

International Human Rights Commission Admits Hul'qumi'num Treaty Group Case

For Immediate Release, December 1, 2009

(Ladysmith, BC) -- The Hul'qumi'num Treaty Group (HTG), the political organization representing over 6,600 First Nations people in British Columbia, received a breakthrough ruling from the Inter-American Commission on Human Rights (IACHR) in Washington DC. In an important judgment that may clear the way for private lands to be dealt with in aboriginal land claims, the IACHR has ruled that HTG's petition on the human rights impacts of the privatization of Hul'qumi'num traditional territory is admissible. This ruling clears the way for the IACHR to hear the merits of a case against Canada on violating the human rights of aboriginal people whose territories are subject to private property rights created by the state.

In a ruling approved by the IACHR on Oct 30, 2009 and released recently to Canada and the HTG, the IACHR has found on an examination of *prima facie* evidence and legal arguments put forward by HTG, that it will examine and comment on alleged violation of Articles II (right to equality before the law), III (right to profess, manifest and practice a religious faith), XIII, (right to culture) and XXIII (right to property) of the American Declaration of the Rights and Duties of Man by Canada against the Hul'qumi'num peoples.

In this ruling, the IACHR found that "by failing to resolve the HTG claims with regard to their ancestral lands, the BCTC process has demonstrated that it is not an effective mechanism to protect the right [to property] alleged by the alleged victims". Indeed, examining the government's position that if a First Nation does not wish to accept its terms negotiating, that it can litigate, the IACHR noted that "there is no due process of law to protect the property rights of the HTG to its ancestral lands"

The IACHR observed that "the legal proceedings mentioned above [the Canadian court cases on aboriginal title] 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."

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

Robert Morales, chief negotiator of the Hul'qumi'num Treaty Group, says "the Inter-American Commission on Human Rights has made a very strong statement on the utter inadequacy and ineffectiveness of either BC Treaty Process or Canada's judicial system to provide an effective remedy for the protection of Hul'qumi'num human rights to property and aboriginal title. This is a important recognition of the difficult position of Hul'qumi'num people which we hope will clear the way to effectively deal with the private land issue in our treaty talks."

HTG is hoping to break through the 14-year stalemate in land claims negotiations with Canada. In 2007, HTG filed a human rights complaint against Canada, arguing that Hul'qumi'num human rights to property and culture are being violated and ignored. It cites the total failure of Canada to deal with the 1884 E&N Railway grant (which privatized the entire southeast quarter of Vancouver Island) through the BC treaty negotiation process, and the massive urbanization happening in this area now with little to no First Nations involvement as the core of these human rights violations.

Canada had argued in March 2009 that the case is not admissible before the Commission because HTG has not taken the 1884 E&N Railway Grant issues through the domestic courts. Canada had also argued that the precautionary measures request made by HTG for the commission to suspend real estate development and permitting activity on the Hul'qumi'num's traditional lands subject to an agreed upon shared-decision making process was outside the scope of the Commission to comment on.

HTG responded to Canada arguments, emphasizing the failure of the domestic processes of the BC Treaty Process or litigation in Canada to resolve the alienation of traditional territories to private land, and highlighted by lengthy submissions to the IACHR by 14 aboriginal communities -- from the Nunavut to the AFN to the Summit to the UBCIC to the Wet'suwet'en to the Tsilhq'otin to the Stó:lo -- in support of HTG's human rights petition. Cowichan Tribes elder Arvid Charlie had offered to the commission his perspective on the threats to their continuing cultural survival and integrity as indigenous peoples, revealing the tragic effect of the privatization of First Nations territories has had.

For an interview or further information please contact Robert Morales, HTG Chief Negotiator, (mobile phone 250-710-2241, rmorales@telus.blackberry.net) or Chief Lydia Hwitsum, Cowichan Tribes (mobile phone 250-710-5640, chief@cowichantribes.com).

-- 30 --

Backgrounder - HTG Petition to the Inter-American Commission on Human rights

A full copy of the 15-page IACHR Report (No. 105/09, Petition 592-07) can be obtained from the IACHR website when posted (<http://www.cidh.oas.org/DefaultE.htm>) or by request from the Hul'qumi'num Treaty Group (info@hulquminum.bc.ca)

A detailed backgrounder on the hearings can be found at:
http://www.hulquminum.bc.ca/pubs/Thom_2009_Culture_3_2_2009.pdf

Podcasts of Hearings

Audio recordings of the 1-hour hearings will can be heard on the web through the IACHR. To link to audio recording of HTG hearing, go to

March 23, 2009 Hearing (Govt of Canada argument & HTG response):
<http://www.iachr.org/Audiencias/134/20.%20P%20592%2007%20y%20MC%20110%2007%20Hul%20qumi%20num%20Treaty%20Group%20Canada.mp3>

October 28, 2008 hearing (HTG's arguments):
<http://www.iachr.org/Audiencias/133/B26HulquminumTreatyGroupCanada.mp3>

Photos from Hearings in Washington DC

The HTG chiefs attended the hearings Washington in full regalia to witness these important proceedings. AP photographer Charles Dharapak attended 23 Mar 09 hearing at the Inter-American Commission on Human Rights office, and posted a number of photos of the chiefs in regalia, the lawyers and so on, with annotations on the CP wire that day.

Photos taken by HTG staff member Brian Thom at this hearing can be found at
<http://picasaweb.google.com/brian.thom/IACHRHearingPhotos#>.

Prior News Coverage of Hearings

Ladysmith Chronicle article, Government responds to rights complaint, by Stephen Thomson, March 31, 2009

http://www.hulquminum.bc.ca/pubs/31Mar09_govtrespondstorightscompalint_chronicle.pdf

Times Colonist article, Island First Nations take land complaint to international body, By Judith Lavoie, March 24, 2009

http://www.hulquminum.bc.ca/pubs/24Mar09_complaint_to_intl_body_timescolonist.pdf

Nanaimo Daily News article, Treaty members meet over rights International human rights body offered to oversee discussions, By Robert Barron, March 24, 2009

<http://www2.canada.com/nanaimodailynews/news/story.html?id=e4e773c6-9d66-4100-98a4-1b93d33897da>

Canada makes its case for treaty process at international hearing, by Krista Siefken - Cowichan News Leader and Pictorial - March 24, 2009

http://www.hulquminum.bc.ca/pubs/24Mar09_CanadaMakesitsCase_newsleader.pdf

B.C. natives take complaint to international group
Globe and Mail, 29 October 2008

http://www.hulquminum.bc.ca/pubs/globeandmail_29Oct08.pdf

Natives to take human-rights protest to U.S. commission
Victoria Times Colonist, 27 October 2008

http://www.hulquminum.bc.ca/pubs/times_colonist_27Oct08.pdf

HTG takes complaint against Canada to international tribunal
Cowichan News Leader & Pictorial, 24 October 2008

http://www.hulquminum.bc.ca/pubs/Newsleader_OAShearing_24Oct08.pdf

Cowichan elder speaks at international hearing
Cowichan News Leader & Pictorial, 28 October 2008

http://www.hulquminum.bc.ca/pubs/newsleader_luschiim_oas_28Oct08.pdf

First Nations claim 200,000 hectares of E&N trail
Nanaimo Daily News, 31 October 2008

http://www.hulquminum.bc.ca/pubs/nanaimo_dailynews_31Oct08.pdf

Native group awaits ruling on human-rights complaint
Victoria Times Colonist, 02 November 2008

http://www.hulquminum.bc.ca/pubs/times_colonist_OAS_02Nov2008.pdf