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International rights tribunal to probe ownership of native land

By JUSTINE HUNTER

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The case involves 300,000 hectares of land on the east coast of Vancouver Island

A Vancouver Island native group has won a ruling that will force the Canadian government to defend its domestic [human rights](#) record at an international tribunal later this year.

The Inter-American Commission on Human Rights has approved the Hul'qumi'num Treaty Group's petition to hear the case against Canada. The native group contends that their human rights were violated by the privatization of their traditional territory – roughly 300,000 hectares of land on the east coast of Vancouver Island that was taken in the 1800s and converted to private property.

The IACHR, an autonomous body of the Organization of American States, has found the B.C. treaty process has demonstrated it is not an effective mechanism to protect the alleged aboriginal victims' rights.

Robert Morales, chief negotiator for the treaty group, is intent on using to the case to alter the future of treaty-making in B.C., where most of the land base – and future development – is still subject to aboriginal land claims.

“Instead of land claims, I think we need to change the dialogue to human rights,” he said in an interview.

Mr. Morales is well-positioned to change that dialogue. He's part of a working group of B.C. chiefs with the task of moving the moribund treaty process forward.

The B.C. government has pushed for treaty settlements as a means to end the uncertainty that has hampered investment. Because unsettled land claims hang over most of the province, development such as mining is frequently held up in litigation.

The treaty task force was set up last summer, after the failure of the provincial government's attempt to create a sweeping law to recognize aboriginal title.

The ambitious Recognition and Reconciliation Act was abandoned in the face of criticism from both industry and native communities, and now native leaders are developing a strategy to move forward.

The chiefs' task force is due to come back with a proposal in March, and the Hul'qumi'num's approach could provide the chiefs with a new road map, said Mr. Morales, who represents more than 6,000 aboriginal people on Vancouver Island and the Gulf Islands.

Land ownership in B.C.

Unlike most land in B.C., the traditional territory of the Hul'qumi'num – roughly 300,000 hectares of land on the east coast of Vancouver Island – is privately owned.



CARRIE COCKBURN/THE GLOBE AND MAIL » SOURCE: HUL'QUMI'NUM NATIONS PETITION TO IACHR

“We need to find a way to have Canada and B.C. recognize the aboriginal treaty rights of first nations in B.C.,” he said. “Canadians pride themselves on their human rights record, but they don't associate the huge disparity between people living on reserves and people living off reserves as a question of human rights.”

Although the province is pressing ahead with individual treaties, there is no broad agenda to settle the land question.

George Abbott, B.C.'s aboriginal relations minister, said there is progress on the treaty front, noting there are several native bands that are expected to vote on proposed treaties this year.

“I’m pretty optimistic we are going to make some progress in 2010 on aboriginal issues,” he said in an interview. But the province is focusing on deals with bands where there is an appetite for settlement.

The Hul’qumi’num ancestral lands, which were converted to railway lands, are now privately owned by forest companies. That means B.C. and Canada won’t even discuss most of the land the tribes’ claim as their traditional territories because it is no longer Crown land.

The Inter-American Commission on Human Rights found Canadian courts “do not seem to provide any reasonable expectations of success, because Canadian jurisprudence has not obligated the state to set boundaries, demarcate and record title deeds to lands of indigenous peoples.”

Both Canada and the treaty group have been given several months to prepare for the hearing, which is expected to proceed in the fall. Chuck Strahl, federal Indian Affairs Minister, could not be reached for comment yesterday.

It is rare for the international tribunal to take on a Canadian native rights issue. Mike Mitchell of the Akwesasne reserve near Cornwall, Ont., asked the commission to uphold native rights to transport cigarettes and alcohol across the border. The commission ruled against Mr. Mitchell