

Printed in MultiGrafic
Telefax: 249 4797
500 ejemplares
Firts Edición
January, 2006
Managua, Nicaragua



The Center for Justice and Human Rights of the Atlantic Coast of Nicaragua, CEJUDHCAN, is a Non-Governmental Organization, apolitical, non-profit and of a humanitarian character, dedicated to the promotion and defense of Human Rights with emphasis on Territorial Rights.

OUR VISION

That the indigenous peoples and the ethnic communities of the Atlantic Coast of Nicaragua have access to justice to defend their territorial rights, according to their customary law, and to achieve social and environmental justice

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FINANCIAL ASPECTS

With what financing will the demarcation task be done?

To execute the present law, the “National Fund for Demarcation and Legalization of Communal Lands” has been created, which will be administrated by CONADETI. This will be done under the supervision of the Ministry for Treasury and Public Credit through the OT.

CONCLUSION

Law No. 445 is of great importance in these processes and in the organization of the Indigenous Peoples and Ethnic Communities, because it will permit traditional people to continue their ancestral practices. It could be stated that even though the actions and thoughts are focused on a communal level, it is the fundamental basis to outline the contradictions actually existing.

Both communal and regional authorities play an important role in the process of demarcation and titling, because people have full and active participation. In the past, the State imposed borders between the indigenous and so-called national lands. It is necessary to give importance to the ideological, philosophical and political dimensions established by Law No. 445 as a Regime for the Communal Property of Indigenous People.

THE DIAGNOSIS REQUIRES AN EXPLANATION OF:

The petitioner community's or communities' historical background.

The demographical, social, economical and cultural characteristics of the petitioner community or communities.

The traditional forms of management, usage and tenancy of the requested area.

The name of the indigenous and ethnical communities and other entities or persons that occupy land bordering the requested area

The eventual conflicts of the petitioner community or communities with nearby communities or third parties.



ACKNOWLEDGMENTS

The publication of this booklet has been made possible thanks to the support of **Novib-Holand** and **Global Rights**. Together they collaborated to make a publication that would be easier for the people to understand and would provide them with more accessible information concerning Law No. 445, the “Communal Property Regime Law”.

For this reason, the **Center for Justice and Human Rights of the Atlantic Coast of Nicaragua** gratefully acknowledges the support offered for this purpose. Undoubtedly, it will permit us to continue working with our communities, so that they can participate in these activities and serve as messengers to other people encountered in their daily lives. We are sure that this material will serve as a guide for all of our people, because it is a material historical vindication for the Atlantic Coast people.

THE FIVE STAGES OF THE TITLING PROCESS

- ❑ Presentation of the application to the CIDT
- ❑ Conflict resolution
- ❑ Measuring and demarcation
- ❑ Titling by CONADETI
- ❑ Sanitation with OTR technical support

TECHINICAL SUPPORT FOR THE COMMUNITIES

Who will support the communities throughout this process of demarcation and titling?

They can count on the technical support of the Regional Council, but they can also ask for support from other organizations that work on territorial rights. This technical support is not necessarily material, but it can be in terms of how to implement the mechanisms and procedures related to Law No. 443



ve a land reform title defective in form and substance, such titles have no validity. However, the government shall compensate the third parties, and in both cases the third parties would have to abandon or leave the land. Nevertheless, if they wish to remain on the land, they would have to negotiate a land lease with the community. On the other hand, third parties that have INRA and IAN titles issued before 1987 have the right to remain on the communal land, but they cannot sell it, they only have the right to sell the growths from the land.

It is worthwhile to note that the Rural Land Titling Office (COTR) carries out this stage, but they always have to do this in coordination with the concerned community.



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4. TITLING

The CONADETI will issue the title within 45 days, and the title of the property must be inscribed, for free, in the respective public property office.

It is important to register the title to legitimize it, because by registering a title, the State recognizes the ownership of the indigenous peoples and ethnic communities over their lands. This is the main subject of Law No. 445.

Once they have registered the title, the communities achieve legal security over their lands.

5. SANITIZING

After the community has obtained their title, they can begin the process of sanitizing their land together with the third parties occupying their communal land. This activity will be carried out with the technical help of the OTR. For example, if there are third parties that are without title or



CONFLICT RESOLUTION

Once the diagnosis has been presented, if any pending conflicts, inter-communal or with third parties, remain, the Regional Council, through the CIDT, can resolve border problems among the communities once the Territorial Authorities have exhausted their intervention without any result. The Regional Council shall issue a resolution resolving the conflict, which must be ratified by a plenary session of the Regional Council within three months. If a community does not agree with the Regional Council resolution, they can refute it before the Directive Board of the Regional Council.

MEASURING AND DEMARCATION

When the conflict solving stage ends, the Intersectorial Commission for Demarcation and Titling will proceed to delineate and mark the communal lands in a maximum time of twelve months. In case they do not comply, this time can be extended up to six months more. **Article 55** of the law states that the State is responsible for the financing of the measuring and demarcation process; however, the communities can undertake this activity with their own financing and with the support of external cooperation.

INTRODUCTION

This booklet is a popular version of the Communal Property Regime Law for the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers. Law No. 445 contains legalizations and mechanisms for communal property, the organization of local social life and the relationship established between the national state and the Indigenous Peoples and Ethnic Communities of the Nicaraguan Caribbean Coast.

Several historical studies begin with the above focus, specifically centered in the area of Indigenous Peoples and Ethnic Communities of the Nicaraguan Caribbean Coast.

The importance of this publication resides in the communities' participation in the implementation of Law No. 445.

This booklet expresses clearly that the communities must take an active role in selecting their own representatives, given the great importance that the Communal Assemblies have in making decisions. It also discusses registration in the context of elections, community rights to economic benefits, as well as the consulting process.

The booklet clearly delineates the roles of the CIDT and CONADETI as commissions created by the law; it reflects

different phases in the process, such as the application, demarcation of land, conflict resolution, measuring and legitimacy of the property title.

This document does not discuss in depth important elements such as sanitizing the property and the technical support of the Regional Council towards the communities, because an inter-ethnic relationship with economic and political interests has been shown. The Law was approved on December 13th, 2002 and came into force on January 1st, 2003.

Within this stage, the representative of the community must go to present the demarcation and titling application to the CIDT, along with the community diagnosis. With the support of a technical staff, necessary studies will be made, and the Institute for Territorial Studies (**INETER**) will be asked to do the mapping and demarcation of the requested territory.

After the application is presented, the CIDT will issue a resolution, recognizing the area in favor of the community within 30 days.

It is important to mention that the diagnosis is only a study. It should not be a complicated document, nor too extensive, and it can be handwritten on three pages. It can consist of, among other things, of a map drawn by the community and a few pages explaining:

- The community background or history.
- The community demographical, social, economical and cultural characteristics.
- The traditional forms of management, uses and ownership of the requested area.

The names of Indigenous or Ethnic communities and other entities or people occupying the lands bordering the requested areas should be mentioned or stated in the diagnosis, along with all conflicts which the community may eventually be facing with other nearby communities or third parties.

PRESENTATION OF THE APPLICATION

THE APPLICATION SHOULD CONTAIN

- ◆ The name of the Community and the Authority that represents the community.
- ◆ The designated place to receive notification where the request has been presented.
 - ◆ The community diagnosis

PURPOSE

Law No. 445 is a legal instrument that regulates communal property of all Indigenous Peoples and Ethnic Communities of the Atlantic Coast and the Bocay, Coco, Indio and Maíz Rivers. This means that it is for the Miskitu, Sumu/Mayangnas, Ramas, Creoles, Mestizos and Garífunas that live on this ample territory.

The advantages of Law No. 445 are that the Indigenous Peoples and Ethnic Communities have a legal guarantee of their territories and that they will administrate their own resources, which would diminish the advancement of peasant farming (better known as “frontera agrícola”). This will allow the Atlantic Coast people to take better care of their environment.

What is the role of the communities implementing Law No. 445?

Law No. 445 was created for the Indigenous Peoples and Ethnic Communities of the Atlantic Coast and for the communities that live on the Bocay, Coco, Indio and Maíz Rivers. It permits them to actively and directly participate by voicing their opinions and voting through their traditional authorities. This means that they can influence decisions through their participation in all the stages of

To facilitate participation of communities and their authorities in the entire process

To create a technical staff with the support of professional technicians.

To issue resolutions that can help to promote the process and resolve any conflict that arises during the process.

To make technical and legal evaluations of the performance and reports produced during the process to ensure no step has been omitted.

To create an effective mechanism for the delimitation, demarcation and titling in accordance with Customary Law, values, usages and customs of the indigenous peoples.



COMMUNAL AND TERRITORIAL AUTHORITIES

Article 4 of the Law says that all people living in each community have to decide who will be their communal and territorial representatives in the delimitation and demarcation process. It is very important to emphasize the recognition of communal authorities in the new law, because it is the first time that such recognition appears in the legal framework.



Article 5 says that the indigenous peoples and ethnic communities will elect their communal authorities according to their customs and traditions.

This means that the Communal Assembly elects the highest authority and the Territorial Assembly has the highest power to choose a legal representative of their territory, according to the procedures established by the law. The law also establishes the procedures for the election of communal authorities in each geographical area that they administer.

ELECTIONS AND REGISTRATION OF COMMUNAL AND TERRITORIAL AUTHORITIES

In short, all elections must be done according to the indigenous and ethnic communities' customs and traditional procedures. As is mentioned in **Article 7**, the election must be done in the presence of one member of the communal authorities and one of the respective Regional Council, who will serve as witnesses.

Article 8 says that after the election, the Secretary of the Regional Council will issue a certificate in no more than 8 days. In case of the absence of the aforementioned authorities, the Territorial and Communal Assemblies will send the record of the election to the Autonomous Regional Council for its registration and certification.

- The delegate of the Institute for Territorial Studies (INETER)
- A representative of each ethnic group of the region or territory, assigned by the traditional authorities
- A representative of the communities located in the Bocay and Coco River Basins
- The Mayor of the municipality located within the area of demarcation and titling

It is important to note that within CONADETI and CIDT, indigenous and ethnic representation exist through the elected authorities. It is further important to note that the first time commissions exist to represent the indigenous peoples and ethnic communities.

CIDT'S ROLE

The CIDT is a technical and operative entity in the demarcation and titling process. Its duties are the following:

- To receive the petitions or requests regarding titling of community lands, accept them if they meet the requirements stated in the law or make observations if they don't meet such requirements, so that they may be corrected.
- To process the applications requesting demarcation and titling

CONADETI'S FUNCTIONS

CONADETI is the main entity in charge of implementing Law 445. Its main function is to lead the process of territorial demarcation by acting in the following way:

- To advise, resolve and give title to Indigenous Peoples' and Ethnic Communities' lands.
- To lead the entire demarcation process.
- To create technical, territorial and regional commissions.
- To develop its Internal Rules of Procedure.
- To administer the budget and National Fund for Demarcation and Legalization of Communal Lands.
- To issue titles for the lands in coordination with the Rural Land Titling Office (OTR).

THE CIDT'S MEMBERS

The Intersectorial Commission for Demarcation and Titling (CIDT), is comprised of:

- The president of the respective Regional Council
- The delegate of the Rural Land Titling Office (OTR)

In case the Secretary does not extend the Certificate within the time stated, it should be extended by pure right from the president of the corresponding Regional Council.



The Regional Council has the obligation to carry an updated registry of the Communal and Territorial Authorities. The public officer in charge of the registry should be previously qualified and should master at least two languages of the Autonomous Regions.

REGISTRATION OF COMMUNAL AUTHORITIES AT THE REGIONAL COUNCIL



Regional Council
Secretary's office



Municipality



CONADETI'S MEMBERS

Each Commission is comprised of various actors. CONADETI, because of its national character, is formed by:

- ❑ The two presidents of the Regional Councils (North and South) who alternatively preside over the commission.
- ❑ The Director of the Rural Land Titling Office (OTR).
- ❑ Two representatives of the Bocay Basin.
- ❑ A delegate from the Ministry of Agriculture, Livestock and Forestry (MAGFOR).
- ❑ The Director of the Nicaraguan Institute for Territorial Studies (INETER).
- ❑ A representative from each of the ethnic groups of the Autonomous Regions.
- ❑ A representative of the National Assembly and the Commission for Ethnic issues of the Communities of the Atlantic Coast.
- ❑ The Mayors of the municipalities located within the area of demarcation and titling.



STEPS TO FOLLOW TO LEGALIZE LAND

Law No. 445 creates two commissions. One of these commissions is national, known as the National Commission for Demarcation and Titling (CONADETI) and the other is regional, known as the Intersectorial Commission for Demarcation and Titling (CIDT).

THE INDIGENOUS AND ETHNIC COMMUNITIES' RIGHTS TO USE NATURAL RESOURCES

No permission is needed for artisan activities developed by the communarians as referred to in **Article 10**, concerning fishing, hunting and farming. On the other hand, Traditional Authorities can give permission to third parties to exploit the natural resources where they have expressly mandated for this through the Communal Assembly in cases where the natural resources belong to an area of common or joint usage, the permit or approval should be given by the Territorial Assembly. The corresponding Regional Council can offer technical support in the approval process and rational exploitation of the resources.

According to **Article 12** of Law No. 445, when concessions and contracts are given to exploit underground natural resources on indigenous land, the municipality should seek their opinion once they have consulted with the indigenous community on whose land the Natural Resources are located. However, this consultation does not dispense with the requirement for the Regional Council or any other entity to consult directly with the communities concerning the Natural Resources.



CONSULTATION PROCESS

According to Law No. 445, consultation is the “expression and handing over of technical information about the project operation, followed by a discussion and a decision on its value” (free translation). During this process, the communities should have their interpreters translate to them in their mother language. The communities should choose their interpreters as well as the technicians involved in the process. As was already mentioned, when granting concessions and/or contracts for the rational exploitation of natural resources found in the subsoil, the municipalities and Regional Councils should state their opinion or previously decided resolution.

Nevertheless, according to **Article 16** in respect to the exploitation of natural resources, any person or entity applying has the obligation to consult directly with the communities. If the community opposes the project, the Regional Council has to initiate a process of negotiation with the community. This negotiation must contain the following aspects: environmental conservation and the right to compensation. At no time can they contemplate displacing or transferring the community. The Central Government has the obligation to favor the community in these negotiations and also, in case of the exploitation stated in **Article 13**, to mention the effective foreign legislation.

ECONOMIC BENEFITS ARISING FROM THE NATURAL RESOURCES

The taxes collected from the exploitation of the natural resources located in the North Autonomous Region should be distributed in the following way: the community receives 25%, the municipality 25%, the Regional Council 25% and the Central Government also receives 25%. These funds should be turned over by the Ministry of Treasury and Public Credit to the legal representative of each one of the entities mentioned.