

Human rights ruling could change land claims process

BY ROBERT MORALES, SPECIAL TO THE SUN DECEMBER 14, 2009

A recent ruling from the Inter-American Commission on Human Rights (IACHR) in Washington, D.C., should send a strong and unequivocal message to both the federal and B.C. governments that the current approach to resolving land claims is clearly inadequate and simply not working.

Specifically, the ruling by the IACHR -- an autonomous organ of the Organization of American States, promoting and protecting human rights -- could clear the way for private lands to be dealt with in aboriginal land claims given that the privatization of traditional territory may be a violation of human rights. This ruling of the IACHR could fundamentally change the future of the land claims treaty process in British Columbia and it's clear that governments need to come to the table and start negotiating in order to resolve this issue.

The ruling is in response to a petition made by the Hul'qumi'num Treaty Group (HTG), the political organization representing over 6,600 first nations people on what today is known as Vancouver Island and the Gulf Islands.

In 2007, HTG filed a human rights complaint against Canada, arguing that Hul'qumi'num human rights to property and culture were being violated and ignored.

The complaint cited the total failure of Canada to deal with the 1884 E&N Railway grant, which privatized the entire southeast quarter of Vancouver Island through the B.C. treaty negotiation process. The complaint also cites the massive urbanization currently happening in this area with little to no first nations involvement.

At its core, the HTG petition asked the Commission to examine whether the current B.C. treaty process and Canada's judicial system were effective in protecting Hul'qumi'num human rights as a result of the privatization of traditional territory.

The IACHR ruled it as admissible.

This ruling clears the way for the IACHR to hear the merits of a case against Canada on violating the human rights of aboriginal people whose traditional territories are subject to private property rights created by the state.

Notably, the IACHR will examine and comment on alleged violation of Articles II (right to equality before the law), III (right to profess, manifest and practice a religious faith), XIII (right to culture) and XXIII (right to property) of the American Declaration of the Rights and Duties of Man by Canada against the Hul'qumi'num peoples.

In this ruling, the IACHR found that by failing to resolve the HTG claims with regard to their ancestral lands, the British Columbia Treaty Commission process has demonstrated that it is not an effective

mechanism to protect the right to property of the alleged victims.

Indeed, examining the government's position that if a first nation does not wish to accept its terms under negotiation, that it can litigate, the IACHR said there is no due process of law to protect the property rights of the HTG to its ancestral lands.

The IACHR also observed that the legal proceedings 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.

In the case of HTG, those remedies would not be effective under recognized general principles of international law.

Finally, critiquing the ineffectiveness of the province's Heritage Conservation Act, the commission commented that such legislation is not suitable because it cannot be used to comprehensively and permanently protect all HTG ancestral lands from the actions of their parties because their purpose is not to recognize the HTG's property rights to those lands or the obligation of the state to provide restitution.

This ruling doesn't mean that government will expropriate the private land, but it will need to begin to account for that private land through financial compensation to first nations.

The ruling fundamentally recognizes the difficult position of Hul'qumi'num people and will hopefully begin to clear the way to effectively deal with the private land issue in treaty negotiations.

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