



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2003/NGO/125  
12 March 2003

ENGLISH ONLY

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COMMISSION ON HUMAN RIGHTS  
Fifty-ninth session  
Item 18 of the provisional agenda

EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS

Written statement\* submitted by International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 February 2003]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

A major purpose of the United Nations, under Article 1 of the Charter, is “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Under Article 55 of the Charter, the United Nations and its member States have the duty to “promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion,” with a view to “the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.” Under Article 56 of the Charter, all Member States “pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”

The Organization of American States Charter, in Article 1, states as a major purpose, the achievement of an “order of peace and justice.” Article 3 of the OAS Charter reaffirms the principles of international law and the faithful fulfillment of their obligations, as well as good faith, as the standard of conduct between States. OAS Charter Article 106 establishes the Inter-American Human Rights Commission to “keep vigilance over the observance of human rights.” Unlike the United Nations Universal Declaration on Human Rights, which remains for the most part an aspirational document placing no binding legal obligations on the member States, the OAS Declaration on the Rights and Duties of Man<sup>1</sup> is a source of international obligations for all OAS member States.<sup>2</sup>

We call attention to the Commission to the Inter American Commission on Human Rights (IACHR) decision in *Dann v. United States*<sup>3</sup>, wherein the United States was found to have violated, and continuing to violate the rights of the Western Shoshone Indigenous Peoples, particularly the American Declaration’s Article II (right to equality before the law), XVIII (right to a fair trial), and XXIII (right to property).

The case was filed before the IACHR by two brave Indigenous Western Shoshone women, sisters Mary and Carrie Dann, as they face the full brunt of United States power. The IACHR found that the United States government threatened to and did impound the livestock for the failure of the Dann sisters to pay grazing fees for grazing their livestock on their own traditional ancestral lands, in which they are in actual possession and use, and had allowed gold mining and gold prospecting on these Indigenous lands, in violation of the American Declaration.

The United States government never disputed that these lands are ancestral Western Shoshone land. The government argued that the lands had been “taken” and their title “extinguished,” “sometime on July 1, 1872. This was the final 1979 finding of the United States government’s Indian Land Claims Commission, which calculated a monetary award to the Shoshone based upon property values at 1872 prices. The Western Shoshone throughout the Land Claims Commission proceedings were never allowed to litigate their title to the lands. And the Land Claims Commission had no statutory authority to quiet title or declare the title extinguished, but only to appraise the loss.

The Western Shoshone, as the Hopi and Lakota Peoples, have never accepted these “awards” from the Indian Land Claims Commission. Their lands, fixed by Treaty, have never been for sale.

The actions of the United States throughout this case, initially filed in 1993, are telling. Procedurally, the IACHR can and does issue “precautionary measures” that request of a State that it delay actions against petitioners until the case is fully examined. In 1993, in response to a threatened impoundment of Dann livestock by the United States, the IACHR requested that the government stay its intentions to impound all livestock belonging to the Danns until the case had been resolved. It issued a similar request to the United States again in March of 1998. Similar precautionary measures were requested of the United States government thereafter.

Indeed, as documented by the IACHR<sup>4</sup>, in response to the IACHR precautionary measures, the United States government initiated legislation before the United States Congress that would authorize the sale of “public lands,” including Western Shoshone traditional lands, in open bidding to mining, ranching and other “private” interests. Other proposed legislation would distribute the Indian Land Claims Commission “award” per capita to individual Western Shoshone, “for the extinguishment of their rights to Western Shoshone lands.”

The IACHR also has “friendly settlement” procedures, whereby the parties are asked to enter into a process under the IACHR’s auspices, to attempt to settle the matter in an amicable manner. The United States did participate in such proceedings in the year 2000, but never departed from its position that the ancestral lands of the Western Shoshone were now the property of the United States.

Another process used by the IACHR is the private transmittal of a preliminary report to the State, to allow the State to take measures consistent with the report. This the IACHR did on October 15, 2001. The United States responded by rejecting the IACHR report in its entirety.

In their final decision<sup>5</sup> the IACHR noted that since the precautionary measures were requested, and since the issuance of the preliminary report, that on September 22, 2002, the United States, with 40 armed federal agents, seized approximately 225 head of cattle from the Dann’s ancestral lands which were subsequently auctioned off to the highest bidder. As noted by the IACHR, “[T]hese events took place despite an October 2, 2002 request by the Commission for the United States to comply with the Commission’s June 28, 1999 precautionary measures by returning the said livestock to the Danns and refraining from impounding any additional livestock belonging to the Danns until the procedure before the Commission was completed, including any implementation of any final recommendations that the Commission might adopt in the matter.”<sup>6</sup>

Since the final decision by the IACHR, the United States has threatened to confiscate horses grazing on Western Shoshone lands, and voiced an intention to reintroduce legislation for the public sale of ancestral Western Shoshone land, as well as the per capita distribution of the Indian Land Claims Commission money.

We draw the attention of this Commission to this case, and to the agenda item being addressed, the effective functioning of human rights mechanisms.

Nothing would serve the effective functioning of human rights mechanisms more (whether they be this Commission's or of regional arrangements) than the good faith of the States, particularly the most powerful. The primary purposes of the United Nations as well as of the Organization of American States are ill served by a continuing pattern of certain States to only live up to their legal and binding obligations if and when it suits them. These actions, among others, raise much reasonable doubt throughout the world as to the effectiveness of the international system, including the United Nations, as a mechanism for peace and justice, for human rights and fundamental freedoms.

These actions and heavy handed response by the United States to legitimate and established human rights standards and mechanisms only serve to undercut the credibility of all States members of the OAS and the UN. Indeed, some States may question their sacred responsibilities to promote and respect human rights and fundamental freedoms when the most powerful only reject them.

The International Indian Treaty Council calls upon the United States to comply with its legally binding human rights obligations and honor completely and in good faith, the decision of the Inter-American Commission on Human Rights on the Western Shoshone Dann case. We ask all States of good will to join us in that call.

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<sup>1</sup> Inter-American Declaration on the Rights and Duties of Man, Organization of American States, adopted in Bogota, Colombia, April, 1948 (at the same time as the OAS Charter).

<sup>2</sup> Organization of American States Inter-American Commission on Human Rights web page, Introduction, <http://cidh.oas.org/Basicos/basic1.htm>, visited 29 January 2003, citations in fn. 11 therein omitted.

<sup>3</sup> Report No. 75/02, Case 11.140, Mary and Carry Dann v. United States, December 27, 2002.

<sup>4</sup> Id, at paras. 23 and 25.

<sup>5</sup> Mary and Carrie Dann v. US, fn. 3.

<sup>6</sup> Id, at para. 179.