

**Order of the
Inter-American Court of Human Rights
of November 26, 2007
Provisional Measures regarding Nicaragua
Case of the Mayagna (Sumo) Awas Tingni Community**

HAVING SEEN:

1. The Judgment of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of August 31, 2001, in the Case of the Mayagna (*Sumo*) Awas Tingni Community v. Nicaragua (hereinafter "the Awas Tingni Community" or "the Community").

2. The Order of the Inter-American Court of September 6, 2002, in which it decided, in accordance with Articles 63(2) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), to order the State of Nicaragua (hereinafter "the State" or "Nicaragua"):

1. [...] to adopt without delay, whatever measures are necessary to protect the use and enjoyment of ownership of the lands belonging to the Mayagna Awas Tingni Community, and of the natural resources existing on those lands, specifically those measures designed to avoid immediate and irreparable damage resulting from activities of third parties who have established themselves inside the territory of the Community or who exploit the natural resources that exist within it, until the definitive delimitation, demarcation and titling ordered by the Court are carried out.

2. [...] to allow the applicants to participate in the planning and implementation of those measures and, in general, to keep them informed of progress regarding the measures ordered by the Inter-American Court of Human Rights.

3. [...] to investigate the facts set forth in the claim that gave rise to the current measures, so as to discover and punish those responsible.

4. [...], the representatives of the Community, and the Inter-American Commission to report to the Court on the measures taken to implement the "agreement on provisional recognition of the rights to use, possession and exploitation of the Community" as soon as they are implemented.

5. [...] to report to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to order the representatives of the Community to submit their comments on the respective reports within four weeks of their receipt, and the Inter-American Commission on Human Rights to submit its comments on the said reports within six weeks of receiving them.

3. The State's reports of March 26 and November 18, 2003, June 4 and December 17, 2004, February 21 and August 5, 2005, and May 19, 2006, on implementation of the provisional measures, in which it indicated, *inter alia*:

(a) Regarding the measures to protect the use and enjoyment of the property of the members of the Awas Tingni Community, that:

i. Following a request from the Community, the Environmental Attorney's Office filed a complaint against Boanerges Herrera Flores, Lorenzo García, Mariano Cano and Fernando Jarquín and any other person exploiting the forestry resources located within the land claimed, and this was admitted by the First District Delegation of the National Forestry Institute on November 8, 2002;

ii. On January 23, 2003, the State ratified and published Act No. 445 on the Regime for the Communal Property of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio and Corn Rivers, which establishes the necessary legal procedures for legal recognition of the Community's lands;

iii. "It continues [...] not to grant forestry permits in the areas claimed not only by the Awas Tingni [Community], but also by the neighboring communities of La Esperanza, Santa Clara and Francia Siripi." However, "once the dispute settlement stage established in Act No. 445 has been exhausted, the real area in which the Awas Tingni [Community] conducts its traditional activities will be determined and it will proceed immediately with the process of demarcation and titling in favor of the Community [...]";

iv. The Community submitted a request for the demarcation of territory on November 11, 2003, following a diagnosis by the Intersectoral Demarcation and Titling Commission (CIDT), "in June and July 2003." As stipulated by Act No. 445, that commission indicated that there were disputes among the neighboring communities and that, "consequently, once the dispute settlement stage established in Act No. 445 had been exhausted, the real area in which the Awas Tingni [Community] conducts its traditional activities could be determined"; and

v. It has adopted measures to protect the area claimed, "based on the presence of members of the Nicaraguan Army, with the corresponding authorization of the Community."

(b) Regarding the provisional agreement on rights of use, occupation and exploitation of the property, that:

i. The members of "the Community [...] signed a Community Forestry Exploitation Agreement [on June 27, 2003, [...] covering an area of 1,000 hectares." However, the members of "the Community did not put the Agreement into effect, but merely ceded their rights to Amerinica Exotic Woods S.A[,] which submitted three minimal exploitation plans covering a surface area of 150 hectares"; and

ii. "It recognizes that the members of the Awas Tingni Community own 100% of the value of the standing timber of the exploitable species in this area." Despite this, the Community has only exploited 20% of the authorized amount of timber.

(c) Regarding the participation of the beneficiaries in the implementation of the measures ordered by the Court, that "it had urged the members of the Community to initiate a bilateral dialogue mechanism to seek [...] institutional and legal mechanisms that would facilitate the prompt and effective titling of the land in favor of the Awas Tingni Community, which has been an essential aspect of the Government's intentions." In addition, it reiterated that eight meetings had been held between State authorities and members of the Community between November 2003 and July 2004. These meetings were proposed by both

parties and have helped facilitate the process of titling the land in favor of the members of the Community.

(d) Regarding the investigation into the reported facts and the eventual punishment of those responsible, that:

i. It had formally opened administrative proceedings against the *Asociación de Excombatientes de la Resistencia Indígena de Desarrollo* (ARID). In addition, the authorities had proceeded to confiscate the wood that had been cut illegally; and

ii. It had created a mechanism to process and pay priority attention to the requirements of the members of the Community.

4. The observations forwarded by the representatives of the beneficiaries (hereinafter "the representatives") of January 30, March 3, April 25 and November 14, 2003, May 3, July 12, October 26 and November 17, 2004, January 15, March 31, September 2 and November 4, 2005, and June 19 and April 26, 2007, in which they indicated, *inter alia*:

(a) Regarding the measures to protect the use and enjoyment of the property of the members of the Community, that:

i. "[...T]he State's responsibility [...] is not exhausted by the actions of the institutions of the central Government, nor does the granting of forestry exploitation permits exhaust the forms of tacit or express consent to the illegal activities that are being carried out [...] on the Community's territory." The Community has reported incursions onto its territory by third parties without its authorization; one of these cases relates to "a mestizo tenant farmer [having] sold around 10,000 hectares in the region of Wakambay to 20 mestizo families";

ii. As required by Act No. 445, they had presented a request for the delimitation, demarcation and titling of their land on November 11, 2003; and

iii. The existence of other indigenous communities in adjoining areas who are making claims over ancestral lands has never been denied. However, the State's allegation that there are "overlapping areas" does not excuse the failure to grant title to the Awas Tigni Community.

(b) Regarding the provisional agreement on the rights of use, occupation and exploitation of the property: that the Community was unable to exploit the forestry resources owing "to the need to fulfill onerous requirements imposed by the Nicaraguan authorities and the inaction of these authorities, which prevented the start-up of forestry exploitation work." The Forestry Exploitation Agreement expired in June 2004, before forestry exploitation activities had started and the exploitation rights were transferred to Amerinca Exotic Woods S.A.

(c) Regarding the participation of the beneficiaries in the implementation of the measures ordered by the Court: that, although several meetings had been held with the State authorities, they had been held "outside the formal negotiating channels for implementation of the judgment of the Inter-American Court, in a context of pressure on the

Community leaders," and "without the presence of their legal representatives, thus limiting the effective participation of the Community."

(d) Regarding the investigation into the reported facts and the eventual punishment of those responsible, that:

i. The *Asociación de Excombatientes de la Resistencia Indígena de Desarrollo* (ARID) "has been the subject of constant complaints [by the Community] since April 2002, when the process of execution of the judgment started, and more than three years elapsed [...] before an investigation into the facts";

ii. The State has not punished anyone who was responsible for the illegal felling of trees, or taken any measures regarding the murder of Octavio Henry, a member of the Community, in July 2004. Furthermore, it has not investigated the death threats and the physical violence against members of the Community, despite repeated complaints; and

iii. "The only result of the investigation conducted after the statutory time limit had passed" was the administrative punishment of Community members for the "illegal felling of trees on land occupied by the Awas [T]igni Community." The administrative decision was subsequently annulled.

5. The observations presented by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") on January 31, May 20 and November 17, 2003, July 12, 2004, February 2, April 20 and September 21, 2005, and July 5, 2006, in which it indicated, *inter alia*:

(a) Regarding the measures to protect the use and enjoyment of the property of the Community, that:

i. The non-concession of forestry permits in the areas claimed "does not imply compliance by the State [...] with the Court's Order [for provisional measures]." The State "must take positive steps to prevent [...] the illegal tree felling that has been reported by the victims' representatives"; and

ii. The progress regarding the measures ordered has been tardy and insufficient.

(b) Regarding the provisional agreement on the use, occupation and exploitation of the property, it was concerned that the State "had not [...] extended the Community Forestry Exploitation Agreement [...]. Consequently, [the State] was failing to implement the fourth operative paragraph of the judgment [...]."

(c) Regarding the investigation into the reported facts and the eventual punishment of those responsible:

i. It recognized the effort that the State had made by opening administrative proceedings against the *Asociación de Excombatientes de la Resistencia Indígena de Desarrollo* (ARID) and confiscating the wood from the trees that had been felled

illegally. Nevertheless, those responsible for this illegal tree felling had not been punished; and

ii. "The grave situation of lack of protection in which [the members of] the Awás Tigni Community live continues, and there have even been death threats against its members by third parties interested in the natural resources on the Community's territory."

CONSIDERING:

1. That the State ratified the American Convention on Human Rights on September 25, 1979, and, pursuant to Article 62 thereof, accepted the compulsory jurisdiction of the Court on February 12, 1991.

2. That Article 63(2) of the American Convention establishes that in cases of "extreme gravity and urgency, and when is necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration."

3. That Article 25(1) of the Rules of Procedure of the Court stipulates that, "[a]t any stage of the proceedings involving cases of extreme gravity and urgency, and when is necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention."

4. That Article 1(1) of the Convention embodies the obligation of the States Parties to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms. This obligation is even more evident in relation to those who are involved in proceedings before the organs of supervision of the American Convention.

5. That the States Parties to the Convention must comply with its provisions in good faith, which corresponds to a basic principle of the law of the international responsibility of the State (*pacta sunt servanda*).¹ Also, they must ensure the inherent effects of such provisions (*effet utile*).²

6. That, under international human rights law, the purpose of provisional measures is not merely precautionary, in the sense that they preserve a juridical situation, but they are essentially protective because they protect human rights inasmuch as they seek to avoid irreparable damage to persons. Provided the basic requirements of extreme gravity and urgency and the prevention of

¹ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of November 22, 2002, third considering paragraph; *Case of García Asto and Ramírez Rojas v. Peru. Monitoring compliance with judgment*. Order of July 12, 2007, sixth considering paragraph; and *Case of Molina Theissen v. Guatemala. Monitoring compliance with judgment*. Order of July 10, 2007, third considering paragraph.

² Cf., *Case of Ivcher Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 24, para. 37; *Case of Gómez Palomino v. Peru. Monitoring compliance with judgment*. Order of October 18, 2007, fourth considering paragraph, and *the Case of García Asto and Ramírez Rojas*, *supra* note 1, seventh considering paragraph.

irreparable damage to persons are met, provisional measures become a real jurisdictional guarantee of a preventive nature.³

7. That provisional measures are exceptional in nature; they are ordered based on the need for protection and, once ordered, must be maintained, provided the basic requirements described above subsist.⁴

8. That, in the Judgment of August 31, 2001, the Court ordered the State to delimit, demarcate and title the land corresponding to the members of the Mayagna (Sumo) Awas Tingni Community and, until this delimitation, demarcation and titling had been completed, to abstain from carrying out acts that could lead the State's agents, 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.

9. That, in the Order of September 6, 2002, the Court decided that it was necessary to grant provisional measures in order to protect the use and enjoyment of the ownership of the lands belonging to the members of the Awas Tigni Community and the natural resources within these lands in order to avoid immediate and irreparable damage resulting from the activities carried out by the exploitation of the natural resources on this territory by third parties outside the Community (*supra* second having seen paragraph).

10. That, now that more than five years have elapsed since the adoption of the provisional measures, the Court has assessed the different State reports and the observations of the representatives and the Commission concerning the measures adopted to protect the ownership of the ancestral lands of the members of the Awas Tigni Community, and observes that the information provided is closely related to compliance with the judgment of August 31, 2001 (*supra* third, fourth and fifth having seen paragraphs).

11. That, based on the above, in the instant case the Court deems it pertinent to associate the examination and assessment of the information provided on the measures adopted to protect the ownership of the ancestral lands of the members of the Awas Tigni Community with monitoring compliance with the judgment, so that it is unnecessary to maintain in force the provisional measures that were ordered (*supra* second having seen paragraph).

12. That, since the adoption of the Judgment of August 31, 2001, the Court has been monitoring compliance with it, pursuant to the provisions of the Convention regulating its competence in this regard (*supra* first and fifth considering paragraphs).

³ Cf. *Case of Herrera Ulloa v. Costa Rica*. Provisional measures. Order of the Inter-American Court of Human Rights of December 6, 2001, fourth considering paragraph; *Matter of Colotenango regarding Guatemala*. Provisional measures. Order of the Inter-American Court of Human Rights of July 12, 2007, sixth considering paragraph; *Matter of Haitians and Dominicans of Haitian origin in the Dominican Republic*. Provisional measures. Order of the Inter-American Court of Human Rights of February 2, 2006, fifth considering paragraph; *Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison) with regard to Venezuela*. Provisional measures. Order of the Inter-American Court of Human Rights of February 2, 2007, fourth considering paragraph

⁴ Cf. *Case of the Constitutional Court v. Peru*. Provisional measures. Order of the Inter-American Court of Human Rights of March 14, 2001, third considering paragraph; *Case of Raxcacó Reyes et al.* Provisional measures. Order of the Inter-American Court of Human Rights of November 21, 2007, fourth considering paragraph; and *Matter of the Monagas Detention Center ("La Pica")*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of July 3, 2007, seventh considering paragraph.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to the authority conferred by Article 63(2) of the American Convention on Human Rights and Article 25 of its Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights in favor of the members of the Mayagna (Sumo) Awas Tigni Community, as indicated in the tenth considering paragraph of this Order.
2. To continue monitoring compliance with the judgment delivered by the Inter-American Court of Human Rights in the instant case on August 31, 2001.
3. To notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the beneficiaries.

Sergio García Ramírez
President

Cecilia Medina Quiroga

Manuel E. Ventura Robles

Diego García-Sayán

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary