

COMMISSION ON HUMAN RIGHTS
Sub-commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Peoples
Seventeenth session
26 July - 30 July 1999
Item 5: Land Rights of Indigenous Peoples
29 July 1999

Oral intervention by Sharon H. Venne, Akaitcho Territory Government

Madam I am making a joint statement on behalf of a number of groups including the Akaitcho and Deh Cho Dene Peoples, the Sachigo Lake First Nation, the Hupacasath First Nation and the Joseph Bighead Cree.

Madam Daes, we have received your second progress report and will take it home to the communities for their review and comments. There will be an effort to table a complete analysis of the second progress report by the end of the year. Having made a brief review of the document and having listened to your comments, I would like to make the following observations.

The use of the term people in the title of the report rather than "Peoples" is noted. Peoples have a collective rights and people do not have such a collective right. Indigenous Peoples have always stressed that our rights to our lands and territories is based on the collective. In the final report, we would like to see the error in the title corrected.

The Akaitcho and Deh Cho Dene Peoples commend Madam Daes on her effort to seek to understand the relationship that Indigenous Peoples have with our land. It is noted that the report does not address directly the question of the land rights of Indigenous Peoples.

Included in the materials, there is a review of information from state parties that relate to the dispossession of Indigenous Peoples. Indigenous Peoples do not consider ourselves dispossessed from our lands and territories. Indigenous Peoples are taking care of our lands and territories according to the laws of the Creator. For us, dispossession is a western concept. They want us to believe that this is a reality.

In the first working documents, there was an inventory. It might be helpful to provide a couple of specific case studies to flush out the inventory. In this regard, we make the following recommendation.

Recommendation 1. Reconsider the inventory of state measures that create problems for Indigenous Peoples in their relation to land by taking into account the specific historical situation and collective nature of Indigenous Peoples.

Still with regard to this inventory, the Akaitcho and Deh Cho Dene Peoples wish to draw attention to one particular item, which is the issue of "claims". It is a very statist position to use the word "Claim". Indigenous Peoples do not have to claim what belongs to them. It is the state party who is making a claim on Indigenous lands. This should be clearly pointed out in the final report.

There is also some effort to look at "claims process" in countries such as Canada. The reports seem to suggest that there is some more promise for Indigenous Peoples to protect their land and resource base. The experiences of the Akaitcho and Deh Cho Peoples does not confirm this. The Claims processes in Canada raises more fundamental problems than being simply "time consuming". A recent report of the Auditor-General of Canada has condemned the "Claims" process as being unproductive and does not settle any outstanding issues. Rather, the Auditor General points to the Claims process as a source of future problems. The Auditor General has recommended to parliament that the present system be changed to be more productive to all parties, as yet Canada has not acted on the recommendations of its own Auditor-General. We will supply you with a copy of the Auditor General's report for your information.

In Canada, the policy of claims processes have one objective to achieve "certainty" for the state party. This means one fundamental condition in negotiations, Indigenous Peoples have to extinguish our rights to our lands, resources and territories. Indigenous Peoples will never extinguish their rights to their territories. It is a

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precondition set by Canada that has prevented the settlement of outstanding disputes related to Treaty implementation within Akaitcho and Deh Cho.

In Madame Daes's report with a few exceptions, extinguishment is mainly treated as a problem of the past. This is not the case. The question of extinguishment as a pre-condition for negotiation as currently practiced in Canada in all negotiations with Indigenous Peoples. There is a need to address this issue in detail in the final working paper. This is one example shows the need for an integrated approach to the different state measures described in the working paper: we feel that there is a *functional link* between extinguishment and proposals for negotiated solutions in Canada on the side of the state party. Without a fair and equitable table, Indigenous Peoples are placed under duress and forced to take action to protect their lands, resources and territories.

In the 1998 text, there is a reference to the *Delgamuukw v. The Queen*, a Supreme Court of Canada decision. This case does not assist Indigenous Peoples to deal with land rights. The judges in the Supreme Court of Canada wrote that "aboriginal title" crystallized under the Crown at the time of contact. Madame Daes, it was our strong belief that the international legal community had disowned the concept of *terra nullius*, discovery and conquest. If this is the case, why should a UN document support the decision which is essential the acceptance of the doctrine of discovery? We do not feel that this case helps our position on land and our discussions with the state of Canada to have all our lands under the rubric of the underlying title vesting in the Crown. This is an outdated and vile doctrine based on the notion of racial superiority of the colonizers. We have prepared an analysis of this case and will send a copy to you. We feel that the case should be strongly condemned in your final paper.

Recommendation 2. Undertake a critical analysis of efforts made resolve Indigenous land issues (Part IV).

At the outset in the 1997 paper, Madam Daes shows particular concern with the question of the "cultural differences" of Indigenous Peoples and the "unique elements" of their relationship with their lands (paras. 5, 7, 13). The focus on "cultural difference" does not account sufficiently for the threat of dispossession by state governments. It is essentially a problem of colonization and its continuance. "Cultural differences" is not the problem. Culture is the prerogative of those who are part of it. Within an international legal construction, cultural rights flow to minorities and not to **PEOPLES**. It should not enter into considerations of legal relationships between Peoples. It is the position of the Akaitcho and Deh Cho Dene Peoples that the issue of dispossession points to colonialism and the failure of successor state parties to live up to the treaty and other obligations. The attempted dispossession requires solutions that reverse colonial processes and compel state parties to abide by the agreements that have been undertaken. Dispossession has generally been argued by the state parties on the basis that Indigenous Peoples do not own our lands. This concept of dispossession is based on the misguided doctrine of discovery that our lands belong to the non-Indigenous. The Treaties did not surrender, extinguish or alienate our lands and territories. According to the Dene Elders and as confirmed by the courts of Canada, the Dene Treaties were peace and friendship treaties and not land surrender Treaties.

Similarly, human rights based on Eurocentric values, which constitute the basic framework used in the preliminary working paper (paras. 4, 14, 81) do not cover the entire issue. Solutions focusing on the individual (as indicated by the use of the term "Indigenous people" – not "peoples" – in the title of the preliminary working paper) can hardly be durable and equitable to all parties involved. Respect for human rights of Indigenous Peoples depends on respect for, and recognition of, the rights of Indigenous Peoples as peoples with their own population, land base, legal and political representation, and legal capacity. It is the basic reason that Indigenous Peoples pushed so hard to have a Declaration on our Rights as the present instruments do not protect us from the colonial states.

Recommendation 3. Regarding the need for a "collaborative strategy", it is essential in our view to consider the footing of the parties involved. Negotiation and adjudication of land rights issues on an unequal footing cannot bring about results that are lasting and are acceptable to all parties. The proposition of placing the strategy "upon a firm human rights foundation" should not distract from the necessity of equality of parties. Parties involved in efforts of negotiating and adjudicating the land rights issues of Indigenous Peoples are not individuals but collective entities as recognized by the entering into Treaties with the British Crown. For Indigenous Peoples, land rights are **peoples' rights** and not issues of real estate or private property.

Recommendations 4.

The "need for a fluid and flexible atmosphere" and "evidence of urgency" of the issue should not preclude the importance of Recommendations 1, 2 and 3. The future of Indigenous Peoples is at stake. Decisions we make affect our children and children not yet born. If there is a requirements of "urgency" and "flexibility", it should be noted that the state governments are the ones pushing the urgency. Indigenous Peoples have been living on our lands and territories since the beginning of time. As the Elders have said on a number of occasions, we are not going anywhere - why push us to make hasty decisions?

Land rights is a matter of critical importance to us. We would like to see this item appear on the future agenda of the working group as a permanent agenda item.

One final point Madame Daes, I was very pleased to hear your statement yesterday morning when you introduced the second progress report. You have rightly picked up a critical issue related to the international legal norms and the conflict with the concept of "extinguishment". You have correctly pointed out that the issue is a critical one and a barrier to equal and fair negotiations with Indigenous Peoples. We commend you on your perceptive and insightful statement and look forward to a equally strong and insightful final report.
Thank - You