

# Frequently Asked Questions about the Onondaga Nation Land Rights Action



## WHAT IS THE ONONDAGA NATION?

The Onondaga Nation is an Indian Nation, and a member of the Six Nations Iroquois Confederacy, or Haudenosaunee. The Onondaga Nation is the “Firekeeper” or central council fire of the Haudenosaunee. The other nations are the Mohawk, Oneida, Cayuga, Seneca and Tuscarora Nations. The Haudenosaunee is recognized in three treaties made with the United States, and all of its members are federally-recognized Indian nations. The Onondaga Nation continues to maintain its ancient form of government, including a traditionally-selected Council of Chiefs. The Nation’s present territory is south of Syracuse, New York.

## WHY DID THE ONONDAGA NATION SUE NEW YORK STATE?

The Onondaga Nation took action to assert its legal rights to its homelands in Central New York, with the principal goal of achieving legal recognition of title to its homelands. The Onondagas had initiated the process several years before that filing by meeting with then Governor Pataki and members of his staff. The Nation was told that these discussions could not continue unless they sued. Therefore, the Nation filed its lawsuit in Federal District Court on March 11, 2005. The Nation did not and will not sue individual land owners.

## WHY IS THE NATION CLAIMING HUMAN RIGHTS VIOLATIONS AGAINST THE UNITED STATES?

Almost immediately after the Nation filed its Land Rights Action in early March of 2005, the United States courts created an entirely new set of rules that only apply to Indian nations and land rights, not to anyone else. The new set of rules has been called the “new laches” defense and has been repeatedly criticized by scholars, law professors and legal professionals. The result of this new set of rules were the dismissals of the Nation’s land rights action and the dismissals of the Cayuga and Oneida land claims.

Therefore, the United States courts currently hold that there can be no remedy whatsoever to any nation whose lands were taken illegally and in violation of the federal treaties.

The Nation is filing this Petition to allege that this denial of all remedies for treaty violations and land thefts is a human rights violation under the United Nations Declaration on the Rights of Indigenous Peoples, the American Declaration of the Rights and Duties of Man, and other international human rights agreements. The Nation really has no choice except to file in this international forum, as justice has been completely denied by the United States courts.

## WHAT DOES THE ONONDAGA NATION SEEK?

The Onondaga Nation seeks legal recognition of its title to the lands that were unlawfully taken by New York State in violation of the federal Trade and Intercourse Acts (25 U.S.C. Section 177) and other federal laws and treaties. These lands comprise the territory of the Onondaga Nation.

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## WHAT IS THE LEGAL BASIS FOR THE ONONDAGA NATION'S LAND RIGHTS ACTION?

The Onondaga Nation has lived on the lands at issue from time immemorial, since long before the coming of Europeans, and has never sold or otherwise relinquished its lands or its rights as a sovereign nation. The United States recognized these lands as belonging to the Onondaga Nation (along with additional lands belonging to other members of the Haudenosaunee) in the 1784 Treaty of Fort Stanwix and the 1794 Treaty of Canandaigua. The lands are essential to the Nation's and the Haudenosaunee's ability to practice and maintain their indigenous culture.

The Onondaga Nation land title action is based on the U.S. Constitution, the Treaties of Fort Stanwix and Canandaigua, and the federal Trade and Intercourse Acts. Under the terms of the Constitution and the Trade and Intercourse Act of 1790 and its subsequent re-enactments, no "purchase, grant, lease or other conveyance of land" from an Indian nation is valid without the participation and approval of the United States government.

## HOW DID NEW YORK STATE AND OTHERS COME TO POSSESS ONONDAGA LANDS IF THEY WERE NOT ACQUIRED LEGALLY?

Between 1790 and 1822, the State of New York signed five so-called treaties with unauthorized individual members of the Onondaga Nation, supposedly acquiring all of the Nation's lands except for the 7,300-acre territory where the Nation resides today. The State later sold most of the land to others. None of these "treaties" was ever ratified or approved by the Onondaga Nation itself, by the Haudenosaunee, or by the United States government. As a result, none of these so-called treaties between the State of New York and the Onondaga Nation are valid. The U.S. Supreme Court has decided that under such circumstances title to the land continues to belong to the original Indian nation owner. This was decided in the case of *County of Oneida, New York v. Oneida Indian Nation of New York State*, 470 U.S. 226 (1985).

## WHAT HAS HAPPENED WITH LAWSUITS FILED BY OTHER INDIAN NATIONS?

Several other Indian nations in the eastern United States have made land claims, seeking to win recognition of their titles to lands taken by various states in violation of the Trade and Intercourse Acts. In a 1974 decision on an Oneida Nation land claim brought under the Trade and Intercourse Acts, the U.S. Supreme Court upheld the right of Indian nations to sue in federal court for the recovery of damages with respect to lands taken in violation of the Trade and Intercourse Acts. In a second decision concerning the Oneida Nation claim, the Court ruled that state statutes of limitations and other state law defenses were not applicable to such suits, and that title to lands taken in violation of the Trade and Intercourse Acts remains with the Indian owner. These decisions have served as precedents for a number of land claim cases brought by Indian nations.

Of land claim cases based on the Trade and Intercourse Acts, six have been resolved by negotiation between the Indian nations and representatives of the State and Federal governments and the affected landholders, and have thus mitigated costly and time-consuming litigation that would have inevitably caused substantial

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hardship for all sides.

However, shortly after the Onondaga Nation Land Rights Action was filed in 2005, the rules were changed. The U.S. Supreme Court ruled in *Sherrill v. Oneida* that the Oneida Nation cannot reassert sovereignty over land they purchased. The Court invoked an odd interpretation of “laches”, saying that the Oneidas had waited too long and any remedy would not be fair to locals. But laches, as traditionally used in law, has requirements that must be met for it to be invoked, none of which were met. This case invented new law, and set a dangerous precedent. It was subsequently used to reverse the Cayuga decision in the Second Circuit Court of Appeals in June 2005, completely dismissing their land claim. The Second Circuit then dismissed the Oneida Land Claim in August 2010, and the U.S. Supreme Court decided not to hear the appeal. See the *Chronology of the Onondaga Nation’s Land Rights Action* for more information.

## WHAT HAS HAPPENED TO THE ONONDAGA LANDS TAKEN BY NEW YORK?

In the more than 200 years since the adoption of the U.S. Constitution and the enactment of the Trade and Intercourse Acts, the Onondaga Nation’s original land base has suffered vast reductions. New York’s illegal takings were followed by more than a century of industrial chemical production and manufacturing on parts of the taken land. As a result, parts of the Nation’s homelands are among the most polluted sites in the United States. Perhaps the most dramatic impact has been on Onondaga Lake, which has been designated a Superfund site by the U.S. Environmental Protection Agency (EPA). Within the waters and sediments of the lake, EPA has found dangerous levels of numerous hazardous materials, including pesticides, creosote, polycyclic hydrocarbons, volatile organic compounds, lead, cobalt, mercury, and polychlorinated biphenyls. These last four substances are on the U.S. Agency for Toxic Substance and Disease Registry’s list of the twenty most toxic substances.

In addition to Onondaga Lake, EPA has designated 15 other Superfund sites within Onondaga County, the center of the Nation’s Land Rights Action. High levels of pollution have gravely damaged the land and the entire environment in which the Onondaga have lived for centuries. The resulting conditions impair the Nation’s ability to subsist and limit its options for economic development. Reasserting the Nation’s title to lands illegally taken by New York State is an important step for the Nation not only in addressing issues of pollution, but in providing for the sustained and respectful use of those lands by future generations.

## HOW IS THE UNITED STATES GOVERNMENT INVOLVED IN THE ONONDAGA LAND RIGHTS CASE?

The United States has a responsibility to enforce its own laws, including its treaties with the Haudenosaunee, and to maintain a government-to-government relationship with the Onondaga Nation that is respectful of the Onondagas’ basic human rights. The treaties initiated by the State of New York violated federal law, because they purported to acquire tracts of Onondaga land for the State of New York without United States government approval or participation, and in fact without the approval of the Onondaga Nation and the Haudenosaunee. It is for these reasons that the Onondaga Nation has asked the U.S. government to file suit in federal court together with the Nation.

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## WHAT ARE THE CENTRAL GOALS AND PURPOSES OF THE ONONDAGA LAND RIGHTS ACTION?

See *Specific Goals of the Onondaga Nation Land Rights Action*

## WHAT EFFECT WILL THIS HAVE ON THE ENVIRONMENT?

The Onondaga Nation and the Haudenosaunee were given instructions on how to live on Mother Earth. Part of these instructions include caretaking of the lands with which we live. The Onondagas would set up standards to ensure our future generations have clean air to breathe, fertile soil to plant, clean waters to drink, and a healthy food chain.

## WILL I BE MOVED FROM MY HOME?

No. The Onondaga Nation does not intend a mass exodus of people from their homes. As instructed by our ancestors in the Two Row Wampum, we are to live together in Peace and Friendship Forever. To force families from their homes is not a peaceful way. It happened to our Onondaga villages, and we wouldn't want a similar trauma to happen today.

## WILL SYRACUSE HAVE A CASINO?

No. The Onondaga Nation Chiefs and Clan Mothers have had this proposal brought before the council many times. The Onondaga Nation leaders do not see a casino as a positive impact on the people. The monetary gain does not outweigh the burden a casino may have on our community.

## WILL MORE BUSINESS MOVE?

The Onondaga Nation is looking forward to the creation of attractions and jobs to aid in stimulating the economy. The people of the Onondaga Nation find most of their employment in the greater Syracuse area. The loss of jobs hurts both communities.

## WHY A LAND RIGHTS ACTION WHEN THE US HAS EMINENT DOMAIN?

The Onondaga Nation and the United States has always negotiated as two separate sovereigns. The Onondaga government has seen many changes over time and has never relinquished control. One of these changes was the creation of the United States. The United States has made treaties with the Onondaga and the Haudenosaunee. Therefore, the Onondaga people do not consider themselves defeated by the United States.

## DON'T NATIVES ALREADY RECEIVE MONEY FOR THEIR LAND?

No. The Onondaga Nation receives treaty obligations which include treaty cloth, health and education benefits. The Onondaga Nation does not participate in Federal or State grants. The Onondaga Nation is not a recipient of Federal or State government revenue sharing. The Onondaga Nation is sovereign.