

## ENCROACHING UPON INDIGENOUS LAND: NICARAGUA AND THE ‘DRY CANAL’

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### Introduction

Like the majority of Latin American states, Nicaragua has traditionally sought to achieve a sense of homogeneity in its population. In consequence, indigenous peoples and ethnic communities have been largely ignored. In Nicaragua this started to change in 1983, when the Organization of American States’ Inter-American Commission on Human Rights expressed support for the Miskito people’s rights in a report presented to the Nicaraguan government.<sup>2</sup> This happened in the aftermath of a fierce conflict between the Sandinista régime in power and the indigenous peoples of the Atlantic coast. In 1987, this resulted in a constitutional reform that led to the establishment of the two autonomous regions of the Atlantic coast – *La Región Autónoma Atlántico Norte* (RAAN) and *La Región Autónoma Atlántico Sur* (RAAS).

The reform gave Nicaragua the first and one of the most progressive indigenous rights’ régimes in Latin America. However, despite the constitutional recognition of indigenous rights and the official creation of a régime of multi-racial and regional autonomy, the state has not yet created the legal and administrative mechanisms that are necessary for their effective implementation.

The actual situation of Nicaragua’s indigenous peoples is therefore not very different from the one that existed during the Somoza régime, which was in power until it was toppled by the Sandinist revolution in 1979. The Somoza government encouraged western peasant farmers to move to the Atlantic coast, where land was supposedly free and idle – but in reality was indigenous land. In the absence of any political resolve by subsequent régimes to implement and enforce the law that was enacted two decades ago, the encroachment of indigenous land by *mestizo* peasant settlers and others has continued to this day, despite vociferous opposition by the affected

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<sup>1</sup> The author is a lawyer and attorney on behalf of the Monkey Point Community and the Rama People in the Dry Canal case.

<sup>2</sup> Report on Human Rights of a Nicaraguan Population Sector of Miskito Origin, OAS/Ser.L/V/II/62 doc. 10 rev. 3, November 20<sup>th</sup> 1983.

indigenous and ethnic communities. The case of the Dry Canal, which is the focus of this chapter, falls squarely within the old pattern.

### **Indigenous Land Rights**

Culturally, there has always been a disparity between Nicaragua's Pacific and Atlantic regions. While the Spanish colonization evolved in the west, the east remained an area the conquerors could never even penetrate, much less colonize. Until 1894, when the Atlantic province was integrated into the Nicaraguan state, the indigenous (Miskito, Mayagna and Rama) and ethnic (Creole and Garifuna) peoples who lived here were under the political and economic influence of the British Empire. This set the stage for a dominant western political class, mostly made up of Catholic, Spanish-speaking *mestizos*, who basically regarded the Atlantic Coast as a natural resource reservoir of the state. However, despite the dominance of the western part and Spanish *mestizo* culture, the indigenous peoples of Nicaragua's Atlantic region have to this day preserved their traditional possession of land, their internal forms of organization, their view of the world and their place within it and, to a varying extent, their aboriginal languages.

Since 1905, some 185,000 hectares of indigenous land in the Atlantic region have been titled, representing approximately ten per cent of the land demanded and occupied by the indigenous communities.<sup>3</sup> The limited titling of indigenous land has reinforced the discriminatory practices that tend to dispossess the indigenous and ethnic communities of their traditional lands. Notably, Nicaragua has not titled land for the specific purpose of indigenous tenure. Rather, the titling of indigenous land was always meant to facilitate agrarian reform in favor of immigrating peasants – particularly in times of political campaign – and war veterans, to pacify the area; titling was also used to create national parks and natural reserves, and in the granting of logging concessions.<sup>4</sup> This has created the current situation, where, although any citizen may solicit a Civil District Judge to grant a provisional title for the land that they have occupied for one year, peasants farmers are subject to agrarian reform after three years of land occupation. And although the

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<sup>3</sup> See Roldan. Roque. *La Demarcación de Tierras en la Costa en el Contexto Latinoamericano* in WANI, journal of the Nicaraguan Caribbean. No.28. CIDCA-UCA. January-March 2002. Pages 11 and 12.

<sup>4</sup> See Acosta. Maria L. *El Estado y la Tierra Indígena en las Regiones Autónomas: El Caso de la Comunidad Mayagna de Awas Tingni*. Indigenous Affairs. Working Group on Indigenous Affairs. IWGIA. No. 4. October-November-December 1998.

government alleges that the Office of Rural Titling (OTR) has the legal authority to designate land to the indigenous and ethnic communities, not one of them has obtained a single title for their traditional land over the past decade.<sup>5</sup> The few titles granted to indigenous peoples of the Atlantic Coast were awarded at the beginning of the twentieth century, as a result of the Harrison-Altamirano treaty between Nicaragua and Great Britain.

It should be stressed that the existence of a pertinent legal framework does not seem to be the problem in Nicaragua. Article 107 of the constitution of 1987 establishes that a special law must be created to regulate indigenous land. The article states:

The agrarian reform shall eliminate any form of exploitation of farmers, and of indigenous communities in this country. It will promote the forms of property compatible with the economic and social objectives of this nation, established in this constitution. The land property régime of indigenous communities shall be regulated according to the law of the matter.

Also, Article 31 of the Law of Agrarian Reform, which has been in force since 1981<sup>6</sup>, acknowledges that:

The State may dispose of a quantity of land, as necessary, so that the Miskito, Sumo and Rama can work individually and collectively, so that they benefit from their natural resources, with the objective that their populations can improve their living standards, and also contribute to the social and economic development of the Nicaraguan nation.

In reality, however, this article has not provided the means for the indigenous peoples to secure effective guarantees from any of the government agencies in charge of applying these rules, such as the Ministry of Agricultural Development and Agrarian Reform (MIDINRA), the Nicaraguan Institute of Agrarian Reform (INRA) and the OTR. The state also manifests a lack of political will in failing to support the important initiative of self-demarcation carried out in the territories of Rio Wanky or Coco and Bocay, in the BOSAWAS<sup>7</sup> biosphere reserve.<sup>8</sup> This initiative comprised a

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<sup>5</sup> See Central American and Caribbean Research Council (CACRC). (1998). *General Diagnosis of the Land Tenure in the Indigenous Communities of the Atlantic Coast of Nicaragua*, Final Report (Consultation No. 084-96) (Charles R. Hales, Edmund T. Gordon y Galio Gurdian) Austin, Texas; Bluefields and Puerto Cabezas, Nicaragua, 1998. Executive Report. Pages 28 and 29.

<sup>6</sup> Decree No. 782, of July 19, 1981, *Law of Agrarian Reform*.

<sup>7</sup>The Biosphere Reserve of BOSAWAS has an extension of 2,042,536 hectares, approximately 14% of the nation's territory. In it live 14,000 Miskitos and 6,500 Mayagnas (Sumos).

process of participation, inter-communal negotiations, documentation of traditional land use, the creation of management plans and the mapping of territories – maps that were validated by the Regional Council of the Northern Atlantic Region and also by the *Ministerio del Ambiente y los Recursos Naturales de Nicaragua* (MARENA) itself.<sup>9</sup> Nevertheless, the central government refused to issue titles for these territories.

In the majority of indigenous land rights' cases, the state has imposed agrarian criteria that are designed to benefit farmers, thus disenfranchising indigenous peoples. For instance, the agrarian reform ignores the concept of collective land possession and the concept of territory held by indigenous peoples, which they apply to rivers, the sea and forests in an integral fashion. For the indigenous peoples, their native soil is forest land and does not serve any agricultural function.

By comparison, countries such as Brazil and Colombia have demarcated large tracts of land for indigenous peoples, based on criteria that respect their view of the world and their place within it, and which are different to those applied in agrarian reform.<sup>10</sup> In contrast, Nicaragua has no clear policy regarding communal land property rights for indigenous and ethnic peoples. Consequently, and in stark contrast to the progressive language of the constitution, there are no effective mechanisms to end the discrimination and human rights violations that the encroachment of indigenous lands represents. A sad illustration of this fact is the Dry Canal affair, to which I shall now turn.

### **The Dry Canal**

*Canal Interoceánico de Nicaragua* (CINN) [Nicaraguan Inter-Oceanic Canal] is a consortium formed by international investors and foreign port, shipping and construction companies, in co-operation with the Nicaraguan government. The plan of CINN is to build a 'Dry Canal', to transport ship containers from coast to coast by rail. The project requires the construction of free zones and new ports on the Atlantic coast (in Monkey Point community) and the Pacific coast (in Pie Grande), as well as a 375 km railway and a fenced area 500 metres wide along the track. This mega-project also includes the

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<sup>8</sup> See Howard, Sarah. *Autonomía y Derechos Territoriales de los Sumos en BOSAWAS: El Caso de Sikilta* in WANI, magazine of the Nicaraguan Caribbean. No. 18. CIDCA-UCA. January-April.1996.

<sup>9</sup> Stock et al. *El activismo ecológico indígena en Nicaragua: Demarcación y Legalización de tierra Indígenas en BOSAWAS*. in WANI, magazine of the Nicaraguan Caribbean. No. 25. CIDCA-UCA. December 2000.

creation of a land port (for the land deposit of Defense Trade Controls<sup>i</sup> (DTC) containers) on each coast.<sup>11</sup>

In July 1999, President Arnaldo Alemán introduced a bill to the National Assembly that contained the contract of concession already negotiated between his government and CINN. The communities owning the land where the ‘canal’ was intended had not been notified, consulted or taken into account in any of the prior negotiations between the two parties. The leaders of the affected communities – the multi-ethnic (Creole and Rama) Monkey Point and the indigenous Rama communities in the Bluefields municipality – presented an Appeal for Legal Protection to the Nicaraguan President and to the Attorney General who, by law, was required to sign the contract. In their appeal the communities demanded to be informed and consulted about the project, and they insisted that a negotiation process should be set in train, to allow them to state their position.

Monkey Point is located 47 km south of the city of Bluefields (see map).<sup>ii</sup> The first Creoles arrived here more than a century ago and established their homes next to the Rama inhabitants, with whom they have since lived as close neighbors. The Rama people<sup>12</sup> are descendants of the Chibcha Tribes. Today they speak Creole English, while some have preserved their Rama language.<sup>13</sup> At present they live in the areas of the Coco, Punta de Aguila/Willing Cay, Cane Creek, although their main settlement is Rama Cay, located in the Bluefields Lagoon 15 km south of Bluefields (see map).

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<sup>10</sup> See CEREC. *Reconocimiento y Demarcación de Territorios Indígenas en la Amazonia-La experiencia de los países de la región-* Serie Amerindia No. 4. Bogotá, Colombia 1993.

<sup>11</sup> PBDET. Reference Terms of the Inter-Oceanic Project of Ports and Railways of Nicaragua, for the presentation to the Government of Nicaragua, October 16<sup>th</sup> 1996. Page 1.

<sup>12</sup> The Rama group decreased in population during the eighteenth century. Nevertheless, in 1774 R. Hodgson speaks of “a large tribe of Rama Indians”, a number of whom had separated from the others, although they maintained their original customs and language. They occupied the banks of the Indio River all the way to lands near Lake Nicaragua. Despite this, by 1841 only 500 Rama were left in Punta Gorda and 80 in Rama Cay in the entire area between the northern margin of the San Juan River and the southern edges of the Escondido River, a distance of just over 100 km, [...] Two ideas, in part, derive from the combination of circumstances mentioned above. Firstly, the similarity of many aspects of the material life of the Rama and other aborigine peoples, which reflect a particular adaptation to the geographic environment in which they are to live. Secondly, proven common traits with the other human groups: the extraordinary resistance of their life traditions. If there have been changes, the ‘continuity’ has been stronger [...] established sites, their sizes and distance from one to another, and other traits, pointed out in investigations from 1974, that date back at least three centuries. Romero V., G. (1995). *The Societies in the Nicaraguan Atlantic Coast in the XVII and XVIII Centuries*, Cultural Promotion Fund, BANIC, 1995, Pages 270, 272.

“The Rama were drastically affected by both conquests, the Spanish and the English, and they have suffered the largest loss in population and territory of any indigenous group of the Atlantic Coast. A study places the Rama population at around 1,400. They live south of Bluefields in a small island called Rama Cay and in dispersed settlements on dry land as far south as the bank of the Punta Gorda River, The survival of the Rama is seriously threatened.”

The incursions to carry out technical and pre-feasibility studies onsite, and the negotiations regarding the concessionary contracts between the company and the government, have all advanced without the consent or participation of either the Monkey Point community or the Rama people. At no stage during the process have the public officials involved considered the property rights of the communities and their constitutional right to continue enjoying their forests, hunting, fishing and small-scale agriculture, or any other of the autochthonous activities necessary for the very survival of these peoples in their traditional lands. The members of both communities survive on agriculture. They cultivate corn, rice, beans, coconut, breadfruit, bananas, plantains, pejibaye [a form of palm tree whose fruit is used as a substitute for maize<sup>iii</sup>], etc., for their own consumption. They hunt deer, armadillos and wild boar with guns, rifles, spears or arrows. In the rivers they fish for shad, moharra, snook, tarpon and drum, and they also fish off their cays and in the sea. In addition they cut timber, but only for their own use, for the construction of their homes and kayaks – their main means of transportation. The economy is oriented towards subsistence and depends exclusively on the communal land and the forest, where the railway will cut through. Infrastructure on this scale will undoubtedly alter the use of the land for these people. It will also, unavoidably, affect the biological diversity and the fragile ecosystems of these tropical forests, thus creating a negative impact on the environment inhabited by these communities.

The main settlement of Monkey Point is precisely the area where the construction of the deep-water port for the canal is planned. The rest of the site, where the canal infrastructure is planned, crosses, divides and isolates the land that the Rama people have always occupied and used. Even though the main settlement of the Rama people is Rama Cay, there are also scattered Rama settlements on the mainland, which will be seriously affected by an infrastructure of CINN's magnitude.

It is important to note that the relationship that the indigenous peoples have with their land is more than just economic and material: it also contains elements of spirituality, culture and religion. The Rama view of the world and their place within in it is not about dominating nature: rather, they attempt to inhabit it as an integrated and harmonic part. For the Rama, therefore, the loss of their

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<sup>13</sup> Collete, G. et al. *The Rama Language Survives*. In WANI; magazine of the Nicaraguan Caribbean. Managua, Nicaragua, No. 4, June-September 1986.

territory brings a loss of identity, culture and the possibility of surviving as a distinct people.<sup>14</sup> The CINN mega-project has to be viewed in this perspective. Inevitably, the project will undermine the rights of these communities to their ancestral land and their opportunity to enjoy its fruits in both material and cultural terms.

### **Constitutional Provision**

The actions and omissions claimed in the Appeal for Legal Protection constitute violations of a number of articles in the Political Constitution of Nicaragua. The combined effect of these articles should be to guarantee the indigenous and ethnic communities' property rights and land use, as well as their right to integrity and cultural survival. The wording of the articles cited below is clear enough:

Art. 5. ...The State recognizes the existence of the indigenous peoples, and that they enjoy the rights and duties consigned in the constitution, especially the ones to maintain and develop their identity and culture, to have their own forms of social organization and to administrate their local affairs, akin to maintaining the communal forms of their land and the cultivation, use and enjoyment of the same, all in conformity to the law...

Art. 89. The State recognizes the communal forms of property of the lands of the communities of the Atlantic Coast. It equally recognizes the fruition, use and enjoyment of the waters and forests of their communal lands.

Article 36 of the State of Autonomy defines "communal property" as "constituted by the lands, waters and forests that have traditionally belonged to the communities of the Atlantic Coast". This article also takes indigenous land out of the commercial domain: it cannot be donated or sold. Nor can it be attached to a sequestration or to a mortgage. This article also states that indigenous land cannot under any circumstances be taken away or abandoned:

Art. 180. The State guarantees these communities' enjoyment of their natural resources, the effectiveness of their forms of communal property and the free election of their authorities...

These articles of the constitution confirm the *sui generis* régime of communal indigenous land. They also recognize the property rights and management authority of indigenous peoples. Moreover, they confirm the government's commitment to secure these rights effectively. Article 90 of the constitution further underlines the cultural aspects of indigenous rights: the communities of the

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<sup>14</sup> See Yañez, C. *Nosotros y los Otros: Avances en la afirmación de los derechos de los pueblos indígenas amazónicos. Defense of the People*. Lima, Peru. August 1998 (This text analyses indigenous cultures and their relation to the land as an essential part of their culture, and the indigenous territorial rights in various South American countries).

Atlantic Coast have the right to free expression and to the preservation of their languages, art and culture. It is claimed that the development of their culture and their values enrich the national culture.

Notably, Article 46 of Nicaragua's constitution also incorporates the principal international declarations, conventions and pacts on human rights within the national juridical order, with constitutional status. This implies that the state of Nicaragua has committed itself internationally to observing the right to property of the communal lands belonging to indigenous peoples, and their right not to be discriminated against for reasons of culture or race. Nicaragua has not ratified ILO Convention 169 regarding indigenous and tribal peoples, but has nonetheless participated in its elaboration.

The International Convention on Civil and Political Rights, with its constitutional status within the national juridical order, in conformity with Article 46 of the Constitution, has been applied explicitly to the Miskito and other indigenous peoples of the Atlantic coast of Nicaragua. The Nicaraguan government has also been exposed to pressure from the Organization of American States' (OAS) Inter-American Commission for Human Rights. OAS established that its affiliated states – of which Nicaragua is one – must respect and guarantee the cultural traditions of their indigenous communities with respect to their communal lands. OAS pronounced itself particularly in favour of indigenous peoples' ancestral rights over their lands, and their language and cultural rights, during the conflict with the Sandinista government in the 1980s. OAS required:

...special legal protection for the use of their language, the exercise of their religion, and, in general, matters linked to the preservation of their cultural identity. And attached to that, matters linked to the productive organization, which includes, among others, the problem of ancestral and communal lands.<sup>15</sup>

Consequently, there can scarcely be any doubt that both national and international law – which is referred to here only in part – would support the claims of the affected communities in the case of the Dry Canal. Despite this, the government seems to be fully committed to seeing the project through. This means, in essence, that the Nicaraguan state has given preferential treatment to a private, multinational consortium, at the expense of her indigenous and ethnic peoples. It may be

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<sup>15</sup> See *supra* Note 3. Pages 78-79.

argued, based on a solid legal foundation, that this constitutes open discrimination and a human rights violation.

A complicating factor, however, is that the Monkey Point community does not hold a written land title. Nonetheless, the community has traditionally exercised the right of temporary possession and land occupation, and has co-existed in harmony with the Rama people. Although the Rama people have fourteen royal titles, issued by the Mosquitian Titling Commission,<sup>16</sup> these cover only a small fraction of the areas they have traditionally and historically possessed, and still use. In this instance, the property rights over ancestral and historic land do not rely on the state granting a written title, but on *sui generis* rights that are recognized in Nicaragua's Constitution (Articles 5, 89 and 180). The shared use by two or more ethnic communities or indigenous peoples of one common territory is a frequent form of land use on the Atlantic Coast of Nicaragua. The Creole and Rama populations are also united in their struggle against the CINN project.

Not only does the Dry Canal cut through indigenous communal land, it also intersects the legally protected Biosphere Reserve of south-eastern Nicaragua, which is part of the Atlantic Biological Corridor. The reserve is a responsibility that Nicaragua acquired from the World Bank, which assigned 7.1 million dollars in donations and 35 million dollars in projects complementary to this scheme. The corridor was established to protect the biodiversity and fragile ecosystems of Central America, such as the tropical rainforests of Nicaragua's southern Atlantic region. The Dry Canal will cut right through this area. Thus, there is an inconsistency between the conservationist objectives of the corridor that the state has committed itself to and its ambitions concerning the canal project. Nicaragua has also officially committed itself to adhering to the UN Convention on Biodiversity and to Agenda 21 on popular participation. Therefore, there can be no doubt that Nicaragua, besides its obligations expressed in Articles 60 and 102 of the Constitution, is required to strive to conserve biodiversity and respect the cultural practices and rights of indigenous peoples. What remains is to establish whether the government intends to fulfil these commitments in practice. So far there are few indications that the government intends to do so. The Dry Canal project is certainly a test case.

## **Request for the Suspension**

The leaders of the affected communities who presented the Appeal for Legal Protection respectfully pleaded that Nicaragua's Honorable Supreme Court of Justice should order Dr. Arnoldo Alemán Lacayo and Julio Centeno Gomez to

1. Abstain from continuing a process that would grant a concession and its signing.
2. Initiate a process of dialogue with the ethnic community of Monkey Point and the Rama Indigenous Peoples, if CINN persists in developing its project on the lands of these communities.
3. Employ any other remedy that the Honorable Supreme Court of Justice determines as fair.

On 9 November 1999, the Court of Appeals of the South Atlantic Circumscription in Bluefields denied the Appeal on the following grounds:

Considering, that the bills produced by any power of the State of the Republic of Nicaragua are processes in the making of the same, that is to say, no law has yet been created, this TRIBUNAL RESOLVES: To completely reject the Processing of this Appeal for being notoriously INADMISSIBLE, all in conformity to the Law of Appeals for Legal Protection in force, Law No. 49 and Law 205, The Law of reform to Articles 6 and 51 of the Law of Appeals for Legal Protection, number 2 of the cited Article 51, published in the journal "La Tribuna" on November 30<sup>th</sup> 1995.

The community leaders who had filed the appeal were not willing to give up as a result of this rejection. Instead, they re-introduced it as an Appeal of Deed or Complaint, directly before the Supreme Court of Justice of Nicaragua. Here the plaintiffs argued that the Court of Appeal erred in refusing the Appeal for Legal Protection. It took eleven months before the Supreme Court produced a ruling, stating that it would admit the Appeal presented against the President and the Attorney General. In doing so, the Supreme Court decided against the Court of Appeal. For the affected communities, this was clearly a small but important victory.

In January 2001, the claimants also promoted an Incident of Objection, Challenge or Implication against one magistrate member of the Supreme Court of Justice (Justice Guillermo Selva Argüello), demanding that he should be removed from any hearing of the case. Justice Selva

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<sup>16</sup> See Martínez, P. Et al. *Listado de Propiedades de las Comunidades Indígenas de las Regiones Autónomas*, IPADE, Managua, Nicaragua, 1995.

was president of the National Assembly's Environment and Natural Resources Commission when the Bill for the approval of the CINN contract was introduced. He also took part in the legislative commission that passed the bill. He had also expressed an opinion in favor of the Dry Canal project in Parliament. When the claimants visited him in his office at the Environment and Natural Resources Commission of the National Assembly, in February 2000, Dr. Selva, then a member of the National Assembly, began by arguing that there are no indigenous peoples in Nicaragua and, besides, that the few who remain do not even pay taxes! He also expressed a firm opinion that the Dry Canal is economically very important for the nation and that it would not be stopped by a group of people. Dr. Selva concluded emphatically that the canal would be realized even if it meant changing the Constitution.<sup>17</sup> In January 2002 the Supreme Court passed judgment and dismissed the objection. A consequence of this decision the Supreme Court passed the Appeal to the Justice Department, so that the Court (which includes Magistrate Selva as one of its members) could hear the matter. Although the period of time granted by law for the Supreme Court to decide on appeals is 45 days, the Justice Department has not yet made a decision.

### **Civil Society Support**

The Dry Canal affair has generated an interesting process of mobilization in the region as a whole. At the same time as embarking on the legal process, the affected communities sought public support, and a number of organizations and institutions have become involved as a result. The communities obtained technical assistance from the Committee of Non-Governmental organizations within the South Atlantic Autonomous Region. Support was also offered by the Center for Human, Citizens' and Autonomic Rights (CEDEHCA), the two universities of the region (Bluefields Indian and Caribbean University – BICU – and the University of the Autonomous Regions of the Nicaraguan Caribbean Coast – URACCAN), as well as the Institute for the Development of Democracy (IPADE), the Center for Investigations and Documentations of the Atlantic Coast (CIDCA), the Alexander Von Humboldt Center, The Center of Legal Assistance to Indigenous Peoples (CALPI) and the International Human Rights Law Group (Law Group). All this contributed to national and international attention and widespread media coverage.

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<sup>17</sup> "Indigenous people appeal against the Dry Canal." *The New Daily*, 17 February 2000; a report on the lobbying trip undertaken by the Monkey Point ethnical community and the Rama Indigenous People in Managua from 15 to 17

To begin with, regional authorities ignored the Bill of Concession before the National Assembly, to say nothing of the matters it pertained to. Community leaders and the Support Commission therefore prepared radio programs and articles that were published in Nicaragua's major newspapers, opinion fora, etc., in order to inform regional authorities and the people on the coast about the project and the exclusion of which they had been made victim. When the Council and the Autonomous Regional Government of the RAAS and the Bluefields municipality realized that they had also been left out, they drafted resolutions demanding that representatives of the Regional Council and Government, the municipalities of Rama, Bluefields, Nueva Guinea, and representatives of the Monkey Point and Rama people should be included in a "Multi-Sectoral Commission" that the national government had organized to study and negotiate the CINN concession. The National Assembly accepted this and voted to include representatives of the Monkey Point Community and the Rama People as members of the Multi-Sectoral Commission. The inclusion of these representatives on the commission occurred only after intense lobbying, the presentation of an Appeal for Legal Protection and a Petition for Precautionary Measures before the Inter-American Commission for Human Rights of the Organization of American States (OAS) in 2000.<sup>18</sup> Although Parliament issued a decree, saying that the communities of Monkey Point and the Rama should be allowed to take part in the Multi-Sectoral Commission, but simultaneously giving the Ministry of Transportation and Infrastructure the power to grant the exploration concession to CINN "without further ado". In response to this, the communities presented an Action of Unconstitutionality against the President of the National Assembly and President of the

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February 2000.

<sup>18</sup> The ethnic community of Monkey Point and the Rama Indigenous People, in conjunction with their legal advisors from the Center of Legal Assistance for Indigenous Peoples (CALPI), and in coordination with the International Human Rights Law Group (IHLRG), presented on 11 May 2000, before the Inter-America Human Rights Commission (IHRC), a request for the adoption of urgent precautionary measures for the Communities of Monkey Point and the Rama People, in the hope of avoiding irreparable damage to the rights of these indigenous peoples, with respect to the violations of their rights in negotiations by CINN with the State relating to the law of concession concerning the Dry Canal. In September 2001, the IHRC presented a petition requesting information from the Nicaraguan chancellor about the evolution of the concessionary project for the Dry Canal, without the participation of the ethnic community of Monkey Point and the Rama Indigenous People, whose lands would be affected. The chancellor's office asked for a prorogation to respond. At present, the communities are preparing a formal petition before the IHRC for the opening of a process of amicable solution between the State and the communities.

Republic of Nicaragua. They also stepped forward to occupy their only seat among the seventeen public official members of the Multi-Sectoral Commission.<sup>19</sup>

The Multi-Sectoral Commission initiated meetings at the office of the Minister of Transportation and Infrastructure; in August 2001 these culminated with the signing of the Basic Regulations for the CINN project. The Basic Regulations regulate the terms of feasibility and final design, and thus also the conditions of the concession for the construction, operation and exploitation of the Dry Canal project. The participation of the communities of Monkey Point and the Rama in the Commission resulted in a consensus in Articles 18 and 28 of the Basic Regulations, expressed as follows:

Art. 18. In the case of the land property of the communities of the Autonomous Regions of the South Atlantic, due to their special status, the State is committed to facilitate the demarcation of the traditional communal lands of Monkey Point and the Rama People. For its part, CINN, within its capacities and criteria, is committed to not undermining the territorial aspirations of the communities affected. Such a demarcation of lands should be performed based on the historic rights of the communities and within the legal framework in force.

The human, constitutional and environmental rights of the Monkey Point and the Rama People shall be respected in the entire negotiation process between the communities, the State and CINN, in granting the concession, the construction period, final design, the beginning of the operations of the project and during the exploitation of the inter-oceanic railway of Nicaragua.

Thus, the State and CINN commit themselves to not undermining the access of the Monkey Point Community and the Rama People to their natural resources outside the area of the project, within the Rama territory, that are necessary for their subsistence as a people.

Art. 28. The State shall timeously design a plan for the relocation, socio-economic treatment and actions of repair and mitigation for the socio-environmental aspects directed to the areas and social sectors that are displaced and affected by the project, including the indigenous communities and ethnic groups, taking into

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<sup>19</sup> The Multi-Sectoral Commission is presided over by the Minister of Transportation and Infrastructure (MTI) and is made up of delegates from the Ministries of The Environment and Natural Resources (MARENA), Foreign Relations, Development, Industry and Commerce (MIFIC); The Attorney General; The Nicaraguan Institute of Territorial Studies (INETER); also two members from the Transportation, Energy and Construction Commissions, who are representatives from the Environment and Natural Resources Commission, both of which form part of the National Assembly; The Regional Council of the Autonomous Region of the South Atlantic (RAAS); and one representative

account the special characteristics of these peoples and their relationship with their land, environment and the natural resources on which they depend.

The Basic Regulations also set the standards for the process and negotiation of future compensation that would be appropriate to the different parties affected by CINN's construction in the different jurisdictions and lands. However, another key part of the process established by the Ministry of Environment and Natural Resources (MARENA) is the reference terms for the environmental studies in connection with the Dry Canal project. Here, too, the representatives of Monkey Point and the Rama people plan to continue their active participation to prevent their natural resources from being affected.

The consensus expressed in these two articles is indeed remarkable. But as the indigenous people of Nicaragua know well, from experience, words on paper do not always make much of a difference. They are aware that process has barely begun. The work of the Multi-Sectoral Commission will culminate in a technical evaluation report of the studies presented by CINN, which are to be performed within three years. Once the studies have been concluded and approved, the commission will draft the final concession contract that will later be presented to the National Assembly for consideration. However, there is still a need to create a Multi-Sectoral Commission to study the proposals of another company interested in building the dry canal, the company *Servicio Intermodal de Transporte Global, Sit/Global*.<sup>20</sup>

## **Conclusion**

It is important to emphasize that this is the first time that traditional indigenous community leaders have been permitted by law to participate in a governmental commission at such a high level, where all the other members are government representatives. This is setting a very important precedent in the state's recognition of the rights of the indigenous and ethnic communities. The Monkey Point Rama and Creole inhabitants, and the Rama of other communities, are now working on the documentation of their historic land claims. They are also working to achieve the demarcation of the

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from the 28 mayors of the municipalities through which the project is supposed to pass, and the mayors of Tola and Bluefields.

<sup>20</sup> The National Assembly, in issuing Decree AN No. 2879 on 28 March 2001, authorized the concession of exploration and establishing the conditions for the granting of a concession for the construction, operation and exploitation of an inter-oceanic railway in favor of Sit/Global. The decree also mandated that the communities of Monkey Point and the Rama People form part of the other Multi-Sectoral Commission, which will draft a technical evaluation of the studies presented by the company and will also draft the concession contract. This Decree does not contemplate the elaboration of basic regulations, as does the Decree AN No. 2878 issued for CINN. The commission has not yet started this work.

same as a means of consolidating their rights. In pursuing their legal rights against the state in Nicaragua they have demonstrated extraordinary perseverance. Using the legal system in a country like Nicaragua, with its incipient rule of law tradition, where legal norms are most of the time merely desiderata, is a daring effort. It is also obvious that without the combined support of a number of organizations, and public backing, this case would have been lost. Here, perhaps, is a lesson for other indigenous peoples in their struggle for rights: you need to build coalitions with non-governmental organizations, universities and the media. Alone, the prospects of succeeding in making your claims heard are slim.

Despite the systematic discrimination against indigenous and ethnic communities in Nicaragua, the participation, even though limited, obtained by the ethnic community of Monkey Point and the Rama Indigenous People in the Multi-Sectoral Commission creates an important precedent, hope and expectancy, for them and for society as a whole in Nicaragua.

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<sup>i</sup> Definition of DTC to be included or not? (MJ in contact with María Louisa Acosta)

<sup>ii</sup> Map to follow (Svein Jentoft has this)

<sup>iii</sup> Definition of a pejibaye to be included or not? (MJ in contact with María Louisa Acosta)