

REPORT N° 12/94
CASE 10.770
NICARAGUA
February 1, 1994

I.PROCESSING WITH THE COMMISSION

1. On January 3, 1991, the Inter-American Commission on Human Rights received a complaint to the effect that in 1979 the National Reconstruction Governing Junta had denied Haydee A. de Marín, Leonor Marín Arcia, Orlando Marín Arcia and María Haydee Marín Arcia their rights to possess, own and use their private properties in Nicaragua, even though there was no decree ordering confiscation of said property.

2. The Commission instituted proceedings on this case with a note dated January 3, 1991, wherein it asked that the Nicaraguan Government furnish the pertinent information on the facts in question and any other information that would enable the Commission to determine whether the remedies of internal law had been exhausted.

3. The Inter-American Commission on Human Rights received a note dated January 11, 1991, wherein the Nicaraguan Government acknowledged receipt of the Commission's note.

4. On January 13, 1992, the Inter-American Commission on Human Rights received additional information from the petitioner which was then forwarded to the Government on January 16 of that year.

5. On January 27, 1992, the Nicaraguan Government acknowledged receipt and on March 3 of that year sent the following note:

Due to the workload associated with the final stage of the pacification process, the change of authorities and office moves, we have had to delay our reply on several cases. We are therefore requesting a 90-day extension, although you will likely have the government's reply within two weeks.

6. On July 6, 1992, the Government of Nicaragua sent the following communication to the Inter-American Commission on Human Rights:

Because the competent authorities are investigating the complaints in question, I would ask the Commission to grant us an extension of at least sixty days to reply to the following cases: . . .10,770.

7. Through a note dated November 2, 1992, the Inter-American Commission on Human Rights again asked the Government of Nicaragua to supply information, within

sixty days, in reference to the notes of January 3, 1991 and January 13, 1992.

8. On May 4, 1993, the Inter-American Commission repeated yet again its request to the Government of Nicaragua and advised it that if the requested information was not received within 30 days, it would consider application of Article 42 of the Commission's Regulations and presume the facts denounced to be true as long as other evidence did not lead to a different conclusion.

9. In a note of June 7, 1993, the petitioner sent additional information, which was transmitted to the Government of Nicaragua that same day. It was given 60 days in which to respond. In that communication, the petitioner asked the Commission to contact the Government to prevent one of his properties, the Santa Monica sawmill in the Altagracia district of Managua, from going to public auction.

10. The Inter-American Commission on Human Rights approved Report No. 21/93 at its 84th Regular Session, and forwarded it to the Government of Nicaragua on October 14, 1993, for comment within three months from that date.

11. The Government of Nicaragua remitted its comments and a request for reconsideration on January 18, 1994, which was past the 3-month deadline set by the Inter-American Commission on Human Rights.

12. The Inter-American Commission on Human Rights, at its 85th Regular Session, decided to deny the reconsideration request made by the Government of Nicaragua in its communication of January 18, 1994. The Commission also decided to approve the present report and order publication of it in its 1993 Annual Report, unless the IACHR recommendations were implemented within 15 days from the date of its reply.

II.FACTS DENOUNCED

According to the information supplied to the Inter-American Commission on Human Rights, the facts would be as follows:

1. In 1979 the National Reconstruction Governing Junta attached the properties of the Marín family, without any form of notification or public utility claim. Moreover, there was no decree of confiscation on those properties at the time, as the Marín family had neither ties with the Somocista Liberal Party nor business or family relations with the Somoza family. On July 20, 1979, the Governing Junta issued Decree No. 3, which authorized the Attorney General to attach, requisition and confiscate all property belonging to the Somoza family and to the military officers and government officials who had left the country since December 1977. A later decree, No. 38 of August 8, 1979, expanded the Government's powers still more so that it could freeze or attach any transaction, property or business belonging to persons alleged to be Somocistas.

2. In December 1990, after the change of government, the Marín family filed a formal complaint with the Office of the Attorney General -the only authority to which it could resort at that time. However, that complaint has produced no positive results thus far. The petition filed by the complainants was based on the fact that they were not among those whose properties were, by decree, to be confiscated and that their assets had been attached and requisitioned outright, without any form of notification.

3. According to the reports provided, on January 9, 1992, one of the properties of the wronged parties, called the "Santa Leonor Sawmill" and located in the Altagracia district of Managua, was to be privatized. The sawmill and the machinery it contains belong to the Marín-Arcia family, as shown in the Public Real Estate Records of the Department of Managua, Nicaragua. Those pieces of property are registered under number 31,659, Volume 429, page 9, entry 2, and under number 31,658, Volume 440, page 80-81, entry 5, in the Real Property Section of the Property Book in the Public Records of Immovable Property. Again, the petitioners learned from news reports that on June 6, 1993, the shares in Compañía Combustibles Sólidos de Nicaragua, S.A. (COMSONICSA) would go up for auction. The company's assets included the sawmill, which is 5,000 square varas¹. The state company CORNAP (Corporaciones Nacionales del Sector Público) is the owner of the COMNICSA shares and hence is in physical possession of the "Santa Leonor" sawmill owned by the petitioners. Although in the end the sale of that property never materialized, the properties in question were not returned to their rightful owners.

4. The other properties of the Marín family that were attached in 1979 and thus far not returned to them are as follows:

A. AGRICULTURAL REAL ESTATE

NAME: Hacienda San Miguel
SIZE: 95 hectares
LOCATION: Tisma, Masaya
OCCUPANT: Libio Government

NAME: Hacienda La Concepcion
SIZE: 180 manzanas²
LOCATION: Tisma, Masaya

¹ A vara is a unit of length equal to between 31 and 34 inches.

² A manzana is a unit of measure equal to approximately 1.7 acres.

OCCUPANT: Libio Government

*NAME: Hacienda Rancho Verde
SIZE: 300 manzanas
LOCATION: Valle de Zambrano, Tipitapa, Managua
ADMINISTRATOR: Instituto Nacional de Reforma Agraria (INRA)
[National Agrarian Reform Institute]
OCCUPANT: Sandinista Party

*NAME: Hacienda El Brujo
SIZE: 130 manzanas
LOCATION: Valle de Zambrano, Tipitapa, Managua
ADMINISTRATOR: Instituto Nacional de Reforma Agraria (INRA)
[National Agrarian Reform Institute]
OCCUPANT: Sandinista Party

*NAME: Hacienda San Francisco
SIZE: 167 1/4 manzanas
LOCATION: Tisma, Masaya
ADMINISTRATOR: Instituto Nacional de Reforma Agraria (INRA)
[National Agrarian Reform Institute]
OCCUPANT: Sandinista Party

*NAME: El Carmen
SIZE: 5,000 square varas
LOCATION: Kilometer 7 1/2 on the Carretera Sur, Managua
OCCUPANT: Sandinista Party

*NAME: Los Nogales
SIZE: 2 manzanas and 8,760 square varas
LOCATION: Jocote Dulce-Villa Fontana, Managua
OCCUPANT: Sandinista Party

*NAME: Zamora Lot
SIZE: 400 square varas
LOCATION: Zamora District, Managua
OCCUPANT: Sandinista Party

*NAME: Bolonia District
SIZE: 980.88 square meters
LOCATION: In front of the church of San Francisco, Managua
OCCUPANT: Sandinista Party

*NAME: Solorzano Lot
SIZE: 356.60 square varas
LOCATION: Solorzano district
OCCUPANT: Sandinista Party

B.URBAN REAL ESTATE

*LOCATION: Hacienda Rancho Verde, Valle de Zambrano, Tipitapa
OCCUPANT: Sandinista Party

*LOCATION: Tipitapa, Managua
OCCUPANT: Sandinista Party

*LOCATION: Pochomil, Managua
OCCUPANT: Sandinista Party

III.OBSERVATIONS

1. The Inter-American Commission on Human Rights has the competence to consider the instant case, as it concerns violations of rights recognized in the American Convention on Human Rights: Article 1, the duty to respect rights; Article 21, the right to private property; and Article 25, the right to judicial protection, as provided in Article 44 of that Convention to which Nicaragua is party.

2. The petition meets the formal eligibility requirements stipulated in the American Convention on Human Rights and in the Commission's Regulations. Further, it is not pending settlement in any other international proceeding and does not duplicate a previous petition already examined by the Commission.

3. The information provided during the processing of the instant case indicates that while the domestic legal remedies have been filed they have not been effective in protecting the rights of the wronged persons, whose property is still confiscated even though no public utility was ever claimed and no fair compensation was ever paid. Consequently, the requirements for exhaustion of internal remedies stipulated in Article 46 of the American Convention on Human Rights do not apply.

4. Even though over two years have passed since the Commission's processing of the instant case began, and despite the extensions given, the Government of Nicaragua has not responded to the facts in the case.

5. By failing to respond, the Government of Nicaragua has failed to comply with

its international obligation to provide information within a reasonable period, as Article 48 of the American Convention prescribes.

6. Article 42 of the Regulations of the Inter-American Commission on Human Rights states the following:

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

7. Among the information provided by the petitioner is a statement released by the Office of the Attorney General on October 2, 1990, to the following effect:

The General Secretariat of the Office of the Attorney General of Nicaragua hereby certifies that Mrs. María Haydee Marín Arcia is not subject to any confiscation order.

José A. Fletes Largaespada
Secretary General

8. Hence, as there was no decree ordering confiscation of the properties in question, the Nicaraguan Government should have returned those properties to their rightful owners, especially since said properties were unlawfully attached and requisitioned by a government junta. In effect, the properties owned by the Marín family were arbitrarily usurped by the Sandinista Governing Junta in 1979 and are still in the State's hands. In those 14 years, the Marín family was never paid any compensation.

9. From the foregoing the Inter-American Commission on Human Rights has concluded that Nicaragua, a State Party of the American Convention, has failed to fulfill its duty to respect the rights upheld therein by depriving the petitioners of their property without any form of compensation or for no reason of public utility.

10. Article 617 of the Nicaraguan Civil Code reads as follows:

Article 617. No one may be deprived of property except by law or a decision grounded in law. Expropriation in the public interest shall be defined by law or by a decision grounded in law, and it shall not be

confirmed without prior indemnification. In case of war, such expropriation may precede indemnification.

Should those requirements not be met, the courts shall prevent the expropriation and, if necessary, restore possession to the expropriated owner.

11. Article XXIII of the American Declaration of the Rights and Duties of Man states the following:

Every person has the right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.

12. Article 17 of the Universal Declaration of Human Rights states that:

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

13. In light of the instruments cited above, the right to own property can be regarded as an inalienable right; no State, group or person must undertake or conduct activities to suppress the rights upheld in those international instruments, including the right to own property. An independent expert designated by the United Nations Commission on Human Rights, Mr. Luis Valencia Rodríguez, said the following in his report on the right to own property, dated December 18, 1992:

The individual incorporated in a State needs a property sphere that is strongly protected in legal terms so that he can live among his fellow citizens as an individual, i.e., freely and bearing responsibility for himself and does not become a mere pawn of excessively powerful State authority.

It is generally recognized that a State has the right to enforce such laws as it deems necessary to control the use of property in accordance with the general interests or to secure the payment of taxes or other contributions or penalties. It is important that these regulatory powers of the State should not result in seizure of property without compensation and in "arbitrary" or "illegal" seizure. (Economic and Social Council, E/CN.4/1993/15, page 35 and 85)

14. In the instant case, the petitioners were not just the victims of an arbitrary expropriation without compensation; the State also failed to provide them with simple and

rapid recourse to the competent tribunals for protection against acts of government junta that violated their fundamental rights. In effect, the Marín family turned to the Office of the Attorney General in December 1990, and thus far that State organ has not resolved the matter. On this point, the same expert of the United Nations Commission on Human Rights stated that:

... the most effective implementation of human rights requires an interplay between the international obligation and domestic commitment. It will be even more efficacious if the international treaty requires domestic laws and regulations to be altered to comply with the obligations undertaken, and if a State party is required to provide a remedy for any of the rights violated. The provision of local remedies is a key element in the implementation of rights. While the content of the rights may be set at the individual level, individuals should be able to enjoy them --and to ensure that enjoyment-- locally. The routine provision of remedies by local courts, administrative tribunals and other organs of authority is the most effective guarantee. (Economic and Social Council, E/CN.4/1993/15, page 45).

15. In the ruling on the Preliminary Objections, dated June 26, 1987, in the Velásquez Rodríguez case, the Inter-American Court of Human Rights found that:

... Under the Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art.8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art.1). Thus, when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.

16. That the Government of Nicaragua submitted a request for reconsideration of Report No. 21/93 on January 18, 1994, which was past the deadline set by article 51.1 of the American Convention on Human Rights.

17. That the Government of Nicaragua disclaims responsibility for the allegations in Report No. 21/93 on the grounds that because of "the large number of cases it has to settle, (...) the various complex investigations it has to conduct, and the contradictory property title laws inherited from the past by the present government, it has not been able

to rule on all the claims filed by the Marín Arcia family...." The Inter-American Commission must point out in this regard that "under the principle in international law of identity and continuity of the State, State's responsibility remains regardless of changes in government over time, specifically, from the time the wrongful act that produced the responsibility occurred to the time when such responsibility is declared."³

18. That another argument submitted by the Government of Nicaragua is that "the interested parties filed the case with the IACHR 12 years after a final decision on confiscation by the Government of National Reconstruction, in violation of the six-month deadline set forth in article 46, paragraph b. of the American Convention on Human Rights...." The Inter-American Commission considers that Convention article 46.1b referred to by the Government of Nicaragua does not apply to this case, since the Attorney General of Nicaragua himself issued a statement on October 2, 1990 certifying that the Marín family was not the subject of any confiscatory decree. Also, the Government of Nicaragua did not object to the admissibility of the case at the start of its processing, nor did the Government give any reply during its processing. Moreover, the American Convention on Human Rights clearly provides in Article 21.2 that "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." As the article shows, any expropriation for reasons of public utility must be demonstrated legally, and compensation must be paid. In the present case, the property of the victims was confiscated illegally since it was requisitioned de facto, without any kind of notification being given, and without application of any confiscatory decree in force at that time.

19. That in the preamble in the reply note, the Government of Nicaragua does not cite new factors to refute the complaints nor indicate that proper measures have been taken to resolve the situation complained about.

20. That, based on the above arguments, the Inter-American Commission on Human Rights considers that no new information has been put forward to warrant changing the original report.

IV. CONCLUSIONS

1. By virtue of Article 42 of the Regulations, the facts contained in the petition concerning the seizure of the immovable and movable properties belonging to Haydee Arcia de Marín, Leonor Marín Arcia, Orlando Marín Arcia and María Haydee Marín Arcia, which occurred in Nicaragua in 1979, are presumed to be true.

³ Inter-American Court of Human Rights, Velásquez Rodríguez Judgement, July 29, 1988, pg. 75, par. 194.

2. Consequently, the Inter-American Commission considers that the Government of Nicaragua is responsible for the violation of the rights to private property, to judicial protection and to fair trial, recognized in articles 21, 25 and 8, respectively, of the American Convention on Human Rights.

3. The Government of Nicaragua has not honored its obligation under Article 1.1 of the American Convention on Human Rights, which is to respect the human rights and guarantees upheld in the Convention, of which Nicaragua is a State Party.

V.RECOMMENDATIONS

1. That the Government of Nicaragua return the properties listed in this report to their legitimate owners.

2. That the Government of Nicaragua pay the injured parties the amounts owed in damages and compensation for the time the properties in question were held in usufruct.

3. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of Nicaragua did not adopt measures to correct the situation denounced within the time period.