

Vera Maria Narvaez Lanuza
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Legal Assistan Intern; Monitored appeals of inmates, managed public relations, visits to the main women jails.

09/2009 –12/2009

Work Experience:

Jojo's Pizza, Pomona, CA, 91768

Assistant Manager

Customer Service and Sales Representative, marketing, supervise food making, administrative support.

10/2009 – 12/2009

Charlotte Russe

Montclair Plaza, Montclair, CA, 91763

Sales Representative

12/2008 - 05/2009

PLASTINIC: Maria Lanuza Plastinic Huember Center

Administrative Manager

Assisting the general manager with inventories, responsible for public relations, negotiations, marketing, product products, distribution of products, supervise imports of products.

Language skills

Spanish – native speaker

English - fluent **TOEFL**

French – basic skills

Computer skills

PC & MAC

Microsoft Office

Adobe, Internet research

Interests

12/2008

Awarded Juris Doctor by the Supreme Court of the Republic of Nicaragua

08/2009

Awarded Notary Public by the Supreme Court of the Republic of Nicaragua

08/2009

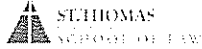
Member of the Lawyers Association in Nicaragua

Special Skills: Very communicative, social, open minded person, great organizational skills, love to know and learn about cultures, traveller, dreamer, writer and believe in love, compassion and solidarity.

Hobbies

Sport Lover, Surf, Fitness (Gym), Yoga, Pilates

Amateur Photographer, Travelling



SAINT THOMAS UNIVERSITY

SCHOOL OF LAW

LL.M. Program in Intercultural Human Rights

Ayra Laghaie Indigenous Peoples' Rights Scholarship

Application Package:

- Vera Narvaez Lanuza's Resume
- Statement/Essay: "The Rights of Mayagnas (Sumo)
Indigenous Peoples' Rights of Nicaragua"
- A short documentary filmed at the Northern Autonomous
Atlantic Region of Nicaragua about Awas Tingni (Mayagnas)

Indigenous Community

May 9th, 2011

Ayra Laghaie Indigenous Peoples' Rights Scholarship

By Vera Narvaez Lanuza¹

I come from a country of both stunning beauty and crushing poverty. Poverty everywhere you go in Nicaragua alongside ocean beaches, lakes, volcanoes, a wide variety of wild animals and birds, tropical fruits and lots of palm trees. Juxtaposed against this tropical paradise is an unemployment rate of 5.9% plus underemployment of 46.5% (2008 est²). Behind all these beauty there is a country that have lived in poverty for many centuries. A country colonized by Spanish Kingdom and subjected to two foreign occupation: the Kingdom of Britain in the 1800's and by the United States of America in the 1900's. Our modern society has the wounds of the past still in flames. Indigenous peoples have not concealed peace from the ancient battles against forced domination and assimilation and for the effective protection of their rights.

There are 5.9 million Nicaraguan citizens who are represented in different ethnic groups such as the Mestizo who constitute the 69%, European descendents 17%, Afro-descendents 9%, and Amerindians 5%³. Spanish is the official language however English and Indigenous languages are also spoken, predominantly in the Caribbean coast due to the British occupation and migration of indigenous peoples in the region since ancient times. Before colonization Nicaragua's population was mainly indigenous or Amerindians, this would drastically change due the invasion of European settlers. Some of those Amerindians still remain in the country such as: Matagalpas, Subtiabas, Chorotega and Nicaraos in the Pacific and Miskitos, Mayagnas (often called Sumos) and Ramas in the Caribbean coast. The mestizaje created new races such as: Mestizos (mixed Amerindians and Europeans) who mostly live in the Pacific; Creoles (mixed Africans and Europeans) and Garifunas (a people of mixed West African, Carib and Arawak descent) who live in the Caribbean coast. In the XIX century, the government divided the department of Zelaya –consisting of the eastern half of the country, that is the Caribbean Coast- into two autonomous regions and granted its inhabitants –mostly indigenous peoples- with limited governance within the country. People in the Pacific of Nicaragua have not yet fully realized about our indigenous peoples rights and the significance of their culture and their on-going struggle for the proper recognition of their rights. We in the pacific –the west side of Nicaragua- have not quite yet understood about our peoples' ancestral claims. However, more young people and students have raised awareness about the social-economic-cultural and political situation of indigenous communities in the country, as expressed by a third year Sociology student from Central American University UCA in Managua, Nicaragua: *"I was born, raised and still living in Esteli-a department located northern-west of Nicaragua-. Now in Esteli we see everybody logging into facebook; they are so concern about getting the new I-phone, or how they got their laptops stolen in a local café. The region is becoming very Americanized, the young generation is losing their cultural identity because they are adopting other cultures that they see in the media, or being brought to the region by other means such as the radio, television, tourism, just to mention a few. This situation is alarming"*. Indeed, I totally agree with the student who is also my cousin. Indigenous culture represents our identity, the "Nicaraguan

¹ LL.M. in Intercultural Human Rights Candidate 2010-2011

² In addition, Nicaragua has the second lowest per capita income in the Western Hemisphere and is the poorest country in Central America, according to the CIA World Fact book

³ According to the U.S. Department of State. Available at < <http://www.state.gov/r/pa/ei/bgn/1850.htm>>

identity” proved in various cultural expressions such as: "El Güegüense" which is one of our oldest indigenous theatrical/dance that represents the folklore of Nicaragua and proclaimed as a “Masterpiece of the Oral and Intangible Heritage of Humanity” in 2005 by UNESCO.

One of the ancient claims of indigenous peoples worldwide is the effective recognition of all their rights, especially the right to land -which is the main focus of my research-. Indigenous peoples have been dispossessed from their ancestral lands most of the time by powerful groups motivated by economical purposes and by the desire of power and wealth.

The result of colonization in Nicaragua by the Spaniards in the Pacific and the British in the Caribbean coast contributed to the formation of a Multi-ethnic and Multicultural Nation. Juxtaposed to its rich culture is its history of conquest, colonization and natural resources exploitation that has left the country underdeveloped and environmentally diminished with high levels of unemployment and poverty. The Political, social, and economical struggles that has always surrounded this culturally and environmentally rich nation have been the causes for its underdevelopment and misunderstanding and ultimately clashes among its people. The eagerness of the elites that have ruled the country have divided its own people instead of uniting them, resulting in cultural differences that up to this day could be seen among its different ethnic groups.

*When the iron race of the Spaniard's seeds
were sown in America's wombs and grew,
there was a mix of great Castille's heroic deeds
with an indigenous mountain fortitude, too⁴
To Columbus by Ruben Dario, 1892.*

As described by one of most illustrious Nicaraguan poets of the nineteenth and twentieth century in his poem dedicated to Christopher Columbus, the people of Nicaragua have been in a constant uphill struggle against foreign domination, first by Spain, then by Great Britain and furthermore by United States of America. Nicaragua has been a disputed land, its habitants subjugated, discriminated, enslaved, tortured and even exterminated. But its people, who cannot forget the battles of the past and the sacrifices made by those Caciques or Indian chiefs and warriors, still fight in the ongoing struggle for recognition, protection and enforcement of their rights. Nicaragua might be seen as a “bellicose” country, always subjected to international disputes. These disputes are nothing more than expressions of freedom of an oppressed, neglected and impoverished people since the terrible times of the conquest until the present day. For its strategic location for commerce, this country was subject to two European invasions that marked the cultural, social, political and economic situation of the present Nicaragua. The Spaniards in the Pacific and the British in the Atlantic contributed to the creation of new ethnicities, cultures, languages and ideologies that currently prevail in its society. The natives of Nicaragua, before the majority of the population, have been reduced to just minorities that represent the ancient identity of the Nicaraguan people. This statement will address the research carried out towards a LL.M. Seminar paper “The Rights of Mayagnas (Sumo) Indigenous Peoples of Nicaragua” stating their claims for the right to their ancestral lands and

⁴ Darío, Rubén, 1867-1916 [Selections, English & Spanish 2005] Selected Writings/ Ruben Dario; edited with an introduction by Ilan Stavans; translated by Andrew Hurley, Greg Simon and Steven F. White. P.cm.- (Penguin Classics) ISBN: I-4362-950I-7 at page 110.

my present involvement with Awas Tingni Community –a Mayagnas (Sumo) indigenous group- in the North-East Autonomous Atlantic Region of Nicaragua and the promise of an on-going Legal Training Project with the community as requested by some members of the elderly council –Consejo de Ancianos-, trustee –Sindico- and forest keepers –Guardabosque-; in collaboration as well with the Center for investigation and documentation of the Atlantic Coast CIDCA – Centro de Investigaciones y Documentaciones de la Costa Atlantica-.

Mayagna (Sumo) People are direct descendents of the ancient indigenous tribe “Taguacas” or “Twahkas or Twakas”, who used to live widespread in the North-East of Nicaragua and South-East of Honduras. The indigenous Miskitu people have, since the 17th Century, undergone a process of assimilation of other cultures such as: British, African and Afro-Caribbean. The Miskitu people represent the largest ethnic group of the region speaking their own language. In contrast, Mayagnas (Sumos) have been more isolated from the rest thus, preserving their distinctive identity and still speaking their ancient language. Mayagnas have historically been reluctant to cultural change. During the economic development brought by XIX and XX centuries, the Mayagna people subtly resisted in participating in the global market economy opting for geographical isolation and engaging in a self-sustainable lifestyle based on agriculture, hunting and fishing instead of working for economic remuneration. In addition, Mayagnas still preserve their own religion, which is the “worship of nature”. Thus, God for Mayagnas is the “Sun” which is the father of all the Mayagna peoples. They feel deeply connected to their lands as they conceive themselves part of the whole environment. As many Indigenous peoples in the world, Mayagna people also seek the realization of all their rights through the connection they have with the land.

Land for indigenous peoples is the foundation for their survival and preservation of their culture and identity. Their holistic approach to conceive life and their spiritual tied with their ancestral lands is one of the most important elements in indigenous culture as stated by scholars⁵ and by the Inter-American Court of Human Rights in the landmark Case of Awas Tingni⁶: *“the close ties of indigenous peoples with the land must be recognized and understood as the fundamental basis for their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities [their relationship with] the land is not merely a matter of possession and production but a material and spiritual element, which they must fully enjoy [...] to preserve their culture legacy and transmit it to future generations”*.

The Mayagnas peoples in fact, because of their lifestyle are people who do not engage into violent acts or politics; they rather solve their conflicts through diplomacy. That is the case of “Awas Tingni”, a Mayagna sub-tribe adscribed to the Panamaka group, who live on the banks

⁵ Professor Siegfried Wiessner explains the close and important relationship [connection] that indigenous peoples have with their lands: *“Against all the odds, the indignities of colonization, and the lures of modern society, indigenous peoples have survived as communities with a strong felt, time-honoured identity. Their claims and aspirations are diverse, but their common ground is a quest for the preservation and flourishing of a culture inextricably, and often spiritually, tied to their ancestral lands. This specific relationship to the land distinguishes them from other communities or groups dispossessed in terms of power or wealth”*. Siegfried Wiessner, THE CULTURAL RIGHTS OF INDIGENOUS PEOPLES: ACHIEVEMENTS AND CONTINUING CHALLENGES. Symposium: The Human Dimension of International Cultural Heritage Law. European Journal of International Law, February, 2011, pp. 1.

⁶ Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Ser. C. No. 79, judgment of 31 August 2001

of Rio Wawa one of the historical arteries of the Nicaraguan Atlantic Coast. Awas Tingni location is the result of the establishment of the grandfathers of the present inhabitants from the ancient settlement Tuburús. The members of the "Awas Tingni" community are linked to its territory, in which they possess a widespread, deep and meticulous knowledge through a series of practices, rooted in ancestral traditions, and a complex network of spiritual meanings. Despite the isolated life that the community of Awas Tingni (Mayagnas) has pretended to live in, they have become the center of international attention due their struggle for recognition and protection of their lands rights that had taken them to International Courts. Their battle for the ancestral lands rights is finally recognized but not yet effectively protected.

The case of Awas Tingni against the government of Nicaragua represents a landmark case for Indigenous Peoples not just in the country, or the Americas, but also to all over the world creating an international precedent for recognition of Indigenous land rights in the Inter-American regional system and in international law. The case also represents a shared struggle among Indigenous Peoples since times of colonization. Awas Tingni case thus, increases and ensures the protection of indigenous peoples rights. As consequence, indigenous peoples in other places of the world are taking this Court judgment as reference to ensure and defend their land, territories, cultures and ultimately, their survival.

In addition, the Awas Tingni case affirmed the existence of indigenous peoples' "collective rights", in this case of "communal lands" that have been already recognized by the Nicaraguan Constitution since 1987. The court states that "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 peoples by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous peoples with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. Collective rights are indeed a relatively new figure in legal systems. This holistic approach of collective rights might be better understood in the light of the United Nations Declaration of Indigenous Peoples Rights in its preamble that states: "*Recognizing and affirming that Indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples...*"

Despite of the recognition of this fundamental right of indigenous peoples nationally and internationally and the unnumbered and endless legal battles that have occurred throughout history, indigenous peoples of Nicaragua continue to face violations of their rights of land ownership, resulting in frustration and alteration of their natural habitat, customs and traditions, as well as their inter-relations with various groups of society. The leaders and the elderly of indigenous communities express their concerns on this matter and demand the respect for their rights, especially their right to ancestral lands, as well as the legalization of their territories to stop once and for all the historical invasion of their territories and to live together in peace and harmony among their communities and the rest of society, so as to preserve their culture and identity for future generations, as they have stated several times "*With legalized land the next generation to come might live in peace and enjoy their rights*".

As a result of the Inter-American Court of Human Rights –hereinafter IACtHR- decision in the *Awas Tingni Case*, the State of Nicaragua has an ineludible obligation to respond to the claims of its citizens, that is in this context, the effective protection of its peoples rights. After losing the international battle against one of its abandoned and neglected groups, the State has been trying to comply with the demands of *Awas Tingni*, as well as other indigenous communities in the country. That is why it issued Law 445 "*Law of communal property regime of the Indigenous Peoples and Ethnic communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the rivers Bocay, Coco, Indio and Maiz*" on January 22nd of 2003. Law 445's specific concern is the land rights of these communities, which have been generally ignored in spite of the *Autonomy Law of 1987*. In essence, Law 445 demands the demarcation and titling of all indigenous and Afro-descendant territories. It recognizes the rights of such communities to use, administer and manage their traditional lands and resources as communal property. As such, Law 445 re-establishes the property rights of Nicaragua's ethnic minorities and devolves political power to the communal level. Finally on December 14, 2008, the Government of Nicaragua handed over *Awas Tingni* community the long-awaited title to its traditional territory after 7 years of national and international legal and advocacy battle by *Awas Tingni* community, assisted by the *Indigenous Peoples Law and Policy Program* from University of Arizona, to effectively protect their land rights and natural resources⁷.

Although *Awas Tingni* and other indigenous and afro-descendant community already have been granted communal titles in respect to their ancestral lands, these titles that represent in some way a legal protection for their land rights are not quite yet effectively protected. Prior the demarcation process, migration to these indigenous territories by third people –mestizos/colonos or peasants- was at a certain extent regulated and controlled. The migration phenomenon now is quite interesting, after the demarcation process indigenous and afro-descendant communities have been facing migration by third people not just by mestizos/colonos or peasants but also by farmers and ranchers that are coming to their lands for economical reasons. Some indigenous groups still live in the forests of Nicaragua. Their lands are still preserved and possess rich natural resources such as precious wood and gold that has been one of the main reasons for invasion by powerful groups such as the government and foreign companies. Third powerful people –as a mentioned above- are taking advantage of the unfinished demarcation process of indigenous peoples lands. This situation is alarming for indigenous peoples in Nicaragua, who have been recently fighting for their land rights before international tribunals. *Awas Tingni Community* has been claiming the rights to their ancestral communal lands since 1998 in domestic courts, culminating their legal victory in the IACtHR decision in August 31st 2001. The demarcation process so far have advanced in demarcating 15 communities out of the 23 indigenous and afro-descendants communities, yet, none of them have been cleared up as stipulated by law resulting in a pending demarcation process that leaves a door open for on-going migration of third people. According to Article 45 of Law 445, there are five stages for the demarcation process: 1) Submittal of Application Stage; 2) Dispute Settlement Stage; 3) Measuring and Marking out Stage; 4) Titling Stage; and 5) Title Clearance Stage or "Etapa de Saneamiento" which is the final and perhaps the most challenging stage of the demarcation process. It involves ordering up the land; in addition, in "Saneamiento Stage", all illegal settlers,

⁷ Nicaragua issues title to *Awas Tingni's Lands!* Indigenous Peoples Law and Policy Program, University of Arizona. Available at <<http://www.law.arizona.edu/depts/iplp/international/pdf/Awas%20Tingni.pdf>>

or those in possession of illegal titles, are asked to pay rent directly to the appropriate territorial government, or failing that, vacate their properties.

This situation is alarming, as the demarcation of indigenous and Afro-descendants territories is crucial in order to give effective protection of indigenous peoples and Afro-descendants communities in accordance with the constitution, special laws and international laws, since the invasion of *Colonos* or third parties have been affecting directly the use and enjoyment of their collective lands. The peasants and farmers of the agricultural sector began to occupy indigenous lands without the proper knowledge of how to use and exploit the land and its natural resources and without legal certainty of land tenure, resulting in the failure to meet their survival needs. However, the claims of "survival needs" of the peasants and farmers for many years have become a typical excuse to occupy these lands, and subsequently have resulted in the transfer of land colonized to land traffickers, ranchers and powerful landowners or "latifundistas" contributing largely to the dispossession of indigenous land, generating further deforestation and destruction of biodiversity in the forest, and consequently resulting in the overall deterioration of the environment, climate change and global warming. Most peasants in indigenous lands occupy small plots of land, and they expect support from indigenous communities or the state to be able to remain in those lands. Peasants (third parties) have been also threatened by the arrival of new settlers and powerful usurpers, those who accumulate large amounts of land obtained mainly by supplementary titles that are considered illegal by law and by indigenous customs and traditions. Although, they constitute a small number –farmers, ranchers-, they are the ones who are generally more reluctant to comply with the law. As expressed by Humberto Pedro Patron –Awas Tingni's forest keeper or Guardabosque-: *"We have the title that states that we are the legal owners of these lands, but it is just a paper, just a theory; what happens in practice is totally contradictory. These people are destroying the richness of our lands, why do we say "the richness of our lands"? Because they are settling on the lands that we used to exercise our religion, our "sacred sites" where there are many natural resources. The government has granted us the titles that says that we are the only owners of these lands, but in reality we do not fully exercise that right, because they –the government- is allowing the migration of these third people. Third people are contaminating our rivers, are engaging in massive agricultural practices that put endangered our natural resources and the environment. These people do not know how to protect the environment that is why we call the government to stop this situation so we can live in peace and harmony among ourselves and with other communities"*

The unfinished demarcation process has already raised concern not just within indigenous communities in the Northern Atlantic Autonomous Region of Nicaragua –RAAN- "Awas Tingni", but also amongst other indigenous and afro-descendant communities in the Southern Autonomous Region –RAAS-. It is vital that the government of Nicaragua hears the claiming of its indigenous peoples and protects them effectively against historical on-going violations of their human rights, especially their communal land rights. It is also necessary to raise awareness of indigenous peoples issues within the different sectors of society in Nicaragua, from governmental institutions, universities, schools and private sector.

Throughout the research done on Mayagnas (Sumo) indigenous peoples of Nicaragua, I have always been concerned about the most effective mechanism of protection for indigenous peoples' rights. I have asked indigenous peoples' lawyers, experts, scholars, activists, students, and the indigenous peoples themselves. The result can be summarized as: "the respect of the rights of others" in order to live peacefully and in harmony not just with other human beings but also with the environment. Maria Luisa Acosta, an indigenous peoples' lawyer from Nicaragua in an interview made for this research, expressed that the most effective protection for indigenous peoples lies in "*the respect of their property right regarding to the other rights that are involve, which is not only a property/ownership right, but are also cultural and political rights that indigenous peoples also have on their territory, for their economic basis, for their culture, religion and identity, and ultimately for their survival*".

This scholarship then, not only will award the research done on the Mayagna's Peoples but also will help a cause, a struggle of a people that have been fighting for human dignity. Awas Tingni Project started as a research work focused on indigenous peoples' rights in Nicaragua towards a LLM Seminar paper since the beginning of Spring 2011. However, I have been engaged with the community since last December 2010. During the academic holidays I visited for the first time the Northern Autonomous Atlantic region of Nicaragua and met one of its community leaders Mrs. Melba McLean, who has been actively working on indigenous peoples issues in Nicaragua through the Center for Investigation and Documentation of the Atlantic Coast CIDCA. During my first visit, Mrs. McLean explained the situation concerning the demarcation process and the status of the land rights of indigenous and afro-descendant communities. In addition, she expressed a desire for the implementation of a legal training project that will help indigenous leaders to protect more effectively their rights. As these communities live in isolation, legal help sometimes come too late or is not provided at all. Mrs. McLean then proposed to coordinate a legal training project in which we will be providing legal services, as well as teaching tools towards key issues related to the laws governing indigenous peoples in Nicaragua at the communal, regional, central –domestic- and international level; tools for effective leadership; conflict resolution, that will help in the demarcation process especially in the last stage "Title Clearance Stage"; the administration of their natural resources and the protection of the environment. The project sounded very interesting and challenging. I went back to Miami to begin with the second semester of the LL.M enrolling in a Seminar Course that will allow me to express our indigenous peoples' concerns. I returned once again to the peaceful forests of Nicaragua, but this time to visit Awas Tingni Community with the purpose to interact with their leaders. I interviewed members of the elderly council, trustee –sindicos- and forest keepers –guardabosques-. All of them expressed the same concern: "the illegal invasion of their territory and the negative effects of this invasion". They also stated their desire for the implementation of the project due to the lack of information provided to their leaders and youth in general. Mr. Marcelo a member of the elderly council told us that "*the new generation is losing little by little their cultural identity due to this invasion, the environment is changing due to the contamination and we are suffering from more economic and environmental devastation*".

Thus "Education" is then the most powerful instrument for the protection of any rights, as expressed by the former President of Mexico Vicente Fox in his speech addressed to student of Saint Thomas University in April 2011: "Education and collaboration from all the different sectors of society is the foundation of any development". Development that not necessarily

means “economical” but also cultural, social and humanistic development. It is therefore fundamental the government’s participation and involvement in the issues concerning indigenous peoples by providing training to regional officers, community leaders, officials from the various governmental institutions, judicial, legislative and administrative personnel, as well as special training to lawyers and notary public to prevent them to engage in illegal practices concerning indigenous territories.

As you know, Nicaragua is considered a developing country, the desire to make our small and impoverished country big as Ruben Dario declared in his poetry –“If the country is small, one dreams it big” (Si la patria es pequena, uno grande la suena)- motivate us to create new avenues to contribute with out little grain of sand. Indeed, our contribution then will be the legal training project agreed with Awas Tingni Community. The project will be for the duration of three months from September to December 2011. This scholarship would be an enormous economical help for the realization of that project, since we need financial resources in order to cover administrative expenses and the travelling to the community, which constitute a financial burden for those who would like to help but lack economic resources, such as myself and Mrs. Melba McLean.

It was a Wednesday afternoon when I was so frustrated with the books and the uncertain future. I had a final exam on Saturday and I was even half way of the studying for the exam. On top of that, I was so concern about something that I do not know about: “the future”. As we are now at one of the highest point of that professional mountain to grab in our souls this great achievement, comes the question of: *now what?* What Have I learnt from human rights? What is my passion? What do I want to do in life? Well the first two questions are easy to answer at this point, but I am still not sure about the last one. Life changes in a second and your whole world might be changing now! That Wednesday night I was so troubled trying to figure it out how I was going to take the next step, after this degree. That is how I turn to God and the divinity of believing on something higher than us that guides us or that voice we hear inside of us that is telling us something. I asked for guidance and strength. Guidance and Strength to keep my promise to the Mayagnas (Sumo) people of Awas Tingni indigenous community of the Northern Autonomous Atlantic Region of Nicaragua. After finally concealing peace to keep studying for the big final exam, I randomly checked my STU Email and as God was speaking I found a scholarship opportunity on indigenous peoples, right there in my inbox. My heart just jumped of happiness and extreme joy realizing the words of my dad: *“hard work and faith always pays back at the end”*.

I can only express my condolences to Ayra’s family and my infinite gratitude for this opportunity. With all due respect to Ayra’s family and friends, I would like to take this opportunity through this statement to pay tribute to *Ayra Laghaie*, whose journey, services to indigenous communities and aspirations for indigenous peoples’ rights is also shared. Ayra might not be in this world physically but his presence will always be among his beloved ones and those who did not even know him personally, but have known about his journey and his invaluable work towards indigenous peoples’ rights. This scholarship then, represent Ayra’s continuation journey through another visionary, another “someone” who is also committed to the protection of indigenous peoples’ rights.

I would also like to express my gratitude and appreciation to Prof. Siegfried Wiessner and Prof. Roza Pati who have inspired and motivated us all to shape and share the values of society through the respect of human dignity and to follow a new POJ approach⁸ in our legal career that will help us to make more accurate forecasts of future decisions⁹. In a week we will be graduating from the LL.M. in Intercultural Human Rights, a much-awaited day for many of us. Some of us will be advocates, lawyers, scholars, judges, peacekeepers, diplomats, and maybe even commander in chief of a country. Whoever we might be, I assure you that I won't forget the teachings of this alma matter and its experts, that have contributed in the finding of my professional passion which is the protection of human dignity through human rights law and the protection of indigenous peoples' rights.

I am attaching along with my application, a copy of my recent resume, a copy of the LL.M. Seminar paper on "The Rights of the Mayagnas (Sumo) Indigenous Peoples of Nicaragua" and a copy of the short documentary filmed and edited in Nicaragua with the collaboration of the Director of an organization based in Nicaragua and El Salvador called "Volunteer International Program -VIP". The result of the research, the travels and the interviews is reflected in our 19 minutes short film that we humbly invite you to watch. This short documentary tries to address the problematique of Indigenous peoples rights in Nicaragua, specifically: Lands Rights. The demarcation process established by Law No. 445, focusing mainly on "Title Clearance Stage" which constitute the last step and the most challenging stages in the process in order to ensure the effective protection of indigenous peoples in Nicaragua.

I would like to conclude this statement expressing once again my appreciation towards this opportunity and your kindly consideration in reading this note. May God bless you all.

Vera Narvaez Lanuza
Monday 9th May, 2011
Miami, Florida, USA

⁸ The New Haven School of Jurisprudence

⁹ See Siegfried Wiessner: The New Haven School of Jurisprudence: A Universal Toolkit for Understanding and Shaping Law. *Asia Pacific Law Review*, Vol 18 No 1, Lexis Nexis 2010

CURRICULUM VITAE

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Qualifications

08/2010- Present Saint Thomas University School of Law, Miami, Florida, USA
L.L.M. in Intercultural Human Rights Candidate 2010-2011

12/2006 – 03/2008 University of California, Los Angeles, UCLA, United States
Diploma in International Trade and Commerce, Specialization in
Import and Export Operations

01/2006-02/2006 *University of Salamanca, Spain*
Postgraduate Diploma in International Private Law

Education

01/2001 - 05/2005 American University, UAM, Managua, Nicaragua
Bachelor in Law

01/1997 - 12/1999 Pureza de Maria, Girls Catholic Academy, High School

Internships & Work Experience

01/2010 – 05/2010 **Internship Abroad:** Black Sash, Regional Office Cape Town, South Africa. Human Rights Non-Profit Organization. Paralegal.

05/2009 - 08/2009 **Internship:** The Salvation Army, Los Angeles, CA, USA
Recruit volunteers to the program, placed volunteers to different communities and programs, telemarketing, administrative support.

05/2009 - 08/2009 **Internship:** Kidsave, Los Angeles, CA, USA
Organize fundraising events, follow up with donors, responsible for getting donations, administrative support.

04/2004 - 08/2004 **Internship:** Human Rights, Comision Permanente de los Derechos Humanos "CPDH", Managua, Nicaragua
Non-governmental organization;

The Rights of the Mayagnas (Sumo) Indigenous Peoples of Nicaragua
By Vera Narvaez-Lanuza

*When the iron race of the Spaniard's seeds
were sown in America's wombs and grew,
there was a mix of great Castille's heroic deeds
with an indigenous mountain fortitude, too.¹
To Columbus by Ruben Dario², 1892.*

As described by one of most illustrious Nicaraguan poets of the nineteenth and twentieth century in his poem dedicated to Christopher Columbus, the people of Nicaragua have been in a constant uphill struggle against foreign domination, first by Spain, then by Great Britain and furthermore by United States of America. Nicaragua has been a disputed land, its habitants subjugated, discriminated, enslaved, tortured and even exterminated. But its people, who cannot forget the battles of the past and the sacrifices made by those Caciques or Indian chiefs and warriors, still fight in the ongoing struggle for recognition, protection and enforcement of their rights. Nicaragua might be seen as a “bellicose” country, always subjected to international disputes. These disputes are nothing more than expressions of freedom of an oppressed, neglected and impoverished people since the terrible times of the conquest until the present day. For its strategic location for commerce, this country³ was subject to two European invasions that marked the cultural, social, political and economic situation of the present Nicaragua. The Spaniards in the Pacific and the British in the Atlantic contributed to the creation of new ethnicities, cultures, languages and ideologies that currently prevail in its society. The natives of Nicaragua, before the majority of the population, have been reduced to just minorities that represent the ancient identity of the Nicaraguan people. This paper will address the problematique of Indigenous peoples lands in Nicaragua. The demarcation process established by Law No. 445, focusing mainly on “Title Clearance Stage” which constitute the last step and the most challenging stages in the demarcation process of indigenous territories in order to ensure the effective protection of indigenous peoples in Nicaragua.

¹ Dario, Rubén, 1867-1916 [Selections, English & Spanish 2005] Selected Writings/ Ruben Dario; edited with an introduction by Ilan Stavans; translated by Andrew Hurley, Greg Simon and Steven F. White. P.cm.- (Penguin Classics) ISBN: I-4362-950I-7 at page 110.

² Ilan Stavans describes Ruben Dario as the Nicaraguan *homme de letters* and indisputable leader of the *Modernista* movement that swept Latin America at the end of the nineteenth century and the early years of the twentieth. Ruben Dario characterized himself as: “*I am good for nothing else, I believe in God, and I am attracted to mystery. I am befuddled by daydreams and death; I have read many philosophers yet I know not a word of philosophy. I do espouse a certain Epicureanism, of my own sort: let the soul and body enjoy as much as possible on earth, and do everything possible to continue that enjoyment in the next life. Which is to say, je vois la vie en rose.*” See Dario, supra note 1, at Introduction.

³ The Republic of Nicaragua is bound on the north by Honduras, on the south by Costa Rica, on the east by the Caribbean Sea and on the west by the Pacific Ocean. Nicaragua is a tropical country located between 11 and 17 north latitude. Nicaragua is the largest country in Central America and covers an area of 130,000 Sq. Km. considered the largest area of arable land in the region with 12.1 million acres, of which 8.9 million area ideal for agriculture and 3.2 million for cattle ranching. Lago de Nicaragua (Lake Nicaragua), a large freshwater lake, borders the Pacific Ocean, Low mountains and hills, covered whit pine separate the populated west from the eastern half of the country. The east is covered with woodlands (along the coast) and tropical rain forests. In fact, one third of the country is forested. Natural resources include gold, silver, copper, lead, zinc, and timber. Permanent Mission of Nicaragua to the OAS Updated: 8 May 2008, available at <http://www.oas.org/children/members/Education%20&%20Culture/description_of_nicaragua.html>

Section I: Historical Background

History of Indigenous Peoples in Nicaragua before, during and after Colonization

The distribution of the different indigenous groups that inhabit Nicaragua at the time of the first contacts with Europeans conquerors between the XVI and XVII century can be established through the writings of many conquerors, soldiers, explorers, Spanish friars and historians that migrated to the territory as a result of colonization. Native American groups began coming from the North, from different regions of Mexico, and settled in the plains of Nicaragua's pacific coast. We can distinguish the *Chorotegas or Mangués*; the *Maribios, Nagrañanos or Sutiavas*, the *Nahuatl, Pipiles or Nicaraguas*. The Spaniards learnt Nahuatl and used the language extensively to begin Christianizing indigenous groups that lived in the regions giving rise to "el mestizaje"⁴.⁵ The Miskitos and Sumos arrive from the South and settled along the Atlantic Coast. Their origin is linked with the Circum-Caribbean tribes that were dispersed from the Caribbean coasts of Venezuela to the Caribbean coasts of Honduras.⁶

Around 1492 Spain achieved unity and reality as a nation and began expanding its reign. Pope Alexander VI⁷, who was Spanish, ordained Queen Isabella as proprietor and master of the New World the expansion of the kingdom of Castile by extending God's reign over the earth.⁸ On 1501 Queen Isabella authorizes the migration of African slaves to America as labor force. At the same time Captains Rodrigo de Bastidas and Juan de la Cosa are the first Spaniards to see the Caribbean coast of the Central American isthmus, sailing its mysterious waters from Uraba Gulf to "North Darien" or the actual State of Colombia.⁹ Christopher Columbus on his fourth and last voyage discovers the Caribbean coast of Nicaragua in 1502. Columbus while looking for a way to cross the equator gets to which he referred to *Thank God Cape* or "*Cabo Gracias a Dios*" on September 12. He surrounded Monkey Point passing by "San Juan del Norte" Bay reaching the coasts of Colombia.¹⁰ On 1506, Spaniards Captains Juan Diaz de Solis and Vicente Yanez Pinzon navigated along the Atlantic Coast of Central America from South to North looking for a

⁴ *Mestizaje* is an ideology which believes that the fusion of various cultural traditions (including language, religion, food, music, etc.) in the Americas created a new and better *mestizo* race. *Mestizos* are the people resulting from the blending of European, Indian, and African traditions in Latin America. At different places and times, they have also been called *ladinos* or *cholos*. Available at < <http://www2.truman.edu/~marc/resources/terms.html>>

⁵ *Jaime Incer Barquero: Ubicacion de los grupos indigenas de Nicaragua en los siglos XVI y XVII. Culturas indigenas de Nicaragua/Samuel Kirkland Lothrop...[et al].- 1a ed.- Managua: HSPAMER, 2003. V.1. ISB 99924-57-21-x at 120.*

⁶ See Barquero, Id at 122

⁷ Papal bulls were a formal proclamation, letters patent or charter issued by the pope (usually written in antiquated characters and sealed with a leaden bulla) also known as decree, edict or orders which were legally binding commands or decisions among European Empires since the sixth century, The Papal Bull of 1493 granted Africa to the Portuguese and America was given to the Spanish Crown in 1508 by another bull. See *Indigenous Peoples: Global Issues: International Law and Indigenous Peoples*. The site developed by Professor Peter d'Errico and Alan Gaitenby of the University of Massachusetts Legal Studies Department as a teaching and research resource. The site is presented courtesy of NativeWeb and a 1998 Five Colleges Peace and World Security Studies curriculum development grant. Available at < <http://www.nativeweb.org/pages/legal/indig-romanus-pontifex.html>>

⁸ See *Eduardo Galeano "Open Veins of Latin America": five centuries of the pillage of a continent*. Translated by Cedric Belfrage.- 25th anniversary ed./ foreword by Isabel Allende. ISBN 978-0-853-45991-0, 1997.

⁹ *Joaquim Rabella Vives "Aproximacion a la historia de Rio San Juan (1500-1995)" Managua, Nicaragua, Imprimatur, 1995. Id at 7*

¹⁰ Id at 8

strait between both oceans, and in the fall of 1522 they returned to Spain with the message to the Queen that they had for the first time united both oceans and confirmed that the world was round by circling it. Spanish Crown then begins with the occupation in the region uprising innumerable bloody conflicts between the Spaniards and the American natives or “American-indians”.¹¹ In 1509 the first geographical map is published in Strasburg, including America as the New Continent. Spain establishes African Slavery in America by Royal Decree in 1511. Spain’s interest in an oceanic route that connects both oceans –Atlantic with the Pacific- is notable in the expeditions of Captain Nunez de Balboa who discovers “*Mar de Sur*” or south ocean –Pacific Ocean- reaching San Miguel in Panama on September 25th 1513. Spain ordered the discovery of the “*Secreto del Estrecho*” –the Strait Secret- between both oceans and on 1520 Hernan Cortez, Governor of Nueva Espana -what is now Mexico- sends his lieutenant Gonzalez de Sandoval to find the inter-oceanic strait from the Gulf of Mexico¹² and in 1523 Pedro de Alvarado launched the conquest of Central America.

The first Spanish military expedition by land to explore and conquer the Nicaraguan territory was carried out by Gil Gonzalez Davila and Andres Nino, who left Panama with approximately 100 men in 1522.¹³ Andres Nino is sent to find the inter-oceanic strait. Gonzalez interviewed caciques [Amerindian Chiefs] “Nicoya” and “Nicaragua” in 1523 marking the beginning of the conquest and colonization in the territory. However, he encounters resistance from an army of 3,000 warriors, led by cacique “Diriangen”. Gonzalez retreats and travels south to the coast, returning to Panama with large quantities of gold and pearls.¹⁴ On 1524, Captains Gonzalo Fernandez de Cordoba and Pedrarias Davila founded the city of Granada near the indigenous village “Xalteva” along the river of “fresh water”. Followed by Granada, the *conquistadores* established another city close by the indigenous community of “Imabite” and they named it “*Santiago de los Caballeros de Leon*” or “*Leon*”¹⁵. Nicaragua then, was governed from 1527 to 1531 by Pedrarias Davila¹⁶, who was well-known for his cruelty to the Indians. Some Indians were sent to Spain to be sold as slaves, other died miserably. Others were imposed to adopt the colonizer “religion” and customs, in other words, forcing them into a cultural change.¹⁷ As Galeano states with such passion: “*America was the vast kingdom of the devil....the fanatical mission against the natives’ heresy was mixed with the fever that New World treasures stirred in the conquering hosts..... they arrived in America to serve God and His Majesties and also to get riches*”.

¹¹ See Galeano, *supra* note 8 at 16

¹² See Vives, *supra* note 9

¹³ See *Breve historia de Nicaragua*. Academia de Geografia e Historia. Todos los Derechos Reservados. ©Año 2007, Managua Nicaragua. Available at <<http://www.agn.edu.ni/breve.html>>

¹⁴ See Nicaragua: people, culture and history. A Timeline of Nicaraguan History. University of Pittsburg. Available at <http://www.ucis.pitt.edu/clas/nicaragua_proj/history.html>

¹⁵ See Vives, *supra* note 9 at 10

¹⁶ Pedrarias Davila died in 1531. Upon Davila’s death, his son in law Rodrigo de Contreras is named new governor of Nicaragua. See Vives, *supra* note 9, at 11

¹⁷ Some enslaved Indians in America were forced to adopt the Catholic faith. Before each military action the captain of the conquest were required to read to them, without an interpreter but in before a notary public, a long rhetorical Requerimiento that states: “*If you do not, or if you maliciously delay in so doing, I certify that with God’s help I will advice powerfully against you and make war on you wherever and however I am able, and will subject you to the yoke and obedience of the Church and of their majesties and take your woman and children to be slaves, and as such I will sell and dispose them as their majesties may order, and I will take your possessions and do you all the harm and damage that I can*”. See Galeano, *supra* note 8 at 13.

In 1544, after a period of intense rivalry between the Spaniards, the territory was incorporated into the Captaincy General of Guatemala.¹⁸ During an expedition directed and executed by the new Governor of Nicaragua *Rodrigo Contreras* himself, discovers near “San Juan del Norte” – North San Juan- the indigenous village of “Talalegualé” whose natives seem to spoke “*Nahuatl*” [one of the ancient indigenous language in Nicaragua]. The New Laws, in Spanish “*Leyes Nuevas or Leyes de Barcelona*”, known as the “*New Laws of the Indies for the Good Treatment and Preservation of the Indians*”¹⁹, issued November 20, 1542 by King Charles V of Spain, abolishes the slavery of the indigenous peoples of the Americas²⁰. In 1554 the Nicaraguan Indians were prohibited to carry guns and not allowed to have “carnal union” – sexual relations- with black people and were exempt from paying taxes if they were poor. The new Governor of Nicaragua and Costa Rica *Diego de Artieda* takes office in 1573 allowing massive migration of African slaves to Nicaragua followed by the creation of a new labor system, where Indians were forced to work for long-periods of time without any monetary remuneration or benefits.²¹ International trade starts booming in the 1600’s and the Caribbean coast of Nicaragua begins exporting corn, cocoa, cotton, leather, gold, sugar, tobacco, just to mention a few, to Europe.

During this time, the country enjoyed relative peace and prosperity, although some English pirates or “filibusters” (irregular military adventurers) such as Francis Drake tried to invade and loot villages. In 1620 more than a thousand Indians reached the areas of Sarapiquí and Pocosal rivers [south-east Nicaragua] fleeing from the north of Nicaragua. The process of expropriation of indigenous lands in the Caribbean coast begins with the British encounters. The process of expropriation of indigenous lands in the Nicaraguan Caribbean coast began during the British presence during the XVII century. The British introduced to the Indians [of the south-east of the Caribbean coast] manufactured items such as axes and knives, which traded for forest products. According to economic and political interests, the British, on behalf of the Miskito, would negotiate several agreements with the Nicaraguan government and other neighboring governments, the borders of a territory under the government of a Miskito king to legitimize the monopoly of the Coast on natural resources of the region. The Miskito king granted large areas of land to European entrepreneurs and adventurers who founded many plantations, extracted precious woods and tried to develop agricultural colonies.²² With the ambitious purpose of building the inter-oceanic canal²³, the British founded a commercial factory “Providence Company” in the islands of Providence and Henrietta or well know as “San Andres”²⁴. British

¹⁸ See *Breve historia de Nicaragua*, *Supra* note 13

¹⁹ See King Charles V. 1971. *The New Laws of the Indies for the Good Treatment and Preservation of the Indians*. New York: Copyright © 1995 - 2009, Pearson Education, Inc., publishing as Pearson Longman. Available at <[http://woodlawnschool.pbworks.com/f/The+New+Laws+of+the+Indies+for+the+Good+Treatment+and+Preservatio+n+of+the+Indians\(1542\)+King+Charles+V.pdf](http://woodlawnschool.pbworks.com/f/The+New+Laws+of+the+Indies+for+the+Good+Treatment+and+Preservatio+n+of+the+Indians(1542)+King+Charles+V.pdf)>

²⁰ *Id* at. 21

²¹ See *Vives*, *supra* note 9, at 17

²² See *Sarah Howard*: *Autonomía y derechos territoriales indígenas: El caso de la RAAN* (1993). *Demarcación territorial de la propiedad comunal en la Costa Caribe de Nicaragua* / Alvaro Rivas y Rikke Broegaard. Managua, MultiGrafic, 2006. 282 p. –ilus. ISBN: 99924-0-5457

²³ A waterway through Nicaragua to connect the Caribbean Sea and Atlantic Ocean with the Pacific Ocean. See *Vives*, *supra* note 9

²⁴ In 1928 Colombia and Nicaragua signed a Treaty in which Colombia recognized Nicaragua’s sovereignty over the Mosquito Coast, as well as over the Corn Islands. In the same Treaty, Nicaragua recognized Colombia’s sovereignty over the islands of San Andrés, Providencia, Santa Catalina, and the other maritime features that form part of the

Captain Commock establishes commerce with some Indians as well as strategic check-points along the Miskito's coast. While in England is being published the "*Practical Memorandum of the Indies*" contemplating the possible inter-oceanic communication through the *San Juan River* in Nicaragua.²⁵ In 1640 more slaves were being sent from Africa – the Guinea Gulf- to the Atlantic coast of the country. Some historians believe that the Zambo-Miskito ethnic group is the result of a mix of African Slaves with the Amerindians "Tawihka".²⁶ Since the early seventeenth century Sumos were dominated by the Miskitos with the support of the weapons that they received from the English settlers of Jamaica. For the rest of the century both groups joined forces under the English command to attack Spanish towns in the pacific such as Segovia, Matagalpa and Chontales as well as other locations in Honduras and Costa Rica. However, some Sumos cuts benefited the friars founded the villages adjoining the Spaniards and were classified as "tame caribbeans" or "caribes mansos", in contrast to the "savage caribbeans" or "caribes bravos" that made up the hordes of attackers.²⁷ By 1655 the British took Jamaica and started signing treaties with indigenous chiefs of the Atlantic coast from Cabo Gracias a Dios – Thank God Cape- to "Bocas del Toro" Panama. Bluefields which is the city established by the British in the Caribbean coast of Nicaragua becomes their operation center. Around 1670 Spain and England adopted the *Treaty of Madrid*²⁸ –"*Tratado de Madrid*" in Spanish- also known as the *Godolphin Treaty*, under the terms of the treaty, Spain recognized English occupation of Jamaica and the Caribbean Sea –West Indies- and the rights to protect any of the territories occupied by England in America, as well as freedom of movement in the Caribbean. On the other hand, England promises to stop finding piracy.²⁹

Furthermore, Act IV, Book II, First Title of the "Indian Laws" of 1680, recognized some indigenous peoples' rights such as: their native's laws that had governed them before the establishment of the new government (that is colonization) in according to their own good governance. It also recognizes their customs and traditions as their cultural identity as well as the progressive assimilation of the new laws imposed to them by the new government. Act XII, Second Title established a reporting process between the Council of the Indies and the government based on dialogues with the habitants of the new territories, especially those who are subject to assimilation of such laws –that is to say indigenous populations-. It empowers judges

Archipelago of San Andrés. The international disputes reached the International Court of Justice. The ICJ announces decision on preliminary objections in Nicaragua v Colombia case on 17 December 2007, the Courts finds, *inter alia*, that the 1928 Treaty between Colombia and Nicaragua settled the matter of sovereignty over the islands of San Andrés, Providencia and Santa Catalina, that there is no extant legal dispute between the Parties on that question, and that the Court thus cannot have jurisdiction over the question; the Court further finds that it has jurisdiction to adjudicate upon the dispute concerning sovereignty over the other maritime features claimed by the Parties and upon the dispute concerning the maritime delimitation between the Parties. See "Territorial and Maritime Dispute (Nicaragua v. Colombia) Preliminary Objections", No. 2007/30 of 13 December 2007. Available at <<http://www.icj-cij.org/docket/files/124/14303.pdf>>

²⁵ See "*La ruta de Nicaragua a través de la historia*", 1616-1799, *El Nuevo Diario*, 14 de Septiembre de 1998, Managua, Nicaragua. Available at <<http://archivo.elnuevodiario.com.ni/1998/septiembre/14-septiembre-1998/cultural/cultural2.html>>

²⁶ See *Vives*, *supra* note 9, at 22

²⁷ See Barquero, *Supra* note 5 at 138

²⁸ See National Humanities Center, 2006: www.nhc.rtp.nc.us:8080/pds/pds.htm. In Eric Williams, ed., *Documents of West Indian History* (Port-of-Spain, Trinidad: PNM Publishing Co., 1963), Vol. I, 1492-1655, pp. 206-208, 215, 222, 230-231, 241, 253-254, 257-258. Permission pending. Punctuation modernized. Complete image credits at www.nhc.rtp.nc.us/pds/amerbegin/imagecredits.htm.

²⁹ See *Vives*, *supra* note 9, at 26

to excuse the breach of certain provisions by the Indians, and therefore seek the progressive implementation of the provisions based on equality and justice.³⁰ By the *Treaty of Utrecht*³¹ of 1713, Great Britain obtained the contract for supplying slaves to the Spanish West Indies. Its monopoly stimulated the trafficking of African slaves in America. On 1714 Felipe V, king of Spain orders by Royal Decree “the extermination or slavery” of Miskitos, alleging that they are the responsible for violent attacks within Nicaragua. In 1719 the first British communities were established along the Maiz River and San Juan River -southeast of the Caribbean coast of Nicaragua-.³² In 1739 Spain and Great Britain signed *Treaty of Pardo* or the *Convention of El Pardo*, designed to find a solution to the issues of smuggling, Asiento –establishment of slaves- and freedom of the seas [“Navio de Permiso”]³³. Once the British obtained their legal occupation in the region, they appointed one of the Miskito’s leaders –and good friend of them- as the first King of the Moskitia, to guarantee their domination over the region. Simultaneously, Caribbean-Indian slaves were requested to work in the farms of the Spanish conquistadores and “terratenientes” –land tenures- mostly in the Pacific. In the eighteenth century, the British sided with the indigenous Miskitos and consolidated their hegemony in the region. In 1748 the British took over “San Juan de Nicaragua” and begin to extend their influence throughout the Caribbean coast. During the second half of this century, the territory of the Mosquito or Mosquito Coast would be considered a British colony.³⁴

In 1778 Miskitos-Zambos and Spaniards helped by the Americans signed a commerce treaty in San Juan del Norte. British, African slaves, and Nicaraguan Indians now inhabit the Atlantic coast of Nicaragua, giving birth to new ethnicities that will inhabit Nicaragua until its present days. The construction of an Inter-Oceanic Canal in Nicaragua is again brought up to Spanish Crown, this time by the French Count Louis-Hector de Segur. In 1783, Spain and Great Britain signed the Treaty of Paris –commonly known as “Treaty of Versailles”- declaring peace in the American Continent and settlement of the American Colonies. Great Britain recognizes

³⁰ Reconocimiento a los derechos indígenas en las Leyes de Indias de 1680: Ley IV de las leyes de indias de 1860 Libro II, Título Primero: “Se guarden las leyes que los indios tenían antiguamente para su gobierno y las nuevas que se hiciesen. Ordenamos y mandamos, que las leyes y las buenas costumbres, que antiguamente tenían los indios para su buen gobierno y política y sus usos y costumbres observadas y guardadas después que son cristianos, y que no se encuentra con nuestra sagrada religión, ni con las leyes de este libro y las que han hecho y ordenado de nuevo se guarden y se ejecuten, y siendo necesario, por la presente las aprobamos y confirmamos, con tanto, que nos podamos añadir lo que fuéremos servido y nos pareciere que conviene al servicio de dios nuestro señor y a la conservación cristiana de los naturales de aquellas provincias, no perjudicando a los que tienen hecho, ni sus justas costumbres y estatutos” Las costumbres de los indios. Ley XII Título Segundo de las Leyes de Indias: “Se manda a nuestro consejo de las indias que cuando hubieren de proveer y ordenar las leyes y provisiones generales para el gobierno de las indias, sea, estando primero informados, y certificados de lo antes proveído en las materias sobre que hubieren de disponer, y precediendo la mayor noticia e información que se pueda de las cosas y negocios y de las partes para donde se proveyeran con información y parecer de lo que los gobernare, o pudiere dar de ellas a una luz, si en la dilación de pedir información un hubiere algún inconveniente” Decisiones Judiciales: “Se faculta a los jueces para que perdonen el incumplimiento de ciertas disposiciones a los indios, y por lo tanto busquen la aplicación de las disposiciones con equidad, pues esta es la justicia del caso concreto”. See *Indian Laws “Leyes de Indias”* text. Digital archive of the Peruvian Legislation, Peru’s Congress website. Available at <<http://www.congreso.gob.pe/ntley/LeyIndiaP.htm>>

³¹ See *François Velde*, The Treaties of Utrecht (1713). Available at <http://www.heraldica.org/topics/france/utrecht.htm#utrecht_french> Last modified: Jan 20, 2010

³² See *Vives*, *supra* note 9, at 31

³³ Id at 33

³⁴ *Breve historia de Nicaragua*, *Supra* note 13

Spanish Colonies and promise restitution of all lands confiscated by the English Crown. Additionally to this treaty is the “London Treaty” which gives the Spanish Crown sovereignty over all the Atlantic territory of Nicaragua and obliges British occupation to abandon the territory.³⁵ As a result, hundreds of British men along with thousands of slaves left the region to settled in Jamaica. Spain issues a Royal Decree to re-populate the regions of Bluefields, Cabo Gracias a Dios and San Juan River on September 24th 1787. At the beginning of the XIX century the population of Central America is distributed as follows: Guatemala 436.833 inhabitants; El Salvador 129.667 inhabitants; Nicaragua 117.113; Honduras 92.330; Chiapas 74.869; Costa Rica 27.065 and divided between 600.000 American Indians, 300.000 Mestizos –Indians & Europeans- 45.000 Criollos –African Slaves & Europeans- and 5.000 Spaniards. Central America was becoming more and more a multi-ethnic and multi-cultural region.

Nicaragua as a sovereign State after 1800’s

In September 15th, 1821 the confederation of Central America provinces proclaims its independence from Spain and annexing themselves to an independent Mexican Empire under General Agustín de Iturbide. Mexico then becomes a Republic in 1824 and Costa Rica, Guatemala, Honduras, El Salvador and Nicaragua form the Central American Federation. Central American Federation abolishes slavery in the region on April 20th and the following year -1825- the Federation is formally established and Nicaragua issues its first Constitution on April 22nd, 1826.³⁶ Political conflicts between federation members followed, forcing the Central American Congress to allow States to leave the federation. Nicaragua, Honduras and Costa Rica seceded and declared independence in 1838.³⁷ Internal conflict prevailed despite the Nicaraguan independency of 1838. After 3 years in 1841, San Juan del Norte (southeast of the Caribbean coast) is subjected to the first Miskito’s occupation supported by British Colonels and led and executed by the Miskito King “Robert Charles Frederick”. The Moskitia flag is being honored for the first time in the region and Bluefields is established as the capital of the “Moskitia”. Slavery is abolished in Corn Islands and in 1843 Great Britain officially enacts the “Moskitia Protectorate” –“Protectorado de la Moskitia-.”³⁸

In 1846 Louis Napoleón Bonaparte, future French Emperor proposes an inter-oceanic route in San Juan del Norte, Nicaragua that will cross the two largest lakes of Nicaragua. Napoleón III categorizes Nicaragua as “the Constantinople of the New World”. Great Britain defined the limits of Moskitia from the Cabo Gracias a Dios in Honduras to San Juan del Norte Nicaragua on March 7th, 1847. Nicaragua and Great Britain signed the “*Tratado de las Cien Islas*” (Treaty of the 100 Islands) is signed in Granada in which Nicaragua recognizes the British-Miskito occupation in San Juan del Norte. San Juan del Norte is renamed to “Greytown” in honor of the governor of Jamaica Sir Charles Grey. El Salvador, Honduras and Nicaragua signed a new regional pact “National Representation in Central America –National Representation of Central America-. In addition, on December 12th, 1848 New Granada (“Nueva Granada” what is now “Colombia”) and the United States signed the Treaty of Nueva Granada in

³⁵ See *Vives, supra* note 9, at 47

³⁶ See *Vives, supra* note 9, Id at 53

³⁷ See National Humanities Center, *supra* note 28

³⁸ See *Vives, supra* note 9, Id at 58

which the region gives the U.S. the rights to build an inter-oceanic Canal in Panama.³⁹

A year later on 1849 Nicaragua and the United States negotiate a treaty that gives the US exclusive rights to a transit route across Nicaragua. Commodore Cornelius Vanderbilt, an American businessman, negotiates a contract with the Nicaraguan government grants Vanderbilt's company exclusive rights to build a canal across Nicaragua within twelve years.⁴⁰ Vanderbilt founded the "American Atlantic and Pacific Ship Canal Company"⁴¹ in San Juan del Norte and obtains a Canal concession under the *Treaty Zepeda-Juarez-White*. Arrives at San Juan del Norte the ship "Orus" to begin with the first voyage of the Transit Route in 1847. This expedition brings a group of Moravos' missionaries to Bluefields (capital of "La Moskitia) who established the Morava influence as its religion and expanding it throughout the Atlantic coast, practicing the religion until present days. In 1850 Nicaragua signed the Independence Treaty – *Tratado de Independencia*- with Spain, where, inter alia, Nicaragua ensures Spain the transit by the inter-oceanic canal⁴² and amends the Constitution on April 30th, 1954. Conservative General Fruto Chamorro becomes the first President of Nicaragua.⁴³ In 1850, Great Britain and the United States of America signed the Clayton-Bulwer Treaty in which both nations were competing for the rights to build the inter-oceanic canal from the Pacific of Nicaragua, crossing the Great Nicaraguan Lake to San Juan del Norte in the Atlantic Coast (Caribbean Coast) of Nicaragua; both nations agreed that none of them would take absolute control on the Canal and Great Britain would not exercise authority anywhere in Central American Caribbean coast. The first president of Nicaragua Fruto Chamorro dies on February 12th 1855 and the American mercenary William Walker is hired by the Nicaraguan Liberal Party to topple the established Conservative government, he then takes control of the government and sets himself up as president with the international recognition of the United States of America in 1856.⁴⁴

On April 15th 1858, Nicaragua and Costa Rica signed the Canaz-Jerez Treaty. The treaty specifies the limits of the borders of Nicaragua and Costa Rica. The providences of Nicoya and Guanacaste are permanently transferred to Costa Rica. San Juan River border is fixed by the southern bank of the river, up to 3 miles east of town of "El Castillo", where Nicaragua has a range of 2 miles south of the river and the Nicaraguan lake to the Pacific Ocean, as it is today. Nicaragua adopts a new constitution in which states that for citizenship must have at least 100 pesos for President 4000. Only 640 representatives are elected President.

In January 28, 1860 the "*Treaty of Managua*"⁴⁵ or Zeledon-Wyke Treaty is an agreement

³⁹ See *Vives, supra* note 9, Id at 60

⁴⁰ See Nicaragua: people, culture and history, *supra* note 14

⁴¹ The "American Atlantic and Pacific Ship Canal Company" became the "Central American Transit Company" in 1849. It was then renamed as "The Caribbean & Pacific Transit Company Limited" in 1875 founded by Carlos Carlos Napoleón Pellas and renamed again by the Italian businessman Alfredo Pellas as the "Nicaragua Steamship and Navigation Company. See *Vives, supra* note 9

⁴² See *Vives, supra* note 9, Id at 63

⁴³ See Nicaragua: people, culture and history, *supra* note 14

⁴⁴ See *Breve historia de Nicaragua, Supra* note 13

⁴⁵ *Treaty of Managua* of 28 January 1860 – sovereignty over the Mosquito Islands – respective rights of Nicaragua and the self-governed Mosquito Indians. Sovereignty – extent of sovereignty over a self-governed territory – limited sovereignty of the sovereign State Nicaragua over the self-governed territory of Mosquito Islands by native Indians – right to hoist their respective flags – emblem of the sovereignty of Nicaragua to be attached to Mosquito Indians'

signed between Nicaragua and Great Britain in which Britain recognized Nicaraguan sovereignty over the Caribbean coast and renounced its claims on the Moskitia. According to the treaty Nicaragua commits to compensate the Indians with 5000 dollars per year for 10 years, for the "loss of independence" and establish a "Miskito Reservation" within its territory. Miskito Kings were going to control the territory and be called the heads of the region. The Treaty does not become effective in practice. The population of the region is estimated to be as follows: 6000 Atlantic Coast Miskitos, 6000 Sumos, 1000 Criollos and 500 Ramas. San Juan del Norte was declared a free port. William Walter is executed in Honduras. In 1862 a new Law is created with the purpose to regulate the port's activities and the people of San Juan del Norte ["Reglamento para el Puerto y poblacion de San Juan del Norte"] that becomes an "authentic political constitution" for the town.⁴⁶

The Caribbean coast, once under the British control, takes a new dominant influence under the U.S.A. control. North American companies began exploiting the region's natural resources. The Indians worked for these foreign companies under terrible conditions and low wages. However, although they were exploited, the Indians did not realize the wealth that these companies represented. Perceived their relationships with the foreigners as mutually advantageous, because the businesses were selling clothes, exotic food and manufactured canned items to the population. Through the contract with the British, manufactured articles for the Miskito constituted a necessity to get them. They traded their natural resources for these goods. Miskito society then becomes a "consumer society".⁴⁷ General Jose Santos Zelaya is confirmed as president after a revolt by Liberals. Zelaya becomes a dictator who expands coffee production, boosts banana exports, promotes internal development, and modernizes Nicaragua's infrastructure, and a year after he takes office in 1894, the Miskito reserve was annexed and incorporated into the national territory as the "Department of Zelaya". The Caribbean-Indians kept good relations with the foreigners, on the other hand, hated the Pacific mestizos who assumed the administration of the Coast and then requested the assistance of the British against the mestizos officers who mistreated the Indians and took their land.⁴⁸

In 1905, the British, in order to fulfill their obligations with the peoples of the Caribbean coast signed the Harrison-Altamirano Treaty with the Nicaraguan government, in which formally recognizes the incorporation of "La Moskitia" to Nicaragua.⁴⁹ According to the terms of this treaty, Indigenous communities would receive collective titles to their lands. The communities would receive a lot for seeding, with a calculated area of eight blocks per family, or two apples per person if the family had more than four children. They were also given a batch for livestock. The remaining lands were considered national lands. A British official called Chalkley was in charge of the titling process, as the Indians had no confidence in the Nicaraguan authorities. But, in practice, few communities received land titles, and continued to demand it from the British for

flag – protection of the sovereign rights on the territory by appointment of a Commissioner. See REPORTS OF INTERNATIONAL ARBITRAL AWARDS. Award as to the interpretation of the Treaty of Managua between the United Kingdom and Nicaragua of 2 July 1881. VOLUME XXVIII pp. 167-184. United Nations, 2007. Available at <http://untreaty.un.org/cod/riaa/cases/vol_XXVIII/167-184.pdf>

⁴⁶ See *Vives*, *supra* note 9, Id at 77

⁴⁷ See Howard, *supra* note 22

⁴⁸ See Howard, *supra* note 22

⁴⁹ See *Vives*, *supra* note 9

over 50 years after the signing of the treaty. During the period of extensive production for the foreign companies situated in the region, the alienation of land and natural resources of the Coast increased. The Nicaraguan government granted successive concessions to explore land and natural resources in the region to powerful foreign companies. Banana companies such as the Standard Fruit Company of United States occupied enormous tracts of land for plantations. The Bragmans Bluff Lumber Company (which began operations in 1920) razed large areas of coniferous and broadleaf forests.⁵⁰

The government issued a Law concerning the sale of Indigenous communities lands on February 16th of 1906 in which prohibits the sell of indigenous communities lands. This law was derogated by the Legislative Decree of June 3rd of 1914. It derogates the Law of Law of 16 February 16th of 1906, Law concerning the sale of Indigenous communities lands and regulates the administration of indigenous communities lands. In 1914 under President Adolfo Dias signed the Bryan-Chamorro Treaty granted the United States, exclusively and in perpetuity of the rights of the proposed Inter-Oceanic Canal by Nicaragua, the 99-year lease of the Corn Islands and a military base in the Gulf of Fonseca. United States agrees to deliver to Nicaragua \$ 3,000,000 (on 5 August) and 10 days after August 15 Panama Canal started operations. In 1915 an American company begins to harvest timber in the region, with more than 1000 workers, most from Ometepe region in the Pacific, which constitute in large indigenous communities. They settled on the banks of the rivers of San Juan, Santa Cruz, and Tepenaguasapa Melchorita. In 1916 villages of the Miskito's Reserve were granted with lands. According to the 1952 national census, 83% of the land in Rio San Juan are in farms over 500 he, of which 70% exceed 2000 ha (including 8 of the latter totaling 448,000 ha).⁵¹ Several concessions granted by the Government to foreign companies becomes a hot topic in the country and in 1918 by Legislative Decree No.120 of August 6th of 1918 issues the Indigenous Communities Statute, Law of 16 February 16th of 1906. Law concerning the sale of Indigenous communities lands is again enacted.⁵² Since Nicaragua's independence in 1821, the situation for indigenous people has not much improved in the country, on the contrary, it has become even more complex as we move along with globalization and the rule of the capitalized world. The Somoza Regime (1936 -1979) deepened the indigenous struggle for recognition and protection of their rights, especially concerning their ancestral lands. The Somoza Regime built an immense fortune for himself and his family during the 1940's through substantial investments in agricultural exports, especially in coffee and cattle. Somoza also gained large profits from economic concessions to national and foreign companies such as "The Nicaraguan Longleaf Pine Company" which resulted most of the time, in the destruction of natural resources.⁵³

In 1959 a forestation and control of fire project was initiated in an area of 300 thousand hectares in the north of the North Atlantic Region RAAN – Caribbean coast-. The project, which was called Northeast Forestry Project, was supported by the United Nations Organization for Agriculture and Food and was managed by the National Development Institute (INFONAC). The total area of the project involved a one million 605 thousand 50 hectares, which included indigenous lands. Indigenous communities were not consulted in this project. In addition,

⁵⁰ See Howard, *supra* note 22

⁵¹ See Vives

⁵² Id

⁵³ See Howard

INFONAC also banned the logging by Indigenous peoples. INFONAC, also banned the cutting of indigenous timber. This measure gave rise to conflicts between the indigenous communities and the government, especially by communities of the Coco River. To ease the situation, the Nicaraguan Agrarian Institute (IAN) granted land titles to 15 indigenous communities of the Coco River, but received only small areas of land.

Another factor that affected indigenous land was the invasion by poor peasants because of the expansion of agribusinesses in the Pacific peasants were evicted from their land by the Somoza family and its associates and had nowhere to go. In addition this economical-forced migration, the Somoza government established a colonization programs of empty land in the Caribbean coast, by peasants and rich ranchers from the Pacific.⁵⁴ In April of 1963 the government approves the Agrarian Reform Act to relocate the peasants from the North-Pacific to other territories in the country, specifically to the Caribbean coast.⁵⁵

Somoza promulgated several laws concerning indigenous issues such as: the Legislative Decree of May 24th of 1934, that grants 40,000 hectares of land to the indigenous community of Bluefields; Legislative Decree of June 26th of 1935, which prohibits municipalities to sell untitled land and indigenous lands; Executive Agreement No. 404 of October 18th 1945 approving a Plan of Arbitration of the indigenous community of Jinotega; Law of March 11th 1952 concerning the election of Administration boards of indigenous communities properties; Executive Agreement No. 15 of September 19th of 1977. In addition, the government of Nicaragua under Somoza's regime became one of the first member states to ratified the Charter of the United Nations in 1945 followed by the signature of the charter of the Organization of American States OAS in 1948 and the ratification of the International Covenant on the elimination of all racial discrimination in 1977. Somoza was not so popular among indigenous peoples due to his capitalist policies that did not favored indigenous communities. The conflicts between indigenous communities and the government, specially by communities around Coco River –North East the Caribbean coast or RAAN- originated in an indigenous desperate call for equality and justice. They began organizing a political movement called ALPOMISU (Alianza para el progreso de los Miskitos y Sumos) –Alliance for Progress of the Miskito and Sumo groups. However, ALPOMISU did go to far, it was the Sandinista Revolution that contributed to the organization of indigenous peoples to claim their rights. The revolution opened political spaces for indigenous organization that did not exist at the time of Somoza. Although not initially recognized the need for an indigenous organization, the Sandinistas persuaded ALPOMISU to be reorganized under a new name: MISURASATA (Miskito, Sumo, Rama and Sandinistas working together).⁵⁶

The Somoza Regime was finally overthrown by The Sandinista National Liberation Front –Frente Sandinista de Liberacion Nacional FSLN- in 1979. The FSLN established a revolutionary government from 1979 to 1990, first as part of a Junta of National Reconstruction –Junta de Reconstruccion Nacional-. The regulation of property becomes one of the most

⁵⁴ Id

⁵⁵ See Vives

⁵⁶ See Howard

important issues that the FSLN addressed. The FSLN began confiscating properties illegally owned by Somoza, his family and his associates.⁵⁷

During the Revolution, indigenous' lands were affected by several factors: land reform, the formation of new settlements by peasants and the authorized migration of communities in national lands and in most cases on Indigenous lands. The agrarian reform acknowledged the right of indigenous peoples to their lands. In the case of the North Atlantic Region of the Caribbean coast RAAN, we can identify three ways of distribution of land: by individual tenure "de facto", by the distribution of agricultural cooperatives and by indigenous land titling. The cooperatives initially involved mestizo's peasants in around the mining towns, and war refugees who were displaced and relocated in new lands, in some cases, indigenous lands as stated above.⁵⁸

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Nicaragua a Multi-ethnic and Multi-cultural State

The result of colonization in Nicaragua by the Spaniards in the Pacific and the British in the Caribbean coast contributed to the formation of a Multi-ethnic and Multicultural Nation. Juxtaposed to its rich culture is its history of conquest, colonization and natural resources exploitation that has left the country underdeveloped and environmentally diminished with high levels of unemployment and poverty. The Political, social, and economical struggles that has always surrounded this culturally and environmentally rich nation have been the causes for its underdevelopment and misunderstanding and ultimately clashes among its people. The eagerness of the elites that have ruled the country have divided its own people instead of uniting them, resulting in cultural differences that up to this day could be seen among its different ethnic groups.

In 2010 an estimated 5.9 million people lived in Nicaragua distributed among its different ethnic groups such as the Mestizo who represent the 69%, European descendents 17%, Afro-descendents 9%, and Amerindians 5%⁵⁹. Spanish is the official language however English and Indigenous languages are also spoken, predominantly in the Caribbean coast due to the British

⁵⁷ See

⁵⁸ See Howard, *Supra* note

⁵⁹ According to the U.S. Department of State. Available at < <http://www.state.gov/r/pa/ei/bgn/1850.htm>>

occupation and migration of indigenous peoples in the region since ancient times. Before colonization Nicaragua's population was mainly indigenous or Amerindians, this would drastically change due the invasion of European settlers. Some of those Amerindians still remain in the country such as: Matagalpas, Subtiabas, Chorotega and Nicaraos in the Pacific and Miskitos, Mayagnas (often called Sumos) and Ramas in the Caribbean coast. The mestizaje created new races such as: Mestizos (mixed Amerindians and Europeans) who mostly live in the Pacific; Creoles (mixed Africans and Europeans) and Garifunas (a people of mixed West African, Carib and Arawak descent) who live in the Caribbean coast. In the XIX century, the government divided the department of Zelaya –consisting of the eastern half of the country, that is the Caribbean Coast- into two autonomous regions and granted its inhabitants –mostly indigenous peoples- with limited governance within the country.

As a result of historical-ongoing violations against indigenous peoples right [specially lands rights which is the main focus of this paper] and its unstoppable struggle for recognition, the government under the Sandistas administration, acknowledged the existence of Indigenous peoples in the territory and recognized their rights under the amended Constitution of 1987. Article 5 of the Constitution states:

*“The State recognizes the existence of indigenous peoples, who enjoy the rights, duties and guarantees enshrined in this Constitution, and in particular to maintain and develop their identity and culture, have their own forms of social organization and manage their local affairs; as well as maintaining the communal forms of land ownership and enjoyment, use and enjoyment of them, all in accordance with the law. An Autonomy Regime shall be established for the communities of the Atlantic Coast”.*⁶⁰

In addition, Indigenous communities have the right to live according to their own traditions and customs that have characterized them since ancient times. The State guarantees the rights of Indigenous communities to self-determination, self-government and the exploitation of their natural resources, as well as the preservation of their culture, language, religion and traditions [Article 180 of the Constitution]. Furthermore, the government shall establish by law an Autonomy Regime for indigenous peoples and ethnic communities of the Atlantic Coast [Caribbean coast], in which shall contain, among other rules: the power of their governing bodies, their relationship with the executive and Legislative and municipalities and the exercise of their rights. Such Regime was established in Law No. 28 “Statute of Autonomy of the Autonomous Region of the Atlantic Coast” of September 7th 1987. Law 28 establishes two autonomous regions: North Atlantic Autonomous Region –RAAN (Region Autonoma del Atlantico Norte)- and the South Atlantic Autonomous Region –RAAS (Region Autonoma del Atlantico Sur)–Article 6. Law No.28-. Such regions constitute the 50% of the total territory of Nicaragua⁶¹. Miskitos, Mayagnas (Sumos), Ramas, Creoles and Garifunas are the predominant ethnics of the Caribbean coast. Miskitos and Mayagnas (Sumos) live in the North Atlantic

⁶⁰ Constitucion Politica de la Republica de Nicaragua. La Gaceta, Diario Oficial No. 176.

⁶¹ Provision II of the Preamble of Law No. 28 of 1987: “The Nicaraguan Atlantic region constitutes approximately 50% of national territory and, with nearly three hundred thousand inhabitants representing 9.5% of the population, spread out with one hundred and eighty-two thousand Spanish-speaking mestizos; seventy-five thousand Miskito who speak their own language; twenty-six thousand English-speaking Creoles; nine thousand Sumos with their own language, Garifuna 1750, most of whom have lost their language, and eight hundred and fifty branches of which only thirty-five preserved their language”

Region while the Ramas, Creoles and Garifunas in the South Atlantic Region.

Rights of Indigenous Peoples recognized by the Nicaraguan Constitution of 1987:

<i>Provisions</i>	<i>Indigenous Peoples Rights</i>
<i>Article 5</i> ⁶²	Self-determination; Political, social and ethnic pluralism; Multi-cultural & Multi-ethnic Nation; Recognition of Indigenous Peoples; Identity and forms of organization; Collective Right; Communal Property; Autonomy
<i>Article 8</i> ⁶³	Multi-ethnic nature
<i>Article 11</i> ⁶⁴	Recognition of Indigenous Languages
<i>Article 27</i> ⁶⁵ & <i>91</i> ⁶⁶	Non-discrimination; Equality before the law
<i>Article 49</i> ⁶⁷	Right to association
<i>Article 89</i> ⁶⁸	Indigenous peoples rights; Indigenous groups/communities; Afro-descendent communities; Collective Rights; Right to cultural identity; Self-governance; Communal; Property; Usufruct of their lands
<i>Article 90</i> ⁶⁹	Right to preservation of culture as a national culture; Freedom of

⁶² Art. 5 "Son principios de la nación nicaragüense: la libertad; la justicia; el respeto a la dignidad de la persona humana; el pluralismo político, social y étnico; el reconocimiento a las distintas formas de propiedad; la libre cooperación internacional; y el respeto a la libre autodeterminación de los pueblos. El pluralismo político asegura la existencia y participación de todas las organizaciones políticas en los asuntos económicos, políticos y sociales del país, sin restricción ideológica, excepto aquellos que pretenden el restablecimiento de todo tipo de dictadura o de cualquier sistema antidemocrático. El Estado reconoce la existencia de los pueblos indígenas, que gozan de los derechos, deberes y garantías consignados en la Constitución y en especial los de mantener y desarrollar su identidad y cultura, tener sus propias formas de organización social y administrar sus asuntos locales; así como mantener las formas comunales de propiedad de sus tierras y el goce, uso y disfrute de las mismas, todo de conformidad con la ley. Para las comunidades de la Costa Atlántica se establece el régimen de autonomía en la presente Constitución. Las diferentes formas de propiedad pública, privada, asociativa, cooperativa y comunitaria deberán ser garantizadas y estimuladas sin discriminación para producir riquezas, y todas ellas dentro de su libre funcionamiento deberán cumplir una función social"

⁶³ Art. 8 "El pueblo de Nicaragua es de naturaleza multiétnica y parte integrante de la nación centroamericana".

⁶⁴ Art. 11 "El español es el idioma oficial del Estado. Las lenguas de las comunidades de la Costa Atlántica de Nicaragua también tendrán uso oficial en los casos que establezca la ley".

⁶⁵ Art. 27 "Todas las personas son iguales ante la ley y tienen derecho a igual protección. No habrá discriminación por motivos de nacimiento, nacionalidad, credo político, raza, sexo, idioma, religión, opinión, origen, posición económica o condición social" ...

⁶⁶ Art. 91 "El Estado tiene la obligación de dictar leyes destinadas a promover acciones que aseguren que ningún nicaragüense sea objeto de discriminación por razón de su lengua, cultura y origen".

⁶⁷ Art. 49 "En Nicaragua tienen derecho de constituir organizaciones los trabajadores de la ciudad y el campo, las mujeres, los jóvenes, los productores agropecuarios, los artesanos, los profesionales, los técnicos, los intelectuales, los artistas, los religiosos, las Comunidades de la Costa Atlántica y los pobladores en general, sin discriminación alguna, con el fin de lograr la realización de sus aspiraciones según sus propios intereses y participar en la construcción de una nueva sociedad"

⁶⁸ Art. 89 "Las comunidades de la Costa Atlántica son parte indisoluble del pueblo nicaragüense y, como tal, gozan de los mismos derechos y tienen las mismas obligaciones. Las comunidades de la Costa Atlántica tienen el derecho de preservar y desarrollar su identidad cultural en la unidad nacional; dotarse de sus propias formas de organización social y administrar sus asuntos locales conforme a sus tradiciones. El Estado reconoce las formas comunales de propiedad de las tierras de las comunidades de la Costa Atlántica. Igualmente reconoce el goce, uso y disfrute de las aguas y bosques de sus tierras comunales.

Article 103 ⁷⁰	Expression; Preservation of Language, Arts & Culture
Article 107 ⁷¹	Recognition of Communal Property
Article 121 ⁷²	Agrarian Reform; Prohibition of expropriation of Indigenous Lands; communal property regime
Article 164 ⁷³	Right to education in indigenous languages
Article 177 ⁷⁴	Judicial Instances
Article 180 ⁷⁵	Political and administrative autonomy; Law of Municipality will regulate the relationship between the municipalities and indigenous communities
Article 181 ⁷⁶	Collective Rights; Self-Determination; Self-Governance; The Right to exploitation their natural resources; Right to religion; Right to preserve their traditions, language, Arts and Culture; Preservation of their identity; Social organization rights; Guarantee of the use, enjoyment of their natural resource; Effectiveness of their lands rights; Free election of their representatives
	Autonomy Regime; Participation in the exploitation of natural resources

⁶⁹ Art. 90 "Las comunidades de la Costa Atlántica tienen derecho a la libre expresión y preservación de sus lenguas, arte y cultura. El desarrollo de su cultura y sus valores enriquece la cultura nacional. El Estado creará programas especiales para el ejercicio de estos derechos".

⁷⁰ Art. 103 "El Estado garantiza la coexistencia democrática de las formas de propiedad pública, privada, cooperativa, asociativa y comunitaria; todas ellas forman parte de la economía mixta, están supeditadas a los intereses superiores de la nación y cumplen una función social".

⁷¹ Art. 107 "La reforma agraria eliminará el latifundio ocioso y se hará prioritariamente con tierras del Estado. Cuando la expropiación de latifundios ociosos afecte a propietarios privados, se hará cumpliendo con lo estipulado en el Artículo 44 de esta Constitución. La reforma agraria eliminará cualquier forma de explotación a los campesinos, a las comunidades indígenas del país, y promoverá las formas de propiedad compatibles con los objetivos económicos y sociales de la nación establecidos en esta Constitución. El régimen de propiedad de las tierras de las comunidades indígenas se regulará de acuerdo a la ley de la material".

⁷² Art. 121 "El acceso a la educación es libre e igual para todos los nicaragüenses. La enseñanza primaria es gratuita y obligatoria en los centros del Estado. La enseñanza secundaria es gratuita en los centros del Estado, sin perjuicio de las contribuciones voluntarias que puedan hacer los padres de familia. Nadie podrá ser excluido en ninguna forma de un centro estatal por razones económicas. Los pueblos indígenas y las comunidades étnicas de la Costa Atlántica tienen derecho en su región a la educación intercultural en su lengua materna, de acuerdo a la ley".

⁷³ Art. 164 "Son atribuciones de la Corte Suprema de Justicia: 13) Conocer y resolver los conflictos de constitucionalidad, entre el gobierno central y los gobiernos municipales y de las regiones autónomas de la Costa Atlántica".....

⁷⁴ Art. 177 "Los municipios gozan de autonomía política administrativa y financiera. La administración y gobiernos de los mismos corresponde a las autoridades municipales.....La Ley de Municipios deberá incluir, entre otros aspectos, las competencias municipales, las relaciones con el gobierno central, con los pueblos indígenas de todo el país y con todos los poderes del Estado, y la coordinación interinstitucional".

⁷⁵ Art. 180 "Las comunidades de la Costa Atlántica tienen el derecho de vivir y desarrollarse bajo las formas de organización social que corresponden a sus tradiciones históricas y culturales. El Estado garantiza a estas comunidades el disfrute de sus recursos naturales, la efectividad de sus formas de propiedad comunal y la libre elección de sus autoridades y diputados. Asimismo garantiza la preservación de sus culturas y lenguas, religiones y costumbres".

⁷⁶ Art. 181 "El Estado organizará, por medio de una ley, el régimen de autonomía para los pueblos indígenas y las comunidades étnicas de la Costa Atlántica, la que deberá contener, entre otras normas: las atribuciones de sus órganos de gobierno, su relación con el Poder Ejecutivo y Legislativo y con los municipios, y el ejercicio de sus derechos. Dicha ley, para su aprobación y reforma, requerirá de la mayoría establecida para la reforma a las leyes constitucionales. Las concesiones y los contratos de explotación racional de los recursos naturales que otorga el Estado en las regiones autónomas de la Costa Atlántica, deberán contar con la aprobación del Consejo Regional

Law No. 28 Estatute of Autonomy of the Autonomous Region of the Atlantic Coast

- ❖ Preamble⁷⁷
 - Indigenous lands represents 50% of the total national territory
 - Recognition of Indigenous groups:
 - Miskitus, Mayagnas (Sumos), Ramas
 - Garifunas and Creoles
- ❖ The power of their governing bodies (Article 19-31)
- ❖ Autonomy Regime⁷⁸ Article 4
- ❖ Recognition of their language Article 5
- ❖ Establishes two autonomous regions⁷⁹: Article 6 (1) & (2)
 - North Atlantic Autonomous Region –RAAN (Region Autonoma del Atlantico Norte)
 - Miskitus and Mayagnas (Sumos)
 - South Atlantic Autonomous Region –RAAS (Region Autonoma del Atlantico Sur)
 - Ramas, Creoles, Garifunas
- ❖ Their relationship with the executive and Legislative and municipalities and the exercise of their rights⁸⁰ Article 7

Autónomo correspondiente. Los miembros de los consejos regionales autónomos de la Costa Atlántica podrán perder su condición por las causas y los procedimientos que establezca la ley”.

⁷⁷ Preamble of Law No. 28: II: “*Que la Región Atlántica nicaragüense constituye aproximadamente el 50% del territorio patrio, y con cerca de trescientos mil habitantes representa el 9.5% de la población nacional, distribuida en: ciento ochenta y dos mil Mestizos de habla hispana; setenticinco mil Miskitos con su propia lengua; veintiseis mil Creoles de habla inglesa; nueve mil Sumos con su propia lengua; mil setecientos cincuenta Garifunas, la mayoría de los cuales han perdido su lengua, y ochocientos cincuenta Ramas de los cuales sólo treinta y cinco conservan su lengua”..... VIII “□Que el nuevo orden constitucional de Nicaragua establece que el pueblo nicaragüense es de naturaleza multiétnica; reconoce los derechos de las Comunidades de la Costa Atlántica a preservar sus lenguas, religiones, arte y cultura; al goce, uso y disfrute de las aguas, bosques y tierras comunales; a la creación de programas especiales que coadyuven a su desarrollo y garantiza el derecho de estas Comunidades a organizarse y vivir bajo las formas que corresponden a sus legítimas tradiciones (Artos. 8, 11, 49, 89, 90, 91, 121, 180 y 181 Cn.)”.*

⁷⁸ Law No. 28 Arto. 4 “*Las Regiones en donde habitan las Comunidades de la Costa Atlántica gozan, dentro de la unidad del Estado Nicaragüense, de un Régimen de Autonomía que les garantiza el ejercicio efectivo de sus derechos históricos y demás, consignados en la Constitución Política”.*

⁷⁹ Law No. 28 Arto. 6. “*Para el pleno ejercicio del derecho de Autonomía de las Comunidades de la Costa Atlántica, se establecen dos Regiones Autónomas-en lo que comprende el Departamento de Zelaya: 1. “La Región Autónoma Atlántico Norte” tiene su jurisdicción sobre el territorio de la Zona Especial I, y las Islas y Cayos adyacentes. Su sede administrativa es la ciudad de Puerto Cabezas”. 2. “La Región Autónoma Atlántico Sur” tiene su jurisdicción sobre el territorio de la Zona Especial II, y las islas y Cayos adyacentes. Su sede administrativa es la ciudad de Bluefields.” En circunstancias extraordinarias las administraciones regionales podrán funcionar en otras partes de sus respectivos territorios”.*

⁸⁰ Law No. 28 Arto. 7. “*El territorio de cada Región Autónoma se dividirá para su administración en municipios, que deberán ser establecidos, hasta donde sea posible, conforme a sus tradiciones comunales y se regirán por la ley de la materia. La subdivisión administrativa de los municipios será establecida y organizada por los Consejos Regionales correspondientes, conforme a sus tradiciones”.*

Rights of Indigenous Peoples of Nicaragua under Law No. 28 Statute of Autonomy of the Autonomous Regions of the Atlantic Coast

Provisions	Indigenous Peoples Rights
Article 8	<ul style="list-style-type: none"> ❖ Autonomous Regions are also legal persons ❖ Through their administration bodies they 1) Participate effectively in the elaboration and execution/implementation of projects and development programs for their region; 2) Administer programs concerning: Health, education, culture, transportation, supply, communal services in coordination with the institutions from the Central Government; 3) Promote the rational use, enjoyment of their natural resources of their lands, forests, rivers, ecosystem; 4) Promote their culture; 5) Promote economic development; among others
Article 9	<ul style="list-style-type: none"> ❖ Exploitation of their natural resources; Recognition of Communal Lands; Benefits of natural resources among all the communities, Regional Government and Central Government
Article 11	<ul style="list-style-type: none"> ❖ Rights of the people from the autonomous regions; ❖ Collective Rights; ❖ Equality and non-discrimination; ❖ Preservation and development of their languages, religion and culture; ❖ Use and enjoyment of their water (rivers, ocean) forests and communal lands; ❖ Social organizations; ❖ Education in their native language and Spanish; ❖ Recognition of Communal Land; ❖ Preservation of their scientific knowledge; ❖ Natural Medicine
Article 15	<ul style="list-style-type: none"> ❖ Regional Administration: 1) Regional Council [Art. 19 - 31]; 2) Regional Coordinator [Art. 29 – 31]; 3) Municipalities and Communal Authorities; 4) Others
Article 36	<ul style="list-style-type: none"> ❖ Communal property: land, waters & forests that have traditionally belonged to Indigenous Peoples since ancient times; ❖ Communal lands are inalienable, can not be donated, sold, seized, taxed, they cannot be subject to prescription; ❖ The right to work on their communal lands and the enjoyment of usufruct from the property

Mayagna (Sumo) Peoples

According to a Nicaraguan historian, the Mayagna (Sumo) People are direct descendents of the ancient indigenous tribe “Taguacas” or “Twahkas or Twakas”, who used to live widespreadly in the North-East of Nicaragua and South-East of Honduras⁸¹. The indigenous Miskitu people have, since the 17th Century, undergone a process of assimilation of other cultures such as: British, African and Afro-Caribbean. The Miskitu people represent the largest ethnic group of the region speaking their own language. In contrast, Mayagnas (Sumos) have been more isolated from the rest thus, preserving their distinctive identity and still speaking their ancient language.⁸² Mayagnas have historically been reluctant to cultural change. During the economic development brought by XIX and XX centuries, the Mayagna people subtly resisted in participating in the global market economy opting for geographical isolation and engaging in a self-sustainable lifestyle⁸³ based on agriculture, hunting and fishing instead of working for economic remuneration. In addition, Mayagnas still preserve their own religion, which is the “worship of nature. Thus, God for Mayagnas is the “Sun” which is the father of all the Mayagna peoples⁸⁴. They feel deeply connected to their lands as they conceive themselves part of the whole environment. As many Indigenous peoples in the world, Mayagna people also seek the realization of all their rights through the connection they have with the land.

Mayagna people have been characterized as “tame Indians” or “Indios mansos” but in reality, Mayagna peoples have been active actors of shaping their history. Thus, Mayagna peoples have been subjected to discrimination, domination and slavery not just by the conquistadores but also by neighbor groups, specifically the Miskitos⁸⁵. This could be the reason why Mayagnas and Miskitos still face cultural issues among them. Contrary to some academic research that have portrayed Mayagnas as a weak and passive people, the fact is that they constitute one of the most united indigenous groups around their culture. Their language remain intact, as well as the purity of their phenotypic constitution. Mayagnas people never lost control of their own destiny, thus, shaping it through history. Mayagna people are well-known as Sumos, although, they prefer to be called just Mayagna since the term Sumo was originally used in a derogatory meaning by the Miskitos. The term Mayagnas thus, means “nosotros” in Spanish or “all of us” in English. Some historians such as Incer Barquero from Nicaragua, have identified sub-tribes within Mayagna peoples such as: the Twahkas, Panamakas, Prinzus, Bawihkas, Kum,

⁸¹ See Barquero, Supra note 5 at 121. Incer Barquero explains the origin of Mayagnas (Sumo) People from the writings of the Spanish missionaries that arrived to the country during the XVI and XVII century. “*Información de primera mano reaparece con motivo de las visitas de los frailes itinerantes Alonso Ponce y Antonio Vásquez de Espinosa, entre los siglos XVI y XVII, así como la de los franciscanos que intentaron la conquista de las provincias entonces llamadas Taguzgalpa y Tologalpa, según fue referida por Fray Francisco Vásquez. Tales provincias comprendían las regiones selváticas en el oriente de Honduras y Nicaragua, donde algunos frailes fueron martirizados por los indómitos indios Taguacas y Albagüinas, hoy identificados como pertenecientes a la gran tribu de los Sumus*”.

⁸² See Barquero, Supra note 5

⁸³ See Mark Carey, La influencia Mayagna (Sumo) en la historia de la Costa Atlántica Nicaraguense.

⁸⁴ See General Luis Hurtado de Mendoza: “*Identidad Cultural Mayagna en Nicaragua*”, Revista del Caribe Nicaraguense.- Julio-Septiembre 2002, No. 30. Presentación que el autor hizo de su libro en Casa del Libro el 21 de Junio.

⁸⁵ See General Mark Carey, Supra note 64

Yuskus, Silam, Kukras, Boas and Ulwas. The Panamakas are located around Bocay, Amaka and Wina Rivers located in the North Atlantic Region of Nicaragua –RAAN-⁸⁶

Luis Hurtado de Mendoza in his book “Mayagna Identity of Nicaragua” describes the present territories of the Mayagna people, from BOSAWAS Reserve located North-East of Nicaragua bordered with Honduras. Hurtado explains that the Mayagna people used to share an extensive portion of land now much reduced. There are four territories along the basin of the rivers Bocay, Lakus, Waspuk and Uli, which have been settled around the years 1994 to 1996 and sums up a total of 4,257 km² of their territory⁸⁷. The “Sauni Bu community” of the Mayagna people of the basin of Bocay river have been claiming no less than 500 km² that have been invaded by “Colonos-Mestizos”. On the other hand, the “Kipla Sait Tasbaika community” of the Mayagna peoples share approximately 200 km² of their territory with some Miskito peoples around the torrents of Coco River⁸⁸. As stated above, Mayagna peoples throughout history have been sharing their territory with other indigenous communities; they have also shared their culture and traditions. The problem arise then when other communities do not respect their culture and traditions and engage in acts that go contrary to their lifestyle, that is, the spiritual communion they have with their lands and the environment.

Religion, Culture, Economy, and Communal Organization of the Mayagna (Sumo) Peoples

Religion

Some Mayagna Peoples still preserve their ancient religion, which is the “Worship of nature”, while others like the Balna Mayagnas –a Mayagna sub-group- have assimilated the Catholic religion and others the Moravan religion brought from the English missionaries as explained before. The Catholic priests and the Marovan pastors have a high level of prestige and recognition and influence among the communities. They have influenced the communities in respect of their decisions and internal organizations without limiting the right to enable them to manage their own ethical and religious beliefs. Mayagna Peoples enjoy the principle of freedom of religion, however, this implies that Mayagna Peoples are rapidly losing elements of their traditional religion, which constitute an enormous concern among the elderly people and they

⁸⁶ See Barquero, Supra note 5

⁸⁷ See Hurtado de Mendozam Supra note 65 at 61

⁸⁸ See Hurtado de Mendoza, Supra note 65: “No se cuenta con información comparable para determinar la extensión territorial de las comunidades mayagnas en la cuenca del río Bambina ni tampoco acerca del territorio que los mayagnas ulvas consideran suyo en Karawala, pero no parece aventurado suponer, siguiendo los patrones ocupacionales arriba descritos, que el total podría llegar a unos 1200 km². Así, se postula que los actuales territorios mayagnas en Nicaragua bien podrían estar en el orden de los 5,760 km², poco más del 4% del territorio continental de país. Es preciso mencionar que también hay una importante población mayagna en Honduras, principalmente en la cuenca media del río Patuca, la cual cobija a muchas familias nicaragüenses durante la guerra de los años ochenta. Hoy en día y seguramente ya por algunos siglos, estos mayagnas del grupo lingüístico Tauhka están separados de los mayagnas panamahkas del norte de Nicaragua. Según Hurtado en su libro, la nación mayagana, en conjunto con quienes ahora son los mismitos, tiene una antigüedad que excede los 4,500 años y su identidad como etnia distinguible mayagna se remonta al menos en esos mismos 4,500 años. A lo largo de la historia, los mayagnas han sido sujetos a un sin número de conflictos, especialmente durante los tiempos de la conquista, donde los enemigos abundaban, mejor armados y apoyados por los ingleses, mientras las autoridades españolas se tornaban incompetentes o ausentes. Culminaba así una etapa prolongada, de siglos de conflictos y lucha por la tierra y la sobrevivencia. Quedaban pocos de los tantos y miles de mayagnas que, organizados en nueve tribus, poblaron orgullosamente tantos territorios del país, desde el Patuca hasta el río Escondido”.

have been in a constant struggle to revitalize the original religions Mayagna's traditions⁸⁹.

Culture

Mayagna People have a very unique culture, it is known by the oral tradition. Mayagnas have been in some extent very mysterious about their traditions. They still pray to their God, which is the Sun and the earth seem as a holistic approach where they believe that their duty in life is to protect the whole environment for the future generations. They have preserved their ancient language "Sumo". The parents teach their children how to fish, hunt and work the land⁹⁰.

Economy

Mayagna Peoples enjoy a subsistence economy primarily which is supplemented with the sale of certain agricultural products. In an on-site research to Awas Tingni Community one of the Sindicos –trustee- was interviewed; he stated that they engage in agriculture and fishing. One of the agricultural products they sell to other communities is bananas⁹¹. Maria Luisa Acosta, an expert on indigenous peoples, explained that Mayagna Peoples engage in a subsistence economy that has to do with their particular culture, that is agricultural work that does not damage the environment, they take what they need to survive from earth because they feel part of it, living in communion with the environment⁹². In addition Mayagnas recognize the positive effect of tillage tools, but they indicate that the growing relationships with other ethnic groups have created new needs that agricultural development along does not resolve. Their diet has changed and now they need to buy food. Clothing has also changed as a result of this inter-relation, forcing them to buy clothes. In a nutshell it has increased the need for cash income. In some areas, extraction and sale of gold and wood help to address these needs, but not enough. The marketing of grain and bush meat also help, but the distances increase the cost of transport and prices do not always justify the effort⁹³.

Communal Organization

The community organization takes many traditional forms always rescuing the Councils of Elders. The community choose communal coordinators or Sindicos –Trustees-, and appoint members of the community as Territorial Ranger Corps or "Guardabosques". They have also formed non-governmental organizations such as SUKAWALA, SIMSKULT and AEDPCIMISUJIN for the purposes of relations with governments and external cooperation

⁸⁹ See General Hurtado de Mendoza, Supra note 65 at 64-66

⁹⁰ See General Hurtado de Mendoza, Supra note 65 at 64: "*Los Mayagnas tienen una cultura tradicional muy propia. La mayor parte es conocida por tradición oral, la arqueología y la etnohistoria, pero en este inventario se torna evidente que existen sobrevivencias importantes, principalmente en lo concerniente al lenguaje, la ideología, las remembranzas históricas, la relación con la naturaleza, la organización social, la vivienda y patrones de asentamiento, la producción y uso de los recursos del bosque*"

⁹¹ Interview with Sindico Porras in Awas Tigni Mayagna community on March 2011: De que vive la comunidad, cual es el desarrollo económico? "*Agricultura especialmente la pesca, hay veces llevan para cultivo, banano por ejemplo, llevan a vender*".

⁹² Interview with Maria Luisa Acosta, Indigenous Peoples Lawyer from Nicaragua: "*Ellos tienen una economía de subsistencia que tienen que ver con su propia cultura, no mal tratar a la naturaleza, tomar de ella de lo que necesitan, no tienen una concepción no como el estilo occidental de que el hombre toma la tierra sino que ellos son parte de la tierra parte de la naturaleza, y son uno mas de la naturaleza, ellos tienen que vivir en comunión con esa naturaleza, entonces no vas a tomar mas de lo que vas a comer o de lo que vas a necesitar, ese concepto de consumismo y de producir hasta que caigas, eso no es parte de su cultura*".

⁹³ See General Hurtado de Mendoza, Supra note 65 at 65

agencies. Among the functions of Sindicos –trustees- are to represent the communities, management development programs, coordinate the activities taking place in communities in decision making and problem solving to work for the defense of their territories⁹⁴

Cultural Inter-relation among Mayagnas and Miskitos

Karawala community is populated by Mayagnas and Miskitos respectively and it is believed that some of these two ethnic groups migrated from the central region of Nicaragua – Matagalpa- to the North-East. Both ethnic groups have been culturally inter-related with each other before colonization, forming family units. Since colonial times, Mayagnas have had many differences with the Miskitos due to their domination on the Mayagnas. In addition, some Miskito communities have dispossessed Mayagnas from their ancient territories, forcing them to migrate to other lands⁹⁵. As a result of this inter-relation, some Mayagnas have assimilated Miskito language, in contrast to the Miskitos that have kept their Ulva Miskito language and assimilated Spanish and some English language. By 1905 the Karawala community was composed by twelve Miskito families. Some Mayagnas were coming from the Northern region of Nicaragua to situate themselves around the Karawala Community and both ethnicities started to mix with each other⁹⁶, creating a new hybrid race and triggering territory issues that up to this date constitute one of the major conflict among both groups.

Section II: Conflicting Claims

The historical and linguistic evidence indicate that Mayagna People were one of the first settlers to inhabit the territories of the actual States of Costa Rica, Nicaragua and Honduras⁹⁷. However, indigenous peoples in Nicaragua have been denied the rights to legally own their territory, they have been dispossessed from their ancestral lands and been restricted to the use, usufruct, manage and enjoyment of their natural resources. Land for indigenous people is the foundation for their survival and preservation of their culture and identity. Professor Siegfried Wiessner explains the close and important relationship [connection] that indigenous peoples have with their lands: *“Against all the odds, the indignities of colonization, and the lures of modern society, indigenous peoples have survived as communities with a strong felt, time-honoured identity. Their claims and aspirations are diverse, but their common ground is a quest for the preservation and flourishing of a culture inextricably, and often spiritually, tied to their ancestral lands. This specific relationship to the land distinguishes them from other communities or groups dispossessed in terms of power or wealth”*⁹⁸.

⁹⁴ See Rafael Casanova and Roberto Macias, Linea Basal de los Pueblos Indígenas de Nicaragua según su ascendencia en las Regiones Pacifico, Centro Norte y Caribe (RAAS), Movimiento Indígena Nicaragüense. Revisado por Martínez Gaitan Guillermo, Dirigentes y Líderes de los Pueblos Indígenas de Nicaragua. Managua, Nicaragua Noviembre 1999. Also see General Hurtado de Mendoza, Supra note 65 at 65

⁹⁵ Id at 29. Also see Barquero, Supra note 5

⁹⁶ Id at 30-44

⁹⁷ See General Hurtado de Mendoza, Supra note 65. Revista del Caribe Nicaragüense, Julio-Septiembre 2002. No. 30, CIDCA-UCA

⁹⁸ See Siegfried Wiessner, THE CULTURAL RIGHTS OF INDIGENOUS PEOPLES: ACHIEVEMENTS AND CONTINUING CHALLENGES. Symposium: The Human Dimension of International Cultural Heritage Law. European Journal of International Law, February, 2011, pp. 1. See also Aboriginal Land Rights (Northern Territory)

The Spiritual tied with their ancestral lands is one of the most important elements of indigenous culture as stated by the Inter-American Court of Human Rights in the landmark Case of Awas Tingni [that will be analyzed in more detail in past trends and decisions]: *“the close ties of indigenous peoples with the land must be recognized and understood as the fundamental basis for their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities [their relationship with] the land is not merely a matter of possession and production but a material and spiritual element, which they must fully enjoy [...] to preserve their culture legacy and transmit it to future generations”*⁹⁹.

Despite of the recognition of this fundamental right of indigenous peoples nationally and internationally and the unnumbered and endless legal battles that have occurred throughout history, indigenous peoples of Nicaragua continue to face violations of their rights of land ownership, resulting in frustration and alteration of their natural habitat, customs and traditions, as well as their inter-relations with various groups of society. The leaders and the elderly of indigenous communities express their concerns on this matter and demand the respect for their rights, especially their right to ancestral lands, as well as the legalization of their territories to stop once and for all the historical invasion of their territories and to live together in peace and harmony among their communities and the rest of society, so as to preserve their culture and identity for future generations, as they have stated several times *“With legalized land the next generation to come might live in peace and enjoy their rights”*¹⁰⁰.

Therefore it is important to address the main conflicting claims that these indigenous groups are facing in the present time not just with the Government [which has been the biggest violator of their rights] but also with other indigenous groups and third people or new settlers known as Colonos/Mestizos, in order to grant an effective protection of their fundamental rights. One of the most effective means to protect their rights is through legal instruments recognized domestically and internationally, as Professor Federico Lenzerini stated in the interim report of the International Law Association at the Hague Conference in 2010: *“In the event of dispossession of indigenous lands, the form of reparation to be pursued is restitutio in integrum, except when it is objectively unfeasible, for the reason that “the profound relationship that indigenous peoples [have] with their lands and territories [has] critical social, economic, political, culture and spiritual dimensions. [This makes] the return of land [...] the only means by which to provide redress and restore a people’s ability to survive as a distinct people”*¹⁰¹.

Act of Australia with respect to the spiritual ties in relation to indigenous lands: Professor Wiessner explains: “the 1976 Aboriginal Rights (Northern Territory Act) had been passed, responding to the claims of Australian Aborigines by recognizing traditional claims to land in the Northern Territory based on spiritual ties”. Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis. Harvard Human Rights Journal, Volume Twelve, Spring 1999, ISSN 1057-5057. Aboriginal Lands Rights Act available at < http://www.austlii.edu.au/au/legis/cth/consol_act/alrta1976444/> (Last visited April 29, 2011)

⁹⁹ See Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Ser. C. No. 79, judgment of 31 August 2001, para 149. See also Claire Winfield Ngamihi Charters: Lands Rights, Interim Report: Rights of Indigenous Peoples, International Law Association, The Hague Conference at page 20.

¹⁰⁰ Los líderes y los ancianos resumen sus esperanzas en la siguiente frase: “Con tierras legalizadas la nueva generacion verdadera podria vivir en paz y gozar de sus derechos”. See General Hurtado de Mendoza, *Supra* note 65. Revista del Caribe Nicaragüense, Julio-Septiembre 2002. No. 30, CIDCA-UCA

¹⁰¹ See Federico Lenzerini: Reparations, Redress and Remedies. Interim Report: Rights of Indigenous Peoples, International Law Association, The Hague Conference (2001) available at < <http://www.ila->

The first conflict is the demand of land's rights between indigenous peoples and the State. This is when the State refuses to recognize the rights of indigenous people and continues to grant concessions to third parties in indigenous territories¹⁰²; an example of this is the landmark case of the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*¹⁰³. Second, is the demand of land conflicts between indigenous communities and third parties "Mestizos/Colonos". This is the conflict between the concepts of private-individual versus the concept of private-communal property. According to Law 445 (which I will be analysing in past trends in decision) Mestizo families have the right to remain on the land, but not to alienate, if they have the documents of ownership and possession from the year 1987. If they do not have possession they will lose their rights even though they might have the documents; and if they don't have the documents they will have to evacuate the land without any compensation. However, the law also mentions the possibility that they can rent the land previously occupied from indigenous communities¹⁰⁴. This conflict will be covered in detail in past trends in decision. Third, territorial conflicts demand between various indigenous communities. These conflicts also include the territories claimed by different ethnic groups. The conflicts for the demand of territory amongst different communities, sometimes - but not always correspond to inter-ethnic conflicts. These claims typically arise from overlap of ownership. Both (or more) communities claim the same land based on the same type of argument: historical occupation and the claimed land is part of the space traditionally used by the community.

An important element to understand, and finally redress such conflicts is that the land use in these cases is not exclusive use, as is known in the case of private individual property rights. Consequently we must have an ample knowledge of the area traditionally used by the parties in conflict, and develop creativity about how to interpret the claims in order to propose fair solutions¹⁰⁵. The fourth and last conflict that apparently triggers and add fuels to the dispute between indigenous communities and third parties is the corruption among the regional government. An Awas Tingni community leader stated in an interview made in March 2011 that "some officials among the regional government promise land titles to third people in order to get votes to maintain in power or be able to get elected for the first time in office"¹⁰⁶.

hq.org/en/committees/index.cfm/cid/1024> See also Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 UN Doc. E/CN.4/2002/98 of 6 March 2002, para. 81.

¹⁰² See Rikke Broegaard y Alvaro Rivas: *Demarcacion Territorial del Caribe Nicaragüense*. Introducción. Pag 9-10; *Demarcacion Territorial de la Propiedad Comunal en la Costa Caribe de Nicaragua*. Managua, MultiGrafic, 2006. ISBN: 99924-0-5457, CIDCA-UCA Primera Edicion 2006. See also *Armstrong Wiggins: El caso de Awas Tingni: O el futuro de los derechos territoriales de los pueblos indígenas del Caribe nicaragüense (2002)*

¹⁰³ Supra note 6

¹⁰⁴ *Liliam Jarquin*, "El nuevo marco juridico de la propiedad comunal en la Costa y los rios Bocay, Coco, Indio y Maiz (2003). *Demarcacion Territorial del Caribe Nicaragüense*. Introducción... Rikke Broegaard y Alvaro Rivas. Pag 9-10; *Demarcacion Territorial de la Propiedad Comunal en la Costa Caribe de Nicaragua*. Alvaro Rivas y Rikke Broegaard (Compiladores), Managua, MultiGrafic, 2006. ISBN: 99924-0-5457, CIDCA-UCA Primera Edicion 2006

¹⁰⁵ Supra note 6. See also Maria Luisa Acosta: "Usurpacion estatal de tierras indigenas: El caso de las comunidades de Monkey Point y Rama (2000). For additional information about the property ownership see "Diagnostico general sobre la tenencia de la tierra en las comunidades indigenas de la Costa Atlantica (2000) elaborated by the Central American and Caribbean Research Council

¹⁰⁶ Interview with Mr. Parrales, Sindico of Awas Tingni, March 2011, Awas Tingni Community, Northern Atlantic Region of Nicaragua.

Section III: Past trends in decision

Although there is no universally accepted definition of “indigenous peoples” many scholars have attempted to give a proper definition. Different terminologies have been used but there is not concrete and complete one that could be used to integrate it in international treaties and domestic legislation. Jose Martinez Cobo, Former Special Rapporteur, UN Sub-Commission on the Promotion and Protection of Human Rights defines Indigenous peoples as: “*Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural, social institutions and legal systems*¹⁰⁷”. In addition, the current Special Rapporteur and Professor at Law James Anaya defines them as: “*Living descendants of pre-invasion inhabitants of lands now dominated by others... culturally distinctive groups that find themselves engulfed by settler society born of the focus of empire and conquest*¹⁰⁸”. Although these two definitions are correct, they are yet incomplete. One of the most important element of indigenous peoples is still missing within these two definitions which is “the spiritual connection to their lands” as Professor Wiessner explained and I have mentioned in the conflicting claims: “[...] *Their claims and aspirations are diverse, but their common ground is a quest for the preservation and flourishing of a culture inextricably, and often spiritually, tied to their ancestral lands. This specific relationship to the land distinguishes them from other communities or groups dispossessed in terms of power or wealth*”¹⁰⁹.

The first international instrument to address indigenous peoples issues in the Americas was the Inter-American Charter of Social Guarantees concluded in Bogota, Colombia in 1948 by the Organization of American States General Assembly¹¹⁰. Followed the 1948 OAS Charter, the

¹⁰⁷ John B. Henriksen. Study of the Problem of Discrimination Against Indigenous Populations, UN Doc E/CN.4/Sub.2/1986/7Add.4, Paragraph 379. Research on best practices for the implementation of the principles of ILO Convention No. 169, Case Study 7. Programme to Promote ILO Convention No. 169.

¹⁰⁸ James Anaya INDIGENOUS PEOPLES IN INTERNATIONAL LAW. New York: Oxford University Press, 2004. 408pp.

¹⁰⁹ See Siegfried Wiessner, THE CULTURAL RIGHTS OF INDIGENOUS PEOPLES: ACHIEVEMENTS AND CONTINUING CHALLENGES. Symposium: The Human Dimension of International Cultural Heritage Law. European Journal of International Law, February, 2011, pp. 1. See also Aboriginal Land Rights (Northern Territory) Act of Australia with respect to the spiritual ties in relation to indigenous lands: Professor Wiessner explains: “the 1976 Aboriginal Rights (Northern Territory Act) had been passed, responding to the claims of Australian Aborigines by recognizing traditional claims to land in the Northern Territory based on spiritual ties”. Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis. Harvard Human Rights Journal, Volume Twelve, Spring 1999, ISSN 1057-5057. Aboriginal Lands Rights Act available at <http://www.austlii.edu.au/au/legis/cth/consol_act/alrta1976444/> (Last visited April 29, 2011)

¹¹⁰ Article 39: “In countries where the problem of an indigenous population exists, the necessary measures shall be adopted to give protection and assistance to the Indians, safeguarding their life, liberty and property, preventing their extermination, shielding them from oppression and exploitation, protecting them from want and furnishing them and adequate education. The state shall exercise its guardianship in order to preserve, maintain and develop the patrimony of the Indians or their tribes; and it shall foster the exploitation of the natural, industrial or extractive resources or any other sources of income proceeding from or related to the aforesaid patrimony, in order to ensure in

International Labour Organization is then the first international agency that addresses indigenous peoples issues since its first attempt launched in 1957¹¹¹ Convention No. 107¹¹²; which primarily focused on the integration and assimilation of indigenous peoples rather than the protection of such minorities. However, by 1989 the ILO adopted the Convention Concerning Indigenous and Tribal Peoples in Independent Countries¹¹³ with a ratification of 10 states. Almost 22 years later, only 20 Countries have ratified the Convention. Nicaragua became a State party to the Convention on August 25th, 2010¹¹⁴. Article 1 (1)-(a)(b) establishes the application of the Convention to tribal and indigenous peoples but does not stipulate a definition. Article 1 (a) provides the social, cultural and economic elements linked to Tribal people, while provision (b) presents the historical continuity and territorial connection of indigenous populations disregarding the importance of the spiritual connection¹¹⁵. The elements of indigenous peoples in

due time the economic emancipation of the indigenous groups. Institutions or agencies shall be created for the protection of Indians, particularly in order to ensure respect for their lands, to legalize their possession thereof, and to prevent encroachment upon such lands by out-siders". Inter-American Charter of Social Guarantees, Bogota (1948) available at <http://www.corteidh.or.cr/docs/libros/Basing101.pdf>>. See also Historical Background of the Rights of Indigenous Peoples under the Inter-American System, Inter-American Commission of Human Rights. Available at <<http://www.cidh.oas.org/indigenas/chap.1.htm>>

¹¹¹ Siegfried Wiessner: Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis. Harvard Human Rights Journal, Volume Twelve, Spring 1999, ISSN 1057-5057. At page 100.

¹¹² See S. James Anaya & Robert A. Williams: "THE PROTECTION OF INDIGENOUS PEOPLES' RIGHTS OVER LANDS AND NATURAL RESOURCES UNDER THE INTER-AMERICAN HUMAN RIGHTS SYSTEM. Harvard Human Rights Journal, Spring 2001. Compare with International Labour Organization Convention No. 107 Concerning Indigenous and Tribal Peoples in Independent Countries, entered into force June 2, 1959, 328 U.N.T.S. 247. Siegfried Wiessner: Rights and Status of Indigenous Peoples: A Global Comparative and International Legal Analysis. Harvard Human Rights Journal, Volume Twelve, Spring 1999, ISSN 1057-5057. At page 100.

¹¹³ ILO Convention No. 169 Concerning Indigenous Peoples and Tribal Peoples in Independent Countries adopted June 27 1993 available at < <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>>

¹¹⁴ Status of the ratification of the State of Nicaragua, available at < <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloeng&document=7752&chapter=19&query=C169%40ref&highlight=&querytype=bool>>

¹¹⁵ Article 1 of the ILO Convention No. 169: This Convention applies to: a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. 2) Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply. 3) The use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law. Article 1(3) of the ILO No. 169 Convention specifies that the use of the term peoples in the Convention shall not be construed as having any implication as regards the rights which may attach to the term under international law. The objective of this reservation is to avoid challenging international legal questions related to the concept of "peoples" – in particular the right to self-determination, which under international law is acknowledge as the right of "all peoples". This reservation or the application of the other provisions of Convention No. 169, shall not – according to article 35 of the Convention-affect rights of peoples concerned pursuant to other international instruments or national legislation. The reservation in article 1(3) demonstrates the close link between the problem of finding an international agreement on how indigenous peoples should be identified and legal issues. John B. Henriksen. Study of the Problem of Discrimination Against Indigenous Populations, UN Doc E/CN.4/Sub.2/1986/7Add.4, Paragraph 379. Research on best practices for the implementation of the principles of ILO Convention No. 169, Case Study 7. Programme to Promote ILO Convention No. 169

sum are determined by the following factors: first, uninterrupted occupation of ancestral lands [at least part of them]; Spiritual connection/relation with their ancestral lands; Subsistence economy; same language, culture, religion, customs and traditions; self-governing system, e.g. Elderly Council; Connection and protection of the environment and a communal lifestyle where they perceive their rights as a whole adopting a holistic and a cosmological view of the realization of all human values, that is to say that all their rights are equally important and essential to them, e.g. they cannot conceive the right to life without the right to a clean environment or the right to their lands, all the rights must be inter-related and inter-connected in order to see themselves fully realized in the world.

The ILO Convention No. 169 is a binding instrument amongst State parties¹¹⁶. It recognizes indigenous peoples legal status such as their right to self-determination enriched in several international instruments such as the International Covenant on Economic, Social and Cultural Rights¹¹⁷, the International Covenant on Civil and Political Rights¹¹⁸ in common article 1¹¹⁹, in which the State of Nicaragua also had become a party to the Conventions in 1980. The ILO No. 169 ensures several rights to indigenous peoples such as: internal structures or self-governing; their social, cultural, religious, practices, languages and spiritual values [Article 5]; their right to be consulted concerning any decision regarding their lands and political organization [Article 6]; right to their own economic development [Article 7]; right to Land [Article 13]; right to ownership [Article 14]; right to use, manage and preserve their natural resources [Article 15]; the prohibition of re-location [Article 16]; the right to enjoy social security and health [Articles 24-25]; right to education and cooperation [Article 26-31] among others.

¹¹⁶ A binding instrument comes in the form of a treaty. In international Law "Treaties" are formally concluded and ratified agreement between States. The Vienna Convention on the Law of the Treaties regulates all international agreements concluded between States and international entities. Under the Vienna Conventions on the Law of Treaties, a treaty must be (1) a binding instrument, which means that the contracting parties intended to create legal rights and duties; (2) concluded by states or international organizations with treaty-making power; (3) governed by international law and (4) in writing. See *Regulating International Agreements*, Reisman, Arsanjani, Wiessner & Westerman: "International Law in Comparative Perspective. 2004 Foundation Press, New York. ISBN 1-58778-653-2. See also, Siegfried Wiessner: "American Indian Treaties and Modern International Law" at p. 1307. 7 St. Thomas L. Rev. 567, 591-599 (1995)

¹¹⁷ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. Entry into force: 3 January 1976, in accordance with article 27. Office of the United Nations High Commissioner for Human Rights webpage, available at < <http://www2.ohchr.org/english/law/cescr.htm>>

¹¹⁸ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966. Entry into force: 23 March 1976, in accordance with article 49. Office of the United Nations High Commissioner for Human Rights webpage, available at < <http://www2.ohchr.org/english/law/ccpr.htm>>

¹¹⁹ Common Article 1: 1) "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations".

Additionally, several international instruments indirectly protect the rights of indigenous peoples such as: *Universal Declaration of Human Rights*¹²⁰; *International Convention on the Elimination of All Forms of Racial Discrimination*¹²¹; and the *American Convention on Human Rights*¹²², which is undoubtedly the regional convention implemented in the *Awas Tingni Case* by the Inter-American Court of Human Rights. Last but not least, on September 13th 2007 the Security Council adopted by Resolution 61/295 the most waited *Declaration on the Rights of Indigenous Peoples*¹²³[hereinafter UNDRIP], which represents victory for indigenous peoples historical struggle for recognition of their fundamental rights. The following indigenous peoples rights are being recognized by the UNDRIP: Collective rights [Arts. 1, 7]; Equality before the law, non-discrimination, equality of gender [Art. 2, 44]; Self-determination [Art. 3]; Autonomy, self-governance [Arts. 4, 5, 9, 20, 34, 37]; Right to Nationality [Art. 6]; Right to Culture, right to not be subjected to forced assimilation or destruction of their culture [Art. 8]; Prohibition of removal from their lands, no re-location [Art. 10]; Right to practice their own traditions, culture, religion, spiritual property [Art. 11]; Right to their spiritual and ceremonial traditions [Art. 12]; Right to education and preservation of their culture and to choose their own educational system [Arts. 13, 14]; Right to consultation and cooperation [Arts. 15, 19, 38]; Right to work, special protection to indigenous women and children [Arts. 17, 22]; Right to participation [Art. 18]; Right to development [Arts. 21, 23]; Right to their traditional medicines, social and health system [Art. 25]; Right to land, territory and its natural resources [Arts. 26, 27, 32]; Right to restitution, reparation and compensation [Art. 28]; Right to the conservation and protection of the environment [Art. 29]; Right to not be subjected to military activities [Art. 30]; Right of association [Art. 33]; Right to maintain and develop contacts with the lands and communities divided by international borders [Art. 36]; Right to access to financial and technical assistance from the State [Art. 39]; Right to access to justice [Art. 40]; Establishment of a permanent forum on indigenous peoples' issues to promote the respect for and full application of the provisions of the UNDRIP and follow up the effectiveness of the declaration.¹²⁴

The rights of the Mayagna (Sumo) People: The Inter-American Court of Human Rights decision of Awas Tingni, August 31st, 2001¹²⁵

The Mayagna Peoples as we explained in Section II of this Seminar paper, because of their lifestyle are people who do not engage into violent acts or politics; they rather solve their conflicts through diplomacy. That is the case of “Awas Tingni”, a Mayagna sub-tribe adscribed to the Panamaka group, who live on the banks of Rio Wawa one of the historical arteries of the Nicaraguan Atlantic Coast. Awas Tingni location is the result of the establishment of the

¹²⁰ Adopted and proclaimed by General Assembly resolution 217 A(III) of 10 December 1948, available at < <http://www.un.org/en/documents/udhr/index.shtml>>

¹²¹ Adopted and opened for signature and ratification by General Assembly resolution 2106 A(XX) of 21 December 1965, available at < <http://www2.ohchr.org/english/law/cerd.htm>>

¹²² Signed November 22, 1969. Entered into force July 18, 1978, Organization of American States Treaty, available at < http://www.hrcr.org/docs/American_Convention/oashr.html>

¹²³ United Nations Declaration on the Rights of Indigenous Peoples, General Assembly Resolution, 61/295, Annex, U.N. Doc. A/RES/61/295, September 13, 2007, available at < <http://www.un.org/esa/socdev/unpfii/en/drip.html>>

¹²⁴ Siegfried Wiessner, *United Nations Declaration on the Rights of Indigenous Peoples*. United Nations Audiovisual Library of International Law, 2009. Available at <www.un.org/law/avl>

¹²⁵ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Ser. C. No. 79, judgment of 31 August 2001. Available at < http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf>

grandfathers of the present inhabitants from the ancient settlement Tuburús. The members of the "Awas Tingni" community are linked to its territory, in which they possess a widespread, deep and meticulous knowledge through a series of practices, rooted in ancestral traditions, and a complex network of spiritual meanings. Despite the isolated life that the community of Awas Tingni (Mayagnas) has pretended to live in, they have become the center of international attention due their struggle for recognition and protection of their lands rights that had taken them to International Courts. Their battle for the ancestral lands rights is finally recognized but not yet effectively protected.

The case of Awas Tingni against the government of Nicaragua represents a landmark case for Indigenous Peoples not just in the country, or the American Continent, but also to all over the world creating an international precedent for recognition of Indigenous land rights in the Inter-American Court system and in international law. The case also represents a shared struggle among Indigenous Peoples since times of colonization. Awas Tingni case thus, increases and ensures the protection of Indigenous Peoples rights. As consequence, Indigenous Peoples in other places of the world are implementing this Court judgment as reference to ensure and protect indigenous land, territories, cultures and ultimately, their survival¹²⁶.

The Awas Tingni case starts with one of the most common practices of governments for economic development "granting of concessions" in territories occupied by Indigenous peoples since immemorial times. In 1995, the Nicaraguan government granted a Korean-based logging company a concession in the ancestral lands of Awas-Tingni. The government gave the concession without first consulting the community, and most importantly, ignoring its own laws, such as the Autonomy Law of 1987, which protects the lands and rights of the Caribbean Coast's indigenous and Afro-descendant peoples. The Mayagna people tried to seek justice in its own domestic legal system as stipulated by law without any success. After many years of legal battle, the case was heard by the Inter-American Commission of Human Rights which turned the case to the Inter-American court of Human Rights. The court ruled in favor of the Mayagna people, maintaining that the government had violated their human rights on its judgment of August 31st of 2001. As result, the Court demanded the State of Nicaragua to fully delineate, demarcate and title Anwas-Tingni's territory, as well as all other indigenous territories within the country.¹²⁷

Article 21 of the American Convention on Human Rights & the Recognition of "Communal Rights"

In addition, the Awas Tingni case affirmed the existence of indigenous peoples' "collective rights", in this case "communal lands" that have been already recognized by the

¹²⁶ See generally Johathan P. Vuotton: AWAS TINGNI V. NICARAGUA: INTERNATIONAL PRECEDENT FOR INDIGENOUS LAND RIGHTS? Section VI. How Awas Tingni Will be Applied: Maya Indigenous Communities of Belize and Yakye Axa Indigenous Communities of Paraguay, Boston University International Law Journal, [Vol. 22:219] at pp. 236.

¹²⁷ See *Armstrong Wiggins*: El caso de Awas Tingni: O el futuro de los derechos territoriales de los pueblos indígenas del Caribe nicaragüense (2002). Rikke Broegaard y Alvaro Rivas: Demarcacion Territorial del Caribe Nicaragüense. Introducción. Pag 9-10; Demarcacion Territorial de la Propiedad Comunal en la Costa Caribe de Nicaragua. Managua, MultiGrafic, 2006. ISBN: 99924-0-5457, CIDCA-UCA Primera Edicion 2006

Nicaraguan Constitution since 1987. Article 21 of the American Convention of Human Rights¹²⁸ was the core central to the Inter-American Court's¹²⁹ reasoning combined with Article 29 (b)¹³⁰ of the Convention. The court states that "*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 peoples by the fact of their very existence, have the right to live freely in their own territory; the close ties of indigenous peoples with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival....*"¹³¹

Collective rights are indeed a relatively new figure in legal systems. This holistic approach of collective rights might be better understood in the light of the United Nations Declaration of Indigenous Peoples Rights in its preamble: "*Recognizing and affirming that Indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples...*"

Law 445: Law of communal property regime of the Indigenous Peoples and Ethnic communities of the autonomous regions of the Atlantic Coast of Nicaragua and of the rivers Bocay, Coco, Indio and Maiz

As a result of the IACtHR's decision the State of Nicaragua has an ineludible obligation to respond to the claims of its citizens; that is in this context, the effective protection of its peoples rights. After losing the international battle against one of its abandoned and neglected groups of peoples, the State have been trying to comply with the demands of Awas Tingni, as well as other indigenous communities in the country. That is why it issued Law 445¹³² on January 22nd of 2003. Law 445's specific concern is the land rights of these communities, which have been generally ignored in spite of the Autonomy Law of 1987. In essence, Law 445 demands the demarcation and titling of all indigenous and Afro-descendant lands. It recognizes the rights of such communities to use, administer and manage their traditional lands and resources as

¹²⁸ Article 21. Right to Property: "*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 be prohibited by law*"

¹²⁹ –Hereinafter IACtHR–

¹³⁰ Article 29. Restrictions Regarding Interpretation: "*No provision of this Convention shall be interpreted as: 1) Permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; 2) 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; 3) Precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or 4) Excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have*".

¹³¹ See Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Ser. C. No. 79, judgment of 31 August 2001, para 148-149. For general details of this case, see Siegfried Wiessner, *Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous Peoples*. Vanderbilt Journal of Transnational Law. [Vol. 41:1141] at pg. 1158.

¹³² Ley No. 445 Ley de Regimen de Propiedad Comunal de los Pueblos Indigenas y Comunidades Etnicas de las Regiones Autonomas de la Costa Atlantica de Nicaragua y de los Rios Bocay, Coco, Indio y Maiz. Publicada en la Gaceta, Diario Oficial, No. 16 del 23 de enero de 2003.

communal property. As such, Law 445 re-establishes the property rights of Nicaragua's ethnic minorities and devolves political power to the communal level.¹³³ Finally on December 14, 2008, the Government of Nicaragua handed over Awas Tingni community the long-awaited title to its traditional territory after 7 years of national and international legal and advocacy battle by Awas Tingni community, assisted by the Indigenous Peoples Law and Policy Program to effectively protect their land rights and natural resources¹³⁴.

For the purposes of carrying out the demarcation, various structures were created, including the National Commission for Demarcation and Titling (CONADETI), Regional Intersectoral Commissions and Regional Technical commissions. According to Article 45 of Law No.445 of 2003, the demarcation process consists of 5-stages:

- 1) Submittal of Application Stage: The various forms of land tenure within a given territory are identified, including private and collective. This stage is carried out by a technical team who physically surveys the area. A sociological study accompanies the diagnosis.
- 2) Dispute Settlement Stage: A process where communities can come together 'in a friendly way' to solve any problems of land overlapping, or disputes over natural resources.
- 3) Measuring and Marking out Stage: Conflicts now resolved, the actual setting of territorial boundaries is accomplished.
- 4) Titling Stage: CONADETI submits the territorial claim to the government, who in turn issues a collective title.
- 5) Title Clearance Stage or "Etapas de Saneamiento": The final and perhaps most challenging stage of the demarcation process involves ordering up the land. In saneamiento, all illegal settlers, or those in possession of illegal titles, are asked to pay rent directly to the appropriate territorial government, or failing that, vacate their properties.

Demarcation Process

Prior Law 445

The Central American and Caribbean Research Council (CACRC) in accordance with administrative contract #084-96 and with the Nicaraguan Institute of Agrarian Reform –Instituto Nicaraguense de Reforma Agraria prior 2000 performed a diagnostic of communal land claims of 128 communities in the Caribbean Coast of Nicaragua, about one third of them in the RAAS and two thirds in the RAAN. The form of documentation was multidimensional, including basic ethnographic information of the communities and ethno-mapping that provides a cartographic representation of the claims and a preliminary outline of the forms of land use in the territories claimed¹³⁵.

¹³³ Maria Luisa Acosta: "Los Retos del Proceso de Titulacion y Saneamiento como Proteccion a la Propiedad Indigena. Revista del Caribe Nicaraguense "WANI". Enero-Marzo 2009. No. 69. BICU-CIDCA. ISSN 1813-369X

¹³⁴ Nicaragua issues title to Awas Tingni's Lands! Indigenous Peoples Law and Policy Program, University of Arizona. Available at <<http://www.law.arizona.edu/depts/iplp/international/pdf/Awas%20Tingni.pdf>>

¹³⁵ Diagnostico general sobre la tenencia de la tierra en las comunidades indigenas de la Costa Atlantica (2000).- Central American and Caribbean Research Council (CACRC) Rikke Broegaard y Alvaro Rivas: Demarcacion Territorial del Caribe Nicaraguense. Introduccion. Pag 9-10; Demarcacion Territorial de la Propiedad Comunal en la

The method of the diagnosis was fully participatory. At every stage of research the community members were involved in the data collection. The investigation did not move from one phase to another until it had reached a broad consensus in the community involved in the study. This methodological requirement was particularly difficult to achieve in the case of multi-community blocks, some of which cover large territorial areas and gather more than 20 communities and have only rudimentary means of communication and transport. The most important end product of the ethnographic research and analysis relevant maps, are essentially a representation of what religious leaders, cultural, political and intellectuals of communities claim as their own. With the exception of one case (Coco River Block 4) is returned to each community with a draft map that was presented, discussed and ratified or amended publicly according to the case. Finally, although the ultimate responsibility for this rests Consulting three CACRC international consultants, the entire team of researchers, including the two regional coordinators are indigenous intellectuals. In that sense, the diagnosis was aimed at strengthening the principles of autonomy from the beginning, through which the indigenous population manage their own affairs and establish horizontal bargaining relations and mutual understanding and respect for the central government¹³⁶.

The most important result of this diagnosis is that along the Caribbean Coast of Nicaragua, most indigenous and afro-descendent communities have chosen to submit their claims as multi-community blocks, instead of making individual claims of communal land. Of the 128 communities in the context of the study, only 12 chose to submit individual claims to communal lands, the remaining 116 communities are spread over 17 multi-communal blocks. The tendency to present communal land claims in the form of multi-community blocks in the caribbean coast of Nicaragua where most of the indigenous peoples live, does not have a simple explanation. However, it is possible to break the causal factors into two broad categories: the "existential factor" regarding their identity, holistic and cosmological view and their cultural, and religious traditions. The ethnic identity of the group also serves as a unifying element in some communities. This is particularly true in the case of "Rama and Garifuna of the Southern Region of the Atlantic Coast. In these cases, the need to defend against external threats strengthens community identity or ethnicity, which in turn makes the collective claim more logic and persuasive. Another expression of identity that influences the formation of blocks is of regional or sub-ethnic character¹³⁷.

Each of the 29 ethno-maps resulting from the diagnosis indicates what community members believe are the users of their land. The consultant interpreted the term "use" in its broadest sense, so to include from areas of intensive production activity, to spiritual value areas and ecological reserves. Existing practices of productive collective activities land claims are equally diverse. A key result of this diagnosis is that the origin of the problem of communal land rights in Nicaragua is the social fact of a racially and culturally defined population that resides in the Caribbean region of the country. A population that are generally recognized as having

Costa Caribe de Nicaragua. Managua, MultiGrafic, 2006. ISBN: 99924-0-5457, CIDCA-UCA Primera Edicion 2006. At p. 146

¹³⁶ Id at 147

¹³⁷ Id at 148

geographical origins in that region as well as cultural and spiritual relations with the territory that makes them different from most of the remaining population of the country¹³⁸.

Based on Law 445: “Title Clearance Stage” under Article 45 [Etapa de Saneamiento]

The Title Clearance Stage or “Etapa de Saniamiento” is the final and perhaps the most challenging stage of the demarcation process involves ordering up the land. In the Title Clearance Stage, all illegal settlers, or those in possession of illegal titles, are asked to pay rent directly to the appropriate territorial government, or failing that, vacate their properties¹³⁹. The State of Nicaragua has imposed several protected areas on indigenous peoples territories, it has planned the construction of mega-projects and infrastructure, and has granted concessions that have affected indigenous territories. But surely, this is undoubtedly the most damaging and silent forms of environmental destruction and usurpation of indigenous lands, which up to this date has constituted the main economic development of farmers, and powerful economic corporations and businesses through illegal granting of land titles, a situation that must be clarified, among others, during the process of indigenous lands demarcation in accordance with the provisions of the law 445.¹⁴⁰

Article 59 of Law 445 establishes that once the title has been obtained, the communities may commence, with the technical and material support from the Rural Land Titling Office [Oficina de Titulación Rural (OTR)], the title clearance stage, in relation to third parties occupying their lands. According to CONADETI (The National Demarcation and Titling Commission) from the 23 indigenous and afro-descendent territories, just 15 have been demarcated and titled, but the none of those territories have been cleared or finished the title

¹³⁸ Id at 149

¹³⁹ See Acosta, Supra note at 133

¹⁴⁰ In an interview with Maria Luisa Acosta she explained the conflict within this process: “El problema con el proceso de Saneamiento que el Estado no esta interesado en hacerlo, porque por ejemplo los Ramas son como aproximadamente 3000 como máximo en su territorio. Un problema grave es durante la época de campana electoral, en Nicaragua tenemos una campana cada ano. Este ano, por ejemplo, es sobre la elección de presidente y consejo regional, dentro de 2 anos la municipal, y así han pasado, cada vez que van los políticos a campana electora proponen y prometen a los campesinos que van a titular la tierra –la tierra indígena- con el propósito de ganar los votos, ahora si ellos van y sacan a la gente de ahí pierden esos votos, como los indígenas son una minoría, entonces ellos no les conviene el voto indígenas porque son menores. El gobierno territorial Rama-Creole realizo “una guía de convivencia” que era una forma a través de los cuales “ellos-los terceros-” podían a través de ciertas condiciones quedarse en su territorio y convivir siempre que los respetaran como autoridades, como pueblos indígenas, que hubiera un respeto al medio ambiente, etc. Y al parecer la CONADETI ha tratado de implementarla pero de todas maneras no ha sido algo específico. Entonces esta podría ser la medida, a mi parecer no esta medida no es ni viable ni política ni éticamente tampoco. Porque sacar a la gente si el Estado les ha permitido ocupar esas tierras? En muchos casos el Estado le permitido ocupar esas tierras. Ahora lo que si deberían de hacer es parar esa “Migración” porque es nociva para el medio ambiente, también es nociva para la paz y para la gobernabilidad. La gente de la frontera agrícola corta y avanza y detrás viene el ganadero o el político y se están haciendo latifundistas y todo eso es ilegal y el gobierno bien gracias se hacen de la vista gorda entonces estamos ante un problema social y político y además económico y de destrucción de medio ambiente entonces los casos de Saneamiento van mas allá de solamente considerarlos con lo de los pueblos indígenas, es un problema que tiene divisiones nacionales y generales para todos los nicaragüenses de saber que se esta destruyendo el medio ambiente, que se están perdiendo las identidades de los grupos indígenas de Nicaragua”.

clearance stage, thus, none of those territories have legally culminated the demarcation process¹⁴¹.

This situation is alarming, as the demarcation of indigenous and Afro-descendants territories is crucial in order to give effective protection of indigenous peoples and Afro-descendants communities in accordance with the constitution, special laws and international laws, since the invasion of *Colonos* or third parties have been affecting directly the use and enjoyment of their collective lands.

CONADETI has been developing a manual of procedure for the Title Clearance Stage called: "Manual of Procedure of the Title Clearance Stage Sanitation in the process of demarcation and titling of communal property of indigenous peoples and ethnic communities of the autonomous regions of the Atlantic coast Nicaragua and the Rivers Bocay, Coco, Indio and Maiz"¹⁴². According to the CONADETI, this manual has been used as a tool for reorganization of the territories of the Special Zone, on an experimental basis, to make adjustments over the process. Just as we have been making adjustments to the manual of procedure for the rest of the process of demarcation and titling.

Parties of the Demarcation Process¹⁴³

As proposed by the Manual, the key actors in the process are:

- The indigenous and ethnic communities,
- CONADETI, As the body of the process,
- The Presidents of Regional Councils,
- The Administration of Property,
- The Nicaraguan Institute of Territorial Studies (INETER),
- The Attorney General's Office (PGR) and
- Secretary of Caribbean Coast Development (SDC).
- Also involves the Ministry of Agriculture and Forestry (MAGFOR) to have the competence to develop national policy on indigenous land, and the
- Supreme Court of Justice (CSJ) to regulate the status of judges and lawyers who have illegally granted lands titles over indigenous territories and
- The Police and the Nicaraguan Army as auxiliaries in the process.

Based on historical and legal background, the Managua treaty of 1860 and Harrison-Altamirano Treaty of 1905, the legal framework to implement in the process of demarcation of Indigenous Peoples and Afro-descendent communities lands is the following:

- Constitution of Nicaragua [artos. 5, 89, 107 and 180],
- Law no. 28 article 11, paragraph 3 and 6, and
- Law 445 in its articles 3, 35 to 38, 70 and 71 which establish the *sui generis* legal regime of ownership of the lands and territories and indigenous and Afro-descendant communities:

¹⁴¹ Id at 9-10

¹⁴² Maria Luisa Acosta: "Necesidad de un Manual de Saneamiento para CONADETI de conformidad con la Ley 445". MEMORANDO

¹⁴³ Id

- The penal code of Nicaragua in relation to environmental crime, and the
- United Nations Declaration on the Rights of Indigenous Peoples, especially in articles 3, 25 to 29.

The provision of Law 445 specifically refers to the 1987 constitution which for the first time in the constitutional history of Nicaragua recognizes indigenous peoples lands rights over their territory; it sets out the different forms of property among, which it includes communal property, and expressly stating the recognition of the existence of Indigenous Peoples in everything concerning the right of ownership over their rights, specially the usufruct, enjoyment and self-governance over their territory. In addition, the Statute of Autonomy (Law No. 28) concerning communal lands also puts Indigenous territories out of market by declaring inalienable. Any title claimed without legal occupation lacks legal efficacy according to the Article 71 of Law 445 by stating that “the issuance of suppletory titles and titles granted by the law reform for lands claimed by the communities object to the law are suspended”. This definitively strengthens the regime *sui generis* protection for traditional lands of indigenous peoples and ethnic communities.

Concerning “*third people*” or *colonos* (intruders) Law 445 in its Article 3 defines third parties as “*natural or legal persons, other than the communities alleging property rights within communal lands or indigenous territories*”.

Concerning the Title Clearance Stage and third parties

Law 445 in its Articles 36 to 38¹⁴⁴ sets out the rules for third parties who occupies or claim land as their own in communal lands. For as anyone who has received title from the land reform act in indigenous lands and entered into possession of them, Law 445 recognizes their right of property, however, if they intend to sell the land, they must sell it to the indigenous or Afro-descendant communities who are the legal and ancestral owners of such lands, in order to prevent the arrival of non-indigenous population that can cause conflicts in the area.

Article 35 of the Law 445 clearly stipulates that the property ownership rights and historic occupation of the indigenous and ethnic communities shall prevail over the titles issued in favor of third parties who have possessed said properties and who have intended to occupy them since 1987. However, some titles were granted by the State under the Agrarian Reform Act in the 90’s suffered from errors of form and substance¹⁴⁵. Thus, the Law in its article 36 to 38 regulates the land titles hold by third party by stating that third parties holding an Agrarian Title on Indigenous Lands, who have occupied and possessed the land protected under this title, have the right to continue possessing in as a matter of law. In case they intend to alienate the property

¹⁴⁴ Article 35: “*The property ownership rights and historic occupation of the indigenous and ethnic communities shall prevail over the titles issued in favor of third parties who have never possessed said properties and who have intended to occupy them since 1987*”. Article 36: “*Third parties holding an Agrarian Title on Indigenous Lands, who have occupied and possessed the land protected under this title, have the right to continue possessing it as a matter of law. In case they intend to alienate the property, they shall sell the improvements to the community*”. Article 37: “*Third parties who received agrarian titles on indigenous lands containing any defect in form or substance will be compensated in order for them to return the lands to the affected community*”. Article 38: “*Third parties on indigenous lands, who have no title at all, shall leave the indigenous lands without receiving any compensation, but in case they intend to remain there, they shall pay a rate of rental to the community*”.

¹⁴⁵ See Acosta, *Supra* note at 133

they shall sell the improvements to the community. Third parties who received agrarian titles on indigenous lands containing any defect of form or substance will be compensated in order for them to return to the lands to the affected indigenous communities. Additionally, third parties on indigenous lands, who have no title at all, shall leave the indigenous lands without receiving any compensation; but in case they intend to remain there, they shall pay a rate or rental to the community.¹⁴⁶

The Title Clearance Stage is crucial for the effective protection of lands rights of indigenous peoples over their territories, since this last stage is intended to ensure the effective access, use and enjoyment of their lands and natural resources, especially, when most of the indigenous territories are being invaded by settlers that lack legality regarding indigenous lands. The peasants and farmers of the agricultural sector began to occupy indigenous lands without the proper knowledge of how to use and exploit the land and its natural resources and without legal certainty of land tenure, resulting in the failure to meet their survival needs. However, the claims of “survival needs” of the peasants and farmers for many years have become a typical excuse to occupy these lands, and subsequently have resulted in the transfer of land colonized to land traffickers, ranchers and powerful landowners or “latifundistas” contributing largely to the dispossession of indigenous land, generating further deforestation and destruction of biodiversity in the forest, and consequently resulting in the overall deterioration of the environment, climate change and global warming. Most peasants in indigenous lands occupy small plots of land, and they expect support from indigenous communities or the state to be able to remain in those lands. Peasants (third parties) have been also threatened by the arrival of new settlers and powerful usurpers, those who accumulate large amounts of land obtained mainly by supplementary titles. Although, they constitute a small number, they are the ones who generally more reluctant to comply with the law.

To give an effective solution to the problem, the Rama indigenous people and the Kriol afro-descendent community have elaborated the Rama-Kriol Guidance Manual of co-existence “La Guía de Convivencia para el Territorio Rama y Kriol”, addressed to those rural families (peasants familias) who are not part of the community and do not have a legal protection for the

¹⁴⁶ A member of the Elderly Council of Awás Tingni Community –Don Marcelo- and a Síndico –Don Parrales- were interviewed and asked what the community proposes in relation to third parties: *“Ellos tienen que decidir si quieren quedarse con el arrendamiento, en otras palabras.... Que pasa si vienen personas a vivir aquí, por ejemplo vera en la comunidad, construir una casita.... Ley 445: la tierra del pueblo indígena no se vende no se dona, no se regala, entonces si las personas quieren eso, la misma ley dice, tiene que vender al dueño. Hay muchos que entran solo para ocupar y luego vender,,,,, la ley dice una cosa y en la practica se hace algo diferente. Podes arrendar un pedazo de tierra, pero no adueñarse, esa situación simplemente seria negocio. Pero usted tiene que recordar, todo lo que usted ha invertido se queda en la comunidad. Con respecto al arrendamiento, realmente nuestro territorio son 3 comunidades, realmente las personas que tenga autoridad para arrendar pedazos de tierra tienen que ser aprobados por la asamblea comunal, 3 comunidades tienen que decidir. Entonces ellos dicen: “estas personas necesitan arrendar, ustedes que piensan?” por ejemplo: cuando vas a Costa Rica y pedís por la visa en migración ellos te preguntan: que vas hacer ahí, cuanto tiempo te vas a quedar, cuando vas a regresar a tu país, etc.” entonces es la asamblea comunitaria que lo aprueba. Un síndico un presidente territorial ellos no tienen NINGUNA autoridad para dar un aval a estas personas, tiene que ser aprobado por una asamblea. Todo el territorio de los pueblos indígenas por ejemplo en el pacífico yo no se como hacen, pero en nuestro territorio así es.. yo soy síndico pero no puedo dar un aval. La gente hay veces piensa y llegan a cobrar, cuando te dicen la asamblea comunitaria de Awás Tingni tenes un derecho pero mientras no te dicen eso no tenes derechos!. Aunque traigan millones de córdobas para nosotros no valen, cuantos millones de dólares, a nosotros no nos importa sus córdobas ni sus dólares..... para entonces poder vivir así, tiene que ser aprobado por la comunidad”*

lands that they are occupying. The Rama-Kriol communities do not wish to leave these people without a place to stay or live, that is why they have set out rules to respect the property and the rules of life and peaceful coexistence with the indigenous people and the Kriol (afro-descendent communities). The ultimate purpose of the Guidance Manual is to use the land rationally and preserve its natural resources and adopting the Statute of the Rama and Kriol territory. The main purpose of indigenous peoples and afro-descendent communities is to organize their territory and set co-existence rules among its habitants (peasants or third parties) to live together in a manner that respects the environment and indigenous peoples rights. It is expected that the State respects and implement what has been established by national legislation on indigenous lands rights, without discrimination, in accordance with the provisions of the Constitution, special laws and of international law, for a successfully completion of the demarcation process.

Section IV: Future Predictions

The achievements of CONADETI in the process of lands demarcation are very important. However, the Title Clearance Stage is what will ensure whether or not indigenous and Afro-descendants communities effectively use and enjoy their right to land, now titled. Especially if we consider that all the indigenous territories, to a lesser or greater extent, are invaded by settlers, in addition to the lack of effective implementation by the State regarding the prevention of third people invading Indigenous peoples territories. The unfinished process of demarcation leaves a door open to the continue migration by third parties on their territory causing on-going violations on their lands. The regional government has being accused of corruption by various indigenous communities due to the illegal granting of land titles on their territory. Although, this statement has not been legally proven, some indigenous community leaders have expressed their knowledge on some cases where regional officials have abused of their power and have granted illegal property titles to third people know as Colonos/Mestizos in order to maintain in power and in the cases of new political leader, to get elected by promising land titles on indigenous territory. Some of these third parties are mestizos already living within the territories while others are new comers from the pacific such as farmers, ranchers that their main purpose is to exploit indigenous land's natural resources, engaging in agriculture, mining and logging without proper consent with the indigenous communities. If the last stage of the demarcation process – title clearance stage- does not get completed, the demarcation process cannot be settled, resulting in the lost of more indigenous territory, environmental degradation and massive violations of indigenous peoples' rights already recognized domestically and internationally by the Government of Nicaragua. Thus, indigenous peoples will keep being under foreign domination as they have been since colonization times.

The unfinished demarcation process has already raised concern not just within indigenous lands in the Northern Atlantic Autonomous Region of Nicaragua –RAAN- but also in the Southern Autonomous Region –RAAS-. Communities in the RAAS are facing the new “big and awaited economic development” of the “Eco-canal” that has marked the history of colonization of Nicaragua and that has not yet stopped. It is unclear how this “Eco-canal” will really benefit indigenous communities in the region –along San Juan River-. This project has been the most-awaited project of the government of Nicaragua since Pedrarias Davila set foot for the first time in the fertile soil of our land and started domination of our people. The government will fight

against whoever and whatever in order to accomplished this historical economical project that has left the country impoverished and hopeless. Many Nicaraguans support this project without yet knowing the reality of indigenous communities and the importance of preserving the environment. The government will soon begin (June-July 2011) with the construction of an airstrip on the lands along San Juan River¹⁴⁷. Although such property is not populated, it represents a cultural site for the country –not recognized by UNESCO-. However, the land in which the airstrip will be built it is believed to be under the demarcation process of the Rama Indigenous People of the RAAS. According to one of its community leader, there was a consultation process between the government and the indigenous communities regarding the construction of the airstrip. The result of the consultation was the green light for the construction of this project, notwithstanding the expressed rejection by the Rama peoples. The community proposed an alternative territory for the construction of the airstrip but the government dismissed the proposal alleging that such land possesses a strategic location for the purpose of the “Eco-Canal”¹⁴⁸. From the analysis of the history of Nicaragua (address in Section I of this Seminar paper) since colonial times, we can conclude that some of Nicaragua’s major international disputes had been regarding San Juan River. The battles amongst Spanish Conquistadores and British Pirates and furthermore Kingdoms such as the Spanish and British vying the rights of the Caribbean coast of Nicaragua for the purpose of commerce have created an unfavorable and disadvantage situation for indigenous people, forcing them to migrate to other territories, resulting in the lost of their culture and identity.

Section V: Appraisal

Throughout the realization of this Seminar paper, I have always been concern about the most effective mechanism of protection for indigenous peoples’ rights. I have asked indigenous peoples’ lawyers, experts, activists, students, and the indigenous peoples themselves. The result can be summarized as: “the respect of the rights of others” in order to live peacefully and in harmony not just with other human beings but also with the environment. Maria Luisa Acosta expressed that the most effective protection for indigenous peoples lies in “the respect of their property right regarding to the other rights that are involve, which is not only a property/ownership right, but are also cultural and political rights that indigenous peoples also have on their territory, for their economic basis, for their culture, religion and identity, and ultimately for their survival”. Continues to be essential the collaboration of universities, cooperation agencies and NGOs to maintain the support of indigenous peoples and Afro-descendant communities, in coordination with CONADETI, in order to accomplish the process of demarcation, titling and clearance of their ancestral lands and territories, and to achieve a real and effective protection for lands rights of indigenous peoples and afro-descendent communities¹⁴⁹.

¹⁴⁷ See newspaper article about the construction of the airstrip in San Juan de Nicaragua. The article explains the case of the airstrip in the town of Greytown, now San Juan de Nicaragua, which is part of indigenous territories of the basin of Indio & Maiz River, recognized as indigenous territories under Law 445. Available at <http://www.el19digital.com/index.php?option=com_content&view=article&catid=23:nacionales&id=5028:construir-an-aereopuerto-en-san-juan-de-nicaragua&Itemid=12>

¹⁴⁸ See Tierra America article about Eco-canal, available at <<http://www.tierramerica.net/2001/0506/iacentos.shtml>>

¹⁴⁹ See Acosta, Supra note at 133

The government must hear the claiming of indigenous peoples and protect them effectively against historical on-going violations against their territories, as expressed by one of Awas Tingni rainforester –guardabosque-:

“Tenemos titulo y el papel dice que hay muchos recursos y se estan destruyendo totalmente las riquezas del territorio. Porque decimos eso: la destrucción de la riqueza? porque donde estan los sitios sagrados, donde hay recursos naturales o sitios muy importante son donde estan ocupando los terceros. El gobierno nos ha dado titulo que dice que tenemos el derecho a nuestra tierra, pero eso no se da en la practica. Nos estan haciendo mucho dano porque estan permitiendo la entrada de terceros”.

“Queremos que el gobierno ordene el saneamiento, uno: alguno estaban antes de la titulacion entonces eran muy pocas familias ahora después de la titulacion han entrado mucho mas... se tiene que saber cuanta gente estaban antes y los otros que han entrado de manera ilegal, y si es posible, el Estado tiene que ubicarlos en otro lado. Estan destruyendo todos los recursos naturales, las riquezas del territorio. Estan despalando mucho, eso esta afectando, esta contaminando y secando nuestro rio. Eso es lo principal, los lideres actual no saben mucho sobre el proceso, como frenar eso no lo saben”.
Humberto Pedro Patron, guardabosque de la comunidad de Awas Tingni, Marzo 2011.

It is also necessary to raise awareness of indigenous peoples issues within the different sectors of society in Nicaragua, from governmental institutions, universities, schools and private sector. Education is then the most powerful instrument for the protection of any rights, as expressed by the former President of Mexico Vicente Fox in his speech addressed to student of Saint Thomas University in April 2011: “Education and collaboration from all the different sectors of society is the foundation of any development”. Development that not necessarily means “economical” but also cultural, social and humanistic development. It is therefore vital the government’s participation and involvement in the issues concerning indigenous peoples by providing training to regional officers, community leaders, officials from the various governmental institutions, judicial, legislative and administrative personnel, as well as special training to lawyers and notary public to prevent them to engage in illegal practices concerning indigenous territories.

Si la patria es pequena, uno grande la suena
Ruben Dario