

Osiyo ni-gad. Stacy dagwado-u. Ah-ni Tsa-la-gi A-ye-li.

My name is Stacy Leeds and I am a citizen and former Supreme Court Justice of the Cherokee Nation. The Cherokee Nation is the largest Indigenous Nation by population within the United States. Our population totals over 300,000 with approximately 75,000 living within the Cherokee Nation territorial boundaries as defined by the 1835 Treaty of New Echota and the 1866 Treaty between the Cherokee Nation and the United States.

Our history is not unique as experienced by Indigenous peoples worldwide with respect to the right to land. During colonization, Cherokee territories were repeatedly reduced. Cherokee land tenure systems governed by Cherokee law, which included both group rights to property ownership and individual property ownership rights and not mere possessory rights, have been repeatedly ignored and replaced with conflicting United States property laws.

In the late 1830s, Cherokee Nation was permanently and forcibly removed from our homelands and relocated to Indian Territory in the south-central United States. A place that is now called Oklahoma and is home to Cherokee Nation and 38 other modern-day Indigenous nations.

At the time this removal from the homelands, the Cherokee Nation negotiated by treaty for a new territory to be conveyed in fee title ownership that was just under 4.5 million acres<sup>1</sup> or 7,000 square miles. This is approximately the size of present-day Kuwait. On these lands, the Cherokee Nation once again governed property ownership by Cherokee legal systems.

As part of the land exchange, Cherokee Nation bargained for two other matters: one political and one jurisdictional. A delegate to United States Congress which we are currently seeking to enforce, and federally recognized Cherokee jurisdiction over matters within our territory - this meant our own court systems, regulatory agencies, and law enforcement and again, administration of our land laws.

Like most Indigenous nations in the United States, this arrangement was only in place for about 6 decades - before the push to take our lands once again materialized. The lands were allotted under duress around the beginning of the 1900s. This was the intention to break up what was considered by the colonists as a single large land-base held in common by the tribe (when one ignores tribal property laws that exist inside) and divide the land into very small tracts of land to be held by the benefit of individual families or individuals - eventually converting most of the lands to fee title that would then be free to pass to non-Indians or the state government and no longer under the control or legal autonomy of the Indigenous nations.

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<sup>1</sup> 4,420,068

That process of forced break up effective. Today the Cherokee Nation retains governmental ownership and autonomy over only 113,100 acres of those post-removal bargain for acres - which amounts to 2.6% of previously of the previous land base. Although the Cherokee Nation firmly believes that their territorial boundaries are still intact - the corresponding 97.4% of lands of land inside those boundaries are now lands held in three forms: (1) by the state or (2) by non-Indians or (3) continue to be held by tribal citizens that have no protections or reassurances that their land will not be taken by adverse possession, or by state exercises of eminent domain for government projects or rights of way. It is for lands in this final category that there is also jurisdictional ambiguity.

Against this historical backdrop, I will share 4 topics that are areas of present-day concern and I will follow up my remarks today with a written submission further outlining the complexity.

I will note at the outset that, while some progress continues to be made slowly through United States legislative amendments, the first 3 of these topics regarding United States action or inaction with respect to Cherokee land remains problematic with respect to the standards set forth in Articles 25-29 of the United Nations Declaration on the Rights of Indigenous Peoples.

First, current United States laws governing land tenure will continue to deprive Cherokee Nation of the right to own, develop and control the lands - meaning the 2.6% remaining land base will continue to be reduced over time. Much of the remaining 2.6% of land is held in form of ownership called restricted fee land that for which Cherokee Nation and a few neighboring tribes are singled out for application. After allotment, these lands were held in fee title by the Indigenous tribe, family or individual, but they were not free to alienate these lands without permission of the federal government. On its face, this served as a protective matter, but in practical reality, it was only in place to stop transfers of property that the Indigenous people wanted, such as land transfers within a family or between citizens of the same Indigenous community. A Cherokee land-owner that wishes to gift land to their children prior to death would only be allowed to do so after obtaining permission of the federal government.

Further, these federal restrictions on alienation do not extend federal protection to the land. For instance, there is no requirement of federal approval if the state and local non-Indigenous governments take the land by eminent domain for projects and rights of way, even over the Indigenous landowners objection. This can happen in state courts by applying state probate and state quiet title actions.

Second, a related topic, is the same current United States laws specific to Cherokee Nation and neighboring tribes impose state substantive laws to govern the disposition of tribal land and thereby denies the Cherokee Nation the right to apply its own land tenure systems. It is not simply that the Cherokee Nation's rules do not govern cases of probate matters and transfers of land to the next generations. This system also ignores Cherokee property laws and makes matters such as adverse possession and squatter's rights to acquire land a matter of local state law and administered in state courts. This is problematic because the Cherokee Nation has a robust court system of its own, as do similarly situated tribes - but rather than empower Cherokee Nation courts to be the forums of decision making, these decisions are only heard under state law in state courts.

Because restricted-fee lands are subject to Oklahoma's adverse possession statutes, many Cherokee families are divested of their lands but often do not discover this until years later after the elder passes on.

In one instance, a full-blood Cherokee elder whose dominant language was Cherokee hired an attorney he trusted to do estate planning. It was through this estate planning that the attorney learned of an 80 acre restricted fee allotment owned by the elder. The will was written but did not speak to the 80 acre restricted fee allotment. After the elder signed the will, the attorney initiated the conditions required for adverse possession. The elder died, survived by his wife. Two years after the elder's death, the attorney completed the adverse possession, took ownership of the property, and sold it the very next day to a non-Indian family. Only after the elder's wife passed away 3 years later did the elder's children discover what had happened. The only thing the family can do now is to warn others.

Allowing adverse possession of restricted fee land is nothing more than a continuation of the US Government's policy to divest tribes and individual Indians of their Indian land holdings. The system is working as designed.

Third, currently the Cherokee Nation and tribes within the United States are very concerned about natural resource development on their lands. Tribes are looking for assistance and best practices to ensure that the United States government engages in meaningful consultation prior to taking actions such as in the permitting process associated with utilities companies, pipelines, oil and gas extraction and etc. Although the United States has Indigenous consultation rules that apply to all federal agencies, there is significant room for meaningful consultation and ongoing efforts to engage the assistance of Free Prior and Informed Consent plans.

The intersectionality from land to the ability to protect the community from violence. Protecting laws that enhance criminal justice in Indian country and protecting tribal housing. If land diminishes or is not recognized, either as a property right or as with political and territorial boundaries that tribes are recognizes as operating within.

Finally, under United States jurisprudence, the jurisdictional powers of tribes are often equated to continued land ownership and not just the exterior territorial boundaries of the Indigenous Nation. In contrast, if a city or state's jurisdictional powers are defined by the territorial boundaries - with no regard for the ownership patterns inside those boundaries.

With Indigenous Nations, United State jurisprudence requires both the territorial component and continued land ownership before a tribe can be recognized to exercise control and apply its laws on that tract of land. This creates a strong intersectionality between land ownership and the Indigenous Nation's power and autonomy to exercise jurisdiction over matters that occur on those lands. It is too often the case that every acre lost to non-Indigenous ownership is also an acre lost to non-Indigenous jurisdiction.

When you consider a tribe's ability to exercise criminal jurisdiction to stop violence against Indigenous women and elder being limited to only lands that hold special protective status, land ownership coupled with protective statues is a gateway to true self-determination.

In closing, the Cherokee Nation's top priority is seating a Delegate to Congress which was a condition of the removal of our homelands and relocation to the current land base. All other priorities are tied to land, our control of that land, our ability to apply our substantive laws and our jurisdiction to those lands.