



1-1-2016

Nicaragua's Canal Initiative Endangers the Rights of Indigenous and Afro-Caribbean Communities

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Recommended Citation

Thomas M. Antkowiak, *Nicaragua's Canal Initiative Endangers the Rights of Indigenous and Afro-Caribbean Communities*, 47 U. PAC. L. REV. 233 (2017).

Available at: <https://scholarlycommons.pacific.edu/uoplawreview/vol47/iss2/11>

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Nicaragua’s Canal Initiative Endangers the Rights of Indigenous and Afro-Caribbean Communities

*Thomas M. Antkowiak**

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I. INTRODUCTION

This essay examines the trailblazing approach to communal property in the Inter-American human rights system, and then applies that legal framework to the distressing Nicaraguan initiative to construct a trans-oceanic canal. The estimated \$50 billion megaproject started initial development in December of 2014, and seriously threatens the lands and livelihoods of the indigenous and Afro-Caribbean communities in its path. I conclude that, if Nicaragua proceeds with the Canal and several of its associated projects, the State will violate the communities’ property rights, among other rights and freedoms. As a result, Nicaragua, in accord with its international legal obligations, should halt the Canal initiative until it secures the free, prior, and informed consent of the affected populations.

II. THE RIGHT TO PROPERTY IN THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The American Convention on Human Rights (American Convention) is the Western Hemisphere’s primary human rights treaty. It has been acceded to or ratified by twenty-three States in the Americas, including Nicaragua.¹ The Convention’s Article 21 provides, in part:

* Associate Professor of Law, Seattle University School of Law. My International Human Rights Clinic has joined with indigenous rights advocates in Nicaragua to challenge the Canal before the Inter-American Commission on Human Rights. Note that brief parts of this essay were adapted from my upcoming book with Alejandra Gonza, *THE AMERICAN CONVENTION ON HUMAN RIGHTS: ESSENTIAL RIGHTS* (forthcoming 2016).

1. American Convention on Human Rights, Signatories and Ratifications, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention].

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1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.²

While Article 21 was very contested and almost eliminated during the Convention's drafting process, the provision endured and now stands as one of the strongest and most detailed expressions of an international right to property.

Due to the ideological disputes of the Cold War, neither the International Covenant on Civil and Political Rights, nor the International Covenant on Economic, Social, and Cultural Rights provide for the right to property.³ The First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms formulates a more constrained right than Article 21 of the American Convention.⁴ Like the European Protocol, both the African⁵ and Arab Charters⁶ establish property rights—to a greater or lesser degree—but they all omit an express right to compensation when the owner is deprived of property.

Particularly in this sense, then, the American Convention provides a stronger formulation of the right. Among other protections, it requires “just compensation” upon deprivation of property.⁷ The EU Charter of Fundamental

2. *Id.*

3. Of course, the Universal Declaration of Human Rights established the right to property. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

4. Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1, Mar. 20, 1952, 213 U.N.T.S. 262.

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Id.

5. The African Charter establishes: “The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.” African Charter on Human and Peoples’ Rights, art. 14, June 27, 1981, 21 I.L.M. 58.

6. “Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.” Arab Charter on Human Rights, art. 31, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *available at* http://www.cartercenter.org/resources/pdfs/peace/democracy/des/revise_Arab_charter_human_rights.pdf (on file with *The University of the Pacific Law Review*).

7. American Convention, *supra* note 1, at art. 21.

Rights takes this guarantee a step further: if one is “deprived of his or her possessions,” then “fair compensation” must be paid “in good time.”⁸

The Inter-American Court of Human Rights renders the authoritative interpretations of the American Convention. It has taken Article 21’s broad terms and developed an expansive notion of property, including communal and private property.⁹ The Inter-American concept encompasses tangible and intangible property: “all movable and immovable property, corporeal and incorporeal elements, and any other immaterial object that may have a value.”¹⁰

The Inter-American system has seen increasing numbers of cases where States and private companies have sought to extract natural resources or develop commercial projects on communal lands.¹¹ In 2001, the Court issued its first judgment on indigenous land rights, *Mayagna (Sumo) Awas Tingni v. Nicaragua*.¹² *Awas Tingni*’s ruling on an indigenous right to communal property was a first for an international human rights court.¹³ Beginning with this judgment, the Court recognized “the unique and enduring ties that bind indigenous communities to their ancestral territory.”¹⁴ According to the Court,

8. Charter of Fundamental Rights of the European Union, art. 17, Mar. 30, 2010, 2010 O.J. (C 83).

9. According to the Inter-American Court, corporations possess property rights, but these rights are only relevant to the extent that they “encompass” human rights, such as a shareholder’s right to property. *See, e.g., Perozo v. Venezuela*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 195, ¶¶ 399–400 (Jan. 28, 2009).

10. *E.g., Memoli v. Argentina*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 265, ¶ 170 (Aug. 22, 2013); *Ivcher-Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 122 (Feb. 6, 2001).

11. In addition to the judgments discussed, the Inter-American Commission on Human Rights has dealt with such cases on several occasions. For example, in 2011, the Commission ordered Brazil to halt construction on the Belo Monte hydroelectric power plant, a large initiative that endangered indigenous communities of the Xingu River Basin in Pará, Brazil. Precautionary Measure 382/10: Indigenous Communities of the Xingu River Basin, Pará, Brazil, Inter-Am. Comm’n H.R., Annual Report, OEA/Ser.L/V/II., doc. 69 (2011), available at www.oas.org/en/iachr/decisions/precautionary.asp (on file with *The University of the Pacific Law Review*). For more Commission jurisprudence on the topic, see Indigenous and Tribal Peoples’ Rights over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System, Inter-Am. Comm’n H.R., OEA/Ser.L/V/II., doc. 56/09 ¶ 74 (2009), available at <http://www.oas.org/en/iachr/indigenous/docs/pdf/AncestralLands.pdf> (on file with *The University of the Pacific Law Review*).

12. *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, (Aug. 31, 2001).

13. The African Human Rights Courts were not yet in operation, and the European Court of Human Rights still has not rendered a comparable interpretation. The non-binding Human Rights Committee, for its part, does not even have competence to find violations of the right to property, because property was omitted from the International Covenant on Civil and Political Rights. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171. For more commentary on *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, see S. James Anaya & Maia S. Campbell, *Gaining Legal Recognition of Indigenous Land Rights: The Story of the Awas Tingni Case in Nicaragua*, in HUMAN RIGHTS ADVOCACY STORIES 117 (Deena R. Hurwitz & Margaret L. Satterthwaite eds., 2009); S. James Anaya & Claudio Grossman, *The Case of Awas Tingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples*, 19 ARIZ. J. INT’L & COMP. L. 1 (2002).

14. *Moiwana Community v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 131 (June 15, 2005); *Mayagna (Sumo)*, *supra* note 12, at ¶ 149.

such a people's relationship to traditional lands should be understood as "the fundamental basis of its culture, spiritual life, integrity, and economic survival."¹⁵

In *Moiwana Community v. Suriname*, the Court decided that the N'djuka community, a non-native population of African descent, possessed a similar relationship with its lands.¹⁶ Although the community had only lived in Moiwana Village for a century, the Court found a significant spiritual and cultural nexus to the territory—describing the connection as "all-encompassing."¹⁷ Consequently, the Court concluded that, despite lacking an official title to its lands, the community's ownership was nevertheless protected by Article 21.

In the Inter-American system, then, if communities have occupied their lands "in accordance with customary practices," they are generally entitled to official recognition of their ownership rights.¹⁸ The Court is receptive to such claims of "traditional" occupation. By requiring communities to follow a "cultural script," however, the Court's approach limits the autonomy of indigenous peoples and their capacity for change.¹⁹ Petitioners have satisfied the Court's standard by submitting the testimony of community members themselves, as well as reports by anthropologists and other experts.

Once this standard is deemed fulfilled, the Court orders States, where applicable, to delimit, demarcate, and grant collective title over the territories in question within a reasonable amount of time.²⁰ When necessary, States are required to amend relevant domestic legislation and policy in order to ensure

15. Mayagna (Sumo), *supra* note 12, at ¶ 149.

16. Moiwana Community, *supra* note 14, at ¶ 133. For other Court judgments protecting the collective land rights of Afro-Latin populations, see e.g. Afro-Descendant Communities Displaced From the Cacarica River Basin (Operation Genesis) v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 270, ¶ 353 (Nov. 20, 2013); Saramaka People v. Suriname, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172, ¶ 86 (Nov. 28, 2007).

17. Saramaka People, *supra* note 16, at ¶ 86.

18. E.g., Moiwana Community, *supra* note 14, at ¶13, 1; Xákmok Kásek Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 214, ¶ 93 (Aug. 24, 2010). In *Xákmok Kásek Indigenous Community*, the Court utilized four factors to assess the "traditional character" of the lands in question: "a) the Community's occupation and trajectory of the land and its surrounding areas; b) the toponymy of the area; c) technical studies prepared on the matter, and d) the alleged suitability of the land being claimed." *Id.*

19. See RICHARD PRICE, RAINFOREST WARRIORS: HUMAN RIGHTS ON TRIAL 238–39 (2011) (finding *Saramaka's* requirement that natural resources must be "traditionally used" for Article 21 protections to be "disturbingly essentialist"); Ariel E. Dulitzky, *When Afro-Descendants Became "Tribal Peoples": The Inter-American Human Rights System and Rural Black Communities*, 15 UCLA J. INT'L L. & FOREIGN AFF. 29, 42 (2010) (explaining that to obtain property protection, groups are pressured to show the Court an "essentialized and frozen culture"); KAREN ENGLE, THE ELUSIVE PROMISE OF INDIGENOUS DEVELOPMENT: RIGHTS, CULTURE, STRATEGY 162–82 (2010).

20. See, e.g., Mayagna (Sumo), *supra* note 12, at ¶ 173; Kuna Indigenous People of Madungandi and Embera Indigenous People of Bayano and their Members v. Panama, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 284, ¶ 117, 134, 232 (Oct. 14, 2014).

such communal rights to land.²¹ Until these measures are adopted, the Court often forbids States, “or third parties acting with [their] acquiescence or tolerance,” from engaging in acts that would affect the ancestral lands in any way.²²

In these cases, the Court has required restrictions on property rights to be: 1) previously established by law; 2) necessary; 3) proportional; and 4) with the aim of achieving a legitimate objective in a democratic society.²³ Furthermore, the measure cannot constitute “a denial of [the community’s] traditions and customs in a way that endangers the very survival of the group and of its members.”²⁴

According to *Saramaka People v. Suriname*, in order to ensure that concessions do not comprise a “denial of their traditions and customs,” States must comply with three “safeguards.”²⁵ First, the State must ensure “the effective participation of the [community], in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan” within the territory.²⁶ Second, the State must guarantee that the community will receive “a reasonable benefit” from any such project.²⁷ Third, the State must prevent concessions “unless and until independent and technically capable entities, with the State’s supervision, perform a prior environmental and social impact assessment.”²⁸

To ensure “effective” and “meaningful” participation, the Court has held that States have “a duty to actively consult” with the community, which requires “good-faith” efforts starting at the “early stages” of a development plan.²⁹ Any possible environmental or health risks must be communicated promptly to the community.³⁰ The consultations “should take account” of “traditional methods of

21. See, e.g., *Mayagna (Sumo)*, *supra* note 12, at ¶ 173; *Saramaka People*, *supra* note 16, at ¶ 214. When domestic legislation and procedures fail to ensure these rights, the Court may also declare a violation of Article 2 (Domestic Legal Effects) of the American Convention. See, e.g., *Mayagna (Sumo)*, *supra* note 12, at ¶ 155; *Kuna Indigenous People*, *supra* note 20, at ¶ 157.

22. E.g., *Mayagna (Sumo)*, *supra* note 12, at ¶ 173; *Kuna Indigenous People*, *supra* note 20, at ¶ 232.

23. See, e.g., *Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 125, ¶ 144 (June 17, 2005); *Saramaka People v. Suriname*, *supra* note 16, at ¶ 127.

24. *Saramaka People*, *supra* 16, at ¶ 128. Note that the Court has emphasized that “the term ‘survival’ in this context signifies much more than physical survival.” It refers to the community’s ability to maintain its traditional way of life and its special relationship with its territory. *Saramaka People v. Suriname*, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 185, ¶ 37 (Aug. 12, 2008).

25. *Saramaka People*, *supra* note 16, at ¶ 128.

26. *Id.* at ¶ 129.

27. *Id.*

28. *Id.* In its August 2008 judgment interpreting the *Saramaka* decision, the Court stated that the studies must “conform to the relevant international standards and best practices,” such as the Akwé:Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments. *Saramaka People v. Suriname*, Interpretation of the Judgment, *supra* note 24, at ¶ 41.

29. *Saramaka People*, *supra* note 16, at ¶ 133.

30. *Id.*

decision-making;" for example, it is the indigenous community, not the State, who must decide which person or persons will represent the community in the process.³¹

While all consultations must have "the objective of reaching an agreement," the Court only requires States to obtain consent in certain circumstances.³² With regard to "large-scale development or investment projects that would have a major impact" within indigenous territory, States have "a duty not only to consult" with the affected community, "but also to obtain [its] free, prior, and informed consent [FPIC], according to [its] customs and traditions."³³ The Court alternately described such projects as "major development or investment plans that may have a profound impact on the property rights of [the community] to a large part of their territory."³⁴

Saramaka's standard on FPIC was at the vanguard of international law,³⁵ and has proven very influential for international human rights institutions, such as the UN Human Rights Committee³⁶ and the African Commission on Human and Peoples' Rights.³⁷ The Court's framework to protect indigenous lands and resources is far from perfect,³⁸ of course, and even consent has its limits.³⁹

31. *Id.* In addition, in the subsequent judgment, *Sarayaku v. Ecuador*, the Court expanded the applicability of consultation rights, extending them to "any administrative and legislative measures that may affect [indigenous and tribal] rights." *Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment Inter-Am. Ct. H.R. (ser. C) No. 245, ¶ 166 (June 27, 2012)*. The *Sarayaku* Court even regarded the right to consultation as a "general principle of international law." *Id.* at ¶ 164.

32. *Kichwa Indigenous People, supra* note 31.

33. *Id.* at ¶ 134 (emphasis added).

34. *Id.* at ¶ 137.

35. The United Nations Declaration on the Rights of Indigenous Peoples established consent as the "objective" of consultations, but only expressly required consent in a couple of drastic scenarios: when the project will result in a community's "relocation" from its traditional lands, and in situations involving the storage or disposal of toxic waste within territories. United Nations Declaration on the Rights of Indigenous Peoples, art. 10, 29(2) U.N. Doc. A/61/L.67 Sept. 13, 2007.

36. See *Poma Poma v. Peru, Comm'n No. 1457/2006*, U.N. Human Rights Committee, ¶7.6, U.N. Doc. CCPR/C/95/D/1457/ (2009) (holding, in part: "The Committee considers that participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community").

37. See African Comm'n on Human and Peoples' Rights, *Resolution on a Human Rights-Based Approach to Natural Resources Governance*, 51st Sess., Res. 224 (2012), available at <http://www.achpr.org/sessions/51st/resolutions/224> ("[A]ll necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance"); *Ctr. for Minority Rights Dev. (Kenya) v. Kenya, Afr. Comm'n on Human & Peoples' Rights*, No. 276/2003, para. 291 (Feb. 4, 2010), available at http://www.achpr.org/files/sessions/46th/communications/276.03/achpr46_276_03_eng.pdf (on file with *The University of the Pacific Law Review*) (holding that with respect to "any development or investment projects that would have a major impact within the Endorois territory, the State has a duty not only to consult with the community, but also to obtain their free, prior, and informed consent, according to their customs and traditions").

38. See Thomas M. Antkowiak, *Rights, Resources, and Rhetoric: Indigenous Peoples and the Inter-American Court*, 35 U. PA. J. INT'L L. 113, 170 (2013) (explaining how there are many opportunities for States to exploit the Court's safeguards).

Nevertheless, FPIC is an important means to safeguard indigenous rights, and it clearly must apply to the Nicaraguan Canal initiative.

III. PLANS FOR THE CANAL AND NICARAGUA'S INTERNATIONAL LEGAL OBLIGATIONS

As stated above, Nicaragua ratified the American Convention; further, it accepted the Court's jurisdiction and must follow the Tribunal's authoritative interpretations of Article 21. The bewildering scale of the megaproject easily meets the Court's FPIC standard: "large-scale development or investment projects that would have a major impact" on indigenous lands.⁴⁰ As a result, the affected communities must provide their free, prior, and informed consent before the initiative can proceed.

In 2013, President Daniel Ortega pushed a bill through Congress, with little debate and no bidding process, which granted a fifty-year, renewable concession to Wang Jing and his corporation, the Hong Kong Nicaragua Canal Development Investment Company (HKND).⁴¹ The Canal, according to HKND, will be three times as long (178 miles) and almost twice as deep (ninety-two feet) as the Panama Canal.⁴² HKND also intends to build new seaports, railways, highways, an oil pipeline, and tourist resorts, among other developments.⁴³

Ortega's government granted HKND powers to expropriate land along the planned route, which could affect thousands of Nicaraguan property owners.⁴⁴ A significant portion of the announced route intrudes upon the communal lands of indigenous and Afro-Caribbean communities in Nicaragua.⁴⁵ This includes the autonomous territories of the Creoles and the indigenous Sumo and Rama groups. The displacement could cause dire social, cultural, and economic consequences for the communities. For example, if the Rama people of

39. For example, a small-scale operation that destroys a sacred site could devastate a community, yet it would not likely require consent by the Court. See Jo Pasqualucci, *International Indigenous Land Rights: A Critique of the Jurisprudence of the Inter-American Court of Human Rights in Light of the United Nations Declaration on the Rights of Indigenous Peoples*, 27 WIS. INT'L L.J. 51, 98 (2009).

40. Saramaka People, *supra* note 16, at ¶ 134.

41. See, e.g., Jon Lee Anderson, *Breaking Ground on the Nicaragua Canal*, NEW YORKER (Jan. 2, 2015), available at <http://www.newyorker.com/news/news-desk/breaking-ground-nicaragua-canal> (on file with *The University of the Pacific Law Review*); Chris Kraul, *Nicaragua Canal: A Giant Project with Huge Environmental Costs*, YALE ENV'T 360 (May 5, 2015), http://e360.yale.edu/feature/nicaragua_canal_a_giant_project_with_huge_environmental_costs/2871 (on file with *The University of the Pacific Law Review*).

42. See, e.g., Jonathan Watts, *Land of Opportunity—and Fear—Along Route of Nicaragua's Giant New Canal*, GUARDIAN (Jan. 20, 2015), available at <http://www.theguardian.com/world/2015/jan/20/sp-nicaragua-canal-land-opportunity-fear-route> (on file with *The University of the Pacific Law Review*).

43. See Anderson, *supra* note 41; HKND *Entrega Estudio de Impacto Ambiental y Social*, LA PRENSA (June 1, 2015), <http://www.laprensa.com.ni/2015/06/01/nacionales/1842373-hknd-entrega-estudio-de-impacto-ambiental-y-social> (on file with *The University of the Pacific Law Review*).

44. *Id.*

45. Advocates have estimated that fifty-two percent of the announced route intrudes upon the communal lands of indigenous and Afro-Caribbean communities.

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Nicaragua—the last speakers of the Rama language—are dispersed, their language could be silenced forever.⁴⁶

In addition, scientists and environmental experts have expressed alarm about the megaproject's threat to nature and wildlife. The planned route slices through wetlands, nature reserves, and rainforests. Lake Nicaragua, Central America's largest body of freshwater, faces particular danger: one third of the Canal could traverse the lake, which would need to be dredged extensively.⁴⁷ The digging could contaminate the water—a key source of drinking water for the country—and threaten indigenous fish and other species.⁴⁸

Biologists Jorge Huete-Pérez and Axel Meyer wrote that the Canal would cause nothing less than “an environmental disaster in Nicaragua and beyond.”⁴⁹ They stated that the project would likely “destroy around 400,000 hectares of rainforests and wetlands,” including “some of the most fragile, pristine and scientifically important marine, terrestrial and lacustrine ecosystems in Central America.”⁵⁰

Some communities that rely on these territories for their livelihood have protested that their consent was never sought for the Canal—nor were they ever “actively consulted in good faith,” as required by international law.⁵¹ To the contrary, HKND delegations have crossed into communal lands, and left signposts and other markings of the Canal's planned route, without any explanation at all.⁵² In other cases, information was hastily presented without an opportunity for meaningful exchange; there are also reports that Ortega's government has attempted to coerce or bribe certain community members to obtain their acquiescence.⁵³

Finally, as held in *Saramaka People*, States cannot grant concessions until environmental and social impacts have been fully evaluated.⁵⁴ HKND hired the firm Environmental Resources Management (ERM) to conduct impact assessments; on May 31, 2015, HKND delivered the ERM report to the

46. See Kate Kilpatrick, *Canal 'Will Destroy We,'* AL JAZEERA AMERICA (Apr. 9, 2015), <http://projects.aljazeera.com/2015/04/nicaragua-canal/displaced.html> (on file with *The University of the Pacific Law Review*).

47. Kraul, *supra* note 41; *Scientists Question Rush to Build Nicaragua Canal*, PHYS.ORG (Mar. 4, 2015), <http://phys.org/news/2015-03-scientists-nicaragua-canal.html> (on file with *The University of the Pacific Law Review*).

48. Kraul, *supra* note 41.

49. Jorge Huete-Pérez & Axel Meyer, *Conservation: Nicaragua Canal Could Wreak Environmental Ruin*, NATURE INT'L WEEKLY J. SCI. (Feb. 19, 2014), <http://www.nature.com/news/conservation-nicaragua-canal-could-wreak-environmental-ruin-1.14721>. Huete-Pérez is a past president of the Nicaraguan Academy of Sciences. *Id.*

50. *Id.*

51. *Saramaka People*, *supra* note 16, at ¶ 133.

52. Kilpatrick, *supra* note 46.

53. *Id.*; see also Roy Moncada, *Indígenas de Nicaragua Resisten Presión del Gobierno por el Canal*, LA PRENSA (Feb. 8, 2016), <http://www.laprensa.com.ni/2016/02/08/nacionales/1982372-indigenas-nicaragua-resisten-presion-del-gobierno-canal> (on file with *The University of the Pacific Law Review*).

54. *Saramaka People*, *supra* note 16, at ¶ 129.

Nicaraguan government.⁵⁵ In this way, Nicaragua granted the full concession and allowed nearly six months of work on the megaproject before the completion of any substantial impact studies.⁵⁶

IV. CONCLUSION

All potential impacts and benefits resulting from the Canal initiative must be fully discussed with the owners of these communal lands—following the above Inter-American parameters closely. If the communities decide to reject the proposal, it is their right to do so under Article 21 of the American Convention, in recognition of their distinctive relationship to their territories and resources. To conclude, Nicaragua is the poorest nation in the Americas, after Haiti. Clearly, Ortega's government must pursue opportunities to reduce poverty and strengthen the national economy. However, it cannot do so without fully democratic processes, inclusive multicultural policies, and a strict adherence to its international and national legal obligations.

55. *HKND Entrega a Nicaragua el Estudio de Impacto Ambiental del Gran Canal*, EL NUEVO DIARIO (June 1, 2015), <http://www.elnuevodiario.com.ni/nacionales/361307-hknd-entrega-nicaragua-impacto-ambient-al-gran-cana/> (on file with *The University of the Pacific Law Review*).

56. Of course, more objections could be made against the recent studies: they were finished too quickly and they lacked indigenous/Afro-Caribbean participation, among others.