

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF MAY 28, 2010**

CASE OF YATAMA V. NICARAGUA

MONITORING OF COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on preliminary exceptions, merits, reparations, and costs (hereinafter "the Judgment") issued by the Inter-American Court of Human Rights, (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on June 23, 2005.
2. The Order of the Court of November 29, 2006.
3. The Order of the Tribunal of August 4, 2008, in which it declared, *inter alia*:
 1. That [...] it w[ould continue] proceeding[s] for monitoring compliance with the following obligations pending fulfillment in the instant case, namely:
 - a) the adoption, within a reasonable time, of such legislative measures as may be necessary to provide for a simple, prompt, and effective judicial remedy to review the decisions adopted by the Supreme Electoral Council which may affect human rights, such as the right to participate in government, in compliance with the relevant legal and treaty guarantees, and to repeal any provisions preventing said remedy from being sought (ninth operative paragraph of Judgment of June 23, 2005);
 - b) the amendment to Electoral Act No. 331 of 2000 so that it clearly regulates the consequences of non-compliance with electoral participation requirements, the procedures to be followed by the Supreme Electoral Council in finding such non-compliance, and the reasoned decisions to be adopted by said Council in that regard, as well as the rights of those whose participation is affected by a decision of the State (tenth operative paragraph of the Judgment of June 23, 2005);
 - c) the reform of the regulation of those requirements established in Electoral Act No. 331 of 2000 that were found to be in violation of the American Convention and the adoption of such measures as may be required for the members of indigenous and ethnic communities to be able to effectively take part in election processes in accordance with their values, customs, and traditions (eleventh operative paragraph of Judgment of June 23, 2005);
 - d) the payment of the compensation set for pecuniary and non-pecuniary damage, which amount is to be paid to the YATAMA organization, which shall distribute it as appropriate (twelfth operative paragraph of Judgment of June 23, 2005);
 - e) the payment of the amount due on account of costs and expenses incurred as a result of the proceedings started before the domestic courts and the Inter-American system for the protection of human rights to the YATAMA organization, which shall subsequently deliver to CENIDH and CEJIL such portion thereof as may be required to reimburse them for the expenses they incurred (thirteenth operative paragraph of Judgment of June 23, 2005); and

f) the duty to publicize via broadcast by a radio station with widespread coverage on the Atlantic Coast the paragraphs stated in Chapter VII (Proven Facts), Chapters IX and X, and the operative paragraphs of the Judgment (eighth operative paragraph of the Judgment of June 23, 2005).

4. The communication of December 6, 2008, through which the Republic of Nicaragua (hereinafter the "State" or "Nicaragua") submitted a report regarding the advances in its compliance with the Judgment issued by the Tribunal in the present case.

5. The brief of January 5, 2009, whereby the representatives of the victims (hereinafter "the representatives") submitted their observations to the report submitted by the State (*supra* Having Seen 4). In the aforementioned brief, the representatives requested that this Tribunal summon the parties to a hearing on the supervision of compliance with the Judgment.

6. The communication of March 12, 2009, whereby the Inter-American Commission on Human Rights (hereinafter "Commission" or "Inter-American Commission") submitted its observations on the report submitted by the State (*supra* Having Seen 4).

7. The Order issued by the President of the Tribunal (hereinafter "the President") of April 21, 2010, whereby he called the State, the representatives, and the Inter-American Commission to a private hearing with the purpose of receiving information by the State on its compliance with the Judgment issued in the present (*supra* Having Seen 1) and to hear the observations of the Inter-American Commission and the representatives in that regard.

8. The private hearing held by the Court at its seat in San José, Costa Rica, on May 26, 2010.¹

CONSIDERING:

1. That monitoring compliance with its decisions is a power inherent to the jurisdictional functions of the Court.

2. That Nicaragua is a State Party to the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") since September 25, 1979 and accepted the adjudicatory jurisdiction of the Court according to Article 62 of the Convention on February 12, 1991.

3. That Article 68(1) of the American Convention establishes that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties". The treaty obligations of the States Parties bind all the powers or functions of the State.²

¹ To this hearing appeared: a) for the Inter-American Commission: Lilly Ching, Specialist Attorney of the Executive Secretary; b) for the representatives of the victims: Brooklyn Rivera (YATAMA), Norwin Solano (CENIDH), Alejandra Nuño (CEJIL), Marcía Aguiluz (CEJIL) and Georgina Vargas (CEJIL), and c) for the State of Nicaragua: María Elsa Fixione Ocón, Coordinator of the International Criminal, Human Rights and Humanitarian Affairs of the Attorney General's Office of the Republic, and Ana Cecilia Navarro Mierisch, Legal Advisor of the Nicaraguan Embassy.

² Cf. *Case of Baena Ricardo and Others v. Panamá. Competence*. Judgment of November 28, 2003. Series C No. 104, par. 60; *Case of Las Palmeras v. Colombia. Supervision of Compliance with the Judgment*. Order of the Inter-American Court of Human Rights of February 3, 2010, Considering third, and *Case of Cesti Hurtado v. Perú. Supervision of Compliance with the Judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering third.

4. That due to the final and non-appealable character of the Judgments of the Court, according to that established in Article 67 of the American Convention, these shall be promptly complied with by the State in an integral form.

5. That the obligation to comply with that established in the decisions of the Court conforms to a basic principle of the law of the international State responsibility, supported by international jurisprudence, according to which the States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as it has been already stated by this Court and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, the States shall not, due to reasons of an internal nature, fail to assume the international responsibility already established³.

6. The States parties to the Convention shall guarantee the compliance with the treaty provisions and their corresponding effects (*effet utile*) at the level of their respective domestic law. This principle is applied not only in relation to the substantive norms of the human rights treaties (this is, those that contain dispositions regarding the protected rights), but also in relation to rules of procedure, such as those referring to the compliance with the decisions of the Court. These obligations shall be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into account the special nature of human rights treaties⁴.

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7. Regarding the obligation to publicize, through a radio station with widespread coverage on the Atlantic Coast, several paragraphs of the Judgment, (Operative Paragraph eight), during the private hearing (*supra* Having Seen 8) the State informed that it is unable to prove the days in which the judgment was publicized through its broadcast in several radio stations since "after having visited [them...] with the purpose of obtaining the proof that [the Court...] request[ed in this sense, they found that...] these radio stations do not keep for a long time their record, this is, they do not have files of th[ese] publication[s]". The State pointed out, however, "the government consider[ed] and request[ed] in a frank manner, a constructive level of credibility in the precise information submitted regarding the names of the radio stations and the languages in which such publication was carried out, supported by the invoices of the payment made to them, and based upon the logic reasoning that it would make no sense to make the payments for such [*sic*] and not make them later". Nevertheless, the State stated that it has the disposition of making the broadcasts again if the Court deems it necessary. Regarding the publication of the Judgment in the Rama language, "which is pending," the State reiterated its "willingness of prompt compliance, of which it [will] later submit concrete information to the Court."

8. In this regard, in the private hearing (*supra* Having Seen 8) the representatives

³ Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of El Amparo v. Venezuela. Supervision of Compliance with the Judgment*. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering fifth. and *Case of Cesti Hurtado v. Perú*, *supra* note 2, Considering fiftha.

⁴ Cf. *Case of Ivcher-Bronstein v. Peru*. Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of El Amparo v. Venezuela*, *supra* note 3, Considering sixth, and *Case of Cesti Hurtado v. Perú*, *supra* note 2, Considering sixth.

pointed out that this obligation “has the goal of letting people know about the Judgment, and [that] for the indigenous peoples it is particularly important”, given that the Court was very “emphatic in pointing out the different languages in which it had to be translated, and in pointing out even the frequency of broadcast that the Judgment [should] have.” Regarding the broadcast apparently carried out by the State, they mentioned that such reparation measure was never consulted with the representatives, and that they “never kn[ew] when the broadcast was made, [that] nobody has commented [to them] [...] that they heard it, [and that they do not know] the text of what was translated,” therefore they cannot “control if that translated and that supposedly said corresponds to that the Court ordered.” The representatives mentioned that they respected that pointed out by the State and that they did not distrust of the submission of the invoices, but that they considered that the object was to prove that the measure of reparation had met its purpose, which, in their concept, had not happened due to the form in which the State carried it out. Therefore, they requested this point to be declared not complied with, and the broadcast of the Judgment to be newly ordered in coordination with the representatives and the victims.

9. The Inter-American Commission (*supra* Having Seen 8) pointed out that it shall be reminded that the Judgment of the Court establishes a term of one year to comply with this obligation, but, that for four years, the State has reiterated that it has already complied with this point, without presenting information which, besides the invoices, allows to infer such compliance according to that ordered by the Court, which was very specific. In that sense, it pointed out that it could not conclude that this aspect of the Judgment have been complied with.

10. The State has accepted that the invoices or receipts are not enough to prove the broadcasts of the Judgment in the Spanish, Miskito, Sumo and English languages that have apparently being performed. Such invoices are in the file of the Tribunal, however, other elements additional to such evidence. In this sense, the State expressed its will to comply with this point and to perform the broadcasts again. The Court accepts this offering while it considers that there is an uncertainty regarding to that apparently made public through the radio broadcasts pointed out by the State. Therefore, the Tribunal requests Nicaragua, once such broadcasts are performed again, to submit to the Court a copy of the corresponding audio and to indicate precisely the date, time, intervals, and radio stations through which the respective broadcasts were made. Likewise, the Tribunal remains waiting on the information, on the part of the State, regarding the broadcast of the Judgment in Rama language, which, it expressed, has not been yet carried out.

11. In the other hand, the Tribunal observes that the request of the representatives, for the broadcasts of the Judgment to be performed in coordination with them and the victims arises from the information that has been submitted by both, them and the State, throughout the procedure of supervision of compliance with the Judgment, in the sense that a Mixed Compliance Commission has been formed. This Commission is integrated by representatives of YATAMA, of the CENIDH, and of the Ministry of Foreign Affairs of Nicaragua “with the purpose of carrying out a coordinated, harmonic, participative and transparent process of compliance of the Judgment.”⁵ The Tribunal urges the State to comply with the corresponding commitments made to this point, that have been voluntarily

⁵ According to the representatives, that Commission came up in a meeting held on August 8, 2005. *Cf.* Brief of the representatives of September 21, 2006 (File of Supervision of Compliance with the Judgment, volume I, folio 322); likewise, the report of the State of Nicaragua of August 23, 2006 (File of Supervision of Compliance with the Judgment, volume I, folio 301).

assumed, in order to carry out in a manner coordinated with the representatives, the broadcasts regarding the Judgment.

12. Therefore, the Court considers that the compliance of Operative Paragraph eight of the Judgment is pending.

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13. In relation to the obligations related to the adoption of diverse legislative measures in electoral matters (*Operative Paragraphs nine through eleven of the Judgment*), the State informed during the private audience (*supra* Having Seen 8) that, "as is within the knowledge of the Court, [the Nicaraguan government] has worked on a draft project of reform of electoral law." Nevertheless, the State indicated that in fulfillment of these measures "has not been executed swiftly [...] as it must be," "not for a lack of will or for the desire to continue manipulating the situation [...] in favor of determined political parties, but for a situation of legal conditions and for the lack of consensus by the same parties [...] in the National Assembly." In the same manner, the State referred to the fact that "for dealing with a law of constitutional range, [the fulfillment of these extremes in the Judgment] imply a partial reform to the Political Constitution," which, according to the State, is not "of the powers of the Executive Power, but of the Legislative Power." Also, the State indicated that "[t]he Executive Power possess only the initiative of partial reform."⁶ Notwithstanding, the State reiterated the will of the State of Nicaragua to comply with the reforms ordered in the Judgment as well as its commitment to give "precise information about the manner in [which] it plans to execute the same."

14. The representatives indicated in the hearing (*supra* Having Seen 8) that the State "has presented several versions about what it is doing [in the fulfillment of these measures...], and [that] now [...] it signals, trying in any way to exonerate its own responsibility [...], that this is something within the competence of the General Assembly and that therefore, due to the complexity of the make-up of the Assembly, it h[as] not been fulfilled." Also, the State stated that the lack of fulfillment of the Judgment "is of the State of Nicaragua as a whole" but that, nevertheless, "at least one concrete action" has been carried out "that signals that the State has had [the] will to encourage these reforms." Regarding the reform project mentioned by the State, it signaled that this "not only has not been consulted with the indigenous people, but nor has it entered the legislative flow to generate a discussion." According to the representatives, "it is this way because it is convenient for the State of Nicaragua that an ambiguous electoral law exists [...] because in this way, [the law] can continue to be applied [... in] an arbitrary way and the State can continue to violate the political rights of the Nicaraguan people."

⁶ According to the information submitted by the State, "this initiative may [also] be made by one third of the congressmen of the National Assembly. Likewise, this reform shall be carried out according to the procedures established for the partial amendments to the Political Constitution, with the difference that, for being a constitutional law, [...] it requires its approval in one legislative period [...]. In this topic it should also intervene the political will of the different parties that form the National Assembly, given that to obtain the approval of such partial amendments, it is required a majority of 60% of the congressmen. This means 56 votes in favor, majority that, at this moment, none of the parties has on its own, even if associating with other congressm[en]. This is, there shall be a consensus and political will of all the parties represented in the National Assembly regarding this topic."

15. At the private hearing (*supra* Having Seen 8), the Commission “evaluat[ed] the expression of will” of the State, nevertheless, it indicated that, “five years before the Judgment was handed down [...], the parties do not [have] clarity about the actions that [...] it has carried out, nor which would be the mechanisms to give participation to the indigenous peoples in the legislative reform process.” In the same way, the Commission signaled that “it [does] not know the substance of [the] initiatives” mentioned, in particular, that referred to in the project that would be presented “to the legislative agenda of 2008” to which the State referred. Also, it signaled that “beginning from the [year] 2007, it [has] not again mentioned [...] any express participation that the indigenous peoples would have in this process. It [is] not known, in synthesis, of any significant advance in the fulfillment of this measure.”

16. The Court observes that the State has not submitted updated information about the steps that it alleges it has carried out to give fulfillment to the ninth, tenth and eleventh Operative Paragraphs of the Judgment. Notwithstanding, the Tribunal evaluates positively the will expressed by the State to comply with its obligations in this sense. In particular, the Tribunal highlights the promise to inform about the specific steps that it will carry out with the goal to encourage the partial reform of the Political Constitution, which it indicated are necessary to comply with this end of the Judgment. In this respect, the Tribunal considers it pertinent to remind that the conventional obligations of the State Parties are binding upon all their powers and organs (*supra* Considering 3).

17. The Tribunal is still waiting on information about all those measures carried out and planned with the end of: i) adopting, within a reasonable time period, the legislative measures necessary to establish a simple, quick and effective judicial recourse that permits the decision of the Supreme Electoral Board that affect human rights to be controlled, such as political rights, with observance of the respective legal guarantees and conventions, and to derogate the norms that impede the interposition of this recourse; ii) reforming the Electoral Law No. 331 of 2000 in a way that regulates with clarity the consequences of the lack of fulfillment of the requirements of electoral participation, the procedures that must be observed by the Supreme Electoral Board to determine such lack of fulfillment and the decisions supported in this respect that must be adopted by said Board, as well as the right of persons whose participation is affected by a decision of the State, and iii) reforming the regulation of those requirements provided in the Electoral Law No. 331 of 2000, which were declared in violation of the American Convention and to adopt, within a reasonable time period, the measures necessary so that the members of the indigenous and ethnic communities may participate in the electoral processes in an effective manner and, taking into account their traditions, uses and customs.

18. Consequently, the Tribunal finds that the Operative Paragraphs nine, ten and eleven of the Judgment are still pending fulfillment.

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19. Regarding the obligation of the State to make the payment of indemnity for pecuniary and non-pecuniary harm, as well as the return of the costs and expenses (Operative Paragraphs twelve and thirteen of the Judgment), the State reiterated its “will” to comply soon with the obligation to pay “the moratorium interests for the period of January 1 to November 25, 2008, [which] remained consigned in Deed 198 of the compliance with

judgment." The State indicated that "it [will] later send concrete information to the Court" about this point.

20. The representatives signaled that the State, effectively, made the payment of US \$111,425.00 (one hundred and eleven thousand, four hundred and twenty-five dollars of the United States of America) but that, nevertheless, this "is pending the payment of the moratorium interests for the period of the first of January of 2008, until September 25 [*sic*] of 2008, the date on which the State subscribed to [a] payment agreement."⁷ During the private hearing (*supra* Having Seen 8), they warned that "since September 25 [*sic*] of 2008, the State promised to [...] make this payment as soon as possible [..., as well as to] elaborate a report to fix the amount of the interest," notwithstanding, almost two years have passed, "and there has been no contact with the victims nor [...] an intention to make a payment." Therefore, they consider that "this point is still not fulfilled."

21. During the private audience (*supra* Having Seen 8), the Inter-American Commission reminded that "there is no contradiction in the sense that only the [payment] of moratorium interest since January through September [*sic*] of 2008 is still pending." In this respect, the Commission warned that "it does not h[ave] any information about [...] the plan of the State to comply" with this obligation.

22. Of the information provided, the Court verifies that the parties coincide in that the State made the payment of indemnities ordered for pecuniary and non-pecuniary damages, as well as the costs and expenses provided for in the present case. As indicated in the aforementioned public deed (*supra* Considering 19 and 20), which are found in the case file of the Tribunal, the payment of moratorium interest relative to the period of January 1 through November 25, 2008, is still pending.⁸ In this sense, the Tribunal verifies that the State expressed its will to settle it (*supra* Considering 19).

23. The Tribunal evaluates positively the efforts of the State to comply with that ordered in the Judgment regarding the payment of indemnity for pecuniary and non-pecuniary damages, as well as the costs and expenses ordered. Also, the Tribunal appreciate that manifested by the State during the private hearing (*supra* Having Seen 8), in the sense that it will soon comply with the payment of moratorium interest pending. In this respect, the Court considers that the State must inform about the time period in which it will fully fulfill this point of the Judgment.

24. In such a way, the Court finds that the State has partially fulfilled with the obligations established in the Operative Paragraphs twelve and thirteen of the Judgment.

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25. During the private hearing carried out in the present case (*supra* Having Seen 8), the State promised to send to the Tribunal, in a period of three months, the detailed and

⁷ Cf. Brief of the representatives of January 5, 2009, (File of Supervision of Compliance with the Judgment, Volume II, folio 594).

⁸ Cf. Public Writ number one hundred ninety eight (198) "Compliance with the Judgment of the Inter-American Court of Human Rights and settlement in favor of the State of the Republic of Nicaragua in economic matters" (File of Supervision of Compliance with the Judgment, Volume II, pages 584 and 586).

complete timeline of actions directed to the complete fulfillment of the Judgment. The Tribunal understands that this requires the efforts of diverse State authorities; nevertheless, it is necessary that in the time period proposed of three months, the State define special short, medium, and long-term goals to give prompt and full observance to the pending obligations of fulfillment, in the terms of Considering paragraphs 10, 11, 12, 16, 17, 18, 22, 23, and 24 of the present Order. Once the State submits this time line to the Tribunal, it must inform the Court every four months of its advances in the achievement of the goals established and on the fulfillment of the orders of the Judgment pending completion.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In the exercise of its attributes of supervision of compliance with its decisions and in conformity with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Statute, and 31(2) and 69 of its Rules,

DECLARES:

1. That in conformity with that set forth in the Considering paragraphs 22, 23 and 24 of the present Order, the State has partially complied with the following Operative Paragraphs of the Judgment:

a) to pay indemnities for pecuniary and non-pecuniary damages, which must be delivered to the organization YATAMA, that must distribute it as it corresponds (*Operative Paragraph twelve of the Judgment of June 23, 2005*);

b) to pay the quantity provided for costs and expenses generated in the internal ambit and in the international process before the Inter-American system of protection of human rights, in favor of the organization YATAMA, which will deliver to CENIDH and CEJIL their corresponding parts to compensate their expenses (*Operative Paragraph thirteen of the Judgment of June 23, 2005*).

2. To maintain open the process of supervision of compliance with the points pending fulfillment signaled in the previous Operative Paragraph, as well as of the following, namely:

a) to adopt, within a reasonable time period, the legislative measures necessary to establish a simple, quick and effective judicial recourse that permits the decisions of the Supreme Electoral Board that affect human rights to be controlled, such as political rights, with observance of the respective legal guarantees and conventions, and to derogate the norms that impede the interposition of this recourse (*Operative Paragraph nine of the Judgment of June 23, 2005*);

b) to reform the Electoral Law No. 331 of 2000 in a way that regulates with clarity the consequences of not fulfilling the requisites of electoral participation, the procedures that must be observed by the Supreme Electoral Board to determine such lack of fulfillments and the supported decisions in this respect that must be adopted by said Board, as well as the rights of the persons whose participation is seen as affected by a decision of the State (*Operative Paragraph ten of the Judgment of June 23, 2005*);

c) to reform the regulation of the requisites provided in the Electoral Law No. 331 of 2000 that were declared to be in violation of the American Convention and to adopt the necessary measures so that the members of the indigenous and ethnic communities can participate in the electoral processes in an effective manner and taking into account their traditions, uses and customs (*Operative Paragraph eleven of the Judgment of June 23, 2005*);

d) to give publicity, through a radio station of high coverage on the Atlantic Coast, to the paragraphs indicated in Chapter VII (Proven Facts) of Chapters IX and X of the Operative Paragraphs of the Judgment (*Operative Paragraph eight of the Judgment of June 23, 2005*).

AND DECIDES:

1. To require the State of Nicaragua to adopt all the measures necessary to give effective and prompt observance to the points pending fulfillment, signaled in the first and second Operative Paragraphs *supra*, in conformity with that stipulated in Article 68(1) of the American Convention on Human Rights.
2. To request that the State of Nicaragua send the timeline indicated in Considering paragraph 25 of the present Order to the Tribunal by September 6, 2010.
3. To request the State of Nicaragua to present a report on the advances in the achievement of the goals established in the time line and regarding the fulfillment of the points of the Judgment pending fulfillment every four months, in the terms of that established in the Considering paragraphs 10, 11, 12, 16, 17, 18, 22, 23 and 24 of this Order.
4. To request the representatives of the victims and the Inter-American Commission on Human Rights to present the observations that they find pertinent on the time line mentioned in the second Operative Paragraph of the present Order, in the time periods of two and four weeks, respectively, from the date of the reception of the same.
5. To request the representatives of the victims and the Inter-American Commission on Human Rights to present the observations that they find pertinent to the report of the State of Nicaragua referred to in the third Operative Paragraph of this Order, in the time periods of four and six weeks, respectively, from the date of the reception of the same.
6. To continue supervising the orders of the Judgment pending fulfillment.
7. To request the Secretary of the Court to serve notice of the present Order on the State of Nicaragua, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary