

Small Island First Nations make a big statement with international complaint about human rights violations

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A small group of Vancouver Island First Nations could force the federal government to defend itself before an international tribunal against claims of human rights violations. But while the Hul'qumi'num Treaty Group took a significant step this week toward achieving that goal, there is no guarantee that the group will finally get the hearing it seeks, according to a lawyer for the Inter-American Commission on Human Rights.

The treaty group has been working since 2008 to have its human rights complaint by a tribunal of the Inter-American Commission on Human Rights, but the foundation of its complaint stretches back to the 1880s and a key land grant that gave nearly 20% of Vancouver Island to a railway company and continues to influence the development of Vancouver Island to this day.

While the treaty group says the announcement this week that their complaint is admissible to the commission is proof that their complaint is a serious one, federal and provincial treaty negotiators say the First Nations should try to resolve the dispute in Canada before taking the fight to an international level.

The Hul'qumi'num Treaty Group represents a coalition of small Island groups, including the Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation and Penelakut Tribe. The group says that 810,000 hectares of its traditional territory in southeast Vancouver Island, most now privately owned and developed, was illegally confiscated in 1884 as part of a land grant given to the Dunsmuir Company to build the Island's railway.

They want to be compensated for the loss of that land because they say their human rights were ignored during the land grant process. However, most privately owned land is off the negotiating table as First Nations and government negotiators try to press forward with long-stalled treaty negotiations.

Hul'qumi'num's chief negotiator, Robert Morales, said this week that it's "unrealistic" to expect to have the land be returned to them, but the group wants fair compensation for the loss. At current market values, plus interest, that would likely be in the billions of dollars.

"There's not enough money in Canada to adequately compensate us for the land, but we're prepared to be reasonable and negotiate a fair settlement," Morales said.

Canadian officials have long argued that the treaty group still has legal options in Canadian courts and the treaty processes to air their grievances and the case should not be heard outside of the country.

Spokespeople for both the federal and provincial governments say that the Hul'qumi'num Treaty Group has already agreed to abide by the principles of the B.C. treaty process and should stay the course rather than appeal to international bodies for support. But the treaty group is pushing forward with the case, even if its outcome only serves to embarrass the government's human rights record in regards to Canada's indigenous peoples.

"We see the ongoing treaty process as the best means to balance the interests of the treaty group and all Canadians," Margot Geduld, a spokeswoman for the Department of Indian and Northern Affairs, said.

George Abbott, B.C.'s Ministry of Aboriginal Relations and Reconciliation, said there are "many domestic remedies" for First Nations seeking to address their rights and title interests, rather than seeking international assistance.

"The (treaty group) must now show how resolution of their historical claim with respect to a land grant made before the turn of the last century is better resolved through a non-binding IACHR process designed to address contemporary issues, than through the Canadian democratic process," Abbott said.

The Inter-American Commission on Human Rights is an autonomous branch of the Organization of American States dedicated to the promotion and protection of human rights in member countries.

Marie Fournier, a lawyer for the IACHR, said it's a "big step" for the treaty group to have its case declared worthy of further investigation, but it doesn't mean that the case will proceed to a full hearing

Fournier said from her office in Washington, D.C. that the "vast majority" of human rights violation complaints in member countries investigated by the commission never get to the hearing stage. She said the commission receives hundreds of petitions each year that are determined to have merit, but only about one-fifth actually get to the hearing stage. And even if the treaty group is successful in having a tribunal agree that its human rights have been violated and the case should be transferred to the Inter-American Court of Human Rights for a judgment, any decision by the court would not be legally binding on Canada.

Fournier said the onus is now on both the treaty group and the Canadian government to present written arguments before a decision is made about moving the case forward.

"Recommendations are usually made by the commission in many cases, and sometimes cases are ordered to our court," Fournier said. "However, Canada has not ratified our conventions so any recommendations on this case that could be made would be the final stage of our process because we have no jurisdiction to order Canada to do anything in regards to financial compensation for the lands in question."

Carole Saindon, a spokeswoman for the Department of Justice, which is handling the case for Canada, said the government "takes seriously" any decision of the Inter-American Commission on Human Rights and will carefully consider its findings. But she pointed out that the commission has ruled only on the admissibility of the treaty group's petition not the merits of their claims.

"Canada still considers negotiations as the preferred method for addressing their claims and we remain committed to resolving their issues by negotiating workable agreements through the British Columbia Treaty Commission process,"

Saindon said from Ottawa.

"This case is still before the Inter-American Commission on Human Rights, (so) it would not be appropriate to comment further at this time."

Morales is not concerned that the commission's findings aren't legally binding.

If a tribunal rules in favour of the treaty group it would show the world how ineffectual the nation's treaty process is and tarnish Canada's human rights reputation internationally, he said.

"We didn't want to go this route, but the government has forced us into this position," he said.

"If the ruling goes our way, we fully expect the Harper government to step up and deal with these human rights issues."

Doug White, the chief of the Snuneymuxw First Nation which faces similar land claims issues as the treaty group, said millions of dollars and 15 years have spent on treaty negotiations in B.C., but they have led "nowhere" for most First Nations in B.C.

He said some provincial rights have been achieved in that time, but "not one square inch" of the Snuneymuxw's or the treaty group's traditional lands have been recognized as title land by governments.

"We expect the fight to embarrass the federal government to continue until it has to stand up and defend its human rights record with the nation's indigenous people," White said.

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