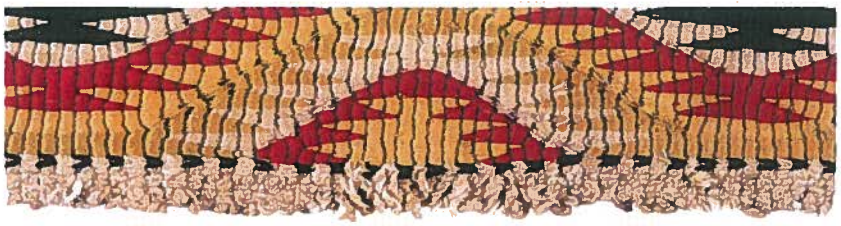

HUL'QUMI'NUM TREATY GROUP

OFFICIAL PRESS CONFERENCE KIT
June 10, 2011

Content includes:

- Hul'qumi'num Treaty Group Press Statement June 10, 2011 (Tab)
- HTG OAS Petition-Inter-American Commission Human Rights (Tab) Backgrounder June 2011
- Organization of American States Admissibility Decision regarding HTG OAS Petition to IACHR
- Affidavit Submission to IACHR- Elder Luschiim (Arvid Charlie)
- Media Releases- (Tab)
- May 12, 2011 HTG Opposing Proposed 1Billion dollar sale by TimberWest without consultation
- Media Release May 25, 2011-Opposition to TimberWest sale grows as Vancouver Island First Nations agree on Declaration
- Vancouver Island First Nations Declaration
- Amnesty International Support Statement (Tab)
- Lawyer's Rights Watch Canada Support Statement
  OAS Amicus brief summary
- Ancient Forest Alliance Support Statement

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Ladysmith, B.C. V9G 1M5
Telephone: 250-245-4660 Fax: 250-245-4668

Hul'qumi'num Treaty Group

Press Statement

June 2011

OPENING STATEMENT

HUL'QUMI'NUM TREATY GROUP

JUNE 9, 2011

AS PREPARED FOR DELIVERY

Good morning. My name is Robert Morales, Chief Negotiator for HTG, the Hul'qumi'num Treaty Group, which represents over 6,500 members of six Hul'qumi'num First Nations on Vancouver Island. I want to thank the members of the press and media for attending today's press conference which we've called to announce new important developments and steps that we've taken in furtherance of our efforts in opposition to the proposed 1 billion dollar takeover bid of TimberWest Forest Corporation by the British Columbia Investment Management Corporation and the Public Sector Pension Investment Board.

First, I want to acknowledge the Squamish First Nation for allowing us to hold this event on their territory, in conjunction with the First Nations Summit Meeting here at the Chief Joe Mathias Centre. Their support is greatly appreciated. Second, I want to introduce the individuals and organizations they represent that have joined us today at this press conference to show their support for our efforts aimed at opposing this billion dollar corporate takeover of TimberWest by the two pension plans. Joining us today to show their support for our determined efforts to protect our human rights as indigenous peoples in our ancestral lands on Vancouver Island are the following individuals and organizations. The HTG is pleased to announce that we have secured a coalition of several First Nations on Vancouver Island. In total 15 First Nations have joined in this coalition, including the 6 HTG nations, Cowichan Tribes, Lake Cowichan First Nation, Halalt First Nation, Penelakut Tribe, Lyackson First Nation, Stz'uminus First Nation, Snuneymuxw First Nation, Tseshaht First Nation, Hupacasath First Nation, Laich-kwil-tach Treaty Society which includes, Kwiakah First Nation, Wei Wai Kai First Nation, Wei Wai Kum First Nation, K'omoks First Nation, T'sou-ke First Nation, and the Esquimalt First Nation.

We are also pleased to announce that the coalition is joined by the preeminent human rights advocate organizations Amnesty International and Lawyers Rights Watch Canada. Lawyers Rights Watch Canada has filed an Amicus Curiae brief with the IACHR in support of the HTG.

As well we have been joined by the environmental organizations of Ancient Forest Alliance and Ecotrust Canada. These organizations have each provided a statement today, which is included in your press kit, regarding their support.

Following my opening remarks, which will include a brief rundown of the background to our efforts aimed at protecting our human rights as indigenous peoples in our ancestral lands, I have an announcement to make on behalf of HTG about our most recent legal action that we have taken before the British Columbia Security Commission with respect to the sale of TimberWest. Following that, we have several photographs and a brief video taken from exhibits we've submitted to the OAS Inter-American Commission on Human Rights, which we feel document and explain why we felt forced to take these actions to protect our human rights in our ancestral lands. After that, I will turn over the microphone to several of the members of our coalition who will offer their own brief remarks on the issues involved in this case, and then open the floor for questions.

In an historic, precedent setting decision HTG's human rights complaint against Canada was ruled admissible by the IACHR on October 30, 2009 and has been admitted to the merits stage of the proceedings. The crux of the Commission's decision was that Canada's legal system and the BCTC treaty process were found to be completely ineffective in providing adequate remedies for the alleged human rights violations committed against the Hul'qumi'num indigenous peoples. HTG's complaint and related claims are now under active consideration by the IACHR; HTG recently filed its reply argument to Canada's defense against these claims and a formal hearing on the matter has been requested. Additionally, HTG has filed a request for Precautionary Measures along with its recent submission to the IACHR, which is the equivalent of an injunction under principles of international human rights law, to stop all logging and developmental activities by TimberWest and two other forestry companies, Hancock Timber Resources and Island Timberlands on Hul'qumi'num ancestral lands, until proper consultation mechanisms are established.

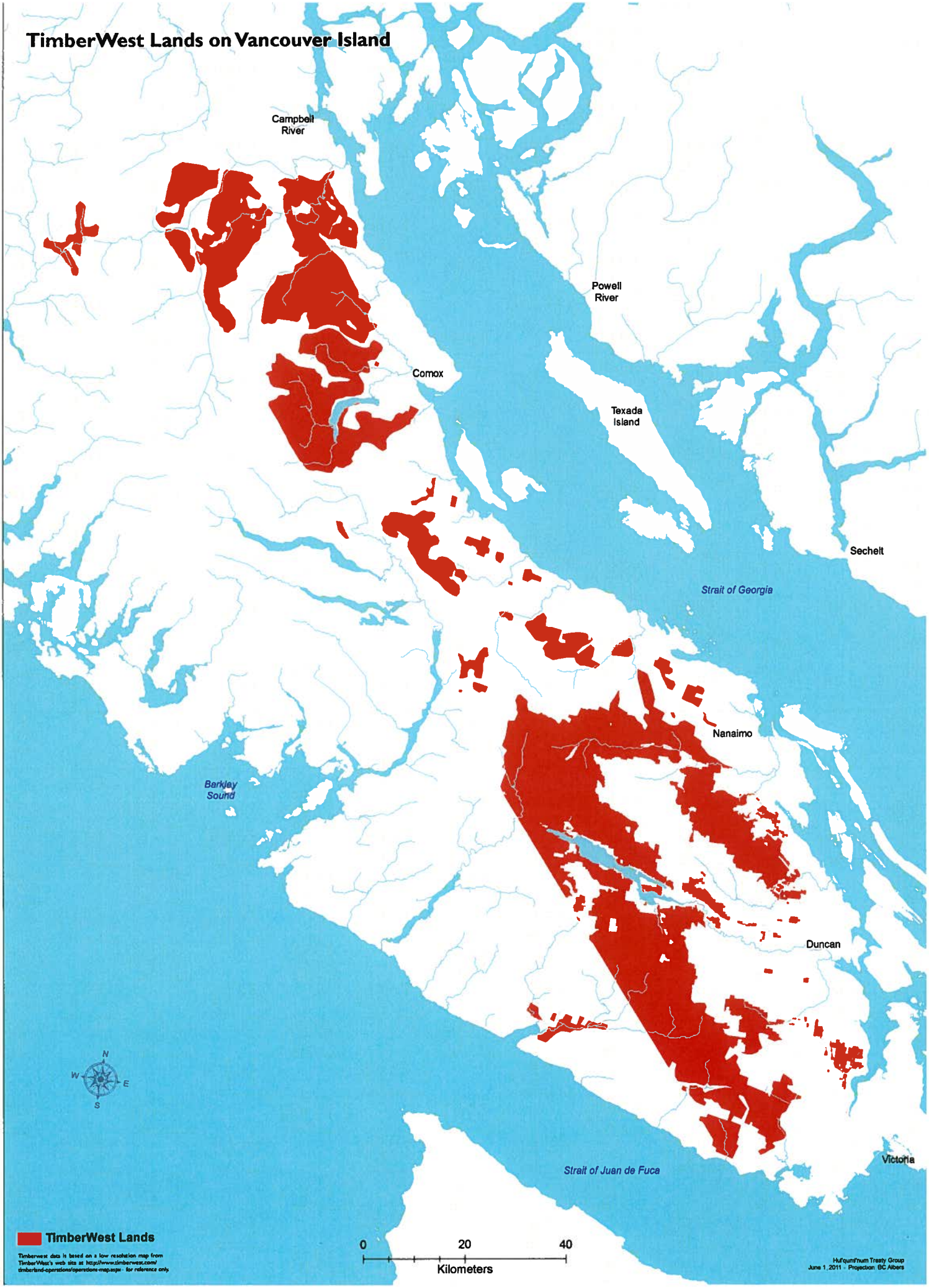
New action taken before the British Columbia Securities Commission

In support of these efforts, on May 25, just two weeks ago, HTG announced that 9 additional Vancouver Island First Nations whose traditional lands and territory have also been confiscated by Canada through the E & N Railway grant, had joined together in support of HTG's efforts in

opposition to the sale of TimberWest, demanding the right to consultation and accommodation prior to the sale. As our "E & N Declaration" states,

> We never surrendered or ceded our traditional territories and we therefore object to decisions being made on these "private" lands without our consultation and accommodation and where necessary our consent.
>
> Canada, BC and corporate entities have an obligation under domestic and international law to honour our right to be consulted about decisions being made on these "private" lands and we call upon them to fulfill this obligation now and into the future.
>
> We collectively object to the current proposed sale of the TimberWest stapled units which includes these "private" lands, within our traditional territories to the Canada and BC pension funds and any other potential buyer without prior consultation with our nations.

In furtherance of these efforts, HTG has sent a formal letter to the British Columbia Securities Commission to express its concerns regarding the potential acquisition off TimberWest Forest Corporation (TimberWest) by the two pension plans. In that letter, dated June 10, 2011, HTG explained its position that TimberWest has failed to properly disclose information relating to HTG's human rights petition and claims before the IACHR that it believes are required under federal and provincial securities laws and other instruments that apply in takeover bid situations. Therefore, HTG has requested in that letter that the BC Securities Commission investigate and take appropriate action, including ordering TimberWest to cease trade pending disclosure of the material information related to HTG's specific human rights claims, and take any other actions the Commission deems appropriate.


TimberWest Lands on Vancouver Island
Campbell River
Powell River
Comox
Texada Island
Sechelt
Strait of Georgia
Nanaimo
Barkley Sound
Duncan
Victoria
Strait of Juan de Fuca
N
W
E
S
TimberWest Lands
Timberwest data is based on a low resolution map from TimberWest's web site at http://www.timberwest.com/timberland-operations/operations-map.aspx for reference only
0
20
40
Kilometers
Hul'quminum Treaty Group
June 1, 2011 - Projection: BC Albers

Hul'qumi'num Treaty Group

- OAS Petition Backgrounder June 2011
- IACHR Admissibility Decision Nov 23, 2009
- IACHR Affidavit Submission-Luschiim-Arvid Charlie

Hul'qumi'num Treaty Group
Petition to Inter American Commission on Human Rights, Washington, D.C.

BACKGROUNDER

In May 2007 the Hul'qumi'num Treaty Group filed a petition to the Inter-American Commission on Human Rights. The complaint against Canada alleges ongoing violations of the Hul'qumi'num peoples' right to property, culture and equality of law, as protected by the American Declaration on the Rights and Duties of Man, by granting approximately 85% of the lands traditionally used and occupied by the Hul'qumi'num communities to private land owners. The relief sought by HTG from the Commission includes urging Canada to provide restitution for the confiscation of the Hul'qumi'num's lands and resources, a site visit from the Commission to further investigate the facts of the case, and establishment of a protocol for consultation between the federal, provincial and regional governments and the HTG.

Indigenous peoples are advocating that their land rights are in fact human rights. We argue that while these rights are based in our historical connection to the land, it is the present day oppression and inequity that affects today's indigenous peoples and their communities. In particular we argue that the colonizing governments have failed to recognize indigenous peoples right to property, right to cultural integrity and the right to equality and freedom from discrimination.

The Inter-American Commission on Human Rights is empowered to promote the observance of human rights among the members of the Organization of American States, which includes Canada, and to act on complaints or petitions that allege particular violations of human rights.

The proceedings before the Inter-American Commission are now at the merits stage when the Commission considers the allegations of human rights violations and makes a decision as to whether or not the state is in violation of its human rights obligations under the American Declaration on the Rights and Duties of Man.

The Hul'qumi'num Treaty Group in recent submission to the IACHR has also applied for a precautionary measure order which is equivalent to an injunction to stop development activity in our traditional territory.

INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINE DES DROITS DE L'HOMME

IACHR 50 years defending HUMAN RIGHTS

ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006 U.S.A.

November 23, 2009

RE: Hul'qumi'num Treaty Group
Case 12.734
Canada

Dear Sir:

I am pleased to address you in order to inform you that the Inter-American Commission on Human Rights examined the case referred to above during its 137 regular period of sessions and, in connection therewith, adopted its Report on Admissibility N° 105/09, copy enclosed, in compliance with Article 46 of the American Convention on Human Rights.

In accordance with Article 37(2) of the Commission's Rules of Procedure, Petition N° 592-07 has been registered as Case N° 12.734, as cited above. I ask that you utilize the latter reference in all future communications.

Pursuant to Article 38(1) of its Rules of Procedure, the Commission has set a period of two months, as from the date of the present communication, for you to present additional observations regarding the merits.

Further, as provided for in Article 38(4) of the Rules of Procedure, the Commission places itself at the disposal of the parties with a view toward reaching a friendly settlement of this matter, in compliance with Article 48(1)(f) of the American Convention.

Robert A. Williams, Jr.
Legal Representative
The University of Arizona
Rogers College of Law
Indigenous Peoples Law
and Policy Program
1201 E. Speedway Blvd.
Tucson, Arizona 85721
Fax: 520-621-9140

Accordingly, I request that you present your response to that offer as soon as possible.

Sincerely yours,

Santiago A. Canton
Executive Secretary

Enclosure

Organization of American States

50 years defending HUMAN RIGHTS

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

OEA/Ser.L/V/II.137
Doc. 14
30 October 2009
Original: English

137° regular period of sessions

REPORT N° 105/09
PETITION 592-07
ADMISSIBILITY
HUL'QUMI'NUM TREATY GROUP
CANADA

Approved by the Commission at its session N° 1809
held on October 30, 2009

REPORT N° 105/09
PETITION 592-07
ADMISSIBILITY
HUL'QUMI'NUM TREATY GROUP
CANADA
October 30, 2009

I. SUMMARY

1. On May 10, 2007, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "the Commission," or the "IACHR"), received a complaint lodged by the *Hul'qumi'num Treaty Group* and the *Indigenous Peoples Law and Policy Program* of the University of Arizona (hereinafter the "petitioners"), on behalf of six indigenous peoples and their members,[1] who make up the Hul'qumi'num Treaty Group (hereinafter, "the alleged victims," "the Hul'qumi'num peoples," or "HTG"), against the State of Canada (hereinafter "the Canadian State," "Canada" or the "State"). The petition alleges that the State has violated the human rights of the HTG because of the absence of demarcation, established boundaries and recording of title deed to their ancestral lands; the lack of compensation for HTG ancestral lands currently in the hands of private third parties; the granting of licenses, permits and concessions within ancestral lands without prior consultation; and the resulting destruction of the environment, the natural resources and of those sites the alleged victims consider sacred.

2. The petitioners allege that the Canadian State is responsible for violating the rights guaranteed under the provisions of Article XXIII (right to property), Article XIII (right to culture), and Article II (equality before the law) of the American Declaration of the Rights and Duties of Man (hereinafter "the Declaration," or the "American Declaration") and of other human rights enshrined in international common law. The petitioners claim exception from the requirement of exhaustion of domestic remedies because, they argue, domestic legislation does not provide for adequate and efficient remedies to serve the specific claims of the petitioners and, also, due to the petitioners' lack of financial means.

3. For its part, the State argues that the petition should be declared inadmissible because the human rights of the alleged victims have not been violated since the petitioners have not exhausted all domestic remedies available; because, despite their lack of financial means, the petitioners have access to government loans to file legal actions, and because certain alleged facts do not constitute violations of the American Declaration but of other international instruments that are not connected. Therefore, the State maintains that the requirement of prior exhaustion of domestic remedies established in Article 31 of the Rules of Procedure of the Inter-American Commission on Human Rights has not been met.

4. As this report indicates, after analyzing the information and the arguments submitted by the parties with regard to admissibility, the Commission concludes that the petition is admissible with regard to alleged violations of Articles II, III, XIII and XXIII of the American Declaration. The Commission resolves to notify the parties of this decision, to publish it and to include it in its Annual Report to the General Assembly of the Organization of American States.

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[1] The alleged victims include the indigenous peoples or "First Nations" Cowichan; Chemainus; Penelakut; Halalt; Lyackson; and Lake Cowichan, and their members. The petitioners point out that the Hul'qumi'num Treaty Group (HTG) is an organization legally established and recognized in the province of British Columbia, formed in 1993 to represent the interests of the six indigenous peoples mentioned above within the framework of the process of negotiation of treaties or agreements with the State to resolve territorial claims, the recognition of indigenous self-government, and the promotion of the language, culture and economic self-sufficiency of those peoples.

II. PROCESSING BEFORE THE COMMISSION

A. Processing of the Petition

5. The Commission received the petition on May 10, 2007, and assigned it number 592-07. The petitioners also requested the adoption of precautionary measures in order to safeguard the integrity of the ancestral lands of the Hul'qumi'num peoples.[2] On January 15, 2008, the Commission forwarded copies of the relevant parts of the petition to the State, and requested that the submit its response within a period of two months, in accordance with Article 30 of the Rules of Procedure of the IACHR. The State's response was received on April 30, 2008.

6. The IACHR also received additional information from the petitioners on the following dates: June 6, 2008; July 11, 2008; September 24, 2008; October 14, 2008; November 21, 2008; February 13 and 16, 2009; March 10, 2009; September 14, 2009; and on October 27, 2009. Those communications were duly forwarded to the State.

7. The IACHR also received observations from the State on the following dates: October 17, 2008; December 15, 2008; and on February 25, 2009. Those communications were duly forwarded to the petitioners.

8. The parties presented oral arguments regarding the admissibility of the petition during hearings held by the Commission within the framework of the 133rd and 134th Sessions, held respectively on October 27, 2008, and on March 23, 2009.

9. On February 24, 2009, and on March 16, 2009, the IACHR forwarded to the parties the *amicus curiae* briefs filed by Canadian indigenous peoples and organizations.[3]

III. POSITION OF THE PARTIES

A. Position of the petitioners

10. The petitioners point out that all the efforts carried out by the HTG to secure recognition, protection and restitution of their ancestral lands are based on the plundering of their territory beginning in the 19th century, when 85 percent of their ancestral lands were transferred by force to private third parties without prior consultation and without any compensation for the lands taken.

11. The petitioners point out that, despite this loss of territory, for a long time, the alleged victims hunted, fished, gathered food and practiced ceremonies and spiritual activities within a good portion of their ancestral lands. The petitioners allege that, during the last 7 years, those activities have been significantly limited due to the dramatic increase in concessions granted to private individuals and real estate developers for the construction of homes, commercial buildings and resorts within that territory, as a result of the 2010 Winter Olympic Games being held in British

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[2] The petition for adoption of precautionary measures is currently in the phase of requesting information from the State. The petitioners requested that the granting of permits and licenses to private third parties for residential and commercial development within a specific area of their ancestral lands, be suspended until an appropriate consultation process between the HTG and the State gets underway with the mediation of the IACHR.

[3] *Amicus curiae* briefs were filed with the IACHR by: Ahousaht First Nation, Assembly of First Nations, First Nations Summit, Nunavut Tunngavik Inc., Union of British Columbia Indian Chiefs, Westbank First Nation, Leich-Kwil-Tach Treaty Society, Wets'uwet'en Hereditary Chiefs, Tsilhqot'in Nation, British Columbia Assembly of First Nations, Stolo Tribal Council y los Gitanyow Hereditary Chiefs.

Columbia. The petitioners maintain that those concessions were granted without prior consultation of the alleged victims. In addition to encouraging the destruction of the environment by the cutting down of trees this type of commercial and residential development requires, the petitioners allege that these activities have prevented the alleged victims from continuing to practice their culture and their way of life such as hunting, fishing, and gathering food, as well as to practice their religious activities by denying them access to their sacred sites, since those who hold the licenses to those places have prohibited HTG members from entering and trespassers would be subject to arrest and prosecution were they to engage in traditional ceremonies in certain private lands.

12. The petitioners point out that the recognition of their ancestral rights to those lands is essential to protecting them from such development and to preserve their culture and their way of life. They point out that, for decades, the members of the HTG have sought the recognition of their ancestral rights through meetings, letters and through written complaints filed with various government agencies and authorities. Since 1994, the petitioners contend, the HTG has participated in a process of political negotiation of treaties with the State known as the *British Columbia Treaty Commission* - BCTC[4]. The petitioners point out that the process has not been able to produce any results due to the fact that the State is not willing to conduct negotiations involving lands in private hands or to discuss compensation for the loss of ancestral lands. The petitioners allege that the State makes reaching these agreements contingent on the indigenous peoples not filing lawsuits based on any issue object of the negotiations while the negotiations are being conducted or after a treaty has been ratified; otherwise, the process of negotiation would end or the indigenous peoples would have to compensate the State for any lawsuit filed afterwards. The petitioners explain that the imposition of those conditions is part of the policy of *"extinguishment" or "renouncement"* pursued by the State, which they consider discriminatory toward indigenous peoples due to the fact that, under this government policy, the benefits they gain through negotiated treaties are obtained in exchange for recognition of the rights of the indigenous peoples to only a reduced portion of the ancestral lands in question, and without any possibility of reclaiming the rest of their ancestral lands in the future.

13. The petitioners argue that such conditions imply that the HTG could only acquire rights to state lands of the "Crown," which represent only 12% of their ancestral lands.[5] The petitioners point out that if the HTG were to file suit in court to claim the remainder of its territory, it would not be able to take part in the process of negotiation of treaties which would result in the loss of time and money they have already invested in that process. Furthermore, the petitioners contend that a petition for recognition of their *"aboriginal title"* would have no chance of success because Canadian legal precedent indicates that the State has never recognized the existence of the aboriginal title of an indigenous people to their ancestral lands. Therefore, the petitioners contend that the conditions imposed by those domestic remedies imply a discriminatory situation that violates the right of equality before the law.

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[4] According to the information provided by the parties, the British Columbia Treaty Commission is part of current Canadian policy favoring the negotiation of political agreements between indigenous peoples, the federal Canadian government and the provinces above legal litigation, in order to resolve claims regarding lands, the administration of natural resources, self-government, education, and compensation for indigenous peoples. The indigenous peoples taking part in these negotiations receive government loans based on the condition that the unpaid balance is deducted from whatever monetary compensation is agreed upon in the final agreement. According to the petitioners, the HTG owes the State $13 million for participating in the BCTC process, due to the fact that these funds are needed to carry out the historical, legal, geographical and ethnographical studies needed to support their rights in these negotiations.

[5] The petitioners point out that this percentage represents 38,800 hectares (has) classified as state lands. The petitioners add that 800 hectares of these ancestral lands are currently under the system of protected areas, and that 6,782 hectares (2% of their ancestral lands) are classified as Indigenous Reserves for the benefit of the HTG and are under the jurisdiction of the Canadian federal government.

14. With regard to the preceding matter, the petitioners add that, in 2004, representatives of the Cowichan Peoples of the HTG enlisted the services of the law firm Ratcliff & Company, which is recognized as one of the experts in defending the interests of indigenous peoples in Canada, to study the viability of filing a lawsuit to obtain restitution of their ancestral lands. The petitioners point out that the report prepared by that law firm concluded that, in light of Canadian legal precedent, such a lawsuit would have no chance of success given that there were no domestic remedies available to pursue that action. The petitioners argue that this professional opinion confirms the impediment the HTG faces in order to obtain restitution of its ancestral lands in the domestic courts.

15. With regards to the State's allegation that the HTG has not exhausted all domestic remedies available based on recent events such as the proposal made by British Columbia to the Cowichan peoples, offering to negotiate a treaty granting them full control over lands, and also with regard to the recent motion the Cowichan peoples filed with the Supreme Court of British Columbia petitioning the court to review the permits issued for a residential project, (see *infra* paragraphs 20 and 23), the petitioners point out that these remedies are not sufficient to resolve all their complaints. With regard to the first point, the petitioners allege that the agreement in question offers an insufficient amount of state lands and, furthermore, if they were to accept that agreement, the Cowichan people would have to surrender their right to self-government in those specific lands and would have to accept the jurisdiction of the municipal government. With regard to the motion for review referred to above, the petitioners emphasize that this action is only a petition to review the administrative approval process of a permit issued for the construction of a specific project, and that in no way does it represent a legal action that would result in a decision regarding the property rights that the alleged victims claim to all their ancestral lands currently in private hands.

16. Additionally, the petitioners point out that the high financial cost of accessing the domestic remedies represent an obstacle due to the lack of financial means of the alleged victims who, according to socio-economic studies, live in one of the poorest communities in Canada. The petitioners contend that this situation has led the HTG to accumulate $13 million in debts for taking part in the BCTC process and made it impossible for it to continue with the administrative challenges it had filed to try to stop the issuing of licenses in individual cases where sacred sites were being threatened in certain private lands. The petitioners further contend that the extreme poverty in which the alleged victims live provides added proof of their need to have access to their ancestral lands in order to preserve their cultural, social and economic ways.

B. Position of the State

17. For its part, the State requests that the petition be declared inadmissible because the allegations do not constitute violations of human rights and because the domestic remedies have not been exhausted. The State asserts that the Hul'qumi'num peoples have sufficient legal remedies to secure the lands necessary to preserve their culture and their way of life.

18. The State points out, that the main recourse available is the BCTC process of treaty negotiations, which, in the HTG case, is still underway. The State contends that the BCTC process encourages the search for consensus in finding solutions by concentrating on the interests that indigenous peoples have in the lands claimed (interest-based approach), rather than on their rights in a strictly legal sense (rights-based approach), since that would imply the need to provide legal evidence through costly historical and ethnological studies. The State maintains that, in this process, indigenous peoples can establish which state-owned lands are best suited to resolve their claims. The State adds that, together with the HTG, they have identified the state-owned lands that are available for negotiation.

19. With regard to lands in private hands, the State contends that these lands can be purchased, even after an agreement has been signed, if owners are willing to sell them. The State asserts that this process allows for consideration of the interests of thirds parties who may be affected. The State asserts that this process of negotiation saves time and financial resources that would otherwise be spent in litigating these claims in the courts, and encourages the reconciliation of interests of all sectors of the Canadian population. Furthermore, the State contends that a final agreement can give indigenous peoples the authority to preserve their cultural interests inside and outside of the ancestral lands agreed upon in the negotiating process.

20. By way of example of what the BCTC process of negotiation offers, the State points out that on July 14, 2009, the Province of British Columbia offered to negotiate an incremental treaty agreement with the Cowichan People of the HTG, whereby full control over a certain amount of land would be transferred to them as part of the lands that would eventually be agreed upon between the HTG and the State under the BCTC process. The State affirms that, as in other incremental agreements made with other indigenous peoples, the Cowichan people would also receive funds to administer their territory and its protection as indigenous territory would be constitutionally guaranteed.

21. The State contends that the petitioners are not limited to the treaty negotiating process and that they have several legal avenues available to file petitions with the courts such as a "declaration of Aboriginal rights and title," as well as petitioning to obtain compensation for the violation of these rights. The State also points out that the petitioners could also petition for a judicial review of any government decision, including those made regarding urbanization projects, should they consider that the government has failed to comply with its obligation to consult with the HTG about the possible negative effects that decision could have on their rights to the land in question. The State adds that those petitions may be lodged even while the HTG is involved in the BCTC process. In order to prevent actions that are the object of claims for violation of prior consultation, the State also points out that the petitioners may file interim or interlocutory injunctions) to prevent the actions that represent that threat.

22. As an example of available remedies, the State reviews Canadian jurisprudence where other indigenous peoples have accessed some of the legal remedies mentioned above to protect their rights and where interim costs have been granted based on their indigence, but which the Hul'qumi'num have not requested with regard to their land claims.

23. The State further adds that on July 13, 2009, the Cowichan people filed a motion with the Supreme Court of British Columbia petitioning the review of a permit granted by agents of the provincial government for an area known as the Paldi Development, where a massive residential project is scheduled to be built, and which is one of the projects the petitioners have shown great concern about. According to the State, this shows the effectiveness of domestic remedies to address the claims being presented by the petitioners before the IACHR, since with that legal motion, the Cowichan People seek to have the permit granted for the project, together with the permit for wastewater treatment, in that particular area suspended, and they also seek a ruling that the provincial government's agents violated the right to prior consultation with the Cowichan people.

24. With regard to other remedies available in Canada, the State also mentions the Heritage Conservation Act as a mechanism that the Hul'qumi'num could use in order to coordinate with the State the implementation of measures to preserve those sites considered to be of high significance and value to their heritage.

25. The State also contends that some of the allegations made by the HTG are inadmissible *ratione materiae* because they are not based on the American Declaration but, rather,

on international instruments which Canada is not a party to, such as the American Convention on Human Rights, the United Nations Declaration on the Rights of Indigenous Peoples, and the Draft American Declaration on the Rights of Indigenous Peoples, which the IACHR is not competent to evaluate. Likewise, the State argues, the petitioners base their claims on judgments issued by organs and special proceedings of the United Nations with regard to governmental policy on treaty negotiations which are not within the purview of the Commission.

26. With regard to the alleged violations of the right to equality before the law and of the right to religious freedom, the State contends that these are not properly developed and, therefore, should be declared inadmissible. At the same time, the State asserts that, with regard to this point, the domestic remedies have not been exhausted because the petitioners have not filed any legal action under the Canadian Charter of Rights and Freedoms for the alleged violations of the right to equality before the law and of the right to religious freedom.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* of the Inter-American Commission

27. After examining all available evidence, the Commission considers that it is competent to examine the present petition. Article 23 of the Rules of Procedure of the Commission authorizes the petitioners to lodge a petition alleging the violation of rights protected by the American Declaration of the Rights and Duties of Man. The alleged victims, the six peoples who make up the Hul'qumi'num Treaty Group and their members,[6] fall under the jurisdiction of Canada and their rights are protected by the American Declaration, whose provisions the State is obligated to respect in accordance with Article 17 of the OAS Charter, Article 20 of the Commission's Statute, and Article 29 of the Rules of Procedure of the Commission. Canada is subject to the jurisdiction of the Commission since depositing its instrument of ratification of the OAS Charter on January 8, 1990. Therefore, the IACHR is competent *ratione personae* with regard to the Hul'qumi'num Treaty Group and its members.

28. To the extent that the petitioners allege the violation of Articles XXIII, XIII and II of the American Declaration of the Rights and Duties of Man, the Commission is competent *ratione materiae* to examine the petition.

29. The Commission is competent *ratione temporis* to examine the complaints with regard to the facts alleged in the petition which took place after Canada's obligations under the Declaration were already in force.

30. Last, the Commission is competent *ratione loci*, because the petition alleges facts which presumably took place within Canada's jurisdiction.

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[6] The alleged victims are primarily the six indigenous peoples mentioned *supra* note 1 who are located in the British Columbia province. Altogether, these six indigenous peoples comprise a population of approximately 6,400 inhabitants. These communities are located in specific geographic areas, and their members can be identified individually. In that regard, see IACHR. Report 62/04, Admissibility, P 167/03, Kichwa de Sarayaku Indigenous People and their members, Ecuador, October 13, 2004, par. 47; IA Court H.R., *Case Mayagna (Sumo) Awas Tingni Community*. Judgment issued on August 31, 2001. Series C N° 79. par. 149; and IACHR. Report 58/09, Admissibility, P12.354, Kuna de Madungandi and Embera de Bayano Indigenous Peoples and their Members (Panamá), April 21, 2009, par. 26.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

31. Article 31(1) of the Rules of Procedure of the Commission establishes that for a petition to be admissible, a) the remedies of the domestic legal system have been pursued and exhausted in accordance with generally recognized principles of international law. Article 31(2) establishes that the preceding will not apply when: a) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, and c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. The jurisprudence of the inter-American system clearly indicates that only those remedies that are suitable and effective, if pertinent, in resolving the matter in question, must be exhausted.

32. The Commission will analyze the exhaustion of domestic remedies taking into consideration that, for years, the alleged victims, as indigenous peoples, have tried to protect these rights as being interrelated: 1) recognition of their right to property of their ancestral lands, including lands in private hands, primarily by setting boundaries, demarcation and by recording the title deed to that territory, or, if that is not possible, by obtaining alternative lands as restitution or by obtaining just and equitable compensation; and 2) by implementing a process of prior consultation between the HTG and the State for the purpose of preventing the destruction of the environment, and, consequently, the necessary restrictions to preserve their cultural, religious and spiritual practices as a result of a series of licenses, permits, and concessions granted on ancestral lands that are currently in private hands.

33. In this case, the parties disagree as to whether this requirement has been met. The petitioners argue that they have been prevented from exhausting the domestic remedies because, first, there is no effective mechanism to obtain legal recognition and restitution of their ancestral lands, and second, access to Canadian courts is very costly for the HTG and makes it impossible to lodge the legal remedies mentioned by the State. The petitioners add that, for decades, the HTG has sought recognition of its ancestral rights through various actions with different authorities and governmental agencies, and since 1994, the HTG has taken part in a political negotiation of treaties process with the State known as the British Columbia Treaty Commission – BCTC.[7] But, the petitioners maintain that the process has not produced results because the State is not willing to negotiate lands in private hands or to discuss compensation for the loss of ancestral lands, and making these agreements conditional on the indigenous peoples not pursuing legal action regarding the matter that is the object of the negotiations.

34. For its part, the State contends that the petitioners have not exhausted the domestic remedies available which consist, primarily, of: the treaty negotiation process under the BCTC; legal actions to obtain recognition of aboriginal title and compensation for the violation of that right; filing petitions under the provisions of the Heritage Preservation Act to demand that the Crown fulfill its obligation to conduct prior consultation with indigenous peoples, and petitioning for

[7] According to the information provided by the parties, the British Columbia Treaty Commission is part of current Canadian policy favoring the negotiation of political agreements between indigenous peoples, the Canadian federal government, and the provinces, rather than litigation, to resolve land claims, the management of natural resources, self-government, education, and compensation of indigenous peoples. The indigenous peoples who take part in these negotiations receive government loans on the condition that the unpaid balance of the loan be deducted from whatever monetary compensation the parties agree to. According to the petitioners, the HTG owes the State $13 million for taking part in the BCTC process, due to the fact that the funds are needed to carry out historical, legal, geographical and ethnographical studies to support their rights in these negotiations.

interim or interlocutory measures against violations; and, legal action under the provisions of the Canadian Charter of Rights and Freedoms.

35. With regard to the negotiation of treaties under the BCTC, the Commission notes that the State promotes that process as an ideal mechanism to address, in a comprehensive manner, the territorial claims of indigenous peoples without having to incur the high financial costs or meet the legal and technical requirements necessary to carry out litigation. Therefore, the IACHR considers that the HTG's use of this resource is an important reference point to evaluate the exhaustion of remedies by the petitioners.

36. In that regard, the IACHR recalls that the jurisprudence of the inter-American system has determined that with regard to indigenous peoples, the State must provide them with effective protection that takes into consideration their own traits, their social and economic condition as well as their specially vulnerable situation, their common law, values, practices and customs.[8] This also includes taking into account the political mechanisms indigenous peoples use through their respective representatives, to manage their relations with the State and to claim their rights.

37. The Commission notes that for over a decade, the HTG, through its representative institutions, has sent letters and complaints to various government authorities with regard to activities that impact their ancestral lands,[9] and, furthermore, since 1994, the HTG, through the treaty negotiation process of the BCTC, has brought to the attention of official authorities the central facts contained in the petition, to wit: legal recognition and/or restitution of their ancestral lands, including lands that are currently in private hands, as well as the implementation of a process of prior consultation as indispensable measures to protect those lands from the actions of private third parties. However, the BCTC process has not allowed negotiations on the subject of restitution or compensation for HTG ancestral lands in private hands, which make up 85% of their traditional territory. Since 15 years have passed and the central claims of the HTG have yet to be resolved, the IACHR notes that the third exception to the requirement of exhaustion of domestic remedies applies due to the unwarranted delay on the part of the State to find a solution to the claim. Likewise, the IACHR notes that by failing to resolve the HTG claims with regard to their ancestral lands, the BCTC process has demonstrated that it is not an effective mechanism to protect the right alleged by the alleged victims. Therefore, the first exception to the requirement of exhaustion of domestic remedies applies because there is no due process of law to protect the property rights of the HTG to its ancestral lands.

38. In the opinion of the IACHR, these comments demonstrate the difficulties faced by indigenous peoples when trying to avail themselves of this remedy due to the limited access to the justice system during and following treaty negotiations, which confirms that the treaty negotiation process is not an effective mechanism to protect the rights claimed by the petitioners.

39. The IACHR also considers relevant the experiences of other Canadian indigenous groups described in the *amicus curiae* briefs filed with the IACHR, which show the difficulties they have faced when trying to access the legal remedies that the State contends must be exhausted by

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[8] IA Court H.R., *Case Yakye Axa Indigenous Community*, par. 63; *Case Sawhoyamaxa Indigenous Community*, Merits, Reparations and Costs. Judgment issued March 29, 2006. Series C No. 146, par. 83; and *Case of the Saramaka Peoples*. Preliminary Exceptions, Merits, Reparation and Costs. Judgment issued November 28, 2007. Series C No. 172, par. 178; *Case Tiu Tojin*. Judgment issued November 28, 2008. Series C No. 190, par. 96. IACHR, Report No. 58/09 (Admissibility), Petition 12.354, Kuna de Madungandi y Embera de Bayano Indigenous Peoples and their Members (Panama), April 21, par. 37.

[9] Documents included in the case file of this petition.

the HTG in order to obtain recognition and protection of its ancestral lands.[10] The Commission notes that the judgments cited by the State recognize the existence of the aboriginal title, the communal nature of indigenous property and the right to consultation in the Canadian legal system. But, the *amicus* briefs show that none of those judgments has resulted in a specific order by a Canadian court mandating the demarcation, recording of title deed, restitution or compensation of indigenous peoples with regard to ancestral lands in private hands. Not having obtained any legal certainty with regard to their ancestral lands through any of the judgments, those indigenous peoples contend that they have incurred excessive expenses in order to pursue their legal claims which have experienced many delays due to procedural questions and to the various appeals filed by the State, which, the petitioners argue, have resulted in a situation where their lands are left unprotected against the actions of third parties.[11]

40. It bears recalling that the jurisprudence of the inter-American System has clearly indicated that only those remedies that are suitable and effective, if pertinent, to the resolution of the matter in question must be exhausted. Although the State contends that it is possible to exhaust a series of legal remedies, based on the information contained in the case file, there is no evidence to support that claim.

41. It bears pointing out that, the jurisprudence of the IACHR has established that a petitioner may be exempt from the requirement of having to exhaust domestic remedies with regard to a complaint, when it is evident from the case file that any action filed regarding that complaint had no reasonable chance of success based on the prevailing jurisprudence of the highest courts of the State.[12] The Commission notes that the legal proceedings mentioned above 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, and, therefore, in the case of HTG, those remedies would not be effective under recognized general principles of international law.

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[10] As an example of the effectiveness of those legal remedies, the State makes reference to several judgments regarding indigenous peoples: the case of the *Tsilhqot'in Nation vs. British Columbia*, in which an indigenous people petitioned for the declaration of aboriginal title in an area within the Province of British Columbia and the Supreme Court of the province ruled in favor of the right of those indigenous people to pursue their traditional practices; in the case of *Delgamuukw vs. British Columbia*, the Supreme Court of Canada defines the nature of the aboriginal title which includes occupancy and exclusive use of the land and concludes that the claim of the indigenous people in question be forwarded to the court of first instance for reexamination and to determine whether the indigenous people in question sunh property right; in the case of *Haida Nation vs. British Columbia*, the Supreme Court ruled that the Province of British Columbia had the obligation to consult with indigenous peoples even before the property rights of an indigenous people had been proven; and in the case of *Wil'litswx vs. British Columbia (Minister of Forests)* the Court of Appeals of British Columbia ruled that the Crown had the obligation to consult with an indigenous people before granting a permit for forestal operations, in a case in which the indigenous people in question requested interim measures to prevent the granting of such license.

[11] The IACHR takes note of the *amicus* brief filed by the Wet'suwet'en People, one of the peoples party to the case of *Delgamuukw* cited by the State, where it is pointed out that the judgment in this case defined what an aboriginal tile is, but ordered that the court of first instance reexamine the indigenous peoples' claim. The judgment did not rule on the merits of the case, the recording of title deed to the lands requested by the indigenous people. The Commission points out that this case lasted more than 15 years and cost the indigenous peoples involved over $14 million, and due to the lack of financial resources they have not been able to continue litigation in the courts. The authors of the brief point out that in the meantime, the State and third parties continue to exploit the natural resources in the ancestral lands of those indigenous people.

Likewise, the *amicus* brief filed by the Tsilhqot'in People, whose case was also cited by the State, explains that, in their case, the judgment handed down by the Supreme Court addresses their right to their traditions but does not decide on the existence of their aboriginal title due to procedural matters. According to the brief, their people have spent more than $15 million in 24 years of litigation and responding to appeals without having won the recognition of their property rights or the protection of their ancestral lands against the actions of third parties.

[12] IACHR, Tracy Lee Housel, Report No. 16/04, Petition 129-02 (Admissibility), February 27, 2004, par. 38.

42. Therefore, the IACHR considers that with regard to legal remedies to obtain the declaration and protection of the aboriginal title, the exception to the requirement of exhaustion of domestic remedies applies because the remedy does not constitute an effective protection of the right alleged by the petitioners.

43. With regard to remedies under the Heritage Preservation Act, the interim or interlocutory measures that may be granted against violations, and to legal actions under the provisions of the Canadian Charter of Rights and Freedoms, the IACHR notes that those remedies are not suitable because they cannot be used to comprehensively and permanently protect all HTG ancestral lands from the actions of third 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. Therefore, the petitioners are not obligated to exhaust those remedies.[13]

2. Deadline to lodge the petition

44. Article 32(1) of the Rules of Procedure of the Commission establishes that for a petition to be admissible, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment exhausting the domestic remedies. Article 32(2) of the Rules of Procedure of the Commission establishes that, "in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case."

45. In the present case, the Commission ruled *supra* on the applicability of the exception to the requirement of exhaustion of domestic remedies. Taking into consideration that for over a decade, the petitioners have taken part in a process of political negotiation for the purpose of protecting the same rights alleged in their petition to the IACHR, as well as the letters, complaints and administrative actions used by the members of the HTG to prevent, on certain occasions, the granting of licenses; and also considering the evolution and continuity of the alleged situation, and the date on which the petition was filed with the IACHR, the Commission considers that the petition was lodged within a reasonable period of time. Therefore, the requirement regarding the deadline to lodge the petition has been met in accordance with the provisions of Article 32 of the Rules of Procedure of the Commission.

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[13] It appears evident from the information provided by the parties, including the *amicus curiae* briefs filed, that remedies such as complaints for lack of prior consultation, the process to obtain interim or interlocutory measures, and the Heritage Preservation Act are ineffective in permanently resolving the claims of the HTG and of other indigenous groups because those remedies must be filed each time a request for a permit or license is made that could impact their ancestral lands that are in private hands.

In the specific case of HTG, the petitioners argue that those remedies have been ineffective. For example, the petitioners say that in 2004, a group of elders from the Penelakut Community filed an administrative challenge under the provisions of the Heritage Preservation Act to prevent the granting of a permit to a private business to discharge waste water on a private lot where an old cemetery where their ancestors were buried was located. In the case of the *Penelakut First Nation Elders v. British Columbia (Regional Waste Manager)*, [2004] B.C.E.A. No. 34, the administrative court for the environment ruled that the elders had not provided enough evidence to show that in order for them to be able to continue their religious practices, the discharge of waste water had to be stopped. The petitioners point out that the elders have not been able to appeal that decision because of their lack of financial means. In any event, it is obvious that this remedy does not permanently guarantee the property rights of the HTG and that it would have to be filed every time a permit is granted for land located within the territory claimed by the HTG.

It is also noted that, with regard to the petition lodged in July 2009 by the Cowichan Indigenous People against the permit granted for the area known as the Peldi Development, *supra* par. 22, this type of recourse is also limited to one specific permit and it would not solve the totality of the HTG territorial claim.

3. Duplication of proceedings and international *res judicata*

46. Article 33 of the Rules of Procedure of the IACHR establishes that for a petition to be admissible, the subject of the petition or communication must not be pending in another international proceeding for settlement or be substantially the same as one previously studied by the Commission or by another international organization.

47. It is not evident from the case file that the subject of the petition is pending in another international proceeding for settlement, nor that it is substantially the same as one previously studied by the Commission or by another international organization.

48. Therefore, the Commission concludes that the requirements established in Article 33 of the Rules of Procedure of the Commission have been met.

4. Characterization of the alleged facts

49. For purposes of admissibility, the Commission must decide whether the alleged facts may constitute a violation of rights under the provisions of Article 27 of the Rules of Procedure of the Commission, or if the petition is "manifestly groundless" or "out of order" as established in the same article. The criterion for evaluating these requirements is different from the one used to decide on the merits of a petition. The Commission must carry out a *prima facie* evaluation in order to determine whether the petition establishes the basis of the, possible or potential, violation of a right protected by the Declaration, or of the actual violation of rights. This evaluation constitutes a preliminary analysis that does not imply prejudgment on the merits of the case.

50. The Commission will focus its analysis on the following allegations made by the petitioners: 1) the State has not set boundaries, demarcated, or recorded the title deed to the ancestral lands of the HTG; 2) the State has granted licenses, permits and concessions within its ancestral lands without prior consultation; 3) the State has not provided restitution for the ancestral lands the HTG lost involuntarily and that were transferred by the State to private third parties; and 4) this has resulted in the destruction of the environment, natural resources, and of the sacred sites used by the alleged victims.

51. With regard to the allegations about the lack of demarcation and legal recognition of the lands of the HTG, of the licenses and concessions granted without prior consultation within HTG territory, and of the lack of restitution for the loss of ancestral lands, the IACHR notes that they tend to characterize alleged violations of Article XXIII of the American Declaration.

52. With regard to the allegations that the presumed violations mentioned above are the result of the discrimination suffered by the alleged victims because of their ethnic background, the IACHR notes that they tend to characterize the alleged violation of Article II of the Declaration.

53. With regard to the destruction of the environment, natural resources, and sacred sites of the HTG and the impact on its culture and its way of life, the IACHR notes that they tend to characterize alleged violations of Articles XIII and III – the latter in virtue of the principle *iura novit curia* – of the American Declaration.

54. Therefore, the Commission considers that the requirements established by Article 27 of its Rules of Procedure have been met.

V. CONCLUSIONS

55. The Commission concludes that it is competent to examine the allegations of the petitioners and that the petition is admissible with regard to alleged violations of Articles II, III, XIII and XXIII of the American Declaration in accordance with the provisions of the Rules of Procedure of the Commission.

56. Based on the foregoing arguments in fact and in law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the allegations contained in the petition with regard to Articles II, III, XIII and XXIII of the American Declaration admissible.

2. To forward this report to the petitioners and to the State.

3. To continue with the analysis on the merits of the case.

4. To publish this report and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 30th day of the month of October, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Victor E. Abramovich, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro and Paolo G. Carozza, Commissioners.

The undersigned, Santiago A. Canton, Executive Secretary of the Inter-American Commission on Human Rights, in keeping with Article 47 of the Commission's Rules of Procedure, certifies that this is an accurate copy of the original deposited in the archives of the IACHR Secretariat.

Santiago A. Canton
Executive Secretary

PETITION

to the

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

submitted by

THE HUL'QUMI'NUM TREATY GROUP

P-592-07

against

CANADA

AFFIDAVIT of ARVID CHARLIE (LUSCHIIM)

I, Arvid Charlie or known to my community as Luschiim, respected elder of Cowichan Tribes First Nation, of #2 - 5131 Trestle Road, Duncan, BC, V9L 3X9, British Columbia, Canada, **MAKE OATH AND SAY THAT:**

1. I am an Elder and member of the Cowichan Tribes Indian Band who are Coast Salish indigenous people. I speak the dialect Hul'q'umi'num' (linguistic group) and grew up in the traditional territory of my indigenous people and as such have personal knowledge of the facts and matters herein deposed to, save and except where they are stated to be on information and belief, and as to such facts, I verily believe them to be true.

2. I grew up receiving teachings from the Elders of my indigenous community and have spent my life learning knowledge of plants, animals and other traditional teachings as I was growing up. I continue to learn today. I have been taught *Mukw' stem 'I 'utuna tumuhw 'o' hulitun tst* that is "everything on the earth is what sustains us."

3. My ancestors have lived in this territory and have used it since time immemorial.

4. I provide information on my people's use of the territory but in no way believe this affidavit to be comprehensive respecting our total uses for the area.

5. I was born and was raised at Quamichan Reserve. I was the third child and there were 12 children in my family. I stayed there until I was 36 years old.

6. We only spoke Hul'q'umi'num' until I was 6 or 7 years old. It took me a while to learn as I never spoke English until I was 7 or 8 years old.

7. I grew up hunting, fishing and gathering plants and medicines. Our families relied on food from the territory. We ate salmon, trout, grouse, deer, and others.

8. I learned most of what I know from my great grandfather, Luschiim. Luschiim was the main teacher in my life. He would visit me all the time. He was my mom's grandfather. He lived at Lhumlhumuluts' (Clem Clem luts).

9. Luschiim taught me how to always be thinking. He taught me to make sure of your words before you speak and always to be respectful of your fellow man and the environment including all the animals, water, plants and inanimate objects such as tumulh (red ochre). Luschiim taught me that you have to respect yourself first before you can respect others.

10. Luschiim taught me that everything in this world has its own spirit, even if is not bleeding or breathing such as the ground or rocks. We must respect them all.

11. Luschiim used to take me and my sister Myra for walks. He would name all the trees and tell me about their uses. He taught me about the plants that you could survive on if you were blown out (stranded) somewhere. For days and days you can eat cambium off certain trees and survive. After our walk he would lay and rest. I would lie always in right arm.

Fish

12. When I was four years old I started fishing with a gaffe hook and my sister Myra, who is a little bit older, used to hold me around the waist. It used to take two of us to pull the fish out. I was not strong enough to pull it out myself.

13. Besides learning how to fish we had to learn how to avoid fish wardens and eventually the game warden. We used to go down places to fish at night. The police used to chase us around through Quamichan heights. We would run through lawns to get away from them.

14. One of the first things I was taught by my family was that a "Warden might come and take fish, gaffe and put you in jail." I was taught to be aware of any fish warden. One warden came when I was six he was almost ready to grab me.

15. I used my gaffe hook to pole vault across the side channel of the river and then I quickly ran away. We used to make trails to take the wardens down when they chased us. We would run off the side and have tunnels to hide in and escape. The Warden would go down the trail and we would disappear from sight. I was in my mid teens when we did this.

16. Many of the places we used to fish cannot be accessed anymore because of private property.

17. In 1954 was the first time I was allowed to go hunting on a white man opening day for deer. We left Quamichan by canoe, our destination was Saltspring. There happened to be a salmon run happening at that time. That salmon run lasted for two weeks for spring salmon, coho and chum. A salmon run is when the salmon all congregate and travel up the river together to spawn. Today a run will last for a few hours & that's it, compared to two weeks. I've seen it decline. I've also seen the Cowichan river dry up completely by Quamichan. The river disappeared because of the gravel in the river bed that is a result of the sediment from forestry and residential development. The sediment increases the velocity of the river and modifies the temperature destroying fish habitat. For example there is a lot of gravel that ended up down in Quamichan due to increased logging and subsequent run offs.

18. In the past we had many villages below the city of Duncan; there names were Sh ts'u'ts'mi'nus, Pi'p-qwulus, Kw thinus,
Q'q-mune' and across from Tuy'ti-tuxun. They were affected by the new flooding from the diversion of the rivers from the log jams. Log jams were happening from log drifting. They put the logs into the river and transported them to Cowichan bay. The drifting logs and the log jams trashed the rivers. It started to raise the river beds and continued on. We had to move buildings out of those places because it always flooding. There were floods in June & July in the dry season. At the times when I mentioned the river plugs from the gravel build up and you get more flooding again. This cost Cowichan Tribes hundreds of thousands of dollars to remove some of the gravel.

Hunting

19. My family started teaching me how to shoot a gun when I was young, 6 years old. I was allowed to go up the mountain with the young men in our family. They would take me along. I would be with them to observe, learn about hunting, sneaking for animal, listening, using your nose to hunt, my nose my smell was so keen that later on I would hardly watch I would just use my ears or my nose. I could smell them or hear them chewing for probably 150 feet away or three war canoe lengths (50 feet each). Depending on the place, maybe even more.

20. The teachings from my family taught me to listen to the birds, the squirrels or other animals that were around. I learnt the sounds they make if there is a person or deer present.

21. We used to hunt in a location which is now a subdivision near Maple Bay on Mountain Tzouhelem. This was a good area to find deer out especially when you really needed one. This site was to be saved for that kind of hunt; in case you had been unsuccessful anywhere else but really needed a deer. That is all gone now and instead major subdivisions. The whole Mount Tzouhelem is now closed for hunting. We are not allowed to shoot firearms there as it is privatized; it was completely logged and cleared.

22. We have repeatedly experienced areas being closed due to privatization of the lands, development of the lands, or forestry.

23. There have been many effects of past and present developmental activities on the health and well-being of Hul'q'umi'num' indigenous peoples due to environmental damage or changes with respect to our ability to practice our subsistence culture such as fishing, hunting and gathering practices, our traditional spiritual and religious practices and beliefs (access to sacred sites) as well as, loss of our economic opportunities (forestry) in our traditional lands.

Bathing

24. *Shakw'um*-is an ordinary bath whether in a bathtub or a river.

25. *Kw'aythut*-is a special physical, emotional and spiritual cleansing in preparation to receive a spiritual helper or improve yourself using water, bushes, wind in a secluded environment. The Hul'q'umi'num' people *Kw'aythut*, or they go up and find a clear place in the forest, up the mountains, away from everybody, away from people. They must use the water to cleanse their body. This process also cleanses their emotions and spirituality. You take your dip in the water to cleanse your body. Also to cleanse your emotions & your spirituality. You're cleansing your whole body. *Thut* is yourself.

26. *Kw'aythut* is looking after your spirit; that is where your helper spirit comes in. This ceremony guides you in the work you do such as becoming a hunter, craftsmen, knitter, artist, or map maker. The helper you are seeking is wild; just like the wild creatures. If you visit that place too much the spirit helper is going to move. The water will be there but the spirituality is not there. When a place is clear cut or disturbed too much the value that we seek is not there. The spiritual and cultural values disappear.

27. I started *kw'a'kw'i'uthut* when I was in my pre-teens. I sought to be good with my hands and to be a good fisherman. I wanted to excel in our cultural ways.

28. *Kw'aythut* is a sacred Coast Salish ceremony involving protocols that must be learned and adhered to. Kw'aythut is part of our vision quest. The members of our community that practice bathing must find clean, pure and private sites to bathe in. They must respect the spirits in the bathing site.

29. As an Elder educated in our teachings I have visited almost all the bathing and meditation sites in our territory and beyond. It my responsibility to know about all the sites and to ensure they are respected. Unfortunately, development in

the territory has drastically undermined my ability to protect and preserve sacred bathing sites. Many of these sites have been destroyed through logging and urban development.

30. If a site which has spirits becomes disturbed with too many people or pollution and development activity the spirits will leave the site. In addition, we are unable to use these sites because they are destroyed and often completely obliterated.

31. Many of these bathing areas we used are not there anymore. We cannot use them because there is no privacy, the areas have been clear cut and the rivers or creeks are destroyed. The destruction of these sites ruins our spiritual health. Once you completely develop a site its natural qualities disappear; everything dies or moves away including all the power that was there.

32. The lack of privacy at our bathing sites is a serious problem. We were up on Hwt'eshutsun practicing our sacred ceremony of bathing and we heard a hound howling coming up creek. We rushed, got dressed and left area. While still walking up creek this man and his hound caught up to us. His hounds were following raccoon scent. When you have hunting hounds go through there they destroy the sacredness of the area.

33. There are very few good places left, to the point where some are overused. In the past most people had individual bathing holes, but there are so few now that many of us use the same bathing holes. Some of us travel to great extent to find secluded bathing areas.

34. A lot of our meditation areas such as mountain tops, high points of land, are now within parks, municipalities, or private forestry lands that we cannot longer use for meditation anymore.

35. Clear cuts affect our *Kw'aythut* or bathing ceremony. Clear cuts result in destruction to river and locations of our ceremony as well as lack of privacy.

36. The clear cutting affects Hul'q'umi'num' bathing sites and their members are forced to travel far to locate proper sites; they are becoming rare and our people suffer. Once these bathing sites are destroyed the Hul'q'umi'num' people cannot bathe there because of lack of privacy and purity. Bathing sites have been logged out so my family cannot bathe there anymore.

37. Kw'aythut or our vision quest is of critical importance and we now have very few places because the locations are all contaminated. There is no privacy. Meditation is the way of soul searching for our people and it is a way of healing for them. When my community travels up to the hills today, there is noise from logging trucks everything, chainsaws which preclude the community from meditation; the noise disrupts the animals as well. It will chase them away.

38. Some people can get sick if you can't *kw'aythut*.

39. Private forestry companies such as Timberwest own a large portion of our territory. They are considered private and therefore can treat their lands as they choose and can prohibit our use of them. The company has chosen to clear cut their lands and this has resulted in major destruction of the territory preventing our practice of culture.

Forestry

40. Historically it would take forest companies several months to clear cut areas that now can be completely cleared in a few days.

41. Another concern is that forests are not given enough time to mature fully, and rejuvenate habitat and so on. (see Exhibit "A") This is on Timberwest lands. I am concerned that the territory cannot withstand this as it is unsustainable for our activities in the long term.

42. The clear cutting has also destroyed cultural sites. There is a special place at Shawnigan Lake which is now privatized land, called Wild Deer Creek by the non-Aboriginal people; that was clear cut. This creek empties into the Koksilah River and used to be salmon and trout bearing. There is a small water fall there approximately 6 feet high.

43. This was an especially sacred location because there was sacred caves, a large bathing pool that was used for sacred ceremonies and hosted fish. This location was home for Cowichan families and had very old names and stories attached to it. We had much history there. It had *Kw'aythut* values (special place to go to receive spiritual help and gather important medicines and plants). There were cedar and douglas fir trees there that are important to our people. It was sacred for its spiritual values and was believed to host *Stiyeeye'* or dwarfs (little people) along the creek is the bluffs or *Sqwa'luxw*.

44. We, the Cowichan people, told the land owners of the special nature of this sacred site. The private land owners clear cut the area, thereby destroying so much of the sacred importance. It was devastating and continues to hurt our people. Now it is no longer fit to bath there; the whole creek if full of mud sediment from the run-off.

45. Run off is a major problem in logged out areas. Silt and gravel run off lands running into stream and rivers. Once the forests are clear cut there are no longer any trees or root systems holding the silt and gravel so it slides downward into rivers and streams (See Exhibit "B") This is on Timberwest lands. The trees and other plants that held the soil and gravel in place are no longer there for support so the mountain sides slide down, often into rivers and streams. This along with no tree cover causes warmer water and pollution which harms fish habitat.

46. The clear cuts result in a loss of critical habitat for many animals and plants the Hul'q'umi'num' rely upon. Clear cutting destroys the habitat for deer and elk because there is so little wintering range forest left. When the larger trees are cut down there are no homes for the animals, elk, bear, or birds. (See

Exhibit "C") The animals try to hold up in a place like this but they'll starve, when it gets cold there's no wind protection and they freeze. The reason I know is observation. I've gone through and there are many animal carcasses there. They froze or starved to death. They become trapped in there. The food will only last so long. Summer time-if there is small growth nearby they will have lots of food there. When there are whole mountain ranges logged and then the animals die off. (See Exhibit "D") photo is on Timberwest lands.

47. The run off result in absolute destruction of the wetlands. The wetlands are critical ecosystems for entire environment; they are keystone. The wetlands are heating up and drying up because they are not surrounded by forests that give them shade, the clear cutting leaves the wetlands exposed, so we are losing the natural filtering process that is relied to keep waters cleaned. The private land owners often bulldoze through the wetlands. Once wetlands are destroyed we lose frogs, salamanders, birds, this effects everything including animals and plants.

48. The clear cut is planted monoculturally. The return of many of the important medicines takes a significant amount of time given their reliance on old growth and certain trees that take a long time to grow.

49. Some examples of threatened plants in our territory are Devils Club-*Qwa'pulhp* which is a very special medicine for health and spirituality. People have *Pa'nuhw*-or favorite place to go to gather them but in many places this sacred plant has disappeared. In addition, the grand Fir - T'a'hw which is very important for medicine and spiritual use is difficult to find now. Quq-unalhp or prince's pine which doesn't grow very tall is a very special medicine for health and spirituality; it is threatened in our territory. The lady slipper we use requires older growth trees and is medicinal and spiritual and is now very hard to find due to the logging practices which have devastated their habitat. There are ever decreasing places to harvest these and other plants.

50. We used a lot of cedar, many places you go, you see all fir trees planted. You look around and there used to be cedar there before. Another thing to bring back is white pine; they died off from disease. You go to the higher mountain where we used to collect yellow cedar. You don't see yellow cedar being replanted; however, both red and yellow cedar is very important to us. We use Red Cedar-*Xpey'*, yellow Cedar-*Pashuluqw*, Douglas Fir-*Ts'sey'*, Grand Fir - *T'a'hw*, White Pine-*Ts'qe'ulhp*, Western Yew-*Tu xwa'tsulhp*, Bow-*Tuxwa'ts* for carving and medicine. The way the forests are clear cut results in an absolute shortage of these trees. Some of them are impossible to gather now.

51. In addition, logging roads provide access to ATV's and motorcycles to the sensitive alpine areas where they are destroyed by these vehicles.

52. Once we lose our medicines we lose our ability to heal ourselves. We're at risk of losing our spiritual ways. In time the knowledge about these plants will be gone and our people will suffer.

53. Gathering enough wood for our homes and ceremonies is an immense problem. We may be arrested if we try to remove wood from private lands, so we are forced to search and look "where do we get wood?" We are forced to travel very far and have great difficulty collecting enough. Cowichan Tribes has three longhouses and therefore they are constantly running out of wood. For crown land, we only get limited amounts. We are sometimes consulted about the availability of wood on Crown lands but never on private lands and the owners won't accommodate; they take the position they are complete owners of the resource.

54. I have observed that the quality wood that we can access is no longer good. I observed that second growth causes our people to cough when we burn it. With older growth wood we have an easier time breathing.

55. Access is a serious problem on private land today. For example the workers of a forest company close to Duncan kicked myself and my family out of there. We were told we were trespassing. We were told to get out when we were riding a bicycle in there. My brother used to sneak in with his motorbike they cornered him and kicked him out. This is very common problem on the private lands. We know that if we take any forest wood we may be arrested. It is how the HTG members live, in fear of arrest or harm when they attempt to continue their lifestyle on these private lands.

56. In our area we also used the sea shore but none of our shore is quiet anymore. Most of it is private land, where can't down to the beach. Even if go by boat and land they tell you to get out of here it is "private property." Even if it's a secluded place, boats go by and it's not very private anymore. I don't have a place within Cowichan Tribes core territory to go bathing within saltwater. When I use salt water I have to travel to other First Nations territories. An example is Robert Memorial Park.

57. When go into the bush, the mountains, I usually go there for several purposes, go for medicine and also to meditate. It is also a time for cleansing: emotionally, spiritually, physically, I went yesterday after being at a funeral. Forests and wind cleanse me off of the sorrow we went through after we buried our loved one. After that, I went to get some medicine.

58. For me, I know our territory, I know where to go for certain purposes. For me it is like knowing which store to go to: hardware, grocery, convenience store. That is what going to the mountains or the woods is. I know the main reason I go there but I will accomplish many things at once because I know of the way the land and territory is. I know what I want to get but I observe and read signs for anything I might need at a later date.

59. Timber forest companies leave a small patch of trees for wildlife. This is not sufficient enough size, this would be like having a roof over head but no walls, the wind blows through, there's no protection for animals from wind and rain.

60. In 1964, when my daughter was born, I went logging at Mesachie, one end of the mountain range was very rocky and steep; it had old growth forest in there. The rest of the range was all logged off. That snow the previous winter, trees already fell, deer carcass were all over, the deer had no where to go except a small patch of forest. The animals starved and froze there. That is what happens when wildlife patches are left too small. (see Exhibit "E") This is Timberwest lands.

61. I learned to look for animals, we search the mountain range for a variety of different species, young growth, which is perfect for deer food, there may be no deer there now. I learned to look for old growth forest for winter survival. We tested over many years. When we hunt in these mountains we have to look for some old growth to find the animals, a variety of habitat.

62. In the Mt. Vernon area, Vernon Creek, I logged up there. I used to know the area really well but it's been many years since I've been back there. (see Exhibit "F") This is an example of a blow down. The purpose of leaving the small patch may have been intended for wildlife. Most of it has blown down. The trees were meant to stay standing but were knocked down by the wind. This area is Crown land-Timber Forest License 46.

63. The reason I know if it pertains to Timberwest lands is the information was provided by HTG's GIS technician.

64. I don't have scientific support for my arguments, I live it. I know it.

Residential Development

65. Residential development has completely destroyed forests. Mountain Tzouhelem used to be our hunting and plant gathering site, part of it is now cleared for residential and recreational use. We used to gather certain foods and medicine's along St. Anne's bluff, it has also been turned into an ecological reserve. Now it is a park, we are not supposed to harvest there now.

66. Recently there has been another find at Timbercrest that looks like a spun'o't-hw (partially underground building). Luschiim, my great-grandfather, always told me we had these homes which were used for extremely cold weather. We had these homes years ago. There are a few elders that knew about them. Timbercrest was seeking to build at this site, right beside it. This has been disallowed however the damage has already been done. This put the historic building site at risk for complete destruction; a very important part of my history is there. It must be preserved with care and respect as it is a sacred site.

67. The Timbercrest conflict with Cowichan Tribes has gone on for years and has resulted in a major residential development with many homes. This project has been devastating to our people especially our ancestors that were buried there as the subdivision construction involved the destruction of a major cemetery belonging to my people. This site development resulted in the displacement and

disrespectful treatment of 36 people that were buried there. This is devastating to us and counter to our beliefs. People are not to be bothered when they are interred. They must be respected.

68. I have witnessed the clear cutting of vast tracts of land and then the sale of them for residential purposes, all done without consultation with us. This further impedes our ability to practice our culture. Residential development makes it incredibly difficult, if not impossible, for our community to continue cultural maintenance.

69. Forestry, farming, commercial and residential developments have tremendous adverse impacts resulting in dire consequences for our communities' health and well being. This is a serious problem that goes ignored.

70. I have witnessed residential development sprawl across my territory at an alarming rate with very serious consequences for our territory. I have watched my ancestral burial grounds be desecrated, such as by Timbercrest development whereby 36 of my ancestors were unearthed. This was hurtful and disrespectful. Who else would get away with desecrating cemeteries? Why do our rights go disrespected, ignored and disregarded?

TimberWest

71. Timberwest owns 34% of my traditional territory now privately. They are a major forestry company which practices clear cutting and is now selling real estate for residential and commercial purposes. This is an aggressive form of forestry resulting in absolute destruction and obliteration of our sacred and cultural sites. In addition, clear cutting destroys habitat and causes major sediment in our water sources as noted above.

72. We use the Timberwest lands since time immemorial for living, hunting, fishing, gathering and other subsistence practices. These lands were rich forests providing for our people for generations and generations.

73. It is my belief there are many camping and village sites on the Timberwest lands that our people used for centuries.

74. We have fished trout and salmon from these lands. The lands and the water are in integral part of fish habitat. These locations are being destroyed due to extreme logging and clear cutting practices and causing subsequent run off.

75. We gather plants and berries from these land masses. There are specific locations in which specific plants have been gathered for generations. Some have been clear cut, died out and have not returned. An example is Ts'qwúlhp (Sitka Spruce).

76. We hunted Ha'put (deer), Kwawe'uts (elk), Spe'uth (black bear), Maúqw (birds) Squlew (beavers) Qwlilchúqs (V.I. marmots) and other land animals (T-tsaalmuhw) from what is now Timberwest lands.

77. We have collected minerals, wood, cedar, ochre, bulrush, cherry bark and stinking nettle from these lands. We have also gathered, pine bark and devils' club from what is now Timberwest lands.

78. We have used the forest lands including Timberwest lands and considered many sites sacred, an example is the site where the First Ancestor came from (creation story) is located on Timberwest lands.

79. In addition there are many, many stories of legends about these lands with locations for our spiritual and mythical beings to use. There are super natural qualities to some of these sacred locations on the Timberwest lands.

80. There are many sacred bathing sites on the Timberwest lands. We have a grieving site on their lands. There are locations of spiritual retreats our men, newlyweds, coming of age and shaman have used. We have locations that have been used for healing, spiritual purposes or vision quests.

81. We have used these lands to collect important pieces of our traditional regalia (including bird feathers, bark, wood, minerals and animal parts) that is important for our culture and ceremonies.

82. We have place names for locations on Timberwest lands.

83. Timberwest has locked their gates and prevented our access and use of the territory.

84. We live in fear of the "private lands" signs. We live with the threat of being arrested as we know that if we take any trees for our homes or our ceremonies we will be arrested. I take plants but I used to be afraid to. I harvest in private, crown and parks lands; I have to, I need these medicines and food which are very scarce.

85. We have long experienced Timberwest's complete disregard for our rights as indigenous people.

86. There is a case *TimberWest Forest Corp v. British Columbia (Deputy Administrator, Pesticide Control Act)*, [2003] B.C.E.A. No 31 in which TimberWest appealed the Deputy Administrator's decision to place a number of conditions on a Pest Management Plan ("PMP") TimberWest had submitted for authorization. Under the PMP, TimberWest sought permission to use pesticides on its land (formerly part of the Railway Lands, like the Removed Lands in this case.) Cowichan Tribes claimed aboriginal rights and title to those lands. Before authorizing the PMP, the Deputy Administrator met with representatives of the Cowichan Tribes concerning the proposed PMP. When the final PMP was issued, it took into consideration the Cowichan Tribes asserted aboriginal rights by restricting the use of pesticides at sites of particular spiritual or ceremonial significance to the Cowichan Tribes.

87. The Panel concluded that the Deputy Minister did have a duty to consult and accommodate Cowichan Tribes' interests before issuing his authorization of the

PMP, and therefore, that the Cowichan Tribes' claims of aboriginal rights and title were relevant considerations. The case was successful affirming our right to be consulted. However, Timberwest still continues to act as if they have no duty.

88. Given our use and long ancestral connection to the Timberwest lands we require deep and meaningful consultation and accommodation. We are fearful there will be even greater destructive conduct or consequences to the environment and our people.

89. I make this affidavit to support Hul'qumi'num Treaty Group's application for Precautionary Measures to the Inter-American Commission on Human Rights

AFFIRMED BEFORE ME AT)
TOWN OF LADYSMITH,)
IN THE PROVINCE OF)
BRITISH COLUMBIA,)
THIS 6 DAY OF MAY)
, 2011.)
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)
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)

Arvid Charlie Luschiim
ARVID CHARLIE (LUSCHIIM)

R Racette

A Commissioner for taking
Affidavits in British Columbia

Renee Racette
Barrister and Solicitor
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Ladysmith, BC V9G 1M5
(250) 245-4660

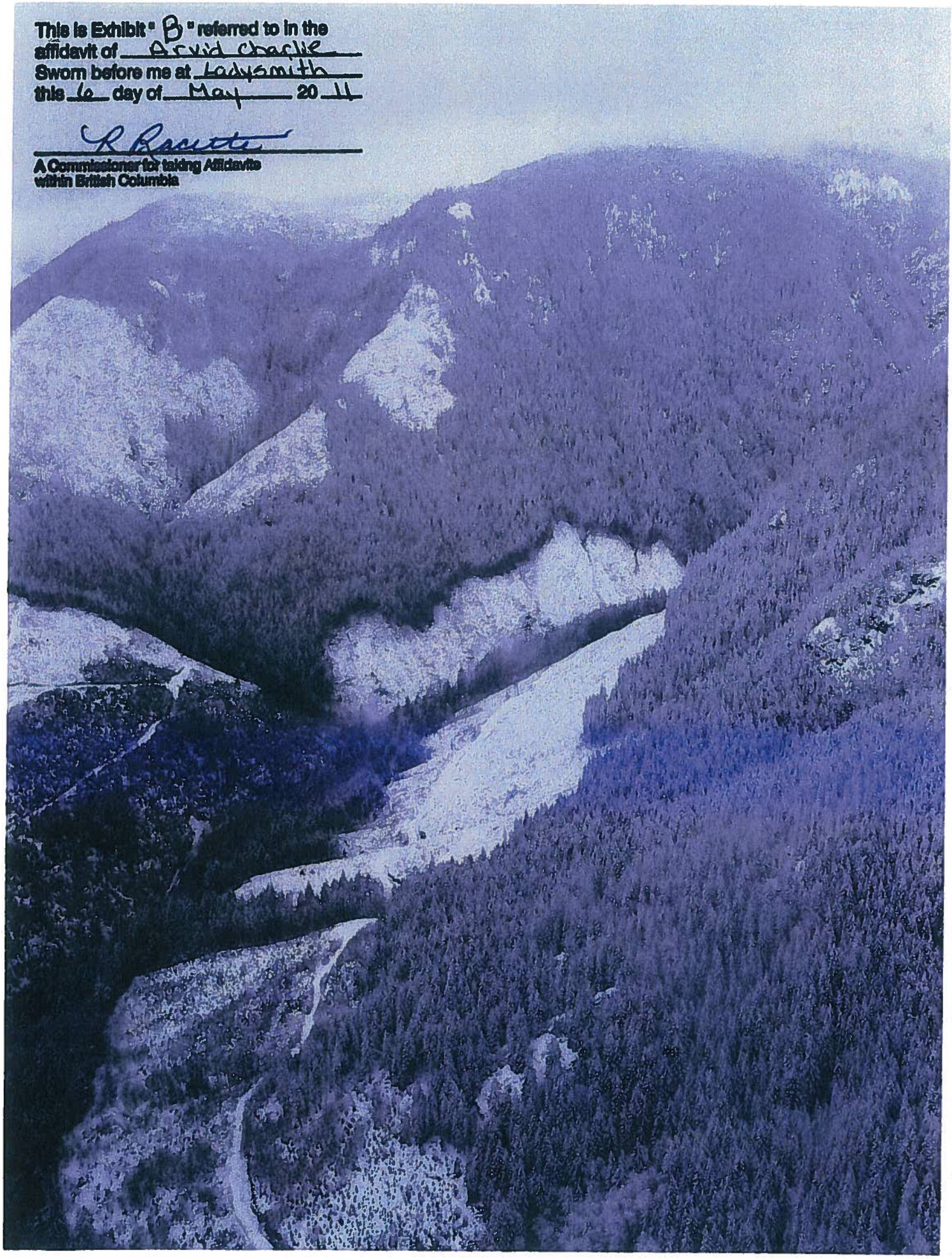
DSC_0961

A Commissioner for taking Affidavits
within British Columbia

This is Exhibit " B " referred to in the
affidavit of David Charlie
Sworn before me at Ladysmith
this 16 day of May 20 11

R Rascette

A Commissioner for taking Affidavits
within British Columbia



HTG-083

DSC_0717

This is Exhibit "C" referred to in the affidavit of David Charlie
Sworn before me at Ladysmith
this 16 day of May 20 11

L Routte

A Commissioner for taking Affidavits within British Columbia

This is Exhibit "D" referred to in the affidavit of Arvid Charlie
Sworn before me at Ladysmith
this 6 day of May 20 11

R Bacetti
A Commissioner for taking Affidavits within British Columbia

HTG-246

DSC_0673

This is Exhibit "E" referred to in the affidavit of David Charlie
Sworn before me at Ladysmith
this 6 day of May 20 11

L Rascetta
A Commissioner for taking Affidavits within British Columbia

DSC-0858

This is Exhibit " F " referred to in the affidavit of ____________
Sworn before me at ____________
this 6 day of May 20__

A Commissioner for taking Affidavits within British Columbia

Media Releases

May 12,2010

May 25, 2010

VI First Nations Declaration

Hul'qumi'num Treaty Group opposing proposed 1 billion dollar sale by Timberwest without consultation

For Immediate Release, May 12, 2011

(Ladysmith, B.C.) TimberWest Forest Corp. of Vancouver, BC, is considering the sale of their stapled units, which includes113,208 hectares of forested lands and irreplaceable eco-systems within the Hul'qumi'num Treaty Group (HTG) member First Nations' traditional territory to the BC and Canada public service pension funds for 1 billion dollars. HTG is opposed to this sale, because no consultation have been held with the HTG communities respecting this sale, as required under Canada's international human rights treaty obligations. The Hul'qumi'num people continue to assert their fundamental human rights to these lands and resources on Vancouver Island. To protect their rights in their lands and resources involved in this billion dollar transaction, HTG has today filed a request for immediate assistance in the form of precautionary measures (the equivalent of an injunction) from the Inter American Commission on Human Rights (IACHR), the human rights monitoring organ of the Organization of American States, which Canada joined in 1990.

"We counted that one logging truck leaves our territory every 3.5 minutes," says Robert Morales, HTG Chief Negotiator. The accelerated rate of logging prompted the HTG to charge Canada with international responsibility for the unregulated clear-cutting of the forests. HTG has provided extensive documentation on the irreparable destruction and disruption of the lands and eco-systems caused by what it calls the "Big Three" private forest development companies operating within its territory, TimberWest, Hancock Timber Resource Group, and Island Timberlands. Canada is responsible for failing to engage in any form of effective consultation, benefit sharing, environmental and social impact assessment with the affected Hul'qumi'num communities before allowing these companies to proceed with their clear-cutting, deforestation and real estate development activities. According to Morales, "TimberWest has stated in their public filings that it has no knowledge of any First Nation claims on their real property, which, as we can document, is totally false. We notified them of our human rights petition to the IACHR and sent them a copy in March 2010."

HTG is requesting precautionary measures from the IACHR, a move that would, if acted on favourably by the human rights body, require the federal and provincial governments to order the immediate suspension of all clear-cutting activities, property sales. subdivision permits, licenses, and concessions for residential, commercial and industrial development projects, including logging, oil, gas and mineral exploration or extraction, and other development within lands traditionally owned, used and occupied by the Hul'qumi'num peoples and granted by Canada to the E & N Railway and presently controlled by the Big Three forestry development corporations. The HTG states that the private citizens who own land in the E & N grant area have nothing to fear. Morales makes it clear that their human rights battle is aimed at stopping the Big Three forestry developing companies from "clear-cutting" every last tree standing on their lands. He hopes that the membership of those unions of the pension plans in particular educate

themselves about the Hul'qumi'num peoples' historical efforts and present day human rights struggles in seeking justice from Canada, by going to the HTG website www.hulquminum.bc.ca.

According to Chief Lydia Hwitsum, Cowichan Tribes, the HTG's original petition to the IACHR , which was filed in 2007 "charges that Canada is in violation of the Hul'qumi'num peoples' human rights protected under the American Declaration of the Rights and Duties of Man for refusing to provide restitution for the taking of these HTG ancestral lands that are currently controlled by these private development corporations"

The petition has generated considerable support from First Nations and non-First Nation organizations who have filed amicus curiae briefs with the IACHR in support of the HTG's petition. "Indigenous peoples' rights to the land are absolutely vital to the fulfilment of a wide range of human rights," says Amnesty International Secretary General Alex Neve. "It is unacceptable that Canada has created such steep barriers to achieving fair and effective redress for the historic and ongoing violation of these rights. We hope that the Inter-American Commission's deliberation on the Hul'qumi'num case will help break the impasse faced by so many Indigenous peoples in Canada."

"Canada must move quickly to stop the proposed sale of the E & N Railway lands and ensure their return to the HTG people" says Gail Davidson of Lawyer's Rights Watch Canada. "For 130 years Canada has violated the rights of the Hul'qumi'num people to equality and freedom from discrimination by the forcible seizure and alienation of their lands and resources in the 1880s and the continuing preferential recognition and protection of the rights of non-aboriginal people regarding these lands. Canada must discontinue the persistent failure to compensate the Hul'qumi'num people for this action and remedy violations of their internationally and domestically protected rights. The law mandate remedies. Justice mandates the return of the E & N lands to the HTG as part of that remedy."

AFN National Chief Shawn Atleo states: "Canada's comprehensive land claims policy is to blame. Despite constitutional recognition of Aboriginal rights and now international recognition with the UN Declaration on the Rights of Indigenous Peoples, Canada continues to refuse to reform its laws and policies to reflect these changes. As such, there is currently no available remedy in Canada to address the issue of HTG's loss of its traditional territories to private third parties based on the actions of the government, nor a practicable way to protect their Aboriginal lands from continued private encroachment and development, consistent with the principle of free, prior and informed consent. It is the same old pattern of delays, denials, bureaucratic failures, and bad faith by Canada that is the basis for Canada's violations under the American Declaration."

Grand Chief Edward John of the First Nations Summit and member of the United Nations Permanent Forum on Indigenous Issues states "The First Nations Summit fully supports this initiative of the First Nations of the Hul'qumi'num Treaty Group. The federal and BC governments continue to deny the existence of the collective Aboriginal and human rights of the Hul'qumi'num people. There is a wide gap between the Constitutional laws

that protect Aboriginal and treaty rights of indigenous peoples and the practical implementation of these rights."

"We will not continue to have our human and aboriginal rights ignored by government and corporate interests" says Chief Richard Thomas, Lyackson First Nation and President of the HTG. "We are prepared to do whatever is necessary to protect our traditional territory and are meeting next week with all other First Nations affected by the E&N to discuss our options."

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For further information contact:

Robert Morales, HTG Chief Negotiator, (mobile 250-710-2241, htg-rmorales@shaw.ca) or Chief Lydia Hwitsum, Cowichan Tribes (phone 250-748-3196 chief@cowichantribes.com).

Opposition to TimberWest sale grows as Vancouver Island First Nations agree on Declaration

For Immediate Release – May 25, 2011

(Ladysmith, B.C) First Nations from throughout Vancouver Island within the E&N Railway Grant area have united in protest against the takeover of forest giant TimberWest.

A declaration opposing the sale of the company to Canada and BC public service pension funds, or any other buyer, has been agreed to by leaders of nations whose traditional territory includes more than 113,000 hectares of TimberWest lands that were part of the 2 million acre E&N Railway land grant of 1883.

The declaration followed a meeting in Ladysmith on May 19 at which leaders came out to add their voices and support the Hul'qumi'num Treaty Group in opposition to the proposed sale. HTG gained the attention of the world's financial markets a week earlier when it announced its opposition to the $1 billion sale.

Within hours of HTG filing a Precautionary Measures request with the Inter-American Human Rights Commission (IACHR), TimberWest shares tumbled in value on the Toronto Stock Exchange. The IACHR is an independent body of human rights experts, within the Organization of American States, of which Canada is a member. The filing was part of HTG's larger human rights complaint against Canada.

"We were very heartened by the support we received from other nations, both on and off Vancouver Island," said Robert Morales, the chief negotiator of HTG. Other Island leaders see that our fight is also theirs. We are all opposed to the large-scale sale and resource extraction on private lands in our traditional territories.

"These lands have never been surrendered or ceded, yet others have benefited from land sales such as this for 150 years. Our interests in these lands continue, even as they are being clear-cut of timber and subdivided for development."

The E&N Declaration states the signers' objection to the lack of consultation and accommodation when decisions are made about lands such as those controlled by TimberWest. In doing so, the Declaration laid down a legal and moral challenge not only to federal and provincial governments, but also to business and industry.

"Governments and corporate entities have an obligation under both Canadian and international law to honour our rights," Morales said. "The Declaration calls on all of them to fulfill that obligation."

He said the HTG campaign has resonated far outside the boundaries of Vancouver Island and BC.

"When we first filed our original petition with IACHR in 2007, First Nations across Canada immediately understood our position: that government, federal and provincial, and local, has been ignoring our steadfast opposition to what is happening in our traditional territories. That refusal to consult with us is what makes it a human rights issue.

"Now the corporate world realizes that such issues can seriously impact their bottom line," Morales said. "After HTG sent out its media announcement last week, we have been receiving calls from financial centres in many locations.

"Investors in resource companies like TimberWest are worried. When investors are worried, governments get worried. It means we have their attention."

Chief Negotiator Rod Naknakim of the Laich-kwil-tach Treaty Society says "our Chiefs have instructed me to explore legal remedies such as filing an application for an injunction regarding the proposed sale by TimberWest in the BC Supreme Court.

Chief Douglas White III of the Snuneymuxw First Nation and a member of BC's First Nations Summit Executive stated "Approximately 20,000 ha of TimberWest lands are at the core of Snuneymuxw territory in the Nanaimo River watershed. The alienation of these lands, as part of the E&N Land Grant, represents a fundamental breach of the Snuneymuxw Douglas Treaty of 1854. We have written to both TimberWest and the Pension corporations to put them on notice of this dark cloud on the title to this land. Snuneymuxw stands with our relations in opposition to the proposed sale. We will be raising this matter on the Summit agenda when First Nations from across British Columbia convene in Vancouver in early June."

"There is no question about this," Chief Richard Thomas of Lyackson First Nation and HTG's president said. "We will not continue to have our fundamental human rights and our aboriginal rights ignored by government and corporate interests. He said direct action will continue before TimberWest shareholders gather in Vancouver, B.C. to vote on the proposed sale on June 14."

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For further information contact:

Robert Morales, HTG Chief Negotiator, (mobile 250-710-2241, htg-rmorales@shaw.ca)

DECLARATION

We the VANCOUVER ISLAND FIRST NATIONS WITHIN THE E&N LAND GRANT AREA being sovereign Nations and the rightful, legal occupants with Aboriginal Title and Rights, Douglas Treaty Rights, and Indigenous Human Rights to our territories as given us by our Creator do hereby declare that:

Whereas the government of BC granted 2 million acres of land to the government of Canada in the late 1800's and the government of Canada subsequently unlawfully granted these lands to James Dunsmuir of the Esquimalt and Nanaimo Railway in "private" fee simple ownership (E&N Land Grant) and these lands have passed from one corporate entity to another since then.

And whereas the E&N Land Grant was a violation of our Aboriginal Title and Rights in our ancestral lands and a fundamental breach of Douglas Treaty rights and Crown obligations arising from Douglas Treaties.

And whereas our First Nations were never informed, consulted or offered any restitution for any of these actions.

And whereas the government of Canada continues to refuse to offer any form of restitution resulting from their actions.

And whereas our First Nations continue to be refused any form of consultation, consent, environmental impact assessments or benefit sharing with respect to any decisions being made on these "private" lands.

And whereas this unlawful granting of our Traditional territories has had a devastating effect on our communities that have depended on and continue to depend on access to our land to carry on our traditional subsistence, religious and other cultural practices and this privatization, has facilitated the destruction of our special relationship to our invaluable forest lands.

And whereas as a result of the Crown's inability to effectively regulate these private forest lands, intense clear-cut logging has resulted in the deforestation of these lands with only a very small percentage of original old growth forest left. This privatization has also severely impacted essential water supplies, traditional medicinal plants, and fishery and wildlife populations.

WE THERFORE DECLARE THAT:

We never surrendered or ceded our traditional territories and we therefore object to decisions being made on these "private" lands without our consultation and accommodation and where necessary our consent.

Canada, BC and corporate entities have an obligation under domestic and international law to honour our right to be consulted about decisions being made on these "private" lands and we call upon them to fulfil this obligation now and into the future.

We collectively object to the current proposed sale of the TimberWest stapled units which includes these "private" lands, within our traditional territories to the Canada and BC pension funds and any other potential buyer without prior consultation with our nations.

HTG Supporters Statements

- Amnesty International
- Lawyer's Rights Watch Canada
- Ancient Forest Alliance

Background
9 June 2011

Amnesty International continues to support fair resolution of the Hul'qumi'num Treaty Group case before the Inter-American Commission on Human Rights

Amnesty International has called the decision of the Inter-American Commission on Human Rights of the Organization of American States (OAS) to hear a complaint about Indigenous land rights on Vancouver Island "a wake-up call to Canadian policy-makers."

Responding to the decision of the Commission to hear the case of the Hil'qumi'num Treaty Group (HTG) of Vancouver Island, Amnesty International Secretary General Alex Neve said, "Indigenous peoples' rights to the land are absolutely vital to the fulfilment of a wide range of human rights. It is unacceptable that Canada has created such steep barriers to achieving fair and effective redress for the historic and ongoing violation of these rights. We hope that the Inter-American Commission's deliberation on the Hul'qumi'num case will help break the impasse faced by so many Indigenous peoples in Canada."

The complaint, filed by the Hul'qumi'num Treaty Group in 2007, alleges that the provincial and federal governments have violated the rights of First Nations whose traditional territories in south-eastern Vancouver Island were confiscated and then "privatized" in the late 1800s.

The six First Nations of the HTG have been in negotiation with the federal and provincial governments since 1994 under the BC treaty process. Participation in this process has already cost the First Nations $20 million for research and other expenses that will be deducted from any settlement.

In agreeing to hear the complaint, the Commission has ruled that the treaty process is demonstrably "not an effective mechanism" for protection of their rights. The Commission also concluded that taking the matter to court "would not be effective under recognized general principles of international law" because Canadian courts have consistently turned questions of Indigenous title back to governments to resolve through negotiation.

The initial ruling of the Commission echoes concerns long expressed by Indigenous peoples, human rights groups, and independent government reviews over the fairness and efficiency of the available means to resolve lands rights disputes in Canada.

The Hul'qumi'num Treaty Group was one of the cases cited in In the Amnesty International 2011 Annual Report *The State of the World's Human Rights.* That reported stated, "Indigenous Peoples in the Americas have become increasingly vocal and organized in defence of their rights in recent years. Nevertheless, the legacy of widespread human rights abuses against them, and the failure to hold those responsible to account, helped perpetuate longstanding discrimination and poverty in Indigenous communities throughout the region."

The Treaty Group's complaint to the Inter-American Commission cites government failure to record and protect Aboriginal title to their ancestral land, the lack of compensation for lands transferred or sold to private hands, the failure to consult before allowing development of these lands, and the resulting destruction of the environment, natural resources and sacred sites vital to these First Nations.

The Hul'qumi'num Treaty Group is the political organization representing the Cowichan Tribes; the Chemainus First Nation; the Penelakut Tribe; the Halalt First Nation; the Lyackson First Nation; and the Lake Cowichan First Nation.

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Almost all their traditional lands were confiscated by Canada and sold to private third party interests in the late 1800s, including an 1884 grant of over 835,000 hectares to the E & N Railway.

Today, Craig Benjamin, Amnesty International's Campaigner on the Human Rights of Indigenous Peoples, expressed the organization's continued support for the case. He stated, "The Inter-American Commission's review of the Hul'qumi'num Treaty Group case has the potential to be a landmark moment in clarifying Canada's human rights obligations toward Indigenous peoples. It is imperative that the rights at the center of this case be protected while the Commission has the opportunity to review the evidence and make its recommendations. To do otherwise would not only undermine the Hul'qumi'num people, but also this vitally important human rights mechanism."
For more information, please contact:

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Lawyers Rights Watch Canada has filed submissions in support of the Hul'qumi'num Treaty Group's (HTG) petition to the Inter-American Commission because of the history of inequality and discrimination by Canada against the Hul'qumi'num though the seizure and alienation of their traditionally owned lands and resources; by the unequal and discriminatory treatment of their customary land tenure system; and by the laws and practices instituted by successive Canadian governments that restricted and impaired the economic, political/civil, and cultural rights of Indigenous peoples and prevented equal access to judicial remedies.

In the 1880s Canada seized—without agreement or compensation—over 385,000 hectares of lands and resources owned and occupied by the Hul'qumi'num, on the basis that the Hul'qumi'num as 'indians', were inferior and not entitled to the same rights as others. Successive Canadian governments then further restricted and impaired the economic, political and cultural rights of the Hul'qumi'num and prevented equal access to judicial remedies through discriminatory laws and practices that have persisted to the present.

The law now recognizes the right of all people to equality and non-discrimination as a peremptory norm from which no derogation is permitted and the companion duty of states to remedy historical violations of these rights. The law now requires Canada to afford to the Hul'qumi'num the preferential treatment necessary to remedy past violations and ensure their present capacity to exercise rights on an equal footing with others.

Roughly one third of the lands wrongfully taken from the Hul'qumi'num in the 1880s are now for sale. As part of the legal remedies owed to the Hul'qumi'num, Canada must act quickly to purchase the lands and return them to the Hul'qumi'num.

Lawyers' Rights Watch Canada

II. SUMMARY OF BRIEF

This *amicus curiae* brief reviews the following areas:

(i) the peremptory nature of the right to equality and non-discrimination, and the inter-relation of these two concepts;

(ii) the substantive equality requirement that States take special measures to remedy indirect discrimination and the conditions of historically disadvantaged groups that impede their ability to exercise protected rights on an equal footing with others.

(iii) the history of formal or *de jure* inequality and direct discrimination perpetrated against the Hul'qumi'num, through the appropriation of their ancestral lands and resources, by the unequal and discriminatory treatment of their customary system of land tenure, and by the laws and practices instituted by successive Canadian governments that restricted and impaired Indigenous peoples' economic, political, cultural and religious rights;

(iv) the consequential real or *de facto* inequality experienced by the Hul'qumi'num as a result of this historical discrimination; and

(v) Canada's on-going perpetuation of unequal legal, social, political, cultural and property rights.

The right to equality is set out in Article II of the *American Declaration of Rights and Duties of Man* which also protects property rights (Article XXIII) and the right to effective judicial protection (Article XVIII). These rights are transversal and they must be interpreted in light of the *corpus juris gentium.* Thus, even though Canada is not a party to the *American Convention on Human Rights,* whose Article 24 likewise guarantees the right to equality and non-discrimination, its obligations must be interpreted in light of the principles set out in the *Declaration.*

The fundamental character of the right to equality is reflected in its inclusion in a great number of other human rights instruments to which Canada is a party. These include the Charter of the United Nations; the *Universal Declaration of Human Rights*; the *International Covenant on Civil and Political Rights*, the *Convention on the Elimination of Racial Discrimination* and, most notably, the *United Nations Declaration on the Rights of Indigenous Peoples* which also specifies that remedies must be provided for the historical injustices that have resulted from the dispossession of Indigenous peoples from their land and resources.

The principle of equality is also fundamental to Canadian legality. Since ancient times the Coronation Oath has obliged the monarch to protect the laws and customs of the people. It has long been established that the rule of law means that everyone, including the monarch, is subject to the laws of the land and the principles of equality and the rule of law were recently reiterated in the *Constitution Act, 1982.*

The principle of equality cannot be separated from the principle of non-discrimination. These

principles are so fundamental to international law that, as affirmed by the Inter-American Court in several judgments including *Yatama vs. Nicaragua,* they have become peremptory norms or *Jus cogens.* States are obligated not only to provide formal or *de jure* equality by ensuring that their laws do not discriminate through distinctions based on grounds such as race, but also to eliminate substantive or *de facto* inequality that arises when laws have an unequal effect.

The obligation of states to institute ameliorative measures to ensure the full exercise of rights, even by social groups or sectors that are weak or helpless, is well established. This includes situations in which Indigenous peoples have experienced historical disadvantages. Several decisions of the Inter-American Court have upheld this principle. The same approach was adopted by the European Court of Human Rights when considering the right of Roma children to equal educational opportunities. The principle was reiterated once again in the *United Nations Declaration on the Rights of Indigenous Peoples.*

An examination of the history of relations between Canada and the Hul'qumi'num peoples reveals both *de jure* and *de facto* violations of the right to equality and non-discrimination. Canada failed to acknowledge, respect or protect the laws and property rights of the Hul'qumi'num. It failed to apply English law in an egalitarian way and used force during the 1880's to seize their ancestral lands for the benefit of non-indigenous settlers. During the late 19th and early 20th centuries, many laws were instituted that discriminated overtly against Indigenous peoples on the basis of race and prevented them from seeking redress in Canadian courts.

Athough the worst of this *de jure* discrimination was removed half a century ago, Canada has done little to redress the resulting disadvantages experienced by Indigenous peoples. The Hul'qumi'num are now among the poorest people in British Columbia while those occupying their ancestral territories are among the wealthiest. Even after the filing of the Hul'qumi'num complaint to the Inter-American Commission, Canada has continued to issue permits allowing third parties to clear-cut the disputed ancestral territory without consulting the Hul'qumi'num or obtaining their consent. As the Hul'qumi'num report, Canada has also ignored opportunities to prepare for restitution by failing to purchase parts of the land that have been offered for sale by some of the third party occupants.

In view of Canada's willful disregard for well established legal principles and its on-going violation of the equality rights of the Hul'qumi'num, LRWC urges the Commission to support the application of the Hul'qumi'num Treaty Group.

Ancient Forest Alliance Joins Hul'qumi'num Treaty Group to Oppose Sale of TimberWest Lands

The Ancient Forest Alliance is joining the Hul'qumi'num Treaty Group in opposing the sale of TimberWest Forest Corporation's Vancouver Island forest lands. The $1 billion sale would involve 327,000 hectares, more than 10% of Vancouver Island, to be bought by two public sector pension funds, BC Investment Management Corporation and the Public Sector Investment Board.

The Hul'qumi'num Treaty Group represents six First Nations bands with 6200 members on southeastern Vancouver Island stretching from Shawnigan Lake and Salt Spring Island in the south, to Nanaimo in the north.

The HTG is opposing the sale for several reasons, citing concerns about the rampant clearcutting of their traditional territories and the lack of consultation with HTG communities by the companies and governments in the sale of the lands. The BC government has stated that the private lands of the major logging companies TimberWest, Island Timberlands, and Hancock Timber Resource Group in HTG territory are not on the table for future land settlements through the BC Treaty Process, nor will First Nations be compensated for the taking of these lands through the E&N land grant over a century ago – which constitute the vast majority of their territory.

The Ancient Forest Alliance is also concerned about the sale due to the lack of commitment from the two pension funds to not log the last remnants of old-growth forests on these lands. Several thousand hectares of old-growth forests remain on TimberWest's lands, including the spectacular Muir Creek Grove west of Sooke and the Koksilah Ancient Forest west of Shawnigan Lake, which various levels of government have expressed an interest in buying for conservation, as well as mature second-growth forests that buffer the Red Creek Fir (the world's largest Douglas fir) east of Port Renfrew.

In addition, the breakneck speed of logging of the second-growth stands – mainly for raw log exports, as TimberWest is the number 1 exporter of raw logs from BC –is far from sustainable, eliminating valuable wildlife habitat, causing siltation of fish-bearing streams, and eliminating future jobs for British Columbian millworkers and value-added wood manufacturers.

The Hul'qumi'num have devised a high level land-use plan that is strongly environmental, calling for an expansion of protected forest lands, ecosystem-based management, the protection of remaining old-growth forests in their territories, and the re-growth of second-growth stands into becoming old-growth stands through longer logging rotations. Only 8% of the original old-growth forests remain in the Hul'qumi'num's territory.

Unlike most First Nations in BC whose territories largely consist of Crown lands, 85% of the Hul'qumi'num's territory has been given or sold to private interests without providing any compensation to the First Nations people for the loss of their unceded lands. This makes it particularly difficult for the bands to regain control over their traditional territories through Treaty settlement, especially as government has proclaimed that compensation will not be considered for the loss of the now-privatized lands. Within HTG territory, over 100,000 hectares or one-third of their lands are owned by TimberWest.

Considering the history of TimberWest's rampant logging and the lack of commitment by the pension funds to do things differently, the Hul'qumi'num stand to regain a sea of stumps and monotonous tree plantations by the time they sign a Treaty - unless things change.

ecotrust canada building the conservation economy

ON THE PROPOSED SALE OF TIMBERWEST TO BC AND CANADA PENSION FUNDS

The situation:

- There is ~600,000 hectares of private forestland on Vancouver Island. Much of this is the result of the historical E&N rail grant in the 1800's. Timberwest has made a deal to sell 113,000 hectares of this land, located in Hul'qumi'inum traditional territory to the BC and Canada Pension Funds.

- The private forestlands on the east side of Vancouver Island are some of the most productive growing sites in Canada, with very unique and important biodiversity. They are also the backyard to one of the most desirable places to live in Canada, which is experiencing rapid population growth.

- The current business model on Vancouver Island's PFLs is focused on a rapid liquidation of any remaining quality timber and the transition of higher value lands to real estate.

- First Nations on Vancouver Island, whose homelands have been historically alienated from these PFL are voicing their opposition to the proposed sale and have filed a precautionary measure with the Inter American Commission on Human Rights at the Organization of American States.

Ecotrust Canada believes:

1) That building a conservation economy includes managing our lands and resources in the best interests of the environment, the economy and our local communities.

2) The private forestlands on Vancouver Island, and any transition in their ownership, must include a plan to manage according to the highest third party certification standards, and be structured to ensure long term community benefit. There must also be a recognition and respect for Aboriginal title and rights.

3) These lands and this opportunity offer a unique moment in history to consider redefining the old business model with a longer term horizon in mind, including the need for reconciliation with First Nations in B.C.

4) Ecotrust Canada has offered our support to the HTG to develop an alternative approach for PFL in their territory that will better marry social, ecological and economic outputs and integrate the interests and needs of communities. This means managing not only for timber, but also for water, high biodiversity, non timber forest products, climate change mitigation and meaningful work.