

**Order of the
Inter-American Court of Human Rights
of April 3, 2009
Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The judgment on the Merits, Reparations and Costs rendered on August 31, 2001 (hereinafter "the Judgment") by the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court" or "the Court",) whereby the Court ordered the following, to wit:

[...]

4. [...] the State must carry out the delimitation, demarcation, and titling of the corresponding 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 what was set forth in paragraphs 153 and 164 of th[e] Judgment

[...]

2. The Public Hearing for Monitoring Compliance with the Judgment, held on May 3, 2008, intended for the Court to obtain information from the State regarding compliance with the third, fourth, sixth and seventh operative paragraphs of the Judgment, as well as the comments by the representatives of the Mayagna Awas Tingni Community members (hereinafter "the representatives") and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission"), which ended with an official record of the agreements being signed between the Republic of Nicaragua (hereinafter "the State" or "Nicaragua") and the representatives, in the presence of the Commission, at the seat of the Court.

3. The Order of Monitoring Compliance with Judgment issued by the Court on May 7, 2008, whereby it declared that:

[...]

1. [...] the State has complied fully with the third, sixth and seventh operative paragraphs of the Judgment delivered [...] on August 31, 2001.

2. [...] it will keep open the procedure of monitoring compliance with the pending aspect of this case, concerning the State's obligation to delimit, demarcate and title the lands that correspond to the members of the Awas Tingni Community and, until that delimitation, demarcation and titling has been done, to 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 Community live and carry out their activities [...].

3. [...] the Court takes note of the “official record of the agreements” signed by the representatives and the members of the Community, the State and the Commission on [...], in which it was agreed [...] that:

1) The State, within a time limit not to exceed two months, shall determine the claim made by the “Ten Communities” in connection with the Regional Council Resolution dated February 14, 2007.

2) Once the aforementioned decision be rendered, within a time limit not to exceed forty days, the boundary marking phase shall be ended.

3) Immediately following that, the title to the ancestral lands of the Community will be drawn up and approved, observing the statutory procedures. The parties estimated that title would be conveyed to the Awas Tingni Community during the month of August, 2008.

[...]

4. The briefs filed on October 31, 2008 and December 22, 2008, whereby the State reported on the stage compliance with the Judgment had reached.

5. The briefs filed on December 2, 2008 and January 9, 2009, whereby the representatives forwarded their comments on the report by the State, as regards monitoring compliance with the Judgment.

6. The briefs filed on March 6, 2009, whereby the Commission forwarded its comments on the report by the State, as regards monitoring compliance with the Judgment.

CONSIDERING:

1. That monitoring the compliance with its decisions is an inherent jurisdictional power of the Court.

2. That 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 that it accepted the binding jurisdiction of the Inter-American Court on February 12, 1991.

3. That Article 68(1) of the American Convention establishes 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.” For that purpose, the States must ensure the implementation, within their jurisdictions, of the orders issued by the Court in its decisions.¹

4. That since the Court Judgments are final and not subject to appeal, pursuant to the provisions in Article 67 of the American Convention, the State must diligently and fully comply with them.

5. That the obligation to comply with the decisions of the Court is a basic principle of law regarding the international responsibility of the State, which is supported by international jurisprudence, according to which the States must comply with their international conventional obligations in good faith (*pacta sunt servanda*) and that, as this Court has pointed out and pursuant to Article 27 of the Vienna Convention on the Law of Treaties of 1969, the States may not, due to reasons of a domestic order, avoid the international responsibility which has already

¹ Cf. *Case of Baena Ricardo et al. v. Panamá. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Case of Ivcher Bronstein v. Perú. Monitoring Compliance with Judgment*. Order of the Court of February 27, 2009, Considering Clause Number Four; and *Case of Suárez Rosero v. Ecuador. Monitoring Compliance with Judgment*. Order of the Court of March 20, 2009, Considering Clause Number Three.

been established. The conventional obligations of the States Parties bind all powers and organs of the State.²

6. That the States Parties to the Convention must guarantee the compliance with conventional provisions and their specific effects (*effet utile*) in their own domestic legal systems. This principle applies not only with regard to the substantive provisions of the human rights treaties (that is to say, those which express provisions regarding the protected rights,) but also with regard to the procedural rules, such as those referring to the compliance with the decisions of the Court. These obligations must be interpreted and applied so that the protected guarantee be truly practical and efficient, taking into account the special nature of the human rights treaties.³

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7. That, as regards the fourth operative paragraph, concerning the obligation of the State to delimit, demarcate and title the land corresponding to the members of the Mayagna Awas Tingni Community (hereinafter “the Awas Tingni Community” or “the Community”) and, until that delimitation, demarcation and titling had been done, to abstain from carrying out acts that could lead the agents of the State itself, or third parties acting with its acquiescence or tolerance, to affect the existence, value, use or enjoyment of the property located in the geographical area where the members of the Community live and conduct their activities, the State reported in its communication dated October 31, 2008 that on June 25, 2008, the *Consejo Regional Autónomo* [Autonomous Regional Council] had issued Administrative Provision No. 44-25-06-2008, ratified on August 11, 2008 in Provision No. 63-11-08-2008, wherein it was decided: a) to ratify 73,394 hectares in favor of the members of the Awas Tingni Community; b) to recognize the right of the Ten Communities to claim the ancestral lands in their territory; c) to institute the diagnosis stage for the purpose of preventing possible disputes and of securing feasible settlement alternatives; d) to immediately proceed to establish and mark the boundaries of the lands of the Awas Tingni Community, and to the titling thereof, and e) to determine the boundary lines delimiting the territories of the members of the Awas Tingni Community, of the Ten Communities and of the Tasba Pri (Tasba Raya). As regards the process of laying the boundary marks, the State reported that in August, 2008 the second land survey plan had been designed and that it had been carried out from September 20 to October 22, 2008, with some delay caused by difficulties in entering the area after Felix hurricane had hit it in September, 2007. Likewise, the State pointed out that the border lines would be approved in five days so that they could have them drawn on maps and laid out physically, and that it had put the drafting, approving, recording and conveying of title on the agenda.

8. That by means of the brief dated October 31, 2008 and as regards the protection measures, the State pointed out that “in view of the events reported by the representatives of the Community that would endanger security in the area”, the National Police and the National Army Northern Military Detachment expressed they were ready to respond to any behavior destabilizing

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights.)* Advisory Opinion OC-14/94 of December 9, 1994. para. 35; *Case of Bámaca Velásquez v. Guatemala. Monitoring Compliance with Judgment.* Order of the Court of January 27, 2009, Considering Clause Number Five; and *Case of Suárez Rosero v. Ecuador. Monitoring Compliance with Judgment.* Order of the Court of March 20, 2009, Considering Clause Number Four.

³ Cf. *Case of Ivcher Bronstein v. Perú.* Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Bámaca Velásquez v. Guatemala, supra* note 2, Considering Clause Number Six; and *Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala. Monitoring Compliance with Judgment.* Order of the Court of January 27, 2009, Considering Clause Number Six.

the Community. In its turn, the *Ministerio Público* [Office of the Public Attorney] confirmed it was inquiring into the reports and receiving the statements, in order to institute criminal proceedings. The State affirmed that “the aim of the Government is to settle the dispute in the most peaceful manner [, and it made it clear] that at no time [would] it act to favor personal interests or those of social groups [...and] it indicat[ed] that both the National Police and the Army were alert and ready to prevent any irregular event.”

9. That the State reported on December 22, 2008 that “it ha[d] complied with the titling [...] covering [73,394] hectares [...], title thereto “having been received by Mr. Levito Jonatan Malean, Syndic of the Awas Tingni Community, in the course of the historic act of Just Redress by full recognition of the Communal Property system.” Furthermore, it attached the communication signed by Mr. James Anaya, Special Rapporteur on the human rights and situation of the indigenous people, who expressed “satisfaction with the recent action taken by the Government of Nicaragua in order to finish delimiting and titling the traditional territory of the Awas Tingni [C]ommunity [, which] is an important step towards compliance with the Judgment of the Court [...] rendered on August 31, 2001 [, and] reveals a commitment by the Government of Nicaragua regarding such matters and fosters hopes for a new age in the relations between the Government and the indigenous people to be dawning.”

10. That for the purpose of settling the territorial dispute between the “Ten Communities” and the “Awas Tingni Community”, the *Consejo Regional Autónomo de la Región Autónoma Atlántico Norte* [Northern Atlantic Self-Governing Region Autonomous Council] (hereinafter “CRAAN”) issued Administrative Provision No. 44-25-06-2008 dated June 25, 2008. The representatives reported in their brief dated December 2, 2008 that such provision mentioned “considering that, regarding the territory of the “Ten Communities”, the diagnosis stage previous to communal land delimiting and titling in such territory ha[d] not yet started, identifying the conflict in the province may be foreseeable in the due course of its review and amendment, unless the disputes are considered settled, provided they always be adjusted to the usages and customs prevalent among Indigenous Communities”, as well as “[e]stablishing the rights to occupation and usufruct for life over the lands obtained by YATAMA, ARMINGOB and AMIR former combatants who, under pacification agreements relating to the armed conflict in the ‘80s, were granted such rights in lands denominated as collective lands and located in territories of the Awas Tingni, the Ten Communities or the Tasba Pri [Tasba Raya].” On account of the foregoing, it contradicted Resolution No. 26-14-02-2007 issued by the CRAAN, wherein it was pointed out that “[the title to t]he lands granted by the State of Nicaragua [...] must be cleared by the State according to the procedures established in Law [No.] 455.” As regards the foregoing and before the act of titling the lands, the representatives considered that “the idea remain[ed] that the case [would be] reopened once the [Ten] [C]ommunit[ies] start[ed] their own titling procedures, [casting] doubts about the legal certainty the Awas Tingni might have concerning their rights to the titling of their ancestral lands, delimitation of which [had] already been defined, decided and ratified twice as extending over 73,394 hectares [, and they contended that] action [was] intended to be taken against the very wording of the law and in order to drive Awas Tingni Community members to despair by keeping them waiting for tilting and under the threat of having such lands entered and occupied by third parties Law [No.] 445 rejects.”

11. That on January 9, 2008 the representatives informed that the conveyance to the Community of title to 73,394 hectares “was a step of paramount importance towards compliance with the Judgment”, and that “[t]he Community [was] generally pleas[ed] with the titling and realiz[ed] it represent[ed] an important achievement both for the Awas Tingni and for the other indigenous peoples in Nicaragua, as well as for the indigenous peoples throughout the world.” However, they pointed out that “the Government has not yet complied fully with the second part of Operative Paragraph Number 4 in the Judgment of August 31, 2001, wherein Nicaragua is ordered 'until [...] delimitation, demarcation and titling ha[ve] been done, to 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.'" Accordingly, they stated that there is still "concern about [the State] taking advantage of such procedures in order to grant third parties rights within Awas Tingni territory", for which reason they "urge Nicaragua [to] decide upon any interest held by third parties in the territory already titled, in favor of the Awas Tingni, pursuant to the principles ruling the rights to land the indigenous peoples have under [...] international law."

12. That in its communication dated March 6, 2009, the Inter-American Commission stated that it "welcomed the substantial progress in compliance with the Judgment[,] hoping the title clearing stage will be effected as soon as possible [...] without affecting the property rights already acknowledged [and] considering it essential for the State to adopt all the protection and surveillance measures that may be necessary so that the title clearing stage be carried out without risk for the life and the physical integrity of the Awas Tingni Community members[; for which reason it concludes] that compliance with the obligation of the State of Nicaragua to guarantee the use and enjoyment of the territory belonging [to the beneficiaries] is still pending."

13. That the Court observes that paragraph 4 in the Judgment of August 31, 2001 includes two aspects. On the one hand, the obligation of the State to delimit, demarcate and title the land, and on the other hand, the obligation, until such actions have been done, to 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 geographical area in question. That is to say that, as far as the order by the Court in the fourth operative paragraph of its Judgment is concerned, the duty regarding abstention remains in force as long as the active obligation to delimit, demarcate and title has not been done, for which reason once the latter is discharged, the former lapses.

14. That on the basis of the information provided by the parties, the Court observes that the State, in a ceremony that took place on December 14, 2008, conveyed unto Mr. Levito Jhonatan Malean, who represented the members of the Community, the title to ownership over 73,394 hectares, thereby complying with the obligation to delimit, demarcate and title the lands in favor of the members of the Awas Tingni Community, pursuant to the provisions in the fourth operative paragraph of the Judgment delivered on August 31, 2001 (*supra* Having Seen Clause Number 1).

15. That the Inter-American Court sets much store by the fact that the State has fully complied with the reparation measures ordered by this Tribunal in the Judgment on the Merits, Reparations and Costs of August 31, 2001, something which establishes an important legal precedent in International Human Rights Law, since this one is a leading case on the matter of recognition of the property rights vested in the indigenous peoples, as well as of their ancestral values, usages and customs.

16. That the Court acknowledges the efforts deployed by the State to guarantee the rights of the Indigenous Communities in the area and, in such regard, it reminds the State that compliance with the Judgment does not exempt it from its duty to adopt the mechanisms it may consider effective in order to ensure to all persons subject to its jurisdiction the free and full exercise of their rights, pursuant to the general obligations the States Parties to the American Convention have under Article 1(1) thereof.

17. That the Court urges the State to keep promoting and protecting the rights of the indigenous peoples in Nicaragua, in accordance with International Human Rights Law.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority to monitor compliance with its decisions conferred upon it by Article 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of its Statute, and Article 30(2) of its Rules of Procedure,⁴

DECLARES:

1. That according to what has been set forth in Considering Clauses Number 13 to 15 of the instant Order, the State has complied with the obligation to delimit, demarcate and title the land corresponding to the members of the Mayagna (Sumo) Awas Tingni Community (*fourth operative paragraph of the Judgment delivered on August 31, 2001*).
2. That according to what has been set forth in Considering Clauses Number 13 to 15 of the instant Order, the State has complied with the obligation to abstain, until such delimitation, demarcation and titling has been done, from acts that might lead the agents of the State itself, or third parties acting with its acquiescence or tolerance, to affect the existence, value, use or enjoyment of the property located in the geographical area where the members of the Mayagna (Sumo) Awas Tingni Community live and conduct their activities (*fourth operative paragraph of the Judgment delivered on August 31, 2001*)."
3. That, therefore, the State has fully complied with the Judgment of August 31, 2001 in the case of the members of the Mayagna (Sumo) Awas Tingni Community, pursuant to the terms of Article 68(1) of the American Convention on Human Rights imposing on the States Parties to the Convention the obligation to comply with the Judgments pronounced by the Court.

AND DECIDES:

1. To consider monitoring of the "Case of the Mayagna (Sumo) Awas Tingni Community" closed, since the State has complied fully with what was ordered in the Judgment delivered by the Inter-American Court of Human Rights on August 31, 2001.
2. To close the file on the instant case.
3. To communicate this Order to the General Assembly of the Organization of American States at its next regular session by means of the 2009 Annual Report by the Inter-American Court of Human Rights.
4. To require the Secretariat of the Inter-American Court of Human Rights to notify this Order to the State, to the Inter-American Commission on Human Rights and to the representatives of the victims.

⁴ Article 29(2), before the Amendment to the Rules of Procedure adopted during the LXXXII Regular Session, pursuant to Articles 71 and 72 thereof.

Cecilia Medina Quiroga
President

Diego García Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary