The Dann Case Before the Inter-American Commission on Human Rights: A Summary of the Commission’s Report and its Significance for Indian Land Rights

This paper provides information about the Inter-American Commission on Human Rights’ decision finding United States law about Indian lands to be fundamentally discriminatory and in violation of international human rights law. The decision calls upon the US to review and revise its law and to make a fair legal process available to Indian peoples. The paper discusses how this decision may be used by other Indian communities to combat discriminatory treatment by the US regarding Indian land rights. The Dann case is one example of how indigenous peoples can utilize international human rights law to seek justice. The original decision by the Inter-American Commission can be found on our website at www.indianlaw.org by going to the Projects page/Past Projects/Western Shoshone-Dann Case/Advocacy before the IACHR.
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Introduction

The Dann case decided by the Inter-American Commission on Human Rights represents a groundbreaking development in international jurisprudence that has profound impacts on Indian land rights in the United States. In the case, Carrie and Mary Dann, sisters and traditional Western Shoshone elders, filed a complaint with the Inter-American Commission on Human Rights, maintaining that the United States has violated and continues to violate their basic human rights by attempting to take their traditional Western Shoshone land through discriminatory means. Having heard the Danns’ allegations and the United States’ response, the Inter-American Commission issued its report in 2002 finding that the United States’ attempts to remove the Danns from their ancestral lands violates their basic human rights to property, to equality before the law, and to a fair trial. The Commission recommended that the United States provide the petitioners with an effective remedy for the infringements of Western Shoshone property rights over ancestral lands and that the United States review its laws to ensure that indigenous peoples’ property rights are determined in accordance with recognized human rights standards.

The purpose of this paper is to provide information about the significance of the Inter-American Commission’s decision, and how this decision may be used by other Indian communities to combat discriminatory treatment by the United States regarding Indian land rights. The Dann case is one example of how indigenous peoples can utilize international human rights law to seek justice. The Dann family’s courage and determination in resisting removal from their lands by the federal government continue today.

History of the Case

In 1863, the Western Shoshone signed the Treaty of Ruby Valley with the United States. In the Treaty, the Western Shoshone granted the United States the right to various uses of
the Western Shoshones' ancestral lands. The Treaty did not transfer title to any of these lands to the United States. Nonetheless, the United States unilaterally assumed complete control over 24 million acres of ancestral Western Shoshone lands. Some of the lands that the United States assumed control over were the ancestral lands of Carrie and Mary Dann.

One Western Shoshone band, the Te-Moak Tribe, decided to file a land claim case with the Indian Claims Commission for compensation for lands supposedly taken by the United States. The Indian Claims Commission (ICC) was an administrative body created by Congress to determine the compensation to be paid to Indian tribes whose land and resources were taken. During the ICC proceedings, the Danns maintained that not all ancestral lands of the Western Shoshone had been taken and that they never ceded their lands to the United States. They claimed that the ICC proceedings took place without the consent and participation of all Western Shoshone people, particularly themselves. Nonetheless, the ICC held that the aboriginal title to all Western Shoshone ancestral lands, approximately 24 million acres, had been extinguished by the gradual encroachment of whites. The ICC awarded the Western Shoshone $26 million, roughly 15 cents per acre, as compensation for this taking.

The Te-Moak Tribe later attempted to stay the proceedings, arguing the same position as the Danns that not all Western Shoshone aboriginal title was extinguished, particularly the lands they continued to occupy and use. They argued that when they filed their ICC claim, they were not informed that they could file a claim for compensation for only those lands that were actually taken from them, while still asserting title to a portion of the lands that were not taken. The ICC, however, ignored their argument.

According to the ICC Act, once a tribe is paid the compensation ordered, it cannot make any further claims against the United States. As such, the Western Shoshone, still believing that the title to all of their ancestral lands had not been extinguished, refused distribution of the monies, and the funds are still sitting in the US Treasury.

While the claim was still pending before the ICC, the United States brought a trespass action against the Danns claiming that they were grazing their livestock illegally on US land. The Danns stated that they were merely continuing to use the Western Shoshone ancestral lands that their family had always used. This case went all the way to the Supreme Court which ruled on the narrow issue that the Western Shoshone were paid, their compensation when the money was deposited into a US Treasury account for them, even though it was never actually distributed to them. The Court ruled that because they were already paid, the ICC Act barred any claim to the land by the Danns. The Court never actually considered whether gradual encroachment could in fact extinguish aboriginal title without an act of Congress to support such extinguishment.

**What does international law have to do with the fight for Indian land rights?**

In the United States, the relationship between indigenous communities and the federal
government is generally governed by Congress through the plenary power doctrine, which supposedly gives Congress sweeping power to govern practically all matters relating to Indian nations and their property. Nonetheless, it is the Supreme Court that interprets the legal rights of indigenous communities and the corresponding legal obligations of the United States. In recent years, the Supreme Court has been slowly but consistently wittling away at the rights and powers of Indian governments. As a result, Indian governments have begun to look for legal strategies that do not rely on Congress or the courts. Indigenous communities have begun to look to international law.

International law is the law that governs relations between nations, that is, the countries of the world. International law includes human rights law, which is the law that governs how countries protect the fundamental rights, such as civil, political, economic, social and cultural rights, of their citizens. An important aspect of international law is the ongoing effort to get the community of nations to recognize that Indian people have basic human rights and to get each nation to respect those rights in their dealings with Indian people.

Most people are familiar with the community of countries or nations known as the United Nations (UN). People are less familiar with the community of nations known as the Organization of American States (OAS). The OAS is the community of nations that covers North, Central and South America. The United States is a member of both the UN and the OAS. Both the UN and the OAS are very concerned with human rights, that is, with the way countries respect the fundamental rights of those within their borders.

With this concern in mind, the OAS adopted the American Declaration of the Rights and Duties of Man (American Declaration) in 1948. The American Declaration is a document in which the OAS member countries affirm the basic human rights held by all people. These rights pre-exist the creation of the countries themselves. In addition to its preamble, the American Declaration consists of 38 articles spelling out the basic human rights held by all people and the corresponding duties of each member country to protect those rights. It does not create or grant rights. Rather, it merely recognizes the civil, political, economic, social and cultural rights already held by man. Although it was originally adopted as a declaration and not as a legally binding treaty, the American Declaration is today considered a source of international obligations for the OAS member countries.

What is the Inter-American Commission on Human Rights?

The Inter-American Commission on Human Rights (Inter-American Commission or Commission) is an organization of the OAS whose principal function is to promote the protection of human rights, including the rights recognized in the American Declaration. More importantly, it is the organization within the OAS that is authorized to receive and investigate complaints by individuals alleging that a member country has violated or is violating human rights. This includes situations where the United States has violated or continues to violate recognized human rights of Indian tribes or Indian individuals.
Although the Commission has considered numerous complaints by indigenous groups, it has considered only one indigenous case from the United States.

In its investigative authority, the Commission can engage in on-site visits to member countries to engage in more in-depth analysis of the situation. The Commission is also authorized to publish special reports regarding the situation in a specific country. The Commission can make recommendations to member countries to adopt certain measures which would contribute to human rights protection. Further, the Commission can request member countries to adopt specific "precautionary measures" to prevent serious and irreparable harm to human rights in urgent cases.

**Why did the Danns take their fight to the Inter-American Commission?**

Despite their long struggle utilizing the mechanisms available through the United States legal system, the Danns were unable to find justice in the US courts. They had exhausted all of their domestic remedies within the United States, and still they found their ancestral lands being taken from them without due process. To make matters worse, they found themselves stripped of their means of livelihood and faced with enormous monetary fines for grazing their livestock on their own aboriginal land. Having no other options within the United States, but still convinced that the US had violated their basic rights to property and due process of law, the Danns looked to the international community for help. In 1993, the Indian Law Resource Center filed a complaint with the Inter-American Commission on behalf of the Danns.

In the complaint, the Danns alleged that the United States has been and continues to violate their human rights as recognized in the American Declaration of the Rights and Duties of Man, the most important of which are the right to property, the right to equality before the law, and the right to a fair trial.

The right to property means that *Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.* Article XXIII of the American Declaration of the Rights and Duties of Man.

The right to a fair trial implies that the judicial remedies made available must allow participation by all interested parties. See, Article XVIII of the American Declaration.

The right to equality before the law means that *All persons are equal before the law . . . without distinction as to race, sex, language, creed or any other factor.* Article II of the American Declaration.

The Danns alleged that the United States violated their right to property by illegally claiming title to Western Shoshones' ancestral lands, in violation of the 1863 Treaty of Ruby Valley, and by continuing to deprive the Western Shoshone people of access to
their lands. They alleged that the United States violated their right to equality before the law by taking their land in a discriminatory manner by providing far less legal protections for Indian property than for property owned by others. Finally, the Danns alleged that the United States violated their right to a fair trial by denying them the opportunity to participate in the ICC proceedings.

**The Inter-American Commission on Human Rights Report**

In December 2002, the Inter-American Commission issued its report, *Western Shoshone, Mary & Carrie Dann v. United States* (Inter-American Commission Report or Report), in which the Commission concluded that United States attempts to remove the Danns from their ancestral lands violated their basic human rights to property, to equality before the law, and to a fair trial.

In its report, the Commission recognized that indigenous people not only hold rights as individuals, but they also hold rights collectively as groups.

Perhaps most fundamentally, the [Inter-American Commission] and other international authorities have recognized the collective aspect of indigenous rights, in the sense of rights that are realized in part or in whole through their guarantee to groups or organizations of people. [The Commission recognizes] a particular connection between communities of indigenous peoples and the lands and resources that they have traditionally occupied and used, the preservation of which is fundamental to the effective realization of the human rights of indigenous peoples more generally and therefore warrants special measures of protection.  

Inter-American Commission Report, 128.

Thus, in its interpretation of the rights set forth in the American Declaration, the Commission acknowledged the special interest indigenous people have in their traditional land and declared that special measures must be taken to ensure that they are not deprived of this interest except with fully informed consent, under conditions of equality, and with fair compensation. Inter-American Commission Report, 131.

It is important to note that the Commission did not try to decide who currently owns the Western Shoshones’ ancestral lands. Rather, the Commission merely addressed whether the United States violated the Western Shoshone peoples’ human rights when it made its determination that the lands had been taken. The Commission concluded that the US failed to make its determination in a fair way.

Specifically, the Commission recognized that Western Shoshone land rights have received far less legal protection than non-Indian land rights in similar situations. United States law has strong protections for all other property rights. In fact, the Fifth Amendment of the US Constitution requires that property may not be taken without due process of law. This guarantees a court proceeding at the very least. In addition,
property owners must receive the fair market value of their land when they are compensated for its loss. Fair market value is the amount the owner would receive in the open market as a willing seller. Despite this requirement, Indians have for the most part received a small fraction of the value of their lands. In the end, the Western Shoshone were awarded about 15 cents an acre, based on a valuation date of 1872. Even though the claim was brought more than 50 years later, they were never awarded any interest.

Another example of unfair treatment acknowledged by the Commission was the way the ICC viewed the question of whether the Western Shoshone land rights had been terminated, or Aextinguished @ Historically, Indian nations gave lands to non-Indians through a formal negotiation process. In the case of the Western Shoshone, however, the ICC found that their lands had been Aextinguished @ by Agradual encroachment @ of non-Indians.

This Agradual encroachment @ theory violates the Treaty of Ruby Valley, which recognized the Western Shoshone ownership of some 24 million acres in 1863. The Western Shoshone have not negotiated any land cessions since. In their petition, the Danns argued that this theory was a discriminatory way to transfer land away from indigenous peoples. The ICC was a fact-finding body, not a court. In fact, the question of extinguishment of title to 24 million acres guaranteed to the Western Shoshone Nation by the Treaty of Ruby Valley of 1863 was never considered by a United States court. Instead, a fact-finding administrative body, the Indian Claims Commission, adopted the legal fiction that title had been extinguished by Agradual encroachment, @ in other words, by non-Indians moving onto the land. This violated Western Shoshone rights to property and equal treatment under the law.

The Inter-American Commission Report also found that the United States failed to provide the Western Shoshone with fundamentally fair proceedings. For example, the ICC refused to allow many affected Western Shoshone individuals and tribal groups to participate in the case. The ICC proceedings therefore violated the Western Shoshone’s right to a fair trial.

After concluding that the United States had violated these rights, the Inter-American Commission recommended that the United States reform its laws in order to comply with human rights standards. In its report, the Commission recommended that the United States:

A1. Provide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measure necessary to ensure respect for the Danns’ right to property in accordance with Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands. @ Inter-American Commission Report, § 173. This could include a fair trial with full, informed participation by all affected parties.
A2. Review its laws, procedures and practices to ensure that the property rights of all indigenous persons are determined in accordance [with recognized human rights standards, namely] with the rights established in the American Declaration, including Articles II, XVIII, and XXIII of the Declaration. Commission Report, 173.

The Inter-American Commission also said that all governments must honor the unique relationship between indigenous people and their traditional resources and lands. This relationship, the Commission wrote, warrants special measures of protection. These special measures of protection must be part of the legal systems of all countries for indigenous human rights to be protected.

Unfortunately, the United States has refused to accept the Commission’s findings, arguing that the ICC decision ended the Western Shoshone land claim, despite its fundamental unfairness. Further, the United States has so far refused to reform its laws or to carry out any of the Commission’s recommendations.

The Inter-American Commission Report as Part of a Growing Trend

Despite the United States’ refusal to recognize the Commission’s report in the Western Shoshone case, the Inter-American Commission on Human Rights continues to be an important organization when it comes to promoting indigenous human rights. The Commission has considered over 20 different complaints by indigenous groups during its existence. This highlights the increasing importance of international human rights law in the context of indigenous issues.

However, recognition of indigenous land rights is not limited to human rights bodies. Over the last 15 years, several countries have rejected outdated, discriminatory legal doctrines that limited the land rights of indigenous peoples in favor of non-indigenous ownership. In Mabo v. Queensland, for example, decided in 1992, the High Court of Australia rejected the doctrine of terra nullius.

Terra nullius means a land of no one. Under this doctrine, land that was unclaimed by a recognized sovereign government was considered to be owned by no one, regardless of whether indigenous people lived on the land. In Mabo, the High Court rejected this discriminatory doctrine, said that native title existed when non-indigenous settlers arrived, and recognized the land rights of the indigenous people. In the United States, this doctrine terra nullius is still considered good law, and is called the doctrine of discovery.

Australia is not the only country to recognize the pre-existing land rights of indigenous people, or the unique and special relationship of indigenous peoples to their lands. In 1982, the Canadian people amended their Constitution to recognize both the aboriginal and treaty rights of Canada’s First Nations. Aboriginal rights are important because they
are the rights that pre-existed contact with non-indigenous people.

The constitutional provision was followed up in 1997 with *Delgamuukw v. British Columbia*, in which the Supreme Court of Canada recognized that oral tradition could be evidence of indigenous land title. This case was important because the Canadian Supreme Court recognized the special relationship indigenous people have with the land. It was also important because the court recognized indigenous law or tradition, in a national court, as evidence of the right to land.

While there is still much work for indigenous peoples to do in these countries, they are far ahead of the United States in their willingness to take a modern look at outmoded, racially motivated legal doctrines. Human rights bodies, including the Inter-American Commission and various United Nations organizations, are also working to define and protect indigenous human rights, and these issues can be raised in those forums when a government is violating indigenous human rights.

**How Indian Communities and Indian Peoples Can Use the Inter-American Commission Report**

The Report shows that the procedures and methods of the Indian Claims Commission were fundamentally unfair and contrary to universal human rights standards. This is a point that countless indigenous communities have made over the years as they have objected to high-handed treatment by the ICC. Now these indigenous communities may be able to use the Report in the *Dann* case to seek reconsideration of their cases by Congress and possibly by the courts.

Clearly, there is a need for Congress to look at the present land situation of the Western Shoshone people. The injustice to the Western Shoshone people has been and continues to be extreme. Congress could be urged to seriously look at this issue and take steps to resolve Western Shoshone land issues in a fair way. The Report in this case is an official and legal conclusion that what has been done up to now is fundamentally unfair and discriminatory. Further, the Report could be used to approach Congress about the need to develop a more just and fair process to address Indian land issues in general.

The Report could also be used by tribal governments in their dealings with Interior Department officials and other federal officials who address Indian land issues. The Report is a powerful statement that the United States has been seriously unfair in how it deals with Indian lands, and it is strong condemnation of the unfairness of certain United States laws and legal doctrines relating to Indian lands. These findings can be and should be presented to federal administrative officials whenever issues relating to land arise.

Further, any US Indian tribe or individual may file a new case or “petition” with the Inter-American Commission, which is headquartered in Washington, D.C., alleging human rights violations by the United States, subject to various procedural requirements. There are an estimated 26 US tribes that have battled the Indian Claims Commission and have not accepted judgment funds, similar to the Western Shoshone. The Inter-American
Commission=s findings in the Dann case should be analyzed in regard to these situations to see if similar human rights violations have occurred.

As the United States has so far rejected the Commission=s findings and recommendations in the Dann case, it falls behind more progressive countries that are beginning to reject discriminatory law within their own domestic systems. The more claims are brought in human rights forums, the more pressure is brought to bear on the United States to reform its laws and uphold the human rights of indigenous people. If the United States will not reform its discriminatory laws on its own, it must be pressured and shamed into doing so.

It is important to note that the United States Supreme Court has recognized the importance of international law in helping to guide the interpretation of domestic laws by stating that international law is US law. Thus, the Commission Report can be used in the courts of the United States as an official and legal conclusion regarding how the United States has not met its obligations to protect the human rights of the Western Shoshone people.

Further Information

You can learn more about the Inter-American Commission on Human Rights at their website, http://www.cidh.oas.org/DefaultE.htm. For a full copy of the Commission=s Report, see http://www.indianlaw.org/WS_Dann_case_IACHR_final.pdf. If you have questions about your own tribe=s case, contact:

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About the Indian Law Resource Center

The Indian Law Resource Center is a non-profit legal advocacy organization, founded in 1978 by American Indians. Our mission is to assist indigenous peoples to protect their lands and environment, combat racism and oppression, achieve genuine self-government, and realize their human rights through policy development, litigation and law reform, and education and training. The Center=s experience at the forefront of indigenous activism for over twenty-five years has given the organization a high level of expertise in international human rights law, federal Indian law, tribal capacity building, coalition building, shaping national and international law and policy regarding indigenous peoples, and protecting the environment. For further information about the Center, visit our website, www.indianlaw.org.