



**WORLD
COUNCIL
OF
INDIGENOUS
PEOPLES**

WCIP-Secretariat
Suite B-844
University of Lethbridge
Lethbridge, Alberta
Canada T1K 3M4
Tel: 327-7255

LAND RIGHTS OF THE INDIGENOUS PEOPLES, INTERNATIONAL AGREEMENTS AND TREATIES,
LAND REFORM AND SYSTEMS OF TENURE.

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LAND RIGHTS OF THE INDIGENOUS PEOPLES, INTERNATIONAL AGREEMENTS
AND TREATIES, LAND REFORM AND SYSTEMS OF TENURE

This paper has been prepared based on the policies of the World Council of Indigenous Peoples and the documentation that was made available by member nations and distributed at the workshops on National Issues and Economic and Political Imperialism in Indigenous Homelands which were held in conjunction with the WCIP Third General Assembly, April, 1981.

Researched and Prepared
by
Debra M. Hoggan

Edited
by
Marie Smallface Marule

LAND RIGHTS OF INDIGENOUS PEOPLES, INTERNATIONAL AGREEMENTS AND
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Traditionally Indigenous Nations had the exclusive jurisdiction, the supreme and absolute power over their territories, their resources and their lives. We had the right to govern, to make laws and enforce laws, to decide citizenship, to wage war or make peace, to manage our lands, resources and institutions. Each Nation had very sophisticated and unique political, legal, social, and economic institutions and systems. Each Nation had absolute control over the resources and products of its land.

When the Colonizers arrived upon the Indigenous World, they gradually assumed political control over the lands and the Indigenous Peoples. Through the use of their colonial legal systems the Colonizers imposed their own concepts of Indian Rights.

The World Council of Indigenous Peoples' (WCIP), the representative for Indigenous Nations all over the world which totals in excess of 60,000,000 Indigenous peoples is here today to provide for you an Indigenous interpretation of what "land rights, international agreements and treaties, land reform and systems of tenure" means to us.

LAND RIGHTS

It is impossible to discuss Indigenous land rights without referring to a history of dispossession, colonization and degradation. Consequently for the non-Indigenous people and their governments there is an enormous emotional and psychological burden connoted in the term "land rights". Present day legislation and laws are evidence of a vague, inadequate and often contradictory understanding of this much abused term.

The issue of land rights has not received the proper attention it deserves. It is easy to overlook the fact that 'land rights' means to Indigenous Nations something totally different from the meaning used by government officials and the non-indigenous population. Indigenous Peoples should not have to revise their concept of land rights. We know what our rights are. Colonial efforts to force us to adopt their views should be no longer tolerated.

Our right as Indigenous, Aboriginal and Indian people to choose and determine how our lands and resources shall be managed stems from our inherent status as the original inhabitants of our lands. We had uncontested, supreme and absolute power over all aspects of our lives. According to International Law people who live together, share a common language and a common culture, complete with a philosophy of life, values and institutions, have a right to govern themselves and their lands, and have a right, as a people to self-determination. This principle has been restated most recently in the International Covenant on Economic, Social and Cultural Rights. It provides in its first article that;

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Our right, as Indigenous People, of self-determination is a right which we have not and will not surrender. For this principle of self-determination to be effective and have meaning there must be a basic respect between political communities.

The World Council of Indigenous Peoples' appeals to the United Nations to take the leading role in the application of the principles of self-determination and equality of Indigenous Peoples.

INTERNATIONAL TREATIES AND AGREEMENTS

The most serious problem that exists and threatens Indigenous Nations today is the efforts of non-Indigenous governments to terminate the hereditary rights of Indigenous Peoples. We would like to bring your attention to the following two examples which illustrate how the non-Indigenous peoples are ignoring treaties and agreements made with Indigenous Peoples:-

I) Mapuche Indians of Chile:

Today there are approximately one million Mapuches living in Chile. In a country of nearly 11 million, they represent up to 10% of the entire population. However their future as a people is now threatened.

On March 22nd, 1979 the military junta under General Augusto Pinochet issued Decree Law 2568. The new law outlines major changes regarding the Chilean state's policies and objectives towards the country's indigenous minorities. In particular the law stipulates the conditions under which the division of the land may occur. Under the new law, only one 'occupant' need request the division of the land, and there is no appeal procedure if others on the reserve do not consent to this division.

Further interpretation of Law 2568 is: the absolute non-recognition of the Mapuche land rights and identity; the determination to make the problems of the indigenous people "disappear" by assimilating them into the "mainstream" of Chilean society, especially by putting an end to the unique socio-political community and the reserve. The military junta calculates that the elimination of the Indian communities can be accomplished within five years.

A week after the signing ceremony the Mapuche leaders were able, for the first time, to view the actual contents of the new law. Eighty-five Mapuche leaders, representing over 800 reservations, immediately called for a suspension of the land division process, the annulment of Law 2568 and that a new law be drawn up with their active participation.

This new law comes as a harsh blow to an already impoverished and weakened people. For years the Mapuches have experienced overt

discrimination and have seen their lands and homes illegally seized. Chilean governments have refused to recognize their right to a distinct and separate culture. The Mapuches predict that if the new law proceeds as it is now planned it will only be a short period of time before they are culturally extinct.

b) Indian Nations of Canada

In Canada many efforts have been made by various governments in power to destroy Indigenous Nations. Through biased policies and narrow interpretations of existing agreements the government has deviously employed legal devices and program measures to replace tribal systems of governments, to eliminate Indian tradition, beliefs and cultural practices, to destroy Indian languages, and to deprive Indian Nations of territories and resources required to maintain an economic basis for our livelihood.

After many generations of assimilationist tactics the Federal Government made an effort to bring this process to an official and irrevocable conclusion in 1969. In that year, a 'White Paper' was presented to Parliament which could have put an end to special status and all Indian rights. This plan provided that;

- the Constitution ~~would have been~~ amended ^{to} eliminating ^e all reference to Indians;
- the Indian Act, which guarantees a number of specific rights ~~would have been~~ repealed;
- the Department of Indian Affairs and its special budgetary appropriations for Indians would ~~have~~ disappeared;
- Indian reserves would ~~have~~ lost ^e their protected status;
- full jurisdictional powers over Indians would ~~have been~~ transferred to the provinces.

The only reason that the 'White Paper' provisions were not implemented was that Indian Nations were able to unite solidly across Canada in effective opposition.

The 'White Paper' has become a wolf in sheep's clothing as the Prime Minister of Canada, with the support of the Prime Minister of Britain, is taking moves to single-handedly transfer the British North America Act from control by Britain to the control of Canada. In his constitutional proposal, a "Charter of Rights" is included which directly aims at terminating the rights of Indian people, declaring Band citizens as ordinary citizens of an independant Canada. Further, the proposal is prepared and written in such a way that all Canadians, and even many of our own people, would welcome such a move. This is so subtly hidden within Trudeau's proposal that only under close scrutiny can the threat to our existence as a Nation be seen.

These are but two examples of government officials misinterpreting, misusing and/or ignoring treaties that have been established between them and Indigenous Nations. Even today this practice is taking place and affecting the future of Indigenous Peoples.

George Manuel, following a fact-finding mission to Chile in 1978 stated;

"To me, the Indian Law 2568 is a gross violation of the UN Declaration of Human Rights. This Indian Law which has been passed by the Chilean junta is same law and has the same ideology - to end treaties, Indian reserves and aboriginal rights - that I have seen in other countries, including Canada. The law itself sets a very dangerous precedent to other governments of the world. It is the same law which was proposed by the Liberal Government of Canada in 1969...was proposed by the executive authorities of the US in 1949...and has been continually proposed by the Brazilian and Australian Governments. To a large degree, it is a threat to all indigenous peoples of the world. It is a dangerous example because the Pinochet government is the first government to boldly implement an "Indian law" without consultation of the Indian people."

... On behalf of our membership which consists of Indigenous Nations in twenty-six nation-states the WCIP makes the following recommendations;

- that the International community recognize Indigenous sovereignty and entitlement to traditional lands;
- that the United Nations recognize the treaties that Indigenous Nations around the world have signed as binding under International Law.
- that the International community and the United Nations honour its responsibility to the Indigenous Nations of the world by establishing the necessary mechanisms and instruments to protect their rights to self-determination with their lands and resources.

In Canada and the United States Indigenous Nations have resumed the use of treaties to relate to each other. The Comanche and Ute Nations in the United States are also using treaties to mend

old wounds. Traditionally enemies, they are currently finalizing negotiation of friendship and trade between each other. In the Pacific Northwest, Indian Nations are currently in the process of negotiating treaties between each other in relation to the conduct and management of fishing rights in their traditional fishing places. In Canada, the Oweekeno and Mount Currie Indian Nations are currently finalizing a treaty with representatives of overseas countries on the export of wood.

LAND REFORM AND SYSTEMS OF TENURE

Since time immemorial Indigenous Nations have practiced land tenure and land reform. This practice which has sustained their every needs has been encroached upon non-Indigenous governments whose interest is individual ownership. In Canada the effects of introducing the concept of private property, individualism and European political systems have manifested themselves at different times in the different Indian communities.

The changes that have been imposed upon Indigenous Peoples in relation to land tenure and land reform have raised new issues for us. One of the main issues is the individual and his relative value compared to his community. The introduction of individualism in the occidental context has affected our customs, it has affected our customs, it has been used to disrupt our ways of life, our kinship systems, our value systems, our institutions of marriage, economics, education, health care and justice.

Traditionally, our survival, as Indigenous Peoples, relied on the knowledge of nature, of the environment, and to be producers-responsible users of lands and resources. This knowledge must be respected by the international community for the sake of all human survival.
