

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURIDICOS PARA LOS PUEBLOS INDIGENAS

July 30, 2002

The Case of Mary and Carrie Dann v. The United States

Summary of the conclusions and recommendations of the Inter-American Commission on Human Rights

In its preliminary report, made public by the Commission on July 29, 2002, the Commission made its findings, conclusions and recommendations concerning the human rights complaint filed by Mary and Carrie Dann, Western Shoshone Indians who filed a formal complaint in 1993 charging that the United States was illegally depriving them and other Western Shoshones of their lands, primarily in Nevada. The Commission's conclusions and recommendations are as follows:

1. The Commission concludes that the United States in its treatment of the Danns and their land rights has violated Articles II (right to equality before the law), XVIII (right to a fair trial), and XXIII (right to property) of the American Declaration on the Rights and Duties of Man. Para. 5.
2. The Commission decides in Para. 130 of the Report that there are detailed international legal principles and norms that apply to indigenous peoples' rights to land, based on the American Declaration, ILO Convention No. 169, the draft UN Declaration on the Rights of Indigenous Peoples, the OAS draft American Declaration on the Rights of Indigenous Peoples, and other sources.
3. The Indian Claims Commission process in the Western Shoshone claim did not comply with international human rights norms. Para. 139.
4. Any determination of indigenous peoples' interests in land must be based upon a process of fully informed and mutual consent on the part of the indigenous community as a whole. Specifically: 1) Members must be fully and accurately informed, and 2) Members must have an effective opportunity to participate as individuals and as collectives. Para. 140.
5. The Western Shoshone claim in the Indian Claims Commission was pursued by one band of Western Shoshones without a mandate (informed consent) from the others, and this was not adequate to comply with international human rights norms, that is, the principle that there be informed and mutual consent on the part of the Western Shoshone community as a whole. Para. 141.

MAIN OFFICE

ROBERT T. COULTER, ESQ.
Executive Director

DEBORAH J. SCHAAF, ESQ.

ANDREW I. HUFF, ESQ.

TERRY L. JANIS, ESQ.
Director of Program Development
Admitted in Arizona

MICHELLE A. ALLEN
Development Director

DENISE McVEA
Communications Fellow

602 North Ewing Street

Helena, Montana 59601

Phone: (406) 449-2006

Fax: (406) 449-2031

Email: mt@indianlaw.org

WASHINGTON OFFICE

STEVEN M. TULLBERG, ESQ.
Director, Washington Office

ARMSTRONG A. WIGGINS
Director of Central and South America Program

ALEXANDRA C. PAGE, ESQ.

VANESSA J. JIMÉNEZ, ESQ.

601 E Street, S.E.

Washington, D.C. 20003

Phone: (202) 547-2800

Fax: (202) 547-2803

Email: dc@indianlaw.org

S. JAMES ANAYA, ESQ.

Special Counsel

Email: sjanaya@indianlaw.org

6. Therefore, the Danns' rights (and the rights of other Western Shoshones) in their lands were not determined in an effective and fair process in compliance with the norms and principles of international law. Para. 142. (In other words, the claimed "extinguishment" of the Western Shoshones' land title as a result of the Indian Claims Commission process was in fact a violation of international human rights law.)

7. In regard to the United States' assertion of ownership of the land as against the Danns, the Danns have not been afforded their right to equal protection of the law under Article II of the American Declaration of the Rights and Duties of Man. Para. 143. (In other words, the claim of the United States that it owns title to the Western Shoshone lands used and occupied by the Danns is a violation of human rights, because it discriminates against the Danns and other Western Shoshones and deprives them of rights that others enjoy.)

8. The requirements of the Fifth Amendment to the Constitution (property shall not be taken by the government except for a public purpose, with due process of law, and with fair market compensation), which apply generally to takings of property by the United States, were not extended to the Danns, and there was no proper justification for this discriminatory treatment. Para. 144.

9. Furthermore, no interest was awarded on the compensation by the Indian Claims Commission, thus leaving the Western Shoshone uncompensated for the cost of the alleged taking during the period between the alleged taking and the award. Para. 144.

10. In regard to their claimed lands and the Western Shoshone claim in the Indian Claims Commission, the Danns have not been afforded equal treatment under the law. Para. 145.

11. The United States must make available a fair legal process to determine the Danns' (and other Western Shoshone) land rights. Para. 146.

12. The United States has failed to ensure the Danns' right to property under conditions of equality contrary to Articles II, XVIII, and XXIII of the American Declaration of the Rights and Duties of Man.

Recommendations.

The Commission recommends that the United States:

1. Provide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measures 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.

2. Review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration, including Articles II, XVIII, and XXIII of the Declaration.

Notes

1. The cover letter dated July 26 from Ariel Dulitzky, In Charge of the Executive Secretariate of the Commission, states that the Commission will, in due course, issue its final report taking into account the response of the United States and including the Commission's final conclusions and recommendations.
2. The Commission does not attempt to determine what land rights the Danns actually or legally have. That determination must be left to the United States in the first instance pursuant to a process that complies with the international human rights principles stated by the Commission and that provides the Danns with a judicial remedy, that is, access to the courts.
3. The letter from Dultzky implies that the pending bill to distribute the Western Shoshone claim award of the Indian Claims Commission may have an adverse effect on the human rights of the Danns and other Western Shoshones. This is one reason for the release of the report at this time.