

February 9, 2008

Ms. Nathalie Prouvez
Secretary
Committee on the Elimination of Racial Discrimination
UNOG-OHCHR
CH-1211
Geneva 10, Switzerland

Re: Response to Report of Nicaragua (June 21, 2007) on behalf of the Indigenous Community of Awas Tingni (Nicaragua)

Dear Ms. Prouvez:

1. In the present communication, the University of Arizona Indigenous Peoples Law and Policy Program (IPLP Program), on behalf of the Awas Tingni indigenous community in Nicaragua, responds to the Report presented by Nicaragua to the Committee on the Elimination of Racial Discrimination (“Committee”) under Article 9 of the Convention on the Elimination of all forms of Racial Discrimination on June 21, 2007. In addition, the IPLP Program hereby provides an update to its Request for Urgent Action under the Early Warning Procedure dated February 13, 2006, and subsequently updated in June 2006, March 2007, and July 2007. This communication is submitted for consideration by the Committee during its upcoming examination of implementation by Nicaragua of the Convention during its 72nd Session (18 February to 7 March, 2008).
2. We feel that the Committee could play an important role in moving forward the implementation of the landmark decision of the Inter-American Court of Human Rights in the *Awas Tingni v. Nicaragua* case. Accordingly, we also hereby respectfully request that the Committee, under its Urgent Action and Early Warning procedure, offer to send to Nicaragua one or more of the members of the Committee to provide technical or mediation assistance to help the government complete the demarcation and titling of Awas Tingni lands. Alternately, we ask that the Committee recommend that Nicaragua avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights.
3. In its June 2007 Report, Nicaragua rightly stated that Awas Tingni was scheduled to receive its long awaited title on August 9, 2007.¹ However, this date came and went and Awas Tingni was not issued its title. As we noted in our June 2007 communication, the Community has been

¹ Informe presentado por los estados partes conforme al artículo 9 de la Convención, Decimocuarto informe periódico de los Estados Partes que debía presentarse en 2006. Adición: Nicaragua [June 21, 2007] CERD/C/NIC/14, Oct. 15, 2007, at para. 164 [hereinafter “Nicaraguan Report June 2007”].

able to get support for its land demarcation efforts from the Regional Development Council of the Caribbean Coast. It was this same institution that assured Awas Tingni that those families close to the boundary established by the February 2007 Regional Council resolution (which resolved an overlapping land claim between Awas Tingni and neighboring indigenous communities) would not be adversely affected by that resolution. This institution also carried out the first stage of boundary-marking, which was completed on July 18, 2007. Yet the second and final stage of boundary-marking, leading to actual land titling, never took place. This was due to Nicaragua's Land Administration Project's (PRODEP) insistence that Awas Tingni and neighboring Diez Comunidades initiate a new conflict resolution stage to address a new and unsubstantiated overlap claim.² Nevertheless, several government officials, including those within the Regional Development Council, have assured Awas Tingni that they see no basis for the Diez Comunidades claim and that they intend to continue carrying out the February 2007 Resolution. Since then, Awas Tingni has been told that its land title was scheduled to be issued in October 2007, November 2007, and then December 2007. Yet to date Awas Tingni remains without title to its lands.

4. As has been previously stated to the Committee, for six years, Awas Tingni's land titling has suffered serious delays in part due to an overlap claim by a block of three neighboring Miskito Communities, Tasba Raya. Awas Tingni underwent the conflict resolution process established by Law 445 to address this claim. Although this process itself was seriously delayed, it came into a final conclusion with a resolution by the Regional Council of the Northern Atlantic Coast in February 2007. As noted by the government in its June 2007 Report, this Resolution was a significant step in moving forward the titling of Awas Tingni lands.³ It is important to note that the *only* conflict identified by the land demarcation institutions was the Tasba Raya conflict. Nevertheless, following the termination of the conflict resolution stage by the February 2007 Resolution of the Regional Council, the land titling process has suffered a new and unexpected setback due to a dubious land claim asserted by a second block of neighboring Miskito communities, the Diez Comunidades, as we detailed in our June 2007 communication.

5. The same claim of Diez Comunidades was raised by the Nicaraguan State during the 2001 Inter-American Court proceedings.⁴ However, at no point during those proceedings did the State ever demonstrate the existence of any property right held by any other indigenous community or third parties, including the Diez Comunidades, even after the Inter-American Court specifically requested such information.⁵ The Diez Comunidades do have a land title issued in its name from around 1915 under the Harrison-Altamirano Treaty. However the boundary limits of that title do not lie within or even near Awas Tingni territory. Nevertheless, some members of the government, particularly those associated with PRODEP, have given credence to these claims

² In fact, PRODEP has assured the Diez Comunidades leadership that it will not carry out any boundary-marking within the area allegedly claimed by Diez Comunidades. See Letter by Hazel Law, Coordinator of Indigenous Component of PRODEP to Rosa Wilson, President of Bloque Diez Comunidades (July 2, 2007) (on file with legal representatives).

³ Ibid. at para. 162.

⁴ Inter-Am. Ct.H.R., *The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001 (Series C) no. 79, at Testimony of Marco Antonio Centeno Caffarena, Director of the Office of Rural Titling of Nicaragua. The Awas Tingni decision is available at:

http://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf.

⁵ Ibid. at para. 69.

and have pressured Awas Tingni to initiate yet another conflict resolution stage—despite the fact that the relevant institutions of Law 445 never called for a conflict resolution stage for Diez Comunidades when reviewing all legitimate neighboring land claims.

6. Awas Tingni has maintained that if Diez Comunidades does have a legitimate claim, it should be made in writing, and should formally request that the conflict resolution phase under Law 445 be reinitiated. No formal notice of the existence of a territorial overlap or of a request for initiating another conflict resolution stage has ever been made by Diez Comunidades or any land demarcation institution. Still, representatives of PRODEP have insisted that Awas Tingni hold conflict resolution sessions with the Diez Comunidades. In order to comply with these requests, Awas Tingni held several such sessions in June 2007. During the meetings, Diez Comunidades was still unable to present any evidence at all to demonstrate property rights within the territory claimed by Awas Tingni.

7. The State asserts in its June 2007 Report that Awas Tingni is only focused on obtaining its land title that it is unable to perceive the profound social implications of its land claim on these other “third party property rights.”⁶ The Awas Tingni community would like to emphasize to the Committee that it is aware that the demarcation and titling process has fomented social tensions and catalyzed boundary conflicts among neighboring Mayangna and Miskito communities, and that these issues should be addressed. However, rather than facilitate a spirit of cooperation between the communities, the purported conflict resolution process with Diez Comunidades has rather seemed to fodder inter-ethnic tensions and suspicions. The conflict resolution efforts have been carried out in a completely *ad hoc* fashion, and have not attempted to clarify what is at the root of the Diez Comunidades’s ambiguous land claim. Members of the Awas Tingni community have insisted that there are no personal problems between individual members of Awas Tingni and Diez Comunidades. However, the actions of the government representatives, which have helped to set the leaders of the respective communities against each other to assert their rights to land over the same area, have had the effect of feeding into any latent or existing hostilities.

8. Nicaragua has in fact enacted a legislative measure providing for indigenous land demarcation, as ordered by the Court (Law 445), as it states in its June 2007 Report.⁷ Nevertheless, the institutions created by Law 445 continue to suffer from systemic deficiencies due to the lack of sufficient monetary and technical support provided by the Nicaragua government.⁸ In fact, the National Commission for Demarcation and Titling (CONADETI), which the State often mentions in its Report,⁹ has continued to be inoperative and notably absent from the latest land demarcation efforts of Awas Tingni, seemingly due to what seems to be entrenched institutional dysfunction. In addition, Nicaragua claims that it is complying with the Inter-American Court ruling by providing funds to the Regional Development Council of the Caribbean Coast and PRODEP, yet it is precisely PRODEP that has stated to the Community that

⁶ Ibid. at para. 160.

⁷ Nicaraguan Report, June 2007, at para. 157.

⁸ See Urgent Action Request submitted to CERD: Petición de Acción Urgente bajo el Procedimiento de Alerta Temprana al Comité para la Eliminación de la Discriminación Racial, Presentada por el Programa de Derechos y Políticas Indígenas de la Facultad de Derecho de la Universidad de Arizona en representación de la Comunidad Indígena Mayangna de Awas Tingni (February 13, 2006), at paras. 18-23.

⁹ Nicaraguan Report June 2007, at paras. 158, 160, 163, 169.

it will not disburse any funds for the completion of on-the ground boundary-marking until Awas Tingni sits down to negotiate with Diez Comunidades.¹⁰ However, as mentioned, these supposed negotiation sessions have been carried out in an uncoordinated fashion; and the leaders of both Awas Tingni and Diez Comunidades have been left alone to assert their claims against each other in a totally unstructured and unproductive conflict resolution setting.

9. Thus, the most fundamental aspect of the Inter-American Court's decision—the demarcation and titling of Awas Tingni lands—has yet to be completed. Awas Tingni has complied with all the requirements of Law 445 in order to obtain legal recognition of its ancestral title. The first stage of boundary-marking was completed on July 18, 2007. The second and last stage of the boundary-marking, however, has not yet been initiated and the Community has not received its land title. At first, the Community was told that this was due to financial problems within PRODEP, which were to be resolved as of late August 2007. However, to date, there has been no advancement at all in the demarcation process. The demarcation and titling process of Awas Tingni lands has therefore come to a standstill. It appears that the principal cause for this stagnation is a lack of institutional capacity and coordination necessary to carry out demarcation and titling of Awas Tingni lands, though the Diez Comunidades claim has also been used as a pretext for delaying this process. What should be a fairly simple procedure (laying physical posts along Awas Tingni's boundary and issuing a title over that area) at times seems to be as much a distant probability as it was before the 2001 judgment of the Inter-American Court.

10. In the meantime, the Awas Tingni community continues to suffer violations of its human and territorial rights, as detailed in the February 2006 Request for Urgent Action under the Early Warning Procedure, June 2006 Addendum, and March and June 2007 updates submitted by the IPLP Program. At no time has the threat of third party incursions ceased to be a serious and urgent situation. Therefore, the IPLP would like to reiterate to the Committee the gravity of the threat represented by ongoing third party logging and colonist presence in Awas Tingni territory which merit urgent action under the Committee's Early Warning Procedure.

11. Certainly, the land titling situation is more complicated in the aftermath of Hurricane Felix, which severely impacted the Northern Atlantic Coast Region on September 2007 and in the case of Awas Tingni, reduced almost all of its ancestral rainforest to an impenetrable mass of tree trunks and sticks. In a matter of hours, the Community lost the forest and resources that it has fought for years to protect. The hurricane also destroyed the majority of the posts set during the first phase of the boundary-marking process in July 2007. The Awas Tingni members fear that third parties will take advantage of the chaotic situation to further exploit resources within Awas Tingni lands; and in fact, various logging companies have approached the community members with proposals to extract the valuable fallen hardwood, but which are of questionable benefit to the Community. In addition, non-indigenous settlers have continued to make incursions into Awas Tingni lands and in one case destroyed the Community's own boundary markers after Hurricane Felix, chopping it with a machete. Demarcation of the boundary and issuance of the land title will be essential to protecting the Awas Tingni traditional territory from these illegal incursions. The Awas Tingni community understands that the destruction caused by the hurricane has affected many indigenous communities in the Atlantic Coast and is that the

¹⁰ Personal communication from Hazel Law, Director of PRODEP Indigenous Component to Awas Tingni leaders and Leonardo Alvarado (IPLP) (August 2007).

Regional Council has considerable work to do to rebuild the disaster zones. However, it also knows that the reconstruction efforts can take place simultaneously with efforts to secure the land tenure of the affected indigenous communities.

12. Therefore, there is significant coordination and cooperation with Nicaraguan government institutions that needs to take place in order the advance the demarcation and titling of Awas Tingni lands. These efforts are also necessary to rebuild the relationships between the Mayangna Awas Tingni community and neighboring Miskito communities. The Awas Tingni community hopes that the Committee will be able to offer its good offices to assist in this regard.

13. In light of these concerns, the Awas Tingni community hereby reiterates its request that the Committee take the following action under the **Urgent Action procedure** with respect to the Awas Tingni situation:

- Offer to send to Nicaragua one or more of the members of the Committee in order provide technical or mediation assistance to the relevant Nicaraguan institutions to complete the demarcation and titling of Awas Tingni lands; or
- Recommend that Nicaragua avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights.

14. Additionally, the Awas Tingni Community requests that the Committee make the following recommendations in its **concluding observations to Nicaragua**:

- Immediately set a calendar with fixed dates to delimit, demarcate, and title Awas Tingni's lands;
- Immediately facilitate the resolution of any formally-presented boundary conflicts with neighboring communities, through a fair procedure that fully respects indigenous land rights based on traditional use and occupancy;
- Prevent, halt, investigate, and sanction all illegal third party activities in Awas Tingni territory, including illegal land sales, settlement, and logging; and
- Continue to foster a constructive and good faith dialogue with the Awas Tingni community in order to formulate solutions to the problems and concerns that arise in the process of delimitation, demarcation and titling of Awas Tingni territory.

Please do not hesitate to contact us if you have any further questions.

Submitted respectfully by,



Leonardo Alvarado



Maia Campbell

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Indigenous Peoples Law and Policy Program
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