

**PETITION AND PRELIMINARY DECLARATION  
OF THE MAYAGNA COMMUNITY OF AWAS TINGNI  
ON REPARATIONS AND COSTS**

**BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

**IN THE CASE OF THE  
MAYAGNA (SUMO) INDIGENOUS COMMUNITY OF AWAS TINGNI  
AGAINST THE REPUBLIC OF NICARAGUA  
(Unofficial Translation)**

**INTRODUCTION**

1. The Inter-American Commission on Human Rights (hereinafter the “Commission” or the “Inter-American Commission”) presented to the Inter-American Court of Human Rights (hereinafter the “Court”) a petition against the Republic of Nicaragua (hereinafter the “State” or the “State of Nicaragua”) relating to the case of the Mayagna (Sumo) Indigenous Community of Awas Tingni (hereinafter the “Community” or the “Awas Tingni Community”). The Commission asserts that the State has violated the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) by not taking necessary measures to guarantee the rights of the Community with relation to its traditional lands, including demarcation or title issuance and the authorization of a logging concession to the company Sol del Caribe, S.A. (hereinafter “SOLCARSA”) on those lands. The complaint also asserts that the State of Nicaragua has violated the American Convention by failing to guarantee a judicial remedy that responds effectively to the demands of the Community with regard to its traditional lands and natural resources.

2. In accordance with the procedure followed by the Court in prior cases and the Court’s Rules of Procedure, which were in effect up to the final stages of this case,<sup>1</sup> the Commission stated in its complaint:

The Commission respectfully reserves the right to present a separate brief with respect to reparations and costs in this case, at the appropriate phase of the proceeding before the

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<sup>1</sup> See Rules of Procedure of the Inter-American Court of Humans Rights, effective as of 1 January 1997, and supplanted by the Rules of Procedure of the Inter-American Court of Human Rights, approved by the Court at its XLIX ordinary period of sessions, effective 1 June 2001.

Court, and to offer, at that time, arguments and proof regarding those aspects of the case.<sup>2</sup>

3. After having issued its decision against the Preliminary Objections filed by the State, the Court scheduled a public hearing on the merits. At this hearing, which took place on November 16, 17, and 18, 2000, at the Court, evidence and oral arguments related to Nicaragua's responsibility for the violation of the American Convention were introduced.<sup>3</sup> Then, on August 10, 2001, within the time specified by the Court in its communication of July 6, 2001, the Commission presented to the Court its post-trial brief on the responsibility of the State.<sup>4</sup>

4. On July 31, 2001, the Court sent a note to the Commission requesting it to present evidence on damages and costs in the case. The Court's request came to the attention of Professor James Anaya, legal representative of the Community, on August 17 at 3:30 p.m., by way of a telephone conversation with the Inter-American Commission.

5. The Awas Tingni Community presents this brief through its duly accredited legal representative and pursuant to article 23 of the Court's Rules of Procedure, which permits alleged victims or their legal representatives to autonomously present requests, legal arguments, and evidence in cases before the Court. The Community also bases this petition on articles 38 and 39 of the Court's Rules of Procedure, according to which "the parties may seek the permission of the President to enter additional written pleadings" and the "President . . . shall call such hearings as may be necessary."

6. In this petition, the Community requests that the Court or its President call a hearing, to be held within a reasonable period of time, commencing subsequent to a judgment establishing Nicaragua's responsibility, in order to hear evidence relevant to reparations and costs in this case. The Community requests that this proceeding include presentation of additional evidentiary documentation, the convocation of a hearing for witness and expert

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<sup>2</sup> Petition of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Indigenous Community of Awas Tingni Against the Republic of Nicaragua, June 4, 1998, para. 195 (hereinafter "Commission's Petition").

<sup>3</sup> See Inter-Am. Ct. H.R., *The Mayagna (Sumo) Awas Tingni Community Case*: Transcript of the public hearing on the merits, November 16, 17, and 18, 2000, at the seat of the Court (hereinafter "Transcript of the hearing on the merits").

<sup>4</sup> See Post-trial Brief of the Inter-American Commission on Human before the Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Indigenous Community of Awas Tingni Against the Republic of Nicaragua, August 10, 2001 (hereinafter "The Commission's Post-trial Brief").

testimony, and an on-site visit to observe, investigate and confirm the nature of the material and moral damages suffered by the Community.

7. Without prejudice to any right the Community might have to submit a later brief and additional evidence related to this case, the Community includes in this petition a preliminary declaration of reparations and costs, indicating the evidence in support of its claims.

**I. THE AWAS TINGNI COMMUNITY SHOULD BE GRANTED A PROPER OPPORTUNITY TO PRESENT DOCUMENTARY AND ORAL EVIDENCE REGARDING DAMAGES AND COSTS, SIMILAR TO THE OPPORTUNITIES GRANTED TO VICTIMS IN OTHER CONTENTIOUS CASES ADJUDICATED BY THIS COURT**

8. In his important treatise on the Inter-American system for the protection of human rights, Dr. Héctor Faúndez Ledesma observes:

To be sure, a necessary consequence of the violation of the Convention is the duty to repair the effects of that violation and compensate the injured party . . . [I]t is in this phase of the proceeding in which the necessity of the victim's autonomous participation is greatest.<sup>5</sup>

Similarly, Dinah Shelton affirms that the autonomous and direct participation of victims in the proceedings before the Court “could be a requirement for due process.”<sup>6</sup> The Inter-American Court recognized the implications the alleged victims’ autonomous participation has on due process, especially in the reparations phase, when the Court guaranteed such participation under article 23 of its Rules of Procedure and in its earlier cases.

9. The two basic elements of due process are notice and an opportunity to be heard (participate).<sup>7</sup> Without notice and the proper opportunity to be heard, the right to participate in the action, a right affirmed by article 23 of the Court's Rules of Procedure, remains diluted and without effect.

10. The Community respectfully affirms that its duly accredited legal representatives have as of yet received no notice regarding the submission of evidence of damages and costs from the Court. On August 17, 2001, the Community's legal representative, Professor James Anaya, received notice of the request received by the Commission via a telephone call from the Commission. However, despite the direct notice requirement provided by article 23, the Community’s representatives have received no direct notice from the Court. Further, the Community respectfully asserts that, in order to fully take advantage of a proper opportunity to participate effectively in the reparations phase, the

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<sup>5</sup> Héctor Faúndez Ledesma, *El sistema interamericano de protección de los derechos humanos: aspectos institucionales y procesales* (San José, C.R.: Instituto Interamericano de Derechos Humanos, 1996), p. 389.

<sup>6</sup> Dinah Shelton, “Reparations in the Inter-American System,” in David Harris & Stephen Livingston, eds., *The Inter-American System of Human Rights* (Oxford: Clarendon Press, 1998), pp. 152, 171-73.

<sup>7</sup> See Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (New York: Aspen Law & Business, 1997), pp. 450-53 (referring to the jurisprudence of the Supreme Court of the United States of America).

Court should set a reasonable period of time for the submission of briefs and evidence on damages and costs, a period of time consistent with its practice in earlier cases.

11. With few exceptions, the practice of the Court in its earlier cases has been to receive evidence regarding damages and costs after having issued a decision concerning the responsibility of the state in question.<sup>8</sup> This practice was confirmed by a resolution of the Court in which it indicated that the determination of reparations and compensation constitutes a new and distinct phase in the proceedings, which is subsequent to the judgment on the merits.<sup>9</sup> Within this reparations phase practice, the time period set by the Court for submission of proof of damages and costs typically has been two or more months,<sup>10</sup> and this period had not been set before a period of up to six months had passed, during which the parties attempted to come to an agreement regarding reparations.<sup>11</sup> Additionally, in several cases, the Court has called public hearings in the reparations phase for the presentation of relevant oral testimony, and in at least one case, the Court made an on-site visit to investigate the damages caused.<sup>12</sup>

12. This earlier practice of the Court demonstrates compliance with the requirements of due process set forth in article 63(1) of the American Convention, which establishes that “the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated . . . [, that] the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.” As the Court has recognized in reparations proceedings in other cases, due process is a requirement for compliance with article 63(1). The Inter-American Commission

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<sup>8</sup> Faúndez Ledesma, *supra*, p. 390.

<sup>9</sup> Resolution of the Inter-American Court of Human Rights of September 19, 1995, para. 4 of the considerations.

<sup>10</sup> See, for example, Inter-Am. Ct. H.R., Caballero Delgado and Santana Case, Reparations, Judgment of January 29, 1997, para. [7] (the Court set period from March 15, 1996 until May 15, 1996); Inter-Am. Ct. H.R., Garrido and Biagorria Case, Reparations, Judgment of August 27, 1998, para. 25 (period set from February 5, 1997 until April 7, 1997); Inter-Am. Ct. H.R., Aloeboetoe et al. Case, Reparations, Judgment of September 10, 1993, Ser. C. No. 15, para. 13 (period granted from January 18, 1992 until March 31, 1992); Corte I. D.H., Suárez Rosero Case, Reparations, Judgment of January 20, 1999, Ser. C. No. 44, para. 4(1)-(2) (Court grants IACHR, Mr. Rafael Iván Suárez Rosero (victim) and his family members or representatives from December 10, 1997 until February 10, 1998 to submit a brief and any evidence they may have in their possession for the purpose of determining the compensation and expenses).

<sup>11</sup> See, for example, Inter-Am. Ct. H.R., Velasquez Rodríguez Case, Compensatory Damages, Judgment of July 21, 1989, Ser. C. No. 7, para. 2; Inter-Am. Court, El Amparo Case, Reparations, Judgment of September 14, [1996], para. 5; Inter-Am. Ct. H.R., Neira Alegría et al. Case, Reparations, Judgment of September 19, 1996, para. 5.

<sup>12</sup> See Aloeboetoe et al., *supra*, para. 40.

and the Community consider the enjoyment of the same opportunity to participate in the reparations phase, which has been granted in other cases the Court has adjudicated, to be an essential element in the present case.

13. The Community is aware that, under the Court's new Rules of Procedure, the intent is to litigate reparations and costs simultaneously with the issue of state responsibility, something which represents a procedural change with respect to contentious cases before the Court. However, this procedural change, which did not enter into force until three years after this suit had been filed, should not prejudice the substantive and procedural rights of the Community. Retroactive application of the new rules to the present proceedings would have the unjust result of denying or limiting the opportunity of the Commission and the Community to present their legal arguments regarding and proof of reparations and costs.

14. Application of the new Rules of Procedure to the instant case should be done in such a manner as to respect the procedural norms and criteria that govern during the time of each phase of the litigation. The Inter-American Commission complied with the norms and criteria in force when, in its petition, it explicitly reserved the right to present briefs and evidence of damages and expenses in a subsequent reparations phase. The Commission also followed the procedural norms and criteria in effect at the time when it presented its oral testimony at the hearing on the merits. Within the time limits set forth by the Court for that hearing, the Commission directed its evidence toward establishing responsibility of the State, leaving for a later proceeding, in accordance with the Court's practice, the evidence on damages and costs.

15. The Rules of Procedure currently in force indicate a certain flexibility in the definition of the proceeding, giving the President of the Court the power to call oral proceedings in addition to those specified in the Rules.<sup>13</sup> The Court has affirmed that the American Convention should be interpreted in favor of the individual, the subject of the Inter-American system for the protection of human rights.<sup>14</sup> The same principle should govern the interpretation and application of the Court's Rules of Procedure and inure to the benefit of those individuals who are members of an indigenous community.

16. The extreme complexity of this case of first instance deserves a detailed reparations proceeding because it involves the determination of various elements of material damages suffered by an indigenous community with respect to its rights over natural resources, as well as the quantification of moral damages

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<sup>13</sup> See articles 38 and 39 Court's Rules of Procedure.

<sup>14</sup> Inter-Am. Ct. H.R., Viviana Gallardo et al. Case, Judgment of November 13, 1981, (Ser. A) No. 101-81, para. 16.

suffered by the State's violation of and refusal to guarantee those rights, while leaving the Community without an effective judicial remedy.<sup>15</sup> Because the lands and natural resources in question constitute the foundation for the survival and cultural integrity of the Awas Tingni Community, the acts and omissions of the State have put the Community in a precarious situation with respect to its existence and identity, constituting a moral harm of multiple dimensions that the Court should examine thoroughly.

17. Thus, the Community requests that, in the instant case, the Court follow its earlier practice by issuing a judgment regarding the State's responsibility and by leaving for a later phase the adjudication of reparations and costs in the event the judgment assigns responsibility to the State.

18. With respect to the reparations phase, the Community requests that the Court or its President call a hearing subsequent to the judgment on State responsibility, similar to such a proceeding in earlier cases, for the submission of legal arguments and additional evidence on damages and costs. The Community further requests that this proceeding include a public hearing, in addition to the opportunity to present briefs and other documentary proof. The Community deems necessary a hearing with oral testimony by witnesses and experts in order for the Court to fully appreciate the cultural, social, psychological, economic and physical damages the Community has suffered as a result of the infringement of its rights. A hearing in the reparations phase of this case is no less justifiable than in the reparations phase of earlier cases, such as the *Caballero Delgado and Santana* case, the *Garrido and Biagorria* case, the *Aloeboetoe* case, and other cases.<sup>16</sup> Additionally, the Community requests that the Court designate a representative to carry out an on-site visit, as was done in the *Aloeboetoe* case, in order to investigate the damages.<sup>17</sup> The Community considers that, given its authority, the Court could discover facts about the State's conduct and the resulting harms that otherwise would remain undisclosed. The Community further considers that the special nature of this case merits the Court's acquiring first-hand knowledge of the way in which the Community lives and the extent to which it has been affected by the infringement of its rights.

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<sup>15</sup> See, *infra*, paras. 19, 22-24, 26-28.

<sup>16</sup> See, *Caballero Delgado and Salgado*, *supra*, para. 12; *Garrido and Biagorria*, *supra*, para. 30; *Aloeboetoe et al.*, *supra*, para. 13.

<sup>17</sup> See *Shelton*, *supra*, p. 161.

## II. PRELIMINARY DECLARATION OF ALLEGED REPARATIONS AND COSTS

19. The Community affirms that, as the Commission has demonstrated in its multiple communications to the Court and in the public hearing on the merits, the State of Nicaragua is responsible for violating the human rights of the Awas Tingni Community and its members. Despite repeated efforts before State officials, the Awas Tingni Community does not enjoy formal title or any other official recognition of its entitlement to the land it has traditionally used and occupied. The State has responded negligently and arbitrarily to Awas Tingni's requests for title to its lands, and State officials have intentionally acted to undermine the Community's legitimate claims. This situation represents a violation of articles 1, 2, 21, and others of the American Convention, which in their totality establish the right to affirmative measures that guarantee traditional land tenure of indigenous communities. In addition, the State actively violated the right to property and other related rights by authorizing the logging concession to SOLCARSA on the land used and occupied by the Community, without even consulting the Community or taking its interests into account.<sup>18</sup> Further, the multiple fruitless attempts by the Community to seek recourse in its domestic tribunals constitute a violation of the right to an effective judicial remedy, as provided for in article 25 of the Convention.

20. Because of the human rights violations against the Community and its members, it is incumbent upon the Court, under article 63 of the Convention, to order reparational measures, including compensation for damages caused and the payment of expenses. Without prejudice to whatever right the Community may have to subsequently submit a brief and additional evidence in this case, the Community hereby submits a preliminary declaration of reparations and costs and provides the evidence that substantiates these claims.

### **A. Reparations Requested: Official measures to guarantee traditional land tenure and effective judicial remedies; compensation of US\$1,500,000 for moral and material damages**

21. **Reparational Measures.** In order to repair the described human rights violations, the Court should order the State of Nicaragua to carry out the following:

- a. Establish a process, in accordance with relevant national and international legal norms, which results in the prompt demarcation and official recognition of the specific rights of the

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<sup>18</sup> See The Commission's Post-Trial Brief, *supra*, paras. 26-35, 59-74.



Awasi Tingni Community over its communal lands and natural resources;

- b. Within that process, establish or provide for a coordination mechanism between the Awasi Tingni Community and the neighboring indigenous communities in order to arrive at an understanding of their respective rights over their territories;
- c. Abstain from authorizing or considering authorization of any concession for natural resource exploitation on the lands used and occupied by the Awasi Tingni Community, until the question of land tenure affecting the Community has been resolved, or until a specific agreement on the issue has been reached between the State and the Community;
- d. Identify and sanction those State officials responsible for the acts and omissions endangering the Awasi Tingni Community's rights over its traditional lands;
- e. Establish adequate mechanisms within the relevant state agencies that prevent future decisions that endanger or violate the traditional rights of the indigenous communities to their lands and natural resources;
- f. Establish a regulation or law which guarantees the indigenous communities' demarcation and title to lands they have traditionally used and occupied, as well as effective enjoyment of their property rights over those lands;
- g. Adopt specific measures to create, facilitate and guarantee real and verifiable access to justice for the indigenous communities, including measures to strengthen and train the tribunals and governmental agencies to adequately serve the needs and rights of the indigenous communities;
- h. Reform the law of *amparo* to create a recourse that is truly simplified and accessible to the indigenous communities and carry out other reforms necessary for streamlining the judicial process;
- i. Take all measures mentioned here in consultation with and with the approval of the affected indigenous communities; and
- j. Pay the Community US\$1,500,000 as compensation for the moral and material damages the Community has suffered due to the

infringement of its rights, as outlined below.

22. **Compensation for moral damages.** The facts as proven justify compensation to the Community for moral damages. The State's negligent, arbitrary, and intentional actions in the face of the Community's claims to the land where it lives and engages in its cultural and subsistence activities has left the Community in a precarious and insecure situation, which affects its social, cultural, and economic patterns. The precarious and insecure situation of the Community increased when the State authorized the logging concession to SOLCARSA on land used and occupied by the Community, including areas of religious and cultural significance. The negative effect of the SOLCARSA concession began with the entry of company agents onto the traditional land of the Community to take inventory of the forest and to carry out other preparatory activities. These activities caused moral damage to the Community even before the company had begun cutting wood. The commencement of forest operations without adequate environmental controls, and the insistence by the State to let the concession remain effective, even after it was declared unconstitutional by Nicaragua's Supreme Court of Justice, increased the harm suffered by the Community. For many years, the Community has had to withstand not only the government's rejection of its legitimate land claims and the authorization of the logging concession to SOLCARSA, it also has had to withstand official State actions, such as the intentional spread of disinformation about the Community's claims, which instigated the neighboring communities' opposition to the Community's claims and which were intended to undermine the Community's right to the land. These acts have had a negative impact on the Community's relations with its neighbors, the damage of which required great efforts by Awas Tingni leaders to overcome.

23. The Community also has suffered moral damages due to the lack of an effective judicial remedy by which to recover for the violation of its rights to its lands and natural resources. The Community made various attempts before domestic tribunals to oppose the SOLCARSA concession and demand that the government process the Community's title application, but those efforts resulted in drawn-out proceedings which ended in judgments or attitudes unjustly and completely rejecting the legitimacy of the Community's claims. The anxiety, energy, and time those attempts cost the Community resulted in feelings of desperation and defenselessness in the face of the serious threats to the Community.

24. Proof of the damages to the Awas Tingni Community is in the documents already presented to the Court by the Commission<sup>19</sup> and in the witness

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<sup>19</sup> See, for example, Annex C.18 (Press Clipping: "It's Indians vs. Loggers in Nicaragua", *The New York Times*, Tues. June 25, 1996), C.31 (Press Clipping: "Illegal concession

and expert testimony presented by the Commission at the public hearing on the merits.<sup>20</sup> The Community will present additional documentary proof, which will include, among other things, written communications from state officials, written statements of Community members and other Nicaraguan citizens, expert reports and videos on the environmental impact of SOLCARSA's forest operations, reports from the attorney Maria Luisa Acosta and her personal observations of the State's acts, reports from anthropologists Charles Hale and Theodore Macdonald on the condition of the Community, and press clippings. Additionally, the Community proposes that the following witnesses and experts give oral testimony: Dr. Charles Hale and Dr. Rodolfo Stavenhagen, experts who will testify as to the social, cultural and psychological impacts resulting from the threats to the land tenure of the indigenous communities and the lack of an effective domestic judicial remedy; Dr. Theodore Macdonald, Mrs. Emma Caddy, Mr. Charlie Mclean, Mr. Yotam Lopez, Mr. Wilfredo Mclean, Mr. Modesto Frank, and Mrs. Melba Mcleas, witnesses who will testify as to the impact of the lack of an effective domestic judicial remedy in the particular case of the Awas Tingni Community; and other possible witnesses and experts.

25. The moral damages suffered by the Community justify compensation of at least US\$750,000. This amount is reasonable in view of the earlier judgments in which the Court ordered the payment of compensation for moral damages on equitable grounds. For example, in the *Genie Lacayo* case, the Court ordered the payment of US\$20,000 to the family members of an assassination victim, not for the death of the victim but rather for the lack of adequate police investigation into the conditions of the victim's death.<sup>21</sup> In the present case, the moral damage has been suffered not only by one person but by an entire community of more than one thousand persons,<sup>22</sup> and the case involves the collective survival of the Community and its fundamental human rights, which have been threatened by negligent and intentional official acts of the State, which until now has gone unpunished. European Court of Human Rights precedent also

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continues unbridled(?despale?) in the North Atlantic", La Tribuna, May 29, 1997), C.32 (Press Clipping: "The trees fall far away and no one hears them", La Tribuna, May 29, 1997), C.33 (Press Clipping: Edurne Arbeloa, "Stripping the land in no man's land", La Tribuna, June 12, 1997), C.39 (Lic. Magda Lanuz, "SOLCARSA doesn't pay attention to Ministerial Resolution either" Environmental Guide), C.40 ("Privatizing the Rain Forest--A New Era of Concessions", Cepad Report, June/July 1997, pp. 17, 19-21) of the Commission's Petition, *supra*.

<sup>20</sup> See Transcription of the hearing on the merits, *supra*, pp. 28-35 (witness testimony of Charlie Maclean); pp. 69-81 (expert testimony of Rodolfo Stavenhagen); pp. 83-96 (witness testimony of Guillermo Castilleja); pp. 115-122 (witness testimony of Brooklyn Rivera); pp. 124-133 (witness testimony of Humbert Thompson); pp. 136-147 (witness testimony of Wilfredo Mclean); pp. 176-192 (expert testimony of Lottie Cunningham).

<sup>21</sup> See Inter-Am. Ct. H.R., *Genie Lacayo* Case, Judgment of January 29, 1997, para. 95.

<sup>22</sup> See Commission's Post-Trial Brief, *supra*, paras. 6-7.

indicates a justification for the amount of compensation requested for the moral damages shown. In the *Guillemin v. France* case, for example, the petitioner received approximately US\$34,407 in moral damages for the anxiety and uncertainty she suffered as a result of the legal proceedings she brought in order to receive just compensation for her expropriated property and in order to oppose such expropriation.<sup>23</sup>

**26. Compensation for material damages.** In addition to having suffered moral damages for the human rights violations with respect to its lands and natural resources, the Community has suffered material damages for which it should receive additional compensation. First, the Community has suffered a loss of economic opportunities by the acts and omissions of the State relating to its traditional land. Without having its rights to its lands and natural resources secured within the domestic legal system, the Community has not been able to develop the economic potential of the natural resources on those lands. The granting of the SOLCARSA logging concession assured that the Community could not advance its claim over the area of the concession and fully enjoy its rights to the natural resources within that area. Even if the Community shares claims and rights to the land in the concession area with other indigenous communities, the economic loss to the Awas Tingni Community is real. Related to this is the loss of income resulting from the State's non-renewal of the tripartite agreement among the Community, the State, and the forestry company MADENSA, which agreement was negotiated with the assistance of the World Wildlife Fund (WWF). After the initial five-year term of the agreement expired, the State rejected efforts by the Community and MADENSA to renew it based on the position that the Community did not possess title to the area of forest to be exploited, a position contrary to that taken by the State prior to signing the agreement. Economic studies that will be performed by forest engineers Hans Akesson and Emma Caddy, experts on natural resources and economic development, and possibly one other economic expert, will show that the Community has lost at least US\$500,000 in economic opportunities and lost profits, which loss the Community made known to the State in its first land claim in the early 1990s. The Community will submit written proof of these studies in its documentary evidence, and it also proposes that the authors of the studies give expert testimony in the course of the requested public hearing on reparations.

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<sup>23</sup> See *Guillemin v. France*, (1998) 25 EHRR 432. The Court declared that "Mrs. Guillemin has already sustained indisputable non-pecuniary damages as she has been and still is living in a state of uncertainty and anxiety about the outcome of the proceedings in issue." Also see *Matos E Silva, LTD v. Portugal* (1997) 24 EHRR 573, (the Court ordered moral damages of approximately \$45,030.84 for the 13 years of uncertainty suffered by the victim due to the threatened expropriation of her property, constituting an intrusion on her right of peaceful enjoyment of her property); *Casciarolo v. Italy*, (1991) ECHR 5/1991/257/328 (\$US 33,339 in moral damages); *Bonzano v. France*, (1985) ECHR 5/1985/91/138 (\$US 175,000 in moral damages).

27. Secondly, the Community has suffered material damages because of the illegal cutting of trees by SOLCARSA. As shown in their sworn affidavits submitted to the Court, members of the Community have seen an uncountable number of trees felled within the area of the SOLCARSA concession that is included in their communal land.<sup>24</sup> The State itself has admitted to the illegal and harmful cutting of trees by the company, fining it 1,000,000 Nicaraguan Cordobas, a sum which at the time represented approximately US\$100,000.<sup>25</sup> However, the Community has neither been compensated for this cutting down of trees nor for the related environmental damage. The State must compensate the Community for these material damages with payment of at least US\$50,000. Additional evidence to that already submitted to the Court to justify this claim for compensation will include those documents, and if permitted, oral testimony of forestry engineers Claud Leduc, Victor Campos, or Magda Lanuza of the Humboldt Center, an environmental organization.

28. Thirdly, the Community has been harmed by the invasion of its lands by persons outside the Community. Without official demarcation and title to its communal land, the Community has been vulnerable to these invasions and, in some cases, these invasions have been specifically authorized by the State. Since this case was brought in the Inter-American system, increasingly more people have arrived from other places to settle on the Community's lands, resulting in the loss of extensive areas of the Awas Tingni Community's communal lands. Should this loss prove irreversible, the Community should be compensated for that loss by payment of at least US\$200,000. Evidence justifying this compensation will include written reports, photographs, and oral testimony by members of the Community and will include an economic study performed by Emma Caddy or another expert on lost property valuation.

29. For the material damages stated above, in addition to the moral damages, compensation in the amount of US\$1,500,000 is justified. The collective nature of the Community's infringed rights is such that the harms suffered by the Community are collective, and as such, the compensation should be paid to the Community as one entity.<sup>26</sup>

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<sup>24</sup> See Annex C.29 of the Commission's Petition (Affidavit of Yotam López Espinoza, June 11, 1997), *supra*.

<sup>25</sup> See *Ibid*, para. 138 and Annex C.30 (Ministerial Resolution No. 02-97 of MARENA, May 16, 1997).

<sup>26</sup> See Study Concerning the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, final report submitted by Mr. Theo Van Boven, Special Rapporteur to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/1993, sec. VII (on the necessity, in appropriate cases, for collective reparation for communities and groups).

## B. Costs Claimed

30. The Court has declared:

Costs are one element to be considered under the concept of reparations to which article 63(1) of the Convention refers since they are a natural consequence of the effort made by the victim, his or her beneficiaries, or representatives to obtain a court settlement recognizing the violation committed and establishing its legal consequences. In other words, the activity they undertake to accede to the courts, a recourse provided for in the Convention, entails or can entail financial outlays or commitments for which the victim must be compensated when a guilty verdict is delivered.<sup>27</sup>

31. The Awas Tingni Community and its representatives have worked for several years to obtain a resolution through legal means that recognizes the violation of the Community's rights and provides for legal reparations of the violation. Included in this effort, which has included suits in the domestic legal system and lengthy and complex proceedings before bodies within the Inter-American system,<sup>28</sup> are the various expenses incurred as well as the great amount of legal services utilized for which compensation should be awarded.

### *1. Transportation, communication and other expenses – US\$100,000*

32. The necessary expenses incurred by the Community include transportation expenses to Managua and Matagalpa, Nicaragua to bring and pursue the Community's *amparo* actions and to petition State officials; transportation expenses to Puerto Cabezas, seat of the North Atlantic Autonomous Region, to petition State officials at the regional level; trips to Washington, D.C. and San José, Costa Rica to participate in meetings and hearings in the Inter-American system; expenses for expert and witness participation in the Washington and San José hearings; trips of Community lawyers from the United States and Bluefields, Nicaragua, to Awas Tingni to consult with the Community; telephone calls and fax communications among Community leaders, their lawyers, other assistants, and the Inter-American Commission; the contracting of technical experts; and other expenses, which later will be substantiated with appropriate proof.

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<sup>27</sup> Inter-Am. Ct. H.R., Garrido and Baigorria Case, Reparations (art. 63(1) American Human Rights Convention), Judgment of August 27, 1998 (Ser. C) No. 39 (1998), para. 79.

<sup>28</sup> See evidence of case before the Commission, beginning with the Community's petition of October 2, 1995, after the Community's failed petitions within the domestic legal system; and evidence of the case before the Court, beginning with the Commission's complaint of June 4, 1998.

33. The Community and its representatives are in the process of preparing a detailed accounting of specific expenses and compiling the appropriate proof thereof. At this time, expenses are estimated to total at least US\$100,000.

## **2. Legal fees – US\$260,000**

34. Among the expenses to be compensated are those for the indispensable work of the attorneys who represented and advised the Community throughout the domestic and international proceedings. In accordance with the Court's jurisprudence, the *quantum* of the compensation for legal fees is determined "on an equitable basis, and consider[ing] the 'sufficient connection' that must exist between those costs and the results achieved."<sup>29</sup> Estimation of the value of the attorneys' services requires taking into account elements such as "the evidence introduced to demonstrate the facts alleged, full knowledge of international jurisprudence and, in general, everything that would demonstrate the quality and relevance of the work performed."<sup>30</sup>

35. At a later date, the Community will submit to the Court a detailed summary of the attorneys' services, indicating the tasks performed and their relation to the various phases of the case, the number of hours worked, the lawyers' professional qualifications, and the difficulty and complexity of the work in such a novel case. For the time being, the information below is provided to the Court.

36. Professor James Anaya, tenured professor at the College of Law of the University of Arizona, has been the Community's principal attorney during all phases of the national and international proceedings of the case. He has been principal researcher and author of all pleadings and actions brought on behalf of the Community before the domestic tribunals and other state authorities, as well as before the Inter-American Commission. Additionally, he has been principal author of all substantive pleadings in the case submitted to the Court on behalf of the Commission. He also directed the presentation of documentary and oral evidence before the Court. A graduate of Harvard Law School, he has been an expert on international law, human rights, and indigenous peoples law for several years. He also has published several books and articles on these topics. As partially reflected in the evidence of this case, which has been submitted to the Commission and the Court, Professor Anaya has dedicated more than 2,500 hours to the case since its inception in 1995.

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<sup>29</sup> Garrido and Baigorria Case, *supra*, para. 82 (citing Eur. Court H. R., *Brincat v. Italy* Judgment of 26 November, 1992, Series A no. 249-A).

<sup>30</sup> Garrido and Baigorria Case, *supra*, para. 83.

37. María Luisa Acosta, a Nicaraguan lawyer, has worked with Professor Anaya during all phases of the case, including research and document preparation, especially during the domestic proceedings. She was responsible for the processing of the *amparo* action, which was brought on behalf of the Community before the domestic tribunals, and her presence in Nicaragua has been indispensable to communications with state officials and the constant consultation between the attorneys and the Community. Ms. Acosta travelled regularly to the remote Community to gather information and consult with Community members about the legal proceedings in which their attorneys were engaged. Ms. Acosta is a graduate of the Universidad del Rosario in Bogotá, Colombia and the College of Law of the University of Iowa, and she is recognized as an expert on indigenous peoples rights in Nicaraguan law. She has dedicated more than 2,500 hours of work on the case.

38. Mr. Todd Crider, along with some of his colleagues in the law firm of Simpson Thacher & Bartlett of New York, has assisted Professor Anaya in the preparation of communications to the Inter-American Commission and the Court, as well as in the development of legal strategy in all phases of the case in the Inter-American system. A graduate of Columbia University Law School, Mr. Crider is a partner in the abovementioned firm and has extensive experience in and knowledge of international law.

#### **PRAYER FOR RELIEF**

39. For the reasons stated above and in the pleadings before the Inter-American Commission, and pursuant to articles 23, 38, and 39 of the Court's Rules of Procedure, the Awas Tingni Community requests that this honorable Court and its President:

- a. Issue a judgment on the merits of the present case, declaring that the State of Nicaragua has violated the American Human Rights Convention to the detriment of the Awas Tingni Community, as has been asserted in the Commission's pleadings; and

Subsequently,

- b. Fix a reasonable period of time for the Awas Tingni Community's presentation of a brief and documentary evidence supplementing the preliminary declaration of reparations to and costs of the Awas Tingni Community;
- c. Call a public hearing to receive witness and expert testimony regarding the damages and reparations in the case;



- d. Make an on-site visit to investigate and confirm the harms suffered by the Community; and
- e. Order reparational measures, compensation, and the payment of costs in accordance with the evidence presented.

Respectfully submitted on August 22, 2001  
by the Legal Representative of the Awas Tingni  
Community

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