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## Statement to the Working Group on Indigenous Populations

by

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## AGENDA ITEM 5 - REVIEW OF DEVELOPMENTS

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Thank you, Madam Chair.

I would like to address the issue of indigenous lands and territories, drawing particular attention to two situations in which the Indian Law Resource Center currently is involved. These cases exemplify a problem that has been brought repeatedly to the attention of the Working Group and other UN bodies, a problem that involves patterns of government behavior and neglect which result in indigenous peoples being further dispossessed of their lands and resources.

We just heard from Davi Yanomami, who spoke on behalf of the Yanomami people of the Amazon. As Mr. Yanomami told us, the very survival of the Yanomami as a people is at risk due to the continuing threats to their territorial base. On the eve of the Rio UNCED meeting, President Fernando Collor demarcated Yanomami territory and removed the invading gold miners who had despoiled

the Yanomami environment and killed almost one fifth of the Yanomami population in a few short years. We celebrated this achievement. We had been pressing a complaint on behalf of the Yanomami in the Inter-American Commission on Human Rights since 1978, and this seemed to be the critical breakthrough we were hoping to achieve. But shortly after the demarcation, to our dismay, hundreds of miners returned and continued their devastation of Yanomami territory.

The forced resignation of Sydney Possuelo, the first President of the government Indian office FUNAI to champion a principled Indian rights policy, does not help the Yanomami situation. As director of FUNAI, Mr. Possuelo had pushed for demarcation of Indian lands and had supported the "Free Jungle II" program to remove the re-invading miners from Yanomami territory. The government apparently denied him the budgetary and political support necessary to carry out his work.

We are concerned, moreover, that the Brazilian government has not recently demonstrated the political will necessary to take the steps that are required under Brazilian law to demarcate Indian lands. The President of Brazil, Itamar Franco, has failed to ratify demarcations that have been presented to his office. It now appears certain that the constitutionally mandated deadline of October of this year for the government to complete Indian land demarcations will not be met. Furthermore there is now a growing and increasingly influential movement among officials and politicians to annul the Yanomami demarcation.

For several years the government of Brazil has not responded to a request by the Inter-American Commission on Human Rights for an on-site investigation of the Yanomami case and other human rights situations in Brazil. At a recent OAS meeting in Managua the Commission once again solicited the invitation that is needed to undertake such a visit. To our knowledge there has yet been no response from the government of Brazil. We encourage the government of Brazil to cooperate fully with the Commission and to move swiftly to rectify the situation that threatens the survival of the Yanomami and other Indian peoples of the country.

The second situation I wish to discuss briefly, madam chair, is one which has been brought to the attention of the Working Group on previous occasions, the issue of ~~is the~~ land and territorial rights ~~issue~~ facing the Western

Shoshone Nation of the Great Basin region of the United States.

The Western Shoshone issue is highlighted by the case of Mary and Carrie Dann, two Western Shoshone sisters who are ranchers. The

United States claims that it ~~now~~ owns the lands that the Danns' and other Western Shoshones ~~on the basis~~ have long possessed and used, and the government has taken steps to impound the Danns' cattle and horses and to stop the Danns from using the range land that the Dann Family has ranched for generations.

The land in question is the aboriginal land of the Western Shoshone Nation -- land that has never been given up, never sold, never lost in battle.

Indeed, the United States agreed in the Treaty of Ruby Valley of 1863 to respect the land rights of Western Shoshone throughout their ancestral territory. The United States now claims that the Western Shoshone and the Danns

The government claims it extinguished Western Shoshone land title in 1979 ~~then~~ through a claims process, which, as we have explained to the Working Group previously, denied the Western Shoshone due process and which offered them only money

in exchange for their lands, money the

lost their land title just a few years ago as a result of an award in a claim that had been processed by the federal Indian Claims Commission, supposedly on behalf of all Western Shoshones. In fact the claim had been initiated by an unauthorized and unrepresentative group, and eventually practically all the Western Shoshone tribes, including the Dann Band, tried to stop or change the claim. The claim asked for money compensation for land that still belonged to the Western Shoshone people and that had never been taken.

The United States urged that the claim be continued and sought entry of judgment. The Indian Claims Commission entered judgment in 1979, awarding an average of about US\$1.35 per acre for the Western Shoshones' land, including most of the Dannels' land. The money has stayed in the U.S. Treasury because the Western Shoshone people have refused to accept it. Nevertheless, the United States now has as its official position that "payment" of the award into its own treasury extinguished the Dannels' and the other Shoshones' rights to all but a small fraction of their ancestral lands.

After years of unsuccessful litigation in United States courts, the Indian Law Resource Center has filed on behalf of the Dannels a complaint in the Inter-American Commission on Human Rights. The United States government has responded to this and years of additional pressure and education by exploring possible processes of resolution in Congress and the Department of Interior. The Indian Law Resource Center encourages and supports

this new search for a resolution of these critical land claims and urges this body to give its fullest attention and assistance.

Madam chair, it is evident that the outright dispossession of indigenous peoples from their homelands is not taking place only in the more remote areas of the globe or only in countries of the developing world. It is a problem that characterizes the condition of indigenous peoples in all regions. Over the years of the life of the Working Group, indigenous peoples' representatives from throughout the world have emphasized the importance of a secure land base to the survival of their nations and communities, and they have told of their ongoing battles against formidable political and economic forces in this regard. Even in those countries such as Brazil and the United States, which include in their legal systems some formal recognition of Indian land or territorial rights, the secure and effective enjoyment of those rights frequently remains but an elusive dream.

Indigenous land and territorial rights are a matter of basic human dignity and equality under the law. At the same time, the effective recognition and implementation of indigenous land rights is difficult and complex in the face of a long history of dispossession and the existence of contending political forces. The continuing lack of effective enjoyment of indigenous land and territorial rights is a problem that requires serious attention, careful analysis and the implementation of strong corrective standards and procedures.

The Indian Law Resource Center asks the Working Group on Indigenous Populations to recommend that a study be initiated by the Working Group and the Sub-Commission on indigenous land claims procedures and demarcation efforts. This study should emphasize the identification and analysis of innovative procedures and should examine positive measures being taken by states as well as problems in this area. The Indian Law Resource Center believes that such a study would appropriately build upon the standard-setting activities of the Working Group by providing a practical orientation to the land rights standards developed in successive drafts of the Declaration.

Thank you madam chair.