

**Order of the
Inter-American Court of Human Rights
of May 7, 2008
Case of the Mayagna (Sumo) Awas Tingni Community
v. Nicaragua
(Monitoring Compliance with Judgment)**

HAVING SEEN:

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

[...]

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

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

[...]

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

[...]

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

[...]

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

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

[...]

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

2. The reports of the State of Nicaragua (hereinafter "the State" or "Nicaragua") dated March 22 and September 26, 2002; March 28 and November 18, 2003; June 4 and December 17, 2004; February 23, March 7 and August 5, 2005, and May 19, 2006.

3. The observations of the representatives of the victims (hereinafter "the representatives") dated June 28 and October 15, 2002; April 25, November 4 and 14, 2003; May 6, July 12 and November 17, 2004; January 18 and September 6, 2005; June 19, 2006; July 13, 2007 and April 22, 2008. Also, the communications of May 6, 2005 and December 13, 2006, concerning the "request for additional reparations" and the "supplementary request for additional reparations," respectively.

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

5. The order of the President of the Court of March 14, 2008, in which she decided, *inter alia*, to convene the Inter-American Commission, the representatives and the State to a private hearing to be held at the seat of the Court on May 3, 2008, for the Court to obtain information from the State on compliance with the third, fourth, sixth and seventh operative paragraphs of the judgment on merits, reparations and costs delivered on August 31, 2001 (hereinafter "the Judgment") in the instant case and hear the observations of the Inter-American Commission and the representatives.

6. The private hearing held by the Court on May 3, 2008, during which the State, the representatives and the Commission referred to the status of compliance with the Judgment.²

7. The documents submitted by the State³ and the representatives⁴ during the private hearing.

8. The request made by the panel of judges during this hearing inviting the representatives and the State to reach agreement on the measures and actions needed to achieve full compliance with the Judgment delivered in this case.

² In accordance with Article 6(2) of the Rules of Procedure, the Court held the hearing with a panel of judges composed of: Diego García-Sayán, Sergio García Ramírez and Leonardo A. Franco. There appeared before the hearing: (a) for the State: Hazel Law Blanco, Coordinator of the SDC/PRODEP Indigenous Component; Joel Dixon, Secretary for the Indigenous Peoples of the Ministry of Foreign Affairs, and Ramón Canales, Representative of the Secretariat for the Caribbean Coast; (b) for the representatives: Maia Campbell and Mario Rizo, legal advisers to the Community, and Levito Jonathan, Santa López, Wilfredo McLean and Dinarte Salomón Felipe, members of the Community; and (c) for the Inter-American Commission: Isabel Madariaga, adviser.

³ This was the "*Report of the State of Nicaragua on compliance with the Judgment delivered by the Inter-American Court of Human Rights in the case of the Mayagna de Awás Tingni Indigenous Community.*"

⁴ These were: "*Documents presented by the Awás Tingni Community at the private hearing on May 3, 2008.*"

9. The “Official record of the agreements reached between the legal representatives of the State of Nicaragua and the Awás Tingni Community in Mayagna Awás Tingni Community v. Nicaragua” (hereinafter “the official record of the agreements”), signed by the victims and their representatives, the State, and the Inter-American Commission on May 3, 2008, which was submitted to the Court the same day, following the private hearing in this case.

CONSIDERING:

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

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

3. That Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” To this end, the State must ensure implementation at the national level of the Court’s decisions in its judgments.⁵

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

5. That the obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of the law of the international responsibility of the State, supported by international case law, according to which, a State must comply with its international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.⁶ That the treaty obligations of the States Parties are binding for all the powers and organs of the State.

6. That the States Parties to the Convention must ensure compliance with its provisions and their inherent effects (*effet utile*) within their respective domestic legal systems. This principle is applicable not only with regard to the substantive norms of human rights treaties (that is, those which contain provisions concerning the protected rights), but also with regard to procedural norms, such as those referring to compliance with the decisions of the Court. These obligations shall be interpreted and

⁵ Cf. *Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 131; *Gómez Paquiyauri Brothers v. Peru. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of May 3, 2008, third considering paragraph; and *Raxcacó Reyes v. Guatemala. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of March 28, 2008, third considering paragraph.

⁶ 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 the Gómez Paquiyauri Brothers. Monitoring compliance with judgment*, *supra* note 5, fifth considering paragraph; *Yakye Axa Indigenous Community v. Paraguay. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 8, 2008, sixth considering paragraph.

applied so that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁷

7. That the Court considers that the hearing held to monitor the points pending compliance in this case, characterized by the good will and spirit of cooperation of the parties, was extremely useful.

*
* *
*

8. That, regarding the obligation to adopt the legislative, administrative, and any other measures necessary to create an effective mechanism for the delimitation, demarcation, and titling of the properties of the indigenous communities (*third operative paragraph of the Judgment*), the State and the representatives of the members of the Mayagna (*Sumo*) de Awas Tingni Indigenous Community (hereinafter "the Community" or "the Awas Tingni Community") created a joint committee, known as "Committee II" on April 16, 2002, in order to monitor the State's compliance with this operative paragraph.

9. That, on March 27, 2003, the State advised that, among the advances made within the framework of "Committee II" was the adoption of Act No. 445, entitled "Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast and of the Coco, Bocay, Indio and Maiz Rivers" of January 23, 2003, which was published in official gazette No. 16 on that date. This law established a specific procedure and the institutional authorities for the demarcation and titling of the lands of the Indigenous Peoples and Ethnic Communities of the Atlantic Coast and the Coco, Bocay, Indio and Maiz Rivers. The stages of the procedure established in this law include: (a) presentation of the demarcation application to the Intersectoral Demarcation and Titling Commission (CIDT), which must be accompanied by a document called a "diagnosis"; (b) dispute settlement; (c) measurement of the land and marking of the boundaries; (d) titling, and (e) clearance (dealing with non-indigenous third parties who may be in the area claimed).

10. That the State indicated that this act "complied with the part of the Court's judgment [...] concerning [...] the establishment of legislative measures leading to the delimitation, demarcation and titling of the lands of the Awas Tingni Indigenous Community" and that this process "will be adapted to the mechanisms and procedures which this act [...] establishes for the demarcation and titling of all the indigenous lands in Nicaragua," including those of the Awas Tingni Community.

11. That on November 18, 2003, the State indicated that it had promoted the implementation of the said Act No. 445 both financially and operationally, and undertaken to prioritize and accelerate the process of demarcating the lands of the members of the Community and shorten, insofar as possible, the maximum time limits defined by the said act for the different stages of the demarcation and titling procedure. Lastly, in its reports, the State referred to the measures taken and the

⁷ Cf. *Ivcher Bronstein v. Peru. Competence*. Judgment of the Inter-American Court of Human Rights of September 24, 1999, para. 37; *Case of the Gómez Paquiyauri Brothers. Monitoring compliance with judgment*, *supra* note 5, sixth Considering paragraph; and *Baena Ricardo et al. v. Panama. Monitoring compliance with judgment*. Order of the President of the Inter-American Court of Human Rights of February 11, 2008, sixth considering paragraph.

status of the procedure followed under Act No. 445 for the delimitation, demarcation and titling of the territory of the members of the Awas Tingni Community (*supra* Having seen paragraph 2).

12. That, during the private hearing held on May 3, 2008, at the seat of the Court, the State once again indicated, in relation to the third operative paragraph, that Act No. 445 had been promulgated, establishing the mechanisms and procedures for the demarcation and titling of indigenous lands. It indicated that these mechanisms were established by the legislators in conjunction with indigenous leaders and that, as established in this act, any existing disputes between the applicant community and the neighboring communities needed to be settled. It specified that, in the case of the Awas Tingni Community, there were two different disputes, one of them with the Tasba Raya communities, which had been settled by the competent authority on February 14, 2007, and the other arising from a supposed overlapping alleged by the *Miskita* group known as the "Ten Communities," which was pending settlement.

13. That, in the observations they presented on April 25, 2003, the representatives stated that they "acknowledge that Act No. 445 reflects a historic achievement for the indigenous peoples of the Atlantic Coast and represents a first step in the State's compliance with [the third operative] paragraph of the Judgment." However, they also said that "it is impossible to determine [...] whether this act will constitute an effective mechanism for titling the Community's lands." In subsequent observations, including those submitted on November 17, 2004, January 18 and September 6, 2005, and June 19, 2006, the representatives indicated that, despite the deadlines established in Act No. 445 and the State's undertaking to give priority to the delimitation, demarcation and titling of the lands of the members of the Community, the latter's application has suffered various delays and the process was at a standstill. They considered that the act did not represent an effective mechanism. On November 17, 2004, they asked the Court to declare that the State had failed to comply with the third operative paragraph. However, at the private hearing on May 3, 2008, the representatives made no specific reference to the status of compliance with this operative paragraph.

14. That, in its observations, the Inter-American Commission stated that it "recognized the progress made [...] owing to the] adoption of the new Act [No.] 445 and the appointment of a representative of the President to coordinate and monitor compliance with the Judgment." However, it pointed to the lack of progress in the process of delimitation, demarcation and titling of the lands of the members of the Awas Tingni Community. Nevertheless, the Commission acknowledged that the State had complied with the third operative paragraph of the Judgment, and reaffirmed this during the private hearing held on May 3, 2008.

15. That, from the information forwarded by the parties and provided by them during the said private hearing, the Court observes that the State, as ordered in the third operative paragraph of the Judgment, promulgated Act No. 445, whose purpose is to regulate the communal property regime of the indigenous and ethnic lands of the Atlantic Coast and the Coco, Bocay, Indio and Maiz Rivers, and to establish the necessary legal procedures for the delimitation, demarcation and titling of the communal lands. Consequently, the Court considers that the third operative paragraph of the Judgment has been complied with.

*
* *
*

16. Regarding the delimitation, demarcation and titling of the lands that correspond to the members of the Awas Tingni Community (*fourth operative paragraph of the Judgment*), on November 18, 2003, the State reported that, together with the representatives of the victims, it had agreed to submit this procedure to the mechanism established in Act No. 445. It also undertook to prioritize and expedite the demarcation process of the area claimed.

17. That the State, in a brief of November 18, 2003, advised that it had taken the necessary organizational, contractual and financial measures for the Community to conduct the diagnosis stipulated in Act No. 445. It indicated that it had financed the preparation of this study for the Community by providing the sum of US\$75,000.00 (seventy-five thousand United States dollars). In this regard, it affirmed that, on October 27, 2003, the consultancy firm that had been hired presented the "Final Report on the diagnosis on ownership and use of the land of the Mayagna Awas Tingni Community" and that, following its submission, the National Demarcation and Titling Commission (CONADETI) and the Intersectoral Demarcation and Titling Commission (CIDT) were created. The State also indicated that on November 11, 2003, the members of the Community submitted the application for delimitation, demarcation and titling as required by Act No. 445. It then mentioned that, since another group of communities settled in the zone (the Tasba Raya communities) also claimed ownership of the communal lands, the delimitation application of the Awas Tingni Community was transferred to the "dispute settlement stage" established in the Act. This border dispute was resolved by a resolution of the Regional Council of the North Atlantic Autonomous Region (CRAAN) of February 14, 2007.

18. That, on June 4, 2004, the State also advised that in 2003 and 2004, it had held various meetings with the representatives of the Community, during which it made a proposal regarding a site and area of land, which was rejected by the representatives, because they affirmed that "this proposal ignored the criteria of customary law, values, uses and customs," as well as those indicated in the Court's Judgment.

19. That, on August 5, 2005, the State indicated that its "political will to guarantee the human rights of the indigenous communities of Nicaragua [...] had been amply demonstrated by the titling, under the mechanisms established in Act No. 445, of five indigenous territories situated in the Bosawas Biosphere Reserve, which had benefitted 87 Mayagna and Miskita communities." It also affirmed that these procedures were not easy and that "a long process of dialogue and negotiation between the Government of Nicaragua, the Regional Council of the North Atlantic Autonomous Region (CRAAN), the National Demarcation and Titling Commission and the representatives of each territory involved was required [...]." The State also affirmed that it "had made many efforts, providing support and technical and logistic assistance to the Demarcation Commission of the North Atlantic Autonomous Region (RAAN) and the National Demarcation and Titling Commission, in order to resolve aspects that would facilitate and permit the prompt titling for the Awas Tingni indigenous community".

20. That, during the private hearing held on May 3, 2008, the State advised that it had been making a continuous effort to be able to title the lands of the members of the Awas Tingni Community and the other communities that benefitted from the Act. Among the measures adopted in relation to the fourth operative paragraph of the Judgment, it mentioned the importance of the resolution issued by the Regional Council of the North Atlantic Autonomous Region (CRAAN) on February 14, 2007, resolving the border dispute between the Awas Tingni Community and the Tasba Ray

Communities. It indicated that, once this conflict had been resolved, the stage of marking the boundaries of the lands began; this was interrupted on July 25, 2007, because the "Ten Communities" group stated that it had a right to the ownership of the lands. Consequently, in order to find a solution to this situation, the State again urged the leaders of the two territories in dispute to hold a peaceful dialogue. Lastly, the State indicated that a series of activities remained pending; these included facilitating the settlement of disputes owing to overlaps with the territories of the "Ten Communities" and concluding the stage of marking the boundaries.

21. That, in their observations of July 12, 2004, the representatives stated that the State had disregarded the results of the diagnosis presented to the Intersectoral Demarcation and Titling Commission (CIDT). They also indicated that the State's intention of achieving a concerted agreement with the members of the Community and then submitting it to the consideration of the institutions mentioned in Act No. 445, represented an attempt to disregard the results of the diagnosis made by the State. The representatives ended the process of negotiation with the State regarding the delimitation and demarcation of the lands in order to concentrate on the process of applying for delimitation, demarcation and titling pursuant to Act No. 445. They indicated that the members of the Community had filed the demarcation application before the Intersectoral Demarcation and Titling Commission (CIDT) of the North Atlantic Autonomous Region (RAAN) "under protest," on November 11, 2003.

22. That the representatives also indicated, among their various observations, that: (a) "the application of Act No. 445 has been paralyzed" owing to the State's failure to support its implementation; (b) the mechanisms and procedures that the State should have provided had not received adequate financial and technical support for the effective functioning of the responsible entities to implement the process of demarcating the indigenous lands and to resolve border disputes; (c) the Regional Council of the North Atlantic Autonomous Region (CRAAN) should have initiated the dispute settlement stage; however, there were no regulations on the implementation of this stage and the Council did not have either the technical or the financial capability; (d) there were obstacles to the functioning of the institutions involved, owing to the dispute that arose between the autonomous authorities and the central Government regarding the terms in which the communal titles should be incorporated under Act No. 445; and (e) regarding the disputes relating to the borders of the lands of the members of the Awas Tingni Community with other communities, the Community have always been amenable to reaching an agreement.

23. That, in their observations of April 21, 2008, the representatives indicated that, following the settlement of the dispute with the Tasba Raya Community, the "dispute settlement stage" was concluded, and the application could proceed to the "stage of measurement and the marking of the boundaries," both established in Act No. 445. In this regard, they stated that the first phase of the boundary marking had been carried out and was concluded on July 17, 2007. However, they indicated that "at a meeting held in the Community on June 17, 2007, representatives of another group of *Miskita* Communities known as "Ten Communities" announced unexpectedly the existence of an alleged overlapping of territory with the Awas Tingni lands and requested the settlement of this dispute." The representatives stated that "since the claim of the "Ten Communities" was announced, there has never been even a preliminary determination by the demarcation institutions established by Act No. 445 as to whether there are grounds that justify re-opening the dispute settlement stage[...] in the Awas Tingni case." They indicated that, in a communication to the President of "Ten Communities" dated July 2, 2007, the State advised that the boundary of the part in which the "Ten

Communities" group asserts that there is an overlap would not be marked until this situation has been resolved. Lastly, they indicated that the demarcation application submitted by the members of the Community within the framework of the Act No. 445 procedure had not resulted in compliance with the fourth operative paragraph of the Judgment.

24. That, during the private hearing on May 3, 2008, the representatives stated that, in February 2007, the Regional Council urged the State's competent institutions to proceed with the demarcation and titling of the territory of the members of the Awas Tingni Community without delay. However, they indicated that the Community had not yet received the title and the demarcation and titling procedure was again at a standstill. In addition, they stated that, during recent months, the State had justified its lack of action by the alleged territorial overlap with another group of *Miskita* communities known as "Ten Communities." They indicated that the claim made by "Ten Communities" is not new and that it had already been considered and rejected by the Regional Council of the North Atlantic Autonomous Region when issuing its resolution of February 14, 2007. They also stated that "Ten Communities" had never been able to establish valid, and that there was no justification for starting the dispute settlement stage anew.

25. That, in its observations, the Commission indicated that the State and the representatives agreed that the demarcation and titling process would be carried out according to the procedures established in Act No. 445 (*supra* Having seen paragraph 4). It indicated that, according to the diagnosis of ownership and use of the land, the members of the Awas Tingni Community were using almost 125,000 hectares for all their activities, especially hunting. The current area claimed is 94,394 hectares, which is 76% of the area used.

26. That in its observations presented on July 5, 2006, the Commission reiterated its concern because delimitation, demarcation and titling of the ancestral lands of the Community had not yet been carried out in accordance with their customary rights, values, uses and traditions. Although it had considered the State's proposal regarding a site and area for the Communities designed to comply with the provisions of the Judgment, it stated that this proposal did not reflect what the Court had ordered.

27. That, during the private hearing held on May 3, 2008, the Commission indicated that the "situation of defenselessness of the Community is equal or worse than the one it was suffering when it resorted to the organs of the inter-American system," on October 2, 1995. Also, it indicated that, despite the delivery of the Judgment, the territory continued without being delimited, demarcated and titled, and this had increased the presence of settlers within the Community's ancestral lands, while third parties from outside the territory continued trying to exploit its forestry wealth.

28. That, during the said private hearing, the panel of judges recommended to the Inter-American Commission, the representatives and the State that they hold a meeting to reach an agreement on compliance with the fourth operative paragraph of the Judgment. Following this meeting, the parties delivered to the Court the "official record of the agreements," which included the following points:

- (1) Within no more than two months, the State would comment on the claim of the "Ten Communities" in relation to the Resolution of the Regional Council of February 14, 2007.
- (2) When it has issued this comment, the phase of marking the boundaries will be concluded, within 40 days at most.

- (3) Immediately afterwards, steps will be taken to prepare and approve the title in favor of the ancestral territory of the Community, under the legal procedure. The parties consider that the title will be delivered to the Awas Tingni Community in August 2008.
- (4) Lastly, the parties request the presence of a delegate of the Court and of the Commission to verify *in situ* compliance with the agreements.

29. That, according to information provided by the parties, the Court observes that various measures have been taken to implement the provisions of the fourth operative paragraph of the Judgment; these are: (a) the creation of "Committee II" to monitor the process of delimitation, demarcation and titling of the lands of the members of the Community; (b) the organization of meetings and the adoption of agreements between the State and the representatives of the members of the Community within the framework of this committee; (c) the promulgation of Act No. 445 entitled "'Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast and of the Coco, Bocay, Indio and Maiz Rivers"; (d) the submission of the delimitation, demarcation and titling of the territory of the members of the Awas Tingni Community to the procedure established in Act No. 445; and (e) the "official record of the agreements" signed within the framework of the private hearing held at the seat of the Court on May 3, 2008.

30. That, five successive stages can be distinguished within the procedure for the demarcation and titling of the communal lands established by Act No. 445 (*supra* ninth Considering paragraph). Of these stages, during the processing of the instant case, the submission of the application has been accomplished, the dispute has been settled, and implementation of the measurement and marking of the boundaries has started; part of the boundary marking and the final stages of titling, and clearance remain pending. According to the representatives, the dispute settlement stage concluded officially with the issue of a Resolution by the Regional Council of the North Atlantic Autonomous Region (CRAAN) dated February 14, 2007, which ratified the Resolution of the Demarcation and Land Use Commission of the Regional Council of the North Atlantic Autonomous Region and settled the border dispute between the Awas Tingni Community and the Tasba Raya Communities. In this regard, they added that the suspension of compliance with the third stage (measurement and marking of the boundaries) was a result of the territorial dispute alleged by the Administrative Council of the "Ten Communities," which prevented the titling being carried out on the expected date (August 9, 2007).

31. That the Court observes that various problems and delays have arisen that have prevented the titling of the lands, although more than six years have elapsed since the Court delivered its Judgment in this case.

32. That the Court appreciates that, in the "official record of the agreements" of May 3, 2008, the State has expressed its willingness to comply with the fourth operative paragraph of the Judgment which is pending compliance, and to this end undertook to take various measures (*supra* Having seen paragraph 9). Consequently, it urges the State authorities to implement the planned measures and awaits information from the parties on the results.

*
* *
*

33. That, regarding the investment in works or services of collective interest for the benefit of the members of the Community (*sixth operative paragraph of the Judgment*), on April 16, 2002, the State and the representatives established a joint committee (known as "Committee I") in order to reach agreement on how to implement this aspect of the Judgment.

34. That, during the subsequent meetings of "Committee I," the State and the representatives agreed, among other matters, on the construction of a student hostel for the Community in Bilwi, Puerto Cabezas. The State also undertook to pay interest on arrears in the construction of the hostel from November 4, 2002, to the date of the official delivery of the hostel, because the period of 12 months established in the Judgment to make this investment expired on November 3, 2002.

35. That the State reported that on March 5, 2003, it had officially handed over the student hostel to the members of the Community, in compliance with the sixth operative paragraph of the Judgment and in accordance with the agreement made with the Community.⁸ It also gave detailed information on the total amount of the investment in the building. Regarding the payment of the interest on arrears owed to the Community, it indicated that this interest was paid on March 3, 2004, by a deposit in the account of the Permanent Mission of the Organization of American States and delivered to a representative of the Community.

36. That, on November 14 2003, the representatives indicated in their observations that the student hostel in Bilwi had been built according to the plans, although it took more than the 12 months established by the Court, because it was officially handed over to the members of the Community on March 5, 2003. They also indicated that the State had paid the interest on arrears owed to the Community.

37. That, on November 16, 2004, the Commission indicated that it acknowledged that the State had complied with the sixth operative paragraph of the Judgment.

38. That, based on the statements made by the parties during the private hearing on May 3, 2008, the Court notes that there is no dispute regarding the status of compliance with this operative paragraph.

39. That, having examined the information forwarded by the State and the observations made by the representatives and the Commission, the Court considers that the State has complied fully with the sixth operative paragraph of the Judgment.

*
* *
*

40. That, regarding the reimbursement of expenses and costs (*seventh operative paragraph of the Judgment*), on March 22, 2002, the State reported that on March 5, 2002, it had delivered "to the Inter-American Commission on Human Rights [...] cheque No. 3685 [...] in payment of expenses and legal costs incurred by the members of the Community and their representatives," according to the provisions of the Judgment.

41. That, on April 16, 2002, the Commission forwarded a copy of the document

⁸ The record of the final handing over of the hostel, presented by the State as evidence, shows that on February 28, 2003, the Emergency Social Investment Fund (FISE) officially received the student hostel for the Community from the contractor.

recording the delivery of a cheque to the legal representatives of the Awas Tingni Community (*supra* Having seen paragraph 4), corresponding to the payment made by the State to the Inter-American Commission, in compliance with the seventh operative paragraph of the Judgment.

42. That the representatives indicated in their observations of November 17, 2004, that "Nicaragua complied with the [seventh] operative paragraph [of the Judgment] on April 16, 2002, when it delivered a check [...] for legal costs to the Community through the Inter-American Commission [...]."

43. That, based on the statements of the parties during the private hearing on compliance held on May 3, 2008, the Court observes that there is no dispute regarding the status of compliance with this operative paragraph.

44. That the Court considers that the State has fully complied with the seventh operative paragraph of the Judgment.

*
* *
*

45. That regarding the "requests for additional reparations" and the "supplementary request for additional reparations" (*supra* Having seen paragraph 3), the representatives asked the Court to "demand" that the State assume responsibility for failing to comply with the Judgment of the Court of August 31, 2001, and "consequently, to order Nicaragua to compensate the Community for the damage it has suffered and continues to suffer owing to the State's failure to comply with [...] the Court's rulings," and also to pay costs and expenses. In this regard, they indicated that the Court has the powers to require that its decisions are complied with and this power "includes the power to require additional reparations for the damage arising from the State's failure to comply with the Court's rulings."

46. That, given the allegations of the representatives and based on the Court's case law, at this stage of monitoring compliance, the Court is empowered to give instructions at the request of a party or *motu proprio* relating to compliance with or implementation of the measures of reparation ordered in its Judgment delivered on August 31, 2001, so that the operative paragraphs of this Judgment are complied with. Nevertheless, this does not imply that it can order measures of reparation that differ from those it has already ordered so as to modify the Judgment. The Court also observes that, even though the representatives can submit their requests, arguments and evidence autonomously throughout the proceedings (as established in Article 23 of the Rules of Procedure), in this case the Court is unable to rule on new facts and claims that are not part of the measures of reparation that have already been ordered. Consequently, the Court rejects as inadmissible the requests for additional reparations submitted by the representatives in this case.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 29(2) of its Rules of Procedure,

DECLARES:

1. That, as indicated in Considering paragraphs 15, 38 and 39, and 43 and 44 of this Order, the State has complied fully with the third, sixth and seventh operative paragraphs of the Judgment delivered by the Inter-American Court of Human Rights on August 31, 2001.

2. That it will keep open the procedure of monitoring compliance with the pending aspect of this case, concerning the State's obligation to delimit, demarcate and title the lands that correspond to the members of the Awas Tingni Community and, until that delimitation, demarcation and titling has been done, 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 Community live and carry out their activities (*fourth operative paragraph of the Judgment of August 31, 2001*).

3. That the Court takes note of the "official record of the agreements" signed by the representatives and the members of the Community, the State and the Commission on May 3, 2008, in which it was agreed, as regards the point pending compliance, that:

- (1) Within no more than two months, the State would comment on the claim of the "Ten Communities" in relation to the Resolution of the Regional Council of February 14, 2007.
- (2) When it has issued this comment, the phase of marking the boundaries will be concluded, within 40 days at most.
- (3) Immediately afterwards, steps will be taken to prepare and approve the title in favor of the ancestral territory of the Community, under the legal procedure. The parties consider that the title will be delivered to the Awas Tingni Community in August 2008.
- (4) Lastly, the parties request the presence of a delegate of the Court and of the Commission to verify *in situ* compliance with the agreements.

[...]

AND DECIDES:

4. To require the State to adopt all necessary measures to comply promptly and effectively with the only point pending compliance, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights, and also to comply with the undertakings made on May 3, 2008, which appear in the "official record of the agreements."

5. To request the State to present to the Inter-American Court of Human Rights, by November 3, 2008, at the latest, a report indicating all the measures adopted to comply with the aspects ordered by the Court in the fourth operative paragraph of the Judgment and with the elements established in the "official record of the agreements" of May 3, 2008.

6. To request the representatives and the Inter-American Commission on Human Rights to submit any observations they deem pertinent on the State's report mentioned in the preceding operative paragraph within four and six weeks, respectively, of receiving it.

7. To reject as inadmissible the requests for additional reparations submitted by the representatives in the instant case.
8. To continue monitoring compliance of the fourth operative paragraph of the Judgment of August 21, 2001.
9. To require the Secretariat of the Court to notify this Order to the State, the Inter-American Commission on Human Rights and the representatives of the victims.

Cecilia Medina Quiroga
President

Diego García-Sayán

Sergio García Ramírez

Manuel E. Ventura Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary