

INTER-AMERICAN COURT OF HUMAN RIGHTS

**CASE OF
THE MAYAGNA (SUMO) COMMUNITY
OF AWAS TINGNI**

Transcript of the public hearing
on the merits, November 16, 17, and 18, 2000,
at the seat of the Court.

(Unofficial Translation)

For the Inter-American Court of Human Rights:

Antônio A. Cançado Trinidad, President
Máximo Pacheco Gómez, Vice President
Hernán Salgado Pesantes, Judge
Oliver Jackman, Judge
Alirio Abreu Burelli, Judge
Sergio García Ramírez, Judge
Carlos Vicente de Roux Rengifo, Judge
Alejandro Montiel Argüello, Judge *ad hoc*.

For the Inter-American Commission on Human Rights (IACHR):

Dr. Helio Bicudo, delegate;
Dean Claudio Grossman, delegate;
Dr. Bertha Santoscoy, staff lawyer; and
James Anaya, Esq., assistant.

Government of the Republic of Nicaragua (GON):

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

Witnesses and Experts for the Inter-American Commission on Human Rights:

Jaime Castillo Felipe, witness; (Interpreter: Modesto José Frank Wilson)
Charlie Mclean, witness;
Theodore Macdonald, witness;
Rodolfo Stavenhagen, expert;
Guillermo Castilleja, witness;
Galio Gurdíán, witness;
Brooklyn Rivera, witness;
Humbert Thompson, witness;
Wilfredo Mclean, witness;
Charles Hale, expert;
Roque Roldán, expert; and
Lottie Cunningham, expert.

Witness for the Inter-American Court of Human Rights:

Marco Centeno Caffarena, witness.

PRESIDENT CANÇADO TRINIDADE: Those photographers and cameramen have three minutes in which to film. Afterwards, they must leave the platform but may remain in the courtroom. Also, for those in attendance, the use of cell phones and walkie-talkies is prohibited, so kindly turn off those devices.

The Public Hearing on the merits in the case of the Mayagna Sumo Community of Awas Tingni is hereby in session, in which we will hear the testimony of the witnesses and experts whose appearance was ordered by the Inter-American Court of Human Rights. Likewise, the Illustrious State of Nicaragua and the Inter-American Commission on Human Rights will give their summary oral arguments on the merits of the case of the Mayagna Sumo Community of Awas Tingni.

Before we begin, allow me to welcome the delegation of the Illustrious State of Nicaragua, presided by its Agent, Mr. Edmundo Castillo Salazar; its advisor, Mr. Rosendo Castro; and their assistants, Ms. Betsy Baltodano and Ms. Ligia Margarita Guevara. I would also like to convey my greetings to the Nicaraguan Ambassador to Costa Rica, Mr. Mauricio Díaz Dávila, who recently assumed his post in this country and is attending a hearing for the first time before this Court. Likewise, I convey my greetings to the Honorable Inter-American Commission on Human Rights, Mr. Helio Bicudo; to its staff attorney, Ms. Bertha Santoscoy; and their advisor, Mr. James Anaya.

First, we will present the testimony and, at the end, each party will have the opportunity to present its summary arguments.

I would request that those appearing before the Court speak slowly and clearly to facilitate the work of the interpreters. Mr. Secretary, please call the first witness to testify.

Yes, Mr. Delegate?

IACHR (Dr. Helio Bicudo): Mr. President, the Inter-American Commission on Human Rights would like to thank this Honorable Court for the opportunity to appear before you in this Hearing on the Merits on the case of the Awas Tingni Community against the State of Nicaragua, in order to clarify the facts alleged by the Commission.

I will begin by presenting the members of the delegation with me: Doctor Bertha Santoscoy, staff lawyer in charge of issues dealing with Nicaragua and the IACHR; Professor of International and Constitutional law, James Anaya, legal representative of the Community of Awas Tingni; and myself, Helio Bicudo, serving as President of the Commission.

Next, Mr. President, we will present to the Court witnesses and experts who will corroborate the facts and conclusions raised in the Commission's complaint against the State of Nicaragua.

With your permission, I will now call on Doctor Santoscoy, who will question Mr. Jaime Castillo; then Professor Anaya will question Mr. Charlie Mclean and Professor Rodolfo Stavenhagen.

PRESIDENT CANÇADO TRINIDADE: Yes, but before that, I'd like to announce that there is a, the testimony, before the testimony of the first witness,

the Secretary of the Court must swear in each of the witnesses before questioning. Thus, I ask the Secretary to call the first witness to testify.

IACHR: Thank you very much.

PRESIDENT CANÇADO TRINIDADE: Thank you very much.

SECRETARY VENTURA ROBLES: Mr. Jaime Castillo.

PRESIDENT CANÇADO TRINIDADE: Mr. Modesto José Frank Wilson will serve as interpreter, identity card number 611-140-265-0000R, already duly sworn in by the Court. I ask that the gentleman give his name to the Court.

WITNESS JAIME CASTILLO FELIPE: (in the Mayagna language through the interpreter): My name is Jaime Castillo; I was born in Awás Tingni the 15th of June, 1964.

PRESIDENT CANÇADO TRINIDADE: Nationality and number of identification document?

WITNESS JAIME CASTILLO FELIPE: I am from Awás Tingni.

PRESIDENT CANÇADO TRINIDADE: Number of identification document?

WITNESS JAIME CASTILLO FELIPE: The identification number is 607-150664-0003.

PRESIDENT CANÇADO TRINIDADE: Place of domicile?

WITNESS JAIME CASTILLO FELIPE: I am from Awás Tingni.

PRESIDENT CANÇADO TRINIDADE: Thank you. Mr. Secretary, please read the statement the Court gives to witnesses.

SECRETARY VENTURA ROBLES: The witness will limit himself to answering clearly and precisely the question asked, limiting himself only to the facts or circumstances that he knows to be true and refraining from giving personal opinions.

The witness is hereby informed that he was called by the Court to testify on the following issues: he will testify on his patterns of territorial use and occupation and those of the members of the Mayagna (Sumo) Community of Awás Tingni in general; the documentation of those patterns and of their alleged communal ancestral lands; the processes that brought about the ethnographic study and maps of that land; the alleged lack of demarcation or official titling of the lands of the Community that the Community is attempting to vindicate; the Community's efforts to obtain the demarcation or titling of those lands, as well as those to stop the SOLCARSA concession; the responses received by agents of the State to their demands; the supposed invasion of said lands by loggers; the harm the Mayagna (Sumo) Community of Awás Tingni suffered by the acts and omissions of the State with respect to the lands mentioned and other issues that affect the supposed communal land of the Mayagna (Sumo) Community of Awás Tingni.

The declarant is hereby informed that, in accordance with Articles 50 and 51 of the Rules of Procedure of the Court, States cannot prosecute the witnesses or experts, nor take retaliatory measures against them or their families because of their testimony or determinations made before the Court. And the Court can request that States apply the sanctions provided for by their legislation against

those who failed to appear or rejected being deposed with no legitimate reason, or who, in appearing before this Court, have violated the principles they were sworn to uphold.

PRESIDENT CANÇADO TRINIDADE: The witness will now be sworn in.

Do you solemnly swear and testify, with all honor and conscience to tell the truth, the whole truth, and nothing but the truth?

WITNESS JAIME CASTILLO FELIPE: Yes, sir.

PRESIDENT CANÇADO TRINIDADE: Will the Inter-American Commission representative please tell the Court the name of the person who will question the witness and please proceed.

IACHR (Dr. Bertha Santoscoy): Doctor Bertha Santoscoy.

PRESIDENT CANÇADO TRINIDADE: You may proceed.

IACHR: Thank you, Honorable Court. Please state your complete name and place of birth.

WITNESS JAIME CASTILLO FELIPE: My name is Jaime Castillo Felipe; I was born in Awas Tingni the 15th of June, 1964.

IACHR: Tell me, Mr. Castillo, where is your current place of residence?

WITNESS JAIME CASTILLO FELIPE: In the actual Community of Awas Tingni.

IACHR: Tell me, what is your mother tongue?

WITNESS JAIME CASTILLO FELIPE: Sumo Mayagna

IACHR: Are you Mayagna?

WITNESS JAIME CASTILLO FELIPE: Yes.

IACHR: And the other members of the Awas Tingni Community are Mayagna?

WITNESS JAIME CASTILLO FELIPE: We are all Sumos, Mayagna. Excuse me?

IACHR: Tell me, Mr. Castillo, have you held a leadership position within the Community? If so, which one and when?

WITNESS JAIME CASTILLO FELIPE: From 1991 to 1996 I used to be, or was, *Sindico* of the Community.

IACHR: Tell the Court, Mr. Castillo, what being *Sindico* means.

WITNESS JAIME CASTILLO FELIPE: The *Sindico* is the Community's representative who deals with all the problems about the territory and also conflicts that can come up around the Community, in coordination with communal authorities, before governmental authorities.

IACHR: Could you tell us, Mr. Castillo, on what do you and the members of the Awas Tingni Community subsist?

WITNESS JAIME CASTILLO FELIPE: We subsist on hunting, farming and other activities, on fishing and others.

IACHR: Tell us, who is the owner of the lands where you realize these activities you referred to, hunting, fishing, farming?

WITNESS JAIME CASTILLO FELIPE: We are the owners, which is why we have maintained it by working it and maintain it until now.

IACHR: Why do you say you are owners?

WITNESS JAIME CASTILLO FELIPE: I say that because we have lived there more than three hundred years, we have worked all the time and part of that is shown by our having places, historic sites and part of the work accomplished in the land. That is why we are owners of the land.

IACHR: Tell us, Mr. Castillo, during the time you were Síndico, did you do anything to obtain the titles or demarcation of the lands in favor of the Community?

WITNESS JAIME CASTILLO FELIPE: At the beginning, I went before government agencies such as INRA, at that time MARENA. At that time I submitted documents and maps on the case. Following that, the authorities in the region sent me a letter, transferred the case to Managua and, also from Managua, they sent a letter to Mr. Alberto Escobar regarding the response, the possible response that we never know what it said.

IACHR: Tell us, you spoke of the INRA, what does the INRA mean?

WITNESS JAIME CASTILLO FELIPE: Agrarian Reform Institute.

IACHR: Now, what were the results of your actions, of your efforts before the INRA?

WITNESS JAIME CASTILLO FELIPE: After all, I visited many times, but they told me to come back another day and another day but to date never responded.

IACHR: You have told us that you went before the INRA; could you tell us if you also went before the regional government of the RAAN?

WITNESS JAIME CASTILLO FELIPE: Yes, I also visited the regional government.

IACHR: In what year was that?

WITNESS JAIME CASTILLO FELIPE: That was exactly the 12th of March of 1996.

IACHR: And what did you assert in that request?

WITNESS JAIME CASTILLO FELIPE: The contents of the request were that I asked that they give me title to the Community because, well, we had always had the hope, we hoped to have that communal title.

IACHR: What was the response they gave you to that request?

WITNESS JAIME CASTILLO FELIPE: The response was that the authorities of that exact moment were going to study it and that they were going to respond to us later, but they never did. At that time I submitted maps, census of the Awas Tingni population, and also a document that Doctor Theodore Macdonald had made of the territory.

IACHR: Tell us, Mr. Castillo, whether they told you that you had to go to another place, to another institution to present this request.

WITNESS JAIME CASTILLO FELIPE: They never recommended where we should go because they said that they were going to study it, which they did not do, did not give us a response.

IACHR: Tell us, the Awas Tingni Community's complaint that they filed before the Inter-American Commission, was it filed by you when you were Síndico of

Awaw Tingni?

WITNESS JAIME CASTILLO FELIPE: Yes, at that time I was the Síndico.

IACHR: Why did you file this complaint?

WITNESS JAIME CASTILLO FELIPE: I did it because I needed the title and had asked many times but that they never responded to us; but, to the contrary, many people were entering who were affecting, such as companies, so I had to request in this manner to see if the government would respond or not.

IACHR: Now tell us, what results were you, the Community, hoping for, to be able to obtain from this proceeding before the Court?

WITNESS JAIME CASTILLO FELIPE: Because the government of Nicaragua never responded and we spoke on various occasions but all was negative, then we were obligated to send the case before the Court and we hoped for a response based on the justice of the rights of the communities, as we are hoping and expressing.

IACHR: Do you have anything else to add for the Court?

WITNESS JAIME CASTILLO FELIPE: Yes, I have some things.

After we presented the complaints before the tribunals where we are, still the Government admitted giving papers to the settlers, to the companies that cut wood and that are destroying the part where we today are claiming.

They felled much wood that are rotting and continue displacing the people, without knowing that they really are hurting someone.

Until now there are more settlers present who are arriving around, to the area of the Community, like invaders. That is what I would like to add, part of my testimony.

IACHR: Thank you very much, Mr. Castillo

PRESIDENT CANÇADO TRINIDADE: Thank you very much to the Commission's delegation and also for keeping within the time allotted.

I will now call on the representative of the Illustrious State of Nicaragua, if they would like to question the witness, please indicate who will question this witness.

GON (Edmundo Castillo): Good afternoon, Mr. President; good afternoon Judges of this High Tribunal, Honorable Inter-American Commission, ladies and gentlemen.

We appear before you to refute each one of the unfounded violations of the American Convention that the Inter-American Commission has attributed to the Republic of Nicaragua.

Rosenaldo Castro will use our time to conduct the questioning; however, I would first like, Mr. President, to ask a question on order, a point of order.

We understood that our interaction with the witnesses was to consist of questions. In the last question that was asked of the witness, they asked Mr. Jaime Castillo such an open-ended question, "do you have anything else to add," that it virtually invites him to make a presentation and not to answer specific questions. We would like, Mr. President, that this type of question be suppressed in the future witness questioning.

PRESIDENT CANÇADO TRINIDADE: You may proceed.

GON: Thank you very much. We call on Mr. Rosenaldo to speak

PRESIDENT CANÇADO TRINIDADE: The Commission also has a point of order.

IACHR (Dr. Bicudo): Mr. President, Honorable Judges, the Commission objects to the Illustrious State of Nicaragua's point of view, because a question can be very, very broad or very, very narrow, and in the case of a very broad question, it is to give a broader perspective of what is happening in the region. So that is the Commission's point of view. Thank you very much, Mr. President.

PRESIDENT CANÇADO TRINIDADE: I would like to resolve that question. The question was whether he had anything to add, but the witness' answer remained within the purpose of his testimony, so that when a witness is asked whether he has something to add, what must be added must be about what he has already testified and not about other issues. And with this we resolve the question. The delegation of the Illustrious State of Nicaragua may proceed.

GON (Rosenaldo Castro): Thank you very much, Your Honor. Mr. Castillo, are you Mayagna, *Mestizo*, or Miskito?

WITNESS JAIME CASTILLO FELIPE: I am Mayagna.

GON: Mr. Castillo, do you know that in 1995 a census was taken in the Republic of Nicaragua in which the zone known as Caño Awas Tingni was counted, in which there is a habitation settlement and in which it was established that forty percent of the population is not Sumo?

IACHR (Professor James Anaya): Mr. President, I object. The State representative's question is not a question; the State's delegate is giving testimony. He is not asking something concrete. The witness is not an expert in the area.

PRESIDENT CANÇADO TRINIDADE: Neither is it testimony, I think that it is a question but that it can be restated in other terms. Please

GON: The question is whether he knows that a census exists, right, that he establishes that, yes or no?

INTERPRETER: Excuse me, forty percent is not

GON: Forty percent of the population of Awas Tingni of six hundred persons who are not of the Mayagna ethnic group, according to the official census of Nicaragua; does he know that, yes or no?

WITNESS JAIME CASTILLO FELIPE: It is certain that those people exist, but they are minimal because they have arrived there to live or as part of a couple.

GON: In what year was the town or village of Awas Tingni built?

WITNESS JAIME CASTILLO FELIPE: Exactly in Awas Tingni we've been there more than fifty years, but before that in Tuburus, there we lived all the time. We have no idea since when because we don't know.

GON: Could you be more precise? We are asking in what year it was established.

WITNESS JAIME CASTILLO FELIPE: I don't know.

PRESIDENT CANÇADO TRINIDADE: Yes? A point of order from the Commission.

IACHR (Dr. Bicudo): I think that the question would be better restated if the witness were asked "how many generations, for how many generations, have the Awas Tingni been there?"

PRESIDENT CANÇADO TRINIDADE: The witness already answered the State's question.

WITNESS JAIME CASTILLO FELIPE: I have no idea.

GON: The witness has not answered. I would like, Your Honor, I would like with all due respect, em, the State of Nicaragua is asking the question, we would like that the questions of the State of Nicaragua be respected given that the Commission did not ask this question during its allotted time.

PRESIDENT CANÇADO TRINIDADE: Yes, you may proceed.

GON: Thank you very much. Mr. Castillo, the community that your fathers or ancestors comprised, was it issued title at any time?

WITNESS JAIME CASTILLO FELIPE: The elders say, those that no longer exist, that now few know of the history earlier than three hundred years ago.

GON: Nicaragua does not take the answer as a response. Nicaragua is asking whether the witness knows if his ancestors had obtained any property title or not, yes or no?

IACHR (Dr. Bicudo): Your Honor, the witness has given an answer to the question.

PRESIDENT CANÇADO TRINIDADE: Could you please repeat your answer to the question?

WITNESS JAIME CASTILLO FELIPE: No, I don't have any idea; I don't answer.

PRESIDENT CANÇADO TRINIDADE: The question is answered; he has no knowledge of titles.

GON: He has no knowledge ... thank you, Your Honor. Mr. Castillo, why, in the contract that the Awas Tingni Community signed with the logging company MADENSA in 1992, which you also signed and which is in the evidentiary record in this case, do you affirm that the Community has titles to the property recognized by the central government and the regional government and that forms were presented as attachments to said contract?

WITNESS JAIME CASTILLO FELIPE: Yes, I know.

GON: Nicaragua does not . . . give answer. Nicaragua does not understand the answer.

INTERPRETER: Please repeat that again please.

PRESIDENT CANÇADO TRINIDADE: Slowly please, to help the interpreter.

GON: Mr. Castillo, together with the Community's authorities, signed a contract between the logging company MADENSA and themselves, in which he is one of the signatories. They affirm having title to the property, recognized by the central government and by the regional government, which they say will be presented at the appropriate time.

IACHR (Prof. Anaya): Excuse me, Your Honor, the State's representative is alleging that the Community affirms having title in the contract, but in the

contract, if we look at it, it is in evidence, there is no such affirmation. The State should tell us where the affirmation is before the witness answers.

GON: Excuse me, Your Honor, we would like to insist that there be no interruption by the. . . .

PRESIDENT CANÇADO TRINIDADE: I would only like to remind you that among the subjects covered in the testimony are the efforts that have been made to obtain the demarcation or titling of those same subjects, as well as to stop the SOLCARSA concession. So the witness may answer the question. It is within the purpose of his testimony.

WITNESS JAIME CASTILLO FELIPE: Title was affirmed because the Community existed and had, or has, been living there for more than five hundred years, so it feels as if it is the real owner of the territory and they affirmed that.

GON: We are going to take the question as answered, Your Honor, and we will continue. What relation does the Awas Tingni Community have with the Tilba-Lupia Community?

GON: I object; the interpreter is coaching the witness.

INTERPRETER: He is asking in what sense, so I told him, what relationship the document has that you say has to do with Awas Tingni.

PRESIDENT CANÇADO TRINIDADE: Please, it is not the document's relationship, according to how I understood the question, the relationship between one community and another.

INTERPRETER: Exactly, the relationship of both places.

PRESIDENT CANÇADO TRINIDADE: Of the communities.

GON: Of the communities, yes, Sir.

WITNESS JAIME CASTILLO FELIPE: As concerns Tilba-Lupia, it is a small territory that we do not manage.

GON: Could Mr. Castillo clarify that statement that Awas Tingni does not manage, if what we are asking is about the relationship that exists between the Community of Awas Tingni and the Community of Tilba-Lupia?

WITNESS JAIME CASTILLO FELIPE: I am not speaking about Tilba-Lupia right now; rather, I am speaking about my territory which I have been assured that they will issue title to me for.

GON: Mr. Castillo, are there members of that Tilba-Lupia Community that currently live in the Community of Awas Tingni?

WITNESS JAIME CASTILLO FELIPE: Many years ago they lived there, but now they are not there. And if there are some of them, they are very few, hardly any.

GON: Mr. Castillo, is it possible that the Community of Tilba-Lupia could have been the mother community of Awas Tingni?

PRESIDENT CANÇADO TRINIDADE: Mr. Delegate of the Commission.

IACHR (Dr. Bicudo): Honorable President, the questions should follow a fixed course so I, I would like that the illustrious attorney, representative of the Illustrious Government, explain the relationship between one thing and another to continue in that line of questioning.

PRESIDENT CANÇADO TRINIDADE: Yes, the question can be explained.

GON: Yes Sir, the State is trying to demonstrate the relationship the indigenous community of Tilba-Lupia has with the inhabitants of the Community of what is the Caño Awas Tingni, which was later established as a Community in 1991, and where it has earlier affirmed having lived and had title. For that reason we are wishing to establish through the witness the relationship that exists. We thank the witness; he has told us that there are in fact very few inhabitants of Tilba-Lupia in Awas Tingni and that there have been others. I am not very clear on whether they are from Awas Tingni in Tilba-Lupia or from Tilba-Lupia in Awas Tingni, but I think Nicaragua finds the answer satisfactory.

PRESIDENT CANÇADO TRINIDADE: From what I understand of the explanation, the purpose of the question, of the earlier questions, a link is being made specifically between the question and the issue of title. Good, we can thus move to the next question.

GON: Yes, Sir. Mr. Castillo, could you tell us what distance you normally cover to hunt and fish?

WITNESS JAIME CASTILLO FELIPE (through interpreter): In all the area over which we have the run of the land, we make use of different activities, without other options to work them there.

GON: Excuse me, what distance do you cover to hunt, to fish?

WITNESS JAIME CASTILLO FELIPE: He does not specify the distances, but rather he takes all the area which belongs to him, so he is not interested right now in saying from here to there.

GON: Really, the State of Nicaragua is interested in knowing that distance.

WITNESS JAIME CASTILLO FELIPE: In this case it is the government's obligation to go and recognize or know the terrain and not be asking the length without seeing things.

GON: Let's make it, eh . . . we would like to emphasize that the witness refuses to answer.

PRESIDENT CANÇADO TRINIDADE: Maybe the question could be restated in relation to the extension of the area in which he moves around

GON: It is very difficult . . . he refuses

PRESIDENT CANÇADO TRINIDADE: In a last attempt at an effort to obtain a response to that question, in hours it takes to walk, how much time does it take to move to engage in the work or the activities or the type of fishing to which the State referred?

IACHR (Bicudo): Mr. President.

PRESIDENT CANÇADO TRINIDADE: In time.

IACHR: Mr. President, with all due respect, it seems the witness has answered in the form in which he can. He does not know the distance in centimeters, blocks, nor in the manner in which the Government wants the response given.

PRESIDENT CANÇADO TRINIDADE: He still has not been asked the question in terms of time. If he does not know, the opportunity to answer the question will be terminated.

WITNESS JAIME CASTILLO FELIPE: His normal hunting distance is a trip of fifteen days; they go to work or go to hunt and, after, they return knowing where their surrounding territories are.

PRESIDENT CANÇADO TRINIDADE: The question is answered.

GON: The question is answered, Your Honor, and let's pass to the next one within the time allotted. In order to fish or hunt in a zone with abundant fauna, in a zone with many rivers and fish, the very tributary in which Mr. Castillo lives, Mr. Castillo, is it necessary for you to walk so much to get a fish to feed your children?

WITNESS JAIME CASTILLO FELIPE: In order to maintain the territory, even if there is an abundance of animals, types of animals, the Community does not expend its resources, but rather selects what it is going to consume and, in that way, it uses a broad expanse of territory but it does not destroy and only recognizes the existence of its surrounding riches.

GON: Mr. Castillo, do you know Mr. Theodore Macdonald?

WITNESS JAIME CASTILLO FELIPE: Yes.

GON: Do you know of any training to make maps that Mr. Macdonald and his assistant supposedly gave to members of the Community?

IACHR (Prof. Anaya): Objection, Mr. President. I think that it is not a proper question to ask a witness about the activity of another witness which has no bearing on the fact in issue.

PRESIDENT CANÇADO TRINIDADE: Maybe those questions could be reserved for the other witness; mention in the question, simply respond whether or not he knows him, no more.

GON: We have asked just that, whether he knows.

PRESIDENT CANÇADO TRINIDADE: And nothing more. But he had already answered.

GON: Fine. . . .

INTERPRETER: Wait for me, wait for me, just a moment.

GON: The next question refers to the training, in order to establish affirmations made by the other witness.

INTERPRETER: I . . . the gentleman said yes and did not say I in Spanish and they raised their hand, and until now I say 'yes' because he answered that he worked on the team with Mr. Theodore Macdonald. The question that . . .

GON: I finish with this question. Would you be willing, Mr. Castillo, to resolve amicably and immediately the land claim that you have pending with the government?

WITNESS JAIME CASTILLO FELIPE: In principle, the initiative was to talk, dialogue, negotiate all the types, mechanisms, that were already exhausted but, until now, I am afraid not because I am in a court and I cannot decide, and I await the decision of the Court that will come out at the end of the proceeding.

GON: Thank you very much, Mr. Castillo.

PRESIDENT CANÇADO TRINIDADE: Thank you very much to the delegation of the Illustrious State of Nicaragua. I now consult the Honorable

Judges of the Court as to whether they want to ask any questions. Judge Alejandro Montiel Argüello?

JUDGE MONTIEL ARGÜELLO: No questions.

PRESIDENT CANÇADO TRINIDADE: Judge de Roux?

JUDGE DE ROUX RENGIFO: I have a question.

PRESIDENT CANÇADO TRINIDADE: You have the floor.

JUDGE DE ROUX RENGIFO: Yes, Mr. President. I would like to ask the witness if the Community of Awas Tingni is in any condition to determine precisely who are the persons that belong to it without missing a single name and without there being too many names.

INTERPRETER: Once again?

JUDGE DE ROUX RENGIFO: Yes, I would like to ask the witness whether the Community of Awas Tingni is in any condition to determine who are the people that comprise it in such a manner as to be able to make a list from which no name would be missing, nor would there be a single name too many.

WITNESS JAIME CASTILLO FELIPE: Eh, that is a lot; I don't have a good enough memory to mention 1,080 persons, 1,018, 1,018 at this time.

JUDGE DE ROUX RENGIFO: Yes, I would like to clarify. It's not that he would name them for us now. Rather that he tell us whether, at a certain point, the Community is in any condition to indicate precisely which persons comprise it.

WITNESS JAIME CASTILLO FELIPE: Perfectly.

JUDGE DE ROUX RENGIFO: Another question. I would like for the witness to indicate whether in the context of the Community, among the Community, the persons who are part of it have parcels of land assigned to them for individual cultivation, or if the cultivation is done collectively.

WITNESS JAIME CASTILLO FELIPE: The use of resources is collective and it is organized in such a way that one has to work freely where one wants, but the entire expanse of territory is communal; no one has owner of it.

JUDGE DE ROUX RENGIFO: Thank you, gentlemen. Thank you, President.

PRESIDENT CANÇADO TRINIDADE: Thank you, Judge de Roux. Judge García Ramírez, you have the floor.

JUDGE GARCIA RAMIREZ: Thank you, Mr. President. I would like to know the information that the witness could give about the rights that each member of the Community has in relation with the lands the Community occupies as a whole.

WITNESS JAIME CASTILLO FELIPE: Please repeat.

JUDGE GARCIA RAMIREZ: What are the rights that each member of the Community has in relation to the lands that the Community occupies as a whole? My basic assumption is this: the lands are occupied and taken advantage of by the entire Community. No one is individually an owner of them; the owner is the Community as a whole, if I understood correctly the response to the previous question. If that is so, I would like to know what the rights are that each individual has in relation to those lands.

WITNESS JAIME CASTILLO FELIPE: The right is singular because they demonstrate that, he says, that there are places, sites that they have worked so

there, there is no difference that someone determines who has the right, the difference, that does not exist, it is common.

JUDGE GARCIA RAMIREZ: Can the Community freely expel any one of its members?

WITNESS JAIME CASTILLO FELIPE: That right of expulsion does not exist.

JUDGE GARCIA RAMIREZ: Can the Community, as a whole, prevent its members from working the land?

WITNESS JAIME CASTILLO FELIPE: Pardon?

JUDGE GARCIA RAMIREZ: Can the Community prevent, prohibit, exclude one of its members from the work on the land of the Community?

WITNESS JAIME CASTILLO FELIPE: Yes, there are ways. If the person does not belong to that community, he cannot. But if he has always lived there, he can. And, in any case, an entire panel must study the case to make the determination to negate that right.

JUDGE GARCIA RAMIREZ: When a member of the Community dies, what happens with that member's children or close relatives in relation to the Community?

WITNESS JAIME CASTILLO FELIPE: If that person died of a natural illness, then we can do nothing; the family members are owners of those things the person who died had.

JUDGE GARCIA RAMIREZ: Can a member of the Community freely transfer to another person the land use rights he has?

WITNESS JAIME CASTILLO FELIPE: There is no manner stating what we are going to assign, because it is collective property. There are no considerations for that.

JUDGE GARCIA RAMIREZ: Thank you.

PRESIDENT CANÇADO TRINIDADE: Thank you, Judge García Ramírez. Judge Abreu Burelli?

JUDGE ABREU BURELLI: No.

PRESIDENT CANÇADO TRINIDADE: Judge Jackman?

JUDGE JACKMAN: No.

PRESIDENT CANÇADO TRINIDADE: Judge Salgado Pesantes?

JUDGE SALGADO PESANTES: No.

PRESIDENT CANÇADO TRINIDADE: Judge Pacheco Gómez?

JUDGE PACHECO GOMEZ: No, Mr. President.

PRESIDENT CANÇADO TRINIDADE: I have no questions either. Our thanks to the witness.

WITNESS JAIME CASTILLO FELIPE: Thank you.

PRESIDENT CANÇADO TRINIDADE: You may leave the stand. Mr. Secretary, please call the next witness to testify.

SECRETARY VENTURA ROBLES: Mr. Charlie Mclean.

PRESIDENT CANÇADO TRINIDADE: Will the witness please state his name before the Court?

WITNESS CHARLIE MACLEAN: Charlie Mclean, Charlie Webster Mclean

Cornelio.

PRESIDENT CANÇADO TRINIDADE: Nationality.

WITNESS CHARLIE MACLEAN: I was born in Awas Tingni, Wawa River.

PRESIDENT CANÇADO TRINIDADE: Identification document number?

WITNESS CHARLIE MACLEAN: Six hundred seven-two hundred twenty, nine hundred fifty-four zeros, letter R.

PRESIDENT CANÇADO TRINIDADE: And place of residence?

WITNESS CHARLIE MACLEAN: Eh, Awas Tingni.

PRESIDENT CANÇADO TRINIDADE: Mr. Secretary, please read the statement of the Court to all giving testimony.

SECRETARY VENTURA ROBLES: The witness must limit his testimony to answering clearly and precisely the question asked him, stating only the facts or circumstances that he knows to be true and avoid giving personal opinions. The witness is notified that he was cited by the Court to testify about the following facts:

He will testify about the territorial patterns of use and occupation and those of the Mayagna (Sumo) Community of Awas Tingni in general; the documentation of these patterns and over his alleged communal ancestral lands; the processes that brought about the undertaking of an ethnographic study and its corresponding maps; the alleged lack of demarcation or official titling of the lands to which the Mayagna (Sumo) Community of Awas Tingni lay claim; the efforts that he has undertaken to obtain demarcation or titling of those lands, as well as to halt the concession to SOLCARSA; the responses received from agents of the State to the claims; the supposed invasion of the lands mentioned by loggers; the harm the Mayagna (Sumo) Community of Awas Tingni suffered by the acts and omissions of the State with respect to the lands and about other issues which affect the supposed communal lands of the Mayagna (Sumo) Community of Awas Tingni.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may indict neither the witnesses, experts, nor may it take retaliatory measures against them or their family members because of their testimony or reports given before the Court. And the Court may request that the States apply the sanctions available within their legislation against whomever does not appear or refuses to be deposed without a legitimate reason or whom it appears to the Court may have violated the oath.

PRESIDENT CANÇADO TRINIDADE: The witness will now take the oath.

Do you solemnly swear or declare, with all honor and all conscience to tell the truth, the whole truth, and nothing but the truth?

WITNESS CHARLIE MCLEAN: Yes, I commit to that.

PRESIDENT CANÇADO TRINIDADE: Will the representative of the Inter-American Commission indicate to the Court the name of the person who will question the witness and proceed to the questioning?

IACHR (Dr. Bicudo): Thank you very much, Mr. President; James Anaya will ask the questions.

PRESIDENT CANÇADO TRINIDADE: You may proceed.

IACHR (Prof. Anaya): Thank you. Mr. President, Honorable Members of the Court, good afternoon. Mr. President, Honorable Members of the Court, Representatives of the State. Mr. Mclean, can you state your full name and place of birth, please?

WITNESS CHARLIE MCLEAN: My name is Charlie Webster Mclean Cornelio, born in Awas Tingni the 22nd of September, 1950.

IACHR: And where is your current place of residence?

WITNESS CHARLIE MCLEAN: Awas Tingni and Wawa River.

IACHR: And where is Awas Tingni located, generally?

WITNESS CHARLIE MCLEAN: It is located one kilometer, no twenty-one kilometers from Puerto Cabezas, by the Waspám municipality. It is thirteen kilometers inside of the bush.

IACHR: And that is in the Atlantic Region of Nicaragua?

WITNESS CHARLIE MCLEAN: Right, in the Atlantic Region of Nicaragua.

IACHR: And what is your maternal language, Mr. Mclean?

WITNESS CHARLIE MCLEAN: The Mayagna (Sumo) language.

IACHR: And you yourself are Mayagna?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: And can you tell the Court what the word Mayagna means?

WITNESS CHARLIE MCLEAN: The word Mayagna means "child of the son."

IACHR: And the Community where you live, Awas Tingni, are all, all the members are Mayagna?

WITNESS CHARLIE MCLEAN: All is of the Mayagna, Mayagna ethnic group.

IACHR: There are no others, Miskitos?

WITNESS CHARLIE MCLEAN: A minority of only four families exists, but they are men who live there, married with Mayagna.

IACHR: So, can you explain that a little more, there are Miskitos but only men that are. . . .

WITNESS CHARLIE MCLEAN: Yes, only men.

IACHR: And they are married with?

WITNESS CHARLIE MCLEAN: The Mayagna race.

IACHR: And how many persons live in the Community, make up the Awas Tingni Community?

WITNESS CHARLIE MCLEAN: Currently, there are 1,016 inhabitants.

IACHR: And how do you know that that exact number lives there?

WITNESS CHARLIE MCLEAN: Through a census, house-by-house, we have taken the number of inhabitants.

IACHR: And who took the census?

WITNESS CHARLIE MCLEAN: The members of the Community; the leaders.

IACHR: And you were among them, those that took the census?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: And what would you say in response to what the State says, that the

number is much lower, that there only three hundred or four hundred people?

WITNESS CHARLIE MCLEAN: We, previously, we had a census but very small, after it came, in many years the people have multiplied.

IACHR: Have you held a leadership position in the Community?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: What position have you held?

WITNESS CHARLIE MCLEAN: Manager of the Forest.

IACHR: And can you explain to us, what is the Manager of the Forest?

WITNESS CHARLIE MCLEAN: He is the manager of the forest, he takes care of the forest, responds to all dangers, he cannot discriminate, most of all that is the person responsible for the forest; he takes care of the little wild animals, the little fish, and many other things.

IACHR: And what other position of leadership?

WITNESS CHARLIE MCLEAN: I currently hold the position of Secretary of the Awas Tingni Territorial Commission.

IACHR: All right, at this time, with the permission of the Court, we're going to show a picture. I will ask our assistant to show the picture on the screen.

PRESIDENT CAÑADO TRINIDADE: You may proceed as previously agreed between the parties in the informal meeting, but in such a way that both parties can have access to the screen.

IACHR: Mr. Maclean, can you identify what we are looking at? Can you identify this? [See Figure 1 in the Appendix to the Hearing Transcript.]

WITNESS CHARLIE MCLEAN: Yes.

IACHR: And what is it?

WITNESS CHARLIE MCLEAN: That picture is the area we are claiming. This area drawn by the black line is drawn all around Awas Tingni.

IACHR: And who made this map that we see? [Figure 1.]

WITNESS CHARLIE MCLEAN: I personally made, together with the leaders of the Community.

IACHR: And when did you make it?

WITNESS CHARLIE MCLEAN: In 1991.

IACHR: And did you have any help from anyone outside of the Community in making this map?

WITNESS CHARLIE MCLEAN: No.

IACHR: So only

WITNESS CHARLIE MCLEAN: Only members of the Community and the leaders.

IACHR: Please, can you indicate again and more slowly for the Court, the places of the map that indicate the territorial extension of the Community?

WITNESS CHARLIE MCLEAN: All right, it shows from Caño Coco Lano, passing by where Kusak Laini and then Suku Was, passing by where Alwas Eumuma, then Kitan Mukni, then, Kuru Was, passing by Cerro Kiamak, then it comes, and goes passing by Caño Turuh Wasni the Caño Rawa Was and then comes Tunjlan Tuna, it comes finishing with Kuah Sahnna.

IACHR: And the place where you currently live, have your houses, the village of the Community, can you show it to us?

WITNESS CHARLIE MCLEAN: Eh, currently we are here, in this Caño Awas Tingni, where we see a small logo with houses.

IACHR: And have you always been there?

WITNESS CHARLIE MCLEAN: We are always there, but after you see another village there that is called Tuburus. From Awas Tingni we traveled there to Tuburus. Currently people live there, two families.

IACHR: For how long have you been in the place where you are now, within the area shown on the map?

WITNESS CHARLIE MCLEAN: Eh, all the time we are living in this area.

IACHR: All right, can you tell us, show us some of the important places for the Community, that are important for the Community and the meaning of those places?

WITNESS CHARLIE MCLEAN: Yes, Cerro Urus Asang is a sacred hill since our ancestors, because there we have our grandfathers buried and for that we call it sacred. Then, Kiamak is also a sacred hill because there we have our, there are stored and closed away our grandfathers' arrows. Then there is Caño Kuru Was; it is an old town. Every name that we have mentioned in this picture, it all is sacred. There are some places, they are Old Town and it goes this way.

IACHR: Okay, Mr. Mclean in present times, what does the total area mean in relation to the Community; what does that area mean to the Community?

WITNESS CHARLIE MCLEAN: The total area is our property, we always maintain there, always live there of this forest and always maintain as any other necessity; for example, if we want to hunt mountain pig, we go across all that area there and then hunt and fish there and we also go there, after we have other ways of obtaining *pipante*, there is that we receive

IACHR: What is a *pipante*, Mr. Mclean?

WITNESS CHARLIE MCLEAN: It is a *pipante* that can navigate in the Wawa River.

IACHR: Like a boat?

WITNESS CHARLIE MCLEAN: It is a small boat, yes, for us.

IACHR: Okay, and you, the Community, use all that area?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: Okay, we are going to . . . for the Court's information, this map is attached to the Commission's complaint, as Appendix C1. Now, Mr. Mclean we are going to show you another document that is also attached to the Commission's complaint as Appendix C2.

Mr. Mclean, can you identify this document? [See Figures 2 and 2a in the Appendix to the Hearing Transcript.]

WITNESS CHARLIE MCLEAN: Yes.

IACHR: What is it, please? [Figure 2.]

WITNESS CHARLIE MCLEAN: This is, more than anything there gives . . . there it says "fighting for Mayagna Sumo." That is, we are fighting from earlier

times to current. So for that reason that we indicated there as limits of our land, there as the picture or the map, same way, that is the way it is written.

IACHR: Okay, and who prepared this document?

WITNESS CHARLIE MCLEAN: I personally and the leaders of the Community.

IACHR: Did you have assistance from anyone outside of the Community?

WITNESS CHARLIE MCLEAN: No.

IACHR: Okay, we are going to show you another document that is attached as Appendix C2. Can you identify this document? [See Figures 3 and 3a in the Appendix to the Hearing Transcript.]

WITNESS CHARLIE MCLEAN: Yes.

IACHR: And what is it, please? [Figure 3.]

WITNESS CHARLIE MCLEAN: This, same way, indicates the Mayagnas are always living here in this forest; also, we are guardians of the forest, we have always lived since way before. Before mention, also we are thinking that it is ours, no one else, because we are claiming it since before, since our ancestors. Also a small, short story, how they lived in this river, how they lived in this area, who are the owners and also the rivers and also from how many years they have lived; also, the people that were there, were living in that area, and also the chiefs were in that same area.

IACHR: And, Mr. Mclean, who prepared this document?

WITNESS CHARLIE MCLEAN: I personally and the leaders.

IACHR: Okay, eh . . .

WITNESS CHARLIE MCLEAN: . . . The Community of Awas Tingni.

IACHR: Thank you. These documents that we have seen, Mr. Mclean, for what reason did you prepare them?

WITNESS CHARLIE MCLEAN: Uh, we prepared to claim or demand of the Government of Nicaragua to have a right to the property.

IACHR: Did you present these documents to any State institution?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: And what efforts have you made to obtain title of your land?

WITNESS CHARLIE MCLEAN: Well, we have made quite a big effort and quite a bit of hope from the government, but there has never been anything.

IACHR: Did you go to any institution with those documents; can you tell us when and how and with whom?

WITNESS CHARLIE MCLEAN: Yes, firstly after preparing the map, we took to the INRA delegate—at that time it was called INRA, INRA means Nicaraguan Institute of Agrarian Reform. There we could submit to the INRA delegate, who was named Alberto Escobar.

IACHR: And what happened?

WITNESS CHARLIE MCLEAN: And he told us that he is going to study later, after would call us.

IACHR: And after that?

WITNESS CHARLIE MCLEAN: When he didn't call us, then we went there

once again to ask what was happening, then he more or less sent us to Managua to request another right of the delegate, the INRA Minister in Managua.

IACHR: And, in the end, did you obtain some form of title, demarcation of your land?

WITNESS CHARLIE MCLEAN: No, we have never obtained anything up to this point.

IACHR: Mr. Mclean, in the State's brief, reference is made to a contract between the MADENSA company and the Community, dated 1992. Do you know of that contract, that document?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: Did you sign that document?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: Okay, how was it that you ended up signing that; how did the process begin that lead up to that . . . signing?

WITNESS CHARLIE MCLEAN: Well, firstly MADENSA sent someone to Puerto Cabezas, to see, dialogue and how it can work in our area.

IACHR: And did you have some legal or technical assistance in the signing of that contract?

WITNESS CHARLIE MCLEAN: No.

IACHR: The contract makes some reference to a title that the Community would present at some time. What title is that?

WITNESS CHARLIE MCLEAN: Well, we said to MADENSA, the company MADENSA, we said to it that we have title. For what reason? We have a lot of right to this area because, since way before, we live in this same area. So for that reason that we, that is our title.

IACHR: Okay, after that contract of 1992, did you sign another contract or agreement with MADENSA? This same company.

WITNESS CHARLIE MCLEAN: Yes.

IACHR: And in the preparation, in the negotiation of that other agreement, did you have any legal or technical assistance?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: And was any institution of the State involved in that process?

WITNESS CHARLIE MCLEAN: Yes, that's right.

IACHR: And which one was it?

WITNESS CHARLIE MCLEAN: MARENA.

IACHR: What does MARENA mean?

WITNESS CHARLIE MCLEAN: Minister . . . of, I am not familiar with that MARENA because

IACHR: Ministry of the Environment and Natural Resources.

WITNESS CHARLIE MCLEAN: Ah yes, that's it.

IACHR: Okay, and did MARENA make any commitment to you during that process?

WITNESS CHARLIE MCLEAN: Yes.

IACHR: What was that commitment?

WITNESS CHARLIE MCLEAN: It would help with the demarcation of our property.

IACHR: And did it keep that promise?

WITNESS CHARLIE MCLEAN: It did not carry out anything. It was only a word.

IACHR: And what happened later?

WITNESS CHARLIE MCLEAN: Later we had to always, always keep demanding.

IACHR: And was there another logging company that appeared?

WITNESS CHARLIE MCLEAN: Oh, yes.

IACHR: How did that happen?

WITNESS CHARLIE MCLEAN: It was SOLCARSA.

IACHR: And what happened?

WITNESS CHARLIE MCLEAN: Instead of helping us, it authorized a concession to SOLCARSA, a figure of 62,000 hectares, inside of our area.

IACHR: And did anyone ask permission, or was there any consultation process with you about that?

WITNESS CHARLIE MCLEAN: No.

IACHR: And what was the reaction of the Community when it realized the existence of that concession?

WITNESS CHARLIE MCLEAN: The Community reacted and immediately we had a meeting. We always call General Assembly in the Community. So there is that we decided, all the Community decided to do, prepare a letter, to demand of the Government.

IACHR: Thank you; Mr. Mclean, do you want to say anything else about your efforts at obtaining title to your land?

WITNESS CHARLIE MCLEAN: Yes, if there is time I can speak. Judges, we have never had opportunity like this during many years, but thank you; right now, we are gathered among ourselves, we are demanding our rights, because we, I think that we know where the history of before says, I say history because in the time of Jehova, the Israelis' story was made, in Ezekiel, Chapter 45, Verse 9. There it tells us all. So, we as Mayagna are humble, we are demanding since way before, not only current government, we are asking since way before, since 1968, we are demanding of the governments and it never gives us any response. So the reason is now, we have arrived this far, the reason is, we have gone around asking, demanding, in all parts of the Atlantic Coast, and it does not give us a positive response. So I ask the judges of the International Court, pardon Inter-American Court, to give us help for the solution. We do not want to be hoping for more time because quite a long time we have fought. That is my word. Thank you.

IACHR: Thank you, Mr. Mclean.

PRESIDENT CAÑADO TRINIDADE: Thank you, Inter-American Commission delegation. I will now give the floor to the representative of the Illustrious State of Nicaragua, so that if he wishes to ask questions, he may indicate the person who will do the questioning.

GON (Mr. Castillo): Yes, Mr. President, I will conduct the examination. Mr. Mclean, which is the area of the map that you prepared?

WITNESS CHARLIE MCLEAN: The area that I was showing just right now.

GON: I am not referring to the boundaries; I am referring to the surface area.

WITNESS CHARLIE MCLEAN: Pardon, repeat?

GON: What is the surface area in hectares of the map that you drew up?

WITNESS CHARLIE MCLEAN: We practically are not technicians, we are not experts, but we do have a picture in which we are showing ourselves.

GON: Mr. Mclean, do you know that in 1993, counselors Anaya and Acosta claim to have presented a request for title to the INRA, requesting 16,000 hectares?

WITNESS CHARLIE MCLEAN: We

IACHR (Prof. Anaya): Sir, pardon, I object. That allegation has no basis and I would like to know from where it comes. There is no evidence in the record, it seems that . . . and what is the purpose?

GON: Mr. Anaya, the document you yourselves presented to the Court when you presented the documents after the preliminary objections in answer to affirmations that we made during the preliminary objection phase. I can show the Court that document and that it is in the record.

PRESIDENT CANÇADO TRINIDADE: He may answer the question. Maybe you could repeat

GON: Yes, I was asking Mr. Mclean if he knew that counselors Anaya and Acosta, his lawyers and legal representatives, claim to have requested of INRA a property title of 16,000 hectares for the Awas Tingni Community.

WITNESS CHARLIE MCLEAN: I think we did not deal with that; we don't know, because the Community has never mentioned 16,000 hectares.

GON: Then you don't know what your advisors ask for?

WITNESS CHARLIE MCLEAN: No, we have met, but that is not the request we are making.

GON: I continue with the questioning. Mr. Mclean, do you know what is the area claimed by Awas Tingni in the Regional Counsel?

WITNESS CHARLIE MCLEAN: Pardon, repeat.

GON: In 1996 or 1997, the Community sent a request to the Regional Council, asking that it help the Community in the process of obtaining title to its lands. At that time the Community affirmed that the surface area of their lands were 95,000 hectares. Did you know that?

WITNESS CHARLIE MCLEAN: Yes, we know that, yes.

GON: Do you know that the map that they attached to the request represents a surface area of 156,000 hectares?

WITNESS CHARLIE MCLEAN: We, the picture that shows, we show the map, we don't deal in numbers, but yes, the government has given a response indicating this area is quite large and so the number was lowered.

GON: How do you explain that, as time passes, the Community of Awas Tingni

has been increasing the surface area of its land claim? Because first it asked for 16,000 hectares, then 45,000, then 95,000 and, in the last map, if we are going to technically determine the surface area, the map prepared by Mr. Macdonald, they are claiming 156,000 hectares. How do you explain those contradictions?

IACHR (Prof. Anaya): Mr. President, the premises of the questions are all incorrect; they are not proven and there is no evidence in the record.

GON: Mr. President, the record contains each one of those documents, and we can show them if it is necessary.

IACHR: Please show them.

PRESIDENT CANÇADO TRINIDADE: The . . . no, this is a hearing; we are in the oral phase of the proceeding. I would like to ask the witness, who has already testified that he does not deal with numbers, if he has anything else to add in relation to the question asked by the Agent.

WITNESS CHARLIE MCLEAN: Yes, Your Honor. We do not indicate numbers, but rather the picture and the map where it says all the area that we are showing/markings. That is our property since way before.

GON: Mr. President, there must have been someone that indicated the numbers, if it was not the Community, maybe it was its counselors; we would like that to be determined.

WITNESS CHARLIE MCLEAN: Yes, the government told us, MARENA itself told us, "Look, you are few people, there the inhabitants are few; why do you mention enormous amount of land?" And also we did not accept that, we explained.

GON: We must presume, Mr. Mclean, that it was then the State that successively enlarged that surface area, to its own detriment?

WITNESS CHARLIE MCLEAN: But always in MARENA they indicated that, yes, the last government could approve.

GON: I continue the questioning, Mr. President. Mr. Mclean, do you know in the maps that you have presented us, either prepared by you or by the anthropologist Macdonald, that there are other communities with title from forty years ago, such as Francia Sirpi and Santa Clara and Esperanza?

WITNESS CHARLIE MCLEAN: Yes, there are neighboring communities, but we have always maintained firmly that it is our property and, also, Mr. Macdonald has prepared, consistent with what we did in the first map that is by hand, after transferred to a new map that is more professional, so now it follows; as far as the neighbors, yes they exist, but we firstly had a conflict, small conflict, but now we have corrected, discussed, and now we are all peaceful. We are in agreement among the four communities with us.

GON: Mr. Mclean, you requested the surface area all to your benefit. Why then did you affirm that you are in a friendly relationship, if you want to strip them of all of their titled lands?

IACHR (Prof. Anaya): Again, Mr. President, excuse me, but the premise is incorrect; there is no title of the kind that's being referred to.

PRESIDENT CANÇADO TRINIDADE: I would like to ask the State's delegate

if maybe he could limit his question to the first part.

GON: I withdraw the question, Mr. President. I would just like the record to reflect that there are titled communities in the area claimed by Awas Tingni, and I continue my questioning. Do you know that those communities were titled forty years ago, in a time as ancestral as the date on which you founded Awas Tingni in 1945?

PRESIDENT CANÇADO TRINIDADE: Please, let us come to an understanding, because it is not possible to conduct questioning in this manner. Let us leave the questions specifically about titling for the summations of the parties and limit ourselves to asking the witness whether or not he knows of one thing or another, but the specific questions, let us leave them for the summary arguments of the parties, please.

GON: Yes, Mr. President.

PRESIDENT CANÇADO TRINIDADE: Whether or not he has knowledge of what the delegate is asking; maybe he could repeat the question.

GON: Do you know that, in the area to which you lay claim, there are communities such as Francia Sirpi and Santa Clara, Esperanza, and Kukalaya that were issued title by the State many years ago?

WITNESS CHARLIE MCLEAN: Francia Sirpi and Santa Clara, Esperanza, we already have an agreement; there is no, there is no conflict there right now, and the *Sindico*, the representative of those communities, is here now.

GON: Yes, Mr. Mclean. Do you also know that, in the area claimed unilaterally by you, there are other claims of other Miskito communities, like the Group of the Eighteen Communities that is situated to the north of Awas Tingni and the Group of Ten Communities that is asking for practically more than half of the area claimed by you?

WITNESS CHARLIE MCLEAN: I think that we have to be clear. The claim of Ten Communities does not include where we are claiming. That is very, very, very separate.

GON: Did you know, Mr. Maclean, that there is a testimony presented to the Court in which the Group of Ten Communities affirms that you arrived in Awas Tingni in 1945, they're Miskitos, the ancestral possessors, and how, with a gesture of good will, they allowed you the good fortune of unstable possession in the area?

IACHR (Prof. Anaya): Please, excuse me, but the State's representative is testifying his case, he is making allegations, he is not asking questions; he will surely have his opportunity.

PRESIDENT CANÇADO TRINIDADE: He could restate the question, whether or not he knows of the claims

GON: Do you know that the Group of Ten Communities affirms being the ancestral possessors, earlier than you, and that they tolerated your presence when you arrived in 1945?

WITNESS CHARLIE MCLEAN: No, we do not know that; Ten Communities belongs to where we are, it is very separate.

GON: Thank you, Mr. Mclean. That is all Mr. President.

PRESIDENT CANÇADO TRINIDADE: Thank you very much to the delegation of the Illustrious State of Nicaragua. Let us now proceed to ask the other judges if they have questions to ask the witness. Judge Montiel Argüello? Judge de Roux?

JUDGE DE ROUX RENGIFO: Yes, Mr. President.

PRESIDENT CANÇADO TRINIDADE: You may proceed.

JUDGE DE ROUX RENGIFO: Please explain the following to us: in the map that you prepared and that has been exhibited before the Court, two places are located on it, the town of Awas Tingni and that of Tuburus. Is that right?

WITNESS CHARLIE MCLEAN: Yes, that is right.

JUDGE DE ROUX RENGIFO: Good. Please explain to us by what means of transport do people who live in Awas Tingni move to Tuburus and vice versa? What are the customary means of communication?

WITNESS CHARLIE MCLEAN: To Tuburus?

JUDGE DE ROUX RENGIFO: Yes.

WITNESS CHARLIE MCLEAN: Among ourselves it is with the *pipante*.

JUDGE DE ROUX RENGIFO: What is the *pipante*?

WITNESS CHARLIE MCLEAN: It's, I don't know what it's called in Costa Rica, but we as Nicaraguans call it *pipante* or canoe

JUDGE DE ROUX RENGIFO: It's a canoe

WITNESS CHARLIE MCLEAN: Yes, yes.

JUDGE DE ROUX RENGIFO : Okay. What is the means of moving that canoe? Does it have an outboard motor, or does it move with an oar?

WITNESS CHARLIE MCLEAN: Please repeat.

JUDGE DE ROUX RENGIFO: Does it have an outboard motor, or does it move with oars? By hand?

WITNESS CHARLIE MCLEAN: We move it with a stick, with an oar, with a paddle.

JUDGE DE ROUX RENGIFO: Then tell us something: how much time does the trip take between Awas Tingni and Tuburus?

WITNESS CHARLIE MCLEAN: It takes, in the dry season, one arrives in a day and a half.

JUDGE DE ROUX RENGIFO: And in

WITNESS CHARLIE MCLEAN: And in the winter, two and a half days.

JUDGE DE ROUX RENGIFO: Two and a half days.

WITNESS CHARLIE MCLEAN: Yes.

JUDGE DE ROUX RENGIFO : Okay. Now please tell me the following. Do the members of the Community of Awas Tingni live concentrated in those towns? Or do they live dispersed in parcels, in

WITNESS CHARLIE MCLEAN: No, we are living united, concentrated. Additionally, two families live in Tuburus that are permanently there, concentrated, not dispersed.

JUDGE DE ROUX RENGIFO: Okay. Thank you very much.

WITNESS CHARLIE MCLEAN: Thank you, Judge de Roux. Judge García Ramírez?

JUDGE GARCIA RAMIREZ: Thank you, Mr. President.

PRESIDENT CANÇADO TRINIDADE: You may proceed.

JUDGE GARCIA RAMIREZ: Mr. Mclean, you stated that the lands about which you are telling us are the property of the Mayagna Community.

WITNESS CHARLIE MCLEAN: Yes.

JUDGE GARCIA RAMIREZ: And you indicated that there are 1,016 members of the Mayagna Community. Would you like to explain to me in what ways can those 1,016 members of the Mayagna Community benefit from those lands? What can they do with them?

WITNESS CHARLIE MCLEAN: Well, we, family, 1,016 in general, in families it is 208 families, all of the young people that were growing up, being young then and at the age of marriage, so they got married and live with their wives and thus multiplied. In addition, we always lived off the same bush; we always survived on the same.

JUDGE GARCIA RAMIREZ: The members of the Community work those lands?

WITNESS CHARLIE MCLEAN: Yes.

JUDGE GARCIA RAMIREZ: Do they have the right to work those lands?

WITNESS CHARLIE MCLEAN: Yes; we all have the right to work, cultivate and collect medicinal plants and hunting and fishing, we survive there.

JUDGE GARCIA RAMIREZ: Those are rights that the members of the Community have?

WITNESS CHARLIE MCLEAN: Yes; we have the full right to survive off that.

JUDGE GARCIA RAMIREZ: They cannot be excluded from or deprived of those rights?

WITNESS CHARLIE MCLEAN: No. We cannot privatize or sell anything.

JUDGE GARCIA RAMIREZ: Thank you.

PRESIDENT CANÇADO TRINIDADE: Thank you, Judge García Ramírez. Judge Abreu Burelli? Judge Jackman? You may proceed.

JUDGE JACKMAN: Mr. Mclean, I am from Barbados in the Caribbean, an English-speaking island, with much influence from Great Britain and, among other things, the names Mclean and Thompson are very common in Barbados. I am interested in knowing, where does your name Mclean come from?

WITNESS CHARLIE MCLEAN: Okay, very well. You see, Your Honor, in the time of our grandfathers, they gave names of wild animals; but now things are modernizing, changing the way of life, let us say civilizing through study and religion, so things are changing and now they name . . . children and newborns are baptized and when they are baptized they mention a name so, from there is my name, Charlie Mclean. I don't know how they named me, but my name is Charlie Mclean. That's the way it is. And I can demonstrate an example. There—it is said in short history—there the chiefs were given names in the Mayagna language, a name of the animal “sparrowhawk;” *Yacalviquís* is a sparrowhawk, you see, and

so on lived our grandfathers, as a typical indigenous man, owner of the forest.

JUDGE JACKMAN: But the name of your father was not Mclean?

WITNESS CHARLIE MCLEAN: Of course, a reverend has mentioned, gave that name because my father was going to study theology in Viloascarma to be a Moravian minister. The name was given that way.

JUDGE JACKMAN: Thank you very much.

PRESIDENT CANÇADO TRINIDADE: Thank you, Judge Jackman. Judge Salgado Pesantes, Judge Pacheco Gómez?

JUDGE PACHECO GOMEZ: No, Mr. President, no questions.

PRESIDENT CANÇADO TRINIDADE: I do have just one question: I would like to ask the Secretary to project the map again. You mentioned, Mr. Mclean, that Urus Asang Hill and Kiamak Hill are sacred places, isn't that right?

WITNESS CHARLIE MCLEAN: Yes.

PRESIDENT CANÇADO TRINIDADE: And you referred to the practices of the grandfathers and, in your last answer, referred to the fact that your father had a religious education. I would like to know a little more about the sacred nature of those hills.

WITNESS CHARLIE MCLEAN: Okay, this Urus Asang Hill. Do you know Mono?

PRESIDENT CANÇADO TRINIDADE: No.

WITNESS CHARLIE MCLEAN: Well, that is Mono [Monkey], Mono Hill. Why did they name it that way? Our grandfathers lived in that hill, so they had as their animals those that are the monkeys. Yes, so, then that grandfather died there, and there they buried him. The other, Kiamak, is a sacred hill. This one is also sacred. This other is sacred. The utensils of war of our ancestors, our grandfathers, were the arrows. There they are stored and, also, they put a person inside that hill and closed him in there. When we had to figure out points of reference of this picture, when we went there, it seemed the same to us; that is, it was consistent with what our grandfathers told us about it. To be sure, there the button on the GPS didn't function, rather it wanted to burn it. So, ah, for what reason they want to burn, so we went down from there, separated ourselves by a distance of fifteen meters, then it worked there. So that is how we maintain our history, since our grandfathers. For that we have it as a Sacred Hill.

PRESIDENT CANÇADO TRINIDADE: Thank you. And when you refer to our grandfathers, that is to say, "our dead," to how many generations do you refer?

WITNESS CHARLIE MCLEAN: My grandfather told me it can be some three hundred cycles, centuries, pardon, because there they have lived all the time in their life. Yes; in addition, if we base it on the history, it extends over many places too, yes.

PRESIDENT CANÇADO TRINIDADE: And in the sacred hills or in some other place you also worship in honor of the Community's dead?

WITNESS CHARLIE MCLEAN: Yes, they are buried there. There are fruit trees like pejibaye, lemon, and so like . . . I don't remember right now that name,

it's (he asks a Community the name in his language) avocado. Avocado fruit trees always exist.

PRESIDENT CANÇADO TRINIDADE: Yes, do you have any type of homage or any symbolic homage to past generations, to your ancestors?

WITNESS CHARLIE MCLEAN: Yes.

PRESIDENT CANÇADO TRINIDADE: What do these commemorations or symbolisms to past generations consist of?

WITNESS CHARLIE MCLEAN: Yes, as symbol we have, it is, there is a part, it doesn't appear here, because it is a rustic map. We . . . I prepared. So here it exists—inside of that area there is a place, it is called Quitiris—there exists a symbol that our grandfathers had a place to meet, a special place. It currently exists; the chairs there are made of stone and such.

PRESIDENT CANÇADO TRINIDADE: So you show your respect to your dead, in the Community?

WITNESS CHARLIE MCLEAN: Yes we have respect. When we go there, we pass by greeting silently with respect. Also, our grandfathers had this . . . relationship with Asangpas Muigeni. Do you know Asangpas . . . ?

PRESIDENT CANÇADO TRINIDADE: No. Can you explain? I am very interested in knowing.

WITNESS CHARLIE MCLEAN: Asangpas Muigeni is the spirit of the mountain; it is the same form as a human, but it is a spirit always lives under the hills. And it has a relationship, if we base it on history, we have to speak about many things there, yes.

PRESIDENT CANÇADO TRINIDADE: Thank you very much. The questioning has finished; you may step down. You may remain in the courtroom if you wish.

WITNESS CHARLIE MCLEAN: Okay.

PRESIDENT CANÇADO TRINIDADE: In accordance with the agreement between the parties before the hearing, we still have a witness and an expert scheduled for today. If we keep to the understanding that we will question both, I would suggest that we take a break now, no? A recess, if we all agree, and we could reconvene at 6:30, in twenty-five minutes. Do we agree? The session is adjourned.

PRESIDENT CANÇADO TRINIDADE: The Public Hearing on the merits in the case of the Mayagna (Sumo) Community of Awas Tingni is reconvened, with the purpose of listening to the testimony of one more witness and the report of an expert whose report was ordered by the Inter-American Court of Human Rights. I ask the Secretary to call the next witness to testify.

SECRETARY VENTURA ROBLES: Mr. Theodore Macdonald.

PRESIDENT CANÇADO TRINIDADE: I ask the witness to please state his name before the Court.

WITNESS THEODORE MACDONALD: My name is Theodore Macdonald, Junior.

PRESIDENT CANÇADO TRINIDADE: Nationality?

WITNESS THEODORE MACDONALD: United States.

PRESIDENT CANÇADO TRINIDADE: Number of identification document?

WITNESS THEODORE MACDONALD: Passport, I don't know.

PRESIDENT CANÇADO TRINIDADE: You can give it to the Secretariat after.

WITNESS THEODORE MACDONALD: I already did.

PRESIDENT CANÇADO TRINIDADE: You already did?

WITNESS THEODORE MACDONALD: They already have it.

PRESIDENT CANÇADO TRINIDADE: And place of residence?

WITNESS THEODORE MACDONALD: United States, Cambridge, Massachusetts.

PRESIDENT CANÇADO TRINIDADE: Mr. Secretary, please read the statement of the Court to all giving testimony.

SECRETARY VENTURA ROBLES: The witness must limit his testimony to answering clearly and precisely the question asked him, stating only the facts or circumstances that he knows to be true and avoid giving personal opinions. The witness is notified that he was cited by the Court to testify about the following facts:

About the alleged unfruitful efforts to obtain official means leading to the demarcation and specific recognition of communal indigenous lands. The supposed granting of concessions of the RAAN, including the concession to SOLCARSA; the environmental impacts that said operations and natural resource exploitation activities have had; the patterns of non-indigenous migration and settlement that would affect the communal indigenous lands; the alleged lack of sufficient state controls over the exploitation of natural resources on the Atlantic Coast; other subjects related to the exploitation of natural resources and the land tenure of the indigenous communities and the forestry sector in Nicaragua and its impact on the Mayagna Community of Awas Tingni.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may indict neither the witnesses, nor experts, nor may it take retaliatory measures against them or their family members because of their testimony or reports given before the Court. And the Court may request that the States apply the sanctions available within their legislation against whomever does not appear or refuses to be deposed without a legitimate reason or whom it appears to the Court may have violated the oath.

PRESIDENT CANÇADO TRINIDADE: The witness will now take the oath. Do you solemnly swear or declare, with all honor and conscience, that you will tell the truth, the whole truth, and nothing but the truth?

WITNESS THEODORE MACDONALD: Yes.

PRESIDENT CANÇADO TRINIDADE: Will the representative of the Inter-American Commission please give the Court the name of the person who will examine the witness and proceed with it?

IACHR (Dr. Bicudo): Honorable President, James Anaya will examine the witness.

PRESIDENT CANÇADO TRINIDADE: Thank you. You may proceed.

IACHR (Prof. Anaya): Doctor Macdonald, please introduce yourself to the Court by your full name.

WITNESS THEODORE MACDONALD: My name is Theodore Macdonald, Junior.

IACHR: Have you had any relationship with the Awas Tingni Community?

WITNESS THEODORE MACDONALD: Yes.

IACHR: And what has been the nature of that relationship?

WITNESS THEODORE MACDONALD: I made three visits, or stays, in the Community; two in 1995, the first between March and April, the second in July of 1995, and I made a third visit in January of 1999.

IACHR: And the objective of these visits, please?

WITNESS THEODORE MACDONALD: The objective mainly was to study the relationship between the people of the settlement of Awas Tingni and the land that they use. But that also required a socio-political study and a historical study, and also some research in the libraries.

IACHR: And how is it that you came to perform or work on that study?

WITNESS THEODORE MACDONALD: At the beginning there was a project financed, established, by the World Wildlife Fund. They contracted with the University of Iowa, and it was the University of Iowa that contracted with me to do this work.

IACHR: Okay, let's talk for a moment about your qualifications to do this type of work. You . . . what is your profession?

WITNESS THEODORE MACDONALD: I am an anthropologist.

IACHR: And your academic preparation?

WITNESS THEODORE MACDONALD: My bachelor's is in history from the University of Massachusetts, and the doctorate is from the University of Illinois-Urbana. I did post-graduate studies at Harvard, and I also took courses of Conflict Management at the Massachusetts Institute of Technology, MIT.

IACHR: And where do you currently work?

WITNESS THEODORE MACDONALD: I am the Co-Director of the Program on Nonviolent Sanctions and Cultural Survival of the Weatherhead Center for International Affairs at the University of Harvard.

IACHR: Fine, let's talk about the study you performed. In what way were the results of the study you did with the Awas Tingni Community documented?

WITNESS THEODORE MACDONALD: They were documented, first as a preliminary report I presented in 1996; at the same time, we presented a map of the lands used by those of the Awas Tingni settlement, and I also sent another report that came out in January of 1999.

IACHR: Okay, so you did a report in 1999 and an earlier one in 1996.

WITNESS THEODORE MACDONALD: Yes.

IACHR: And what was the purpose of doing a report in 1999; wasn't that of 1996 complete?

WITNESS THEODORE MACDONALD: Well, the first report's title was . . . it

was a preliminary report, and I had always anticipated broadening it further. It is very common to do that and, also, in returning I realized that there were many things that I wanted to know, especially the history.

IACHR: And did you find any contradiction in making your 1999 study, with the conclusions of the 1996 study?

WITNESS THEODORE MACDONALD: No, quite the contrary, from an ethnographic point of view, it was deepened even more; that is, I obtained more details that backed the study.

IACHR: Right, let's talk a little about the maps that you mentioned. We are going to ask that the picture be shown. What are we seeing here, Doctor Macdonald? What can you say about it? [Figure 1.]

WITNESS THEODORE MACDONALD: Yes, we are looking at a map that the Awas Tingni Community prepared. I think more or less around 1992.

IACHR: You had nothing to do with this map?

WITNESS THEODORE MACDONALD: No, they presented it on beginning the study.

IACHR: And you understand that this represents what?

WITNESS THEODORE MACDONALD: According to them, this represents the territory that they say is theirs.

IACHR: All right.

WITNESS THEODORE MACDONALD: Here we see the border, here we see the principal community and other communities, sacred sites.

IACHR: Okay, we're going to give you something to point out those places.

WITNESS THEODORE MACDONALD: This is the border that they have established, this is their principal settlement, this is another older place that they had lived in before. I was struck by the number of houses they had put in this place. Also, we see here the Wawa River that flows from the Atlantic Coast to the west.

IACHR: Very good, now we are going to show another picture where two maps appear. Can you tell us what these represent? [See Figure 4 in the Appendix to the Hearing Transcript.]

WITNESS THEODORE MACDONALD: Well, in the first place, they are obviously two different maps. The first is the map that we saw first, turned on its side. This is the map that we prepared based on a computer, or based on a computer program, called GIS, Geographic Information System. What we did was to input the data collected by the Community; we see that it is very similar. Here we see the Awas Tingni Community, here we see the Wawa River, here we see Tuburus, and here we see the sacred sites, also the border. And it is the same here below; we see the current Awas Tingni Community, and the Community of Tuburus, the sacred sites and the border. The principal difference is that one is made by hand, the other is made by computer.

IACHR: So you participated in the preparation of the map below?

WITNESS THEODORE MACDONALD: Yes.

IACHR: Okay, let's study the map below, please.

WITNESS THEODORE MACDONALD: If you'll allow me, I can hardly see it.

IACHR: Is this the same map that we saw earlier in the lower part of the previous picture? [See Figure 5 in the Appendix to the Hearing Transcript.]

WITNESS THEODORE MACDONALD: Can I see the other one a little longer? This map was prepared in 1999, and the other in 1996, but based on the same information; it comes from the base map that we prepared in 1995.

IACHR: Okay, let's call it the green map, let's say. Can you describe it with a little more detail, what was the methodology for the preparation of this map?

WITNESS THEODORE MACDONALD: Yes, well, in the first place, I began with a device called GPS, Geographic Movement Positioning System, that functions based on satellites. And let's start here, in the Awas Tingni Community. I began, with five members of the Community; we went up the Wawa River, through here, taking data on the use of the land, all the territory and also confirming the information we had heard verbally from the Community. That was the first stage; there was a second stage in which the members of the Community, after having received my training, went and finished, with the GPS device, this map here. They obtained more than 150 points in this visit. My trip, the first, lasted more or less one week. Their trip, for this part, lasted more or less three weeks.

IACHR: In that way the data was obtained, and what was done with the data?

WITNESS THEODORE MACDONALD: With the data, with the points, with the data they obtained with the device, first we put them on a base map in Puerto Cabezas with the professional cartographer. He prepared a base map. And after, we put that map in a computer system to prepare that map.

IACHR: Very good; please help us, Doctor, to interpret the map as concerns the uses of the land that are indicated.

WITNESS THEODORE MACDONALD: Okay, the yellow here and the yellow here—the yellow near the town of Tuburus and also near Awas Tingni—that is the zone of current active use by the people, more than anything in agriculture. That is the land that they are currently working. In the gray part that follows the Wawa River, more or less two kilometers on each side, is the area of potential use. This is according to the agricultural system that they have and probably are going to need in the future, and have used in the past. The dark green color is the hunting and fishing region and, as we see with these symbols that indicate hills, it also includes the sacred sites; when I say that, by the river they are principally cemeteries, old communities inside of the dark green area. These are sacred sites; they are hills inside of which the Spirits of the Mount Asangpas Muigeni, as they call them, live.

IACHR: Let's talk of the Community itself as a corporate entity. In what sense is Awas Tingni a community? As an organization, how

WITNESS THEODORE MACDONALD: We must speak of community as a process. You want me to speak in terms of history or in

IACHR: Currently.

WITNESS THEODORE MACDONALD: Currently? It is a community that has its own leadership, it has its own form of social organization, it has a form of leadership, and it recognizes itself—and for me this is the most important—the Community recognizes itself as an indigenous community.

IACHR: And the predecessors of the Community? The history? Has this Community existed for a long time or is it recent? A recent phenomenon?

WITNESS THEODORE MACDONALD: It is . . .

PRESIDENT CANÇADO TRINIDADE: The delegation of the Illustrious State of Nicaragua has a point of order.

GON (Mr. Castillo): Yes, Mr. President, according to the terms of reference, the testimony of Mr. Macdonald is on the current land tenure; that is, I don't see in the paragraph any reference to determine the ancestry in the occupation of those lands. So I think that this speech of Mr. Macdonald should be focused on the current tenure of this land. Given the contrary, we would be diverging from the terms of reference the Commission itself presented.

PRESIDENT CANÇADO TRINIDADE: I would like . . . yes?

IACHR: If I may . . . in the first place, it is not possible to speak of the current land tenure of an indigenous community without speaking of its predecessors, because of the very nature of the indigenous community and the very nature of that land tenure, as Doctor Macdonald is prepared to testify. In the second place, the Inter-American Commission, in its complaint, in notifying the testimony of Doctor Macdonald, specified that Doctor Macdonald, and I quote: “Will give testimony on . . .” pardon, “Doctor Macdonald, author of the ethnographic study, will give testimony on the ethnographic study, the cartographic work he did with the Awas Tingni Community.” That is in the Inter-American Commission's complaint, although it is not specified in the Court's notice, but it does come within the general terms of the Community's land tenure.

PRESIDENT CANÇADO TRINIDADE: We will have to abide by the hearing's convocation resolution, and I would like to reread the terms of reference for Mr. Theodore Macdonald's testimony.

“About the allegations and unfruitful efforts to obtain official measures that would lead to the demarcation and specific recognition of indigenous communal lands; the supposed authorization of concessions in the RAAN, including the concession to SOLCARSA; the alleged logging activities under the SOLCARSA concession, the environmental impacts that said operations and natural resource exploitation activities have had; the patterns of non-indigenous migration and settlement that would affect the communal indigenous lands; the alleged lack of sufficient state controls over the exploitation of natural resources on the Atlantic Coast; other subjects related to the exploitation of natural resources and the land tenure of the indigenous communities in the forestry sector in Nicaragua and its impact on the Mayagna Community of Awas Tingni.”

Certainly those other aspects would be assessed by the Court, no? Of all the documentation that has been presented before the Court, but I would ask that maybe the question be restated.

IACHR: Very well. Okay, Doctor Macdonald, regarding the Awas Tingni Community's land tenure, can you describe how it has developed in the last few years?

WITNESS THEODORE MACDONALD: When you say the last few years

IACHR: As you wish

WITNESS THEODORE MACDONALD: Okay.

IACHR: What you consider pertinent, the time period that you consider pertinent.

WITNESS THEODORE MACDONALD: Okay, because to talk about the land

IACHR: Current land tenure.

WITNESS THEODORE MACDONALD: . . . You have to talk about the history. The Community itself, quite a while ago, it identified principally as a Mayagna Community. Little by little, based on demographic growth—and also with the continued contact they had with people of other areas—they increasingly became an independent community, around certain spiritual leaders called *caciques*, no? And it began forming and growing stronger, not only as a community, but also with respect to boundaries, and currently those are in place; they consider themselves still part of the Mayagna Community, but also recognize that they are an independent community with their own boundaries.

IACHR: Fine, thank you, Doctor Macdonald. The map shows, from what I understand, the presence of some Miskito communities; that is, communities that are not Awas Tingni. Can you explain the existence of those communities in relation to the land tenure of Awas Tingni?

WITNESS THEODORE MACDONALD: Yes, there are two: one is a real community; that is called La Esperanza. That is a Miskito Community that was founded in two phases. One in 1971, after the war between Honduras and Nicaragua—they were relocated—and, after the hurricane of 1972, other communities located there. One of the communities, the five are called Tasba Raya, one of them is La Esperanza. They came here under orders of the government of the time and were accepted by the Awas Tingni Community of that time. The other, that goes by the name of Yapu Muscana, we can see that it is, the Community of La Esperanza is to the north of the Wawa River. The other is not a Community; it is nothing more than a refuge that I noticed in 1995, to which a Miskito family went that had independently occupied land to the south, and it was the only family that lived independently to the south.

IACHR: And is there any evidence that those communities were there prior to the Awas Tingni Community or its predecessors?

WITNESS THEODORE MACDONALD: No; to the contrary, the very members of the Community indicated that those from Awas Tingni were there before.

IACHR: The very members of which community?

WITNESS THEODORE MACDONALD: The person who told me that was from Francia Sirpi, that is the community that borders this Community of La Esperanza, also a Miskito Community.

PRESIDENT CANÇADO TRINIDADE: I would like to give the floor to the delegate.

GON: Mr. President, I am confused about the time period. I understand that Mr. Macdonald's testimony is about the current tenure, not about the ancestrality. The current tenure goes back to 1945, the date on which the Community confesses to have founded/declared Awás Tingni. To speak of earlier periods is to speak of the ancestrality, and that is not part of his terms of reference. I am also confused about recent periods, because the only document that we have in the record before the Court is Mr. Macdonald's preliminary study that was prepared in 1995. Now he is telling us about a second study that he did in 1999 and that no one here in the Court has seen. Maybe only Mr. Anaya, such that that document cannot be held as relevant today before the Court. We have to rely solely on the 1995 document that, as Mr. Macdonald says, is preliminary and does not allow us to arrive at definitive conclusions because it is preliminary; he only relied on the oral testimony of the Mayagna, nothing more.

PRESIDENT CANÇADO TRINIDADE: I would like to confer with my colleagues, the other judges . . . Commission delegate?

IACHR (Dr. Bicudo): Mr. President, before the Court comments on this question, we would like to posit an issue for consideration. It is that land tenure has a history, and a history can be concretized on a particular date . . . a history that evolves, that was proposed in a specific year, rather than extending up until now and that has an earlier ancestral history. I think that this cannot be expressed in the deposition of the witness. Thank you, Mr. President.

PRESIDENT CANÇADO TRINIDADE: I would like to notify the parties of the unanimous agreement of all the judges of the Court. The Commission has also presented, in addition to the witnesses, four experts—one of which we are going to hear today and three tomorrow—and the objective of the current testimony is to receive testimony and not an expert opinion, and that is the unanimous opinion of the Court; that if the witness could concentrate on the facts of which he has knowledge within the terms of reference of his testimony, and if we could concentrate on the question of ancestrality during the expert testimony, please.

WITNESS THEODORE MACDONALD: Could I add a point?

PRESIDENT CANÇADO TRINIDADE: Yes.

WITNESS THEODORE MACDONALD: I would like to mention that when I was speaking of the history, I was speaking of my first report that mentions both communities, and the second report did go more into depth on that but this map—the one I mentioned, as well as the one from the preliminary report—just to correct.

PRESIDENT CANÇADO TRINIDADE: With this understanding, the Commission may proceed with its questioning, please.

IACHR (Prof. Anaya): Okay, about the direct knowledge that you have of the Community, about your observations, your presence in this area: did you find any indication that these communities were there before Awás Tingni?

WITNESS THEODORE MACDONALD: No.

IACHR: The very members of those other communities, what is their position?

WITNESS THEODORE MACDONALD: Currently?

IACHR: Yes, the communities of Francia Sirpi, what did they tell you about that?

PRESIDENT CANÇADO TRINIDADE: Delegate of the State?

GON: Excuse me, Mr. President, we are not establishing an ancestry relationship between communities. That is not part of Mr. Macdonald's testimony.

PRESIDENT CANÇADO TRINIDADE: I understand that the question refers to the current situation, the present-day situation.

IACHR: Yes.

PRESIDENT CANÇADO TRINIDADE: The present-day situation.

IACHR: Yes, how does Awas Tingni relate to the surrounding communities? What are the relationships and the notions of those communities according to your direct knowledge of those relationships?

PRESIDENT CANÇADO TRINIDADE: Today, currently.

WITNESS THEODORE MACDONALD: Today there are many conflicts.

IACHR: And the cause?

WITNESS THEODORE MACDONALD: 1995, as you see there, there was only confusion.

IACHR: And to what are those conflicts owed?

WITNESS THEODORE MACDONALD: Principally to the presence and lack of understanding by the presence of the SOLCARSA company.

IACHR: And to what is that owed? Why is there conflict because of that?

WITNESS THEODORE MACDONALD: Because some members of neighboring communities want to take over that land, thinking that the "owner" of the land is going to be the community that benefits.

IACHR: Okay, we are going to show you another map, please. Did you also prepare this map? Is it the same as the one from before, or is there any difference? [See Figure 6 in the Appendix to the Hearing Transcript.]

WITNESS THEODORE MACDONALD: The only difference is the line that we see.

IACHR: Can you please show it with the . . .

WITNESS THEODORE MACDONALD: There is a line that runs through here that we added after the preparation of the first map.

IACHR: The red line only runs through the central part that you indicated?

WITNESS THEODORE MACDONALD: It is not red; it's yellow. But the line itself is.

IACHR: It doesn't run through the northern part of the map?

WITNESS THEODORE MACDONALD: Yes, excuse me. The most notable is that line, but is also runs through here.

IACHR: And what does it represent?

WITNESS THEODORE MACDONALD: It includes the entire southern portion of the Wawa River and the most obvious line that runs through the village's territory.

IACHR: And what does that red line indicate?

WITNESS THEODORE MACDONALD: That is, in the opinion of the Community, the land that they currently claim as theirs and, as we see, it is smaller than the actual territory.

GON: Pardon, Mr. President, but it seems that the Commission is still confused about its line of questioning. Now it is telling us about a study subsequent to 1995 that has not been presented to the Court. So, as a function of the principle of contradiction, there would be a lack of balance if we get into considering this map that no one here in the Court knows, only Mr. Anaya.

PRESIDENT CANÇADO TRINIDADE: I would like to remind you about the understanding we came to in the meeting prior to this hearing, which was that the State would not object at the beginning to the showing of charts and maps, but, if a particular map were objected to, I understand that the Commission would take it into account. Commission delegate?

IACHR: With all respect to the representative of the State of Nicaragua, I would like possibly to refresh his memory that this map does exist in the evidence as Appendix C-4, C-4 to the Commission's complaint, and he can find it there very easily. And as we said in the pre-hearing meeting, we are going to be making reference to the maps and other documents that are already in evidence.

PRESIDENT CANÇADO TRINIDADE: Yes, it is in the evidence.

STATE OF NICARAGUA: Yes, in effect, I became confused because they have talked about maps from 1999 and from 1995.

PRESIDENT CANÇADO TRINIDADE: Yes, I think that with that clarification we can continue, no? Thank you.

IACHR: Please go ahead with the explanation of the line.

PRESIDENT CANÇADO TRINIDADE: Can you please repeat the question?

IACHR: Yes. Doctor Macdonald, can you explain what the red line on that map represents?

WITNESS THEODORE MACDONALD: First, I am going to indicate the red line again so that all understand. Beginning with the Awas Tingni River itself, it runs up here, including the agricultural section that they are currently occupying, and after it follows the Wawa River until Cucun, and after it runs directly to the south and it goes, what we can't see in this projection, it runs through here and comes again to Awas Tingni. It is a polygonal shape.

IACHR: And what does it represent?

WITNESS THEODORE MACDONALD: It represents the actual claim of the community settled in Awas Tingni.

IACHR: And do you know the approximate amount of land in terms of hectares that exists within that area?

WITNESS THEODORE MACDONALD: Approximately sixty-six thousand hectares.

IACHR: Sixty-six?

WITNESS THEODORE MACDONALD: Approximately. I don't know all the details because we are talking about this. In the time that we prepared the map I

have always used general numbers; it is more than sixty-five thousand hectares.

IACHR: Okay, we are going to show another map.

PRESIDENT CANÇADO TRINIDADE: I would just like to remind you of the time allotted and that, after, the State will be given exactly the same time by which the Commission has gone over its limit.

IACHR: We are going to finish now, Mr. President.

PRESIDENT CANÇADO TRINIDADE: Please.

IACHR: This map is also in evidence, for the State, Appendix C-5. Did you prepare this map? [See Figure 7 in the Appendix to the Hearing Transcript.]

WITNESS THEODORE MACDONALD: Yes.

IACHR: And what does it represent?

WITNESS THEODORE MACDONALD: It represents principally the presence of the Korean company, SOLCARSA, on top of the map that we made originally.

IACHR: Can you indicate how this presence is shown?

WITNESS THEODORE MACDONALD: It is shown by the presence of lines and numbers. The lines indicate the lots that are going to be cut annually, and the number indicates the year in which they are going to cut them. One, two, three . . . up to eighteen, and even further to the south. This was going to be the annual cut of wood in this region.

IACHR: Were you present in the Community or in the area when they became aware of that concession to the SOLCARSA company?

WITNESS THEODORE MACDONALD: Yes.

IACHR: And were you with the Community in those days, at that time?

WITNESS THEODORE MACDONALD: Yes.

IACHR: And how did the Community react?

WITNESS THEODORE MACDONALD: In the beginning, there was confusion, misunderstanding, especially by the presence of the family next to it, because they thought they were going to occupy the land they had; the residents of Tuburus, related to those of Awás Tingni, were afraid for their lives because there were bad relations with the family members that lived here.

IACHR: I am referring to the reaction to the presence of the SOLCARSA company, to the concession.

WITNESS THEODORE MACDONALD: In the beginning there was confusion. Then, when they realized what was going to happen, the confusion became conflicts—even armed threats—and conflicts that still have not been resolved. The situation became one of uncertainty, worry, questioning, a certain fear of real conflicts.

IACHR: Thank you, Mr. Macdonald.

PRESIDENT CANÇADO TRINIDADE: Thank you very much to the Inter-American Commission delegation. I now give the floor to the representative of the Illustrious State of Nicaragua to examine the witness if he wishes, the time being extended by fifteen minutes, the same as that of the Commission.

GON (Mr. Castillo): In principle, we think that won't be necessary, Mr. President, because we adapt to the time allotted.

PRESIDENT CANÇADO TRINIDADE: Thank you very much.

GON: I would like to ask a question that does not relate to Awas Tingni, Doctor. I would qualify it as academic because I really know nothing about anthropology. But the first question that comes to my mind when I see a map that supposedly evinces an ancestral presence is whether an ancestral possession and history can be constructed of indigenous peoples of differing ethnic groups.

WITNESS THEODORE MACDONALD: Yes. They have done it.

GON: Since 1945?

WITNESS THEODORE MACDONALD: At that time, it was not necessary because there were no threats. As I mentioned before, the question of boundaries exists, or rather the meaning of boundaries, of our community, that became stronger little by little with more interaction with neighboring communities.

GON: Then you say that there was interaction between neighboring Sumos and Miskitos and that, as a function of that, an ancestral history can be constructed. What population census did you have to document that relationship between Sumos and Miskitos from which a community and a history and an ancestral occupation took shape?

IACHR (Prof. Anaya): I object, Mr. President. I must point out that the relationship indicated by Doctor Macdonald, as stated by the State's representative, is incorrect. He did not say what the State's representative says; that should not be the basis for a question.

GON: I am not attributing any statement to him, Mr. President, I am only asking if he had seen the population census of different periods to be able to affirm that there had, effectively, been a community relationship between these communities, between the Miskitos and the Sumos.

PRESIDENT CANÇADO TRINIDADE: You may proceed.

WITNESS THEODORE MACDONALD: Before the recent conflicts, there was only the feeling of Community Awas Tingni, between them and the Mayagna.

GON: But were you looking at the population census?

WITNESS THEODORE MACDONALD: Population census done by whom? By the Community? Yes.

GON: No sir, by the State. Those are the ones that are official.

WITNESS THEODORE MACDONALD: I have not seen them.

GON: Had you seen any other official document providing evidence of the existence of Awas Tingni prior to 1990?

WITNESS THEODORE MACDONALD: No, but if you will excuse me, no one has attempted to do so either.

GON: Yes, but we are relying on your diagnostic study to determine the existence of the Community, of the history and of an ancestral possession; it is the only piece of evidence before this Court on that.

WITNESS THEODORE MACDONALD: The only evidence that one can use is oral history. I have inquired about the history of the Community at the University, and I have also inquired of my colleagues in the United States, at Harvard, and in Central America on archeology, that is, ancient history, and there is nothing that

contradicts the oral history that I used principally for my study.

GON: You refer to the oral history of Awas Tingni, of the Sumos of Awas Tingni. Why in your study are there no references to the oral testimony and to the oral history of the other local ethnic groups?

WITNESS THEODORE MACDONALD: Those are included in my 1999 study.

GON: But you did not collect the testimony of those ethnic groups?

WITNESS THEODORE MACDONALD: Not in the 1995 study, no.

GON: You only based it on the oral and subjective testimony of the interested party, Awas Tingni?

WITNESS THEODORE MACDONALD: Yes, but as I mentioned before, there is nothing in my 1999 study that contradicts what I said in the 1995 one.

GON: I continue with my questioning, Mr. President. There has been discussion about a map. I would like to know, Doctor Macdonald, how you managed to train six hundred indigenous people, spread out over 156 thousand hectares, ninety thousand hectares, in the difficult science of GPS, in only fifteen days.

WITNESS THEODORE MACDONALD: Well, in the first place, I would like to say that the science is not that difficult. I should have brought the device with me to show you. I bought it in a camping catalogue of the United States. It is very, very easy. It is a matter of standing outside—it can't be done inside or under trees—and turning it on. The interesting thing about all this, I didn't train six hundred people; there were mainly two very intelligent youths. There are certain buttons that must be pressed to make sure the battery doesn't get all used. We don't need to go into more detail. But, for me, the most interesting thing, once I was showing the Community what I was doing to reassure them that I wasn't acting as a spy or anything like that, and one of the youths came to me and said: "You forgot to push that button to turn it on." And I realized immediately that they were understanding that complicated technology, that isn't very complicated; it is a matter of pushing a series of three buttons and holding it in one's hand.

GON: All right.

WITNESS THEODORE MACDONALD: Until the three satellites appear, and there you have it.

GON: You realize, don't you, Doctor Macdonald, that the preparation of the map in the country that the indigenous people of Awas Tingni did, that is

WITNESS THEODORE MACDONALD: Yes.

GON: The interested party in this claim.

WITNESS THEODORE MACDONALD: But putting those points in the device, there is no way to play with those points.

GON: In your testimony, Doctor Macdonald, I also see that you relied on another technique to prepare the maps and that this map was prepared by your assistant. How did a law student in Connecticut, in Harvard, prepare a map in Nicaragua?

WITNESS THEODORE MACDONALD: We used the base notes that came from MARENA, copied in Puerto Cabezas; we transferred electronically all the

data we had input, as I said we had, I, Mr. Charlie Mclean and Jaime Castillo.

GON: Let's conclude then, shall we Doctor, that the interested party at the time prepared the map, that is, the indigenous people and neophytes, such as a law student at Harvard, added to it.

IACHR (Prof. Anaya): I object, because that is a question that insinuates the response and that suggests what it wants that to be and not what the witness is going to say.

GON: I restate my question and I apologize.

PRESIDENT CANÇADO TRINIDADE: Reformulate it, please.

GON: The verification of the map of the indigenous people was made by a Harvard law student, not a cartographer or a specialist on the subject.

WITNESS THEODORE MACDONALD: I have heard that he had learned the GIS system, Geographic Information System. He was a law student, but he was also a computer expert; today, there are many people who do the two things. And

....

GON: Thank you very much.

WITNESS THEODORE MACDONALD: And he was very interested in it. His specialization is environmental law and that is one of the instruments that many lawyers use.

GON: Yes. Do you know what the area that the indigenous community of Awas Tingni claimed before the Regional Council of the RAAN was?

WITNESS THEODORE MACDONALD: Yes.

GON: What was the area, Doctor?

WITNESS THEODORE MACDONALD: The area inside of the red line that we have already shown has

GON: But in your document the Community specified an area; do you know it?

WITNESS THEODORE MACDONALD: Know it in what sense?

GON: The document that the Community presented to the Regional Council of the RAAN, in addition to having a map attached, specified in the literature that it claimed an area of ninety-five thousand hectares. Is there, then, a contradiction between your map and the one that the Community presented?

WITNESS THEODORE MACDONALD: In what?

GON: The area claimed by the Community. You say that your map is fifty-plus thousand hectares or seventy thousand; I don't remember the exact number. However, the Community presented a claim of ninety-five thousand hectares. Do you think that this confusion is due to the fact that we had unqualified indigenous people?

WITNESS THEODORE MACDONALD: No.

GON: And let's call it that, and, I'd like to use a nice word, people from Harvard interested in cartography making these maps?

WITNESS THEODORE MACDONALD: No. What we did was to obtain the data based on the computer system, and we are verifying that now with the folks at the University of Texas who are going to speak later, and I would prefer that they explain how they prepared their map.

GON: Do you know the biodiversity of Awas Tingni? That is, the flora and the fauna existing in the area?

WITNESS THEODORE MACDONALD: Yes, eh . . . I am not a botanist, but I saw the difference.

GON: Do you think that, for this Community, it is necessary to travel fifteen days to go to hunt to obtain its wild game and its mountain pig?

WITNESS THEODORE MACDONALD: If you can show the map again, the answer is yes, because there is a big difference between the physical geography of what is currently Awas Tingni and what before was Tuburus.

GON: What is the distance between Tuburus and Awas Tingni, Doctor?

WITNESS THEODORE MACDONALD: Twenty-one miles.

GON: Twenty-one miles. Approximately how much is that in kilometers?

WITNESS THEODORE MACDONALD: One kilometer is 0.6, so it would be . . .

GON: About sixty kilometers.

WITNESS THEODORE MACDONALD: No.

GON: Fifty kilometers.

WITNESS THEODORE MACDONALD: No, about . . .

GON: I don't know; I'm not a cartographer. (Voices are heard shouting "thirty.")

WITNESS THEODORE MACDONALD: Thirty, something like that.

GON: I am just a lawyer.

WITNESS THEODORE MACDONALD: Yes.

GON: A couple of final questions, Doctor. Do you understand the relationship between the concepts of a concessioned area and an environmental management plan?

WITNESS THEODORE MACDONALD: Yes.

GON: Could you explain them to us?

WITNESS THEODORE MACDONALD: Well, an environmental impact plan can come from an environmental organization, it can come from the State, it can come from any interested party; it can come from the Community itself.

GON: But you agree that, when the State concedes an area, there is not immediate exploitation of the entire area, but rather an annual execution of segments of the concessioned area?

IACHR (Prof. Anaya): I object.

PRESIDENT CANÇADO TRINIDADE: There's a point of order, yes.

IACHR: Mr. President, once again the State's representative is testifying for himself and asking questions outside of the scope of Doctor Macdonald's testimony and . . .

PRESIDENT CANÇADO TRINIDADE: No, it's not so much the question but rather the way it is asked.

GON: Doctor, in your testimony, you indicated that the State had authorized a concession to SOLCARSA and then showed pictures, within that concession, that represented the areas that were going to be exploited annually, is that right?

WITNESS THEODORE MACDONALD: Yes.

GON: That is all, Mr. President.

PRESIDENT CANÇADO TRINIDADE: Thank you very much to the Agent of the State of Nicaragua. Let us move now to the following phase of questions from the judges; I ask Judge Montiel Argüello whether he has any questions?

JUDGE MONTIEL ARGUELLO: No questions.

PRESIDENT CANÇADO TRINIDADE: Judge de Roux?

JUDGE DE ROUX RENGIFO: Yes, Mr. President.

PRESIDENT CANÇADO TRINIDADE: You may proceed.

JUDGE DE ROUX RENGIFO: I would like to ask the witness if he would clarify the forms of exploitation of the soil of the area of the Awas Tingni Community. Are they individual forms of appropriation and soil exploitation? Are they collective? Are they mixed? What can you tell us about that?

WITNESS THEODORE MACDONALD: It is a communal system, but inside the communal system there is individual usufructory use. This means that one cannot sell or rent that territory to people from outside of the community. However, inside of the community, certain individuals use a lot, it can be called an area; sometimes, year after year, the community respects the usufructory rights but does not respect the right to abuse the usufructory right, attempting to sell it or rent it. Am I clear?

JUDGE DE ROUX RENGIFO: Yes. Now I would like you to explain to us the following. The lands that were given in concession to SOLCARSA, what rights did they give to SOLCARSA in relation to the natural resources? Could it cut down all of the wood? Could it cut down the entire forest? Does it only have the right to cut down a determined type of tree? What would happen with the rest of the vegetation? What would the consequences, the effects, of the concession be *in situ*?

WITNESS THEODORE MACDONALD: I don't know exactly how they were going to cut down the trees, what their plan was; I am not aware of their management plan nor their work plan.

JUDGE DE ROUX RENGIFO: Thank you.

WITNESS THEODORE MACDONALD: I cannot answer. I can guess, but it is nothing more than a guess.

JUDGE DE ROUX RENGIFO: Okay, okay, thank you very much. Thank you, Mr. President.

PRESIDENT CANÇADO TRINIDADE: Thank you. Judge García Ramírez?

JUDGE GARCIA RAMIREZ: Thank you, Mr. President. Mr. Macdonald, this usufruct, this right of usufruct perhaps, as you call it, how is it acquired, how is it lost, how is it transmitted, if at all; how is it enjoyed?

WITNESS THEODORE MACDONALD: In many cases it is inherited. The son obtains it from his father, something like that, and he can keep it forever, using the same land, passing it on. But mainly it is a chorus of consensus of the community. If someone says: "Okay, I'd like my neighbor to obtain the usufructory right," and the community approves that, it is possible for individuals to exchange rights among themselves. The important thing is that it is only a right

of use. It is not a right to sell or rent, nor to do something that is not related to the continuity of the community.

JUDGE GARCIA RAMIREZ: So it is acquired by succession? And it can also be transmitted to the descendants by succession? Is there a line of transmission that has to do with the family?

WITNESS THEODORE MACDONALD: In general that is what happens, but one can, as you mentioned, transfer it to another family. But it has to be a member of the community, and it has to be with the consensus of the community, to avoid conflicts more than anything else. That some guy is taking over my lot, enjoying it. That has nothing to do with the sale or renting of the territory.

JUDGE GARCIA RAMIREZ: Whoever benefits from that usufruct, is he thus able to exclude, from the use of that land, from the enjoyment of that land, all other members of the community?

WITNESS THEODORE MACDONALD: Yes, yes. It's possible that this is the lot that I've occupied for three generations and please respect it . . . and, in general, the community respects it . . . and I have worked in various Latin American countries, in similar environments, and it is a very, very common system, and the usufruct invasions of the Sumos are very rare and, in general, the community controls it.

JUDGE GARCIA RAMIREZ: You mention Latin America; have you worked in Mexico?

WITNESS THEODORE MACDONALD: No.

JUDGE GARCIA RAMIREZ: Where have you worked?

WITNESS THEODORE MACDONALD: Well, I have worked here in Nicaragua. Currently I am carrying out a project on land conflicts that includes Venezuela, Colombia, Ecuador, Peru and Bolivia.

JUDGE GARCIA RAMIREZ: I ask you because I would like you to tell me, if it is possible, to what other form of enjoyment of land in any area of Latin America, does that to which you referred resemble?

WITNESS THEODORE MACDONALD: Almost all the indigenous communities work that system.

JUDGE GARCIA RAMIREZ: Thank you.

PRESIDENT CAÑADO TRINIDADE: Thank you very much. Judges Abreu Burelli? Judge Jackman? Judge Salgado Pesantes? Judge Pacheco Gómez?

JUDGE PACHECO GOMEZ: No, Mr. President, thank you.

PRESIDENT CAÑADO TRINIDADE: I have just one question. In response to one of the questions of the Agent of the Illustrious State of Nicaragua, you referred to a relationship with the Mayagna Community, and I am referring to the expression "in the sense of boundaries." Could you elaborate, explain to us of what that consists, in the cosmology of the Community, this "sense of boundaries?"

WITNESS THEODORE MACDONALD: Yes, I mention sense because, in the beginning, there were not many conflicts over this. They had an idea of their territory; the idea comes, as you mention, from the cosmology. If you could show

me the map, that would help.

Those hills are the main ones, according to them; inside of those hills live the spirits of the mountain, chiefs of the mountain, that in Mayagna are called Asangpas Muigeni. They control the animals around that region.

In order to harvest those animals, there must be a special relationship with the spirits of the mountain. On many occasions, the *cacique*, also a kind of shaman that they called Ditelian, can maintain that relationship with the spirits; then the presence of the animals and the possibility of using the animals, through hunting, is based on the cosmology and has a lot to do with the boundaries because, according to them, those masters of the mountain are the owners of the animals, especially the mountain pigs that roam in herds, and they roam around the mountains. And to be able to take those animals, there must be a good relationship with the spirit that lives inside the mountain. To achieve that good relationship, time must pass, so there is a strong bond within the cosmology, with these sacred sites, the spirits that live inside and their brothers that are members of the Community, that have special relationships—spiritual, they can be called—with the animals of the mountain that allows them to go to the hunt. That is their sense of being with the territory.

PRESIDENT CANÇADO TRINIDADE: And, lastly, on the same point, are there sacred places in the boundary areas?

WITNESS THEODORE MACDONALD: Near the border areas, yes. There are two types of sacred places: cemeteries, that are frequently visited even today by the members of the Community. Those are located between those points that we see here. They are sacred places along the Wawa River; they are old settlements and they include cemeteries because the people bury their members inside of the Community, and when they go hunting, they visit those places. They also take advantage of the hunt to visit their predecessors. At the same time, they are relating to the spirits of the mountain. So it is, up to a certain point, it is a spiritual act, to go hunting, and it has much to do with the territory that they enjoy.

PRESIDENT CANÇADO TRINIDADE: And the second type? You mentioned the first type that is the cemeteries, and the second type of sacred areas?

WITNESS THEODORE MACDONALD: Oh, excuse me; they are the hills.

PRESIDENT CANÇADO TRINIDADE: The hills, the hills. Thank you very much, thank you very much. With this, we conclude the testimony, thank you very much.

WITNESS THEODORE MACDONALD: Thank you very much to you too.

PRESIDENT CANÇADO TRINIDADE: Next will the Secretary please call the expert to testify.

SECRETARY VENTURA ROBLES: Don Rodolfo Stavenhagen.

PRESIDENT CANÇADO TRINIDADE: Will the expert please state his name before the Court?

EXPERT RODOLFO STAVENHAGEN: My name is Rodolfo Stavenhagen.

PRESIDENT CANÇADO TRINIDADE: Nationality?

EXPERT RODOLFO STAVENHAGEN: Mexican.

PRESIDENT CANÇADO TRINIDADE: Number of identification document?

EXPERT RODOLFO STAVENHAGEN: Mexican passport 97390014731.

PRESIDENT CANÇADO TRINIDADE: And place of residence?

EXPERT RODOLFO STAVENHAGEN: Place of permanent residence, Mexico City, Federal District.

PRESIDENT CANÇADO TRINIDADE: Mr. Secretary, please read the statement of the Court to all giving testimony.

SECRETARY VENTURA ROBLES: The expert must limit his testimony to answering clearly and precisely the question asked him, stating only the facts or circumstances that prove them in relation to his expertise. The expert is notified that he was cited by the Court to testify about the following facts:

He will testify on indigenous peoples and their bonds with their ancestral lands.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may indict neither the witnesses, nor experts, nor may it take retaliatory measures against them or their family members because of their testimony or reports given before the Court. And the Court may request that the States apply the sanctions available within their legislation against whomever does not appear or refuses to be deposed without a legitimate reason or whom it appears to the Court may have violated the oath.

PRESIDENT CANÇADO TRINIDADE: The expert will now take the oath. Do you solemnly swear or declare that you will exercise your position as expert with total honor and total conscience?

EXPERT RODOLFO STAVENHAGEN: I do.

PRESIDENT CANÇADO TRINIDADE: Will the Inter-American Commission's representative please indicate to the Court who will conduct the questioning of the expert?

IACHR (Dr. Bicudo): With the blessing of the Honorable President, I will conduct the questioning.

PRESIDENT CANÇADO TRINIDADE: You may proceed; thank you very much.

IACHR: Thank you. Professor Rodolfo Stavenhagen, what is your profession?

EXPERT RODOLFO STAVENHAGEN: I am an anthropologist and sociologist.

IACHR: And your academic preparation?

EXPERT RODOLFO STAVENHAGEN: I have a master's in anthropology from the National School of Anthropology and History of Mexico, and a doctorate in sociology from the University of Paris.

IACHR: Professor Rodolfo Stavenhagen, what is your professional experience in relation to indigenous peoples in America?

EXPERT RODOLFO STAVENHAGEN: Almost half a century ago, I began to work at the National Indigenist Institute of Mexico. For several years, I have done research among indigenous communities and peoples of Mexico, and of Bolivia. I worked in academic institutions, doing research and giving classes on subjects

connected with indigenous peoples and farmers. I have collaborated with international institutions on indigenous issues. In 1986, I was elected Rapporteur President of the Commission of Experts of the International Labor Organization that prepared the first draft of the Covenant 169, subsequently approved by the General Conference of the ILO. For several years I was President of the Directive Council of the Indigenous Peoples' Development Fund of Latin American and the Caribbean, an organization created by the Ibero-American Summit. I am Vice-President of the Inter-American Institute of Human Rights, where I have collaborated to develop some of the Institute's activities on indigenous human rights. I have published some books on the topic.

IACHR: Do you know the situation of the indigenous peoples on the Atlantic Coast of Nicaragua?

EXPERT RODOLFO STAVENHAGEN: I know it by reference; I do not know it directly.

IACHR: What can you tell us about it?

EXPERT RODOLFO STAVENHAGEN: Well, I can speak in general of the problems indigenous peoples face on our continent in different countries and under different circumstances, beginning with the situation of discrimination, of marginalization, to which they have been exposed for a long time for historic reasons—dating from the time of the conquest and the colonization—and with the current situation which, happily, has been changing for the past several years, due to legislative changes in many of our countries, to constitutional changes, to the growing consciousness in the public opinion and that is also being incorporated within the legal system—nationally as well as internationally—revolving around the claims and demands that indigenous organizations have presented starting some years back in our countries as well as at the international level.

IACHR: How can indigenous peoples be conceptualized in America?

EXPERT RODOLFO STAVENHAGEN: Well, indigenous peoples are usually defined as those social and human groups—identified in cultural terms, in ethnic terms—that keep a historic continuity with their predecessors from the period prior to the arrival to this continent of the first Europeans. This continuity is noted in the forms of organization, in the culture itself, in the self-identification that these peoples create for themselves, and also in the use—in most cases—of a language, the origins of which are pre-Hispanic. These peoples are known in our countries precisely because they maintain ways of life and culture that distinguish them from the rest of society and they are also considered by the rest of the society, especially the Spanish- or Portuguese-speaking society—depending on the case, and they are also considered this by the part of the population called *mestizo*—as distinct from this group that, at times, is the majority but that, in all cases, is dominant; and also because, in the third place, because for well-known historic reasons the indigenous peoples in our continent have traditionally been subordinated to and marginalized by discriminatory economic, political, social structures that many times have kept them in a position of subordination—practically of second-class citizenship—and this has happened in spite of our

legislation. Formally, indigenous peoples have, well, the same rights that non-indigenous peoples have. But in reality, in the historic reality lived by the majority of the indigenous peoples, this formal citizenship is like, at times it is said, an imaginary citizenship because, in reality, they continue suffering in many cases, these forms, that I would call structural forms of discrimination, of social exclusion, of marginalization.

IACHR: Fine, and today, the relationships between these indigenous communities and the other communities in the Atlantic Coast of Nicaragua?

EXPERT RODOLFO STAVENHAGEN: Are you asking me about Nicaragua in particular?

IACHR: Nicaragua in particular, in particular Nicaragua.

EXPERT RODOLFO STAVENHAGEN: Well, as I said I, I don't have direct experience in the knowledge of those peoples of Nicaragua. I do, however, have some knowledge of the ethnographic literature, of the anthropological literature of Nicaragua, and I have read reports that have been done by specialists with respect to the situation, above all of the Nicaraguan Atlantic Coast. Peoples that, as I understand, have been traditionally marginalized from the central power in Nicaragua and that have been connected to some economic, or political, or international interest, but that nonetheless have been very conscious of their cultural identity, of their self-perception, their social perception, as social groups with a historic continuity with the past, with a bond with the land, with a bond with economic activities and with their own forms of organization that have distinguished them from the rest of the Nicaraguan population.

Because of well-known events, the Nicaraguan State has, for many years, carried out policies of incorporation, of integration, of these populations that are called the Atlantic Coast to the National State, with some results which I would call very positive concerning the national integration of the country, but that also have produced tensions among the indigenous population of this area, with the rest of the society, particularly because the processes that we could call modernization, the processes of incorporation—that also are carried out in many other Latin American countries—violate some of the fundamental rights of these populations, that put their survival in danger, as social groups identified with a collective personality and with a singular ethnic identity.

IACHR: Because of what you are saying, I would then ask that you please explain to the Court the character and nature of the relationships between indigenous peoples and the land.

EXPERT RODOLFO STAVENHAGEN: Well, effectively, this is a fundamental issue in the definition of indigenous peoples. All anthropological, ethnological studies—all the documentation that the indigenous populations themselves in recent years have had the opportunity to present to the public opinion—all the reports that governmental experts and international experts of different types of multilateral organizations show one fundamental thing: that the bond between indigenous peoples and the land is an essential bond that gives and maintains the cultural identity of these peoples. And here one must understand the

land to mean not a simple instrument of agricultural or other type of production, not the land as a factor in production as economics tells us, but rather, the land as a part of the geographic space and the social space, of the symbolic space, of the religious space with which the history of indigenous peoples is connected and with which the current functioning of those same peoples is connected. The majority of the indigenous peoples in Latin America are peoples whose essence is derived from their relationship with the land, be it as farmers, be it as hunters, as gatherers, as fishermen, as gardeners, etc. Although we know very well that there are hundreds of thousands—if not millions—of indigenous farmers who have gone to cities and have migrated to other parts, the bond with the land is essential for their self-identity. Thus, the concept of the land must be extended beyond that which a certain modernity asks that we see it as land, as simply, as I said a moment ago, an instrument of production, one more variable of an economic equation when, in reality, it is something that gives life to an entire culture, to an entire nation. So this land is connected as the concept of territory, no? A territory as a geographic space, as a physical space, but also as a social and symbolic space with which the culture identifies itself. There is an old saying that says that the Indian without land is a dead Indian. And I think that is valid for many of the indigenous populations of our countries. Also, the indigenous organizations themselves and the declarations of the indigenous movements always tell us that the land does not belong to us, but rather, that we belong to the land. The bond is fundamental in that the fertility of the land, the fertility of the people, the physical health, the mental health, the social health of the indigenous people is connected with the concept of the land. And I think that this concept is deeply rooted, very entrenched in the very culture of the indigenous peoples, something that, unfortunately, those of who live in the cities, those of us who have disconnected ourselves from our natural origins are no longer able to understand.

IACHR: Professor, following this question, I would like to know, and to inform the Honorable Court, what, to your knowledge, has been the practice and policy of the States with respect to indigenous land?

EXPERT RODOLFO STAVENHAGEN: This is a long and, I would say, sad history and dramatic history in Latin America, as it has been in other parts of the world. We know that, before the conquest and colonization, and before the formation of nation states, indigenous peoples and their lands, their territories were a whole, a single whole. To this was then added or superimposed, in well-known historical periods, the Nation State, in which the majority of countries assumed eminent domain over lands that ancestrally belonged and belong to the indigenous peoples. In the republic period of our countries in the 19th and the 20th centuries, the Nation State declared large geographic spaces of the American territory to be wastelands, national lands, establishing laws with respect to them and assuming, let's say the right, assuming for itself the right to dispose of those lands as best it saw fit, without taking into consideration the original rights, the historic rights, including the physical presence of indigenous peoples, more or less numerous, organized in different ways on these lands since time immemorial.

And it is possible that this does not affect the indigenous peoples, as long as there are not third-party interests that want to occupy or use these lands that the State suddenly decides belong to it. The tension and the problems arise when the States decide to title these lands or give concessions or allow clearing, allow the incorporation of these lands into other specific ends or diverse economic interests, and when indigenous peoples begin to have pressure put on them in a different way is when, suddenly, many indigenous peoples realize that they are not really, juridically speaking, legally speaking, the authentic owners of the territories they traditionally occupy. When suddenly a regulation, a decree, a rule, a public functionary appears and says to them: "Well, this is set aside for these . . .," or doesn't even tell them; rather, they simply appear there, people or companies or functionaries that have the lands, the forests, the rivers, the waters, at their disposal, without even taking into consideration the acquired interests, the acquired rights, the current interests of the indigenous peoples. And it has only been in recent decades, few decades, that the indigenous peoples have begun to organize themselves to resist and realize that they have to do something to legally safeguard and protect these lands because, if not, the State will not even recognize those ancestral rights. Happily, now, in recent years, what I think is an international norm has been developing, that we all know, through the ILO, through the United Nations, including in the Inter-American system and, of course, at the level of many national laws, of constitutional modifications, in the last fifteen years that recognize that, in effect, indigenous peoples have rights that must be respected. The bad thing is that, many times, as we know, there is a big divide between what the law says and what happens in reality. And so, many indigenous peoples are cornered, no? Because these third parties or the states have made decisions without even taking them into account, to dispose of those traditional lands. I think that the list is just numerous, just numerous, very long the list of cases in practically each one of our countries where indigenous peoples are present, in which this has not only happened in the past, but it is also happening right now.

IACHR: Two more questions. If I am not wrong, Professor, you have said that you have heard of ethnographic reports on the problem. I would like you to tell us specifically if you know the report of Doctor Professor Theodore Macdonald on the Awasi Tingni Community?

EXPERT RODOLFO STAVENHAGEN: Yes, I have read Professor Ted Macdonald's report on the Awasi Tingni Community.

IACHR: Can you comment on the methodology and conclusions of the study?

EXPERT RODOLFO STAVENHAGEN: Look, within my capabilities, without having been in the region and known the Community directly to be able to recall, or I mean, either confirm or disagree with the author, I think that this study, in my understanding, responds to all the requisites of a serious, deep study, methodologically responsible in ethnographic research, above all because it is based on the use of multiple sources, on the use of concepts that come from various disciplines: from anthropology, from geography, from economy, etc. The

researcher, apparently, from what I have seen in reading the study, has made extensive trips in the area, has interviewed many, many people, has obtained information from direct research, which is what we anthropologists generally do, and, in addition, has relied on the critical analysis of a lot of documentation that is not always easily obtainable to document the results to which he leads us.

IACHR: With the permission of the Honorable Court, to clarify your testimony, do you have anything else to add?

GON (Mr. Castillo): Mr. President.

PRESIDENT CAÑADO TRINIDADE: The State has the same five additional minutes at its disposal that the Commission did, and I would like to propose a consensus solution: that the issues the expert wishes to add be in response to the questions of the judges at the end.

IACHR: Okay. Thank you very much.

PRESIDENT CAÑADO TRINIDADE: Thank you very much for your understanding. I now give the floor to the Agent of the Illustrious State of Nicaragua to ask questions and indicate the persons or person who will do the questioning.

GON: Yes, maybe as a point of order for the Court to reflect on and tomorrow night tell us its opinion about. Nicaragua does not agree with this system that each of the parties increases its time and obliges us, maybe unnecessarily, to use time we do not need.

PRESIDENT CAÑADO TRINIDADE: Delegate of the Commission.

IACHR: If you will allow me, I think, at least I remember that in the pre-hearing meeting, it was agreed that the expert would speak for thirty minutes.

PRESIDENT CAÑADO TRINIDADE: That's the way it was. That is why there was an excess of five minutes; I would ask the good faith of the parties, but we will take into account what the State has brought up for tomorrow's witness and expert testimony. Thank you Agent and Delegate. You may proceed.

GON (Mr. Castillo): I would like to begin by paying my respect to Doctor Stavenhagen, whose works I have read; some of them have allowed me to learn about the situation of indigenism in each one of our countries of the people here. I would also like to begin by specifying something, stated by you, Doctor, and it is that you indicated that you have no personal knowledge, direct knowledge, but rather purely academic knowledge of the concrete facts and situations relative to this specific case. I understand that that is part of your statement, and I am not asking about that; I am only repeating something you said. Upon that basis, Doctor, I am not going to have the discourtesy of asking you if you know how many indigenous communities there are in Nicaragua, or if you know how many have been issued title, or if you know what the process of titling or the material problems inherent in the problem have been, because you have said that your reference is purely academic and from a tertiary source. But I would like to take advantage of your scientific knowledge, Doctor, to ask you a couple of specific questions. The first is related to ancestry: you associated ancestry to a pre-Colombian presence in a specific area. Can a community that has admitted to

establishing itself in a specific place in 1945 sustain the notion that it has ancestral possession in pre-Colombian terms as you explained, Doctor?

PRESIDENT CANÇADO TRINIDADE: Yes.

IACHR (Prof. Anaya): I object again, Mr. President; the State representative is alleging something that has not been established, he says that the Community has only been there since 1945. The record says something else.

PRESIDENT CANÇADO TRINIDADE: I would like to submit for your reflection that this is expert testimony, and the expert has total liberty to express any opinion because it is not witness but, rather, expert testimony. So he may respond and express his opinion with total freedom.

GON: To clarify, Mr. President. I did not speak of Awas Tingni; I spoke of a community.

PRESIDENT CANÇADO TRINIDADE: That is why I would like to remind you that the aim of the expert's statement is to testify on indigenous peoples and their bond with their ancestral lands in general. He can state any opinion because he is an expert.

GON: Then I will repeat the question. Can a community that has settled in a place in 1945 sustain the notion that its occupancy is ancestral, in the pre-Colombian terms as you have explained?

PRESIDENT CANÇADO TRINIDADE: You may answer.

EXPERT RODOLFO STAVENHAGEN: Thank you, Mr. President. In effect, yes, I would maintain that position, for the following reason: the continuity is established in terms of the historic continuity of group X, whichever it is, that, for centuries, has maintained an identity from which it derives precisely its current situation in the country in issue. The fact is that for reasons of historic changes, economic depressions, of political violence, civil wars and other things, but above all, for the pressures of the dominant economic system that, throughout the centuries, has pressured and has confined indigenous peoples to areas that, let's say didn't appeal to the first invaders or colonizers or later the big companies and this has forced many, many indigenous groups to find new habitats, to find refuge in different regions, to be able to maintain this historic continuation precisely without the intervention of foreign forces, precisely to maintain their liberty and their rights to live as they understand them. Many cases can be documented in my own country. For example, there is a group descendent of the Maya called the Lacandones in the jungle in the southeast of Mexico, in the jungle of Chiapas. And the anthropological testimonies tell us that these Lacandones have not always been there. But they were forced to find refuge in the jungle when their cities, their ceremonial centers, their pre-Hispanic civilizations, were destroyed. And they have existed there to date. And, at this time, the few that remain of the Lacandones are also fighting to conserve a little of those territories, of those lands that they consider, and legitimately, I would say, to be theirs. That is one example. Many more examples could be given, and I don't think that the fact that whichever community may have moved from one place to another, in relatively recent historic periods, in any way puts the right in doubt, in my judgment, the

right that this community has, through its historic continuity with its pre-Hispanic origin, to maintain its identity as an identified indigenous people. Thank you, Mr. President.

GON: Mr. President, considering that Doctor Stavenhagen's statements—because they are related to international indigenism, with other communities around the world—he has no specific information to bring with respect to the specific case that concerns us, so I will abstain from asking further questions. Thank you, very much.

PRESIDENT CANÇADO TRINIDADE: Commission Delegate?

IACHR (Dr. Bicudo): I think that it is not fair play to be generalizing things so as to prevent that scientific information, which is not about the whole world but is rather specific to the indigenous problem, be alleged by the expert. I think that is not the best way to proceed.

PRESIDENT CANÇADO TRINIDADE: Agent of the State?

GON: Mr. President, it seems that Doctor Bicudo wants to force me to continue asking, and I have already given up my right.

PRESIDENT CANÇADO TRINIDADE: Fine; for the reason expressed by the Agent, we thank both parties and move to the second phase of the Hearing, which is the questions of the Judges . . . that can be as broad as they like. I thus confer with the judges as to whether they have questions. Judge Montiel Argüello? Judge De Roux?

JUDGE DE ROUX RENGIFO: Yes, Mr. President.

PRESIDENT CANÇADO TRINIDADE: You may proceed.

JUDGE DE ROUX RENGIFO: Doctor Stavenhagen, I would ask you to illustrate the following. The Court has received information, according to which the indigenous communities of the region that concerns us, the east of Nicaragua, the communal forms of property are combined with an assignment of parcels to members of the Community for them to exploit. The Court will possibly have to deal with the need to create a—or resort to—a group of concepts that might allow it to deal with the combination of those two forms of tenure and exploitation of land, and maybe it will find itself with problems because the conceptual tool it uses is a modern legal conceptual tool that you have called modern—concepts such as dominion, property, a form of property perhaps, usufruct, etc. From the legal interpretation, you have explained what an anthropologist and sociologist is, and I would, in any case, like to ask you to illustrate your perception on the manner in which a collective appropriation is combined, as is combined in this case, that I daresay is like an assignment of parcels to individuals within the Community. From all of your knowledge on the indigenous ethnicities in America and what you also know about the indigenous communities of Nicaragua in the region to which I made reference, I would ask that you give us some elements to illustrate whether we are in fact confronting an essentially communitarian, collective property, or if we are confronting an individual appropriation covered by a cloak of communitarian forms of appropriation. What is your perception on the issue?

EXPERT RODOLFO STAVENHAGEN: With pleasure, Your Honor. Traditionally, the indigenous communities and peoples of the different countries in Latin America have had a communal concept of the land and of its resources. The anthropological literature shows us that in many parts of Latin America. Of course, this communal land varies from country to country, and it also varies as a function of the type of economic and social organization the indigenous peoples have, and I would say that we could make a very summary distinction, maybe too superficial, between the two ideal models—in the Gregorian sense, if necessary—of organization: that would be the lowlands, including the Amazonian Basin, the Caribbean region, and the highlands. Traditionally, in the lowlands, indigenous peoples have carried out rotational subsistence farming, of slash and burn, especially in the tropical forests, if they do farm, but in any case, they also frequently combine this rotational subsistence farming with other activities that require a relatively bigger economic space than that for a common agricultural parcel—a *milpa*, as we would call it in Mexico. And so, the space in which this type of farming is rotated, sometimes in an almost semi-nomadic fashion, in a collective space. And so the local authorities of each community have their own mechanisms, uses and customs; that is, a customary right, lived, practiced daily, to equitably distribute the access among the domestic units, the families that make up one town or another, and we have seen that, according to the technology, the productivity, the ecological sustainability, the productive capacity, that this rotation can last for several years; four, five, seven years of one people moving around, occupying spaces before returning again to the original place where the vegetation has regrown and again allows for farming. This occurs often in the lower areas, and is very different from high zones that are more densely populated. For example, in the Andes range and in the part of Mesoamerica where there are more permanent settlements and there is also a more permanent distribution of parcels, or lots, for the members of the community to engage in subsistence agricultural practices: corn, sweet potato, potato—*la papa*, as we call it—rice, pardon, yes, rice as well, etc., etc., no? But this tells us that there are two concepts of collective land: first, the territory generally that the community considers as common to the community but, internally, the community has mechanisms to assign possible use and occupation to its own members that does not allow alienation to others from outside of the community. And second, that which represents the lands that are really the areas of sole and exclusive collective use; “the commons,” as they would say in the, shall we say, English, period, that do not get divided into parcels. So almost all indigenous communities have a “commons” part, a part of collective use and then another part that, for many reasons, can be divided and assigned to families or to domestic units. Whichever the use given it, however, the concept of this as collective property is maintained, so that when it is not titled, it is put into doubt by others, by the State itself many times. But when these problems arise, the need to title the land arises because, if not, the community risks losing everything, and the entire history of Latin America has been, well, a dispossession, practically permanent, of indigenous

communities by external interests. Now, due precisely to the imposition of these interests, of this private right that the Roman law establishes in our legislation and constitutions, there are also pressures, so that those inside the communities, those who have the right of usufruct or occupation, title those parcels in some way; that they have some document, as we say in Mexico, “the paper talks.” So, if I have a paper to show that I and my family, my father, my mother, my uncles, my grandparents, have occupied this little parcel, then I show that inside the community, this is mine. What happens is that then State says: “Ah, good that is private property, I recognize it as your private property, no? And you can sell it or you can rent it out.” And that breaks with the community’s tradition. And, in Mexico, we have tried to eliminate this a few times, in the Mexican Revolutionary period, with the provision of the *ejidos*. The thing is that, for various reasons, the system has been in crisis, and, in some cases, it has protected and maintained this communal property, including individual usufructory rights; in others, it has effectively destroyed the community as a collectivity, shall we say, of communal property.

JUDGE DE ROUX RENGIFO: Yes, pardon, I’d like to ask you for two brief clarifications. If I understood correctly, you have described to us two forms relating to the land: a highlands model and a lowlands model. If I understood correctly, you have expressed that, also in the highlands, there are communitarian forms of appropriation, but with a more stable assignment of the individual parcels.

EXPERT RODOLFO STAVENHAGEN: That is correct.

JUDGE DE ROUX RENGIFO: Yes, sir. My second clarification: the final of those two ideal models—ideal types, or ideal as you called it—the communities of the west of, pardon, of the east of Nicaragua, to which of those two would they belong?

EXPERT RODOLFO STAVENHAGEN: I think they belong to the lowlands model.

JUDGE DE ROUX RENGIFO: Thank you very much, Doctor Stavenhagen. Thank you, President.

PRESIDENT CANÇADO TRINIDADE: Thank you. Judge García Ramírez?

JUDGE GARCIA RAMIREZ: Thank you, Mr. President. Mr. Stavenhagen, you have expressed your qualification as a sociologist and anthropologist—eminent, by the way—not necessarily a jurist, but you have profoundly explored the rights of indigenous peoples and have also done it with a human rights perspective. I would like to know your point of view on the human rights of indigenous peoples. The relationship of the indigenous person leads us to formulate a special type, a special form of human right. What is the indigenous community’s and the indigenous individual’s experience from the point of view of his rights, from his rights having to do with the land, and how would you characterize this experience—if it can be said that way—from the human rights angle that you have so broadly explored?

EXPERT RODOLFO STAVENHAGEN: Your Honor, you ask me the \$64

million, or 64 million peso, question. Effectively, I believe it is a fundamental problem, no? Of course, as you have indicated, because they are human rights, they are essentially human and belong to the human person. However, in certain conditions, in certain circumstances, in certain historic contexts, the rights of the human person are guaranteed and can be fully exercised only if the rights are recognized of the collectivity and the community to which this person belongs from birth, and of which he is a part, and which gives him the necessary elements to be able to feel fully realized as a human being. That also means a social and cultural being. The opposite side of this affirmation is that, in violating the rights of a community—whichever it is, linguistic, religious, ethnic, cultural, indigenous person or not, but it applies, of course, in the first place to indigenous peoples—in violating the rights of these communities to continue subsisting as they are and to be able to reproduce as these unities and identities that they are historically; I am convinced that a basic, fundamental human right is violated, or a series of basic human rights: the right to culture, the right to participation, the right to an identity—including the right to survival—and that is what a number of studies on indigenous peoples and communities in the Latin American region have shown us. So, in the current phase of the discussion of human rights, I consider that due to the circumstances that we know, of the ways of life of indigenous peoples, of the pressure that is put on them, the international community of human rights and the right to human rights—if it can be put in that way—has the challenge to develop new concepts and new norms that, without in any way injuring or encroaching on the human rights of the person, of the individual, to the contrary, would enrich them by recognizing the social and cultural reality in which these violations occur.

JUDGE GARCIA RAMIREZ: Thank you, Mr. Stavenhagen.

EXPERT RODOLFO STAVENHAGEN: Thank you, Judge.

PRESIDENT CANÇADO TRINIDADE: Thank you very much. Judge Abreu Burelli? Judge Jackman? Judge Salgado Pesantes? Judge Pacheco Gómez?

JUDGE PACHECO GOMEZ: No, Mr. President.

PRESIDENT CANÇADO TRINIDADE: I do have only one question for the expert. Professor Stavenhagen, in your statement you referred to the land not only as a factor of production, but also as a social and religious space. I would like to know if, in your opinion, that conception has been accepted by all indigenous customary laws and, if so, if it has also been adequately accepted by the internal public law of the State and the international human rights instruments.

EXPERT RODOLFO STAVENHAGEN: Yes, Mr. President, I think that what we generically call indigenous customary law—which, of course, is neither a structured body nor much less codified, because then it would not be customary law—is a series of real practices that are carried out differently in different communities to resolve a series of problems: administration of justice, conflict resolution, maintenance of internal order, regulating interpersonal relationships, connection with the outside world, etc., etc., no? Within this totality of what we could call customary law, effectively, the land is seen as a community of human beings with spiritual beings through the connection with the territory, with the

forest, with the sacred sites. That is what gives it significance, what gives meaning to the community. That connection with that territory, and that does not need to be written down, because everyone lives it daily, because everyone knows it, because the behavior of the people is in this direction. You go, Mr. President, to whichever indigenous community of our continent and ask the people, they can immediately indicate: here, in this place, there is this religious symbol; here, our predecessors are buried; here, we go to give an offering before killing an animal or to hunt an animal; or here, is the Pachamama, the Mother Earth, who gives us permission to cultivate the soil and that assures the continuity of our culture because we respect our Mother Earth. So all of this forms part of the indigenous cosmology, and it always has been part of it. What happens is that right now this cosmology is in danger of disappearing and, happily, what is being done is that—as I said a while ago—in the positive state law it is being adopted; indigenous public international law that is being constructed is adopting it; the works of the United Nations adopt it, in the Draft Declaration of Indigenous Rights; the OAS is adopting it in the Draft on Indigenous Rights; the International Labor Organization's Convention 169 is adopting it, etc. What happens is that it is merely being given a formal recognition, in one or two words, but we still have not been able to move forward much on the regulation of the recognition of these rights.

PRESIDENT CANÇADO TRINIDADE: Is that to say, for example, that ILO Convention 169 adopts it, but not in a sufficiently adequate manner?

EXPERT RODOLFO STAVENHAGEN: It may be recognized at a level of generality that challenges us to translate it into effective rules and regulations at the national level.

PRESIDENT CANÇADO TRINIDADE: Thank you very much, Professor Stavenhagen.

EXPERT RODOLFO STAVENHAGEN: Thank you.

PRESIDENT CANÇADO TRINIDADE: This expert's testimony is concluded. You may stay in the courtroom if you like; the declaration is concluded. Thank you. We had agreed earlier, in the private session with the parties, to conclude today's hearing with the showing of a two-minute video, presented by the Commission. The State of Nicaragua did not object to the showing of this video, so we will proceed to the showing, and I would also like to appeal to the Commission that, when the State of Nicaragua objected today to the extension of the witness questioning, that it could maybe make an effort tomorrow so that we could abide by the time limits agreed upon, since we had agreed upon twenty minutes for the witnesses and thirty minutes for the experts and, that way, with the understanding of both sides, we can continue fruitfully with these hearings. So let's move on to the projection of the video.

IACHR (Dr. Santoscoy): Mr. President, if I may, I would only like to explain that the purpose of this video is to show how the Awás Tingni Community lives, how it lives off of hunting, fishing, etc.

PRESIDENT CANÇADO TRINIDADE: Thank you very much for the

clarification. (Video Showing.)

PRESIDENT CANÇADO TRINIDADE: At the end of this hearing, I would like to announce that we will begin tomorrow at 9:00—if we all agree—and, before adjourning the hearing, I would like to thank the representatives of the Inter-American Commission on Human Rights and of the Illustrious State of Nicaragua for the constructive spirit and procedural cooperation that both have demonstrated in this public hearing. Thank you very much to both delegations. The session is adjourned.