

**Order of the President of the
Inter-American Court of Human Rights
March 14, 2008
Case of the Mayagna (Sumo) Awas Tingni Community
v. Nicaragua
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The judgment on merits, reparations and costs delivered in the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on August 31, 2001,¹ in the operative paragraphs of which, it:

decide[d]

3. [...] that the State must adopt in its domestic law, pursuant to Article 2 of the American Convention on Human Rights, the legislative, administrative, and any other measures necessary to create an effective mechanism for the delimitation, demarcation, and titling of the property of indigenous communities, in accordance with their customary law, values, customs and mores, pursuant to paragraphs 138 and 164 of th[e] Judgment.

4. [...] that the State must carry out the delimitation, demarcation, and titling of the lands of the members of the Mayagna (Sumo) Awas Tingni Community and, until that delimitation, demarcation and titling has been done, it must abstain from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Mayagna (Sumo) Awas Tingni Community live and carry out their activities, in accordance with paragraphs 153 and 164 of th[e] Judgment.

[...]

6. [...] that, in equity, as reparation for non-pecuniary damage, within 12 months the State must invest the sum of US\$50,000 (fifty thousand United States dollars) in works or services of collective interest for the benefit of the Mayagna (Sumo) Awas Tingni Community, by common agreement with the Community and under the supervision of the Inter-American Commission on Human Rights, pursuant to paragraph 167 of th[e] Judgment

[...]

7. [...] that, in equity, the State must pay the members of the Mayagna (Sumo) Awas Tingni Community, through the Inter-American Commission on Human Rights, the sum of US\$30,000 (thirty thousand United States dollars) for expenses and costs incurred by the members of that Community and their representatives in the domestic proceedings and in the international proceedings before the inter-American protection system, pursuant to paragraph 169 of th[e] Judgment.

[...]

¹ *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, reparations and costs. Judgment of August 31, 2001. Series C No. 79.

8. [...]that the State must submit a report to the Inter-American Court of Human Rights on the measures taken to comply with this Judgment every six months from the date of notification of th[e] Judgment.

[...]

9. [...] to monitor compliance with th[e] Judgment and that the case will be concluded when the State has fully carried out the provisions set forth in th[e] Judgment.

2. The State's reports dated March 22 and September 26, 2002; March 28 and November 18, 2003; June 4 and December 17, 2004; February 23, March 7 and August 5, 2005, and May 19, 2006.

3. The observations of the representatives of the victims (hereinafter "the representatives") dated June 28 and October 15, 2002; April 25, November 4 and 14, 2003; May 6, July 12 and November 17, 2004; January 18 and September 6, 2005; June 19 and December 13, 2006, and July 13, 2007.

4. The observations of the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") dated April 16, July 18 and November 7, 2002; May 20 and November 17, 2003; March 3, July 12 and November 16, 2004; April 20, 2005, and February 2 and July 5, 2006.

CONSIDERING:

1. That one of the inherent attributes of the jurisdictional functions of the Court is to monitor compliance with its decisions.

2. That the State of Nicaragua has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 25, 1979, and accepted the compulsory jurisdiction of the Court on February 12, 1991.

3. That, in view of the final and unappealable character of the judgments of the Court, as established in Article 67 of the American Convention, they should be complied with fully and promptly by the State.

4. That Article 68(1) of the American Convention stipulates that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." The treaty obligations of the States Parties are binding for all the powers and organs of the State.

5. That in order to fulfill its mandate of monitoring compliance with the undertaking made by the States Parties under Article 68(1) of the Convention, the Court must first know the status of compliance with its decisions. To this end, the Court must monitor that the State in question has complied with the reparations ordered by the Court.²

² Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 101; *Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of December 14, 2007, fifth considering paragraph; and *Yakye Axa Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of December 14, 2007, fifth considering paragraph.

6. That the States Parties to the Convention that have accepted the Court's compulsory jurisdiction must comply with the obligations established by the Court. This responsibility includes the State's obligation to inform the Court of the measures adopted to comply with the decisions of the Court in its judgment. The prompt implementation of the State's obligation to report to the Court on how each aspect ordered by the Court is being fulfilled is essential to assess the overall status of compliance with the judgment.

7. That the Court observes that, at various times during this procedure of monitoring compliance, the State expressed its intention of complying with the Judgment and forwarded information on the measures taken, *inter alia*: (a) the promulgation of Act No. 445 entitled "Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast and of the Coco, Bocay, Indio and Maiz Rivers" (hereinafter "Act No. 445"), and indicated that it had promoted the implementation of this act both financially and operationally; (b) the submission of the case of the members of the Mayagna (*Sumo*) Awas Tingni Community (hereinafter "the Awas Tingni Community" or "the Community") for the delimitation, demarcation and titling of their lands, under the provisions of Act No. 445, the measures taken, and the status of the procedure; (c) the official handing over of the students hostel to the members of the Awas Tingni Community on March 5, 2003.³ According to the State, on March 3, 2004, it agreed to pay interest on arrears for the delay in the delivery of the hostel; and (d) the payment of the expenses and costs made on March 5, 2002, with cheque No. 3685.

8. That the Inter-American Commission acknowledged that the State had complied with the third, sixth and seventh operative paragraphs of the judgment. However, it emphasized the failure to comply with the fourth operative paragraph of the judgment relating to the delimitation, demarcation and titling of the lands of the members of the Awas Tingni Community more than six years after the judgment had been delivered, on August 31, 2001. It also pointed to the absence of specific information on various aspects of compliance with the measures ordered in the judgment and about the specific actions taken and progress made in the procedure under Act No. 445 to comply with the Court's judgment.

9. That, on several occasions the representatives have presented observations on the information provided by the State and have referred to the status of compliance with the different measures of reparation, including: (a) that they have stated repeatedly that, despite the time limits established in Act No. 445 and the State's commitment to give priority to the delimitation, demarcation and titling of the lands of the Community, the application has suffered several delays and is at a standstill. Consequently, they stated that the Act did not represent an effective mechanism for the delimitation, demarcation and titling of the communal lands; (b) that the demarcation request presented by the members of the Community under the Act No. 445 procedure, had still not led to compliance with the fourth operative paragraph of the judgment and more than four years had elapsed since the request was presented; (c) that the Bilwi Community student hostel had been built and officially handed over to the members of the Community on March 5, 2003. However, once the building had been handed over, the State had not officially notified the Community of its final cost

³ The official record of the final delivery, submitted as evidence by the State, states that, on February 28, 2003, the Emergency Social Investment Fund (FISE) received the student hostel for the Community from the contractor.

and that, although the Community had received the payment for interest on arrears, the State had not formally informed the Community of how the interest had been calculated, so that it was not possible to verify this, and (d) that the payment of legal costs was complied with by Nicaragua on April 16, 2002. The representatives submitted a brief requesting additional reparations and also a supplementary brief for additional reparations in which they alleged that, by not complying with the fourth operative paragraph of the judgment, the State had caused various pecuniary and non-pecuniary damages to the members of the Community. Consequently, they requested the Court to order the State to pay compensation for this concept, as well as for costs and expenses. Lastly, they requested the Court to order that a public hearing be held.

10. That, now that seven years have elapsed since the said Judgment, the Court requires updated and detailed information on the measures adopted by the State to comply with its rulings, so that it can assess the effective implementation and verify whether the judgment has been complied with. Consequently, the State must prove to the Inter-American Court that it has fulfilled its obligations under the third, fourth, sixth and seventh operative paragraphs of the judgment with due diligence.

11. That, in view of the above, the Court finds it necessary for the State to present detailed and updated information on:

(a) Its obligation to “adopt in its domestic law, pursuant to Article 2 of the American Convention on Human Rights, the legislative, administrative, and any other measures necessary to create an effective mechanism for the delimitation, demarcation, and titling of the property of the indigenous communities, in accordance with their customary law, values, customs and mores” (*third operative paragraph of the judgment of August 31, 2001*). In this regard, the Court requires information on the progress made in complying with this obligation; and on why Act No. 445, entitled Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast and of the Coco, Bocay, Indio and Maiz Rivers is an effective mechanism for the delimitation, demarcation and titling of the properties of the indigenous communities, in accordance with their customary law, values, customs and mores, including the corresponding supporting documentation;

(b) Its obligation to “carry out the delimitation, demarcation, and titling of the lands of the members of the Mayagna (Sumo) Awas Tingni Community and, until that delimitation, demarcation and titling has been done, abstain from any acts that might lead State agents, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Mayagna (Sumo) Awas Tingni Community live and carry out their activities” (*fourth operative paragraph of the judgment of August 31, 2001*). In this regard, the Court requires information on the specific measures taken by the State to fulfill this aspect and the progress made in complying with this obligation, including the supporting documentation corresponding to:

(i) The submission of the case of the Awas Tingni Community for the delimitation, demarcation and titling of their land under the Act No. 445

procedure; the measures taken; the progress achieved in the procedure under this law, and the current status of the procedure; and

ii) The specific measures taken to abstain from carrying out [to protect from] any acts that might lead State agents, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area where the members of the Mayagna (Sumo) Awas Tingni Community live and carry out their activities, until the delimitation, demarcation and titling of the lands of the Community has been carried out;

(c) The obligation, "in equity, as reparation for non-pecuniary damage, within 12 months [to] invest the sum of US\$50,000 (fifty thousand United States dollars) in works or services of collective interest for the benefit of the Mayagna (Sumo) Awas Tingni Community, by common agreement with the Community and under the supervision of the Inter-American Commission on Human Rights" (*sixth operative paragraph of the judgment of August 31, 2001*). In this regard, although the State has reported on the official delivery of the student hostel, and both the Commission and the representatives have indicated that the State has handed over this building, the Court requires the State to submit updated information, specifically mentioning the total cost of the work, and the way in which the interest on arrears owed was calculated, so that it may assess compliance with this operative paragraph; and

(d) The obligation, "in equity, [to] pay the members of the Mayagna (Sumo) Awas Tingni Community, through the Inter-American Commission on Human Rights, the sum of US\$30,000 (thirty thousand United States dollars) for expenses and costs incurred by the members of that Community and their representatives in the domestic proceedings and in the international proceedings before the inter-American protection system" (*seventh operative paragraph of the judgment of August 31, 2001*).

12. That monitoring compliance with the judgments delivered by the Inter-American Court is carried out by means of a written procedure, in which the State in question must submit any reports that the Court requests, and the Inter-American Commission and the victims or their legal representatives must forward their respective observations. Despite this, the Court itself has recognized that, should it be opportune and necessary, it can convene the parties to a hearing to listen to their arguments on compliance with the judgment, and it has done so in previous cases.⁴

13. That, regarding hearings, Article 14(1) of the Rules of Procedure stipulates that:

⁴ Cf. *Sawhoyamaya Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of December 14, 2007; *Yakye Axa Indigenous Community v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of December 14, 2007; *Caballero Delgado and Santana v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of December 10, 2007; *Ricardo Canese v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of December 10, 2007; *Juvenile Reeducation Institute v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of December 10, 2007; *Blake v. Guatemala*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of October 29, 2007; *Garrido and Baigorria v. Argentina*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of October 29, 2007; and *the "White Van" (Paniagua Morales et al.) v. Guatemala*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of October 29, 2007.

Hearings shall be public and shall be held at the seat of the Court. When exceptional circumstances so warrant, the Court may decide to hold a hearing in private or at a different location. The Court shall decide who may attend such hearings. Even in these cases, however, minutes shall be kept in the manner prescribed in Article 43 of these Rules.

14. That, based on the foregoing, it is opportune and necessary to convene a hearing so that the Inter-American Court may receive from the State complete and updated information on fulfillment of the aspects pending compliance of the judgment on merits, reparations and costs delivered in this case and hear the corresponding observations of the Inter-American Commission and the victims' representatives.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority of the Inter-American Court of Human Rights to monitor compliance with its decisions and in accordance with Articles 67 and 68(1) of the American Convention on Human Rights, 25(1) of its Statute, and 14(1) and 29(2) of its Rules of Procedure,

DECIDES:

1. To convene the Inter-American Commission on Human Rights, the representatives of the victims and the State to a private hearing to be held at the seat of the Inter-American Court of Human Rights in San José, Costa Rica, on May 3, 2008, from 9 a.m. to 10.30 a.m., so that the Court may obtain information from the State on compliance with the third, fourth, sixth and seventh operative paragraphs of the judgment on merits, reparations and costs in this case, delivered on August 31, 2001, and hear the corresponding observations of the Inter-American Commission on Human Rights and the representatives of the victims.

2. To notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims.

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary