**CONCURRING OPINION OF**
**JUDGE HERNÁN SALGADO PESANTES**

I would like to add a few comments in connection with this case.

1. In our hemisphere, land tenure by indigenous peoples and communities in the form of communal property or by ancestral tenure, is a recognized right that many Latin American countries have raised to the level of a constitutional right.

2. This right to the land –which is the entitlement of indigenous peoples- comes under the general heading of the right to property. However, it transcends the right to property in the traditional sense, which mainly concerns the right to private property. Communal or collective tenure, on the other hand, better serves the necessary social function that it is intended to have.

3. The anthropology of the XX century made it abundantly clear that indigenous cultures have a very unique bond with their ancestral lands. They rely upon the land for their survival and look to it for moral and material fulfillment.

4. In this case, there are a number of settlements of indigenous communities (*traslapes*). When a State delimits and demarcates communal lands, the overriding criterion must be proportionality. With the interested parties participating, the State deeds over those lands that all the inhabitants-members of the indigenous communities will need to carry on their way of life and ensure it for their posterity.

5. Finally, when the right to property is asserted, one must be careful to bear in mind that the enjoyment and exercise of the right to property carries with it duties, from moral to political to social. Overarching all these is a juridical duty, specifically the limitations that law in a democratic State imposes. In the words of the American Convention: "The law may subordinate such use and enjoyment to the interest of society." (Art. 21(1)).

Hernán Salgado-Pesantes
Judge

Manuel E. Ventura-Robles
Secretary