

## LAND DISPUTE

**B.C. natives take complaint to international group**JANE ARMSTRONG  
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VANCOUVER -- A group of B.C. native chiefs hope to persuade a Washington-based human-rights organization to hear its complaint that Canada has refused to play fair in treaty negotiations concerning a swath of now-private land.

The native group claims that about 300,000 hectares of land on the east coast of Vancouver Island was unfairly taken in the 1800s and converted to private property to build a railway.

Most of the land, first used for the E&N Railway, has since been transferred to logging companies and today is worth at least tens of millions of dollars, said Robert Morales, chief negotiator for the Hul'qumi'num Treaty Group.

But privately held land is not on the table in the British Columbia treaty process. As a result, the group's claim has been reduced to about 18,000 hectares, a fraction of what they lost, Mr. Morales said in an interview from Washington.

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His group represents about 6,200 members of the Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation and Penelakut Tribe, all on Vancouver Island.

The natives are asking the Inter-American Commission on Human Rights, an arm of the Organization of American States, to hear their case.

Mr. Morales argued the natives' case yesterday afternoon. Canada, scheduled to present its argument next March, will urge the rights body to dismiss the claim, arguing that the issue should first go through Canada's courts.

The Hul'qumi'num lost control of most of their land in the 1800s.

That was when the government transferred huge amounts of property to industrialist Robert Dunsmuir to encourage construction of the E&N Railway from Esquimalt, just outside Victoria, to Duncan in the north. Logging companies later acquired most of those lands.

Mr. Morales said the issue of privately held land has reached a deadlock in the B.C. treaty process. The Hul'qumi'num group is hoping first to get its case heard by the international tribunal. A favourable ruling, he said, could put pressure on Canada to rethink the notion of putting privately held land on the negotiating table.

The native group doesn't expect that the disputed land can ever be expropriated from private hands. But it does want an appropriate compensation package that recognizes the value of the land.

"We're not saying that we want to kick all the private landowners off their land. What we're saying is: 'We want to be dealt with in a fair way,' " Mr. Morales said. "If a country or state confiscates land, they either have to return the land or give you replacement lands or they have to compensate you. I don't expect the government is going to expropriate all these lands and return them to the Hul'qumi'num. I just don't think that's in the cards. It's all developed. It's just not going to happen."

However, the Hul'qumi'num group wants to reverse the mindset that privately held land won't ever be part of the negotiation equation.

"For us to be told: 'Well, it's just not available, 85 per cent of your territory is gone and you can't bring it up any more,' is just wrong. It's unacceptable. We're saying, 'this was an illegal confiscation of our land.' "

This is the second time that a Canadian native group has taken an issue to the international tribunal, said Sarah Morales, a University of Victoria law instructor who is Robert Morales's daughter.

The previous complaint came from Mike Mitchell of the Akwesasne reserve near Cornwall, Ont., who asked the commission to uphold native rights to transport cigarettes and alcohol across the border. The commission ruled against Mr. Mitchell.

Other native groups are stuck on the issue of privately held land and will be watching to see how the tribunal rules, Ms. Morales said.

"Canada prides itself on its human-rights record," she said. "If the commission was to come down and find that Canada has violated the Hul'qumi'num's right to property or their right to culture, it would say even more if Canada did nothing."

Mr. Morales said the idea to take the case abroad came from community elders. "When we started the treaty process ... the elders said to us: 'How is it that we lost our land?' "

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