

**ORDER OF THE  
INTER-AMERICAN COURT OF HUMAN RIGHTS  
OF AUGUST 22, 2013**

**CASE OF YATAMA v. NICARAGUA**

**MONITORING COMPLIANCE WITH THE JUDGMENT**

**HAVING SEEN:**

1. The Judgment on preliminary objections, merits, reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court," or "this Court") on June 23, 2005. In the foregoing Judgment, it was established that the candidates proposed by the indigenous regional political party, Yapti Tasba Masraka Nanih Asla Takanka (hereinafter "YATAMA"), were excluded from participating in the municipal elections held in 2000 as a result of several decisions issued by the Supreme Electoral Council that were not duly substantiated, nor were they adapted to the parameters set forth in Article 8(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), as well as due to the provisions of the Electoral Act No. 331 of 2000, which established an undue restriction to the exercise of the right to be elected and regulated these provisions in a discriminatory manner. The Court further determined that there was no judicial remedy against one of the resolutions of the Supreme Electoral Council. Consequently, the State was found responsible for the violation of Article 8(1) of the American Convention, in relation to Article 1(1) of that same treaty, as well as Articles 23, 24, and 25(1) of the Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of the aforementioned persons.

2. The Orders of the Court of November 29, 2006; August 4, 2008; and, May 28, 2010. In the latter, the Tribunal declared, *inter alia*:

1. That [...] the State has partially complied with the following operative paragraphs of the Judgment:

a) To pay compensation for pecuniary and non-pecuniary damages to the YATAMA organization. YATAMA must then distribute the compensation as appropriate (*Operative Paragraph 12 of the Judgment*[...]);

b) To pay the amounts awarded as costs and expenses incurred domestically and in international proceedings before the inter-American Human Rights Protection System to YATAMA, which will in turn pay the appropriate compensation to CENIDH and CEJIL for the expenses they covered (*Operative Paragraph 13 of the Judgment*[...]).

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 period, the legislative measures necessary to establish a simple, quick and effective judicial recourse that allows the decisions of the Supreme Electoral Board regarding human rights, such as political rights, to be controlled in observance of the respective legal and conventional guarantees, and to repeal those laws that impede the implementation of this recourse (*Operative Paragraph 9 of the Judgment*[...]);

b) To reform the Electoral Law No. 331 of 2000 so that it clearly regulates the consequences of not fulfilling the requisites of electoral participation, the procedures that

must be observed by the Supreme Electoral Board to determine such non-compliance, and the decisions that must be taken by the Board in this regard, as well as the rights of those persons whose participation is affected by a State ruling (*Operative Paragraph 10 of the Judgment[...]*);

c) To reform the regulation of the requirements provided for in 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 members of the indigenous and ethnic communities can participate in electoral processes in an effective manner, taking into account their traditions, uses, and customs (*Operative Paragraph 11 of the Judgment[...]*);

d) To publicize via a radio station with widespread coverage on the Atlantic Coast the paragraphs indicated in Chapter VII (Proven Facts), Chapters IX and X, and the Operative Paragraphs of the Judgment (*Operative Paragraph 8 of the Judgment[...]*).

And decid[ed]:

[...]

2. To request that the State of Nicaragua submit to the Court the timeline referred to in Considering paragraph 25 of the [...] Order, by no later than September 6, 2010.

3. To request that the State of Nicaragua present a report every four months on advances in achieving the goals established in the timeline, as well as reporting on compliance with the points of the Judgment that are pending fulfillment [...].

3. The Order of the Court issued on June 30, 2011, whereby it decided to request the State, *inter alia*:

[...]

2. To [...] present information to the Court on the steps it has taken pursuant to Operative Paragraph 1 of this Order and to submit the timeline it proposed by October 4, 2011, pursuant to Considering Clauses 7 and 10 [thereof].

3. That [...] after presenting the report mentioned in the previous operative paragraph, [to submit] a report once every four months on compliance with those operative paragraphs of the Judgment still outstanding, as well as on advances made with respect to the goals established in the timeline, where and when it is appropriate. [...]

4. The briefs of October 19, 2011, June 19, 2012, and March 4, 2013, whereby the representatives of the victims (hereinafter "the representatives") submitted information regarding the monitoring of compliance with the Judgment.

5. The notes from the Secretariat of the Court (hereinafter "the Secretariat") of October 26, 2011, February 16, 2012, May 24, 2012, and June 29, 2012, whereby it requested the Republic of Nicaragua (hereinafter "the State" or "Nicaragua") to report on the measures it had adopted to comply with the reparations ordered in the Judgment that were still pending compliance, as well as to forward the timeline proposed by the State, whose deadline for submission had expired on October 4, 2011 (*supra* Having Seen clause 3). The State did not submit the information requested. Similarly, the note of the Secretariat of April 16, 2013, whereby the President of the Court summoned the State, the representatives, and the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") to a private hearing on monitoring compliance with the Judgment, to be held on May 28, 2013.

6. The private hearing convened by the Court and held at its seat in San Jose, Costa Rica on May 28, 2013.<sup>1</sup> The State did not appear at this hearing.

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<sup>1</sup> At this hearing, the following were present: a) for the Inter-American Commission: Silvia Serrano Guzmán, Special Attorney for the Executive Secretary, and b) for the representatives of the victims: Brooklyn

7. The briefs dated June 28 and July 31, 2013, by which the representatives and the Commission, respectively, referred to the lack of compliance with the Judgment and the absence of the State in the process of monitoring compliance as a whole.

8. The note of the Secretariat dated July 3, 2013, in which the Plenary of the Court informed Nicaragua that its failure to appear at the private hearing held on May 28, 2013 constitutes a breach of its duty to inform the Court on its compliance with the Judgment, and granted the State until July 22, 2013 to submit its observations regarding the information provided by the Commission and by the representatives during the aforementioned hearing, and on the brief of the representatives of June 28, 2013 (*supra* Having Seen clause 7). The State did not submit any observations. Moreover, the note of the Secretariat of the Court of August 1, 2013, in which the State was given a new deadline of August 9, 2013 for the submission of its observations on the above-mentioned information. At the date of issuance of the present Order, such observations have not been received by the Court.

#### **CONSIDERING THAT:**

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

2. Nicaragua has been a State Party to the American Convention on Human Rights since September 25, 1979, and, pursuant to Article 62 of the Convention, it recognized the jurisdiction of the Court on February 12, 1991.

3. In conformity with the provisions of Article 67 of the American Convention, the State must promptly comply with the judgments of the Court in their entirety. Moreover, 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 States must ensure the implementation at the domestic level of the Court’s decisions in its judgments.<sup>2</sup> The foregoing obligation includes the duty of the State to report to the Court on the measures adopted to comply with the rulings of the Court. The prompt implementation of the State’s obligation to report to the Court on how each aspect ordered by the Court is being fulfilled is essential in order to assess the status of compliance with the Judgment as a whole.<sup>3</sup>

4. The obligation to comply with the Tribunal’s rulings conforms to a basic principle of international law, supported by international jurisprudence, under which States must abide by their international treaty obligations in good faith (*pacta sunt servanda*) and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, neglect their pre-established international

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Rivera (YATAMA), Norwin Solano (CENIDH), Marcia Aguiluz, Luis Carlos Buob, Carlos Zazueta, Sergio Pacheco and Luciana Peri (CEJIL). The State did not establish a delegation.

<sup>2</sup> Cf. *Case of Baena Ricardo et al. V. Panamá. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Abrill Alosilla et al. V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause three.

<sup>3</sup> Cf. *Case of Five Pensioners V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, Considering clause 4, and *Case of Abrill Alosilla et al. V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 6.

responsibility.<sup>4</sup> The treaty obligations of State Parties are binding on all branches and bodies of the State.<sup>5</sup>

5. The States Parties to the Convention must ensure compliance with its conventional provisions and their effectiveness (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (that is, those addressing protected rights), but also to procedural provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.<sup>6</sup>

#### **A. Information submitted by the representatives regarding the measures of reparation still pending compliance**

6. The *representatives* reported that on April 25, 2012, the President of the Republic introduced a bill to the National Assembly to amend the Electoral Act No. 331. This initiative was approved, and published on May 23, 2012 in the Official Gazette, as Act No. 790, "Amendment to Act No. 331, Electoral Act." According to the representatives, this reform modified 25 articles of the Electoral Act related to the following topics: "integration of polling stations, the rights of political parties to appoint prosecutors, the delivery of identity cards, the registration of citizens in the electoral roll, the debugging and publication of the electoral roll, [and] the requirements for political parties to obtain legal status, among others." However, "none of the reformed articles refer[red] to what was ordered by the Court." Consequently, the electoral regulations that were found to be in violation by this Court remain in place. Moreover, the representatives referred to alleged specific cases which demonstrate the consequences of the failure of the State to comply with the reparations ordered by the Court in relation to the legal reforms.

7. The *representatives* further expressed their concern in regard to the failure to comply with the obligation to publish the Judgment, whose implementation would not present much difficulty. They indicated that it is clear that the mere passage of time impacts the effectiveness of the measure and makes it increasingly difficult for indigenous communities to retain and fully understand it. In this regard, they noted that "for this measure to comply with the purpose of redressing the victims, it is necessary for there to be direct coordination between the State, the victims, and their representatives to establish the appropriateness of its implementation, especially to verify the proper translation to the Miskito, Rama, Sumo and English languages, as well as to determine the hours and stations through which it should be transmitted," given that "unilateral, mechanical, and executive actions on the part of the State could modify the nature of the measure and render it ineffective." Lastly, the representatives argued that, in regards to the moratorium interest accrued for default on

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<sup>4</sup> Cf. International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Arts. 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, and *Case of Abrill Alosilla et al. V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 4.

<sup>5</sup> Cf. *Case of Castillo Petrucci et al. V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering clause 3, and *Case of Abrill Alosilla et al. V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 4.

<sup>6</sup> Cf. *Case of Ivcher Bronstein V. Perú. Jurisdiction*. Judgment of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37, and *Case of Abrill Alosilla et al. V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of May 22, 2013, Considering clause 5.

compensation and costs and expenses, payment was still pending corresponding to the period of January 1, 2008 until September 25, 2008, the date on which the payment agreement was reached with the victims.

8. The State did not present information on compliance with the operative paragraphs of the Judgment pending compliance, nor did it submit the proposed schedule (*supra* Having Seen clauses 2, 3, and 5, and *infra* Considering clause 9). Due to the foregoing, the Commission did not present any observations.

### ***B. Regarding the duty of the State to report on the measures adopted***

9. The last written report that the State submitted to this Court was on December 6, 2008. Subsequently, during the private hearing on May 26, 2010, the State pledged to submit to the Court "a detailed and complete timeline of actions directed to the complete fulfillment of the Judgment." The Court requested the State to send the foregoing timeline by no later than September 6, 2010.<sup>7</sup> Nevertheless, it was not submitted, even though an extension was granted for this purpose. Subsequently, by Order of June 30, 2011, the Court requested the State to present information on the steps taken to comply with the Judgment and to submit the timeline it had proposed by no later than October 4, 2011.<sup>8</sup> Despite the fact that the foregoing request was repeated on four occasions, the State did not submit the report and timeline as requested. The State also did not appear at the private hearing on May 28, 2013, nor did it present observations on the information provided by the Commission and the representatives during said hearing and in their subsequent briefs (*supra* Having Seen clauses 5, 6, 7, and 8).

10. In this regard, the *representatives* argued that the absence of Nicaragua at the private hearing confirmed what had already been evidenced in writing; that is, that it had no intention of complying with the Judgment, and that, in turn, it was also questioning the authority of the Court to monitor its judgments. As a result of the foregoing, and due to the severity of the manifest lack of compliance by the State, as well as to prevent Inter-American justice from becoming illusory, they requested, pursuant to Articles 65 of the American Convention and 30 of the Statute of the Court, to inform the General Assembly of the Organization of American States (OAS) about "the express unwillingness and serious lack of compliance on the part of the Nicaraguan State with regard to [the] Judgment," and that the Court establish in its decision, "its competence to continue monitoring compliance with the foregoing [J]udgment and [...] [to] request information from the parties for such purposes." For its part, the *Commission* expressed its concern regarding the absence of the State at the private hearing and indicated that this situation is a clear breach of the obligation to inform the Court and a repudiation of the mechanism of supervision of compliance with the judgments. As such, it requested the Court to assess whether such situation merits the application of Article 65 of the Convention, with the express statement that this does not preclude the jurisdiction of the Court to continue monitoring compliance with the Judgment.

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<sup>7</sup> Cf. *Case of Yatama V. Nicaragua. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of May 28, 2010, Having seen clause 4, Considering clauses 7 to 25 and Operative Paragraph 2.

<sup>8</sup> Cf. *Case of Yatama V. Nicaragua. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of June 30, 2011, Operative Paragraph 2.

11. In view of the foregoing, the Court considers it appropriate to refer to the failure of the State to comply with the obligation to inform the Court regarding compliance with the Judgment. As the Court has informed the General Assembly of the OAS, the power to monitor its judgments is inherent in the exercise of its jurisdictional power and its purpose is to ensure that the reparations ordered by this Court in each specific case are effectively implemented and fulfilled.<sup>9</sup> To achieve this objective, the Court periodically requests information from the State on the activities carried out for purposes of compliance and obtains the observations of the Commission and the representatives of the victims. Furthermore, when it deems it appropriate, it may issue orders or convene the State and the representatives of the victims to a hearing in order to monitor compliance with its decisions, and to hear the opinion of the Commission.<sup>10</sup> In this sense, the procedure for monitoring compliance with its own judgments and other decisions, regulated by Article 69 of its Rules of Procedure<sup>11</sup>, is one of the most important powers of the Court for the protection of human rights, since “[t]he effective implementation of the Court’s decisions is the key element of the real exercise and effectiveness of the inter-American system without which the purpose for which it was created is rendered illusory.”<sup>12</sup>

12. Indeed, an innovative mechanism that the Court has conducted since 2007 are the hearings on the procedure to monitor compliance with the judgments. At these hearings, the Court tries to create compromises between the parties, suggests certain alternate solutions, encourages compliance, calls attention toward non-compliance that is defined by lack of unwillingness, promotes the preparation of compliance schedules for the parties involved, and even offers its premises for the parties to hold conversations, which, on many occasions, are very difficult to arrange with the State involved.<sup>13</sup> Meanwhile, the parties have the opportunity to directly present their positions and reply, creating participatory spaces for dialogue and consultation with the State authorities and the victims or their representatives.

13. In this regard, this Court has had the opportunity to inform the General Assembly of the OAS that, since its implementation, very favorable results have been obtained with the hearings on the procedure to monitor compliance with the judgments, as there has been significant progress in compliance with the reparations ordered by the Court. In this sense, the Court highlights that, in practice, the mechanism of holding hearings on the procedure to monitor compliance with the judgments has promoted conditions to facilitate compliance with that ordered by the Court in its judgments. To illustrate the foregoing, in the cases of *Gómez Palomino* and *De la Cruz Flores*, after repeated periods in which the State of Peru did not present information, the submission of the same was requested through Orders issued by the Court; hearings to monitor compliance with the judgments were also held. Once the foregoing process was carried out, the State reported on the progress in complying with the respective judgments. Based on such information, and the observations of the Commission and the representatives, the Court declared that certain of the operative paragraphs in each

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<sup>9</sup> Cf. Annual Report of the Inter-American Court of Human Rights of 2011, page. 13, and Annual Report of the Inter-American Court of Human Rights of 2011, page 13, and Annual Report of the Inter-American Court of Human Rights of 2012, page 13.

<sup>10</sup> Cf. Annual Report of the Inter-American Court of Human Rights of 2010, page. 10; Annual Report of the Inter-American Court of Human Rights of 2011, page. 13, and Annual Report of the Inter-American Court of Human Rights of 2012, pages. 13, 14 and 28.

<sup>11</sup> Cf. Rules of Procedure of the Court approved by the Inter-American Court in its LXXXV Regular Period of Sessions, held on November 16 to 28, 2009.

<sup>12</sup> Cf. Annual Report of the Inter-American Court of Human Rights of 2010, page. 9.

<sup>13</sup> Cf. Annual Report of the Inter-American Court of Human Rights of 2010, page. 4; Annual Report of the Inter-American Court of Human Rights of 2011, page. 28, and Annual Report of the Inter-American Court of Human Rights of 2012, page. 28.

of the judgments had been complied with.<sup>14</sup> Similarly, in the cases of the *Mayagna (Sumo) Awas Tingni Community*, *Vargas Areco*, and *Valle Jaramillo*, as a result of the hearings to monitor compliance with the judgments that were held, the willingness to engage in discussions that was shown during these hearings by the respective States of Nicaragua, Paraguay, and Colombia, and the subsequent agreements between the parties in each case, significant progress was achieved in terms of compliance with the respective rulings.<sup>15</sup> In fact, Nicaragua complied with the Judgment, in its entirety, in the case of the *Mayagna (Sumo) Awas Tingni Community*.<sup>16</sup>

14. It is important to point out that, in response to this practice, the General Assembly of the OAS has reaffirmed the importance of “[t]he hearings held to monitor compliance with judgments as one of the most effective mechanisms developed to promote compliance with them.”<sup>17</sup> Therefore, in accordance with the provisions of Article 69(3) of the current Rules of

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<sup>14</sup> In the Case of *Gómez Palomino* the mortal remains of Mr. Santiago Gómez Palomino were found and delivered to the family members after almost 20 years after their forced disappearance. Moreover, the publication in a newspaper of national circulation established in the ruling was carried out and a part of the payment established in the Judgment was ordered. Cf. *Case of Gómez Palomino V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of October 18, 2007, Considering clauses 6 to 11; *Case of Gómez Palomino V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of July 1, 2009, Considering clauses 8 to 40; *Case of Gómez Palomino V. Perú. Monitoring of Compliance of Judgment*. Order of the President of the Inter-American Court of Human Rights in exercise for the case of December 21, 2010, Considering clauses 33 to 37; *Case of Gómez Palomino V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of July 5, 2011, Declarative Paragraphs 1 and 2, and *Case of Gómez Palomino V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering clauses 6 to 15.

In the case of *De la Cruz Flores* the publication in the Official Gazette was carried out and the Court declared that said measure of the Judgment had been complied with. Cf. *Case of De la Cruz Flores V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of September 1, 2010, Declarative Paragraph 1; *Case of De la Cruz Flores V. Perú. Monitoring of Compliance of Judgment*. Order of the President of the Inter-American Court of Human Rights of December 21, 2009, Considering clauses 22 to 25.

<sup>15</sup> In the Case of *Valle Jaramillo* the parties reached an agreement to implement the measure of reparation concerning the grant of a scholarship for school or profession training, and said agreement was considered admissible by the Court. Cf. *Case of Valle Jaramillo V. Colombia. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of February 28, 2011, considering clauses 34 to 37, and *Case of Valle Jaramillo V. Colombia. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of May 15, 2011, Considering clauses 6 to 11.

In the Case of *Vargas Areco* the parties reached an agreement regarding payment of the appropriate default interests, and once the payments were made, the Court considered the measure to have been complied with. Cf. *Case of Vargas Areco V. Paraguay. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2010, Considering clause 39, and *Case of Vargas Areco V. Paraguay. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of September 4, 2012, Considering clauses 21 to 24.

<sup>16</sup> In the Case of the *Mayagna Community (Sumo) Awas Tingni*, the State assumed a series of commitments aimed at carrying out the only operative paragraph that had not yet been complied with, which resulted in compliance of the Judgment as a whole, and the case was archived. Cf. *Case of the Mayagna Community (Sumo) Awas Tingni V. Nicaragua. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of April 3, 2009, Operative Paragraphs 1 and 2.

<sup>17</sup> Cf. General Assembly, “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights,” Resolution AG/RES. 2500 (XXXIX-O/09), approved by the fourth plenary sessions, held on June 4, 2009, Operative Paragraph 5; “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights,” Resolution AG/RES. 2587 (XL-O/10), approved by the fourth plenary session, held on June 8, 2010, Operative Paragraph 5; “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights,” Resolution AG/RES. 2652 (XLI-O/11), approved by the fourth plenary session, held on June 7, 2011, Operative Paragraph six, and “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights”, Resolution AG/RES. 2759 (XLII-O/12), approved by the fourth plenary session, held on June 5, 2012, Operative Paragraph 6.

Procedure<sup>18</sup>, the State must appear before the Court when convened to a hearing to monitor compliance with its decisions, since the failure to appear constitutes a failure to comply with its duty to inform the Court about the implementation of the Judgment and an insult to one of the most effective and democratically approved mechanisms developed in the Inter-American system.

15. In this case, the last communication received by the Court from Nicaragua in the proceedings of monitoring compliance with the Judgment dates back to three years ago. Subsequently, the process has been characterized by the absence of the State, despite the constant requests made and the private hearing held at the seat of the Court (*supra* Having Seen clause 6). The Court considers that the evident failure of the State of Nicaragua to comply with its obligation to inform regarding measures of reparation pending fulfillment constitutes an open disregard of the duties derived from the Judgment handed down by the Court and of the treaty obligations of the State Party, which precludes the reparation of the violations to the human rights established in the Judgment and strips the Convention of its effectiveness in this specific case.

16. The Court considers it necessary to recall and underline, as it has done in prior occasions<sup>19</sup>, that prompt observance of the obligation of the State to advise the Court as to how it is implementing each aspect ordered by the Court is essential in order to assess the status of compliance with the Judgment as a whole. Moreover, this obligation is not fulfilled with the mere formal presentation of a document to the Court, but is twofold in nature and, for its effective compliance, requires the formal presentation of a document within the established time frame, and that it presents specific, true, recent and detailed information on the aspects to which this obligation relates.<sup>20</sup>

17. Without the appropriate information from the State, this Court is unable to exercise its function of monitoring the execution of the judgments it delivers. In this regard, the OAS General Assembly has reiterated that, in order to enable it to meet in full its obligation to report to the General Assembly on compliance with its judgments, it is necessary that the States Parties provide, in a timely fashion, the information requested by the Court.<sup>21</sup>

18. Consequently, Nicaragua must adopt all the measures necessary to effectively comply with the decisions of the Court in the Judgment (*supra* Having Seen clause 1). This

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<sup>18</sup> Article 69(3) of the Rules of Procedure of the Court noted that, “[w]hen it deems it appropriate, the Tribunal may convene the State and the victims’ representatives to a hearing in order to monitor compliance with its decisions; the Court shall hear the opinion of the Commission at that hearing.”

<sup>19</sup> In this regard, by way of the notes of the Secretariat of June 29, 2012, and July 3, 2013, pursuant to the instructions of the Plenary of the Court, the State was reminded that “[t]he timely observance of the State’s obligation to inform the Court of its compliance with each of the measures ordered by the Court is fundamental in order to evaluate the status of compliance with the Judgment as a whole.” In the abovementioned note of July 3, 2013, the State was also informed that “its failure to appear in the private hearing on Monitoring of Compliance of Judgment that was carried out on May 28, 2013, in the headquarters of the Court, constitutes noncompliance with its obligation to inform the Court on its compliance with the Judgment,” and that, “pursuant to that provided in Article 69(3) of the Rules of Procedure of the Court, the State must appear before the Court when summoned to a hearing on Monitoring of Compliance of Judgment”.

<sup>20</sup> Cf. *Case of Bámaca Velásquez V. Guatemala. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of July 4, 2006, Considering clause 7, and *Case of Gómez Palomino V. Perú. Monitoring of Compliance of Judgment*. Order of the Inter-American Court of Human Rights of February 13, 2013, Considering clause 20.

<sup>21</sup> Cf. General Assembly of the OAS, “Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights,” Resolution AG/RES. 2759 (XLII-O/12), approved by the fourth plenary session, held on June 5, 2012, Operative Paragraph 5.

obligation includes the duty of the State to inform this Court on the measures adopted to comply with the orders set forth in such Judgment.

19. Based on the foregoing, in order to timely and adequately assess the information provided by the representatives, as well as the request to apply Article 65 of the American Convention in this case (*supra* Considering clauses 6, 7, and 10), the Court considers it essential for the State to submit a complete, detailed, and updated report regarding the actions carried out aimed at complying with all measures of reparation ordered in the Judgment that are still pending. Likewise, it is necessary for the Court to receive the observations of the representatives of the victims and the Inter-American Commission in this regard. Moreover, in accordance with the provisions of Article 69 of its Rules of Procedure, this Court deems it appropriate to convene a new public hearing to be held throughout the course of the following year for the Court to receive complete and current information regarding the implementation of the measures of reparation ordered in the Judgment that are still pending fulfillment, and to hear the respective observations of the Inter-American Commission and the representatives, in order to issue the corresponding rulings in this case.

**THEREFORE:**

**THE INTER-AMERICAN COURT OF HUMAN RIGHTS,**

in exercise of its authority to monitor compliance with its decisions and, pursuant to Articles 33, 62(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Articles 24 and 30 of its Statute, and Articles 31(2) and 69 of its Rules of Procedure,

**DECLARES THAT:**

1. In conformity with that set forth in the Having Seen paragraphs 5, 6, and 8, and in the Considering paragraphs 8, 9, 11, 15, 18, and 19 of the present Order, the State has not complied with its obligation to inform this Court about the measures adopted to comply with the operative paragraphs of the Judgment on preliminary objections, merits, reparations and costs issued on June 23, 2005 in this case.

2. To maintain open the proceedings to monitor compliance with the following points pending fulfillment to:

a) Publish, via a radio station with widespread coverage on the Atlantic Coast, the paragraphs indicated in Chapter VII (Proven Facts), Chapters IX and X, and the Operative Paragraphs of the Judgment (*Operative Paragraph 8 of the Judgment*);

b) adopt, within a reasonable period, the legislative measures necessary to establish a simple, quick and effective judicial recourse that allows the decisions of the Supreme Electoral Board regarding human rights, such as political rights, to be controlled in observance of the respective legal and conventional guarantees, and to repeal those laws that impede the implementation of this recourse (*Operative Paragraph 9 of the Judgment*);

- c) reform the Electoral Law No. 331 of 2000 so that it clearly regulates the consequences of not fulfilling the requisites of electoral participation, the procedures that must be observed by the Supreme Electoral Board to determine such non-compliance, and the decisions that must be taken by the Board in this regard, as well as the rights of those persons whose participation is affected by a State ruling (*Operative Paragraph 10 of the Judgment*);
- d) reform the regulation of the requirements provided for in 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 members of the indigenous and ethnic communities can participate in electoral processes in an effective manner, taking into account their traditions, uses, and customs (*Operative Paragraph 11 of the Judgment*);
- e) pay compensation for pecuniary and non-pecuniary damages to the YATAMA organization. YATAMA must then distribute the compensation as appropriate (*Operative Paragraph 12 of the Judgment*); and,
- f) pay the amounts awarded as costs and expenses incurred domestically and in international proceedings before the inter-American Human Rights Protection System to YATAMA, which will in turn pay the appropriate compensation to CENIDH and CEJIL for the expenses they covered (*Operative Paragraph 13 of the Judgment*).

**AND DECIDES TO:**

3. Continue monitoring the operative paragraphs still pending compliance of the Judgment on preliminary objections, merits, reparations and costs delivered by this Court on June 23, 2005.
4. Require the Republic of Nicaragua to submit to the Inter-American Court of Human Rights, by no later than November 25, 2013, a report indicating all of the measures adopted to comply with the reparations ordered by this Court that are still pending fulfillment, in accordance with the terms of Having Seen clause 2 and Considering clauses 6 and 19, as well as in the second Operative Paragraph, of the present Order.
5. Request the representatives of the victims and the Inter-American Commission on Human Rights to present observations on the report of the State referred to in the preceding Operative Paragraph, within four and six weeks, respectively, from the date of receipt of such report.
6. Convene the Republic of Nicaragua, the Inter-American Commission on Human Rights, and the representatives of the victims to a public hearing to be held during the course of the following year, for the purpose of obtaining information from the State on compliance with the measures of reparation ordered in the Judgment on preliminary objections, merits, reparations and costs delivered in the case at hand that are still pending, and to listen to the respective observations of the Inter-American Commission and the representatives of the victims.
7. Request that the Secretariat of the Inter-American Court of Human Rights provide notification of the present Order to the Republic of Nicaragua, the Inter-American Commission on Human Rights, and the representatives of the victims.

Diego García-Sayán  
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary