

# Mayagna (Sumo) Awas Tingni Community v. Nicaragua

## ABSTRACT<sup>1</sup>

*This case was brought because the State did not demarcate the communal lands of the Awas Tingni Community, nor did the State adopt effective measures to ensure the property rights of the Community to its ancestral lands and natural resources. Also, the State granted a concession on community lands without the assent of the Community, and the State did not ensure an effective remedy in response to the Community's protests regarding its property rights. The Court found that the State violated the American Convention on Human Rights.*

## I. FACTS

### A. Chronology of Events

The Awas Tingni community is a community of indigenous people living in the Northern Atlantic Autonomous Region (“RAAN”) of the Atlantic coast of Nicaragua.<sup>2</sup> Most Community members belong to the Mayagna or Sumo ethnic groups.<sup>3</sup> The Community is comprised of more than 600 hundred individuals who take part in communal agriculture, family farming, fruit and medicinal plant gathering, hunting, and fishing. These activities and the general use and enjoyment of the lands they inhabit are part of the Community’s “traditional collective form of organization.”<sup>4</sup>

The Community does not have legal title to the lands it inhabits,

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1. Sarah Frost, Author; Jennifer Barrera, Elise Cossart-Daly, Erika Green, Melissa Kurata, and Shamin Rostami, Editors; Laura Ybarra, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 103 (Aug. 31, 2001).

3. *Id.* ¶¶ 83(a)-(b), 103(a). In the language of the Community, *mayagna* means “child of the sun.” *Id.* ¶ 83(b).

4. *Id.* ¶ 103(e).

nor is the land demarcated.<sup>5</sup> There are other indigenous communities who claim ownership rights over parts of the lands claimed by the Awas Tingni community.<sup>6</sup> The State also maintains that it owns some of the lands claimed by the Community.<sup>7</sup>

Since 1990, no indigenous communities in Nicaragua have received title deeds to their lands.<sup>8</sup>

**March 26, 1992:** The Awas Tingni community signs a contract with *Maderas y Derivados de Nicaragua, S.A.* (“MADENSA”), for “comprehensive management of the forest.”<sup>9</sup>

**May 1994:** The Awas Tingni community, MADENSA, and the Ministry of the Environment and Natural Resources (“MARENA”) all sign a Forest Management Agreement to “facilitate the ‘definition’ of communal lands and to avoid undermining the Community’s territorial claims.”<sup>10</sup>

**January 5, 1995:** The National Forestry Service of MARENA approves a forest management plan submitted by Sol del Caribe, S.A. (“SOLCARSA”), a logging company, to use timber from the lands inhabited by the Awas Tingni community.<sup>11</sup>

**April 28, 1995:** The Regional Coordinator of RAAN signs the forest management plan with SOLCARSA.<sup>12</sup>

**June 28, 1995:** The Board of Directors of the Regional Council of RAAN approves the agreement signed by RAAN and SOLCARSA and authorizes logging operations in the Cerro Wakambay area.<sup>13</sup>

**July 11, 1995:** María Luisa Acosta Castellón submits a letter to the Minister of MARENA on the Community’s behalf, requesting that the process of granting a concession to SOLCARSA be halted until an agreement with the Community can be reached.<sup>14</sup>

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5. *Id.* ¶ 103(g).

6. *Id.* ¶ 103(f).

7. *Id.*

8. *Id.* ¶ 103(s).

9. *Id.* ¶ 103(h).

10. *Id.* ¶ 103(i).

11. *Id.*

12. *Id.* ¶ 103(j).

13. *Id.* ¶ 103(j).

14. *Id.* ¶ 103(ñ).

**September 11, 1995:** The Awas Tingni community files an application for *amparo* against MARENA officials before the Appellate Court of Matagalpa.<sup>15</sup> The Community asks the court to prevent the officials from granting the concession to SOLCARSA, suspend the concession process between MARENA and SOLCARSA, and require a dialogue process with the Community regarding the use of timber on Community lands.<sup>16</sup>

**September 19, 1995:** The Civil Panel of the Appellate Court of the Sixth Region of Matagalpa declares the Community's application for *amparo* inadmissible because the Community's failure to submit the application within thirty days of becoming aware of MARENA's actions amounts to tacit consent to the granting of the concession.<sup>17</sup>

**September 21, 1995:** The Community files an *amparo* application before the Constitutional Panel of the Supreme Court of Justice for review of the Civil Panel's decision. The Community argues that it is becoming aware of new violations on a daily basis, thus causing the thirty-day filing requirement to continually reset.<sup>18</sup>

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**October 2, 1995:** Jamie Castillo Felipe, Syndic of the Awas Tingni community, files a petition before the Commission in his own name and on behalf of the Community.<sup>19</sup> He requests precautionary measures to prevent the State from granting SOLCARSA a concession to start logging on indigenous lands.<sup>20</sup>

**March 13, 1996:** The State, through MARENA, grants a thirty-year

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15. *Id.* ¶ 103(p).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.* ¶ 6. The Syndic is the person charged with resolving conflicts arising within the Community and with communicating with State entities. *Id.* ¶ 83(a).

20. *Id.* ¶ 6.

concession to SOLCARSA to manage and utilize about 62,000 hectares of forestland in the RAAN region.<sup>21</sup>

James Anaya, legal representative of the Community, informs the Commission that the logging concession continues to be processed, lacking only a signature before becoming final.<sup>22</sup>

**March 20, 1996:** MARENA's lawyers inform the Awas Tingni community that the Regional Council of RAAN has approved the concession granted to SOLCARSA. They assert that because the Community does not have an independent legal personality but benefits nonetheless from representation by the authorities of RAAN, RAAN's approval of the concession is valid.<sup>23</sup>

**March 21, 1996:** The Awas Tingni community submits a request to the Regional Council of RAAN. The Community asks that the Regional Council initiate a study process, in cooperation with the Community, to achieve appropriate demarcation of territory.<sup>24</sup> The Community maintains that the submission of the request is due to a lack of administrative remedies available elsewhere within the Nicaraguan legal system to ensure the Community's property rights.<sup>25</sup>

**March 22, 1996:** In response to the Community's request, the Board of Directors of the Regional Council of RAAN notifies the Community's lawyers that the concession that it adopted in June 1995 was not final, that it is still subject to ratification by the plenary session of the Regional Council, and that the Board of Directors would not grant the consent required for ratification.<sup>26</sup>

**March 29, 1996:** Two members of the RAAN Regional Council file an application for *amparo* before the Appellate Court of Matagalpa against MARENA officials to prevent the concession to SOLCARSA from being implemented.<sup>27</sup> They claim the concession is invalid since it was

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21. *Id.* ¶ 103(k).

22. *Id.* ¶ 10.

23. Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 2(i) (Aug. 31, 2001).

24. *Id.* ¶ 2(j); Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, ¶ 103(o).

25. Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, ¶ 103(o).

26. Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Preliminary Objections, Judgment, ¶ 2(k).

27. Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, ¶ 103(q).

not approved by the plenary session of the Regional Council of RAAN, as is required under Article 181 of the Nicaraguan Constitution.<sup>28</sup>

**April 9, 1996:** The Civil Panel of the Appellate Court of Matagalpa admits the application for *amparo* but ultimately denies the request to suspend the concession.<sup>29</sup> The Civil Panel refers the application to the Supreme Court of Justice.<sup>30</sup>

**February 27, 1997:** The Constitutional Panel of the Supreme Court of Justice rules on the applications for *amparo* filed by both the Awas Tingni community and the members of the Regional Council of RAAN.

The Constitutional Panel dismisses the Community's application for *amparo* for the same reasons given by the Civil Panel of the Appellate Court of the Sixth Region of Matagalpa in its September 19, 1995 decision.<sup>31</sup>

Regarding the application for *amparo* filed by the two members of RAAN, the Constitutional Court holds in Judgment No. 12 that the concession granted to SOLCARSA by MARENA is unconstitutional because was not approved by RAAN, as required under Article 181 of the Constitution of Nicaragua.<sup>32</sup>

The State does not suspend the concession and logging operations continue.<sup>33</sup> Despite the Constitutional Court's judgment, MARENA once again requests RAAN to approve the concession.<sup>34</sup>

**May 16, 1997:** MARENA sanctions SOLCARSA through Ministerial Order No. 02-97 for illegally felling trees on the site of the Kukulaya community and for carrying out works without an environmental permit.<sup>35</sup>

**October 9, 1997:** The Regional Council of RAAN decides to ratify Administrative Provision No. 2-95 of June 28, 1995, which approved a logging concession in favor of SOLCARSA.<sup>36</sup> The Regional Council also suspends the April 28, 1995 forest management plan between the Regional Coordinator of RAAN and SOLCARSA, and ratifies the

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28. *Id.*

29. *Id.*

30. *Id.* ¶ 130.

31. *Id.* ¶ 103(p).

32. *Id.* ¶¶ 12, 17, 103(m), 103(q).

33. *Id.* ¶¶ 17, 19.

34. *Id.* ¶ 103(m).

35. *Id.* ¶ 103(l).

36. *Id.* ¶ 103(n).

March 13, 1996 thirty-year concession agreement between MARENA and SOLCARSA.<sup>37</sup>

**October 31, 1997:** The Commission requests that the State adopt any precautionary measures necessary to suspend the concession to SOLCARSA.<sup>38</sup>

**November 5, 1997:** The State informs the Commission that RAAN has approved the concession to SOLCARSA, making it valid.<sup>39</sup>

**November 7, 1997:** Members of the Awas Tingni community file a second application for *amparo* before the Civil Panel of the Appellate Court of the Sixth Region of Matagalpa against MARENA officials and specific members of the Board of Directors of the Regional Council of RAAN, requesting that the concession to SOLCARSA be suspended and declared null.<sup>40</sup> They also request that an order be issued to require the Board of Directors of the Regional Council of RAAN to process the Community's March 1996 request to be included in the demarcation of territory process.<sup>41</sup> They seek relief in the form of an order requiring MARENA officials to refrain from issuing further concessions until the land ownership in the area is defined.<sup>42</sup>

**November 12, 1997:** The Civil Panel of the Appellate Court of the Sixth Region of Matagalpa admits the Community's second application for *amparo*.<sup>43</sup> The Civil Panel declines to suspend the concession on the grounds that it has already been carried out.<sup>44</sup> The Civil Panel summons the officials against whom the application has been filed to appear before it.<sup>45</sup>

**December 5, 1997:** The Commission receives a note from the State containing an express objection that the petitioners have not exhausted domestic remedies.<sup>46</sup>

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37. *Id.* ¶¶ 103(n), 103(j), 103(k).

38. *Id.* ¶ 20.

39. *Id.* ¶ 21.

40. *Id.* ¶ 23.

41. *Id.* ¶ 103(r).

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Preliminary Objections, Judgment, ¶ 55.

**January 22, 1998:** Humberto Thompson Sang, a member of the Regional Council of RAAN, files a request before the Constitutional Panel of the Supreme Court of Justice to request the execution of the Constitutional Panel's Judgment No. 12 of February 27, 1997.<sup>47</sup>

**February 3, 1998:** The Constitutional Panel of the Supreme Court of Justice issues an order to inform the President of the Republic that the Minister of MARENA has not complied with it Judgment No. 12 of February 27, 1997.<sup>48</sup> The Constitutional Panel orders that the National Assembly be informed of the Minister of MARENA's refusal to comply as well.<sup>49</sup>

**February 16, 1998:** The Minister of MARENA informs the General Manager of SOLCARSA that, as the logging concession has become null owing to the Constitutional Panel's Judgment No. 12 of February 27, 1997, the company would suspend all of its activity relating to the contract.<sup>50</sup>

**March 3, 1998:** The Commission issues Merits Report No. 27/98.<sup>51</sup> The Commission concludes that the State has violated Articles 21 (Right to Property) and 25 (Right to Judicial Protection), in relation to Articles 1 (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention because it granted a concession to SOLCARSA without the consent of the Awas Tingni community and did not guarantee an effective remedy to respond to their claims of right to the lands and natural resources.<sup>52</sup>

The Commission recommends that the State establish procedures, acceptable to the indigenous communities involved, to quickly recognize and demarcate the territories of the Awas Tingni and other indigenous communities.<sup>53</sup> The Commission also recommends that the State suspend all activity related to SOLCARSA's logging concession until the issue of the ownership of the land is resolved.<sup>54</sup> Lastly, the

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47. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, ¶¶ 24, 103(q).

48. *Id.* ¶ 103(q). The Court's Merits decision indicates that the Constitutional Panel issued its order on February 13, 1998. *Id.* ¶ 130.

49. *Id.* ¶ 103(q).

50. *Id.*

51. *Id.* ¶ 25.

52. *Id.*

53. *Id.*

54. *Id.*

Commission recommends that the State initiate discussions with the Awas Tingni community to determine the circumstances necessary to reach an agreement between the State and the Community.<sup>55</sup>

### *B. Before the Court*

**June 4, 1998:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>56</sup>

#### 1. Violations Alleged by the Commission<sup>57</sup>

Article 4 (Right to Life)

Article 11 (Right to Privacy)

Article 12 (Freedom of Conscience and Religion)

Article 16 (Freedom of Association)

Article 17 (Rights of the Family)

Article 21 (Right to Private Property)

Article 22 (Freedom of Movement and Residence)

Article 23 (Right to Participate in Government)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

#### 2. Violations Alleged by Representatives of the Victims<sup>58</sup>

Same Violations Alleged by Commission.

**July 2, 1998:** The State appoints Alejandro Montiel Argüello as Judge *ad hoc*.<sup>59</sup>

**August 19, 1998:** The State raises a preliminary objection claiming that

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55. *Id.*

56. *Id.* ¶ 29.

57. *Id.* ¶¶ 2, 156.

58. Tierra Viva from the Pueblos Indígenas del Chaco served as representatives of the Awas Tingni community. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Ficha Técnica, Inter-Am. Ct. H.R.

59. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, ¶ 32.



domestic remedies have not been exhausted.<sup>60</sup> It argues that the Community has committed omissions and taken defective procedural actions in contesting the concession to SOLCARSA; that it did not use all of the existing jurisdictional remedies, which negatively impacted the promptness of the judicial remedy; and that it made no request for the award of land titles to competent authorities, but rather sought assistance from third parties lacking competence in this area.<sup>61</sup>

**October 13, 1998:** The President of Nicaragua submits a draft bill called “Organic Law Regulating the Communal Property System of the Indigenous Communities of the Atlantic Coast and BOSAWAS,” to implement certain provisions of the Constitution of Nicaragua in order to facilitate the delimitation and titling of indigenous community land.<sup>62</sup>

**October 14, 1998:** The Constitutional Panel of the Supreme Court of Justice issues its decision on the Community’s second application for *amparo*.<sup>63</sup> The Constitutional Panel decides that the application is time-barred because the Community allowed thirty days to pass before seeking a remedy after becoming aware that the concession had been granted.<sup>64</sup> The Court declares the application for *amparo* to be inadmissible.<sup>65</sup>

**January 27, 1999:** The Organization of Indigenous Syndics of the Nicaraguan Caribbean (*OSICAN*) submits an amicus curiae brief.<sup>66</sup> Later, Eduardo Conrado Povedo accedes to *OSICAN*’s brief.<sup>67</sup>

**May 28, 1999:** The Assembly of First Nations (*AFN*), a Canadian organization, submits an amicus curiae brief.<sup>68</sup>

**May 31, 1999:** The International Human Rights Law Group submits an amicus curiae brief.<sup>69</sup>

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60. *Id.* ¶ 35.

61. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Preliminary Objections, Judgment, ¶ 40.

62. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, ¶ 103(t).

63. *Id.* ¶ 103(r).

64. *Id.*

65. *Id.*

66. *Id.* ¶ 38.

67. *Id.*

68. *Id.* ¶ 41.

69. *Id.* ¶ 42.

**February 1, 2000:** The Court unanimously dismisses the State's preliminary objection regarding exhaustion of domestic remedies. Exhaustion of domestic remedies is required under Article 46 of the American Convention for cases before the Commission to be admissible.<sup>70</sup> The Court considers that it is a generally recognized principle of international law that States may expressly or implicitly waive invocation of the rule of exhaustion of domestic remedies.<sup>71</sup> In order to be timely, the objection that domestic remedies have not been exhausted must be raised during the early stages of proceedings before the Commission, otherwise it will be presumed that the State has waived invocation of the rule.<sup>72</sup> Furthermore, when a State invokes the rule, the State must indicate which domestic remedies have yet to be exhausted and provide evidence of their effectiveness.<sup>73</sup>

Although the State presented information to the Commission on various proceedings before domestic courts, the State did not clearly file an objection that domestic remedies had not been exhausted.<sup>74</sup> The Commission received the State's first clear objection on December 5, 1997, over two years after the Commission received the petition on the case.<sup>75</sup> The Court thus concludes that the State has tacitly waived filing its objection of non-exhaustion of domestic remedies because the State failed to raise it before the Commission in a timely manner.<sup>76</sup> The Court declines to consider the effectiveness of domestic remedies.<sup>77</sup>

Judge *ad hoc* Alejandro Montiel Argüello pens a concurring opinion with the Court's judgment. He says that he writes separately owing to the Court's "lack of precision" in the expression "initial stages," pointing out that the instruments regulating proceedings before the Commission do not define what the initial stages actually are.<sup>78</sup> Article 47 of the Convention only defines circumstances in which the Commission must declare a petition inadmissible; if a petition is considered admissible, the Commission need only request information

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70. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Preliminary Objections, Judgment, ¶ 52.

71. *Id.* ¶ 53.

72. *Id.*

73. *Id.*

74. *Id.* ¶ 55.

75. *Id.*

76. *Id.* ¶ 56; *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, ¶ 44.

77. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Preliminary Objections, Judgment, ¶ 59.

78. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Preliminary Objections, Separate Opinion of Judge Alejandro Montiel Argüello, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 2 (Aug. 31, 2001).

from the State.<sup>79</sup> The State may still object on grounds of inadmissibility.<sup>80</sup> The Commission has a practice of processing petitions without making a declaration of admissibility in many cases, as declarations of admissibility can slow the processing of cases.<sup>81</sup> Judge *ad hoc* Montiel Argüello argues that, in order to ensure legal certainty, the Commission should reform its Regulations in order to identify the exact stages of proceedings that are “initial” so that preliminary objections against admissibility of the petition can be filed during this time.<sup>82</sup>

### III. MERITS

#### *A. Composition of the Court*

Antônio Augusto Cançado Trindade, President  
Máximo Pacheco Gómez, Vice President  
Hernán Salgado Pesantes, Judge  
Oliver H. Jackman, Judge  
Alirio Abreu Burelli, Judge  
Sergio García Ramírez, Judge  
Carlos Vicente de Roux Rengifo, Judge  
Alejandro Montiel Argüello, Judge *ad hoc*

Manuel E. Ventura Robles, Secretary  
Pablo Saavedra Alessandri, Deputy Secretary

#### *B. Decision on the Merits*

**August 31, 2001:** The Court issues its Judgment on Merits, Reparations and Costs.<sup>83</sup>

The Court found by seven votes to one that the State had violated:

Article 25 (Right to Judicial Protection), in relation to Articles 1(1) and 2 of the Convention, to the detriment of members of the Mayagna (Sumo) Awas Tingni community,<sup>84</sup> because:

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79. *Id.* ¶ 4.

80. *Id.*

81. *Id.* ¶ 5.

82. *Id.* ¶ 6.

83. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, ¶ 111.

84. *Id.* ¶ 139.

*The State did not adopt adequate domestic procedures to enable delimitation, demarcation, and titling of the Awas Tingni community's lands and did not process the Community's applications for amparo within a reasonable time.*<sup>85</sup> Article 25 (Right to Judicial Protection) establishes the obligation of States to provide effective legal remedies against acts that violate fundamental rights, whether they derive from the Convention or a State's Constitution or domestic law, to all persons within their jurisdiction.<sup>86</sup> The right to a "simple and rapid remedy" is "one of the basic mainstays, not only of the American Convention, but also of the Rule of Law in a democratic society."<sup>87</sup> Compliance with Article 25 (Right to Judicial Protection) requires not only the formal existence of remedies, but remedies must also be effective.<sup>88</sup>

*The Court considered two aspects of the case that were applicable to the State's obligation to provide effective remedies. First, the Court addressed the issue of whether an effective procedure existed to title and demarcate indigenous land. It concluded that, while laws existed to recognize and protect indigenous communal property, the procedure for titling such property was not clearly regulated in Nicaraguan legislation.*<sup>89</sup> Law No. 14 "Amendment to the Agrarian Reform Law" establishes procedures to guarantee property to "all those who work productively and efficiently," but does not establish specific procedures for titling and demarcating property held by indigenous communities.<sup>90</sup> *There is a general lack of certainty as to what steps must be taken to request demarcation and titling of property.*<sup>91</sup> *Indeed, from 1990 to the date of the Court's decision, no title deeds had been issued to indigenous communities.*<sup>92</sup> *As a result, the Court determined that the State had not provided an effective procedure for demarcating and titling indigenous communal lands.*<sup>93</sup>

*Second, the Court addressed the administrative and judicial steps taken by the Community to secure their communal rights. Regarding the two applications for amparo filed by the Community, the Court noted that*

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85. *Id.* ¶ 137.

86. *Id.* ¶ 111.

87. *Id.* ¶ 112.

88. *Id.* ¶ 114.

89. *Id.* ¶¶ 122-23.

90. *Id.* ¶ 123.

91. *Id.* ¶¶ 124-25.

92. *Id.* ¶¶ 103(s), 126.

93. *Id.* ¶ 127.

*Law No. 49 “Amparo Law” dictates that amparo remedies should be processed within forty-five days. The Community’s first and second application, however, took over seventeen months and eleven months, respectively, to be processed.<sup>94</sup> The Court thus found that the unjustified delay in reaching a decision on amparo remedies rendered them “illusory and ineffective.”<sup>95</sup>*

*The Court found that the State violated Article 25 (Right to Judicial Protection) of the Convention.*

Article 21 (Right to Property), in relation to Articles 1(1) and 2 of the Convention, to the detriment of members of the Mayagna (Sumo) Awas Tingni community,<sup>96</sup> because:

*The State granted concessions to third parties before delimiting, demarcating, and titling the lands belonging to the Awas Tingni community.<sup>97</sup> Article 21 (Right to Property) establishes the right to the use and enjoyment of property, which nonetheless can be subordinate to and deprived due to the needs of social interest or public utility.<sup>98</sup> If the State takes property away, however, just compensation must be paid.<sup>99</sup> The Court took notice of Article 29(b) of the Convention, which establishes that provisions in the Convention are not to be interpreted in such a way as to restrict the enjoyment or exercise of any right or freedom recognized by State laws or other treaties to which the State is Party.<sup>100</sup> Employing an “evolutionary interpretation” of international human rights instruments and Article 29(b) of the Convention, the Court determined that the right to property under Article 21 includes the rights of members of indigenous communities to ownership under the communal property framework.<sup>101</sup> This right is also recognized under the Constitution of Nicaragua.<sup>102</sup> For indigenous communities lacking real title to property of communal lands, possession of land should suffice for obtaining official recognition and consequent registration of the property.<sup>103</sup>*

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94. *Id.* ¶¶ 131-33.

95. *Id.* ¶ 134.

96. *See id.* ¶ 153.

97. *Id.*

98. *Id.* ¶ 143.

99. *Id.*

100. *Id.* ¶ 147.

101. *Id.* ¶ 148.

102. *Id.*

103. *Id.* ¶ 151.

*In this case, the State recognizes the right to communal property of indigenous peoples, but does not have procedures in place to confirm recognition.<sup>104</sup> The lack of formal recognition, along with uncertainty as to the exact boundaries of the Awas Tingni community's lands, has led to "a climate of constant uncertainty."<sup>105</sup> The Community has the right to have the State carry out delimitation, demarcation, and titling of its lands and abstain from taking action that would affect the "existence, value, use or enjoyment" of the lands in which the Community lives until the titling process is complete.<sup>106</sup> Since the State granted concessions to third parties before the lands were delimited, demarcated, and titled, the Court concluded that it violated the Awas Tingni community's right to property under Article 21.<sup>107</sup>*

The Court unanimously dismissed the claim that the State had violated:

Articles 4 (Right to Life), 11 (Right to Privacy), 12 (Freedom of Conscience and Religion), 16 (Freedom of Association), 17 (Rights of the Family), 22 (Freedom of Movement and Residence), and 23 (Right to Participate in Government), in relation to Articles 1(1) and 2 of the Convention, to the detriment of members of the Mayagna (Sumo) Awas Tingni community,<sup>108</sup> because:

*Even though the Court may declare a violation that has not been alleged in the petition brief if there are proven facts to support it, the Court found that its judgment on Articles 21 (Right to Property) and 25 (Right to Judicial Protection) was sufficient.<sup>109</sup> Furthermore, the Commission failed to state the grounds for violation of the above articles in its brief on the final arguments.<sup>110</sup> For these reasons, the Court dismissed the claims of violation.*

### *C. Dissenting and Concurring Opinions*

#### 1. Concurring Opinion of Judges Antônio Augusto Cançado Trindade, Máximo Pacheco Gómez, and Alirio Abreu Burelli

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104. *Id.* ¶ 152.

105. *Id.* ¶¶ 152-53.

106. *Id.* ¶ 153.

107. *Id.*

108. *Id.* ¶ 157.

109. *Id.*

110. *Id.*

In a separate opinion, Judges Antônio Augusto Cançado Trindade, Máximo Pacheco Gómez, and Alirio Abreu Burelli commented on the inter-temporal dimension of the communal form of property that exists among members of indigenous communities.<sup>111</sup> They referred to testimony provided by members of the Awas Tingni community at a public hearing, which described the importance of the Community's land not only for its own subsistence, but also for the family, cultural, and religious development of its members.<sup>112</sup> The land is considered to be sacred, as it holds the mortal remains of their ancestors as well as divine spirits.<sup>113</sup> Rather than view the land as something that can be privately owned and exploited, they hold the land communally, and its natural resources form an integral part of their customary law.<sup>114</sup> The right to communal property has an important cultural dimension; "just as the land they occupy belongs to them, they in turn belong to their land."<sup>115</sup>

Because of the important place land occupies within the culture of the Community, the Judges reason that without the ability to effectively use and enjoy the land, the Community "would be deprived of practicing, conserving and revitalizing their cultural habits, which give a meaning to their own existence, both individual and communitarian."<sup>116</sup> It is therefore essential that Article 21 (Right to Property) be conceived of as broader than the "civilist," or private law, understanding of property in this case.<sup>117</sup> The communal form of property "reflects a cultural manifestation of the integration of the human being with nature and the world wherein he lives. This integration . . . is projected into both space and time, as we relate ourselves, in space, with the natural system of which we are part and that we ought to treat with care, and, in time, with other [past and future] generations."<sup>118</sup> Acknowledging cultural diversity is a vital aspect of securing the efficacy of human rights norms at both national and international levels, and one that has been repeatedly affirmed in the jurisdiction of the Court.<sup>119</sup> The Judges

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111. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Separate Opinion of Judges Antônio Augusto Cançado Trindade, Máximo Pacheco Gómez, and Alirio Abreu Burelli, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 1 (Aug. 31, 2001).

112. *Id.* ¶ 2.

113. *Id.* ¶¶ 2-4.

114. *Id.* ¶ 6.

115. *Id.* ¶¶ 6, 8.

116. *Id.* ¶ 8.

117. *Id.* ¶ 9.

118. *Id.* ¶ 10.

119. *Id.* ¶ 14 (citing *Aloeboetoe et al. v. Suriname*, Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 15 (Sept. 10, 1993) and *Bámaca Velázquez v. Guatemala*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 70 (Nov. 25, 2000)).

applauded the Court's approach in this case in particular for centering the Judgment around the "indigenous cosmovision."<sup>120</sup>

The Judges also noted that respect for cultural "manifestations," though essential to the protection of human rights, cannot be invoked against universally recognized standards of human rights.<sup>121</sup> Thus, there is a delicate tension between the value of diversity and the importance of uniformity in human rights law.<sup>122</sup> Cultural diversity must be respected, and cultural relativism discarded.<sup>123</sup> The Judges considered the Court's Judgment in this case to be "a positive contribution to the protection of the communal form of property."<sup>124</sup>

## 2. Concurring Opinion of Judge Hernán Salgado Pesantes

Judge Hernán Salgado Pesantes wrote separately to discuss the appropriate perspective from which to view the right of indigenous communities to their land and to propose an approach for delimiting and demarcating communal lands.<sup>125</sup>

He restated the "unique bond" that indigenous communities have with their land; not only do they rely on it for survival, but it also provides them with "moral and material fulfillment."<sup>126</sup> For this reason, the right of indigenous peoples to their land transcends the right to property in the traditional sense.<sup>127</sup> It serves a social function, as opposed to a merely private function.<sup>128</sup>

Judge Salgado Pesantes also proposed that States use the principle of proportionality when delimiting and demarcating communal lands when there are multiple communities utilizing a given area of land.<sup>129</sup> He argued that this is the best approach to ensure that all members of indigenous communities are able to continue their way of life.<sup>130</sup>

Lastly, Judge Salgado Pesantes raised the point that the enjoyment and exercise of the right to property also carries with it moral, political,

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120. *Id.* ¶ 13.

121. *Id.* ¶ 14.

122. *Id.*

123. *Id.*

124. *Id.* ¶ 15.

125. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Concurring Opinion of Judge Hernán Salgado Pesantes, Inter-Am. Ct. H.R. (ser. C) No. 79, ¶ 1 (Aug. 31, 2001).*

126. *Id.* ¶ 3.

127. *Id.* ¶ 2.

128. *Id.*

129. *Id.* ¶ 4.

130. *Id.*



and social duties.<sup>131</sup> As Article 21(1) (Right to Use and Enjoyment of Property) states: “The law may subordinate such use and enjoyment to the interest of society.” Thus, the right to property can be limited by the law imposed by a democratic State.<sup>132</sup>

### 3. Concurring Separate Opinion of Judge Sergio García Ramírez

Judge Sergio García Ramírez wrote separately to discuss the interpretation of treaties and the scope and meaning of the term “property.”<sup>133</sup>

Regarding the interpretation of treaties, he explained that the Court is required to interpret the provisions of the American Convention according to the rules set forth within it, as well as according to the rules of the Vienna Convention on the Law of Treaties.<sup>134</sup> Thus, the Court must interpret provisions consistently with the object and purpose of the treaty. The *pro homine* principle also requires that provisions be interpreted in a manner most beneficial to the human being, “for the ultimate purpose of preserving human dignity, ensuring fundamental rights and encouraging their advancement.”<sup>135</sup> Under Article 29 of the Convention, which states that “[n]o provision . . . shall be interpreted as . . . restricting the exercise or enjoyment of any right or freedom recognized by virtue of the laws of any State Party,” the provisions of the Convention supplement the laws of States; they do not supplant them.<sup>136</sup> In this way, the rights recognized under domestic law merge with those recognized by the Convention, creating an “ever-growing body of human rights.”<sup>137</sup>

Judge García Ramírez reasoned the object and purpose of the American Convention was to “uphold human dignity and recognize the demands that the protection and fulfillment of the human person pose, to articulate attendant obligations, and to provide juridical instruments that preserve that human dignity and meet those demands.”<sup>138</sup> In its Advisory Opinion OC-16/99 (The Right to Information on Consular Assistance within the Framework of the Guarantees of Due Process),

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131. *Id.* ¶ 5.

132. *Id.*

133. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).

134. *Id.* ¶ 2.

135. *Id.*

136. *Id.* ¶ 3.

137. *Id.*

138. *Id.* ¶ 4.

the Court held that the interpretation of treaties must account for the “system of which it is part,” in addition to the agreements and instruments relating to the treaty itself.<sup>139</sup> Judge García Ramírez argued that the Court correctly considered the prevailing values of the Convention and the Inter-American system in this case.

Regarding the interpretation of the term “property” in Article 21 (Right to Property) of the Convention specifically, Judge García Ramírez identified several instruments relating to indigenous peoples’ property rights. These included the International Labour Organization’s (“ILO”) Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, the Draft Declaration on Discrimination against Indigenous Peoples prepared by the United Nations Economic and Social Council’s Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Proposed American Declaration on the Rights of Indigenous Peoples, and the Constitution of Nicaragua.<sup>140</sup> Each of these instruments affirms the duty States and the international community have to respect the culture, spiritual values, and legal systems of indigenous communities, particularly with respect to their lands.<sup>141</sup>

The Court’s interpretation of the scope of Article 21 (Right to Property) in this case is broad enough to “accommodate all subjects protected by the Convention,” including indigenous peoples.<sup>142</sup> It allows for more than one conception of property, so that “[e]very people, according to its culture, interests, aspirations, customs, characteristics and beliefs, can institute its own distinctive formula for the use and enjoyment of property.”<sup>143</sup> To disallow multiple conceptions of property would deny protection of the right to millions of people.<sup>144</sup>

Judge García Ramírez lastly spoke on the “inextricable link” between individual and collective rights. He explained that collective rights do not disregard or deny individual rights; rather, many individual

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139. *Id.* ¶ 5.

140. *Id.* ¶¶ 7-9; International Labour Organization (“ILO”), Convention Concerning Indigenous and Tribal Peoples in Independent Countries, No. 169, 76th Sess., entered into force Sept. 5, 1991; Commission on Human Rights Technical Review of the United Nations Draft Declaration on the Rights of Indigenous Peoples, 46th Sess., E/CN.4/Sub.2/1994/2/Add.1 (Apr. 20, 1994); Proposed American Declaration on the Rights of Indigenous Peoples, Inter-Am. Comm’n H.R. 95th Sess. (Feb. 26, 1997). Please note that the Sub-Commission on Prevention of Discrimination and Protection of Minorities has since been renamed the Sub-Commission on the Promotion and Protection of Human Rights.

141. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Concurring Opinion of Judge Sergio García Ramírez, ¶¶ 7-9.

142. *Id.* ¶ 11.

143. *Id.*

144. *Id.* ¶ 13.

rights flow from and are protected by collective rights.<sup>145</sup> Because of this connection, the issue of indigenous peoples' property rights and the Court's Judgment in this case both represent an important convergence of civil law and economic, social, and cultural law.<sup>146</sup> He asserts that the issue "stands at that junction where civil law and social law meet."<sup>147</sup> The American Convention thus "must be and is a system of rules that affords the indigenous people of our hemisphere the same, certain protection that it affords to all people . . . who come under the American Convention's umbrella."<sup>148</sup>

#### 4. Dissenting Opinion of Judge *Ad Hoc* Alejandro Montiel Argüello

In a separate, dissenting opinion, Judge *ad hoc* Alejandro Montiel Argüello argued that there was no violation of Article 25 (Right to Judicial Protection) or Article 21 (Right to Property).<sup>149</sup> The existence of institutions with titling authority, such as the Nicaraguan Agrarian Reform Institute (*Instituto Nicaragüense de Reforma Agraria*, "INRA") and the Office of Rural Land Titling, whose decisions can be appealed through applications for *amparo*, demonstrates that there is an effective judicial remedy.<sup>150</sup> Although the laws governing the titling process could be improved, he argues that that does not mean it does not exist.<sup>151</sup> The State's domestic courts heard several applications for *amparo*, but these were unrelated to the title-seeking process; they instead contested the State's grant of a concession to SOLCARSA.<sup>152</sup> Judge *ad hoc* Montiel Argüello further argued that the reason no titles had been issued to indigenous communities since 1990 was because indigenous communities were disinterested in seeking title.<sup>153</sup> He pointed out that the Awas Tingni community had never filed a land deed with any competent authority.<sup>154</sup> This omission shows that the State had not violated Article 25 (Right to Judicial Protection) or Article 21 (Right to Property).<sup>155</sup>

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145. *Id.* ¶ 14.

146. *Id.* ¶ 17.

147. *Id.*

148. *Id.*

149. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Dissenting Opinion of Judge *ad hoc* Alejandro Montiel Argüello, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).

150. *Id.* ¶ 4.

151. *Id.*

152. *Id.* ¶¶ 5-6.

153. *Id.* ¶ 7.

154. *Id.*

155. *Id.* ¶ 8.

Because, according to Judge *ad hoc* Montiel Argüello, these Articles had not been violated, reparations in the form of compensation were not appropriate.<sup>156</sup> He nevertheless conceded that the Court had been fair in setting the amounts awarded as compensation.<sup>157</sup>

#### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

##### *A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

###### 1. Create an Effective Mechanism for Delimiting, Demarcating, and Titling the Property of Indigenous Communities

The State must adopt any legislative, administrative, or other measures necessary to create an effective mechanism for delimiting, demarcating, and titling indigenous communities' property.<sup>158</sup> These measures must be taken in accordance with the customary laws, values, customs, and mores of the indigenous communities involved.<sup>159</sup>

###### 2. Carry Out the Delimitation, Demarcation, and Titling Process for the Awas Tingni Community's Lands

The State must furthermore carry out the delimitation, demarcation, and titling of the Awas Tingni community's lands, with the full participation of the Community, within fifteen months.<sup>160</sup> Until the titling process is complete, the State must refrain from acting, or allowing third parties to act, in any way that affects the existence, value, use, or enjoyment of the lands on which the Community lives.<sup>161</sup>

###### 3. Judgment as a Form of Reparation

The Court decided that the Judgment itself was a form of reparation to the members of the Awas Tingni community.<sup>162</sup>

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156. *Id.* ¶ 9.

157. *Id.* ¶ 10.

158. *Id.* ¶ 164.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* ¶ 166.

*B. Compensation*

By a vote of seven to one, with Judge Alejandro Montiel Argüello dissenting, the Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The State must invest a total of \$50,000 in works or services of collective interest for the benefit of the Awas Tingni community as reparation for immaterial damages.<sup>163</sup> The investment must be made by common agreement with the Community and is to be supervised by the Commission.<sup>164</sup>

3. Costs and Expenses

The Court awarded \$30,000 to the members of the Awas Tingni community and its representatives for expenses and costs incurred during the domestic and international proceedings.<sup>165</sup>

4. Total Compensation (including Costs and Expenses ordered):

\$80,000

*C. Deadlines*

The State is required to carry out the demarcation, delimitation, and titling of the Awas Tingni community's lands within fifteen months of the Judgment.<sup>166</sup>

The investment of \$50,000 in works or services of collective interest to the Community must be made within one year.<sup>167</sup>

The payment of costs and expenses to the Awas Tingni community

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163. *Id.* ¶ 167.

164. *Id.*

165. *Id.* ¶ 169.

166. *Id.* ¶ 164.

167. *Id.* ¶ 167.

and its representatives must be made within six months.<sup>168</sup>

#### V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

#### VI. COMPLIANCE AND FOLLOW-UP

**September 6, 2002:** In response to a brief filed by the representatives of the Awas Tingni community, the Court issued a decision on Provisional Measures.<sup>169</sup> The Court enjoined the State to adopt any measures necessary to protect the use and enjoyment of the Community's lands, in particular, to prevent "immediate and irreparable damage" resulting from the activities of third parties who had established themselves on the Community's land or were exploiting its natural resources, until the delimitation, demarcation, and titling had been carried out.<sup>170</sup> The State must allow the Community to participate in the planning and implementation of the State's protective measures.<sup>171</sup>

The Court also required the State to investigate the facts alleged by the Community regarding the continued presence of third parties on the land and their exploitation of its natural resources.<sup>172</sup>

**November 26, 2007:** In its second decision on Provisional Measures, the Court observed that the information being provided by the State regarding the provisional measures ordered five years earlier were closely related to the State's compliance with the Court's Judgment.<sup>173</sup> The Court, therefore, decided to lift the provisional measures ordered and to continue monitoring the State's compliance with its decision of August 31, 2001.<sup>174</sup>

**March 14, 2008:** The Court decided to convene a private hearing between the State, the Commission, and the representatives of the Awas Tingni community on May 3, 2008 to obtain information from the State

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168. *Id.* ¶ 169.

169. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Having Seen," ¶ 2 (Sept. 6, 2002).

170. *Id.* "Decides" ¶ 1.

171. *Id.* "Decides" ¶ 2.

172. *Id.* "Decides" ¶ 3.

173. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Considering" ¶¶ 11-12 (Nov. 26, 2007).

174. *Id.* "Decides" ¶¶ 1-2.

regarding its compliance with the Court's Judgment.<sup>175</sup>

Specifically, the Court sought information regarding the State's progress in adopting legislative, administrative, and any other measures necessary to establish an effective mechanism for delimiting, demarcating, and titling the property of indigenous communities, in a manner that accords with the customary law, values, customs, and mores of the communities.<sup>176</sup> With the State's enactment of Act No. 445 "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" (Act No. 445), the Court requested information indicating how the Act is an effective mechanism for satisfying this obligation.<sup>177</sup>

The Court also requested information pertaining to the delimitation, demarcation, and titling of the property of the Awas Tingni community.<sup>178</sup> It requested the State to explain the submission of the Awas Tingni community's case under Act No. 445, the measures taken so far, what progress had been made under the law, and what the current status of the case was.<sup>179</sup> Since the State was obliged to refrain from acting, or allowing third parties to act, in any way that affected the existence, value, use, or enjoyment of the lands on which the Community was living, the Court inquired as to the specific measures taken by the State in this regard.<sup>180</sup>

Regarding the State's obligation to invest \$50,000 in works or services of collective interest for the benefit of the community, the State opted to give the Community a student hostel in Bilwi, Puerto Cabezas and to pay interest on arrears for its delay in delivering the building.<sup>181</sup> The Court asked the State to provide information on the total cost of the student hostel and the way the interest on arrears owed was calculated.<sup>182</sup>

Lastly, the Court requested information on the State's obligation to pay \$30,000 to the members of the Awas Tingni community and its representatives for expenses and costs incurred during the domestic and international proceedings.<sup>183</sup>

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175. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Decides" ¶ 1 (Mar. 14, 2008).

176. *Id.* "Considering" ¶ 11(a).

177. *Id.*

178. *Id.* "Considering" ¶ 11(b).

179. *Id.* "Considering" ¶ 11 (b)(i).

180. *Id.* "Considering" ¶ 11 (b)(ii).

181. *Id.* "Considering" ¶ 7.

182. *Id.* "Considering" ¶ 11(c).

183. *Id.* "Considering" ¶ 11(d).

**May 3, 2008:** The Court held a private hearing with the State, the Commission, and the Awas Tingni community and its representatives to obtain updated information on the State's compliance with its Judgment.<sup>184</sup>

**May 7, 2008:** The Court issued an Order after receiving information on the State's compliance status.

Regarding the State's obligation to adopt legislative, administrative, and other measures necessary to establish an effective mechanism for delimiting, demarcating, and titling the property of indigenous communities in a manner consistent with the customary laws and values of the communities, the Court noted several steps taken by the State. In April 2002, the State had formed a committee with representatives of the Awas Tingni community, called Committee II, to monitor the State's compliance with the Court's order.<sup>185</sup> In March 2003, the State had enacted Act No. 445, which created a specific procedure with institutional authorities for demarcating and titling indigenous peoples' lands.<sup>186</sup> The procedure involved presenting a demarcation application and diagnosis to the Intersectoral Demarcation and Titling Commission ("CIDT"), reaching a dispute settlement, measuring the land and marking its boundaries, titling, and clearing non-indigenous third parties from the claimed area.<sup>187</sup> In November 2003, the State had taken steps to accelerate the process of demarcating the lands of the Awas Tingni community.<sup>188</sup> Although the representatives of the Community argued that Act No. 445 did not represent an effective mechanism because the Community's application was at a "standstill," the Court nevertheless declared that the State had complied with its obligations in this regard.<sup>189</sup>

The Court held that the State had made progress, but still had not fully complied with the State's obligation to delimit, demarcate, and title the Awas Tingni community's lands.<sup>190</sup> Although the State had financed the preparation of the diagnosis required under Act No. 445, the cost of which was \$75,000, there had been delays owing to two

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184. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Having Seen,"* ¶ 6 (May 7, 2008).

185. *Id.* "Considering" ¶ 8.

186. *Id.* "Considering" ¶ 9.

187. *Id.*

188. *Id.* "Considering" ¶ 11.

189. *Id.* "Considering" ¶¶ 13, 15.

190. *Id.* "Considering" ¶ 32.



disputes over land with neighboring communities.<sup>191</sup> The dispute with the Tasba Raya communities group, who also claimed ownership of the lands, was settled on February 14, 2007 through a resolution of the Regional Council of RAAN.<sup>192</sup> The dispute with the Ten Communities group remained pending.<sup>193</sup> Representatives of the Community had also rejected a proposal regarding a specific site and area of land for disregarding the criteria of its customary law, values, uses, and customs.<sup>194</sup> The Community's representatives said that its demarcation application before the CIDT had been filed "under protest" as well.<sup>195</sup> The measurement and marking of the boundaries and clearance of third parties from the land still needed to be finished.<sup>196</sup> For these reasons, the Court concluded that the State had not fully complied with its obligation to delimit, demarcate, and title the Awas Tingni community's lands.<sup>197</sup>

After hearing the views of the State, the Commission, and the representatives of the Community regarding the State's obligation to invest \$50,000 in works or services of collective interest for the benefit of the community, the Court concluded that there was no dispute regarding the State's compliance.<sup>198</sup> The State's gift of the student hostel to the Community satisfied its obligation in this regard.<sup>199</sup>

The Court concluded that the State had fully complied with its obligation to pay \$30,000 to the members of the Community and its representatives for expenses and costs incurred during the domestic and international proceedings.<sup>200</sup>

Responding to the Community's request for "additional reparations" owing to the State's failure to comply with the Court's Judgment and the resultant damage suffered by the Community, the Court acknowledged that it is empowered to give instructions relating to compliance with measures of reparation.<sup>201</sup> It denied, however, that it has the power to order measures of reparation differing from those already ordered.<sup>202</sup> Thus, the Court rejected the Community's request for additional reparations as inadmissible.<sup>203</sup>

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191. *Id.* "Considering" ¶¶ 17, 20.

192. *Id.* "Considering" ¶ 17.

193. *Id.* "Considering" ¶ 20.

194. *Id.* "Considering" ¶ 18.

195. *Id.* "Considering" ¶ 21.

196. *Id.* "Considering" ¶ 30.

197. *Id.* "Considering" ¶ 32.

198. *Id.* "Considering" ¶¶ 33-39.

199. *Id.*

200. *Id.* "Considering" ¶¶ 40-44.

201. *Id.* "Considering" ¶ 45.

202. *Id.* "Considering" ¶ 46.

203. *Id.*

**December 14, 2008:** The State conveyed to Levito Jhonatan Malean, as representative of the Community, title to ownership of over 73,394 hectares of land.<sup>204</sup>

**April 3, 2009:** The Court considered the State's remaining obligation to delimit, demarcate, and title of the property of the Awas Tingni community. It concluded that the State had fully complied with the obligation as of the ceremony that took place on December 14, 2008, in which the State conveyed title to ownership of over 73,394 hectares of land in favor of the Community.<sup>205</sup> The Court nevertheless urged the State to adopt further effective mechanisms to ensure that everyone under its jurisdiction enjoy free and full exercise of their rights.<sup>206</sup>

The Court praised the State for complying fully with its Judgment of August 31, 2001. The case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* was on the forefront of cases involving the property rights of indigenous peoples, and the State's compliance thus represented an important legal precedent in international human rights law.<sup>207</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 79 \(Aug. 31, 2001\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Preliminary Objections, Separate Opinion of Judge Alejandro Montiel Argüello, Inter-Am. Ct. H.R. \(ser. C\) No. 79 \(Aug. 31, 2001\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 79 \(Aug. 31, 2000\).](#)

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204. *Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering" ¶ 14 (Apr. 3, 2009).*

205. *Id.*

206. *Id.* "Considering" ¶ 16.

207. *Id.* "Considering" ¶ 15.

## 2. Decisions on Merits, Reparations and Costs

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 79 \(Aug. 31, 2001\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Separate Opinion of Judges Antônio Augusto Cançado Trindade, Máximo Pacheco Gómez, and Alirio Abreu Burelli, Inter-Am. Ct. H.R. \(ser. C\) No. 79 \(Aug. 31, 2001\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 79 \(Aug. 31, 2001\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Dissenting Opinion of Judge ad hoc Alejandro Montiel Argüello, Inter-Am. Ct. H.R. \(ser. C\) No. 79 \(Aug. 31, 2001\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Concurring Opinion of Judge Hernán Salgado Pesantes, Inter-Am. Ct. H.R. \(ser. C\) No. 79 \(Aug. 31, 2001\).](#)

## 3. Provisional Measures

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 26, 2007\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sept. 6, 2002\).](#)

## 4. Compliance Monitoring

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Apr. 3, 2009\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R.](#)

[\(May 7, 2008\).](#)

[Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Mar. 14, 2008\).](#)

## 5. Review and Interpretation of Judgment

[None]

### *B. Inter-American Commission*

#### 1. Petition to the Commission

Mayagna (Awas) Sumo Tingni Community v. Nicaragua, Petition No. 11.577 Inter-Am. Comm'n H.R. (Oct. 2, 1995).

#### 2. Report on Admissibility

[Same as Report on Merits]

#### 3. Precautionary Measures

Mayagna (Awas) Sumo Tingni Community v. Nicaragua, Precautionary Measures, Order of the Commission, Inter-Am. Comm'n H.R., Case No. 11.577 (Oct. 31, 1997).

#### 4. Report on Merits

Mayagna (Awas) Sumo Tingni Community v. Nicaragua, Report on Merits, Report No. 27/98, Inter-Am. Comm'n H.R., Case No. 11.577 (Mar. 3, 1998).

#### 5. Application to the Court

Mayagna (Awas) Sumo Tingni Community v. Nicaragua, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.577 (May 28, 1998).

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