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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities

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Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND  
SEGREGATION AND OF APARTHEID IN ALL COUNTRIES, WITH  
PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT  
COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION  
UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XLVIII)

Written statement submitted by the Indian Law Resource Center,  
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Introduction

Many countries continue systematically to adopt practices which grossly violate the human rights and fundamental freedoms of indigenous peoples. Among the worst of these practices is institutionalized racial discrimination against indigenous peoples.

Racism Against Indigenous Populations

Racism and racial discrimination against indigenous peoples is today still embodied in the law and legal systems of many countries of the Americas. This information comes to the attention of the Indian Law Resource Center because we represent or give legal assistance to indigenous peoples in South, Central and North America and because we have conducted legal and factual research into this question.

Race discrimination in the law of any country is recognized as an especially grave breach of human rights because it gives public governmental sanction to discrimination which is therefore institutionalized and on-going. In this respect, the law affecting indigenous populations in the Americas is like the more familiar abomination, apartheid.

With certain notable exceptions, such as the study now nearing completion on the treatment of indigenous peoples, almost no attention has been given to the problems of discrimination against indigenous populations. Because of severe poverty, isolation, political repression and other reasons, indigenous peoples have not until recently

been able to bring these problems to the attention of this body and the Commission on Human Rights. Therefore it should be no surprise that we now find widespread, institutionalized and governmentally sanctioned race discrimination against indigenous populations. Many delegations of indigenous people are planning to attend the Conference on Indigenous People and the Land, in Geneva, Switzerland, from 15 to 18 September 1981, in order to attest to and document these facts.

Race discrimination in the law affecting indigenous peoples has three principal elements which are found in the law of almost every American country having an indigenous population.

1. The treatment of indigenous peoples as wards, incompetents or beneficiaries of a supposed trust.

Under the law of many countries indigenous peoples are said to be the permanent wards of the Government or it is said that they are the beneficiaries of a trust, with the dominant Government as trustee.

This "trusteeship" is imposed, so far as we are aware, on only one racial group: indigenous peoples.

Such trusteeships have their origin in colonial practices of the past century when they were used to mask the exploitation of colonized people. These trusteeships, then as now, are not true trusts but impositions upon unwilling peoples. The trust usually cannot be legally enforced and the "trustee" is accountable to no one.

The assertion of such a "trust" relationship not only deprives indigenous peoples of their full legal capacity, but also serves as a pretext for broad authority over them. The paternalistic and abusive nature of such a sham trust is but a part of the over-all pattern of institutionalized race discrimination practised against indigenous peoples.

2. The denial of legal or juridical identity to some or all indigenous entities.

The human rights of greatest importance to indigenous peoples in the Americas are largely rights which exist only as community or group rights, such as the right to maintain their religious and cultural ways. This includes the right to own and use property and natural resources which are almost without exception rights held in common by indigenous peoples or communities. Purely private ownership of land is very rare, in general indigenous people own their land in common. As a result, legal protection of fundamental indigenous rights requires that indigenous groups have juridical identity or legal existence. Virtually every country we have examined in the Americas claims the unqualified right to deny to or to terminate the juridical identity of any or all indigenous entities. In some countries all indigenous entities are denied juridical existence. This limitless and devastating legal authority applies only to indigenous peoples. It is a special and fundamental legal disability or liability affecting one racial group like no other, and it is one of the keystones of the institutionalized race discrimination against indigenous peoples.

3. The denial of legal protection or recognition of indigenous property rights on the same basis as other races.

The dominant Governments in the western hemisphere frequently deny that indigenous peoples own the land on which they live. Indigenous people who have lived on land for generations, or since time immemorial are regarded under the law of most American governments as having nothing more than possessory rights. Indian land rights are sometimes termed "aboriginal title" or "Indian title", but not absolute ownership or title. Because it is denied that Indian tribes, nations and communities actually own their ancestral lands, they often are not allowed to protect their land rights in court. In a number of American countries indigenous peoples, because of their race, receive almost no legal protection for their lands. Indian land can be taken without paying compensation, without notice of intent to take, without the opportunity to be heard as to the taking, and for any purpose, including the private profit of non-Indian individuals and corporations.

Everywhere in the western hemisphere, indigenous people are denied the right to own, use and retain their property, through the operation of laws and policies which apply to them solely because of their race.

Land is essential to the cultural, political, and economic survival of indigenous peoples. To most indigenous peoples, land has central spiritual and religious significance. Without land, self-sufficient people lose their capacity to provide for themselves. The racist denial of land rights is part of a process which, if left unchecked, could destroy many of the indigenous peoples.

Effects of Discrimination

The effects of this discrimination are extremely severe, in some instances leading to the virtual extinction of certain populations. This occurs because of the lack of legal protection and the resulting inability to defend themselves against expropriation of their lands, forced relocations, diseases brought by intruding non-Indians, and destruction of the fish, game and habitat necessary for their way of life.

In some countries literally thousands of indigenous people or people of indigenous heritage have been killed, quite often because of efforts to retain or regain control of their native lands. Not long ago an Indian lawyer in a Central American country, whom we have been proud to assist, and who was working to protect indigenous land rights, was assassinated there along with his young son. Countless tales of horror and repression could be told, all related to this basic fact: institutionalized race discrimination exists against indigenous people in the legal systems of most countries in the Americas.

Where there exists legally sanctioned race discrimination, no rights of the affected class can be secure. Because indigenous people can be and are threatened with such serious violations of fundamental rights, they cannot, practically speaking, defend themselves or protect other rights, even those that are nominally protected by the law. Where the very existence of a community may be destroyed and its lands expropriated with Government sanction, the threat of such action has the effect of

nullifying every other right. How can there be freedom of religion, for example, if the dominant Government is free to suppress that religion with the threat of expropriation of lands?

It is well understood, particularly in relation to South Africa, that the existence of legally sanctioned race discrimination debases civilization itself and destroyed the moral and civil authority which is the foundation of law. This Sub-Commission must not turn away from this serious problem but must give close attention and study to it. This body must not accept blindly or uncritically the elaborate rationalizations of governments which wish to be excused. Of course, every Government which in fact exercises the right to expropriate indigenous lands discriminatorily and without due process of law or compensation will plead excuses and try to show it treats indigenous people well. But none can deny the existence of overtly discriminatory laws and legal doctrines. This body must not cease its scrutiny of this matter until all such laws are expressly done away with.