Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Mayagna (Sumo) Awas Tingni Community v. Nicaragua
Doc. Type:	Judgment (Merits, Reparations and Costs)
Decided by:	President: Antonio A. Cancado Trindade; Vice President: Maximo Pacheco-Gomez; Judges: Hernan Salgado-Pesantes; Oliver Jackman; Alirio Abreu-Burelli; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo; Alejandro Montiel Arguello
Dated:	31 August 2001
Citation:	Mayagna v. Nicaragua, Judgment (IACtHR, 31 Aug. 2001)

In the Mayagna (Sumo) Awas Tingni Community case (hereinafter "the Community", "the Mayagna Community", "the Awas Tingni Community", or "Awas Tingni"),

the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal"), pursuant to articles 29 and 55 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure")*, delivers the following Judgment on the instant case:

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* Pursuant to the March 13, 2001 Order of the Court on Transitory Provisions pertaining to the Rules of Procedure of the Court, this Judgment on the merits of the case is rendered under the terms of the Rules of Procedure approved by the September 16, 1996 Order of the Court.

I. INTRODUCTION OF THE CASE

1. On June 4, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court a lawsuit against the State of Nicaragua (hereinafter "the State" or "Nicaragua"). The case in question had originated in petition No. 11,577, received at the Commission's Secretariat on October 2, 1995.

2. In its lawsuit, the Commission cited articles 50 and 51 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and article 32 and subsequent articles of the Rules of Procedure. The Commission presented this case for the Court to decide whether the State violated articles 1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 21 (Right to Property), and 25 (Right to Judicial Protection) of the Convention, in view of the fact that Nicaragua has not demarcated the communal lands of the Awas Tingni Community, nor has the State adopted effective measures to ensure the property rights of the

Community to its ancestral lands and natural resources, and also because it granted a concession on community lands without the assent of the Community, and the State did not ensure an effective remedy in response to the Community's protests regarding its property rights.

3. Likewise, the Commission requested that the Court declare that the State must establish a legal procedure to allow rapid demarcation and official recognition of the property rights of the Mayagna Community, as well as that it must abstain from granting or considering the granting of any concessions to exploit natural resources on the lands used and occupied by Awas Tingni until the issue of land tenure affecting the community has been resolved.

4. Finally, the Commission requested that the Court sentence the State to payment of equitable compensation for material and moral damages suffered by the Community, and to payment of costs and expenses incurred in prosecuting the case under domestic jurisdiction and before the inter-American System.

II. JURISDICTION

5. Nicaragua has been a State Party to the American Convention since September 25, 1979, and recognized the contentious jurisdiction of the Court on February 12, 1991. Therefore, under article 62(3) of the Convention, the Court has jurisdiction to consider the merits of the instant case.

III. PROCEEDING BEFORE THE COMMISSION

6. On October 2, 1995, the Inter-American Commission received in its Secretariat a petition lodged by Jaime Castillo Felipe, Syndic of the Community, in his own name and on behalf of the Community. Precautionary measures were also requested in that petition, since the State allegedly was about to grant Sol del Caribe, S.A. (SOLCARSA) (hereinafter "SOLCARSA") a concession to commence logging on communal lands. On the 6th of that same month and year, the Commission acknowledged receipt of said brief.

7. On December 3, 1995, and January 4, 1996, the Commission received briefs reiterating the request for the precautionary measures mentioned in the previous paragraph.

8. On January 19, 1996, the petitioners requested a hearing before the Commission, but the Commission answered that it would not be possible to grant that request.

9. On February 5, 1996, the Commission began processing the case and sent the relevant parts of the petition to the State, requesting that it provide the corresponding information within 90 days.

10. On March 13, 1996, James Anaya, as legal representative of the Community, submitted two newspaper articles to the Commission, pertaining to the granting of the concession to SOLCARSA, and a letter sent by the Ministry of the Environment and Natural Resources to the President of SOLCARSA, informing him that the "request for a logging concession [was] being

processed [,] all that[was] lacking [was] the signature of the concession contract", and that the Community's protests were the main obstacle.

11. In a March 28, 1996 brief, the petitioners sent a draft "memorandum of understanding" to the Commission for a friendly settlement of the case, and according to James Anaya, the legal representative of the Community, that document had been submitted to the Ministers of Foreign Affairs and of the Environment and Natural Resources.

12. On April 17, 1996, as legal representative of the Community, James Anaya submitted a document in which other indigenous communities of the North Atlantic Autonomous Region (hereinafter "the RAAN") and the Indigenous Movement of the South Atlantic Autonomous Region (RAAS) expressed their support for the petition brought before the Commission.

13. On May 3, 1996, there was an informal meeting among the petitioners, the State, and the Commission, so as to reach a friendly settlement in this case. On the 6th of that same month and year, the Commission placed itself at the disposal of the parties to attain such a solution, and granted them 30 days to reply on the matter. On May 8 and 20, 1996, the petitioners and the State, respectively, accepted this proposal.

14. On June 20, 1996, there was a second meeting between the petitioners, the State, and the Commission. At that meeting, Nicaragua rejected the draft "memorandum of understanding" submitted by the claimants (supra, para. 11). They, in turn, suggested that a delegation of the Commission visit Nicaragua for a dialogue with the parties.

15. A third meeting took place on October 3, 1996, among the petitioners, the State, and the Commission. At that meeting, the petitioners requested that the State not grant any further concessions in the area, that it begin the process of demarcation of the lands of the Community, and that it differentiate them from State lands. The State, in turn, submitted some documentary evidence, announced the establishment of the National Demarcation Commission, and invited the petitioners to participate in it.

16. On March 5, 1997, the petitioners reiterated to the Commission their request for precautionary measures (supra, paragraphs 6 and 7), given the threat of logging operations starting on indigenous lands, and on the 12th of that same month and year, the Commission granted the State 15 days to submit a report on this matter. On March 20, 1997, Nicaragua requested a 30 day extension to respond to the request, and it was granted.

17. On April 3, 1997, the petitioners informed the Commission about the February 27, 1997 judgment by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed by the members of the Regional Council of the RAAN, declaring the unconstitutionality of the concession granted by the Ministry of the Environment and Natural Resources (hereinafter "MARENA") to SOLCARSA, because it had not been approved by the Regional Council of the RAAN, as required by article 181 of the Nicaraguan Constitution. They also reported that the State had not suspended the concession.

18. On April 23, 1997, Nicaragua requested that the Commission reject the request for precautionary measures made by the petitioners (supra, paragraphs 6, 7, and 16), given the judgment by the Constitutional Court of the Supreme Court of Justice and the fact that the State undertook to comply with that judgment. Nevertheless, on June 7 of that same year, the petitioners informed the Commission that the State and SOLCARSA continued to act as if the concession were valid, despite the decision by the Constitutional Court of the Supreme Court of Justice.

19. At a hearing before the Commission on October 8, 1997, the petitioners pointed out that logging operations on Community lands continued, and they requested that the Commission conduct an in situ observation. On October 27th of that same year, three days before the scheduled visit of the Commission to Nicaragua, the State informed it that the visit would no longer be necessary, since it was preparing an additional brief on the matter.

20. On October 31, 1997, the Commission requested that the State adopt whatever precautionary measures (supra, paragraphs 6,7,16, and 18) were required to suspend the concession granted to SOLCARSA, and set a 30-day limit for Nicaragua to report on those measures.

21. On November 5, 1997, the State requested that the Commission close the case, as the Regional Council of the RAAN had ratified approval of the concession to SOLCARSA, thus correcting the "error of form" and, therefore, the concession was now valid.

22. On November 17, 1997, the petitioners stated to the Commission that the central element of the petition was the lack of protection by Nicaragua of the rights of the Community to its ancestral lands, and that this situation still persisted. Furthermore, regarding ratification by the Regional Council of the RAAN of the concession to SOLCARSA, they pointed out that this Council is part of the political-administrative organization of the State, and that it had acted without taking into account the territorial rights of the Community. Finally, they requested that the Commission issue a report in accordance with article 50 of the Convention.

23. On December 4, 1997, the State sent a brief to the Commission stating that on November 7, 1997, the petitioners had filed an amparo remedy at the Matagalpa Appellate Court, requesting it to declare the concession to SOLCARSA null. For this reason, Nicaragua argued that domestic remedies had not been exhausted, and it invoked articles 46 of the Convention and 37 of the Rules of Procedure of the Commission.

24. On March 2, 1998, the State informed the Commission that on January 22 of that same year the petitioners had filed a request before the Supreme Court of Justice for execution of the February 27, 1997 judgment by that court (supra, para. 17). On this occasion, Nicaragua reiterated its position that domestic remedies had not been exhausted, and requested that the Commission abstain from continuing to process the case.

25. On March 3, 1998, the Inter-American Commission approved Report No. 27/98, forwarded to the State on the 6th of that same month and year, and granted Nicaragua 2 months

to report on measures it had taken to comply with the recommendations. In that Report, the Commission concluded:

141. Based on the acts and omissions examined, […] that the State of Nicaragua has not complied with its obligations under the American Convention on Human Rights. The State of Nicaragua has not demarcated the communal lands of the Awas Tingni Community or other indigenous communities, nor has it taken effective measures to ensure the property rights of the Community on its lands. This omission by the State constitutes a violation of Articles 1, 2 and 21 of the Convention, which together establish the right to the said effective measures. Articles 1 and 2 oblige States to take the necessary measures to give effect to the rights contained in the Convention.
142. The State of Nicaragua is actively responsible for violations of the right to property, embodied in Article 21 of the Convention, by granting a concession to the company SOLCARSA to carry out road construction work and logging exploitation on the Awas Tingni lands, without the consent of the Awas Tingni Community.
143. [...] that the State of Nicaragua did not guarantee an effective remedy to respond to the claims of the Awas Tingni Community regarding their rights to lands and natural resources, pursuant to Article 25 of the Convention.

The Commission also recommended that Nicaragua:

a. Establish a procedure in its legal system, acceptable to the indigenous communities involved, that [would] result in the rapid official recognition and demarcation of the Awas Tingni territory and the territories of other communities of the Atlantic coast;
b. Suspend as soon as possible, all activity related to the logging concession within the Awas Tingni communal lands granted to SOLCARSA by the State, until the matter of the ownership of the land, which affects the indigenous communities, [is] resolved, or a specific agreement reached between the state and the Awas Tingni Community;
c. Initiate discussions with the Awas Tingni Community within one month in order to determine the circumstances under which an agreement [could] be reached between the State and the Awas Tingni Community.

26. On May 7, 1998, the Inter-American Commission received the State's reply. The Commission stated that, even though said reply was presented extemporaneously, it would analyze its content in order to add it to the case record. As regards the recommendations of the Inter-American Commission, Nicaragua stated that:

a) In order to comply with the recommendations of the Commission with regard to establishing a legal procedure acceptable to the indigenous communities involved, which [would] result in the demarcation and official recognition of the lands of the Awas Tingni and other communities of the Atlantic coast, the Government of Nicaragua has a National Commission for the Demarcation of the Lands of the Indigenous Communities of the Atlantic Coast.
To the same end, a draft Law on Indigenous Communal Property [has been] prepared, with three elements:

1. To make the necessary provisions for accrediting the indigenous communities and their authorities.
2. To proceed to demarcate the properties and provide title documents.
3. Settlement of the dispute.

This bill endeavors to find a legal solution to the property of indigenous people or ethnic minorities. The project will be consulted with civil society and, once there is a consensus, it will be submitted to the National Assembly for discussion and subsequent approval. The estimated time for the whole procedure is about three months from today's date.

b) Regarding the recommendation to suspend all activity relating to the logging concession granted to SOLCARSA and to comply with the judgment of the Supreme Court of Justice, the Government of Nicaragua cancelled this concession on February 16, 1998. On that day, it notified Michael Kang, General Manager of SOLCARSA[,] that, as of that date, the concession was null and void. He was also advised that he should order the suspension of all activities and warned that, to the contrary, he would be violating Article 167 of the Constitution and be liable to having either a criminal or civil suit brought against him.

c) Regarding the recommendation to initiate discussions with the Awas Tingni [C]ommunity, the Government of Nicaragua is firmly committed to finding a global solution for all the indigenous communities of the [A]tlantic [C]oast, within the framework of the [C]ommunal [P]roperty Draft Bill, and to this end, there will be extensive consultations with these communities.

27. As regards the conclusions of Report No. 27/98, the Nicaraguan State expressed its acknowledgment of the rights of the indigenous communities, enshrined in its Constitution and other legislative norms. It further stated that it

has faithfully complied with the previous legal provisions and, consequently, it has acted in accordance with the national legal system and the provisions of the rules and procedures of the [American] Convention [on] Human Rights. Likewise, the Community of Awas Tingni exercised their rights as set forth in the law and had access to the legal remedies that the law provides.

Finally, Nicaragua requested that the Inter-American Commission close the instant case.

28. On May 28, 1998, the Commission decided to bring the case before the Court.

IV. PROCEEDING BEFORE THE COURT

29. The Commission filed the application before the Court on June 4, 1998.

30. The Commission appointed Claudio Grossman and Hélio Bicudo as its delegates, David Padilla, Hernando Valencia and Bertha Santoscoy, as its legal advisors, and James Anaya, Todd Crider, and María Luisa Acosta Castellón as the assistants.

31. On June 19, 1998, after a preliminary examination of the application by the President of the Court (hereinafter "the President"), the Secretariat of the Court (hereinafter "the Secretariat") notified the State of the application, as well as of the periods within which it should respond to it, raise preliminary objections, and appoint its representatives. Furthermore, it invited the State to

appoint an ad hoc Judge. That same day, the Secretariat requested the Commission to send some pages of the petition annexes which were illegible.

32. On July 2, 1998, Nicaragua appointed Alejandro Montiel Argüello as ad hoc Judge, and Edmundo Castillo Salazar as its agent.

33. That same day, the Commission submitted to the Court copies of the application annex pages requested by the Secretariat (supra para. 31), as well as the addresses and powers of attorney of the representatives of the victims, with the exception of Todd Crider's power of attorney, which was submitted on July 24, 1998.

34. On August 18, 1998, the State attested the appointment of Rosenaldo J. Castro S. and Bertha Marino Argüello as its legal advisors.

35. On August 19, 1998, Nicaragua filed the preliminary objection stating that domestic remedies had not been exhausted, pursuant to articles 46 and 47 of the Convention, and requested that the Court declare the application inadmissible.

36. On September 25, 1998, the Commission submitted its observations to the preliminary objection raised by the State.

37. On October 19, 1998, the State submitted its reply to the application.

38. On January 27, 1999, the Organization of Indigenous Syndics of the Nicaraguan Caribbean (OSICAN) submitted a brief as amicus curiae. On February 4, 1999, the Secretariat received a note from Eduardo Conrado Poveda, in which he acceded to the abovementioned amicus curiae brief.

39. On March 15, 1999, the Secretariat requested that the State send various documents offered as annexes in the briefs of reply to the application and on preliminary objections, which had not been submitted at that time. Documents requested from the reply to the application were: pages 129 and 130 of annex 10; maps and physical descriptions offered in annex 15, and documents pertaining to titling of neighboring communities to Awas Tingni, offered in that same annex. The following documents were requested for annex 10 of the brief on preliminary objections: estimated projections of the geographical location of the area claimed by the Awas Tingni Community, claims by other communities, "overlap" of claims, ejido lands, national lands, and other illustrations relevant to the case; a certification by the Instituto Nicaragüense de Reforma Agraria (hereinafter "INRA") in connection with the request for titling by the Awas Tingni Community; the Nicaraguan Constitution; certification of articles of the Nicaraguan Legal Codes, relevant Laws and Decrees, and certification of the actions taken by Central Government institutions, decentralized bodies or autonomous entities, and other institutions of the National Assembly and the Supreme Court of Justice of Nicaragua.

40. On May 26, 1999, the State submitted a brief to which it attached the following documents: the Nicaraguan Constitution, with its amendments, the Amparo Law, Law No. 290 and pages 8984 to 8989 of the Official Newspaper La Gaceta No. 205, of October 30, 1998. In

that same brief, Nicaragua stated that it would not submit the maps and physical descriptions offered as annex 15 in its brief replying to the application, because "the maps submitted with the brief on preliminary objections show the geographical location of the area claimed by the Community, claims by other communities, physical descriptions, and so forth". The State also expressed that it would not submit the INRA certification regarding titling of the Awas Tingni Community, offered as annex 10 of the brief on preliminary objections, "because that same brief […] included a certification issued by that institution on this same affair, on August 5, 1998". Regarding pages 129 and 130 of annex 10 of the brief replying to the application, the State indicated that said annex actually ended on page 128. As regards the documents pertaining to titling of other indigenous communities, the State pointed out that, if it deemed this appropriate, it would submit them later on during the proceedings.

41. On May 28, 1999, the Canadian organization Assembly of First Nations (AFN) submitted a brief in English, acting as amicus curiae. The Spanish version of that document was presented in February, 2000.

42. On May 31, 1999, the organization International Human Rights Law Group submitted a brief in English, acting as amicus curiae.

43. A public hearing was held on preliminary objections, at the seat of the Court, on May 31, 1999.

44. On February 1, 2000, the Court rendered its Judgment on preliminary objections, in which it dismissed the preliminary objection raised by Nicaragua.

45. On February 2, 2000, the Secretariat requested that the Commission send the definitive list of witnesses and expert witnesses offered by the Commission to render testimony at the public hearing on the merits of the case. The Commission submitted said information on the 18th of that same month and year.

46. On March 20, 2000, the President issued an Order convening the Inter-American Commission and the State to a public hearing on the merits, to be held at the seat of the Court on June 13, 2000. That public hearing did not take place due to budgetary cutbacks which made the Court postpone its XLVIII Regular Session, at which that hearing was to take place.

47. On April 7, 2000, the State submitted a brief stating "the names of the persons who w[ould] explain the content and scope of the documentary evidence offered at the appropriate time", for the following persons to be heard as witnesses and expert witnesses at the public hearing on the merits of the present case: Marco Antonio Centeno Caffarena, Director of the Office of Rural Titling; Uriel Vanegas, Director of the Secretariat of Territorial Demarcation of the Regional Council of the RAAN; Gonzalo Medina, advisor and an expert in Geodesics and Cartography at the Nicaraguan Institute of Territorial Studies, and María Nella Rocha, Special Public Attorney for the Environment at the Office of the Attorney General of the Republic.

The arguments submitted by the State in said brief indicate that testimony of the witnesses and expert witnesses offered would contribute to establishing:

a) damages caused to property rights of indigenous communities that are neighbors of the Mayagna Awas Tingni Community, if title were given to the disproportionate area claimed by that Community [;]
b) damages to land claims of the rest of the indigenous communities of the Atlantic Coast of Nicaragua, if the disproportionate area claimed by the Awas Tingni Indigenous Community were allocated to it;
c) the interest of the State in carrying out an equable and objective titling process on the lands of the Indigenous Communities, which will safeguard the rights of each one of the Communities; arguments presented in the brief on Preliminary Objections and in the Reply to the Application, and supported by documents submitted by means of the Annexes previously referred to.

48. On April 13, 2000, the Commission sent a brief in which it requested that the Court order the State to adopt "the necessary measures to ensure that its officials do not act in such a way that they tend to apply pressure on the Community to give up its claim, or that tends to interfere in the relationship between the Community and its attorneys, [, and…] that it cease to attempt to negotiate with members of the Community without a prior agreement or understanding with the Commission and the Court in that regard". The Commission attached an April 12, 2000 brief by James Anaya, legal representative of the Community, to Jorge E. Taiana, Executive Secretary of the Commission, which included as an annex the report prepared by María Luisa Acosta Castellón on the meeting between officials of the State and the Awas Tingni Community, held on March 30 and 31, 2000, in the offices of the Nicaraguan Ministry of Foreign Affairs.

49. On April 14, 2000, the Secretariat gave the State 30 days within which to submit its comments to the aforementioned brief. On May 10 of that same year, Nicaragua stated that it had not applied any pressure at all on the Community nor had it interfered in the Community's relations with its legal representatives. The State also indicated its willingness to seek a friendly settlement through direct and exclusive conversations with the Commission. It submitted an attached document dated February 3, 2000, with the title "record of appointment of the representatives of the inhabitants who constitute the Mayagna ethnic group of the Community ofAwas Tingni, Municipality of Wa[s]pam, Río Coco, RAAN".

50. On May 10, 2000, the Commission sent a brief in which it stated that Nicaragua, in its reply to the application, had not offered witnesses nor expert witnesses.It also added that the State had not argued that force majeure or other reasons justified admitting evidence not listed in its reply, and for this reason the Commission requested that the Court declare the calling of witnesses and expert witnesses offered by Nicaragua inadmissible (supra para. 47).

51. On June 1, 2000, the Secretariat requested that the State submit, no later than June 15 of that year, the grounds for or comments on its offering of witnesses and expert witnesses, for the President to consider their admissibility. In its August 18, 2000 Order, the Court reiterated its request for the State to submit the grounds for the extemporaneous proposal of witnesses and expert witnesses (supra para. 47); the Court also requested that the State specify which persons were offered as witnesses and which as expert witnesses.

52. On May 31, 2000, the Hutchins, Soroka & Dionne law firm submitted an amicus curiae brief in English, on behalf of the Mohawks Indigenous Community of Akwesasne.

53. On September 5, 2000, the State submitted a brief in which it stated that the persons listed in its April 7, 2000 brief (supra para. 47) had been offered as expert witnesses. The following day the Secretariat, under instructions by the President, asked the Commission to send its observations to that brief, as well as its definitive list of witnesses and expert witnesses by September 12, 2000.

54. On September 12, 2000, the Commission sent a note in which it upheld its request for the appointment of expert witnesses offered by the State to be declared inadmissible, since the State did not give reasons to substantiate the extemporaneous proposal. In that same note, the Commission gave the definitive list of its witnesses and expert witnesses, including as an expert witness Theodore Macdonald Jr., who in the application had been offered as a witness.

55. In his September 14, 2000 Order, the President decided that the offer of evidence made by the State on April 7, 2000 (supra para. 47) was time-barred; however, as evidence to facilitate adjudication of the case, in accordance with article 44(1) of the Rules of Procedure, the President summoned Marco Antonio Centeno Caffarena to come before the Court as witness. The President also rejected the request by the Commission for Theodore Macdonald Jr. to appear as an expert witness, because it was time-barred, and admitted him as a witness, as originally offered. The President also summoned witnesses Jaime Castillo Felipe, Charly Webster Mclean Cornelio, Wilfredo Mclean Salvador, Brooklyn Rivera Bryan, Humberto Thompson Sang, Guillermo Castilleja and Galio Claudio Enrique Gurdián Gurdián, and expert witnesses Lottie Marie Cunningham de Aguirre, Charles Rice Hale, Roque de Jesús Roldán Ortega and Rodolfo Stavenhagen Gruenbaum, all of them offered by the Commission in its application, to render testimony at the public hearing on the merits of the case, scheduled to be held at the seat of the Court on November 16, 2000.

56. On October 5, 2000, the Commission submitted a brief in which it requested the good offices of the Court for the public hearing on the merits to be held at the seat of the Supreme Court of Justice of Costa Rica, given the large number of people who had shown an interest in attending that hearing.

57. On October 20, 2000, the President issued an Order in which he informed the Commission and the State that the public hearing convened by the September 14, 2000 Order would be held at the seat of the Supreme Electoral Board of Costa Rica, starting at 16:00 hours on November 16, 2000, to hear the testimony and reports, respectively, of the witnesses and expert witnesses previously summoned.

58. On October 26, 2000, the State sent a brief requesting the Court to reject the request by the Commission to hold the public hearing on the merits at the seat of the Supreme Court of Justice of Costa Rica, because the reasons given were “purely speculative” and were not “sufficient juridical reason to justify the transfer of said hearings”.

59. On October 27, 2000, the Commission sent a brief with a list of 19 members of the Awas Tingni Community who would attend the public hearing as observers.

60. On that same day, the President issued an Order in which he decided that, given the request by the State for the public hearing on the merits be held at the seat of the Court and that the number of members of the Mayagna Community who would attend the hearing, according to the Commission, was much smaller than had originally been envisioned, the reason given for holding the public hearing outside the seat of the Court did not exist, and he therefore decided that the hearing would be held at the seat of the Court, on the same day and at the same time specified in his October 20, 2000 Order (supra para. 57).

61. In November, 2000, Robert A. Williams Jr., on behalf of the organization National Congress of American Indians (NCAI), submitted a brief, in English, acting as amicus curiae.

62. On November 16, 17, and 18, 2000, at the public hearing on the merits of the case, the Court heard the testimony of the witnesses and expert witnesses offered by the Commission and that of the witness summoned by the Court in accordance with article 44(1) of the Rules of Procedure. The Court also heard the final oral pleadings of the parties.

There appeared before the Court:

For the Inter-American Commission on Human Rights:

Hélio Bicudo, delegate;
Claudio Grossman, delegate;
Bertha Santoscoy, attorney, and
James Anaya, assistant.

For the State of Nicaragua:

Edmundo Castillo Salazar, agent;
Rosenaldo Castro, advisor;
Betsy Baltodano, advisor, and
Ligia Margarita Guevara, advisor.

Witnesses offered by the Inter-American Commission on Human Rights:

Jaime Castillo Felipe (Interpreter: Modesto José Frank Wilson);
Charly Webster Mclean Cornelio;
Theodore Macdonald Jr.;
Guillermo Castilleja;
Galio Claudio Enrique Gurdián Gurdián;
Brooklyn Rivera Bryan;
Humberto Thompson Sang, and
Wilfredo Mclean Salvador.

Expert witnesses offered by the Inter-American Commission on Human Rights:

Rodolfo Stavenhagen Gruenbaum;
Charles Rice Hale;
Roque de Jesús Roldán Ortega, and
Lottie Marie Cunningham de Aguirre.

Witness summoned by the Inter-American Court of Human Rights (art. 44(1) of the Rules of Procedure):

Marco Antonio Centeno Caffarena.

63. During his appearance at the public hearing on the merits of the case on November 17, 2000, Marco Antonio Centeno Caffarena offered several documents to substantiate his testimony, and on November 21, 2000 he submitted eight documents (infra para. 79 and 95).

64. On November 24, 2000, the Court, in accordance with article 44 of its Rules of Procedure, decided that it was useful to add to the body of evidence in this case the following documents offered by Marco Antonio Centeno Caffarena: a copy, certified by a notary public, of the February 22, 1983 certification of the entry in the Public Registry of Real Estate of the Department of Zelaya, on February 10, 1917, of estate No. 2111, and the ethnographic expert opinion by Ramiro García Vásquez on the document prepared by Theodore Macdonald, "Awas Tingni an Ethnographic Study of the Community and its Territory" (infra paras. 79 and 95). The Court also asked that the State, no later than December 15, 2000, submit a copy of the complete study, "Diagnostic study of land tenure in the indigenous communities of the Atlantic Coast", prepared by the Central American and Caribbean Research Council.

65. On December 20, 2000 the State complied with the request made by the Court in the Order mentioned in the previous paragraph, by providing a copy of the General framework, Executive summary and Final Report of the document "Diagnostic study of land tenure in the indigenous communities of the Atlantic Coast", prepared by the Central American and Caribbean Research Council (infra paras. 80 and 96).

66. On January 29, 2001, the Commission submitted a note together with three documents: comments by Theodore Macdonald on January 20, 2001, and comments by Charles Rice Hale on January 7, 2001, both in connection with the ethnographic expert opinion by Ramiro García Vásquez on the document prepared by Theodore Macdonald, "Awas Tingni an Ethnographic Study of the Community and its Territory" (infra paras. 81 and 97); and a copy of the document "Awas Tingni an Ethnographic Study of the Community and its Territory. 1999 Report".

67. On June 21, 2001, the Secretariat, following instructions by the President, granted the Commission and the State up to July 23 of that year to submit their final written arguments. On July 3, 2001, the Commission requested an extension until August 10 of that same year to submit its brief. On July 6, 2001, the Secretariat, following instructions by the President, informed the Commission and the State that the extension requested had been granted.

68. In its July 31, 2001 note, the Secretariat, following instructions by the President and pursuant to article 44 of the Rules of Procedure, requested that the Commission submit the documentary evidence and pleadings to substantiate the request for payment of reparations, costs and expenses submitted by the Commission in the point on petitions in its lawsuit (supra para. 4), no later than August 10, 2001.

69. On July 31, 2001 the Secretariat, following instructions by the Court and in accordance with article 44 of the Rules of Procedure, granted Nicaragua up to August 13, 2001 to supply, as evidence to facilitate the adjudication of the case, the following documents: existing title deeds of the Awas Tingni Community (Mayagna Community); of the Ten Communities (Miskita Community); of the Tasba Raya Indigenous Community (also known as the Six Communities), which includes the communities of Miguel Bikan, Wisconsin, Esperanza, Francia Sirpi, Santa Clara and Tasba Pain (Miskito Communities) and of the Karatá Indigenous Community (Miskito Community). These documents were not submitted to the Court.

70. On August 8, 2001, the State objected to the parties being granted the possibility of submitting final written arguments and requested that, in case the Court decided to proceed with the admission of those pleadings, the State be granted an extension up to September 10, 2001, to submit them. The following day, the Secretariat, under instructions by the President, informed the State that it had been a constant and uniform practice at the Court to grant the parties the opportunity to submit final written arguments, taken to be a summary of the positions stated by the parties at the public hearing on the merits, in the understanding that said briefs were not subject to additional contradictory comments by the parties. In connection with the request for an extension of the period for the State to submit its final pleadings, the Secretariat expressed that, following instructions by the President, given the time allotted to the parties to submit their final written arguments, and so as to avoid impairing the balance which the Court must maintain in protecting human rights, legal certainty and procedural equity, an unpostponable period up to August 17, 2001, was granted to both parties.

71. On August 10, 2001, the Commission submitted its final written arguments, which included an annex (infra para. 82).

72. On August 17, 2001, Nicaragua submitted its final written pleadings.

73. On August 22, 2001, the Commission extemporaneously submitted the brief pertaining to reparations, costs and expenses (infra para. 159).

74. On August 25, 2001, the State requested that the Court not consider the brief submitted by the Commission on reparations, costs and expenses, because it was time-barred.

V. THE EVIDENCE

A) DOCUMENTARY EVIDENCE

75. The Inter-American Commission submitted copies of 58 documents in 50 annexes with its application (supra paras. 1 and 29). [FN1]

[FN1] cfr. annex C.1, sketch of the area where the Awas Tingni Community is located in the RAAN; annex C.2, November 8, 1992 brief by Charly Webster Mclean Cornelio; annex C.3, February, 1996 document "Awas Tingni. An Ethnographic Study of the Community and its Territory", Draft Preliminary Report prepared by the Awas Tingni Territorial Demarcation Project, main researcher: Theodore Macdonald; annex C.4, map "Land tenure of the Mayagna of Awas Tingni in the Area of the Concession to SOLCARSA"; annex C.6, statement by Theodore Macdonald Jr. on January 3, 1996; annex C.7, November, 1997 map, "Map of Subsistence Use and Occupation of the Awas Tingni Indigenous Community"; annex C.8, July 11, 1995 brief by María Luisa Acosta Castellón, attorney for the Awas Tingni Community, to Milton Caldera C., Minister of MARENA, attaching: January, 1994 document, "Territorial Rights of the Awas Tingni Indigenous Community" prepared by the University of Iowa as part of its "Project in Support of the Awas Tingni Community"; annex C.9, October 23, 1995 brief by James Anaya, legal representative of the Mayagna Awas Tingni Community, to Milton Caldera Cardenal, Minister of MARENA; annex C.10, December, 1994 document "Cerro Wakambay Broad-leafed Forest Management Plan (Final Edition)", prepared by Swietenia S.A. Consultants for KUMKYUNG CO. LTD; annex C.11, statement by Charly Webster Mclean Cornelio on December 4, 1995; annex C.12, January 4, 1996 document, "Memorandum in support of supplemental request for provisional measures. In the Case of the Mayagna Indian Community of Awas Tingni and Jaime Castillo Felipe, on his own behalf and on behalf of the Community of Awas Tingni, against Nicaragua" prepared by James Anaya, John S. Allen, María Luisa Acosta Castellón, Jeffrey G. Bullwinkel, S. Todd Crider and Steven M. Tullberg; annex C.13, March, 1996 brief requesting "official recognition and demarcation of the ancestral lands" of the Mayagna Awas Tingni Community addressed to the Regional Council of the RAAN, attaching: document "General Census of the Awas Tingni Community" for the year 1994; annex C.14, March 20, 1996 brief by James Anaya, legal representative of the Mayagna Awas Tingni Community, addressed to Ernesto Leal, Minister of Foreign Affairs; annex C.15, March 20, 1996 brief by James Anaya, legal representative of the Mayagna Awas Tingni Community, addressed to Claudio Gutiérrez, Minister of MARENA; annex C.16, document "Draft Memorandum of Understanding"; annex C.17, newspaper article in Diario La Prensa, "Indigenous habitat endangered by logging", published on March 24, 1996; annex C.18, newspaper article in the New York Times, "It´s Indians vs. Loggers in Nicaragua", published on June 25, 1996; annex C.19, May 17, 1996 brief by James Anaya, legal representative of the Mayagna Awas Tingni Community, addressed to José Antonio Tijerino, Permanent Representative of Nicaragua to the Organization of American States (OAS); annex C.20, May 8, 1996 report by María Luisa Acosta Castellón, addressed to James Anaya; annex C.21, testimony of deed number one in protocol number twenty of notary public Oscar Saravia Baltodano, officially recording the "Forest Management and Use Contract" signed on March 13, 1996 by Claudio Gutiérrez Huete, representative of MARENA, and Hyong Seock Byun, representative of SOLCARSA corporation; annex C.22, administrative provision No. 2-95 of June 28, 1995, of the Board of Directors of the Regional Council of the RAAN; annex C.23, December 8, 1995 brief by Alta Hooker Blandford, President of the Regional Council of the RAAN, and Myrna Taylor, First Secretary of the Board of Directors of the Regional Council of the RAAN, addressed to Roberto Araquistain Cisneros, General Director of Forestry; annex C.24, document "Report on the second meeting of the National Committee for the Demarcation of the Communal Lands of the

Atlantic Coast of Nicaragua held on November 14, 1996 in Puerto Cabezas"; annex C.25, November 14, 1996 document "Statement by the indigenous representatives before the National Committee for the Demarcation of the Lands of the Indigenous Communities of the Atlantic Coast of Nicaragua"; annex C.26, November 21, 1996 brief by Ned Archibold and others, of the Organization of Indigenous Syndics of the Nicaraguan Caribbean (OSICAN), addressed to James Wolsensohn, President of the World Bank; annex C.27, December 5, 1996 brief by Fermín Chavarría, Coordinator of the Indigenous Movement of the RAAS, addressed to Enrique Brenes, Provisional President of the National Committee for the Demarcation of the Communal Lands of the Atlantic Coast of Nicaragua; annex C.28, General Remarks by Claude Leduc on the document "Cerro Wakambay Broad-leafed Forest Management Plan (Final Draft)"; General Remarks by Fidel Lanuza on the document "Cerro Wakambay Broad-leafed Forest Management Plan (Final Draft)"; annex C.29, statement by Jotam López Espinoza on June 11, 1997; annex C.30, Ministerial resolution No. 02–97 of May 16, 1997 by the Minister of MARENA; annex C.31, newspaper article in Diario La Tribuna, "Illegal concession continues deforestation in the Northern Atlantic", published on May 29, 1997; annex C.32, newspaper article from Diario La Tribuna, "The trees fall far away and nobody hears them", published on May 29, 1997; newspaper article "Ancestral rights?"; annex C.33, newspaper article in Diario La Tribuna, "Deforestation in no-man's land", published on June 12, 1997; annex C.34, statement by Mario Guevara Somarriba on October 3, 1997; annex C.35, official letter MN-RSV-0377.97 of May 29, 1997 by Roberto Stadhagen Vogl, Minister of MARENA, addressed to Efrain Osejo Morales, President of the Regional Council of the RAAN; annex C.36, August 5, 1997 memorandum of the Evaluating Committee for the "SOLCARSA" Case, addressed to Roberto Stadhagen Vogl, Minister of MARENA, sending him the Evaluation Report on the SOLCARSA Firm; annex C.37, statement by Guillermo Ernesto Espinoza Duarte, Deputy Mayor, , then Acting Mayor of Bilwi, Puerto Cabezas, RAAN, on October 1, 1997; annex C.38, communiqué by the Authorities of Betania, signed by Guillermo Lagra, Rechinad Daniwal, William Fidencio, Guillermo Penegas, Pinner Sinforiano and Guillermo Enrique, on October 16, 1997; annex C.39, document "SOLCARSA does not comply with Ministerial Resolution either", prepared by Magda Lanuza; annex C.40, article "Privatizing the rain forest- a new era of concessions", published in July, 1997, in Reporte CEPAD; annex C.41, resolution No. 17-08-10-97 of October 9, 1997, of the Regional Council of the RAAN; annex C.42, "protest letter" of November 2, 1997, by OSICAN, addressed to the Inter-American Commission; annex C.43, amparo remedy filed on September 11, 1995 before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Mayagna Awas Tingni Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of MARENA's National Forestry Service, and Alejandro Láinez, Director of MARENA's National Forestry Administration; annex C.44, September 19, 1995 decision by the Appellate Court of the Sixth Region, Civil Court, Matagalpa, regarding the amparo remedy filed by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, ot the Mayagna Awas Tingni Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of MARENA's National Forestry Service, and Alejandro Láinez, Director of MARENA's National Forestry Administration; annex C.45, appeal for review of facts as well as law filed on September 21, 1995, before the Supreme Court of Justice of Nicaragua by María Luisa Acosta Castellón, legal representative of the Awas Tingni Community; annex C.46,

February 28, 1997 official notice to María Luisa Acosta Castellón notifying her of the February 27, 1997 judgment No. 11 by the Constitutional Court of the Supreme Court of Justice of Nicaragua; annex C.47, November 12, 1997 judgment by the Appellate Court of the Sixth Region, Constitutional Court, Matagalpa, in connection with the amparo remedy filed by María Luisa Acosta Castellón, as legal representative of Benevicto Salomón, Siriaco Castillo Fenley, Orlando Salomón Felipe, and Jotam López Espinoza, on their own behalf and as Syndics, Coordinator, Town Judge and Person in Charge of the Forest, respectively, in the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA; Roberto Araquistain, Director General of MARENA's National Forestry Service; Jorge Brooks Saldaña, Director of MARENA's State Forestry Administration, and Efraín Osejo et al., members of the Board of Directors of the Regional Council of the RAAN; annex C.48, February 27, 1997 judgment No. 12 by the Constitutional Court of the Supreme Court of Justice of Nicaragua regarding the amparo remedy filed on March 29, 1997 by Alfonso Smith Warman and Humberto Thompson Sang, members of the Regional Council of the RAAN, against Claudio Gutiérrez, Minister of MARENA, and Alejandro Láinez, Director of MARENA's National Forestry Administration; annex C.49, February 3, 1998 judgment by the Constitutional Court of the Supreme Court of Justice of Nicaragua, regarding the request for execution of judgment, filed by Humberto Thompson Sang, member of the Regional Council of the RAAN; request for execution of judgment No. 12 of February 27, 1997 by the Constitutional Court of the Supreme Court of Justice of Nicaragua, filed on January 22, 1998, at the Secretariat of the Constitutional Court of the Supreme Court of Justice of Nicaragua by Humberto Thompson Sang, member of the Regional Council of the RAAN; annex C. 50, November 5, 1997 note by Felipe Rodríguez Chávez, Ambassador, Permanent Representative of Nicaragua to the OAS, addressed to Jorge E. Taiana, Executive Secretary of the Commission; October 24, 1997 brief by Julio Cesar Saborío A., General Director for International Organizations at the Nicaraguan Ministry of Foreign Affairs, addressed to Felipe Rodríguez Chávez, Ambassador, Permanent Representative of Nicaragua to the OAS; and resolution No. 17-08-10-97 of October 9, 1997, by the Regional Council of the RAAN.

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76. In its reply to the lawsuit (supra para. 37), the State attached copies of 16 documents contained in 14 annexes. [FN2]

[FN2] cfr. annex I, contract for comprehensive forest management signed on March 26, 1992, by Jaime Castillo Felipe, Siriaco Castillo, Charly Webster Mclean Cornelio, Marcial Salomón, Genaro Mendoza and Arnoldo Clarence Demetrio, representing the Awas Tingni Community, and Francisco Lemus Lanuza, representing Maderas y Derivados de Nicaragua S.A.; annex II, Law No. 14, "Amendments to the Agrarian Reform Law", published in the official newspaper La Gaceta, No. 8, on January 13, 1986; annex III, certification by notary public of article 50 of Law No. 290 published in the official newspaper La Gaceta, No. 102, on June 3, 1998; annex IV, Law No. 28, "Statute on Autonomy of the Atlantic Coast Regions of Nicaragua", published in the official newspaper La Gaceta, No. 238, on October 30, 1987; annex V, document "Annex A Research Universe"; annex VI, official letter DSP-E-9200-10-98, addressed on October 13, 1998, by the Secretary of the Presidency of the Republic of Nicaragua to Noel Pereira Majano, Secretary of the National Assembly; October 13, 1998 brief by Arnoldo Aleman Lacayo,

President of the Republic of Nicaragua, to Noel Pereira Majano, Secretary of the National Assembly; draft law of October 13, 1998, "Organic Law Regulating the Communal Property System of the Indigenous Communities of the Atlantic Coast and ABOSAWAS"; annex VII, September 12, 1998 brief by Roberto Wilson Watson and Emilia Hammer Francis, respectively President and Secretary of The Ten Indigenous Communities, to Virgilio Gurdian, Director of the Nicaraguan Agrarian Reform Institute (INRA); annex VIII, Septermber 11, 1998 certificate issued by Otto Borst Conrrado, legal representative of the Indigenous Community of Tasba Raya; annex IX, September 11, 1998 brief by Rodolfo Spear Smith, General Coordinator of the Indigenous Community of Karata, to Virgilio Gurdian, Minister of INRA; annex X, document "Block of the Ten Communities" on pages 125 to 130 of the "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast. Case studies, analytical ethnographic section and ethno-maps. Final Report", March, 1998, prepared by the Central American and Caribbean Research Council; annex XI, May 5, 1995 document in which the State Forestry Administration of Marena "makes known to the public" the "Request for Forest Management and Utilization" by the "KUMKYUNG Co. Ltd.; annex XII, official letter DSDG-RMS-02-Crono-014-10-98, on October 8, 1998, by Rosario Meza Soto, Deputy Director General of the National Institute of Statistics and the Census (INEC), to Fernando Robleto Lang, Secretary of the Presidency;by Garcia Cantarero, Drew, Advisor to the Minister of MARENA, to Edmundo Castillo, of the Presidential Secretariat, and annex XII, September 11, 1998 note by Garcia Cantarero, Drew, Advisor to the Minister of MARENA, to Edmundo Castillo, of the Presidential Secretariat; and annex XIV, September 11, 1998 brief by Garcia Cantarero, Drew, Advisor to the Minister of MARENA, to Edmundo Castillo, of the Presidential Secretariat.

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77. During the preliminary objections stage, the State submitted copies of 26 documents. [FN3]

[FN3] cfr. official letter MN-RSV-02-0113.98 of February 16, 1998 by Roberto Stadhagen Vogl, Minister of MARENA, addressed to Michael Kang, General Manager of SOLCARSA; judgment No. 11 of February 27, 1997 by the Constitutional Court of the Supreme Court of Justice of Nicaragua regarding the amparo remedy filed on September 11, 1995, before the Appellate Court of Matagalpa by María Luisa Acosta Castellón as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Mayagna Awas Tingni Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of MARENA's National Forestry Service, and Alejandro Lainez, Director of MARENA's National Forestry Administration; table "Receival of Amparo Remedies from 1995 to August 15, 1998"; table "Comparative Analysis of Amparo Judgments from 1995 to the first semester of 1998"; certificate issued on August 5, 1998 by Virgilio Gurdián Castellón, Minister Director of INRA; copy of the first page of the March, 1996 brief requesting "official recognition and demarcation of the ancestral lands" of the Mayagna Awas Tingni Community, addressed to the Regional Council of the RAAN; February 7, 1997 document "Ownership Conflicts in Nicaragua, 1996", prepared by John Strasma; certificate issued on August 18, 1998 by Edgar Navas, Advisor and Assistant to the Minister of the Presidency; certificate issued on August 5, 1998 by Virgilio Gurdián Castellón, Minister Director of INRA; August, 1998 projections and maps on the location of indigenous areas in the national territory of

Nicaragua within the RAAN, prepared by the Office of the Director of Geodesics and Cartography at the Nicaraguan Institute of Territorial Studies (INETER); August, 1998 report "Juridical Framework and Activities Carried Out by the State for Demarcation and Titling of the Lands of the Indigenous Communities of the Atlantic Coast of Nicaragua", prepared by the High-level Directorate of INRA; list of support programs and projects submitted by the Government of Nicaragua to the Advisory Group in Stockholm, Sweden, "in support of the country's Autonomous Regions and, specifically, the indigenous communities"; a copy, certified by a notary public, of page two hundred and ninety-five to page three hundred and two of the Boletín Judicial of the Supreme Court of Justice of Nicaragua of Nicaragua in 1990; a copy, certified by a notary public, of page three hundred and one to page three hundred and nine of the Boletín Judicial of the Supreme Court of Justice of Nicaragua of Nicaragua in 1991; a copy, certified by a notary public, of page three hundred and forty-five to page three hundred and fifty-two of the Boletín Judicial of the Supreme Court of Justice of Nicaragua of Nicaragua in 1992; a copy, certified by a notary public, of page three hundred and sixteen to page three hundred and twenty of the Boletín Judicial of the Supreme Court of Justice of Nicaragua of Nicaragua in 1993; a copy, certified by a notary public, of page two hundred and seventy-eight to page two hundred and eighty-three of the Boletín Judicial of the Supreme Court of Justice of Nicaragua of Nicaragua in 1994; a copy, certified by a notary public, of the four pages of the Boletín Judicial of the Supreme Court of Justice of Nicaragua with Judgment No. 19, of March 7, 1994, of the Supreme Court of Justice of Nicaragua; a copy, certified by a notary public, of the two pages of the Boletín Judicial of the Supreme Court of Justice of Nicaragua with Judgment No. 2, of January 19, 1994, of the Supreme Court of Justice of Nicaragua; a copy, certified by a notary public, of page two hundred and seventy-one to page two hundred and seventy-six of the Boletín Judicial of the Supreme Court of Justice of Nicaragua of Nicaragua in 1995; a copy, certified by a notary public, of page six hundred and six to page six hundred and sixteen of the Boletín Judicial of the Supreme Court of Justice of Nicaragua of Nicaragua in 1996; a certificate issued on May 27, 1999, by Humberto Useda Hernández, Executive Director of Juridical Services of the Office of rural titling of the Property Administration of the Ministry of the Treasury and Public Credit in Nicaragua; Political Constitution of the Republic of Nicaragua published in "El Nuevo Diario" on July 4, 1995; Law No. 49, "Amparo Law", published in the official newspaper La Gaceta No. 241, 1988; Law No. 290, "Law on Organization, Competence and Procedures of the Executive Branch of Government", published in the official newspaper La Gaceta No. 102, on June 3, 1998; and pages 8984 to 8989 of the official newspaper La Gaceta No. 205, on October 30, 1998.

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78. The Commission submitted copies of 27 documents during the preliminary objections stage. [FN4]

[FN4] cfr. the December 4, 1997 brief by Felipe Rodríguez Chávez, Ambassador, Permanent Representative of Nicaragua to the OAS, addressed to Jorge E. Taiana, Executive Secretary of the Commission; the December 19, 1997 brief by Felipe Rodríguez Chávez, Ambassador, Permanent Representative of Nicaragua to the OAS, addressed to Jorge E. Taiana, Executive Secretary of the Commission; the February 14, 1998 brief by Felipe Rodríguez Chávez, Ambassador, Permanent Representative of Nicaragua to the OAS, addressed to Jorge E. Taiana,

Executive Secretary of the Commission; the May 6, 1998 brief by Felipe Rodríguez Chávez, Ambassador, Permanent Representative of Nicaragua to the OAS, addressed to Jorge E. Taiana, Executive Secretary of the Commission, attaching: the May 6, 1998 brief by Lester Mejía Solís, Ambassador, General Director, General Directorate for International Organizations, addressed to the Inter-American Commission; official letter MN-RSV-02-0113.98 of February 16, 1998, by Roberto Stadhagen Vogl, Minister of MARENA, addressed to Michael Kang, General Manager of SOLCARSA; copy of Decree No. 16-96, "Establishment of the National Committee for Demarcation of the Lands of the Indigenous Communities of the Atlantic Coast", of August 23, 1996, published in the official newspaper La Gaceta No. 169 on September 6, 1996; May 19, 1998 brief by Felipe Rodríguez Chávez, Ambassador, Permanent Representative of Nicaragua to the OAS, addressed to Jorge E. Taiana, Executive Secretary of the Commission; sworn statement by Charly Webster Mclean Cornelio on August 30, 1998; sworn statement by Jaime Castillo Felipe on August 30, 1998; sworn statement by Marcial Salomón Sebastián on August 30, 1998; sworn statement by Benevicto Salomón Mclean on August 30, 1998; sworn statement by Wilfredo Mclean Salvador on August 30, 1998; statement by Sydney Antonio P. on August 30, 1998; statement by Ramón Rayo Méndez on August 29, 1998; sworn statement by Miguel Taylor Ortez on August 30, 1998; sworn statement by Ramón Rayo Méndez on August 30, 1998, to which was attached: copy of a handwritten document with the dates June 28, 11 and 18, 1993, of the Record which the Regional Delegation of INRA allegedly kept; sworn statement by Brooklyn Rivera Bryan on August 30, 1998; sworn statement by Benigno Torres Cristian on September 8, 1998; resolution No. 08-12-9-96 of September 12, 1996, of the Regional Council of the RAAN; sworn statement by Ned Archivold Jacobo on August 30, 1998; official judicial notice of August 12, 1998, signed by Martha López Corea, Notifying Official, Constitutional Court of the Supreme Court of Justice of Nicaragua, in which María Luisa Acosta Castellón is notified of the August 6, 1998 writ of the Constitutional Court of the Supreme Court of Justice of Nicaragua; sworn statement by Humberto Thompson Sang on August 31, 1998; July, 1996 document "Land, Natural Resources and Indigenous Rights on the Atlantic Coast of Nicaragua. Juridical Reflection to Define a Strategy for Indigenous Participation in Participation and Development Projects", prepared by "The World Bank, Technical Department Latin America & the Caribbean"; judgment No. 163 of October 14, 1998 by the Constitutional Court of the Supreme Court of Justice of Nicaragua regarding the amparo remedy filed by María Luisa Acosta Castellón, as the legal representative of Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, on their own behalf and as Syndic, Coordinator, Town Judge and Person Responsible for the Forest, respectively, in the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration of MARENA, and Efraín Osejo and others, members of the Board of Directors of the Regional Council of the RAAN; and document "Indigenous land in the current Nicaraguan situation" and "The institutions of the State", in pages 80 to 89 and 119 to 128 of the March, 1998 "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast. General framework", prepared by the Central American and Caribbean Research Council.

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79. On November 21, 2000, Marco Antonio Centeno Caffarena, General Director of the Office of Rural Titling of Nicaragua, sent copies of 8 documents (supra paras. 63 and 64). [FN5]

[FN5] cfr. copy, certified by notary public, of the February 22, 1983 certificate of registration in the Public Real Estate Registry of the Department of Zelaya, on February 10, 1917, of property No. 2112; copy, certified by notary public, of the February 22, 1983 certificate of registration in the Public Real Estate Registry of the Department of Zelaya, on February 10, 1917, of property No. 2111; copy, certified by notary public, of the March 7, 1983 certification of page 95 of the book of the Mosquitia Titling Commission which contains registration No. 111 of February 9, 1917, in the Public Real Estate Registry of the Department of Zelaya; a September 15, 2000 note by Ramiro García Vásquez, archaeologist of the Anthropological Research Department at the National Museum, addressed to Marco Antonio Centeno Caffarena, General Director of the Office of Rural Titling; document "Ethnographic expert opinion on the document prepared by Dr. Theodore Macdonald, "Awas Tingni an Ethnographic Study of the Community and its Territory", prepared by Ramiro García Vásquez; document "Ethnographic discussion on the Sumo population, an ethnic group that settled a part of the autonomous territory of the Northern Atlantic, Nicaragua", prepared by Ramiro García Vásquez; integrated forest management contract signed on March 26, 1992, by Jaime Castillo Felipe, Siriaco Castillo, Charly Webster Mclean Cornelio, Marcial Salomón, Genaro Mendoza and Arnoldo Clarence Demetrio, representing the Awas Tingni Community, and Francisco Lemus Lanuza, representing Maderas y Derivados de Nicaragua S.A.; and the document "Six individual communities of the Northern plain of the Coco River: Francia Sirpi, Wisconsin, Esperanza, Santa Clara, Tasba Pain, Miguel Bikan" and "Ethno-map. Six individual communities of the Northern plain of the Coco River: Francia Sirpi, Wisconsin, Esperanza, Santa Clara, Tasba Pain, Miguel Bikan", corresponding to pages 153 to 162 of the March, 1998 "General diagnostic study on land tenure in indigenous communities of the Atlantic Coast. Case studies, analytical ethnographic sections and ethno-maps. Final Report", prepared by the Central American and Caribbean Research Council.

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80. On December 20, 2000, in response to a request by the Court, the State submitted a copy of one document (supra para. 65). [FN6]

[FN6] cfr. "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast. General framework", prepared by the Central American and Caribbean Research Council, March, 1998; "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast. Executive summary", prepared by the Central American and Caribbean Research Council, March, 1998; and "General diagnostic study on land tenure in indigenous communities of the Atlantic Coast. Case studies, analytical ethnographic sections and ethno-maps. Final Report", prepared by the Central American and Caribbean Research Council, March, 1998.

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81. The Commission submitted 3 documents together with its note of January 29, 2001 (supra para. 66) [FN7].

[FN7] cfr. document “Comments by Theodore Macdonald/ January 20, 2001”, in connection with the document “Ethnographic expert opinion on the document prepared by Dr. Theodore Macdonald”, written by Ramiro García Vásquez; January 7, 2001 document “Ethnographic expert opinion on the document prepared by Dr. Theodore MacDonald. By Ramiro García Vásquez, Archaeologist”, written by Charles Rice Hale; and document “Awas Tingni. An Ethnographic Study of the Community and its Territory. 1999 Report”, prepared by the Awas Tingni Territorial Demarcation Project, main researcher: Theodore Macdonald.
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82. On August 10, 2001, together with the final written pleadings, the Commission submitted one document as an annex to that brief (supra para. 71). [FN8]

[FN8] cfr. judgment No. 163 of October 14, 1998, by the Constitutional Court of the Supreme Court of Justice of Nicaragua regarding the amparo remedy filed by María Luisa Acosta Castellón, as legal representative of Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, on their own behalf and as Syndic, Coordinator, Town Judge and Person Responsible for the Forest, respectively, of the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration of MARENA, and Efraín Osejo and others, members of the Board of Directors of the Regional Council of the RAAN.

B) ORAL AND EXPERT EVIDENCE

83. At the public hearing held on November 16, 17 and 18, 2000 (supra para.62), the Court heard the testimony of eight witnesses and four expert witnesses offered by the Inter-American Commission, as well as the testimony of one witness summoned by the Tribunal, exercising its authority under article 44(1) of the Rules of Procedure. Said testimonies are summarized below, in the order received:

a. Testimony of Jaime Castillo Felipe, member of the Awas Tingni Community (Interpreter: Modesto José Frank Wilson)

The witness was born in Awas Tingni on June 15, 1964, and he currently lives in the Awas Tingni Community. He is a member of the Mayagna ethnic group, and his mother tongue is “Sumo Mayagna”.
The other members of the Awas Tingni Community are also Sumo. It is true that there are persons in the Community who are not of the Mayagna ethnic group, but they are few, having come to live there or having members of the Community as spouses. They have been in Awas Tingni for over fifty years, and before they lived in Tuburús. He does not know exactly in what year the hamlet of Awas Tingni was established. They are the owners of the land which they inhabit because they have lived in the territory for over 300 years, and this can be proven because they have historical places and because their work takes place in that territory. There

were members of the Tilba-Lupia Community who lived in Awas Tingni. He could indicate the persons who constitute the Community.
He was Syndic of the Awas Tingni Community from 1991 to 1996. The Syndic is the person in charge of resolving conflicts which might arise within the community, as well as of taking steps, in coordination with the communal authorities, before State entities.
During the time he was Syndic, he dealt with INRA to attain titling or demarcation of lands in favor of the Community, but those steps were unsuccessful, since there has been no response to date. On March 12, 1996, he addressed the Regional Council of the RAAN. The authorities' response was that they were going to study his request, but he has not received any reply in that regard. At that time he submitted maps of the Community, the census of the population of Awas Tingni, and a document on the territory of the Community, prepared by Dr. Theodore Macdonald, of Harvard University.
He and the members of the Community make their living from agriculture, hunting, and fishing, among other activities. To hunt they make a 15-day trip. The Community selects what is to be consumed, so as not to destroy the natural resources.
The lands are occupied and utilized by the entire Community. Nobody owns the land individually; the land's resources are collective. If a person does not belong to the Community, that person cannot utilize the land. There is no right to expel anyone from the Community. To deny the use of the land to any member of the Community, the matter has to be discussed and decided by the Community Council. When a person dies, his or her next of kin become the owners of those things that the deceased person owned. But since lands are collective property of the community, there is no way that one member can freely transmit to another his or her rights in connection with the use of the land.
He is not aware of whether his ancestors obtained any title deed. When an agreement was reached between the logging firm Maderas y Derivados de Nicaragua S.A. (MADENSA) (hereinafter "MADENSA") and the Community, in 1992, the latter stated that it had a property right recognized by the Central Government and by the National Government, because the witness and the other members of the Community feel that they are the true owners of those lands, since they have lived on them for over 500 years.
The Community filed the application before the Inter-American Commission because it required the title deed which it had requested several times and the State had never replied. They hope to obtain a reply based on justice and the rights of indigenous communities. At first they intended to settle the land claim in a friendly manner, but now, having exhausted all means and having reached the level of the Inter-American Court, they await its decision to put an end to this conflict.

b. Testimony of Charly Webster Mclean Cornelio, Secretary of the Awas Tingni Territorial Committee

The witness was born in Awas Tingni, Nicaragua, and he is a member of the Mayagna Community, which in the Mayagna language means "child of the Sun". He held the position of Person Responsible for the Forest within the Community, and therefore he protected the forest from harm and cared for the animals. He is currently the Secretary of the Awas Tingni Territorial Committee, and in 1991 he participated, together with the other leaders of the Community, in the making of the map which identifies the territorial limits of the Mayagna Community.

The Community he belongs to has 1,016 inhabitants, and is formed by 208 families; only four families are formed by marriages of Miskito men and Mayagna women. The number of inhabitants was determined through a census taken recently by the leaders of the Community. Figures presented by the State, according to a census taken years ago, place the number of members of the Community between 300 and 400, but that is not the current number.

The struggle of the Mayagna to attain recognition by the State of their historical right to their lands goes back a long time. Recent efforts to attain respect for their lands include the drafting, without any advisory assistance, of the document "Struggling for Mayagna Sumo", in which they ask the State to recognize their property rights. This document was made known to Alberto Escobar, who was then the INRA delegate. Subsequently they went to Managua for a dialogue with the Minister of INRA, but they did not obtain the title deed to their land.

In 1992 the Community signed a contract with the MADENSA firm, with no advisory assistance. The leaders of the Community stated to the representatives of MADENSA that they had title to those lands in the sense that they had a right to them through historical possession. Then they signed another agreement with MADENSA, with advisory assistance from and participation by MARENA, which committed itself to helping the Community in the demarcation of its territory, but this commitment was not fulfilled.

Afterwards, the State granted a concession to the firm SOLCARSA. Their disagreement with that concession is based on the fact that the State did not previously consult with the Community to determine whether the concession was advantageous, and also because the works by SOLCARSA would be on 62,000 hectares of Awas Tingni territory. Therefore, the Community reacted and a General Assembly was held, at which the decision was reached to draft a letter to denounce the State.

To attain respect for the territory of the Community, its leaders made a map. The Community has 13 kilometers in the mountains, and is located 21 kilometers from Puerto Cabezas, alongside the municipality of Waspám, and according to the map its borders are within the following boundaries: from Caño Cocolano going by Kisak Laini, by Suku Was, Kalwa, Kitan Mukni, Kuru Was, Kiamak, Caño Turuh Wasni, Caño Rawa Was, Tunjlan Tuna, to Kuah Sahna. This map shows the area they are claiming. The leaders of the Community have referred to its territory, and have not talked about hectares. The witness is not aware that doctors Anaya and Acosta requested a title deed to 16,000 hectares for the Community in 1993. The State, in turn, has argued that the extent of the territory claimed by the Mayagna is excessive, bearing in mind the number of members of the Community determined by the official census, and that the area claimed by this Community is not in proportion to the area it effectively occupies.The Mayagna have had some conflicts with the communities of Francia Sirpi, Santa Clara and Esperanza regarding land claims, which have been settled peacefully. According to the State, part of its territory is claimed by groups in the Eighteen Communities and in the Ten Communities, who have stated that they possessed it before the Mayagna arrived, and that they had allowed them to settle in their territory as a sign of good will. In face of this statement, the witness points out that the territories of these communities are far away from those of Awas Tingni and that, therefore, he does not understand why there is a talk about a conflict over land, when there is no such conflict.

The witness explained that to go from the hamlet of Awas Tingni, where most of the Community is concentrated, to Tuburús, also inhabited by members of the Mayagna Community, they have to travel in "pipantes", a type of canoe driven by oars, and in dry weather this takes a day and a half, and during the rainy season two days and a half.

The territory of the Mayagna is vital for their cultural, religious, and family development, and for their very subsistence, as they carry out hunting activities (they hunt wild boar) and they fish (moving along the Wawa River), and they also cultivate the land. It is a right of all members of the Community to farm the land, hunt, fish, and gather medicinal plants; however, sale and privatization of those resources are forbidden.

The territory is sacred for them, and throughout the territory there are several hills which have a major religious importance, such as Cerro Mono, Cerro Urus Asang, Cerro Kiamak and Cerro Quitiris. There are also sacred places, where the Community has fruit trees such as pejibaye, lemon, and avocado. When the inhabitants of Awas Tingni go through these places, which date 300 centuries, according to what his grandfather said, they do so in silence as a sign of respect for their dead ancestors, and they greet Asangpas Muigeni, the spirit of the mountain, who lives under the hills.

c. Testimony of Theodore Macdonald Jr., anthropologist

He has been in contact with the Awas Tingni Community. He has visited the Community three times, in March and July of 1995 and in January of 1999. The purpose of those visits was to study the relationship between the people of the Awas Tingni settlement and the land they utilize, and this required a socio-political and historical study, as well as other research. He started work on this study thanks to a project funded by the World Wildlife Fund. They hired the University of Iowa, which in turn hired him for this study.

The results of his study on the Awas Tingni Community were documented, first as a preliminary report, in 1996, in which he included a map with the lands of the Awas Tingni settlement, and then in another report in January of 1999. The purpose of the latter report was to expand on that of 1996, since it had been a preliminary report, and furthermore upon returning he found that there were many things he wanted to learn about the history of the Mayagna Community. There are no contradictions between those two reports, but the second one entered into greater ethnographic depth, and more details were obtained to support the study.

The Awas Tingni Community prepared a map, roughly in 1992, without his advisory assistance; they made it on their own and showed it to him when he began the study of the witness. According to the Mayagna, this map represents the territory which belongs to them. In that map one can see the boundary, the place where the main community is located, where other communities are located, the sacred places, and other, older places where they lived before. One can also see the Wawa River, which runs westward toward the Atlantic Coast.

There are two other maps, made by the witness. The first of these maps was made in 1996 with a computer system called Geographical Information System (GIS). What he did was enter the data and information gathered by the Community to determine the complete extent of the territory. In this map one can see the settlement of the Awas Tingni Community, the Wawa River, Tuburús, the sacred places, and also the boundary. The second map, drawn in 1999, is almost the same. The main difference is that it is hand drawn, but both maps are based on the same information.

The methodology used to make the map was as follows: first he began in the Awas Tingni Community with a Geographical Positioning System (GPS), which operates based on satellites. During the first stage, he went up the Wawa River with five members of the Community, to gather data on the use of the land throughout the territory and to corroborate the information received from the Community. During the second stage, after being trained by the witness,

members of the Community traveled the territory with the GPS equipment. They recorded more than 150 reference points during those visits.

To carry out the work of locating reference points so as to make the map, two young members of the Community were trained. In this way, fieldwork for the map was carried out by indigenous people of Awas Tingni. Once this information is included in the point positioning system, there is no way to manipulate it.

The reference points obtained were reflected on a basic map, prepared by a professional cartographer (a law student at Harvard University, who had learned to operate the Geographical Information System -GIS- and who was a computer expert).

To refer to the Mayagna as a community, one has to see everything as a process. Currently it is a group with its own leadership, its own form of social organization, and it recognizes itself as an indigenous community.

As regards current land tenure in the Awas Tingni Community, the witness believes that first one must talk about history. The Community has identified itself as a Mayagna community, but gradually, through demographic growth and also continuous communication with people from other areas, it came to identify itself as an independent community, around its spiritual leaders called caciques. In this way it took shape and strengthened its feeling of community, with its own limits and boundaries.

There are two Miskito communities in the territory of Awas Tingni, as can be seen on the map. One of them is Esperanza, which was formed in two stages: in 1971, after the war between Honduras and Nicaragua, and in 1972 after the hurricane that year, when other communities arrived. One of the five communities established in the territory is called Tasba Raya, Esperanza, and it is located toward the north of the Wawa River. They arrived there upon orders by the State at that time, and they were accepted by the Awas Tingni Community. The other, called Yapu Muscana, rather than a community was merely a refuge; it was a Miskito family which had established itself independently on the southern side. There is no evidence that those communities were there before the Awas Tingni Community; instead, a member of Francia Sirpi, which is the community neighboring Esperanza, stated to the Witness that Awas Tingni arrived there before.

Currently there are some conflicts with neighboring communities, especially due to the presence and lack of understanding with the SOLCARSA firm, as members of neighboring communities want to take over their lands, with the idea that those who own the land will benefit from the works to be undertaken.

A history and an ancestral possession has been constructed with indigenous people from different ethnic groups. The Community's perception of its boundaries has been strengthened through interactions with their neighbors. The only evidence that can be used to determine the existence of the Community before 1990 is oral tradition. There are research studies on the history of the Community, and some experts were also consulted at Harvard University, in the United States, and in Central America, and no data were found that contradicted the oral tradition on which his study is based.

Forms of land use in the Awas Tingni Community are based on a communal system, in which there is usufruct by individuals, which means that no one can sell or rent this territory to people outside the Community. However, within the Community, certain individuals use a plot, a certain area, year after year. In this way, the Community respects usufruct rights but does not allow this right to be abused. This usufruct right is often acquired through inheritance, passed on from one generation to the next, but mainly it is granted by Community consensus. It can also be

transferred from one family to another. Those who benefit from this usufruct have the possibility of excluding other members of the community from the use of that land, the utilization of those resources.
The hills located in the territory of the Community are very important. The "spirits of the mountain", jefes del monte, which in Mayagna are called "Asangpas Muigeni", live in them, and it is they who control the animals throughout that region. To make use of those animals, one must have a special relationship with the spirits. Oftentimes the cacique, who is a sort of "chaman" called Ditelian, can maintain such a relationship with the spirits. Therefore, the animals' presence and the possibility of hunting them is based on their cosmovision and has much to do with the boundaries, because according to them these masters of the mountain own the animals, especially the wild boars which move in packs around the mountains. There is then a strong tie with the surroundings, with those sacred places, with the spirits that live within, and the brothers who are members of the Community.
There are two sacred places in the border areas: cemeteries, which are currently visited often by members of the Community, and are located along the Wawa River; these are old settlements which they visit when they go hunting. To go hunting is, to a certain point, a spiritual act, and it has much to do with the territory with they utilize. The second type of sacred area are the hills.

d. Expert opinion of Rodolfo Stavenhagen Gruenbaum, anthropologist and sociologist

He knows about the situation of the indigenous peoples of the Atlantic Coast of Nicaragua by reference, not directly. His knowledge comes from the ethnographic and anthropological literature on Nicaragua and from reports by specialists on the situation of the peoples of the Atlantic Coast of Nicaragua, who have traditionally been marginalized from central power and linked to certain economic or international interests, but very aware of their cultural identity, of their social self-perception, as social groups with a historical continuity, ties to the land, and their own economic activities and forms of organization which have set them apart from the rest of the population of Nicaragua.
The indigenous peoples of various countries in our continent suffer problems of discrimination. The situation has been modified over the last several years, due to legislative and constitutional changes, public opinion and the complaints and claims made nationally and internationally by indigenous organizations.
Indigenous peoples are defined as those social and human groups, culturally identified and who maintain a historical continuity with their ancestors, from the time before the arrival of the first Europeans to this continent. That historical continuity can be seen in their forms of organization, in their own culture, in their self-identification, and in the use of a language the origin of which is pre-Hispanic. These peoples are known in our countries because they maintain forms of life and of culture which set them apart from the rest of society, and they have traditionally been placed in a subordinate and marginal position by discriminatory economic, political, and social structures, which practically have kept them in a condition of second-class citizenship, despite the fact that in legislation, in formal terms, indigenous people have the same rights as non-indigenous people. But in reality, that citizenship is as if it were imaginary, because they continue to suffer structural forms of discrimination, social exclusion, and marginalization.
For many years, the Nicaraguan State has carried out policies of incorporation, of integration of these peoples of the Atlantic Coast to the National State, with some positive results in terms of national integration of the country, but there have also been tensions between the indigenous

population of that region and the rest of society, especially because those processes of incorporation violate some fundamental rights of these indigenous populations and endanger their survival as social groups identified with a collective personality and a specific ethnic identity.

A fundamental theme in the definition of indigenous peoples is how they relate to the land. All anthropological, ethnographic studies, all documentation which the indigenous peoples themselves have presented in recent years, demonstrate that the relationship between indigenous peoples and the land is an essential tie which provides and maintains the cultural identity of those peoples. One must understand that the land is not a mere instrument of agricultural production, but part of a geographic and social, symbolic and religious space, with which the history and current dynamics of those peoples are linked.

Most indigenous peoples in Latin America are peoples whose essence derives from their relationship to the land, whether as farmers, hunters, gatherers, fishermen, etc. The tie to the land is essential for their self-identification. Physical health, mental health, and social health of indigenous peoples is linked to the concept of the land. Traditionally, indigenous communities and peoples of the various countries of Latin America have had a communal concept of the land and of its resources.

In lowlands, indigenous peoples have traditionally practiced shifting subsistence agriculture, especially in tropical forests. They often combine this shifting subsistence agriculture with other activities which require an economic space relatively larger than the specifically agricultural plot. The space in which the indigenous population moves, sometimes almost as semi-nomadic groups, is a collective space. The local authorities in each community have their own mechanisms, customs and habits, customary law to distribute egalitarian access among the household communities. According to technology, productivity, ecological sustainability and productive capacity, this rotation can take years, since as a community moves it occupies other spaces before returning to the original place. This happens a lot in the lowland areas, and is very different from the densely settled highlands. Nicaragua's indigenous communities follow the lowland model.

There are two concepts of collective land: the territory, generally, which the community considers common, although internally there are mechanisms to allocate temporary occupation and use by its members and which does not allow alienation to persons who are not members of the community; and the areas which are only used collectively, the "commons" which are not divided into plots. Almost all indigenous communities have a part used collectively as "commons", and then another part which can be divided and allocated to families or domestic units. Nevertheless, the concept of collective property remains, even if it is disputed by others, often the State itself, when there is no title. When there are problems, the need for property titles arises because the community risks losing everything. The history of Latin America has been one of almost constant dispossession of indigenous communities by external interests.

There are pressures for those having usufruct or occupation rights within the communities to obtain a deed title to those plots in one way or another, but when the State recognizes it as private property, it can be sold or rented, and this breaks with the tradition of the community.

The history of the practice and of the policies of the States in Latin America, as regards the indigenous peoples, is a protracted and dramatic one. Before conquest and colonization and before the creation of the national States, the indigenous peoples and their lands were a whole, a unique whole. The National State was superimposed on this, and in most countries it takes over property rights to land which in terms of ancestral rights belonged, and still belongs, to the

indigenous peoples. In the 19th and 20th centuries, the States declared large geographical spaces of the territory of the hemisphere to be wastelands, national lands, and they took upon themselves the right to make their will on those lands, without taking into account the original rights, the historical rights, and the physical presence of indigenous peoples organized in different ways on those lands from the times of their ancestors. Problems arise when the States decide to issue deed titles to those lands or to grant concessions or to allow the clearing of those lands, to authorize the use of those lands for other purposes determined by various economic interests. That is when many indigenous peoples realize that juridically speaking they are not the authentic owners of the territories which they have occupied traditionally.

In recent decades, indigenous peoples have begun to organize, as they have realized that they have to do something to juridically protect and safeguard these lands. What is generically called indigenous customary law is not a structured body of law, much less a codified one; it is a series of real practices which are carried out in different ways in various communities, to solve a number of problems of administrating justice, addressing conflicts, keeping internal order, regulating interpersonal complaints, managing relations with the outside world, etc. Under customary law, the land is seen as a spiritual place, insofar as it is linked to human beings, since it has sacred places, the forest, etc. This linkage of humans with the territory is not necessarily written down, it is something lived on a daily basis.

As regards ancestral occupation of the land, continuity is established in terms of the historical continuity of a group which for centuries has maintained an identity from which, precisely, stems its current situation in the given country. The fact is that due to historical changes, economic depressions, violence, civil wars, and pressures by the economically dominant system, which for centuries has applied pressure on the indigenous peoples and restricted them to those areas which the first invaders, the settlers and then the large corporations, have not been interested in, indigenous groups have been forced to seek new habitats, so as to maintain that historical continuity without the intervention of alien forces, so as to maintain their freedom and their right to live according to their own understanding of life. There are many examples of communities which have moved from one place to another in relatively recent historical times.

All this is part of the indigenous worldview, which currently is being reflected in substantive law, and an international indigenous law is being constructed. This process includes work by the United Nations, in the Draft Declaration on the Rights of Indigenous Peoples; by the Organization of American States, in the Project on Indigenous Rights; by the International Labor Organization, in Covenant 169. Up to now, recognition of indigenous rights has been merely formal, as it has not been possible to attain progress in the development of regulations on those rights. The ILO Covenant reflects them in general terms and poses the challenge of translating those norms into effective national regulations.

The report prepared by professor Theodore Macdonald fulfills all the requirements of a methodologically responsible ethnographic research study, based on multiple sources and on concepts from various disciplines: anthropology, history, geography, economics, etc. It is clear from reading the study that the researcher has traveled extensively throughout those areas, interviewed many people, obtained direct information, which is what anthropologists generally do, and he has also resorted to the critical analysis of a large amount of documents that are not always easy to obtain, so as to substantiate his findings.

In certain historical contexts, the rights of the human being can only be ensured and fully exercised if there is a recognition of the rights of the collectivity and of the community to which this person has belonged since he or she was born and of which he or she is a part, and which

gives him or her all the necessary elements for a feeling of complete realization as a human being, which also means a social and cultural being. The counterpart to this statement is that, by violating the rights of a community to continue to subsist as such and to its reproduction as a unit and identity, a number of basic human rights are violated: the right to culture, to participation, to identity, to survival; this has been shown in a large number of studies on indigenous peoples and communities in Latin America.

The international community and human rights law face the challenge of developing new concepts and new norms which, without in any way damaging or curtailing the individual's human rights, are able to enrich the way of life of indigenous peoples by recognizing the social and cultural reality in which those rights are breached.

e. Testimony of Guillermo Castilleja, Special Projects Director for the World Wildlife Fund (WWF)

In 1993, as Forestry Policy Officer of the World Wildlife Fund for Latin America, he began a project in connection with the Awas Tingni Community in Nicaragua. The main objective of that project was to support the Government of Nicaragua in the establishment of a contractual arrangement for the sustainable use of the "broad-leafed" forests of the Atlantic Coast, specifically the Awas Tingni forests.This project was a response to an explicit initiative by Nicaragua requesting advisory assistance.

Since 1991, the World Wildlife Fund has played an advisory role in Forestry Policy, specifically with the Natural Resources Institute (IRENA), as it was called at that time, which currently is MARENA, the Ministry of the Environment and Natural Resources. The immediate background of the Awas Tingni project was a concession made by the State to a Taiwanese company called EQUIPE, covering an area of roughly one million hectares on the Atlantic Coast. This generated a substantial conflict, which was ultimately resolved through cancellation of that concession by Nicaragua. A lesson learned from the EQUIPE concession was the need to develop forest utilization models which were truly viable and could be sustainable on a long-term basis.

In the case of the Awas Tingni Community, it had initiated a contractual agreement with a company called MADENSA, Maderas y Derivados de Nicaragua, of Dominican capital, which established the basis for what might be a form of logging which involved participation by inhabitants of that region.

Basically, what is not used, what is not claimed, what is not appropriately managed, is open, in the specific case of the Coast, to invasion by settlers, to transformation of the forests into agricultural areas, and that is how Nicaragua and other countries in the region have unfortunately lost many of their forests.

For conservation of resources through logging activities it is necessary for three things to happen. First, the logging operation has to be technically sustainable, in other words, extraction must not exceed the forest's capacity to regenerate naturally. Second, there must be the necessary elements for the operation to be economically profitable, that is, economically viable. Third, specifically in the case of the forests of Latin America where there are many rural population groups living around them, it is necessary for it to be socially viable, there must be the social support and legal framework required to ensure that these operations, even if they are technically successful and economically viable, do not harm the rights that the communities inhabiting those forests may have.

For all these reasons, the World Wildlife Fund found that the case of this contractual relationship between Awas Tingni and MADENSA was a very interesting possibility to show that this type of forest management can be done. The fact that MADENSA had from the start accepted the presence of the community was significant progress as compared to the case of a concession previously granted to a Taiwanese company, in which the fact that there were indigenous communities in the area was simply not recognized.

Before beginning the project, the following government officials were contacted: Dr. Jaime Incer, then the Minister of MARENA; Roberto Araquistain, the Director of the National Forestry Service; Eng. Brady Watson, in charge of the Administration of Forests on Public Lands (ADFOREST), and James Gordon, the Delegate of IRENA, now MARENA, in Puerto Cabezas. In the framework of discussions with other officials, the starting point was that while the Community did not have formal title to the land, implicit ownership was recognized due to occupation of those lands, which would eventually have to be formalized. In other words, it was known that at least a part, if not all the area covered by the management plan of MADENSA, was communal land of the Awas Tingni Community. There was also the recognition that as a result of this process, demarcation of that communal land would take place, because a clear legal framework is one of the fundamental conditions for sustainable management.

The first contact the witness had with the Community was in early 1993. They were accompanied by representatives of IRENA and of the National Forestry Service. They held meetings at Puerto Cabezas with some leaders and members of the Community. Afterwards they traveled to Awas Tingni to get to know the rest of the Community and the conditions under which they lived, as well as to hear people's opinions directly. By talking with the leaders of the Community at Puerto Cabezas and with members of the Community, they became aware of two main concerns. One was the contract which the Community had signed with MADENSA, a 25 year contract, which made them feel trapped, and the second concern, the main one for them, was the uncertainty they felt with regard to land tenure. The Community was not so much interested in exploitation proper of the forest or in the resources it could provide, but rather in obtaining funding for the necessary studies to finally be able to carry out the demarcation of their lands. These were their main concerns.

It was agreed with MADENSA and with IRENA that the 25 year contract that Awas Tingni had signed with the former would be renegotiated. For this, technical and legal advisory services would be required, because they had been requested by the Community, so as to negotiate better conditions.

The role of the World Wildlife Fund was to ensure that such support be provided to the Community. The WWF helped set up a technical legal team, which began with participation by James Anaya, from the University of Iowa, and Hans Ackerson, a forestry expert who had provided advisory services to Nicaragua in the area of forestry.

An important obstacle in the negotiation of this process was the lack of legal precedent to serve as a reference point for this type of arrangements. Another obstacle throughout the negotiation was the issue of land tenure, since to have a management plan there had to be a well-defined area.

Another task undertaken by the World Wildlife Fund was to ensure that there be a process to which the various parties would adhere. In addition, once the negotiations had begun, the WWF contributed to hiring a facilitator to help "unblock" the negotiation. The result of these negotiations was an agreement among the three parties, with participation by the Awas Tingni Community, the State through MARENA, and the MADENSA corporation. It was a five-year,

renewable agreement, setting the terms for the sale of timber by the Community and bought by the corporation; the terms under which MARENA recognizes land tenure, ownership of the land; the terms of activities for yearly extraction, and the monitoring system which this operation would require.

Several parts of the agreement refer to land tenure. One of them considers the community as if it were "the owner of these lands". Furthermore, Nicaragua undertook the commitment to facilitate the titling process and to not undermine the Community's aspirations as regards their territorial claims. While the contract stated that the State would facilitate the process of land titling, the witness does not recall having heard how this would be done. He recalls a discussion on this matter, because the process of land titling which was known up to then was that carried out by INRA, the Nicaraguan Agrarian Reform Institute, which at that time distributed 50 manzanas of land per family. However, the National Forestry Service was very emphatic that such a process was inadequate in this case, arguing that what they wanted to promote as land use was forestry, while the INRA process promoted agricultural land use. They feared that the model of agricultural land distribution would unleash a wave of deforestation. He does not recall MARENA establishing a path for the Community to request land titling, since they were also confused as to what the process should be.

As of 1994, he had less contact with the project and no direct knowledge of what was happening. He heard of State plans to grant a concession to the SOLCARSA corporation through a letter sent by the Community, through its representatives, to Minister Milton Caldera. He held a conversation with Minister Caldera at the time in connection with the concession to SOLCARSA. That official knew that the land claimed by the community included most of the area included in the concession, and that the Community objected to it. The Minister's reaction was that the agreement that MARENA had signed with the Community and with MADENSA was an agreement which he did not agree with, and regarding the Community's claims, he said "they are too many".

The State has had two policies in granting the concession to MADENSA, first, and subsequently to SOLCARSA. One was a recognition of the acquired rights of the communities, and that they should be taken into account in those forest management contracts; the other was that as long as there is no title deed, there is no basis for thinking that the communities have acquired rights and, therefore, concessions on public lands can be granted to third parties.

f. Testimony of Galio Claudio Enrique Gurdián Gurdián, holder of a licentiate degree in philosophy, a specialist in social anthropology and development studies, especially relations between States and indigenous peoples

He lived in the Northern Atlantic Region of Nicaragua from 1979 to 1990, from 1996 to 1998, and sporadically in 1999 and the year 2000.

He was one of the three main researchers and the general coordinator of the General Diagnostic Study on land tenure among the indigenous communities of the Atlantic Coast, carried out by the Central American and Caribbean Research Council.The diagnostic study had two main objectives. The formal part sought to cartographically reflect what the communities or some of the communities of the Caribbean Coast of Nicaragua considered to be their communal lands and their uses. The tacit purpose was modernization of the land registry. It also sought to define the boundaries of the territories of indigenous communities, to further clarify which were the

national lands on which the State could act. The diagnostic study was carried out in the course of implementing an agreement between Nicaragua and the World Bank.

The diagnostic study had five chapters. In the first chapter, called General Principles, it recommended that, given the history of the Nicaraguan State's relations with indigenous communities, it issue a statement expressing its willingness to solve such problems. Another recommendation was to complete the diagnostic study carried out by the Central American and Caribbean Research Council, as it was estimated that there are between 280 and 300 communities on the Caribbean Coast of Nicaragua, and the diagnostic study only covered about 50% of that total universe. To attain a comprehensive view of the claims, of the overlaps, of the land tenure problems generally, it was necessary to complete the diagnostic study. A third aspect of the chapter on General Principles was to deliver the results of the diagnostic study to the communities which had supplied the information. This is something which is not usually done, and it is a key aspect to begin a process of demarcation and land titling.

A second chapter, called Conflict Resolution, was very important because of the existing overlaps in the area. Overlaps are areas where several communities' use and possession of the territory coincide.

The key recommendation to deliver the results of the diagnostic study to the communities, through a massive workshop, was never carried out, nor have the measures required to implement the recommendations of the diagnostic study been taken. It was suggested that the State should resort to customary law and to existing relations among the communities, through their traditional authorities, to seek a solution to the conflicts. For this reason it was essential that solution of the conflicts take place within a framework in which the Nicaraguan State were no longer judge and party, which has been its historical role in this regard, for it to become instead a facilitator State. The State did not follow up on the recommendations made in the diagnostic study. Two bills were submitted by the executive branch of government in 1998 in connection with the communal lands of the indigenous communities of the Atlantic Coast, but none of those two projects was a response to what had been reflected in the diagnostic study.

Nicaragua consulted with the indigenous communities about the preliminary draft of the Land Titling Law for their lands. These consultations were attained through pressure by the indigenous peoples. A proposal was submitted by the two Regional Councils in September, 2000, and the existing perception at the national level is that this proposal will not be approved, because the political will to do so does not exist.

The former INRA, currently the Ministry of Agriculture and Forestry, has no authority for demarcation or titling of communal lands of indigenous communities. There has been no titling of indigenous communities since 1990, the formal power of land demarcation and titling has not been exercised.

If an indigenous community wants to attain titling of its land, there is no State institution or mechanism they can resort to. The only title that is found is that of the Ten Communities, granted by the Harrison-Altamirano Treaty Commission between 1905 and 1917. Territory of the other communities has not been titled. There is one other titling, as a result of the border conflict between Nicaragua and Honduras, which took place in the early sixties, in favor of the communities along the Coco River, but that titling is not in accordance with the needs and land use possession patterns of the communities in that territory. Interruption of land titling by Nicaragua may be due to the State seemingly responding to crisis situations. In other words, titling during the 1980s, essentially due to the war, was part of the strategy to turn a military conflict into a political discussion. So after the elections and with the climate of peace which

came to be established, the State seems to have no incentive to solve the historical claims of the communities.

One of the two consolidated maps included in the diagnostic study corresponds to the Northern Atlantic Autonomous Region, and it summarizes the problem of overlaps. All the communities, a total of 116, presented their claims as a block and they have the characteristic of overlapping. Only the Tumarín Community does not have this feature. The phenomenon of overlaps is more complex in the Awas Tingni Community, in the area between that Community and the Ten Communities.

The area claimed by Awas Tingni is roughly 90,000 hectares. The communities argued that their cartographic projection based on oral history has to do with the ethnography of the territory. Thus, bibliographic sources up to the 19th century state that the Miskito communities, which received title deeds from the Harrison-Altamirano Treaty, are on the coast. The rest, from the coastal area inland, are Sumo Mayagna communities, so the presence of Awas Tingni in that territory is not an anomaly, it is not an exception, but rather represents the settlement pattern of the Tuasca, Panamascas, and Wuga Communities. It is precisely because of the expansion of the coastal communities and of the banana and logging companies, in this case, that the communities withdrew toward the sources of the rivers. The presence of Awas Tingni in this territory, in the upper basin of the Wawa River, is part of the settlement pattern of the Mayagna communities in the territory.

The diagnostic study did not include the land claimed by Awas Tingni because their case was being dealt with legally, and another study was being carried out by doctor Macdonald, with a very similar methodology, which ensured the quality of that work.

The overlaps between Awas Tingni and the communities of Francia Sirpi, the Eighteen Communities and the Communities of Puerto Cabezas, were all part of the same pattern; there was nothing special, and the diagnostic study sought to establish the characteristic features of those overlaps. What was most important in the diagnostic study was to summarize all those overlaps, and not to focus on a single case which had the same overlapping characteristics, which was not very different from what happened in other areas, and where a study was being conducted with the same qualities as that being carried out for the diagnostic study. The land conflict between Awas Tingni and the group of Ten Communities was not documented in the diagnostic study, nor was the conflict between Awas Tingni and the Kukalaya Community, Esperanza Community, Santa Clara, and Francia Sirpi.

According to oral history, the Awas Tingni Community migrated. The settlement pattern of the communities is a pattern of territorial migration. One of the grounds of the State for denying possession rights to the territory has been to argue that these communities are nomadic. The Awas Tingni Community migrated from the traditional settlement of the Mayagna communities and also of the Miskito communities, seeking better conditions for their subsistence.

Since 1990 the State, through its corresponding agencies, has not given any title deeds to the communities.

g. Testimony of Brooklyn Rivera Bryan, an indigenous leader

He is a member of one of the Miskito communities, Lidaucra Sandy Bay, and he lives in the city of Bilwi, in the Northern Atlantic Autonomous Region in Nicaragua. When he held the position of Minister-Director of the Nicaraguan Institute for the Development of the Autonomous Regions (INDIRA), he coordinated development and social action plans of the State, at an

institutional level, in the autonomous region where most of the indigenous communities of Nicaragua are located. At that time, he was aware of the policies and practices of other State institutions regarding the indigenous communities, specifically those of MARENA and the Nicaraguan Institute of Agrarian Reform (INRA).

In connection with the situation of indigenous peoples and the titling of their lands, he points out that when he was Minister-Director of INDIRA he took steps to oppose the granting of concessions. He first addressed MARENA, in charge of deciding on such concessions. Since he did not obtain an appropriate response, he sent a communiqué to all the other Ministers, who at that time showed no interest. The situation was not dealt with.

INRA limited its work to addressing land claims by the cooperatives and landless peasants, granting them a plot of land, 50 manzanas per family, accompanied by technical assistance. INRA did not undertake any responsibility toward the indigenous communities, arguing that the law did not empower them to deal with their claims, and there was no other specific agency to deal with them. INRA transferred the claims of the indigenous communities to INDIRA, but the law did not give it the authority to deal with those specific claims, nor did it do so with MARENA, so the State lacked a legal instrument to address those claims.

When there were claims by the indigenous communities, he addressed the authorities at INRA to see how they could be dealt with, and he discussed the matter with high officials in the Cabinet. Even though INRA claimed that it had no authority, it issued certificates of land granted to former military, army and police entities, and the Nicaraguan resistance, lands which were within the territories of most indigenous communities.

Subsequently, INDIRA sought other mechanisms, based on the activities of the communities themselves, for which purpose it cooperated in the establishment of the Organization of Indigenous Syndics, who are the legal administrators of the lands of the communities. The Organization of Syndics of the Atlantic Coast of Nicaragua (OSICAN) was born. This organization prepared a bill through extensive consultation with the indigenous communities, and it was submitted to the National Assembly in 1996. As a result of that initiative, it was decided that the National Committee for Demarcation of Lands of the Indigenous Communities should be set up, and this was done in 1996, but it was not able to attain progress in the tasks entrusted to it.

Establishment of the National Demarcation Committee remained as a legacy to the Government which took office in 1997. During that Government there were some meetings between representatives of the States and indigenous peoples, who requested that indigenous representation be broadened; that request led to a bill which was submitted to the National Assembly on October 13, 1998.

When the State granted the concession to the SOLCARSA corporation, the witness held the position of Minister, for which reason he knows that, while MARENA was considering that concession, some representatives of the indigenous communities of Awas Tingni, Kakamuklaya, and others came to their offices to object, arguing that their territorial rights were being violated, since the area of the proposed concession coincided with their ancestral territories.

Together with representatives of the communities, he contacted the higher authorities at MARENA to state their concerns and demands. However, the position adopted by that Institution, as by the Government, was that empty areas or wastelands belonged to the State, that the indigenous communities had no title to the land, and that the concession would bring benefits because it would generate employment and income. These concerns were raised directly with the

Minister of MARENA, first Milton Caldera, then his successor Claudio Gutiérrez, and then Roberto Araquistain y Láinez, who were directly in charge of policies pertaining to concessions.
To grant a concession to a firm, first the criteria and policies for the country's forest development had to be established; however, that had not yet been done, so concessions were granted without well adjusted criteria to ensure indigenous property rights and protection of the environment. MARENA only required the firm to submit a forest management plan. The witness noted that some of MARENA's officials participated in the consultancy groups that prepared the management plans, so there was a conflict of interest.
The indigenous communities of the region were never consulted on whether the concession to SOLCARSA was convenient, nor was any inspection carried out in the area. Neither was there a concrete commitment to investigate and appropriately address their complaints.
Under Law No. 14, 28 indigenous communities that benefited from the agrarian reform were given titles. The witness knows that a draft Indigenous Communal Property Law was submitted to the National Assembly, and there were consultations to analyze that bill.
The Awas Tingni Community, which was the one directly affected by the concession, has possession which goes back to the time before the creation of the Nicaraguan State, and like most indigenous communities it has a historical right to the lands it occupies and its resources. The concession to SOLCARSA damages them, as the logging would take place in their territory, which the community have traditionally occupied to live on and to carry out cultural, economic, and social activities. Maps and studies effectively support the right they have, as communities, to those areas and to their ancient places.

h. Testimony of Humberto Thompson Sang, a member of the Lanlaya indigenous community

He is a Nicaraguan national. He has lived most of his life in the Lanlaya Community, of the Miskito ethnic group, which he is a member of, close to the city of Puerto Cabezas, Nicaragua. He has been a member of the Regional Council, and in 1998 he was elected for a four-year period. He is also a member of the indigenous organization YATAMA.
On March 29, 1996, he filed an amparo remedy against the State, with the objective of suspending the concession made by the State to the SOLCARSA corporation. The remedy was requested by the communal leaders of the Awas Tingni Mayagna Community. Almost a year went by before the Court decided on the remedy. The decision cancelled the concession to the firm and ordered that it be suspended. Despite that, the firm continued its operations.
Engineer Jorge Brooks, who was a MARENA official, took some steps to promote the SOLCARSA concession.
After the decision by the Supreme Court, SOLCARSA covered the expenses to set up a meeting in Puerto Cabezas, including the cost of taking all the Councilmen of the region from the municipalities to Puerto Cabezas. After the meeting in Puerto Cabezas, Jorge Brooks offered each of the Council members 5,000 cordobas to vote in favor of the concession to the SOLCARSA corporation.
On January 22, 1998, the witness filed another remedy for the concession to be cancelled. Eight months later, the Court cancelled the concession. However, the situation of indigenous land titling or demarcation remained as before. The State did nothing about it.

The Atlantic Coast has an autonomous status which has been recognized since 1987 by Law No. 28, according to which any concession granted by the State has to be consulted with the indigenous communities and also with the Regional Council.
The witness knows of an unconstitutionality remedy filed against the concession to SOLCARSA, in which the Awas Tingni Community was a party to the suit, and as a result of which the concession was declared unconstitutional. He also knows that MARENA ordered the concession to be suspended shortly after being notified by the Supreme Court of Justice that this concession was unconstitutional.
He has no knowledge of the Management Plan, which is a prior requirement to begin logging, being approved by the State for SOLCARSA. He knows that MARENA, in Ministerial resolution No. 02-97, fined SOLCARSA for illegal logging outside the area of the concession.
The Awas Tingni Community occupies ancestral lands, is an indigenous community, and "historically it is their territory, it is their land, no one can take it away (from them), and the State is well aware of this, totally, this territory belongs to the Awas Tingni Community."

i. Testimony of Wilfredo Mclean Salvador, a member of the Awas Tingni Community

The witness was born in the Awas Tingni Community. He belongs to the Mayagna ethnic group. Within the Community, he holds the position of Person Responsible for the Forest. He is also the Person Responsible for the School Center at Awas Tingni.
He attended a meeting held at the Presidential House in February, 1997. The Syndics, Community delegates and their advisors also attended the meeting. That time they stated to the President of Nicaragua their request for territorial demarcation of Awas Tingni, and they informed him that the SOLCARSA logging firm was entering into Community territory. The President said that he understood they have rights to those lands, and that he would resolve the case, and he then organized a meeting with the Minister of MARENA. That same day the Minister received them at the Ministry. At that meeting, they were told that they would go to the Community to investigate.
Subsequently, the SOLCARSA concession was declared unconstitutional. However, the State officials never went to the Community to seek to resolve to their request for demarcation of the land.
Between March 28 and 30, 2000, they attended another meeting in Managua, at the Ministry of Foreign Affairs. The Community requested a hearing with the authorities due to its concerns about demarcation of their lands. Twelve delegates of the State attended that meeting. Doctor María Luisa Acosta, the representative of the Community, was the only one of their advisors who was allowed to be present at that meeting. They did not allow international advisors to be present; they stated that it was not necessary to go before the Inter-American Court, and that it was better to solve the case in Nicaragua.
The State told them that it was better to find a solution to the case between the government and the indigenous group. The representatives of the latter showed the delegates of the State the map which represented the demarcation of the lands belonging to Awas Tingni, according to the claims of the Community. The State's delegates answered that they did not recognize that demarcation, as it had not been done together with the State authorities. The representatives of the State offered to give the Community title to 12,000 hectares of land, with more than 50 head of cattle and other resources and materials for their development. The legal advisor was not present at the time the representatives of the State made this proposal. The State arrived at this

figure because according to the Agrarian Reform Law, each family was granted 58 hectares, and therefore, given the population of the Awas Tingni Community, that was the corresponding area. the Community did not accept the deal, because the offer was not in accordance with its land title claims, according to the map submitted by the Community.
As regards the request for land titling made to the Executive, the answer they received was when they visited the President and the Minister, who said that they would study it, but they did not go to give them a title deed. The indigenous group did not request land titling from the Courts of Justice after they received no response from the Executive.
The Awas Tingni Community has been struggling for a long time, requesting that Nicaragua provide a solution to their case, requesting demarcation of their lands.

j. Expert opinion of Charles Rice Hale, anthropologist specializing in indigenous cultures

His work has concentrated on the study of indigenous cultures, especially in Central America and more specifically in the Atlantic Coast of Nicaragua. To carry out these studies, he has lived roughly five years in the Atlantic Coast. The studies he carried out in that coastal region, during the first three years, were ethnographic studies based on anthropological methods. Subsequently, he also carried out studies and mapping in the context of a diagnostic study on the claims of the indigenous peoples of the Coast. He speaks Miskito, which is one of the main languages used by the indigenous peoples. He lived mainly in a town called Bluefields, and the community where he conducted more intensive fieldwork is called Sandy Bay Sirpe, which is located to the North, at the mouth of the Río Grande. In the context of the diagnostic study he also traveled throughout the Atlantic Coast and spent more time working more intensively in the extreme northern area, near the border with Honduras, at Río Guanqui, Río Coco.
The general diagnostic study on land tenure in the Atlantic Coast communities, which the State has referred to in its reply to the application by the Commission, is a study begun in 1997 in which he was directly involved as coordinator of the research. This diagnostic study included an ethnographic study and the mapping of some 128 indigenous and black communities. It was based on two key questions: what are the claims of these communities as regards their rights to communal land, and how do they justify their claims. The study was conducted community by community, using a consistent methodology to answer those two questions in connection with the communities included in the research universe.
The indigenous peoples of the Atlantic Coast are primarily three: the Miskito, the Mayagna, and the Rama. There are various groups which have existed since before the Europeans arrived. The groups surviving to the present day are the Mayagna, of whom there are three important groups: Panamaca, Tuaca, and Urba, who at the time of the arrival of the
Europeans settled in the area of land use and possession, which is the same until now.
The three key land tenure characteristics are an extensive use of the land, the environment, and its resources. There is a place of land use and possession and, depending on economic activities, they move to other places to carry out their economic activities.
There have been few concrete actions by the State regarding recognition, titling, and endorsement of communal rights to the land. Only twice has there been land titling more or less in accordance with what the community was claiming; that was in 1987, for two Mayagna communities, out of roughly 300 communities in all. Since 1990 there has been no action directed toward that goal.

In some cases, land titles are agrarian allocations which are less than the community's claims. Agrarian allocations are a step prior to legal titling, and in many cases the process is incomplete, leading to a statement of intent, but without legalization nor the guarantees that the community requires to protect its lands from third parties. There is no evidence of actions tending to ensure use and possession by the communities.

INRA is seen by the indigenous communities as a hostile actor, representing a vision which is not in accordance with their demands nor with the understanding of indigenous culture itself. Its main actions have been for the benefit of immigrant peasant farmers in the Western part of the country. The MARENA office which has had a greater presence in connection with the indigenous communities is the one which until 1998, if it has not changed its name, was called ADFOREST, which was in charge of granting concessions. In the perception of the indigenous communities, it is an entity which has been granting concessions to lands and resources which belong to them, for which reason it is seen as a threat to their interests.

The witness is aware of the territorial claim by the Awas Tingni Community. His sources of knowledge on Awas Tingni include the ethnographic study carried out by Theodore Macdonald and the respective documents. The work by doctor Macdonald applied a set of methodological criteria similar to those applied in the diagnostic study carried out by the Central American and Caribbean Research Council. As regards cartography, professor Macdonald's work is similar, in terms of its rigor and content, to the study on 128 communities included in the aforementioned diagnostic study.

The ancestors of the current inhabitants of Awas Tingni always used and possessed this territory. In prior times they were a population that lived in different places. With the arrival of the Moravian Missionaries at the turn of the century, which is documented in the daily press, there was a process of "nucleated settlement" of those inhabitants, first in the Community of Tuburús, in the late 19th and early 20th centuries. In 1945 the Community of Tuburús moved to Awas Tingni, for several reasons. The forebears of that community had lived in this territory since ancestral times, despite the fact that there had been a process of "nucleated settlement". The sites for subsistence, such as hunting and fishing, and the key sites which have spiritual or cultural value, are a factor defining the traditional territory.There are key sites that are spiritual sites and are located within the area claimed.

The indigenous communities closest to the Awas Tingni Community are not of the same Mayagna ethnic group. They are the communities of Tasba Raya, which are Miskitos, and the Ten Communities, as they are called. There is documentation pertaining to the arrival of the communities of Tasba Raya, Francia Sirpi, Wisconsin, Santa Clara, and so forth, in the sixties, and more recently the arrival of Awas Tingni. The Ten Communities have been in the area of Awas Tingni for quite some time, but they are quite distant from each other.

It is very common for there to be overlaps in all the areas included in the diagnostic study. There are overlaps throughout the Atlantic Coast. The overlaps are areas that the inhabitants of two communities that claim the same area use jointly, in some way. This is not necessarily in a conflictive sense. There are no title deeds granted over the area claimed by the Awas Tingni Community. There are titles of the Ten Communities, but this is a small percentage, and there are no overlaps with what these communities already have title to. Actually those lands are not yet titled, but there is a project to title them. Reference is made to projection by each community, which would be the basis for a subsequent process which has not yet taken place.

The data for the Awas Tingni Community have been analyzed in connection with their land claim, and it has been found that the extent of the claim by Awas Tingni is precisely intermediate

in terms of the range of claims by other multi-communal blocks included in the diagnostic study. Each communal block in turn has some overlap with the neighboring community.
What has been found to function as a righting mechanism for the management of these overlaps, since they are communities that claim use and possession of the land without denying its use by other communities, is the legal recognition of that shared land, whether joining and creating a single territory among the two communities, or through a legal instrument which explicitly recognizes the area as one that is shared. There are examples of this type of solution in the same area of Awas Tingni with the neighboring communities of Francia Sirpi and Tasba Raya. What is sought is to identify the area they want to manage jointly, and in this way to carry out the legal process prior to an agreement among the parties. In some cases there will always be conflict. The vast majority of overlaps suggest the possibility of an agreement based on existing legal forms or a new legal instrument which recognizes what in actual practice is joint use and possession by two communities.
No requests made by indigenous communities for the title deeds to the land to be individual have been found. Claims are almost always collective, as a group of members of a community claim collective possession and use rights. There is no individual possession nor a concept of such a type of right as regards title deeds; instead, what indigenous communities request is a collective title deed.

k. Expert opinion by Roque de Jesús Roldán Ortega, attorney

The expert witness worked at the Colombian Agrarian Reform Institute (INCORA) for 18 years. At INCORA, he worked for two years in peasant-farmer land titling programs, and for 16 in the office in charge of legalizing land in favor of Colombian indigenous groups. He worked as head of the National Directorate of Indigenous Affairs in the Ministry of the Interior. He has been an international consultant on indigenous legislation in several Latin American countries.
He has carried out two consultancies in Nicaragua. In 1995 he did a consultancy for MARENA, and in 1996 one for INRA. The consultancy for INRA took place within the framework of a program for land administration in the Atlantic Region, which was carried out by that agency with support from the World Bank. The consultancy sought to determine the feasibility of land titling within the Biological Corridor Program conducted by MARENA under the auspices of the World Bank.
He recently published a book under the title “Legality and Rights on the Atlantic Coast”, which is a critical review of the Nicaraguan legal system as regards the issue of the rights of ethnic minorities in the country, and it also refers to the attempt to reform the legal system pertaining to land in Nicaragua.
In Nicaragua there are two indigenous sectors: one located in the Pacific region, strongly tied to the market economy and quite integrated to patterns of national culture, and the other located in the Atlantic region, which has strong features of its traditional culture. The demands of indigenous groups on the Atlantic Coast are based on historical reasons, due to millenary occupation of that territory by those peoples, since they were already there at the time of conquest or European occupation of that territory by the British and the Spanish. Archaeological and/or anthropological studies show that these peoples had occupied those territories for several centuries before discovery. This millenarian occupation is expressed in substantive actions by the inhabitants in that territory, by activities for their subsistence, such as hunting, fishing, and gathering.

Nicaragua has signed commitments to recognize indigenous lands, such as the signing of the Harrison-Altamirano Treaty; there have been subsequent commitments to legally recognize indigenous lands, especially those adopted in 1987 as modifications to the Constitution and the "Autonomy Statute".

The policy for treatment of indigenous peoples in all countries of Latin America, since the discovery, was to seek an accelerated integration of these peoples into the life patterns of the rest of national society. That policy continued for a long time. Gradually, the countries have been changing their Constitutional norms, to the point that now a number of nations have norms that recognize the cultural diversity of the respective national societies, the existence of indigenous peoples, the right of these peoples to maintain their cultural diversity forever, and the right to legalize their lands. Nicaragua was one of the first countries in Latin America to undertake such a process of recognition. The existence of indigenous peoples as culturally differentiated societies vis-à-vis the rest of society, with specific rights that refer primarily to collective land possession, has been accepted at a Constitutional level. Since the adoption of the 1987 Constitution and the Autonomy Law, which established that indigenous peoples have the right to recognition of their ownership of the land, of their possession of the land, since then the indigenous peoples can be considered full owners of the land, and if they have no written titles, they can demonstrate their possession through different types of evidence. Adoption of these norms should force the State to abstain from adopting decisions regarding the territories occupied by the indigenous.

The Autonomy Statute also states that ownership of indigenous lands by indigenous communities is non-attachable, imprescriptible, and inalienable. In actual practice there are some problems because the Agrarian Reform Law, which authorized giving land to indigenous peoples, was adopted one year before the Constitution and the Autonomy Law. And that Agrarian Reform Law did not recognize a special nature of indigenous property, but rather an ownership according to the terms of Nicaragua's Civil Code, in other words, that it is an attachable, prescriptible, and alienable property, located within trade and granted with the same characteristics as land given to peasant farmers, after studies which are similar to those carried out before giving lands to peasant farmers.

Indigenous property is private property which belongs collectively to an indigenous people, community, or group. Transactions disposing of it are restricted, taking into account that it is property assigned to a group which is a people and wishes to perpetuate itself as a people, and demands that the population and territory be maintained.

The lands occupied by the indigenous peoples of the Atlantic Coast have been seen as national lands, government lands, lands which the State can freely dispose of, and as such they are being given to peasant farmers who have been settling in those regions. The indigenous communities have also been given title deeds to land, but these titles are of the same nature as those to lands given to peasant-farmers.

Certain changes have to be made in the country's legal system. First, there is a need to clarify or develop some existing Constitutional norms, to develop them in terms of the law. A clear procedure must be established to guarantee the indigenous peoples' access to full ownership of their lands, through a procedure which they can manage according to their tradition and culture, which recognizes the imprescriptibility and non-attachability of those lands. There is also a need to further the definition of certain aspects pertaining to property and natural resource management, since even though according to the Constitution and in the Autonomy Law they belong to the indigenous peoples, they contradict certain norms established by the State. Such is

the case, for example, of certain territories which have been defined as “parks” within the Atlantic Region. There is a need to clarify what rights the indigenous peoples and the State have over those territories. A system must be set up for administration of the lands once they are granted by the State.

The ongoing process of consultation on the draft bill for titling of indigenous communal property in Nicaragua is a significant step forward, as it has created opportunities for participation of and consultation with the indigenous peoples.

Indigenous peoples live off the land; in other words, the possibility of maintaining social unity, of cultural preservation and reproduction, and of surviving physically and culturally, depends on the collective, communitarian existence and maintenance of the land, as has been the case since ancient times. The indigenous groups themselves, in some regions, are interested in the utilization of their resources, but experience has proven that using natural, renewable or non-renewable resources without adopting special measures to ensure stability of the indigenous people on the land -measures which must respect their culture and avoid environmental damage- causes catastrophic damage.

There is no clear uniformity in all countries of Latin America on whether there can be property rights without a title deed. Certain legislation, as is the case, for example, of Colombia, accept that indigenous peoples are owners of land and that the title deed is merely a recognition, a form of evidence. This position can be maintained by indigenous peoples in all countries which have signed the conventions of the International Labor Organization. Nicaragua constitutionally accepted the property rights of indigenous peoples, when it adopted the Autonomy Statute, because it declared that indigenous peoples have rights to the land, the right of have the lands which they have traditionally occupied.

The countries that carried out Constitutional reforms have effectively contributed to providing greater stability to indigenous peoples and to substantially improve relations between those population groups and the rest of the country’s population, as well as with the State.

He has not specifically studied the situation of the Awas Tingni Community. The studies he carried out refer to an analysis and review of the legal system in Nicaragua as it pertains to the territorial rights of indigenous peoples.

The experience in Latin America regarding the issue of communal property provides clear illustration. All the policies of Latin American States, for almost 180 years, were geared toward the elimination of forms of collective property and autonomous forms of government of the indigenous peoples. This contributed to the elimination of many of the indigenous peoples, as it led not only to their cultural disappearance but also to their physical disappearance. Experience in the course of the last 20 years, in those communities which have managed to attain collective property of the land and have received some sort of support from the State to develop an economy within those spaces, proves that maintaining the communal system becomes a very powerful force for transformation and development for the benefit of these communities and of the respective countries.

In the case of Nicaragua, if a procedure had been defined for demarcation of the territories and titling of indigenous lands, following the adoption of the Constitution and the Law on Autonomy, bearing in mind the number of communities that exist on the Atlantic Coast and progress of those same communities in self-definition of their own life space, the time taken to grant legal title to those lands could have been shortened considerably, to one, two, or three years.

l. Expert opinion of Lottie Marie Cunningham de Aguirre, attorney

The expert witness is a resident of Ciudad Bilwi, in the Municipality of Puerto Cabezas, Northern Atlantic Autonomous Region. She is an attorney and notary public. She has 6 years' experience working with indigenous communities on the Atlantic Coast of Nicaragua, and has provided legal advice to indigenous communities in the various territories of the RAAN, both in the Municipality of Puerto Cabezas and in that of Waspam. She is a Miskito Indian, and her mother tongue is Miskito, which gives her some possibility of understanding the phenomena in that community.

In the functioning of the judicial system in her country, indigenous communities face problems due to lack of harmony between substantive law and customary law as well as delay of justice. The exclusive use of the Spanish language in judicial proceedings poses another difficulty; there is a law on languages according to which the languages of indigenous peoples and ethnic communities are official in the autonomous regions, but the judges do not appoint translators nor interpreters for members of indigenous communities.

The Constitution of Nicaragua protects property rights of indigenous communities. Articles 5, 89 and 180 of that Constitution recognize the right to property and also establish direct guarantees for such rights of indigenous peoples, with no need for subsequent specification.

Regarding domestic remedies under Nicaraguan legislation, the only existing one is the amparo remedy. According to Law No. 49, the Law on Amparo, the indigenous communities have to file this remedy before the Appellate Court. This law states that the amparo remedy is to be filed before the Appellate Court which "hears the first proceedings up to the act of suspension, and the latter part up to the definitive judgment will be heard subsequently by the Supreme Court of Justice".

Indigenous peoples have resorted very little to the amparo remedy, because formerly the RAAN had no appellate court, which was only established in 1999. In 1982 the Appellate Court of the Department of Matagalpa was set up, far away from the Awas Tingni Community and other indigenous communities, and therefore the communities had to travel -because there was no other way- to Bilwi, then to the capital of Nicaragua, and finally to Matagalpa. It took them three days to file the remedy.

The Awas Tingni Community filed an amparo remedy on September 12, 1995, and justice was delayed in this case. The law establishes a 5-day term for the Court where the remedy was filed to decide whether it accepts or rejects it, and it is then passed on to the Supreme Court of Justice of Nicaragua, which must decide on it in 45 days. The remedy filed by Awas Tingni was not decided within the 45 days, but rather almost two years afterward, on February 27, 1997, without responding to the applicant's claims.

A second amparo remedy was subsequently filed because the first one was not rejected on the basis of land titling, but rather for other reasons, such as not having consulted the Regional Council of the RAAN. With the request made in this second remedy, which was accepted, the concession to SOLCARSA was suspended.

The Court accepted the remedy of unconstitutionality because the Council in full had not given its approval. Thus, the Nicaraguan Court declared that the unconstitutionality remedy was in order, and it annulled the 1997 concession. Once the concession was declared unconstitutional, the Regional Council met and ratified the concession.

According to the law in Nicaragua, compliance with the decisions of the Supreme Court of Nicaragua in the case of amparo remedies must be within 24 hours. However, compliance with

the decision of the Supreme Court on the aforementioned remedy did not occur within that period, but rather in approximately one year.

While compliance with the order of the Supreme Court of Nicaragua was still pending, the witness heard that the company was fined for felling precious wood trees, among other things. It was a 1,000,000 cordoba fine. She also knows that the General Comptroller's Office approved that fine and that the Comptroller's Office punished the official authority in charge once again. The Comptroller's Office determined that the sanction should be at least twice the amount of that fine, and requested that the Minister responsible pay it individually for not having enforced the law, but the Minister never made the payment; furthermore, this Minister has recently had problems with the Comptroller's Office again in connection with the felling of precious wood trees in Nicaragua.

In her opinion, there is no other judicial procedure which has proven to be effective in Nicaragua for enforcement of Constitutional norms in connection with indigenous peoples. To improve the functioning of the judicial system as regards the indigenous communities, it would be necessary to modify Law No. 49 on the amparo remedy, which indicates the procedures for filing this remedy, a procedure which must be established in such a way that it is simple, agile, and effective, for indigenous communities to have access to justice; the Organic Law of the Judiciary must also be modified for it to be in accordance with the Constitutional framework and to establish that judicial authorities can act ex officio in petitions filed by indigenous communities regarding their territorial right; and the Law on Demarcation and Titling of Traditional Lands of the Waspam Indigenous Communities and Waspam must be enforced, be published and be effective, for those communities to have access to a procedure to resolve their claims on territorial rights. The bill was supported by the two Regional Autonomous Councils and officially submitted to the National Assembly. Article 18 of the Statute on Autonomy of the Autonomous Regions is especially interesting, as it establishes that the administration of justice must be subject to special regulations, taking into account the cultural specificities of the indigenous communities and ethnic communities.

On the other hand, the witness attests to the ancestral nature of possession by Awas Tingni since this is an indigenous community with its own language, its own culture, and historically established possession in its territory. She is aware that the Awas Tingni Community requested titling of its land through administrative procedures, that they exhausted all such procedures, and nevertheless the Community has received no response from the administrative authorities.

As an attorney she is familiar with the concept of administrative procrastination. It is constituted in accordance with the will of the authorities. Once it has occurred, and when the administrative path has been exhausted, the communities have no other option than to resort to the judiciary, in other words, the only procedure is the amparo remedy in light of omission by the authorities. The period to file an amparo remedy is 30 days after notification of the act or omission by the authorities. Through an amparo remedy, the Awas Tingni Community requested titling of its ancestral lands via the judiciary. The witness knows of actions carried out by Awas Tingni before the Courts to promote its rights.

Regarding the request that the logging concession be suspended, the amparo remedy filed by the Awas Tingni Community was rejected due to the State's constant disrespect for recognition of indigenous rights of the communities. From a procedural standpoint, the courts did not discuss the reason why the remedy was rejected.

For the indigenous communities, there is no other procedure through which they can assert their ancestral rights, which are recognized in the Constitution.

Article 18 of the Autonomy Statute of the Autonomous Regions states that the administration of justice must be subject to special regulations, but it is a general law for which regulations have not been developed. There is no procedure that allows the judicial authorities to take into account the specificities they should consider.

m. Testimony of Marco Antonio Centeno Caffarena, Director of the Office of Rural Titling in Nicaragua

The witness lives in Managua, Nicaragua. He has been a Government official since 1991, having held high-level positions as an advisor and on issues pertaining to property. He is currently the General Director of the Office of Rural Titling.

To explain the history of land titling in Nicaragua, one must differentiate three periods or stages in the course of the 20th century.

The first moment was that of implementation of the Treaty between the United Kingdom and the Republic of Nicaragua, the Harrison-Altamirano treaty, as it was called. Article three of this treaty ordered that title deeds to a specific area be granted to the existing indigenous communities of the Nicaraguan Miskitia. Each four-member household unit was to be granted title deed to eight manzanas of land. If the household had more than that number of members, they should receive title deed to an additional two manzanas per person.

The objective of the treaty was to grant title deeds to all the ethnic groups or indigenous communities inhabiting the Atlantic Coast of Nicaragua at that time. Between 1915 and 1920, more than 80,000 hectares were titled, and 60 title deeds were issued which are duly registered in the Public Real-Estate Record Office at Bluefields, which is the only one on the Atlantic Coast. In addition, two titles were granted to the Tilba-Lupia community, the registration numbers for which are 2111 and 2112. At that time, the Mayagna or Sumo ethnic groups were granted title to a considerable amount of land, roughly 3,690 hectares, taking into account the results of the 1950 population census, which estimated that population at roughly 407 individuals in the Atlantic Coast region of Nicaragua.

The procedure followed during implementation of the Harrison-Altamirano Treaty was an elementary one. The Titling Committee for the Mosquitia was set up, and it visited the places where title deeds were to be granted or where there were communities, and the communities stated their demands. These demands “were published, so that if any one felt that there was an infringement, they could object”. If there were no objections, the land was measured and title deed subsequently granted, but if someone objected, a friendly settlement was sought by providing compensation for the areas where others were affected by the titling.

Subsequently, during the sixties and seventies, there was a second moment during which the Nicaraguan Agrarian Institute (IAN) granted title deeds following an agrarian criterion; for this reason, the comprehensive approach to titling gave way to a period in which title deeds to additional lands were granted under the 1963 Agrarian Law. At that time, the indigenous communities received title deeds to 62,500 hectares. A total of 28 communities received title deeds. The Mayagna or Sumo ethnic groups received title deeds to 14 thousand hectares. During this period there was a conflict between Nicaragua and Honduras, and as a consequence some communities decided to return to Nicaragua, and they received title deeds; Francia Sirpi and Wisconsin were among those communities.

The period of the Revolution, during the eighties, is another moment. Under a new agrarian reform law, based on the criterion of additional lands and under the institution called MIDINRA,

29 communities received title deeds, but the exact number of hectares was not recorded in the Real-Estate Record Office. A study of the institutions' records and those of the Real-Estate Record Office was only able to establish that title deeds had been issued to 28,000 hectares.

During the 1995-98 period, a very complete diagnostic study was carried out on land tenure in the indigenous communities. This diagnostic study reflected the situation, according to the consultants' discernment, of the communities mentioned at that time. The diagnostic study did not refer to the case of the Awas Tingni Community.

An especially interesting point of land claims on the Atlantic Coast of Nicaragua has to do with the establishment of blocks. These blocks have a very positive aspect, as they strengthen management by the communities. However, there is a problem insofar as recently established communities, called "daughter communities", have been added to the "mother communities" which received title deeds from the Titling Committee for the Mosquitia. The former have separated from the latter, attaining a certain autonomy, and now they intend to claim title to the land by invoking ancestral rights.

No formal request for land titling by the Awas Tingni Community has been found in the archives of the institution which today bears the name of Office of Rural Titling (formerly INRA, and before that MIDINRA). However, at some point during the case proceedings, the Inter-American Commission supplied a photocopy of a register "of visits or incoming documents", where a request by two representatives of the Community, demanding 16 thousand hectares of land titling, was recorded. Nevertheless, the witness could not specify the year in which that claim took place.

The witness has knowledge of the study prepared by doctor Theodore Macdonald, which seeks to show ancestral occupation of their lands by the Awas Tingni Community. In this regard, he states that the Office of Rural Titling has addressed the issue of the Community, "in the understanding that it has already become known and that it is an issue which they must document […] institutionally", for which reason the aforementioned Office hired a Nicaraguan expert, Ramiro Garcia, an archaeologist employed as a researcher by the National Museum of Nicaragua and an advisor to the Nicaraguan Cultural Institute, to evaluate that study.

The institutional criterion of the Office that he represents is that the Awas Tingni Community does not have ancestral occupation of the lands to which it is requesting title deed.

In fact, the Awas Tingni Community has conflicts of interest regarding land titling with communities which already duly received title deeds from the Titling Committee for the Mosquitia, but especially with communities or groups which received title deeds during the IAN period, specifically with the Communities of Francia Sirpi, Wisconsin, Santa Clara, Aminrosita 1, Aminrosita 2, as well as the Eighteen Communities and the Ten Communities, as they are called. This has made it impossible to issue title deeds in an expeditious manner in response to the petition or claim by the Awas Tingni Community. However, the office headed by the witness has never denied that Community the right to land titling.

As a consequence of the draft bill submitted by the Executive to the Legislative Assembly of Nicaragua in October, 1998, there have been a number of consultations with the communities and the authorities of the Atlantic Coast autonomous region, as well as with Nicaraguan civil society.

During the period covering the sixties and seventies, the IAN issued 28 title deeds to the indigenous communities. After 1974, during the Government of General Anastacio Somoza, title deeds were issued for which he does not have precise figures, but according to the records of the Regional Titling Office, roughly 68,000 hectares were granted.

The claim by the Awas Tingni Community is contradictory. Their request, according to the competent authority on geographical referencing and cartography in Nicaragua, which is the Nicaraguan Institute of Territorial Studies, INETER, covered roughly 156,000 hectares.
No indigenous communities have received title deeds during the last 11 years, and in the year the witness has been at the respective institution, there has been no land titling in favor of indigenous communities, basically because the legal framework is incipient. Therefore, "it would be entirely inadmissible for the institution […] to officiously grant [indigenous title deeds] following criteria which perhaps would not be in accordance with the spirit [to be] reflected in the law".
The witness cannot specify the number of indigenous people there are in Nicaragua, but that information is in the documents of the 1995 census, although an inventory by the Office of Rural titling in 1991 listed 230 communities. 60 of these received title deeds from the Titling Committee for the Mosquitia; 7 additional communities were identified in a study by the University of Austin, Texas, under contract; 28 communities received title deeds during the IAN period, and 29 during the eighties, under the institution called MIDINRA. Therefore, according to this basic calculation, 124 communities have received title deeds.
Regarding the claim by the Awas Tingni Community, the Office of Rural Titling undertook the task of documenting their case, as it was contradictory in terms of the area claimed, since Awas Tingni has boundary problems. In this sense, a document submitted by the Inter-American Commission to the Court includes a map with the location of an area of roughly fifty-some thousand hectares. The Institute of Territorial Studies digitalized and geographically referenced that information, and it gave a completely contradictory area.
The fact that there is this legal action and that it has not yet been decided is an additional element which does not allow titling in favor of Awas Tingni, in an unofficial manner and following criteria which might contradict the spirit of a law which has not yet been adopted.
There has been criticism of the report prepared by Theodore Macdonald, which refers to the methodological aspects of the study, as it favored oral sources and did not compare them to archaeological sources, nor were ethnographic techniques combined with elements of historical demography, nor were linguistic studies conducted to corroborate that this is a compact community belonging to a clearly defined ethnic group. Furthermore, this study was inconclusive regarding the ancestral nature of occupation of the area claimed.
There are Constitutional norms pertaining to land titling and recognition of the rights of the indigenous communities, but the Office of Rural Titling is not the agency which should recognize them, as its role is merely to make them operative. As a titling institution, it has delegations in areas where there is indigenous presence, which are there precisely to detect and receive titling requests; but according to the Statute on Autonomy of the Atlantic Coast, the local authorities have the responsibility of providing assistance to the population groups and contributing to appropriate processing of their claims.

VI. EVALUATION OF THE EVIDENCE

84. Article 43 of the Rules of Procedure indicates the appropriate procedural moment to submit items of evidence and their admissibility, as follows:

Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto and, when appropriate, in the document setting out the preliminary objections and in the answer thereto. Should any of the parties allege

force majeure, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.

85. Article 44 of the Rules of Procedure empowers the Court to:

1. Obtain, on its own motion, any evidence it considers helpful. In particular, it may hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems to be relevant.
2. Request the parties to provide any evidence within their reach or any explanation or statement that, in its opinion, may be useful.
3. Request any entity, office, organ or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. The documents may not be published without the authorization of the Court.
[…]

86. It is important to point out that the principle of presence of both parties to an action rules matters pertaining to evidence. This principle is one of the foundations for article 43 of the Rules of Procedure, as regards the time at which evidence must be submitted for there to be equality among the parties.

87. Given that the purpose of evidence is to demonstrate the veracity of the facts alleged, it is extremely important to establish the criteria applied by an international human rights court in evaluating items of evidence .

88. The Court has discretional authority to evaluate testimony or statements made, both in writing and by other means. For this, it can adequately evaluate evidence following the rule of "competent analysis", which allows the judges to arrive at a conclusion on the veracity of the facts alleged, taking into account the object and purpose of the American Convention. [FN9]

[FN9] cfr. Ivcher Bronstein Case. Judgment of February 6, 2001. C Series No. 74, para. 69; "The Last Temptation of Christ" (Olmedo Bustos et al.). Judgment of February 5, 2001. C Series No. 73, para. 54; and Baena Ricardo et al. Judgment of February 2, 2001. C Series No. 72, para. 70.

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89. So as to obtain the greatest possible number of items of evidence, this Court has been very flexible in admitting and evaluating them, following the rules of logic and based on experience. A criterion which has already been mentioned and applied previously by the Court is non-formalism in evaluation of evidence. The procedure established for contentious cases before the Inter-American Court has its own characteristics that differentiate it from that which is applicable in domestic legal processes, as the former is not subject to the formalities of the latter.

90. For this reason, “competent analysis” and the non-requirement of formalities in admission and evaluation of evidence are fundamental criteria for its evaluation, as evidence is assessed rationally and as a whole.

91. The Court will now assess the value of the items of evidence tendered by the parties in the instant case.

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92. Regarding the documentary evidence tendered by the Commission and by the State, which was neither disputed nor challenged, nor were questions raised on its authenticity, this Court attaches legal value to that evidence and admits it into evidence in the instant case.

93. The documents “Awas Tingni. An Ethnographic Study of the Community and its Territory”, prepared by Theodore Macdonald in February, 1996; “Ethnographic expert opinion on the document prepared by Dr. Theodore Macdonald”, written by Ramiro García Vásquez, and several maps of the territory occupied by the Awas Tingni Community, were challenged as regards their content. The Court takes into account the various positions of the parties regarding said documents; nevertheless, the Court believes it useful to admit them into evidence in the present case.

94. Regarding the newspaper clippings tendered by the Commission, the Court believes that even though they are not properly documentary evidence, they can be appraised insofar as they reflect publicly or well-known facts, statements by high-level State agents, or corroborate what is established in other documents or testimony received during the proceedings. [FN10]

[FN10] cfr. Ivcher Bronstein case, supra note 9, para. 70; Baena Ricardo et al. case, supra note 9, para. 78; and Constitutional Court case, Decision of January 31, 2001. C Series No. 71, para. 53.

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95. The documents tendered by Marco Antonio Centeno Caffarena on November 21, 2000, at the public hearing, were assessed by the Court, and in its Order of November 24, 2000, this Court admitted into evidence, pursuant to article 44 of its Rules of Procedure, two of the eight documents he submitted (supra paras. 63, 64 and 79).

96. The document “General diagnostic study of land tenure in the indigenous communities of the Atlantic Coast”, prepared by the Central American and Caribbean Research Council, was tendered by the State on December 20, 2000, as requested by the November 24, 2000 Court Order (supra paras. 64, 65 and 80). Since that document was requested by the Court, based on article 44 of its Rules of Procedure, it is admitted into evidence in the instant case pursuant to the provision in subparagraph one of that same norm.

97. The Court finds the three documents tendered by the Commission on January 29, 2001 (supra paras. 66 and 81) to be useful, especially since they were not disputed nor challenged, nor

were their authenticity or veracity questioned. Therefore, they are admitted into evidence in the instant case.

98. The body of evidence of a case is indivisible and is formed by the evidence tendered throughout all stages of the proceedings. [FN11] For this reason, the documentary evidence tendered by the State and by the Commission during the preliminary objections stage is admitted into evidence in the present case.

[FN11] cfr. Case of the "Street Children" (Villagrán Morales et al.). Reparations (art. 63.1 American Convention on Human Rights). Judgment of May 26, 2001. C Series No. 77, par 53; and Blake case. Reparations (art. 63.1 American Convention on Human Rights). Judgment of January 22, 1999. C Series No. 48, para. 28.

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99. The State did not submit the documents requested by the Court on July 31, 2001, as evidence to facilitate adjudication of the case (supra para. 69). In this regard, the Court makes the observation that the parties must submit to the Court the evidence requested by the Court, whether documents, testimony, expert opinions, or other types of evidence. The Commission and the State must supply all required evidentiary items -ex officio, as evidence to facilitate adjudication of the case, or upon a request by a party- for the Court to have as many elements of judgment as possible to determine the facts and as a basis for its decisions. In this regard, it must be taken into account that in proceedings on violations of human rights it may be the case that the applicant does not have the possibility of tendering evidence which can only be obtained with the cooperation of the State. [FN12]

[FN12] cfr. Baena Ricardo et al. case, supra note 9, para. 81; Durand and Ugarte case. Judgment of August 16, 2000. Series C No. 68, para. 51; and Neira Alegría et al. case. Judgment of January 19, 1995. C Series No. 20, para. 65.

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100. Regarding the expert opinions and testimonial evidence heard, which was neither challenged nor disputed, the Court admits it into evidence only insofar as it is in accordance with the object of the respective examination.

101. In the brief submitting its final arguments, the State expressed that:

Almost all the expert witnesses presented by [t]he Commission recognized that they had no direct knowledge of the claim to ancestral lands made by the Awas Tingni Indigenous Community; in other words, they recognized that their professional opinions were based on studies carried out by other persons.
The few experts presented by [t]he Commission who might have some direct knowledge of the claim to ancestral rights made by Awas Tingni, recognized the preliminary and, therefore,

inconclusive nature of their essays. As those studies are not conclusive, they should not be admitted as scientific evidence to substantiate an accusation of non-titling of ancestral lands.

102. Regarding the above, the Court has discretionary authority to evaluate statements and pronouncements submitted to the Court. For this purpose, the Court will conduct an appropriate appraisal of the evidence, following the rules of "competent analysis". [FN13]

[FN13] cfr. Cesti Hurtado case. Reparations (art. 63.1 American Convention on Human Rights. Judgment of May 31, 2001. C Series No. 78, para. 23; "Street Children" case (Villagrán Morales et al. case). Reparations, supra note 11, par 42; "White van" case (Paniagua Morales et al. case). Reparations (art. 63.1 American Convention on Human Rights). Judgment of May 25, 2001. C Series No. 76, par 52.

VII. PROVEN FACTS

103. After examining the documents, testimony, expert opinions, and the statements by the State and by the Commission, in the course of the instant proceedings, this Court finds that the following facts have been established:

a. the Awas Tingni Community is an indigenous community of the Mayagna or Sumo ethnic group, located in the Northern Atlantic Autonomous Region (RAAN) of the Atlantic Coast of Nicaragua; [FN14]
b. the administrative organization of the RAAN is formed by a Regional Council, a Regional Coordinator, municipal and communal authorities, and other bodies corresponding to the administrative subdivision of the municipalities; [FN15]
c. the organization of the Awas Tingni Community includes a Board of Directors whose members are the Town Judge, the Syndic, the Deputy Syndic, and the Person Responsible for the Forest. These members are elected in an assembly of all adult members of the Community, and they answer directly to that assembly; [FN16]
d. the Mayagna (Sumo) Awas Tingni Community is formed by more than six hundred persons; [FN17]
e. the members of the Community subsist on the basis of family farming and communal agriculture, fruit gathering and medicinal plants, hunting and fishing. These activities, as well as the use and enjoyment of the land they inhabit, are carried out within a territorial space in accordance with a traditional collective form of organization; [FN18]
f. there are "overlaps" or superpositions of communal lands claimed by the indigenous communities of the Atlantic Coast. Some communities allege rights over the same lands claimed by the Awas Tingni Community; [FN19] furthermore, the State maintains that part of the lands claimed by the Awas Tingni Community belong to the State; [FN20]
g. the Community has no real property title deed to the lands it claims; [FN21]
h. on March 26, 1992, a contract was signed by the Awas Tingni Community and Maderas y Derivados de Nicaragua, S.A. (MADENSA) for the comprehensive management of the forest; [FN22]

i. in May, 1994, the Community, MADENSA, and MARENA signed a "Forest Management Agreement" by means of which the latter undertook to facilitate the "definition" of communal lands and to avoid undermining the Community's territorial claims; [FN23]

[FN14] cfr. official letter DSDG-RMS-02-Crono-014-10-98, of October 8, 1998 by Rosario Meza Soto, Deputy General Director of the National Institute of Statistics and the Census (INEC), to Fernando Robleto Lang, Secretary of the Presidency; document "Annex A Research Universe"; testimony of Charly Webster Mclean Cornelio before the Inter-American Court on November 16, 2000; "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast. General framework", prepared by the Central American and Caribbean Research Council; amparo remedy filed on September 11, 1995, before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndic, respectively, of the Mayagna Awas Tingni Community, against Milton Caldera Cardenal, Minister of MARENA; Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forest Administration of MARENA, and the January, 1994 document "Territorial Rights of the Awas Tingni Indigenous Community", prepared by the University of Iowa as part of its "Project in Support of the Awas Tingni Community".

[FN15] cfr. Law No. 28 "Statute on the Autonomy of the Regions of the Northern Atlantic Coast of Nicaragua", published in the official newspaper La Gaceta No. 238 on October 30, 1987.

[FN16] cfr. January, 1994 document "Territorial Rights of the Awas Tingni Indigenous Community" prepared by the University of Iowa as part of its "Project in Support of the Awas Tingni Community"; amparo remedy filed on September 11, 1995, before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA; February 27, 1997 judgment No. 11 of the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on September 11, 1995 before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA; and decision No. 163 of October 14, 1998 by the Constitutional Court of the Supreme Court of Justice on the amparo remedy filed by María Luisa Acosta Castellón, as legal representative of Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, an their own behalf and as Syndic, Coordinator, Town Judge, and Person Responsible for the Forest, respectively, of the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration of MARENA, and Efraín Osejo et al., members of the Board of Directors of the Regional Council of the RAAN.

[FN17] cfr. March, 1996 brief requesting "official recognition and demarcation of ancestral lands" of the Mayagna Awas Tingni Community, addressed to the Regional Council of the

RAAN; judgment No. 163 of October 14, 1998 by the Constitutional Court of the Supreme Court of Justice of Nicaragua, on the amparo remedy filed by María Luisa Acosta Castellón, representing Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, in their own name and as Syndic, Coordinator, Town Judge and Person Responsible for the Forest, respectively, in the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration of MARENA, and Efraín Osejo et al., members of the Board of Directors of the Regional Council of the RAAN; document "Awas Tingni. An Ethnographic Study of the Community and its Territory. 1999 Report", prepared by the Awas Tingni Territorial Demarcation Project, main researcher: Theodore Macdonald; official letter DSDG-RMS-02-Crono-014-10-98 of October 8, 1998, by Rosario Meza Soto, Deputy General Director of the National Institute of Statistics and the Census (INEC), to Fernando Robleto Lang, Secretary of the Presidency; document "Annex A Research Universe"; testimony by Charly Webster Mclean Cornelio before the Inter-American Court on November 16, 2000; January, 1994 document "Territorial Rights of the Awas Tingni Indigenous Community" prepared by the University of Iowa as part of its "Project in Support of the Awas Tingni Community"; and "General Census of the Awas Tingni Community" for the year 1994.

[FN18] cfr. testimony of Charly Webster Mclean Cornelio before the Inter-American Court on November 16, 2000; testimony of Jaime Castillo Felipe before the Inter-American Court on November 16, 2000; testimony of Theodore Macdonald Jr. before the Inter-American Court on November 16, 2000; January, 1994 document "Territorial Rights of the Awas Tingni Indigenous Community", prepared by the University of Iowa as part of its "Project in Support of the Awas Tingni Community"; and document "Awas Tingni. An Ethnographic Study of the Community and its Territory. 1999 Report", prepared by the Awas Tingni Territorial Demarcation Project, main researcher: Theodore Macdonald.

[FN19] cfr. "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast", Final Report and General Framework, March 1998, prepared by the Central American and Caribbean Research Council; August, 1998 maps and projection on location of indigenous area in the Nicaraguan national territory of the RAAN, prepared by the Office of the Director of Geodesics and Cartography of the Nicaraguan Institute of Territorial Studies (INETER); July, 1996 document "Land, Natural Resources and Indigenous Rights on the Atlantic Coast of Nicaragua. Juridical Reflections on the Definition of a Strategy for Indian Participation in Participation and Development Projects, prepared by The World Bank, Technical Department Latin America & the Caribbean; October 13, 1998 brief by Arnoldo Alemán Lacayo, President of the Republic of Nicaragua, to Noel Pereira Majano, Secretary of the National Assembly; October 13, 1998 bill "Organic Law to Regulate the Communal Property System of the Indigenous Communities of the Atlantic Coast and BOSAWAS"; testimony of Galio Claudio Enrique Gurdián Gurdián before the Inter-American Court on November 17, 2000; testimony of Charles Rice Hale before the Inter-American Court on November 17, 2000; testimony of Marco Antonio Centeno Caffarena before the Inter-American Court on November 17, 2000; September 12, 1998 brief by Roberto Wilson Watson and Emilio Hammer Francis, President and Secretary, respectively, of The Ten Indigenous Communities, to Virgilio Gurdián, Director of the Nicaraguan Agrarian Reform Institute (INRA); September 11, 1998 certification by Otto Borst Conrrado, legal representative of the Tasba Raya Indigenous Community; March, 1996 brief requesting "official recognition and demarcation of the ancestral lands" of the Mayagna Awas

Tingni Community, to the Regional Council of the RAAN; and September 11, 1998 brief by Rodolfo Spear Smith, General Coordinator of the Indigenous Community of Karatá, addressed to Virgilio Gurdián, Minister of INRA.

[FN20] cfr. "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast", Final Report and General Framework, March 1998, prepared by the Central American and Caribbean Research Council; testimony on public instrument number one of protocol number twenty of notary Public Oscar Saravia Baltodano, which contains the "Forest Management and Use Contract" signed on March 13, 1996, by Claudio Gutiérrez Huete, representing MARENA, and Hyong Seock Byun, representing the SOLCARSA corporation; Ministerial order No. 02–97 of May 16, 1997, by the Minister of MARENA; December, 1994 document "Cerro Wakambay Broad-leafed Forest Management Plan (Final Edition)", prepared by Swietenia S.A. Consultores for KUMKYUNG CO., LTD; and testimony by Brooklyn Rivera Bryan before the Inter-American Court on November 17, 2000.

[FN21] cfr. July 11, 1995 brief by María Luisa Acosta Castellón, attorney for the Awas Tingni Community, to Milton Caldera C., Minister of MARENA; amparo remedy filed on September 11, 1995 before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA; March, 1996 brief requesting "official recognition and demarcation of the ancestral lands" of the Mayagna Awas Tingni Community, addressed to the Regional Council of the RAAN; "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast, General Framework", March 1998, prepared by the Central American and Caribbean Research Council; testimony of Jaime Castillo Felipe before the Inter-American Court on November 16, 2000; testimony of Charly Webster Mclean Cornelio before the Inter-American Court on November 16, 2000; statement by Sydney Antonio P. on August 30, 1998; and statement by Ramón Rayo Méndez on August 29, 1998; sworn statement by Miguel Taylor Ortez on August 30, 1998; sworn statement by Ramón Rayo Méndez on August 30, 1998.

[FN22] cfr. comprehensive forest management contract signed on March 26, 1992 by Jaime Castillo Felipe, Siriaco Castillo, Charly Webster Mclean Cornelio, Marcial Salomón, Genaro Mendoza and Arnoldo Clarence Demetrio, representing the Awas Tingni Community, and Francisco Lemus Lanuza, representing Maderas y Derivados de Nicaragua S.A.; and "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast. General framework", March, 1998, prepared by the Central American and Caribbean Research Council.

[FN23] cfr. "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast. General framework", March, 1998, prepared by the Central American and Caribbean Research Council; testimony of Guillermo Castilleja before the Inter-American Court on November 17, 2000; and July 11, 1995 brief by María Luisa Acosta Castellón, attorney for the Awas Tingni Community, to Milton Caldera C., Minister of MARENA.

Concession to the SOLCARSA corporation for the utilization of timber

j. on January 5, 1995, the National Forestry Service of MARENA approved the forest management plan submitted by SOLCARSA to utilize timber "in the area of the Wawa River

and Cerro Wakambay". In March, 1995, that plan was submitted to the Regional Council of the RAAN. On April 28, 1995, the Regional Coordinator of the RAAN and the SOLCARSA corporation signed an agreement, and on June 28 of that year the Board of Directors of the Regional Council of the RAAN, in resolution No. 2-95, recognized that agreement and authorized the beginning of logging operations in the area of Wakambay, as set forth in the forest management plan; [FN24]

k. on March 13, 1996 the State, through MARENA, granted a 30 year concession to the SOLCARSA corporation to manage and utilize the forest in an area of roughly 62,000 hectares located in the RAAN, between the municipalities of Puerto Cabezas and Waspam; [FN25]

l. SOLCARSA was sanctioned by Ministerial Order No. 02-97, adopted by MARENA on May 16, 1997, for having illegally felled trees "on the site of the Kukulaya community" and for having carried out works without the environmental permit; [FN26]

m. on February 27, 1997 the Constitutional Panel of the Supreme Court of Justice declared the concession granted to SOLCARSA to be unconstitutional because it had not been approved by the plenary of the Regional Council of the RAAN (infra para. 103(q)(iii)). Subsequently, the Minister of MARENA requested that the Regional Council of the RAAN approve this concession; [FN27]

n. on October 9, 1997, the Regional Council of the RAAN decided to: a) "[r]atify Administrative Provision No. 2-95 of June 28, 1995, signed by the Board of Directors of the Autonomous Regional Council and the Regional Coordinator of the [RAAN]", which approved the logging concession in favor of the SOLCARSA corporation; b) "[s]uspend the existing Agreement between the Regional Government and [SOLCARSA], signed on April 28, 1995", and c) "[r]atify [...] the Contract for Management and Use of the Forest, signed by the Minister of MARENA and [...] SOLCARSA on March 13, 1996"; [FN28]

[FN24] cfr. June 28, 1995 administrative provision No. 2–95 of the Board of Directors of the Regional Council of the RAAN; testimony in public instrument number one of protocol number twenty of notary public Oscar Saravia Baltodano which includes the "Forest Management and Use Contract" signed on March 13, 1996 by Claudio Gutiérrez Huete, representing MARENA, and Hyong Seock Byun, representing the SOLCARSA corporation; resolution No. 17-08-10-97 of the Regional Council of the RAAN on October 9, 1997; and the December, 1994 document "Cerro Wambakay Broad-leafed Forest Management Plan (Final Edition)", prepared by Swietenia S.A. Consultores for KUMKYUNG CO., LTD.

[FN25] cfr. testimony of public instrument number one of protocol number twenty of notary public Oscar Saravia Baltodano which includes the "Forest Management and Use Contract" signed on March 13, 1996 by Claudio Gutiérrez Huete, representing MARENA, and Hyong Seock Byun, representing the SOLCARSA corporation; official letter MN-RSV-02-0113.98 on February 16, 1998, by Roberto Stadhagen Vogl, Minister of MARENA, to Michael Kang, General Manager of SOLCARSA; judgment No. 12 of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on March 29, 1997 before the Appellate Court of Matagalpa by Alfonso Smith Warman and Humberto Thompson Sang, members of the Regional Council of the RAAN, against Claudio Gutiérrez, Minister of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA; and Ministerial order No. 02–97 of May 16, 1997, by the Minister of MARENA.

[FN26] cfr. Ministerial order No. 02–97 of May 16, 1997, by the Minister of MARENA.

[FN27] cfr. Decision No. 12 of February 27, 1997 by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on March 29, 1997 before the Appellate Court of Matagalpa by Alfonso Smith Warman and Humberto Thompson Sang, members of the Regional Council of the RAAN, against Claudio Gutiérrez, Minister of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA; official letter MN-RSV-0377.97 of May 29, 1997 by Roberto Stadhagen Vogl, Minister of MARENA, to Efraín Osejo Morales, President of the Regional Council of the RAAN; resolution No. 17-08-10-97 of October 9, 1997 by the Regional Council of the RAAN; request for execution of judgment No. 12 of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua, filed on January 22, 1998 at the Secretariat of the Constitutional Court of the Supreme Court of Justice of Nicaragua by Humberto Thompson Sang, member of the Regional Council of the RAAN; February 3, 1998 order by the Constitutional Court of the Supreme Court of Justice of Nicaragua, regarding the request for execution of judgment No. 12 of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua, filed by Humberto Thompson Sang, member of the Regional Council of the RAAN; statement by Mario Guevara Somarriba on October 3, 1997; and statement by Guillermo Ernesto Espinoza Duarte, Vice-mayor, at that time Acing Mayor of Bilwi, Puerto Cabezas, RAAN, on October 1, 1997.

[FN28] cfr. resolution No. 17-08-10-97 of October 9, 1997 by the Regional Council of the RAAN.

Administrative efforts made by the Awas Tingni Community

ñ. on July 11, 1995 María Luisa Acosta Castellón, representing the Community, submitted a letter to the Minister of MARENA, with a request that no further steps be taken to grant the concession to the SOLCARSA corporation without an agreement with the Community. The letter also stated that MARENA had the duty to "facilitate the definition of the communal lands and [...] to avoid damaging [...] the territorial claims of the Community", since it was thus stipulated in the agreement signed by the Community, MADENSA, and MARENA in May, 1994 (supra para. 103 (i); [FN29]

o. in March, 1996 the Community submitted a brief to the Regional Council of the RAAN, in which it requested "that the Regional Council initiate a study process leading to an appropriate territorial demarcation" with participation by the Awas Tingni Community and other interested communities, "so as to ensure their property rights on their ancestral communal lands", and to "prevent the granting of concessions for exploitation of natural resources within the area under discussion without prior consent by the Community". For this, they proposed the following: a) an evaluation of the ethnographic study submitted by the Community and, if necessary, a supplementary study; b) a process of negotiation between the Awas Tingni Community and the neighboring communities regarding the borders of their communal lands; c) identification of State lands in the area; and d) "delimitation of the communal lands of Awas Tingni". The Community stated that the request was submitted "due to lack of administrative remedies available within the Nicaraguan legal system through which indigenous communities can ensure property rights to their communal lands"; [FN30]

[FN29] cfr. July 11, 1995 brief by María Luisa Acosta Castellón, attorney for the Awas Tingni Community, addressed to Milton Caldera C., Minister of MARENA.
[FN30] cfr. March, 1996 brief requesting "official recognition and demarcation of the ancestral lands" of the Mayagna Awas Tingni Community, addressed to the Regional Council of the RAAN.

Legal steps and actions

p. First amparo remedy filed by the Awas Tingni Community and its leaders.

p.i) on September 11, 1995 María Luisa Acosta Castellón, acting as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, representatives of the Community, filed an amparo remedy before the Appellate Court of Matagalpa against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA. In that application they requested that: a) the abovementioned officials be ordered to abstain from granting the concession to SOLCARSA; that the agents of SOLCARSA be ordered to leave the communal lands of Awas Tingni, where "they [had been] carrying out works directed toward initiating the lumber operation" and that they begin a process of dialogue and negotiation with the Community, in case the SOLCARSA corporation continued to have "an interest in utilization of timber on Community lands"; b) any other remedies be adopted that the Supreme Court of Justice deemed just; and c) an order be issued to suspend the process of granting the concession requested from MARENA by SOLCARSA. Furthermore, when they referred to the Constitutional provisions breached, the applicants stated that the disputed actions and omissions "[were] violations of articles 5, 46, 89 and 180 of the Nicaraguan Constitution, which together ensure the property and use rights of the indigenous communities to their communal lands" and that, even though "[t]he Community lacks a real title deed […], the rights to its communal lands have solid foundations in a traditional land tenure system linked to communitarian organization and cultural practices"; [FN31]

p.ii) on September 19, 1995 the Civil Panel of the Appellate Court of the Sixth Region of Matagalpa declared the amparo application inadmissible as "unfounded", arguing that the Community had tacitly consented to the granting of the concession, according to the Amparo Law, because the applicants allowed the thirty days "since they became aware of the action or omission" to elapse, before submitting that application. That Court considered that the applicants were aware of the actions by MARENA since before July 11, 1995, the date at which they addressed a letter to the Minister of MARENA (supra para. 103(ñ)); [FN32]

p.iii) on September 21, 1995, María Luisa Acosta Castellón, acting as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, representatives of the Mayagna (Sumo) Awas Tingni Community, filed an amparo application before the Supreme Court of Justice appealing for review of facts as well as law, in which they stated that the Community and its members had not consented to the process of granting the concession, that the remedy "[was] filed against actions which [were] being committed currently, as the Community and its members [became] aware of new violations on a daily basis", and that therefore the thirty days to file the amparo remedy "could […] begin to be counted as of the last violation which the members of the Community [were] aware of"; [FN33]

p.iv) on February 27, 1997 the Constitutional Panel of the Supreme Court of Justice dismissed the amparo application appealing for review of facts as well as law, based on the same reasons argued by the Civil Panel of the Appellate Court of the Sixth Region of Matagalpa (supra para. 103.p.ii); [FN34]

q. Amparo remedy filed by members of the Regional Council of the RAAN:

q.i) on March 29, 1996, Alfonso Smith Warman and Humberto Thompson Sang, members of the Regional Council of the RAAN, filed an amparo remedy before the Appellate Court of Matagalpa, against Claudio Gutiérrez, Minister of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA, for having "signed and authorized" the logging concession to SOLCARSA, without it having been discussed and evaluated by the plenary of the Regional Council of the RAAN, thus breaching article 181 of the Constitution of Nicaragua. In that remedy, they requested that implementation of the concession be suspended, and that the concession be annulled; [FN35]

q.ii) on April 9, 1996, the Civil Panel of the Appellate Court of Matagalpa admitted the amparo remedy filed, ordered that the Attorney General of the Republic be informed, warned the officials against whom the remedy had been filed that they should submit reports on their actions to the Supreme Court of Justice, and summoned the parties to appear before the latter Court "to exercise their rights". Finally, it denied the request to suspend the disputed act; [FN36]

q.iii) in judgment No. 12 of February 27, 1997 the Constitutional Panel of the Supreme Court of Justice granted the amparo application and ruled that the concession was unconstitutional as it "was not approved by the Regional Council [of the RAAN], but rather by its Board of Directors, and by the Regional Coordinator of the [RAAN]", thus breaching article 181 of the Constitution of Nicaragua; [FN37]

q.iv) on January 22, 1998, Humberto Thompson Sang, a member of the Regional Council of the RAAN, submitted a brief to the Constitutional Court of the Supreme Court of Justice, in which he requested execution of judgment No. 12 issued on February 27, 1997; [FN38]

q.v) on February 3, 1998, the Constitutional Panel of the Supreme Court of Justice issued an order to inform the President of the Republic that the Minister of MARENA had not complied with Judgment No. 12 of February 27, 1997, for the President to order that the Minister duly comply with that judgment, and the Court also ordered that the National Assembly be informed of this; [FN39]

q.vi) in an official letter of February 16, 1998, the Minister of MARENA informed the General Manager of SOLCARSA that he should order "the suspension of all actions" pertaining to the logging concession contract, since that contract had become "devoid of any effect or value", in accordance with judgment No. 12 of February 27, 1997 by the Supreme Court of Justice; [FN40]

[FN31] cfr. amparo remedy filed on September 11, 1995, before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA; September 19, 1995 decision by the Appellate Court of the Sixth Region, Civil Court, Matagalpa, on the amparo

remedy filed on September 11, 1995, before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA; and judgment No. 11, of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on September 11, 1995, before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA.

[FN32] cfr. September 19, 1995 decision by the Appellate Court of the Sixth Region, Civil Court, Matagalpa, on the amparo remedy filed by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA.

[FN33] cfr. appeal for review of facts as well as law, filed on September 21, 1995 before the Supreme Court of Justice of Nicaragua by María Luisa Acosta Castellón, as legal representative of the Awas Tingni Community; and judgment No. 11, of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on September 11, 1995, before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA.

[FN34] cfr. judgment No. 11, of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on September 11, 1995, before the Appellate Court of Matagalpa by María Luisa Acosta Castellón, as special agent for Jaime Castillo Felipe, Marcial Salomón Sebastián and Siriaco Castillo Fenley, Syndic and Deputy Syndics, respectively, of the Awas Tingni Mayagna Community, against Milton Caldera Cardenal, Minister of MARENA, Roberto Araquistain, Director of the National Forestry Service of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA; and judicial notification document of February 28, 1997, in which María Luisa Acosta Castellón is notified of judgment No. 11 of February 27, 1997, by the Constitutional Court of the Supreme court of Justice of Nicaragua.

[FN35] cfr. judgment No. 12, of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on March 29, 1997, before the Appellate Court of Matagalpa by Alfonso Smith Warman and Humberto Thompson Sang, members of the Regional Council of the RAAN, against Claudio Gutiérrez, Minister of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA.

[FN36] cfr. judgment No. 12, of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on March 29, 1997, before the Appellate Court of Matagalpa by Alfonso Smith Warman and Humberto Thompson Sang, members of the Regional Council of the RAAN, against Claudio Gutiérrez, Minister of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA.
[FN37] cfr. judgment No. 12, of February 27, 1997, by the Constitutional Court of the Supreme Court of Justice of Nicaragua on the amparo remedy filed on March 29, 1997, before the Appellate Court of Matagalpa by Alfonso Smith Warman and Humberto Thompson Sang, members of the Regional Council of the RAAN, against Claudio Gutiérrez, Minister of MARENA, and Alejandro Láinez, Director of the National Forestry Administration of MARENA.
[FN38] cfr. request for execution of judgment No. 12, of February 27, 1997 by the Constitutional Court of the Supreme Court of Justice of Nicaragua, filed on January 22, 1998 at the Secretariat of the Constitutional Court of the Supreme Court of Justice of Nicaragua by Humberto Thompson Sang, member of the Regional Council of the RAAN; and February 3, 1998 judgment by the Constitutional Court of the Supreme Court of Justice of Nicaragua, regarding the request for execution of judgment filed by Humberto Thompson Sang, member of the Regional Council of the RAAN.
[FN39] cfr. February 3, 1998 judgment by the Constitutional Court of the Supreme Court of Justice of Nicaragua, on the request for execution of judgment filed by Humberto Thompson Sang, member of the Regional Council of the RAAN.
[FN40] cfr. official letter MN-RSV-02-0113.98 of February 16, 1998, by Roberto Stadhagen Vogl, Minister of MARENA, to Michael Kang, General Manager of SOLCARSA.
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r. Second amparo remedy filed by members of the Awas Tingni Community:

r.i) on November 7, 1997, María Luisa Acosta Castellón, representing Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, who appeared on their own behalf and as representatives of the Mayagna (Sumo) Awas Tingni Community, filed an amparo remedy before the Civil Court of the Appellate Court of the Sixth Region of Matagalpa, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration (ADFOREST) of MARENA, and Efraín Osejo et al., members of the Board of Directors of the Regional Council of the RAAN during the periods from 1994 to 1996 and 1996 to 1998. In that remedy they requested that: a) the concession to SOLCARSA be declared null, because it was granted and ratified setting aside the Constitutional rights and guarantees of the Awas Tingni Community; b) an order be issued for the Board of Directors of the Regional Council of the RAAN to process the request submitted in March, 1996 to "further a process to attain recognition and official [c]ertification of the property rights of the Community to its ancestral lands"; c) an order be issued for "the officials of MARENA to refrain from furthering a concession to utilize [n]atural [r]esources in the area of the concession to SOLCARSA, until land tenure in that area has been defined or an agreement has been reached with Awas Tingni and any other Community which has a justified claim to communal lands within that area", and d) the disputed act be suspended; [FN41]

r.ii) on November 12, 1997, the Civil Panel of the Appellate Court of the Sixth Region of Matagalpa admitted the amparo application; it denied the request of the applicants that the act be suspended because "apparently the act ha[d] been carried out"; it ordered that the decision be made known to the Attorney General of the Republic, and that the officials against whom the application had been filed should be notified for them to report to the Supreme Court of Justice on their actions, and it summoned the parties to appear before that Court "to exercise their rights"; [FN42]

r.iii) on October 14, 1998, the Constitutional Panel of the Supreme Court of Justice declared "the amparo remedy application to be inadmissible because it is time-barred", arguing that the applicants allowed the thirty days to elapse after they became aware of the act, without submitting the remedy. That Court concluded, in this regard, that the concession was signed on March 13, 1996, and that the applicants were aware of the concession shortly after it was signed; [FN43]

s. indigenous communities in Nicaragua have received no title deeds to land since 1990; [FN44]

t. on October 13, 1998, the President of Nicaragua submitted to the National Assembly the draft bill "Organic Law Regulating the Communal Property System of the Indigenous Communities of the Atlantic Coast and BOSAWAS", which sought to "implement the provisions of [a]rticles 5, 89, 107, and 180 of the Constitution" because such provisions "require the existence of a legal instrument which specifically regulates delimitation and titling of indigenous community lands, to give concrete expression to the principles embodied in them" [FN45]. At the time this Judgment is issued, the aforementioned draft bill has not yet been adopted as law in Nicaragua.

[FN41] cfr. November 12, 1997 decision by the Appellate Court of the Sixth Region, Civil Court, Matagalpa, on the amparo remedy filed by María Luisa Acosta Castellón, as legal representative of Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, on their own behalf and as Syndic, Coordinator, Town Judge, and Person Responsible for the Forest, respectively, of the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration of MARENA, and Efraín Osejo et al., members of the Board of Directors of the Regional Council of the RAAN; and judgment No. 163 of October 14, 1998, by the Constitutional Court of the Supreme Court of Justice of Nicaragua, on the amparo remedy filed by María Luisa Acosta Castellón, as legal representative of Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, on their own behalf and as Syndic, Coordinator, Town Judge, and Person Responsible for the Forest, respectively, of the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration of MARENA, and Efraín Osejo et al., members of the Board of Directors of the Regional Council of the RAAN.

[FN42] cfr. November 12, 1997 decision by the Appellate Court of the Sixth Region, Civil Court, Matagalpa, on the amparo remedy filed by María Luisa Acosta Castellón, as legal representative of Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, on their own behalf and as Syndic, Coordinator, Town Judge, and

Person Responsible for the Forest, respectively, of the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration of MARENA, and Efraín Osejo et al., members of the Board of Directors of the Regional Council of the RAAN.

[FN43] cfr. judgment No. 163 of October 14, 1998, by the Constitutional Court of the Supreme Court of Justice of Nicaragua, on the amparo remedy filed by María Luisa Acosta Castellón, as legal representative of Benevicto Salomón Mclean, Siriaco Castillo Fenley, Orlando Salomón Felipe and Jotam López Espinoza, on their own behalf and as Syndic, Coordinator, Town Judge, and Person Responsible for the Forest, respectively, of the Awas Tingni Community, against Roberto Stadhagen Vogl, Minister of MARENA, Roberto Araquistain, General Director of the National Forestry Service of MARENA, Jorge Brooks Saldaña, Director of the State Forestry Administration of MARENA, and Efraín Osejo et al., members of the Board of Directors of the Regional Council of the RAAN.

[FN44] cfr. testimony of Marco Antonio Centeno Caffarena before the Inter-American Court on November 17, 2000; testimony of Charles Rice Hale before the Inter-American Court on November 17, 2000; testimony of Galio Claudio Enrique Gurdián Gurdián before the Inter-American Court on November 17, 2000; and "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast. General framework", March, 1998, prepared by the Central American and Caribbean Research Council.

[FN45] cfr. October 13, 1998 brief by Arnoldo Alemán Lacayo, President of the Republic of Nicaragua, to Noel Pereira Majano, Secretary of the National Assembly; October 13, 1998 bill "Organic Law Regulating the Communal Ownership System of the Indigenous Communities of the Atlantic Coast and BOSAWAS"; and official letter DSP-E-9200-10-98 of October 13, 1998 by the Secretary of the Presidency of the Republic of Nicaragua to Noel Pereira Majano, Secretary of the National Assembly.

VIII. VIOLATION OF ARTICLE 25 (Right to Judicial Protection)

Arguments of the Commission

104. Regarding article 25 of the Convention, the Commission alleged that:

a) despite the fact that the institution of amparo has been protected by the Constitution of Nicaragua (articles 45 and 188) and by Nicaraguan legislation (Law No. 49 or Amparo Law), it has been absolutely ineffective to prevent the State from allowing the foreign firm SOLCARSA to destroy and exploit the lands which for years have belonged to the Awas Tingni Community;

b) the applicants resorted to the jurisdictional body established by law to seek legal remedy to protect them from acts which violated their Constitutional rights. The jurisdictional body must give reasons to support its conclusions, and it must decide on the admissibility or inadmissibility of the legal claim which originates the judicial remedy, after a procedure in which evidence is tendered and there is debate on the allegation. The legal remedy was ineffective, since it did not recognize the violation of rights, it did not protect the applicants in the rights affected, nor did it provide adequate reparation. The court avoided a decision on the rights of the applicants and hindered their exercise of the right to legal remedy pursuant to article 25 of the Convention;

c) almost a year after the second amparo remedy had been admitted, the Supreme Court of Justice ruled against that remedy without deciding on the merits, arguing that the applicants only objected to the initial granting of the concession, and that Court reached the conclusion, in this regard, that the remedy was time-barred, when actually the remedy objected to the lack of response to the territorial claim by the Community and the "alleged" ratification of the concession by the Regional Council of the RAAN in 1997;

d) judicial protection pertains to the obligation of the States parties to ensure that the competent authorities comply with judicial decisions, pursuant to article 25(2)(c) of the Convention. However, in the only case included in the facts in this proceeding, in which there was a ruling on the amparo remedy, the State ignored the judicial decision issued in favor of the indigenous communities, thus breaching the abovementioned article of the Convention. Furthermore, the decision of the Supreme Court of Justice was based on omission of the procedural requirement set forth in article 181 of the Constitution, and it did not protect property rights regarding the area under that concession;

e) the Nicaraguan authorities should have complied with the February 27, 1997 judgment in a timely manner and, therefore, they should have urgently and rapidly suspended any act which had been declared to be unconstitutional, so as to avoid that SOLCARSA cause irreparable damage in the lands of the Awas Tingni Community. However, they did not proceed in this manner. For two years, the Community suffered the continuation of a logging concession which negatively affected their traditional land tenure and their natural resources;

f) the Commission was informed on May 6, 1998 of the suspension of the concession granted to SOLCARSA, a year and a half after the Supreme Court of Justice had ordered that suspension and after the Commission adopted the Report pursuant to article 50 of the Convention;

g) The response of Nicaragua to the Report by the Commission constitutes an acceptance of international responsibility, insofar as it recognizes its obligation, when it points out that it is in the process of complying with the recommendations made in that report;

h) Nicaragua does not allow the indigenous groups access to the Judiciary, and therefore it discriminates against them;

i) There is no effective procedure or mechanism in Nicaragua for demarcation and titling of indigenous land, especially that of the Atlantic Coast communities. Lack of an effective mechanism for titling and demarcation of indigenous lands is clearly visible in the case of Awas Tingni. The complexity of the matter is no excuse for the State not to comply, for years, with its duty according to the American Convention, nor to consider that the untitled indigenous lands are State lands, nor to grant concessions to foreign firms on those lands. Even after the State undertook the commitment, in its "1986 Constitution", to guarantee communal property of the indigenous communities, a long period has gone by without this being actually carried out in connection with Awas Tingni and many other indigenous communities;

j) the representatives of Awas Tingni have taken several steps in connection with titling of their lands, addressing the State authorities which have had any relevant competence, including INRA, the institution which was indicated by Nicaragua as the authority which had the power to grant title deed to the indigenous communal lands. On the other hand, according to the tripartite contract signed by the Community, MARENA and MADENSA, MARENA undertook a commitment to provisionally recognize property rights of the Community over the forestry management area and to facilitate a titling process in favor of the Community. However, MARENA did not fulfill this commitment. Furthermore, in March, 1996 the Community

submitted a titling request to the Regional Council of the RAAN, but never received a reply, and instead the following year the Council authorized the concession to the SOLCARSA corporation without having consulted with the Community. Finally, the Community met with the President of Nicaragua in February, 1997, to object to the concession and request his aid for those same goals; however, that meeting did not generate any concrete act for the benefit of the Community.

k) in promoting the concession to SOLCARSA, the State did not take into account the Community and its traditional land tenure; Nicaragua considered the area of the concession to be State lands;

l) the Community has no formal title nor any other instrument recognizing its right to the land where they live and where their cultural and subsistence activities take place, even though it has been requesting it from the State for years. Since 1987, Nicaragua has granted no title deeds at all to indigenous communities. The situation of the Community has continued despite efforts made since 1991 to attain demarcation and titling of their traditional land. The State has been negligent and arbitrary in the face of the titling requests by the Community;

m) the principle of estoppel does not allow the State to argue that the Community has no legitimate claim based on traditional or historic land tenure, since that allegation is contrary to positions maintained by the State before the Commission and before the Community on several occasions;

n) for indigenous peoples, access to a simple, rapid, and effective legal remedy is especially important in connection with the enjoyment of their human rights, given the conditions of vulnerability under which they normally find themselves for historical reasons and due to their current social circumstances. In this case, article 25 of the Convention was breached in three ways: unjustified delay in court proceedings; rejection of the remedies filed by the Community, and non-enforcement of the judgment that declared the concession to be unconstitutional; and

ñ) the granting of the concession to SOLCARSA and omission by the State in not adopting measures to ensure the rights of the Awas Tingni Community to its land and natural resources, according to their traditional patterns of use and occupation, were breaches of articles 1 and 2 of the Convention.

Arguments of the State

105. Regarding article 25 of the Convention, the State, in turn, alleged that:

a) it cannot be established that there has been legislative procrastination in Nicaraguan law that has hindered claiming a right recognized by the Constitution. There is a legal framework to carry out the process of land titling for indigenous communities in the country, through the Nicaraguan Agrarian Reform Institute (INRA), which was ignored by the Community. This juridical framework was established by Law No. 14, “Amendment to the Agrarian Reform Law”, on January 11, 1986. The State has granted title deed to 28 indigenous communities under this law. There is no request for title deed submitted by the community in the files of INRA;

b) there has been no denial of recognition of a right in connection with which there have simply been no requests made to the national authorities. The Awas Tingni Indigenous Community never filed a formal request for land titling before the courts. The Supreme Court of Justice cannot be blamed for not having provided a legal remedy which was never requested. The claims of the Community were all related to their objection to the logging concession granted to SOLCARSA;

c) the Community submitted an ambiguous and obscure request to the Regional Council of the RAAN for it to help fill a normative gap which allegedly existed in this matter. With that, the Community sought to disregard the indigenous land titling procedures, in addition to creating confusion or conflict of jurisdictions between the authorities of the Central Government and of the Regional Governments in the Atlantic Coast;

d) on November 7, 1997 the Community filed an amparo remedy before the Supreme Court of Justice arguing the responsibility of the State for administrative procrastination caused by lack of a decision by the Regional Council of the RAAN, diverting attention from the fundamental issue, arguing that the Community had not submitted any request for titling of its alleged ancestral lands before the competent authorities, which is equivalent to lack of procedural claim;

e) the Community has disregarded domestic procedures under Nicaraguan law, it claims lands which are not ancestral, and through the mechanism of international judicial pressure it seeks to set aside the interests of third parties in the area;

f) the Awas Tingni Community exercised its right to request land titling in a deficient manner, considering that it was doing so when it objected to the logging concession granted on lands that they claim:

1. When the administrative procedure to grant the logging concession had not yet been completed and the authorities of MARENA advised the public on May 17, 18, and 19, 1995 of that circumstance, for third parties to have the opportunity to object, the Community abstained from raising any objection to that concession, thus turning it into a consensual act.

2. Once the logging concession had been granted to the SOLCARSA corporation, the Community did not resort to the amparo remedy within the term established by law. Through this grave omission, absolutely imputable to the applicant party, they lost the possibility of a judicial review of the administrative decisions pertaining to the concession.

3. In a negligent manner, the Community disputed the judicial decision which denied the amparo remedy mentioned in the previous point, by filing another amparo remedy appealing for review of facts as well as law, in which it did not request suspension of the administrative act which granted the concession. However, the Supreme Court of Justice had to restrict its ruling strictly to the question posed by the applicant (principle of strict right in the review).

4. While the judgment on the remedy appealing for review of facts as well as law was still pending, the Community did not object to the logging concession through a remedy of unconstitutionality, when it had the opportunity to do so. This is another expression of their negligent exercise of their right to petition. The Community had to depend on the action of a third party to obtain what it was incapable of obtaining. The obligation to exhaust all domestic remedies falls exclusively on the applicants, who cannot excuse themselves from their procedural obligation due to remedies filed by third parties;

5. Regarding the request for annulment of the logging concession granted to SOLCARSA, the Nicaraguan judicial system was effective in providing the judicial remedy requested, as that concession was declared null. Those who were not effective were the advisors to the Awas Tingni Community who did not file any remedy of unconstitutionality against that concession, as was done by some members of the Regional Council of the RAAN. Regarding the alleged delay in the enforcement of the judgment that declared the concession to be null, it must be taken into account that the State requested that SOLCARSA suspend the concession shortly after that judgment was issued. Furthermore, the significance of this issue is not clear, as the remedy which led to that judgment was filed by a third party, alleging unconstitutionality of a

concession granted in areas which Awas Tingni claims without having demonstrated ancestrality nor property rights;
g) the right of Awas Tingni to titling of the non-ancestral lands that it occupies would be subject to a decision by the State, after having consulted with that Community;
h) the Commission has said that Nicaragua uses the excuse that it has not given title deed to the Awas Tingni Community because the territorial claim submitted by the latter is complex. However, there has been no decision on that claim because Awas Tingni has not proven that it has the necessary requirements to substantiate it, specifically that of ancestral occupation of the ancestral lands; and
i) the State has promoted important initiatives in connection with titling of communal lands of the indigenous communities of the Atlantic Coast.

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Considerations of the Court

106. Article 25 of the Convention states that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws […] or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:

(a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
(b) to develop the possibilities of judicial remedy; and
(c) to ensure that the competent authorities shall enforce such remedies when granted.

107. Article 1(1) of the Convention affirms that

[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

108. Article 2 of the Convention, in turn, asserts that

[w]here the exercise of any the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

109. The Commission argues, as a key point, lack of recognition of the rights of the Community of Awas Tingni by Nicaragua, and more specifically the ineffectiveness of the

procedures set forth in legislation to make those rights of the indigenous communities effective, as well as the lack of demarcation of the lands possessed by that Community. The Commission adds that, despite multiple steps taken by the Community, official recognition of the communal property has not yet been attained, and furthermore it has been prejudiced by a logging concession granted to a company called SOLCARSA on the lands occupied by that community.

110. The State, in turn, argues basically that the Community has disproportionate claims, since its possession is not ancestral, it is requesting title to lands that have been claimed by other indigenous communities of the Atlantic Coast of Nicaragua, and it has never made a formal titling request before the competent authorities. Nicaragua also maintains that there is a legal framework which regulates the procedure of land titling for indigenous communities under the authority of the Nicaraguan Agrarian Reform Institute (INRA). As regards the logging concession granted to SOLCARSA, the State points out that the Awas Tingni Community suffered no prejudice, as that concession was not executed but rather was declared unconstitutional.

111. The Court has noted that article 25 of the Convention has established, in broad terms,

the obligation of the States to offer, to all persons under their jurisdiction, effective legal remedy against acts that violate their fundamental rights. It also establishes that the right protected therein applies not only to rights included in the Convention, but also to those recognized by the Constitution or the law. [FN46]

[FN46] cfr. Case of the Constitutional Court, supra note 10, para. 89; and Judicial Guarantees in States of Emergency (arts. 27.2, 25 and 8 American Convention on Human Rights) Advisory Opinion OC-9/87 of October 6, 1987. A Series No. 9, para. 23.

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112. The Court has also reiterated that the right of every person to simple and rapid remedy or to any other effective remedy before the competent judges or courts, to protect them against acts which violate their fundamental rights, “is one of the basic mainstays, not only of the American Convention, but also of the Rule of Law in a democratic society, in the sense set forth in the Convention”. [FN47]

[FN47] cfr. Ivcher Bronstein case, supra note 9, para.135; Case of the Constitutional Court, supra note 10, para. 90; and Bámaca Velásquez case. Judgment of November 25, 2000. C Series No. 70, para. 191.

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113. The Court has also pointed out that

the inexistence of an effective recourse against the violation of the rights recognized by the Convention constitutes a transgression of the Convention by the State Party in which such a situation occurs. In that respect, it should be emphasized that, for such a recourse to exist, it is

not enough that it is established in the Constitution or in the law or that it should be formally admissible, but it must be truly appropriate to establish whether there has been a violation of human rights and to provide everything necessary to remedy it. [FN48]

[FN48] cfr. Ivcher Bronstein case, supra note 9, para. 136; Cantoral Benavides case. Judgment of August 18, 2000. C Series No. 69, para. 164; and Durand and Ugarte case, supra note 12, para. 102.
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114. This Court has further stated that for the State to comply with the provisions of the aforementioned article, it is not enough for the remedies to exist formally, since they must also be effective. [FN49]

[FN49] cfr. Case of the Constitutional Court, supra note 10, para. 90; Bámaca Velásquez case, supra note 47, para. 191; and Cesti Hurtado case. Judgment of September 29, 1999. C Series No. 56, para. 125.
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115. In the present case, analysis of article 25 of the Convention must be carried out from two perspectives. First, there is the need to analyze whether or not there is a land titling procedure with the characteristics mentioned above, and secondly whether the amparo remedies submitted by members of the Community were decided in accordance with article 25.

a) Existence of a procedure for indigenous land titling and demarcation:

116. Article 5 of the 1995 Constitution of Nicaragua states that:

Freedom, justice, respect for the dignity of the human person, political, social, and ethnic pluralism, recognition of the various forms of property, free international cooperation and respect for free self-determination are principles of the Nicaraguan nation.
[…]
The State recognizes the existence of the indigenous peoples, who have the rights, duties and guarantees set forth in the Constitution, and especially those of maintaining and developing their identity and culture, having their own forms of social organization and managing their local affairs, as well as maintaining communal forms of ownership of their lands, and also the use and enjoyment of those lands, in accordance with the law. An autonomous regime is established in the [...] Constitution for the communities of the Atlantic Coast.
The various forms of property: public, private, associative, cooperative, and communitarian, must be guaranteed and promoted with no discrimination, to produce wealth, and all of them while functioning freely must carry out a social function.

117. Article 89 of the Constitution further states that:

The Communities of the Atlantic Coast are an inseparable part of the Nicaraguan people, and as such they have the same rights and the same obligations.
The Communities of the Atlantic Coast have the right to maintain and develop their cultural identity within national unity; to have their own forms of social organization and to manage their local affairs according to their traditions.
The State recognizes the communal forms of land ownership of the Community of the Atlantic Coast. It also recognizes the use and enjoyment of the waters and forests on their communal lands.

118. Article 180 of said Constitution states that:

The Communities of the Atlantic Coast have the right to live and develop under the forms of social organization which correspond to their historical and cultural traditions.
The State guarantees these communities the enjoyment of their natural resources, the effectiveness of their communal forms of property and free election of their authorities and representatives.
It also guarantees preservation of their cultures and languages, religions and customs.

119. Law No. 28, published on October 30, 1987 in La Gaceta No. 238, Official Gazette of the Republic of Nicaragua, regulated the Autonomy Statute of the Regions of the Atlantic Coast of Nicaragua. In this connection, it established that:

Art. 4. The Regions inhabited by the Communities of the Atlantic Coast enjoy, within the unity of the Nicaraguan State, an Autonomous Regime which guarantees effective exercise of their historical and other rights, set forth in the Constitution.
[…]
Art. 9. Rational use of the mining, forestry, fishing, and other natural resources of the Autonomous Regions will recognize the property rights to their communal lands, and must benefit their inhabitants in a just proportion through agreements between the Regional Government and the Central Government.

120. Decree No. 16-96 of August 23, 1996, pertaining to the creation of the National Commission for the Demarcation of the Lands of the Indigenous Communities of the Atlantic Coast, established that “the State recognizes communal forms of property of the lands of the Communities of the Atlantic Coast”, and pointed out that “it is necessary to establish an appropriate administrative body to begin the process of demarcation of the traditional lands of the indigenous communities”. To this end, the decree entrusts that national commission, among other functions, with that of identifying the lands which the various indigenous communities have traditionally occupied, to conduct a geographical analysis process to determine the communal areas and those belonging to the State, to prepare a demarcation project and to seek funding for this project.

121. Law No. 14, published on January 13, 1986 in La Gaceta No. 8, Official Gazette of the Republic of Nicaragua, called “Amendment to the Agrarian Reform Law”, establishes in article 31 that:

The State will provide the necessary lands for the Miskito, Sumo, Rama, and other ethnic communities of the Atlantic of Nicaragua, so as to improve their standard of living and contribute to the social and economic development of the [N]ation.

122. Based on the above, the Court believes that the existence of norms recognizing and protecting indigenous communal property in Nicaragua is evident.

123. Now then, it would seem that the procedure for titling of lands occupied by indigenous groups has not been clearly regulated in Nicaraguan legislation. According to the State, the legal framework to carry out the process of land titling for indigenous communities in the country is that set forth in Law No. 14, "Amendment to the Agrarian Reform Law", and that process should take place through the Nicaraguan Agrarian Reform Institute (INRA). Law No. 14 establishes the procedures to guarantee property to land for all those who work productively and efficiently, in addition to determining that property may be declared "subject to" agrarian reform if it is abandoned, uncultivated, deficiently farmed, rented out or ceded under any other form, lands which are not directly farmed by their owners but rather by peasants through medieria, sharecropping, colonato, squatting, or other forms of peasant production, and lands which are being farmed by cooperatives or peasants organized under any other form of association. However, this Court considers that Law No. 14 does not establish a specific procedure for demarcation and titling of lands held by indigenous communities, taking into account their specific characteristics.

124. The rest of the body of evidence in the instant case also shows that the State does not have a specific procedure for indigenous land titling. Several of the witnesses and expert witnesses (Marco Antonio Centeno Caffarena, Galio Claudio Enrique Gurdián Gurdián, Brooklyn Rivera Bryan, Charles Rice Hale, Lottie Marie Cunningham de Aguirre, Roque de Jesús Roldán Ortega) who rendered testimony to the Court at the public hearing on the merits in the instant case (supra paras. 62 and 83), expressed that in Nicaragua there is a general lack of knowledge, an uncertainty as to what must be done and to whom should a request for demarcation and titling be submitted.

125. In addition, a March, 1998 document, "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast", prepared by the Central American and Caribbean Research Council and supplied by the State in the present case (supra paras. 64, 65, 80 and 96), recognizes "[…]lack of legislation assigning specific authority to INRA to grant title to indigenous communal lands" and points out that it is possible that the existence of "legal ambiguities has […] contributed to the pronounced delay in the response by INRA to indigenous demands for communal titling". That diagnostic study adds that

[…] there is an incompatibility between the specific Agrarian Reform laws on the question of indigenous lands and the country's legal system. That problem brings with it legal and conceptual confusion, and contributes to the political ineffectiveness of the institutions entrusted with resolving this issue.
[…]

[…] in Nicaragua the problem is the lack of laws to allow concrete application of the Constitutional principles, or [that] when laws do exist (case of the Autonomy Law) there has not been sufficient political will for them to be regulated.
[…]
[Nicaragua] lacks a clear legal delimitation on the status of national lands in relation to indigenous communal lands.
[…]
[…] beyond the relation between national and communal land, the very concept of indigenous communal land lacks a clear definition.

126. On the other hand, it has been proven that since 1990 no title deeds have been issued to indigenous communities (supra para. 103(s)).

127. In light of the above, this Court concludes that there is no effective procedure in Nicaragua for delimitation, demarcation, and titling of indigenous communal lands.

b) Administrative and judicial steps:

128. Due to the lack of specific and effective legislation for indigenous communities to exercise their rights and to the fact that the State has disposed of lands occupied by indigenous communities by granting a concession, the "General diagnostic study on land tenure in the indigenous communities of the Atlantic Coast", carried out by the Central American and Caribbean Research Council, points out that " 'amparo remedies' have been filed several times, alleging that a concession by the State (normally to a logging firm) interferes with the communal rights of a specific indigenous community".

129. It has been proven that the Awas Tingni Community has taken various steps before different Nicaraguan authorities (supra paras. 103(ñ), (o), (p), (r), as follows:

a) on July 11, 1995, they submitted a letter to the Minister of MARENA in which they requested that no further steps be taken to grant the concession to the SOLCARSA corporation without a prior agreement with the Community;
b) in March, 1996, a request was filed before the Regional Council of the RAAN to ensure their property rights to their ancestral communal lands, in accordance with the Constitution of Nicaragua, and for the Regional Council of the RAAN to prevent the granting of concessions for the utilization of natural resources in the area without the assent of the Community. The latter submitted several proposals for delimitation and official recognition of its communal lands and for State lands to be identified in the area;
c) on September 11, 1995, an amparo remedy aaplication was filed before the Appellate Court of Matagalpa, requesting suspension of the "process of granting the concession requested by SOLCARSA of MARENA" and for an order to be issued for "the agents of SOLCARSA […] to evacuate the communal lands of Awas Tingni[,] where works are currently underway to begin logging", since the disputed actions and omissions "were violations of articles 5, 46, 89, and 180 of the Constitution of Nicaragua, which together guarantee the property and use rights of the indigenous communities to their communal lands". On September 19, 1995 the Civil Panel of the

Appellate Court of the Sixth Region of Matagalpa declared this remedy inadmissible because it was "unfounded";

d) on September 21, 1995 an amparo remedy application was filed before the Supreme Court of Justice for review of fact as well as law to dispute the decision mentioned in the previous paragraph. On February 27, 1997, the Supreme Court rejected that remedy; and

e) on November 7, 1997 the Community filed an amparo remedy before the Civil Panel of the Appellate Court of the Sixth Region of Matagalpa against the Minister of MARENA, the General Director of the National Forestry Service of MARENA, and the members of the Board of Directors of the Regional Council of the RAAN during 1994 to 1996 and 1996 to 1998, in which they requested, basically, that the concession to SOLCARSA be declared null and that an order be issued for the Board of Directors of the Regional Council of the RAAN to process the request filed in March, 1996 to "promote a process to attain official recognition and [c]ertification of the property rights of the Community to its ancestral lands". On November 12, 1997 this application was admitted by that Panel, which summoned the parties to appear before the Supreme Court of Justice. On October 14, 1998 the Constitutional Court of the Supreme Court of Justice declared "the amparo remedy unfounded because it is time-barred".

130. In addition to those steps, on March 29, 1996 Alfonso Smith Warman and Humberto Thompson Sang, members of the Regional Council of the RAAN, filed an amparo remedy before the Appellate Court of Matagalpa, against the Minister of MARENA and the Director of the National Forestry Administration of MARENA, for having "signed and authorized" the logging concession to SOLCARSA without it having been discussed and evaluated by the plenary of the Regional Council of the NAAR, in violation of article 181 of the Constitution of Nicaragua. On April 9, 1996 the Civil Panel of the Appellate Court of Matagalpa admitted the amparo remedy filed, issued an order that the Attorney General of the Republic be informed of it, denied the request to suspend the disputed act, referred it to the Supreme Court of Justice, warned the officials against whom the appeal was directed that they should send a written report on their actions to the Supreme Court of Justice, and summoned the parties to appear before the Supreme Court to exercise their rights. On February 27, 1997 the Constitutional Court of the Supreme Court of Justice admitted the amparo remedy filed and ruled that the concession was unconstitutional as it was not approved by the Regional Council of the RAAN but rather by its Board of Directors and by the Regional Coordinator of the RAAN. On January 22, 1998 Humberto Thompson Sang filed a brief before the Supreme Court of Justice of Nicaragua in which he requested execution of Judgment No. 12, of February 27, 1997. On February 13, 1998 the Constitutional Panel of the Supreme Court of Justice issued an order to inform the President of Nicaragua of the non-compliance by the Minister of MARENA with Judgment No. 12 of February 27, 1997, for the latter to be ordered to duly comply with that order and, also, to report to the National Assembly of Nicaragua on the matter (supra para. 103 (q)).

131. In the course of examining simple, rapid, and effective mechanisms involved in the provision discussed, this Court has maintained that the procedural institution of amparo has the required characteristics to effectively protect fundamental rights [FN50], that is, being simple and brief. In the Nicaraguan context, in accordance with the procedure established for amparo remedies in Law No. 49 published in La Gaceta No. 241, called "Amparo Law", it should be decided within 45 days.

[FN50] cfr. Case of the Constitutional Court, supra note 10, para. 91 and Judicial Guarantees in States of Emergency (arts. 27.2, 25 and 8 American Convention on Human Rights), supra note 46, para. 23.

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132. In the instant case, the first amparo remedy was filed before the Appellate Court of Matagalpa on September 11, 1995 and the court decision was reached on the 19 of that same month and year, that is, eight days later. Since that remedy was dismissed, on September 21, 1995 the representatives of the Community filed a remedy to appeal for review of fact as well as law before the Supreme Court of Justice, pursuant to article 25 of the Amparo Law. On February 27, 1997 the Supreme Court of Justice rejected that remedy. The Inter-American Court notes that the first of the abovementioned judicial decisions was reached within a reasonable time. However, processing the remedy filed for review of fact as well as law took one year, five months, and six days before it was decided by the Supreme Court of Justice.

133. The second amparo remedy was filed before the Civil Panel of the Appellate Court of the Sixth Region of Matagalpa on November 7, 1997, admitted by that court on the 12th of that same month and year, and decided by the Constitutional Panel of the Supreme Court of Justice on October 14, 1998. In other words, 11 months and seven days elapsed from the time the remedy was filed until a decision was reached on it.

134. In light of the criteria established on the subject by this Court, and bearing in mind the scope of reasonable terms in judicial proceedings [FN51], it can be said that the procedure followed in the various courts which heard the amparo remedies in this case did not respect the principle of a reasonable term protected by the American Convention. According to the criteria of this Court, amparo remedies will be illusory and ineffective if there is unjustified delay in reaching a decision on them. [FN52]

[FN51] cfr. Case of the Constitutional Court, supra note 10, para. 93; Paniagua Morales et al. case. Judgment of March 8, 1998. C Series No. 37, para. 152; and Genie Lacayo case. Judgment of January 29, 1997. C Series No. 30, para. 77.

[FN52] cfr. Ivcher Bronstein case, supra note 9, para.137; Case of the Constitutional Court, supra note 10, para. 93; and Judicial Guarantees in States of Emergency (arts. 27.2, 25 and 8 American Convention on Human Rights), supra note 46, para. 24.

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135. Furthermore, the Court has already said that article 25 of the Convention is closely linked to the general obligation of article 1(1) of the Convention, which assigns protective functions to domestic law in the States Party, and therefore the State has the responsibility to designate an effective remedy and to reflect it in norms, as well as to ensure due application of that remedy by its judicial authorities. [FN53]

[FN53] cfr. Villagrán Morales et al. case (“Street Children” case). Judgment of November 19, 1999. C Series No. 63, para. 237; also see, Ivcher Bronstein case, supra note 9, para. 135; and Cantoral Benavides case, supra note 48, para. 163.

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136. Along these same lines, the Court has expressed that

[t]he general duty under article 2 of the American Convention involves adopting protective measures in two directions. On the one hand, suppressing norms and practices of any type that carry with them the violation of guarantees set forth in the convention. On the other hand, issuing norms and developing practices which are conducive to effective respect for such guarantees. [FN54]

[FN54] cfr. Baena Ricardo et al. case, supra note 9, para. 180; and Cantoral Benavides case, supra note 48, para. 178.

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137. As stated before, in this case Nicaragua has not adopted the adequate domestic legal measures to allow delimitation, demarcation, and titling of indigenous community lands, nor did it process the amparo remedy filed by members of the Awas Tingni Community within a reasonable time.

138. The Court believes it necessary to make the rights recognized by the Nicaraguan Constitution and legislation effective, in accordance with the American Convention. Therefore, pursuant to article 2 of the American Convention, the State must adopt in its domestic law the necessary legislative, administrative, or other measures to create an effective mechanism for delimitation and titling of the property of the members of the Awas Tingni Mayagna Community, in accordance with the customary law, values, customs and mores of that Community.

139. From all the above, the Court concludes that the State violated article 25 of the American Convention, to the detriment of the members of the Mayagna (Sumo) Awas Tingni Community, in connection with articles 1(1) and 2 of the Convention.

IX. VIOLATION OF ARTICLE 21 (Right to Private Property) [FN55]

[FN55] There is no substantial variation among the Spanish-, English- Portuguese-, and French-language text for article 21 of the Convention. The only difference is that the epigraph in the English-language text reads “Right to Property” while in the other three languages it reads “Right to Private Property”.

Arguments of the Commission

140. Regarding article 21 of the Convention, the Commission argued that:

a) the Mayagna Community has communal property rights to land and natural resources based on traditional patterns of use and occupation of ancestral territory. There rights "exist even without State actions which specify them". Traditional land tenure is linked to a historical continuity, but not necessarily to a single place and to a single social conformation throughout the centuries. The overall territory of the Community is possessed collectively, and the individuals and families enjoy subsidiary rights of use and occupation;
b) traditional patterns of use and occupation of territory by the indigenous communities of the Atlantic Coast of Nicaragua generate customary law property systems, they are property rights created by indigenous customary law norms and practices which must be protected, and they qualify as property rights protected by article 21 of the Convention. Non-recognition of the equality of property rights based on indigenous tradition is contrary to the principle of non-discrimination set forth in article 1(1) of the Convention;
c) the Constitution of Nicaragua and the Autonomy Statute of the Regions of the Atlantic Coast of Nicaragua recognize property rights whose origin is found in the customary law system of land tenure which has traditionally existed in the indigenous communities of the Atlantic Coast. Furthermore, the rights of the Community are protected by the American Convention and by provisions set forth in other international conventions to which Nicaragua is a party;
d) there is an international customary international law norm which affirms the rights of indigenous peoples to their traditional lands;
e) the State has neither demarcated nor titled the indigenous lands of the Awas Tingni Community nor has it taken other effective measures to ensure the property rights of the Community to its ancestral lands and natural resources;
f) the life of the members of the Community fundamentally depends on agriculture, hunting and fishing in areas near their villages. The Community's relations to its land and resources are protected by other rights set forth in the American Convention, such as the right to life, honor, and dignity, freedom of conscience and religion, freedom of association, rights of the family, and freedom of movement and residence;
g) the National Commission for the Demarcation of the Lands of the Indigenous Communities of the Atlantic Coast, created for the purpose of preparing a "Demarcation Project", has not contributed to establishing a mechanism for demarcation of the lands of indigenous peoples with their full participation;
h) most inhabitants of Awas Tingni arrived during the 1940s to the place where they have their main residence, having come from their former ancestral place: Tuburús. There was a movement from one place to another within their ancestral territory; the Mayagna ancestors were here since immemorial times;
i) there are lands that have traditionally been shared by Awas Tingni and other communities. The concept of property can consist of co-ownership or in access and use rights, according to the customs of indigenous communities of the Atlantic Coast;
j) the State breached article 21 of the Convention by granting the SOLCARSA corporation a logging concession on lands traditionally occupied by the Community, a concession which endangered the enjoyment of the rights of the indigenous communities, and by considering all lands not registered under formal title deed to be State lands;
k) the members of the Community "occupy and utilize a substantial part of the area of the concession". The concession granted to the SOLCARSA corporation endangered the economic

interests, survival, and cultural integrity of the Community and its members. "[T]he logging operations of SOLCARSA […], on lands used and occupied by the Awas Tingni Community, specifically, may have damaged thus Community's forests". The concession and the actions of the State in connection with it are a violation of the right to property;

l) the complexity of the matter is no excuse for the State not to fulfill its obligations, nor for it to manage the untitled indigenous lands as if they were State lands;

m) article 181 of the Constitution of Nicaragua refers to the approval of concessions by the State to lands belonging to the State, not to the utilization of resources on communal lands. That article does not authorize MARENA and the Regional Council of the RAAN to authorize logging on private or communal lands without the owner's authorization;

n) the State must adopt appropriate measures for demarcation of the property of the Community and to fully guarantee the Community's rights to its lands and resources;

ñ) in the instant case, the American Convention must be interpreted including the principles pertaining to collective rights of indigenous peoples, pursuant to article 29 of the Convention; and

o) the granting of the concession to SOLCARSA and omission by the State in not adopting measures to guarantee the rights of the Awas Tingni Community to the land and the natural resources, according to its traditional land use and occupation patterns, was a violation of articles 1 and 2 of the Convention.

Arguments of the State

141. Regarding article 21 of the Convention, the State alleged that:

a) there are "particularistic circumstances which place this claim outside the normal scope of indigenist law". The Community is a small group of indigenous people which resulted from a communal separation and successive geographic shifts; their presence in the region has not been sufficiently documented; they possess lands which are not ancestral and on part of which title has been obtained by other indigenous communities, or other communities claim that they have ancestral possession rights predating the alleged right of Awas Tingni. Land claims by various ethnic groups have led to the existence of complex conflicting interests, which require careful analysis by national authorities and a delicate process of solution of those conflicts to generate legal certainty. The Community recognized that its population includes persons coming from the Tilba-Lupia indigenous community, which received title deed from the State;

b) Law No. 14, known as the "Amendment to the Agrarian Reform Law" established a legal framework to conduct indigenous communal land titling. Under that law, "numerous indigenous communal land titlings took place". However, the Community has not made any request to the competent governmental authorities for demarcation and titling;

c) the Community has recognized on different occasions that it received title to the land and it stated this explicitly in the contract it entered into with the MADENSA corporation;

d) The Commission was unable to prove that Awas Tingni was present before 1945 on the lands they claim; the Community itself has recognized that possession of the lands it claims goes back to that year. The State believes that it is a group that separated itself from a "mother" indigenous community, but that it claims separate and independent titling of lands the possession of which is not ancestral;

e) adverse possession does not apply in this case, as the Mayagna Community's possession was "precarious";

f) the process of indigenous titling of the communities of the Atlantic Coast is characterized by being complex, due to the following circumstances: a) the phenomenon of proliferation of indigenous communities, as a consequence of the dismemberment of groups of these; b) the phenomenon of grouping and regrouping of indigenous communities with and without title; c) the phenomenon of migration of indigenous communities to occupy lands that are not ancestral; d) the phenomenon of indigenous communities with title that claim ancestral lands as if they had never received title deeds, and e) human groups that claim indigenous titles without having formally accredited their status as indigenous communities according to the law;

g) the area of land claimed by the Community is disproportionate to the number of members of the Community, for which reason it does not have the right under the terms stated in its claim. The Mayagna Community states that it has about 600 members, and it irrationally claims an area of roughly 150,000 hectares, a claim that exceeds the subsistence needs of its members. The area's biodiversity does not justify the long distances covered for hunting and fishing, which seems to be an argument used by the Community to increase the area they are claiming. Furthermore, a 1995 census indicates that the number of members of the Community is 576 persons, of whom only 43% are Mayagna;

h) in the course of submitting petitions to non-competent authorities, the Awas Tingni Community increased the area claimed, which demonstrates bad faith in its actions and became an obstacle to attaining "an expeditious solution";

i) the logging concession granted to the SOLCARSA corporation was restricted to areas which were considered to be national lands. Since the process of land titling began on the Atlantic Coast, the State has left "corridors" or "areas of national lands" between the indigenous communities that have received title to their lands. The national authorities of MARENA granted a logging concession to a fraction of an area considered to be a "national lands corridor" and none of the communities disputed it "because they were aware that it was on a fraction of the corridor of national lands that existed between them". However, the Mayagna Community claims all that area;

j) the logging concession granted to the SOLCARSA corporation caused no damage to the Mayagna Community and that firm did not begin logging activities derived from the concession;

k) the "Forest Management Agreement" signed by the Community, the MADENSA corporation, and the authorities of MARENA, "is not a valid precedent to prejudge the legitimacy of the claim to communal ownership by the Mayagna Community. Actions by MARENA -due to its lack of competence in the matter- cannot be used as an allegation to demand recognition of the legitimacy of indigenous land titling claims, because the competent institution to receive and decide on such claims is INRA, currently under the Ministry of Agriculture and Forestry (MAF). The Commission itself accepts that in the aforementioned document "Nicaragua did not recognize ancestral possession,[but rather] simply committed to facilitating the titling of ancestral lands, which presupposed that a claim be submitted to the administrative, jurisdictional authority, and an effective demonstration of ancestrality"; and

l) there is a legal framework and a competent authority to conduct land titling for indigenous communities. Nicaragua has promoted important initiatives for titling of communal lands of indigenous communities of the Atlantic Coast.

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Considerations of the Court

142. Article 21 of the Convention declares that:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall by prohibited by law.

143. Article 21 of the American Convention recognizes the right to private property. In this regard, it establishes: a) that "[e]veryone has the right to the use and enjoyment of his property"; b) that such use and enjoyment can be subordinate, according to a legal mandate, to "social interest"; c) that a person may be deprived of his or her property for reasons of "public utility or social interest, and in the cases and according to the forms established by law"; and d) that when so deprived, a just compensation must be paid.

144. "Property" can be defined as those material things which can be possessed, as well as any right which may be part of a person's patrimony; that concept includes all movables and immovables, corporeal and incorporeal elements and any other intangible object capable of having value. [FN56]

[FN56] cfr. Ivcher Bronstein case, supra note 9, para. 122.

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145. During the study and consideration of the preparatory work for the American Convention on Human Rights, the phrase "[e]veryone has the right to the use and enjoyment of private property, but the law may subordinate its use and enjoyment to public interest" was replaced by "[e]veryone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the social interest." In other words, it was decided to refer to the "use and enjoyment of his property" instead of "private property". [FN57]

[FN57] The right to private property was one of the most widely debated points within the Commission during the study and appraisal of the preparatory work for the American Convention on Human Rights. From the start, delegations expressed the existence of three ideological trends, i.e.: a trend to suppress from the draft text any reference to property rights; another trend to include the text in the Convention as submitted, and a third, compromise position which would strengthen the social function of property. Ultimately, the prevailing criterion was to include the right to property in the text of the Convention.

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146. The terms of an international human rights treaty have an autonomous meaning, for which reason they cannot be made equivalent to the meaning given to them in domestic law. Furthermore, such human rights treaties are live instruments whose interpretation must adapt to the evolution of the times and, specifically, to current living conditions. [FN58]

[FN58] cfr. The Right to Information on Consular Assisstance in the Framework of Guarantees for Due Legal Process Advisory Opinion OC-16/99 of October 1, 1999. A Series No. 16, para. 114.

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147. Article 29(b) of the Convention, in turn, establishes that no provision may be interpreted as "restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party".

148. Through an evolutionary interpretation of international instruments for the protection of human rights, taking into account applicable norms of interpretation and pursuant to article 29(b) of the Convention -which precludes a restrictive interpretation of rights-, it is the opinion of this Court that article 21 of the Convention protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property, which is also recognized by the Constitution of Nicaragua.

149. Given the characteristics of the instant case, some specifications are required on the concept of property in indigenous communities. Among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.

150. In this regard, Law No. 28, published on October 30, 1987 in La Gaceta No. 238, the Official Gazette of the Republic of Nicaragua, which regulates the Autonomy Statute of the Regions of the Atlantic Coast of Nicaragua, states in article 36 that:

Communal property are the lands, waters, and forests that have traditionally belonged to the Communities of the Atlantic Coast, and they are subject to the following provisions:
1. Communal lands are inalienable; they cannot be donated, sold, encumbered nor taxed, and they are inextinguishable.
2. The inhabitants of the Communities have the right to cultivate plots on communal property and to the usufruct of goods obtained from the work carried out.

151. Indigenous peoples' customary law must be especially taken into account for the purpose of this analysis. As a result of customary practices, possession of the land should suffice for

indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration.

152. As has been pointed out, Nicaragua recognizes communal property of indigenous peoples, but has not regulated the specific procedure to materialize that recognition, and therefore no such title deeds have been granted since 1990. Furthermore, in the instant case the State has not objected to the claim of the Awas Tingni Community to be declared owner, even though the extent of the area claimed is disputed.

153. It is the opinion of the Court that, pursuant to article 5 of the Constitution of Nicaragua, the members of the Awas Tingni Community have a communal property right to the lands they currently inhabit, without detriment to the rights of other indigenous communities. Nevertheless, the Court notes that the limits of the territory on which that property right exists have not been effectively delimited and demarcated by the State. This situation has created a climate of constant uncertainty among the members of the Awas Tingni Community, insofar as they do not know for certain how far their communal property extends geographically and, therefore, they do not know until where they can freely use and enjoy their respective property. Based on this understanding, the Court considers that the members of the Awas Tingni Community have the right that the State

a) carry out the delimitation, demarcation, and titling of the territory belonging to the Community; and
b) abstain from carrying out, until that delimitation, demarcation, and titling have been done, actions that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographical area where the members of the Community live and carry out their activities.

Based on the above, and taking into account the criterion of the Court with respect to applying article 29(b) of the Convention (supra para. 148), the Court believes that, in light of article 21 of the Convention, the State has violated the right of the members of the Mayagna Awas Tingni Community to the use and enjoyment of their property, and that it has granted concessions to third parties to utilize the property and resources located in an area which could correspond, fully or in part, to the lands which must be delimited, demarcated, and titled.

154. Together with the above, we must recall what has already been established by this court, based on article 1(1) of the American Convention, regarding the obligation of the State to respect the rights and freedoms recognized by the Convention and to organize public power so as to ensure the full enjoyment of human rights by the persons under its jurisdiction. According to the rules of law pertaining to the international responsibility of the State and applicable under International Human Rights Law, actions or omissions by any public authority, whatever its hierarchic position, are chargeable to the State which is responsible under the terms set forth in the American Convention [FN59].

[FN59] cfr. Ivcher Bronstein case, supra note 9, para. 168; Case of the Constitutional Court , supra note 10, para. 109; and Bámaca Velásquez case, supra note 47, para. 210.

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155. For all the above, the Court concludes that the State violated article 21 of the American Convention, to the detriment of the members of the Mayagna (Sumo) Awas Tingni Community, in connection with articles 1(1) and 2 of the Convention.

X. OTHER ARTICLES OF THE AMERICAN CONVENTION

156. In its brief with the final pleadings, the Commission alleged that given the nature of the relationship that the Awas Tingni Community has with its traditional land and natural resources, the State is responsible for the violation of other rights protected by the American Convention. The Commission stated that, by ignoring and rejecting the territorial claim of the Community and granting a logging concession within the traditional land of the Community without consulting the opinion of the Community, "the State breached a combination" of the following articles enshrined in the Convention: 4 (Right to Life), 11 (Right to Privacy), 12 (Freedom of Conscience and Religion), 16 (Freedom of Association), 17 (Rights of the Family); 22 (Freedom of Movement and Residence), and 23 (Right to Participate in Government).

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Considerations of the Court

157. With respect to the alleged violation of articles 4, 11, 12, 16, 17, 22 and 23 of the Convention, as argued by the Commission in its brief on final pleadings, the Court has considered that even when the violation of any article of the Convention has not been alleged in the petition brief, this does not impede the violation being declared by the Court, if the proven facts lead to conclude that such a violation did in fact occur. [FN60] However, in the instant case, the Court refers to what was decided in this same Judgment in connection with the right to property and the right to judicial protection of the members of the Awas Tingni Community, and it also dismisses the violation of rights protected by the abovementioned article because the Commission did not state the grounds for it in its brief on final arguments.

[FN60] cfr. Durand and Ugarte case, supra note 12, para.84; Castillo Petruzzi et al. case. Judgment of May 30, 1999. C Series No. 52, para. 178; and Blake case. Judgment of January 24, 1998. C Series No. 36, para. 112.

XI. APPLICATION OF ARTICLE 63(1)

Arguments of the Commission

158. In its application brief, the Commission requested that the Court, pursuant to article 63(1) of the Convention, declare that the State must:

1. Establish a juridical procedure, in accordance with relevant international and national legal norms, which will lead to prompt and specific official recognition and demarcation of the rights of the Awas Tingni Community to its communal natural resources and rights;
2. Abstain from granting or considering any concessions to utilize natural resources in the lands used and occupied by Awas Tingni, until the issue of land tenure affecting Awas Tingni has been resolved, or until a specific agreement has been reached on this matter between the State and the Community;
3. Pay equitable compensation for the monetary and moral damage suffered by the Community due to lack of specific official recognition of its rights to natural resources and lands and due to the concession to SOLCARSA, [and]
4. Pay the Indigenous Community for the costs it incurred in to defend its rights before the Courts in Nicaragua and in the procedures before the Commission and the Inter-American Court.

159. On August 22, 2001 the Commission filed the brief on reparations, costs and expenses, which had been requested by the Secretariat on July 31, 2001. The deadline for filing that brief expired on August 10, 2001, so it was received 12 days after expiration of the term. In this regard, the Court considers that the time elapsed cannot be considered reasonable, according to the criterion the Court has followed in its jurisprudence. [FN61] Under the circumstances of this case, the delay was not due to a mere mistake in calculating the term. Furthermore, the imperatives of legal certainty and procedural balance require that terms be respected [FN62], unless exceptional circumstances impede this, which did not occur in the instant case. Therefore, the Court rejects the brief filed by the Commission on August 22, 2001, because it was time-barred, and abstains from discussing its content.

[FN61] cfr. Baena Ricardo et al. case, supra note 9, para. 50; Case of "The Last Temptation of Christ"(Olmedo Bustos et al. case). Order by the Inter-American Court of Human Rights on November 9, 1999, Whereas clause No. 4; Castillo Páez case, Preliminary Objections. Judgment of January 30, 1996. C Series No. 24, para. 34; Paniagua Morales et al. case, Preliminary Objections. Judgment of January 25, 1996. C Series No. 23, paras. 38, 40-42; and Cayara case, Preliminary Objections. Judgment of February 3, 1993. C Series No. 14, paras. 42 and 63.
[FN62] cfr. Case of "The Last Temptation of Christ", supra note 61, Whereas clause No. 4.

Arguments of the State

160. The State, in turn, stated in its briefs responding to the petition and to the final arguments, that:

a) any claim to compensation due to lack of titling or granting of the logging concession to the SOLCARSA corporation is unfounded because:
   i) the SOLCARSA concession caused no damage to the Community. In its submission on the facts, the Commission recognized that it is not clear whether there was damage to the forest in the areas claimed by the Community. Execution of the logging activity derived from the concession granted to SOLCARSA did not begin, because the State did not

approve the First Management Plan for the logging operation. However, the corporation did in effect cause damage to the forest in the area of Cerro Wakambay, through illegal felling of trees outside the area of the logging concession granted to it. The illegal action by SOLCARSA, which was external to the concession, was a private action not linked to any governmental permissiveness, and which was punished by the State authorities;

ii) in its effort to determine monetary responsibilities against the State, the Commission concludes that in any case those damages were against third parties, who are not parties to this case nor have they brought claims against the State, for which reason it does not recognize the ancillary nature of international jurisdiction;

iii) the claim made by the Community is disproportionate and irrational, and it refers to an area in which they have not had ancestral possession;

iv) the Community has not been displaced from the lands it claims; and

v) there has been no alteration of the form of life, beliefs, customs, and production patterns of the Community;

b) any claim for compensation derived from actions of the courts of justice is unfounded because the Community:

i) did not request titling of its alleged ancestral lands through judicial procedures;

ii) did not exhaust domestic remedies;

iii) did not exercise due diligence in its procedural actions; and

iv) obtained the annulment of the logging concession, "the only judicial remedy requested";

c) the alleged judicial delay attributed to the national courts did not cause any type of moral nor patrimonial damage to the detriment of the Community, because:

i) it was not displaced nor did it suffer invasion of the areas occupied;

ii) it has remained within the area it claims as ancestral, "hunting, fishing, farming, and visiting its sacred places";

iii) its ancestral form of life (social cohesion, values, beliefs, customs, health standards, and productive patterns) was not altered; and

iv) it suffered no lost earnings nor consequential damages;

d) the State proved that there has been considerable progress regarding land titling of indigenous communities on the Atlantic Coast, such as:

i) making a contract for a study to diagnose the land tenure situation and the areas claimed by those communities; and

ii) preparing a draft bill for the "Special Law to Regulate the Communal Property System of the Indigenous Communities of the Atlantic Coast and BOSAWAS", and conducting an extensive process of consultation with the communities, so as to substantially improve the existing legal and institutional framework; and

e) for the abovementioned reasons, the application for reparations filed by the Commission must be rejected.

161. Regarding costs, in its brief on final pleadings the State indicated that it must not be sentenced to such payment for the following reasons, including that:

a) Nicaragua showed good faith in its allegations;

b) the State proved that the evidence submitted by the Commission regarding ancestral possession of the Community was insufficient, and that its claim is excessive and over-dimensioned to the detriment of third parties;
c) the operating costs of the Commission and of the Court are covered by the OAS budget;
d) "access to the Commission [and] the Court is subject to no schedule of fees or rates";
e) article 45 of the Rules of Procedure states that the party proposing an item of evidence will cover the costs incurred for it; and
f) Nicaragua is one of the poorest States of the hemisphere and must commit its limited resources, among other uses, to funding the costly process of titling and demarcating the lands of indigenous communities.

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Considerations of the Court

162. Article 63(1) of the American Convention establishes that

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

163. In the instant case the Court established that Nicaragua breached articles 25 and 21 of the Convention in relation to articles 1(1) and 2 of the Convention. In this regard, the Court has reiterated in its constant jurisprudence that it is a principle of international law that any violation of an international obligation which has caused damage carries with it the obligation to provide adequate reparation for it. [FN63]

[FN63] cfr. Cesti Hurtado case. Reparations, supra note 13, para. 32; "Street Children" case (Villagrán Morales et al. vs. Guatemala). Reparations, supra note 11 para. 59; "White van" case (Paniagua Morales et al. vs. Guatemala). Reparations, supra note 13, para. 75; Ivcher Bronstein case, supra note 9, para.177; Baena Ricardo et al. case, supra note 9, para.201; Case of the Constitutional Court, supra note 10, para.118; Suárez Rosero case. Reparations (art. 63.1 American Convention on Human Rights). Judgment of January 20 1999. C Series No. 44, para.40; Loayza Tamayo Case. Reparations (Art. 63.1 American Convention on Human Rights), Judgment of November 27, 1998. C Series No. 42, para.84; Caballero Delgado and Santana case. Reparations (art. 63.1 American Convention on Human Rights). Judgment of January 29, 1997. C Series No. 31, para.15; Neira Alegría et al. case. Reparations (art. 63.1 American Convention on Human Rights). Judgment of September 19, 1996. C Series No. 29, para.36; El Amparo case. Reparations (art. 63.1 American Convention on Human Rights). Judgment of September 14, 1996. C Series No. 28, para.14; and Aloeboetoe et al. case. Reparations (art. 63.1 American Convention on Human Rights). Judgment of September 10, 1993. C Series No. 15, para.43. In this same direction, cfr., Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, p. 184; Factory at Chorzów, Merits, Judgment No. 13,

1928, P.C.I.J., Series A, No. 17, p. 29; and Factory at Chorzów, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21.

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164. For the aforementioned reason, pursuant to article 2 of the American Convention on Human Rights, this Court considers that the State must adopt the legislative, administrative, and any other measures required to create an effective mechanism for delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores. Furthermore, as a consequence of the aforementioned violations of rights protected by the Convention in the instant case, the Court rules that the State must carry out the delimitation, demarcation, and titling of the corresponding lands of the members of the Awas Tingni Community, within a maximum term of 15 months, with full participation by the Community and taking into account its customary law, values, customs and mores. Until the delimitation, demarcation, and titling of the lands of the members of the Community have been carried out, Nicaragua must abstain from acts which might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Awas Tingni Community live and carry out their activities.

165. In the instant case, the Court notes that the Commission did not prove that there were material damages caused to the members of the Mayagna Community.

166. The Court considers that this Judgment is, in and of itself, a form of reparation to the members of the Awas Tingni Community. [FN64]

[FN64] cfr. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.), supra note 9, para.99; and Suárez Rosero case. Reparations, supra note 63, para.72.

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167. The Court considers that due to the situation in which the members of the Awas Tingni Community find themselves due to lack of delimitation, demarcation, and titling of their communal property, the immaterial damage caused must also be repaired, by way of substitution, through a monetary compensation. Under the circumstances of the case it is necessary to resort to this type of compensation, setting it in accordance with equity and based on a prudent estimate of the immaterial damage, which is not susceptible of precise valuation. [FN65] Due to the above and taking into account the circumstances of the cases and what has been decided in similar cases, the Court considers that the State must invest, as reparation for the immaterial damages, in the course of 12 months, the total sum of US$ 50,000 (fifty thousand United States dollars) in works or services of collective interest for the benefit of the Awas Tingni Community, by common agreement with the Community and under the supervision of the Inter-American Commission. [FN66]

[FN65] cfr. Cesti Hurtado case. Reparations, supra note 13, para.51; "White van" case (Paniagua Morales et al. vs. Guatemala). Reparations, supra note 13, para.105; Ivcher Bronstein case, supra

note 9, para.183; Baena Ricardo et al. case, supra note 9, para. 206; and Castillo Páez case, Reparations (Art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. C Series No. 43, para. 84. Also cfr., inter alia, Eur. Court H.R., Wiesinger Judgment of 30 October 1991, series A no. 213, para. 85; Eur. Court H.R., Kenmmache v. France (Article 50) judgment of 2 November 1993, Series A no. 270-B, para. 11; Eur. Court H.R., Mats Jacobsson judgment of 28 June 1990, Series A no. 180-A, para. 44; and Eur. Court H.R., Ferraro judgment of 19 February 1991, Series A no. 197-A, para. 21.

[FN66] cfr., inter alia, "Street children" case (Villagrán Morales et al. vs. Guatemala). Reparations, supra note 11, para. 103; Benavides Cevallos case. Judgment of June 19, 1998. C Series No. 38, para. 48.5; and Aloeboetoe et al. case. Reparations, supra note 63, paras. 54 to 65, 81 to 84, and 96.

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168. Regarding reimbursement for costs and expenses, this Court must prudently assess them, including expenses for actions taken by the Community before the authorities under domestic jurisdiction, as well as those generated in the course of the proceedings before the inter-American system. This assessment can be done on the basis of the principle of equity. [FN67]

[FN67] cfr. Cesti Hurtado case. Reparations, supra note 13, para.72; "Street children" case (Villagrán Morales et al. vs. Guatemala). Reparations, supra note 11, para.109; and "White van" case (Paniagua Morales et al. vs. Guatemala). Reparations, supra note 13, para. 213.

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169. To this end, the Court considers that it is equitable to grant, through the Inter-American Commission, the total sum of US$ 30,000 (thirty thousand United States dollars) for expenses and costs incurred by the members of the Awas Tingni Community and their representatives, both those caused in domestic proceedings and in the international proceedings before the inter-American system of protection. To comply with the above, the State must make the respective payment within the term of 6 months from the time of notification of this Judgment.

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170. The State can fulfill its obligations through payment in United States dollars or in an equivalent amount of Nicaraguan currency, using for the respective calculation the exchange rate between both currencies in the New York, United States of America exchange the day before that payment.

171. The payment of immaterial damages as well as of costs and expenses, as set forth in this Judgment, shall not be subject to any current or future tax. Furthermore, if the State were to delay payment, it must pay interest on the amount owed, at the banking rate for delay in Nicaragua. Finally, if for any reason it were not possible for the beneficiaries to receive their respective payments or to receive the respective benefits within the above stated term of twelve months, the State must deposit the respective amounts in their name to an account or certificate

of deposit in a solvent financial institution, in United States dollars or their equivalent in Nicaraguan currency, under the most favorable conditions allowed by banking practices and legislation. If after ten years the payment has not been claimed, the amount will be returned, with interest earned, to the Nicaraguan State.

172. According to its regular practice, the Court reserves the authority to oversee full compliance with this Judgment. The proceeding will be concluded once the State has fully complied with the provisions set forth in this decision.

XII. OPERATIVE PARAGRAPHS

173. Therefore,

THE COURT,

By seven votes to one,

1. finds that the State violated the right to judicial protection enshrined in article 25 of the American Convention on Human Rights, to the detriment of the members of the Mayagna (Sumo) Awas Tingni Community, in connection with articles 1(1) and 2 of the Convention, in accordance with what was set forth in paragraph 139 of this Judgment.

Judge Montiel Argüello dissenting.

By seven votes to one,

2. finds that the State violated the right to property protected by article 21 of the American Convention on Human Rights, to the detriment of the members of the Mayagna (Sumo) Awas Tingni Community, in connection with articles 1(1) and 2 of the Convention, in accordance with what was set forth in paragraph 155 of this Judgment.

Judge Montiel Argüello dissenting.

Unanimously,

3. decides that the State must adopt in its domestic law, pursuant to article 2 of the American Convention on Human Rights, the legislative, administrative, and any other measures necessary to create an effective mechanism for delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores, pursuant to what was set forth in paragraphs 138 and 164 of this Judgment.

Unanimously,

4. decides that the State must carry out the delimitation, demarcation, and titling of the corresponding lands of the members of the Mayagna (Sumo) Awas Tingni Community and, until that delimitation, demarcation and titling has been done, it must abstain from any acts that might

lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Mayagna (Sumo) Awas Tingni Community live and carry out their activities, the above in accordance with what was set forth in paragraphs 153 and 164 of this Judgment.

Unanimously,

5. finds that this Judgment constitutes, in an of itself, a form of reparation for the members of the Mayagna (Sumo) Awas Tingni Community.

By seven votes to one,

6. finds that, in equity, the State must invest, as reparation for immaterial damages, in the course of 12 months, the total sum of US$ 50,000 (fifty thousand United States dollars) in works or services of collective interest for the benefit of the Mayagna (Sumo) Awas Tingni Community, by common agreement with the Community and under supervision by the Inter-American Commission of Human Rights, pursuant to what was set forth in paragraph 167 of this Judgment.

Judge Montiel Argüello dissenting.

By seven votes to one,

7. finds that, in equity, the State must pay the members of the Mayagna (Sumo) Awas Tingni Community, through the Inter-American Commission of Human Rights, the total sum of US$ 30,000 (thirty thousand United States dollars) for expenses and costs incurred by the members of that Community and their representatives, both those caused in domestic proceedings and in the international proceedings before the inter-American system of protection, pursuant to what was stated in paragraph 169 of this Judgment.

Judge Montiel Argüello dissenting.

Unanimously,

8. finds that the State must submit a report on measures taken to comply with this Judgment to the Inter-American Court of Human Rights every six months, counted from the date of notification of this Judgment.

Unanimously,

9. decides to oversee compliance with this Judgment and that this case will be concluded once the State has fully carried out the provisions set forth in this Judgment.

Judges Cançado Trindade, Pacheco-Gómez and Abreu-Burelli informed the Court of their Joint Opinion, Judges Salgado-Pesantes and García-Ramirez informed the Court of their Opinions,

and Judge Montiel-Argüello informed the Court of his dissenting vote, all of which accompany this Judgment.

Done at San José, Costa Rica, on August 31, 2001, in Spanish and English, the Spanish text being authentic.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Hernán Salgado-Pesantes
Oliver Jackman
Alirio Abreu-Burelli
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Alejandro Montiel-Argüello
Judge ad hoc

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

JOINT SEPARATE OPINION OF JUDGES A.A. CANÇADO TRINDADE, M. PACHECO GÓMEZ AND A. ABREU BURELLI

1. We, the undersigned Judges, vote in favour of the adoption of the present Judgment of the Inter-American Court of Human Rights on the merits in the case of the Community Mayagna (Sumo) Awas Tingni versus Nicaragua. Given the importance of the matter raised in the present case, we feel obliged to add the brief reflections that follow, about one of its central aspects, namely, the intertemporal dimension of the communal form of property prevailing among the members of the indigenous communities.

2. At the public hearing held in the headquarters of the Inter-American Court on 16, 17 and 18 November 2000, two members and representatives of the Community Mayagna (Sumo) Awas Tingni pointed out the vital importance of the relationship of the members of the Community with the lands they occupy, not only for their own subsistence, but also for their family, cultural and religious development. Hence their characterization of the territory as sacred, for encompassing not only the members of the Community who are alive,, but also the mortal

remains of their ancestors, as well as their divinities. Hence, for example, the great religious significance of the hills, inhabited by those divinities.

3. As one of the members of the Community referred to pointed out in his testimony in the public hearing before the Court,

"(...) Cerro Urus Asang is a sacred hill since our ancestors because therein we have buried our grandparents and therefore we call it sacred. Thus, Kiamak is also a sacred hill because there we have (...) the arrows of our grandparents. Then comes Caño Kuru Was, it is an old village. Every name we have mentioned in this framework is sacred.(...)" [FN1].

[FN1] Testimony of Mr. Charlie Webster Mclean Cornelio, in: Inter-American Court of Human Rights (IACtHR), Case of the Community Mayagna (Sumo) Awas Tingni - Transcripción de la Audiencia Pública sobre el Fondo Celebrada los Días 16, 17 y 18 de Noviembre de 2000 en la Sede de la Corte, p. 26 (mimeographed, internal circulation).

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4. And he then added that

"(...) Our grandparents lived in this hill, they then had had as their small animals (...) the monkeys. The utensils of war of our ancestors, our grandparents, were the arrows. There they are stored. (...) We maintain our history, since our grandparents. That is why we have [it] as Sacred Hill. (...) Asangpas Muigeni is spirit of the hill, is of equal form to a human [being], but is a spirit [who] always lives under the hills. (...)" [FN2].

[FN2] Ibid., pp. 41-43.

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5. As an anthropologist observed in his testimony in the public hearing before the Court, there are two types of sacred places of the members of the Mayagna Community: a) the hills, where the "spirits of the hill" stay, with whom one "ought to have a special relation"; and b) in the frontier zones, the cemeteries, where they bury their dead "within the Community", along the river Wawa, "visited frequently until nowadays by members of the Community", above all when they "go hunting", up to a certain point as a "spiritual act" [FN3]. As another anthropologist and sociologist added, in an expertise, in the same hearing, the lands of the indigenous peoples constitute a space which is, at the same time, geographical and social, symbolic and religious, of crucial importance for their cultural self-identification, their mental health, their social self-perception [FN4].

[FN3] Testimony of Mr. Theodore Macdonald, anthropologist, in ibid., pp. 67-68.
[FN4] Expertise of Mr. Rodolfo Stavenhagen Gruenbaum, anthropologist and sociologist, in ibid., pp. 71-72.

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6. As it can be inferred from the testimonies and expertises rendered in the aforementioned public hearing, the Community has a tradition contrary to the privatization and the commercialization and sale (or rent) of the natural resources (and their exploitation) [FN5]. The communal concept of the land - including as a spiritual place - and its natural resources form part of their customary law; their link with the territory, even if not written, integrates their day-to-day life, and the right to communal property itself has a cultural dimension. In sum, the habitat forms an integral part of their culture, transmitted from generation to generation.

[FN5] Cf., e.g., the testimony of Mr. Charlie Webster Mclean Cornelio, member of the Community Mayagna, in ibid., p. 40, and the expertise of Mr. Rodolfo Stavenhagen Gruenbaum, anthropologist and sociologist, in ibid., p. 78.

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7. The Inter-American Court has duly acknowledged these elements, in paragraph 141 of the present Judgment, in which it points out that

"(...) Among the indigenous persons there exists a communitarian tradition about a communal form of the collective property of the land, in the sense that the ownership of this latter is not centered in an individual but rather in the group and his community. (...) To the indigenous communities the relationship with the land is not merely a question of possession and production but rather a material and spiritual element that they ought to enjoy fully, so as to preserve their cultural legacy and transmit it to future generations".

8. We consider it necessary to enlarge this conceptual element with an emphasis on the intertemporal dimension of what seems to us to characterize the relationship of the indigenous persons of the Community with their lands. Without the effective use and enjoyment of these latter, they would be deprived of practicing, conserving and revitalizing their cultural habits, which give a meaning to their own existence, both individual and communitarian. The feeling which can be inferred is in the sense that, just as the land they occupy belongs to them, they in turn belong to their land. They thus have the right to preserve their past and current cultural manifestations, and the power to develop them in the future.

9. Hence the importance of the strengthening of the spiritual and material relationship of the members of the Community with the lands they have occupied, not only to preserve the legacy of past generations, but also to undertake the responsibilities that they have assumed in respect of future generations. Hence, moreover, the necessary prevalence that they attribute to the element of conservation over the simple exploitation of natural resources. Their communal form of property, much wider than the civilist (private law) conception, ought to, in our view, be appreciated from this angle, also under Article 21 of the American Convention on Human Rights, in the light of the facts of the cas d'espèce.

10. The concern with the element of conservation reflects a cultural manifestation of the integration of the human being with nature and the world wherein he lives. This integration, we believe, is projected into both space and time, as we relate ourselves, in space, with the natural

system of which we are part and that we ought to treat with care, and, in time, with other generations (past and future) [FN6], in respect of which we have obligations.

[FN6] Future generations begin to attract the attention of the contemporary doctrine of international law: cf., e.g., A.-Ch. Kiss, "La notion de patrimoine commun de l'humanité", 175 Recueil des Cours de l'Académie de Droit International de La Haye (1982) pp. 109-253; E. Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity, Tokyo/Dobbs Ferry N.Y., United Nations University/Transnational Publs., 1989, pp. 1-351; E. Agius and S. Busuttil et alii (eds.), Future Generations and International Law, London, Earthscan, 1998, pp. 3-197; J. Symonides (ed.), Human Rights: New Dimensions and Challenges, Paris/Aldershot, UNESCO/Dartmouth, 1998, pp. 1-153.

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11. Cultural manifestations of the kind form, in their turn, the substratum of the juridical norms which ought to govern the relations of the community members inter se and with their goods. As timely recalled by the present Judgment of the Court, the Political Constitution in force of Nicaragua itself provides about the preservation and the development of the cultural identity (in the national unity), and the proper forms of social organization of the indigenous peoples, as well as the maintenance of the communal forms of property of their lands and the enjoyment, use and benefit of them (Article 5) [FN7].

[FN7] Cf. also Articles 89 and 180 of the Political Constitution in force of Nicaragua.

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12. These forms of cultural manifestation and social self-organization have, in this way, materialized, with the passing of time, into juridical norms and into case-law, at both international and national levels. This is not the first time that the Inter-American Court has kept in mind the cultural practices of collectivities. In the case of Aloeboetoe and Others versus Suriname (Reparations, Judgment of 10.09.1993), the Court took into account, in the determination of the amount of reparations to the relatives of the victims, the customary law itself of the maroon community (the saramacas, - to which the victims belonged), where poligamy prevailed, so as to extend the amount of the reparations for damages to the several widows and their sons [FN8].

[FN8] IACtHR, case Aloeboetoe and Others versus Suriname (Reparations), Series C, n. 15, Judgment of 10.09.1993, pp. 51-96, pars. 1-116.

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13. In the case of Bámaca Velásquez versus Guatemala (Merits, Judgment of 25.11.2000), the Court took into due account the right of the relatives of the person who had disappeared by force to a worthy grave for the mortal remains of this latter and the repercussion of the issue in the maya culture [FN9]. However, in this Judgment on the merits in the case of the Community Mayagna (Sumo) Awas Tingni, the Court, for the first time, goes into greater depth in the

analysis of the matter, in an approximation to an integral interpretation of the indigenous cosmovision, as the central point of the present Judgment.

[FN9] IACtHR, case Bámaca Velásquez versus Guatemala (Merits), Series C, n. 70, Judgment del 25.11.2000, pp. 191-331, pars. 1-230.

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14. In fact, there are nowadays many multicultural societies, and the attention due to the cultural diversity seems to us to constitute an essential requisite to secure the efficacy of the norms of protection of human rights, at national and international levels. Likewise, we consider that the invocation of cultural manifestations cannot attempt against the universally recognized standards of observance and respect for the fundamental rights of the human person. Thus, at the same time that we affirm the importance of the attention due to cultural diversity, also for the recognition of the universality of human rights, we firmly discard the distortions of the so-called cultural "relativism".

15. The interpretation and application given by the Inter-American Court to the normative content of Article 21 of the American Convention in the present case of the Community Mayagna (Sumo) Awas Tingni represent, in our view, a positive contribution to the protection of the communal form of property prevailing among the members of that Community. This communal conception, besides the values underlying it, has a cosmovision of its own, and an important intertemporal dimension, in bringing to the fore the bonds of human solidarity that link those who are alive with their dead and with the ones who are still to come.

Antônio Augusto Cançado Trindade
Judge

Máximo Pacheco-Gómez
Judge

Alirio Abreu-Burelli
Judge

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE HERNÁN SALGADO PESANTES

I would like to add a few comments in connection with this case.

1. In our hemisphere, land tenure by indigenous peoples and communities in the form of communal property or by ancestral tenure, is a recognized right that many Latin American countries have raised to the level of a constitutional right.

2. This right to the land –which is the entitlement of indigenous peoples- comes under the general heading of the right to property. However, it transcends the right to property in the traditional sense, which mainly concerns the right to private property. Communal or collective tenure, on the other hand, better serves the necessary social function that it is intended to have.

3. The anthropology of the XX century made it abundantly clear that indigenous cultures have a very unique bond with their ancestral lands. They rely upon the land for their survival and look to it for moral and material fulfillment.

4. In this case, there are a number of settlements of indigenous communities (traslapes). When a State delimits and demarcates communal lands, the overriding criterion must be proportionality. With the interested parties participating, the State deeds over those lands that all the inhabitants-members of the indigenous communities will need to carry on their way of life and ensure it for their posterity.

5. Finally, when the right to property is asserted, one must be careful to bear in mind that the enjoyment and exercise of the right to property carries with it duties, from moral to political to social. Overarching all these is a juridical duty, specifically the limitations that law in a democratic State imposes. In the words of the American Convention: "The law may subordinate such use and enjoyment to the interest of society." (Art. 21(1).

Hernán Salgado-Pesantes
Judge

Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE SERGIO GARCÍA RAMÍREZ IN THE JUDGMENT ON THE MERITS AND REPARATIONS IN THE "MAYAGNA (SUMO) AWAS TINGNI COMMUNITY CASE"

1. I have voted with the majority on the Court in the Judgment on the merits and reparations in the instant case, which finds that articles 21 and 25 of the American Convention on Human Rights were violated to the detriment of the Mayagna Awas Tingni Community. Before arriving at this decision, the Court carefully examined the arguments of the petitioners, who were represented before this Court by the Inter-American Commission on Human Rights. It also examined the position of the State, which explicitly acknowledged the rights of the Mayagna (Sumo) Awas Tingni Community and its members (par. 152 of the Judgment), the evidence offered at the hearing and other information in the case file. Building on this foundation, the Court has, in my view, correctly interpreted Article 21 of the American Convention on Human Rights.

2. When exercising its contentious jurisdiction, the Inter-American Court is duty-bound to observe the provisions of the American Convention, to interpret them in accordance with the rules that the Convention itself sets forth and those that can be applied under the legal regime governing international treaties, as set forth in the Vienna Convention on the Law of Treaties, of

May 23, 1969. It must also heed the principle of interpretation that requires that the object and purpose of the treaties be considered (Article 31(1) of the Vienna Convention), referenced below, and the principle pro homine of the international law of human rights –frequently cited in this Court's case-law- which requires the interpretation that is conducive to the fullest protection of persons, all for the ultimate purpose of preserving human dignity, ensuring fundamental rights and encouraging their advancement.

3. Article 29 of the American Convention, which concerns the Convention's interpretation, states that no provision of the Convention shall be interpreted as "restricting the exercise or enjoyment of any right or freedom recognized by virtue of the laws of any State Party (...)." In other words, even assuming, for the sake of argument, that the Convention contained provisions that restricted or limited pre-existing rights, which it does not, those persons protected under the legal regime that the Convention establishes would not forfeit the freedoms, prerogatives or authorities they have under the laws of the State to whose jurisdiction they are subject. The rights, prerogatives and authorities recognized under domestic laws are not supplanted by Convention-recognized rights; instead, they are adjusted to conform to the rights recognized under the Convention, or are added to an ever-growing body of human rights.

4. Article 31(1) of the Vienna Convention on the Law of Treaties provides as follows: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." In this regard, the object and purpose of the American Convention on Human Rights are to uphold human dignity and recognize the demands that the protection and fulfillment of the human person pose, to articulate attendant obligations, and to provide juridical instruments that preserve that human dignity and meet those demands. When examining the ordinary meaning of the terms of the treaty now being applied –namely, the American Convention-, one has to consider the scope and meaning –or scopes and meanings- that the term "property" has in the countries of the Americas.

5. In its Advisory Opinion OC-16/99 (The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process) the Inter-American Court of Human Rights held that "the interpretation of a treaty must take into account not only the agreements and instruments related to the treaty (...) but also the system of which it is part" (par. 113). It cited the International Court of Justice, which found that "an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation." (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16 ad 31). This is precisely what the Inter-American Court has done in the judgment it delivered on the instant case.

6. Various international instruments on the life, culture and rights of indigenous peoples call for explicit recognition of their legal institutions, one of them being the concepts of property once and still prevalent among them. The review of these texts was informed by a wide array of beliefs, experiences and requirements. The finding was that the documents were legitimate and that the land tenure systems must be respected. It necessarily follows, then, that those systems must be recognized and protected. In the final analysis, the individual rights of indigenous persons and the collective rights of their peoples fit into the regime created by the more general

instruments on human rights that apply to all persons, as illustrated by the texts of the more specific instruments for which there exists an ever broader and more robust consensus.This information is useful, if not indispensable, for an interpretation of those Convention provisions that the Court must apply.

7. Geneva Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries was adopted by the 76th General Conference of the International Labour Organisation (Geneva, 1989) out of a concern for the survival of indigenous and tribal peoples' cultures and the institutions that their cultures have produced and protect. It provides that "governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship." (Article 13(1)). The Convention also provides that "[T]he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised." (Article 14(1)).

8. The Draft Declaration on Discrimination against Indigenous Peoples, prepared by the United Nations Economic and Social Council's Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1994/2/Add.1, 20 April 1994) makes clear reference to these very same issues and sets the standards that the international juridical community is to observe in matters bearing upon indigenous peoples and the members of their communities. Article 4 stipulates the following: "Indigenous peoples have the right to maintain and strengthen (...) their legal systems (...)". Article 25 provides that "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard." In Article 26, the Draft Declaration recognizes indigenous peoples' right to "own, develop, control and use the lands and territories," and adds the following: "This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems (...) and the right to effective measures by States to prevent any interference with, alienation of or encroachment upon these rights."

9. The Proposed American Declaration on the Rights of Indigenous Peoples, which the Inter-American Commission on Human Rights approved on February 27, 1997, speaks to the existence, relevance and observance of the individual and collective rights of indigenous peoples. It provides the following: "Indigenous peoples have the right to the legal recognition of the varied and specific forms and modalities of their control, ownership, use and enjoyment of territories and properties." (Article XVIII.1). It further states that indigenous peoples "have the right to the recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied, as well as to the use of those to which they have historically had access for their traditional activities and livelihood." (Ibid., par. 2).

10. Various bodies of law within the Ibero-American world contain similar provisions, informed by the very same historical and cultural experience. A case in point is the Constitution of Nicaragua, the country to whose jurisdiction the Mayagna (Sumo) Awas Tingni Community is subject. That community is on Nicaragua's Atlantic Coast. Under the heading "Rights of the Atlantic Coastal Communities," that Constitution stipulates that: "The State recognizes the

communal land-tenure systems of the Atlantic Coast communities. It also recognizes their right to enjoy, use and exploit the waters and forests on their communal lands." This recognition must be taken into account when interpreting and applying the American Convention, in keeping with the Convention's Article 29(a).

11. When examining this case, the Court considered the scope of Article 21 of the American Convention. Under the title "Right to Property," that article provides that "Everyone has the right to the use and enjoyment of his property." When the Court examined this question, it had before it the travaux preparatoires of the Convention. There one can trace the evolution of the language of Article 21 to its present-day wording. Originally, the article was to speak of the right to private property, specifically. Later, the proposed language changed until the authors finally settled on the wording we have today: "the right to the use and enjoyment of [one's] property."The language in which this right is framed was meant to accommodate all subjects protected by the Convention. Obviously, there is no single model for the use and enjoyment of property. Every people, according to its culture, interests, aspirations, customs, characteristics and beliefs, can institute its own distinctive formula for the use and enjoyment of property. In short, these traditional concepts have to be examined and understood from the same perspective.

12. A number of countries in the Americas are home to indigenous ethnic groups whose ancestors –this hemisphere's aborigines- built legal systems that predate the conquest and colonization and that are to some extent still in effect. These ethnic groups established special de facto and de jure relationships with the land that they possessed and from whence they obtained their livelihood. Since the conquest, their legal institutions –which reflect their framers' way of thinking and have the full force of law- have withstood countless attempts to undermine them and have managed to survive to this day. In a number of countries, these indigenous legal institutions have been adopted into the national legal systems and are backed by specific international instruments that assert the lawful interests and traditional rights of the original inhabitants of the Americas and their descendents.

13. Such is the case with the indigenous property system, which does not preclude other forms of land ownership or tenure that are the product of differing historical and cultural processes. Indeed, it and the other forms of property and land tenure fit into the broad and pluralistic universe of rights that the inhabitants of various American countries enjoy. This set of rights has spread because of shared basic beliefs --the core idea of the use and exploitation of goods-, although there are significant differences as well –especially apropos the final disposition of those goods. But, taken together, these laws and rights are the property system that most of our countries have in common. To ignore the idiosyncratic versions of the right to use and enjoy property, recognized in Article 21 of the American Convention, and to pretend that there is only one way to use and enjoy property, is tantamount to denying protection of that right to millions of people, thereby withdrawing from them the recognition and protection of essential rights afforded to other people. Far from ensuring the equality of all persons, this would create an inequality that is utterly antithetical to the principles and to the purposes that inspire the hemispheric system for the protection of human rights.

14. In its analysis of the matter subject to its jurisdiction, the Inter-American Court regarded the rights to use and enjoy property, protected under Convention Article 21, from a perfectly

valid perspective, that of the members of the indigenous communities. In my opinion, the approach taken for purposes of the present judgment does not in any way imply a disregard or denial of other related rights that differ in nature, such as the collective rights so frequently referenced in the domestic and international instruments that I have cited in this opinion. It must be recalled that individual subjective rights flow from and are protected by these community rights, which are an essential part of the juridical culture of many indigenous peoples and, by extension, of their members. In short, there is an intimate and inextricable link between individual and collective rights, a linkage that is a condition sine qua non for genuine protection of persons belonging to indigenous ethnic groups.

15. During the hearing held to receive evidence on the merits of the case that the Court has now decided, opinions were proffered that alluded directly to this very point. In his verbal opinion, summarized in the Judgment, expert witness Rodolfo Stavenhagen Gruenbaum pointed out that "(i)n certain historical contexts, the rights of the human person can be fully guaranteed and exercised only by recognizing the rights of the collectivity and of the community to which that person has belonged since birth and of which he is part, a community that affords him the elements necessary to be able to feel self-fulfilled as a human being, which also means a social and cultural being."

16. In the history of the countries of modern-day Latin America, collective expressions of indigenous law have been attacked time and time again. These attacks have directly violated the individual rights of the members of the communities and the rights of the communities as a whole. Another expert heard by the Court, Roque de Jesús Roldán Ortega, spoke to this aspect of the issue. In the opinion he gave before the Court, he stated the following: "The experience in Latin America with the communal property issue is very telling. For almost 180 years, the policy of the Latin American States was to liquidate forms of communal ownership and the autonomous forms of government of the indigenous peoples, to annihilate them not just culturally but physically as well."

17. The judgment of the Inter-American Court of Human Rights in the Mayagna (Sumo) Awas Tingni Community Case contributes to the recognition of certain specific juridical relationships that together make up the body of law shared by a good portion of the inhabitants of the Americas, a body of law being increasingly accepted by and recognized in domestic laws and international instruments. The topic of this judgment, and by extension the judgment itself, is at that point where civil laws and economic, social and cultural laws converge. In other words, it stands at that junction where civil law and social law meet. The American Convention, applied in accordance with the interpretation that it authorizes and in accordance with the rules of the Law of Treaties, must be and is a system of rules that affords the indigenous people of our hemisphere the same, certain protection that it affords to all people of the American countries who come under the American Convention's umbrella.

Sergio García-Ramírez
Judge

Manuel E. Ventura-Robles
Secretary

DISSENTING OPINION OF JUDGE MONTIEL ARGÜELLO

1. I dissented on operative paragraphs 1, 2, 6 and 7 of the judgment the Court delivered in the Mayagna (Sumo) Awas Tingni Community Case.

2. I recognize that this is a highly complex case and that the Court and each of its Judges have deliberated upon it calmly and thoughtfully.

3. The Government of Nicaragua is very respectful of indigenous peoples' rights, which are amply recognized in the Constitution and secondary laws.

4. In my judgment, this case did not involve a violation of Article 25 of the American Convention on Human Rights (hereinafter "the Convention") which guarantees the existence of an effective judicial remedy against acts that violate fundamental rights. The Court has concluded otherwise, but did so on the basis of a false premise, i.e., that there is no clearly regulated procedure for titling indigenous communities' properties. The truth is that the Instituto Nicaragüense de Reforma Agraria (Nicaraguan Agrarian Reform Institute - INRA), then the MIDINRA and now the Office of Rural Land Titling, have had property-titling authorities. Their decisions can be challenged by means of a petition of amparo filed with the Supreme Court. That the existing legislation can be improved is not to say that it does not exist. As the Court acknowledges in its own judgment, the Government of Nicaragua has hired a consulting firm to conduct a comprehensive diagnostic study of all the indigenous communities and has introduced a bill in the Legislative Assembly, titled the "Statute Regulating the Communal Property System of the Atlantic Coast and Bosawas Indigenous Communities."

5. Again in connection with Article 25 of the Convention, the Court took a number of petitions of amparo under consideration. The first was filed by the Community in September 1995. It was not seeking title to their lands; instead, it was challenging a logging concession that had been awarded. The petition argued that the concession would have a detrimental effect on their lands. The petition was declared inadmissible on the grounds that it was filed extemporaneously. The fact that the Supreme Court decision came down more than one year after the petition was filed was not prejudicial to the Community. The Court would never have granted cert because the petition was filed after the time limit.

6. The other amparo that the Court considered was the constitutionality challenge that two members of the Consejo Regional de la Región Autónoma Atlántico Norte (RAAN) filed in March 1996 and that, after various proceedings, was successful in getting the Court to nullify and cancel the logging concession in question. However, the nullification was based solely on the fact that the concession had not been approved by the Regional Council's full membership; in other words, it had nothing to do with the demarcation of the Community's lands and was not filed by the Community.

7. In its finding that Article 21 of the Convention, which guarantees the right to property, had been violated, the Court reasoned that Nicaragua has no procedure for putting into practice the recognition of the communal property of indigenous peoples. That premise is untrue, as the

preceding paragraphs show.The fact that no titles of that nature have been awarded since 1990 does not mean that no procedure is in place. It only indicates the indigenous communities' disinterest in seeking title to their lands. In the specific case of the Awas Tingni Community, it has never filed for a land deed with any competent authority. Instead, its measures were confined to attacking the logging concession mentioned previously. The only grounds for the allegation would have been if applications seeking title had been filed and then rejected.

8. The facts recounted in the preceding paragraphs show that articles 25 and 21 of the Convention, found to have been violated in the judgment of the Court, were not in fact violated.

9. As for the reparations that the Court agreed upon, I must go on record to state that as there was no violation of a Convention-protected right, Article 63 of the Convention does not apply.

Nor is it proper to agree upon an indemnity in the absence of damages. There were no damages in the instant case: no material damages because there was no logging in the concession area; no moral damages, because the fact that the lands were not demarcated did no harm to the traditional way of life of the indigenous people in the Awas Tigni Community.

Concerning the reimbursement of costs and expenses, in my judgment such damages should only be awarded when the State has had no rational reason for contesting the application.

10. The foregoing notwithstanding, it has to be said that the Court has been fair in setting the amounts to be awarded as compensation, and has taken into consideration the difficult economic situation that Nicaragua is experiencing.

Alejandro Montiel-Argüello
Judge ad hoc

Manuel E. Ventura-Robles
Secretario