

**STATEMENT OF THE
INDIAN LAW RESOURCE CENTER
TO THE SEVENTEENTH SESSION OF THE
WORKING GROUP ON INDIGENOUS POPULATIONS**

Item 5.

July 28, 1999

June L. Lorenzo

Thank you, Madame Chair. On behalf of the Indian Law Resource Center, I congratulate you on your election as Chairperson of the Seventeenth Session of the Working Group on Indigenous Populations.

The question of indigenous land rights is, we believe, central to the question of human rights for indigenous peoples. It is a particularly difficult issue that is likely to create conflict between indigenous peoples and states because it usually involves questions of wealth and resources. In this regard, the provisions of the Draft Declaration are extremely important and should be studied by all countries. We should also recognize that other international instruments address land issues as well. The Annex to the Second Progress Report amply demonstrates this point.

Further, states should also recognize a growing body of legal materials about indigenous land rights. The annotations to this Progress Report point to an impressive, important and persuasive body of law and international opinion about these rights.

When the international community considers and addresses indigenous land rights, it is not enough just to deal with the issues in a simplistic and generalized way. For example, pronouncements such as "we ought to recognize indigenous land rights" or "indigenous land rights should be enforced," are not useful for solving problems.

In our opinion, one of the most serious problems is the practice of many states taking indigenous land without due process of law or compensation. In my country, the United States, the Congress has the power to unilaterally extinguish the land rights of indigenous peoples if it so desires. At this moment there is pending before the U.S. Congress a bill that would extinguish any claim to lands that the Delaware people may have, H.R. 562. I spend a great deal of my time working on land claims on behalf of member nations of the Haudenosaunee, or Six Nations people, against the State of New York, in which New York claims the right to extinguish the land rights of the Six Nations peoples.

Another serious problem is the failure of governments to demarcate lands, specifically to recognize and describe on national maps indigenous lands, as you point out in your report.

In specific response to your request to provide factual information about measures to resolve indigenous land problems, we would like to provide several updates and additional information.

On July 17, 1999, the Guyana Constitutional Reform Commission, which has an indigenous woman as its Vice-Chair, submitted its final report to the Guyanese

WGIP 99/AME/1

Parliament. Indigenous peoples have submitted serious recommendations regarding the question of indigenous land rights. Among these was the establishment of a land claims settlement procedure, whereby Amerindians and the State would negotiate the settlement of land claims.

In the case of the Western Shoshone (discussed at paragraphs 57 through 61 of the Second Progress Report) the Inter-American Commission on Human Rights issued on June 28, 1999, precautionary measures pursuant to Article 29.2 of its Regulations and requested that the United States government take the appropriate measures to stay its intention to impound the Dann sisters' livestock, until it has the opportunity to fully investigate the claims raised in the petition. We believe the United States should demonstrate its respect for the Inter-American Commission by complying immediately with the Commission's request. Perhaps the United States will tell us today whether they intend to do so.

In the Awas Tingni case, involving the Mayagna indigenous community in Nicaragua, (discussed at paragraphs 49-51 of the Second Progress Report), the first set of objections were heard this spring before the Inter-American Court in Costa Rica. This case is the first to raise indigenous land rights issues and the obligations of states to respect these rights. There is interest in the case beyond the Americas, as we learned that members of the European Court of Justice were present at the hearing.

We also firmly believe that as the rights of indigenous peoples gain more and serious international attention, the states governments of Nicaragua, Guyana, the United States, and others, cannot address these issues in a vacuum.

It is unfortunate that few States have responded to Madame Daes' request to participate in this discussion in a serious and substantive manner. Unless they participate seriously in this effort, we firmly believe neither Indigenous peoples nor States will do well. We therefore urge countries to respond with substantive comments.

Thank you.