

Institution: Inter-American Court of Human Rights
Title/Style of Cause: Mayagna (Sumo) Awas Tingni Community v. Nicaragua
Doc. Type: Order
Decided by: President: Antonio A. Cancado Trindade;
Judges: Alirio Abreu-Burelli; Hernan Salgado-Pesantes; Oliver Jackman;
Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated: 6 September 2002
Citation: Mayagna v. Nicaragua, Order (IACtHR, 6 Sep. 2002)
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HAVING SEEN:

1. The August 31, 2001 judgment of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) in the Mayagna (Sumo) Awas Tingni Community Case.
2. The brief filed by the representatives of the Mayagna (Sumo) Awas Tingni Community on July 19, 2002, in which they submitted to the Inter-American Court of Human Rights, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and 23 of the Rules of Procedure of the Court, a request for Provisional Measures in favor of the Mayagna Community, “with [the] aim of comprehensively maintaining the right of the Community to use and enjoy its lands and resources, as recognized by the judgment of the Court on the merits and reparations in the instant case.”
3. The aforementioned brief by the representatives of the Community (supra 2) in which they requested that the Court order the Republic of Nicaragua (hereinafter “the Nicaraguan State,” “the State” or “Nicaragua”) to “adopt provisional measures to avoid immediate and irreparable damage resulting from current and continuous activities of third parties who have established themselves in the territory of the Community or who exploit natural resources existing in that territory,” as well as the following specific measures:
 - a. To conduct an exhaustive technical inspection on presence, agricultural activities and logging in the territory. The conclusions of this inspection will be submitted to the Inter-American Commission and to the Community.
 - b. Delimitation of areas currently under agricultural use and occupation within the territory, and suspension of all expansion in those areas until the delimitation, demarcation, and titling of lands belonging to the Community has been carried out.

c. Putting into practice all appropriate measures to ensure definitive suspension of settlement of new settlers within the territory.

d. Suspension of issuing of new main or supplementary deeds, or ownership certificates or any other real rights to areas within the territory, until definitive delimitation, demarcation, and titling have been carried out.

e. Development and implementation of appropriate measures to ensure definitive suspension of all logging in the territory by third parties not belonging to the community and without prior agreement with it.

f. Official communication at the highest level with all relevant agents of the State, at all levels, regarding the content and scope of the judgment of the Court, together with an appeal to take appropriate action to avoid third parties foreign to the community conducting activities that may impair the existence, value, use, or enjoyment of the resources that exist in the territory.

g. Official, individualized communication to all third parties who occupy or conduct activities in areas within the territory, regarding the content and scope of the judgment of the Court, together with an appeal to not expand the current areas of occupation and use, to not promote settlement by new persons, and to not conduct logging activities without previously consulting with the Community, until delimitation, demarcation, and titling of the lands of the Community has been carried out.

4. The additional statement by the representatives of the Community, in their request for provisional measures, that:

a) “[c]ontrary to the explicit order of the Court, the State of Nicaragua [...] has not avoided detriment to the property located within the geographical area where the members of the Community live and conduct their activities, by third parties foreign to the Community itself and acting without its consent” and that these facts “endanger the effectiveness of the rights recognized by the Court, threaten the Community with irreparable damage, and hinder the process of demarcation, delimitation, and titling of the lands of the Community;”

b) the judgment of the Court on the merits and reparations in the instant case requires that “until the delimitation, demarcation and titling of the lands of Awas Tingni has been done, the State 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 ‘impair the existence, value, use or enjoyment of the property located in the geographic area where the members of the Awas Tingni Community live [...]’;”

c) in its judgment, the Court imposed upon the State a dual duty: “the duty of abstaining, as regards the agents of the [S]tate itself” (to abstain from impairing the existence and use of property located in the lands used by the Community); “and the duty to monitor and ensure immediate suspension of actions by third parties who have not obtained the consent of the Community;”

d) the Community has repeatedly “called the attention” of the State to these facts, and Nicaragua has not fulfilled its specific commitment to take actions in this regard, and it “has allowed the invasion of traditional lands of the Community and illegal exploitation of its resources to continue, contrary to what the Court specifically ordered,” especially in connection with agricultural activities and logging in the area, and

e) there is a need for Provisional Measures to be adopted to maintain the status quo of the Community and to ensure compliance with the judgment of the Court, to avoid abridgement of

the property rights of the Community, and to avoid irreparable damage to the life, health, and well-being of the Awas Tingni Community.

5. The July 22, 2002 brief by the Inter-American Court, calling upon the State of Nicaragua and the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) to submit the observations they deemed appropriate regarding the request filed by the representatives of the Mayagna Community (supra 2, 3 and 4) within 15 days from the date they received the request by the Court.

6. The July 29, 2002 brief filed by the Inter-American Commission, in which it stated that it believed it “necessary for the [...] Inter-American Court of Human Rights to adopt appropriate measures to allow the parties to fully and effectively execute the August 31, 2001 Judgment.” In that same brief, the Commission requested the Court to “take action as necessary to avoid immediate and irreparable damage resulting from current activities of third parties who have established themselves in territory belonging to the Community or who exploit natural resources existing in that territory, until the definitive delimitation, demarcation, and titling ordered by the Court are carried out.”

7. The August 16, 2002 brief filed by the State of Nicaragua in which it stated that “in the Minutes of the meeting held on July 22 and 23 of this year [...] an agreement was reached with members of the Community and their legal representatives, to respond in writing to [the request of observations made by the Court (supra 5)] at the next meeting [between the State and the representatives of the Community] to be held on September 2, 2002,” as well as the brief sent by the Inter-American Court on that same day, stating that in light of the existence of an agreement with the representatives of the Community regarding submission of observations, an extension had been granted until September 3, 2002 to submit the observations requested by the Court.

8. The brief filed by the representatives of the Mayagna Community on August 30, 2002, in which they stated that “[n]o agreement has been reached nor is there one now between the Community and the [S]tate of Nicaragua regarding the Court’s request for provisional measures” and that “[w]hile the matter was incidentally discussed [...] no such agreement was ever reached.”

9. The September 5, 2002 brief filed by the State, in which it reported that:

on Monday, September 2 of this year, the VI Meeting of Commission II was held, with participation by the legal representatives of the Community, and at this meeting it was agreed that the Government of Nicaragua would grant provisional recognition of the rights to use, possession and development by the community subsequent to carrying out the diagnostic study, along the lines of the proposal made by the Community and taking into account the results of the diagnostic study itself. [...] In this regard, [...] the Government of Nicaragua conducted an in situ inspection in the Awas Tingni Community from August 18 to 28 of this year [...] and as a demonstration of good will by the Government of Nicaragua, it was agreed that it would respond in writing to the proposal made by the Awas Tingni Community for a provisional joint management mechanism for conservation and sustainable use of the forestry resources of the

territory, before the next meeting of the Commission, to be held on October 31, 2002, at Puerto Cabezas, Nicaragua.

CONSIDERING:

1. The State ratified the American Convention on September 25, 1979 and, pursuant to Article 62 of the Convention, it accepted contentious jurisdiction of the Court on February 12, 1991.

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

3. According to Article 25(1) of the Rules of Procedure of the Court, [a]t any stage of the proceedings involving cases of extreme gravity and urgency, and when 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. Article 1(1) of the Convention stipulates the duty of the States Party to respect the rights and freedoms recognized in that treaty and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

5. The Inter-American Court of Human Rights unanimously decided in the judgment on the merits and reparations in the instant case:

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

[...]

4. [...] that 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, the above in accordance with what was set forth in paragraphs 153 and 164 of the [...] Judgment.

6. The background information supplied by the representatives of the victims in their request (supra “Having seen” 2, 3, and 4) demonstrates the existence of a situation of extreme gravity and urgency regarding the property of the Mayagna Community, including the resources therein, which are the basis for their subsistence, culture, and traditions. In this regard, the Court has recognized the importance of taking into account certain aspects of the customs of the indigenous peoples of the American continent when applying the American Convention on Human Rights [...]

7. As the Court has set forth in this regard,

[a]mong indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community. Indigenous groups, by the fact of their very

existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element that they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.

8. It is fitting to recall that the Court determined that: [t]he right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it.

9. The purpose of provisional measures, in International Human Rights Law, is to effectively protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons. Said measures can also be applied during the stage in which compliance with the judgment is overseen; in the instant case it is probable that irreparable damage will occur that it will preclude faithful and full compliance with the judgment on the merits and reparations in the case of the Mayagna Community, for which reason adoption of said measures is in order.

10. The State of Nicaragua reached an agreement with the representatives of the Community to grant “provisional recognition of the Community’s rights to use, occupation, and exploitation subsequent to carrying out the diagnostic study, along the lines of the proposal made by the Community and taking into account the results of the diagnostic study;” and said recognition has not been granted, and therefore it is necessary to protect the geographical area where the members of the Mayagna (Sumo) Awas Tingni Community live and conduct their activities.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

by virtue of 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 order the State to adopt, without delay, whatever measures are necessary to protect the use and enjoyment of property of lands belonging to the Mayagna Awas Tingni Community, and of natural resources existing on those lands, specifically those measures geared toward avoiding 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 order the State to allow the applicants to participate in planning and implementation of those measures and, in general, to keep them informed of progress regarding measures ordered by the Inter-American Court of Human Rights.
3. To order the State 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. To order the State, the representatives of the Community, and the Inter-American Commission to report to the Court on steps taken to implement the “agreement on provisional recognition of the rights to use, possession and development by the Community” as soon as they are implemented.
5. To order the State to report to the Inter-American Court of Human Rights, every two months, on 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 said reports within six weeks of the date they are received.

Antônio A. Cançado Trindade
President

Alirio Abreu-Burelli
Hernán Salgado-Pesantes
Oliver Jackman
Sergio García-Ramírez
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary