

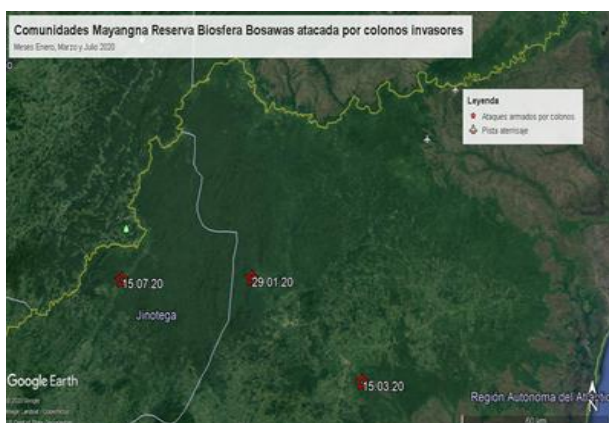


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Gross Human Rights Violations against the Miskitu and Mayangna Indigenous Peoples in the Autonomous Region of the Northern Caribbean Coast (RACCN) of Nicaragua*.

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Gross Human Rights Violations against the Miskitu and Mayangna Indigenous Peoples in the Autonomous Region of the Northern Caribbean Coast (RACCN) of Nicaragua

SUMMARY

This paper analyzes the situation of the Miskitu and Mayangna indigenous peoples of Nicaragua according to the Atrocity Crimes Analysis Framework created by the Office of the Special Advisor to the United Nations Secretary General on the Prevention of Genocide and the Responsibility to Protect. It concludes that in the context of the Northern Caribbean Coast of Nicaragua there are common risk factors that indicate that such crimes are currently being perpetrated because of the following:

Instability caused by an autocratic regime and severe political repression;

**forced displacement in the 1980s during the first government of Daniel Ortega in the same geographic area and against the same indigenous peoples, which were not sanctioned, creating the risk of repetition;*

** the weakness of State structures that have failed to protect indigenous communities that have been systematically and repeatedly attacked since 2015 to date;*

** the motives or incentives of political elites, companies and settlers to take over natural resources in indigenous territories;*

** the capacity to commit heinous crimes demonstrated by the settlers by having the logistics to plan, organize and mobilize up to 200 men armed with weapons of war, and attack indigenous communities; and*

** the entry of agro-industrial, logging and mining companies, facilitating the emigration of non-indigenous people and the advance of the agricultural and livestock frontier over the indigenous territories of the communities under attack.*

Gross Human Rights Violations against the Miskitu and Mayangna Indigenous Peoples in the Autonomous Region of the Northern Caribbean Coast (RACCN) of Nicaragua

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I. Introduction

"*Atrocity crimes*" or "*gross violations of human rights*" are crimes that, due to their gravity, offend the dignity of the entire human race; and therefore constitute international crimes, legally defined by the Rome Statute of the International Criminal Court, as *crimes against humanity* -such as: Forced Displacement, Persecution, Extermination-, and Genocide. The United Nations Declaration on the Rights of Indigenous Peoples by way of protection and guarantee establishes: "*indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide*"; The American Declaration on the Rights of Indigenous Peoples states: "*Indigenous peoples have the right not to be subjected to any form of genocide or attempted extermination*"; ILO Convention 169, establishes that *forced displacement* constitutes a violation of the rules of international protection of the collective human rights of these peoples.

Likewise, the Office of the Special Advisor to the Secretary General of the United Nations on the Prevention of Genocide has detected that these crimes constitute processes that require some level of organization and that are not carried out in a single act; therefore, it has developed an Analysis Framework for Atrocity Crimes that allows identifying the Risk Factors and their Indicators; in order to identify warning signs that could lead to their recurrence, creating capacity and providing technical assistance to strengthen prevention and response capacity to States.

We note that the Member States of the United Nations at the 2005 World Summit reaffirmed the primary responsibility of individual States, and moreover collectively, to protect populations from *atrocity crimes* through the "*responsibility to protect*", in order to prevent humanitarian crises and conflicts resulting in *atrocity crimes* anywhere in the world.

We have used all of the above elements to carry out this analysis of the *persecution* that is evident in the systematic attacks of which the indigenous communities of the Mayangna and Miskitu peoples, located in the Autonomous Region of the North Caribbean Coast (RACCN) of Nicaragua, have been victims since 2015 to date.

II. The context and location of indigenous peoples

According to the 2005 Population and Housing Census, Nicaragua has a population of 443,847 people self-identified as belonging to an indigenous community or people, which represents approximately 13% of the total population of the country. The majority indigenous people of the Caribbean Coast is the Miskitu, with an estimated population of 120,817 people; followed by the Mayangna (Sumu) people, with 9,756 people; the Rama people with 4,185 inhabitants and the Ulwa people with 698. The Creole/Kiol population totals 19,890 people and the Garifuna people number 3,271¹

¹ INIDE. VIII Population Census and IV Housing Census of 2005. Self-identified population according to indigenous people. Available at: <https://www.inide.gob.ni/censos2005/VolPoblacion/Volumen%20Poblacion%201-4/Vol.IV%20Poblacion-Municipios.pdf>

Historical context

Nicaragua's independence from Spain took place in 1821, and the Indigenous and Afro-descendant Peoples of the Caribbean Coast were incorporated into the national territory until 1894, as part of the Mosquito Reserve of the then called Atlantic Coast;² and unlike the Indigenous Peoples of the Central and Northern Pacific of Nicaragua (PCN), they have retained much of their traditional territories.

The incorporation of La Mosquitia to the territory of Nicaragua was carried out by means of a military occupation of Bluefields. The government of General José Santos Zelaya, in order to legitimize the annexation, made the Nicaraguan military authorities convene the Misquito Convention of 1894, seeking the ratification of the annexation treaty by the indigenous peoples. However, the Convention has raised all kinds of comments by historians, questioning its legal validity, due to the lack of due consent, since the leaders accredited before the indigenous communities were not the signatories of this, nor were the required legal procedures observed. Furthermore, there were accusations that it was carried out under intimidation, an inefficient translator, and that alcohol was distributed to those present at the Convention, all directed by the Nicaraguan military.³

The forced assimilation of the Indigenous Peoples of the PCN, as well as the incorporation of La Mosquitia to the territory of Nicaragua, had as a common denominator the denial of the identities, traditions and histories of the indigenous or native peoples and Afro-descendants. Since the National State, denied all ethnic diversity to the Nicaraguan people, building the myth of mestizo Nicaragua, until the approval of the Political Constitution of the Republic of Nicaragua in 1987.

Constitutional change were made in order to pacify the country, through the signing of a friendly settlement agreement with the indigenous peoples before the Inter-American Commission on Human Rights (IACHR) in the 1980s,⁴ and through the Peace Agreements in Central America;⁵ due to the armed insurgency raised against the first Sandinista Government, made up by the indigenous peoples of the Caribbean Coast and the Nicaraguan Resistance -primarily of peasants-.

In this way, the Inter-American System for the Protection of Human Rights of the Organization of American States formed by the IACHR and the Inter-American Court of Human Rights (Inter-American Court) have pronounced three times in the last four decades on indigenous rights in Nicaragua. Specifically in the cases of the Report on the Human Rights of a Sector of the Nicaraguan Population of Miskito Origin in the 1980s, on territorial rights in the case of the Mayagna (Sumo)

Executive Decree of Reincorporation of the Mosquito Convention. Published in La Gaceta, Official Gazette.ç, N°. 39 of December 15, 2005. December 1894. Available at:

[http://legislacion.asamblea.gob.ni/normaweb.nsf/\(\\$All\)/EF4F2ADD76CC12B1062580DC006D7983?OpenDocument](http://legislacion.asamblea.gob.ni/normaweb.nsf/($All)/EF4F2ADD76CC12B1062580DC006D7983?OpenDocument)

³ Rossbach L. and Wunderich V. Indigenous Rights and the Nation State in Nicaragua: the Mosquito Convention of 1894. Pag. Institute of Sociology, University of Hannover. Available at: <https://core.ac.uk/download/pdf/35142102.pdf>

⁴ Report on the Human Rights of a Sector of the Nicaraguan Population of Miskito Origin, OEA/Ser. L./V.II.62 doc. 10 rev. 3. 29. November 1983. Available at: <http://www.cidh.org/countryrep/miskitoeng/toc.htm>

⁵ Barbeyto, Arely. The peace process in Central America and the recognition of ethno-cultural diversity: The case of Nicaragua and Guatemala. Revista Wani, No. 60, year 2010. Available at: <https://www.lamjol.info/index.php/WANI/article/view/264>

Community of Awas Tingni v. Nicaragua⁶ and on the rights of the indigenous political organization YATAMA.⁷

Specifically, the Inter-American Court in the Judgment of the Mayangna (Sumo) Community of Awas Tingni considers that when Article 21 of the American Convention "*protects the right to property in a sense that includes, among others, the rights of the members of the indigenous communities in the framework of communal property, which is recognized in the Political Constitution of Nicaragua*".⁸ Since the indigenous people own the land collectively, so that belonging is not centered on the individual but on the community, and recognizes the close relationship that the indigenous people have with their lands "*the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For the indigenous communities, the relationship with the land is not merely a matter of possession or production; but a material and spiritual element that they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations,*" states the Court.⁹

Following the ruling in the Awas Tingni Case, the State enacted Law No. 445; Article 24¹⁰ of which establishes that the State "*recognizes*" and also "*guarantees*" the "*inalienability*" of indigenous lands, which includes the prohibition not only to sell but also to donate them. As well as the self-determination of their traditional authorities and the right to the administration of the indigenous territories. It also established an administrative procedure to demarcate and title these territories. As a result, the indigenous and Afro-descendant peoples of the Autonomous Regions of the Caribbean Coast of Nicaragua currently comprise 304 communities in 23 territories, titled as of 2006, under communal or collective property regime, over a territorial extension of 37,841 km² representing 31.16% of the national territory.¹¹

However, the State has omitted to carry out the regularization process of the 23 titled indigenous territories, a process that would have the purpose of defining the rights of third parties or settlers within the titled indigenous territories, preventing many of the property conflicts that have given rise to the current crisis in these territories. But instead the State has tried to impose a policy of "*cohabitation*" of the indigenous people with the settlers invading their traditional territories.¹²

⁶ Inter-American Court. Case of the Mayangna (Sumo) Awas Tingni Community v. Nicaragua. Case of the Mayangna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79. Available at: https://www.corteidh.or.cr/corteidh/docs/casos/articulos/seriec_79_ing.pdf

⁷ Inter-American Court. Case of YATAMA v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No.127. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_127_ing.pdf

⁸ See *supra* note 6, para. 148

⁹ *Idem*. Para. 149

¹⁰ Law No. 445, Law of Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio and Maíz Rivers. Published in La Gaceta, Official Gazette, No. 16 of January 23, 2003. Available at: <http://www.fao.org/forestry/13017-0582583ff7555a791ab39835763a7d42f.pdf>

¹¹ CONADETI and CIDT's Executive Report as of June 30, 2013. Available at: https://www.poderjudicial.gob.ni/pjupload/costaribe/pdf/informe_costacaribe3006.pdf and El 19 Digital. Commandant-President Daniel delivers community titles to native peoples of the Caribbean Coast of Nicaragua. October 29, 2016. Available at: <https://www.el19digital.com/articulos/ver/titulo:48337-comandante-presidente-daniel-entrega-titulos-comunitarios-a-pueblos-originarios-de-la-costa-caribe-de-nicaSalinas>

¹² León C., Sergio. From condominium to cohabitation. La Prensa, February 25, 2014. <https://www.laprensa.com.ni/2014/02/25/politica/184128-de-codominio-a-cohabitacion>.

Location of indigenous peoples under attack

The State superimposed a series of legally protected areas on traditionally indigenous territories, including the Bosawás Biosphere Reserve, where the Mayangna and Mískitu indigenous peoples have historically lived almost exclusively; the Mískitu live mainly along the banks of the Coco River (Wangki), while the Mayangna live in the central zone of the reserve and along the banks of the Pis-Pis, Waspuk, Bocay and Laku rivers. The indigenous people maintain many of their traditional forms of integral and sustainable management of the ecosystems; their economy is basically subsistence: migratory agriculture, fishing, hunting, and gathering fruits and medicinal plants.¹³

The Bosawás Biosphere Reserve was recognized by the Program: Man and the Biosphere, in October 1997 and ratified by the Government of Nicaragua in 2001, through Law 407 "*Law that declares and defines the Bosawás Biosphere Reserve*";¹⁴ part of the heart of the Mesoamerican biological corridor and is, together with the Rio Platano Reserve in Honduras, both conform the second largest tropical rainforest in the Americas, after the Amazon rainforest. It is also considered a World Heritage Site by the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Bosawás Biosphere Reserve is located in the territories of the municipalities of Wiwilí, El Cuá and San José de Bocay in the department of Jinotega; Wiwilí in Nueva Segovia, Waslala, Bonaza, Siuna and Waspán in the RACCN of Nicaragua.

Current context

For several decades, the State of Nicaragua has promoted internal immigration of non-indigenous people in the Autonomous Regions, mainly in the RACCN, which has the highest rate of internal immigration in the country; the State has promoted this immigration, making indigenous peoples minority populations in their own territories and facilitating the advance of the agricultural frontier¹⁵ and extensive cattle ranching on indigenous lands and legally protected areas such as Bosawás, thus facilitating an undisclosed policy of internal colonization. In addition, the last decade

See also: González, Miguel. El conflicto por la tierra puede ser una oportunidad para que los costeños nos preguntamos sobre el tipo de autonomía que queremos, Confidencial. September 11, 2015. Available at: <https://confidencial.com.ni/el-conflicto-por-la-tierra-en-la-costa-caribe/>

¹³ VIDEO: Bosawás: Mayangnas at the forefront. Oxfam Nicaragua, March 13, 2014. Available at: <https://www.youtube.com/watch?v=Cudfg9BS9jI>

¹⁴ Law N°. 407, Law that Declares and Defines the BOSAWAS Reserve. Published in the Official Gazette, Diario Oficial N°. 244 of December 24, 2001. Available at: <http://legislacion.asamblea.gob.ni/normaweb.nsf/d0c69e2c91d9955906256a400077164a/276abf1f6374c9f2062570ae0052d6aa?OpenDocument>

¹⁵ La Prensa Gráfica. Nicaragua exports 82% of Central America's meat. October 17, 2019. Available at: <https://www.sica.int/consulta/noticia.aspx?idn=120201&idm=1&ident=1461> See also: Tórriz G., Cinthya. Ranchers clarify that they do not raise cattle in indigenous communities. La Prensa, October 23, 2020. Available at: <https://www.laprensa.com.ni/2020/10/23/economia/2737287-serios-senalamientos-contraganaderos-de-nicaragua-en-carne-que-se-envia-a-ee-uu-el-sector-lo-niega> Rautner, Mario and Cuffer, Sandra. What does the meat that Nicaragua exports to the world have to do with deforestation? See also: Mangobay, October 3, 2020. Available at: <https://es.mongabay.com/2020/10/que-tiene-que-ver-la-carne-que-exporta-nicaragua-al-mundo-con-la-deforestacion/> See also: PBS News Hours. In Nicaragua, supplying beef to the U.S. comes at a high human cost. October 20, 2020. Available at <https://www.oaklandinstitute.org/nicaragua-supplying-beef-us-comes-high-human-cost> Nicaragua Y, Ríos, Duyerling and Mendoza. Cristopher. where are the cattle being introduced into the Indio Maíz Reserve going? Mongabay series: Livestock in Central America. August 15, 2017. Available at: <https://es.mongabay.com/2017/08/nicaragua-donde-va-ganado-introducen-la-reserva-indio-maiz/>

has seen an exacerbation of violence against indigenous peoples;¹⁶ experts point to the presence of organized crime and drug trafficking in the area;¹⁷ A natural resource extractivist policy has also been promoted, degrading the livelihoods and territories of the indigenous peoples through deforestation caused by logging in general¹⁸ and by the Alba-Forestal company in particular,¹⁹ the expansion of monocultures such as African Palm (*Elaeis guineensis*),²⁰ and the increase in mining activity, with the state-owned Nicaraguan Mining Company (ENIMINAS);²¹ the announcement of the concession of the Grand Interoceanic Canal by Nicaragua (GCIN)²² and the acquiescence of the State in increasing internal migration in the Autonomous Regions of settlers over protected areas superimposed on indigenous territories.

As a result, the Autonomous Region of the Caribbean Coast of Nicaragua are under an aggressive colonization, wiping out about 40% of the forest cover between 1983 and 2011, with a rate

¹⁶ On April 23, 2013 the indigenous Mayangna Elías Charles Taylor, father of 6 children, was murdered; and other leaders who accompanied him were wounded, the incident occurred while the indigenous patrolled their territory in the BOSAWÁS Biosphere Reserve in response to a complaint that squatters were cutting down the forest; upon arriving at the site and asking the intruders what they were doing on indigenous land, they responded by shooting. Gustavo Sebastián Lino, president of the Mayagna Sauni As territory, upon reporting the death of Elías Charles Taylor, said that this was not an isolated incident, since 20 indigenous people have been killed defending their territory in BOSAWÁS since 2010. However, all cases, including that of Mr. Charles Taylor have remained in impunity. Special multimedia report by Confidencial SOS BOSAWÁS. Confidential. Carlos Salinas Maldonado, April 27, 2014. Available at: <https://confidencial.com.ni/archivos/articulo/17239/sos-Bosawás>

¹⁷ Silva, José Adán and Romero, Elizabeth. Nicaragua: There are logistics behind arms and ammunition in the Caribbean. InfoRed September 11, 2015. Available at: https://prensaindigena.org/web/index.php?option=com_content&view=article&id=14489:nicaragua-hay-logistica-tras-armas-y-municiones-en-el-caribe&catid=86:noticias Retired Major Roberto Samcam, retired Major of the Nicaraguan Army, believes that the settlers operate in Bosawás in collusion with high-ranking government officials and that they intend to depopulate the area in order to install a base of operations for illegal activities such as the smuggling of wood, cattle and the transfer of drugs. Nicaragua Investiga, February 3, 2020. Available at: <https://www.facebook.com/nicaraguainvestiga/videos/544063992870037>

¹⁸ Pérez García, Danny. Environmentalists blame Ortega's regime for the merciless deforestation in Nicaragua's Segovias. SNN. February 2020. Available at: http://www.agenciasnn.com/2020/02/ambientalistas-culpan-al-regimen-de.html?m=1&fbclid=IwAR36CgA8VFt_hiFelh6TDPWaADIikNOEMK3q7Y_TT4v6

¹⁹ Enriquez, Octavio. Government protects Alba Forestal. Confidencial, June 5, 2013. Available at: <http://confidencial.com.ni/archivos/articulo/12124/quot-gobierno-protege-a-alba-forestal-quot>

²⁰ Carrere, Michelle. Palm company violated environmental regulations. Confidential, September 14, 2017. Available at: <https://confidencial.com.ni/empresa-palma-violo-normativas-a> Y: López, Julio. Nicaragua: African palm expands unchecked and puts pressure on producers. Mongabay Latam and Onda Local de Nicaragua, January 23, 2019, Available at: <https://es.mongabay.com/2019/01/palma-africana-en-nicaragua/?fbclid=IwAR3FLJKvxxmSqcYzRCyzQkKd84Aqx5fHY0VWjAd5sI5U6Djfb9V4ecFQCM>

²¹ The Plenary of the National Assembly unanimously approved the creation of the Nicaraguan Mining Company, ENIMINAS, which will allow the State of Nicaragua to have economic participation in all concessions granted for mining exploitation. Nicaraguan Mining Company, ENIMINAS, is created by Law. Prensa-Asamblea Nacional, July 21, 2017. Available at: <http://www.asamblea.gob.ni/360792/aprueban-por-ley-empresa-nicaraguense-de-minas-eniminas/> See also: Humboldt Center. "Estado del Arte Minería en Nicaragua." 2020. Retrieved from <https://humboldt.org.ni/estado-del-arte-mineria-en-nicaragua/c>

²² Ruxandra, Guidi. Another obstacle for the Nicaragua Canal: indigenous peoples who will not give up their territories. Mongabay. 12 January 2016. Available at: <https://es.mongabay.com/2016/01/otro-obstaculo-para-el-canal-de-nicaragua-los-pueblos-indigenas-que-no-entregarán-sus-territorios/>

²² Erkenwick Watsa, Mrinalini. 'Nature Reserves' say enough: illegal settlers deforest huge tracts of land in Nicaragua's protected areas. Mongabay. 28 November 2014. Available at: <https://es.mongabay.com/2014/11/las-reservas-naturales-dicen-basta-colonos-ilegales-deforestan-enormes-extensiones-de-terreno-en-areas-protegidas-de-nicaragua/>

of 400 km² per year, producing the loss of 1.5 million hectares of forest since 2009, and between 2009 and 2011 the highest rate of deforestation in the last 28 years.²³

The Settlers

Likewise, the core zone of Bosawás is being deforested and since the end of 2011 the Miskitu and Mayangna indigenous communities, inside and outside Bosawás, are being victims of systematic and widespread attacks by non-indigenous settlers (“Colonos”) armed with weapons of war, many of them with military training;²⁴ The settlers - violently dispute the indigenous territories from their legitimate owners with the acquiescence of the State - steal and kill the animals of the indigenous communities, burn their houses, pollute the waters of the rivers from which they obtain water for human consumption, prohibit access to their plots and areas for gathering fruits and medicinal plants, agriculture, hunting and fishing; while destroying the forest, biodiversity and crops to plant pastures for cattle and even marijuana.²⁵ The attacks are carried out in order to seize the natural resources of the indigenous territories titled by the State since 2006. The settlers cause entire communities to be forcibly displaced to other communities, nearby towns and even to the bordering Republic of Honduras.²⁶

It is also estimated that, due to the violence, around 1,000 indigenous persons are currently forcibly displaced in other communities and municipal capitals, as well as in border communities with Honduras. Since the beginning of the attacks, up to 3,000 indigenous persons have been displaced, many of them in the Republic of Honduras.²⁷

Despite the fact that the attacks against indigenous communities are committed by non-state actors, the lack of state investigation, generates impunity and therefore, more probabilities of violence over these indigenous peoples.²⁸

²³ Executive Summary of the Environmental and Social Impact Assessment (ESIA) of the Nicaragua Canal. ERM, June 2015. P. 6. Available at: http://www.tortillaconsal.com/summary_esia_canal.pdf

²⁴ Medina, Fabián. A silent war in Nicaragua: indigenous people are massacred to strip them of their lands. INFOBAE, February 9, 20120. Available at: <https://www.infobae.com/america/america-latina/2020/02/09/una-guerra-silenciosa-en-nicaragua-masacran-a-indigenas-para-despojarlos-de-sus-tierras/>

Many settlers who invade indigenous lands are ex-military. Confidencial, Available at: https://confidencial.com.ni/muchos-colonos-que-invaden-tierras-indigenas-son-exmilitares/amp/?fbclid=IwAROF1tthRYwH1gdrItUtaF_f62UI6koWlqBlpwo6oF6HocvkyaP4WAjUkds

²⁵ See *supra* note 17.

²⁶ Oakland Institute. Nicaragua: A Failed Revolution: The Indigenous Struggle for Sanitation, April 2020. Available at: <https://www.oaklandinstitute.org/nicaragua-revolucion-fallida-lucha-indigena-saneamiento> See also: Miranda Aburto. Wilfredo. "Ethnocide in Nicaragua: The violent onslaught of invaders displacing indigenous people on the Caribbean Coast." August 9, 2020. Available at: <https://www.divergentes.com/colonos-desplazan-indigenas-nicaragua/> See also: CEJIL. Miskitu resistance: a struggle for territory and life August 2019. Available at: <https://cejil.org/es/informe-resistencia-miskitu-una-lucha-territorio-y-vida> and, see also: Alianza de Pueblos Indígenas y Afrodescendientes de Nicaragua (APIAN). Report on the Situation of the Territorial Rights of Indigenous and Afro-descendant Peoples of Nicaragua. Nicaragua, December 2017. (*hereinafter* APIAN Report 2017) Available at: <http://www.temasnicas.net/informeapian.pdf>

²⁷ CEJUDHCAN. Displaced/Refugees from the communities of Rio Coco by the invasion of the Colonos/Terceros. CEJUDHCAN speaks with refugees in the territory of Honduras, who are fleeing from the violence of the Colonos/Terceros in the Rio Coco. Northern Nicaragua, 22 August 2016. Available at: <https://www.youtube.com/watch?v=iSxMGDgm45E>

²⁸ Tórrez García, Cynthia. Why are massacres of indigenous people so frequent in Nicaragua (such as the one in Bosawás)? These are Ortega's debts with the peoples of the Caribbean. La Prensa, February 2, 2020. Available at:

The Center for Justice and Human Rights of the Atlantic Coast of Nicaragua (CEJUDHCAN), has reported that since 2015 the land conflict has left 47 indigenous persons injured, 44 kidnapped and 40 dead; as well as serious food insecurity among indigenous people deprived of their lands and livelihoods, generating an imminent ethnocide, by the extermination that these indigenous peoples are suffering.²⁹ Likewise, on behalf of the attacked communities, CEJUDHCAN and the Center for Justice and International Law (CEJIL), obtained precautionary measures from the IACHR and provisional measures from the IACHR Court to grant³⁰ in favor of a dozen indigenous communities, 11 of them Miskitu and one Mayangna.³¹ However, the Nicaraguan State has not complied with these measures and instead denies that the attacks are occurring.³²

III. Attacks in 2020 and 2021

The escalation of violence is alarming as Mayangna indigenous leaders have widely denounced the attacks perpetrated without the State having protected them; so far in 2021 alone,

<https://www.laprensa.com.ni/2020/02/02/nacionales/2635944-por-que-son-tan-frecuentes-las-masacres-de-indigenas-en-nicaragua-como-la-ocurrida-en-Bosawás-en-la-justicia-esta-la-clave>

²⁹ UN denounces repeated attacks against indigenous peoples in Nicaragua to expel them from their lands. February 7, 2020. Available at: <https://www.europapress.es/internacional/noticia-onu-denuncia-reiterados-ataques-contra-pueblos-indigenas-nicaragua-expulsarlos-tierras-20200207124738.html>

³⁰ The resolutions are as follows: IACHR. Resolution 37/2015. Precautionary Measures No. 505-15. Miskitu Indigenous People of Wangki-Ti-Tasba Raya Respecto de Nicaragua October 14, 2015. Available at: <https://www.oas.org/es/cidh/decisiones/pdf/2015/MC505-15-ES.pdf> IACHR. Resolution 44/2016; Precautionary Measures No.505-15. Expansion of beneficiaries Miskitu Indigenous Peoples of Wangki Twi Tasba Raya, regarding Nicaragua, August 08, 2016. Available at: <https://www.oas.org/es/cidh/decisiones/pdf/2016/MC505-15-ES-2.pdf> Inter-American Court . Extension of Provisional Measures with respect to Nicaragua. Matters settlers of the communities of the Miskitu Indigenous Peoples of the Northern Caribbean Coast Region, August 23, 2018. Available at: http://www.corteidh.or.cr/docs/medidas/miskitu_se_05.pdf IACHR. Resolution 2/2016. Precautionary Measures No. 505-15. Expansion of beneficiaries Miskitu Indigenous People of Wangki-Ti-Tasba Raya Regarding Nicaragua January 16, 2016. Available at: <http://www.refworld.org/pdfid/5747f9b94.pdf> Inter-American Court. Resolution of the Inter-American Court of Human Rights of September 1, 2016. Request for Provisional Measures Regarding Nicaragua. Matter of the Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region. Available at: http://www.corteidh.or.cr/docs/medidas/miskitu_se_01.pdf Inter-American Court. Resolution of the Inter-American Court of Human Rights of November 23, 2016. Matter of the Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region. Available at: https://www.corteidh.or.cr/docs/medidas/miskitu_se_02.pdf Inter-American Court. Resolution of the President the Inter-American Court of Human Rights of June 11, 2017. Extension of Provisional Measures Regarding Nicaragua. Matter of the Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region. Available at: <https://www.oas.org/es/cidh/decisiones/pdf/2017/16-17MC505-15-NI.pdf> Corte IDH. Resolution of the President the Inter-American Court of Human Rights of August 23, 2018. Extension of Provisional Measures Regarding Nicaragua. Matter of the Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region. Available at: https://www.corteidh.or.cr/docs/medidas/miskitu_se_05.pdf Inter-American Court. Resolution of the President of the Inter-American Court of Human Rights of January 6, 2020. Extension of Provisional Measures Regarding Nicaragua. Case of the Inhabitants of the Communities of the Miskitu Indigenous People of the Northern Caribbean Coast Region. Available at: https://www.corteidh.or.cr/docs/medidas/miskitu_se_06.pdf

³¹ *The communities of: Santa Fe, El Naranjal, El Cocal, Olopaywas, of the Miskitu Wanki Li Aubra indigenous territory; the Miskitu indigenous communities of Esperanza, Santa Clara, Wisconsin and Francia Sirpi in the Wangki Twi-Tasba Raya indigenous territory; San Geronimo, Esperanza Rio Coco and Klisnat, in the Wangki Li Aubra indigenous territory; and the community of Wiwilak in the Lilamni Tasbaika Kum e la RACCN indigenous territory.*

³² EFE. Nicaraguan police deny recent attack on indigenous people that caused outrage. La Vanaguardia. February 20, 2020. Available at: <https://www.lavanguardia.com/vida/20200220/473673845106/policia-de-nicaragua-niega-reciente-ataque-a-indigenas-que-causo-indignacion.html>

attacks by settlers have left 1, -19 years old indigenous person- death, 7 wounded (two of them minors and one of them lost his left hand due to the gunshot wounds he received during the attack); while during 2020, at least 13 murders were reported (one of them of a minor), 8 injured, two kidnapped - most of them members of the Mayangna indigenous people- and the forced displacement of a community and two assaults on underage Miskitu indigenous girls.

The vast majority of indigenous people killed in this context are defenders of their way of life, culture and Cosmo vision; what they carry out on a daily basis in their lands and territories; according to the OMCT Observatory in 2018, *"more than half of the homicides of land and environmental rights defenders committed in the world occurred in Latin America."*³³

The following is a list of reported attacks against the communities:

Aggressions against Miskitu girls

On February 16, 2020 Diajaira Lacayo Wilson, 15 years old, was shot while returning from the river near the community of Santa Clara, Wangki Twi Tasba Raya territory, the bullet pierced her jaw from one side of her face to the other, leaving her with scars on her face and problems eating food.³⁴

On July 14, 2020 Maria del Carmen Taylor Ingram, 16 years old, from the community of Sagni Laya, Twi Yahbra territory, was abducted by settlers.³⁵

Attacks against communities in 2020

On January 29, 2020, the Mayangna community of Alal, made up of 800 inhabitants located 430 kilometers northeast of the country's capital, was attacked by 80 heavily armed settlers, leaving 16 houses burned, 10 indigenous people missing, 4 men from the indigenous community Jarle Samuel Gutiérrez, 20, Amaru Rener Hernández, 24, Cristino López Ortiz, 26, and Juan Emilio Devis Gutiérrez, 40, were murdered; Marconi Jarquin, 30, and Maynor Will Fernández, 27, were wounded, and Maynor Will Fernández was left paraplegic as a result of the gunshot wounds he received during the attack. The settlers also exterminated the livestock and many of the community members, mainly the elderly, women, girls and boys, had to hide in the forest for several days after the attack for fear that the settlers would kill them. Despite national and international condemnation for the attack on Alal, this assault also went unpunished.³⁶

³³ OMCT. Indigenous Peoples. Available at: <https://www.omct.org/es/que-hacemos/pueblos-ind%C3%ADgenas>

³⁴ Voice of America. Alert on humanitarian crisis in Nicaragua's indigenous communities. Despacho 505, February 18, 2020. Available at: <https://www.despacho505.com/ataque-comunidades-indigenas-nicaragua/>

³⁵ Shiffman, Giovanni. Denuncian secuestro de niña por colonos comunidad de Puerto Cabezas. Artículo66, July 14, 2020. Available at: <https://www.articulo66.com/2020/07/14/denuncian-secuestro-nina-colonos-comunidad-puerto-cabezas/>

³⁶ Munguía, Ivette. Impunity facilitates the killings of indigenous people in Bosawás. Confidencial, January 31, 2020. Available at: https://confidencial.com.ni/impunidad-del-regimen-facilita-matanzas-de-indigenas-en-Bosawás/?utm_medium=Social&utm_source=Facebook&fbclid=IwAR23sB9MBJzk04sonoUAc6N-HcD16rNvKE3iHF51Oa34yBGtvtfAwVwCQr4#Echobox=1580482473

The attack against the Alal community was different from previous attacks because this time, Mayangna indigenous leaders and authorities appeared on social networks before the independent press, asking for help. The indigenous leaders identified their aggressors: 80 men from the Kucalón gang, led by Isabel Meneses Padilla "Chavelo".³⁷

The following day, pro-government media published statements by public officials of indigenous origin minimizing the impact of the Alal attack;³⁸ likewise, the National Police issued 3 press releases between January 30 and February 1, 2020, all contradictory; in the first one, it recognized two people killed by gunshot wounds in the Bonanza area but decontextualized the fact by not mentioning the armed attack; In the second, the following day, the police denied the murders despite the fact that the community members reported having found and buried two of the bodies of the indigenous people attacked and that two others were seriously wounded in local hospitals and in Managua; and on the third day, in the face of social repudiation due to the contradictory information, the police accepted having found the four bodies of the indigenous people in the area near Alal.³⁹ Meanwhile, the social networks were flooded with photographs and statements about the massacre that continued to be sent from the community of Alal, which was probably the cause of the National Police presence on the ground after the attack.

On February 12, 2020, the Chief of Police in the Mining Triangle, Prinzapolka and Mulukukú, informed the media that they had arrested Lester Isaías Orozco Acosta, 36 years old, alias "El Choco", one of the members of the gang led by "Chabelo"; Orozco Acosta has a record of organized crime, assault, frustrated homicide, drug trafficking and cattle rustling; and that he would be immediately handed over to the Public Prosecutor's Office.⁴⁰ However, during the first week of June 2020, authorities and indigenous leaders of Alal denounced through a communiqué that Lester Isaías Orozco Acosta had been released.⁴¹

On March 26, 2020, the Wasakin Community was attacked by armed settlers and 3 indigenous men of the Mayangna ethnic group: Neldo Dolores Morales Gómez, 30 years old, Ruben

³⁷ VIDEO: 100% News. Mayagna territorial government denounces atrocious murder of indigenous people. February 30, 2020. Available at: https://www.youtube.com/watch?v=HUIYI4elfBw&feature=share&fbclid=IwAR18VQoclHx034GRNBKbCZwa_rHYImjXgz_nuYRtjuxjvDaZTQ7I5u-SiYZw

³⁸ Pro-Ortega indigenous leaders minimize Bosawás facts and keep quiet about settlers. Nicaragua Investiga, January 30, 2020. Available at: <https://www.nicaraguainvestiga.com/lideres-indigenas-pro-ortega-minimizan-hechos-de-Bosawás-y-callan-sobre-colonos/>

³⁹ Shiffman, Geovanny. Policía orteguista patina por tercera vez y ahora dice que si hubo cuatro asesinados en el caribe. Article 66, February 1, 2020. Available at: <https://www.articulo66.com/2020/02/01/policia-orteguista-patina-por-tercera-vez-y-ahora-dice-que-si-hubo-cuatro-asesinados-en-el-caribe/>

⁴⁰ El 19 Digital. Member of the "Chabelo" Gang Captured for Crimes against the Community of Alal Wednesday, February 12, 2020. Available at: <https://www.el19digital.com/articulos/ver/titulo:99994-capturan-a-integrante-de-la-banda-chabelo-autor-de-los-delitos-en-perjuicio-en-la-comunidad-alal>

⁴¹ CALPI. Public Complaint. Detainee released for attack on Alal Indigenous Community and Ejercito could be involved in the attack. June 8, 2020. Available at: <https://www.facebook.com/calpinicaragua/posts/4166665220018116/>

Jacobo “Mencho” Bendlis, 29 years old, and Dunis Rodolfo Morales, 28 years old, were assassinated.⁴²

On March 27, 2020, Miruam Andru Flores (mother) Durk Whashington (son) and Pedro Pérez. of the Miskitu ethnic group died in another attack in the community of Ibu, along with Wasakin; For a total of 6 indigenous people murdered in 48 hours, both communities are located in the Mayangna Tuahka territory of the Rosita municipality, *"The deceased were carrying out cleaning activities in the landmarks of their territory, which shows that they were killed in the defense of their territory"*.⁴³

On July 10, 2020, the Amak Community was attacked, leaving one indigenous person dead, Semeon Silva 26 years old, and Santos Gómez Pérez 50 years old wounded, the indigenous people were on their way to the plots where they clean their crops; but, about 300 meters from their house and 600 meters from the so-called Caño de Ahsawas, they were ambushed by three or four settlers armed with shotguns and revolvers.⁴⁴

On August 2020, in the community of Santa Fe, Miskitu Li Aubra Territory, Lucas Estrada (head of the settlers in the area) threatened the indigenous community member Edwin Vásquez with a gun while he was carrying out his routine activities in his plot of land, Estrada argued that the community member was *"invading his property"*. The community members feel vulnerable and defenseless because despite repeated complaints filed with government agencies, they have not obtained any results in favor of their individual and collective rights.⁴⁵

On September 2020, Mr. Celso, a native of the Wiwinak community, Li Lamni Territory, was kidnapped by settlers, the community came to his aid and managed to rescue him.⁴⁶

On September 10, 2020 in the indigenous community of Sangni Laya, settlers burned 5 houses in the community.⁴⁷

⁴² VIDEO: Mayagna leaders of Wasakin of the North Caribbean Coast speak out on the killings and invasion in their communities. April 14, 2020. Available at:

https://www.facebook.com/watch/live/?v=693669214704415&ref=watch_permalink

Dispatch 505. IACHR condemns massacre in Wasakin, Bosawás. March 31, 2020. Available at:

<https://www.despacho505.com/cidh-condena-masacre-en-wasakin-Bosawás> See also: Shiffman, Giovanni. IACHR

condemns attack against indigenous people in the Caribbean of Nicaragua. Article 66, March 31, 2020. Available at:

<https://www.articulo66.com/2020/03/31/cidh-condena-ataque-contra-indigenas-nicaragua/> Y

Tórriz García, Cynthia. IACHR condemns attack against indigenous Mayangnas in the Wasakin Caribe Norte community.

La Prensa, March 31, 2020. Available at: <https://www.laprensa.com.ni/2020/03/31/nacionales/2657590-cidh-condena-ataque-contra-indigenas-mayangnas-en-la-comunidad-wasakin-caribe-norte>

<https://www.laprensa.com.ni/2020/03/28/nacionales/2656643-asesinan-a-tres-miskitos-en-comunidad-ibu-en-rosita>

⁴³ Cruz, Eduardo. Asesinan a tres Miskitos en comunidad Ibu en Rosita. La Prensa, March 28, 2020. Available at:

<https://www.laprensa.com.ni/2020/03/28/nacionales/2656643-asesinan-a-tres-miskitos-en-comunidad-ibu-en-rosita>

⁴⁴ Munguía, Ivette. Attack by settlers leaves one Mayangna dead and another injured in San José de Bocay. Confidential,

July 12, 2020. Available at: <https://confidencial.com.ni/ataque-de-colonos-deja-un-mayangna-muerto-y-otro-herido-en-san-jose-de-bocay/>

<https://confidencial.com.ni/ataque-de-colonos-deja-un-mayangna-muerto-y-otro-herido-en-san-jose-de-bocay/>

⁴⁵ Communication with the leaders and authorities of the Miskitu Indigenous Territories: Wangki Maya, Wangki Twi

Tasba Raya, Li Aubra and Li Lamni, in the Municipality of Waspam, RACCN.

⁴⁶ *Ibid.*

⁴⁷ CEJUDCAN, September 26, 2020. Available at:

<https://www.facebook.com/cejudhcan.derechoshumanos/posts/2873374459559484>

On September 21, 2020, members of the indigenous community of Sangni Laya: Manuel Salvador Hernandez Gonzalez, 47 years old, and Felix Yasser Labonte Rojas, 34 years old, were kidnapped.⁴⁸

On October 11, 2020, after the celebration of an equestrian festival held in the municipality of Bonanza, an armed group aboard three motorized vehicles crossed the center of the indigenous community of Panyasak, firing several shots with firearms - 38 caliber pistols - leaving two livestock (horses) dead and one wounded, cattle owned by members of the community.⁴⁹

On November 14, 2020 near the Wiwinap River, Nacilio Macario, a 43 year old native of the indigenous Mayangna Musawas Community -with 7 children, the youngest of which was a newborn- was murdered. The events took place while they were guarding a plot of land from which some settlers had been evicted several months ago in the Bosawás Biosphere Reserve. According to his relatives, Mr. Nacilio Macario had already been threatened by settlers and his death is directly related to the gold exploitation by the EMSA Company that has been installed in the indigenous territory since the beginning of 2020.⁵⁰

On December 6, 2020 in the Nawahwas Community, Mayangna Sauni Bu Territory, in the Bosawás Biosphere Reserve, 17 year old Mayangna youth Michael Rivera López was murdered with a machete. The murder was perpetrated in cold blood, wielding a non-indigenous settler, according to two witnesses.⁵¹

Attacks against communities in 2021

On January 22, 2021 in the vicinity of the communities of Wilu, Tuybangkana, Musawas and Alal in the Mayangna territory of Sauni As, in the core zone of Bosawás, the indigenous rangers were attacked, resulting in injuries to Donald Castillo Felipe, 60 years old, Presino Samuel, 47 years old and Corino Simeón, 44 years old, the latter was transferred in delicate condition to the hospital in Bonanza. However, the indigenous community members feared what happened to the wounded from the January 29, 2020 attack in Alal, whom the settlers threatened inside the hospital while they were being treated.⁵²

On March 4, 2021 an attack was perpetrated in the community of Kimakwas, in the Mayangna Sauni Arungka Territory, in which the young Antonio Lopez Rufus, 17 years old, received five bullet

⁴⁸ *Ibid.*

⁴⁹ Indigenous Miskitu denounce attack by settlers this morning in Sangni Laya. Republic 18, September 10, 2020.

Available at: <https://republica18.com/indigena-miskitu-denuncia-ataque-de-colonos-este-manana-en-sangni-laya/>

⁵⁰ IACHR. November 17, 2020. Available at: <https://twitter.com/cidh/status/132882177729019909?s=24> See also: Galo, Abigail. Organismo de derechos humanos solicitan a Ortega investigar asesinato de líder Mayangna. Available at:

<https://radio-corporacion.com/blog/archivos/73322/organismo-de-derechos-humanos-solicitan-a-ortega-investigar-asesinato-de-lider-mayangna/>

⁵¹ 100 News. Another murder of an indigenous Mayangna in the northern Caribbean region of Nicaragua, thirteen so far this year. December 11, 2020. Available at: <https://100noticias.com.ni/sucesos/104212-indigena-asesinado-caribe-norte-nicaragua/>

⁵² CALPI. Attack with USE machine guns and shotguns to the Mayangna people in Bosawás. January 25, 2021. Available at: https://landportal.org/es/blog-post/2021/01/atacan-con-metralletas-use-y-escopetas-al-pueblo-mayangna-en-bosawas?fbclid=IwAR12whWMcEX_4fYhy9V-TvXTgmQk780mURT7seC6ta8FYVj_POYh7rpgzwc

impacts and due to the danger of infection he ran the risk of having his leg amputated; Lopez Rufus after the attack was missing for two days along with Leve Pedro Devis, both were found by members of their community, one injured and the other beaten and strongly affected psychologically.⁵³

On May 10, 2021, an attack occurred in the Silamwas Community, located in the Bosawás Biosphere Reserve, on the road between Rosita and Bonanza, at approximately five o'clock in the morning, when as usual five members of the Muskuswas community were heading to their crops and were ambushed by eight settlers, leaving two Mayangna Indians wounded. As a result of the shooting, one settler was also killed and another wounded. However, the official media "Sistema de Noticias del Caribe" misrepresented the facts mentioning only the affected settlers and blaming the indigenous people for the incident; which generated a strong note in the social networks from the indigenous leaders asking the media to retract, which they did not do. Likewise, the National Police began to look for the injured indigenous men, while the community members point to a regional councilor of the Sandinista National Liberation Front (FSLN), the governing party, and member of the National Commission of Demarcation and Titling (CONADETI), as the cause of the recent acts of violence in the Mayangna Sauni Arungka Territory, and requested the authorities of the National Police and the Public Prosecutor's Office to carry out the relevant investigations to clarify the case. They also asked the Nicaraguan Army's Ecological Battalion, in charge of protecting the Reserve and its inhabitants, to fulfill its duty.⁵⁴

On June 14, 2021, during an attack in the Miskitu Community of Santa Fe, in the Li Aubra territory, in the municipality of Waspám, took place the murder of 19-year-old Bonifacio Dixon Francis; The young man had gone into the forest with 17-year-old Jafeth Dixon Francis in search of two head of cattle; and upon his return in the afternoon, they were found by armed settlers who, after asking them where they came from, began to shoot at them. Jafeth was wounded by a bullet as a result of which he lost his left hand.⁵⁵

IV. The national and international legal framework

The indigenous and Afro-descendant peoples of Nicaragua enjoy the protection of robust national and international legislation, as their rights are recognized by the Political Constitution of the

⁵³ OMCT. Urgent Interventions. Nicaragua: Armed attack against indigenous defenders Antonio López Rufus and Leve Pedro Devis. March 19, 2021. Available at: <https://www.omct.org/es/recursos/llamamientos-urgentes/nicaragua-ataque-armado-contra-los-defensores-ind%C3%ADgenas-antonio-l%C3%B3pez-rufus-y-leve-pedro-devis>

See also: Romero, Elizabeth. Otro indígena mayangna herido tras ataque de colono. Obrero de la Tecla. March 5, 2021. Available at: <https://obreradela-tecla.com/otro-indigena-mayangna-herido-tras-ataque-de-colonos/?fbclid=IwAR1Ncj2wwMQngKVwBbmkyVgcXmY7e0kbOoKA6h-TaBuM7sOn32Xsj5aaadc>

⁵⁴ CALPI. Third Attack on Mayangna and Partisan Politics. Land Portal. 17 May 2021. Available at: <https://landportal.org/es/blog-post/2021/05/tercer-ataque-los-mayangna-y-la-pol%C3%ADtica-partidaria> See also: <https://www.facebook.com/2248619305176275/posts/4101492023222318/?sfnsn=mo>

⁵⁵ Prilaka Community Foundation. June 14, 2021. Available at: <https://www.facebook.com/hashtag/prilakadenuncia> Ver See also: CEJUDHCAN. June 15, 2021. Available at: <https://www.facebook.com/photo?fbid=3081958942034367&set=pcb.3081961405367454>

And, Shiffman, Geovanny. Denuncian el asesinato de comunitario a manos de colonos en el Caribe Norte. La Prensa, 16 de junio de 2021. Disponible en: <https://www.laprensa.com.ni/2021/06/16/nacionales/2838778-denuncian-el-asesinato-de-comunitario-a-manos-de-colonos-en-el-caribe-norte>

Republic of Nicaragua,⁵⁶ ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries,⁵⁷ the United Nations Declaration on the Rights of Indigenous Peoples,⁵⁸ and the American Declaration on the Rights of Indigenous Peoples,⁵⁹ among others.

Therefore, the Nicaraguan State is internationally obligated to the Miskitu and Mayangna indigenous peoples as a Member State of the United Nations and as a State Party to 8 of the 9 main international human rights treaties,⁶⁰ in addition to its voluntary pledges and commitments made in the Universal Periodic Review processes before the UN Human Rights Council in 2010, 2014 and 2019;⁶¹ and also as a signatory to the American Convention on Human Rights,⁶² protected by the Inter-American Human Rights System (IAHRS), which has developed a broad body of legal decisions on the protection of the rights of indigenous peoples.

In accordance with international human rights law, the State of Nicaragua has the specific obligation to *respect, protect and guarantee the human rights and fundamental freedoms* of persons within its jurisdiction, without any discrimination on grounds of race, color, sex, language, religion, political or any other opinion, national or social origin, economic status, birth or any other social condition; as well as to take all necessary measures to *prevent and remedy violations of those rights*. And particularly in the case of indigenous peoples -human groups that have traditionally and historically been excluded and discriminated against-⁶³ since according to international law in the case of the crime of *genocide* they want the category of *Protected Groups*, as this crime is committed against *members of a national, ethnic, racial or religious group*.

Likewise, geographic isolation and limited access to means of communication, their own language and culture, different from those dominant in the rest of society and the country, as well as the lack of respect for their customary rights and access to the state legal system, make it difficult for indigenous peoples to obtain protection of their traditional and collective land; Thus, despite the fact

⁵⁶ Political Constitution of the Republic of Nicaragua. Articles 5, 8, 11, 46, 49, 51, 52, 89, 90, 91, 121, 180 and 181. The full text of the Political Constitution of the Republic of Nicaragua is available at:

https://www.constituteproject.org/constitution/Nicaragua_2014?lang=en

⁵⁷ ILO. ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, ratified by the State of Nicaragua on May 6, 2010, Available

at:https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

⁵⁸ OUN. The United Nations Declaration on Indigenous Peoples (UNDRIP). Available at:

https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁵⁹ OAS. The American Declaration on the Rights of Indigenous Peoples (DADPI). Available at:

<https://www.oas.org/en/sare/documents/DecAmIND.pdf>

⁶⁰ UN. Multilateral Treaties Deposited with the Secretary-General. Available at:

<https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

⁶¹ Nicaragua's human rights situation to be considered by Universal Periodic Review

<https://www.ohchr.org/SP/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=24599&LangID=S>

⁶² OAS. American Convention on Human Rights "Pact of San José" (ACHR). Available at:

https://www.oas.org/dil/access_to_information_American_Convention_on_Human_Rights.pdf

⁶³ Huerta, Juan R. Hungry Caribbean indigenous peoples forgotten and with the same problems as 500 years ago. Nuevas Miradas, interview Ray Hooker, September 9, 2019. Accessed January 16, 2020.

<https://nuevasmiradas.com.ni/2019/09/09/pueblos-indigenas-del-caribe-con-hambre-olvidados-y-con-los-mismos-problemas-de-hace-500-anos/?fbclid=IwAR0EM2b65iNHnhbqtSPjlvK8DMGAqjV3ZWA6KMRx9aOVqmJPg2-iOfH-WTs>.

that the invasion of indigenous lands, the permanent threats,⁶⁴ and violations to the personal integrity of the members of the Mayangna and Miskitu indigenous peoples, constitute criminal offenses under national criminal legislation,⁶⁵ they remain unpunished.

Likewise, the United Nations Declaration on the Rights of Indigenous Peoples in its articles 7.2, 8.1 and 42 establish that *"indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide" ... "the right not to be subjected to forced assimilation or destruction of their culture" "The United Nations, its organs ... and the specialized agencies, including at the local level, and States, shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration."*

Articles 10.2 and 11 of the American Declaration on the Rights of Indigenous Peoples state: *"States shall not develop, adopt, support or favor any policy of assimilation of indigenous peoples or destruction of their cultures"... "Indigenous peoples have the right not to be subjected to any form of genocide or attempted extermination"*.

Article 16 of ILO Convention 169 establishes that forced displacement constitutes a violation of the international protection of the collective human rights of these peoples; and the Rome Statute of the International Criminal Court defines and indicates the elements that make up these international crimes.

V. Perpetration of atrocity crimes

The Member States of the United Nations at the 2005 world summit (Outcome Document paras. 138 and 139)⁶⁶ express the clear and unequivocal acceptance by all governments of the

⁶⁴ "If I go back there they can kill me". The story of a woman whose property was invaded by settlers in an indigenous community in Bosawás. La Prensa, October 12, 2019. Available at: <https://www.laprensa.com.ni/2019/10/12/nacionales/2598170-si-regreso-ahi-me-pueden-matar-la-historia-de-una-mujer-a-la-que-los-colonos-le-invadieron-su-propiedad-en-una-comunidad-indigena-en-Bosawás>

⁶⁵ Article 241 of the Penal Code of the Republic of Nicaragua establishes the crime of Usurpation of Communal Domain as follows: *Whoever...d) Occupies communal lands or lands belonging to indigenous communities...e) Whoever by de facto means restricts, limits or makes it impossible to pass through public roads and which constitute access to a property, hamlet, community, population, lake, maritime or fluvial coasts, shall be punished with imprisonment of one to three years. Without prejudice to what may proceed, the judge shall order the immediate opening.* Article 427 - Discrimination. *Whoever prevents or hinders another from exercising a right or faculty provided for in the Political Constitution of the Republic of Nicaragua, laws, regulations and other provisions, for any reason or economic, social, religious, political, personal or other conditions, shall be punished with imprisonment from six months to one year or a fine of three hundred to six hundred days.* Código Penal, Law No. 641, Published in La Gaceta; Diario Oficial, No. 232 of December 3, 2007. Available at: http://www.ine.gob.ni/oaip/leyesAdministrativas/leyes/Ley641_CodigoPenal.pdf

⁶⁶ Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity 138. *Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.* 139. *The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security*

collective international responsibility to protect populations from *atrocities crimes* and *crimes against humanity*. The readiness to take collective action in a timely and decisive manner to this end, through the United Nations Security Council, when peaceful means prove inadequate and national authorities are manifestly failing to do so.

Therefore, the Office of the Special Adviser to the United Nations Secretary-General on the Prevention of Genocide and the Responsibility to Protect has developed the Atrocity Crimes Analysis Framework (*hereinafter "Analysis Framework"*), which identifies risk factors and indicators as an integrated risk assessment and analysis tool that can be used anywhere in the world to detect behaviors, circumstances or elements that create an environment conducive to the commission of atrocity crimes or indicate the possibility, likelihood or risk of their occurrence.⁶⁷

According to the Analysis Framework, We found in the context of the RACCN of Nicaragua common risk factors to this type of crimes such as the following: Instability caused by an autocratic regime and severe political repression; forced displacement in the 1980s during the first government of Daniel Ortega in the same geographical area and against the same indigenous peoples, the crime of *genocide* was denounced then but was not sufficiently investigated and therefore, was not sanctioned, consequently this creates a risk of repetition;⁶⁸ We also find the weakness of State structures reflected in the National Police, the Ecological Battalion, the Municipal authorities, the authorities of the Autonomous Regions, the Judicial System, the Public Ministry, the Ministry of Foreign Affairs and the Executive Branch that have failed to protect the indigenous communities under attack; the motives or incentives of political elites, companies and settlers to take over the natural resources in the indigenous territories; capacity to commit heinous crimes has been demonstrated by the settlers having the logistics to plan, organize and mobilize up to 200 men armed with weapons of war, and attack indigenous communities; absence of mitigating factors such as NGOs -CEJUDHCAN and CEJIL- and the independent press, although these have been threatened by members of the governing party, for supporting and transmitting the accusations of the indigenous communities under attack;⁶⁹ propitious circumstances or preparatory actions such as the prior facilitation of the emigration of non-indigenous people that favor the advance of the agricultural frontier and extensive cattle ranching, the impulse of the entry of agro-industrial and extractive timber and mining companies, over

Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out. We fully support the mission of the Special Adviser to the Secretary-General on the Prevention of Genocide. United Nations General Assembly. 2005 World Summit Outcome. A/60/L.1 Distr. Limited. 15 September 2005 English. Available at: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_60_1.pdf

⁶⁷ UN. Atrocity Crimes Analysis Framework. A tool for prevention (*hereinafter "Analysis Framework"*). 2014, reprinted 2018. P. 6. Available at: https://www.un.org/en/genocideprevention/documents/publications-and-resources/Genocide_Framework%20of%20Analysis-English.pdf

⁶⁸ See *supra* note 4. See also: VIDEO: Red Christmas: Sandinista genocide against the Miskito people of #Nicaragua. 1980s. Available at: <https://www.youtube.com/watch?v=TT-IZNBiM1U>

⁶⁹ See *supra* note 67. Analysis Framework, pp. 10-17.

the indigenous territories of the communities -attacked since 2015 to date- are actions that fit perfectly with an unadmitted state policy of internal colonization of the Caribbean Coast.⁷⁰

Specifically regarding *crimes against humanity*, according to the Analysis Framework, the above constitute clear specific risk factors combined with the State's failure to protect indigenous peoples from the companies and settlers that have systematically attacked the Mayangna and Miskitu indigenous peoples for almost a decade, as we will see below:

Crimes against humanity

As defined by the Rome Statute of the International Criminal Court⁷¹ (*hereafter "Rome Statute"*) in the relevant part of its Article 7, paragraph 1, as follows:

*...crimes against humanity shall mean any of the following acts - a) Murder; b) **Extermination**; ...d) Deportation or forcible transfer of population;... f) Torture; g) Rape, ...or any other form of sexual violence of comparable gravity; h) **Persecution of a group or collectivity with its own identity** based on political, racial, national, ethnic, cultural, religious, ...i) Enforced disappearance of persons;...- k) when committed as part of a **widespread or systematic attack against a civilian population and with knowledge of such attack**: Other inhumane acts of a similar character **intentionally causing great suffering or serious injury to body or to mental or physical health** (emphasis added).*

The documented crimes committed by the settlers against a *civilian population* - the Mayangna and Miskitu indigenous communities - during the attacks coincide with those indicated in Article 7.1 - *murder, torture, forced disappearance of persons, kidnapping, sexual violence, forced displacement, extermination and persecution* - which have undoubtedly *caused great suffering and have seriously undermined the physical integrity, mental and physical health* of the indigenous members of the Mayangna and Miskitu communities.

We now proceed to analyze the remaining elements such as: "**persecution of a group or collectivity with its own identity based on political, racial, national, ethnic, cultural or religious grounds**" and "**knowledge of such an attack**".

The Miskitu and Mayangna indigenous communities are undoubtedly "*a group or collectivity with their own identity*" because they are made up of *racial, national, ethnic, cultural, religious* elements, different from those of the majority of the Nicaraguan population; peoples that are currently being *persecuted for political, racial, national, ethnic, cultural, and religious reasons*; since the State has its own plans for the territories that historically and traditionally have been used and inhabited by these peoples. In the same way these are also "*civilian populations*" that *in accordance with the policy of colonization of the Caribbean Coast implemented by the State of Nicaragua coincides with that of the organization* - of the settlers - that *systematically commit the attacks decidedly promoted by that policy*";⁷² and the State's omission to protect the indigenous peoples from such attacks could constitute veiled protection for such *organization*.

⁷⁰ *Ibid.* Analysis Framework, pp. 20 and 21.

⁷¹ The text of Rome Statute of the International Criminal Court. Available at: https://legal.un.org/icc/statute/99_corr/cstatute.htm

⁷² VIDEO: IACHR. "Impact of colonization on indigenous territories of the Atlantic Coast in Nicaragua" Hearing before the IACHR held on Thursday, March 18, 2021. Available at: <https://www.youtube.com/watch?v=O3a2ZFkYpSo>

In addition, through the protection measures granted by the IACHR and the Inter-American Court of Human Rights, communicated directly to the State, the State has had "*knowledge of these attacks*", and in spite of this, it has omitted its international duty to comply with the protection measures that these international organizations have demanded in favor of the indigenous communities.⁷³

Attack against a civilian population

Article 7.2(a) of the Rome Statute in its relevant part states:

(a) "*Attack against a civilian population*" means a course of conduct involving the **multiple commission of acts** referred to in paragraph 1 **against a civilian population**, pursuant to **or in furtherance of a policy of a State or an organization to commit such an attack** (emphasis added).

According to the definition of Article 7.2 (a) such attacks obey a *course of conduct* since they have been perpetrated systematically since 2015 to date, attacks that reveal to obey an organization by its economic means, planning, promotion and encouragement of such violent acts. The *modus operandi* of these attacks has been conforming groups of up to 200 men armed with weapons of war that in a surprise manner attack the main settlements of indigenous communities burning homes, churches, stealing and killing livestock, and perpetrating crimes against indigenous peoples. Actions carried out in the Bosawás Biosphere Reserve despite the presence of the Ecological Battalion of the Nicaraguan Army (BECO) whose function is to protect the Reserve.⁷⁴

Persecution

Article 7.2(g) of the Rome Statute in its relevant part states:

(g) "**Persecution**" shall mean **the intentional and severe deprivation of fundamental rights** in contravention of international law on account of the **identity of the group** or collectivity (emphasis added).

The Miskitu and Mayangna indigenous communities are also "*a group or collectivity with their own identity*", conformed by their Cosmo vision of *native or indigenous people of the Americas* with their own worldview, values and ways of life that deeply link them to their lands, natural resources and territories, on which they depend economically and spiritually for their subsistence as peoples; which determines them as a *national, ethnic, cultural, racial and religious group*, easily distinguishable from the majority of the Nicaraguan population; Communities that are being victims of *persecution* - through *systematic* attacks perpetrated by non-indigenous settlers who attack them - based mainly on *political, racial, national, ethnic and cultural motives*; since due to the existing structural and institutional racism, the usurpation of the ancestral territories of these peoples is being sought; thus

⁷³ See *supra* note 30.

⁷⁴ VIDEO: Canal 10 Nicaragua: Where was the Ecological Battalion in the Bosawás massacre? Interview with retired General Hugo Torres. February 3, 2020. Available at: <https://www.youtube.com/watch?v=yXiPvNw3pd0>
See also: Nicaraguan Army: through the Ecological Battalion "BOSAWÁS" it is clear that the protection of our country's strategic natural resources is a matter of national security. Available at: <https://www.ejercito.mil.ni/contenido/unidades-militares/ft/ftdmm.html> Y: La Voz del Sandinismo. "Hecho histórico creación de Batallón Ecológico de Nicaragua, dijo UNESCO". November 30, 2011. Available at: <https://www.lavozdelsandinismo.com/nicaragua/2011-11-30/hecho-historico-creacion-de-batallon-ecologico-de-nicaragua-dijo-unesco/>

the *political, racial, national, ethnic and cultural* particularities of these peoples become disadvantages for them due to the lack of state protection.

Extermination

Article 7.2(b) of the Rome Statute in its relevant part states:

*b) "Extermination" shall include **the intentional imposition of** conditions of life, including but not limited to **deprivation of access to food or medicine, aimed at causing the destruction of part of a population** (emphasis added).*

The lack of state protection facilitates the "*extermination*" of these peoples through *the intentional imposition of living conditions* that imply, among others, *the deprivation of access to food -water, hunting, fishing, agriculture, fruit gathering and medicinal plants-* in their ancestral and historical territories, the fundamental basis -spirituality and identity- of these peoples. And by lacking them, they are *heading towards the destruction of part of* these indigenous population.

Forced Displacement

Article 7.2(d) of the Rome Statute in its relevant part states:

*(d) "Deportation or forcible transfer of population" shall mean **the forcible displacement** of the persons concerned, **by expulsion or other coercive acts**, from the area in which they are **lawfully present, without grounds authorized by international law** (emphasis added).*

The *forced displacement* of the territories that these peoples legitimately occupy - by ancestral and historical usufruct and that by the Political Constitution of the Republic of Nicaragua and the law have received State recognition - are *expelled* by means of *coercive acts* such as armed violence and terror generated by constant and credible threats by the attacks already perpetrated - for almost a decade - while the settlers act *without grounds authorized by international law*, and to the detriment of the most elementary human rights of these indigenous peoples; for Example: the Community of Polo Paiwas, Municipality of Waspam, was displaced when between October and December 2015 it was attacked twice, as well as other communities in the Wangki Twi-Tasba Raya territory;⁷⁵ On December 9, 2017 all the family members of the Wilú Community of the Sauni As territory of Bosawás left their homes and took refuge in the Community of Musawas, because a group of armed settlers attacked them;⁷⁶ and on September 3, 2020, 30 families from the Sangni Laya Community of the Twi

⁷⁵ See *supra* note 67. Analysis Framework, pp. 17-18.

⁷⁶ VIDEO: Cruz, Martin. Villagers of La Comunidad de Wilu del Territorio Sauni As ask the Government of Nicaragua to guarantee peace in their territory. Tele Bonanza, December 14, 2017. <https://www.facebook.com/100006749323761/videos/2048251712076453/> See also: Garth Medina, José. Indígenas abandon community due to confrontation against settlers. La Prensa, December 9, 2017. Available at: <https://www.laprensa.com.ni/2017/12/09/departamentales/2344103-indigenas-abandonan-comunidad-por-enfrentamiento-contra-colonos> And: Calero. Mabel. Indigenous Mayangnas arrive at CENIDH. La Prensa, December 20, 2017. Available at: <https://www.laprensa.com.ni/2017/12/20/nacionales/2349721-indigenas-mayangnas-llegan-al-cenidh>

Yahbra Territory, Municipality of Puerto Cabezas, were forcibly displaced to Auhyapihni and Bilwi for fear of an announced attack by settlers.⁷⁷

Genocide

As noted in the Analysis Framework, the crime of *Genocide* on many occasions reveals historical or ongoing tensions or conflicts between specific groups or between one of these groups with the State, in relation to access to rights and resources, socioeconomic inequalities, participation in decision-making processes, security, expressions of group identity or perceptions about the target group.⁷⁸ Likewise, during the armed conflict of the 1980s, the first government of President Daniel Ortega also entered into serious conflicts with these indigenous peoples in this same geographic area, which generated the accusation that *genocide* was being committed against these peoples; however, the criminal complaint did not prosper nationally, due, among other reasons, to the approval of different amnesty laws.⁷⁹ Although the conflict was pacified by means of a friendly settlement agreement before the IACHR, which gave rise to the recognition of these peoples and their fundamental rights for the first time in the Political Constitution of Nicaragua.⁸⁰

Nicaraguan criminal legislation also considers *Genocide* as a crime⁸¹ and the Rome Statute in its Article 6, in its relevant part defines *Genocide* as follows:

... "*genocide*" means any of the following acts committed **with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such**: a) **Killing** of members of the group; b) Causing **serious** bodily or mental harm to members of the group; c) **Intentionally inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part...**(emphasis added).

For the crime of *genocide* to be committed, it is required as a *sine qua non* element that it be perpetrated "*with the intent to destroy in whole or in part a national, ethnic, racial or religious group*", *In the case of the members of the Mayangna and Miskitu indigenous communities - so recognized by the Political Constitution of the Republic of Nicaragua- they undoubtedly constitute "a national, ethnic, and religious group"* that self-identify themselves as members of the Mayangna Nation and the Miskitu Nation, differentiating themselves from the majority of the Nicaraguan population. Likewise, the

⁷⁷ Cross. Ana Lucia. Settlers displace more than thirty indigenous families from the Sangni Laya community. Confidential September 6, 2020. Available at: https://confidencial.com.ni/colonos-desplazan-a-mas-de-treinta-familias-indigenas-de-la-comunidad-sangni-laya/?fbclid=IwAR0JvLx_zs-Q1mt0NZ8xFp1CC7nhxnd0ZksmUYL39tOMhYjW_IXT-7D6shc

⁷⁸ See *supra* note 67. Analysis Framework, p. 18

⁷⁹ Law No. 100, Amnesty 50. Granted by Violeta B. de Chamorro. Published in La Gaceta No. 98 of May 23, 1990. Available at: https://www.enriquebolanos.org/articulo/34_amnistias_en_nicaragua

⁸⁰ See *supra* note 38.

⁸¹ National Assembly. Bill No. 641, Penal Code, approved on November 13, 2007. TITLE XXII. CRIMES AGAINST THE INTERNATIONAL ORDER. CHAPTER I. GENOCIDE. Art. 484. Genocide. *A term of imprisonment of twenty to twenty-five years shall be imposed on whoever, with the purpose of totally or partially destroying a determined group of persons, by reason of their nationality, ethnic group or race, religious belief or political ideology, carries out any of the following acts: a) Causing the death of one or more members of the group. b) Seriously injuring the physical or psychological integrity, or attacking the freedom or sexual integrity of one or more members of the group. c) Subjecting one or more members of the group to conditions of existence that result in their physical destruction, in whole or in part; d) Forcibly displacing the group or its members...* Art. 485. Provocation, proposition and conspiracy. *Provocation, proposition and conspiracy to commit genocide shall be punished with ten to fifteen years imprisonment.* CHAPTER II. CRIMES AGAINST HUMANITY. Art. 486. Torture. Art. 488. Forced disappearance of persons. Available at: http://www.oas.org/juridico/spanish/mesicic3_nic_codigo_penal.pdf

settlers have sent messages and direct threats adducing the racial and ethnic nature of the indigenous peoples and their extermination with phrases such as: "*all the Miskitus are going to die*"⁸² or that "*they [the settlers] did not play and that if possible they would kill every last Miskito*"⁸³ "*we are going to kill with a lot of courage, we are Spanish and you are moscos*" printed in a note left on November 20, 2015 in the community of Santa Clara,⁸⁴ just to cite two of them. "*They are trying to get us out of here,*" said Vina Ernesto Efrain, 44, who witnessed his nephew being gunned down by a group of armed men who appeared in his village. "*I haven't been back to my land since then, which means they have taken it away from me.*"⁸⁵

And regarding "*the intention to destroy in whole or in part*" the aforementioned group, we find that 3 of the 5 forms that make up the international crime of genocide have been widely documented, such as the following: the *killings and serious injuries to the physical and mental integrity of the members of these indigenous communities*; actions that undoubtedly have been carried out in order to achieve the *intentional* subjection of *the group to conditions of existence that will lead to their physical destruction, total or partial...* by means of such violent acts to reach the takeover of their ancestral lands, which constitute the economic and spiritual basis of their culture and their existence as peoples. For by being expelled from their lands by armed settlers, their members are subjected to *conditions of existence that will lead to their physical destruction - totally or partially - as groups, in this case as indigenous peoples.*

Likewise, "*the intention to totally or partially destroy*" these indigenous peoples can be inferred from the State's omission to protect these peoples in the face of the repeated violent acts committed as a result of the systematic attacks perpetrated over a long period of time and to date by the settlers; its consequent lack of investigation that has generated impunity, as well as the denial of the occurrence of such acts, in addition to the refusal to comply with the multiple protection measures issued by the IACHR and the Inter-American Court in favor of these indigenous peoples.⁸⁶

The conflict has been in the public domain since 2015 generated by settler attacks on the indigenous communities of the RACCN and has been evidenced by countless testimonies in the independent, national and international social media, while the official media remain silent or present distorted versions of the situations denounced by members of the Mayangna and Miskitu indigenous communities;⁸⁷ as well as in reports and investigations such as the one carried out by CEJIL and

⁸² Situation of the Wangki Twi Tasba Raya Indigenous Territory. CEJUDHCAN, July 15, 2015. Video. Available at: <https://www.youtube.com/watch?v=IG4D9HF1KXo>

⁸³ Tension in Li Auhbra territory, Rio Coco Arriba due to kidnapping. La Prensa, Thaimi Acevedo, August 17, 2015. Available at: <https://www.laprensa.com.ni/2015/08/17/nacionales/1885034-tension-en-territorio-li-auhbra-rio-coco-arriba-por-secuestro>

⁸⁴ See *supra* note 26. APIAN Report 2017, p. 119.

⁸⁵ A dispute over indigenous land sparks a wave of homicides in Nicaragua. By Frances Robles October 17, 2016 Available at: <https://www.nytimes.com/es/2016/10/17/espanol/una-disputa-por-tierras-indigenas-provoca-una-ola-de-homicidios-en-nicaragua.html>

⁸⁶ See *supra* note 27.

⁸⁷ IACHR Urges the State of Nicaragua to Cease Violations of the Rights of Indigenous Peoples and Communities. Available at: https://www.oas.org/en/iachr/media_center/PReleases/2020/061.asp See also: Tórrrez, Cinthya. IACHR Condemns attack against Mayangna indigenous people in the community of Wasakin, North Caribbean. La Prensa, March 31, 2020. Available at: <https://www.laprensa.com.ni/2020/03/31/nacionales/2657590-cidh-condena-ataque-contra-indigenas-mayangnas-en-la-comunidad-wasakin-caribe-norte>

CEJUDHCAN called: *Mískitu Resistance: A Struggle for Territory and Life*; the in-depth report by Divergentes entitled *"Ethnocide in Nicaragua: The Violent Onslaught of Invaders Displacing Indigenous People on the Caribbean Coast"* and the Oakland Institute's investigation *"Nicaragua: A Failed Revolution the Indigenous Struggle for Sanitation"*;⁸⁸ for the information presented to the mechanisms of the United Nations such as the UN Special Rapporteur for Indigenous Peoples, before the OHCHR and during the two Universal Periodic Reviews 2010, 2014 and 2019 in which Nicaragua has participated. But above all, the information and evidence in the requests submitted to the IACHR and the Inter-American Court to obtaining precautionary and provisional measures in favor of the Mayangna and Mískitu indigenous communities granted by those bodies.⁸⁹

VI. Failure to comply with IACHR and Inter-American Court measures of protection

Article 63.2 of the American Convention on Human Rights establishes that *"in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons"*, the Inter-American Court may take, at the request of the IACHR, such provisional measures as it deems pertinent in matters not yet before it.⁹⁰

In view of the information sent to the IACHR first by the members of the Mískitu and Mayangna indigenous communities; and subsequently by the IACHR and the Inter-American Court, both institutions in each of their areas found that there are the necessary elements to grant precautionary measures and request provisional measures in favor of these indigenous communities of the RACCN between 2016 and 2020. Therefore, the State of Nicaragua through the Foreign Ministry was informed of the situation in which the Miskitu and Mayangna indigenous communities find themselves by both institutions of the ISHR, without the State having done enough to comply with the measures and somehow reduce or *avoid extreme gravity and the urgency of suffering irreparable damage* to the indigenous people and their communities beneficiaries of such measures.⁹¹ Instead, the State has minimized the situation, has failed to protect the victims, the human rights defenders of these communities and their lawyers; and on several occasions, including in a hearing before the Inter-American Court, the State of Nicaragua has denied the facts denounced by the members of these communities and the non-governmental organizations that have accompanied them in their claims.⁹²

VII. Threats and stigmatization of Human Rights Defenders

CEJUDHCAN, CEJIL, indigenous leaders, community and territorial authorities, defenders of their lands, environment, plots of land and families, have been victims of threats from members of the

⁸⁸ See *supra* note 26.

⁸⁹ See *supra* note 30.

⁹⁰ CEJUDHCAN. Displaced/Refugees from Rio Coco communities due to Colonos/Terceros invasion. CEJUDHCAN talks to refugees in Honduran territory who are fleeing Colonos/Terceros violence in Rio Coco. Northern Nicaragua, August 22, 2016. Available at: <https://www.youtube.com/watch?v=iSxMGDGm45E>

⁹¹ See *supra* note 30.

⁹² Thematic Hearing on the Human Rights Situation of Indigenous and Afro-descendant Peoples on the Caribbean Coast of Nicaragua at the 156th session before the IACHR held on October 16, 2015. Available at: <https://www.youtube.com/watch?v=t1tLDq15d4o>

FSLN party, currently in government, for which the IACHR and the Inter-American Court have also issued precautionary and provisional measures to protect the life and physical integrity of these human rights defenders.⁹³ The threats received by the defenders were caused for carrying out their work accompanying the communities under attack with their demands.⁹⁴ This is in spite of what was established in the judgment of the Inter-American Court in the *Case of Acosta et al. Vs. Nicaragua*, which mandates the State of Nicaragua to *develop protection mechanisms and investigation protocols for cases of risk situations, threats and aggressions against human rights defenders*.⁹⁵

VIII. Is the State responsible for these international crimes?

It is clear that the material authors of the attacks against the Mayangna and Miskitu indigenous communities are the settlers. However, the organization of groups of up to 200 men to attack indigenous communities requires a high level of logistics, organization and economic resources. The geographic location of the events that occurred and the actors involved, in fact and in law, as factual and real powers in the case, raise some questions that need to be analyzed.

In 2011, the Nicaraguan Army created the Ecological Battalion (BECO) to protect legally protected natural areas threatened by settlers and loggers.⁹⁶ However, despite BECO being in the area of the attacks by the settlers, it has not submitted any report related to any capture and/or disarmament of the settlers armed with weapons of war in Bosawás.

Likewise, justice operators starting with the National Police, the Public Prosecutor's Office and the Judiciary have not reported conducting effective, independent and impartial investigations to establish truth, justice and reparation for the victims; and thus, ensure accountability for the violations and abuses committed by the perpetrators of the attacks against the Mayangna and Miskitu indigenous peoples, systematically attacked since 2015.

It is pertinent to mention the actions and omissions of the National Police because since 2015 it has refused to receive complaints from members of indigenous communities about threats, kidnappings, attempted homicides, injuries, murders and other crimes perpetrated by settlers against the personal and psychological integrity of indigenous people, expressly claiming that "*by superior guidance*" it could not receive their complaints. For example; CEJUDHCAN in November 2015 filed 14 complaints of aggressions by armed settlers in indigenous territories before the Police; however, the complaints were not investigated, much less clarified. And because the violence in indigenous territories continued, on December 21, 2016 human rights defenders from CEJUDHCAN accompanied victims, communal authorities and religious leaders from indigenous communities in filing 49 additional complaints; however, Captain Emilio Molina with chip number 10687, second chief

⁹³ CENIDH condemns death threats against defenders of CEJUDHCAN. CENIDH. March 8, 2017. Available at: <http://www.cenidh.org/noticias/979/>

⁹⁴ Precautionary Measure No. 505-15. Lottie Cunningham regarding Nicaragua (Expansion) June 11, 2017. Available at: <https://www.oas.org/es/cidh/decisiones/pdf/2017/16-17MC505-15-NI.pdf>

⁹⁵ Inter-American Court. Judgment in the Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of March 25, 2017. Series C No. 334. Eleventh operative paragraph and paras. 223 and 224 of the Judgment. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_334_esp.pdf

⁹⁶ See *supra* note 76.

of the National Police Delegation in Waspám, rejected to file the complaints arguing that "*by superior guidance*" he could not receive complaints related to land conflicts in the area.⁹⁷

Likewise, in the case of the attack against the Mayangna Alal community, the National Police declared that they would investigate. After the attack, members of the National Police and BECO from the Nicaraguan Army occupied the community supposedly to protect it, however, members of the community requested their withdrawal because they felt threatened by them. In addition, a few days after the attack the National Police reported: having detained a member of the gang of 80 settlers who attacked Alal, who according to the authorities had a criminal record, had been captured having in his possession weapons of war, ammunition and even marijuana; and therefore, would be placed under the orders of the Public Ministry; however the only one captured was released a few months later without further explanation.⁹⁸

Therefore, the Mayoralties of the municipalities Wiwilí, El Cuá and San José de Bocay of the department of Jinotega, Wiwilí of Nueva Segovia, Waslala, Bonaza, Siuna and Waspám and those members of the Councils and Regional Governments of the RACCN -where the Mayangna and Miskitu indigenous communities are located- were these communities are been systematically attacked since 2015, have omitted their obligation to protect these communities and instead there are constant complaints that they illegally negotiate indigenous lands and protect settlers.

The Human Rights Ombudsman's Office has been a totally absent entity in this process.

Finally, the Ministry of Foreign Affairs of the Republic of Nicaragua, subordinates to the Executive Power of Nicaragua, has been directly informed by the IACHR and the Inter-American Court of the *extreme gravity and urgency*, and of the *irreparable damage to the people* faced by the Miskitu and Mayangna indigenous communities attacked by the settlers, since 2015, without the highest authorities of the Nicaraguan State complied with such measures.⁹⁹

IX. Conclusions and Recommendations

Conclusions

1. Applying the Atrocity Crimes Analysis Framework developed by the Office of the Special Advisor to the United Nations Secretary-General on the Prevention of Genocide and the Responsibility to Protect to the current situation of the Miskitu and Mayangna peoples in the Autonomous Regions of the Caribbean Coast of Nicaragua, we have concluded that

⁹⁷ See *supra* note 26. In APIAN Report 2017, P. 116 and ANNEX III: Tables of National and International Legal Actions (Judicial/Administrative) before the Inter-American System for the Protection of Human Rights of the OAS, IACHR and Inter-American Court, carried out by the Miskitu/CEJUDHCAN and CEJIL Indigenous Peoples in The RACCN.

⁹⁸ See *supra* note 42.

⁹⁹ Cerda, Arlen. Rivera: "Gobierno se lava las manos en violencia contra indígenas". Confidential, January 4, 2017. Available at: <https://confidencial.com.ni/rivera-gobierno-se-lava-las-manos-en-violencia-contra-indigenas/>
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they are most likely victims of "atrocities crimes" with characteristics of crimes against humanity and/or genocide.

2. The *obligation to protect* on the part of the Nicaraguan state requires it to exercise *due diligence against human rights abuses occurring in its territory and/or jurisdiction* by state agents or even *non-state actors*, including *armed groups and private companies*. For its part, the international community must be vigilant in identifying early warnings of the likelihood that events have been initiated that could lead to the commission of international crimes *against humanity and/or genocide* anywhere in the world.
3. Since the Miskitu and Mayangna indigenous communities since 2015 until today are being attacked and its members persecuted: including elders, women, girls and boys who have suffered *threats, kidnappings, sexual violence, torture, forced disappearances, murders etc.*; so the persons members of indigenous communities are being obligated to forced displacement, which has led to the dispossession of their lands and traditional livelihoods. In addition, these indigenous peoples are *protected populations or groups*, which make up a *national, ethnic, racial and religious group*, easily differentiated from the majority of the Nicaraguan population; currently threatened with partial extermination through the threats of systematic attacks by armed settlers who inflict loss of life, cultural, physical, psychosocial and psychological damage.
4. Likewise, the Nicaraguan State is fundamentally responsible for taking appropriate measures to *prevent, investigate, punish and remedy* the violations against the Mayangna and Miskitu indigenous communities; but by omitting its obligation, it *has allowed or tolerated* the serious crimes perpetrated by the settlers. Therefore, the State could be held internationally responsible for human rights abuses committed by non-State actors, for the lack of *due diligence in preventing the violation* or *for the omission* to respond to such violations. In addition, it is pertinent to point out that in cases of *serious violations of international human rights law* through the commission of *atrocities crimes*, these international crimes are not subject to statutes of limitation; and those responsible, the material and intellectual authors of such crimes, in addition to the responsibilities before domestic jurisdictions, may eventually be tried under universal jurisdiction or by international tribunals.

Recommendations

1. The State of Nicaragua must abide by the precautionary and provisional measures granted by the IACHR and the Inter-American Court in favor of the 12 Miskitu and Mayangna indigenous communities attacked by settlers and the measures granted in favor of the human rights defenders of CEJUDHCAN, as well as create the provisions of the judgment of the Inter-American Court in the case Acosta et al. Vs. Nicaragua.
2. The Nicaraguan Army by BECO must immediately dismantle and disarm the armed settlers and protect indigenous individuals and peoples from illegal and violent acts such as the attacks they have been suffering systematically since 2015.

3. The State of Nicaragua must conduct effective, independent and impartial investigations to establish the truth and ensure accountability for the violations and abuses committed, identify, prosecute and adequately punish those allegedly responsible.
4. The State of Nicaragua should allow access to the country by the Special Rapporteur on the Rights of Indigenous Peoples and other Special Mechanisms of the UN Human Rights Council, the OHCHR, and the IACHR to investigate the case of the Miskitu and Mayangna indigenous communities attacked by settlers and seek a solution to the problem, as has been repeatedly requested.
5. The Human Rights Council should monitor the evolution of the situation of the Miskitu and Mayangna Indigenous Peoples under attack and encourage the United Nations General Assembly to do the same.

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ANNEXES

SUMMARY OF INDIGENOUS GIRLS ASSAULTED BY BOSAWAS SETTLERS

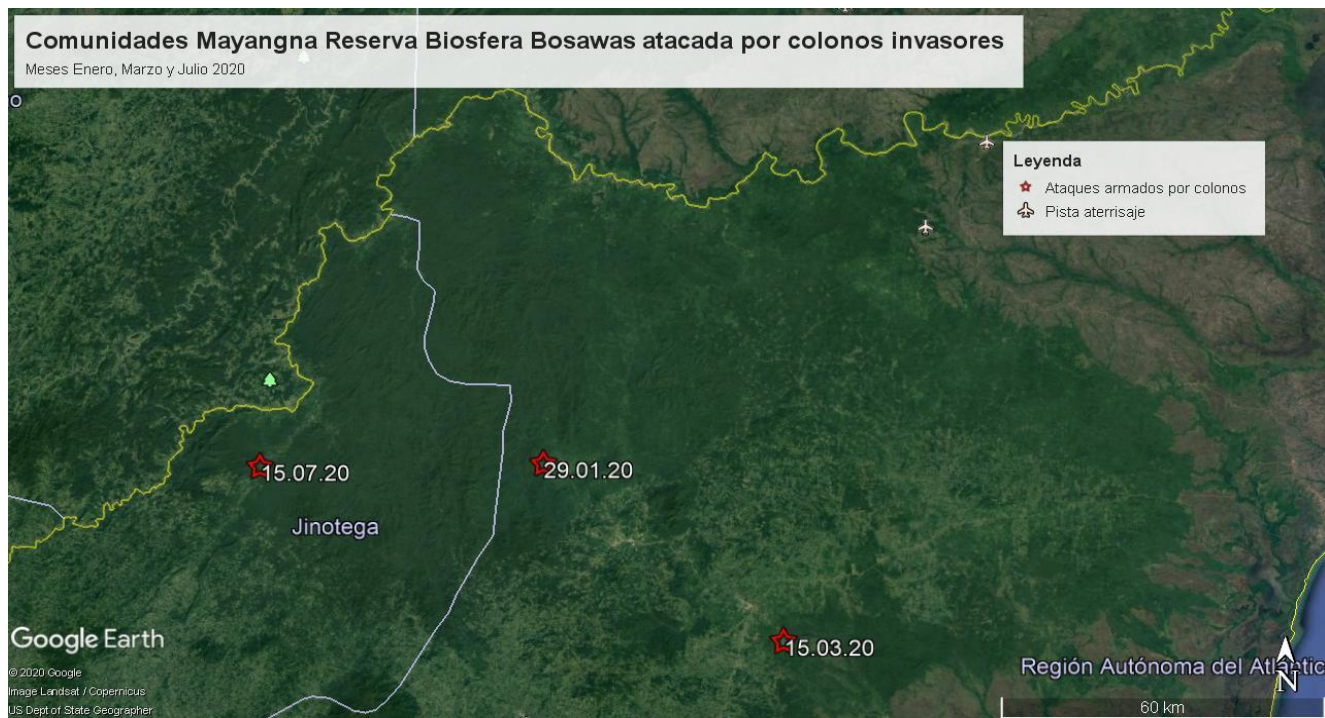
No.	Community/Territory	Name and age of victim	Crime committed by settlers	Date of attack
1	Santa Clara community, Wangki Twi Tasba Raya Wangki territory	Diajaira Lacayo Wilson, 15 years old	Bullet wound passed in the jaw from one side of the face to the other.	February 16, 2020
2	Community of Sagni Laya, Twi Yahbra territory	Maria del Carmen Taylor Ingram, 16 years old	Kidnapping.	July 14, 2020

SUMMARY OF KILLED, INJURED AND ABDUCTED IN THE BOSAWAS INDIGENOUS TERRITORIES IN 2020 AND 2021

No.	Community/Territory	Name and age killed by settlers	Name and age injured and/or kidnapped by settlers	Date of attack
1	The Mískitu Community of Santa Fe, Li Aubra, Territory, Municipality of Waspám.	Bonifacio Dixon Francis, 19 years old.	Jafeth Dixon Francis, 17 years old, wounded during the attack, as a result of the injuries, lost his left hand.	June 14, 2021
2	The Silamwas Community, Mayangna Sauni Arungka Territory		Demetrio Miguel and Arbi Miguel	May 10, 2021
3	Kimakwas Community, Wilú, Mayangna Sauni As Territory (MSAS)		Antonio López Rufus, 17 years old (at risk of having his foot amputated).	March 4, 2021
4	Karah Wilú Community, Mayangna Sauni As Territory (MSAS)		Donald Castillo Felipe, 60 years old, Presino Samuel, 47 years old and Corino Simeon, 44 years old.	January 22, 2021
5	Nawahwas community, Mayangna Sauni Bu Territory	Michael Rivera López 17 years old.		December 6, 2020
6	-Wiwinap River- Musawas Community	Nacilio Macario 43 years old.		November 14, 2020
	Sangni Laya Community of the Twi Yahbra Territory - formerly 10 communities - Municipality of Puerto Cabezas (Mískitu)		Manuel Salvador Hernández González, 47 years old, and Felix Yasser Labonte Rojas, 34 years old, were abducted within 7 hours of each other.	September 21, 2020

7	Community of Sangni Laya of the Twi Yahbra Territory - formerly 10 communities - Municipality of Puerto Cabezas (Miskitu).		Unidentified Miskitu community member, for fear of reprisals, was grazed by a bullet fired by settlers.	September 10, 2020
8	AMAK Community, Mayangna Sauni Bu Territory (MSBU) Municipality of San José de Bocay, Jinotega.	Semeon Silva 26 years old.	Santos Gómez Pérez, 50 years old.	July 10, 2020
9	Community Miskitu of Ibu Tuahka Territory.	Miruiam Andru Flores (mother) Durk Whashington (son) Pedro Pérez.		March 27, 2020
10	Wasakin Community, Tuahka Territory	Neldo Dolores Morales Gómez, 30 years old, Ruben Jacobo "Mencho" Bendlis, 29 years old and Dunis Rodolfo Morales, 28 years old.	Etlerson Johnny Montiel and Ilaiso Saballos Montiel.	March 26, 2020
11	Community of Alal, Mayangna Sauni As Territory (MSAS)	Jarle Samuel Gutiérrez, 20 years old, Amaru Rener Hernández, 24 years old, Cristino López Ortiz, 26 years old and Juan Emilio Devis Gutiérrez, 40 years old.	Marconi Jarquin, 30 years old and Maynor Will Fernandez 27 years old (paraplegic as a result of the attack) without medical assistance.	January 29, 2020

MAPS OF ARMED ATTACKS AGAINST MAYAGNA COMMUNITIES UNTIL 2020



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