

**(DAY 2 OF HEARING)**

**PRESIDENT CANÇADO TRINIDADE:** This public hearing on the merits in the case of the Mayagna (Sumo) Community of Awas Tingni is reconvened, with the objective of continuing to listen to witness and expert testimony whose presentations were ordered by the Inter-American Court of Human Rights. Likewise, the Illustrious State of Nicaragua and the Honorable Inter-American Commission on Human Rights will present their oral summary arguments on the merits in the case of the Mayagna (Sumo) Community of Awas Tingni.

Before beginning, I would like to reiterate the Court's request of yesterday, that the speakers rigorously observe the time accorded in yesterday's meeting with the parties prior to the hearing and that they make an effort to limit objections to that which is essential, potential objections to that which is strictly essential. And that questioning of witnesses be conducted for witnesses and not for experts, and for the experts as experts and not as witnesses. I now ask the Secretary to call the first witness of this morning.

**SECRETARY VENTURA ROBLES:** Mr. Guillermo Castilleja.

**PRESIDENT CANÇADO TRINIDADE:** Please state your name for the Court.

**WITNESS GUILLERMO CASTILLEJA:** My name is Guillermo Castilleja.

**PRESIDENT CANÇADO TRINIDADE:** Nationality?

**WITNESS GUILLERMO CASTILLEJA:** American.

**PRESIDENT CANÇADO TRINIDADE:** Identification document number?

**WITNESS GUILLERMO CASTILLEJA:** United States passport number 701558929.

**PRESIDENT CANÇADO TRINIDADE:** And place of residence?

**WITNESS GUILLERMO CASTILLEJA:** Washington, D.C., United States.

**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: the witness will testify about the alleged unfruitful attempts to obtain official measures leading to the demarcation and specific recognition of communal indigenous lands; the supposed authorization of concessions in the RAAN, including the concession to SOLCARSA; the alleged forest activities under the SOLCARSA concession; the environmental impacts that those operations and other situations of natural resource exploitation would have had; non-indigenous patterns of migration and settlement that would affect the communal indigenous lands; the alleged lack of sufficient state control over natural resource exploitation on the Atlantic Coast; other issues relative to the use of natural resources and indigenous community tenure of lands on the Nicaragua forestry sector and its impact on 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, 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 GUILLERMO CASTILLEJA:** I swear.

**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?

**IACHR (Dr. Bicudo):** Yes, Mr. President, Doctor Bertha Santoscoy will conduct the questioning. Thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much; you may proceed.

**IACHR (Dr. Santoscoy):** Thank you, Honorable Court. Doctor Castilleja, tell me, what is your current professional position?

**WITNESS GUILLERMO CASTILLEJA:** I am the Special Projects Director of the World Wildlife Foundation, in Spanish, El Fondo Mundial para la Naturaleza, known by its acronym in English as WWF.

**IACHR:** Tell us about your academic background.

**WITNESS GUILLERMO CASTILLEJA:** I have a bachelor's degree in biology from the National Autonomous University of Mexico, two master's degrees in forest resources from Yale University, and a doctorate in forest ecology also from Yale University.

**IACHR:** Tell us, how long have you worked for the World Wildlife Fund?

**WITNESS GUILLERMO CASTILLEJA:** For 9 and one half years, since May of 1991.

**IACHR:** And what have been your previous positions in the WWF?

**WITNESS GUILLERMO CASTILLEJA:** I began as Program Officer for Forest Policy in Latin America, from 1991 to 1994. In 1994 I was named representative of the WWF in Mexico, where I held that position until October of this year, 2000, and from October of this year, I am Director of Special Projects, based in Washington, D.C.

**IACHR:** Now tell us, in your capacity as Forest Policy Officer for Latin America of the WWF, did you begin a project in relation to the Awas Tingni Community in Nicaragua?

**WITNESS GUILLERMO CASTILLEJA:** Yes.

**IACHR:** In what year did that project begin?

**WITNESS GUILLERMO CASTILLEJA:** In 1993.

**IACHR:** Now, in general terms, tell us about the purpose of this project.

**WITNESS GUILLERMO CASTILLEJA:** The main objective was to support the Government of Nicaragua in the establishment of a contractual arrangement that would allow for the sustainable use of the broad-leafed forests on the Atlantic Coast, in particular in the forests of Awas Tingni. This project and the participation of the WWF was in response to an express invitation of the Government of Nicaragua to participate as advisors.

**IACHR:** Now please tell us, tell the Court about the events leading up to this project.

**WITNESS GUILLERMO CASTILLEJA:** Since 1991, WWF took the role of advisor in Forest Policy, in particular to the then Natural Resource Institute, IRENA, now MARENA, a Ministry, and the immediate event is really a concession that Nicaragua authorized to a Taiwanese company, EQUIPE, for an area of about one million hectares on the Atlantic Coast. This generated a substantial conflict that was finally resolved with the cancellation of this concession by the Government. Once that happened, the Ministry began to ask many questions with respect to forest development of the Atlantic Coast; that was really one of the Government's objectives. So the question is: what can we learn from the EQUIPE concession so as not to repeat the problems that we had and to be able to develop models of forest exploitation that were really viable and could be sustainable over the long term?

Taking into account that that was what was happening at that moment on the Coast, there was a case that seemed particularly interesting to demonstrate that things could be done in a different manner; that was the case of the Awas Tingni Community, which had already begun a contractual arrangement with the Dominican capital company, MADENSA, Nicaraguan Woods and Products, where there were being established, we were seeing, the basis of what could be a form of exploitation where, for the first time, the participation of the area's inhabitants would be taken into account. So, this was the event that allowed us at WWF to identify this project as a specific area of support to MARENA.

**IACHR:** But why was WWF interested in that?

**WITNESS GUILLERMO CASTILLEJA:** Well, we are a nature conservation organization, we see in forest management, in forest use, a way to conserve resources. Basically, what is not used, claimed, or has no adequate management is vulnerable. In the specific case of the Coast, this is evident from invasion by settlers and from the transformation of the forest to agricultural areas; unfortunately, that is how Nicaragua and other countries in the region have lost a big part of their forests. So for us, forest activity is a form of conservation, and our programs support this type of activity. However, we thought that in order for this to really happen, it is necessary that three important things happen: first, it is necessary that the forestry operation be technically sustainable; that is, no more is cut down than the forest has the capacity to regenerate naturally. Second, that there exist elements to make an activity economically profitable, that is, it must be economically viable; and third, specifically for the forests in Latin America, in

which there is a great quantity of rural populations that live in or around these forests, it must be socially viable. That is, there is a social structure that is required and the legal legislative framework that is required so these operations, though they may be technically successful and economically viable, do not infringe on other rights that the communities living in these forests may have. So, because of all this we saw, in the case of the contractual relationship between Awas Tingni and MADENSA, a very interesting possibility to be able to show that, in fact, this type of forestry management could be done. The fact that the company itself had already accepted, from the beginning, the Community's presence was a significant advance with respect to the earlier Taiwanese case, where there was simply no recognition of the fact that there were communities in the area. So we thought that this was really an opportunity to put these principles into practice, to safely develop a pilot program, from which similar operations could be developed in other parts of the Atlantic Coast, because, as I said, this is an interest that we detected since that time in Nicaragua.

**IACHR:** Very well, now tell us, before beginning this project, who were the governmental officials with whom you had contact?

**WITNESS GUILLERMO CASTILLEJA:** We had contact with the then Minister, Doctor Jaime Incer; with the Director of the National Forest Service, the engineer, Roberto Arakistain; with the head of the Administration of Forests on Public Lands, ADFOREST, the engineer Brady Watson; also with the delegate of IRENA, now MARENA in Puerto Cabezas, Mr. James Gordon.

**IACHR:** What was the position of those government functionaries on the communal land of Awas Tingni and, in particular, in relation to the area of forest management proposed by MARENA?

**WITNESS GUILLERMO CASTILLEJA:** Well, it was—and this was the initial discussion we had with them—that while the Community did not have formal title to this land, they recognized the implicit property that the occupation of these persons of these lands represented, and this obviously would eventually have to be formalized. That is, that they knew that at least a part, if not all the area of the management plan of MADENSA, was communal land of the Awas Tingni Community in particular, even though they also recognized from the beginning that part of this process would have to lead to demarcation of this land, because, as I said in response to your previous question, a clear legal framework is one of the fundamental conditions for sustainable management.

Also, part of their position was that this demarcation process could be accomplished once negotiations with MADENSA began.

**IACHR:** Yes, please tell us, Doctor, about the first contacts that you had with the leaders, with the leadership of the Community; tell us what you spoke of with them and what is your opinion about it.

**WITNESS GUILLERMO CASTILLEJA:** The first contact that we made directly with the Community was in the beginning of 1993. We were accompanied by representatives of IRENA, the National Forest Service. We had meetings in Puerto Cabezas with some of the leaders of the Community and

members of the Community that came on that occasion to Puerto Cabezas, and after we went to Awas Tingni to meet the rest of the Community, see in what conditions they lived and listen directly to the people, what they thought about this. Speaking with the leaders in Puerto Cabezas and confirming it later in the Community, it was clear, I think, that the Community had two main worries. One was that the contract that they had signed with MADENSA, a twenty-five year contract that had no real escape clauses, they felt trapped in a contract, and the terms of that contract really worried them. And the second worry—that, I think, was the main one—was the uncertainty that they felt with respect to land tenure. In fact, speaking with people in the Community, I remember that it was clear that the Community was not so interested in the actual exploitation of the forest or the resources that could actually be generated from them, but rather as a manner to obtain the financing they needed to conduct, complete the studies that they knew they were going to need to finally be able to demarcate their lands. So I think that those were the fundamental worries of the Community of which we became aware from the beginning.

**IACHR:** Now Doctor Castilleja, please indicate to the Court what happened later in that process as a result of your meetings with the Community.

**WITNESS GUILLERMO CASTILLEJA:** Well, as a follow-up to the commitment that we made to the Community, we first agreed on a process with MADENSA and IRENA. That is, what will follow and what is at stake for each one, what role each one of them will take.

The first agreement was that the twenty-five year contract that Awas Tingni had made with MADENSA would be renegotiated, and for that they would need, and also the Community had asked for it, they would need technical and legal assistance so that the Community could effectively enter into the negotiation process under better conditions. This was, let's say, the main agreement. Then from that, the role of the WWF would be to assure that the Community had this assistance, and we contributed to the formation of a technical and legal team that began with the participation of Mr. James Anaya of the University of Iowa, at that time, and of Mr. Hans Ackerson, a forestry expert who had a long career of advising the Government of Nicaragua in forestry matters.

**IACHR:** Yes, tell us: what were the biggest obstacles to the advance of the trilateral process in this negotiation?

**WITNESS GUILLERMO CASTILLEJA:** One important obstacle was the absence or lack of a legal precedent that could serve as a reference to be able to do this type of arrangement. We were speaking of an arrangement that really had no precedent, as far as we knew. This definitively, then, implied a series of obstacles. Another, without a doubt, and it continued showing itself that way all during the negotiation, was again the question of land tenure, because to be able to have a management plan, one needs a consolidated area. If the area is not consolidated, shall we say, once the land is titled, all property to one single owner, then what is going to happen? Will the land have to be divided if one parcel is communal and the other is State land? There were these types of difficulties. I

think that another important obstacle was also the lack of experience, resulting from the lack of legal precedent, of a private company's participation—and of the Government in this case—in negotiating this type of contract with an indigenous community.

**IACHR:** Tell us, what was the role the World Wildlife Fund played here and, in particular, your role during these negotiations?

**WITNESS GUILLERMO CASTILLEJA:** We played, I think two, two main roles. One, as I said, was to ensure that the Community had the legal and technical assistance that it required to be able to carry out a negotiation in serious, professional terms; and second, to ensure, to the extent of our capabilities, that there was a process and that the different parties adhered to that process. In fact, once the negotiations began, when the obstacles to which I referred began to appear, we realized that the negotiation would require outside assistance, so we also contributed to contract with a facilitator who would help to unblock the negotiation.

**IACHR:** So what was the result of those negotiations?

**WITNESS GUILLERMO CASTILLEJA:** The result of that negotiation was a tripartite agreement in which the Awas Tingni Community, the government, through MARENA, and the MADENSA company participated. It is a five-year renewable agreement, in which the terms for the buying and selling of the wood the Community sells and buys are established, as are the terms in which MARENA recognizes the ownership of the land, the land tenure, the terms of the activities of annual use, and the monitoring system that this operation was going to require.

**IACHR:** Now, with respect to the land tenure, what was MARENA's specific commitment?

**WITNESS GUILLERMO CASTILLEJA:** In the agreement there are various parts referring to this commitment; one of them is to consider the Community as if it were, and it says this in the text, as if it were the owner of these lands as concerns the right they have to payment for the per-foot value; that is, for practical purposes, it was recognized that the Community was the owner of the land within the area of the management plan. Also, the government committed itself to facilitate the titling process and not to diminish the Community's aspirations regarding their territorial claim.

**IACHR:** Now then, in what way was it understood that it was going to facilitate these negotiations?

**WITNESS GUILLERMO CASTILLEJA:** The government?

**IACHR:** Yes.

**WITNESS GUILLERMO CASTILLEJA:** Yes, well, in the contract it was stipulated that it was going to facilitate . . . I don't remember ever having heard the government say what the plan was to carry this out; that is, I don't remember that a specific plan was ever made that could specify what the different steps were to arrive at titling. Here what I do remember is a discussion about it, given that the known process until that moment, of titling, was the process practiced by—

that was practiced by, I don't know if it is now—INRA at the time, the National Institute of Agrarian Reform, which is an agrarian distribution of fifty blocks per family, and that is what we knew as the process. However, the National Forest Service was emphatic in considering this process inadequate for this case, because what we were dealing with here was to develop a forestry-related use of the soil, while INRA's process, what it would develop in any case was agrarian use, and here the fear was to unleash a wave of deforestation using the agrarian agricultural partition model. I remember Arakistan, the head of the government forestry agency, putting much emphasis on the fact that, to be able to manage those forests, it could not be done under a tenure system based on an agricultural concept, but rather it had to be the consolidation of relatively large forest areas.

**IACHR:** Tell us, Doctor, if at any time MARENA proposed that the Community had to initiate the process for itself, through a request or other institution of the State.

**WITNESS GUILLERMO CASTILLEJA:** As I say, I don't remember MARENA having established a critical route because, as I also say, they were confused about what the process should be.

**IACHR:** So, according to your knowledge, MARENA ended up supporting the Community in the demarcation of its land and its commitment not to diminish the territorial claim of the Community?

**WITNESS GUILLERMO CASTILLEJA:** Well, the contract was signed in 1994—that is the contract that has the clauses that you refer to—it was signed in 1994, May, June of 1994; a few months later, I went to Mexico as a WWF representative and I became distanced from the project, so I was not able to closely follow what happened. I think that, from what I have been able to find out, there was no real follow-up in the demarcation by MARENA, and later, I think the granting of the concession to SOLCARSA definitively . . . .

**IACHR:** I will interrupt a little because we have little time, Doctor. When you were preparing the mapping and land study of the Community, did you realize the government was planning to grant a concession to the SOLCARSA company? I would ask you to be brief because we have little time.

**WITNESS GUILLERMO CASTILLEJA:** Yes, I knew about it from the letter the Community sent through its representatives to the Minister of Marena, Milton Caldera.

**IACHR:** Tell me, did you have any conversations with any functionaries about this concession? If so, tell us when and where.

**WITNESS GUILLERMO CASTILLEJA:** Yes, I had a conversation with the then Minister of MARENA, Mr. Milton Caldera, in Mexico City, in the context of a meeting with CCAD, and I was introduced to him by Mr. Jorge Rodríguez.

**IACHR:** Minister Caldera, as you just mentioned, did he know that the land claimed by the Community included the major part of the area of this concession and that the Community was opposed to the concession?

**WITNESS GUILLERMO CASTILLEJA:** Yes, yes he knew, and although his reaction, I remember clearly, was that the agreement that MARENA had signed

with the Community and with MADENSA was an agreement with which he did not agree—in fact, he referred to it as a Mickey Mouse agreement—I remember that well, and about the Community's claims he said, "They are too much," although he knew that in principle there was a counterargument.

**IACHR:** Tell me, do you have any clarifications to make regarding your earlier testimony?

**WITNESS GUILLERMO CASTILLEJA:** No.

**IACHR:** Thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much to the Commission for abiding by the agreed time limits. I will give the floor to the Agent of the Illustrious State of Nicaragua to proceed with the questioning, if he would like.

**GON (Mr. Castillo):** A very good morning to you, Mr. President, Judges of the Court. I will make use of the time to conduct questioning.

Mr. Castilleja, in your terms of reference, Doctor, I point out that you were to deal with issues related with the unfruitful efforts of the Community to obtain its titling. You were to deal with the issued related to the SOLCARSA concession, with the forest activities that supposedly took place under the SOLCARSA concession; you were also to speak about the environmental impact that the concession supposedly had, etc.

However, in your testimony, you yourself have confessed that you lived in Nicaragua only between 1991 and 1994. So I would like you to tell me if you have personal knowledge as a witness of what occurred in Nicaragua with each one of these issues prior to that date.

**WITNESS GUILLERMO CASTILLEJA:** I never lived in Nicaragua and, in effect, from 1994 onwards my contact with the project was less and I had no direct knowledge of what was happening.

**GON:** So you cannot give testimony on the governmental activities relative to the titling to Awas Tingni subsequent to 1994?

**PRESIDENT CANÇADO TRINIDADE:** The delegate of the Commission has an objection.

**IACHR (Prof. Anaya):** I would like to remind that a party cannot insinuate the answer; he is implying what the answer should be.

**PRESIDENT CANÇADO TRINIDADE:** Yes, I would ask that the Agent restate the question.

**GON:** Yes, maybe simply leave established before the Court that the witness has no direct, personal, information, as a witness, of what occurred in each one of these issues subsequent to 1994.

**PRESIDENT CANÇADO TRINIDADE:** Pardon, I would just like to indicate that that can be done in the closing arguments before the Court.

**GON:** Yes, Mr. President. Let's talk about MADENSA, Mr. Castilleja. Do you know that the attorney María Luisa Acosta was the notary who executed the public document containing the MADENSA contract?

**WITNESS GUILLERMO CASTILLEJA:** No.



**GON:** Do you know which is the only institution legally authorized to grant contracts to which the State is a party?

**WITNESS GUILLERMO CASTILLEJA:** Pardon, are you referring to the first MADENSA contract?

**GON:** I am referring to the public document that Ms. Acosta executed in 1994.

**WITNESS GUILLERMO CASTILLEJA:** No, then we are speaking of two contracts; remember that, in my presentation, I spoke of a first contract that the Community had with MADENSA that the parties decided to annul in order to negotiate a second. So please, can you explain to me specifically to what you are referring?

**GON:** Yes, the contract of 1992, that to which you are possibly referring, a private contract; do you know whether the Community of Awas Tingni declared in that contract that they had title to property?

**WITNESS GUILLERMO CASTILLEJA:** I don't remember.

**GON:** Do you know what the functions of MARENA are? Briefly?

**WITNESS GUILLERMO CASTILLEJA:** Well, of IRENA because . . . .

**GON:** Oh yes, IRENA. That was the previous name, yes.

**WITNESS GUILLERMO CASTILLEJA:** I don't feel qualified to answer that question.

**GON:** Do you know, obviously, within these functions is not that of performing a diagnostic study on indigenous land claims? Do you know which institution of the State has that job?

**WITNESS GUILLERMO CASTILLEJA:** I don't feel qualified to answer that question.

**GON:** Do you know if, in the MARENA contract to which we are referring, the State reserved to itself the right not to recognize any land claims?

**WITNESS GUILLERMO CASTILLEJA:** Can you restate the question?

**GON:** If, in the MARENA contract, we will call it that, the MADENSA contract, no? Whether the State reserved to itself the right not to recognize any land claims?

**WITNESS GUILLERMO CASTILLEJA:** I would ask that you make the distinction between the tripartite agreement of 1994 and the MADENSA contract of 1992, because I think they are being confused.

**GON:** This contract of 1992 was annulled by Awas Tingni and by the State, and it was substituted by a contract of 1994.

**WITNESS GUILLERMO CASTILLEJA:** That's right.

**GON:** I am asking if, in the 1994 contract, if you know whether the State reserved to itself the right not to recognize any right to ancestral property of the Awas Tingni Community?

**WITNESS GUILLERMO CASTILLEJA:** Once again, the contract uses the formula of treating the Awas Tingni Community as if it were the owner.

**GON:** Do you know whether the parties to that contract agreed expressly that the land claim that Awas Tingni subsequently asserted would not be guaranteed, conditioned, limited by that contract?

**WITNESS GUILLERMO CASTILLEJA:** I couldn't respond to that question.

**GON:** Do you know who the parties are in the forest use contracts?

**WITNESS GUILLERMO CASTILLEJA:** As I said, part of the problem we found is the lack of legal precedent for this type of use contract.

**GON:** Do you know the difference between a concession and a forest use contract?

**WITNESS GUILLERMO CASTILLEJA:** Generally, yes; the concession is granted over public lands to third parties. And the use contract can include owners.

**GON:** It was asked for what reason would the State, through MARENA, be a party to a forest use contract.

**WITNESS GUILLERMO CASTILLEJA:** Can you repeat that?

**GON:** Whether you know for what reason the State was a party to the forest use contract as a contracting party?

**WITNESS GUILLERMO CASTILLEJA:** Really, the questions that you are asking me are out of my area of expertise; we participated in this basically as advisors to the government, and I imagine that all of these points to which you are referring, in any case, had to be clarified by the government before entering into this contractual relationship.

**GON:** Do you think it is the same to say that the State recognized the presence of an indigenous group as to say that the State recognized the ancestral character of its position?

**PRESIDENT CAÑADO TRINIDADE:** Just a moment, please—a question that . . . the witness cannot give opinions. He can refer to the facts, but an expert has to give an opinion.

**GON:** I'll restate the question.

**PRESIDENT CAÑADO TRINIDADE:** Please.

**GON:** Do you think that it is the same to say presence as to say ancestral possession?

**WITNESS GUILLERMO CASTILLEJA:** I don't feel qualified to answer that question.

**GON:** That is all, Mr. President.

**PRESIDENT CAÑADO TRINIDADE:** Thank you, Agent of the State. I now ask the other judges whether they have questions to ask. Judge Montiel Argüello?

**JUDGE MONTIEL ARGUELLO:** No question.

**PRESIDENT CAÑADO TRINIDADE:** Judge de Roux?

**JUDGE DE ROUX RENGIFO:** Doctor Castilleja, I would like you to please tell the Court, as far as you know, what reasons caused the State of Nicaragua to change the policy expressed in the agreement related to the first concession, that of MADENSA, as it compares with the second concession, that of SOLCARSA. I want neither technical concepts nor opinions; as far as you know, if you don't know, that is no problem, of course.

**WITNESS GUILLERMO CASTILLEJA:** The only thing I can say is that it occurred with the departure of Doctor Jaime Incer and the administrative changes

that Milton Caldera's taking office brought about, who definitely had another way of seeing things.

**JUDGE DE ROUX RENGIFO:** And if you could briefly characterize each one of those two policies, as far as you know, in brief words, how would you characterize each policy: that expressed in the first concession, with MADENSA, and that expressed in the second with SOLCARSA?

**WITNESS GUILLERMO CASTILLEJA:** When you refer to the concession, are you referring to the tripartite agreement?

**JUDGE DE ROUX RENGIFO:** Pardon, to the agreement.

**WITNESS GUILLERMO CASTILLEJA:** Yes, what—to me—seems the most obvious is, in one case, the recognition that in fact or in principle there are acquired rights of communities that should be taken into account upon entering into those contracts of forest use management, and, in the other case, that as long as no title exists, there is no basis to think that there are acquired rights by the communities, and so concessions on public lands can be granted.

**JUDGE DE ROUX RENGIFO:** Thank you, Doctor Castilleja. Thank you, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** Thank you, Judge De Roux. Judge García Ramírez?

**JUDGE GARDIA RAMIREZ:** No.

**PRESIDENT CANÇADO TRINIDADE:** Judge Abreu Burelli? Judge Jackman?

**JUDGE JACKMAN:** Thank you.

**PRESIDENT CANÇADO TRINIDADE:** Please . . . .

**JUDGE JACKMAN:** In the tripartite agreement of 1994, was there a map that formed part of the agreement?

**WITNESS GUILLERMO CASTILLEJA:** There was a map of the management plan area, but it was stated that it was the area to be managed and has nothing to do with land tenure.

**JUDGE JACKMAN:** When you say it was stated in the text of the contract, the map was described as being limited in the way you described it?

**WITNESS GUILLERMO CASTILLEJA:** Sorry, it's not in the contract itself, it's not an annex to the contract; what is an annex to the contract is the management plan, and in the management plan there is a map of the area to be managed.

**JUDGE JACKMAN:** Thank you.

**PRESIDENT CANÇADO TRINIDADE:** Thank you. Judge Salgado Pesantes?

**JUDGE SALGADO PESANTES:** None.

**PRESIDENT CANÇADO TRINIDADE:** Judge Pacheco Gómez?

**JUDGE PACHECO GOMEZ:** No.

**PRESIDENT CANÇADO TRINIDADE:** I have no questions, either, for the witness; you may leave or stay in the courtroom if you wish. Thank you very much. I now ask the Secretary to call the next witness to testify.

**SECRETARY VENTURA ROBLES:** Mr. Galio Gurdían.

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

**WITNESS GALIO GURDIÁN:** My name is Galio Gurdían.

**PRESIDENT CANÇADO TRINIDADE:** Nationality?

**WITNESS GALIO GURDIÁN:** Nicaraguan.

**PRESIDENT CANÇADO TRINIDADE:** Identification document number?

**WITNESS GALIO GURDIÁN:** Passport number C398064.

**PRESIDENT CANÇADO TRINIDADE:** Place of residence?

**WITNESS GALIO GURDIÁN:** Managua, Nicaragua.

**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: the witness will testify about the alleged unfruitful attempts to obtain official measures leading to the demarcation and specific recognition of communal indigenous lands; the supposed authorization of concessions in the RAAN, including the concession to SOLCARSA; the alleged forest activities under the SOLCARSA concession; the environmental impacts that those operations and other activities of natural resource exploitation would have had; non-indigenous patterns of migration and settlement that would affect the communal indigenous lands; the alleged lack of sufficient state control over natural resource exploitation on the Atlantic Coast; other issues relative to the use of natural resources and indigenous community tenure of lands on the Nicaragua forestry sector and its impact on 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 not indict the witnesses, nor may it take retaliatory measures against them or their family members because of their testimony 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 GALIO GURDIÁN:** Yes I do.

**PRESIDENT CANÇADO TRINIDADE:** Will the representative of the Inter-American Commission please indicate to the Court the name of the person who will examine the witness and to proceed with the examination.

**IACHR (Dr. Bicudo):** Mr. President, Doctor Bertha Santoscoy will conduct the questioning.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed.

**IACHR (Dr. Santoscoy):** Thank you, Honorable Court. Doctor Gurdíán, could you tell us, speak to us about your academic background?

**WITNESS GALIO GURDIÁN:** I have my bachelor's degree in philosophy, a master's in social anthropology, and doctorate in social anthropology.

**IACHR:** Tell us, what is your profession or occupation.

**WITNESS GALIO GURDIÁN:** Well, I have specialized in social anthropology and development studies, especially in relations between national states and indigenous peoples. Also in the development studies part are the relationships between indigenous peoples' natural resource use and the problems they encounter, especially in the Mesoamerican area.

**IACHR:** Could you tell us more about your work experience in the Atlantic Coast of Nicaragua?

**WITNESS GALIO GURDIÁN:** Yes, I arrived on the coast in 1979 as Regional Delegate of the Ministry of Agriculture, Livestock and Agrarian Reform. I lived in the area of las Minas, working for that delegation from 1979 to 1981. Later, I was founder of the Center of Research and Documentation of the Atlantic Coast; from 1981 to 1990, I was its Director and lived in what is now the North Atlantic Region.

**IACHR:** From what date have you lived in the North Atlantic Region?

**WITNESS GALIO GURDIÁN:** Well, from 1979 to 1990, and later from 1996 to 1998, and sporadically during 1999 and periods of 2000.

**IACHR:** Tell us, Doctor Gurdíán, the State in its reply brief to the Commission's complaint makes reference to the general diagnostic study on the land tenure of the indigenous communities of the Atlantic Coast, a diagnostic study performed by the Central American and Caribbean Research Council; do you know of that diagnostic study? Could you tell us to what it refers?

**WITNESS GALIO GURDIÁN:** Yes, the general diagnostic study on land tenure, yes, I know it. That is, I was the one who signed the contract for the preparation of the study. I was also one of the three principal researchers of the study and general coordinator of the work.

**IACHR:** Could you tell us the purpose or objective of that diagnostic study?

**WITNESS GALIO GURDIÁN:** Yes. Well, to me it seems that it had, depending on whom you ask, it had about two fundamental objectives: the formal part dealt with cartographically projecting what the communities or a part of the communities of the Caribbean coast of Nicaragua considered were their communal lands and the uses that they have on those communal lands. However, the implicit purpose was part of this project for land registry modernization, and it is an agreement of the Government of Nicaragua with the World Bank. And it also sought, that is, by delimiting the indigenous communities, to clarify which were national lands over which the State could exercise control.

**IACHR:** Tell us, Doctor Gurdíán, again in the government's brief, replying to the

Commission's complaint in this case before the court, the State asserts that the former INRA and now MAG, that is, Ministry of Agriculture, Livestock, and Forestry, did or does have the capability to demarcate or title the communal land of indigenous communities. What is your reaction to this assertion?

**WITNESS GALIO GURDIÁN:** Well, it seems to me that currently it does not have it, that is, the old INRA disappeared; it seems that it does not have the competence. The new Ministry of Agriculture and Forestry, the office of which I was in charge, for example, I think this project passed to the Ministry of Taxation and Public Credit. But in general, what I can say is that from 1990, there has been no titling of indigenous communities—for example—and, if perchance any institution of the Nicaraguan State has that formal capability, the reality is that in practice it has not worked. So my opinion about the question you ask me is that the Ministry of Agriculture and Forestry does not have the capability and, in addition, it does not have the will to resolve this type of problem.

**IACHR:** Now, so in accordance with your research . . .

**PRESIDENT CAÑADO TRINIDADE:** There is a point of order.

**GON (Mr. Castillo):** Your Honor, it seems to me that he was stating opinions.

**PRESIDENT CAÑADO TRINIDADE:** Yes, you are right. Maybe reformulate the question so that it does not induce an opinion, please.

**IACHR:** Tell us, Doctor Gurdián, if an indigenous community would like to obtain titling of its land, does there exist any State mechanism or institution to which it could go? Or to which it could apply?

**WITNESS GALIO GURDIÁN:** Not really. No.

**IACHR:** All right, briefly tell us, what were the recommendations of the diagnostic study?

**WITNESS GALIO GURDIÁN:** There were five recommendations, substantial . . . let's say five chapters. We called the first one General Principles, and what we recommended is that, because of the history that the Nicaraguan State has had with the indigenous communities, it would issue a declaration making known its will to resolve this type of problem; that is, it was a way to begin to diminish the acrimony in an issue that is tremendously conflictive in Nicaraguan history.

The other recommendation that we made was to complete the diagnostic study that, as I mentioned in the beginning, we calculated there are between 280 and 800 communities on the Nicaraguan Caribbean Coast, and the diagnostic study covers approximately fifty percent of that total universe.

Based on the results of the diagnostic study, it seemed to us that in order to have an integral vision of the claims, of the overlapping claims, of the problems in general of land tenure in that area, it was necessary to complete the diagnostic study; that was the other very important recommendation.

A third aspect in this chapter of general principles was to return the results of the diagnostic to the communities that had given the information. And this was fundamental because the methodology of the diagnostic—we asserted from the beginning, that this work, in the year's time they gave us—could not be done without the participation of all the communities in the diagnostic study and

that the information that they were giving had to be given back to the communities, something that is not usually done, and it was key, precisely in order to then, from the diagnostic study—which was a simple projection of the demands of the communities—to really initiate a process of demarcation, titling. This was the other central aspect. That was the first chapter on general principles.

There was a second chapter that we entitled Resolution of Conflicts that was also very important for the type of overlapping claims that there are, that we found in the studied universe, almost . . . I would say with the exception of the community of Tumarín, one of 128 communities, the rest of the communities have these overlapping claims; that is, areas where a community or various communities use and possess the territory at the same time.

**IACHR:** Yes, could you tell us if there was any follow-up by the State on the recommendations contained in the study?

**WITNESS GALIO GURDIÁN:** No; that is, neither of the general principles nor of the actions leading to the beginning of a process of return of the lands, and neither of the resolution of conflicts.

**IACHR:** Thank you. Tell us, Doctor Gurdíán, in its reply brief to the complaint in the instant case, the State affirms that the diagnostic study represents one of its important initiatives to advance titling of indigenous lands. How do you react to this?

**WITNESS GALIO GURDIÁN:** Well, as for the fruits of the diagnostic study, the diagnostic study is practically a State secret. No one, with the exception of the entities of the State that received it, knows of the study; it is not public knowledge. This fundamental recommendation to distribute it through a massive workshop in the respective autonomous regions—to distribute it to the communities—never happened, and measures leading to the implementation of the recommendations in the diagnostic study have not been taken.

**IACHR:** Now, let me ask you, also in its reply brief, the State mentions a legislative bill for communal lands in the Atlantic Coast indigenous communities as proof of its willingness to advance in titling of lands. How do you react to this?

**WITNESS GALIO GURDIÁN:** As far as the two legislative initiatives presented by the Executive in 1998, we commented on both initiatives and they did not seem to respond to what we were finding in the diagnostic study, for the representation that there was . . . .

**PRESIDENT CANÇADO TRINIDADE:** A question of order.

**GON (Mr. Castillo):** It would seem that the question is also suggesting . . . .

**PRESIDENT CANÇADO TRINIDADE:** But please limit yourself to the question of fact in the response, ah? Without giving any opinion, only answer the question of fact.

**IACHR:** Do you want me to repeat the question?

**PRESIDENT CANÇADO TRINIDADE:** Please repeat the question.

**IACHR:** Also in its reply brief, the State mentions a legislative bill for the communal lands of the Atlantic Coast indigenous communities as proof of its will to advance in titling indigenous lands. How do you react to that?

**WITNESS GALIO GURDIÁN:** Well, it seems that the two legislative initiatives are rather proof of not advancing. The laws do not resolve the problem, they complicate it.

**IACHR:** Thank you very much. Mr. President, with your permission we are going to show a map here, we are going to present a map.

On the screen to the side . . .

**PRESIDENT CANÇADO TRINIDADE:** Just a moment, can the delegation of the State see the map? Yes? The television screen? Yes? You may proceed.

**IACHR:** Thank you. On the screen to the side of you, Doctor Gurdíán, we have a map. Please identify this map and indicate to the Court what it represents. [See Figure 8 in the Appendix to the Hearing Transcript.]

**WITNESS GALIO GURDIÁN:** All right, the map is one of the two consolidated maps that the diagnostic study presented, and it corresponds to the North Atlantic Autonomous Region, and it summarizes the problem of the overlapping land claims to which I referred earlier. That is, as we can see, all the blocks, the 116 total communities that made their claim in block form, they have this same characteristic and, as I was saying before, almost ninety-nine percent, with the exception of the Community of Tumarín, which it seems to me does not appear on this map, here his Tumarín; they have this characteristic of overlapping, as we call it, between the claims of the different communities. And these overlapping claims refer above all to areas of common use, where there are about three scenarios that we proposed. The first two are, generally, scenarios where the disputes, which are quite common, are resolved through internal communications among the traditional authorities in the territory. There is one type of conflict . . .

**IACHR:** Could you show us there the areas claimed by the Community of Awás Tingni on the map?

**WITNESS GALIO GURDIÁN:** Here is Awás Tingni. The map of Awás Tingni comes more or less through this area in such a way that it would complicate or make more complex the phenomenon of overlapping claims in this area among the Ten Communities: Awás Tingni, the communities of Francia Sirpi, of the Northern Plain; but let us say it is part of this pattern of overlapping claims among the communities.

**IACHR:** Can you tell us if those communities have been issued title by the State?

**WITNESS GALIO GURDIÁN:** Well, the only title that appears, of which I know, is the title of the Ten Communities that the Commission of the Harrison-Altamirano Treaty gave between 1905 and 1917. It seems to me that the rest of the communities have not had . . . well, there is one title, as a result of the border region conflict between Nicaragua and Honduras in the, in the beginning of the 1960s, for the communities of the Río Coco. But it does not represent, all these titles do not represent the needs, and above all the patterns of use and possession of the communities in the territory.

**IACHR:** Doctor Gurdíán, can you indicate to us there the Community of Awás Tingni? Where is it located? What is the area they claim?

**WITNESS GALIO GURDIÁN:** No, I don't see it well. There are approximately



ninety thousand hectares, and the map has the shape . . . .

**IACHR:** Now tell us whether we should interpret the map as an indication of the land claimed by Awas Tingni, in the sense that it isn't Awas Tingni's ancestral land.

**WITNESS GALIO GURDIÁN:** Well, I think it is the opposite; that is, all geographic, ethnographic and historic information, above all until the end of the 19<sup>th</sup> century, indicates that all of this area, that is, between the coast . . . .

**PRESIDENT CANÇADO TRINIDADE:** A point of order, please.

**GON (Mr. Castillo):** Doctor, Mr. President, without omitting to recognize the qualified opinion of Doctor Gurdían, however, the problem is that this question is not part of his terms of reference. Possibly it was an error of the Commission that it did not include that issue in Doctor Gurdían's testimony. We have the same situation as with Mr. Macdonald. They did not include the issue of ancestry.

**IACHR:** Mr. President, this is part of the diagnostic study, and we are speaking of the diagnostic study in which Mr. Gurdían participated, as he has already said, as writer and researcher.

**GON:** Mr. President, the diagnostic study is not here either.

**PRESIDENT CANÇADO TRINIDADE:** Just a moment, please.

**IACHR:** We have it, and the government itself cites it in its brief.

**PRESIDENT CANÇADO TRINIDADE:** The supposed granting of concessions, the alleged forestry activities under the concession . . . I would like to ask Doctor Santoscoy just one question. In the terms of the object of the testimony, under which of the terms would you categorize this question, of the terms that are in the Court's resolution, please?

**IACHR:** Yes, here *in fine* it says, "And the land tenure of the indigenous communities."

**PRESIDENT CANÇADO TRINIDADE:** On the forestry sector.

**IACHR:** Yes.

**GON:** Mr. President, that last paragraph is part of a larger paragraph, which has a clear direction. It asks about the current land tenure situation. This paragraph does not intend to tell its history.

**PRESIDENT CANÇADO TRINIDADE:** Doctor Santoscoy, could you please restate the question and the terms of the last part of the . . . .

**IACHR:** Yes, I will do that.

**PRESIDENT CANÇADO TRINIDADE:** Please.

**IACHR:** But there is nothing in this point that indicates what the Government is saying.

**PRESIDENT CANÇADO TRINIDADE:** Yes.

**IACHR:** As far as it refers to the land tenure and the indigenous communities within the forestry sector, the witness, Doctor Gurdían, has the competence to answer this.

**PRESIDENT CANÇADO TRINIDADE:** Yes.

**WITNESS GALIO GURDIÁN:** Well, what I was saying is that, based on, effectively, the part of the oral history and the non-historic part was fundamental

to the diagnostic study. That is, the communities argued about their cartographic projection, based on that oral history and on that which has to do, obviously, with the ethnography of the territory. So what I am saying is that the bibliographic sources, until the 19<sup>th</sup> century, note that the Miskito communities that receive titles from the Harrison-Altamirano Treaty are on the coast. The rest, practically from the coastal zone toward the interior, are Mayagna Sumo communities. So for me, the presence of Awas Tingni in the territory is not an anomaly, it is not an exception; rather, it represents the pattern of settlement of the Tuascas, Panamascas, and Wugas communities in that Tunglas territory, and, precisely for the expansion of the communities of the coast and of the banana forestry companies in this case, the communities are withdrawing to the headwaters of the rivers, but the, my opinion, based on knowledge of the region . . . .

**PRESIDENT CANÇADO TRINIDADE:** No opinion, please.

**WITNESS GALIO GURDIÁN:** The presence of Awas Tingni in this territory, in the upper area of the Wawa River, is part of the pattern of settlement of the Mayagna communities of the territory.

**IACHR:** Mr. President . . . .

**PRESIDENT CANÇADO TRINIDADE:** Time has run out.

**IACHR:** If I could, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** Time is up.

**IACHR:** If I could Mr. President, I asked the Honorable Court not to count the time that is taken with the discussion between the parties of the deposition of the witness.

**PRESIDENT CANÇADO TRINIDADE:** Yes, but even so, you went five minutes over time, which was the time that was taken by the objections. So I would ask the Commission's understanding.

**IACHR:** Fine. Thank you. Thank you, Doctor Gurdián.

**PRESIDENT CANÇADO TRINIDADE:** Mr. Agent, please proceed with your questioning.

**GON (Mr. Castillo):** Thank you very much, Mr. President. Mr. Castro and I will do the questioning together.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed.

**GON:** And in the interest of being direct, concise, and brief to point out the concrete, relevant facts, we will ask the following questions prior to asking for thoughts on them. It is understood that a diagnostic study must be complete to contribute to the formulation of public policy; is that correct Doctor Gurdián?

**WITNESS GALIO GURDIÁN:** Well, in this case I think that it is necessary that the diagnostic were to have been completed, precisely because of the overlapping claim problem, so that the State, if it wanted to resolve this problem, would have a complete understanding of the situation.

**GON:** Yes, thank you. Doctor Gurdián, why, in your diagnostic study, was the land claim of Awas Tingni not included?

**WITNESS GALIO GURDIÁN:** Because it seemed to us that in the time we had to perform the diagnostic study, this was a case that was being dealt with in the

courts; we had to cover the RAAN and the RAAS, there was work that they were doing—I understand that Doctor Macdonald had a very similar methodology to the one we were using—and it seemed to us that guaranteed the quality of the work they were doing.

**GON:** But in your testimony, you make reference to your diagnostic study as if it included Awas Tingni; nonetheless, your diagnostic study did not include the Awas Tingni Community.

**WITNESS GALIO GURDIÁN:** Effectively, it did not include it.

**GON:** Next question. In your diagnostic study, Doctor Gurdían, you refer to the land conflicts of the Eighteen Communities located to the north of Awas Tingni. Why did you not document the conflict of these Eighteen Communities with the Awas Tingni Community?

**IACHR (Prof. Anaya):** Mr. President. Mr. President, I ask that the Illustrious lawyer of the State not insinuate the response. He is insinuating the response.

**GON:** There was no insinuation, I am only asking.

**PRESIDENT CANÇADO TRINIDADE:** I think the witness can answer.

**WITNESS GALIO GURDIÁN:** Yes, it seems that I made reference to that. That is, there was work that was being done at the same time that we were covering the RAAN and the RAAS that seemed to us to have the same quality, using the same methodology, and that the State was going to have the information it needed while we covered other conflicts. But additionally . . .

**GON:** Pardon, Doctor. When you speak of the boundary conflicts of the Eighteen Communities, you make a list of the communities with which they have a conflict. Why did you not mention Awas Tingni and now affirm it?

**WITNESS GALIO GURDIÁN:** I was trying to answer that.

**PRESIDENT CANÇADO TRINIDADE:** Let him give the complete explanation, without interference.

**WITNESS GALIO GURDIÁN:** Yes, that is, I mentioned previously that the overlapping claims in the universe that we studied are almost the norm. It seems to us that the overlapping claims that Awas Tingni has with the communities of Francia Sirpi, with the Eighteen Communities and with the Ten Communities of Puerto Cabezas, were part of the same pattern that is not, that is, that had nothing special, and we were interested in covering the characteristics of these overlapping claims. What was recurring in these overlapping claims and what was most important for the diagnostic study was to do a synthesis of all these overlapping claims and not concentrate on a case that did not gauge more for the diagnostic study. That is, it had the same overlapping claim characteristics; it was not very different from what was happening in other areas. Work was being done that had the same qualities as that which we were doing, and it was practically redundant to repeat this work.

**GON:** Doctor Gurdían, with a “yes” or a “no,” if possible: did you document the land conflict among Awas Tingni and the group of the Ten Communities?

**WITNESS GALIO GURDIÁN:** Eh, no.

**GON:** With a “yes” or a “no:” did you document the conflict of Awas Tingni with

the Community of Kukalaya?

**WITNESS GALIO GURDIÁN:** No.

**GON:** With a “yes” or a “no:” did you document the conflict of Awas Tingni with the communities of Esperanza, Santa Clara, and Francia Sirpi?

**WITNESS GALIO GURDIÁN:** No.

**GON:** Along another line of questioning, Mr. President. Doctor Gurdían, do you know whether Law 14 or the Reform Law of the Law of Agrarian Reform is in effect?

**WITNESS GALIO GURDIÁN:** No.

**GON:** Do you know that under this law, if it is still in effect, twenty-eight communities have received title?

**WITNESS GALIO GURDIÁN:** That is, I repeat the information I gave earlier; since 1990 the State, through its authorities, has not given a single title to the communities.

**GON:** Do you, then, affirm that there has been no title issued under that law in effect?

**WITNESS GALIO GURDIÁN:** I repeat what I said; that is, that as far as I know, since 1990 the Nicaraguan State has not recognized a single communal title.

**GON:** In your testimony, you made it understood that there was no legal framework that would allow the issuance of title. That is the reason I am asking you this specific question: Whether the law is in effect, do you or do you not know?

**PRESIDENT CANÇADO TRINIDADE:** Pardon, I think he answered that he does not know.

**GON:** Fine, let’s continue then. One last question, Mr. President: Does Doctor Gurdían know of the consultation effectuated by the State with the indigenous communities relative to the legislative bill of titling of their lands?

**WITNESS GALIO GURDIÁN:** Yes, I know of it.

**GON:** Could you briefly explain to us the extent of this consultation?

**WITNESS GALIO GURDIÁN:** Well, in the first place, the consultation came about because the initiatives regarding the law of indigenous community land tenured by the Executive were dismissed. That is, the consultation was achieved through pressure by the coastal indigenous peoples’ organizations on the issue, and they forced the World Bank and the Nicaraguan Government to engage in this consultation . . . .

**GON:** Doctor Gurdían.

**WITNESS GALIO GURDIÁN:** . . . . that has been massive . . . . I am answering your question, that has been massive, effectively, with the participation of the communities. There is a proposal presented by the two Regional Councils in September of this year, and the perception that exists at the national level, and the opinion of National Assembly deputies, is that that legislative bill will not succeed, because the political will to pass it does not exist.

**GON:** That is an opinion, Mr. President, I ask that it not be allowed.

**PRESIDENT CANÇADO TRINIDADE:** Yes. You may proceed.

**GON:** One last question to clarify the preceding statements. Do you agree, then, that the process of consultation has been broad as you said previously?

**WITNESS GALIO GURDIÁN:** It has been broad because of the will of the indigenous organizations and of the communities of the Atlantic Coast.

**GON:** I pass the questioning to Mr. Castro.

**PRESIDENT CANÇADO TRINIDADE:** Yes, you may proceed. You have seven minutes.

**GON:** Doctor Gurdían, why is the area related to SOLCARSA included in the area of the Wistan block, and that same area is not connected with Awas Tingni at any time in your diagnostic study?

**WITNESS GALIO GURDIÁN:** I think that I explained in the beginning, if the attorney paid attention, that what the diagnostic study attempted to do was to project what the communities or blocks of communities claimed as their areas of use and possession, that is, to us . . . .

**GON:** Pardon, Mr. President, I would like to emphasize a point. I want to ask Mr. Gurdían, because he in his diagnostic study describes the Wistan block and in the area of the Wistan block the study includes the SOLCARSA area; also, it narrates Wistan's fight about the SOLCARSA concession, yes? So, I ask him, why was that included, right? SOLCARSA, in another block of communities, which is not incorporated in the block of Awas Tingni communities, right? Does it include Awas Tingni or does it not include Awas Tingni?

**WITNESS GALIO GURDIÁN:** I am saying the diagnostic study reflects the information that we collected in the territory.

**GON:** Okay, it does not include it. All right. Another question similar to that one. The Clarindán block, which is related to MADENSA, is written about in your study, right? Does it include Awas Tingni inside that block, yes or no?

**WITNESS GALIO GURDIÁN:** I think I answered that question previously; that is, we did not go in depth into the Awas Tingni case.

**GON:** So no. I would like to clarify, Mr. President, that is, the Wistan block does not include the Awas Tingni Community, it only relates it to . . . .

**IACHR (Prof. Anaya):** Mr. President . . . .

**PRESIDENT CANÇADO TRINIDADE:** Yes?

**IACHR:** With your permission, the attorney is giving a response to his own question.

**PRESIDENT CANÇADO TRINIDADE:** Yes, yes.

**GON:** Yes, excuse me; Mr. President, I will repeat the question. Why does no illustration in your map summarize the Wistan blocks and the Clarindán block, within all of those overlapping claims?

**WITNESS GALIO GURDIÁN:** It seems that the consolidated version that we presented summarizes all of the blocks. I don't know to what you are referring.

**GON:** Thank you, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much, alternate Agent

of the Illustrious State of Nicaragua. The questioning is concluded; I now consult the judges, do they have questions to ask the witness? Judge Montiel Argüello?

**JUDGE MONTIEL ARGUELLO:** I want to ask the witness a question. He said that the Miskito communities had progressively been moving west; did the Community of Awas Tingni that is not Miskito also move? In which direction?

**WITNESS GALIO GURDIÁN:** Well, according to the oral history, it moved, that is, the pattern of settlement of the communities is a pattern of movement of territory, Your Honor. That is, it is so much that way that the arguments of the State of Nicaragua to deny rights of possession of property in the territory and has been what is argued as the nomadic character of these communities.

**GON:** Mr. President, with extreme respect, I don't presume to tell the Court how it should ask its questions. However, I understand that the questions of the Court should also be focused on the terms of reference.

**PRESIDENT CANÇADO TRINIDADE:** I would like to clarify something. The terms of reference refer to the questioning by the parties, but the judges have the full power to ask any question. So Judge Montiel Argüello may proceed.

**JUDGE MONTIEL ARGUELLO:** I would like the witness's response about whether Awas Tingni moved or didn't move.

**WITNESS GALIO GURDIÁN:** I thought I said that the Community had moved. The traditional pattern of settlement of the Mayagna communities, and also the Miskito communities, is seeking to move from the territory on which they have settled toward better conditions and that provide better for their survival, Your Honor. So, yes, it has moved.

**JUDGE MONTIEL ARGUELLO:** In which direction, can you tell us?

**WITNESS GALIO GURDIÁN:** Well, one would have to do archeological work that I have not done.

**JUDGE MONTIEL ARGUELLO:** Thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** Thank you, Judge Montiel Argüello; Judge de Roux?

**JUDGE DE ROUX RENGIFO:** Yes, Mr. President. Doctor Gurdían, you affirmed in your testimony that since 1990 there has been no titling of indigenous lands. I would like to ask you, prior to 1990, was there titling of indigenous lands?

**WITNESS GALIO GURDIÁN:** Indeed there was.

**JUDGE DE ROUX RENGIFO:** And as far as you know, as far as your knowledge as a witness, to what could be owed the interruption of that activity of titling of lands?

**WITNESS GALIO GURDIÁN:** The State of Nicaragua seems to respond to crisis situations. That is, the titling that was done during the 1980s, fundamentally due to the war, to the taking up of arms, is part of the strategy to convert a military conflict into more of a political discussion in such a way that, after the elections and with the climate of peace that the State was fostering, it seemed to have no incentive to resolve the historic complaints of the communities.

**JUDGE DE ROUX RENGIFO:** What sort of difficulty to the titling of lands is

produced by the fact that there are overlapping claims of the sort to which you made reference? I'll be more specific: are those overlapping claims an insuperable obstacle to the titling of lands? Are there ways to resolve the problems that involve those claims in the search to assign specific lands to each indigenous community?

**WITNESS GALIO GURDIÁN:** Indeed; in the diagnostic study, we were suggesting the return of the lands as a fundamental step, and for the State to take recourse in customary law and existing relations among these communities, and through traditional authorities in the Moravian Church, and of the other churches to find a solution to the conflicts. That is why a fundamental chapter of the recommendations was to enter into the dynamic of conflict resolution where the Nicaraguan State would stop acting as judge and interested party in the matter, which has been its historic role in this, and convert the State into a facilitator. And I think that there would be . . . the conditions exist, if there were a different will to approach this type of problem.

**JUDGE DE ROUX RENGIFO:** Thank you witness, thank you President.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. Judge García Ramírez? Judge Abreu Burelli? Judge Jackman? Judge Salgado?

**JUDGE SALGADO PESANTES:** No, Your Honor.

**PRESIDENT CANÇADO TRINIDADE:** Judge Máximo Pacheco? I have no questions either. The testimony is concluded. Thank you very much. Will the Secretary please call the next witness to testify?

**GON:** Mr. President, would a five-minute recess be possible?

**PRESIDENT CANÇADO TRINIDADE:** We are thinking of taking a recess immediately after the third witness.

**GON:** Yes, Sir.

**PRESIDENT CANÇADO TRINIDADE:** At about 11:30, a long recess.

**SECRETARY VENTURA ROBLES:** Mr. Brooklyn Rivera.

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

**WITNESS BROOKLYN RIVERA:** Brooklyn Rivera.

**PRESIDENT CANÇADO TRINIDADE:** Nationality?

**WITNESS BROOKLYN RIVERA:** Nicaraguan.

**PRESIDENT CANÇADO TRINIDADE:** Identification document number?

**WITNESS BROOKLYN RIVERA:** 6-454916?

**PRESIDENT CANÇADO TRINIDADE:** And place of residence?

**WITNESS BROOKLYN RIVERA:** Bilwi, North Atlantic Region of Nicaragua.

**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: the witness will testify about the supposed activities and positions of the

institutions and agents of the State about the territorial claim of the Mayagna (Sumo) Community of Awas Tingni and the issue of indigenous lands in general; the judicial capacity to deal with the claims of the Mayagna (Sumo) Community of Awas Tingni and other indigenous communities on land rights; the Commission for Demarcation of Lands and the Indigenous Communities of the Atlantic Coast; the preparation of related proposals and legislative bills; the supposed granting of concessions in the RAAN, including the concession to SOLCARSA; the supposed forestry activities under the SOLCARSA concession; development plans and initiatives that could affect the communal indigenous lands; on other issues related to the use of natural resources and land tenure in indigenous communities.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may not indict the witnesses, nor may it take retaliatory measures against them or their family members because of their testimony 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 BROOKLYN RIVERA:** Yes.

**PRESIDENT CANÇADO TRINIDADE:** Will the Inter-American Commission's representative please tell the Court the name of the person who will do the questioning and proceed to the questioning.

**IACHR (Dr. Bicudo):** I call James Anaya to conduct the questioning. Thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much; you may proceed.

**IACHR (Prof. Anaya):** Thank you, Mr. President, Honorable Court. Mr. Rivera, where is your current residence?

**WITNESS BROOKLYN RIVERA:** I reside in the city of Bilwi, North Atlantic Autonomous Region.

**IACHR:** Could you please give the Court information on your ethnic background ancestral roots?

**WITNESS BROOKLYN RIVERA:** I belong to the Miskito indigenous people of Nicaragua. I come from one of the Miskito communities, Lidauca Sandy Bay, located in the North Atlantic.

**IACHR:** And what is your native language?

**WITNESS BROOKLYN RIVERA:** It is the Miskito language.

**IACHR:** And your current occupation?

**WITNESS BROOKLYN RIVERA:** I am a professor of statistics in the Moravian University, or BICU.

**IACHR:** What positions have you held, if any, as indigenous leader among your



people or community?

**WITNESS BROOKLYN RIVERA:** I have held the position of General Coordinator of the MISURASATA Organization from 1980 until 1986, and then main director of YATAMA for the last five years.

**IACHR:** Have you been an official of the Nicaraguan Government?

**WITNESS BROOKLYN RIVERA:** That's correct. I held the position of Minister-Director of the Nicaraguan Institute of Autonomous Region Development and then Vice-Minister of Social Action, from 1996 to 1997.

**IACHR:** And are these positions in some way related to the indigenous communities of the Atlantic Coast?

**WITNESS BROOKLYN RIVERA:** Indeed. In the INDERA position, we dealt with the institutional coordination of the development and social service plans of the government in the autonomous regions; the same in the Social Action Ministry, in that we had to coordinate the social service plans and policies of the government for those two regions where the majority of the indigenous community is.

**IACHR:** So, when you held these official positions, you knew of the policies and practices of other State institutions with relation to the indigenous communities?

**WITNESS BROOKLYN RIVERA:** That's correct. In particular of the Ministry of Natural Resources and the Environment, MARENA, and then it had to battle with the issue of natural resources and the environment in Nicaragua, and then also with the Nicaraguan Institute of Agrarian Reform, INRA, that dealt with the issue of lands in the country.

**IACHR:** And, to continue talking about this period, what was INRA's practice in the face of the territorial demands of the indigenous communities?

**WITNESS BROOKLYN RIVERA:** INRA always limited its policy to dealing with land claims of the cooperatives and farmers without land and gave, let's say lands to these groups, using the method of fifty blocks per family, which came with some technical assistance; but with respect to indigenous communities, they assumed no responsibility, because, well, they alleged that, well, the law did not empower them, to attend to the claims of the indigenous communities.

**IACHR:** And you, as an official of the government, did you do something in the face of this position?

**WITNESS BROOKLYN RIVERA:** When the communities made demands, I always headed toward the INRA authorities to see how we could deal with these situations and dialogued with the high-level, cabinet-level, functionaries—despite the fact that INRA also alleged that it did not have the competence—but it extended proof of handing over lands to ex-military officers, entities of the army and of the police, and likewise of the Nicaraguan resistance, and those lands were within the majority of the indigenous communities.

**IACHR:** All right, if not to INRA, to which other State institution, if any, could the indigenous communities turn to obtain the demarcation or titling of their traditional lands?

**WITNESS BROOKLYN RIVERA:** Well, there was no other specific agency,

although the INRA asserted, “but we weren’t competent to deal with specific claims,” and neither did MARENA, as Ministry of Natural Resources, have that competency, so, well, all of the Nicaraguan State and, well, their government lacked a legal instrument, a legal framework that would permit it to, well, deal with the territorial claims of the indigenous peoples.

**IACHR:** And when you were Minister and Vice-Minister as you have described, was there any initiative inside the government to change this situation?

**WITNESS BROOKLYN RIVERA:** Yes, indeed; we, first in INDERA then beyond, went to find some mechanism that comes from the grass roots, from the communities themselves, and we collaborated in the formation of the organization of indigenous leaders that are the legal administrators of the lands of the communities, and a group known as OSICAN was formed, the Organization of *Sindicatos* [leaders] of the Caribbean Coast of Nicaragua. Later, this organization worked on a bill, consulting widely with the grass roots and with the communities, and it was presented before the National Assembly in 1996. I repeat: OSICAN was formed in 1995 and this bill was presented to the National Assembly in 1996. A product of this initiative of the communities themselves, the Government of President Chamorro, under our initiative as Ministry of Social Services, we decided to create a national commission of demarcation of lands of the indigenous communities that was established in that same year, 1996; we began to work. But unfortunately, because the Government’s time ended at the end of that year, we were not able to advance much, well, the tasks that we had proposed for ourselves.

**IACHR:** So what were the results of these efforts, of these initiatives?

**WITNESS BROOKLYN RIVERA:** Concretely, the communities, through their authorities, organized a structure for themselves, OSICAN, prepared a bill that was presented to the Assembly, and then the National Demarcation Commission was created.

**IACHR:** All right, and the result of the Commission and the bill, in what did they result?

**WITNESS BROOKLYN RIVERA:** Well, as far as the bill, it stayed in the Reporting Commission, the Government Commission; it didn’t go further. It was not a priority at that time, so as to, let’s say, get pushed through the process, so it didn’t go further, it didn’t return to the plenary session. And as far as the National Demarcation Commission, we left it to the new government that came in 1997.

**IACHR:** And what happened with that Commission under the new government?

**WITNESS BROOKLYN RIVERA:** Well, some meetings took place, the Commission with the representatives of the government and of the indigenous communities that were there. The indigenous communities wanted to broaden the Commission with the representation of the different peoples. It was done, but it seems that the government itself, well, took another position with respect to how to propose the subject of indigenous lands. And later it came out as a bill, which was presented to the National Assembly on the 13<sup>th</sup> of October, 1998.

**IACHR:** Thank you; and when you were Minister under the former government, was that when MARENA granted the forest concession to the SOLCARSA

company?

**WITNESS BROOKLYN RIVERA:** That's correct.

**IACHR:** And when MARENA was contemplating or considering the concession, did you see any problem with it?

**WITNESS BROOKLYN RIVERA:** Logically, in various communities—among them Awas Tingni, Kukalaya and others—they came to our offices and alleged a violation of their territorial rights since the area of the proposed concession was within the areas of the communities.

I personally, with the other communities, spoke with the high authorities of the Ministry and of Natural Resources; we set forth the concerns and the claims of the communities. But the position at that time, well, it was the same as that of the government: that the empty and wastelands belonged to the State and that those communities that laid claim to them had no title, right? And also, the concessions were to benefit the population, because it was going to generate employment and supposed revenues to the population.

**IACHR:** You stated that you had directly presented the concerns to State officials, to whom specifically?

**WITNESS BROOKLYN RIVERA:** Well, beginning with the Minister of MARENA. Initially Milton Caldera was there, then Claudio Gutiérrez. To them, then accompanied by the high functionaries of MARENA, such as Roberto Araquistáin and Lainez, who are those who really, well, dealt with all the policies and the decision of MARENA to give concessions to the companies that requested.

**IACHR:** And, at any time before granting the concession, did they do any, these governmental institutions—INRA, MARENA—did they do any study about the land tenure patterns of the communities within the area of the concession or about the environmental impact on these communities?

**WITNESS BROOKLYN RIVERA:** Well, there is a point that we always alleged in the government: that they first had to establish well-defined criteria and the policies on the country's forestry development. But at that time there was none, and concessions were granted without well-tailored criteria, in which the right to property is ensured; also, an assurance of protection of the environment, the impact it was going to generate, there was really no basis. Only, well, MARENA demanded a forestry management plan, right, of the company, and they drew it up there. We realized that some of the same functionaries of MARENA were part of the consultation that drew up the management plans such that there was, well, a conflict of interest.

**IACHR:** Can you specify whom in particular?

**WITNESS BROOKLYN RIVERA:** Okay, well, in this consultation meeting, that, for example, Roberto Araquistáin himself was one of the men that took part and prepared the documents . . .

**IACHR:** And did he hold a position in the government?

**WITNESS BROOKLYN RIVERA:** Indeed; he was the General Director of the Forest Service at that time, in the Ministry of Natural Resources and the

Environment, MARENA.

**IACHR:** And at the same time he participated in this consultation?

**WITNESS BROOKLYN RIVERA:** That's correct.

**IACHR:** So at some point he consulted with the communities?

**WITNESS BROOKLYN RIVERA:** No way, it was never done. Never even visited the region, the areas of the concession, and only dealt with the claims of the communities because we, I who was in the government, went on to demand that he should know and, well, deal with the claims of the communities. But never them for themselves alone, they, well, committed, to investigate, to get to know and deal with in an adequate manner, the demands of the communities.

**IACHR:** Okay, yes, thank you.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much to the Commission for staying within the agreed time. I will now give the floor to the Agent of the Illustrious State of Nicaragua to proceed to its questioning, if it so wishes.

**GON (Mr. Castillo):** Thank you very much, Mr. President. I will conduct the questioning. Briefly, with a "yes" or a "no, if possible: do you know whether Law 14 or the Law of Reform of Agrarian Reform is in effect?

**WITNESS BROOKLYN RIVERA:** I don't know it.

**GON:** Do you know that under the effective Law 14, twenty-eight communities have received titled?

**WITNESS BROOKLYN RIVERA:** If you are referring to the communities that were beneficiaries of the Agrarian Reform during the Sandinista Government, yes.

**GON:** Do you know the communal indigenous property bill recently presented to the Assembly?

**WITNESS BROOKLYN RIVERA:** Of course I know it.

**GON:** What is your basis to affirm the ancestral possession of Awas Tingni?

**WITNESS BROOKLYN RIVERA:** In the law or in my own criteria?

**GON:** In your own criteria, based on the personal information that you, as witness, have to be supporting the thesis of Awas Tingni's ancestry?

**WITNESS BROOKLYN RIVERA:** It is the right of Awas Tingni and all of the other communities based on possession prior to the earlier formation of the Nicaraguan State.

**GON:** What studies have you done or do you know of to affirm the ancestral possession of Awas Tingni?

**IACHR (Prof. Anaya):** Pardon me, Mr. President, the witness has not testified as an expert, and the representative of the State's questioning goes much beyond what has been testified about.

**PRESIDENT CANÇADO TRINIDADE:** Maybe you could restate the question in relation to that which has been affirmed earlier by the witness.

**GON:** What are your sources of information to affirm that Awas Tingni's possession is ancestral?

**WITNESS BROOKLYN RIVERA:** Well, the very existence of myself and all the communities that are there that, I repeat, are there before, before any right, any

State's existence. These communities are settled there with a right, well, historic over the lands and the resources that they possess.

**GON:** Do you know whether any indigenous communities move through migration?

**WITNESS BROOKLYN RIVERA:** No, there exists none of that evidence of that practice among the indigenous peoples of Nicaragua.

**GON:** One last question. How can you affirm that the concession to SOLCARSA was done in the ancestral area of Awas Tingni?

**WITNESS BROOKLYN RIVERA:** Well, the claims of the Community itself and the double evidence where the communities by tradition have been occupying areas, not only to live, but rather to, really, where they carry out their cultural, economic, social activities, as far as we know, and well, the maps, the studies effectively sustain that as communities they have, right? Over this area, right? Their ancient places, their activities that they carry out, and the position that they have been preserving for years.

**GON:** That is all, Mr. President. Thank you very much, Brooklyn.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much to the State's Agent for keeping to the agreed time; I now consult with the other judges as to whether they have questions to ask. Judge Montiel Argüello?

**JUDGE MONTIEL ARGUELLO:** No question.

**PRESIDENT CANÇADO TRINIDADE:** Judge de Roux?

**JUDGE DE ROUX RENGIFO:** Thank you, Mr. President. I would like to ask the witness the following. If I have understood correctly, you held a position of Minister in the national cabinet when the concession to SOLCARSA was conceded, was granted. Is that right or not?

**WITNESS BROOKLYN RIVERA:** A position, yes, in the government of that time.

**JUDGE DE ROUX RENGIFO:** Your specific position at that time, what was it?

**WITNESS BROOKLYN RIVERA:** It was first Minister-Director of the organization called the Nicaraguan Institute of Autonomous Region Development, that is the Caribbean region of Nicaragua where there are indigenous communities, and where the granting of concessions occurred, well, was conceded.

**JUDGE DE ROUX RENGIFO:** And you have explained to us that the granting of that concession to SOLCARSA was made known and that you made efforts inside the government to oppose those concessions, is that right?

**WITNESS BROOKLYN RIVERA:** That is correct, Your Honor.

**JUDGE DE ROUX RENGIFO:** Up to what level did your efforts go? Did they go before the Ministries? To the office of which Ministries? Did they make it to the office of the President of the Republic? How far did your efforts reach?

**WITNESS BROOKLYN RIVERA:** Well, at the first stage, before the Ministry that was in charge of giving the concession; that, in this case, was the Ministry of Natural Resources and the Environment, MARENA, with the Minister and functionaries that decided to grant the concession. Upon not receiving, shall we

say, adequate attention, I then began to send a communication to all of the other Ministers.

**JUDGE DE ROUX RENGIFO:** You were Minister at the same level as the Minister in charge of environmental issues?

**WITNESS BROOKLYN RIVERA:** Exactly; I was Minister, right, so that allowed me to be in the government's cabinet, and I sent communication to all of the other colleagues. They knew, although they didn't show much interest at that time and practically, well, didn't pay attention to them, and the concession was given by MARENA because it was the authority in charge of giving concessions.

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

**PRESIDENT CAÑADO TRINIDADE:** Thank you. Judge García Ramírez? Judge Abreu Burelli? Judge Jackman? Judge Salgado Pesantes? Judge Pacheco Gómez?

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

**PRESIDENT CAÑADO TRINIDADE:** I have no questions either. The testimony is concluded.

**WITNESS BROOKLYN RIVERA:** Thank you.

**PRESIDENT CAÑADO TRINIDADE:** We will now take a break, and I would like to propose that it be until 11:30. We are rigorously on time, and maybe we could conclude the witness testimonies this morning to leave only expert testimonies for the afternoon; that's possible, no? So we suspend the session and begin again at 11:30 sharp. The session is in recess.

**PRESIDENT CAÑADO TRINIDADE:** This public hearing on the merits of the case of the Mayagna (Sumo) Community of Awas Tingni is reconvened with the objective of continuing to hear witness testimony.

**IACHR (Dr. Bicudo):** Mr. President, for the order, I would like to inform the Honorable Court that Commissioner and First Vice-president Claudio Grossman is present and joining the delegation of the Inter-American Commission of Human Rights.

**PRESIDENT CAÑADO TRINIDADE:** Thank you very much. Will the Secretary call the next witness to testify?

**SECRETARY VENTURA ROBLES:** Mr. Humberto Thompson.

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

**WITNESS HUMBERTO THOMPSON:** My name is Humberto Thompson Sang.

**PRESIDENT CAÑADO TRINIDADE:** Nationality?

**WITNESS HUMBERTO THOMPSON:** Nicaraguan.

**PRESIDENT CAÑADO TRINIDADE:** Identification document number?

**WITNESS HUMBERTO THOMPSON:** C-336836.

**PRESIDENT CAÑADO TRINIDADE:** And place of residence?

**WITNESS HUMBERTO THOMPSON:** Nicaragua.

**PRESIDENT CAÑADO 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: the witness will testify about the supposed activities and positions of the institutions and agents of the State about the territorial claim of the Mayagna (Sumo) Community of Awas Tingni and the issue of indigenous lands in general; the judicial capacity to deal with the claims of the Mayagna (Sumo) Community of Awas Tingni and other indigenous communities on land rights; the Commission for Demarcation of Lands and the Indigenous Communities of the Atlantic Coast; the preparation of related proposals and legislative bills; the supposed granting of concessions in the RAAN, including the concession to SOLCARSA; the supposed forestry activities under the SOLCARSA concession; development plans and initiatives that could affect the communal indigenous lands; on other issues related to the use of natural resources and land tenure in indigenous communities.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may not indict the witnesses, nor may it take retaliatory measures against them or their family members because of their testimony 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 HUMBERTO THOMPSON:** Yes.

**PRESIDENT CANÇADO TRINIDADE:** Will the representative of the Inter-American Commission tell the Court the name of the person who will examine the witness?

**IACHR (Dr. Bicudo):** I name Doctor Bertha Santoscoy for the questioning.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. You may proceed.

**IACHR (Dr. Santoscoy):** Thank you, Honorable Court. Mr. Thompson, tell the Court where you have lived most of your life.

**WITNESS HUMBERTO THOMPSON:** In the Community of Lamlaya, near the city of Puerto Cabezas, Nicaragua.

**IACHR:** Are you a member of an indigenous community of the Atlantic Coast?

**WITNESS HUMBERTO THOMPSON:** Yes, I am from the indigenous Community of Lamlaya.

**IACHR:** To what ethnic group do you belong?

**WITNESS HUMBERTO THOMPSON:** To the Miskito ethnic groups.

**IACHR:** Have you been a member of the Regional Council?

**WITNESS HUMBERTO THOMPSON:** Yes, I was elected in 1996, ah, 1994, for a period of four years, through 1998.

**IACHR:** Are you connected with any political party?

**WITNESS HUMBERTO THOMPSON:** No, I am a member of the indigenous organization YATAMA.

**IACHR:** Tell us, when you were a Council member, did you file an *amparo* action against the Government of Nicaragua?

**WITNESS HUMBERTO THOMPSON:** Yes. We filed the action in court the 29<sup>th</sup> of March of 1996.

**IACHR:** And what was the objective of that action?

**WITNESS HUMBERTO THOMPSON:** It was to stop the concession that the Government of Nicaragua gave to the SOLCARSA company.

**IACHR:** Who asked you to file that action?

**WITNESS HUMBERTO THOMPSON:** The action is requested by the communities, the Mayagna communal leaders of Awas Tingni.

**IACHR:** Tell me, how much time passed before the court was to issue a judgment on that action?

**WITNESS HUMBERTO THOMPSON:** One year, almost one year, from 1996 to February of 1997.

**IACHR:** What was the judgment on the action?

**WITNESS HUMBERTO THOMPSON:** The action is, they cancelled the company's concession.

**IACHR:** Now tell us, what happened after the judgment?

**WITNESS HUMBERTO THOMPSON:** Well, the company always worked and they also always came to the city of Puerto Cabezas and the seat of the Regional Council to convince the Council members.

**IACHR:** So you're telling us that the Court ordered a halt to the concession?

**WITNESS HUMBERTO THOMPSON:** Yes.

**IACHR:** But what happened?

**WITNESS HUMBERTO THOMPSON:** It didn't, well, pay attention, and the company continues working.

**IACHR:** Tell us, Mr. Thompson, if on any occasion someone from the government proposed that you do something with respect to the *amparo*?

**WITNESS HUMBERTO THOMPSON:** Yes; one time, the government came, an official of the government, right? To offer me if I could withdraw the petition.

**IACHR:** Who was that person?

**WITNESS HUMBERTO THOMPSON:** Exactly, the person is the engineer Jorge Brooks, MARENA official.

**IACHR:** What position did he have within the government?

**WITNESS HUMBERTO THOMPSON:** He was like a regional delegate in MARENA.

**IACHR:** And what was his relationship with SOLCARSA?

**WITNESS HUMBERTO THOMPSON:** He worked as advisor, right? Of the company.



**IACHR:** Now, what other efforts did Mr. Brooks undertake to promote the SOLCARSA concession?

**WITNESS HUMBERTO THOMPSON:** Well, Mr. Brooks has traveled much on the Atlantic Coast, from Puerto Cabezas, to convince the Governor and the members of the Regional Council, the Board of Directors, more so that they can pass an approval, right, on the SOLCARSA company.

**IACHR:** Thank you very much; tell us, after the Court issued its judgment, what happened within the Regional Council with relation to the concession?

**WITNESS HUMBERTO THOMPSON:** Well, the company, through Mr. Brooks, offered the expense to hold session in Puerto Cabezas, but also the cost to transport all the Council members from the region, of the municipalities, right, to Puerto Cabezas. It is, eh . . . they assumed all the expense that was going to be in Puerto Cabezas.

**IACHR:** When you referred to Mr. Brooks, you said that someone had given him some money; could you elaborate a little more with respect to that?

**WITNESS HUMBERTO THOMPSON:** Yes, well, after all this, hold that session, right? In Puerto Cabezas, and to all of the Council members that vote in favor of the SOLCARSA company, it offered 5,000 córdobas.

**IACHR:** And Mr. Brooks?

**WITNESS HUMBERTO THOMPSON:** Mr. Brooks was part of this, right? He was representative, as representative of the company, they offered, well, that it is going to pay 5,000 córdobas.

**IACHR:** They offered it to you?

**WITNESS HUMBERTO THOMPSON:** They offered it to me when he came, right? When he came to visit me to withdraw the petition.

**IACHR:** How much did he offer you?

**WITNESS HUMBERTO THOMPSON:** More than 45,000 to withdraw.

**IACHR:** 45,000 what?

**WITNESS HUMBERTO THOMPSON:** Dollars, to withdraw the petition.

**IACHR:** Now then, please continue telling us about what happened in the Regional Council.

**WITNESS HUMBERTO THOMPSON:** Well, within the first Council, the members of the Council, right? Approved, the majority, the approval that the company requested of the Regional Council.

**IACHR:** Now, from what political parties were the majority of the Council members who voted in favor of the concession?

**WITNESS HUMBERTO THOMPSON:** The majority were from the PLC party and from the Sandinista Front, and minority were from YATAMA, from the indigenous organization.

**IACHR:** Now, you have told us that they offered them money as well, 5,000; how do you know that they offered them these 5,000?

**WITNESS HUMBERTO THOMPSON:** Because the members of the Regional Council, our colleagues, are indigenous as well, so after the session, some of them came up to me to tell me that they had been offered 5,000 córdobas to vote in

favor of the company.

**IACHR:** Now, after the Council vote in favor of the concession, what happened?

**WITNESS HUMBERTO THOMPSON:** Well, they voted in favor of the concession, and I arrived in court; we filed the other action, that it can't be, it has to cancel that concession.

**IACHR:** On what date was that?

**WITNESS HUMBERTO THOMPSON:** That date is 22<sup>nd</sup> of January of 1998.

**IACHR:** Now, what happened after you went to court?

**WITNESS HUMBERTO THOMPSON:** Well, the Court ruled, after eight months.

**PRESIDENT CANÇADO TRINIDADE:** The agent of the State has a point of order.

**GON:** Yes, Mr. President, this news of which we are being informed, of the supposed bribery, is not in the evidence before the Court; neither is it in the terms of reference. That is, it seems to us that it should not be discussed if it was not communicated before the national tribunals or before this Court.

**PRESIDENT CANÇADO TRINIDADE:** Counselor . . . .

**IACHR:** Yes, Mr. President, during his time, the representative of the Government will have the opportunity to examine the witness in this respect.

**PRESIDENT CANÇADO TRINIDADE:** Yes, but I would like for you to clarify . . . it seems to me fitting to say it, but I would like you to clarify, under what term of reference is the present line of questioning being conducted?

**IACHR:** Yes, Mr. Thompson is speaking about the efforts that have been carried out against the SOLCARSA concession. It is within that context that he gives this information.

**PRESIDENT CANÇADO TRINIDADE:** The supposed logging activities under the SOLCARSA concession. You may proceed. The Agent will also have his opportunity to examine the witness, under this heading on the witness' statements.

**GON (Mr. Castillo):** If I may, Mr. President, we do not consider this to be included in the terms of reference. That is, if he is making reference to a criminal fact of which only now the Government of Nicaragua has knowledge, of which only now the Inter-American Court has knowledge. The contradiction is breaking because we had no previous knowledge of this fact.

**PRESIDENT CANÇADO TRINIDADE:** Could you please answer the question only as it concerns the logging activities that have been conducted under the SOLCARSA concession?

**IACHR:** Yes, yes. Yes, I will continue, Mr. President. Tell us, Mr. Thompson, what happened after you went to court?

**WITNESS HUMBERTO THOMPSON:** Well, the Court, well, again ruled in favor of the petition.

**IACHR:** So it authorized or didn't authorize the concession? Explain that to us.

**WITNESS HUMBERTO THOMPSON:** Yes, they cancelled the concession.

**IACHR:** Yes, on what date was that?

**WITNESS HUMBERTO THOMPSON:** The 22<sup>nd</sup> of January, 1998.

**IACHR:** Now, you are telling us that the SOLCARSA concession was cancelled, but how did the demarcation or the titling situation of indigenous lands remain?

**WITNESS HUMBERTO THOMPSON:** Well, the demarcation and titling of the indigenous lands still continues as it is; the government totally did nothing.

**IACHR:** Thank you; tell me, would you have anything to add with respect to the previous questions?

**WITNESS HUMBERTO THOMPSON:** Yes, about the *amparo* that we filed. The Atlantic Coast has autonomy, recognized in 1987. Law 28 of the autonomy, which says that any concessions the government grants must be done in consultation with the indigenous communities and also the Regional Council.

**IACHR:** Thank you, Mr. Thompson. Thank you, President.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much to the delegation of the Commission for staying within the agreed time; I now give the floor to the Agent of the Illustrious State of Nicaragua for questioning, if it so wishes.

**GON (Mr. Castillo):** Yes, Mr. President, as a point of order, I would like it to be clearly established that Mr. Thompson's declarations relative to the supposed illicit facts, in addition to not being in his terms of reference, must be dismissed by the Court for the reasons I pointed out.

**PRESIDENT CANÇADO TRINIDADE:** It is up to the Court to assess the testimony.

**IACHR:** Mr. President, if I may proceed. It is the following that is clear: that he will testify about the supposed activities and positions of institutions and agents of the State on the territorial claim.

**PRESIDENT CANÇADO TRINIDADE:** Of course. Once again, pardon, once again, I would like to mention that it is up to the Court to assess all that the witnesses have said and the Court will thus proceed.

**GON:** Thank you, Mr. President. I begin the questioning, which I will conduct personally.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed.

**GON:** Mr. Thompson, we have tried to establish questions with clear answers in an effort to determine the facts in this case. I would ask that you answer me as briefly as possible, if possible with a "yes" or a "no." Do you know of any action of unconstitutionality against the SOLCARSA concession presented by the Awás Tingni Community?

**WITNESS HUMBERTO THOMPSON:** Yes, Sir. The concession that we requested, right? In the court, the SOLCARSA concession was ruled unconstitutional.

**GON:** Next question. The Awás Tingni Community, was it a party in the unconstitutionality action filed by you?

**WITNESS HUMBERTO THOMPSON:** Yes.

**GON:** Next question. Do you know that MARENA ordered the suspension of the logging concession to SOLCARSA a short while after having been notified by the Supreme Court of the unconstitutionality of that concession?

**WITNESS HUMBERTO THOMPSON:** Can you repeat the question, please?

**GON:** Yes. After the Court declared the unconstitutionality of the SOLCARSA concession, MARENA, through a resolution, ordered SOLCARSA to refrain from all logging. Are you aware of that resolution?

**WITNESS HUMBERTO THOMPSON:** Well, MARENA passed that resolution but, inasmuch, the company did not pay attention to it.

**GON:** So you know of that resolution?

**WITNESS HUMBERTO THOMPSON:** Yes.

**GON:** Do you know whether SOLCARSA's management plan was approved, a prerequisite to initiating the logging activity?

**WITNESS HUMBERTO THOMPSON:** The question, please?

**GON:** Whether the logging concession implies a management plan. The prior approval of that management plan is the prerequisite to initiating the logging. Do you know whether that management plan has been approved for SOLCARSA by the State?

**WITNESS HUMBERTO THOMPSON:** The management plan, I don't know of it at all.

**GON:** Do you know that, through Ministerial Agreement number 297, MARENA imposed a fine on SOLCARSA for illegally cutting outside of the area of the concession?

**WITNESS HUMBERTO THOMPSON:** Yes, Sir.

**GON:** What is your source of information for affirming that Awas Tingni occupies ancestral lands?

**WITNESS HUMBERTO THOMPSON:** Well, the indigenous communities, it is historically its territory, it is its land, that no one can take away, and the State knows that well, totally. So that territory or the town, the land of the indigenous communities of Awas Tingni, is of the Awas Tingni Community.

**GON:** One last question, Mr. President. And only for the assessment that the Court gives to his statements of the illicit fact. Mr. Thompson, why did you not report the supposed bribery of which only now you are informing us?

**WITNESS HUMBERTO THOMPSON:** Because I didn't need to, Sir, to do that, because Mr. Brooks came and spoke to me; only the two of us spoke.

**GON:** Mr. Thompson, how can we substantiate, through documents, your allegation of attempted bribery if you did not make any criminal accusation?

**WITNESS HUMBERTO THOMPSON:** Because I know that he, as the representative, spoke to me; he came to me and offered me, and only we two were there at that time, Sir.

**GON:** Mr. Thompson, before, you testified that the unconstitutionality action that was filed against the logging concession was prepared jointly by you and Awas Tingni.

**WITNESS HUMBERTO THOMPSON:** Yes, Sir.

**GON:** Thank you very much, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** Thank you to the Agent of the State. To the delegate of the Commission.

**IACHR (Dr. Bicudo):** Mr. President, I would like to make a request on which the Court will eventually decide.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed.

**IACHR:** Commissioner Grossman asks me to request of the Court the possibility of asking a question of fundamental understanding. Obviously it is within our time and we will give, obviously the Court will give, the State the right of adversarial action.

**PRESIDENT CANÇADO TRINIDADE:** I would just like to propose a consideration, if it is possible, no? That this question be reserved for a later stage in the proceeding, because we have already agreed in the pre-hearing meeting with the parties the procedure to be followed, and I don't want to violate this agreement between the parties. I thank the Commission for its understanding.

Let us now move to the next stage of questioning by the judges; I confer with them as to whether they have questions to ask. Judge Montiel Argüello?

**JUDGE MONTIEL ARGUELLO:** No questions.

**PRESIDENT CANÇADO TRINIDADE:** Judge de Roux?

**JUDGE DE ROUX RENGIFO:** Yes, I would like to ask the witness the following: you made reference to the fact that, in the Regional Council, it was said to the delegates, to the members of that Council, that if they gave their support to the concession to SOLCARSA, they would be given 5,000 córdobas. I want to ask you to specify the following: was this done separately as far as you know, as far as you were informed of this? Was it done separately to each member of the Council, or was it done in a session in which all were present?

**WITNESS HUMBERTO THOMPSON:** It was done separate to each member of the Council.

**JUDGE DE ROUX RENGIFO:** Okay, thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** Thank you. Judge García Ramírez? There are no more questions from the judges. The testimony is concluded. You may leave the courtroom.

**WITNESS HUMBERTO THOMPSON:** Thank you.

**PRESIDENT CANÇADO TRINIDADE:** I would like to ask the Commission whether the next witness is in the seat of the Court. I ask the Secretary to call the last witness to testify.

**SECRETARY VENTURA ROBLES:** Mr. Wilfredo McLean.

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

**WITNESS WILFREDO MCLEAN:** My name is Wilfredo McLean Salvador. I was born the 15<sup>th</sup> of April, 1958.

**PRESIDENT CANÇADO TRINIDADE:** Nationality?

**WITNESS WILFREDO MCLEAN:** Nicaraguan.

**PRESIDENT CANÇADO TRINIDADE:** Identification document number?

**WITNESS WILFREDO MCLEAN:** 399935.

**PRESIDENT CANÇADO TRINIDADE:** And place of residence?

**WITNESS WILFREDO MCLEAN:** In the Awas Tingni Community.

**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: the witness will testify about the patterns of land use and occupation of the Mayagna (Sumo) Community of Awas Tingni in general; the documentation of those patterns and about its alleged ancestral communal lands; the processes leading to the preparation of an ethnographic study and maps of them; the alleged lack of official demarcation or titling of the lands that the Mayagna (Sumo) Community of Awas Tingni claims; the efforts that it was to have attempted to obtain the demarcation or titling of them, as well as to stop the concession to SOLCARSA; the responses it was to have received to its petitions by agents of the State; the supposed invasion of the mentioned lands by loggers; the harm the Mayagna (Sumo) Community of Awas Tingni was to have suffered by the acts and omissions of the State with respect to the mentioned lands and on other issues that could 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 not indict the witnesses, nor may it take retaliatory measures against them or their family members because of their testimony 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.

**WITNESS WILFREDO MCLEAN:** Of course, to tell the truth.

**PRESIDENT CANÇADO TRINIDADE:** Yes, do you solemnly swear or declare, by your honor and conscience, that you will tell the truth, the whole truth, and nothing but the truth?

**WITNESS WILFREDO MCLEAN:** Yes.

**PRESIDENT CANÇADO TRINIDADE:** Will the representative of the Inter-American Commission state for the Court the name of the person who will examine the witness?

**IACHR (Dr. Bicudo):** Mr. President, we are going to divide the time. Divide it as necessary between James Anaya and Commissioner Claudio Grossman.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed, thank you.

**IACHR (Prof. Anaya):** Thank you, Mr. President. Mr. Mclean, you said that you are from the Awas Tingni Community.

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** Were you born there?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** Are you Mayagna?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** And you hold a leadership position within the Community?

**WITNESS WILFREDO MCLEAN:** Of course.

**IACHR:** And what is it?

**WITNESS WILFREDO MCLEAN:** Well, always, since our fight, so always I participated as far as all the efforts, and recently I am in charge of the Manager of the Forest.

**IACHR:** And what is the Manager of the Forest?

**WITNESS WILFREDO MCLEAN:** The one that watches what goes with the land that belongs to the Awas Tingni Community.

**IACHR:** And what is your work, your trade in the Community?

**WITNESS WILFREDO MCLEAN:** Well, also I am in charge, I am responsible for, as Director in the Awas Tingni Community.

**IACHR:** Do you have any relationship with the school?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** What is it? Do you hold a position in the Community's school?

**WITNESS WILFREDO MCLEAN:** Yes, as Manager of the Center.

**IACHR:** Manager of the School Center. Were you in a meeting in the Presidential House in February of 1997?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** I am going to ask our assistant, with the Court's permission, to show a slide.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed.

**IACHR:** Your Honors, this figure is also in the evidence. [See Figure 9 in the Appendix to the Hearing Transcript.]

**PRESIDENT CANÇADO TRINIDADE:** One moment, please, so that the State can have access to the picture as well. Yes?

**IACHR:** Mr. McLean, can you identify what we are looking at?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** Please continue.

**WITNESS WILFREDO MCLEAN:** That photo is ours.

**IACHR:** You are in the photo?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** And where is it?

**WITNESS WILFREDO MCLEAN:** When we got the meeting in the Presidential House with the President, we were with the delegates of the Awas Tingni Community and also with our advisors.

**IACHR:** And the President appears in that photo?

**WITNESS WILFREDO MCLEAN:** Yes he does.

**IACHR:** Very well, thank you. Who was in that meeting?

**WITNESS WILFREDO MCLEAN:** The Sindico of the Awas Tingni Community and also the advisors.

**IACHR:** And what did you tell the President?

**WITNESS WILFREDO MCLEAN:** For our case, we proposed two cases: first,

the demarcation of our Awas Tingni territorial, and, also, that the logging company SOLCARSA is entering.

**IACHR:** And what did the President say?

**WITNESS WILFREDO MCLEAN:** Well, the President said that he understood that we have right to the land, so he can resolve the case.

**IACHR:** So what did he do on saying that?

**WITNESS WILFREDO MCLEAN:** Well, at that time, well, he said: “Why you make with an agreement with Francisco Rayner?” Well, we said . . . well, we didn’t say anything.

**IACHR:** Did the President organize another meeting at that time?

**WITNESS WILFREDO MCLEAN:** After, he took the telephone and called the MARENA Minister, so he said that he would attend to us in the MARENA office.

**IACHR:** And did he attend to you in the MARENA Ministry?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** That same day?

**WITNESS WILFREDO MCLEAN:** That same day, at 2:00 in the afternoon, he attended to us in the MARENA office.

**IACHR:** And who was in that meeting?

**WITNESS WILFREDO MCLEAN:** Roberto Stadhagen and more—he is the Minister of MARENA and he was the INRA representative—and others that were there, but I don’t know, I don’t remember the names.

**IACHR:** And what was discussed in that meeting?

**WITNESS WILFREDO MCLEAN:** Well, the Síndico himself brought up the case that . . .

**IACHR:** The Awas Tingni Síndico?

**WITNESS WILFREDO MCLEAN:** Yes, that Síndico brought it up, Benedicto Salomón brought it up, so, for both cases, so he said: “Very interesting what we are going to resolve and we are going to go where you are to verify the situation.” So, well, they said that, on that occasion.

**IACHR:** And what happened subsequently?

**WITNESS WILFREDO MCLEAN:** Well, one of the proposals that we made was resolved then, the SOLCARSA situation, but the demarcation, until now.

**IACHR:** Did they go to the Community to resolve it?

**WITNESS WILFREDO MCLEAN:** No, they didn’t come.

**IACHR:** Were you present in a meeting with officials of the government in March of this year?

**WITNESS WILFREDO MCLEAN:** Yes, I was.

**IACHR:** And how was that meeting organized?

**WITNESS WILFREDO MCLEAN:** Well, as we had much concern to demarcate our land of Awas Tingni, so, for that, we asked for the meeting. So, well, that’s what we did. And now Mr. Francisco Rayner did come to the Community and organized a commission of ten elements.

**IACHR:** And he is from the Community, or from the government?

**WITNESS WILFREDO MCLEAN:** He is a functionary of the government.



**IACHR:** So he took you to this meeting?

**WITNESS WILFREDO MCLEAN:** Yes, so then he took us, the 28<sup>th</sup> to 30<sup>th</sup>, he took us toward Managua.

**IACHR:** Of what month and year? You said 28<sup>th</sup> to the 30<sup>th</sup>?

**WITNESS WILFREDO MCLEAN:** 28<sup>th</sup> of March to 30<sup>th</sup> of March of this year.

**IACHR:** Of this year?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** And where was the meeting?

**WITNESS WILFREDO MCLEAN:** We had the meeting in the Foreign Ministry.

**IACHR:** And which officials of the State, if you can remember, were there?

**WITNESS WILFREDO MCLEAN:** Well, there were twelve members of the Government Commission there.

**IACHR:** And do you see any of those State delegates in this courtroom?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** Yes?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** Did you tell your counsel? Were your counsel in that meeting? Did they say you could freely have counsel with you? Legal counsel, in that meeting?

**WITNESS WILFREDO MCLEAN:** Well, only, just, we have María Acosta, they let her, well, attend that meeting.

**IACHR:** Did they say anything about your counsel, that you could invite whomever you wanted to come?

**WITNESS WILFREDO MCLEAN:** Well, they said definitely the international lawyer could not participate in this meeting.

**IACHR:** Why, did they tell you why?

**WITNESS WILFREDO MCLEAN:** Because they cannot be there, because among Nicaraguans we can resolve the situation, so it is not necessary that they be there.

**IACHR:** And was there any representation, someone from the Inter-American Commission?

**WITNESS WILFREDO MCLEAN:** No, they were not there.

**IACHR:** And during that meeting, did someone from the government speak about this proceeding before the Inter-American Court?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** What did they say?

**WITNESS WILFREDO MCLEAN:** Well, that they can't, that it is not necessary to go to the Court. Better to resolve the case here, they said.

**IACHR:** All right, what did you tell the government in response?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** What did you tell them?

**WITNESS WILFREDO MCLEAN:** Well, we showed them the map we have.

**IACHR:** All right, we're going to ask to show some slides, with the permission of the Court. What you are seeing right now, is that the map? [Figure 6.]

**WITNESS WILFREDO MCLEAN:** That is the map we showed them.

**IACHR:** And what did they say to you? How did they respond?

**WITNESS WILFREDO MCLEAN:** Well, on seeing that they said that they don't know it, because we didn't make together with the government, so for that they don't know it.

**IACHR:** Did they proceed to negotiate the territorial claim? To talk with you about what you want? About what they were asserting?

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** And how were those negotiations?

**WITNESS WILFREDO MCLEAN:** Well, on that occasion, before ending the meeting, then a part of the delegation that we had in that meeting, then took them and went to a corner, then, well, they said that they promised to give or title twelve thousand hectares and plus thirteen thousand hectares as a lease, then plus they are going to offer, um, fifty head of livestock and plus other resources, as materials for development of the Community.

**IACHR:** And was the legal counsel present with this group when that governmental proposal was talked about?

**WITNESS WILFREDO MCLEAN:** No, she was not.

**IACHR:** And how did the government arrive at that figure of twelve thousand hectares that they wanted to offer you? Did they look at your traditional use map? How did they arrive at that figure?

**WITNESS WILFREDO MCLEAN:** Well, they, according to where the Agrarian Reform Law says that each person can give thirty-eight hectares, each family, so looking at the population, they said, "we can guarantee that figure."

**IACHR:** Did they give you something to sign?

**WITNESS WILFREDO MCLEAN:** Yes. In a break, we came to a break, so they, well, it was the thirty-minute break, so, well, from there, the break got longer, and now almost 4:00, and then they presented a letter they brought that . . . they demanded that we sign right then.

**IACHR:** In what way did they demand that you sign?

**WITNESS WILFREDO MCLEAN:** Well, sign that they can title twelve thousand hectares, so, that what we sign.

**IACHR:** But you said that they demanded of you; they pressured you or they . . .

**WITNESS WILFREDO MCLEAN:** Yes.

**IACHR:** In what way?

**WITNESS WILFREDO MCLEAN:** According to what they said; that no government when it carries out an act and immediately no one that, not sign, then that is not fair, so you need to sign.

**IACHR:** And what did you say?

**WITNESS WILFREDO MCLEAN:** Well, that we did not accept, and finally, we denied.

**IACHR:** Why did you deny the government's offer?

**WITNESS WILFREDO MCLEAN:** Because our decision was not for twelve thousand hectares, but rather what we presented in accordance with the map.

**IACHR:** So now Mr. Mclean, what does the Community, you, want from the Government of Nicaragua?

**WITNESS WILFREDO MCLEAN:** Well, we wait already a long time, many years, we have been fighting and always ask the government that it resolves that case, so the Community also wants at the same time here, from the long road we've come on, here we are with a delegation made up of twenty-three persons, so we hope there is a solution by the government.

**IACHR:** Thank you, Mr. Mclean.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much to the delegation for adhering to the agreed time, and I now give the floor to the Agent of the Illustrious State of Nicaragua to proceed to examine the witness if it so desires.

**GON (Mr. Castillo):** Thank you very much, Mr. President, I will conduct the questioning.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed.

**GON:** Mr. Mclean, did you obtain any administrative resolution from the Executive, denying the petition for titling of the lands?

**WITNESS WILFREDO MCLEAN:** Pardon, what. . .

**GON:** Whether, when you requested from the Executive the titling of your lands, you obtained any resolution. Was there a favorable response, unfavorable? Was there no response?

**WITNESS WILFREDO MCLEAN:** Well, as far as the SOLCARSA case, yes.

**GON:** I am referring to the titling of your lands.

**WITNESS WILFREDO MCLEAN:** As far as the titling, there was nothing, to date.

**GON:** That is, there has not been an administrative resolution favorable to your titling claim? There has not been a response or there was a rejection?

**WITNESS WILFREDO MCLEAN:** Look, I ask the word with the President, that can, well, as our, the Spanish language that is difficult for us, there are grammatical words, so, it would be or, can he permit that someone translate to . . .

**PRESIDENT CANÇADO TRINIDADE:** Does the Secretary of the Court know if yesterday's sworn translator is still in the seat of the Court?

**IACHR (Dean Grossman):** Mr. President, if you'll allow me, I think the question is out of order.

**PRESIDENT CANÇADO TRINIDADE:** No, I am asking another question. If the sworn translator or the sworn interpreter is not here, I would ask the Agent that he maybe restate the question, explaining the question to the witness.

**GON:** I would be happy to, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed.

**GON:** Mr. Mclean, you say that you visited the President of the Republic, that after, you visited Minister Stadhagen, and you requested from both the titling of your lands. My question is what response you had?

**WITNESS WILFREDO MCLEAN:** Well, they said they are going to go to

verify on titling.

**GON:** Since when have you not had a response?

**WITNESS WILFREDO MCLEAN:** Well, the response that they gave us is that they are going to attend to us. But they did not come to demarcate.

**GON:** Yes, I continue the questioning. Mr. Mclean, I interpret, from what you tell me, that there was no response. So did you request the titling of your lands from the courts/tribunals of justice?

**PRESIDENT CANÇADO TRINIDADE:** Just a point of order, no? We, as a Court, will take into account what he has said, only what the witness has said, but without taking into account the interpretation that is given by the parties to what the witness has said.

**GON:** Yes, it's that I felt that there was no, no clear answer to the previous question.

**PRESIDENT CANÇADO TRINIDADE:** I simply wanted to make that clarification. Nothing more.

**GON:** So, independently of what may have occurred in that resolution, after having received a rejection or no answer, you requested titling of your lands from the courts?

**WITNESS WILFREDO MCLEAN:** No.

**GON:** Do you know that it was the lawyer Acosta who wrote a letter to the lawyer Argüello? At that time Vice-Minister of Foreign Relations, proposing that a meeting in Managua take place with all the representatives of Awas Tingni?

**IACHR (Prof. Anaya):** Mr. President, once again, the State's representative is saying things that are not correct, that are not the truth, as a premise for his questioning.

**PRESIDENT CANÇADO TRINIDADE:** Agent . . . .

**GON:** Mr. President, Mr. Anaya has been once and again using offensive expressions, describing us as liars . . . the situation seems intolerable to me. I am asking a concrete question. I am asking Mr. Mclean . . . .

**PRESIDENT CANÇADO TRINIDADE:** If he knows.

**GON:** If he knows of the letter that the lawyer Acosta sent to Foreign Relations requesting a meeting in Managua with the representatives of Awas Tingni.

**WITNESS WILFREDO MCLEAN:** For my part yes, I have not seen.

**GON:** In this meeting in Managua, did they authorize the representatives that you wanted?

**PRESIDENT CANÇADO TRINIDADE:** Pardon?

**GON:** Whether, a delegation from Awas Tingni, a group from Awas Tingni, came to the meeting that took place in Managua. The group that came, are they your legitimate representatives?

**WITNESS WILFREDO MCLEAN:** Yes.

**GON:** Did you choose them freely?

**WITNESS WILFREDO MCLEAN:** Yes.

**GON:** Did you sign a document stating that those persons went in representation of Awas Tingni?

**WITNESS WILFREDO MCLEAN:** Yes, but, um . . . continue.

**GON:** Do you know that that document was also signed by the lawyer Acosta?

**WITNESS WILFREDO MCLEAN:** No.

**GON:** Did the lawyer Acosta accompany you to the meeting in Managua?

**WITNESS WILFREDO MCLEAN:** Yes.

**GON:** During the meeting in Managua, did you admit, before the lawyer Acosta, having been issued title on an earlier occasion?

**WITNESS WILFREDO MCLEAN:** No.

**GON:** Did you recognize that it is possible that the Community was titled, that it was the Community from Tilba-Lupia, the one that seems to have a relationship with Awas Tingni?

**WITNESS WILFREDO MCLEAN:** Well, for the moment I think that we are not speaking of that, of Tilba-Lupia. We are speaking of that which is where we are, the land where we are.

**GON:** Why don't we talk about Tilba-Lupia, Mr. Mclean? Do the people of Tilba-Lupia also live in Awas Tingni?

**WITNESS WILFREDO MCLEAN:** Yes, but that Tilba-Lupia, where the area is, is now destroyed.

**GON:** Thank you very much, Mr. President.

**PRESIDENT CAÑADO TRINIDADE:** Thank you very much to the Agent of the Illustrious State of Nicaragua. I now confer with the other judges as to whether they have questions. We don't have questions; you may leave, the testimony is concluded. Thank you very much.

**PRESIDENT CAÑADO TRINIDADE:** I would like to thank both sides for their strict observation of the agreed times and announce that we have the experts for the afternoon. And then, what we can do is end now to begin earlier in order to conclude the witness examination today.

So, I suggest that, instead of beginning at 4:00, we begin at 3:30, within three hours, so as to leave tomorrow morning for the closing arguments of the parties. If we are all in agreement, the session is now adjourned until 3:30.

**PRESIDENT CAÑADO TRINIDADE:** This public hearing on the merits in the case of the Mayagna (Sumo) Community of Awas Tingni is now reconvened for the purpose of continuing to hear the presentations of the experts ordered by the Inter-American Court of Human Rights. Will the Secretary please call the expert to be sworn in?

**SECRETARY VENTURA ROBLES:** Mr. Charles Hale.

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

**EXPERT CHARLIE HALE:** My name is Charles Hale.

**PRESIDENT CAÑADO TRINIDADE:** Nationality?

**EXPERT CHARLIE HALE:** United States.

**PRESIDENT CAÑADO TRINIDADE:** Identification document number?

**EXPERT CHARLIE HALE:** The number is a license, and I don't have the number with me.

**PRESIDENT CANÇADO TRINIDADE:** You can see the Secretary of the Court.

**EXPERT CHARLIE HALE:** Yes, of course, it has already been submitted, yes.

**PRESIDENT CANÇADO TRINIDADE:** Thank you, very much. Place of residence?

**EXPERT CHARLIE HALE:** Austin, Texas.

**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 he knows to be true 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 the indigenous peoples of the Atlantic Coast of Nicaragua and their patterns of land use and occupation.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may neither indict the 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 CHARLIE HALE:** Yes.

**PRESIDENT CANÇADO TRINIDADE:** Will the representative of the Inter-American Commission please tell the Court the name of the person who will examine the witness?

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

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much, you may proceed.

**IACHR (Prof. Anaya):** Thank you, Mr. President. Doctor Hale, what is your current profession?

**EXPERT CHARLIE HALE:** I am an anthropologist and Professor of Anthropology at the University of Texas, and I am also Director of the Institute of Latin American Studies at the same university.

**IACHR:** Very well, let us talk for a moment about your academic background, please. Can you tell us a little about that?

**EXPERT CHARLIE HALE:** Yes, I received a doctorate in anthropology at Stanford University in California, and all my career, now more than twenty years, has been dedicated to the study of indigenous cultures, above all in Central America, and more specifically on the Atlantic Coast of Nicaragua. I have lived for approximately five years on the Atlantic Coast as a result of those studies.

**IACHR:** And what kind of studies have you done on the Atlantic Coast?

**EXPERT CHARLIE HALE:** Ethnographic studies based on anthropological methods and, in the first three years of that stay and subsequently, study of the kind, partly ethnographic as well as of mapping in the context of a diagnostic study about claims of indigenous peoples, indigenous communities, of the Coast.

**IACHR:** Do you speak an indigenous language?

**EXPERT CHARLIE HALE:** Yes, I speak the Miskito language.

**IACHR:** Is it a language of the Atlantic Coast?

**EXPERT CHARLIE HALE:** It is one of the main languages, the main languages that the indigenous peoples speak, although there are others. Miskito is the one in which I am fluent.

**IACHR:** And when you lived in the Atlantic Coast, where did you live, what place?

**EXPERT CHARLIE HALE:** I lived, more than anywhere, in the town called Bluefields, and the community where I did the most intensive field research work is called Sandy Bay; it is to the north, at the mouth of the Río Grande.

**IACHR:** But you have worked in other parts of the region, you have traveled in other parts of the Atlantic region?

**EXPERT CHARLIE HALE:** Also in the context of the diagnostic study, I also studied, went up and down the entire Atlantic Coast, and stayed for the longest most intensive period of research in the far north, on the border with Honduras, what is the Río Guanqui, Río Coco.

**IACHR:** Have you published a book on the indigenous peoples of the Atlantic Coast?

**EXPERT CHARLIE HALE:** Yes, I have published a book with the Stanford University Press publishing house, edited another book on the Atlantic Coast of Nicaragua, and authored approximately twenty articles on the topic.

**IACHR:** Very well. Mr. Hale, in its brief responding to the Inter-American Commission's complaint in this case, the State of Nicaragua makes reference to a document called the General Diagnostic Study on the Land Tenure of the Communities of the Atlantic Coast. Is this the diagnostic study to which you referred earlier?

**EXPERT CHARLIE HALE:** Yes, it is a diagnostic study that was begun in 1997 and in which I was directly involved as research coordinator.

**IACHR:** Of what does the diagnostic study consist?

**EXPERT CHARLIE HALE:** It consists of an ethnographic and cartographic study of approximately 128 indigenous and black communities, based on two key questions. What is it that those communities claim as far as their right to communal land, and how do they justify those claims? It is a study that went community by community, with quite a consistent methodology to answer those two questions at the level of each community that entered into the universe of the study.

**IACHR:** And this diagnostic study, is it the same study on which Doctor Galio Gurdían worked?

**EXPERT CHARLIE HALE:** Yes, there were three coordinators of the study,

Doctor Gurdián, Doctor Ted Gordon—who is a colleague of mine at the University of Texas—and myself.

**IACHR:** And in particular, what were the research activities that you undertook within the framework of this study?

**EXPERT CHARLIE HALE:** Well, what it consisted of, as a practical matter, was visits to each one of the communities, either by ourselves or by researchers trained by us, to solicit their participation in the identification of the claims; it was also based on three intensive case studies, on complex situations of those claims—one of which I did in the north in the Río Coco area in a block with multi-communal claims—from Waspam on down the river, and many interviews were involved in this part of the study, a lot of field work, and also, the other part is the map, based on use of GPS, the technology to map the claims, based on data transmitted by satellite.

**IACHR:** Very well, thank you, Doctor Hale. Based on your broad knowledge of the topic, can you give the Court a brief general description of the indigenous peoples of the Atlantic Coast and their land tenure patterns?

**EXPERT CHARLIE HALE:** Yes, we are speaking principally of three indigenous peoples: Miskito, Mayagna, and Rama. The two relevant for, I think, for this case are the Miskito and the Mayagna. In the history of the Coast there are a variety of groups that existed since before the arrival of the Europeans. With the arrival of the Europeans, one of those groups establishes intensive relations with them, and those would be the ancestors that, they are those that are now the Miskitos. The others that have survived to date are the Mayagna, and they are three important groups: Panamaca, Tuaca, and Urba, and they are the ones that now, with the arrival of the Europeans, went inland to the mountains and established themselves in the area of use and possession that is there now. The three key characteristics of the land tenure would, first, be the fact of extensive use, right? There is an extensive use of the environment, of the resources. There is also a use that requires much movement from one place to another; that is, there is one place of possession, of use and possession, and depending on the economic activity, they move from one place to another to practice their economic activities. And also a third very important characteristic of those groups is that, since the arrival of the Europeans, there has been a combination of subsistence activities, on the one hand, and of some incorporation into the market economy.

**IACHR:** Thank you. Well, now can you describe to us what the policies and practices of the State of Nicaragua have been as far as the recognition or titling of the lands of the indigenous communities?

**EXPERT CHARLIE HALE:** Well, in our estimation, the concrete actions of the Nicaraguan State, as far as the recognition and titling and support of the rights to communal land, have been little or nothing. There have been some very precise activities that have occurred in times of crisis or interim responses to necessarily conflictive situations, but there has in no way been a general policy to recognize or to guarantee the rights to communal land.

**IACHR:** And in recent years has there been any titling of indigenous lands?



**EXPERT CHARLIE HALE:** The only cases that we have been able to document, where there has been titling more or less in accordance with what the community has claimed, would be two that were issued in 1987. Two Mayagna communities, and that is out of approximately three hundred communities, and that happened in 1987. Since 1990 there has not been any significant action to that end.

**IACHR:** Mr. Hale, the State has sustained that the INRA or some other institution of the State, in recent years, has granted twenty-eight titles to indigenous communities. Can you comment on that?

**EXPERT CHARLIE HALE:** Yes, I saw the list of the twenty-eight communities that correspond to titles according to the document that the State presented, and my opinion is that it is a faulty list. As far as the first three on the list, they are communities moved from Río Coco in times of conflict and titles were given, but not at the request of the Community. Also, next on the list are titles supposedly given in 1984; that is a time in the middle of the war and, of the communities that we visited in the diagnostic study, there is no recognition of those. The only ones that are the same as those proven by the research we have done—and with the other documents of the INRA that we have studied—are a group of titles given in 1987, five in total, of which two correspond, as I said earlier, to complaints, claims of the Community; the three others are very insufficient. So, in summary, that list of twenty-eight left me quite perplexed. It is not a list that reflects, that bears out, the facts collected in our research.

**IACHR:** Okay, you say that there are only two communities that have received titles approximating their claims and the others, can you elaborate a little on how they were titled? What were the characteristics of the titling?

**EXPERT CHARLIE HALE:** Of the twenty-eight?

**IACHR:** The others; not the two that you say were titled in approximation to the claims.

**EXPERT CHARLIE HALE:** In some cases, the other simply, in the list we don't have any information or confirmation that that title exists based on the ethnographic data gathered from discussions with the communal leaders. In some cases, it is possible that agrarian titles and assignments much smaller than the Community's claim were issued. But in summary, and then there is the case of Tasbapri, which really corresponded in no way to the claims of the inhabitants and as soon as they got their permit from the State, they left those places for the communities in which they were born. So, in summary, there is no evidence of action consistent with the guarantee of use and possession for the communities.

**IACHR:** And when you speak of agrarian assignments, can you explain that?

**EXPERT CHARLIE HALE:** It would be some measure before legal title and, in many cases, there is a process, not inconclusive, that results in a declaration of intentions, but without legalization and without the guarantee that the community needs to protect its lands against the settlers, against the companies, or others that could threaten their rights.

**IACHR:** Thank you, Doctor Hale. Based on your studies, what has been the

perception of the indigenous communities with respect to INRA, the Nicaraguan Institute of Agrarian Reform?

**EXPERT CHARLIE HALE:** Well, as we had said in the, and as is written in the diagnostic study, in our conclusion, based on research in many different communities, INRA is seen as a hostile actor with respect to the interests of the Community, and that it represents a vision that does not coincide with either the claims or with any understanding of the indigenous culture itself. It comes with a perspective formed in another part of the country and has not effectuated concrete acts in favor of the Community. To the contrary, its principle actions have been in favor of the immigrant farmers from the West that the Community perceives as a threat.

**IACHR:** And the perceptions of the communities of MARENA, the Environmental and Natural Resource Ministry?

**EXPERT CHARLIE HALE:** What we have been able to observe is that MARENA is the entity that has the most presence as far as indigenous communities are concerned. It includes the entity that, until 1998, if it hasn't changed its name, was called, has been called ADFOREST; it gives concessions, and is what the Community perceives as an entity that is giving concessions to lands and resources that belongs to them so, unfortunately, it is also seen as a threat.

**IACHR:** Do you know of the Awas Tingni Community and its land claim?

**EXPERT CHARLIE HALE:** Yes, I do.

**IACHR:** And on what is this knowledge based?

**EXPERT CHARLIE HALE:** Well, knowledge of Awas Tingni is based on several studies that have been done on history and the contemporary situation of the region and, among them, a doctorate, a doctoral thesis in geography at the University of Texas, other articles and also research work that we did in the diagnostic study itself.

**IACHR:** You included Awas Tingni within the framework of the diagnostic study?

**EXPERT CHARLIE HALE:** No, we did not include Awas Tingni because a study done by other people was already at an advanced state, with the same methodology that we use. So, we just decided to use the study or adopt the study already done instead of duplicating that work.

**IACHR:** However, you testify that you know of Awas Tingni from other sources, from other channels.

**EXPERT CHARLIE HALE:** Yes, and also among the sources that provided me with that knowledge is the ethnographic study of Doctor Theodore Macdonald and the accompanying documents.

**IACHR:** As far as the ethnographic study prepared by Doctor Macdonald, what is your opinion about that work, especially in relation to the diagnostic study you did?

**EXPERT CHARLIE HALE:** Well, we have analyzed the study and, from the point of view of the methodology that we used in the diagnostic study, what we

found is that they used a series of methodological judgments very similar and including, for the focus of time they had, they could have deepened it a little more using the same methods we use. As far as the cartographic part, which is where they collect the boundaries using GPS, we have been able to analyze the points, point by point, with our own mapping equipment to ensure that what is in the study is what would be mapped, and we can confirm that the study effectively matches in rigor and content the studies in the other 128 communities that we did.

**IACHR:** Thank you. I am going to ask that the map prepared by the Community with the help of Doctor Macdonald, that has already been shown to the Court, be shown. Have you seen this map? [Figure 6.]

**EXPERT CHARLIE HALE:** Yes.

**IACHR:** And this is the map that you had analyzed according to the criteria you just mentioned?

**EXPERT CHARLIE HALE:** Yes.

**IACHR:** The State of Nicaragua has asserted that the Community of Awas Tingni just came in 1945 to the place where it is located and, because of that, it does not have an ancestral connection to the land that it currently claims. How do you respond to that assertion?

**EXPERT CHARLIE HALE:** Well, what we have thought about the history of this Community is that there has always been among the predecessors of the current inhabitants of Awas Tingni, use and possession of this territory. But in earlier times the population was dispersed, that is, a population that lived in different areas. Now, with the arrival of the Moravian Missionaries at the beginning of the century, and that is documented in the journals, there was a nucleation of those inhabitants, first in the Community of Tuburus, then . . .

**IACHR:** Pardon, can you show where Tuburus is? You have a pointer there . . . there is a little button on the side.

**EXPERT CHARLIE HALE:** Yes, I see it. There it is. So there must have been, from what we know of the history, there must have been a dispersed population occupying all that territory that is now called Awas Tingni and, with the arrival of the Moravians, there is a nucleation in what is now called Tuburus, and that happened at the end of the 19<sup>th</sup> century, beginning of the 20<sup>th</sup> century. From there, in 1945, for several reasons, there is a movement of the Community from Tuburus to its current location in Awas Tingni. But that the predecessors of this Community have lived in this territory in ancestral times . . . what happened is that there has been a process of nucleation of the Community, beginning with the arrival of the Moravians and also with the arrival of a market economy at the beginning of the 20<sup>th</sup> century.

**IACHR:** Can you show us again where Tuburus and the settlement are located?

**EXPERT CHARLIE HALE:** Here is Tuburus. Here is the current Community of Awas Tingni, here would be the traditional patterns of settlement, they would follow the basins of the principle rivers. So, the traditional territory of Awas Tingni would be in all this area here and also on the other side, what would be the basin of the Wawa River. And also another factor that defines the traditional

territory are the sites for subsistence use such as hunting and fishing, as well as key sites that would have spiritual value or another cultural value, and that was also what we documented in our diagnostic study. The ethnographic study of Macdonald also shows that, based on the oral history and interviews with the Community, various key sites that would be the spiritual sites located within the area claimed.

**IACHR:** Are the nearest indigenous communities that are not from Awas Tingni from the same Mayagna ethnic group?

**EXPERT CHARLIE HALE:** No, they would be the communities of Tasba Raya in this zone here—that would be Miskito—and also the areas of the Ten Communities that would be more on this side.

**IACHR:** Does any evidence exist that these other communities were in the area before the Awas Tingni Community?

**EXPERT CHARLIE HALE:** Well, in the case of the communities of Tasba Raya, we have very clear documentation, because Tasba Raya was a colonization project of the Somoza Government that moved various communities that were settled in the Coco River more to the north, to this area, for reasons that had to do with the border conflict with Honduras as well as with flooding problems and a development project. So there is good documentation of the arrival of the communities here, that would be those of Tasba Raya, Francia Sirpi, Wisconsin, Santa Marta, etc.; that would be in the 1960s, clearly after, quite a bit after, very recently in relation to Awas Tingni, of course.

**IACHR:** The community on the other side, the Ten Communities that you mentioned . . . .

**EXPERT CHARLIE HALE:** The Ten Communities have been there, as well, since long before. But with little interference in what would be in those times before, in what would be the Awas Tingni area. They are there, but in areas quite distanced from each other.

**IACHR:** Thank you. Now we are going to show you some maps that are in the appendices; pardon, Mr. President, I understood us to have half an hour.

**PRESIDENT CANÇADO TRINIDADE:** Yes, but your half-hour is up in five minutes.

**IACHR:** Ah, all right, briefly Doctor Hale, we are going to show you some maps found in the States' appendices, attached to one of its documents before the Court. The first map, can you describe what it is? [See Figure 10 in the Appendix to the Hearing Transcript.]

**EXPERT CHARLIE HALE:** That would be a representation of the Awas Tingni claim; I understand that it is from a document submitted by the Nicaraguan State.

**IACHR:** And does it approximate the representation of the Awas Tingni Community with which you are familiar?

**EXPERT CHARLIE HALE:** Yes. It is, they are, there are small variations, but basically it is the same shape and it is the same area.

**IACHR:** Well, let's look at the next map. Can you describe to us what we are seeing here? [See Figure 11 in the Appendix to the Hearing Transcript.]

**EXPERT CHARLIE HALE:** Those would be the two claims that were the products of the diagnostic study. That is the one of the Eighteen Communities that I mentioned before, and that would be the claim of the Ten Communities. And this, then, would be that of Awas Tingni.

**IACHR:** And Awas Tingni's relationship with those other communities as far as which one was there before? Ancestral occupation?

**EXPERT CHARLIE HALE:** Yes, what it represents is two claims and with one overlapping claim, which is very common in everything we found in the diagnostic study. All along the Atlantic Coast there are overlapping claims, and what it represents is areas that, in some way, inhabitants of the two claims have common use or in some way have a claim to that land. It is not necessarily conflictive in any way, but there are overlapping claims in the entire area and it does not have any implication that one was necessarily prior to the other.

**IACHR:** Let us move on to the next map, please. [See Figure 12 in the Appendix to the Hearing Transcript.]

**EXPERT CHARLIE HALE:** So this would be the . . . pardon, the question . . .

**IACHR:** Continue.

**EXPERT CHARLIE HALE:** Those would be the communities of Tasba Raya, where overlapping claims also exist; but I repeat, overlapping claims that are perfectly harmonious as far as the process that would follow after the initial mapping of the claim.

**IACHR:** If I could be allowed one more question.

**PRESIDENT CANÇADO TRINIDADE:** The last one and no more, please.

**IACHR:** Well, some of these other communities that are represented by these areas, do they have title? And, if so, do those titles extend into the area recognized by Awas Tingni?

**EXPERT CHARLIE HALE:** There are no titles, there are no titles to that area. The Ten Communities has titles but they are small, a small percentage of this claim, and there is no overlapping claim, as far as what they have titled. And these other communities have no titles, there is a project for them, but there are none. So, as far as a legal overlapping claim, there is none. We are speaking of the claim, of projections of each community that would be the basis for a subsequent process that has not taken place.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much to the delegation of the Inter-American Commission. I now give the floor to the Agent of the Illustrious State of Nicaragua to proceed to the questioning if it so wishes.

**GON (Mr. Castillo):** Thank you very much, Mr. President. More than the questioning, I will make this declaration to the Court. The State of Nicaragua considers that there is no merit in questioning Mr. Hale, because he himself has confessed that he did not include the study of the ancestral possession of Awas Tingni in the comprehensive study with which the State entrusted him.

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

**IACHR (Dean Grossman):** I think that that is a consideration for the summary

arguments and not for the expert questioning.

**GON:** Mr. President, Mr. Hale stated that a couple of times.

**PRESIDENT CANÇADO TRINIDADE:** Let's make, let's come to the following understanding. You could explain why you will not question the expert, leaving the argument for the summary argument.

**GON:** Yes.

**PRESIDENT CANÇADO TRINIDADE:** An explanation of why you will not question the expert.

**GON:** I want to explain in one minute, without interruption by the Commission.

**PRESIDENT CANÇADO TRINIDADE:** You can explain and the argument for summary arguments.

**GON:** We are not going to question the expert because Mr. Hale has confessed in his testimony that in the diagnostic study on land tenure on the Atlantic Coast, he did not include the study of the Awas Tingni's ancestral possession.

**IACHR (Dean Grossman):** Mr. President.

**GON:** Your Honor, I requested one minute and they didn't give it to me.

**IACHR:** We want to ask for a point of order. Mr. President, it is, and I can understand that maybe there is a problem with experience here in relation to international tribunals, but it is absolutely inappropriate to make allegations at the time of questioning witnesses and experts, and we have absolutely no problem if the Court is going to establish that possibility for us as well.

**PRESIDENT CANÇADO TRINIDADE:** Yes, of course.

**IACHR:** So, it seems to us under oath that the allegations, I think that the Illustrious Government of Nicaragua has the total right to allege what it deems to be in its interest with respect to an expert, but now we are in another phase. So it seems to us that it is out of order, that maybe it is explained by the lack of experience in the procedures, and it is uncommon. So we simply want this to be reflected in the record. It seems that it is a form of intimidation that should not be accepted. Of course, the Court can decide, but this decision to hear this will influence our reaction to what we are going to do in the procedures as well.

**PRESIDENT CANÇADO TRINIDADE:** The Commission can also reserve for itself the right to assume a position in relation to the position of the State, but I understand that the State is not intimidating the expert. To the contrary, it is explaining why it is not going to question him. If it were an allegation about the expert's answer, it would be inadmissible, but it can explain for what reason it will not question. Please, very briefly.

**GON:** Very briefly, Mr. President. But also we would like . . . yesterday we received all kinds of insinuations that we were lying from Mr. Anaya; today, Mr. Grossman begins another kind of epithets, calling us "green," we would like more respect from the Commission because we are a sovereign state.

**PRESIDENT CANÇADO TRINIDADE:** All right.

**GON:** I am now going to explain why we are not going to ask any more questions in the minute I requested.

**IACHR:** Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** Yes, Mr. Delegate.

**IACHR:** I want to remind the Illustrious representative of the Government of Nicaragua that to speak to us he need speak neither to Mr. Grossman nor to Mr. Anaya, he can take the time to read the instructions, rules, regulations that have to be observed. I mean that, in addition to the fact, at no time did I use the expression “green” in relation to him. What I suggested, and I stress that according to international procedures this has no precedent, and I mean, he is coming to conclusions. I am going to respond to him with respect to an assertion the expert made as to why he was perfectly qualified despite the fact that Awas Tingni was not involved in that study but there were others, so that is a sufficient argument. It seems a waste of time to us to do this before educated judges and it does, however, seem that we must establish procedures. This is not the time to make allegations. We have no intent to offend anyone, and I remind the representatives of the Illustrious Government that to speak to the Inter-American Commission of Human Rights, please be kind enough to speak of the representative Delegates of the Honorable Inter-American Commission of Human Rights.

**PRESIDENT CANÇADO TRINIDADE:** All right, I would like to request a minimum of understanding of the parties so that we can conclude this stage of the examination of the experts with the explanation of why it is not going to question, and the Commission will have ample opportunity in due time to respond to the arguments the State has given on the expert’s statements; that will certainly not be made here, but rather at the right time.

**GON:** Thank you very much, Mr. President. Briefly, we state that we will not question basically for two reasons. First, because in his testimony Mr. Hale has already said, and it would be futile to ask again, that he did not include the study of the ancestral possession of Awas Tingni in his diagnostic study of the general land tenure situation. I also state that Mr. Hale’s source of information has been the Macdonald study that we have already analyzed. So there is no sense in repeating the same thing.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much to the Agent of the Illustrious State of Nicaragua. I now confer with the other judges to see if they have questions to ask the expert. Judge Montiel Argüello.

**JUDGE MONTIEL ARGUELLO:** No questions.

**PRESIDENT CANÇADO TRINIDADE:** Judge de Roux, please, you may proceed.

**JUDGE DE ROUX RENGIFO:** Thank you, Mr. President. Doctor Hale, from your knowledge of the indigenous communities of the Nicaraguan Atlantic Coast, I would like for you to give the Court an idea of the norms of land appropriation by the indigenous peoples. Are they collective norms? Are they individual norms? And, in particular, I would like you to tell us whether the members of the indigenous communities have desires, aspirations, or interests in an individual assignation of the land.

**EXPERT CHARLIE HALE:** In all the studies that we have done, previously as

well as in the diagnostic study that was much more extensive, we have never found a request by the communities that the titles be individual. We are speaking here of claims that are always collective by a group of members of a community and by membership claiming the right to collective use and possession. Now as family groups, yes, for usufructory rights if they are going to work their lands by family work group. But when the agricultural cycle of a cultivation plot ends, that plot reverts to the community. There is no individual possession, neither is there the notion of that type of right as far as title is concerned, but rather it is a collective title they are requesting.

**JUDGE DE ROUX RENGIFO:** Now, I would like for you to tell us about the following. You have recognized that on lands that the Awas Tingni Community aspires be recognized as belonging to it, there are overlapping claims in relation to the claims of other indigenous communities. I would like to ask you to inform us about the type of conceptual approximation with which the Nicaraguan State could possibly work—or in this case, the Court, when it interprets the situation in light of the American Convention—to solve those superimposed claims of different communities over the same territories. Are there approximations for that, or will the situation have to remain one of indifferentiation as far as rights, claims, and rights?

**EXPERT CHARLIE HALE:** In the first place, we have analyzed the Awas Tingni data about its claim very thoroughly, and we have found that the extension of the Awas Tingni claim is just in the middle of the level of the claims of the other multicomunal blocks that are in our study, and each communal block has an overlapping claim with its neighbor.

We have found various mechanisms to compensate for dealing with that overlap. First, many times it represents areas which the two communities historically use in common, and they have a mutual recognition of the presence of the other, yet they claim it for their own use and possession, but without negating the use of the other community. So that suggests a legal form of recognition of that common land, either by joining it and making a single territory between the two, a legal instrument that expressly recognizes a shared area. And there are examples of that type of discussion in Awas Tingni's area with its neighbors from Francia Sirpi and the others, from Tasba Raya, to identify an area they want to manage in common and go through a legal process establishing that agreement between the parties. So yes, in some cases there would be conflicts; that can't be denied. Clearly there are cases, but I would say, in all the communities that we have seen, the great majority of the cases of the overlaps are conditions like those that suggest the possibility of an agreement or with existing legal forms or with a new legal instrument that recognizes what, in practice, is common use and possession between two communities.

**JUDGE DE ROUX RENGIFO:** Very interesting, thank you very much, Doctor Hale. Thank you, President.

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



**JUDGE ABREU BURELLI:** No, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** There are no more questions for the expert. Thank you very much. Will the Secretary now call the next expert to testify?

**SECRETARY VENTURA ROBLES:** Mr. Roque Roldán.

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

**EXPERT ROQUE ROLDAN:** My name is Roque Roldán Orgeta.

**PRESIDENT CANÇADO TRINIDADE:** Nationality.

**EXPERT ROQUE ROLDAN:** I am Colombian from birth, and I have Colombian citizenship.

**PRESIDENT CANÇADO TRINIDADE:** Identification document number.

**EXPERT ROQUE ROLDAN:** Passport and identity card 3338323.

**PRESIDENT CANÇADO TRINIDADE:** Place of residence?

**EXPERT ROQUE ROLDAN:** I live in a place near the City of Medellín called Guarne, in the Antioquia Department.

**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 he knows to be true 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 the indigenous legislation in Latin America in relation to the laws and practices of Nicaragua and on the indigenous peoples on the American continent in general.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may neither indict the 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 ROQUE ROLDAN:** Yes, I do.

**PRESIDENT CANÇADO TRINIDADE:** Will the Commission's representative state for the Court the name of the person who will examine the expert?

**IACHR (Dr. Bicudo):** Dean Claudio Grossman, First Vice-President of the Inter-American Commission on Human Rights, will examine the expert in the name of the Commission.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. You may proceed.

**IACHR (Dean Grossman):** Doctor Roldán tell us, how long did you work at

INCORA?

**EXPERT ROQUE ROLDAN:** I worked for eighteen years, from 1964 until 1982 at INCORA, Colombian Institute of Agrarian Reform.

**IACHR:** And what did you do at INCORA?

**EXPERT ROQUE ROLDAN:** During the time that I was at INCORA, I worked for two years in programs for titling of agrarian land, and for sixteen years I was the head of an office that had the responsibility of legalizing the lands for Colombian indigenous peoples.

**IACHR:** Tell me, Doctor Roldán, did you work with the Ministry of the Interior as well?

**EXPERT ROQUE ROLDAN:** Yes, I worked two years for the Ministry of the Interior. Between 1982 and 1983, I worked as Chief of the National Indigenous Affairs Bureau; that office, it is an entity that has responsibility for orienting the policy of the Colombian state with respect to indigenous affairs.

**IACHR:** Now, more recently in addition to this, to the titling and policy orientation, is it true that you have done international consulting on indigenous issues? And for what organization?

**EXPERT ROQUE ROLDAN:** I have worked in this field, basically developing studies on indigenous legislation in Latin American countries for different organizations—like the International Labor Organization, the World Bank, and the Amazonian Cooperation Treaty, which eight countries in the Amazonian Basin support, and for different Colombian national entities, and for public entities from other countries as well, and for private entities.

**IACHR:** Have you done consultation on indigenous issues for Nicaragua?

**EXPERT ROQUE ROLDAN:** For Nicaragua, for the Government of Nicaragua, I had two consultancies. In 1995, I consulted for the Environmental and Natural Resource Ministry, MARENA, and in 1996 I consulted for the Nicaraguan Institute of Agrarian Reform, INRA.

**IACHR:** What was the consultancy with INRA in reference to?

**EXPERT ROQUE ROLDAN:** Well, the consultancy with the INRA developed in the framework of a program for the administration of lands in the Atlantic region that this organization developed with the support of the World Bank. The consultancy for the MARENA was basically oriented toward determining the viability of a component of titling of lands within the Biological Corridor Program that the MARENA developed, also with World Bank support.

**IACHR:** Did you, as international consultant, require the authorization and approval of the Government of Nicaragua to be contracted with and operate in Nicaragua?

**EXPERT ROQUE ROLDAN:** Those two consultancies were contracted directly by the Government of Nicaragua for each one of these organizations, by the MARENA and by the INRA.

**IACHR:** Did you finish your consultancies?

**EXPERT ROQUE ROLDAN:** Yes, they were finished and the accompanying reports were turned in and are in the control of these entities.

**IACHR:** Did you have a good relationship with them?

**EXPERT ROQUE ROLDAN:** Yes, that's right. I had a very good relationship with them, and I was treated properly and I received support for carrying out those consultancies.

**IACHR:** Did they pay you?

**EXPERT ROQUE ROLDAN:** Yes, they paid me.

**IACHR:** Promptly?

**EXPERT ROQUE ROLDAN:** Yes, properly, promptly.

**IACHR:** Thank you. Tell us, did you recently publish a book on the Atlantic Coast?

**EXPERT ROQUE ROLDAN:** Yes, there is a book that is being published; it is called "Legality and Rights in the Atlantic Coast," which compiles, performs a critical revision of the entire Nicaraguan legal regime around the issue of the country's ethnic minority rights, and it also compiles in some way some of the experiences that are a product of the advancement, or attempt at advancement, in the definition of a legal property regime in Nicaragua.

**IACHR:** Tell me, Doctor Roldán, what is the foundation, based on your experience in Nicaragua and your intellectual production and your long career, what is the foundation of the claims over their traditional land or what they consider to be their traditional land?

**EXPERT ROQUE ROLDAN:** Well, the indigenous peoples of Nicaragua, there are two sectors: one sector of indigenous peoples already strongly connected to the market economy and quite integrated to the national cultural patterns on the Pacific side of Nicaragua; and there is the sector of indigenous peoples of the Atlantic region that has special characteristics that maintains much stronger traits of their traditional culture; and basically, the demands of the indigenous peoples of the Atlantic Coast are founded on reasons historic in character due to their occupation of this territory for thousands of years.

**IACHR:** Pardon, did you say thousands, Doctor Roldán?

**EXPERT ROQUE ROLDAN:** Thousands, yes, to the extent that these peoples were there since the time of the conquest of the European occupation of this land by the English and Spanish, and the archeological and anthropological studies that have come out show that these peoples have been occupying these lands for several centuries before "discovery." So, coming to the issue of the points that support these claims, they are historic in character. The Government of Nicaragua has also signed commitments for the recognition of this land, beginning with the content with the signature of the treaty that definitively incorporated this territory into the political sovereignty of Nicaragua in 1905, the Harrison-Altamirano Treaty, and subsequent regulations have been issued that also commit the State to the legal recognition of the indigenous lands, especially those adopted in 1987 with the political constitution and called the "Statute of Autonomy," Law 28 of that year.

**IACHR:** Tell us about the constitutional reform of 1987; did it or does it reflect this constitutional reform, what do you think as an expert?

**EXPERT ROQUE ROLDAN:** Well, the policy of dealing with the indigenous peoples in all countries of Latin America since discovery was one of seeking the accelerated integration of these peoples to the ways of life of the rest of the national societies. This policy, well, it was maintained for a long time and compulsively tried to achieve this assimilation of these peoples, but, about forty or fifty years ago, the indigenous peoples, especially or because of the adoption of the agreement adopted by the Inter-American Indigenous Institute, in 1940 in Patzcuaro, Mexico, a change was brought about in the organizational process, and assumptions postulated that defined the level of the relationship among national societies and indigenous peoples, and the countries gradually have been changing their constitutional regime to the point that at this time there is a good number of nations that now have committing norms within their constitutional order that recognize the cultural diversity of the respective national societies; they recognize the full existence of the indigenous peoples, they recognize the right of these peoples to maintain that cultural diversity in perpetuity and recognize the right to the legalization of lands. Nicaragua was one of the first countries in Latin America that achieved that recognition.

**IACHR:** So, Doctor Roldán, from the perspective of property, what in Nicaragua is constitutionally recognized?

**EXPERT ROQUE ROLDAN:** Well, the first indigenous peoples are recognized as societies that are culturally distinct from the rest of society with specific rights that refer fundamentally to the right to possess the land collectively.

**IACHR:** Do you remember in what article of the Constitution that is?

**EXPERT ROQUE ROLDAN:** I don't remember exactly . . . .

**IACHR:** Please tell us when you remember or don't remember, that is fine.

**EXPERT ROQUE ROLDAN:** Yes.

**IACHR:** But it is in the Constitution.

**EXPERT ROQUE ROLDAN:** Yes, it is established. Also established in the Autonomy Statute is the non-seizable, imprescriptible, and inalienable condition that property must take.

**IACHR:** What property?

**EXPERT ROQUE ROLDAN:** The ownership of the indigenous lands or territories by the indigenous peoples.

**IACHR:** Now, you tell me that that is constitutionally established. What happens in practice? Does that exist in practice or not?

**EXPERT ROQUE ROLDAN:** Well, in practice, some problems occur because the Agrarian Reform Law that authorized turning over the lands to the indigenous peoples was promulgated one year before the adoption of the Constitution and the adoption of the Law of Autonomy. It was adopted in 1986, and, in this law, indigenous property of a special type was not contemplated, it was rather of a type of property assimilated within the defined guidelines of the Nicaraguan Civil Code: it was seizable, prescriptible property, property that was in commerce and that was handed over under the same conditions, the same characteristics with which land to the earlier farmers was turned over according to studies similar to

those studies planned for the turning over of the lands to the farmers.

**IACHR:** So, if I understand correctly, and correct me: on the one hand, we have the modern Constitution, efficient, reflecting modern tendencies, a communal property, collective property, inalienable, unseizable; and, on the other hand, we have an earlier law according to the Civil Code canons. Does that summarize what you've asserted?

**EXPERT ROQUE ROLDAN:** Yes, that's right.

**IACHR:** Now, what is the position of the State institutions in relation to this dichotomy, in which the earlier and superior law is the Constitution? What positions do the State institutions take with respect to the indigenous lands? Do they consider them lands under the constitutional regime, under the Civil Code? Do they consider them without title? What is happening there?

**EXPERT ROQUE ROLDAN:** Well, the State institutions, one would have to speak of the institution that has dealt with the issue of lands, the INRA. Concretely, although these attributions are in accordance with the latest legal changes that have taken place—I think that the INRA has been assumed by another organization—anyway, these lands have been seen, the lands occupied by indigenous peoples on the Atlantic Coast, have been seen as national lands, or fiscal lands, or lands of which the State can freely dispose, and, to that extent, they have also been handing over these lands to farmers who have located in these regions as settlers. The same indigenous communities have also been issued some titles, but with the characteristics that we noted; titles having the same character that the lands given to farmers have.

**IACHR:** What would have to be done to end this dichotomy or inapplicability of the Constitution?

**EXPERT ROQUE ROLDAN:** Well, one would have to, I think one would have to introduce some legal changes in the country. First, clarifying or developing some of these constitutional norms, giving them legal development in some fundamental areas. Some of them are, first, the definition of a clear procedure that assures the indigenous peoples of the capability to accede to the full dominion of the lands according to a model that they can use, according to their tradition and their culture, that they recognize the unseizability and imprescriptibility of these lands. There would also have to be an advance, I think, in the definition of aspects having to do with ownership and natural resource use; that although they are and are considered as property of the indigenous peoples in the constitutional framework and in the Law of Autonomy, they are in opposition, however, to some of the regulations that the State has issued. Such is the case of the territories that have been established as “parks” in the Atlantic Region and that are being occupied by indigenous peoples. It is necessary to clarify what rights the indigenous peoples have over these territories and what rights the State has. So, these points would have to be clarified, and the guidelines of an administrative regime of the lands once they are turned over by the State would have to be defined. There have really been no significant advances in this, outside of a bill that the government presented in 1998, in October, for consideration by the

Assembly.

**IACHR:** Tell me, to be concrete here, you who were in Nicaragua, how important, because this issue of title, no title, is an abstract concept for indigenous peoples. How important is their land?

**EXPERT ROQUE ROLDAN:** Well, indigenous peoples survive off the land. That is to say, the possibility of maintaining social unity, of maintaining and reproducing the culture and surviving physically and culturally, depends on the existence and maintenance of the land and on the maintenance of the land in a collective, communal way as they have done since ancient times.

**IACHR:** What impact would the cutting of the trees on its ancestral lands have on an indigenous community?

**EXPERT ROQUE ROLDAN:** The impact of the natural resource exploitation, in general, on indigenous peoples has, well, very negative consequences, as much of this exploitation develops without the option of the precautionary measures that any type of exploitation should have. The indigenous peoples themselves, in certain regions, are interested in the exploitation of their resources, but experience has shown that exploitation of natural resources, renewable or non-renewable resources, without the adoption of these measures will produce catastrophic damage, and that has been the experience of Latin America.

**IACHR:** Doctor, a couple of specific questions and we will be finishing. Tell me this: do you think that there can be a right to property without title?

**EXPERT ROQUE ROLDAN:** In this, there is no clear uniformity in all countries in relation to this issue; some law in Latin America, as is the case, for example of Colombia, accept that indigenous peoples are the owners of the land and that title is simply a recognition, a means of proof, that the State provides to indigenous peoples over the land, but that this property exists. This, shall we say, this position can be sustained by all those countries, for indigenous peoples of all those countries that have adopted the International Labor Organization's conventions. Because in those . . .

**IACHR:** Doctor, in your opinion, did Nicaragua constitutionally accept indigenous peoples' right to property?

**EXPERT ROQUE ROLDAN:** It accepted in adopting the statute of autonomy, because it declared that the indigenous peoples, well, they have rights over the lands, they have the right to accede to the lands that they have traditionally occupied.

**IACHR:** And what legal proof do they have, or how is it known that they have occupied the lands; what are the forms in which this thousand-year occupation manifests itself?

**EXPERT ROQUE ROLDAN:** Well, it manifests itself by the stewardship of masters and owners that they exercise over that territory, by the carrying out of survival activities, like the activities of hunting, of fishing, of harvesting—the traditional activities—and it is also credited to historic testimony of that occupation that can be shown by several means of proof, no?

**IACHR:** Doctor, one more: small indigenous groups that make demands that at

times seem very much in decline and that one thinks, well, this is going to destroy the countries, is going to prevent development, etc. Do you think that having indigenous ownership, processes of titling, of course, in Nicaragua's case, destroys the country? In your experience of having been there, seen, in appearance, what recommendation do you make on this, of a possibility of an implosion of a State, serious modernization problems? Is it possible to make the demands compatible with one thing or another? How do you see it?

**EXPERT ROQUE ROLDAN:** Yes, I think that there are many experiences. Already the countries of Latin America have advanced significantly, some have already adopted constitutions subsequent to the Constitution of Nicaragua, as in Bolivia's case, Colombia, Brazil, Ecuador, Paraguay; they have advanced significantly. Today one can say that seventy-five percent of the lands in these countries that have adopted constitutional reforms in the south—with the exception of Venezuela, that just recently adopted a constitution—with the indigenous issue, on the indigenous issue, the experience of turning over the lands is that this giving of the lands has efficiently contributed to giving the indigenous peoples greater stability and to substantially bettering the relations between these populations with the rest of the national population and with the State. That is to say—the case, for example that I know most closely is the Colombian case. It is an exemplary case to the extent that, in this country, the indigenous peoples of the border regions, for the first time, when the State legally turned over and gave them recognition of their territorial spaces, they began to feel they were part of the country and as nationals.

**PRESIDENT CAÑADO TRINIDADE:** Thank you very much to the delegate for adhering the agreed time. I will now give the floor to the Agent of the Illustrious State of Nicaragua to ask his questions if he so wishes.

**GON (Mr. Castillo):** Thank you very much, Your Honor. Briefly, Doctor Roldán, do you have direct information, your own studies of the ancestrality of Awas Tingni's possession?

**EXPERT ROQUE ROLDAN:** Of what?

**GON:** Of the ancestrality of Awas Tingni's possession?

**EXPERT ROQUE ROLDAN:** I have not done specific studies of the situation of the Awas Tingni Community. My studies, as I clarified earlier, refer to the analysis and the revision of the legal regime of Nicaragua on the issue of indigenous territorial rights.

**GON:** A second and last question, Mr. Roldán. Do you consider that the process of consultation that the Government of Nicaragua is conducting, of the titling bill for the communal indigenous property in order to perfect its legislation, has been sufficiently representative?

**EXPERT ROQUE ROLDAN:** Yes, I think that the fact that the government accepted was an important advance, dealing with the reiterated requests of the indigenous populations of the Atlantic Coast. Opening a space for participation and consultation with the indigenous peoples on the bill presented by the government at the end of 1998 was an important advance.

**GON:** That is all, Your Honor.

**PRESIDENT CANÇADO TRINIDADE:** Thank you, very much, Agent. I would like to confer with the judges as to whether they have questions to ask. Judge Montiel Argüello?

**JUDGE MONTIEL ARGUELLO:** I would like to ask the expert if the continuation of the communal regimen of the lands is advisable for the progress of indigenous peoples, or if it would be preferable that the lands be transformed into individual properties?

**EXPERT ROQUE ROLDAN:** The experience, Your Honor, in Latin America, in relation to this issue, is sufficiently illustrative. That is, for almost 180 years, all policy of the Latin American states was oriented toward finding a liquidation of the forms of collective property and the forms of autonomous government of indigenous peoples. And this contributed to the liquidation of a large part of the indigenous peoples, to bring them not only to cultural disappearance, but also to physical disappearance. The experience that has been gained in the last twenty years in those communities that have obtained access to collective dominion of land and that have received some type of support from the State to develop the economy within those spaces shows that the existence, the maintenance of the communal regime is converted into a very powerful force of transformation and development for the benefit of these communities and of the respective countries.

**JUDGE MONTIEL ARGUELLO:** Thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much, Judge Montiel Argüello. Judge De Roux?

**JUDGE DE ROUX RENGIFO:** Yes, Mr. President. Doctor Roldán, I would like to ask you to inform the Court about the following: in accordance with your experience in different countries of America, how prolonged, how time-consuming is a process of identification and recognition of the territories of the indigenous ethnic groups? I'll try to qualify my question a little. From what you and the other experts have explained to us, is this a very complex process?

**EXPERT ROQUE ROLDAN:** Yes.

**JUDGE DE ROUX RENGIFO:** Yes? Very complicated situations present themselves; frequently, one is dealing with vast geographic expanses, where different ethnicities and communities have a presence, occupations of the lands and the demands of those different communities are superimposed, and, of course there are the judicial and legal complexities. The countries that undertake the task, the task of assigning the territories, demarcating them, the different countries have to take their time for those effects to be felt. How much time, in reasonable terms, elapsed between the time the State of Nicaragua would have needed from its knowledge after the coming issuance of the new Constitution to complete that process?

**EXPERT ROQUE ROLDAN:** Well, the experience in Latin America is very diverse, because there is a diversity of procedures among the countries. And some procedures exist that we could consider extremely long and onerous, and others that are relatively agile and where there is, shall we say, a greater acceleration in



the production of the final acts of recognition. If we look, for example, at the case of Bolivia, Ecuador, and Colombia, that now have specific procedures related with the titling of lands to the indigenous communities, I think it would be approximately six months, between five and six months, between the time of the request to the final handing over of title. If we look at the case of other countries, like Brazil, where there has been a definition of a series of, there has been, well, like a series of conditions, technical and anthropological in nature, and they have greatly complicated the processes, it can take approximately a year, a year and a half. In the case of Nicaragua, I think that if the procedure would have been defined from the issuance of the adoption of the new Constitution and of the Law of Autonomy, a specific process would have been defined somewhat rapidly, because it would have been able to advance, I think, that is, keeping in mind the number of communities that exist in the Atlantic Coast and keeping in mind the head start that those very communities have in the self-demarcation of their own living spaces, it would have been able to significantly shorten the time necessary to legally turn over these lands, reducing the time to one, two, or three years.

**JUDGE DE ROUX RENGIFO:** Thank you, Doctor. I would like to ask you another question. You have made a very interesting comparison between the characteristics of property, according of property, let's call it "classic," according to the Civil Code; you have assigned this type of property the qualities of being seizable, prescriptible, acquirable though prescription, alienable, etc., and you have compared this type of property with the property of indigenous peoples, indicating that it wouldn't have those characteristics; to the contrary, it would be nonseizable, imprescriptible, and inalienable.

**EXPERT ROQUE ROLDAN:** Yes.

**JUDGE DE ROUX RENGIFO:** I would like, you are a lawyer, and of course know the American Convention on Human Rights. I would like to ask you if, in your view, that indigenous property whose characteristics you have mentioned to us, would or would not qualify under the terms of the heading of article 21 of the American Convention that speaks of the right to private property. Is property private? Is indigenous property, private or not?

**EXPERT ROQUE ROLDAN:** Yes, it is private property that appears to be headed by a group, by a community, or by an indigenous people, but it is private property. It just has these limitations as far as disposition is concerned—keeping in mind that it is assigned to a group that is a people—it has a special condition in that it wants to perpetuate itself as such, and it requires the maintenance of these people, of this territory.

**JUDGE DE ROUX RENGIFO:** Finally, Doctor Roldán, I would like to ask you the following: that you further explain an assertion that you were making, which I wasn't sufficiently clear on. You were explaining that there were diverse systems to deal judicially with the transition between the moment in which the titles of a determined indigenous community are demarcated and turned over to it. I would like to understand your vision of this transition. Are we facing a right to property once the general constitutional recognition has come about? Are we facing a right

to property, or are we facing a well-founded expectation of the right?

**EXPERT ROQUE ROLDAN:** I think there is a . . . .

**JUDGE DE ROUX RENGIFO:** Pardon, there are two systems, as you were explaining to us. Could you clarify that a little more and comment, as far as you know, how would things be in Nicaragua?

**EXPERT ROQUE ROLDAN:** Yes, I think that from the time the Political Constitution of 1987 was adopted and the Law of Autonomy, in which text we find the clear determination that indigenous peoples have the right to the recognition of ownership of land, of the dominion that they have exercised over the land, from this time indigenous peoples can be considered full owners of the land and they can, if they don't have formal title, give credibility to this condition through various types of proof. I think that, in addition, this adoption of these norms should obligate the Government of Nicaragua to refrain from making determinations in relation to these territories occupied by indigenous peoples, refraining from giving it a use or destination other than handing it over to the indigenous peoples, at least while there is no clarification of up to where are the respective spaces of occupation of all and each one of the communities that has lived in the Atlantic Coast.

**JUDGE DE ROUX RENGIFO:** Thank you, Doctor Roldan. Thank you, President.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much Judge De Roux. Judge García Ramírez? Please.

**JUDGE GARCIA RAMIREZ:** Mr. Roldán Ortega, I would like to determine whether I correctly understood the meaning and implication of one of the responses that you gave to a question of the delegate of the Honorable Inter-American Commission. You affirmed that the new Constitution or the new constitutional norms of Nicaragua recognize certain rights to indigenous communities and, directly or indirectly, as such to its members as well, but that these norms of the highest judicial ranking in the internal legal order still do not have a secondary regulation that develops them and that, in so doing, allows these communities or these members of communities to apply it to their own benefit—that is, put in other terms, the procedures, channels, the authorities, and maybe the organizations so they can use them, the members of the communities, the rights that the Constitution grants them. Was that the implication of your answer?

**EXPERT ROQUE ROLDAN:** Yes, that's right, Your Honor.

**JUDGE GARCIA RAMIREZ:** Is that the way it is?

**EXPERT ROQUE ROLDAN:** Yes.

**JUDGE GARCIA RAMIREZ:** Thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. Judge Abreu Burelli? Judge Jackman?

**JUDGE JACKMAN:** No, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** There are no more questions. The expert may leave the stand, thank you very much. Will the Secretary call the last expert to testify?

**SECRETARY VENTURA ROBLES:** Lottie Cunningham.

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

**EXPERT LOTTIE CUNNINGHAM:** Lottie Cunningham.

**PRESIDENT CANÇADO TRINIDADE:** Nationality?

**EXPERT LOTTIE CUNNINGHAM:** Nicaraguan.

**PRESIDENT CANÇADO TRINIDAD:** Identification document number?

**EXPERT LOTTIE CUNNINGHAM:** 648264.

**PRESIDENT CANÇADO TRINIDAD:** Place of residence?

**EXPERT LOTTIE CUNNINGHAM:** City of Bilwi, Municipality of Puerto Cabezas, North Atlantic Autonomous Region.

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

**SECRETARY VENTURA ROBLES:** The expert must limit her testimony to answering clearly and precisely the question asked her, stating only the facts or circumstances that she knows to be true in relation to her expertise. The expert is notified that she was cited by the Court to testify about the following facts: she will testify on the alleged lack of effective judicial resources in Nicaragua to remedy violations of the rights of indigenous communities.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may neither indict the 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 LOTTIE CUNNINGHAM:** I do.

**PRESIDENT CANÇADO TRINIDADE:** Will the representative of the Inter-American Commission tell the Court the name of the person who will examine the expert?

**IACHR (Dr. Bicudo):** Dean Claudio Grossman.

**PRESIDENT CANÇADO TRINIDADE:** Thank you, you may proceed.

**IACHR:** Ms. Cunningham, tell us, what is your profession?

**EXPERT LOTTIE CUNNINGHAM:** I am an attorney and notary public.

**IACHR:** And when did you graduate and from where?

**EXPERT LOTTIE CUNNINGHAM:** I graduated from the Central American University in Managua, in 1994.

**IACHR:** And do you have any experience working on legal issues with the indigenous communities of the Atlantic coast of Nicaragua?

**EXPERT LOTTIE CUNNINGHAM:** Yes, I have six years.

**IACHR:** Doing what?

**EXPERT LOTTIE CUNNINGHAM:** Providing legal counsel to the indigenous communities.

**IACHR:** To which indigenous communities?

**EXPERT LOTTIE CUNNINGHAM:** To the different territories in the North Atlantic Autonomous Region, in the Municipality of Puerto Cabezas, as well as in the Municipality of Waspm.

**IACHR:** Do you speak a language other than the Spanish language of Castillian?

**EXPERT LOTTIE CUNNINGHAM:** My mother tongue is Miskito.

**IACHR:** In your opinion, does this give you any special ability to understand the events occurring with the Miskito people?

**EXPERT LOTTIE CUNNINGHAM:** Yes, I am indigenous Miskito.

**IACHR:** Tell us, with respect to the judicial system and the indigenous communities of the Atlantic Coast: in which ones are there problems in the functioning of the judicial system?

**EXPERT LOTTIE CUNNINGHAM:** Yes, in my judgment, the obstacles that the indigenous communities face in the judicial system is foremost in the lack of harmony of positive law with customary law, the delay in justice, the exclusive use of the Spanish language in all judicial processes, although the language law, there is a language law that establishes that in addition to Spanish, the languages of the indigenous peoples and ethnic communities are to be used officially in the autonomous regions. However, the judges don't assign translators or interpreters for the community members of the indigenous peoples.

**IACHR:** Why not?

**EXPERT LOTTIE CUNNINGHAM:** Because there is a lack of acceptance and respect for customary law.

**IACHR:** Is there discrimination against the indigenous peoples?

**EXPERT LOTTIE CUNNINGHAM:** Prejudices and discriminatory actions are the fundamental obstacles that the indigenous communities face in the judicial system.

**IACHR:** Let's speak a little about the Nicaraguan Constitution. Does the Constitution of Nicaragua affirm the indigenous peoples' right to property?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** In what terms?

**EXPERT LOTTIE CUNNINGHAM:** In articles 5, 89, and 180 it establishes that the Political Constitution recognizes the right and also establishes the guarantees of these rights of the indigenous peoples.

**IACHR:** Does the Constitution establish this conditionally, saying that they are only recognized if certain requirements are complied with, or does it establish them directly?

**EXPERT LOTTIE CUNNINGHAM:** It establishes them directly.

**IACHR:** Does the Constitution state that this is a right conditioned on the acceptance of subsequent laws, or does it simply state the right of the indigenous peoples without subsequent qualification?

**EXPERT LOTTIE CUNNINGHAM:** It states them without qualification.

**IACHR:** Now, what are the remedies that exist under Nicaraguan law, in general, if there is a violation of rights?

**EXPERT LOTTIE CUNNINGHAM:** The only remedy that exists is the *amparo* action; the indigenous communities have to take recourse before the Appeals Tribunal in order to file an *amparo* action, according to the procedures established by Law Number 49. This law establishes that the *amparo* action will be filed before the Appeals Tribunal, that the first actions will be heard before the Appeals Tribunal until the suspension order, and then the Supreme Court of Justice will hear subsequent actions until there is definitive resolution.

**IACHR:** Have the indigenous populations, according to your knowledge, taken recourse in, used the *amparo* action?

**EXPERT LOTTIE CUNNINGHAM:** I must say very few, because historically, we in the North Atlantic Autonomous Region, we didn't have an Appeals Tribunal until 1999, when the Appeals Tribunal was created. In 1982, the Appeals Tribunal was created by decree, but in the Department of Matagalpa. So we are talking about, in the case of Awas Tingni, five hundred kilometers through the city of Bilwi and then Matagalpa. That meant covering all that distance for the communities; from their community to the city of Bilwi after having to travel by airlines, right, via air, pardon, to the capital city, and then by bus. What does this mean: distance, economic resources, and the proceeding itself after, of *amparo*, it is a hassle, for which they needed an attorney.

**IACHR:** What is the cost of transport from the area of Awas Tingni to the place in which one can file an *amparo* action?

**EXPERT LOTTIE CUNNINGHAM:** The ticket alone is \$100.00 in United States dollars, and from the capital to Matagalpa, one must pay a little more.

**IACHR:** How many days does it take one from the area of Awas Tingni, in addition to the \$100.00, to arrive, how long?

**EXPERT LOTTIE CUNNINGHAM:** It takes three days.

**IACHR:** To file the action?

**EXPERT LOTTIE CUNNINGHAM:** Yes, it takes three days.

**IACHR:** You know that the Awas Tingni Community filed an *amparo* action the 12<sup>th</sup> of September of 1995?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Do you know what happened with that action?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** What happened?

**EXPERT LOTTIE CUNNINGHAM:** Justice was delayed.

**IACHR:** Was the action accepted or dismissed?

**EXPERT LOTTIE CUNNINGHAM:** The first action was dismissed.

**IACHR:** Do you know what the law says in relation to the time period in which an action should be accepted or dismissed?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** What does the law say?

**EXPERT LOTTIE CUNNINGHAM:** The law says that the parties should be

notified within five days.

**IACHR:** By the first tribunal?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Then it goes to the Supreme Court?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** And how much time does the Supreme Court have?

**EXPERT LOTTIE CUNNINGHAM:** Forty-five days.

**IACHR:** Forty-five days . . . do you know if notification on this action was given by the Supreme Court, after having been removed by the first court, within the forty-five days established by law?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** No what?

**EXPERT LOTTIE CUNNINGHAM:** No, notification was not given within the forty-five days.

**IACHR:** Was it decided in two months?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** Three?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** Four?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** A year and a half?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** Around there?

**EXPERT LOTTIE CUNNINGHAM:** Two years.

**IACHR:** You are mistaken, because it is around a little more, a year and a half; the 27<sup>th</sup> of February, 1997, to be exact. Do you know whether the law states that it is necessary to base the action on the rejection or to base the action on the rejection of the *amparo*?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Do you know if the petitioner's demands were responded to, taking into account the arguments they made?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Did the response take those arguments into account or not?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** Do you know whether a second *amparo* action was filed, this time not based on the titling of lands but based on other grounds, on the concession made in the lands, according to the indigenous petitioners?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** This is the case of the Thompson-Smith action; asserting that it be declared, why was it filed, first, I don't want to . . . why was that one filed, do you know?

**EXPERT LOTTIE CUNNINGHAM:** Because the first one was dismissed.

**IACHR:** Do you know that the reason for the second one was that the Regional Council had not been consulted?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Do you know whether that action was accepted?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Clearly: it was accepted, or it wasn't accepted?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Now, what was the basis for that action? It was asking for what?

**EXPERT LOTTIE CUNNINGHAM:** The basis for that action was to suspend the concession given to SOLCARSA, but also the State was asked to recognize the right of the indigenous peoples in their traditional lands.

**IACHR:** Madam, that action did not have the second purpose; it only referred to the first one that you asserted. It referred . . . I want the record to reflect.

**PRESIDENT CANÇADO TRINIDADE:** Yes, yes, it is important that she say only yes or no . . . .

**IACHR:** Yes, okay, now, the Court adopted the unconstitutionality action for it not having been signed by the Council; they didn't have the signature on the concession, establishing its not being justiciable. Do you know the date on which the court said that the unconstitutionality petition was justiciable, annulling the concession?

**EXPERT LOTTIE CUNNINGHAM:** The date no, but it was in 1997.

**IACHR:** That's right. The 27<sup>th</sup> of February of 1997. I won't go on again to ask you how much time passed until this one came out, but I am going to ask you the following question: What does the law of Nicaragua say with respect to the compliance with the decisions of the Supreme Court in *amparo* actions?

**EXPERT LOTTIE CUNNINGHAM:** That it should be complied with in twenty-four hours.

**IACHR:** Was it complied with in twenty-four hours?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** Was it complied with in a week?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** Was it complied with in one month?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** Was it complied with in five months?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** Do you have an idea of when the decision establishing the unconstitutionality of the concession in Nicaragua was complied with; this by the Supreme Court of Nicaragua itself? Do you have any idea of when it was done?

**EXPERT LOTTIE CUNNINGHAM:** Approximately one year.

**IACHR:** Approximately one year. Good. Indeed, now, do you know that while compliance of the Supreme Court of Nicaragua's order was pending, the company was fined for, among other things, cutting precious woods, etc.; did you know this?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Do you know how much the SOLCARSA company was fined?

**EXPERT LOTTIE CUNNINGHAM:** Yes, one million córdobas.

**IACHR:** One million córdobas. So, while it was not complied with, there was a fine, among other things, for cutting precious trees. Do you know that the Comptroller General of the Republic asserted something with respect to this fine? Have you heard something with respect to that, whether the Comptroller approved the extension of this fine?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** What did you hear?

**EXPERT LOTTIE CUNNINGHAM:** That the Comptroller sanctioned the competent authority again.

**IACHR:** Do you know that the Comptroller imposed a fine that is at least the double of this fine and more, requesting that the Minister responsible individually comply with the payment for not having applied the law? Were you aware of that?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Do you know whether the Minister paid?

**EXPERT LOTTIE CUNNINGHAM:** He never paid.

**IACHR:** Do you know whether the Minister is recently once again having problems with the Comptroller because of the cutting of precious wood trees in Nicaragua?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**IACHR:** Now, do you know that a petition for nullity due to unconstitutionality was an act declared unconstitutional with the court's expression in favor of the petition?

**EXPERT LOTTIE CUNNINGHAM:** Yes.



**IACHR:** Do you think that one can ratify the unconstitutionality of something?

**EXPERT LOTTIE CUNNINGHAM:** No.

**IACHR:** I would like to call to the attention of the Illustrious Court, and leave for your consideration and that of the Government, the representatives of the Illustrious Government of Nicaragua, the appendix presented in Appendix C, folder one, that is, pardon, in which there is an affidavit—we will let the record reflect—signed by Mario Guevara Somarriba, in relation to the letter from Roberto Stattenhagen Vog, Minister, where in handwriting it indicates “observation: note, obtain funds for the session,” from among others SOLCARSA, the company. In parentheses, the affidavit, number 35, and of which we have not had the benefit of the Illustrious Government of Nicaragua’s denial, and here is the letter, written by hand, citing the meeting of the Council, the securing of company funds; we simply want the record to show that for analysis.

**PRESIDENT CANÇADO TRINIDADE:** I would like to request that we leave this aspect for the closing arguments.

**IACHR:** No, this has nothing to do with the closing arguments.

**PRESIDENT CANÇADO TRINIDADE:** There can be no allegations.

**IACHR:** No, this is not an allegation. Far from that, and you will understand, Your Honor.

**PRESIDENT CANÇADO TRINIDADE:** Yes, but you can save that for the questioning phase.

**IACHR:** Yes, the only thing that I am saying is the following: in the questioning phase, I am putting two documents on record without commenting on their significance. The two documents are appended to the evidence, and I’d like to call attention to that.

**PRESIDENT CANÇADO TRINIDADE:** Just one clarification, Mr. Delegate.

**IACHR:** Yes?

**PRESIDENT CANÇADO TRINIDADE:** What is the direct relevance with what you just indicated in the last two questions to the expert?

**IACHR:** The process, she is an expert relative to the judicial process, and the importance of the judicial process and of the processes to correct the making of decisions relative to indigenous property. That is the relevance, so I don’t want to make a judgment, rather simply let the record show that this is in the evidence.

**PRESIDENT CANÇADO TRINIDADE:** We won’t consider it as an allegation.

**EXPERT LOTTIE CUNNINGHAM:** No, and of course not.

**PRESIDENT CANÇADO TRINIDADE:** You may proceed. Please, you have seven minutes left.

**IACHR:** That’s right, good; thank you, Your Honor. Now, is there any example in which any court of Nicaragua confirmed the right in an indigenous community to its communal traditional land?

**EXPERT LOTTIE CUNNINGHAM:** I should point out that, a little while ago, a decision came down in favor of the indigenous community of Ramakey, but this

was already when international law in Nicaragua had been stressed at the international level.

**IACHR:** Do you know whether that judicial resolution has been applied?

**EXPERT LOTTIE CUNNINGHAM:** It has not been complied with.

**IACHR:** It exists; we have already spoken with Ms. Cunningham with respect to the diverse issues and of the *amparo*, among other things, and the various petitions of the Community. I would like to know whether there is any other judicial procedure that has been proven to be effective for the application of the Nicaraguan constitutional norms in relation to the indigenous peoples.

**EXPERT LOTTIE CUNNINGHAM:** There is no other procedure.

**IACHR:** And we would like to know, Ms. Cunningham: what are the steps that should be taken to improve the functioning of the judicial system with respect to the indigenous communities?

**EXPERT LOTTIE CUNNINGHAM:** In my judgment, the first step that should be taken is to modify Law Number 49, Law of *Amparo*, which establishes the procedures of the *amparo* action and should establish it in a simple, agile, and efficient form, so the indigenous communities can have access to justice. Another step would be to reform the organic law of the judiciary, establishing that judicial authorities can act of their own accord, *ex officio*, on indigenous community claims with respect to their territorial rights, and that this be within the constitutional framework. Another of the steps that I could mention here is that the National Assembly approve, publish, and put into effect the demarcation and titling bill for the indigenous peoples' traditional lands and Waspam so that the communities can have some procedure and some place to turn to resolve their claims for territorial rights. Now that would be to put into effect the demarcation law, because the bill is currently is shelved in the National Assembly, there is now an impasse; that law was backed by the two Autonomous Regional Councils and officially submitted to the National Assembly, however, there has been no other advance. And another of the steps that I would like to mention here is the Autonomy Statute, which establishes in article 18 that the administration of justice should be governed by special regulations, taking into account the cultural particularities of our indigenous and ethnic communities. I say this because it is a significant way for there to be harmony between positive law and customary law, given that we have different concepts in property law on distribution and usufruct, for example. And that, in my judgment, would be the steps with the greatest priority.

**IACHR:** Thank you very much, Ms. Cunningham. Your Honor, we have concluded.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much to the Commission's Delegate. I will now give the floor to the Agent of the Illustrious State of Nicaragua.

**GON (Mr. Castillo):** Thank you very much, Mr. President. I will conduct the questioning personally. Ms. Cunningham, let's talk about Awas Tingni. Can you testify to the ancestry of Awas Tingni's possession?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**GON:** What is your source of information with respect to that?

**EXPERT LOTTIE CUNNINGHAM:** Because Awas Tingni is an indigenous community with its own language, its own culture and, historically, possessing its territory.

**GON:** Let's speak of the titling of the Awas Tingni lands. Do you know whether the Community of Awas Tingni made an administrative request for the titling of its lands?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**GON:** Do you know when such administrative request was made?

**EXPERT LOTTIE CUNNINGHAM:** Exact dates no, but I know that the administrative channels were exhausted.

**GON:** Do you know whether the Community obtained any response?

**EXPERT LOTTIE CUNNINGHAM:** No.

**GON:** What form does administrative silence take in Nicaragua?

**PRESIDENT CAÑADO TRINIDADE:** Yes, yes, exactly. She doesn't know or doesn't, could you repeat the word, in order to clarify it. The representative of the Commission is completely right. It is necessary to clarify this point. Please repeat the question.

**GON:** Yes, the question is whether she knew if Awas Tingni received a response to the administrative request that it filed.

**EXPERT LOTTIE CUNNINGHAM:** My answer was no, that it has not received any administrative response.

**PRESIDENT CAÑADO TRINIDADE:** Now it's clear.

**GON:** Yes, now, as a lawyer are you familiar with the concept of administrative silence?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**GON:** When does administrative silence take shape?

**EXPERT LOTTIE CUNNINGHAM:** Depending on the will of the authority, according to Nicaragua, to how the authorities of the Nicaraguan Government work.

**GON:** Could you be more specific? That is, what actions must the State take for there to be administrative silence?

**EXPERT LOTTIE CUNNINGHAM:** According to administrative silence, when the authorities do not give an answer, they are giving us a negative response; those are the experiences that we have had.

**GON:** What is the time limit for administrative silence to take shape?

**EXPERT LOTTIE CUNNINGHAM:** I don't know the time limit.

**GON:** When administrative silence takes shape, what is appropriate, procedurally speaking?

**EXPERT LOTTIE CUNNINGHAM:** Once administrative channels are exhausted, the communities have no other option than to go through legal channels.

**GON:** And what is that legal channel?

**EXPERT LOTTIE CUNNINGHAM:** The only procedure is the *amparo* action

for an omission by an authority.

**GON:** What is the time limit to file an *amparo* action?

**EXPERT LOTTIE CUNNINGHAM:** The time limit to file an *amparo* action is thirty days after being notified of the act or omission of the authority.

**GON:** Did the Community of Awas Tingni file an *amparo* action because it lacked title to its lands?

**EXPERT LOTTIE CUNNINGHAM:** It filed the *amparo* action when the regional government, pardon, the central government granted the concession without consulting the indigenous communities.

**GON:** But let's be more precise, because the Community filed a few actions. I am asking you specifically whether the Community legally requested, through the *amparo*, the titling of its ancestral lands: yes or no?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**GON:** All right. Let's speak now about the invalidity of the concession.

**IACHR (Dean Grossman):** An observation . . . .

**PRESIDENT CANÇADO TRINIDADE:** Yes, sir?

**IACHR:** I think that an expert cannot be asked to speak in terms of "yes" or "no" because this limits the position of the expert who can have other issues to raise, so the expert is constrained with a "yes" or "no" response.

**GON:** I withdraw the yes or no, Mr. President. But will she answer my question?

**PRESIDENT CANÇADO TRINIDADE:** I understand that the Agent wanted precision, and no one prevents an expert from being ample in her response, in addition to responding "yes" or "no." You may proceed.

**GON:** Let's talk about the nullification of the concession. There was a logging concession granted to SOLCARSA. Who filed the unconstitutionality action against this action?

**EXPERT LOTTIE CUNNINGHAM:** I should point out to you that I am not the legal advisor of the Awas Tingni Community. I refrain from commenting on those details of proceedings of the lawsuit, the case.

**GON:** So you don't know about the actions that Awas Tingni filed before the Justice Tribunals to demand their rights?

**EXPERT LOTTIE CUNNINGHAM:** I have full knowledge, in a general way, of the entire lawsuit.

**GON:** But we are interested in specific knowledge. The unconstitutionality action was filed for the granting of the logging concession. Did Awas Tingni file that action?

**EXPERT LOTTIE CUNNINGHAM:** I already told you that I cannot give the exact name or surname of who filed the *amparo* action.

**GON:** If you cannot give me the information, is it because you do not know it?

**EXPERT LOTTIE CUNNINGHAM:** Because I feel it is not my responsibility.

**GON:** Let's talk about the request to suspend the logging concession. Do you know why the *amparo* action was dismissed when the Awas Tingni Community filed it?

**EXPERT LOTTIE CUNNINGHAM:** In my view, the *amparo* action was

dismissed because of the constant disrespect the government has for recognizing indigenous rights for the communities.

**GON:** Could you give a reason of legal procedure?

**EXPERT LOTTIE CUNNINGHAM:** They didn't have oral argument in the Tribunals, either, at the time, because the action was dismissed.

**GON:** Okay. Next. Let's talk about the Comptroller. The Commission's delegate has said—I don't know if I'm using the correct terminology, excuse me, the Honorable delegate or representative—that the Comptroller General of the Republic fined MARENA for not having fined SOLCARSA for the logging. Do you know that MARENA filed an *amparo* against that resolution?

**EXPERT LOTTIE CUNNINGHAM:** No, I don't.

**GON:** Do you know that the Court adjudicated MARENA's *amparo*?

**EXPERT LOTTIE CUNNINGHAM:** Repeat your question.

**GON:** Do you know whether the Court has already issued a judgment on the individual?

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**GON:** What did the Court say?

**EXPERT LOTTIE CUNNINGHAM:** The Court issued a judgment on that *amparo* action and the way it is being dealt with is that the decision has not been complied with.

**GON:** Pardon, I am going to present my question in a different way. We are talking about an *amparo* action, filed by MARENA against the Comptroller General of the Republic for an administrative resolution, in which the Government is told that a sufficient amount was not collected for the fine. Do you or do you not know of this action?

**EXPERT LOTTIE CUNNINGHAM:** Yes, I do.

**GON:** Do you know if there was a decision?

**EXPERT LOTTIE CUNNINGHAM:** Yes, yes, I know that.

**GON:** Do you know the content of the decision?

**EXPERT LOTTIE CUNNINGHAM:** I don't know the specific content of the decision.

**GON:** Do you know that the Supreme Court determined the *amparo* was warranted?

**EXPERT LOTTIE CUNNINGHAM:** No.

**GON:** Was it made known to you whether or not MARENA did indeed collect the fine in question?

**EXPERT LOTTIE CUNNINGHAM:** I understand that it was not complied with.

**GON:** What is the source of your knowledge?

**EXPERT LOTTIE CUNNINGHAM:** The source of my information is the relationship that I have with the indigenous communities.

**GON:** Thank you very much, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** Thank you, Agent. Let us now move to the questions from the judges. Judge Montiel Argüello?

**JUDGE MONTIEL ARGUELLO:** No questions.

**PRESIDENT CANÇADO TRINIDADE:** Judge De Roux? Judge García Ramírez? You may proceed.

**JUDGE GARCIA RAMIREZ:** Ms. Cunningham, with your knowledge of the norms and of the practice, but most particularly of the norms, would you say that in the totality of Nicaraguan law there are procedures, guarantees, the indispensable and adequate resources for indigenous communities to assert their rights, such as those allowing them to have their lands titled or so the members of the communities can assert them? I am not referring so much to the attitude that the authorities could or could not adopt, but rather to the very existence of adequate procedures that allow for the assertion of constitutional rights.

**EXPERT LOTTIE CUNNINGHAM:** For the indigenous communities, there is no procedure that could allow for the assertion of their ancestral rights recognized in the Political Constitution.

**JUDGE GARCIA RAMIREZ:** You referred, if I heard correctly, to an ordinance which provides that the jurisdictional system, the judicial system, must take into account the particularities of the litigant, the plaintiff or defendant—you didn't say it like that, but I thought I understood it that way—at the time of ruling on the proceeding and making the necessary decisions. Is that right?

**EXPERT LOTTIE CUNNINGHAM:** Yes, in the Autonomy Statute of the autonomous regions, article 18 establishes that the administration of justice should be governed by special regulations, taking into account the cultural particularities. But this is a general law for which regulations have never been promulgated.

**JUDGE GARCIA RAMIREZ:** So there are, I am asking, none of those special regulations that allow the judicial authority to take into account the particularities that it should, according to the law to which you just referred?

**EXPERT LOTTIE CUNNINGHAM:** There is not a single procedure.

**JUDGE GARCIA RAMIREZ:** Thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much, Judge García Ramírez; Judge Abreu Burelli? Judge Jackman?

**JUDGE JACKMAN:** No questions, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** I only have a very brief question. On this question of the administration of justice with attention to the cultural particularities, do you know of any other example relative to any other community, in which, in the administration of justice, the cultural particularities have been taken into account? Without reference to article 18 of the Statute of Autonomy, but some other example of practical application?

**EXPERT LOTTIE CUNNINGHAM:** Yes, the administration of justice, in fact in Nicaragua in the indigenous communities, the disputes in the communities have been administered by communal judges, traditional authorities, and this is administered according to the customs of the communities.

**PRESIDENT CANÇADO TRINIDADE:** To the customary law.

**EXPERT LOTTIE CUNNINGHAM:** Yes.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. We have

concluded the examination of the experts. The last witness remains; he is the witness called by the Court. I would like to propose a brief break, and that we begin again at 6:00, within twenty minutes, to conclude today's work with the witness proposed by the Court. The session is adjourned until 6:00.

**PRESIDENT CANÇADO TRINIDADE:** We reconvene this Public Hearing on the merits of the case of the Mayagna (Sumo) Community of Awas Tingni, with the purpose of continuing to listen to the testimony of the last witness. Before requesting that the Secretary call the witness, I would like to clarify that, in accordance with the informed understanding between the parties, the State will first examine this last witness, followed by Inter-American Commission, and I thank both the State as well as the Commission for the understanding to which they were able to arrive. Will the Secretary call the last witness of this hearing to testify?

**SECRETARY VENTURA ROBLES:** Mr. Marco Centeno Caffarena.

**PRESIDENT CANÇADO TRINIDADE:** As this is a witness and not an expert, each party will have up to twenty minutes to ask its questions. You may sit down. Will the witness please state his name before the Court?

**WITNESS MARCO CENTENO CAFFARENA:** Marco Antonio Centeno Caffarena.

**PRESIDENT CANÇADO TRINIDADE:** Nationality?

**WITNESS MARCO CENTENO CAFFARENA:** Nicaraguan.

**PRESIDENT CANÇADO TRINIDADE:** Identification document number?

**WITNESS MARCO CENTENO CAFFARENA:** Passport number B000913.

**PRESIDENT CANÇADO TRINIDADE:** Place of residence?

**WITNESS MARCO CENTENO CAFFARENA:** Managua, Nicaragua.

**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 he knows to be true them and avoid giving personal opinions. The witness is notified that he was cited by the Court to testify about the following facts: the witness will testify about the procedure of titling the communal indigenous properties; the criteria that are used in the determination of the surface area that can be recognized; and the general situation of the titling claims by indigenous communities.

The declarant is hereby notified that, according to articles 50 and 51 of the Court's Rules of Procedure, the States may not indict the witnesses, or take retaliatory measures against them or their family members because of their testimony 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, by your honor and conscience, that you will

tell the truth, the whole truth, and nothing but the truth?

**WITNESS MARCO CENTENO CAFFARENA:** I do.

**PRESIDENT CANÇADO TRINIDADE:** I give the floor to the Agent of the Illustrious State to proceed with his questions.

**STATE OF NICARAGUA:** Thank you, Your Honor; Mr. Rosenaldo Castro will conduct the questioning.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much, you may proceed.

**GON (Mr. Castro):** Thank you, Your Honor. Mr. Centeno, as witness of the Court, we have twenty minutes and we would like, as the State of Nicaragua, to deal with four principle issues. First, what has the history of titling in Nicaragua been; in second place, what diagnostic studies are there with respect to indigenous titling that refers to studies on the ancestrality of the indigenous communities of Awas Tingni; and, what is the situation of the bill on indigenous communities that will broaden the currently existing legal framework?

**PRESIDENT CANÇADO TRINIDADE:** Can you repeat the first, to establish the order of the testimony of the witness?

**GON:** Yes.

**PRESIDENT CANÇADO TRINIDADE:** First point.

**GON:** First point, everything related to the history of titling.

**WITNESS MARCO CENTENO CAFFARENA:** Well, to illustrate the question, I am going to divide the periods of titling, if the Honorable Court will allow me, into three fundamental periods, and those three periods have occurred during the 20<sup>th</sup> century.

The first period is the period that gave the framework of the implementation of the Treaty between the kingdom of Great Britain and the Republic of Nicaragua, called the "Harrison-Altamirano Treaty." Article three of that treaty mandated titling of the indigenous communities existing in the Miskito Coast of Nicaragua, and in turn, it mandated titling them in a specific area; in particular, at that juncture, title of eight blocks per nuclear family of four individuals was allocated in the treaty. If the nuclear family exceeded that number by more than four individuals, two additional blocks per person were titled. I must tell the Court, the Honorable Court, that to support each of the things I am saying, I have the pertinent documents here that substantiate my statements, and I put them at the disposition of the Court; at this time, I would be referring to the copy of the Harrison-Altamirano Treaty, duly notarized, as well as the translation, the exchange or exchange of notes of ratification of it, and also the regulations of article three. For procedural economy, we are going to try to go a little faster. Okay, at that time the spirit that existed, and it is reflected in the letter of the treaty, is to title all of the demands and all of the communities that were present on the Atlantic Coast of Nicaragua. By virtue of that, more than eighty thousand hectares were titled, and as a product of that as well, sixty titles were issued that are duly registered with the Bluefields Property Public Register, that is the only register that the Republic of Nicaragua has in the Atlantic Coast; I also put at the



Honorable Court's disposition notarized copies of each one of those titles. I call your attention to that because they are also asking me about the diagnostic study of the Awas Tingni Community, and I know that this case is fundamentally relative to that case that, at that period, was titled to a community called Tilba Lupia, pardon about the diction, right? Tilba-Lupia; two titles were given to it, and whose register accounts are 2111 and 2112. I leave at the disposition of the Court notarized copies of them.

At that time in particular, a considerable area of land, approximately 3,690 hectares, was titled to the Mayagna, or Sumo, ethnic groups. Taking into consideration the census that was taken, the population census of that period, or more rightly, taking into consideration the population census of 1995, we could estimate that the Mayagna population on the Atlantic Coast of Nicaragua was approximately 407 persons. 407 persons; I also put at the Honorable Court's disposition the census of that period, from 1950 and 1995, that the Nicaraguan Institute of Statistics and Census provided us with in order to document the case of Awas Tingni in the institution that I represent and of which I am, well, Director. I am Director of the Office of Rural Titling. An important aspect in titling of the Miskito Coast is the aspect that has to do with . . . .

**PRESIDENT CANÇADO TRINIDADE:** Yes?

**IACHR (Dean Grossman):** He is reading that, turning the page as he goes; with each phase he is reading a testimony that he has there?

**PRESIDENT CANÇADO TRINIDADE:** He is consulting.

**IACHR:** No, I am asking a question. If the answer is that he is consulting his notes for certain things, because my experience in the past has been that witnesses, if they have to look for a piece of information, if he forgot something . . . but they can't be reading a text written previously . . . .

**PRESIDENT CANÇADO TRINIDADE:** He is consulting the texts; there is precedent that the Court allows consulting of texts, no?

**IACHR:** Texts, so he is consulting. Very well, thank you . . . .

**PRESIDENT CANÇADO TRINIDADE:** The same as you did a few minutes ago, also consulted a document, and I indicated that to the Court, no? Yes. No, but as a party as well . . . .

**IACHR (Dean Grossman):** Pardon, but he is a witness, not a party.

**PRESIDENT CANÇADO TRINIDADE:** He is not reading. Let the record show that he is not reading; he is consulting a document in order to give an explanation to the Court in response to the State's question.

**GON (Mr. Castillo):** Mr. President, we ask to be compensated later for the lost time.

**PRESIDENT CANÇADO TRINIDADE:** Yes, that is two minutes and thirty-five seconds up until now.

**IACHR (Dean Grossman):** Your Honor, we are totally in agreement that the time be computed and we would also like, if possible, because the witness has stated that he is submitting documents to the Court, to have a copy of that, and a copy also of the document that he is reading, or that he is consulting, pardon.

**PRESIDENT CANÇADO TRINIDADE:** Article 40 on oral procedure before the Court, according to the regulation, it says that the President will direct the debate and dispose of the pertinent measures to better conduct the hearings. So, based on this article, I decide that if this document can be provided to both parties, a decision of the President, once he is a witness proposed by the Court to better provide . . . .

**GON:** Mr. President, I understand that your decision is with respect to Mr. Centeno's documentation.

**PRESIDENT CANÇADO TRINIDADE:** Exactly, solely. You may continue, if you want to consult, but not read, please.

**WITNESS MARCO CENTENO CAFFARENA:** Yes, I was referring to the procedure used during the implementation of the Harrison-Altamirano Treaty, of the Titling Commission of the Miskito Coast. Basically, it was an elemental procedure; the Commission complied. The Commission would visit the places to be titled or where there were communities, the communities stated their requirement. Their requirement was published, so that if someone felt infringed upon or taken advantage of, shall we say, by the potential titling, he would oppose it, and if there was no opposition, then measurement would be taken and subsequent titling performed. That was the procedure, according to our registers that my institution has consulted; there were approximately only three oppositions. The procedure also took into consideration that, when there were these oppositions, they tried to arrive at, shall we say, a friendly solution, in which those who were affected by the titling were compensated for those areas.

Another important period was the period of the IAN, of the Nicaraguan Agrarian Institute, during the 1960s and 1970s, but I would like to differentiate between what happened with the implementation of the Harrison-Altamirano Treaty and what happened during the period of the IAN. During the period of the Titling Commission of the Miskito Coast, in light of the Harrison-Altamirano Treaty, a comprehensive titling of all the ethnic groups or the communities that lived in that era, in the community, in the Atlantic Coast of Nicaragua. A product of that is the "blocking" that I said previously was titled. When we began the IAN period, titling was basically begun under agrarian criteria, criteria of additional lands. Moving on to the issue of titling of the Atlantic Coast with a comprehensive spirit, it shifted to a state in which additional lands were titled in the framework of the Agrarian Law of 1963. During that period, an area was titled for indigenous communities of 62,500 hectares, exclusively for indigenous communities; twenty-eight indigenous communities were titled, of which fourteen hectares were titled to the Mayagna or Sumo ethnic group, right. Also an important issue to emphasize is that it was in this period when the judgment of the Court of the Hague was issued, pardon, in the dispute between Nicaragua and Honduras, and then there were tribes and communities, pardon, that wanted to return to Nicaragua and they were given title, inside of which is the Community, well-known in the Awas Tingni case, that of Francia Sirpi. There was a community called Wisconsin and others to which I will refer later.

Another interesting time is the time during other regimes, and that is the regime established during the Revolution of the 1980s in the country, with the new law of agrarian reform and always under the criteria of additional lands and under the institutionality called MIDINRA; yes, there, twenty-nine communities were titled and the precise number of hectares was not recorded in the Public Register of Property, only twenty-eight thousand hectare titles were registered. That would be, shall we say, the historical perspective; I don't know if they are going to repeat question by question, Honorable Court . . . .

**PRESIDENT CANÇADO TRINIDADE:** Yes, sir. Maybe you could move on to the second point, no? Delegate of the State.

**GON (Mr. Castro):** We would like to know about the diagnostic studies that the OTR or old INRA has on indigenous titling.

**WITNESS MARCO CENTENO CAFFARENA:** Fine. We, in the period 1995-1998, a diagnostic study that was quite complete was carried out in the indigenous communities. Three people, three experts, were sought, well, the names of the men I don't . . . Mr. Hale, Mr. Gurdíán . . . the diagnostic study was basically a diagnostic study on the land tenure of the indigenous communities. This diagnostic study basically shed light on the situation that, well, according to the criteria of the consultants, existed in the Nicaraguan indigenous communities at that time. What we would bring to your attention as titling authority, and as people who have dealt with the issue for some time, is the particularity that the issue of territorial claims has been taking on the Atlantic Coast, specifically of Nicaragua that has to do with the formation of blocks and that is revealed in the study. I made copies of that study, because it is the richest study that the institution has of the problems created in light of the formation of these blocks. While it is certain that these blocks have a very positive side because they give land management power to the communities—and this is positive in the sense that it can guarantee quite positive sustainable development of those communities—there is also the problem that they have been added, shall we say, to mother communities that were issued title by the Titling Commission of the Miskito Coast, communities that maybe did not belong to the same one, communities that have been formed more recently—or what we call “daughter communities”—that have become detached and have had a certain autonomy, and now intend, shall we say, to make a titling claim, or have asserted in the diagnostic study that they have title, invoking ancestrality. The underlying issue here is that, in reality, this would be quite a bit more than what the territory of the Atlantic Coast could be shown to have. If that many requests were dealt with under this concept, at the same time as which the majority of the communities were titled when they belonged to the mother community, or are newly existing communities, and what we understand, in reality should be dealt with under the additional lands regime, to satisfy the requirements as a social nucleus, right, of sustainability, and of course for the preservation of their culture, etc.

**GON:** Mr. Centeno, we would like to know whether claims of the indigenous Community of Awas Tingni have been dealt with. Why has it not been titled?

What is the situation from the point of view of the competent organization?

**WITNESS MARCO CENTENO CAFFARENA:** In the case of the Awas Tingni Community, let's say, there are various things happening. The first is that in the diagnostic study that was contracted, shall we say, the most in-depth, most serious diagnostic study, the Awas Tingni Community was not analyzed, according to the study that we have done of it, right? And another interesting aspect is that in the archives of the institution, today called the Office of Rural Titling—before it was INRA, and before MIDINRA—a formal request for title doesn't appear, or we haven't found it. What we did find was, in the document that the Honorable Human Rights Commission presented as a response to the documents that the Agents presented at some point in this lawsuit—excuse me, but I am not a lawyer, and I don't know exactly how it is referred to—but in the answer they gave, they included a photocopy from a registry, being of visits or documentation of entry, in which were present or signed, or were registered two agents or two representatives, pardon, or advisors of the Community, and they were requesting or it was registered there, and they presented it at that time, that the Community was asking for titling of sixteen thousand hectares. Then . . . .

**GON:** Do you remember the time?

**WITNESS MARCO CENTENO CAFFARENA:** Pardon?

**GON:** Do you remember when, in what year that was?

**WITNESS MARCO CENTENO CAFFARENA:** I couldn't tell you exactly, because in reality I'm basing my statement on a photocopy that is in the document that was presented as an answer to what the Government of Nicaragua presented and the date is not specified . . . .

**GON:** All right, all right. One thing, Mr. Centeno, on the ancestry of the Awas Tingni Community, what can you tell us?

**WITNESS MARCO CENTENO CAFFARENA:** Well, basically . . . .

**GON:** There are documents, a series of studies on ancestry, that have already been presented; what does the OTR have? What can you tell us?

**WITNESS MARCO CENTENO CAFFARENA:** We have dealt, shall we say, if I may, Mr. Agent, we have dealt with the Awas Tingni issue with the understanding that it has already emerged, and it is an issue that we have to document institutionally. There is a study that we know of, that is the study that Doctor Theodore Macdonald prepared. In that study, an attempt is made to show the ancestral occupation of the Awas Tingni Community. I am sorry that we do not have, shall we say, inside the institution, an expert on those topics; I took up the task of contracting and consulting with a Nicaraguan expert, Mr. Ramiro García, archeologist and plant researcher at the National Museum of Nicaragua and advisor to the Nicaraguan Cultural Institute, to do an evaluation for us, shall we say, of the study. Basically, what Mr. García's study reflects is that we cannot . . . .

**PRESIDENT CANÇADO TRINIDADE:** Mr. Delegate of the Commission?

**IACHR (Dean Grossman):** The witness is referring to a study that we don't know and that is not something that he has done, but rather something done by

another person. I would simply like to have guidance with respect to the admissibility of these kinds of comments . . . I understand, simply to know by what we have to abide, because I cannot later examine the author of a study who is not present, of which we do not have the benefit of knowing and who has been contracted by a witness and not contracted by us.

**PRESIDENT CANÇADO TRINIDADE:** Mr. Agent?

**GON (Mr. Castillo):** Mr. President, we are going to explain the point. The only document probative of Awás Tingni's ancestry that has been presented to the Court is Macdonald's document. What Mr. Centeno is wanting to say here is that that document was subjected to study in his institution, and he is going to speak about the elements of that study. We consider that this is entirely relevant because it explains and justifies why this Community has not been titled and why the Government considers that there is no ancestral occupation.

**PRESIDENT CANÇADO TRINIDADE:** Mr. Delegate?

**IACHR (Dean Grossman):** Yes, well, the regulations of the Illustrious Court say that the witnesses must abstain from giving opinions and speak about things they know to be true. First, we don't have the benefit . . . I tell you, it seems to me that it is very late. We want to contribute to the decisional and enrichment process, but we suggest that from the point of view of, let's put it this way, of analysis of proof, I don't understand the principle on which someone can cite something like a study, a study contracted by him. We don't know the person that wrote it, we don't have the ability to examine the person who wrote it, we don't know the study's methodology. So I simply suggest to you that this seems to me to be quite a bit of flexibility. The only element of proof that Your Honor and the Illustrious Court have is not solely that study; there have been experts that have discussed facts of which they have knowledge, information that they have collected and seen. The witness is speaking of things of which he has no knowledge; that is, there was a study done, but we cannot question him about studies, we don't know anything about that . . .

**PRESIDENT CANÇADO TRINIDADE:** Mr. Agent alternate . . .

**GON (Mr. Castro):** Your Honor, taking into consideration and trying to simplify the issue so that we don't have this conflict, and in the spirit of contribution, I would like to restate the question to Mr. Centeno, taking into account the time lost. Mr. Centeno . . .

**PRESIDENT CANÇADO TRINIDADE:** The lost time will be added to the twenty minutes' time.

**GON:** Thank you very much, Your Honor. Mr. Centeno, tell us, what is the official view of the institution that you represent with respect to the ancestry of the Awás Tingni Community and the reasons for which it has not been titled?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, unfortunately, Honorable Court, I am going to again make reference to the study, a copy of which I bring to the Honorable Court, and for whomever the Honorable Court stipulates, an original copy of the same. The view of the institution . . .

**PRESIDENT CANÇADO TRINIDADE:** A point of order for the representative

of the Commission.

**IACHR (Dean Grossman):** The witness insists on citing a work that we don't know, and he cannot have an opinion on that work and consequently cross-examine. So I think that the question is not an appropriate question for this Court.

**PRESIDENT CANÇADO TRINIDADE:** Yes, Agent of the State?

**GON:** Your Honor, I would ask that Mr. Centeno explain to us only the institutional position, without citing the analysis.

**PRESIDENT CANÇADO TRINIDADE:** He may respond with that understanding, and as I indicated earlier, the documents that the Court deems should be added to the evidence will be transmitted to the Commission, as well as to the State.

**GON:** Thank you, Your Honor.

**PRESIDENT CANÇADO TRINIDADE:** I ask the Secretary when they could be transmitted.

**SECRETARY VENTURA ROBLES:** When they submit them, they are photocopied, and they will be submitted as soon as possible. It can be done tomorrow morning.

**IACHR (Dean Grossman):** Mr. President, allow me to insist just a little on this point, I thank you; Your Honor, the problem of making copies of the documents for the Commission and for the Illustrious Government . . . additionally, now the problem is: how we can argue against a witness on a topic which we don't know?

**PRESIDENT CANÇADO TRINIDADE:** The witness will limit himself to responding within the context of the terms of reference of his testimony, as far as the criteria that are used and the determination of the surface area that can be known, without reference to any concrete document. You may proceed.

**WITNESS MARCO CENTENO CAFFARENA:** The institutional view of the office that I direct, which is the competent authority for titling in the Republic of Nicaragua, is that the Community of Awas Tingni does not hold ancestral occupation of the areas for which it is requesting title.

**GON (Mr. Castro):** Mr. Centeno, could you refer to the overlapping claims and conflicts that this Community has with other communities?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, the Community of Awas Tingni has conflicts of interest in title with communities that were already duly titled in two periods: in the Titling Commission of the Miskito Coast, especially with communities or groups that were titled in the period of the Nicaraguan Agrarian Institute—specifically with Francia Sirpi, with Wisconsin, with Santa Clara, with Aminrosita 1, Aminrosita 2—and it also has conflicts with the Eighteen Communities, the block known as the Eighteen Communities, the communities that are there, and the Ten Communities over the titling claims that these communities have. That has made the expeditious effectuation of the request or claim impossible.

**GON:** Mr. Centeno, has the office in your charge at any time denied the Awas Tingni Community right of title?

**WITNESS MARCO CENTENO CAFFARENA:** No, Sir.

**PRESIDENT CANÇADO TRINIDADE:** The time is up, but, as we agreed again on the two minutes and thirty seconds, we will proceed in accordance with what was announced earlier.

**GON:** Thank you very much. We would like you to tell us about the consultations for the law.

**WITNESS MARCO CENTENO CAFFARENA:** Of the bill. There is a bill that that the Executive Power introduced in the Nicaraguan Legislative Assembly in October of 1998. As a product of this legislative initiative, a series of consultations were done on the Atlantic Coast, as well as with civil society, such as with the autonomous authorities, shall we say, of the Coast—and I want to put at the disposition of the Court a large part of those documents that I bring in this suitcase—and something very interesting happened. In September of this year, the Regional Councils met jointly and, backing this law which had already been modified and amended, and incorporating the consultations or what the local authorities considered pertinent, right? I also put at disposition a copy of that document, for the Honorable Court and whomever it decides.

**IACHR:** Mr. President. Your Honor, as a party in this matter and in other cases before the Illustrious Court, we wish to obtain guidance with respect to how to act as the Inter-American Commission. Is it possible, according to your Honor, that we in these and other cases bring witnesses with a suitcase on the last day of the hearing and add, I don't know, a series of documents to the proceeding? We want to have guidance.

**PRESIDENT CANÇADO TRINIDADE:** That's enough.

**IACHR:** I say that in relation to this and other cases.

**PRESIDENT CANÇADO TRINIDADE:** I am absolutely, it is certain that the Commission does not need a guide because it has already participated in many cases and in various precedents in which documents have been presented that have been later provided to the party . . . evidence for the Court to better issue its ruling.

**GON:** Your Honor, documents that we have previously presented have been objected to and not allowed us.

**PRESIDENT CANÇADO TRINIDADE:** There have also been, there have been previous cases in this Court in which documents were presented as proof to better rule and that after were submitted to the Commission as well as to the respondent State, so the Commission does not need a guide, Mr. Delegate; the Commission knows this perfectly well.

**IACHR:** Thank you very much.

**PRESIDENT CANÇADO TRINIDADE:** The Commission has ample experience in contentious cases.

**IACHR:** I confess that we really do need a guide, and I understand then that it is possible to submit the documents.

**PRESIDENT CANÇADO TRINIDADE:** Yes, in the context of the present case we have decided that we are going to accept the documents and submit copies to the Commission as well as the State, and I heard no objection to this decision; it is

a decision of the Court. First thing tomorrow we can submit the documents to the Commission as well as the State.

**IACHR:** Yes, Your Honor. We object now to the fact that an entire suitcase of documents has been announced. We have closing arguments tomorrow. It is even a practical impossibility. How are we . . . I am . . . and yes, we need a ruling, we understand what the Court is telling us; I will give you an example: tomorrow we have to give closing arguments. The witness announces that he brings, physically, a suitcase of documents to which we don't have . . . .

**PRESIDENT CANÇADO TRINIDADE:** I was referring to the documents already presented to the Court.

**IACHR:** And the new ones that he announced? We object.

**PRESIDENT CANÇADO TRINIDADE:** Yes.

**GON:** Your Honor, the witness is a witness of the Court, so we have respected his freedom to act. Right? I know the first questioning was difficult, insofar as, that is, the terms of reference is the only guide we have. In any case, I think that the witness can respond as to what type of documents they are, what they prove, and how it is proved.

**PRESIDENT CANÇADO TRINIDADE:** But before he responds, I would like to consult with the other judges, if you will allow me two minutes.

**GON:** Yes, Sir.

**PRESIDENT CANÇADO TRINIDADE:** In relation to the additional documents, not in relation to those that were already mentioned, I would like to announce the final determination of the Court. According to article 43 of the Regulation on Admission of Evidence, the evidence adduced by the parties will only be admitted if it is indicated in the complaint and its answer. Exceptionally, the Court can admit evidence if one of the parties alleges *force majeure*, grave impediment or supervening circumstances, at a time different than that already mentioned, always guaranteeing to the opposing party the right to assert its defense. The point of view of the Court is that this exception is not applicable here, so tomorrow the concluding arguments can be solely and exclusively on what the witnesses and experts have declared, so as not to hold up the proceeding. And this is a unanimous decision of all the judges.

**GON:** Mr. President, we accept the decision of the Court.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much.

**GON:** Just for our knowledge, what was the content of this suitcase?

**PRESIDENT CANÇADO TRINIDADE:** That can be done, but let me consult with the Commission, if it agrees . . .so, the decision of the Court is not questioned, it cannot be questioned and the witness can simply inform the Court of the content, as information, of the documents to which he referred.

**WITNESS MARCO CENTENO CAFFARENA:** At this time?

**PRESIDENT CANÇADO TRINIDADE:** Yes.

**WITNESS MARCO CENTENO CAFFARENA:** Basically, I bring the documents I spoke of before: a copy of the Harrison-Altamirano Treaty, its translation; eh, I also bring the regulations of article 3 of this treaty; I bring the



census of 1950 and 1995 of the Republic of Nicaragua, specifically on the indigenous ethnic groups. I also bring a copy of the study analyzing Mr. Macdonald's document I contracted to Mr. García. I also bring a copy of the titles given during the Titling Commission of the Miskito Coast, duly authenticated. I also bring a copy of the titles issued in the period of the MIDINRA, let's say from the 1980s, and of course, I brought the elements having to do with the backing of the two Atlantic Coast Autonomous Councils and the means of support given to them to do it *ad hoc*, etc., of the bill; that is the suitcase to which I made reference as to where the supporting documents are.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. Thank you very much to the delegation of the State. I will now give the floor to the Commission's representative to indicate the person who will ask questions.

**IACHR (Dr. Bicudo):** Mr. President, I myself, plus Delegate Grossman, plus the lawyer James Anaya, will ask questions. I would like to make the following clarifications: the witness is an anthropologist.

**WITNESS MARCO CENTENO CAFFARENA:** Do I answer?

**IACHR:** Are you an anthropologist?

**WITNESS MARCO CENTENO CAFFARENA:** No, Sir.

**IACHR:** Are you a sociologist?

**WITNESS MARCO CENTENO CAFFARENA:** No, Sir.

**IACHR:** Are you a historian?

**WITNESS MARCO CENTENO CAFFARENA:** No, Sir.

**IACHR:** What is your academic preparation?

**WITNESS MARCO CENTENO CAFFARENA:** Okay. My academic preparation. I have a university baccalaureate in computer systems engineering; I have a bachelor's degree in business administration, and I have, hold a master's degree in public policy and management from the University of Chile.

**IACHR:** All right, are you a government functionary?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, Sir.

**IACHR:** And what function do you have?

**WITNESS MARCO CENTENO CAFFARENA:** I am currently the Director General of the Rural Titling Office.

**IACHR:** Is that a political appointment or a career position?

**WITNESS MARCO CENTENO CAFFARENA:** I have been a government functionary since 1991.

**IACHR:** I asked if that position that you hold is a career position as a public functionary, or if it is a political appointment of the government.

**WITNESS MARCO CENTENO CAFFARENA:** I would have, Honorable Court, to give a personal opinion, because in my country there is no Civil Service Law that categorizes this type of position.

**PRESIDENT CANÇADO TRINIDADE:** Is there a corps of permanent public functionaries within your area of activity? Or is the position an appointment by the Executive Authority?

**WITNESS MARCO CENTENO CAFFARENA:** The Minister of the Treasury

and Public Credit is who appoints me. Not the President of the Republic.

**IACHR:** And you have a mandate for that position?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, of course I have a mandate.

**IACHR:** How many years?

**WITNESS MARCO CENTENO CAFFARENA:** I have, when, pardon, can I ask for a clarification? When you say "mandate," what are you referring to?

**IACHR:** Mandate, term, mandate of a fixed term to act without interference from the government.

**WITNESS MARCO CENTENO CAFFARENA:** Of the government of the moment?

**IACHR:** Of the moment? Which other government?

**GON (Mr. Castillo):** The State of Nicaragua would like to clarify that Mr. Centeno is a public functionary.

**IACHR:** Just a moment, this is not a clarification that the Illustrious State can make; the clarification is what the witness is being asked, and he must answer.

**GON (Mr. Castillo):** Yes, but, that is, the State of Nicaragua can explain, it has been amply explained to him that they are asking whether . . .

**PRESIDENT CANÇADO TRINIDADE:** There is a point of order from the Commission; it may proceed. The question is directed to the witness, so it is not the other party that answers, it is the witness. He may answer the question.

**WITNESS MARCO CENTENO CAFFARENA:** Yes. There is no period of time for holding the position that I currently hold, but I must say that I have held high-level advisory positions related to property issues since 1991 in the government that recently left office.

**IACHR:** Did you participate in a public competition for that position?

**WITNESS MARCO CENTENO CAFFARENA:** I must repeat that in Nicaragua, there is no Civil Service Law.

**IACHR:** Do you mean that you did not participate in a public competition for that position?

**WITNESS MARCO CENTENO CAFFARENA:** I have accumulated merits.

**IACHR:** Answer the question as I stated it.

**WITNESS MARCO CENTENO CAFFARENA:** I have been a public functionary since 1991 . . .

**IACHR:** I am asking if you participated in a public competition to be a public functionary, that is the question.

**WITNESS MARCO CENTENO CAFFARENA:** I did not.

**PRESIDENT CANÇADO TRINIDADE:** I understand that you answered when you said you were appointed by the Minister.

**WITNESS MARCO CENTENO CAFFARENA:** Honorable Court, the public service law does not exist in my country.

**IACHR:** Do you mean that you can be removed from the position that you hold at any moment, at the will of your, of the Minister?

**WITNESS MARCO CENTENO CAFFARENA:** There are laws, that is, the

Labor Code of Nicaragua, and if the Minister were to do that he would be involving himself in something improper, and I would have my rights to be able to demand and assert my rights.

**PRESIDENT CANÇADO TRINIDADE:** The question is answered. The State has a point of order.

**GON (Mr. Castillo):** Yes, the questions seem reiterative and intimidating. The witness said that in Nicaragua, the Law of Administrative Career or Civil Service doesn't exist. What is the point in continuing to ask? That is, an attempt is being made to establish, he has a . . . pardon, the lack of the witness' capability to hold the position, in which case, that treatment should be universal for all functionaries of the Nicaraguan public administration and from all other countries in which there is no administrative career. The point is not proving anything.

**PRESIDENT CANÇADO TRINIDADE:** The witness himself definitively clarified the subject.

**IACHR:** For how long has the witness exercised those current duties?

**WITNESS MARCO CENTENO CAFFARENA:** For how long? Since January of 1999.

**IACHR:** Are you subordinate to some other person?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, Sir. To the Minister of the Treasury and Public Credit and to the Property Administrative Division.

**IACHR:** Lastly, when you were appointed, what was your experience in titling?

**WITNESS MARCO CENTENO CAFFARENA:** In 1991, I worked, at that time, as a part of what was being called, or was called, the Office of Territorial Organization that attempted to provide a solution to the problems that arose due to the change of government from the period of the 1980s to the beginning of the Chamorro period. I worked in the computer area, and I worked in the processing area. We established that office, and I was a member of the Commission that reported on the activities that had occurred under Law 86, urban titles or urban lots, pardon, under Law 85, urban housing and ag-related things; that was, at that time, Law 88 that we were . . . .

**IACHR:** I want lastly to clarify to the Court that the questions I asked were in order to find out up to what point the witness is at full liberty to speak to the Court.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. So, as I granted the ability to clarify to the State to be equanime and equitable, I also just granted the ability to clarify to the Commission; but I ask that both sides make the work easy, given the advanced hour, so that we can conduct this hearing to the end in a climate of understanding, of good understanding. Mr. Agent?

**GON (Mr. Castillo):** Pardon my insistence, Mr. President, but an attempt is being made to establish an inexact conclusion. Whichever functionary is part of the public administration is hierarchically subordinate to someone. So trying to establish that he is not going to fulfill his position competently, objectively, because he is hierarchically subordinate to someone, is totally unacceptable.

**IACHR (Dean Grossman):** Your Honor.

**PRESIDENT CANÇADO TRINIDADE:** Mr. Delegate.

**IACHR:** I would like to say just one thing. The only purpose of the questioning by the president of the Commission was to establish whether it was a position of exclusive trust.

**PRESIDENT CANÇADO TRINIDADE:** That is already answered. It is already answered.

**IACHR:** But I clarify. The reason is not to say why one fulfills, the ministers fulfill positions of exclusive trust; it was to see whether or not it was that. So, we, eh, he was very resistant to giving us the answer. Well, it was for that and nothing more. We would like to continue with the questioning. We understand that all this time is being subtracted.

**PRESIDENT CANÇADO TRINIDADE:** Let's continue with the questioning.

**IACHR:** So, Mr. Centeno, I would like to ask you a question. You mentioned that there were five titles issued by the IAN to the indigenous community, right?

**WITNESS MARCO CENTENO CAFFARENA:** Well . . . .

**IACHR:** Do you know the year in which those titles were issued?

**WITNESS MARCO CENTENO CAFFARENA:** Twenty-eight titles to indigenous communities in the IAN period.

**IACHR:** Of course, in the IAN period. Now, in what year? Do you know in what years?

**WITNESS MARCO CENTENO CAFFARENA:** I couldn't specify them, but the period is between the 1960s and the 1970s.

**IACHR:** Fine, now I am going to tell you why we are talking about this: because we are trying to establish the year. According to the Appendix submitted by the Illustrious Government of Nicaragua, there were fifteen titles issued by the IAN in 1974, four in 1976, and, after, it indicates three more in 1983; but do you know who was the head of the government in Nicaragua in 1974 to 1976?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, Sir. But will you allow me to specify something about the titles of 1983?

**IACHR:** With pleasure, you can do what you want.

**WITNESS MARCO CENTENO CAFFARENA:** They were not issued by the IAN, but rather by the MIDINRA.

**IACHR:** Very well, very well. Now, I asked you how many were issued by IAN and you answered, let's see, later, we did not count that, twenty-eight, but let's not go into detail. In 1974 and 1976, who headed the Government of Nicaragua?

**WITNESS MARCO CENTENO CAFFARENA:** In 1974, elections were held in Nicaragua.

**IACHR:** Of course.

**WITNESS MARCO CENTENO CAFFARENA:** And then General Anastacio Somoza Debayle was elected and he held that office until 1979, when he was overthrown by a . . . .

**IACHR:** As a result of the elections, isn't that right?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, Sir.

**IACHR:** Right. Very well. Now these elections resulted in this General that

turned over some titles. Do you know the total of hectares that the “Elected General,” to use your expression, turned over?

**WITNESS MARCO CENTENO CAFFARENA:** No, well, eh . . . .

**IACHR:** If you don’t know, I understand. But do you know the number of hectares?

**WITNESS MARCO CENTENO CAFFARENA:** No, no; honestly, I deal with the data of the hectares that are turned over to the indigenous communities. However, the project was a much more comprehensive project.

**IACHR:** Tell us, what is the data of the . . . .

**WITNESS MARCO CENTENO CAFFARENA:** 68,500 and some additional hectares are the data that we registered.

**IACHR:** Well, according to Appendix 1 of the Illustrious Government’s submission, titles for 27,696 hectares were issued by the IAN. Then ten communities in 1976, for 8,708. You are an engineer, you count better than us; we’ll go with thirty-five. And after the lands of Tasba Pain, and they are five thousand, 4,110, and 5,000. Now, do you know what Awas Tingni’s total claim is?

**WITNESS MARCO CENTENO CAFFARENA:** In our judgment, Awas Tingni has presented their claim contradictorily.

**IACHR:** Without . . . no. I, I think that you should say what you want; that is fine. But I don’t want to lead you. I am asking you if you know, and you may not know; what is the percentage? To how many hectares is the Awas Tingni Community asking you to give them title?

**WITNESS MARCO CENTENO CAFFARENA:** Okay.

**IACHR:** To compare, because you mentioned a number, simply to compare one thing with another.

**WITNESS MARCO CENTENO CAFFARENA:** According to the study that, according to the competent geographic referencing and cartographic authority in Nicaragua, which is the Nicaraguan Institute of Territorial Studies, Ineter, it is approximately 156,000 hectares.

**IACHR:** All right. Now, do you know what the concession granted to this South Korean company was?

**WITNESS MARCO CENTENO CAFFARENA:** No, Sir. I am neither an expert in nor competent to talk about concessions or acts of transfer.

**IACHR:** And you’re not here as an expert, either; you are here as a witness. Now . . . .

**WITNESS MARCO CENTENO CAFFARENA:** But I am not competent in that; I’m sorry. I don’t know the area.

**IACHR:** The witness has to talk about things that he knows and that he knows to be true. Now, so the elected General Somoza turned over fifteen plus three. Do you know, of these Eighteen Communities, what is the communities’ position with respect to these thirty-five thousand hectares turned over by General Somoza, who you claim is President as a result of a popular vote in Nicaragua?

**PRESIDENT CANÇADO TRINIDADE:** Please! That is a point that is not . . . .

**IACHR:** I am citing the witness, please, as he said it. I am citing you, isn't that right?

**PRESIDENT CANÇADO TRINIDADE:** Point of order.

**IACHR:** You said "won the . . ." but that's fine. I'll restate my question. Do you know what is the . . . what the . . .

**GON (Mr. Castillo):** Thank you very much, Your Honor. We would like to request of the representatives of the Honorable Court that due respect be maintained toward the witness.

**PRESIDENT CANÇADO TRINIDADE:** Yes.

**GON:** And not to harass him with questions. They have tried the same thing before, and we have tried to maintain the best relations and so, for the sake of that, we would like to request a deliberation in that respect.

**PRESIDENT CANÇADO TRINIDADE:** Yes. Also, in the view of the judges of the Court, it was a totally unnecessary and unfortunate comment.

**IACHR:** It is a value judgment. Fine. I would like to know: do you know, with respect to these eighteen titles, how many hectares are they in total? I would like to reiterate that question to establish what you . . .

**WITNESS MARCO CENTENO CAFFARENA:** The eighteen indigenous titles. The information I have is twenty-eight indigenous titles. And it is 68,500 and some hectares. I am not dealing with the partial data that you have; rather, I'm dealing with the total data.

**IACHR:** During the year that you have been head of your department, how many documents of title have been granted?

**WITNESS MARCO CENTENO CAFFARENA:** Documents of title, many. But I think that the Honorable Member of the Commission is referring to the indigenous titles.

**IACHR:** Yes, indigenous.

**WITNESS MARCO CENTENO CAFFARENA:** In specifying that, I must tell you that Nicaraguan society has opted to reach a consensus on a law. That law was introduced to the Assembly in October of 1998. If the society is opting to perfect a legal framework to title the indigenous communities, it would be totally inopportune that the institution under my charge would unofficially issue, and with criteria that maybe are not in accordance with the spirit reflected in the law, issue indigenous titles.

**IACHR:** From this explanation, then, I understand that you have given . . . no documents of title have been given during your mandate. Is that correct? For the reason which you explained?

**WITNESS MARCO CENTENO CAFFARENA:** That's basically the way it is. Because there is an incipient basic legal framework, right? Under which some documents of title could be issued. However, since the society has opted to effectuate a series of consultations and produce a bill by consensus reflecting its aspirations, the situation has remained like this.

**IACHR:** That bill, from what, when did that period of consensus that you're talking about begin? From what date?

**WITNESS MARCO CENTENO CAFFARENA:** The project was introduced in the Assembly in October of 1998.

**IACHR:** Thank you. I would like to ask, Mr. Centeno, if you know—because, as you say, that explains the situation from 1998 onward—if you know when the last time was that an indigenous community was issued title in Nicaragua.

**WITNESS MARCO CENTENO CAFFARENA:** Before 1990.

**IACHR:** Do you know how long before 1990?

**WITNESS MARCO CENTENO CAFFARENA:** I couldn't exactly tell you.

**IACHR:** Okay. So, that's fine. From, in the last eleven years, according to what you say, no indigenous community has been issued titled. Right?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, Sir.

**IACHR:** All right. Now, Mr. Centeno, how many indigenous people are there in Nicaragua?

**WITNESS MARCO CENTENO CAFFARENA:** I can't tell you exactly, but it is in the documents of the 1995 census.

**IACHR:** Do you know?

**WITNESS MARCO CENTENO CAFFARENA:** No, I don't know.

**IACHR:** Do you know?

**WITNESS MARCO CENTENO CAFFARENA:** No, I don't know.

**IACHR:** Thank you for the answer. Second. How many indigenous communities are there in Nicaragua?

**WITNESS MARCO CENTENO CAFFARENA:** Well, in the inventory that we as an institution use, we have registered, in the inventory done in 1991, 230 communities.

**IACHR:** Right. 230 communities. And in your opinion, how many are titled?

**WITNESS MARCO CENTENO CAFFARENA:** What happens . . .

**GON (Mr. Castillo):** Pardon, Mr. President, they are asking him for an opinion.

**IACHR:** No.

**GON:** He is a witness.

**IACHR:** No, no. He is the head of an institute that gives documents of title. I can ask him if he knows how many.

**PRESIDENT CANÇADO TRINIDADE:** If he knows how many, but not what his opinion is.

**IACHR:** You are completely right. Do you know how many are titled of the 230 some?

**WITNESS MARCO CENTENO CAFFARENA:** Can I expand on this point a little?

**IACHR:** I would prefer that you answer me first, and then expand on the point.

**WITNESS MARCO CENTENO CAFFARENA:** The issue of an indigenous community, what is an indigenous community, this must be legitimized through a diagnostic study of each one. I explained to them that there is a diagnostic study that we contracted with the University of Austin, Texas, and therein is a more conscientious reflection of what an indigenous community is, that . . .

**IACHR:** Mr. Centeno . . .

**WITNESS MARCO CENTENO CAFFARENA:** . . . are not titled . . .

**IACHR:** . . . I asked you . . .

**WITNESS MARCO CENTENO CAFFARENA:** . . . are not titled, and that merit, shall we say, to have their titling dealt with.

**IACHR:** Mr. Centeno, I asked you how many indigenous communities there were, and you told me 238.

**WITNESS MARCO CENTENO CAFFARENA:** In an inventory, not in a diagnostic study, excuse me.

**IACHR:** Ah, explain a little; so one cannot answer the question of how many titled indigenous communities there are in Nicaragua? So I can't ask that question and no one can answer it, or you can't give me a number, the head of the, in charge of documents of title?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, if you allow me to add up the communities that we have titled in the Titling Commission of the Miskito coast, right? If you allow me to add up number of communities that were titled in the period of the IAN, there were twenty-eight.

**PRESIDENT CANÇADO TRINIDADE:** Point of order.

**GON (Mr. Castillo):** I would like to make note of the following: the State of Nicaragua considers that the Honorable Representative of the Commission is trying to pressure the witness for specification of information that any functionary could deal with in his documents, but that could be dealt with only with much difficulty by memory. We are speaking of a witness that deals with all of the information; none of us in our lives deals with all the information.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. He will attempt to answer if he knows the numbers and if he can add any comments in the context of the terms of reference of his testimony. The criteria that are used in the general situation of titling claims, that can be answered; it is in the context of reference of his testimony.

**WITNESS MARCO CENTENO CAFFARENA:** Using as a point of departure the fact that sixty communities were titled by the Titling Commission of the Miskito coast; that seven additional communities were detected in the diagnostic study that we contracted with Austin, Texas; that twenty-eight were titled in the period of the IAN; and that twenty-nine were titled in the period of the 1980s under the institution named MIDINRA, a basic calculation is that 124 communities were, or are, titled.

**IACHR:** Thank you for your answer, Mr. Centeno. You said 124; I understand 124. Mr. Centeno, do you know the provision of Article V of the Nicaraguan Constitution? I don't intend, if you are not a lawyer, if you don't know it, you are perfectly free to say "no," but I need to evaluate your knowledge as head of a titling institute, so I see, I ask: do you know Article V of the Constitution?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, I know it. I cannot recite it, but I know it. I know the articles that are in the Constitution, that most order us to pay attention to the titling issue, and the recognition of the rights of the indigenous peoples.



**IACHR:** Does your institute recognize the right of indigenous peoples to communal property?

**WITNESS MARCO CENTENO CAFFARENA:** Pardon, but my institution is not an entity that should do that type of recognition without operationalizing them.

**IACHR:** Operationalizing them. Very well, I have no more questions. The rest of the time, my colleague is going to conduct the questioning.

**PRESIDENT CANÇADO TRINIDADE:** Four minutes left, please.

**IACHR (Prof. Anaya):** Mr. Centeno . . . .

**GON (Mr. Castillo):** Mr. President, a good part of the time was lost by the inadmissibility and by the nature of the questions asked by the Commission. I think that they should assume the responsibility of not having asked pertinent questions. I don't see why it should be compensated the time.

**PRESIDENT CANÇADO TRINIDADE:** No, they're not being compensated. There really are four minutes left.

**IACHR:** Mr. Centeno, I understand, Mr. Centeno, you admit knowledge of a claim by Awas Tingni.

**WITNESS MARCO CENTENO CAFFARENA:** Yes, I know of the claim of the Awas Tingni Community. I am hear as witness dealing . . . .

**IACHR:** So your institution knew of the claim, and your institution, from what I understand from your testimony, rejected it?

**WITNESS MARCO CENTENO CAFFARENA:** I don't understand your question.

**IACHR:** Your institution rejected the Awas Tingni claim.

**WITNESS MARCO CENTENO CAFFARENA:** No, Sir.

**IACHR:** No? Then, what did you say previously: that it did not fulfill the criterion of your institution, and so it was not considered admissible?

**WITNESS MARCO CENTENO CAFFARENA:** I said, when I elaborated, a little on the history of what we had given to the task of documenting the Awas Tingni case. That is what I said.

**IACHR:** So it doesn't reject the claim.

**WITNESS MARCO CENTENO CAFFARENA:** The Awas Tingni claim is special, because it is contradictory as far as the subject of the area. Awas Tingni has boundary problems.

**IACHR:** Okay. In what sense is it contradictory on the subject of the area, as you say?

**WITNESS MARCO CENTENO CAFFARENA:** When the Commission submitted the answer to the preliminary exceptions that, in turn, the agents that represent the Republic of Nicaragua submitted to the Court, there the Commission asserted a requirement, or in the copy that it introduced into evidence, of the sixteen thousand hectares.

**IACHR:** You are referring to a document that says nothing about sixteen thousand hectares.

**WITNESS MARCO CENTENO CAFFARENA:** It says at the foot of the page, excuse me, where the two people are registered.

**IACHR:** There are two names and there is a number, but there is no request for sixteen thousand hectares.

**GON (Mr. Castillo):** You are asking him about a topic that is obviously not within his competence. You are asking him about documents in the possession of the Court, and Mr. Anaya . . . pardon, the Honorable Member of the Commission, is showing a loose sheet that, in and of itself, says nothing. However, the Commission itself presented it to justify an alleged administrative petition to the INRA. So they themselves gave it that adjective that they are denying now.

**PRESIDENT CANÇADO TRINIDADE:** Assistant to the Commission.

**IACHR:** We are just mentioning the same document that the witness is mentioning. If the witness is going to mention a document to support his testimony, then let's see the document.

**PRESIDENT CANÇADO TRINIDADE:** Would you do me, please, without reference to any paper, restate your question.

**IACHR:** Fine, the document says nothing in the request about sixteen thousand hectares. According to what it says, it makes no request for ten thousand hectares; is that right?

**WITNESS MARCO CENTENO CAFFARENA:** To finish answering you, I was in mid-response . . .

**IACHR:** Fine, we'll go to another question.

**WITNESS MARCO CENTENO CAFFARENA:** But in the document . . .

**PRESIDENT CANÇADO TRINIDADE:** Just a minute, he's answering the question.

**WITNESS MARCO CENTENO CAFFARENA:** But the document that is with the Court is the measurement, or the map, the Commission presented, and that map makes a petition for approximately fifty and some thousand hectares. However, when we of the Institute of Territorial Studies digitalized that information and it was geo-referenced, a totally contradictory area came out. One hundred fifty and some thousand hectares came out, right? So, from there, we set out with a dilemma, or with contradictory information in the titling of that community.

**IACHR:** Very well, thank you. So the position . . .

**PRESIDENT CANÇADO TRINIDADE:** Last question, ah. Last question.

**IACHR:** Your testimony is that you don't reject the Awas Tingni claim and that you know of the claim.

**WITNESS MARCO CENTENO CAFFARENA:** I know of the claim subsequent to my arrival at the institution. Institutionally, there is knowledge of the claim, institutionally, of the Awas Tingni claim, not because a titling request was filed in the office I direct commensurate with the formality of the situation.

**PRESIDENT CANÇADO TRINIDADE:** Mr. Agent.

**GON (Mr. Castillo):** Mr. President, I don't understand the Honorable Commission's question, because if they had presented a titling request, I understand that the State of Nicaragua could not resolve an issue that is pending before the Inter-American Court.

**PRESIDENT CANÇADO TRINIDADE:** Does the witness have something to add?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, the fact that this dispute exists and that it has still not been resolved is an additional reason why we cannot unofficially, and with criteria that may contradict the spirit of the law that has still not been approved, issue a document of title in favor of Awas Tingni.

**PRESIDENT CANÇADO TRINIDADE:** Time is up. Let's move now to the questions of the judges, if there are any. I consult with the judges as to whether they have questions to ask. Judge Montiel Argüello.

**JUDGE MONTIEL ARGUELLO:** The witness mentioned that there were criticisms of Mr. Macdonald's report on Awas Tingni, with respect to the ancestry of Awas Tingni's position. Could you tell us what those criticisms were?

**WITNESS MARCO CENTENO CAFFARENA:** Basically, the criticisms are aimed at the methodology that was used in the study. The criticisms are aimed at the fact that oral sources were favored, and oral sources were not contrasted with archeological sources. Likewise, the criticisms are aimed at the fact that ethnographic techniques were not used in combination with elements of demographic history, and linguistic studies were not done to support the fact that the community in question was a compact community and that it belonged to a defined ethnic group. As a function of that, and that the study itself was not conclusive, is that our view shares these criticisms, that it cannot be conclusive as far as the ancestry of the occupation of the area in the claim is concerned.

**PRESIDENT CANÇADO TRINIDADE:** Thank you very much. Thank you Judge Montiel Argüello. Judge De Roux.

**JUDGE DE ROUX RENGIFO:** Yes, thank you, President. Sir, please inform us as to whether, in Nicaragua, there is any office, any official office that has among its responsibilities that of providing assistance to the indigenous populations, to contribute to the appropriate processing of the land or other claims, and vindication of the rights of the indigenous peoples as a part of its governmental or state function.

**WITNESS MARCO CENTENO CAFFARENA:** Well, eh, we, as an institution, we are the titling institution. We have delegations in the areas where there is an indigenous presence, and these delegations serve precisely to deal with the titling requests of the communities, or to detect them. However, in accordance with the Autonomy Statute of the Atlantic Coast, to my knowledge and understanding, the local authorities have the responsibility in this respect.

**JUDGE DE ROUX RENGIFO:** Thank you very much. And to have an idea of the order of magnitude of which we are speaking: you told us that the total areas titled up to 1990, if I understood correctly, were 68,000 hectares, right?

**WITNESS MARCO CENTENO CAFFARENA:** Before 1990, Magistrate. We would be including the part of the Miskito coast that was issued, between 1915 and 1920—and only between 1915 and 1920—documents of title were issued exclusively for indigenous communities of more than eighty thousand hectares.

**JUDGE DE ROUX RENGIFO:** Right. So the 68,000 to which you made reference are subsequent to the titling of the area of the Miskito coast?

**WITNESS MARCO CENTENO CAFFARENA:** Yes, Sir. Yes, Honorable Magistrate. They are those that were issued in the period of the Nicaraguan Agrarian Institute between the 1960s and the 1970s.

**JUDGE DE ROUX RENGIFO:** Very well. Could you give us an idea of the number of hectares, approximate numbers, of the area called the Nicaraguan Atlantic Coast?

**WITNESS MARCO CENTENO CAFFARENA:** Not at this time.

**JUDGE DE ROUX RENGIFO:** Very well, thank you very much.

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

**JUDGE ABREU BURELLI:** No.

**PRESIDENT CANÇADO TRINIDADE:** Judge Jackman? Judge Salgado?

**JUDGE SALGADO PESANTES:** No.

**PRESIDENT CANÇADO TRINIDADE:** Judge Pacheco Gómez?

**JUDGE PACHECO GOMEZ:** No, Mr. President.

**PRESIDENT CANÇADO TRINIDADE:** I have no questions either. Thank you very much to our witness.

**PRESIDENT CANÇADO TRINIDADE:** In accordance with the agreement between the parties, we will dedicate tomorrow to the final arguments of the parties, and we have agreed that we will begin, so they will have time to prepare, at 10:00, in this courtroom. I would just ask that they conduct themselves with calm during the presentations. This session is adjourned.