



CHIPPEWAS OF THE THAMES FIRST NATION

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Seventh session of the Expert Mechanism on the Rights of Indigenous Peoples
7 to 11 July 2014
Geneva - United Nations Palais des Nations

Item 8: Proposals to be submitted to the Human Rights Council for its consideration and approval

Statement delivered by Jesse McCormick on behalf of the Deshkaan Ziibing Anishinaabeg, also known as Chippewas of the Thames First Nation.

Thank Mr. /Madam Chairperson,

My name is Jesse McCormick. I am a citizen of the Deshkaan Ziibing Anishinaabeg, also known as the Chippewas of the Thames First Nation. I am also a beneficiary of the United Nations Voluntary Fund for Indigenous Peoples and we would like to express our appreciation to the fund and its contributors for supporting our participation in the present session.

We are pleased to present the following recommendation for a proposal to be submitted to the Human Rights Council for the consideration of the Expert Mechanism.

The people of Chippewas of the Thames First Nation have long sought to exercise greater control over our traditional territory in accordance with our strong relationship with our lands. Despite the legacy and challenges of residential schools, our nation continues to promote and assert our right to participate in the decision making relating to our modern traditional territory and to actively manage our lands.

As a nation we exercise our sovereign, inherent, and treaty rights to assert our jurisdiction over our lands and we have taken steps, together with the Anishinabek Nation Government, to rebuild our traditional governance and to facilitate the recognition of the inherent jurisdiction of the Anishinabek Nation.

The Supreme Court of Canada has recently ruled in favour of the Tsilhqot'in Nation in *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44. After decades of struggle, the Tsilhqot'in Nation was victorious before the Supreme Court in establishing that they hold aboriginal title over lands which have been occupied by the Tsilhqot'in Nation for centuries. It is the first time in the history of Canada that aboriginal title over a specific parcel of land has ever been recognized by the Supreme Court of Canada. The Supreme Court of Canada also declared that the doctrine of terra nullius never applied in Canada.



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This decision has the potential to significantly modify both the legal and factual context within which First Nations and the Crown will approach future title claims. The decision recognizes the authority of the Tsilhqot'in Nation to determine the uses of their title lands and proactively manage those lands. The Supreme Court of Canada described the jurisdictional authority that has been recognized as belonging to the Tsilhqot'in Nation at paragraph 94. The Supreme Court stated, and I quote:

[94] With the declaration of title, the Tsilhqot'in have now established Aboriginal title to the portion of the lands designated by the trial judge with the exception as set out in para. 9 of these reasons. This gives them the right to determine, subject to the inherent limits of group title held for future generations, the uses to which the land is put and to enjoy its economic fruits. As we have seen, this is not merely a right of first refusal with respect to Crown land management or usage plans. Rather, it is the right to proactively use and manage the land.

The uncodified right of First Nations to proactively use and manage aboriginal title lands is novel in Canadian law. It is uncharted territory in the ever developing relationship between First Nations and the Crown and it marks a significant point in the development of the relationship between indigenous and non-indigenous peoples in Canada.

We are setting out on a new journey but we do yet know where our travels will take us. This case offers the opportunity chart a new course towards harmonious and cooperative relations between the State and indigenous peoples through the effective implementation of the land rights of indigenous peoples. However, the potential for challenges and conflict is high. The implementation of this decision will require changes in law, behaviour and expectations. How those changes are undertaken will directly impact future initiatives. The *Tsilhqot'in* decision presents an opportunity to demonstrate to the world that the effective recognition of indigenous land rights is compatible with, and integral to, harmonious and cooperative relations between the State and indigenous peoples.

The Chippewas of the Thames First Nation submits that the Expert Mechanism is well situated by both mandate and expertise to contribute to the formulation of effective measures to guide the implementation of recognized indigenous land rights through the provision of thematic advice to the Human Rights Council.

Chippewas of the Thames First Nation recommends that the Expert Mechanism propose to the Human Rights Council that the Human Rights Council request that the Expert Mechanism examine best practices of both States and indigenous peoples with regard to appropriate measures and implementation strategies for Article 26 of the United Nations Declaration on the Rights of Indigenous Peoples.



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APPENDIX

Article 26 of the Declaration on the rights of indigenous peoples.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.