In the Case of YATAMA,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", or "the Court"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 37, 56, 57 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") [FN1], delivers this judgment.

[FN1] This judgment is delivered under the terms of the Rules of Procedure adopted by the Inter-American Court of Human Rights at its forty-ninth regular session by an order of November 24, 2000, which entered into force on June 1, 2001, and in accordance with the partial reform adopted by the Court at its sixty-first regular session by an order of November 25, 2003, in force since January 1, 2004.

I. INTRODUCTION OF THE CASE

1. On June 17, 2003, in accordance with the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court an application against the State of Nicaragua (hereinafter "the State" or "Nicaragua"), originating from petition No. 12,388, received by the Secretariat of the Commission on April 26, 2001.

2. The Commission presented the application for the Court to decide whether the State had violated Articles 8 (Right to a Fair Trial), 23 (Right to Participate in Government) and 25

(Judicial Protection) of the American Convention, all of them in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof, to the detriment of the candidates for mayors, deputy mayors and councilors presented by the indigenous regional political party, Yapti Tasba Masraka Nanih Asla Takanka (hereinafter "YATAMA"). The Commission alleged that these candidates were excluded from participating in the municipal elections held on November 5, 2000, in the North Atlantic and the South Atlantic Autonomous Regions (hereinafter "RAAN" and "RAAS"), as a result of a decision issued on August 15, 2000, by the Supreme Electoral Council. The application stated that the alleged victims filed several recourses against this decision and, finally, on October 25, 2000, the Supreme Court of Justice of Nicaragua declared that the application for amparo that they had filed was inadmissible. The Commission indicated that the State had not provided a recourse that would have protected the right of these candidates to participate and to be elected in the municipal elections of November 5, 2000, and it had not adopted the legislative or other measures necessary to make these rights effective; above all, it had not provided for "norms in the electoral law that would facilitate the political participation of the indigenous organizations in the electoral processes of the Atlantic Coast Autonomous Region of Nicaragua, in accordance with the customary law, values, practices and customs of the indigenous people who reside there."

3. The Commission also requested the Court, in accordance with Article 63(1) of the Convention, to order the State to adopt the specific measures of reparation described in the application. Lastly, it requested the Court to order the State to pay the costs and expenses arising from processing the case in the domestic jurisdiction and before the organs of the inter-American system.

II. JURISDICTION

4. The Court is competent to hear this case, according to the terms of Articles 62 and 63(1) of the Convention, because Nicaragua has been a State Party to the American Convention since September 25, 1979, and accepted the compulsory jurisdiction of the Court on February 12, 1991.

III. PROCEEDING BEFORE THE COMMISSION

5. On April 26, 2001, YATAMA, the Centro Nicaragüense de Derechos Humanos (hereinafter "CENIDH") and the Center for Justice and International Law (hereinafter "CEJIL") filed a petition before the Commission.

6. On December 3, 2001, the Commission adopted Report No. 125/01, in which it declared the case admissible. The same day, the Commission made itself available to the parties in order to reach a friendly settlement.

7. On March 4, 2003, pursuant to Article 50 of the Convention, the Commission adopted Report No. 24/03, in which it recommended that the State should:

1. Adopt, in its domestic laws, in accordance with Article 2 of the American Convention, such legislative or other measures as may be necessary to establish an effective and simple

recourse to contest the resolutions of the Supreme Electoral Council, without limitations as regards the matter contested.
2. Adopt, in its domestic laws, in accordance with Article 2 of the American Convention, such legislative or other measures as may be necessary to promote and facilitate the electoral participation of the indigenous people and the organizations that represent them, consulting them, and taking into consideration and respecting the customary law, values, practices and customs of the indigenous people residing in the Autonomous Regions on the Atlantic Coast of Nicaragua.
3. Compensate the victims.
4. Adopt the necessary measure to avoid similar events occurring in future, in accordance with its obligation to safeguard and ensure the fundamental rights recognized in the American Convention.

8. On March 19, 2003, the Commission forwarded this report to the State granting it one month from the date of transmittal to provide information on the measures adopted to comply with the recommendations.

9. On March 19, 2003, the Commission informed the petitioners that it had adopted the report indicated in Article 50 of the American Convention on Human Rights and requested them to submit, within two months, their position as regards submitting the case to the Court.

10. On May 2, 2003, YATAMA, CENIDH and CEJIL presented a brief in which they requested the Commission to submit the case to the Court, if the State failed to comply with the recommendations contained in the Commission's report.

11. On June 11, 2003, the State forwarded to the Commission its reply concerning the recommendations made in Report on Merits No. 24/03.

12. On June 12, 2003, having examined the State's reply, the Commission decided to submit the case to the Court.

IV. PROCEEDING BEFORE THE COURT

13. On June 17, 2003, the Inter-American Commission filed the application before the Court (supra para. 1) with the documentary evidence, and offered testimonial and expert evidence. The Commission appointed Susana Villarán and Santiago A. Canton as delegates, and Isabel Madariaga and Ariel Dulitzky as legal advisors.

14. On August 21, 2003, after the President of the Court (hereinafter "the President") had made a preliminary review of the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it, together with the attachments, to the representatives of the alleged victims (hereinafter "the representatives") and the State. It also informed the State of the time limits for answering the application and appointing its representatives for the proceedings. The same day, on the instructions of the President, the Secretariat informed the State of its right to appoint a judge ad hoc to take part in considering the case.

15. On September 2, 2003, the State appointed José Antonio Tijerino Medrano as its Agent, Carlos Hernández Palacios, as adviser, and María Cecilia Contreras Benavides [FN2] as assistant, and advised that it had designated Alejandro Montiel Argüello as Judge ad hoc.

[FN2] On February 9, 2004, the State forwarded a brief in which it advised that it had appointed María Cecilia Contreras Benavides as Deputy Agent, and on April 29, 2005, the State remitted a communication in which it indicated that it had appointed Karla Elaine Carcache Hernández as assistant.

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16. On November 14, 2003, the representatives of the alleged victims submitted their brief with requests and arguments with documentary evidence attached, and offered testimonial and expert evidence.

17. On November 14, 2003, the Wisconsin Coordinating Council on Nicaragua, of Wisconsin (United States), submitted an amicus curiae brief to the Court.

18. On December 17, 2003, the State submitted a brief filing preliminary objections, answering the application and with comments on the brief with requests and arguments with documentary evidence attached, and offered expert evidence

19. On February 3, 2004, the representatives presented their written arguments on the preliminary objections filed by the State.

20. On February 11, 2004, the Commission forwarded its written arguments on the preliminary objections filed by the State.

21. On February 27, 2004, the State remitted a brief with its considerations on the comments that the representatives and the Commission had made on the preliminary objections, and attached various documents.

22. On May 12, 2004, on the instructions of the President, the Secretariat informed the State that it had decided not to accept the said brief, because it constituted a procedural measure that was not envisaged in the Court's Rules of Procedure, and that, when delivering the corresponding judgment, the Court would decide on the admissibility of incorporating as supervening documentary evidence the three documents submitted by the State as attachments to the brief of February 27, 2004. In addition, on the instructions of the President, the Secretariat requested the State to forward the final official list of candidates for mayors, deputy mayors and councilors presented by the YATAMA political party in the RAAN and by the Coastal People Party Alliance (PPC) and YATAMA in the RAAS for the municipal elections of November 2000.

23. On August 4, 2004, the State presented an official communication from the Director General for Electoral Logistics and Organization of the Supreme Electoral Council advising that "the YATAMA political organization did not even attend the official act when the candidates

were presented, and the Supreme Electoral Council has not made any assessment of whether it complies with the requirements of the Electoral Law, since, previously, this Organization had not complied with the requirements to present the 3% supporting signatures, and to have been established six months before the elections, in accordance with the law." The State's agent indicated that, in this "way, the request of the Inter-American Court of Human Rights in its communication of May 12, 2004, had been complied with" (supra para. 22).

24. On December 9, 2004, on the instructions of all the judges of the Court, the Secretariat requested the State to collaborate by forwarding the said final list of candidates (supra paras. 22 and 23), irrespective of the fact that the YATAMA party not had taken part in the said election because it was considered that it had not complied with the legal requirements and some of the proposed candidates had not been registered.

25. On January 14 and 17, 2005, on the instructions of the President, the Secretariat requested the representatives and the State, respectively, to forward, by January 24, 2005, at the latest, any comments they deemed pertinent concerning the Commission's request in the application that the Court incorporate the expert evidence from the Mayagna (Sumo) Awas Tingni Community case, and "order that the references to the history, situation and organization of the indigenous people of the Atlantic Coast of Nicaragua be considered replicated."

26. On January 21, 2005, the State submitted a brief in which it indicated that it was opposed to the Commission's request regarding the incorporation of the expert evidence from the Mayagna (Sumo) Awas Tingni Community case (supra para. 25). On January 25, 2005, the representatives remitted to the Court a brief in which they expressed their support for the Commission's said request (supra para. 25).

27. On January 25, 2005, the State submitted a brief, to which it attached a list from the Supreme Electoral Council of the mayors, deputy mayors and councilors elected in the municipal elections of November 7, 2004, as documentary evidence "recently issued in relation to the municipal electoral process in Nicaragua."

28. On January 28, 2005, the President issued an order in which he called upon Centuriano Knight Andrews, Nancy Elizabeth Henríquez James and Eklan James Molina, proposed as witnesses by the Commission and the representatives, and also Hazel Law Blanco and Cristina Póveda Montiel, proposed as witnesses by the representatives, to provide their testimonies by means of statements before notary public (affidavits). He also called upon María Luisa Acosta Castellón, proposed as an expert witness by the Commission, Manuel Alcántara Sáez, proposed as an expert witness by the representatives, and Mauricio Carrión Matamoros and Lydia de Jesús Chamorro Zamora, proposed as expert witnesses by the State, to provide their expert reports by means of statements before notary public (affidavits). In the same order, the President convened the parties to a public hearing to be held at the seat of the Inter-American Court, starting on March 9, 2005, to hear their final oral arguments on the preliminary objections and merits, reparations, and costs, and the testimonial statements of Jorge Teytom Fedrick and Brooklyn Rivera Bryan, proposed by the Inter-American Commission and endorsed by the representatives, the testimonial statements of John Alex Delio Bans and Anicia Matamoros de Marly proposed by the representatives, and also the expert evidence of Robert Andrés Courtney Cerda, proposed as

an expert witness by the Commission, María Dolores Alvarez Arzate, proposed as an expert witness by the representatives and Carlos Antonio Hurtado Cabrera and Marvin Saúl Castellón Torrez, proposed as expert witnesses by the State. In addition, in this order, the President informed the parties that they had until April 11, 2005, to present their final written arguments on the preliminary objections and merits, reparations, and costs.

29. On February 8, 2005, the State forwarded the sworn written statements made before notary public (affidavits) of two expert witnesses (supra para. 28).

30. On February 15, 2005, the Inter-American Commission remitted the sworn statement made by one witness, and also the sworn written statement made before notary public (affidavit) by an expert witness (supra para. 28). On the same date, the representatives presented sworn written statements made before notary public (affidavits) by three witnesses, and the sworn statement made by one witness, and stated that "they would abstain from presenting the expert report of Manuel Alcántara" (supra para. 28).

31. On February 23, 2005, the Commission forwarded the sworn statement made by the expert witness, Robert Andrés Courtney Cerda, who had been called upon by the President to provide his expert evidence at the public hearing (supra para. 28), and requested the Court to accept it, since the expert witness was unable to attend the hearing.

32. On February 25, 2005, the representatives submitted a brief informing the Court that it had no comments to make on the sworn written statements made before notary public (affidavits) remitted by the Commission and the State, or on the sworn written statement remitted by the Commission (supra paras. 29, 30 and 31).

33. On February 25 and March 1, 2005, the State forwarded its comments on the sworn written statements presented by the Commission and the representatives (supra paras. 30 and 31). Also, in the brief of March 1, 2005, in response to the request of the President and all the judges of the Court (supra paras. 22 and 24), the State attached the "report of the Supreme Electoral Council to the Minister of Foreign Relations […] of February 25, 2005." Among this documentation, the State provided a document signed by the President of the RAAN Regional Electoral Council advising that on July 15, 2000, the legal representative of YATAMA had presented for registration a sheet with the names of the candidates who would take part in the municipal elections in that region.

34. On March 8, 2005, the United Nations University for Peace submitted an amicus curiae brief.

35. On March 9, 2005, the representatives forwarded a brief with which they presented a "copy of the final resolution issued in file No. 217/00, on March 3, 2001, by the Ombudsman of Nicaragua." On the same date, the representatives forwarded to the Court a brief in which they clarified that the resolution was issued on March 3, 2005, and that they had provided this document as "a new piece of evidence in the proceedings."

36. On March 9, 2005, the Commission sent a brief with its comments on the State's objections to the "written statements made by the witnesses, Nancy Elizabeth Henríquez James, Centuriano Knight Andrews, Eklan James Molina, Hazel Law Blanco and Cristina Póveda Montiel, and also by the expert witness, María Luisa Acosta Castellón" (supra para. 33). On March 12, 2005, on the instructions of the President, the Secretariat of the Court informed the Commission that the brief of March 9, 2005, had not been accepted because it was a written procedural measure that was not provided for in the Court's Rules of Procedure.

37. On March 9 and 10, 2005, the Court held a public hearing on preliminary objections and merits, reparations, and costs, during which it received the statements of the witnesses and the reports of the expert witnesses proposed by the parties (supra para. 28). The Court also heard the final arguments of the Commission, the representatives and the State. During the hearing, the witness, Jorge Teytom Fedrick, provided several documents.

There appeared before the Court:

For the Inter-American Commission:

Isabel Madariaga, adviser
Juan Pablo Albán, adviser
Víctor H. Madrigal Borloz, adviser, and
Lilly Ching, adviser.

For the representatives of the alleged victims:

Viviana Krsticevic, Executive Director, CEJIL
Soraya Long, Director, CEJIL Meso-America
Gisela De León, lawyer, CEJIL
Will Bloomfield, assistant, CEJIL, and
Norwin Solano, lawyer, CENIDH.

For the State of Nicaragua:

José Antonio Tijerino Medrano, Agent
María Cecilia Contreras Benavides, Deputy Agent, and
Carlos José Hernández López, adviser.

Witnesses proposed by the Commission and the representatives:

Brooklyn Rivera Bryan, and
Jorge Teytom Fedrick.

Witnesses proposed by the representatives:

John Alex Delio Bans, and
Anicia Matamoros de Marly.

Expert witness proposed by the representatives:

María Dolores Álvarez Arzate.

Expert witnesses proposed by the State:

Carlos Antonio Hurtado Cabrera, and
Marvin Saúl Castellón Torres.

38. On March 24, 2005, the University of Arizona's Indigenous People Law and Policy Program presented an amicus curiae brief.

39. On March 31, 2005, the Secretariat reminded the State that, during the public hearing, the Court had requested it to present, by April 11, 2005, at the latest, a copy of the decision of the Regional Committee, in which, as the State had indicated during the hearing, YATAMA was notified that it did not comply with the requirements for the registration of its candidates for mayors, deputy mayors and councilors in the municipal elections of November 2000. It also reminded the parties that, during the said hearing, the Court had requested them to provide, by April 11, 2005, at the latest, the information that the Court needed to be able to determine the identity of the alleged victims in the case, because the Commission's list differed from that provided by the representatives. In this regard, it also reminded the State that it had not forwarded the list of the RAAS candidates, and had not indicated whether there was any reason it could not do so.

40. On April 8, 2005, in response to the requests of the President and the Court (supra paras. 22, 24 and 39), the State submitted a brief with which it provided several documents. Regarding the copy of the Regional Committee's decision (supra para. 39), in its brief the State indicated that, "the Regional Committee had not issued a decision." The documents submitted by the State included an attestation issued on April 5, 2005, by the Director General for Political Parties of the Supreme Electoral Council, certifying that "according to the candidate registration records prepared by this General Directorate for the election for mayors, deputy mayors and members of the Municipal Councils in the elections of November 2000, the Yapti Tasba Masraka Nanih Asla Takanka (YATAMA) party did not present candidates in the South Atlantic Autonomous Region (RAAS) to the Supreme Electoral Council."

41. On April 8, 2005, the State presented its final written arguments on preliminary objections and merits, reparations, and costs (supra para. 28), and provided copies of three documents that it had attached to its first brief of April 8, 2005 (supra para. 40), as well as two new documents.

42. On April 8, 2005, the Office of the Ombudsman of Nicaragua submitted an amicus curiae brief.

43. On April 11, 2005, the representatives forwarded their final written arguments on preliminary objections and merits, reparations, and costs (supra para. 28), with attachments.

44. On April 12, 2005, the Commission forwarded its final written arguments on preliminary objections and merits, reparations, and costs (supra para. 28).

45. On April 15, 2005, on the instructions of the President, the Secretariat requested the State to forward, as soon as possible, any list or attestation it had with regard to the candidates presented by YATAMA in the RAAS, even if they were documents that had not been presented directly to the Supreme Electoral Council but rather to a regional electoral authority, or attestations that had not been issued by the said Council, but by a regional electoral authority (supra paras. 22, 24 and 39).

46. On April 21, 2005, in response to the Secretariat's communication of April 15, 2005, the State forwarded a brief indicating that the Secretariat "in this regard, had confused the RAAN with the RAAS"; consequently, it provided a new attestation issued on April 20, 2005, by the Director General for Political Parties of the Supreme Electoral Council, indicating that "for the elections for mayors, deputy mayors and members of the Municipal Councils [...] of November 2000, the Yapti Tasba Masraka Nanih Asla Takanka (YATAMA) party did not present candidates before the Supreme Electoral Council, or before the Electoral Council of the South Atlantic Autonomous Region (RAAS)."

47. On April 27, 2005, on the instructions of the President, the Secretariat reiterated to the State (supra paras. 22, 24, 39 and 45) that it should present an official copy of the list of candidates that the alliance between YATAMA and the Coastal People Party had presented to the Supreme Electoral Council, the Directorate General for the elections for mayors, deputy mayors and municipal councilors, the Regional Electoral Council or any other national or regional authority, because the chapter entitled "Considerations" of the resolution issued by the Supreme Electoral Council on August 15, 2000, indicated that "on July 15, [2000,] the PPC/YATAMA Alliance presented candidates for mayors, deputy mayors and councilors" in the RAAS.

48. On April 29, 2005, on the instructions of the President, the Secretariat requested the Commission and the representatives to clarify and explain the differences in the lists of YATAMA candidates they had provided during the proceedings before the Court and informed them that, should any of the persons on either of the lists in the case file be excluded, they should explain this exclusion.

49. On May 5, 2005, in response to the request made by the President and the Court (supra paras. 22, 24, 39, 45 and 47), the State submitted a brief with which it provided "an attestation issued on [May 3, 2005], by the Director for Political Parties of the Supreme Electoral Council with the list containing the details of the candidates [that] the 'PPC/YATAMA Alliance' present[ed] to the Regional Electoral Council in order to participate in the November 2000 municipal elections in the South Atlantic Autonomous Region."

50. On May 9, 2005, on the instructions of the President, the Secretariat informed the Commission and the representatives that, when providing the clarifications and explanations in response to the doubts raised in the notes of April 29, 2005 (supra para. 48) regarding the

determination of the alleged victims in this case, they should also refer to the attestation of the names of "candidates for mayors and councilors" forwarded by the State on May 5, 2005 (supra para. 49), and explain any differences that might appear when comparing the different lists of alleged victims in the RAAS in the case file before the Court.

51. On May 13, 2005, in response to the Secretariat's notes of April 29 and 9 May, 2005 (supra paras. 48 and 50), the representatives forwarded a brief with clarifications and explanations relating to the questions raised in relation to the different lists of candidates presented during the proceedings before the Court. On May 16, 2005, in response to the Secretariat's notes, the Commission submitted a brief indicating that "the statement included in the final arguments brief with regard to the fact that 'the alleged victims were candidates for mayors, deputy mayors and councilors' presented by YATAMA in the municipal elections on November 5, 2000, in the [RAAN] and the [RAAS], was the result of a position of principle," because "the Commission considered that the injured party, which it represented, was in a better position to present the important detailed clarifications required [...] during the public hearing in the case."

52. On May 18, 2005, the State forwarded two briefs referring to the brief presented by the representatives of the alleged victims on May 13, 2005 (supra para. 51).

53. On May 19, 2005, the State presented a brief in which it transmitted its "comments on the communications [… of the] Inter-American Commission on Human Rights and CEJIL [submitted] on May 16 and 13, [2005]" (supra para. 51), and indicated that "at no stage of the proceedings had it provided helpful evidence, and wished for this to be recorded in the respective file."

54. On June 14, 2005, the President addressed a communication to the State regarding the three briefs submitted on May 18 and 19, 2005 (supra paras. 52 and 53).

V. PRELIMINARY OBJECTIONS

55. In the brief answering the application and with comments on the brief with requests and arguments (supra para. 18), the State filed the following preliminary objections:

"First: Lack of jurisdiction of the Inter-American Court of Human Rights";
"Second: Absence of the admissibility requirements established in Article 46 of the American Convention on Human Rights";
"Third: Illegitimacy of the representatives";
"Fourth: Lack of right of action"; and
"Fifth: Obscurity of the application and its expansion".

56. The Court will proceed to examine together the first and fourth preliminary objections presented by the State, and will then examine the other preliminary objections separately in the order in which they were filed.

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FIRST AND FOURTH PRELIMINARY OBJECTIONS

"Lack of jurisdiction of the Inter-American Court of Human Rights" and "Lack of right of action"

Arguments of the State

57. Regarding the first objection:

(a) Since, in Nicaragua, there are norms that regulate the presentation of candidates for the offices of mayor, deputy mayor and councilor, as well as their election, "it is not admissible for the Inter-American Commission on Human Rights to affirm that the State […] has failed to comply with the obligation to adopt domestic legal provisions that facilitate the exercise of the rights recognized in Article 1(1) of the Convention and, consequently, the Court lacks jurisdiction to consider a violation that does not exist. In view of the foregoing, the Commission cannot […] affirm that the Nicaraguan State […] has failed to comply with the general obligation to respect rights referred to in Article 1(1) of the Convention. [T]herefore, […] the Court lacks jurisdiction to consider a non-existent violation;
(b) "There has been no violation of Article 8 of the Convention, which the Inter-American Commission on Human Rights attributes to the State of Nicaragua and, consequently, the Court lacks jurisdiction to consider a non- existent violation";
(c) With regard to the alleged violation of Article (2)(h) of the Convention: "in this case we have a ruling of the Supreme Electoral Council of the Republic of Nicaragua[,] which is the highest electoral tribunal in Nicaragua." "[T]he persons in whose name the Commission is making a claim […] used the recourses established in the Electoral Law; […]the fact that these recourses were unsuccessful in no way signifies that the State of Nicaragua has failed to adopt the legislative provisions necessary to give effect to the rights embodied in the Convention";
(d) "With regard to the alleged violation of Article 23 of the Convention, [...t]he Electoral Act [...] regulates the exercise of the rights and opportunities referred to in Article 23(1) of the Convention, respecting the parameters contained in the second paragraph of this Article." "The fact that the persons in whose name the Commission has filed the application, and the organizations cited in its expansion, have not complied with the regulations of the Electoral Act and, consequently, have not participated in the election process for mayors, deputy mayors and councilors, in no way signifies a violation of their political rights"; and
(e) "In relation to the alleged violation of Article 25 of the Convention, […] the Constitution of the Republic of Nicaragua, the Amparo Act and the Electoral Act establish the recourses to contest acts that are considered to have violated fundamental rights …. T]herefore[,] the Commission […] has no grounds for affirming that the State of Nicaragua has violated Article 25 of the American Convention on Human Rights." If the recourses are considered inadmissible, the State is unable to take action against this decision.

58. With regard to the fourth objection:

(a) "[This] objection […] is based on the fact that the State of Nicaragua has not violated the rights established in Articles 8, 25, 2 and 1, and 23, 24 and 2 of the Convention." "[T]he

YATAMA political party use[d] all the recourses of domestic law that regulate electoral processes";
(b) The Inter-American Commission recognizes the existence of numerous constitutional and legal provisions in favor of the communities of the Atlantic Coast so that they may live and evolve under their own form of social organization. The State "guarantees the concept of the absolute equality before the law of all Nicaraguan citizens"; and
(c) "The Constitution and the laws in force have been applied strictly." Article 173(14) in fine of the Constitution grants judicial powers to the Supreme Electoral Council, when it establishes that there is no ordinary or extraordinary recourse against its resolutions. Since "the laws in force have been applied[, ...] the Commission has no right of action against the State of Nicaragua and [the State] requests the Court to declare this." "A system of jurisdictional powers similar to those granted by the Constitution to the Supreme Electoral Council may be appreciated in comparative law."

Arguments of the Commission

59. The Inter-American Commission requested the Court to "reject summarily" the first preliminary objection and indicated that:

(a) It is inadmissible that the State should present arguments disputing the existence of the alleged violations, in order to avoid the Court ruling on the merits of the case; and
(b) The facts that are the subject of this case occurred after the date on which Nicaragua accepted the Court's jurisdiction.

60. The Commission requested the Court to reject "summarily" the fourth preliminary objection, and indicated that it was "clearly inadmissible" for the State to present exclusively "arguments on the merits [...] of the alleged violations[,]in order to avoid the Court ruling on the merits of the case."

Arguments of the representatives of the alleged victims

61. The representatives requested the Court to "postpone considering the State's [first] objection until the merits stage of the case and then reject it, because there have been violations of the American Convention," and they contended that:

(a) The first objection is not a genuine preliminary objection, "but rather mere objections of the State that refer to the merits of the case";
(b) The debate on whether the State has incurred international responsibility for violating the American Convention, "could only constitute a preliminary objection if the application did not present facts that constitute a violation of the Convention," and this has not occurred in the instant case; and
(c) Pursuant to Nicaragua's ratification of the Convention and acceptance of the Court's compulsory jurisdiction, the Court has jurisdiction to hear any case on the interpretation and application of the Convention.

62. The representatives requested the Court "to consider [the fourth preliminary objection] when considering the merits of this case" and indicated that:

(a) The fourth objection is not a genuine preliminary objection, "but rather simple objections" that "inevitably refer to the merits of the case"; and
(b) They requested the Court to "declare that the Commission has full powers to submit this case to the consideration of the Court under Article 61(1) of the American Convention and Article 32 of the Rules of Procedure of the Court, since the procedures established in Articles 44 to 51 of the Convention have been exhausted."

Considerations of the Court

63. The Court considers that the arguments put forward by the State concerning the first and fourth preliminary objections refer to the merits of the case; namely, the existence or not of violations of the American Convention.

64. The application filed by the Commission before the Court sets out a series of facts that describe possible violations of the provisions of the American Convention. Both the Commission and the representatives of the alleged victims have submitted arguments that refer to violations of this treaty allegedly committed by Nicaragua. The facts described by the Commission occurred after Nicaragua had accepted the Court's jurisdiction.

65. It is for the Court to determine what happened in this case. To this end, it will examine the evidence that has been gathered and the statements of the parties. Based on the facts that it decides have been proved, the Court will rule on the existence of the alleged violations.

66. When deciding on the merits of this case, the Court will bear in mind the State's arguments with regard to the first and fourth preliminary objections, since they involve arguments that contest the existence of the alleged violations.

67. Based on the above, the Court rejects the first and fourth preliminary objections because they do not involve genuine objections.

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SECOND PRELIMINARY OBJECTION

"Absence of the admissibility requirements established in Article 46 of the American Convention on Human Rights"

68. Arguments of the State:

(a) "[I]n the instant case, the situations described in subparagraphs (a), (b) and (c) of paragraph (2) of […] Article [46 of the American Convention] do not exist. Therefore, the application and its expansion should not have been admitted." The Court does not have jurisdiction to hear this case, according to Article 61(2) of the Convention;

(b) "Due process of law for the protection of the right or rights that it is alleged have been violated [was] in force, because the plaintiffs exhausted domestic recourses under the Constitution and the Electoral Act." The State also referred to the powers that the Electoral Act grants to the Departmental (CED), Regional (CER) and Municipal (CEM) Electoral Councils. The domestic laws that regulate the exercise of political rights should be adapted to the parameters of the American Convention "to the extent allowed by the Constitution";
(c) "The Commission itself admitted that the existing recourses had been exhausted;
(d) "The powers that Articles 46 and 47 of the Convention […] grant to the Inter-American Commission […] allow it to determine whether the petition of an alleged victim is admissible." Nevertheless, that decision only binds the alleged victim and the Commission, but it does not bind the Court or the defendant State"; and
(e) "The right of the State to contest the application by alleging that it is not admissible was exercised at the opportune moment before the Inter-American Court, by means of the preliminary objections".

69. Arguments of the Commission

The Inter-American Commission requested the Court to "reject summarily" this preliminary objection as "unfounded and time-barred," and alleged that:

(a) The State has stated expressly that domestic remedies have been exhausted. "[T]hus there is no dispute in this regard";
(b) The objection that domestic remedies have not been exhausted "should be rejected because it disregards an explicit decision of the Commission […] in Report 125/01 of December 3, 2001," declaring the petition admissible. The review of matters of admissibility by the Court "would appear to jeopardize procedural equality and create disparity between the parties"; and
(c) The Admissibility Report makes it clear that the State did not exercise its right to submit information, make comments, and contest or question the requirements for the petition's admissibility at the procedural opportunity established in Article 48 of the Convention and Article 30 of the Rules of Procedure. According to the Court's case law and treaty-based norms, objections to the exhaustion of domestic remedies should be filed before the Commission.

70. Arguments of the representatives of the alleged victims

The representatives requested the Court to "reject the arguments of the State because they were totally unfounded" and indicated that:

(a) The State had accepted that "the complainants have exhausted domestic remedies under the Constitution and the Electoral Act";
(b) "It is evident that the State has interpreted Article 46 of the American Convention erroneously." The requirements for the admissibility of a petition are to be found in Article 46(1) of the Convention and the exceptions to them are established in the second paragraph of this Article. "If, as in the instant case, domestic remedies have been exhausted and the petition has been lodged within the period of six months, the second paragraph of Article 46 is not applicable"; and

(c) The State did not submit comments on the initial petition, or present valid arguments that would justify reopening the discussion on admissibility.

Considerations of the Court

71. In the second preliminary objection, Nicaragua does not allege the failure to exhaust domestic remedies, but submits arguments on issues related to merits. By referring to the existence "of domestic laws [...concerning] due process of law for the protection of the right or rights that are alleged to have been violated," and indicating that, in this case, "the situations described in subparagraphs (a), (b) and (c) of paragraph (2) of […] Article [46 of the American Convention] do not exist," it is, in fact, alluding to the merits of the alleged violations of Articles 8 and 25 of the American Convention.

72. When deciding on the merits of the case, the Court will bear in mind the State's arguments with regard to this second preliminary objection, because they dispute the existence of the alleged violations.

73. In view of the above, the Court rejects the second preliminary objection.

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THIRD PRELIMINARY OBJECTION

"Illegitimacy of the representatives"

74. Arguments of the State:

(a) The provisions of Article 23(1) and 23(2) of the Rules of Procedure of the Court, concerning the participation of the alleged victims have not been complied with. In the communication of August 13, 2003 addressed to the Secretary of the Court by Brooklyn Rivera, "the latter acknowledges that he has not attached the powers of attorney in favor of CEJIL and CENIDH[,]";
(b) "On page seven of the Expansion of the Application, the signatories, members of CEJIL and CENIDH, acknowledge the illegitimacy of their representation" when they ask the Court "to request the State to submit the official lists and allow [them] to present the powers of attorney of each of the victims, when they have seen the official final list of candidates presented by YATAMA in the RAAN and the RAAS for the 2000 municipal elections";
(c) The powers granted to CENIDH and CEJIL by the alleged victims contain "evident violations of the Nicaraguan Notarial Act in force (art. 23(3) […]";
(d) "[I]t is one thing to have presented 64 powers of attorney, flawed or correct, which [the Court] is empowered to accept as valid or to reject, and quite another not to have presented powers of attorney, which constitutes absolute lack of representation, and this is the point the State of Nicaragua is raising in [this] objection."
(e) The representatives of the alleged victims "have not specified, much less, the alleged circumstances that explain why they were unabe to obtain the powers of attorney"; and

(f) "With regard to the State of Nicaragua failing to provide assistance to enable them to know exactly who the alleged victims are by facilitating the official lists, in Nicaragua, Article 921 of the Code of Civil Procedure establishes the legal procedures for obtaining documents or movables."

75. Arguments of the Commission

The Inter-American Commission asked the Court to "reject summarily" this preliminary objection because it was "unfounded and time-barred," and argued that:

(a) The Inter-American Court has established that the proceedings before an international human rights tribunal are not subject to the formalities of domestic laws;
(b) The State's allegations that the powers of attorney granted to CEJIL and CENIDH violate the Nicaraguan Notarial Act "are not admissible before an international human rights court, since the Nicaraguan State knows who represents the [alleged] victims in this case and the formalities relating to the signature of powers of attorney in no way affects their right to a defense."

76. Arguments of the representatives of the alleged victims

The representatives asked the Court to "reject this preliminary objection" and indicated that:

(a) The powers of attorney presented by the representatives do not have to comply with the requirements established in domestic laws. Their validity results from the fact that they identify unequivocally the person granting the power, reflect an evident willingness, individualize clearly the entity to which the power is granted, and indicate precisely the purpose of the representation. The powers of attorney granted in this case show clearly the identification of those granting them and individualize clearly the entities to which the powers are granted;
(b) "The declarations of the Agent of the State of Nicaragua during the public hearing [...] show conclusively that the State has withdrawn the arguments concerning defects in the powers of attorney submitted";
(c) Powers of attorney do not necessarily have to be presented at one precise moment. The representatives may present the powers of attorney "at any time subsequent to notification of the Commission's application. […] Until that time, according to Article 33(3) of the Rules of Procedure of the Court, the Inter-American Commission 'shall be the procedural representative' of all those [alleged] victims who have not appointed a representative";
(d) Article 44 of the Convention "grants considerable latitude for lodging petitions before the Commission";
(e) There are special circumstances that justify why the representatives have not presented all the powers of attorney;
(f) There were difficulties in identifying the candidates elected by the indigenous communities of the Atlantic Coast owing to their oral culture, which explains the absence of written records, and owing to "the obstructive attitude of the Nicaraguan State." In its answer to the application, the State did not present the official lists of candidates "and, consequently, the representatives of the [alleged] victims [were] unable to individualize them and obtain the respective powers of attorney from each of them";

(g) They have also encountered difficulties in obtaining the powers of attorney of the candidates presented by YATAMA owing to the predominance of the oral culture, problems of access and transport in the Atlantic Autonomous Regions and their high cost for the indigenous people, the considerable number of alleged victims, their cultural differences, and locating them; and

(h) When referring to "the duly accredited representatives," the purpose of Articles 23, 33, 35 and 36 of the Court's Rules of Procedure is to ensure that the alleged victims or their next of kin, "when legally empowered to present their arguments, requests and evidence, do not lack a proper defense in the proceedings before the Court".

Considerations of the Court

77. The State's arguments concerning the objection of "Illegitimacy of the representatives" focus on two main issues: (a) that some of the powers of attorney of the alleged victims were not presented; and (b) that the powers granted to CENIDH and CEJIL by some of the alleged victims contain "evident violations of the Nicaraguan Notarial Act in force."

a) Failure to present the powers of attorney of all the alleged victims

78. Article 44 of the Convention establishes that:

Any person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.

79. Article 33 (Filing of the Application) of the Rules of Procedure of the Court, in force when the Commission filed the application in this case before the Court [FN3], stipulated that:

The brief containing the application shall indicate:

(1) The claims (including those relating to reparations and costs); the parties to the case; a statement of the facts; the orders on the opening of the proceeding and the admissibility of the petition by the Commission; the supporting evidence, indicating the facts on which it will bear; the particulars of the witnesses and expert witnesses and the subject of their statements; the legal arguments, and the pertinent conclusions. In addition, the Commission shall include the name and address of the original petitioner, and also the name and address of the alleged victims, their next of kin or their duly accredited representatives, when this is possible.

(2) The names of the Agents or the Delegates.

If the application is filed by the Commission, it shall be accompanied by the report referred to in Article 50 of the Convention.

[FN3] This Article was amended by the Court during its sixty-first regular session, on November 25, 2003, with the addition of a third subparagraph. The addition entered into force as of January 1, 2004. The application in this case was presented by the Commission on June 17, 2003.

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80. Article 35 of the Rules of Procedure (Notification of the Application) establishes that the Secretary shall notify the application to:

(a) The President and the judges of the Court;
(b) The respondent State;
(c) The Commission, when it is not the applicant;
(d) The original claimant, if known;
(e) The alleged victim, his next of kin, or his duly accredited representatives, if applicable.

81. Article 23 (Participation of the Alleged Victims) of the Court's Rules of Procedure, which the State alleges "have not been complied with" in this case (supra para. 74(a)), establishes that:

1. When the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may submit their pleadings, motions and evidence, autonomously, throughout the proceeding.
2. When, there are several alleged victims, next of kin or duly accredited representatives, they shall designate a common intervenor who shall be the only person authorized to present pleadings, motions and evidence during the proceedings, including the public hearings.
3. In case of disagreement, the Court shall make the appropriate ruling.

82. The individual's access to the Inter-American system for the protection of human rights cannot be restricted based on the requirement to have a legal representative. The application can be presented by a person other than the alleged victim. The Court has stated that "the formalities that characterize certain branches of domestic law do not apply to international human rights law, whose principal and determining concern is the just and complete protection of those rights." [FN4]

[FN4] Cf. Case of Castillo Petruzzi et al. Preliminary objections. Judgment of September 4, 1998. Series C No. 41, para. 77.

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83. Article 33 of the Rules of Procedure in force when the application was lodged indicated that "when this is possible," the Commission should include the name and address of the alleged victims, their next of kin or their duly accredited representatives. It is understood that the omission of this information does not entail the rejection of the application. Article 35 of the Rules of Procedure established that the application would be notified, inter alia, to "the alleged victim, his next of kin, or his duly accredited representatives, if applicable." The possibility of the alleged victims or their next of kin not having appointed representatives was therefore envisaged.

84. The scope of the provisions of these Articles of the American Convention and the Rules of Procedure must be interpreted by the Court in accordance with their purpose and object, which

is the protection of human rights, [FN5] and according to the principle of the effet util of the norms. [FN6]

[FN5] Cf. Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 178; Case of the 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, para. 173; and Case of Baena Ricardo et al. Competence. Judgment of November 28, 2003. Series C No. 104, para. 100.
[FN6] Cf. Case of the Serrano Cruz Sisters. Preliminary objections. Judgment of November 23, 2004. Series C No. 118, para. 69; Case of Baena Ricardo et al. Competence, supra note 5, paras. 66, 67 and 100; and Case of Constantine et al. Preliminary objections. Judgment of September 1, 2001. Series C No. 82, para. 74.

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85. The said Article 23 of the Rules of Procedure, which regulates the participation of the alleged victims in the proceedings before the Court, when the application has been admitted, contains one of the most important regulatory modifications introduced in the Rules of Procedure adopted on November 24, 2000, which entered into force on June 1, 2001. This norm recognizes the right of the alleged victims and their next of kin to participate, autonomously, throughout the proceedings. The previous Rules of Procedure of the Court granted them a more limited legitimacy. The Court could not interpret the said Article 23 of the Rules of Procedure by restricting the rights of the alleged victims and their next of kin and ceasing to hear a case when they do not have a duly accredited representative.

86. If an application was not admitted for lack of a representative, this would constitute an unwarranted restriction that would deprive the alleged victim of the possibility of access to justice.

87. The modification to Article 33 of the Rules of Procedure adopted by the Court on November 25, 2003 (supra para. 79), which indicates the information that the applications should contain, reaffirms this conclusion. The third paragraph of this Article states that the application should contain “the names and addresses of the representatives of the alleged victims and their next of kin” and that:

[...] If this information is not provided in the application, the Commission shall act on behalf of the alleged victims and their next of kin in its capacity as guarantor of the public interest under the American Convention on Human Rights to ensure that they have the benefit of legal representation.

88. The Court takes into consideration that the provisions of this third paragraph of Article 33 of the Rules of Procedure concerning the procedural representation that the Commission may exercise, was not in force when the application in this case was lodged, but it has been the consistent practice of the Court for almost ten years. This practice permits establishing that, when the application does not provide any information on the representatives, the Court may hear the case.

89. In the instant case, the Court observes that the Commission provided notarized testimonies of the powers of attorney of 34 of the 109 persons indicated as alleged victims in the application; they show a clear willingness to be represented by officials of CENIDH and CEHIL in the processing of the case before the Court. Moreover, the application indicated the address and other information on these representatives, and provided the powers of attorney of 25 persons who were not on the list of alleged victims. Therefore, the Secretariat, on the instructions of the President, requested the Commission to clarify "whether the 75 alleged victims who ha[d] not granted a power of attorney would also be represented by CENIDH and CEJIL, in which case, they should remit the powers of attorney as soon as possible." It also indicated that "[i]f this is not so, the Commission should defend the interests of those persons, to ensure that they are represented effectively throughout the proceedings before the Court."

90. The Commission presented a note on August 12, 2003, advising the Court that "the original petitioners ha[d] informed it that, owing to various difficulties, they ha[d] been unable to obtain all the powers of attorney of the [alleged] victims mentioned in the C[ommission's] application; however, [CEJIL and CENIDH would] assume the representation of all the [alleged] victims in this case."

91. On August 22, 2003, the said representatives presented a communication from Brooklin Rivera, the legal representative of YATAMA, addressed to the Court, in which he stated that "[t]he indigenous organization […] YATAMA […] indicates […] that […] CEJIL and […] CENIDH, are the legal representatives of all the YATAMA candidates, in both the North Atlantic Autonomous Region and the South Atlantic Autonomous Region, who were excluded from the municipal elections of November 4, 2000," and explained that "[t]he powers of attorney of each candidate in favor of CEJIL and CENIDH are still being collected in each of the places of residence of the candidates" and that "[o]wing to the distance and the number of candidates, this task has been difficult, they would therefore present the respective powers of attorney to the Court as they [were] collected." In their brief with requests and arguments of November 14, 2003, CENIDH and CEJIL indicated that, on various occasions, they had requested the State to provide the official lists of candidates presented by YATAMA for the 2000 municipal elections, but the State only gave them the same list of candidates for the RAAN that was presented when the case was being processed before the Commission. At that time, the representatives did not provide any other power of attorney or proxy. Subsequently, on February 17, 2005, the representatives forwarded the notarized testimony of the powers of attorney granted on February 14, 2005, by seven alleged victims. Finally, when presenting their final written arguments, the representatives provided the notarized testimonies of the powers of attorney granted by 79 alleged victims.

92. Consequently, the powers of attorney of most of the alleged victims were provided during the proceeding before the Court. The Court considers it would have been preferable to have had the powers of attorney when the proceeding before the Court commenced. Nevertheless, it considers that the reasons given by the representatives (supra para. 76) show the existence of problems preventing this, which the representatives explained to the Court and the Commission from the first moment in which they intervened autonomously in the proceedings. These difficulties are closely related to the number of alleged victims, their culture which is predominantly oral, the problems of access and transport to reach the different communities on

the Atlantic Coast, and the lack of official documentation with the names of all those who were proposed as candidates (infra paras. 135 and 136).

93. Given some of the arguments put forward by the State (supra para. 74), the Court considers it should clarify that, even if CENIDH and CEJIL, the Commission or any of the representatives of YATAMA had manifested in writing that the first two organizations represented "all" the alleged victims, when the Court has referred to these organizations as "the representatives of the alleged victims," it has done so in the understanding that they would represent those alleged victims who effectively granted them powers of attorney and that, while this did not happen, the Commission would be responsible for defending the interests of those who lacked representation. Likewise, the Court recognizes that, throughout the proceedings before the Court, CENIDH and CEJIL presented requests, arguments and evidence in favor of all the alleged victims, even though not all of them had appointed these organizations as their representatives.

b) "[E]vident violations of the Nicaraguan Notarial Act in force" in the powers of attorney granted to CENIDH and CEJIL by some of the alleged victims

94. The Court has established that it is not essential that the powers of attorney granted by the alleged victims to their representatives in the proceedings before the Court should comply with the same formalities that regulate the domestic law of the defendant State. [FN7] It has also stated that:

The practice of this Court with regard to the rules of representation has been guided by [these rules]; hence the latitude the Court has allowed and applied without distinction […].
[…] This latitude in accepting instruments granting representation is not without certain limits, however; limits dictated by the practical purpose that the representation itself is intended to serve. First, such instruments are to clearly identify the person granting the power of attorney and include an unambiguous statement of intent. They must also clearly name the party to whom the power of attorney is granted and, finally, specify the purpose of the representation. In the opinion of this Court, instruments that meet these requirements are valid and take full effect upon presentation to the Court. [FN8]

[FN7] Cf. Case of Castillo Páez. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, paras. 65 and 66; and Case of Loayza Tamayo. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, paras. 97, 98 and 99.
[FN8] Cf. Case of Castillo Páez. Reparations, supra note 7, paras. 65 and 66; and Case of Loayza Tamayo. Reparations, supra note 7, paras. 98 and 99.
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95. The powers of attorney granted by most of the alleged victims to CENIDH and CEJIL indicate clearly the personal information of those granting the powers of attorney, the information about those being granted the power of attorney, its purpose, and the willingness of the former to be represented by officials of these organizations. Consequently, the Court finds

that the powers of attorney are valid and effective in the proceeding before this Court. Moreover, the fact that some of the alleged victims have not granted a power of attorney does not result in the Court abstaining from hearing the case, because this would entail an un constraint (supra paras. 82 to 92).

96. Consequently, the Court rejects the third preliminary objection.

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FIFTH PRELIMINARY OBJECTION

"Obscurity of the application and its expansion"

97. Arguments of the State:

(a) "If the persons on behalf of whom the Commission and the organizations cited in its expansion lodged the application failed to comply with the regulations of the Electoral Act and, consequently, did not [...] participate in the election process for mayors, deputy mayors and councilors, this in no way represents a violation of their political rights";
(b) The electoral organizations are empowered to determine whether the YATAMA party complied or not with the requirements set forth in the Nicaraguan Electoral Act to take part in the municipal elections of November 5, 2000. In Nicaragua, the Supreme Electoral Council is the maximum authority in electoral matters and the final instance in this regard. "[T]he electoral laws grant the Council a jurisdictional function […] and, based on this, it took a decision as a judicial body of final instance, under the Constitution in force";
(c) The application is obscure because it is not clear what exactly is being claimed. In the part setting forth the legal claims, the Commission requests the Court to declare that Nicaragua should reform its domestic laws to facilitate the political participation of the indigenous organizations in the different electoral processes in the Atlantic Coast Autonomous Region of Nicaragua, in accordance with the customary law, values, practices and customs of the indigenous people who live there. "No grounds are given for that petition"; and
(d) The position of the Commission and the representatives "seeks an abstract revision of the compatibility of domestic law with the American Convention".

98. Arguments of the Commission

The Inter-American Commission requested the Court to reject "summarily" this objection, because:

(a) "No legal grounds for this claim can be inferred from the arguments made by the State"; and
(b) Article 37(2) of the Rules of Procedure of the Court establishes that, when filing preliminary objections, the State must set out "the facts on which the objection is based, the legal arguments, and the conclusions and supporting documents, as well as any evidence which the party filing the objection may wish to produce."

99. Arguments of the representatives of the alleged victims

The representatives indicated that this objection was not of a preliminary nature, requested the Court to reject it, and stated that:

a) The Commission and the representatives seek "a ruling of the Inter-American Court on the violations of the human rights of the candidates proposed by YATAMA for the 2000 municipal elections and, should the Court so decide, the adaptation of domestic laws to the American Convention." This is very clear from the text of the application and from the representative's brief with requests and arguments;
b) The violation of the human rights of the alleged victims is not being claim owing merely to the existence of the Electoral Act, "but rather, they have indicated specific actions that violated the rights of duly identified individuals, and also the existence and absence of norms that directly affect them, by not protecting their rights; and
c) The Court has ordered several States to adapt their domestic laws to the Convention. "The State itself incurs international responsibility and not just one of its branches of government."

Considerations of the Court

100. The application and the brief with requests and arguments do not set out a request for "abstract revision of the compatibility of domestic law with the American Convention." The Commission indicated that the State should be declared responsible for specific acts and omissions in relation to the alleged exclusion of the YATAMA candidates in the RAAN and the RAAS from the 2000 municipal elections, and sustained that the Electoral Act that was applied did not guarantee the right to political participation of the indigenous organizations in the Autonomous Regions of the Atlantic Coast of Nicaragua according to the values, practices and customs of their members. The determination of this responsibility constitutes the grounds for this dispute.

101. The substance of the dispute in this case is not for the Court to determine whether or not YATAMA complied with the domestic electoral norms (supra para. 97(b)), but rather whether Nicaragua has violated the international obligations it assumed when it became a State Party to the American Convention. [FN9] The purpose of international human rights law is to provide the individual with a means of protecting internationally-recognized human rights before the State. [FN10]

[FN9] Cf. Case of Cesti Hurtado. Preliminary objections. Judgment of January 26, 1999. Series C No. 49, para. 47.
[FN10] Cf. Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 54; Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C No. 110, para. 73; and Case of the 19 Tradesmen, supra note 5, para. 181.

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102. It is a function of the Court to determine whether the State complied with the obligation to adapt its domestic laws to the Convention in order to make the rights embodied therein effective. To this end, the Court will take into consideration the arguments made by the State with regard to this fifth preliminary objection, because their purpose is to dispute the existence of the alleged violations.

103. Based on the above, the Court rejects the fifth preliminary objection, because it is not an authentic objection.

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104. Having rejected the five preliminary objections filed by the State, the Court will now proceed to examine the merits of the case.

VI. EVIDENCE

105. Before examining the evidence received, the Court will make some observations, in light of the provisions of Article 44 and 45 of the Rules of Procedure, which are applicable to the specific case, and which have been developed in its case law.

106. The adversary principle, which respects the right of the parties to defend themselves, applies to matters pertaining to evidence. This principle is embodied in Article 44 of the Rules of Procedure, as regards the time at which the evidence should be submitted to ensure equality between the parties. [FN11]

[FN11] Cf. Case of Caesar. Judgment of March 11, 2005. Series C No. 123, para. 31; Case of the Serrano Cruz Sisters, supra note 10, para. 31; and Case of Lori Berenson Mejía. Judgment of November 25, 2004. Series C No. 119, para. 62.

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107. According to the Court's practice, at the commencement of each procedural stage, the parties must indicate the evidence they will offer at the first opportunity they are given to communicate with the Court in writing. Moreover, in exercise of the discretional powers included in Article 45 of its Rules of Procedure, the Court or its President may request the parties to provide additional probative elements as helpful evidence; and this shall not provide a new opportunity for expanding or completing the arguments or offering fresh evidence, unless the Court expressly permits it. [FN12]

[FN12] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 32; Case of Lori Berenson Mejía, supra note 11, para. 63; and Case of Molina Theissen. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, para. 22.

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108. In the matter of receiving and weighing evidence, the Court has indicated that its proceedings are not subject to the same formalities as domestic proceedings and, when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties. Likewise, the Court has taken account of international case law; by considering that international courts have the authority to assess and evaluate the evidence according to the rules of sound criticism, it has always avoided a rigid determination of the quantum of evidence needed to support a judgment. This criterion is valid for international human rights courts, which have greater latitude to evaluate the evidence on the pertinent facts, in accordance with the principles of logic and on the basis of experience. [FN13]

[FN13] Cf. Case of Caesar, supra note 11, para. 42; Case of the Serrano Cruz Sisters, supra note 10, para. 33; and Case of Lori Berenson Mejía, supra note 11, para. 64.

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109. Based on the foregoing, the Court will now proceed to examine and assess the documentary probative elements provided by the Commission, the representatives and the State at different procedural opportunities and as helpful evidence that was requested by the Court and its President, and also the expert and testimonial evidence given before the Court during the public hearing, all of which comprises the body of evidence in this case. In so doing, the Court will respect the principle of sound criticism within the applicable legal framework,

A) DOCUMENTARY EVIDENCE

110. The Commission, the representatives and the State forwarded testimonial statements and expert evidence given before notary public (affidavits), and the Commission provided two sworn written statements as called for by the President in his order of January 28, 2005 (supra para. 28). These statements and testimonies are summarized below.

TESTIMONIES

a) Proposed by the Inter-American Commission and the representatives

1. Centuriano Knight Andrews, legal representative of YATAMA in the RAAN

YATAMA emerged in the 1970s under the name of ALPROMISU. In 1978, it extended its coverage to all the municipalities of the RAAN. In 1979, it adopted the name of MISURASATA, and in 1987 it became known as YATAMA, which means “Organization of the sons of Mother Earth.”
The indigenous communities consider YATAMA to be their protector and have recourse to its representatives before they resort to any other authority. As of 1990, it began to take part in regional elections as a “public subscription association”. This “meant that any organization could take part in the elections if it collected a certain number of signatures, and the presentation of candidates in all the territorial districts was not required.” The “public subscription” category was eliminated by the 2000 Electoral Act; this obliged the organization to become a political

party on May 4, 2000. The change was imposed by the Government and has prevented YATAMA from "pursuing its actions as an indigenous organization[;] for example, it now has difficulty in obtaining international cooperation funds, which are not forthcoming because it is a political party."

The YATAMA candidates for the 2000 municipal elections were elected according to the "organizational" mechanisms of the indigenous communities in municipal territorial assemblies. In principle, a person may only be a YATAMA candidate once. Consequently, many of the candidates who did not take part in the 2000 municipal elections could not participate in the 2004 municipal elections.

"In October 2000," the Supreme Electoral Council notified YATAMA that it would be unable to participate in the 2000 municipal elections, indicating that "it had not obtained its legal status within the previous six months" and that it had not presented candidates in 80% of the municipalities. This was not true, because YATAMA had obtained is legal status on May 4, 2000, and proposed candidates in "five of the six municipalities" of the RAAN. The RAAS and the RAAN are "distinct and independent" regions and, consequently, the fact that YATAMA had been prevented from participating in the RAAS should not have affected its right to participate in the RAAN. Owing to this exclusion, YATAMA filed an application for amparo before the court of appeal of the North Atlantic district, and the judges ruled in favor of YATAMA. However, the Supreme Court of Justice confirmed the decision of the Supreme Electoral Council.

YATAMA's exclusion from the elections affected the candidates and their families, who had invested money and time, and "stopped working to devote themselves to the [...] political campaign." It also affected YATAMA, which had "financed the organization of the assemblies, and the indigenous communities that did not have representatives "who they had already selected." There was absenteeism in the elections; only those living in large urban centers and in "zones where mestizos live" voted. Since the indigenous people had no representatives, "most of the investments and projects were transferred to places when the supporters of those who were elected live." The communities are not "represented in the Legislature," although the indigenous people comprise 80% of the population of the RAAN, 20% of the RAAS, and 15% of the national population. Only five deputies represent the RAAN and the RAAS, and they belong to traditional parties; one of them has "an indigenous perspective." The seven members of the Supreme Electoral Council belong to the traditional political parties and not one of them is an indigenous person. The Electoral Act should be reformed, establishing a "fixed political quota for the indigenous people in the Legislative Assembly and other State bodies."

2. Nancy Elizabeth Henríquez James, member of the governing body of YATAMA

In a resolution of August 15, 2000, the Supreme Electoral Council excluded YATAMA from the 2000 municipal elections, even though YATAMA had fulfilled the requirements established in the Electoral Act and its candidates had been presented within the stipulated time limit. Owing to YATAMA's exclusion, the indigenous communities "organized protests in the streets of Puerto Cabezas." The Government responded to these protests by sending in the specialized forces of the National Police.

3. Eklan James Molina, proposed as a YATAMA candidate for the position of mayor in the municipality of Prinzapolka in the RAAS for the 2000 municipal elections

The witness was selected a YATAMA candidate in February and March 2000. Candidates required the support of the community, represented by one thousand signatures with identity card numbers, and the "approval of the leaders of YATAMA." The selection process was open. After his selection as a candidate, he visited the communities to "present his plan of action if he was elected mayor." The communities offered him their support. During the 2000 campaign, he invested 500,000 cordobas for expenses of transport by land, water and air, rental of venues, and "a payroll for activists."

The candidates for mayors in the different municipalities got together in a workshop held in the "Bilwi Clinic" in Puerto Cabezas and, on that occasion, the Supreme Electoral Council indicated that YATAMA would not take part in the elections because it had not presented "its legal status in time" and had entered into an alliance with the Coastal People Party in one region, while in another it had its own list of candidates. On learning of the Supreme Electoral Council's decision, YATAMA filed an application for amparo before the "regional delegation of the Puerto Cabezas Court of Appeal" and obtained a favorable ruling. YATAMA's exclusion affected the witness, because he gave up his job and this caused problems within his family because "he was responsible for the household expenses."

The communities showed their support for YATAMA with "civic protests" before the Supreme Electoral Council. The Government of Nicaragua responded with Army and Police units. As a result of YATAMA's exclusion from the elections there was an 85% abstention rate in the elections, and "polling stations at the municipal level were not opened."

The Electoral Act should be reformed and "autonomous elections," conducted by the indigenous people according to their customs should be promoted.

4. Hazel Law Blanco, lawyer

YATAMA participated twice in the autonomous regional elections of the Atlantic Coast, under the mechanisms of a "public subscription association". In 2000, the National Assembly reformed the Electoral Act and YATAMA had to become a regional indigenous political party in order to participate in the elections. It had to submit "its charter and by-laws" written up in a public document, and establish "regional and territorial committees, and municipal committees"; this entailed "traveling expenses to the capital, to Bluefields, and to the other municipal capitals." The transformation into a political party was imposed by the State and resulted in "the need for increased financial resources owing to the formal procedures that the law requires of political parties, such as presenting a list of candidates in 80% of the [districts]."

In 2000, the YATAMA candidates were selected at "municipal assemblies of territorial leaders."

The Supreme Electoral Council adduced two reasons to exclude YATAMA from the 2000 municipal elections: that it had not registered its candidates opportunely; and that the alliance with the Coastal People Party was illegal because the latter had not presented all the necessary signatures. Yet, this argument was not invoked when the candidates were registered, but only when "the exclusion was announced."

YATAMA's absence from the 2000 elections symbolizes one more facet of domination and a manifestation of "arbitrary and racist authority." The indigenous communities were angry and reacted with protests in the different municipalities joined by "mestizo friends." There was an 80% abstention rate in the elections in the RAAN.

YATAMA filed an application for amparo before the Civil Chamber of the RAAN Court of Appeal, alleging the violation of its political rights. The Chamber referred the application to the

Supreme Court of Justice, which declared "the application for amparo inadmissible," stating that, according to the Electoral Act, there was no appeal against the resolutions of the Supreme Electoral Council. YATAMA also filed an appeal for review before the Supreme Electoral Council, which took no decision in this regard.

5. Cristina Poveda Montiel, proposed as YATAMA candidate for mayor in the municipality of Rosita in the RAAS for the 2000 municipal elections

The impossibility of taking part in the 2000 municipal elections affected the witness emotionally and financially, because she invested money in campaigning and obtained loans of 150,000 cordobas. It also caused harm to her family. The indigenous people felt discriminated against and "went out onto the streets to protest."
The State should assume the obligations that the candidates acquired, because if they had taken part in the 2000 municipal elections, "in addition to winning the elections for mayors, they would have had candidates for councilors and, consequently, reimbursement of expenses." The State should respect the dignity of the indigenous people, who have the "right to elect" their governments according to their customs and traditions.

EXPERT EVIDENCE

a) Proposed by the Inter-American Commission and the representatives

1. María Luisa Acosta Castellón, lawyer for some of the indigenous communities of the Atlantic Coast

YATAMA is not only a regional political party, but also the oldest established ethno-political party on the Atlantic Coast of Nicaragua, because it is made up of indigenous and ethnic communities, especially by "members of the Miskito indigenous people." YATAMA was established in order "to promote community self-government through communal democracy and, in particular, to defend the traditional communal lands." This form of communal democracy is practiced by YATAMA, applying the practices and customs of the indigenous people.
The series of indigenous cultural traditions that gave rise to these practices and customs comprise what has been called customary law, which is obligatory for members of the communities, transmitted orally and preserved in the collective and historical memory. Articles 5, 89 and 180 of the Nicaraguan Constitution recognize the validity of the customary law of these indigenous people. The concept of indigenous people "encompasses the recognition of collective rights, such as the right to their culture and language, to elect their authorities, and to administer their local affairs according to their customs and traditions." The purpose of the recognition of ethnic diversity is to eliminate the discrimination endured by these people. This recognition also seeks to guarantee the exercise of their political rights, according to their customs and traditions. The indigenous people have a constitutional right to self-government, which is also embodied in Article 15 of the Statute of Autonomy.
The election of the Council of Elders, the Syndic, the Wihta or any other community or territorial authority in the indigenous communities of the Atlantic Coast "does not conform to provisions of written, enacted or codified law, but to their own customary law."

While, as of its inception, YATAMA proposed autonomy as "indigenous territorial self-government," it was the Sandinista Government that adopted the Statute of Autonomy. "Within the multiethnic autonomy regime, the indigenous people continue to be a minority" and the national political parties maintain the hegemony of the Councils of the Autonomous Regions of the Atlantic Coast.

YATAMA's political participation is an extremely important means of contributing to the protection of the cultural and economic survival of the indigenous people. The exclusion of YATAMA from the 2000 municipal elections, demoralized the indigenous and ethnic people of the Caribbean Coast and Jinotega," because the traditional parties have not been able to identify themselves with the indigenous people who are part of YATAMA. The indigenous people and the ethnic communities have a common history with YATAMA. While the other political parties conduct their campaigns in the urban centers, YATAMA carries out its activities within the indigenous communities.

2. Robert Andrés Courtney Cerda, Executive Director of the non-governmental organization "Ética y Transparencia"

In order to take part in the RAAS municipal elections, the YATAMA political party began a process to ally itself with the Indigenous Multiethnic Party (PIM) and the Coastal People Party (PPC). Even though it was determined that the latter party had not complied with the requirement to present the signatures of 3% of those registered on the electoral roll, YATAMA considered that its own candidates were registered. However, the Supreme Electoral Council declared that the YATAMA party had not presented sufficient candidates, and this coincided "with the expiry of the time limits established in the electoral calendar," so that YATAMA was excluded from the elections.

YATAMA considered that, since its case was not provided for in the Electoral Act, the Supreme Electoral Council should make the process of presenting candidates more flexible instead of excluding them. It filed a request for review of its case with the Supreme Electoral Council, "but nothing was done until the time had expired for presenting candidates in 80% of the Atlantic Coast municipalities." The case of YATAMA merits special treatment, because the Electoral Act does not state that, when one of the parties to an alliance has been disqualified, the other cannot participate with its own candidates.

YATAMA filed an application for administrative amparo that was admitted by the RAAN Court of Appeal, which ordered the Supreme Electoral Council to restore matters to their situation before its resolution of August 15, 2000, excluding YATAMA from the elections of November that year. The Supreme Electoral Council informed the RAAN Court of Appeal, that the Supreme Electoral Council had exclusive jurisdiction in electoral matters. The Supreme Court of Justice decided that the application for amparo could not be admitted.

YATAMA insisted before the Supreme Electoral Council that the latter should give a positive response regarding its participation. The Council maintained its decision not to authorize YATAMA's participation.

There was an 80% abstention rate in the municipal elections in the RAAN, which meant that the authorities were lawfully elected, but lack legitimacy, because they do not represent the people, particularly the indigenous people.

b) Proposed by the State

3. Mauricio Carrión Matamoros, lawyer

He referred to the supremacy of the Constitution over the electoral laws. The principle of hierarchy prevents a norm of an inferior category from contradicting the Constitution, and the principle of jurisdiction establishes that, when there are two norms of equal rank, the one that regulates the "matter at issue" will prevail.
The Electoral Act is a constitutional law, because the Nicaraguan Political Charter establishes that it had to be adopted with the vote of 60% of the deputies of the Assembly.
From the provisions of Articles 140, 141, 191 and 195 of the Constitution, it can be inferred that the National Assembly is the "only power with competence to adopt reforms to the Electoral Act."

4. Lydia de Jesús Chamorro Zamora, lawyer

She referred to the supremacy of the Nicaraguan Constitution and to its defense mechanisms, established in Articles 182 to 195.
The Nicaragua legal system contains two types of laws: constitutional laws and ordinary laws. Constitutional laws regulate electoral matters, amparo and states of emergency, and ordinary laws deal with other issues. The Constitution establishes increased requirements to approve constitutional laws, while ordinary laws require only a simple majority. The same special increased majority applies in the case of reforms to the Constitution.
In Nicaragua, the Electoral Act is of a constitutional nature. It is below the Constitution, but above ordinary laws. The Constitution establishes that the application of the Electoral Act "is the exclusive jurisdiction of the Supreme Electoral Council." It is not even possible to apply for amparo before the Constitutional Chamber of the Supreme Court of Justice. The reform of the Electoral Act depends on the will of the Legislative Assembly. Currently, the special increased majority would only be obtained "by an agreement between the two majority parties."

B) TESTIMONIAL AND EXPERT EVIDENCE

111. On March 9 and 10, 2005, during a public hearing, the Court received the statements of the witnesses proposed by Inter-American Commission on Human Rights and the representatives of the alleged victims, and of the expert witnesses proposed by the State and the representatives. The Court will summarize the principal parts of these testimonies and expert evidences below.

TESTIMONIES

a) Proposed by the Inter-American Commission and the representatives

1. Brooklyn Rivera Bryan, principal leader of YATAMA

The witness is Miskito. Most of the population of the Atlantic Coast of Nicaragua is indigenous. YATAMA emerged in the 1970s as the basic organizational mechanism of the indigenous people of the Atlantic Coast, and since that time has led their struggles and activities. The structure of YATAMA is linked to the traditions, practices and customs of these communities. It is part of

their cultural identity. The organization operates on the basis of the active participation of the members of the indigenous people, according to their practices and customs. The leaders and representatives are selected by the communities. The candidates are proposed by the communities; then the communities of a territory meet and select candidates and, lastly, there is a third level corresponding to the regional assemblies, in which the candidates who have been select are ratified. The way that traditional political parties conduct their electoral campaigns does not respond to these practices and customs. In the case of municipal or regional elections, YATAMA allows "all the other people who are not indigenous, such as mestizos," to take part as candidates.

YATAMA decided to enter political life in order to defend the rights of the indigenous communities. It was obliged to transform itself into a political party to comply with the requirements of the 2000 Electoral Act, which eliminated the category of "public subscription association". The political party is a form of organization alien to the traditions of the indigenous communities. This forced the organization to change from an oral to a written tradition. To comply with the requirements of the Electoral Act, the YATAMA candidates have had to play a political role in territories where there are no indigenous communities. In these areas there are municipalities in which YATAMA has an influence, but also some which are of no interest to the organization.

In the 2000 elections, YATAMA complied with the requirements established in the Electoral Act, in both the RAAN and the RAAS. In the latter, YATAMA entered into an alliance with the Coastal People Party (PPC) and the Indigenous Multiethnic Party (PIM). The latter withdrew from the alliance. When it learned that the Coastal People Party did not comply with the legal requirements, YATAMA asked to be allowed to participate in the electoral process under its "own identity." The Supreme Electoral Council rejected this request and YATAMA was excluded from the elections, despite complying with the legal requirements. In view of this situation, the candidates for the RAAN were also excluded, even though the list of candidates, which included them had already been published. These exclusions were due to the fact that the two "major" political parties entered into a pact to prevent other parties from participating and thus "concentrate" the result of the elections; this was possible because they "dominate the electoral structure of Nicaragua." When this happened, YATAMA tried to communicate with the Supreme Electoral Council on many occasions, without obtaining any response. When the final list was published and the YATAMA candidates in the two regions were not on it, YATAMA filed an appeal for review before the Supreme Electoral Council, on which no decision was taken. It then filed an application for amparo before the Supreme Court of Justice, which ruled against it.

The exclusion of YATAMA resulted in a four-year hiatus for the indigenous communities of the Atlantic Coast. Even though they were eventually able to take part in the 2004 elections, owing to their repeated protests, for four years they had no organization representing their interests.

2. Jorge Teytom Fedrick, responsible for "international relations", YATAMA

He belongs to the Miskito indigenous people. The cultural traditions of the Atlantic Coast differ from those of the Pacific Coast; the people speak six different languages. Also, community systems, the relationship between resources and the land, and the cosmovision are distinct. The indigenous people have a communal tradition and decision-making is based on the community structure. They have a "collective society" with a solid "moral tradition."

YATAMA is the product of a historical process of struggle. During the 1990s, Nicaragua's political situation changed and the category of "public subscription association" was created. YATAMA proposed to enter the political arena by participating in politics in this category. In a "partisan negotiation," the State reformed the Electoral Act as a strategy to impede YATAMA's participation. However, YATAMA formed a team to influence the reform of the Electoral Act, and the Act stipulated that the indigenous organizations of the Atlantic Coast could establish a regional political party. YATAMA is more than a party. It is part of life; it represents history; it is a process of struggle; it is the "organization of the sons of Mother Earth," because "without land, we do not exist."

The Electoral Act established requirements that conflict with the customs of the indigenous people. The first area of conflict is the nature of a political party. Under the indigenous communal system, decisions are taken by consensus. The party system is different because it generates a contest between "competitors"; between personal interests. To be chosen as a candidate in the indigenous communities, a person must have distinguished himself.

Owing to YATAMA's exclusion from the 2000 elections, the witness had to take steps to try and influence the Supreme Electoral Council to allow YATAMA to participate in the elections and to maintain stability. His efforts were unsuccessful.

With regard to reforming the Electoral Act to guarantee the participation of the indigenous people in conditions of equality, the term equality "is relative," because the indigenous people have different cultural traditions and the laws need to be adapted to take this into account. The delimitation of voting districts is not adjusted to the social conditions of the communities, because the indigenous territories do not coincide with those established in the Electoral Act.

b) Proposed by the representatives of the alleged victims

3. John Alex Delio Bans, YATAMA representative in the RAAS in 2000

The witness is Miskito. The State has discriminated against the indigenous communities. They consider that the distinction between the RAAN and the RAAS is the result of an artificial division promoted by the national political parties that does not correspond to the indigenous people' concept of the Atlantic Coast, as a single unit. They consider YATAMA to be part of their tradition. The members of these communities say they are YATAMA "by blood and by conviction." The YATAMA candidates are selected according to the tradition of the indigenous communities in community assemblies. Nowadays, it is necessary to consult the Supreme Electoral Council for the election of community authorities; this was not necessary previously. The State should allow the indigenous people to select their candidates and elect those who represent them in Congress.

In order to participate in the November 2000 municipal elections in the RAAS, YATAMA decided to enter into an alliance with the Indigenous Multiethnic Party (PIM) and with the Coastal People Party (PPC), because they are parties created to defend the interests of the multiethnic communities and, since they had this common purpose, they could obtain better results on the Atlantic Coast. However, the Indigenous Multiethnic Party decided to leave the alliance, possibly as a result of pressure from the Constitutionalist Liberal Party (PLC). When the preliminary list of candidates was published, it contained the YATAMA candidates for the elections in the RAAN, but not those in the RAAS. A protest was made before the Supreme Electoral Council, which advised that this was a mistake. However, the final list of candidates

did not include the YATAMA candidates in either the RAAN or the RAAS, without any justification, because YATAMA had complied with all the requirements established in the Electoral Act. In 2000, there were seven municipalities in the RAAS and a party was required to present candidates in 80% of the municipalities. YATAMA proposed candidates in the seven municipalities; in other words, in excess of the required 80%.
As a result of YATAMA's exclusion from the 2000 elections, many candidates have not been able to return to their communities owing to the debts they incurred as a result of the electoral process. It became necessary to inform the communities why YATAMA would not take part in the 2000 elections and explain how the respective expenses would be paid.

4. Anicia Matamoros de Marly, proposed by YATAMA as candidate for deputy mayor in the municipality of Puerto Cabezas in the RAAN for the 2000 municipal elections

The witness belongs to the Miskito indigenous people. The candidates are chosen by the communities and go before an assembly. These communities consider that YATAMA is an organization that reflects the indigenous people' opinions, and through which they can have an influence in different spheres. Without YATAMA, the people do not have a voice. The communities do not want YATAMA to be a political party. This categorization has been imposed by the State.
When she was selected as a candidate, she had to find someone to substitute her in her employment. When it was known that YATAMA had been excluded from the elections, the community held its leaders responsible, but later it was clarified that they had nothing to do with this situation. Many candidates gave up their jobs to devote their time to visiting the communities and, following YATAMA's exclusion, they were unable to return to them. When the witness heard that her organization would not participate in the elections, she was demoralized and considered that a new form of discrimination had been added to the social exclusion her people endured. Moreover, she even thought that the reason for the exclusion was its name or lack of capacity. It was necessary to explain the situation to the communities and avoid them resorting to violence. Since YATAMA did not take part in the elections, the people "felt they were not represented" and this was reflected by the abstention during the elections: "most of the people did not vote." When YATAMA was able to take part in the 2004 elections, she was very happy, because it was recovering the indigenous communities' space that had been lost in 2000.

EXPERT EVIDENCE

a) Expert witness proposed by the representatives of the alleged victims

1. María Dolores Álvarez Arzate, anthropologist and ethnologist

The Atlantic Coast of Nicaragua covers 50% of national territory and has a population of approximately half a million, of whom 170,000 are indigenous people.
The forms of social organization of the indigenous groups have some local variations but, in general, are based on community assemblies. In the community assembly, the chief authorities are the "wihta or judge and the syndic." In addition, the community members "with their presence and vote, also take part in community decisions." Health authorities, "curanderos"

(local healers), teachers, the priest, women and the elderly have been incorporated into these assemblies. There are also other "high-level organizational bodies" such as territorial and regional councils where important decisions are taken. Some forms of social and political organization of the Atlantic Coast communities are regulated by customs, and an individual's word plays an important role because his authority is based on it. YATAMA "represents these ancient mechanisms or forms of traditional organization" and the indigenous and "coastal" diversity.

During the territorial assemblies held in the communities, the people say whether they agree that a specific person should be a candidate. Those who are selected during the territorial assembly receive the "full support of their communities to carry out their respective electoral campaign." To be selected a representative of the community, people must enjoy prestige and be of sound judgment. The communities support their candidates by providing means of transport or assuming these people's social responsibilities while they are working as candidates and visiting the communities in the course of their electoral campaign.

One of the factors that hinder the political participation of the people of the Atlantic Coast relates to the absence of offices that are "constantly registering voters." There are also problems with the electoral roll, because the members of these communities have life styles that lead them to move from place to place in order to extract resources from the forest without exhausting them. Another factor that hampers their political participation is that the electoral documents are not issued in indigenous languages, but only in Spanish; in many cases, this is a problem owing to lack of education. The rules of the Electoral Act "respond to a global vision of the country" and to the State's intention that all political parties should comply with these rules, disregarding the cultural characteristics of the people of the Caribbean Coast. YATAMA was forced to adopt organizational forms, such as that of a political party, which do not correspond to the "oral tradition of these people."

When they heard that the YATAMA candidates had been excluded from the 2000 elections, the communities began to question these candidates, asking them what they had done wrong; what problems had they encountered. Many candidates reacted by considering that they themselves were insufficiently qualified to take part. Some candidates did not return to their communities for two years, because "they felt they had no moral standing," owing to the debts they had incurred.

b) Expert witnesses proposed by the State

2. Carlos Antonio Hurtado Cabrera, head of the Secretariat for Atlantic Coast Affairs of the Presidency of the Republic

The Secretariat for Atlantic Coast Affairs of the Presidency of the Republic was created at the end of July 2004, in view of the Atlantic Coast's strategic importance for the whole country, and the importance of its biodiversity and multiethnicity. The Atlantic Coast covers 50% of national territory. Likewise, the need was felt to give coherence and effectiveness to the actions of institutions active on the Atlantic Coast. A budget of fifty million dollars has been allocated to this region. The President of the Republic has modified the traditional model of relations with the Atlantic Coast, within the framework of the political autonomy that the regions of the Atlantic Coast enjoy, and with the indigenous communities. The new model is based on the need for permanent two-way communication: from the central Government to the regions and from the

regions to the central Government, using communications that respect the special characteristics and institutions of these autonomous regions.
One of the functions of the Secretariat for Atlantic Coast Affairs is to establish relations with the indigenous communities. In this regard, during the electoral campaign, the President of Nicaragua signed an agreement with the YATAMA political organization establishing various commitments. YATAMA "is the principal indigenous political organization in the country" and the indigenous communities' main spokesperson before the Government. The central Government has taken note of the electoral triumph of YATAMA in the November 2004 municipal elections.
The previous Electoral Act was more representative of the "Nicaraguan people' expectations of democracy," because it included the category of "public subscription association" and contained fewer requirements for forming political parties than the current Electoral Act. This means that there is an "urgent need" to reform the Electoral Act. However, the majority political parties in the National Assembly "do not even have this on the agenda and seem to be satisfied with the actual law."

3. Marvin Saúl Castellón Torres, Deputy Prosecutor for Matters relating to Property

He referred to the supremacy of the Nicaraguan Constitution, embodied in Article 182 of the Constitution. Nicaraguan case law has established that the recourse for unconstitutionality is intended to guarantee this supremacy. The expert witness referred to the principle of the independence and separation of powers.
Article 173 of the Constitution stipulates that, "there shall be no ordinary or special recourse against the resolutions of the Supreme Electoral Council concerning electoral matters." The Supreme Court of Justice of Nicaragua has ruled that, in electoral matters, no recourse is admissible; nevertheless, it is possible to file an application for amparo against an administrative act of the Supreme Electoral Council. When an individual files an appeal for review and the Supreme Electoral Council does not issue a ruling, the individual would be "restricted" because the Council's decision is final.
A reform of the Electoral Act would require "a favorable vote of 60% of the deputies." Bearing in mind the political composition of the Legislature, this would require an agreement between the two majority parties, which are the Sandinista National Liberation Front (FSLN) and the Constitutionalist Liberal Party (PLC). If a reform is possible, it should be the "result of an analysis of the whole Act" by the Supreme Electoral Council.

C) ASSESSMENT OF THE EVIDENCE

Assessment of the documentary evidence

112. In this case, as in others, [FN14] the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity or as helpful evidence, in accordance with Article 45(2) of its Rules of Procedure, that were not contested or opposed, and whose authenticity was not questioned.

[FN14] Cf. Case of Caesar, supra note 11, para. 46; Case of the Serrano Cruz Sisters, supra note 10, para. 37; and Case of Lori Berenson Mejía, supra note 11, para. 77.

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113. Likewise, the State submitted evidence with regard to facts that supervened the filing of the application, in accordance with Article 44(3) of the Rules of Procedure,; consequently the Court accepts as evidence those documents that were not contested or opposed, and whose authenticity was not questioned, and which are related to the instant case (supra para. 27). [FN15]

[FN15] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 37; Case of De la Cruz Flores. Judgment of November 18, 2004. Series C No. 115, para. 58; and Case of the Gómez Paquiyauri Brothers, supra note 10, para. 50.

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114. The State objected to a document presented by the representatives as "new evidence in the proceedings" (supra para. 35), which consists of the resolution of the Nicaraguan Ombudsman of March 3, 2005, file No. 217/00, concerning the "complaint filed by the […] legal representative of […] YATAMA" on August 24, 2000. The State indicated, inter alia, that "it is inconceivable that State institutions, such as the Office of the Ombudsman[...] can intervene at their own discretion, against the interests of the State at the international level," which "implies evident disloyalty to the State." Despite this, but bearing in mind the State's objections, the Court admits it, applying the rules of sound criticism and assessing this document together with the body of evidence, because it is a resolution that relates to the facts of the instant case, issued by a Nicaraguan State institution on March 3, 2005. Therefore, the Court adds it to the body of evidence pursuant to Article 44(3) of the Rules of Procedure, as it has done in a similar case. [FN16]

[FN16] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 42.

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115. With regard to the testimonial statements and the written expert evidence given before notary public (affidavits), as required by the President in an order of January 28, 2005 (supra para. 28), the Court admits them to the extent that they correspond to the purpose established in the said order and assesses them with the body of evidence, applying the rules of sound criticism and bearing mind the comments made by the State (supra para. 33). The Court accepts the waiver of the representatives to present, in an affidavit, the expert evidence of Manuel Alcántara Sáez (supra para. 30).

116. In relation to the sworn statements that were not made before notary public by the witnesses, Nancy Elizabeth Henríquez James and Eklan James Molina, proposed by the Commission and endorsed by the representatives (supra paras. 28 and 30), the Court admits them and assesses them with the body of evidence, applying the rules of sound criticism and bearing mind the State's objections. On other occasions, the Court has admitted sworn statements that

were not made before notary public, when this does not affect the legal certainty and the procedural equality of the parties. [FN17] As the Court has indicated, the statements of the alleged victims can provide useful information on the alleged violations and their consequences. [FN18]

[FN17] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 39; Case of Lori Berenson Mejía, supra note 11, para. 82; and Case of the Gómez Paquiyauri Brothers, supra note 10, para. 58.

[FN18] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 40; Case of Lori Berenson Mejía, supra note 11, para. 78; and Case of Carpio Nicolle et al. Judgment of November 22, 2004. Series C No. 117, para. 71.

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117. The State contested the sworn statement of the expert witness, Roberto Courtney Cerda, presented by the Commission on February 23, 2005 (supra para. 31), owing "to his impossibility" of providing his expert evidence in person during the public hearing. The State indicated, inter alia, that this sworn statement was time-barred and omitted "elementary formalities," and also that Mr. Courtney Cerda "had not provided his expert evidence in accordance with the order" of the President. In this regard, the Court considers that, as the President had decided, this expert evidence "can help the Court determine the facts in the instant case," to the extent that it corresponds to the purpose defined in the said order; it therefore assesses it with the body of evidence, applying the rules of sound criticism and taking into account the State's observations (supra para. 33).

118. The Court considers useful the documents presented during the public hearing by the witness, Jorge Teytom Fedrick (supra para. 37), and also the documents forwarded by the representatives with their final written arguments (supra para. 43), which were not contested or opposed and their authenticity was not questioned, so the Court adds them to the body of evidence, pursuant to Article 45(1) of the Rules of Procedure.

119. In the case of the newspaper Articles submitted by the parties, the Court considers that they can be assessed to the extent that they refer to well-known public facts, or statements by State officials, or corroborate aspects of the instant case. [FN19]

[FN19] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 43; Case of Lori Berenson Mejía, supra note 11, para. 80; and Case of De la Cruz Flores, supra note 15, para. 70.

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120. The State "denied any legal value to any of the amicus curiae briefs submitted during the proceedings or subsequent to the oral hearing." The Court admits these elements, considering that they are four amicus curiae briefs submitted by institutions who have an interest in the subject matter of the application and provide useful information (supra paras. 17, 34, 38 and 42).

121. Furthermore, in application of Article 45(1) of its Rules of Procedure, the Court incorporates into the body of evidence in this case, Act. No. 28 of October 30, 1987, entitled "Statute of Autonomy of the Atlantic Coast Regions of Nicaragua," Electoral Act No. 211 of January 8, 1996, the report of the Instituto Nacional de Estadísticas y Censos de Nicaragua (INEC) [National Institute of Statistics and Censuses of Nicaragua] entitled "Población total por área de residencia y sexo, según departamento y grupos de edades, años 2002 y 2003" [Total population by area of residence and sex, by department and age group, 2002 and 2003], and the study made by the Fundación para la Autonomía y el Desarrollo de la Costa Atlántica de Nicaragua (FADCANIC) [Foundation for the Autonomy and Development of the Atlantic Coast of Nicaragua] entitled "Caracterización Fisiogeográfica y Demográfica de las Regiones Autónomas del Caribe de Nicaragua" [Physiogeographical and demographic nature of the Autonomous Regions of the Nicaraguan Caribbean], which will be useful for deciding the instant case.

Assessment of the testimonial and expert evidence

122. With regard to the statements made by the two witnesses who were proposed by the Commission and endorsed by the representatives, by the two witnesses and an expert witness proposed by the representatives, and by the two expert witnesses proposed by the State in this case (supra para. 111), the Court admits them to the extent they correspond to the purpose defined by the President in his order of January 28, 2005, and grants them probative value, bearing in mind the observations of the parties. The Court considers that the testimony of Anicia Matamoros (supra para. 111(b)(4)), which is useful, must be assessed together with all the evidence in the proceedings and not in isolation because she is an alleged victim and has a direct interest in the case. [FN20]

[FN20] Cf. Case of Caesar, supra note 11, para. 47; Case of the Serrano Cruz Sisters, supra note 10, para. 45; and Case of Lori Berenson Mejía, supra note 11, para. 78.

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123. The State opposed the Commission's request, "endorsed by the representatives, that the Court "consider the expert evidence provided in the Mayagna (Sumo) Awas Tingni Community case, judgment of August 31, 2001, Series C No. 79, as part of the body of evidence and decide that the references to the history, situation and organization of the indigenous people of the Atlantic Coast of Nicaragua should be incorporated into the instant case (supra paras. 25 and 26). The State declared, inter alia, that "this alleged evidence is inadmissible and unacceptable, because it refers to a different issue (elections and territorial demarcation), with no correlation between the persons allegedly prejudiced." The Court considers it is pertinent and useful to incorporate the expert evidence given before the Court by Rodolfo Stavenhagen Gruenbaum, to the extent that it refers to the history, situation and organization of the indigenous people of the Atlantic Coast of Nicaragua, and assesses this expert evidence with the body of evidence, applying the rules of sound criticism and bearing in mind the State's observations (supra para. 25).

VII. PROVEN FACTS

124. Based on the evidence provided, and taking into consideration the statements made by the parties, the Court finds that the following facts have been proved:

CONCERNING THE CARIBBEAN OR ATLANTIC COAST OF NICARAGUA

124(1) The population of Nicaragua is multiethnic, multicultural and multilingual and includes different indigenous and ethnic communities that inhabit the North Central and Pacific Region, as well as the Caribbean or Atlantic Coast. [FN21]

[FN21] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 470); Article 5 of the 1987 Constitution of the Republic of Nicaragua with the constitutional reforms. Official publication of the President's Office (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix C); Act No. 28 of October 30, 1987, entitled "Statute of Autonomy of the Atlantic Coast Regions of Nicaragua"; and map entitled "Nicaragua, un país multilingüe, multiétnico y multicultural" (file of appendixes to the brief with requests and arguments, appendix 4, folio 913).

124(2) Chapter VI of the Nicaraguan Constitution entitled "Rights of the Atlantic Coast communities" establishes that these communities "are an indissoluble part of the Nicaraguan people" and have the right "to preserve and develop their cultural identity within national unity; establish with their own forms of social organization and administer their local affairs in accordance with their traditions." [FN22]

[FN22] Cf. 1987 Constitution of the Republic of Nicaragua with the constitutional reforms. Official publication of the President's Office (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix C).

124(3) Act No. 28 of September 2, 1987, published in "La Gaceta" No. 238 of October 30, 1987, entitled "Statute of Autonomy of the Atlantic Coast Regions of Nicaragua," divided the Caribbean or Atlantic Coast into the North Atlantic Autonomous Region (RAAN) and the South Atlantic Autonomous Region (RAAS), because "autonomy makes it possible for the Atlantic Coast communities to exercise their right to participate in designing ways of exploiting the region's natural resources so that the benefits are reinvested in the Atlantic Coast. This law recognizes that "the indigenous people [are] subject to a process of increasing poverty, segregation, marginalization, assimilation, oppression, exploitation and extermination[, which] requires profound political, economic and cultural changes in order to satisfy their needs and

aspirations." [FN23] The autonomy regime in these regions is regulated by the provisions of the Regulations of October 2, 2003, to Act No. 28. [FN24]

[FN23] Cf. Act No. 28 of October 30, 1987, entitled "Statute of Autonomy of the Atlantic Coast Regions of Nicaragua" (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure).
[FN24] Cf. Act No. 28 of October 30, 1987, entitled "Statute of Autonomy of the Atlantic Coast Regions of Nicaragua" (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure); and Decree No. 3584 of October 2, 2003, entitled Regulations to Act No. 28 "Statute of Autonomy of the Atlantic Coast Regions of Nicaragua" (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix F, file of preliminary objections, merits and reparations, tome II, folios 404-410).

124(4) The Atlantic Coast covers approximately 45.8% of the State's territory and is the second most populous area of Nicaragua. Around 626,629 people live there; namely, 11.4% of the country's total population. [FN25] Approximately 72.54% of the population are mestizos. 28% of the population of the Caribbean or Atlantic Coast identifies itself with one of the indigenous communities. [FN26] About 172,069 inhabitants of the Atlantic Coast belong to indigenous or ethnic communities; that is, 3.13% of the national population. Most indigenous people in Nicaragua live in the RAAN. [FN27]

[FN25] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 502); and report entitled "Población total por área de residencia y sexo, según departamento y grupos de edades, años 2002 and 2003" [Total Population by Residence Area and Gender, according to Department and Age Groups, years 2002 and 2003]. Instituto Nacional de Estadísticas y Censos de Nicaragua (INEC), see www.inec.gob.ni (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure).
[FN26] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 470); and Act No. 28 of October 30, 1987, entitled "Statute of Autonomy of the Atlantic Coast Regions of Nicaragua" (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure).
[FN27] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 470); and report entitled Población total por área de residencia y sexo, según departamento y grupos de

edades, años 2002, and 2003. Instituto Nacional de Estadísticas y Censos de Nicaragua (INEC), see www.inec.gob.ni (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure).

124(5) Several multilingual indigenous and ethnic communities inhabit the Caribbean or Atlantic Coast: mestizos, Miskitos, Sumos, Ramas, Creoles and Garifunas. They have a specific cultural identity; they maintain the values and characteristics of their traditional culture, as well as communal forms of ownership and use, and their own social organization. [FN28]

[FN28] Cf. Article 3 of Decree 3584 of October 2, 2003, entitled Regulation to Act No. 28 "Statute of Autonomy of the Atlantic Coast Regions of Nicaragua" (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix F, file of preliminary objections, merits and reparations, tome II, folios 404 and 405); testimony of Brooklin Rivera Bryan given before the Inter-American Court during the public hearing held on March 9, 2005; and "Indigenous people and poverty: The cases of Bolivia, Guatemala, Honduras and Nicaragua" (file of appendixes to the brief with requests and arguments, tome I, appendix 13, folio 376).

124(6) Currently, the RAAN has seven municipalities: Rosita, Bonanza, Waslala, Prinzapolka, Puerto Cabezas, Waspam and Siuna. In 2000, the RAAN had the first six of these municipalities. This region covers 24.7% of national territory. Its administrative center is Bilwi, in the municipality of Puerto Cabezas. In the RAAN, approximately 45% of the population are Miskitu, 38% Spanish-speaking mestizos, 14% English-speaking 'Creole' Blacks, and 3% Twahka-speaking Mayagnas. [FN29]

[FN29] Cf. Caracterización Fisiogeográfica y Demográfica de las Regiones Autónomas del Caribe de Nicaragua [Fisiographic and Demographic Characterization of the Autonomous Regions of Nicaragua]. Research study by Alfonso Navarrete. Fundación para la Autonomía y el Desarrollo de la Costa Atlántica de Nicaragua (FADCANIC), at www.fadcanic.org/investigacion/investigacion1.htm (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure).

124(7) The RAAS has 11 municipalities: La Cruz de Río Grande, Desembocadura del Río Grande, Tortuguero, Laguna de Perlas, Bluefields, Corn Island, Kubra Hill, Rama, Nueva Guinea, Muelle de los Bueyes and Bocana de Paiwas. In 2000, the RAAS only had the first seven of these municipalities. The RAAS covers 21.1% of national territory and its administrative center is Bluefields, in the municipality of the same name. [FN30] In the RAAS, approximately 85.5% of the population are mestizos, 10.3% Creoles, 2.8% Miskitu, 0.7% Garifunas, 0.4% Ramas and 0.3% Mayagnas. [FN31]

[FN30] Cf. testimony of John Alex Delio Bans given before the Inter-American Court during the public hearing held on March 9, 2005; Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 470); and Caracterización Fisiogeográfica y Demográfica de las Regiones Autónomas del Caribe de Nicaragua. [Fisiographic and Demographic Characterization of the Autonomous Regions of Nicaragua]. Research study by Alfonso Navarrete. Fundación para la Autonomía y el Desarrollo de la Costa Atlántica de Nicaragua (FADCANIC), at www.fadcanic.org/investigacion/investigacion1.htm (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure).

[FN31] Cf. Caracterización Fisiogeográfica y Demográfica de las Regiones Autónomas del Caribe de Nicaragua. [Fisiographic and Demographic Characterization of the Autonomous Regions of Nicaragua]Research study by Alfonso Navarrete. Fundación para la Autonomía y el Desarrollo de la Costa Atlántica de Nicaragua (FADCANIC), en www.fadcanic.org/investigacion/investigacion1.htm (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure).

CONCERNING THE INDIGENOUS ORGANIZATION YATAMA

A) YATAMA AS AN INDIGENOUS AND ETHNIC ORGANIZATION

124(8) In 1969, the ecumenical movement, Asociación de Clubes Agrícolas de Río Coco (ACARIC) was created, based on communal cooperatives marketing agricultural products in the region of the Río Coco (Wanki), “to contribute to improving the social and economic situation of the indigenous people.” [FN32]

[FN32] Cf. sworn written statement by Hazel Law Blanco made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 905); sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 891); and newspaper Article entitled “Yapti Tasba Masraka nani Aslatakanka”, published on the web page: www.miskito-nicaragua.de/miskito/ YATAMA2.htm (file of appendixes to the brief with requests and arguments of the representatives, appendix 1, folio 906).

124(9) The indigenous organization YAPTI TASBA NANIH ASLATAKANKA (hereinafter “YATAMA”), which means “the organization of the people of Mother Earth” or “the organization of the sons of Mother Earth,” [FN33] emerged in the 1970s in the municipality of Waspam under the name of Alianza para el Progreso de los Pueblos Miskitus y Sumos (ALPROMISU), and expanded towards the RAAN. The purpose of ALPROMISU was, among other matters, to “defend our territories and our natural resources.” [FN34]

[FN33] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 891).
[FN34] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 891); newspaper Article entitled "YATAMA, una historia de resistencia," [YATAMA, a history of resistance] published on the web page: www.miskito-nicaragua.de/miskito/YATAMA2.htm (file of appendixes to the brief with requests and arguments, appendix 1, folio 889); and newspaper Article entitled "Yapti Tasba Masraka nani Aslatakanka," published on the web page: www.miskito-nicaragua.de/miskito/YATAMA2.htm (file of appendixes to the brief with requests and arguments, appendix 1, folio 909).

124(10) On November 11, 1979, a General Assembly of the indigenous people was held at which ALPROMISU changed its name and became the MISURASATA (Miskitos, Sumos, Ramas, Sandinistas Aslatakanaka) organization. [FN35]

[FN35] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 891); newspaper Article entitled "YATAMA, una historia de resistencia," [YATAMA, a history of resistance] published on the web page: www.miskito-nicaragua.de/ miskito/YATAMA2.htm (file of appendixes to the brief with requests and arguments, appendix 1, folio 889); and newspaper Article entitled ""Yapti Tasba Masraka nani Aslatakanka," published on the web page: www.miskito-nicaragua.de/miskito/YATAMA2.htm (file of appendixes to the brief with requests and arguments, appendix 1, folio 909).

124(11) In 1987, a General Assembly of the indigenous people in Honduras was held, during which MISURASATA became the "regional ethno-political organization" YATAMA. [FN36] Nowadays, numerous indigenous and ethnic communities of the Nicaraguan Caribbean or Atlantic Coast consider that YATAMA represents them, [FN37] "especially the members of the Miskitu indigenous people." [FN38] YATAMA was formed with the purpose of "defending the historical right of the indigenous people and ethnic communities to their traditional territories, and promoting self-government, [...] and the economic, social and cultural development of Yapti Tasba, thus fostering community democracy within the framework of democracy, peace and the unity of the Nicaraguan nation-State." [FN39]

[FN36] Cf. Newspaper Article entitled "Yapti Tasba Masraka nani Aslatakanka", published on the web page: www.miskito-nicaragua.de/miskito/YATAMA2.htm (file of appendixes to the brief with requests and arguments, appendix 1, folio 910); testimony of Jorge Teytom Fedrick given before the Inter-American Court during the public hearing held on March 9, 2005; and sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 891).

[FN37] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 891); expert evidence of María Luisa Acosta Castellón given before public notary (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 874); and Article 6 of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folio 560).
[FN38] Cf. expert evidence of María Luisa Acosta Castellón given before public notary (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 874).
[FN39] Cf. expert evidence of María Luisa Acosta Castellón given before public notary (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 874); and Article 2 of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folio 560).

B) STRUCTURE AND MEMBERSHIP OF YATAMA

124(12) The basic structure of the YATAMA communities consists of "the sons and daughters of the indigenous and ethnic communities of the Nicaragua Moskitia, who acknowledge their ethnic identity and defend [their own] strategic interests." [FN40] However, when YATAMA takes part in regional or municipal elections, it allows members of "all the other people that are not indigenous, such as mestizos," to be candidates. [FN41]

[FN40] Cf. Article 6 of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folio 560).
[FN41] Cf. testimony of Brooklin Rivera Bryan given before the Inter-American Court during the public hearing held on March 9, 2005.

124(13) YATAMA has its own organizational structure, inherited from its ancestors, called "community democracy". It is based on territorial, district and community assemblies in the indigenous or ethnic territories, and regional assemblies in the RAAN, the RAAS and Jinotega. [FN42] Each community assembly, which is the decision-making body of the community and district, is composed of the assembly of the families (Tawan Aslika); namely, all the indigenous or ethnic families who belong to the community or district, and this community assembly is headed by the Community Council (Wihta Daknika), which is the assembly's executive structure. [FN43]

[FN42] Cf. Article 16 of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folio 560); testimony of Brooklyn Rivera Bryan given before the Inter-American Court during the public hearing held on March 9, 2005; and testimony of Anicia Matamoros de Marly given before the Inter-American Court during the public hearing held on March 9, 2005.

[FN43] Cf. Articles 17 and 18 of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folio 560).

124(14) The territorial assemblies are composed of the representatives of the community assemblies of the indigenous and ethnic communities and districts corresponding to the territory, and their executive structure is the Territorial Council. Each community designates its candidates and proposes them to the assembly. The territorial assembly is responsible for choosing the YATAMA candidates for the positions of councilors for the Regional Council and the Municipal Council, as well as candidates for mayors and deputy mayors in their own territory and municipality. It meets at least twice a year. [FN44] Voting is public. Those elected go to the communities to introduce themselves as candidates. [FN45]

[FN44] Cf. Article 20 of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folio 565); testimony of Anicia Matamoros de Marly given before the Inter-American Court during the public hearing held on March 9, 2005; and testimony of Brooklyn Rivera Bryan given before the Inter-American Court during the public hearing held on March 9, 2005.

[FN45] Cf. testimony of Anicia Matamoros de Marly given before the Inter-American Court during the public hearing held on March 9, 2005; testimony of Brooklyn Rivera Bryan given before the Inter-American Court during the public hearing held on March 9, 2005; and sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 894).

124(15) The regional assembly is composed of the representatives of the "territorial assemblies of the indigenous or ethnic communities or districts" that belong to a specific region. The regional assembly adopts the electoral program and selects the YATAMA candidates for the position of deputies in the National Assembly, and also the candidates for mayors and deputy mayors of the regional capitals (Bilwi and Bluefields) and ratifies the other candidates for elected office in the other municipalities and in the RAAN and the RAAS regional councils. [FN46]

[FN46] Cf. Article 21 of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folio 565).

124(16) "Any leader or member of the organization has the right to be proposed as a candidate for elected office by any of its structures or bodies." Its structure can propose candidates who are not members of YATAMA, with the support of "at least five hundred signatures, certified by the Council of Elders, and they will be selected by the majority vote of the representatives of the respective regional assembly." [FN47]

[FN47] Cf. Article 39 of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folio 565).

C) PARTICIPATION OF YATAMA IN NICARAGUAN ELECTIONS AS AN INDIGENOUS AND ETHNIC ORGANIZATION

124(17) YATAMA first participated in the regional elections in Nicaragua in 1990. In 1994, it again took part in these elections. [FN48] In 1996, YATAMA took part in the municipal elections for the first time. In 1998, it participated in the election for councilors to the regional parliament and obtained 8 of the 45 seats on the RAAN Autonomous Regional Councils and 4 of the 45 seats in the RAAS. [FN49]

[FN48] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 892).

[FN49] Cf. application for amparo filed by YATAMA's legal representatives before the Civil Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folio 528).

124(18) YATAMA participated in these elections in the category of "public subscription association," under the provisions of the 1990 and 1996 electoral laws. This category gave political participation to any organization assembling a minimum of 5% of the voters on the electoral roll of the respective electoral district, or registered on the voters' list in the preceding election. "Public subscription associations" could present candidates for mayors, deputy mayors and municipal councilors throughout the country and also for members of the Councils of the Atlantic Coast Autonomous Regions. [FN50]

[FN50] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 892); application for amparo filed by YATAMA's legal representatives before the Civil Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folios 528); Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folios 512 and 513); and Articles 1, 81 and 82 de la Electoral Act No. 211 of January 8, 1996 (evidence incorporated de oficio by the Court under Article 45(1) of its Rules of Procedure).

124(19) The indigenous and ethnic communities that form part of YATAMA or to which this organization caters do not have a road network, so that most of the access routes to its

territories, particularly in the RAAS, are by river. There is no public transport, which increases the cost of access to most of these communities. The communities are widely spread out, with a population density of 11.72 inhabitants per square kilometer in the RAAS and 7.2 in the RAAN; the national average is 31.14 inhabitants per square kilometer. [FN51] Despite this, the candidates selected by YATAMA maintain direct, personal contact with the communities that selected them, and from which they receive support in the elections. YATAMA carries out its business according to the oral tradition. [FN52]

[FN51] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 471); and expert evidence of María Luisa Acosta Castellón given before public notary (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 880).

[FN52] Cf. expert evidence of María Luisa Acosta Castellón given before public notary (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 874); and expert evidence of María Dolores Álvarez Arzate given before the Inter-American Court during the public hearing held on March 9, 2005.

YATAMA IN THE MUNICIPAL ELECTIONS OF NOVEMBER 5, 2000

A) ENACTMENT OF ELECTORAL ACT NO. 331 OF JANUARY 24, 2000

124(20) On January 24, 2000, a new electoral law (Act. No. 331) (hereinafter "the 2000 Electoral Act" or "Electoral Act No. 331 of 2000") was published in Nicaragua's official gazette, approximately nine months before the date of the following municipal elections. This new law did not include the category of "public subscription associations", which had been included in the electoral laws of 1990 and 1996 (supra para. 124(18)), among the groups that could take part in the elections. [FN53] The new law only allows groups to participate in the electoral processes in the legal category of political parties, [FN54] a form of organization that is non-characteristic of the indigenous and ethnic communities of the Atlantic Coast. [FN55]

[FN53] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II); Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 513).

[FN54] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II); and

sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 893).
[FN55] Cf. testimony of Brooklyn Rivera Bryan given before the Court during the public hearing held on March 9, 2005; testimony of John Alex Delio Bans given before the Inter-American Court during the public hearing held on March 9, 2005; and expert evidence of María Dolores Álvarez Arzate given before the Inter-American Court during the public hearing held on March 9, 2005.

124(21) Article 71 of the 2000 Electoral Act establishes that "regional parties may be formed in the Atlantic Coast Autonomous Regions, and their sphere of action shall be restricted to their districts. The requirements shall be the same as those established for national parties, but circumscribed to the administrative political division of the Autonomous Regions." This law establishes that "[i]n the case of the indigenous organizations, their own natural form of organization and participation will be respected so that they may form regional parties." [FN56]

[FN56] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II); Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 513).

124(22) Article 65(9) of the 2000 Electoral Act establishes that, to obtain legal status, a political party must "[p]resent a duly authenticated document demonstrating support by means of the signatures of at least three per cent (3%) of the total voters registered on the electoral roll in the last national elections." Furthermore, Article 77(7) of this law stipulates that, in order to present candidates, the political party must present the signatures of 3% of the voters with their identity card number, as established in Article 65 of the said law, with the exception of political parties that, in the previous national elections, had obtained a minimum of 3% of the valid votes in the presidential elections. [FN57]

[FN57] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II).

124(23) The first paragraph of Article 77 of the 2000 Electoral Act establishes that in the case of organizations wishing to take part in elections that are not for national authorities (such as municipal elections), in order to present candidates, they must "have obtained their legal status at least [...] six months" before the date of the elections, and "submit a written request [...] to the Supreme Electoral Council." [FN58]

[FN58] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II).

124(24) Article 82 of the 2000 Electoral Act stipulates that, in the case of municipal elections, the political parties must register their candidates "in at least eighty per cent (80%) of the municipalities [... and have] at least eighty per cent (80%) of the total number of candidates." [FN59]

[FN59] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II).

124(25) Articles 83 and 84 of the 2000 Electoral Act establish that political parties or alliances of parties, "through their respective legal representatives, may substitute their candidates in one, several or all the districts during the period indicated or during the extension they are granted by the Supreme Electoral Council." Should the Council "deny a request or reject a candidate because they do not comply with the legal requirements, it will notify the political party or alliance of parties within the three days that follow the decision, so that it may proceed to correct the defects or to substitute the candidates." [FN60]

[FN60] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II, folio 36); application for amparo filed by YATAMA's legal representatives before the Civil Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folio 530); and resolution issued by the Supreme Electoral Council on August 15, 2000 (file of appendixes to the application, tome II, appendix 15(2), folio 599).

B) CONSTITUTION OF YATAMA AS A POLITICAL PARTY

124(26) On March 8, 2000, nine members of YATAMA signed a public instrument "to establish a framework for and adapt its electoral participation [...] as a Regional Ethno-Political group, in accordance with Article 71 of the [Electoral] Act [of January 24, 2000], for presentation to the Supreme Electoral Council, to obtain authorization to proceed to [...] legalize [this organization] and fulfill the established formalities for requesting legal status and being recognized as a 'REGIONAL POLITICAL PARTY'." In this instrument, they appointed Brooklyn Rivera Bryan as their representative before the said Council, and Centuriano Knight

Andrews for the RAAN, and John Alex Delio Bans for the RAAS as alternate representatives. [FN61]

[FN61] Cf. public instrument of March 8, 2000 (file of appendixes to the application, tome II, appendix 9, folio 556).

124(27) The General Assembly of the Communities adopted the YATAMA Statute and it was certified by notary public on March 30, 2000. This Statute established that the said "ethno-political organization of the indigenous people and ethnic communities [...] was governed by the [...] principles of the defense of the strategic interests of the indigenous people and ethnic communities of the Caribbean Coast and Jinotega and, in particular, the defense of the territories and self-government." [FN62]

[FN62] Cf. Article 3(a) of the YATAMA Charter of March 20, 2000 (file of appendixes to the application, tome II, appendix 9, folios 560).

124(28) On May 4, 2000, one day before the expiry of the time limit for an organization to obtain legal status to take part in the municipal elections of November 5, 2000, according to Article 77 of Electoral Act No. 331 of 2000 (supra para. 124(23)), the Supreme Electoral Council issued a resolution in which it granted YATAMA legal status as a regional political party. In this resolution, the Supreme Council decided that, "as of [that] date [YATAMA] could enjoy the rights and privileges granted it by the Constitution, the Electoral Act, and the other laws of the Republic." [FN63]

[FN63] Cf. resolution issued by the Supreme Electoral Council on May 4, 2000 (file of appendixes to the application, tome II, appendix 10, folio 573).

124(29) Pursuant to Articles 4 and 10 of Electoral Act No. 331 of 2000, the Supreme Electoral Council agreed "to adopt the [...] electoral calendar that w[ould] govern the electoral process for municipal authorities" of November 5, 2000. [FN64]

[FN64] Cf. electoral calendar of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 11, folio 577).

124(30) The time limit established in the electoral calendar published by the Supreme Electoral Council for the political parties that had obtained legal status within the period established by the law to present the list of candidates they wished to register for the municipal elections of November 5, 2000, expired on July 15, 2000. [FN65]

[FN65] Cf. electoral calendar of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 11, folio 580).

C) PRESENTATION OF YATAMA CANDIDATES IN THE RAAN

124(31) On July 15, 2000, the legal representative of YATAMA presented to the RAAN Regional Electoral Council the "[r]egistration sheets of the candidates for Waspam Río Coco, Puerto Cabezas, Prinzapolka, Rosita and Bonanza," a "copy of the legal status and emblem of the organization," and also a "[l]ist of candidates for mayors, deputy mayors and councilors [of] Puerto Cabezas, Waspam, Prinzapolka, Rosita and Bonanza." [FN66] On July 18, 2000, the President of the Regional Electoral Council signed a communication in which he stated that he was forwarding these documents to the Director General for Political Parties of the Supreme Electoral Council. [FN67]

[FN66] Cf. letter of July 15, 2000, from the YATAMA representative in the RAAN (file of preliminary objections, merits and reparations, tome III, folio 955); receipt dated July 15, 2000, of the RAAN Regional Electoral Council (file of preliminary objections, merits and reparations, tome III, folio 954); and record of delivery of the original documentation of the candidates dated July 16, 2000, issued by the RAAN Regional Electoral Council (file of preliminary objections, merits and reparations, tome III, folio 942).

[FN67] Cf. letter of July 18, 2000, from the President of the RAAN Regional Electoral Council to the Director General for Political Parties of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 12, folios 582 and 583); and record of delivery of original documentation of municipal candidates for mayor, deputy mayor and councilors of the North Atlantic municipalities (file of appendixes to the application, tome II, appendix 12, folio 584).

124(32) As stipulated in the Electoral Act, the Supreme Electoral Council published a "preliminary list" of YATAMA's candidates for the elections of November 5, 2000, in the RAAN. None of the candidates was contested by any political party. [FN68]

[FN68] Cf. application for amparo filed by YATAMA's legal representatives before the Civil Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folio 530); and testimony of Brooklyn Rivera Bryan given before the Inter-American Court during the public hearing held on March 9, 2005.

D) PRESENTATION OF YATAMA CANDIDATES IN THE RAAS IN ALLIANCE WITH THE COASTAL PEOPLE PARTY (PPC)

124(33) On June 13, 2000, the representatives of the Coastal People Party (PPC), the YATAMA Party and the Indigenous Multiethnic Party (PIM) formed an electoral alliance in a public document, "in order to take part in the municipal elections of November 5, 2000, for mayors, deputy mayors and municipal councilors in the South Atlantic Autonomous Region (RAAS), […] under the name UNIDAD PIM/YATAMA/PPC." The document indicated that the principal purpose of the alliance was "to win public office in the municipalities of the South Atlantic Autonomous Region (RAAS), in the interests of the 'indigenous people and ethnic communities' of the Caribbean Coast of Nicaragua[; to this end,] they w[ould] present candidates for the different elected positions within the period established by the Supreme Electoral Council and in accordance with the Electoral Act." Furthermore, the representatives of the said political parties agreed that the executive organs of the parties to the said alliance would establish rules of procedure with norms, procedures and mechanisms to regulate "the selection of the candidates for mayors, deputy mayors and councilors." [FN69]

[FN69] Cf. notarized attestation of the public instrument of June 13, 2000, on the constitution of the alliance of political parties UNIDAD PIM/YATAMA/PPC (file of appendixes to the application, tome II, appendix 14, folios 589).

124(34) Each of the three political parties that composed the PIM/YATAMA/PPC alliance had legal status granted by the Supreme Electoral Council. [FN70] The three parties agreed that they would retain their own political identity and legal status" so that, should one of the parties withdraw from the alliance, it "w[ould] continue with the other two." In order to join the alliance, each of the respective political parties had to comply with the requirement established in Article 65(9) of the Electoral Act (supra para. 124(22). [FN71] John Alex Delio Bans was appointed the alliance's legal representative before the Supreme Electoral Council. [FN72]

[FN70] Cf. resolution issued by the Supreme Electoral Council on May 4, 2000 (file of appendixes to the application, tome II, appendix 10, folio 590); notarized attestation of the public instrument of June 13, 2000, on the constitution of the alliance of political parties UNIDAD PIM/YATAMA/PPC (file of appendixes to the application, tome II, appendix 14, folios 588); and attestations issued on June 13, 2000, by the Supreme Electoral Council concerning the legal status of the PPC and the PIM as political parties (file of preliminary objections, merits and reparations, tome III, folios 950 and 951).

[FN71] Cf. Articles 65 and 77 of Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II, folios 30 and 33).

[FN72] Cf. notarized attestation of the public instrument of June 13, 2000, on the constitution of the alliance of political parties UNIDAD PIM/YATAMA/PPC (file of appendixes to the application, tome II, appendix 14, folio 588).

124(35) On June 14, 2000, the legal representatives of the regional parties, PIM, YATAMA and PPC, requested the Supreme Electoral Council to authorize the PIM/YATAMA/PPC alliance. On June 24, 2000, the Supreme Electoral Council informed them that they should indicate which party would head this alliance and "under which party's flag they would participate in the elections in which [the alliance would] take part." [FN73] Article 80 of the 2000 Electoral Act establishes that alliances of political parties shall participate in the corresponding elections under "the name, flag and emblem of the political party, member of the alliance, they choose and, accordingly, the chosen party shall be the one that heads the said alliance." [FN74]

[FN73] Cf. resolution issued by the Supreme Electoral Council on August 15, 2000 (file of appendixes to the application, tome II, appendix 15(2), folio 598).
[FN74] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II).

124(36) On July 5, 2000, the representative of the PIM/YATAMA/PPC alliance submitted a document to the Supreme Electoral Council in response to its communication of June 24, 2000 (supra para. 124(35)), indicating that "the name of the alliance of regional political parties [was] PIM and the political party that [would] head the alliance [was] the Indigenous Multiethnic Party (PIM)." Also, he advised that YATAMA had decided unilaterally to withdraw from the alliance, "therefore, [it was] constituted by the Indigenous Multiethnic Party (PIM) and the Coastal People Party (PPC)." [FN75]

[FN75] Cf. letter of July 5, 2000, from the national legal representative of the PIM Alliance to the President of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome III, folio 948); and public instrument providing clarification to the Supreme Electoral Council dated July 4, 2000 (file of preliminary objections, merits and reparations, tome III, folio 952).

124(37) On July 11, 2000, the legal representative of YATAMA in the RAAS informed the President of the Supreme Electoral Council that, "the YATAMA party in the South Atlantic Autonomous Region withdrew on June 13, 2000, from a party alliance formed to participate in the municipal elections [because] after the alliance had been created, it encountered problems." Consequently, he requested the Supreme Electoral Council to "issue instructions to whosoever it may concern to notify the other two parties that YATAMA w[ould] participate alone" in the elections of November 5, 2000. [FN76]

[FN76] Cf. letter of July 11, 2000, from the legal representative of YATAMA in the RAAS to the President of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome III, folio 936); and letter of July 17, 2000, from the legal representative of PIM

to the President of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome III, folio 947).

124(38) Although communications had been presented to the Supreme Electoral Council on July 5 and 11, 2000, on July 14, 2000, the representatives of the PPC and YATAMA presented a further communication in which they advised the President of the Council, in response to his communication of June 24, 2000 (supra para. 124(35)), that "the name of the alliance of regional political parties [was] PPC and the political party that w[ould] head the alliance [was] the Coastal People Party (PPC). In addition, these representatives advised that the Indigenous Multiethnic Party (PIM) had unilaterally decided to withdraw from the alliance; therefore, the alliance was composed of the Coastal People Party (PPC) and the Yapti Tasbah Masraka Nanih Aslatakanka (YATAMA) party." They also indicated that "[these were] the latest decisions taken by the alliance and, if there were any inconsistencies with previous communications, this communication prevailed over the others." [FN77] On July 17, 2000, the legal representative of PIM informed the President of the Supreme Electoral Council that "owing to disagreements with YATAMA and PPC, [this] organization ha[d] decided to participate in the municipal elections of November 5, 2000, alone." [FN78]

[FN77] Cf. letter of July 14, 2000, from the legal representatives of YATAMA and the PPC to the President of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome III, folios 938 and 939); and attestation issued on May 3, 2005, by the Director General for Political Parties of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome V, folio 1735).

[FN78] Cf. letter of July 17, 2000, from the legal representative of PIM to the President of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome III, folio 947).

124(39) On July 15, 2000, the date on which the period established in the electoral calendar for presenting the list of candidates for the elections of November 5, 2000, expired (supra para. 124(30)), the PPC and YATAMA alliance (called the PPC Alliance), through its legal representative, "presented candidates for mayors, deputy mayors and councilors" [FN79] to the Regional Electoral Council in Bluefields. [FN80]

[FN79] Cf. resolution issued by the Supreme Electoral Council on August 15, 2000 (file of appendixes to the application, tome II, appendix 15(2), folios 599).

[FN80] Cf. letter of July 17, 2000, from the legal representative of the Alliance of the PPC and YATAMA (called PPC Alliance) to the President of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome III, folio 937).

124(40) On July 17, 2000, the national legal representative of the PPC/YATAMA Alliance addressed a letter to the Director for Political Parties of the Supreme Electoral Council,

in which, "[i]n compliance with the provisions of the Electoral Act[, …] he forward[ed] the list of candidates for mayors, deputy mayors and municipal councilors, with their respective alternates, for the municipalities of Bluefields, Corn Island, [K]ukra Hill, Laguna de Perlas, La Desembocadura del Río Grande, Tortuguero and La Cruz de Río Grande." [FN81]

[FN81] Cf. letter of July 17, 2000, from the legal representative of the Alliance of the PPC and YATAMA (called PPC Alliance) to the President of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome III, folio 937).

124(41) The Supreme Electoral Council did not refer to the constitution of the PPC/YATAMA alliance until its resolution of August 15, 2000 (infra para. 124(51)). [FN82] Electoral Act No. 331 does not contain any provision that would prevent any political party that had presented itself as part of an alliance from taking part in the elections for which this alliance was established, when another party, which formed part of the alliance, was not authorized to participate. [FN83]

[FN82] Cf. resolution issued by the Supreme Electoral Council on August 15, 2000 (file of appendixes to the application, tome II, appendix 15(2), folio 599).

[FN83] Cf. Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D).

124(42) On April 20, 2005, the Director General for Political Parties of the Supreme Electoral Council issued an attestation in which he indicated that "according to the records kept by the General Directorate of the registration of candidates for the elections for mayors, deputy mayors and members of the municipal councils in the November 2000 elections, the Yapti Tasba Masraka Nanih Asla Takanka (YATAMA) party did not submit candidates to the Supreme Electoral Council, or to the Regional Electoral Council of the South Atlantic Autonomous Region (RAAS)." [FN84]

[FN84] Cf. certification of April 20, 2005, issued by the Director General for Political Parties of the Supreme Electoral Council (file of preliminary objections, merits and reparations, tome V, folio 1701).

124(43) On May 3, 2005, the Director General for Political Parties of the Supreme Electoral Council certified "that folios 2 to 119 of Tome 1 of the book of candidates corresponding to 2000, contain the details of the candidates for mayors and councilors of the South Atlantic Autonomous Region [RAAS] submitted to the South Atlantic Regional Electoral Council in Bluefields (an organization that is not legally authorized to receive candidacies) by the Coastal People Party Alliance (PPC), and to the Supreme Electoral Council on July 17, 2000,

when the time limit had expired; the details correspond to [a] list [of candidates whose names are] included" in the said record. [FN85]

[FN85] Cf. certification of May 3, 2005, issued by the Director General for Political Parties of the Supreme Electoral Council (file of preliminary objections, merits, and reparations, tome V, folio 1735).

E) DECISIONS OF THE SUPREME ELECTORAL COUNCIL, THE CIVIL CHAMBER OF THE RAAN COURT OF APPEAL, THE CONSTITUTIONAL CHAMBER OF THE SUPREME COURT OF JUSTICE, AND THE OMBUDSMAN'S OFFICE RELATED TO THE PARTICIPATION OF THE YATAMA CANDIDATES IN THE ELECTIONS OF NOVEMBER 5, 2000

124(44) The Electoral Power is one of the four branches of government established by the Nicaraguan Constitution, together with the executive, legislative and judicial branches. It is composed of the Supreme Electoral Council, its highest organ, as well as of subordinate electoral organizations, such as the Electoral Councils of the Departments and of the Atlantic Coast Autonomous Regions, the Municipal Electoral Councils, and the Electoral Precinct Boards. It has the exclusive authority "to organize and manage elections, plebiscites [and] referendums." [FN86]

[FN86] Cf. 1987 Constitution of the Republic of Nicaragua with the constitutional reforms. Official publication of the President's Office and Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendixes C and D, file of preliminary objections, merits and reparations, tome II, folio 5); and Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States (file of appendixes to the application, tome II, appendix 19, folios 624 and 625).

124(45) On June 7, 2000, the Supreme Electoral Council conducted "an official act to initiate the verification of signatures," during which it began a process of verifying the signatures required by Article 77(7) of the 2000 Electoral Act, No. 331, for registering the candidates of the political parties with legal status. [FN87]

[FN87] Cf. resolution issued by the Supreme Electoral Council on July 18, 2000 (file of appendixes to the application, tome II, appendix 15(1), folio 596); and Electoral Act No. 331 of January 24, 2000 (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix D, file of preliminary objections, merits and reparations, tome II, folio 34).

124(46) On July 18, 2000, the Supreme Electoral Council issued a resolution in which it indicated that "[t]he signatures presented by the political parties were submitted to the signature verification process, pursuant to the corresponding administrative procedures, and the decisions of the auditors and the Supreme Electoral Council." [FN88] In the resolution, the Supreme Electoral Council "reject[ed] the objections" raised by several candidates from various political parties and "beg[an] the process of canceling the legal status of the political parties that had not presented candidates and of the political parties that [would] not take part in the electoral process, because they did not comply with the requirements for the registration of candidates. The Supreme Electoral Council indicated that, among others, the Coastal People Party (PPC), which headed the Alliance with YATAMA in the RAAS (supra paras. 124(38) and 124(39)), had not presented the 3% of the signatures required by Article 77 of the 2000 Electoral Act, in order to register its candidates in the Region [FN89] (supra para. 124(22)). According to the decisions of the Supreme Electoral Council, only the Constitutionalist Liberal Party (PLC) and the Conservative Party (PC) had submitted the required 3% of the signatures. In the resolution, the Supreme Electoral Council did not make any specific reference to YATAMA's compliance with the requirements in the RAAN or in the RAAS. Also, in this resolution of July 18, 2000, the Supreme Electoral Council ruled on a request presented on July 21, 2000, by the PPC, objecting to the signature verification procedure and alleging "that the signatures with a 'valid identity card number' had not been compared with the information contained on the electoral roll [...] and the valid signatures had been verified illegally, despite the fact that more than the number of valid signatures required by the Electoral Act to participate in the municipal elections had already been submitted." [FN90] In addition to PPC, other political parties requested the Supreme Electoral Council to cancel 'the signature verification procedure arguing that this [was] illegal," because the only requirement in Article 77(7) of the 2000 Electoral Act was that the signatures should be "notarized" and it did not establish a signature verification procedure. [FN91] The Supreme Electoral Council did not notify this resolution to YATAMA, and it did not grant this party, which was part of the PPC Alliance, the period of three days "to proceed to rectify the defects or substitute candidates," as established in Article 84 of Electoral Act No. 331 of 2000 (supra para. 124(25). [FN92]

[FN88] Cf. resolution issued by the Supreme Electoral Council on July 18, 2000 (file of appendixes to the application, tome II, appendix 15(1), folio 596).
[FN89] Cf. resolution issued by the Supreme Electoral Council on July 18, 2000 (file of appendixes to the application, tome II, appendix 15(1), folio 596).
[FN90] Cf. resolution issued by the Supreme Electoral Council on July 18, 2000 (file of appendixes to the application, tome II, appendix 15(1), folio 594).
[FN91] Cf. resolution issued by the Supreme Electoral Council on July 18, 2000 (file of appendixes to the application, tome II, appendix 15(1), folio 592).
[FN92] Cf. testimony of Brooklyn Rivera Bryan given before the Inter-American Court during the public hearing held on March 9, 2005; and testimony of John Alex Delio Bans given before the Inter-American Court during the public hearing held on March 9, 2005.

124(47) On July 31, 2000, Brooklyn Rivera, YATAMA's legal representative, addressed a communication to the President of the Supreme Electoral Council, requesting that YATAMA should be authorized to participate in the RAAS, given that, in the last regional elections, "it ha[d] obtained more votes than the percentage required by law to be authorized to take part in elections in the two regions: RAAN and RAAS." In this communication, the said legal representative indicated that, "since, to date, it had not received any official communication from the official [electoral] body, as a participating group, it [was] being affected because the communities and grass-roots sectors were becoming disheartened, and its rhythm of work in both autonomous regions was suffering." [FN93]

[FN93] Cf. letter of July 31, 2000, from the legal representative of YATAMA to the President of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 16.1, folios 600).

124(48) YATAMA requested the Supreme Electoral Council to "register [this party] for the elections in the South Atlantic Autonomous Region (RAAS) under its own name, presenting [its] own list of candidates to the regional delegate of the Supreme Electoral Council[, …] communications to which it had never received a reply." [FN94] In one of these communications, YATAMA requested that it be allowed to register the candidates presented by the PPC and YATAMA Alliance (called the PPC Alliance) as its own candidates in the RAAS. [FN95]

[FN94] Cf. appeal for review of August 18, 2000, filed before the Supreme Electoral Council by YATAMA's legal representatives (file of appendixes to the application, tome II, appendix 18, folio 605); and application for amparo filed by YATAMA's representatives before ante the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folio 528).
[FN95] Cf. letter of July 31, 2000, from the legal representative of YATAMA to the President of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 16(1), folio 600); application for amparo filed by YATAMA's legal representatives before the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folio 529).

124(49) On August 11, 2000, Brooklyn Rivera Bryan, in person, presented a communication to the Supreme Electoral Council, addressed to the President of this body, in which he "formally delivered the list of photocopies of identity documents of candidates for mayors, deputy mayors and councilors and their substitutes for the municipalities of Bluefields, Kubra Hill, Laguna de Perlas, La Desembocadura del Río Grande, Tortuguero and La Cruz de Río Grande [RAAS], proposed by YATAMA [...] to replace the candidates" who had resigned as candidates of the party. [FN96]

[FN96] Cf. letter of August 11, 2000, from the legal representative of YATAMA to the President of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 16(2), folio 601).

124(50) On August 11, 2000, Brooklyn Rivera Bryan, in person, presented another communication addressed to the President of the Supreme Electoral Council, in which he stated that "[e]ven though, at the last minute, PIM ha[d] abandoned unilaterally its commitment to coastal unity and PPC ha[d] not collected all the required signatures, this did not affect the good intentions or preclude YATAMA's right to take part in the forthcoming elections." Also, in this communication, Mr. Rivera Bryan indicated that, "YATAMA complied with all the legal requirements of the Supreme Electoral Council, including the list of substitutes for the candidates who had resigned in the different municipalities in both autonomous regions, RAAN and RAAS. In the case of the RAAN, the list of candidates [had] already been duly published in the municipalities in which they participated, but the list of candidates in the RAAS had not been published opportunely, which had negatively affected the communities and grass-roots sectors, and the Organization's rhythm of work." [FN97]

[FN97] Cf. letter of August 11, 2000, from the legal representative of YATAMA to the President of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 16(3), folio 602).

124(51) On August 15, 2000, one month after the expiry of the time limit established in the electoral calendar for the political parties to present their list of candidates, the Supreme Electoral Council issued a resolution excluding YATAMA from the elections of November 5, 2000, in both the RAAN, and the RAAS. The Supreme Electoral Council did not give YATAMA the opportunity to "proceed to correct the defects or to substitute the candidates," pursuant to Articles 83 and 84 of Electoral Act No. 331 of 2000 (supra para. 124(25)). In its resolution, the Electoral Council decided: [FN98]

(a) With regard to the participation of YATAMA in the South Atlantic Autonomous Region, "[t]he request by YATAMA to register as candidates for this party those candidates presented by the YATAMA/PPC Alliance in the South Atlantic Autonomous Region is inadmissible (supra para. 124(48)). In this regard, it considered "that YATAMA [was] a legally constituted party and in full use of the rights established in the Electoral Act and, as such, it could take part in the elections of November 2000, either in alliances or individually, provided it complie[d] with the Electoral Act and the terms of the electoral calendar." It also indicated that "since [PPC] failed to provide the percentage of signatures referred to in Article 77(7), [...] the number of municipalities in which YATAMA present[ed] candidates is less than the 80% referred to in Article 82(2) in relation to Article 80 in fine of the Electoral Act[,] which establishe[d] that the parties or alliances of parties must register candidates for all the elections and positions referred to in Article 1 of [the said] law; and also that Article 89(1) of the Constitution establishes that '[t]he communities of the Atlantic Coast are an indissoluble part of the Nicaraguan people and, as such, enjoy the same rights and have the same obligations'";

(b) With regard to the participation of YATAMA in the North Atlantic Autonomous Region (RAAN), that "the candidates presented by the said Organization in the North Atlantic w[ould] not be registered because [...] they had not complied with the time limit established in the Electoral Act".

[FN98] Cf. resolution issued by the Supreme Electoral Council on August 15, 2000 (file of appendixes to the application, tome II, appendix 15(2), folio 599).

124(52) On August 17, 2000, the Supreme Electoral Council notified the said resolution of August 15, 2000, to the legal representatives of YATAMA. [FN99]

[FN99] Cf. resolution issued by the Supreme Electoral Council on August 15, 2000 (file of appendixes to the application, tome II, appendix 15(2), folio 599); and application for amparo filed by YATAMA's legal representatives before the Civil Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folio 529).

124(53) On August 17, 2000, the President of the RAAN Regional Electoral Council addressed a communication to the President, Vice-President and a Magistrate of the Supreme Electoral Council, in which he requested "emphatically" a clarification with regard to YATAMA's exclusion from the municipal elections and indicated that "it [was] urgent that a magistrate should come immediately to clarify this situation and avoid subsequent harm [or,] if this was not possible, [YATAMA] should be offered a meeting with the magistrates of the [Supreme Electoral Council]." The President of the Regional Electoral Council indicated that "if the regional political organization did not receive a clear and positive reply forthwith, it w[ould] not be responsible for any actions that m[ight] be taken in" the RAAN. [FN100]

[FN100] Cf. letter of August 17, 2000, from the President of the RAAN Regional Electoral Council to the President, Vice President and a magistrate of the Supreme Electoral Council (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix A, file of preliminary objections, merits and reparations, tome II, folio 338).

124(54) On August 18, 2000, the legal representatives of YATAMA filed before the Supreme Electoral Council an appeal for review of the resolution of August 15, 2000, issued by this Council (supra para. 124(51)). In this appeal, the representatives stated that, in several communications, they had requested the Supreme Electoral Council to "register YATAMA for the elections in the South Atlantic Autonomous Region (RAAS) under its own name, presenting [its] own list of candidates to the regional delegate of the Supreme Electoral Council[, …] but these communications were never answered." They also indicated that, in accordance with

Article 81 of the Electoral Act, "those who did not comply with the requirements, who had an impediment or who were prohibited under the Constitution and the pertinent laws, could not be nominated for elected office. However, none of [its] candidates were impeded from being nominated, and consequently the existing parties had not opposed them within the time limited established in Article 85 of the Electoral Act." In addition, they stated that: Since [the Supreme Electoral Council] had published the list of [YATAMA] candidates in the North Atlantic Autonomous Region (RAAN), […] it [was] inconceivable that the resolution issued […] should conclude that the fact that the alliance was not accepted in the RAAS, [...] affected [its] candidates in the RAAN." The representatives of YATAMA indicated that this "constituted a violation of the political rights of the coastal people, because the people of the Atlantic Coast were not being allowed to exercise their right to freedom of election and to be able to vote, thereby promoting the two-party system." [FN101] There is no evidence in the case file before the Court that the Supreme Electoral Council issued any decision on this appeal.

[FN101] Cf. appeal for review of August 18, 2000, filed before the Supreme Electoral Council by YATAMA's legal representatives (file of appendixes to the application, tome II, appendix 18, folio 605).

124(55) On August 30, 2000, Brooklyn Rivera and Centuriano Knight filed before the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas, an application for administrative amparo, based on Article 23 of the Amparo Act in force, against the resolution issued by the Supreme Electoral Council on August 15, 2000 (supra para. 124(51); in it, they requested "the suspension of the resolution and its effects." In this application they stated that: [FN102]

(a) The resolution of the Supreme Electoral Council concerning the participation of YATAMA in the RAAN "contradict[ed] the official receipts presented by the President del Electoral Council in the RAAN," since YATAMA presented the list of candidates for mayors, deputy mayors and councilors on July 15, 2000; "consequently the alleged late presentation was unfounded";
(b) Regarding the resolution of the Supreme Electoral Council concerning the participation of YATAMA in the RAAS, "the Electoral Act did not prohibit [a party that] withdrew from a planned alliance from trying to take part in the municipal elections based on [its] own legal status";
(c) Article 84 of the Electoral Act establishes that when the Supreme Electoral Council "denies a request or rejects a candidate because they do not comply with legal requirements, it shall notify the political party or alliance of parties within the three days following the resolution, so that they may proceed to correct the defects or to substitute the candidates." However, the Supreme Electoral Council "issued a resolution excluding YATAMA which [...] le[ft YATAMA] totally unable to act," because the Council never notified its representatives "that an administrative procedure was being executed with regard to the registration of [the YATAMA candidates," to enable them "to ensure [their] participation in the elections." [FN103]

[FN102] Cf. application for amparo filed by YATAMA's legal representatives before the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folio 530).
[FN103] Cf. application for amparo filed by YATAMA's legal representatives before the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(1), folio 530).

124(56) On September 21, 2000, in keeping with the electoral calendar, the electoral campaign began; it lasted 42 days, in accordance with the law, culminating on November 1, 2000. [FN104]

[FN104] Cf. electoral calendar of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 9, folio 580).

124(57) On October 11, 2000, the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas, decided to process the application for amparo presented by YATAMA on August 30, 2000 (supra para. 124(55)), and agreed "to suspend de oficio the resolution preventing the regional party, YATAMA, from registering its candidates and, thus, excluding them from the elections for municipal authorities of November 5, 2000, LEAVING THE SITUATION OF YATAMA BEFORE THE SUPREME ELECTORAL COUNCIL AS IT WAS BEFORE THE RESOLUTION ISSUED BY THE SUPREME ELECTORAL COUNCIL [, …] SINCE, IF THIS RESOLUTION WAS IMPLEMENTED, IT WOULD BE PHYSICALLY IMPOSSIBLE TO RESTORE THE RIGHTS OF THE APPELLANTS." [FN105]

[FN105] Cf. resolution of October 11, 2000, issued by the Court of appeal of the North Atlantic District Civil and Labor Chamber, in Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(2), folio 536).

124(58) On October 20, 2000, the Supreme Electoral Council filed an appeal for reconsideration of a ruling before the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas, against this Chamber's ruling of October 11, 2000 (supra para. 124(57)), for it "to revoke this ruling [...] declaring its nullity" and to declare that the admitted appeal was out of order and "had no legal effect whatsoever," because the resolution of the Supreme Electoral Council referred strictly to an electoral matter. [FN106]

[FN106] Cf. appeal for reconsideration of ruling filed by the Supreme Electoral Council before the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(2), folio 538).

124(59) On October 23, 2000, Brooklyn Rivera and Centuriano Knight, YATAMA representatives, filed a brief before the Bilwi Civil Chamber of the Court of Appeal of the North Atlantic Autonomous Region (RAAN), requesting that the appeal for reconsideration of a ruling filed by the Supreme Electoral Council (supra para. 124(58)) should be rejected as inadmissible, because the Amparo Act in force established that, in order for the suspension that had been decided to be annulled, the only option would be the offer of a guarantee. They also stated that this was a case of an "objection [...] against an administrative resolution that violated constitutional rights to political participation[, ...] and if it was accepted, it would make it physically impossible to restore [their] rights, because not only would it prevent them from taking part in the election, but it would also [...] result in the loss of [their] legal status, according to Article 74(4) of the Electoral Act." [FN107]

[FN107] Cf. petition of October 23, 2000, filed by YATAMA's legal representatives before the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8(4), folio 542).

124(60) On October 24, 2000, the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas, rejected the appeal for reconsideration of a ruling filed by the Supreme Electoral Council (supra para. 124(58)) "because […] it was totally inadmissible," and "safeguarded the rights that the petitioners consider they have, so that they may exercise them in the corresponding instance." [FN108]

[FN108] Cf. resolution of October 24, 2000, issued by the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas (file of appendixes to the application, tome II, appendix 8.5, folio 545).

124(61) On October 25, 2000, the Constitutional Chamber of the Supreme Court of Justice issued judgment No. 205, in which it declared "inadmissible in limine litis" the application for amparo filed by the representatives of YATAMA (supra para. 124(55)), because the resolution of the Supreme Electoral Council of August 15, 2000, "is a resolution concerning an electoral matter," and the said Chamber "lacks [...] competence in electoral matters, based on the final part of Article 173 of the Constitution which establishes: 'There shall be no ordinary or special recourse against the resolutions of the Supreme Electoral Council." Furthermore, the Constitutional Chamber indicated that Article 1 of the Electoral Act established in its "fifth and sixth paragraphs that electoral processes for the election of mayors, deputy mayors and members of municipal councils shall not be subject to any ordinary or special recourse." The said Constitutional Chamber also indicated that, under Nicaraguan laws, "there was no amparo procedure under constitutional or administrative law with regard to electoral matters," and that, in another judgment, "it had ruled on resolutions of the Supreme Electoral Council concerning administrative matters relating to political parties, regarding which the Council ha[d] competence, and it ha[d] so declared." In addition, the said Chamber "reprimanded the Civil and

Labor Chamber of the Court of Appeal of the North Atlantic District, for having processed the application for amparo when it should have rejected it" [FN109] (supra para. 124(57)).

[FN109] Cf. judgment No. 205 of October 25, 2000, issued by the Constitutional Chamber of the Supreme Court of Justice of Nicaragua (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix A, file of preliminary objections, merits and reparations, tome II, folio 384).

124(62) On October 30, 2000, the Supreme Electoral Council issued a communication in which it addressed the "people of Nicaragua in general and the international community to announce [... that] the YATAMA political party had been granted legal status [...] and this was maintained in force and with all its legal effects," and also that the said regional political party "c[ould] participate and present candidates in its respective Autonomous regions in the elections of November [2001]." [FN110]

[FN110] Cf. communication of October 30, 2000, issued by the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 17, folio 604).

124(63) YATAMA, and also the Ombudsman's Office, the President of the National Unity Movement (MUN), the OAS Electoral Observation Mission, and other organizations, such Ética y Transparencia [Translator's note: the local branch of Transparency International], requested "that the municipal elections in the North Atlantic Autonomous Region be postponed for a period that w[ould] allow the YATAMA party to organize a campaign and take part in" these elections, since the Supreme Electoral Council was empowered to suspend them "based on Articles 4 and 10(4) of the Electoral Act […]." [FN111] The Supreme Electoral Council did not suspend the said elections, arguing that the suspension fell within the competence of the National Assembly.[FN112]

[FN111] Cf. sworn written statement by Roberto Courtney made on February 21, 2005 (file of preliminary objections, merits and reparations, tome III, folio 843); Final report on the 2000 municipal elections. Grupo Cívico Ética y Transparencia. December 2000 (file of appendixes to the application, tome II, appendix 21, folio 741); Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States (file of appendixes to the application, tome II, appendix 19, folio 650); and newspaper Article entitled "Procurador de D.H. aconseja suspender elecciones en la RAAN. CSE no debe medir fuerzas con YATAMA", published in "El Nuevo Diario" on November 3, 2000 (file of appendixes to the application, tome II, appendix 22, folio 808).

[FN112] Cf. newspaper Article entitled "CSE persiste en jugar con fuego. Mantienen elecciones sin YATAMA", published in "El Nuevo Diario" on November 4, 2000 (file of appendixes to the application, tome II, appendix 22, folio 816); and Second Report. The Carter Center Mission to

Evaluate Electoral Conditions in Nicaragua, November 1-8, 2000 (file of appendixes to the application, tome II, appendix 20, folio 731).

124(64) As a result of a complaint filed by Brooklyn Rivera Bryan on August 24, 2000, the Ombudsman's Office asked the Supreme Electoral Council to provide "a detailed report of the reasons for the facts reported in the complaint." The Supreme Electoral Council did not allow the Ombudsman's Office to inspect the "Ledger of Resolutions which contained the resolution that the Council had taken unanimously" on August 15, 2000 (supra para. 124(51)), because, according to an official of this Council, "the ledger was locked up and [the] only [person] who has the key [...] had died." [FN113]

[FN113] Cf. resolution of March 3, 2005, issued by the Ombudsman's Office (file of preliminary objections, merits and reparations, tome IV, folio 985); and newspaper Article entitled "Procurador de D.H. aconseja suspender elecciones en la RAAN. CSE no debe medir fuerzas con YATAMA", published in "El Nuevo Diario" on November 3, 2000 (file of appendixes to the application, tome II, appendix 22, folio 808).

124(65) On March 3, 2005, the Ombudsman's Office issued a final decision with regard to this complaint filed by Brooklyn Rivera Bryan (supra para. 124(64), in which it declared that the Supreme Electoral Council and the Supreme Court of Justice "have violated civil and political rights, in the form of the right to equality before the law, the right not to be subjected to discrimination, the right to take part in government, to elect and to be elected, the right to respect for their cultural identity and also the right to judicial protection of the candidates for mayor, deputy mayor, councilors, and the population in general of the Autonomous Regions of the North and South Atlantic." [FN114]

[FN114] Cf. resolution of March 3, 2005, issued by the Ombudsman's Office (file of preliminary objections, merits and reparations, tome IV, folio 992).

CONCERNING THE MUNICIPAL ELECTIONS OF NOVEMBER 5, 2000

124(66) On November 5, 2000, the first municipal elections under Electoral Act No. 331 of 2000, were held in keeping with the electoral calendar of the Supreme Electoral Council (supra para. 124(29)). [FN115]

[FN115] Cf. Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States (file of appendixes to the application, tome II, appendix 19, folio 620).

124(67) The YATAMA party did not take part in the elections of November 5, 2000, owing to the resolution of the Supreme Electoral Council of August 15, 2000 (supra para. 124(51)). This caused tension that had repercussions on the national and international scene. [FN116] There were confrontations with the police, protests and arrests of protesters who questioned this decision. [FN117]

[FN116] Cf. Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States, and Second Report. The Carter Center Mission to Evaluate Electoral Conditions in Nicaragua, November 1-8, 2000 (file of appendixes to the application, tome II, appendixes 19 and 20, folios 649, 656 and 715); newspaper Articles published in "El Nuevo Diario" entitled "Fraude Consumado" of July 19, 2000, "YATAMA afuera" of October 27, 2000, "YATAMA preocupa a la OEA" of October 28, 2000, and "Policía cree que puede controlar a los YATAMA" of October 31, 2000 (file of appendixes to the application, tome II, appendix 22, folios 773, 796, 798 and 802); and request for annulment of the elections in the RAAN filed on November 8, 2000, before the Supreme Electoral Council by the Sandinista National Liberation Front Party (PFSLN), the Constitutionalist Liberal Party (PLC), the Coastal Unity Movement Party (PAMUC), the Indigenous Multiethnic Party (PIM), the Nicaraguan Christian Way Party (CCN) and the Nicaraguan Conservative Party (PCN) (file of appendixes to the application, tome II, appendix 22, folio 846).

[FN117] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 895); Second Report. The Carter Center Mission to Evaluate Electoral Conditions in Nicaragua, November 1-8, 2000 (file of appendixes to the application, tome II, appendix 20, folio 715); newspaper Articles published in "El Nuevo Diario" entitled "YATAMA afuera" on October 27, 2000, "YATAMA preocupa a la OEA" on October 28, 2000, and "Policía cree que puede controlar a los YATAMA" on October 31, 2000 (file of appendixes to the application, tome II, appendix 22, folios 796, 798 and 802); and request for annulment of the elections in the RAAN filed on November 8, 2000, before the Supreme Electoral Council by the Sandinista National Liberation Front Party (PFSLN), the Constitutionalist Liberal Party (PLC), the Coastal Unity Movement Party (PAMUC), the Indigenous Multiethnic Party (PIM), the Nicaraguan Christian Way Party (CCN) and the Nicaraguan Conservative Party (PCN) of November 8, 2000 (file of appendixes to the application, tome II, appendix 22, folio 846).

124(68) Only six political parties took part in the municipal elections of November 5, 2000: the Sandinista National Liberation Front (FSLN), the Constitutionalist Liberal Party (PLC), the Nicaraguan Christian Road (NCC), the Conservative Party (PC), the South Atlantic Indigenous Multiethnic Party (PIM) and the Coastal Unity Movement Party (PAMUC). [FN118] The candidates who won the elections belonged to the traditional parties. [FN119] The political parties, PLC, FSLN and PC obtained 94, 52 and 5 mayoralties, respectively. [FN120] The only coastal political organizations that took part in the municipal elections of November 2000 were the Indigenous Multiethnic Party (PIM) in the RAAS, and the Coastal Unity Movement Party (PAMUC) in the RAAN, which obtained "0.3% of the valid votes in the two Autonomous Regions." [FN121]

[FN118] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 513); Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States (file of appendixes to the application, tome II, appendix 19, folio 649); and newspaper Article entitled "Fraude Consumado", published in "El Nuevo Diario" on July 19, 2000 (file of appendixes to the application, tome II, appendix 22, folio 773).

[FN119] Cf. Second Report. The Carter Center Mission to Evaluate Electoral Conditions in Nicaragua, November 1-8, 2000 (file of appendixes to the application, tome II, appendix 20, folio 715); Newspaper Articles published in "El Nuevo Diario" entitled "YATAMA afuera" on October 27, 2000, "YATAMA preocupa a la OEA" on October 28, 2000, and "Policía cree que puede controlar a los YATAMA" on October 31, 2000 (file of appendixes to the application, tome II, appendix 22, folios 796, 798 and 802); and request for annulment of the elections in the RAAN filed on November 8, 2000, before the Supreme Electoral Council by the Sandinista National Liberation Front Party (PFSLN), the Constitutionalist Liberal Party (PLC), the Coastal Unity Movement Party (PAMUC), the Indigenous Multiethnic Party (PIM), the Nicaraguan Christian Way Party (CCN) and the Nicaraguan Conservative Party (PCN) of November 8, 2000 (file of appendixes to the application, tome II, appendix 22, folio 846).

[FN120] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 513); Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States (file of appendixes to the application, tome II, appendix 19, folios 649); and newspaper Article entitled "Fraude Consumado", published in "El Nuevo Diario" on July 19, 2000 (file of appendixes to the application, tome II, appendix 22, folio 773).

[FN121] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7, folio 513); Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States (file of appendixes to the application, tome II, appendix 19, folios 649); and newspaper Article entitled "Fraude Consumado", published in "El Nuevo Diario" on July 19, 2000 (file of appendixes to the application, tome II, appendix 22, folio 773).

124(69) In the RAAN, there was an abstention level of almost 80%, because part of the electorate, composed of members of indigenous and ethnic communities, was not adequately represented by the national parties. [FN122]

[FN122] Cf. Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States and Second Report. The Carter Center Mission to Evaluate Electoral Conditions in Nicaragua, November 1-8, 2000 (file of appendixes to the application, tome II, appendixes 19 and 20, folios 651 and 715).

124(70) The application of Electoral Act No. 331 of 2000, and the requirements for constituting a political party reduced the possibilities of participation by the Atlantic Coast indigenous and ethnic organizations. More than 20 political parties had taken part in the 1996 presidential elections. [FN123]

[FN123] Cf. Electoral Observation in Nicaragua: 2000 Municipal Elections/Unit for the Promotion of Democracy, Americas Series, No. 27, General Secretariat of the Organization of American States, and Second Report. The Carter Center Mission to Evaluate Electoral Conditions in Nicaragua, November 1-8, 2000 (file of appendixes to the application, tome II, appendixes 19 and 20, folios 644 and 715); newspaper Articles published in "El Nuevo Diario" entitled "YATAMA afuera" on October 27, 2000, "YATAMA preocupa a la OEA" on October 28, 2000, and "Policía cree que puede controlar a los YATAMA" on October 31, 2000 (file of appendixes to the application, tome II, appendix 22, folios 796, 798 and 802); and request for annulment of the elections in the RAAN filed on November 8, 2000, before the Supreme Electoral Council by the Sandinista National Liberation Front Party (PFSLN), the Constitutionalist Liberal Party (PLC), the Coastal Unity Movement Party (PAMUC), the Indigenous Multiethnic Party (PIM), the Nicaraguan Christian Way Party (CCN) and the Nicaraguan Conservative Party (PCN), of November 8, 2000 (file of appendixes to the application, tome II, appendix 22, folio 846).

124(71) On November 8, 2000, the Constitutionalist Liberal Party (PLC), the Coastal Unity Movement Party (PAMUC), the Indigenous Multiethnic Party (PIM), the Nicaraguan Christian Road (CCN) and the Conservative Party (PCN), "with legal status and national and regional representation, participants in the [...] municipal elections of November 5, [2000], in the North Atlantic Autonomous Region (RAAN)," requested the Supreme Electoral Council "to declare the nullity of the elections in the RAAN [... and] to organize new municipal elections in the RAAN with the inclusion of the YATAMA Indigenous Party," since "[d]uring the electoral campaign and the elections in this region, there were acts of violence and social tension, that did not allow the normal exercise of the right to vote[, a s]ituation that arose from the exclusion of the YATAMA Indigenous Party and as a demonstration of the coastal population's dissent, which culminated in an electoral abstention [...] in excess of 80% of the electoral roll." [FN124].

[FN124] Cf. request for annulment of the elections in the RAAN filed on November 8, 2000, before the Supreme Electoral Council by the Sandinista National Liberation Front Party (PFSLN), the Constitutionalist Liberal Party (PLC), the Coastal Unity Movement Party

(PAMUC), the Indigenous Multiethnic Party (PIM), the Nicaraguan Christian Road Party (CCN) and the Conservative Party of Nicaragua (PCN), of November 8, 2000 (file of appendixes to the application, tome II, appendix 22, folio 846).

124(72) YATAMA did not obtain the reimbursement of the expenses of its electoral campaign for the municipal elections of November 5, 2000, because it did not take part in these elections. [FN125]

[FN125] Cf. testimony of John Alex Delio Bans given before the Inter-American Court during the public hearing held on March 9, 2005; and sworn written statement by Cristina Póveda Montiel made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 903).

MUNICIPAL ELECTIONS OF NOVEMBER 2004

124(73) In the 2004 elections, YATAMA "obtain[ed] three mayoralties in the largest municipalities of the North Atlantic Autonomous Region and most of the councilors in all the municipalities." [FN126] Given the large number of members of YATAMA, they "can only be candidates once in order to allow other members to participate." A few of the YATAMA candidates who were going to participate in the 2000 elections took part in the 2004 elections. [FN127]

[FN126] Cf. certification issued by the Supreme Electoral Council on November 30, 2004, confirming the names of the candidates elect in the municipal elections of November 7, 2004 (file of preliminary objections, merits and reparations, tome III, folios 713 to 720); sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 896); and sworn written statement by Hazel Law Blanco made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 911).

[FN127] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 894); official record issued by the RAAN Regional Electoral Council on July 16, 2000, of the registration of the candidates for the municipal elections in five RAAN municipalities (file of preliminary objections, merits and reparations, tome III, folios 942 a 946); official receipt issued by the RAAN Regional Electoral Council on July 18, 2000, for the "original documentation of municipal substitute candidates for mayor, deputy mayor and councilors of the North Atlantic municipalities" forwarded to the Director General for Political Parties of the Supreme Electoral Council (file of appendixes to the application, tome II, appendix 13, folios 584 a 587); attestation issued by the Director General for Political Parties of the Supreme Electoral Council on May 3, 2005, regarding the candidates proposed by "the Coastal People Party Alliance (PPC)" (file of preliminary objections, merits and reparations, tome V, folio 1735); and certification issued by the Supreme Electoral Council on November 30, 2004, regarding the candidates elect in the

municipal elections of November 7, 2004 (file of preliminary objections, merits and reparations, tome III, folios 713 to 720).

REPRESENTATION OF THE COMMUNITIES OF THE ATLANTIC AUTONOMOUS REGIONS

124(74) The indigenous and ethnic communities of the Atlantic Coast represent 3.13% of the national population. In the RAAN, approximately 62% of the population is a member of the ethnic and indigenous communities and, in the RAAS, around 14.5% of the population belong to these communities. [FN128] Article 132 of the Nicaraguan Constitution establishes that the National Assembly "is composed of ninety deputies[.] At the national level, [...] twenty deputies will be elected and, in the departmental districts and autonomous regions, seventy deputies will be elected." Five deputies represent the RAAS and the RAAN in the National Assembly and they belong to traditional parties. [FN129]

[FN128] Cf. Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES) (file of appendixes to the application, tome II, appendix 7); and report entitled "Población total por área de residencia y sexo, según departamento y grupos de edades, años 2002 and 2003" [Total Population by Residence Area and Gender, according to Department and Age Groups, years 2002 and 2003]. Instituto Nacional de Estadísticas y Censos de Nicaragua (INEC), on www.inec.gob.ni.

[FN129] Cf. sworn written statement by Centuriano Knight Andrews made before notary public (affidavit) on February 14, 2005 (file of preliminary objections, merits and reparations, tome III, folio 897).

CONCERNING THE REFORM OF THE NICARAGUAN ELECTORAL SYSTEM

124(75) On November 8, 2002, in judgment No. 103, the Supreme Court of Justice of Nicaragua declared the unconstitutionality of "paragraphs 1 and 2 of Article 65(9) of [Electoral] Act No. 331 […] concerning the presentation of 3% of signatures for a political party to obtain legal status[, ... and also] Article 77(7) of this Act, concerning the presentation of 3% of the voters' signatures for the presentation of candidates." [FN130] The Supreme Court of Justice based its decision on the fact that "there were political parties that, for one reason or another, were unable to obtain the number of signatures required, [... so that] they were unable to acquire legal status and were excluded as electoral options in future campaigns, which violates the political rights of the Nicaraguans [... and] constitutes an interference with and an impairment of individual rights, by establishing a provision in the Electoral Act that obliges voters to manifest their partisan ideological preferences through a process of identification of signatures in support of a party," which "constitutes an undue and abhorrent interference in the political activity of the voters, typical of totalitarian countries." [FN131]

[FN130] Cf. judgment No. 103 of November 8, 2002, delivered by the Supreme Court of Justice of Nicaragua (file of appendixes to the application, tome I, appendix 6, folio 425).
[FN131] Cf. judgment No. 103 of November 8, 2002, delivered by the Supreme Court of Justice of Nicaragua (file of appendixes to the application, tome I, appendix 6, folio 425).

124(76) In the National Development Plan of the Executive Branch of Nicaragua, the President of the Republic proposed institutional reforms to the Nicaraguan electoral system; the central issues related to the "electoral organ and its characteristics[, the] legal grounds or how to improve the rules of play[, and t]he desirable characteristics of an electoral system." [FN132]

[FN132] Cf. Draft National Development Plan of the Executive Branch of Nicaragua (appendixes to the brief with preliminary objections, answering the application and with comments on the brief with requests and arguments, appendix X, file of preliminary objections, merits and reparations, tome II, folio 347).

CONCERNING COSTS AND EXPENSES

124(77) YATAMA's legal representatives took steps to achieve the participation of their candidates in the elections of November 5, 2000, and they have also taken part in the measures taken before the electoral and judicial authorities in the domestic proceedings. The YATAMA party, CENIDH and CEJIL have incurred expenses arising from resorting to the Inter-American system for the protection of human rights. [FN133]

[FN133] Cf. notarized testimonies of powers of attorney before the Inter-American Commission and Court granted by 34 alleged victims in favor of CENIDH and CEJIL lawyers (file of appendixes to the application, tome II, appendix 24); powers of attorney before the Inter-American Commission and Court granted by 25 persons in favor of CENIDH and CEJIL lawyers (file of appendixes to the application, tome II, appendix 24); notarized testimony of power of attorney before the Inter-American Commission and Court granted by 7 alleged victims in favor of CENIDH and CEJIL lawyers (file of preliminary objections, merits and reparations, tome III, appendix to the representative's brief of February 17, 2005, folios 780-783); notarized testimonies of powers of attorney before the Inter-American Commission and Court granted by 79 alleged victims in favor of CENIDH and CEJIL lawyers (file of preliminary objections, merits and reparations, tome III, appendix I to the representative's brief with final arguments of April 11, 2005, folios 1484-1614); invoices and receipts submitted in support of the expenses incurred by YATAMA, CENIDH and CEJIL (file of preliminary objections, merits and reparations, tome V, appendixes to the final written arguments of the representatives of February 17, 2005, appendixes 4 and 5, folios 1647 to 1686).

VIII. CONSIDERATIONS CONCERNING THE DETERMINATION OF ALLEGED VICTIMS

125. Several problems have arisen concerning the determination of the alleged victims. Consequently, before examining the alleged violations, the Court will establish who it will consider the alleged victims to be.

126. The Commission indicated that the alleged violations of the Convention were committed "to the detriment of the candidates for the positions of mayors, deputy mayors and councilors presented by the regional political party […] 'YATAMA' for the municipal elections of November 5, 2000, in the North Atlantic Autonomous Region and the South Atlantic Autonomous Region." It explained that, in the RAAS, the YATAMA party presented candidates in alliance with the Coastal People Party (PPC), an alliance that was called the PPC Alliance, and that, in the RAAN, the YATAMA party took part independently.

127. In principle, determination of the alleged victims would need to be supported by official documents presented to the Nicaraguan electoral authorities or issued by the latter, authenticating the name of the candidates proposed by YATAMA, independently or in alliance.

128. On several occasions during the proceeding before the Commission, the representatives of the alleged victims requested the Director for Political Parties of the Supreme Electoral Council, the Secretary of Proceedings, and the magistrates of this Council to provide them with copies of the lists of candidates presented by YATAMA in the Atlantic Autonomous Regions. The only official document that Nicaragua provided was an official receipt of July 18, 2000, for the "original documentation of municipal substitute candidates for mayor, deputy mayor and councilors of the municipalities of the North Atlantic received on July 15, 2000," which the President of the RAAN Regional Electoral Council forwarded to the Director General for Political Parties of the Supreme Electoral Council. This document contains the names of the candidates that the Commission provided in the application. However, it does not give any information on the list of candidates presented in the RAAS and it does not provide information on all the candidates presented in the RAAN, because it is merely a list of substitute candidates.

129. In their briefs with requests and arguments, and with comments on the preliminary objections, the representatives requested the Court to require the State to present the official lists of candidates proposed by YATAMA in both the RAAN and the RAAS for the 2000 municipal elections, because they had made this request and had not obtained complete information from the State.

130. Since it was necessary to have the official lists of candidates presented by YATAMA and there were differences between the lists of alleged victims provided by the Commission and by the representatives, the Secretariat, on the instructions of the President and all the judges of the Court, requested the State's cooperation in the presentation of these lists, in notes of May 12 and December 9, 2004, March 31, and April 15 and 27, 2005 (supra paras. 22, 24, 39, 45 and 47). In addition, during the public hearing held on March 9 and 10, 2005, the Court called upon the parties to present the necessary information in their final written arguments, so that the Court could determine the list of the alleged victims in this case; a request that was recalled to the

parties in a note from the Secretariat of March 31, 2005 (supra para. 39). The persons proposed by YATAMA to take part in the 2000 municipal elections were not registered as candidates by the Supreme Electoral Council, because it considered that the party had not complied with the legal requirements. Thus, none of them took part in the elections held on November 4 that year. Consequently, the lists, which the State was asked to present, could not refer to registered candidates.

131. In the various requests for the lists of candidates, the State was reminded that, in the RAAS, the list had been presented by the alliance of the Coastal People Party and the YATAMA party; therefore, it should be able to provide these lists irrespective of whether or not YATAMA and its candidates had participated in the 2000 municipal elections, and also that these were documents that had not been presented by YATAMA directly to the Supreme Electoral Council, but to a regional authority, or attestations that had not been issued by the said Council, but by a regional authority.

132. Following the first two requests for collaboration in forwarding the said lists in notes dated May 12 and December 9, 2004 (supra paras. 22 and 24), on March 1, 2005, the State provided a document issued by the RAAN Regional Electoral Council on July 15, 2000, stating that, on that day, "the legal representative of the YATAMA regional party presented the registration sheets of the candidates for the elections [...] in the municipalities of Waspam Río Coco, Puerto Cabezas, Prinzapolka, Rosita and Bonanza," and indicated their names (supra para. 33). Accordingly, it was possible to have complete information on the persons proposed by YATAMA as candidates in the RAAN, given that the Court already had the official list of alternate or substitute candidates (supra para. 128). Nevertheless, the State did not provide any information on the list of proposed candidates in the RAAS.

133. Finally, on May 5, 2005 (supra para. 49), after the Court or its President had made five requests (supra paras. 22, 24, 39, 45 and 47), the State delivered an attestation issued on May 3, 2005, by the Director General for Political Parties of the Supreme Electoral Council, which contained the names of the "candidates for mayors and councilors of the South Atlantic Autonomous Region, presented [… t]o the South Atlantic Regional Electoral Council in Bluefields (an organization that is not legally empowered to receive candidacies) by the Coastal People Party Alliance (PPC) and to the Supreme Electoral Council on July 17, 2000, after the time limited had expired," [FN134]

[FN134] With regard to the persons proposed for registration as candidates in the RAAS, the Court notes that, the attestation issued on May 3, 2005, by the Director for Political Parties of the Supreme Electoral Council with regard to the RAAS (supra para. 49), contains the names of those who were proposed by the alliance of the PPC and YATAMA parties, and it is not possible to distinguish who belonged to each of these parties. Even though the Commission does not include the manner in which the PPC and its candidates were excluded from participating in the 2000 municipal elections as an act that violates the Convention, it does include as alleged victims all the persons who were proposed by the alliance and who YATAMA requested the Supreme Electoral Council to accept as YATAMA candidates, when the PPC was subsequently excluded.

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134. The Court has established that the parties must provide the Court opportunely with the evidence that it requests, so that it has the maximum information to evaluate the facts and substantiate its decisions. [FN135] In proceedings on human rights violations, the applicant may not be able to provide evidence that can only be obtained with the cooperation of the State, which, in many cases, controls the means to clarify facts that have occurred on its territory. [FN136]

[FN135] Cf. Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 83; Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 93; and Case of the 19 Tradesmen, supra note 5, para. 77.

[FN136] Cf. Case of Tibi, supra note 135, para. 83; Case of the 19 Tradesmen, supra note 5, para. 77; and Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections, merits and reparations. (Art. 67 American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, para. 47.

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135. The Court considers that the State had the required official information and that, despite the Court's repeated requests based on Article 45(2) of the Rules of Procedure, it failed to present this information in a timely manner, invoking unsubstantiated arguments (supra paras. 23, 40 and 46). It stated that YATAMA had not fulfilled the legal requirements for participating in the elections (some of which were not even considered by the Supreme Electoral Council when it decided not to register YATAMA's candidates (supra para. 124(51)), and it acted as if it did not understand that, when it was requested to provide information on the candidates proposed by YATAMA in the RAAS, it should provide this, even though YATAMA had presented them in alliance with the PPC.

136. This omission by the State caused unnecessary difficulties in determining the alleged victims and signified non-compliance with the obligation to cooperate with the Court, owing to the failure to provide the information required in a timely manner. It is not for the State, or any other party, to determine the merits and consequences of providing documents requested by the Court or its President.

137. At the date on which this judgment is delivered, the Court holds official documentation determining the names of the alleged victims, so this problem has been resolved.

138. The Court has taken into consideration the following probative elements to determine the persons who were presented by YATAMA as candidates to take part in the 2000 municipal elections: (a) the official receipt dated July 18, 2000, for the delivery of the "original documentation of municipal substitute candidates for mayor, deputy mayor and councilors of the North Atlantic municipalities," that the President of the RAAN Regional Electoral Council forwarded to the Director General for Political Parties of the Supreme Electoral Council; (b) the document issued by the RAAN Regional Electoral Council on July 15, 2000, stating that the same day "the legal representative […] of the […] YATAMA regional party presented the registration sheets of the candidates for elections […] in the municipalities of Waspam Río Coco,

Puerto Cabezas, Prinzapolka, Rosita and Bonanza"; (c) attestation of May 3, 2005, issued by the Director General for Political Parties of the Supreme Electoral Council, containing the names of the "candidates for mayors and councilors of the South Atlantic Autonomous Region, presented [… t]o the South Atlantic Regional Electoral Council in Bluefields […] by the Coastal People Party Alliance (PPC) and to the Supreme Electoral Council on July 17, 2000, after the time limit had expired"; (d) list of candidates presented by the petitioners in the proceedings before the Commission; (e) list of candidates presented by the Commission as attachment 1 to its application; (f) list of candidates included by the representatives in the brief with requests and arguments; (g) final list of candidates presented by the representatives in their final written arguments; [FN137] (h) brief of May 13, 2005, in which the representatives submitted clarifications and explanations concerning the differences in the lists of candidates provided during the proceedings before the Court; [FN138] (i) brief of May 16, 2005, in which the Commission submitted clarifications and explanations concerning the differences in the lists of candidates provided during the proceedings before the Court; and (j) briefs of May 18 and 19, 2005, in which the State presented observations on the two said briefs.

[FN137] The Court has noted that the representatives included 20 people on their lists, but their names do not appear in the application or on the State's official lists. When explaining this difference, the representatives indicated in their brief of May 13, 2005, that, following the "dissolution of the PPC/YATAMA Alliance," it was requested that these persons should be registered as candidates and they asked the Court to consider them alleged victims. The Court will not consider these persons alleged victims because their presentation is not confirmed in any official document, and they were not included on the list presented by the petitioners in the proceeding before the Commission or in the application filed by the Commission, so that the State was unable to consider them.

[FN138] In their brief with clarifications and explanations, the representatives acknowledged that two people who had been included as alleged victims in their final list of candidates in the RAAN had been substituted, so they would not be candidates proposed by YATAMA. Also, the representatives acknowledged that they had included four people on their lists of candidates in the RAAS who should be considered "victims in their capacity as voters" and not as candidates.

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139. When determining the identity of the persons whose names were submitted for registration as candidates for YATAMA, the Court has given prevalence to the first three documents indicated in the preceding paragraph, which are official attestations issued by the electoral organs, whose authenticity and content have not been opposed or questioned.

140. Based on the foregoing, the Court considers as alleged victims the following persons who were proposed by YATAMA to be registered and participate as candidates for mayors, deputy mayors and municipal councilors in the 2000 municipal elections in the RAAN: Municipality of Puerto Cabezas: Rodolfo Spear Smith (mayor), Anicia Matamoros Bushey (deputy mayor), Lilly Mai Henríquez James (councilor), Donly Mendoza Cisnero (substitute councilor), Ovencio Maikell Barwell (councilor), Gumersindo Rodríguez Francis (substitute councilor), Edmundo Catriciano Joseph (councilor), Sonia Pedro Feliciano (substitute councilor), Jerry Labonte Moody (councilor), Evaristo Lacayo Salvador (substitute councilor), Elmer Emsly Blanco

(councilor), Winston Joel Livy (substitute councilor), Rodolfo Alciriades Sánchez (councilor), Alfredo Gabriel Gabrino (substitute councilor), Teresa Jonson Bengis (councilor), Roberto Labonte Centeno (substitute councilor), Minario Emsly Wilson (councilor); Municipality of San Juan de Río Coco Waspam: Celio Thomas Zamora (mayor), Calistro Osorio Bans M. (deputy mayor), Diego Guzmán Vanegas Allington (councilor), Aguilar Salomón Dixon (substitute councilor), Adrián Padilla Richard (councilor), Morano Castro Castro (substitute councilor), Gilberto Williams Jirón (councilor), Alonso Fresly Gabriel (substitute councilor), Lucio Alfred Lacayo Kitler (councilor), Armando Thomas (substitute councilor), José Guzmán Guzmán Briman (councilor), Antonio Avila Gutiérrez (substitute councilor), Bernaldo García Pantin (councilor), Arturo Solórzano White Solórzano (substitute councilor), Loenida Martínez Pasly (councilor), Lobres Josenes Josenes Figueroa (substitute councilor), Remigio Narciso Zepeda (councilor), Antonio Reyes Waldan (substitute councilor); Municipality of Bonanza: Mario Peralta Bands (mayor), Jorge Chacón Wilson (deputy mayor), Ceferino Wilson Bell (councilor), Patricio López Díxon (substitute councilor), Icasio Díxon Reyes (councilor), Cindyluz Carolina Couberth Cárdenas (substitute councilor), Neiria Elizabeth Fúnez Muller (councilor); Municipality of Rosita: Cristina Poveda Montiel (mayor), Morgan Johnny Anderson (deputy mayor), Daniel Manuel Juwith (councilor), Oliverio Mairena Ocampo (substitute councilor), Edison Johnny Anderson (councilor), Lorenzo Mairena Ocampo (substitute councilor), Andrés López Martínez (councilor); Municipality of Prinzapolka: Eklan James Molina (mayor), Jaime Timoteo Hammer Berig (deputy mayor), Marvin Ignacio Serapio (councilor), Romer Barkley Hemphry (substitute councilor), Alonso Edwards Salomón (councilor), Antonio López Hans (substitute councilor), Domingo Peralta Cristóbal (councilor), Fidencio Rivera Janneth (substitute councilor), Melancio Hernández Budier (councilor) and Pedro Morley Rivera (substitute councilor).

141. The Court also considers as alleged victims the following persons who were proposed by YATAMA to be registered and participate as candidates for mayors, deputy mayors and municipal councilors in the 2000 municipal elections in the RAAS: Municipality of Bluefields: Manuel Salvador Paguagua García (mayor), Yahaira Ivonne Amador Gadea (deputy mayor); Councilors: Eustacio Flores Wilson, Ashmet Alexander Ally, Julio Cesar Delgado Pacheco, Israel Díaz Amador, Angela Gibson Morales, Reynaldo Lagos Amador, Eduardo Alexander Siu Estrada, Isabel Reina Estrada Colindres, Lillian Elizabeth Francis Wilson, Carlos John Omeir, Nelly Sánchez Castillo, Flor Deliz Bravo Carr, William Wong López, Jenny Mitchell Omeir, Sergio Warren León Corea, Olga Orelia Shepperd Hodgson; Municipality of Corn Island: Dayne Winston Cash Cassanova (mayor), Cristina Morris Anisal (deputy mayor); Councilors: Lorenzo Fidencio Britton Calderón, Keston Orville López Lewis, Lowell Alvin Rigby Downs, Cherrul Eltina Tucker Hunter, Marlene del Socorro Hebbert Escorcia, Vaden Davis Downs White, Erick Alvaro Archibol Lavonte, Olga María Leyman Francis; Municipality of la Cruz de Río Grande: Exibia Alarcón Herrera (mayor), Gloria Maritza Colindres Romero (deputy mayor); Councilors: Angela Barbarina Hurtado, Juan Francisco Díaz Matamoro, Marcelino Lanzas Amador, Juan Carlos Loáisiga, Digno Días González, Gloria Isabel Lira Díaz, Teodora Duarte Sequeira, Maritza Collado Plazaola; Municipality of Desembocadura de Río Grande: Roberto Chow Molina (mayor), Edward Nixon Ellis Brooks (deputy mayor); Councilors; Kramwel Frank James, Donald Wilson Martínez Roland, Cristina Josefina Hills Thompson, Carolina Del Socorro Hurtado Rocha, Carlos Julián Prudo, Norman Marcelina Inglish, Belarmino Young Richard, Hipólito García López; Municipality of Tortuguero: Gorge Antonio Gutiérrez Robledo (mayor),

Pastora Carmen García Guillen (deputy mayor); Councilors: Jacinta Pérez González, Juana María Jirón Rodríguez, Alejandro Miranda Reyes, Sandra Esther Reyes López, Emelina Valle Solano, Andrea Lira Gaitán, Guillermina López García, Hilda María Miranda Reyes; Municipality of Kukra Hill: Juan Casterio Reyes Craford (mayor), José Mateo López Rigby (deputy mayor); Councilors; Dionicio Márquez Méndez, Ruth Vargas Smith, Leonor Haydé Maesk Thompson, Miguel Amador Huate, Alicia Reyes, Roberto Ramos Renis, Hilda Estela Méndez Sinclair, Samuel Walter Lewis Fedrick; Municipality of Laguna de Perlas: Rodolfo Chang Bennett (mayor), Alonso Florencio Willis Tucker (deputy mayor); Councilors: Liston Hooker Allen, Constantino Franklin Humpheys Hogdson, Jason Kenred Gutiérrez Peralta, Arlen Joan Peralta Davis, Winston Brown Martin López, Clarinda Catalina Hamphys Moses, [FN139] Ilva Bernard, Wilma Janeth Taylor Hebbert and William Martin. [FN140]

[FN139] The Court notes that "Catalina Hamphuys" appears as an alleged victim in the list with the application, while someone with the name "Clarinda Catalina Hamphys Moses", appears in the brief with requests and arguments as an alleged victim; in the representative's final list both names appear as if there were two different people: namely, both "Catalina Hamphuys" and "Clarinda Catalina Hamphys Moses." The representatives presented the Court with two notarized testimonies of powers granted by "Catalina Hamphuys" and "Clarinda Catalina Hamphys Moses." However, in the attestation issued on May 3, 2005, by the Director General for Political Parties of the Supreme Electoral Council with regard to the RAAS (supra para. 49) only "Clarinda Catalina Hamphys Moses" appears. The Court will consider as an alleged victim the persons with the latter name, because it is the name that appears in the said attestation issued by the Director General for Political Parties of the Supreme Electoral Council with regard to the RAAS, which was forwarded to the representatives and to the Commission. They were requested, when submitting their comments, to include an explanation on the differences that might arise when comparing the different lists of alleged victims in the RAAS with the list presented by the State in this attestation, and neither the Commission nor the representatives provided any explanation as regards the fact that the attestation only included the name of "Clarinda Catalina Hamphys Moses."

[FN140] In the case of William Martin, whose registration as a candidate was requested, according to the representatives, following the resolution of the Supreme Electoral Council that excluded the PPC and who does not appear in the attestation regarding the RAAS issued on May 3, 2005, by the Director for Political Parties of the Supreme Electoral Council (supra para. 49), the Court will consider him an alleged victim because he appears on the list that accompanied the application filed by the Commission and on the list that the petitioners presented in the proceeding before the latter, which appears in appendix 6 to the application.

IX. VIOLATION OF ARTICLES 8(1) AND 25 OF THE CONVENTION IN RELATION TO ARTICLES 1(1) AND 2 THEREOF (RIGHT TO A FAIR TRIAL AND TO JUDICIAL PROTECTION)

142. Arguments of the Commission

(a) The decisions of the Supreme Electoral Council not to accept YATAMA's request to register as candidates of this party, those candidates presented by the alliance between YATAMA and the Coastal People Party in the RAAS, and "not to register the candidates presented by YATAMA in the RAAN, because the organization had not complied with the time limit established in the Electoral Act" were arbitrary. The Nicaraguan Electoral Act stipulates that, when the period for presenting candidates has expired, if the Council denies a request or rejects a candidate, "within the three days following the decision, it shall notify the political party that presented [the request or candidate] so that it can proceed to correct the defects or substitute the candidates";
(b) The Supreme Electoral Council indicated in its resolution of August 15, 2000, that YATAMA had not complied with the time limit established in the Electoral Act, which could "only refer to the period of six months provided for in Article 77 of the Electoral Act," the minimum lapse that should transpire between the recognition of the legal status of the political party and the date of the elections. However, the Supreme Electoral Council had acknowledged YATAMA's status as a political party on May 4, 2000; namely six months before the 2000 municipal elections, thus complying with the requirement established in Article 77 of the Electoral Act; and
(c) The State "deprived the candidates of YATAMA for the municipal elections of November 5, 2000, of the right to a fair trial, to be heard and to exercise their right to defense, by failing to provide for a simple and effective recourse under domestic law to contest the resolutions of the Supreme Electoral Council."

143. Arguments of the representatives of the alleged victims

(a) The resolution of the Supreme Electoral Council "did not give any type of reasoning with regard to [...] the decisions it contained" and, when ordering that the candidates should not be registered as they had not been presented within the time limit established by the law, "it did not explain whether the time to which it referred is the time that a party must have existed in order to take part in the elections or the time established for the registration of candidates";
(b) YATAMA was not notified of the Supreme Electoral Council's resolution "not to accept the candidates proposed by the PPC," with which YATAMA had formed an alliance in the RAAS. When it entered into communication with officials of the Supreme Electoral Council, they advised that "the complete list for YATAMA would appear in the final publication of candidates," but this did not happen;
(c) Article 84 of the Electoral Act stipulates that when the Council rejects a candidate because he does not comply with the legal requirements, it shall notify this to the political party or alliance of parties within the following three days so that it may correct the defects or substitute the candidates. "Not only did the Supreme Electoral Council fail to initiate the procedure for remedying the candidacies, but it also failed to notify that it had rejected them";
(d) Article 98 of the Electoral Act establishes the possibility of the parties and alliances filing recourses "before the Supreme Electoral Council against decisions of the Electoral Councils which they consider have violated their rights." Since the resolution of August 15, 2000, was issued by the "sole instance," the representatives of YATAMA filed an appeal for review before it, which "was never decided";
(e) The State was obliged "to respect the procedure established in the law," even though its resolutions were administrative or jurisdictional;

(f) Since the legal consequence of YATAMA failing to participate in the 2000 municipal elections was "the cancellation of the legal status" of the political party, "the legal representatives of YATAMA presented an application for amparo based on Article 76 of the Electoral Act[,] which allows parties to apply [for] amparo if their legal status is cancelled." However, the procedure to cancel the legal status of the parties that "did not take part in the 2000 electoral process" was never officially initiated, which implied that, if "the existence of a final resolution was necessary in order to apply for amparo, the State had already curtailed this right by not initiating the cancellation process for YATAMA, as established in the Electoral Act." The Court of Appeal, which expedited the initial processing of the application for amparo decided "to suspend de oficio the resolution with regard to not allowing the YATAMA Regional Party to register its candidates." The Supreme Electoral Council did not comply with this decision;
(g) The Supreme Court of Justice rejected the application for amparo filed by YATAMA without mentioning the "reasons that [...] its jurisdiction" or the "main purpose of the application";
(h) The Supreme Electoral Council exercises administrative rather than jurisdictional functions. The laws of Nicaragua do not require the members of this body to be experts in legal or electoral matters. Also, "in the case of Nicaragua, there is no judicial recourse against decisions on electoral matters, while, in other countries whose electoral body has similar characteristics, there is a possibility of having recourse to the Judiciary; and
(i) The State left the alleged victims in this case defenseless and violated their right to a "prompt and effective recourse" by failing to provide for a means of "contesting the resolutions of the Supreme Electoral Council."

144. Arguments of the State

(a) In the case of YATAMA, the "procedure [established in the Electoral Act] was not applicable, because it was not rejecting one candidate in particular; it was not denying a request for registration of candidates, but rather the YATAMA political party did not comply with the requirements for the presentation of candidates, according to title VI of the Electoral Act";
(b) YATAMA did not comply with the provisions of Article 77 of the Electoral Act, because it requested that the candidates presented by the political alliance be registered on its behalf, and this request should have been submitted to the Supreme Electoral Council;
(c) The Supreme Electoral Council decided that "of the political parties that presented voters' signatures, in accordance with Article 77 [of the] Electoral Act, only those presented by the Constitutionalist Liberal Party (PLC) and the Conservative Party (PC) amounted to the 3% referred to in the said Article";
(d) "Owing to the dissolution of the political alliance it had formed, the YATAMA political party did not comply with Article 82(2) of the Electoral Act, which requires that, for the municipal elections, candidates must be registered in at least 80% of the municipalities";
(e) The resolution issued by the Supreme Electoral Council on August 15, 2000, "is of a strictly electoral content and matter" and "there is no ordinary or special recourse" against this type of decision (Articles 173 of the Constitution, 1 of the Electoral Act, and 51(5) of the Amparo Act). The Supreme Court of Justice of Nicaragua has stated that there is no recourse against resolutions of the Supreme Electoral Council on electoral matters;
(f) The YATAMA party based its application for amparo on Article 76 of the Electoral Act, which stipulates that this recourse is admissible before the courts of justice against resolutions

that the Supreme Electoral Council issues with regard to political parties. However, the resolution issued on August 15, 2000, by the Supreme Electoral Council, is strictly electoral in nature and does not refer to political parties. Matters relating to political parties are regulated in "paragraphs 17, 18 and 19" of Article 10 of the Electoral Act; and

(g) The representatives indicated that the procedure established in "Article 37 and ff." was not followed, but they did not say that Article 51(5) of the Amparo Act declares that this recourse is inadmissible against resolutions of the Supreme Electoral Council on electoral matters.

Considerations of the Court

145. Article 8(1) of the Convention indicates that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

146. As established by the proven facts (supra para. 124(51), 124(57) and 124(61)), the Supreme Electoral Council, the Civil and Labor Chamber of the Court of Appeal of the North Atlantic District, Puerto Cabezas, and the Constitutional Chamber of the Supreme Court of Justice adopted decisions concerning the participation of the YATAMA candidates in the municipal elections of November 2000.

1) Application of Article 8(1) as regards decisions of the Supreme Electoral Council

147. Article 8 of the American Convention applies to all the requirements that should be observed by the procedural bodies, whatsoever they may be, so that a person may defend himself adequately against any act of the State that could affect his rights. [FN141]

[FN141] Cf. Case of Ivcher Bronstein. Judgment of February 6, 2001. Series C No. 74, para. 102; Case of Baena Ricardo et al. Judgment of February 2, 2001. Series C No. 72, para. 124; Case of the Constitutional Court. Judgment of January 31, 2001. Series C No. 71, para. 69; and Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27.

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148. According to the provisions of Article 8(1) of the Convention, when determining a person's rights and obligations of a criminal, civil, labor, fiscal or any other nature, "due guarantees" must be observed that ensure the right to due process, in accordance with the corresponding procedure.

149. All the organs that exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the American Convention. [FN142] Article 8(1) of the Convention,

which alludes to the right of every person to a hearing by a "competent judge or tribunal" for the "determination of his rights," is also applicable in situations in which a public rather than a judicial authority issues decisions that affect the determination of such rights, [FN143] as occurred in the instant case.

[FN142] Cf. Case of Ivcher Bronstein, supra note 141, para. 104; and Case of the Constitutional Court, supra note 141, para. 71.
[FN143] Cf. Case of Ivcher Bronstein, supra note 141, para. 105; and Case of the Constitutional Court, supra note 141, para. 71.

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150. The decisions issued by domestic bodies with regard to electoral matters may affect the enjoyment of political rights. Consequently, in this sphere also, the minimum guarantees established in Article 8(1) of the Convention must be observed, to the extent that they are applicable in the respective proceeding. In this case, it should be taken into account that the electoral procedure preceding the municipal elections calls for promptness and a simple process that facilitates decision-making within the framework of the electoral calendar. The Supreme Electoral Council should respect the specific guarantees provided for in Electoral Act No. 331 of 2000, which regulates the election process for mayors, deputy mayors and councilors.

151. The decisions issued by the Supreme Electoral Council had a direct effect on the exercise of the right to political participation of the persons proposed by the YATAMA party to participate in the municipal elections of November 2000, because they were decisions that denied their registration as candidates and the possibility of being elected to specific public positions. Nicaraguan laws have assigned functions of a substantially jurisdictional nature to the Supreme Electoral Council. Indeed, the State, in its arguments, indicated that "the electoral laws assign a jurisdictional function to the Council [...] and, consequently, it decided as a judicial body of final instance, pursuant to the Constitution in force."

152. Decisions adopted by domestic bodies that could affect human rights, such as the right to political participation, should be duly ; otherwise, they would be arbitrary decisions. [FN144]

[FN144] Cf. García Ruiz v. Spain [GC], no. 30544/96, § 26, ECHR 1999-I; and Eur. Court H.R., Case of H. v. Belgium, Judgment of 30 November 1987, Series A no. 127-B, para. 53.

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153. The decisions that the Supreme Electoral Council issued on electoral matters and which affected the political rights of the persons proposed by YATAMA as candidates to take part in the municipal elections of November 2000, should have been duly , which involved indicating the norms on which the requirements that YATAMA failed to comply with were based, the facts regarding non-compliance, and the consequences of non-compliance.

154. As has been proved (supra para. 124(46)), on July 18, 2000, the Supreme Electoral Council issued a resolution in which it indicated, inter alia, that the Coastal People Party (PPC),

which headed the alliance with YATAMA in the RAAS (supra para. 124(38) and 124(39)), had not complied with the requirements for registering candidates. The Court has verified that this resolution makes no reference to non-compliance with requirements by YATAMA in the RAAS or in the RAAN, and this created uncertainty concerning the approval of the participation of its candidates. The Council did not notify this decision to YATAMA, even though it affected YATAMA, since the exclusion of the Coastal People Party (PPC) could have consequences for the participation of the YATAMA candidates in the RAAS. Moreover, it did not indicate that there was any problem for the participation of the YATAMA candidates in the RAAN.

155. Following this decision of July 18, 2000, the representatives of YATAMA sent several communications to the Supreme Electoral Council, in which they basically requested the Council to define the situation of its candidates, because YATAMA had not received any official communication with regard to the political participation of its candidates in the municipal elections that year (supra para. 124(47) to 124(50)).

156. The Supreme Electoral Council ruled on the political participation of the YATAMA candidates in the RAAS and in the RAAN on August 15, 2000, and resolved not to register this party's candidates in the electoral process of November that year (supra para. 124(51)).

157. With regard to the participation of the candidates proposed by YATAMA in the RAAS, in the resolution of August 15, 2000, the Supreme Electoral Council declared: "Inadmissible, the request by YATAMA to register as candidates of this party, the candidates presented by the YATAMA/PPC Alliance in the South Atlantic Autonomous Region" (supra para. 124(51)(a)). No grounds for this decision were given. Furthermore, in the "Considering II" it indicated that "YATAMA [was] a legally constituted party, in full use of the rights established in the Electoral Act and, as such, c[ould] take part in the elections of November 2000, either in alliances or alone, provided it complied with the Electoral Act and the terms of the electoral calendar." However, the Council stated that, since the Coastal People Party (PPC) did not have the percentage of signatures referred to in Article 77(7) of the Electoral Act, "the number of municipalities in which YATAMA present[ed] candidates d[id] not attain the 80% referred to in Article 82(2) pursuant to Article 80 in fine of the Electoral Act." The Council did not indicate the municipalities in which YATAMA was not represented.

158. With regard to the participation of the candidates proposed by YATAMA in the RAAN, the said resolution of August 15, 2000, declared that, "the candidates presented by this Organization in the North Atlantic [were] not registered because it had not complied with the time limit established in the Electoral Act" (supra para. 124(51)(b)). The "Considering clauses" contained no reference to the grounds for this decision. The Supreme Electoral Council did not indicate whether the "time limit established in the Electoral Act" that YATAMA "ha[d] not complied with" was the one for obtaining YATAMA's legal status as a political party in order to take part in these elections (supra para. 124(23)), or the one established in the electoral calendar for the presentation of the list of candidates (supra para. 124(30)).

159. Given that, as has been proved, YATAMA had obtained its legal status within the time limit established by Article 77 of the Electoral Act in order to take part in the municipal elections of November 2000 (supra para. 124(23) and 124(28)), and that it had presented the lists of

candidates within the time limit stipulated on the electoral calendar (supra para. 124(30), 124(31) and 124(39)), the Council should have indicated the specific requirement of the Electoral Act that YATAMA had failed to comply with, indicating the corresponding norm, so that it could be understood which "time limit established in the Electoral Act" YATAMA had not "complied with" and the reasons for that conclusion.

160. Compliance with the guarantee to justify the decisions adopted during the electoral process of November 2000 was especially important, since Electoral Act No. 331, which regulated this process, had entered into force approximately nine months before the date set for holding the elections. In other words, this was the first electoral process organized under this law, which embodied significant modifications with regard to the previous law, such as the elimination of the category of "public subscription association" and the new requirement that an individual could only participate as a candidate through a political party (supra para. 124(20)).

161. The Court considers that, by excluding the alleged victims from participating in the 2000 municipal elections, the Supreme Electoral Council did not respect the guarantee established in Article 84 of Electoral Act No. 331, which stipulates:

When the Supreme Electoral Council, pursuant to the provisions of this law, denies a request or rejects a candidate for failing to comply with the legal requirements, it shall notify this to the political party or alliance of parties within the three days following the resolution, so that they may proceed to correct the defects or to substitute the candidates.

162. When deciding that YATAMA had not complied with the requirements for registering its candidates in the RAAS and the RAAN, the Supreme Electoral Council did not grant this organization the opportunity to correct the existing defect. Moreover, it did not notify to YATAMA the resolution issued by the Council on July 18, 2000 (supra para. 124(46)) that excluded the PCC from participating in the elections, even though PPC headed the alliance with YATAMA in the RAAS, an alliance that was pending authorization by the Supreme Electoral Council. One month later, the Council decided that the candidates proposed by YATAMA could not participate because it had not complied with all the respective requirements (supra para. 124(51)).

163. On October 30, 2000, the Supreme Electoral Council addressed itself "to the population in general and to the international community to inform them [... t]hat [...] the political party [...] YATAMA had been granted legal status, which retained all its legal effects," and that this regional political party "c[ould] take part and present candidates in its respective Autonomous Regions in the elections of November [2001]" (supra para. 124(62)). This action of the Supreme Electoral Council is surprising and even contrary to the provisions of Electoral Act No. 331, which establishes as a cause for cancellation of the legal status of a political party that it "does not take part in the elections that are called" (art. 74(4)). On the one hand, the Council decides that the candidates proposed by YATAMA may not participate in the elections of November 2000 (supra para. 124(51)), which would result in the cancellation of its legal status as a political party and, on the other hand, it issues a communication indicating that YATAMA retains its legal status as a party.

164. Based on these findings, the Court concludes that the decisions adopted by the Supreme Electoral Council, which affected the political participation of the candidates proposed by YATAMA for the municipal elections of November 2000, were not duly , nor were they adapted to the parameters established in Article 8(1) of the American Convention, so that the State violated the judicial guarantees embodied in this Article in relation to Article 1(1) of the Convention, to the detriment of the said candidates.

2) Right to a simple and prompt recourse, or any other effective recourse, embodied in Article 25(1) of the Convention

165. Article 25(1) of the Convention indicates that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

166. Article 2 establishes that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

167. The safeguard of the individual in the face of the arbitrary exercise of the powers of the State is the primary purpose of the international protection of human rights. [FN145] The inexistence of effective domestic remedies places the individual in a situation of defenselessness. Article 25(1) of the Convention has established, in broad terms:

The obligation of the States to provide to all persons within their jurisdiction, an effective judicial remedy to violations of their fundamental rights. It provides, moreover, for the application of the guarantee recognized therein not only to the rights contained in the Convention, but also to those recognized by the Constitution and laws. [FN146]

[FN145] Cf. Case of Tibi, supra note 135, para. 130; Case of the “Five Pensioners”. Judgment of February 28, 2003. Series C No. 98, para. 126; and Case of the Constitutional Court, supra note 141, para. 89.
[FN146] Cf. Case of Tibi, supra note 135, para. 130; Cantos case. Judgment of November 28, 2002. Series C No. 97, para. 52; Case of the Mayagna (Sumo) Awas Tingni Community. Judgment of August 31, 2001. Series C No. 79, para. 111; and Judicial Guarantees in States of Emergency, supra note 141, para. 23.

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168. The absence of an effective remedy to violations of the rights recognized in the Convention is itself a violation of the Convention by the State Party. [FN147]

[FN147] Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra note 146, para. 113; Case of Ivcher Bronstein, supra note 141, para. 136; and Case of the Constitutional Court, supra note 141, para. 89.

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169. For the State to comply with the provisions of Article 25 of the Convention, it is not enough that the recourses exist formally, but they must be effective; [FN148] in other words, they must provide the individual with the real possibility of filing a remedy in the terms of this Article. The existence of this guarantee "is one of the basic pillars, not only of the American Convention, but also of the rule of law itself in a democratic society, in the terms of the Convention." [FN149]

[FN148] Cf. Case of Tibi, supra note 135, para. 131; Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 117; and Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 121.

[FN149] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 75; Case of Tibi, supra note 135, para. 131; and Case of the 19 Tradesmen, supra note 5, para. 193.

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170. The general obligation that the State should adapt its domestic laws to the provisions of the Convention to guarantee the rights it embodies, which is established in Article 2, includes the issuance of rules and the development of practices leading to effective enforcement of the rights and freedoms embodied in the Convention, and also the adoption of measures to derogate norms and practices of any kind that entail a violation of the guarantees established in the Convention. [FN150] This general obligation of the State Party implies that the measures of domestic law must be effective (the principle of effet utile), and to this end the State must adapt its actions to the protection norms of the Convention. [FN151]

[FN150] Cf. Case of Caesar, supra note 11, para. 91; Case of Lori Berenson Mejía, supra note 11, para. 219; Case of the "Juvenile Reeducation Institute", supra note 135, para. 206; and Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 78.

[FN151] Cf. Case of Lori Berenson Mejía, supra note 11, para. 220; Case of the "Juvenile Reeducation Institute", supra note 135, para. 205; and Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 142.

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171. Chapter VI of the Constitution de Nicaragua establishes an Electoral Power that is independent of the other three branches of government and whose maximum authority is the Supreme Electoral Council (Article 129). With regard to the resolutions of this Council concerning electoral matters, the Constitution establishes that 'there shall be no ordinary or special recourse" (Article 173(14)), the Amparo Act stipulates that the application for amparo is

inadmissible "against the resolutions issued on electoral matters" (Article 51(5)), and the Electoral Act establishes that "the petitioner groups or political parties may have recourse to the amparo procedure before the courts of justice against the final resolutions concerning political parties issued by the Supreme Electoral Council in the exercise of the powers that this law confers on it" (Article 76).

172. On August 30, 2000, Brooklyn Rivera and Centuriano Knight, YATAMA's legal representatives filed before the Court of Appeal of the North Atlantic Autonomous Region (RAAN) (Civil Chamber, Bilwi), an application for administrative amparo (supra para. 124(55)), based on Article 23 of the Amparo Act in force, against the resolution of August 15, 2000, in which the Supreme Electoral Council excluded YATAMA from the 2000 municipal elections (supra para. 124(51)). On October 25, 2000, the Constitutional Chamber of the Supreme Court of Justice ruled on the application for amparo that had been filed, declaring it inadmissible in limine litis (supra para. 124(61)) on the grounds that it did not have jurisdiction to deliberate on electoral matters, because the resolution issued by the Supreme Electoral Council referred to such matters and Article 173 of the Constitution established that no ordinary or special recourse was admissible against the resolutions of this body. In this ruling, the Constitutional Chamber also indicated that, pursuant to the judgment it had delivered in another case on July 1, 1999, the only resolutions of the Supreme Electoral Council that could be appealed against by an application for amparo were those relating to administrative matters concerning political parties. Nevertheless, it did not include any observations with regard to the differences that existed between matters concerning political parties and those concerning electoral issues, or to the reasons why the resolution that YATAMA was appealing was included in the latter category.

173. There was no judicial remedy against the resolution of the Supreme Electoral Council of August 15, 2000 (supra para. 124(51), so this could not be revised, even if it had been adopted without respecting the guarantees of the electoral procedure established in the Electoral Act or the minimum guarantees established in Article 8(1) of the Convention, applicable to the process.

174. Even though the Nicaraguan Constitution has established that the resolutions of the Supreme Electoral Council on electoral matters are not subject to ordinary or special recourses, this does not mean that this Council should not be subject to judicial controls, as are the other branches of government. The requirements arising from the principle of the independence of the powers of the State are not incompatible with the need to establish recourses or mechanisms to protect human rights.

175. Irrespective of the regulations that each State establishes for its supreme electoral body, the latter must be subject to some form of jurisdictional control that allows it to be determined whether its acts have been adopted respecting the minimum guarantees and rights established in the American Convention, and those established in its own laws; this is not incompatible with regard for the functions inherent in this body concerning electoral matters. This control is essential when the supreme electoral bodies such as the Supreme Electoral Council in Nicaragua, have broad powers, which exceed administrative faculties and which could be used, without an adequate control, to favor determined partisan objectives. In this sphere, this recourse must be simple and prompt, taking into account the characteristics of the electoral process (supra para. 150).

176. In view of the above, the Court concludes that the State violated the right to judicial protection embodied in Article 25(1) of the American Convention, to the detriment of the candidates proposed by YATAMA to participate in the 2000 municipal elections, in relation to Articles 1(1) and 2 thereof.

177. With regard to the other allegations of the representatives, the Court does not find that the facts set out by the Commission in the instant case show that they constitute a violation of Article 25(2)(c) of the Convention.

X. VIOLATION OF ARTICLES 23 AND 24 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLES 1(1) AND 2 THEREOF (RIGHT TO PARTICIPATE IN GOVERNMENT AND RIGHT TO EQUAL PROTECTION)

178. Arguments of the Commission

With regard to the violation of Article 23 in relation to Articles 1(1) and 2 of the Convention, it alleged that:

(a) The candidates presented by YATAMA for the municipal elections of November 5, 2000, in the RAAN and the RAAS were prevented from participating in the elections as a result of the resolution issued by the Supreme Electoral Council of Nicaragua on August 15, 2000. They did not have access to an effective recourse that would have allowed them to exercise their fundamental political rights. "The voters in the Atlantic Autonomous Region of Nicaragua were prevented from choosing between the candidates and electing those presented by the YATAMA indigenous party";
(b) "The exercise of political rights, including the right 'to be elected,' implies that the bodies responsible for monitoring their practice and fulfillment must act in accordance with the rules of due process and that their decisions are subject to review." Electoral bodies must guarantee the exercise of political rights "through the independence and impartiality with which they exercise their functions";
(c) "In international law, in general, and in inter-American law, in particular, special protection is needed for the indigenous people to be able to exercise their rights fully and on an equal footing with the rest of the population. Also, it may be necessary to establish special measures of protection for the indigenous people, in order to ensure their physical and cultural survival," and to ensure their effective participation in the decision-making processes that affect them;
d) Article 23 of the American Convention should be interpreted in light of the normative provisions of the Constitution, the Statute of Autonomy of the Atlantic Coast, and the Municipalities Act, which tend to strengthen the political participation of the indigenous people;
(e) Despite the norms of a constitutional and legal nature that recognize the right of the Atlantic Coast communities to live and evolve under the forms of social organization that correspond to their historical and cultural traditions, the 2000 Electoral Act obliged the indigenous communities of the Atlantic Coast to constitute themselves into political parties. Even though Article 71 of this law states that the natural form of organization and participation of the indigenous organizations will be respected so that they may form regional parties, "in

practice, they must submit to the same rules applicable to the non-indigenous regional or national electoral parties." The members of YATAMA complied with the requirements of the Electoral Act;

(f) The Electoral Act divested part of the population of some of their rights based on their ethnic origin; and

(g) It requested the Court to declare that Nicaragua was responsible for the violation of Article 23 of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the candidates for the positions of mayors, deputy mayors and councilors presented by the regional indigenous political party YATAMA in the RAAN and the RAAS, "because it had not provided for norms in the Electoral Law that would facilitate the political participation of the indigenous organizations in the different electoral processes of the Atlantic Coast Autonomous Region of Nicaragua, according to the customary law, values, practices and customs of the indigenous people who live there."

179. Arguments of the representatives

In addition to alleging the violation of Article 23 of the Convention, the representatives of the alleged victims alleged that the State had violated Article 24 of the Convention, in relation to Articles 1(1) and 2 thereof, an allegation that does not appear in the application presented by the Commission. Regarding the violation of all these Articles, the representatives proposed the same arguments that are summarized in paragraph 143 of this judgment, and also indicated that:

(a) The State violated the political rights embodied in the Convention to the detriment of the candidates presented by YATAMA and of the indigenous communities who had chosen them, because it excluded these candidates from the municipal elections, as a result of the resolution issued by the Supreme Electoral Council on August 15, 2000, and the confirmation of this resolution by the judgment of the Supreme Court of Justice of October 25 that year; by "not allowing them to contest the resolution of the CSE, arguing that it referred to 'electoral matters,' and by not complying with its own domestic laws that ordered the State to eliminate any barriers that stood in the way of equality among all Nicaraguans and their effective participation in the country's political, economic and social life";

(b) The candidates of YATAMA could not exercise the political representation of the indigenous organizations and communities that had chosen them according to their customary law, values, practices, and customs, and they could not fulfill their personal and community aspirations or take part in the conduct of public affairs. In addition, "the indigenous communities [...] were unable to be represented by their own members." "The authorities who were elected on the Atlantic coast do not represent 85% of the voters, most of them indigenous people, who did not vote as a protest for the exclusion of YATAMA. This absence of political representation has had a direct effect on the decisions taken at the municipal level regarding the use and management of resources";

(c) YATAMA was unable to take part in municipal affairs, even though indigenous people are the majority in the Atlantic Autonomous Regions. Moreover, the legal existence of the YATAMA political party was jeopardized;

(d) The Statute of Autonomy of the Atlantic Coast Regions "does not guarantee the right of the indigenous people that inhabit this region to play an active part in the decisions that affect them";

(e) The draft American Declaration on the Rights of Indigenous People recognizes the right to self-government of the indigenous people and the draft United Nations Declaration on the Rights of Indigenous People states that they have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions. The Supreme Electoral Council "did exactly the contrary; that is, it erected barriers to YATAMA's participation";
(f) The State's discrimination against the members of YATAMA, as regards their right to elect and to be elected, resulted from the imposition of a series of excessive requirements, that were too burdensome for the indigenous people: the State's interpretation of the Electoral Act, indicating that it required the presentation of documents exclusively before the Supreme Electoral Council in Managua; diverse barriers erected by the Supreme Electoral Council and by the administration of justice itself, which translated into grave violations of due process and effective judicial protection; and the failure to adopt special measures that would allow political participation in conditions of equality. "The indigenous organizations do not have the same possibilities as the national political parties to comply with the requirements of the Electoral Act";
(g) Special measures of protection are necessary and urgent to ensure that the indigenous communities can exercise their rights effectively, on an equal footing with the rest of the population, in order to guarantee the survival of their cultural values and, in particular, their forms of political participation;
(h) The State's laws established inappropriate requirements that had a discriminatory impact on the indigenous people, did not provide for measures to protect the rights of the alleged victims, and arbitrarily excluded the candidates presented by YATAMA; (i) "The State did not allow the YATAMA candidates to participate in the 2000 municipal elections on an equal footing; it did not ensure equality of access to public office and positions; it did not ensure that the indigenous voters were represented on an equal footing with the other voters"; and
(j) The State has also violated the right to equality because it did not adopt special measures of protection to facilitate and ensure the political participation of the indigenous people, according to their values, practices and customs.

180. Arguments of the State: [FN152]

(a) The 2000 municipal elections respected the constitutional provisions and the Electoral Act in force;
(b) The candidates for the positions of mayors, deputy mayors and councilors did not obtain favorable results in these elections owing to errors in complying with the requirements established in the electoral laws;
(c) The statements made in affidavits by Lidia Chamorro and Mauricio Carrión Matamoros established the validity of the Electoral Act, the constitutional level of the Supreme Electoral Council, and the application of the law. The statements of the expert witnesses, Carlos Hurtado Cabrera, Secretary of the Presidency for Atlantic Coast Affairs, and Saul Castellón reveal the State's concern for the economic, political and social development of the Nicaraguan Caribbean and its full interconnection with the north, center and west of the country;

(d) During the elections of November 4, 2004, YATAMA complied with the requirements of the Electoral Act, and its candidates were elected in Puerto Cabezas, Waspam, Prinzapolka, Desembocadura de Río Grande, Corn Island and Tortuguero;
(e) The candidates selected by the indigenous communities have to submit to the provisions of the law, in the same way as the candidates from other regions and departments of Nicaragua;
(f) The opinion of the expert witness, María Luisa Acosta, who said that the strategic purpose of YATAMA is to achieve indigenous self-government implies "envisaging an independent group within an independent State, which is totally unacceptable";
(g) "The [Electoral] Act […], like other laws, needs to be reformed." Nicaragua is "in the process of modifying and improving its laws." The State can probably "find a way [that,] based on the recommendations of international organizations," permits making the said law more flexible "in order to make participation more effective, especially with regard to regions that are far from the capital";
(h) It trusts that the Court "will assist [it with] recommendations [...] to improve the laws to the benefit not only of the YATAMA community, [...] but of all the Pacific communities that include mestizos, and other communities in the North and Center of the country";
(i) The Electoral Act is a constitutional law. Its reform "requires finding 60% of the votes";
(j) "It does not accept and contests" that it has violated the right to equality and to non-discrimination; and
(k) The Electoral Act provides for special measures of protection for the indigenous people, because "it allows them to select those who wish to take part in public life[,] taking into account their traditions, values, practices and customs"; but, once selected, the "official candidates [of the indigenous communities] must submit to the provisions of the law in the same way as the candidates from the other regions. [...I]f special requirements are established for specific regions, this would create different categories of Nicaraguan citizens, since [...] the law is general and applies to all Nicaraguans equally."

[FN152] The State did not present independent arguments referring specifically to the alleged violation of Article 23 of the Convention.

Considerations of the Court

181. Article 23 of the Convention stipulates that:

1. Every citizen shall enjoy the following rights and opportunities:
(a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
(c) to have access, under general conditions of equality, to the public service of his country.

2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

182. Article 24 of the American Convention establishes that:

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

183. The Court has established that the alleged victim, his next of kin or his representatives may invoke different rights to those included in the application of the Commission, based on the facts presented by the latter. [FN153]

[FN153] Cf. Case of De la Cruz Flores, supra note 15, para. 122; Case of the "Juvenile Reeducation Institute", supra note 135, para. 125; and Case of the Gómez Paquiyauri Brothers, supra note 10, para. 179.

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184. The principle of the equal and effective protection of the law and of non-discrimination constitutes an outstanding element of the human rights protection system embodied in many international instruments [FN154] and developed by international legal doctrine and case law. At the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the realm of jus cogens. The juridical framework of national and international public order rests on it and it permeates the whole juridical system. [FN155]

[FN154] These international instruments include: the OAS Charter (Article 3(1)); the American Convention on Human Rights (Articles 1 and 24); the American Declaration of the Rights and Duties of Man (Article II); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador" (Article 3); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Articles 4(f), 6 and 8(b)); the Inter-American Convention for the Elimination of all Forms of Discrimination against Persons with Disabilities (Articles I(2)(a), II, III, IV and V); the Charter of the United Nations (Article 1(3)); the Universal Declaration of Human Rights (Articles 2 and 7); the International Covenant on Economic, Social and Cultural Rights (Articles 2(2) and 3); the International Covenant on Civil and Political Rights (Articles 2(1) and 26); The International Convention on the Elimination of All Forms of Racial Discrimination (Article 2); the Convention on the Rights of the Child (Article 2); the Declaration on the Rights of the Child (Principle 1); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Articles 1(1), 7, 18(1), 25, 27, 28, 43(1), 43(2), 45(1), 48, 55 and 70); the Convention on the Elimination of All Forms of Discrimination against Women (Articles 2, 3, 5, 7 to 16); the Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief (Articles 2 and 4); Declaration of the International Labour Organization (ILO) of Fundamental Principles and Rights of Work (2(d)); International Labour Organization (ILO) Convention No. 97 on Migration for Employment

(Revised) (Article 6); International Labour Organization (ILO) Convention No. 111 concerning discrimination in Respect of Employment and Occupation (Articles 1 to 3); International Labour Organization (ILO) Convention No. 143 on Migrant Workers (Supplementary Provisions) (Articles 8 and 10); International Labour Organization (ILO) Convention No. 168 concerning Employment Promotion and Protection against Unemployment (Article 6); Proclamation of Teheran, International Human Rights Conference at Teheran, May 13, 1968 (paras. 1, 2, 5, 8 and 11); the Vienna Declaration and Programme of Action, World Conference on Human Rights, June 14 to 25, 1993 (I(15); I(19); I(27); I(30); II(B)(1), Articles 19 to 24; II(B)(2), Articles 25 to 27); the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Articles 2, 3, 4(1) and 5); the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration and Program of Action (paragraphs of the Declaration: 1, 2, 7, 9, 10, 16, 25, 38, 47, 48, 51, 66 and 104); the Convention against Discrimination in Education (Articles 1, 3 and 4); the Declaration on Race and Racial Prejudice (Articles 1, 2, 3, 4, 5, 6, 7, 8 and 9); the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which they Live (Article 5(1)(b) and 5(1)(c)); European Union's Charter of the Fundamental Rights (Articles 20 and 21); the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 14); the European Social Charter (Article 19(4), 19(5) and 19(7)); Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 1); the African Charter on Human and People' Rights "Banjul Charter" (Articles 2 and 3); the Arab Charter on Human Rights (Article 2); and the Cairo Declaration on Human Rights in Islam (Article 1).

[FN155] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 150, para. 101.

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185. This principle is fundamental for the safeguard of human rights in both international and national law; it is a principle of peremptory law. Consequently, States are obliged not to introduce discriminatory regulations into their laws, to eliminate regulations of a discriminatory nature, to combat practices of this nature, and to establish norms and other measures that recognize and ensure the effective equality before the law of each individual. [FN156] A distinction that lacks objective and reasonable justification is discriminatory. [FN157]

[FN156] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 150, para. 88; Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 44; and Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 54.

[FN157] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 150, para. 89; Juridical Condition and Human Rights of the Child, supra note 156, para. 46; and Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica, supra note 156, para. 56. Cf. also Eur. Court H.R., Case of Willis v. The United Kingdom, Judgment of 11 June 2002, para. 39; Eur. Court H.R., Case of Wessels-Bergervoet v. The Netherlands, Judgment of 4th June 2002, para. 46; Eur. Court H.R., Case of Petrovic v. Austria, Judgment of

27th March 1998, Reports 1998-II, para. 30; and U.N., Human Rights Committee, Joseph Frank Adam v. Czech Republic (586/1994), opinion of July 25, 1996, para. 12.4.

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186. Article 24 of the American Convention prohibits any type of discrimination, not only with regard to the rights embodied therein, but also with regard to all the laws that the State adopts and to their application. In other words, this Article does not merely reiterate the provisions of Article 1(1) of the Convention concerning the obligation of States to respect and ensure, without discrimination, the rights recognized therein, but, in addition, establishes a right that also entails obligations for the State to respect and ensure the principle of equality and non-discrimination in the safeguard of other rights and in all domestic laws that it adopts.

187. With regard to the obligation to respect rights, Article 1(1) of the Convention stipulates that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

188. Concerning the domestic legal effects, Article 2 of the Convention establishes that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

189. The Court has established that the general obligation in Article 2 of the Convention entails the suppression of norms and practices of any type that entail the violation of the guarantees established in the Convention, as well as the issuance of rules and the development of practices leading to the effective enforcement of the said guarantees. [FN158]

[FN158] Cf. Case of Caesar, supra note 11, para. 91; Case of Lori Berenson Mejía, supra note 11, para. 219; Case of the "Juvenile Reeducation Institute", supra note 135, para. 206; and Juridical Condition and Rights of the Undocumented Migrants, supra note 150, para. 78.

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190. In light of the proven facts in this case, the Court must determine whether Nicaragua restricted unduly the political rights embodied in Article 23 of the Convention and whether there has been a violation of the equal protection embodied in Article 24 thereof.

1) Political rights in a democratic society

191. The Court has established that "[i]n a democratic society, the rights and freedoms inherent in the human person, the guarantee applicable to them and the rule of law form a triad," in which each component defines itself, complements and depends on the others for its meaning. [FN159] When deliberating on the importance of political rights, the Court observes that the Convention itself, in its Article 27, prohibits their suspension as well as that of the judicial guarantees essential for their protection. [FN160]

[FN159] Cf. Juridical Condition and Human Rights of the Child, supra note 156, para. 92; Certain Attributes of the Inter-American Commission on Human Rights (arts. 41, 42, 44, 46, 47, 50 and 51 American Convention on Human Rights). Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 31; Judicial Guarantees in States of Emergency, supra note 141, para. 35; and Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 26.

[FN160] Cf. The Word "Laws" in Article 30 of the American Convention on Human Rights. Advisory Opinion OC-6/86 of May 9 1986. Series A No. 6, para. 34.

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192. This Court has stated that "[r]epresentative democracy is the determining factor throughout the system of which the Convention is a part," and "a 'principle' reaffirmed by the American States in the OAS Charter, the basic instrument of the inter-American system." [FN161] The political rights protected in the American Convention, as well as in many international instruments, [FN162] promote the strengthening of democracy and political pluralism.

[FN161] Cf. the Word "Laws" in Article 30 of the American Convention on Human Rights, supra note 160, para. 34.

[FN162] These international instruments include: the Inter-American Democratic Charter (Articles 2, 3 and 6); the American Convention on Human Rights (Article 23); the American Declaration of the Rights and Duties of Man (Article XX); the Universal Declaration of Human Rights (Article 21); the International Covenant on Civil and Political Rights (Article 25); the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(c)); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Article 42); the Convention on the Elimination of All Forms of Discrimination against Women (Article 7); the Convention on the Political Rights of Women (Articles I, II and III); the United Nations Declaration on the Elimination of All Forms of Racial Discrimination (Article 6); the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (Articles 2 and 3); International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal People (Article 6); Proclamation of Teheran, International Human Rights Conference at Teheran, May 13, 1968 (para. 5); Vienna Declaration and Programme of Action, World Conference on Human Rights, June 14 to 25, 1993 (I.(8) I(18), I(20), II(B)(2)(27)); Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3); and the African Charter on Human and People' Rights "Banjul Charter" (Article 13).

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193. On September 11, 2001, during the OAS Special Assembly, the Ministers of Foreign Affairs of the Americas adopted the Inter-American Democratic Charter, which states that:

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of governments. [FN163]

[FN163] Inter-American Democratic Charter. Adopted at the first plenary session of the OAS General Assembly, held on September 11, 2001, Article 3.

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2) Content of political rights

194. Article 23 of the Convention establishes the rights to take part in the conduct of public affairs, to vote and to be elected, and to have access to public service, which must be guaranteed by the State under conditions of equality.

195. It is essential that the State should generate the optimum conditions and mechanisms to ensure that these political rights can be exercised effectively, respecting the principles of equality and non-discrimination. The facts of the instant case refer principally to political participation through freely-elected representatives, the exercise of which is also protected in Article 50 of the Nicaraguan Constitution. [FN164]

[FN164] It establishes that “citizens have a right to participate in equal conditions in public affairs and in the state administration. The effective participation of the population shall be guaranteed nationally and locally by law.”

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196. Political participation may include broad-ranging and varied activities that can be executed individually or in an organized manner, in order to intervene in the designation of those who will govern a State or who will be responsible for managing public affairs, as well as influencing the elaboration of State policy through direct participation mechanisms.

197. The exercise of the rights to be elected and to vote, which are closely related to each other, is the expression of the individual and social dimension of political participation.

198. Citizens have the right to take part in the management of public affairs through freely elected representatives. The right to vote is an essential element for the existence of democracy

and one of the ways in which citizens exercise the right to political participation. This right implies that the citizens may freely elect those who will represent them, in conditions of equality.

199. Participation through the exercise of the right to be elected assumes that citizens can stand as candidates in conditions of equality and can occupy elected public office, if they obtain the necessary number of votes.

200. The right to have access to public office, under general conditions of equality, protects access to a direct form of participation in the design, implementation, development and execution of the State's political policies through public office. It is understood that these general conditions of equality refer to access to public office by popular election and by appointment or designation.

3) Obligation to guarantee the enjoyment of political rights

201. The Court understands that, in accordance with Articles 23, 24, 1(1) and 2 of the Convention, the State has the obligation to guarantee the enjoyment of political rights, which implies that the regulation of the exercise of such rights and its application shall be in keeping with the principle of equality and non-discrimination, and it should adopt the necessary measures to ensure their full exercise. This obligation to guarantee is not fulfilled merely by issuing laws and regulations that formally recognize these rights, but requires the State to adopt the necessary measures to guarantee their full exercise considering the weakness or helplessness of the members of certain social groups or sectors. [FN165]

[FN165] Cf. Juridical Condition and Rights of the Undocumented Migrants, supra note 150, para. 89; and Juridical Condition and Human Rights of the Child, supra note 156, para. 46.

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202. When examining the enjoyment of these rights by the alleged victims in this case, it must be recalled that they are members of indigenous and ethnic communities of the Atlantic Coast of Nicaragua, who differ from most of the population, inter alia, owing to their languages, customs and forms of organization, and they face serious difficulties that place them in a situation of vulnerability and marginalization. This has been recognized in the Statute of Autonomy of the Regions of the Atlantic Coast of Nicaragua (supra para. 124(3)) and in the 2001 report on "Desarrollo Humano en la Costa Caribe de Nicaragua" [Human development on the Caribbean Coast of Nicaragua]. [FN166] Furthermore, the expert witness, María Dolores Álvarez Arzate, and the witnesses, Jorge Frederick and John Alex Delio Bans, made specific reference to the difficulties faced by the members of these communities during the 2000 municipal elections (supra para. 111).

[FN166] Desarrollo humano en la Costa Caribe de Nicaragua [Human Development in the Caribbean Coast of Nicaragua]. Report prepared by the Programa Nacional de Asesoría para la Formulación de Políticas with the support of the Consejo Nacional de Planificación Económica Social (CONPES). This report indicates that, according to the Instituto Nacional de Estadísticas

y Censos de Nicaragua (INEC) “among the 25 poorest municipalities in Nicaragua, 12 correspond to municipalities in the Autonomous Regions”; “One of the main inequalities on the Caribbean Coast, which should be underscored, is the limited infrastructure in this part of the country[, which] places the population at a disadvantage as regards their capacity of access to services and entails greater difficulties for transportation and communication”; and “According to data from 1999, the Caribbean Coast, occupying 46% of national territory has only 8.26% of the access roads.” Also, the expert witness, Rodolfo Stavenhagen Gruenbaum, whose expert evidence was incorporated into the body of evidence in this case (supra para. 123), indicated that “the communities of the Atlantic Coast of Nicaragua [..] have traditionally been marginalized from the central power and linked to interests of an international or economic type, but they are very aware of their cultural identity, their self-awareness, of being social groups with historical continuity, with links to the land, and their own forms of organization and economic activities that have distinguished them from the rest of the population of Nicaragua.”

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203. When considering Electoral Act No. 331 of 2000, the Court will interpret the contents of Articles 23 and 24 of the Convention according to the interpretation criteria established in Article 29(a) and (b) thereof.

204. According to Article 29(a) of the Convention, the full scope of political rights cannot be restricted in such a way that their regulation or the decisions adopted in application of this regulation prevent people from participating effectively in the governance of the State or cause this participation to become illusory, depriving such rights of their essential content.

205. According to the provisions of Article 29(b) of the American Convention, the Court considers that, in order to guarantee the effectiveness of the political rights of the members of the indigenous and ethnic communities of the Atlantic Coast, who include the alleged victims in this case, Nicaragua should take into account the specific protection established in Articles 5, [FN167] 49, [FN168] 89 [FN169] and 180 [FN170] of the Constitution and Article 11(7) [FN171]of the Statute of Autonomy of the Atlantic Coast Regions.

[FN167] “The State acknowledges the existence of the indigenous people, who enjoy the rights, obligations and guarantees embodied in the Constitution and, particularly those related to maintaining and developing their own identity and culture, and having their own forms of social organization and administering their local affairs[.]”

[FN168] “In Nicaragua, the communities of the Atlantic Coast and the population in general have the right to establish organizations […], without any discrimination, in order to achieve their aspirations according to their own interests and to participate in the construction of a new society.

These organizations shall be established in accordance with the participatory and elective will of the population, they shall have a social function and may be of a partisan nature or not, according to their purpose and object.”

[FN169] “The communities of the Atlantic Coast have the right to preserve and develop their cultural identity within national unity; establish their own forms of social organization and administer local affairs according to their traditions.”

[FN170] "The communities of the Atlantic Coast have the right to live and develop under the forms of social organization that correspond to their historical and cultural traditions."
[FN171] "The inhabitants of the communities of the Atlantic Coast have the right to "[e]lect and be elected authorities of the Autonomous Regions."
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206. Instituting and applying requirements for exercising political rights is not, per se, an undue restriction of political rights. These rights are not absolute and may be subject to limitations. [FN172] Their regulation should respect the principles of legality, necessity and proportionality in a democratic society. Observance of the principle of legality requires the State to define precisely, by law, the requirements for voters to be able to take part in the elections, and to stipulate clearly the electoral procedures prior to the elections. According to Article 23(2) of the Convention, the law may regulate the exercise of the rights and opportunities referred to in the first paragraph of this Article, only for the reasons established in this second paragraph. The restriction should be established by law, non-discriminatory, based on reasonable criteria, respond to a useful and opportune purpose that makes it necessary to satisfy an urgent public interest, and be proportionate to this purpose. When there are several options to achieve this end, the one that is less restrictive of the protected right and more proportionate to the purpose sought should be chosen. [FN173]

[FN172] Cf. Case of Hirst v. the United Kingdom (no. 2), no. 74025/01, § 36, ECHR-2004.
[FN173] Cf. Case of Ricardo Canese, supra note 5, paras. 96 and 133; Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, paras. 121 and 123; and Compulsory Membership in an Association prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 46. Also cf. Eur. Court H.R., Case of Barthold v. Germany, Judgment of 25 March 1985, Series A no. 90, para. 58; Eur. Court H.R., Case of Sunday Times v. United Kingdom, Judgment of 26 April 1979, Series A no. 30, para. 59; U.N., Human Rights Committee, General comment No. 27, Freedom of movement (art. 12) of November 2, 1999, paras. 14 and 15; and U.N., Human Rights Committee, General comment No. 25, Right to participate in public affairs, voting rights and the right of equal access to public service (art. 25) of July 12, 1996, paras. 11, 14, 15 and 16.
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207. States may establish minimum standards to regulate political participation, provided they are reasonable and in keeping with the principles of representative democracy. These standards should guarantee, among other matters, the holding of periodic free and fair elections based on universal, equal and secret suffrage, as an expression of the will of the voters, reflecting the sovereignty of the people, and bearing in mind, as established in Article 6 of the Inter-American Democratic Charter, that "[p]romoting and fostering diverse forms of participation strengthens democracy"; to this end, States may design norms to facilitate the participation of specific sectors of society, such as members of indigenous and ethnic communities.

208. With regard to the restrictions to the right to be elected, the United Nations Human Rights Committee has stated that:

The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. If a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy. [FN174]

[FN174] U.N., Human Rights Committee, General comment No. 25, supra note 173, para. 17.

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209. Electoral Act No. 331 of 2000, stipulates requirements that were not included in the previous law and which place maximum limitations on the possibility of participating in the municipal elections (supra para. 124(20)). This new Electoral Act entered into force approximately nine months before the day set for holding the elections, in the first electoral process organized while it was in force.

210. The Court takes note of the State's acknowledgement of the need to reform Electoral Act No. 331 of 2000, and considers that this implies an admission that the law contains provisions that affect the exercise of the right to political participation. During the public hearing before the Court (supra para. 37), the State's Agent declared "with conviction […] that there is a need to reform both this law and a series of laws in Nicaragua," "to this end, it would be very useful to receive assistance with contributions, recommendations, to try and make the law more flexible with regard to those points which do not affect the substance of the law[,] to ensure that participation is more effective, especially in the case of regions that are far from the capital." The Agent added that "he [would] try to ensure that, as soon as possible, an improvement to the electoral laws was negotiated and arranged, [...] to benefit not only YATAMA, which merits it, but also other groups in the country and the members of political parties […]." Likewise, the Secretary for Atlantic Coast Affairs of Nicaragua, who provided expert evidence to the Court, stated that there was "an urgent need to reform this law" (supra para. 111).

211. In "Electoral Observation, Nicaragua 2000: Municipal Elections," the OAS Secretariat General stated that Electoral Act No. 331 of 2000 "considerably reduced opportunities to participate in municipal elections," and referred to the law's lack of clarity when it underscored that:

Controversies arose about the interpretation of the law, and even more about its application. During its stay, the Mission noted that different interpretations were applied to similar cases and consequently produced differing decrees or decisions.

212. As regards observance of the principle of legality, the Court finds that Electoral Act No. 331 of 2000, is ambiguous because it does not establish clearly the consequences of non-compliance with certain requirements for both those who participate through a party and those who do so through an alliance of parties; the wording is imprecise on the applicable procedures when the Supreme Electoral Council determines that a requirement has not been complied with; and it does not regulate clearly the fundamental decisions that this body must adopt to establish who is registered to participate in the elections and who does not comply with the registration

requirements, or the rights of those whose participation is affected by a decision of the State. This law does not allow the voter or the electoral bodies to have a clear understanding of the process and encourages its arbitrary and discretional application through extensive and contradictory interpretations that unduly restrict the participation of voters; a restriction that is particularly undesirable when it severely affects fundamental rights, such as recognized political rights. [FN175]

[FN175] Cf. Case of Ricardo Canese, supra note 5, para. 125; Case of Baena Ricardo et al., supra note 141, paras. 108 and 115; and Case of Cantoral Benavides. Judgment of August 18, 2000. Series C No. 69, para. 157.

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213. With regard to the requirements in order to be elected established in the 2000 Electoral Act, the Court takes note that the Supreme Court of Justice of Nicaragua, in judgment No. 103 delivered on November 8, 2002, declared that paragraphs 1 and 2 of Article 65(9) of this law were unconstitutional, as well as Article 77(7) thereof, regarding the requirement for the presentation of the signatures of 3% of voters in order to present candidates, because it found that the provisions in the said paragraphs of Article 65 constituted "a barrier to the exercise of political rights" and that the provisions of Article 77(7) constitute[d] an undue and abhorrent interference in the political activity of the voters" (supra para. 124(75)).

214. Furthermore, Electoral Act No. 331 of 2000, only permits participation in electoral processes through political parties (supra para. 124(20)), a form of organization that is not characteristic of the indigenous communities of the Atlantic Coast. It has been proved that YATAMA was able to obtain legal status to take part in the municipal elections of November 2000 as a political party, fulfilling the corresponding requirements (supra para. 124(28)). Nevertheless, the witnesses, Brooklyn Rivera Bryan and Jorge Teytom Fedrick, and the expert witness, María Dolores Álvarez Arzate, emphasized that the requirement to become a political party disregarded the customs, organization and culture of the candidates proposed by YATAMA, who are members of the indigenous and ethnic communities of the Atlantic Coast.

215. There is no provision in the American Convention that allows it to be established that citizens can only exercise the right to stand as candidates to elected office through a political party. The importance of political parties as essential forms of association for the development and strengthening of democracy are not discounted, [FN176] but it is recognized that there are other ways in which candidates can be proposed for elected office in order to achieve the same goal, when this is pertinent and even necessary to encourage or ensure the political participation of specific groups of society, taking into account their special traditions and administrative systems, whose legitimacy has been recognized and is even subject to the explicit protection of the State. Indeed, the Inter-American Democratic Charter states that "[t]he strengthening of political parties and other political organizations is a priority for democracy." [FN177]

[FN176] Cf. Refah Partisi (the Welfare Party) and Others v. Turkey [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, § 87, ECHR 2003-II; Case of Yazar and Others v. Turkey,

nos. 22723/93, 22724/93 and 22725/93, § 32, ECHR 2002-II; and Eur. Court H.R., Case of Socialist Party and Others v. Turkey, Judgment of 25 May 1998, Reports of Judgments and Decisions 1998-III, para. 29.
[FN177] Inter-American Democratic Charter. Adopted at the first plenary session of the OAS General Assembly, held on September 11, 2001, Article 5.
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216. Political parties and organizations or groups that take part in the life of the State, such as in electoral processes in a democratic society, must have aims that are compatible with regard for the rights and freedoms embodied in the American Convention. In this regard, Article 16 of the Convention establishes that the exercise of the right to associate freely "shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others."

217. The Court considers that the participation in public affairs of organizations other than parties, based on the conditions mentioned in the preceding paragraph, is essential to guarantee legitimate political expression and necessary in the case of groups of citizens who, otherwise, would be excluded from this participation, with all that this signifies.

218. The restriction that they had to participate through a political party imposed on the YATAMA candidates a form of organization alien to their practices, customs and traditions as a requirement to exercise the right to political participation, in violation of domestic laws (supra para. 205) that oblige the State to respect the forms of organization of the communities of the Atlantic Coast, and affected negatively the electoral participation of these candidates in the 2000 municipal elections. The State has not justified that this restriction obeyed a useful and opportune purpose, which made it necessary so as to satisfy an urgent public interest. To the contrary, this restriction implied an impediment to the full exercise of the right to be elected of the members of the indigenous and ethnic communities that form part of YATAMA.

219. Based on the foregoing, the Court considers that the restriction examined in the preceding paragraphs constitutes an undue limitation of the exercise of a political right, entailing an unnecessary restriction of the right to be elected, taking into account the circumstances of the instant case, which are not necessarily comparable to the circumstances of all political groups that may be present in other national societies or sectors of a national society.

220. Having established the foregoing, the Court finds it necessary to indicate that any requirement for political participation designed for political parties, which cannot be fulfilled by groups with a different form of organization, is also contrary to Articles 23 and 24 of the American Convention, to the extent that it limits the full range of political rights more than strictly necessary, and becomes an impediment for citizens to participate effectively in the conduct of public affairs. The requirements for exercising the right to be elected must observe the parameters established in paragraphs 204, 206 and 207 of this judgment.

221. Article 82 of the 2000 Electoral Act establishes as a requirement to participate in the municipal elections that political parties must present candidates in at least 80% of the

municipalities in the respective territorial district and with regard to 80% of the total candidacies (supra para. 124(24)). In this case, when the Supreme Electoral Council resolved not to register the candidates proposed by YATAMA in the RAAS, it considered that, since the party that had presented itself in alliance with YATAMA was excluded, YATAMA alone did not comply with the requirement that it should present candidates in 80% of the municipalities in the territorial district (supra para. 124(51)(a)).

222. The witness, Brooklyn Rivera Bryan, explained that:

They were obliged to [...] enter in other areas where there were no indigenous people, because the Electoral Act makes it obligatory to have 80% of the candidates that must be registered in all the municipalities. Consequently, in the Autonomous Region, there are indigenous municipalities where they predominate, where they exercise their leadership and structure, but there are other municipalities which are mestizo or ladino [with which they have] no connection or interest, but the law obliges them to organize and take part in the processes in these municipalities; otherwise [they would] be disqualified from participating in the elections.

223. This requirement of Electoral Act No. 331 of 2000 constitutes a disproportionate restriction that limited unduly the political participation of the candidates proposed by YATAMA for the municipal elections of November 2000. It did not take into account that the indigenous and ethnic population is a minority in the RAAS, or that there were municipalities in which they did not have the support to present candidates or where they were not interested in seeking this support.

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224. The Court finds that Nicaragua did not adopt the necessary measures to guarantee the enjoyment of the right to be elected of the candidates proposed by YATAMA, who are members of the indigenous and ethnic communities of the Atlantic Coast of Nicaragua, because they were affected by legal and real discrimination, which prevented them from participating, in equal conditions, in the municipal elections of November 2000.

225. The Court considers that the State should adopt all necessary measures to ensure that the members of the indigenous and ethnic communities of the Atlantic Coast of Nicaragua can participate, in equal conditions, in decision-making on matters and policies that affect or could affect their rights and the development of these communities, so that they can incorporate State institutions and bodies and participate directly and proportionately to their population in the conduct of public affairs, and also do this from within their own institutions and according to their values, practices, customs and forms of organization, provided these are compatible with the human rights embodied in the Convention.

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226. The violations of the rights of the candidates proposed by YATAMA are particularly serious because, as mentioned above, there is a close relationship between the right to be elected and the right to vote to elect representatives (supra para. 197). The Court finds it necessary to

observe that the voters were affected as a result of the violation of the right to be elected of the YATAMA candidates. In the instant case, this exclusion meant that the candidates proposed by YATAMA were not included among the options available to the voters, which represented a direct limitation to the exercise of the vote and affected negatively the broadest and freest expression of the will of the electorate, which implies grave consequences for democracy. This harm to the electors constituted non-compliance by the State with the general obligation to guarantee the exercise of the right to vote embodied in Article 1(1) of the Convention.

227. To assess the scope of this harm, it should be recalled that YATAMA contributes to the consolidation and preservation of the cultural identity of the members of the indigenous and ethnic communities of the Atlantic Coast. Its structure and purposes are related to the practices, customs and forms of organization of these communities. Consequently, the exclusion of the participation of the YATAMA candidates particularly affected the members of the indigenous and ethnic communities that were represented by this organization in the municipal elections of November 2000, by placing them in a situation of inequality as regards the options among which they could choose to vote, since those persons who, in principle, deserved their confidence because they had been chosen directly in assemblies (according to the practices and customs of these communities) to represent the interests of their members, had been excluded from participating as candidates. This exclusion resulted in a lack of representation of the needs of the members of the said communities in the regional bodies responsible for adopting policies and programs that could affect their development.

228. This harm to the voters was reflected in the 2000 municipal elections; for example, there was an abstention rate of approximately 80% in the RAAN, due to the fact that part of the electorate did not consider they were adequately represented by the participating parties (supra para. 124(69)) and five political parties requested the Supreme Electoral Council to "[d]eclare the nullity of the elections in the RAAN[… and o]rganize new municipal elections […], with the inclusion of the YATAMA Indigenous Party" (supra para. 124(71)). Also, the expert witness, Carlos Antonio Hurtado Cabrera, emphasized that YATAMA "is the principal indigenous political organization in the country" (supra para. 111).

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229. In view of the above, the Court finds that the State violated Articles 23 and 24 of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the candidates proposed by YATAMA to participate in the municipal elections of November 2000, because it established and applied provisions of Electoral Act No. 331 of 2000, that create an undue restriction to the exercise of the right to be elected and regulates these provisions it in a discriminatory manner. The Court also finds that the State violated Article 23(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of these candidates, because the decisions that excluded them from exercising this right were adopted in violation of the guarantees embodied in Article 8 of the Convention and could not contested by means of a judicial recourse (supra paras. 164, 173 and 176).

XI. REPARATIONS (APPLICATION OF ARTICLE 63(1))

OBLIGATION TO REPAIR

230. This Court has established that it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately. [FN178] In this regard, the Court has based itself on Article 63(1) of the American Convention, which stipulates:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

[FN178] Cf. Case of Caesar, supra note 11, para. 120; Case of Huilca Tecse. Judgment of March 3, 2005. Series C No. 121, para. 86; and Case of the Serrano Cruz Sisters, supra note 10, para. 133.

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231. Article 63(1) of the American Convention reflects a customary norm that constitutes one of the basic principles of contemporary international law on State responsibility. When an unlawful act occurs, which can be attributed to a State, this gives rise immediately to its international responsibility, with the consequent obligation to cause the consequences of the violation to cease and to repair the damage caused. [FN179]

[FN179] Cf. Case of Caesar, supra note 11, para. 121; Case of Huilca Tecse, supra note 178, para. 87; and Case of the Serrano Cruz Sisters, supra note 10, para. 134.

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232. Whenever possible, reparation of the damage caused by the violation of an international obligation requires full restitution (restitutio in integrum), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international Court must determine a series of measures to ensure that, in addition to guaranteeing respect for the violated rights, the consequences of the violations are remedied and compensation paid for the damage caused. [FN180] It is also necessary to add any positive measures the State must adopt to ensure that the harmful acts, such as those that occurred in this case, are not repeated. [FN181] The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, which is regulated by international law. [FN182]

[FN180] Cf. Case of Caesar, supra note 11, para. 122; Case of Huilca Tecse, supra note 178, para. 88; and Case of the Serrano Cruz Sisters, supra note 10, para. 135.

[FN181] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 135; Case of Carpio Nicolle et al., supra note 18, para. 88; and Case of the Plan de Sánchez Massacre. Reparations (Art. 63(1)

American Convention on Human Rights). Judgment of November 19, 2004. Series C No. 116, para. 54.
[FN182] Cf. Case of Caesar, supra note 11, para. 122; Case of Huilca Tecse, supra note 178, para. 88; and Case of the Serrano Cruz Sisters, supra note 10, para. 135.
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233. Reparations consist of measures tending to eliminate the effects of the violations that have been committed. Their nature and amount depend on both the pecuniary and non-pecuniary damage that as been caused. Reparations should not make the victims or their successors either richer or poorer and they should be proportionate to the violations that have been declared in the judgment. [FN183]

[FN183] Cf. Case of Caesar, supra note 11, para. 123; Case of Huilca Tecse, supra note 178, para. 89; and Case of the Serrano Cruz Sisters, supra note 10, para. 136.

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A) BENEFICIARIES

234. Arguments of the Commission

(a) "The candidates for the positions of mayors, deputy mayors and councilors presented by the regional indigenous political party" YATAMA for the municipal elections of November 2000 in the RAAN and the RAAS, are the injured parties;
(b) "The representatives have advised the Court that the final list of victims is the result of consultations with the leaders and members of YATAMA." These consultations "are the most appropriate source for drawing up the final lists, particularly in the RAAS"; and
(c) The list of 59 candidates in the RAAN "results from information certified by the State," which has appropriate probative value. Regarding the two people who were substituted in the RAAS, the injured parties "are in a position to explain why they consider that, although they were substitutes, they are also [alleged] victims."

235. Arguments of the representatives of the victims

(a) The "candidates presented by the YATAMA indigenous organization" who were excluded from the municipal elections of November 5, 2000, have the right to reparation;
(b) The State "has violated the political rights of the indigenous communities of the Atlantic Coast" and, consequently the reparations should include the members of these communities who were prevented from voting for the candidates they had previously selected, and being represented by them;
(c) On several occasions, they requested the Supreme Electoral Council to "provide them with copies of the official lists of candidates." The State "refused to provide the list of candidates presented by YATAMA in the […] RAAS";

(d) The list for the RAAS "includes more than one candidate for each elected office[, because ...] they were unable to obtain the official lists of candidates." "These inconsistencies [...] can be clarified when the State presents the official lists"; and
(e) In cases in which the alleged victims are not individualized and the Court is unable to establish any compensation for them, the Court has established reparations for all the members of the indigenous communities affected by the facts of a case.

236. Arguments of the State

The State argued that "it does not recognize victims or alleged victims" and, with regard to the fact that "it has not provided facilities for knowing exactly who the alleged victims are [and] for obtaining the official lists, [it indicated that,] in Nicaragua, Article 921 of the Code of Civil Procedure establishes the legal procedures [for] obtaining the exhibition of documents or movables."

Considerations of the Court

237. The Court considers that the "injured parties," victims of the violations of the rights embodied in Articles 23, 24 and 25 of the American Convention, all in relation to Articles 1(1) and 2 thereof, and of Article 8(1), in relation to Article 1(1) thereof, are the candidates for the positions of mayors, deputy mayors and municipal councilors proposed by YATAMA for the 2000 municipal elections in the RAAN and the RAAS. These people will be the beneficiaries of the reparations established by the Court.

238. The Court determined the identity of the candidates proposed by YATAMA in the RAAN and the RAAS to participate in the municipal elections of November 2000 in Chapter VIII of this judgment, entitled "Considerations concerning the determination of alleged victims" (supra paras. 125 to 141).

B) PECUNIARY AND NON-PECUNIARY DAMAGE

239. Arguments of the Commission:

(a) With regard to pecuniary damage, it requested the Court to establish "on grounds of equity, an amount determining the compensation that corresponds to the victims for indirect damage and loss of earnings" and, to this end, it should take into consideration "not only the difficulties caused to the victims by being prevented from taking part in the municipal elections of November 2000 on the Atlantic Coast[,] but also the effect on their life projects as political leaders representing their communities, whose possibilities of representing community interests in local government were frustrated";
(b) With regard to non-pecuniary damage, "the type of violations and the impact on the individuals and the community of the State's acts and omissions should be taken into account." The effects on the indigenous communities should be taken into consideration; consequently, the Court should order individual and collective reparations;
(c) The candidates presented by YATAMA to participate in the 2000 municipal elections on the Atlantic Coast were selected by the communities; when they were not allowed to take part in

this process, "they felt discredited n the eyes of their communities";(d) The exclusion of the YATAMA candidates from the municipal elections of November 2000 "also affected the members of the different indigenous people [...] and demoralized the entire society of the Atlantic Coast"; and

(e) The State caused "individual non-pecuniary harm with a collective impact," which the Court should consider in order to "repair it, adapting the payment to the principle of equity." The right of the indigenous electorate to vote and freely elect candidates that represented their communities was violated.

240. Arguments of the representatives of the victims

(a) With regard to indirect damage:

(i) Both the candidates of YATAMA for the elections of November 2000 and the communities incurred expenses required to participate in the elections;

(ii) "The indigenous communities to which the YATAMA candidates belong, not only selected them according to their practices, customs, values and customary law, but also contributed [...] certain goods and services in support of their candidates";

(iii) The calculation of the amount of the expenses incurred by the YATAMA candidates and their communities should take into account the oral tradition of the indigenous people;

(iv) The Court should establish compensation for the expenses incurred during the electoral campaign, on grounds of equity. As an example, an estimate is submitted of the total expenditure incurred by a candidate for mayor (US$46,903.97), a candidate for deputy mayor (US$12,190.80), a candidate for councilor (US$16,057.05) and a candidate for substitute councilor (US$11,491.43);

(v) The Court should establish, on grounds of equity, compensation for the indigenous communities of the RAAN and the RAAS, for the same concept; this amount "should be invested by the State" "in infrastructure or services of a collective interest to the benefit of [these] communities […,] by mutual agreement with them and with the YATAMA indigenous organization"; and

(vi) In their arguments on costs and expenses, they referred to the expenses incurred by YATAMA in the electoral campaign in Puerto Cabezas and Waspam, but they did not request a specific amount for compensation.

(b) The Court should establish, on the grounds of equity, the amounts corresponding to loss of earnings, because the YATAMA candidates had to abandon their employment or suspend their economic activities to devote themselves to the political campaign;

(c) With regard to non-pecuniary damage, they requested the Court to establish, on the grounds of equity, the compensation that the State should pay to the YATAMA candidates for the non-pecuniary damage that their exclusion from politics caused them, and also to the indigenous communities of the Atlantic Coast. The victims suffered family and social dishonor owing to the impossibility of "fulfilling the undertaking they had [made] to their communities." In addition, they have suffered anguish and family problems "because they lost their employment and [...] sacrificed their savings." The Court should take into "account the damage caused to the life project of the candidates and establish an amount for non-pecuniary damage," "because it will be very difficult for them to stand again as candidates in other elections"; and

(d) The Court should order the State "to create a special development fund for the indigenous communities," and they should be consulted constantly about its creation and administration.

241. Arguments of the State:

(a) It rejects the claim to compensate indirect damage and loss of earnings, because it has not violated any of the rights embodied in the American Convention to the detriment of the YATAMA candidates, and it does not acknowledge the obligation to provide compensation;
(b) Each candidate becomes involved in the electoral processes at his own risk. Individuals who aspire to participate in "public life in Nicaragua" are not obliged to abandon their employment. It is "probable that the YATAMA candidates voluntarily interrupted their employment"; and
(c) With regard to non-pecuniary damage, it contested the claim that it had jeopardized the life plans of the candidates, and also "the claim concerning non-pecuniary damage caused to the YATAMA candidates, because it has been shown that they exercised the rights established in the laws in force," and "when a political organization or a person accepts a pre-established legal framework, they may succeed or fail to obtain the desired results."

Considerations of the Court

242. Pecuniary damage generally presumes the loss of or detriment to income, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal relationship with the facts sub judice. [FN184] When applicable, the Court establishes an amount that seeks to compensate the patrimonial consequences of the violations. To decide the claims regarding pecuniary damage, the Court will take into account the body of evidence, its own case law and the arguments of the parties.

[FN184] Cf. Case of Huilca Tecse, supra note 178, para. 93; Case of the Serrano Cruz Sisters, supra note 10, para. 150; and Case of the "Juvenile Reeducation Institute", supra note 135, para. 283.

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243. Non-pecuniary damage can include the suffering and hardship caused to the victims, the harm of objects of value that are very significant to the individual, and also changes, of a non-pecuniary nature, in the living conditions of the victims. Since it is not possible to allocate a precise monetary equivalent to non-pecuniary damage, it can only be compensated by the payment of a sum of money that the Court decides by the reasonable exercise of judicial discretion and based on the principle of equity, and by acts or projects with public recognition or repercussion, such as broadcasting a message that officially condemns the human rights violations in question and makes a commitment to efforts designed to ensure that it does not happen again. Such acts have the effect of acknowledging the dignity of the victims. [FN185] The first aspect of reparation for non-pecuniary damage will be considered in this section and the second in section (C) of this chapter.

[FN185] Cf. Case of Caesar, supra note 11, para. 125; Case of Huilca Tecse, supra note 178, para. 96; and Case of the Serrano Cruz Sisters, supra note 10, para. 156.
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244. The candidates for the positions of mayors, deputy mayors and councilors proposed by YATAMA, and also this organization, incurred various expenses during the electoral campaign before the Supreme Electoral Council decided not to register these candidates. The members of the communities of the Atlantic Coast who selected the candidates in assemblies made material contributions to support their participation. In the instant case, the candidates proposed by YATAMA were excluded from participating in the election by decisions that violated the Convention. Consequently, they merit compensation for non-pecuniary damage for the expenses they incurred; to this end, the Court takes into account the vouchers provided by the representatives, diverse testimonies provided to the Court, and the statement of the expert witness, María Dolores Álvarez Arzate, regarding the oral tradition of the indigenous communities.

245. The Court will not establish compensation for loss of earnings, with regard to non-attendance to economic or work activities, since they do not have a causal relationship with the violations declared in the judgment.

246. With regard to the non-pecuniary damage caused to the candidates, the Court must bear in mind that being proposed as a candidate to participate in an electoral process has particular importance and is a great honor among the members of the indigenous and ethnic communities of the Atlantic Coast. Those who accept a candidacy must demonstrate capacity, honesty, and commitment to the defense of the needs of the communities, and assume the significant responsibility of representing their interests. The witness, John Alex Delio Bans, stated that the candidates felt discriminated against, because they could not exercise their right to be elected. The witness, Anicia Matamoros de Marly, stated that she "felt demoralize[d and as if all their lives [they had been excluded[, ...] and that they were being excluded again"; the communities "almost blamed their leaders, [because they thought] that they had made a pact." The witness. Eklan James Molina, and the expert witness, María Dolores Álvarez Arzate, made similar statements.

247. The Court considers these special circumstances when assessing the frustration that the candidates felt at finding themselves unduly excluded from participating in the elections and representing their communities. This feeling was accentuated by the fact that the Supreme Electoral Council did not provide any justification to explain why the candidates proposed by YATAMA could not be registered. This meant that the communities did not understand the reasons for the exclusion of their candidates. The latter felt powerless to give an explanation to their communities and considered that the exclusion was the result of their condition as members of indigenous communities.

248. In view of the foregoing, the Court establishes, based on the principle of equity, the amount of US$80,000.00 (eighty thousand United States dollars) or the equivalent in Nicaraguan currency, as compensation for the said pecuniary and non-pecuniary damage, to be delivered to YATAMA, which should distribute it as appropriate.

C) OTHER FORMS OF REPARATION (MEASURES OF SATISFACTION AND GUARANTEES OF NON-REPETITION)

249. Arguments of the Commission

It requested the Court to order the State:

(a) To publicly acknowledge the candidates for the positions of mayors, deputy mayors and councilors presented by the regional indigenous political party YATAMA for the municipal elections of November 5, 2000, in the RAAN and the RAAS, in a symbolic act, previously agreed with the victims and their representatives;
(b) To adopt in its domestic legislation all necessary measures to create an effective and simple recourse to contest the resolutions of the Supreme Electoral Council, without any restrictions concerning the matter appealed against;
(c) To adopt the legislative, administrative and any other type of measure necessary to guarantee the participation of the indigenous people of the Atlantic Coast of Nicaragua in the electoral processes, according to their customary law, values, practices and customs; and
(d) To adopt the necessary measures to avoid a recurrence of similar facts in the future.

250. Arguments of the representatives of the victims

They requested the Court to order the State:

(a) To acknowledge publicly its responsibility for the violations committed; this should be done orally, translated into Miskito, Sumo, Rama and English and published and distributed among the indigenous communities of the Atlantic Coast;
(b) To buy time on a radio station to acknowledge publicly the human rights violations committed, to make an undertaking to avoid their repetition and to read "the facts and the concluding part of the judgment delivered by the Court," an also "to establish a fund so that the communities can disseminate the content of this communication in the different languages […] by radio";
(c) To publish the judgment of the Court in the two newspapers with the most widespread circulation in the country, and in Nicaragua's official gazette;
(d) To modify the requirements for participating in the elections so as to ensure that the indigenous communities can accede to public office through their representatives, selected according to their customary law, practices, values and customs;
(e) To modify its domestic laws so that organizations can present candidates in the regions in which they are established;
(f) To adopt legislative measures that "ensure the representation of the indigenous communities in the different power structures," in consultation with these communities and respecting their forms of organization. The State should establish electoral districts that take into account the indigenous territories and establish an "ethnic quota" in favor of the indigenous people in the Legislative Assembly;
(g) To adopt affirmative measures in order to promote and guarantee the political participation of the indigenous people, after consulting with them;

(h) To enact measures that allow the resolutions of the Supreme Electoral Council to be appealed before a judicial body, whether or not they concern electoral matters; and
(i) To create "by law, a Secretariat for Indigenous Affairs, which should be responsible for meeting the needs of this sector of the population; the head of the Secretariat should be selected in consultation with the communities."

251. Arguments of the State:

(a) It was opposed to guarantees of non-repetition being ordered, because "while the Constitution and the Electoral Act are in force, the electoral processes must be adapted to these laws";
(b) It does not accept the claim that "special measures of protection" should be adopted in favor of the indigenous people organized in YATAMA so that they can participate in the municipal elections according to their practices and customs; and
(c) The Electoral Act, "as other laws[,] needs to be reformed." The State is in "the process of modifying and improving the laws," and it is possible that it can "find a way, in keeping with the recommendations of international organizations" "to make the law more flexible," to ensure "that participation is more effective, particularly in the case of the regions that are far away from the capital."

Considerations of the Court

a) Publication of the judgment

252. As it has on other occasions, [FN186] the Court orders that the State should publish in the official gazette and in another newspaper with widespread national circulation, at least once, Chapter VII (Proven Facts), paragraphs 153, 154, 157 to 160, 162, 164, 173, 175, 176, 212, 218, 219, 221, 223, 224, 226 and 227, which correspond to Chapters IX and X on the violations declared by the Court, and the operative paragraphs of this judgment. The publication should include the titles of the said chapters. The entire judgment should be published on the State's official web site. These publications should be made within one year of notification of this judgment.

[FN186] Cf. Case of Huilca Tecse, supra note 178, para. 112; Case of the Serrano Cruz Sisters, supra note 10, para. 195; and Case of Lori Berenson Mejía, supra note 11, para. 240.
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253. The Court takes into account that "the communities use community radio as a means of information"; it therefore considers it necessary for the State to publicize, on a radio station with broad coverage on the Atlantic Coast, paragraphs 124(11), 124(20), 124(28), 124(31), 124(32), 124(39), 124(40), 124(46), 124(51), 124(62), 124(68), 124(70) and 124(71) of Chapter VII (Proven Facts); paragraphs 153, 154, 157 to 160, 162, 164, 173, 175, 176, 212, 218, 219, 221, 223, 224, 226 and 227 which correspond to Chapters IX and X on the violations declared by the Court, and the operative paragraphs of this judgment. This should be done in Spanish, Miskito, Sumo, Rama and English. The radio broadcast should be made on at least four occasions with an

interval of two weeks between each broadcast. To this end, the State has one year from notification of this judgment.

b) Adoption of legislative measures to establish a simple, prompt and effective recourse against the decisions of the Supreme Electoral Council

254. Taking into account the declaration in this judgment concerning the violation of Article 25(1) of the Convention, in relation to Articles 1(1) and 2 thereof, the State must adopt, within a reasonable time, the necessary legislative measures to establish a simple, prompt and effective judicial recourse that allow the decisions of the Supreme Electoral Council, which affect human rights, such as political rights, to be contested, respecting the corresponding treaty-based and legal guarantees, and must derogate the norms that prevent the filing of this recourse.

255. This recourse must be simple and prompt, bearing in mind the need for a prompt decision within the electoral calendar (supra paras. 150 and 175).

c) Reforms to Electoral Act No. 331 of 2000, and other measures

256. The Court notes the State's acknowledgement during the public hearing of the need to reform Electoral Act No. 331 of 2000, and its willingness to receive assistance to this end (supra para. 210). This attitude could constitute a positive element for compliance with the obligations established in this judgment.

257. With regard to the State's allegations that the reform "would require finding 60% of the votes," that elections would be held in November 2006 and that, since "an electoral process [was underway,] it was difficult to change the rules of the game," the Court recalls that States may not invoke provisions of domestic law to justify non-compliance with international obligations. [FN187]

[FN187] Cf. Case of Caesar, supra note 11, para. 133; Case of Ricardo Canese, supra note 5, para. 148; Case of Baena Ricardo et al. Competence, supra note 5, para. 61; and Juridical Condition and Rights of the Undocumented Migrants, supra note 150, para. 165.

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258. To comply with the requirements of the principle of legality in this matter (supra para. 212), the State must reform Electoral Act No. 331 of 2000, so that it regulates clearly the consequences of non-compliance with the requirements for electoral participation, the procedures that the Supreme Electoral Council should observe when determining such non-compliance, and the reasoned decisions that this Council should adopt in this regard, as well as the rights of those whose participation is affected by a decision of the State.

259. The State must reform the regulation of the requirements established in Electoral Act No. 331 of 2000 that, it has been declared, violate the Convention (supra paras. 214, 218 to 221 and 223) and adopt, within a reasonable time, the necessary measures to ensure that the members of the indigenous and ethnic communities may participate in the electoral processes effectively and

taking into account their traditions, practices and customs, within the framework of a democratic society. The requirements established should permit and encourage the members of these communities to have adequate representation that allows them to intervene in decision-making processes on national issues that concern society as a whole, and on specific matters that pertain to these communities; therefore, these requirements should not constitute barriers for such political participation.

260. Finally, the Court finds that this judgment constitutes, per se, a form of reparation. [FN188]

[FN188] Cf. Case of Caesar, supra note 11, para. 126; Case of Huilca Tecse, supra note 178, para. 97; and Case of the Serrano Cruz Sisters, supra note 10, paras. 157 and 201.

D) COSTS AND EXPENSES

261. Arguments of the Commission

The Commission requested the Court to order the State "to pay the costs arising at the domestic level from processing the legal actions filed by the victims or their representatives before the domestic system of justice, as well as those arising at the international level from processing the case before the Commission, and those deriving from processing the [...] application before the Court," and it corresponded "to the Court to prudently assess [their] scope."

262. Arguments of the representatives of the victims

They requested the Court to order the State to reimburse:

a) "To each candidate excluded from the municipal elections, all the expenses incurred during the consultation process with their community";
b) US$61,222.04 (sixty-one thousands two hundred and twenty-two United States dollars and four cents) in favor of YATAMA, [FN189] for the expenses it incurred at the domestic and international level, from filing "the administrative recourses before [the Supreme Electoral Council] and judicial recourses before the Court of Appeal and the Supreme Court of Justice," and also as a result of the different meetings that it has had to carry out in the RAAN and the RAAS, in order to "assemble all its candidates and plan the best strategies for litigating the case at the domestic and the international level [and] to explain the corresponding progress to them." YATAMA also incurred expenses related to "the preparation of the affidavits and the powers of attorney presented [to the] Court," as well as to "the transportation and accommodation of some of those presented as witnesses during the hearing" before the Court;
c) US$13,137.99 (thirteen thousand one hundred and thirty-seven United States dollars and ninety-nine cents) in favor of CENIDH [FN190] for the expenses incurred in the international proceedings; and

d) US$34,178.91 (thirty-four thousand one hundred and seventy-eight United States dollars and ninety-one cents) in favor of CEJIL [FN191] for the expenses incurred in the international proceedings.

[FN189] The description of the costs and expenses which YATAMA incurred and the receipts and documents presented to support these expenses are in: file of preliminary objections, merits and reparations, tome I, folio 200; file of appendixes to the brief with requests and arguments, appendix 16, folios 1108 to 1153; and appendixes to the final written arguments of the representatives, appendix 4, file of preliminary objections, merits and reparations, tome V, folios 1647 a 1650.

[FN190] The description of the costs and expenses which CENIDH incurred and the receipts and documents presented to support these expenses are in: file of preliminary objections, merits and reparations, tome I, folio 201; file of appendixes to the brief with requests and arguments, appendix 17, folios 1154 to 1167; and appendixes to the final written arguments of the representatives, appendix 5, file of preliminary objections, merits and reparations, tome V, folios 1651 to 1669.

[FN191] The description of the costs and expenses which CEJIL incurred and the receipts and documents presented to support these expenses are in: file of preliminary objections, merits and reparations, tome I, folio 201 and 202; file of appendixes to the brief with requests and arguments, appendix 14, folios 998 to 1042; and appendixes to the final written arguments of the representatives, appendix 6, file of preliminary objections, merits and reparations, tome V, folios 1670 to 1686.

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263. Arguments of the State

The State objected to the payment of costs and expenses to YATAMA and its representatives, because “the application is without legal grounds.”

Considerations of the Court

264. The Court has established that costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American Convention. [FN192] The Court must prudently assess their scope, which includes the expenses incurred in both the domestic and the inter-American jurisdiction, taking into account the authentication of the expenses incurred, the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity. [FN193]

[FN192] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 205; Case of Carpio Nicolle et al., supra note 18, para. 143; and Case of the Plan de Sánchez Massacre. Reparations, supra note 181, para. 115.

[FN193] Cf. Case of the Serrano Cruz Sisters, supra note 10, para. 205; Case of Lori Berenson Mejía, supra note 11, para. 242; and Case of Carpio Nicolle et al., supra note 18, para. 143.

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265. YATAMA incurred expenses directly owing to the measures it took in representation of the victims at the domestic level and incurred some expenses in the proceedings before the inter-American system for the protection of human rights. Also, CENIDH and CEJIL incurred expenses when representing the alleged victims in the international proceeding. Consequently the Court deems in equitable to order the State to reimburse the amount of US$15,000.00 (fifteen thousand United States dollars) or the equivalent in Nicaraguan currency to YATAMA for costs and expenses; YATAMA shall deliver to CENIDH and CEJIL the part that corresponds to them to compensate their expenses.

E) METHOD OF COMPLIANCE

266. The State shall pay the compensation for pecuniary and non-pecuniary damage (supra para. 248), and the reimbursement of costs and expenses (supra para. 265) and shall adopt the publicity measures ordered by the Court (supra paras. 252 and 253) within one year of notification of this judgment.

267. Nicaragua shall implement the measures of reparation relating to the creation of a simple, prompt and effective judicial recourse against the decisions of the Supreme Electoral Council (supra paras. 254 and 255), the reform of Electoral Act No. 331 of 2000 (supra paras. 258 and 259), and the adoption of the necessary measures to guarantee the political rights of the members of the indigenous and ethnic communities of the Atlantic Coast (supra para. 259) within a reasonable time.

268. The State shall comply with its pecuniary obligations by payment in United States dollars or the equivalent in Nicaraguan currency, using the exchange rate in force on the New York, United States of America, market the day before the payment to make the calculation.

269. The payment of the compensation for pecuniary and non-pecuniary damage established in this judgment shall be delivered to YATAMA, which shall distribute it as appropriate (supra para. 248).

270. The payment corresponding to the reimbursement of the costs arising from the measures taken by YATAMA, CENIDH and CEJIL in the domestic proceeding and before the inter-American system for the protection of human rights shall be made in favor of YATAMA, as established in paragraph 265 of this judgment.

271. The amounts allocated in this judgment under the headings of compensation for pecuniary and non-pecuniary damage and for the reimbursement of costs and expenses may not be affected or conditioned by current or future taxes or charges. Consequently, they shall be delivered to YATAMA integrally, as established in this judgment.

272. If, for reasons attributable to YATAMA, it is unable to receive these amounts within the period of one year, the State shall deposit the amounts in favor of this organization in an account or a deposit certificate in a solvent Nicaraguan banking institute, in United States dollars or the equivalent in Nicaraguan currency, and in the most favorable financial conditions permitted by

law and banking practice in Nicaragua. If, after 10 years, the compensation has not been claimed, the amount shall revert to the State with the accrued interest.

273. If the State falls into arrears, it shall pay interest on the amount owed, corresponding to banking interest on arrears in Nicaragua.

274. In accordance with its consistent practice, the Court reserves the right, inherent in its attributes and also deriving from Article 65 of the American Convention, to monitor compliance with all the terms of this judgment. The case will be closed when the State has fully complied with the terms of this judgment. Within one year from notification of the judgment, Nicaragua shall provide the Court with a report on the measures adopted to comply with the judgment.

XII. OPERATIVE PARAGRAPHS

275. Therefore,

THE COURT,

DECIDES,

Unanimously, that

1. It rejects the five preliminary objections filed by the State, in accordance with paragraphs 63 to 67, 71 to 73, 82 to 96 and 100 to 103 of this judgment.

DECLARES:

By seven votes to one, that

2. The State violated the judicial guarantees embodied in Article 8(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the candidates proposed by YATAMA to participate in the 2000 municipal elections, in the terms of paragraphs 147 to 164 of this judgment.

Judge ad hoc Montiel Argüello dissenting.

3. The State violated the right to judicial protection embodied in Article 25(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 thereof, to the detriment of the candidates proposed by YATAMA to participate in the 2000 municipal elections, in the terms of paragraphs 165 to 176 of this judgment.

Judge ad hoc Montiel Argüello dissenting.

4. The State violated the political rights and the right to equality before the law embodied in Articles 23 and 24 of the American Convention on Human Rights, in relation to Articles 1(1) and

2 thereof, to the detriment of the candidates proposed by YATAMA to participate in the 2000 municipal elections, in the terms of paragraphs 201 to 229 of this judgment.

Judge ad hoc Montiel Argüello dissenting.

5. This judgment constitutes per se a form of reparation, in the terms of paragraph 260 thereof.

Judge ad hoc Montiel Argüello dissenting.

AND ORDERS:

By seven votes to one, that:

6. The State shall publish, within one year, in the official gazette and in another newspaper with widespread national circulation, at least once, Chapter VII (Proven Facts), paragraphs 153, 154, 157 to 160, 162, 164, 173, 175, 176, 212, 218, 219, 221, 223, 224, 226 and 227, which correspond to Chapters IX and X on the violations declared by the Court, and the operative paragraphs of this judgment, in the terms of paragraph 252 thereof.

Judge ad hoc Montiel Argüello dissenting.

7. The State shall publish the entire judgment on the State's official web site, within one year, in the terms of paragraph 252 thereof.

Judge ad hoc Montiel Argüello dissenting.

8. The State shall publicize, using a radio station with widespread coverage on the Atlantic Coast, within one year, paragraphs 124(11), 124(20), 124(28), 124(31), 124(32), 124(39), 124(40), 124(46), 124(51), 124(62), 124(68, 124(70) and 124(71) of Chapter VII (Proven Facts), paragraphs 153, 154, 157 to 160, 162, 164, 173, 175, 176, 212, 218, 219, 221, 223, 224, 226 and 227, which correspond to Chapters IX and X on the violations declared by the Court, and the operative paragraphs of this judgment, in Spanish, Miskito, Sumo, Rama and English, on at least four occasions, with an interval of two weeks between each broadcast, in the terms of paragraph 253 of this judgment.

Judge ad hoc Montiel Argüello dissenting.

9. The State shall adopt, within a reasonable time, the necessary legislative measures to establish a simple, prompt and effective recourse to contest the decisions of the Supreme Electoral Council that affect human rights, such as the right to participate in government, respecting the corresponding treaty-based and legal guarantees, and derogate the norms that prevent the filing of this recourse, in the terms of paragraphs 254 and 255 of this judgment.

Judge ad hoc Montiel Argüello dissenting.

10. The State shall reform Electoral Act No. 331 of 2000, so that it regulates clearly the consequences of failure to comply with the requirements for electoral participation, the procedures that the Supreme Electoral Council should observe when determining such non-compliance, and the reasoned decisions that this Council should adopt in this regard, as well as the rights of the persons whose participation is affected by a decision of the State, in the terms of paragraph 258 of this judgment.

Judge ad hoc Montiel Argüello dissenting.

11. The State shall reform the regulation of the requirements established in Electoral Act No. 331 of 2000 that, it has been declared, violate the American Convention on Human Rights and adopt, within a reasonable time, the necessary measures to ensure that the members of the indigenous and ethnic communities may participate in the electoral processes effectively and according to their traditions, practices and customs, in the terms of paragraph 259 of this judgment.

Judge ad hoc Montiel Argüello dissenting.

12. The State shall pay the amount established in paragraph 248 of this judgment in compensation for the pecuniary and non-pecuniary damage, and this shall be delivered to YATAMA, which shall distribute it as appropriate.

Judge ad hoc Montiel Argüello dissenting.

13. The State shall pay to YATAMA the amount established in paragraph 265 of this judgment for costs and expenses arising in the domestic sphere and in the international proceedings before the inter-American system for the protection of human rights, and YATAMA shall deliver to CENIDH and CEJIL the appropriate part to compensate the expenses they incurred.

Judge ad hoc Montiel Argüello dissenting.

14. The State shall make the payments for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses within one year from notification of this judgment, in the terms of paragraphs 266 and 268 to 273 hereof.

Judge ad hoc Montiel Argüello dissenting.

15. It shall monitor full compliance with this judgment and shall close this case when the State has complied fully with its terms. Within one year from notification of the judgment, the State shall provide the Court with a report on the measures adopted to comply with it, in the terms of paragraph 274 of this judgment.

Judge ad hoc Montiel Argüello dissenting.

Judge ad hoc Montiel Argüello informed the Court of his dissenting opinion concerning the second to fifteenth operative paragraphs. Judges García Ramírez, Jackman, Cançado Trindade and García-Sayán informed the Court of their separate opinions. These opinions accompany this judgment.

Sergio García Ramírez
President

Alirio Abreu Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina Quiroga
Manuel E. Ventura Robles
Diego García-Sayán

Alejandro Montiel Argüello
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

So ordered,

Sergio García Ramírez
President

Pablo Saavedra Alessandri
Secretary

DISSENTING OPINION OF JUDGE AD HOC ALEJANDRO MONTIEL ARGÜELLO

1. Under Nicaraguan legislation, the Electoral Power, independent of the three traditional branches of government, is responsible for the organization, administration and supervision of elections. The highest body of the Electoral Power is the Supreme Electoral Council, which has jurisdictional and administrative functions. It is evident that the registration of candidates to participate in the elections was an electoral jurisdictional function that required a decision on whether a party or alliance of parties presenting a request was legally authorized to present it, whether the request complied with the legal requirements, and whether the candidates fulfilled the necessary conditions.

2. In this case, the Supreme Electoral Council exercised its functions by denying the registration of the candidates presented by YATAMA for mayors, deputy mayors and municipal councilors in the Autonomous Regions of the Atlantic Coast for the elections held in 2000. The resolution issued by the Supreme Electoral Council constituted the culmination of a process to determine whether YATAMA had the right to present candidates and, concerning this process, no specific violation has been alleged of the judicial guarantees contained in Article 8(2) of the

Convention, which, using a broad interpretation, has been applied to many types of proceedings and not merely to criminal proceedings.

3. Regarding Article 23 (Right to Participate in Government) of the American Convention on Human Rights it has been alleged that it has been violated because the YATAMA candidates were prevented from participating in the elections. It has also been alleged that Article 24 (Right to Equal Protection) has been violated, because the YATAMA candidates were required to comply with the same conditions as non-indigenous candidates, and that Article 25 (Judicial Protection) has been violated, because a recourse to protect participation in the elections had not been provided for.

4. It should be noted that Article 23(2) grants the States the right to regulate the exercise of political rights exclusively on the basis of age and some other conditions. Regulations for other reasons are contrary to the Convention and constitute violations of rights. Nevertheless, the regulations that are permitted, even though only with restrictions, refer to the individual, because this provision cannot be interpreted in the sense that all other regulations, even though they do not refer to the individual, violate human rights, since it is evident that in order to hold elections, it is necessary to regulate the parties that can participate in them, the nomination of the candidates of these parties, and many other issues. It is on the basis of these regulations that elections can be held in an orderly manner and be representative of the people's will, and it was in application of these permitted regulations that the Supreme Electoral Council denied the registration of the YATAMA candidates.

5. With regard to Article 24, it was precisely in application of the principle of equality that the indigenous candidates were required to fulfill the same conditions as the non-indigenous candidates. With the exception of very special cases, a State cannot have different laws for each of the races that compose it for the election of authorities who exercise their functions in territories inhabited by different races, such as the municipalities of the Autonomous Regions.

6. In relation to Article 25, it should be noted that, in its Advisory Opinion OC-9/87 ("Judicial Guarantees in States of Emergency," para. 27), the Court stated that: "in the Spanish text of the Convention, the title of this provision (Article 8(1) of the Convention), whose interpretation has been specifically requested, is "Judicial Guarantees." [FN1] This title may lead to confusion because, strictly speaking, the provision does not recognize any judicial guarantees. Article 8 does not contain a specific judicial remedy, but rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees under the Convention."

Article 25 of the Convention is entitled "Judicial Protection" and establishes the right to a simple and prompt recourse before a competent court or tribunal and, later describes the State's undertaking "to develop the possibility of judicial remedy."

These two provisions have been interpreted as if they established the remedy of amparo as obligatory in all cases, but this is not so.

[FN1] “Right to a Fair Trial" in the English text

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7. Nicaraguan electoral legislation establishes a series of remedies against lesser electoral officials, which, in some cases, can reach the Supreme Electoral Council, but it expressly excludes the remedy of amparo in relation to electoral issues, as do the laws of many other countries. Also, many other countries, like Nicaragua, exclude judicial decisions from the remedy of amparo because they consider that ordinary recourses are sufficient to guarantee human rights. In the instant case, when the Supreme Electoral Council ruled on YATAMA’s request for the registration of its candidates, it was not exercising a simple administrative function, but was acting as a judicial tribunal on electoral matters and, consequently, the remedy of amparo which YATAMA applied for before officials of the Judiciary was inadmissible against this decision. As the grounds for this legal provision, it should be recalled that the high level of partisan politicization that exists in many countries makes it preferable not to politicize the Judiciary; and this would inevitably happen if it was entrusted with electoral matters. Thus, both because this was a jurisdictional decision and because it dealt with an electoral issue, the remedy of amparo was inadmissible.

8. Since this case refers to permitted regulations, it is outside the Court’s competence to examine the Supreme Electoral Council’s resolution to determine whether it was issued in correct application of the Nicaraguan electoral laws. This would be equivalent to converting the Court into a higher court of appeal than all the national courts, distancing it from its functions of interpretation and application of the provisions of the Convention. Moreover, the Court cannot consider Nicaraguan laws in the absence of any evidence that they are contrary to human rights and bearing in mind that, under the same laws, YATAMA took part in the 2004 local elections without any problem.

9. To conclude I would like to put on record the reasons for my dissent on the points relating to the publication of this judgment, the reform of the law, and the adoption of other measures, because, as I said in paragraph 14 of my opinion in the Serrano Cruz Sisters v. El Salvador, judgment of March 1, 2005, Article 63 of the Convention does not entrust the Court with promoting human rights and the points cited constitute promotion rather than reparation for the victims.

10. The contents of the preceding paragraph should not be interpreted to mean that I consider that Nicaraguan laws are perfect as regards the treatment of the indigenous peoples who inhabit the Atlantic Coast. The Government of Nicaragua, respectful of the rights of the indigenous communities, is aware of the defects. Consequently, the 1995 constitutional reform defined the autonomy regime for the ethnic communities and, in 1987, the Statute of Autonomy of the Atlantic Coast Regions was enacted (Act No. 28) while, in 2003, the Act concerning the Communal Property of the Indigenous Communities and Ethnic Communities of the Autonomous Regions of the Atlantic Coast was promulgated (Act No. 445). Moreover, it has created an office of the Special Adviser on Atlantic Coast Affairs within the Presidency of the Republic, and the position is currently filled by one of the persons who testified during the oral stage of this case.

11. I have dissented from the operative paragraphs on pecuniary and non-pecuniary damage and reimbursement of expenses in favor of YATAMA and its candidates, because they are not justified in the absence of human right violations. Furthermore, even if a violation had occurred, this judgment constitutes sufficient reparation, bearing in mind that the only expectation of the claimants was to take part in the elections and that occupying public office, particularly the positions disputed in these elections, constitutes a civic duty and an honor, and should not be considered a source of income. In addition, it is important to point out that YATAMA participated fully in the 2004 elections for local authorities. In numerous cases, the European Court of Human Rights has decided that its declaration that the State has violated human rights constitutes sufficient reparation and the instant case merits the application of this case law, taking its circumstances into account.

Alejandro Montiel Argüello
Judge ad hoc

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE SERGIO GARCIA-RAMIREZ TO THE JUDGMENT IN YATAMA v. NICARAGUA OF JUNE 23, 2005

A) Categories of violations. Individuals and members of groups or communities

1. The Inter-American Court has heard cases concerning isolated violations committed against individuals, which may be reduced to one specific case or reveal a pattern of behavior and suggest measures designed to avoid renewed violations of a similar kind against many people. The Court has also heard cases of violations that affect numerous members of a human group and reflect attitudes or situations with a general scope and even deep historical roots.

2. This second category of issues leads to reflections, based on a specific case and certain individualized victims, on the situation of the members of this group and even the group itself, without in any way exceeding the jurisdictional attributes of the Inter-American Court, since each decision refers to a concrete presumption and decides on it, even though it may lead to reflections and criteria that could be useful for examining other similar situations. If these are posed before the same jurisdiction, they would be examined individually, but case law elaborated on other occasions would contribute to this examination.

3. Furthermore, the idea that case law, which is rationally developed, pondered and reiterated – until it constitutes "consistent case law" – can be extended to situations with the same conditions de facto and de jure that have determined it, is entirely consequent with the work of an international treaty-based tribunal, such as the Inter-American Court of Human Rights, which is called on to apply the American Convention on Human Rights and other multilateral instruments that grant it material jurisdiction.

4. The regional human rights tribunal is not another instance for the review of resolutions of judicial bodies, but a unique international instance, created to define the scope of the human

rights contained in the American Convention, by applying and interpreting it. The Convention itself has established this, and the Court has understood it likewise, and this is recognized with increasing uniformity and emphasis, by the highest courts of the countries of the Americas, whose acceptance of the Inter-American Court's case law is one of the most recent, valuable and encouraging characteristics of the development of the jurisdictional protection of human rights throughout the continent.

5. The Court's deliberations are described in all the cases submitted to its consideration, and also in the advisory opinions it issues. They have acquired their greatest importance in cases concerning members of minority groups – generally, indigenous and ethnic communities – present in different national societies, when examining factors relating to elimination, exclusion, marginalization or "containment." These are expressions or elements of the violation of rights exercised with different levels of intensity. They follow the same line of conduct and reveal different moments of the historical processes of which they form part. They possess specific characteristics and imply a violation or an imminent risk of violation of the principles of equality and non-discrimination, in different areas of social life. They translate into the violation of numerous rights.

6. When examining these cases, the Court has always recalled the objective scope of its jurisdiction in light of Article 1(2) of the American Convention on Human Rights, which clarifies the connotation that this international instrument gives to the concept of "person": the human being, the individual, as the possessor of rights and freedoms. The Court cannot go beyond the frontier established by the Convention that defines its jurisdiction. But, neither can it abstain from the thorough examination of the issues submitted to it, to define their real characteristics, origins implications, consequences, etc., in order to understand the nature of the violations committed, when applicable, and come to an appropriate decision on possible reparations.

7. Consequently, in several decisions – particularly in relation to members of indigenous or ethnic groups – the Court has considered the rights of the individuals, who are members of the communities or groups, within their necessary, characteristic, physical framework: the collective rights of the communities to which they belong: their culture, which endows them with a "cultural identity," to which they have a right and which influences their individuality and personal and social development, and their customs and practices, which coalesce to integrate a point of reference required by the Court in order to understand and decide the cases submitted to it. It would be useless and lead to erroneous conclusions to extract the individual cases from the context in which they occur. Examining them in their own circumstances – in the broadest meaning of the expression: actual and historical – not only contributes factual information to understand the events, but also legal information through the cultural references – to establish their juridical nature and the corresponding implications.

8. The Court has also had to examine certain issues relating to other large human groups, also exposed to violations or victims of violations, even when the elements of their social identification are different from those that exist in the contentious cases that I referred to in the previous paragraphs. It has done this, especially in recent years, in various advisory opinions that have helped clarify the scope of the human rights of people exposed to rejection, abuse or

marginalization; for example, foreign detainees, in the terms of Advisory Opinion OC-16; children who commit offences or are subject to measures of public protection, Advisory Opinion OC-17, and migrant workers, especially if they are undocumented, in Advisory Opinion OC-18. I have added separate opinions to these three opinions. I refer to what I said in them.

9. The Inter-American Court has also examined pending issues relating to groups of people with professional or occupational connections or the same interests. In these cases, it has been necessary to order provisional measures in the terms of Article 63(2) of the Convention, in order to preserve rights and maintain unharmed the juridical prerogatives they protect. In these cases, the Court has gone further, an advance explained and justified taking into account the inherent characteristics of the cases submitted and the very nature of provisional measures. Indeed, the Court has ruled on immediate precautionary protection in relation to many unidentified persons, whose rights were in grave danger. These are not measures for a group, a corporation, an association, a people, but rather for each member: physical persons, possessors of the endangered rights.

10. This new scope of international protection, produced by the evolution of inter-American case law – which could advance even further to the extent allowed by the reasonable interpretation of the Convention – occurred following the order on provisional measures in the Case of the Peace Community of San José de Apartadó, as can be seen in the joint separate opinion issued by Judge Alirio Abreu Burelli and I, five years' ago, adopting a criterion on which I have insisted in other separate opinions relating to provisional measures that have followed the precedent established in that case.

B) Indigenous communities

11. During its sixty-seventh regular session (June 13 to 30, 2005), the Inter-American Court deliberated and delivered judgment on several cases in which the considerations that I am setting out in this opinion attached to the judgment in YATAMA v. Nicaragua are applicable. Evidently, I refer to the latter, and the final rulings in the Moiwana Community v. Suriname and in the Indigenous Community Yakye Axa v. Paraguay; also, to some extent, the order for provisional measures in the Matter of the Pueblo Indigena de Sarayaku, concerning Ecuador.

12. These three contentious cases, which have culminated in judgments on merits and reparations, examine points related to issues that involve the members of indigenous and ethnic communities, as such – not for strictly personal or individual motives – and which have their origin or development in the relationship that these communities have historically kept and still maintain with other sectors of society and, evidently, with the State itself, a relationship that affects the members of these groups and has an impact on their human rights. Obviously, this does not refer to isolated issues or issues exclusive to the States or national societies within which the conflicts examined in these cases have arisen, although the judgments refer – as is natural – exclusively to these conflicts and do not attempt – nor could they attempt – to affect other current or potential cases.

13. For anyone who studies these issues – and, in any case, for the author of this opinion – it is interesting to observe that, in other parts of the American continent, problems such as those

examined herein have also arisen, and they have been brought to the attention of the Court with increasing frequency and have produced certain developments in its case law. These developments, which are binding in the sphere of each judgment, could be of interest in a broader sphere – as I have mentioned above – bearing in mind the great similarity and even sameness of the juridical, social and cultural conditions – historical and actual – that are found at the origin of the disputes observed in very diverse national territories.

14. Some significant precedents should be recalled, as a useful reference for the identification of certain categories of cases and the definition of the general profile of our case law. The list begins, probably, with the Case of Aloeboetoe, one of the oldest in the case history of the Inter-American Court, in which issues associated with the victims' membership in a specific minority group were presented. Likewise, the case of the Mayagna (Sumo) Awas Tingni Community of Nicaragua should be stressed; this has special relevance since it engendered a wide-reaching examination of the rights of the members of indigenous communities in an American country. I also attached a separate opinion to that judgment in which I referred extensively to these issues.

15. Evidently, there have been other cases in which issues of membership in indigenous communities and cultures has been relevant; they reveal the right to identity and the different implication that this can and does have under the American Convention. All this invites us to consider that we are not looking at occasional, isolated cases, circumscribed to a single area, or to ordinary disputes that must be examined and resolved on the basis of abstract, uniform formulas, which disregard the history and inherent legal system of the parties concerned, a legal system that helps to establish the scope – here and now, at a precise place and time, and not outside them – of the juridical concepts that underlie the American Convention.

C) Elimination. Case of the Moiwana Community

16. In the Case of the Moiwana Community, the Court did not examine the massacre that occurred on November 29, 1986, because this related to facts prior to the date on which the Inter-American Court could exercise its jurisdiction, ratione temporis. Rather, it examined violations that had continued since that date – namely, continuing or permanent violations, a concept that case law has defined in other cases, particularly in relation to the presumption of enforced disappearance – or more recent violations of the American Convention, over which it evidently has jurisdiction. It is not excessive to observe – because it is a historical fact – that if we need to seek a starting point for the tribulations of the members of the Moiwana community, we would not find this in the date of the massacre, but at the time when their ancestors were forced to leave their African lands and were brought to America as slaves, an episode that constitutes one of the darkest pages in the history of humanity.

17. In this case - even though the Court did not issue a declaration or condemnation in this respect, owing to the lack of jurisdiction ratione temporis that I referred to above – the most severe public action that could be produced against the members of a community occurred: their physical elimination. This led to the dispersion of the survivors, but not to the loss of the members' rights, or to the alteration of the characteristics of these rights, or to the disappearance of the State's obligation to respect and ensure such rights (that remain in force), precisely in the terms imposed by their nature.

18. All this is contained in the Court's judgment, which emphasizes: (a) the ownership of rights to the territory traditionally occupied, regardless of the lack of documentation authenticating this, considering that the documentary formality is not an element that constitutes ownership in these cases, nor the only evidence of the ownership of rights and not even an appropriate means of authenticating them; (b) the nature sui generis of the relationship that the members of the community, within its framework, have to the territory they own, a relationship that must be considered and that influences another of the state's obligation (which has, of course, its own justification): the obligation of criminal justice, inasmuch as the exercise of the latter permits the "purification" of the territory, which, in turn, encourages the return of the inhabitants, and (c) the protection of the community's culture, which extends to the members of the group as a right to cultural identity, as illustrated by the decisions that the Court structures, based specifically on the characteristic elements of that culture.

D) Exclusion. Case of the Indigenous Community Yakye Axa

19. The Case of the Indigenous Community Yakye Axa presents problems of ancient origin: not only those that began with the avatars of the first conquest and colonization, common to the countries of Latin America, but those that derive from certain very remote events, which also produced adverse consequences for the indigenous groups, as was seen during the proceeding. I refer to what is briefly described in a revealing paragraph of the proven facts in the respective judgment: "At the end of the nineteenth century, vast areas of the Paraguayan El Chaco were sold on the stock market in London." This second process of colonization, if one can refer to it thus, determined a long process during which, for different motives, there were several displacements of the indigenous communities whose ancestors had once been lords and masters of those lands.

20. In its judgment in that case, the Inter-American Court discusses two very relevant issues, among others (which include the issue of due process applied to territorial claims). They are: (a) the community's ownership of its ancestral lands, or more important still: the relationship – which is much more than a traditional right to property, as I will indicate below – that the community has to the land it has occupied; a relationship that, evidently, extends to the members of the community and makes a specific contribution to all their rights, and (b) the right to life of the members of the community, in the terms of Article 4(1) of the Convention, in relation also to the meaning of the right to ownership of the land and all that derives from the ways this is exercised.

21. Once again, the Court establishes the scope of ownership in the case of members of indigenous communities, or rather: once again it determines its scope (which the State must respect), under the auspices of an ancestral culture in which this right is deeply rooted and from which its takes its principle characteristics. In these cases, ownership has different characteristics from those that it has (also validly) in other spheres. It implies a singular relationship between the possessor of the right and the property this relates to. It is more than a real right, according to the meaning currently attributed to that expression. It incorporates other components that are also of interest – or of great interest – in order to redefine ownership in light of the indigenous culture in which ownership is exercised. In my opinion, by doing this, the Court affirmed another

interpretation of Article 21 of the Convention, so that it protects both the right to property in its classic sense – which the liberal principles that prevailed in the twenty-first century transferred to our continent – and also the underlying right to property that finally reappeared. This other interpretation is the appropriate one.

22. Both the constitutional and other laws of Paraguay have recognized the existence of the indigenous peoples "as cultural groups that existed prior to the establishment and organization of the Paraguayan State." This emphatic recognition not only of a demographic fact, by also of a cultural reality, that entails juridical consequences, must translate into respect for the traditional forms of land ownership – prior to the establishment and organization of the state – and into the assurance that all the rights derived from this ownership will be effective and effectively guaranteed by the public authorities in their legislative, executive and jurisdictional functions.

23. The Court has previously examined the right to life. This examination has revealed both the prohibitions that this right embodies with regard to the arbitrary action of the State, and the actions, initiatives, entitlements and promotions that the State itself must assume and develop to establish or foster conditions for a decent life. The first absolutely essential element of these obligations was supplied by a previous stage in the development of law and the provision of rights. The second element, which is also necessary – so that the right to 'life,' a concept with a moral tone, is not resumed in a simple 'possibility of existence or subsistence,' a biological fact – is characteristic of the current stage. This concept has entered into force in the Court's case law.

24. I understand that the creation of the conditions for a decent life, which signifies the development of an individual's potential and the search for his own destiny, should take place in accordance with that individual's own decisions, his respective opinions, his shared culture. This is the basis for the close connection between the right to a decent life, on the one hand, and the right to the "relationship between man and the land" – ownership, property, in the broadest sense – which the judgment has taken into account, on the other. This explains why there was a violation of the right to life embodied in Article 4(1) of the Convention – with the scope we have described – to the detriment of the members of the Yakye Axa community. The lack of evidence about the causes of the death of 16 members of the community, which explains the majority vote in that judgment, does not exclude or reduce the terms of the declaration formulated in the third operative paragraph: there was a violation of the right to life and this violation affected all the members of the community.

E) Containment. Case of YATAMA

25. The Case of YATAMA has examined another group of violations that harm members of communities. This case does not deal with the more dramatic aspects seen in the previous cases, such as: physical suppression, deprivation of land, violation of the right to life. The circumstances in which the facts of this case occurred suggest that, following a long struggle which has produced appreciable progress, YATAMA, which unites members of many communities, has opened up its own space in political and social life, which gives it a relevant and accepted position – not without severe reticence, with diverse juridical implications – and safeguards it from aggressions such as those observed in the other cases. This case deals with the acts or omissions by which the progress of the communities, as such, is "contained." Thus, we

find ourselves faced with a different situation which, perhaps, corresponds to the final stage in the series of refusals to accept equality and non-discrimination in favor of every individual, including, of course, the members of these minority groups.

26. In this case the acts and omissions that harm the right recognized in the Convention are concentrated in political activities and, in this regard, affect the possibility of the members of indigenous communities from intervening on an equal footing with their fellow citizens, members of other social sectors, and participating effectively in the decisions that affect them, together with the latter. One of the ways in which this intervention and participation occurs is through the exercise of political rights.

27. Here, I refer, as I have already said, to material equality and effective non-discrimination, not to a mere formal equality that leaves intact – or scarcely hides – marginalization and maintains discrimination. This type of equality tends to be obtained through factors or elements of compensation, equalization, development or protection that the State provides to the members of the communities, by means of a juridical regime that recognizes the facts relating to a certain cultural background and is established on the basis of a genuine recognition of real limitations, discriminations or restrictions and contributes to overcoming, suppressing or compensating them with appropriate instruments; not merely with general declarations on an inexistent and impracticable equality. Equality is not a starting point, but a finishing point to which the State's efforts should be addressed. In the words of Rubio Llorente, the "Law attempts to be fair, and it is the idea of justice that leads directly to the principle of equality, which, in a way, constitutes its essential content." Nevertheless, "equality is not a starting point, but rather a goal."

F) Participation and political rights

28. These objectives are not being achieved – nor, therefore, are equality and non-discrimination being protected – if the path of those who are struggling for political participation through the exercise of the respective rights, including the right to vote, is strewn with obstacles and unnecessary and disproportionate requirements. The requirement that participation is only through political parties, which today is being established as a natural fact in the democracies of the Americas, should accept the methods suggested by the traditional organization of the indigenous communities. In no way, is this an attempt to undermine the party system, but rather to protect the living conditions, work and organization of the indigenous communities, in the way and in terms that are reasonable and pertinent. The acceptance of these conditions and the respective methods of political participation are not transferred automatically to all mechanisms, nor do they extend beyond the territorial, social and temporal framework in which they are proposed and resolved. The Court decides what it considers admissible based on the circumstances before it.

29. This is the first time that the Court reflects on political rights, which are referred to in Article 23 of the Pact of San José, and which the Court has examined in connection with the other provisions of a broader scope: Articles 1(1), 2 and 24 of the same instrument. In the Court's opinion – as I understand it – these rights should be considered in the circumstances in which their possessors have to assume them and exercise them. It is not possible, even now, to

consider rights in abstract, as empty, neutral, colorless formulas provided to conduct the life of imaginary citizens, defined by texts and not by the strict reality.

30. In the instant case, the object is to promote the participation of people in managing their own lives, through political activities. Consequently, the form that this promotion should take must be considered, in keeping with the specific circumstances of those who are the possessors of rights, which should not be examined in abstract. To this end, it is necessary to remove determined obstacles, consider organizational alternatives, provide measures; in brief, "create circumstances" that allow certain individuals, in a specific characteristic situation, to achieve the objectives sought by human rights in the area of politics. To suppose that general declarations will be sufficient to facilitate the actions of people who are in distinct and distant conditions from those that the authors of these declarations had in mind, is to label illusion as reality.

31. The Court has not established, nor would it have to, the characteristics of a system of laws – and, in general, public action, which is more than general norms – favorable to the exercise of the political rights of members of indigenous communities, so that they are, truly, "as much citizens as the other citizens." The State must examine the situation before it in order to establish the means to allow the exercise of the rights universally assigned by the American Convention, precisely in those situations. The fact that the rights are of a universal nature does not mean that the measures that should be adopted to ensure the exercise of the rights and freedoms has to be uniform, generic, the same, as if there were no differences, distances and contrasts among their possessors. Article 2 of the Pact of San José should be read carefully: the States must adopt the necessary measures to give effect to the rights and freedoms. The reference to "necessary" measures that "give effect" to the rights, refers to the consideration of particularities and compensations.

32. Obviously, we have not exhausted the examination of democracy, which is the foundation and the destiny of political participation, understood in light of the American Convention. The need to have means of participating in the conduct of public affairs is clear, in order to intervene in the guidance of the nation and in community decisions, and this is related to the active and passive right to vote, among other participatory instruments. Achieving this signifies a historical step from the time – which still exists, as we have seen in other cases decided by the Inter-American Court in the current session and mentioned in this opinion – when the struggle for the right was related only to the physical survival, the patrimony and the settlement of the community. However, the progress on the path towards electoral presence – an advance contained, confronted by measures that foster inequality and discrimination – should not detain or dissuade access to comprehensive democracy, in which the access of individuals to the means that will encourage the development of their potential is promoted.

33. As can be observed, the contentious cases I have mentioned in this concurring opinion to the respective judgments examine issues that are common to the indigenous communities and to the rights of their members, even though they do so in relation to different facts and according to the specific circumstances of each case. These decisions are situated in one and the same historical reality and attempt to resolve the specific manifestations that this has resulted in today. Thus, they encourage the application of solutions guided by the same liberating and egalitarian objective that permits the exercise of the individual rights of those who are members – and have

full rights to continue being members – of ethnic and indigenous communities that form part of the broader national communities. After all, the idea is to resolve, in the twenty-first century, the problems inherited from preceding centuries. The specific increasingly abundant and comprehensive case law of the Inter-American Court can contribute to this.

Sergio García-Ramírez
Judge

Pablo Saavedra-Alessandri
Secretary

SEPARATE CONCURRING OPINION OF JUDGE JACKMAN

I have voted in favor of this judgment because I am in complete agreement with the conclusions reached by the Court, as well as with the operative paragraphs.

Nevertheless, I feel obliged to put on record a certain level of disagreement with the ratio decidendi of the Court in relation to the violation by the State of Nicaragua ("the State") of the rights embodied in Article 23 of the American Convention on Human Rights ("the Convention"), to the detriment of the YATAMA candidates.

The specific focus of this opinion is the Court's analysis (in paragraphs 214 to 229 of this judgment) of the State's responsibility in relation to Article 23(1)(b) of the Convention. I propose to consider this analysis, taking into account the provisions of Article 1(2) and Article 2.

Article 1(2) establishes that:

2. For the purposes of this Convention, "person" means every human being.

Article 23(1)(b) establishes that:

1. Every citizen shall enjoy the following rights and opportunities:
[...]
b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and

Article 2 stipulates that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

The principal arguments of this judgment concerning the violation of political rights (Article 23) and the right to equal protection of the law (Article 24) committed by the State can be summarized as follows:

(1) The 2000 Electoral Act only permitted participation in electoral processes through political parties, a form of organization alien to the customs, organization and culture of the "indigenous and ethnic" communities of the Atlantic Coast (para. 214).
(2) There is no provision of the American Convention that allows it to be established that citizens should belong to a political party in order to stand as candidates for public office. The Convention recognizes that, for electoral purposes, other forms of political organization may be appropriate and even necessary to attain common goals, by encouraging or ensuring the participation of specific groups (para. 215).
(3) According to domestic laws, the State is obliged to respect the forms of organization of the communities of the Atlantic Coast. The State has not demonstrated the existence of an urgent public interest that would justify the requirement for YATAMA to become a political party so that its members can participate as candidates in the elections or that the latter must participate through political parties (para. 218).
(4) Based on these considerations (emphasis added), the restriction imposed constituted an undue limitation of the exercise of a political right, "taking into account the circumstances of the instant case, which are not necessarily comparable to all the circumstances of all political groups that may be present in other national societies or sectors of a national society" (para. 219). "[A]ny requirement for political participation designed for political parties, which cannot be fulfilled by groups with a different form of organization, is also contrary to Articles 23 and 24 of the American Convention" (para. 220).

In my understanding, the ratio described in point (4) supra is an unnecessarily indirect and potentially confusing interpretation of the nature of the right embodied in Article 23(1)(b), the language and purpose of which could not be more clear. A "citizen" – who must obviously be an "individual" and not a group, in the terms of Article 1(2) – has an absolute right "to vote and be elected" in democratic elections, as established in the said article. In this way, any requirement that a "citizen" must be a member of a political party or of any other form of political organization to exercise that right clearly violates both the spirit and letter of the norm in question.

It is completely irrelevant whether that requirement can or cannot be "complied with by groups with a different form of organization," such as YATAMA in the instant case. It is the individual right of the individual "citizen" that is proclaimed and must be protected by the Court. I am concerned that by including questions of culture, customs and traditional forms of organization in its ruling on this issue, the Court is running the risk of reducing the protection that should be available to every "citizen" under the jurisdiction of every State, irrespective of his culture, customs or traditional forms of association.

Consequently, in my opinion, merely by imposing the requirement under discussion, the State violated the right of the members of YATAMA to vote and be elected.

My opinion is supported by a careful reading of the relevant sections of the travaux préparatoires of the Convention. From these, it is clear that the Conference that drafted and adopted the Convention specifically rejected a proposal that could have included in the current Article 23(1), a right to belong to political parties, the activities of which would be "protected" by law.

It would be a great shame if this judgment of the Court opens the way to interpretations of this important article that the authors of the Convention, in their wisdom, made an effort to exclude.

Oliver Jackman
Judge

Pablo Saavedra-Alessandri
Secretary

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. When voting in favor of the adoption by the Inter-American Court of Human Rights of this judgment in YATAMA v. Nicaragua, I am obliged to add this separate opinion in order to emphasize two points that I believe deserve special attention. First, when rejecting the third preliminary objection filed by the State, the Court's ruling reflects the perfecting of the proceeding before the Court in recent years, particularly since the adoption of its current Rules of Procedure on November 24, 2000, in force since June 1, 2001. Based on the evolution embodied in these Rules of Procedure, the individual is strengthened as a subject of international human rights law endowed with full international juridical and procedural capacity, in particular owing to the historic change introduced by Article 23 of the Court's Rules of Procedure granting him locus standi in judicio throughout the proceedings before the Court.

2. Moreover, the addition of a new paragraph introduced by the Court into Article 33 in fine of the said Rules of Procedure (paragraph in force as of January 1, 2004), to the effect that, if the information on the representatives of the alleged victims and their next of kin is not provided in the application, the Inter-American Commission on Human Rights:

"shall act on behalf of the alleged victims and their next of kin in its capacity as guarantor of the public interest under the American Convention on Human Rights to ensure that they have the benefit of legal representation."

- provided a definitive clarification of the full scope of the individual right of access to the supreme judicial body under the American Convention on Human Rights.

3. In my opinion, this noteworthy evolution will be complete the day on which – as I have been affirming for some time - the alleged victims are granted jus standi before the Court. [FN1] Nevertheless, there can no longer be any doubt that it is not possible to cite alleged lacunae concerning the legal representation of the alleged victims to try and restrict their access to the Court. The extraordinary qualitative leap made by the Court over the period November 2000 to January 2004, with regard to the international juridical and procedural capacity of the individual under the American Convention, admits of no turning back.

[FN1] A.A. Cançado Trindade, Bases para un Proyecto de Protocolo a la Convención Americana sobre Derechos Humanos, para Fortalecer Su Mecanismo de Protección, First edition, San José, Costa Rica, Inter-American Court of Human Rights, 2001, pp. 1-669 (and Second edition, 2003, pp. 1-750).

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4. In this sphere, there is no vacatio legis; nor can the alleged victims be defenseless. In circumstances such as the cas d'espèce, the Court can and should hear the case; as the Court correctly reasoned when rejecting the third preliminary objection filed by the State:

"If an application was not admitted owing to lack of representation, there would be an undue restriction that would deprive the alleged victim of the possibility of access to justice." [FN2]

[FN2] Paragraph 86, and cf. paras. 95-96.

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5. In sum, nowadays, the right of the individual to international justice under the American Convention is safeguarded both by the relevant treaty-based norms and by the Court's resolve, which has perfected its interna corporis notably (particularly over the period November 2000 to January 2004), by not admitting undue restrictions to that right. This contributes, in my opinion, to the actual process of humanization of international law, in addition to constituting a definitive conquest of contemporary civilization within the framework of the American Convention.

6. The second point I wish to emphasize in my separate opinion concerning this judgment, which is the Inter-American Court's first judgment on political rights in a democratic society [FN3] under Article 23 of the American Convention, is the relevant connection that the Court has made between political rights and the right to equal protection of the law, embodied in Article 24 of the American Convention. The latter is constituted by a basic principle that the Court itself has recognized as belonging to the domain of international jus cogens: the principle of equality and non-discrimination.

[FN3] And, in this Case of YATAMA, as the Court's judgment recognizes, the exercise of political rights is increasing in importance, because it has a direct impact on the need to preserve the right to cultural identity and the right to participate in public life of the indigenous communities of the Atlantic Coast of Nicaragua (paras. 226-228).

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7. In this judgment in YATAMA v. Nicaragua, the Court confirms the significant advance in its case law with regard to the historic Advisory Opinion No. 18 on the Juridical Status and Rights of Undocumented Migrants (2003), by reasoning (in paragraphs 184 to 186 that:

"The principle of the equal and effective protection of the law and of non-discrimination constitutes an outstanding element of the human rights protection system embodied in many international instruments and developed by international legal doctrine and case law. At the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the realm of jus cogens. The juridical framework of national and international public order rests on it and it permeates the whole juridical system.
This principle is fundamental for the safeguard of human rights in both international and national law; it is a principle of peremptory law. Consequently, States are obliged not to introduce discriminatory regulations into their laws, to eliminate regulations of a discriminatory nature, to combat practices of this nature, and to establish norms and other measures that recognize and ensure the effective equality before the law of each individual. A distinction that lacks objective and reasonable justification is discriminatory.
Article 24 of the American Convention prohibits any type of discrimination, not only with regard to the rights embodied therein, but with regard to all the laws that the State adopts and to their application. In other words, this article does not merely reiterate the provisions of Article 1(1) of the Convention concerning the obligation of States to respect and ensure, without discrimination, the rights recognized therein, but, in addition, establishes a right that also entails obligations for the State to respect and ensure the principle of equality and non-discrimination in the safeguard of other rights and in all domestic laws that it adopts.

8. Regarding the broad scope of the basic principle of jus cogens, equality and non-discrimination, I have already referred to this in my extended concurring opinion to the Court's Advisory Opinion No. 18 on the Juridical Status and Rights of Undocumented Migrants, which I will refer to here. In this concurring opinion I stated, for example, that this principle permeates the whole corpus juris of international human rights law (para. 59) of which it is one of the pillars, [FN4] in addition to being an element of general international law or customary law, because the normative of jus gentium should, by definition, "be the same for all the subjects of the international community" [FN5] (para. 60). [FN6] The State's obligation to respect and to guarantee the principle of equality and non-discrimination has the nature of real obligations erga omnes.

[FN4] A. Eide and T. Opsahl, Equality and Non-Discrimination, Oslo, Norwegian Institute of Human Rights (publ. No. 1), 1990, p. 4, and cf. pp. 1-44 (study reproduced in T. Opsahl, Law and Equality - Selected Articles on Human Rights, Oslo, Notam Gyldendal, 1996, pp. 165-206).
[FN5] H. Mosler, "To What Extent Does the Variety of Legal Systems of the World Influence the Application of the General Principles of Law within the Meaning of Article 38(1)(c) of the Statute of the International Court of Justice?", in International Law and the Grotian Heritage (Hague Commemorative Colloquium of 1983 on the Occasion of the Fourth Centenary of the Birth of Hugo Grotius), The Hague, T.M.C. Asser Instituut, 1985, p. 184.
[FN6] And cf. paras. 61-64.

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9. What I would like to add here, in this separate opinion, is that, nowadays, the judicial recognition of the jus cogens nature of the basic principle of equality and non-discrimination is evident in case law not only in advisory matters, but also, as attested to by this judgment in the

Case of YATAMA – in the cases heard by this Court, thus making a positive contribution in the vanguard of the development of the bases of international human rights law itself.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE DIEGO GARCÍA-SAYÁN

1. This is the first case that the Inter-American Court of Human Rights hears on the crucial issue of political rights. To the significance with which this circumstance alone endows the case is added its intrinsic importance for the affirmation and protection such rights in situations such as those described therein.

2. Regardless of this case, there is no doubt that the exercise of political rights and the fundamental components of democracy are delicate matters that, in the past and nowadays, have affected vital aspects of the life of the region's population. Governments emerging from military coups are a thing of the past, but today's reality reveals a multitude of threats to democracy and to political rights that pose daily challenges that must be confronted in almost al the countries of the region. The Court, with this judgment, strengthens and develops vital aspects of the political rights stipulated in the Convention. For all these reasons, I consider it necessary to emit this concurring opinion that seeks to add other considerations and perspectives to those already included in the judgment, which I support completely.

3. As the judgment truly states, representative democracy is determinant throughout the system of which the American Convention on Human Rights forms part. Indeed, from the start, the Organization of American States (OAS) was explicit in stating that democracy and its promotion is one of the basic purposes of the Organization. Already, in 1948, the OAS Charter proclaimed the fundamental rights of the person, without distinction based on race, nationality religion or sex, and stipulated that respect for human rights was one of the fundamental obligations of States. Among the first objectives of the OAS was the "...promotion and strengthening of representative democracy."

4. Thus, since the inception of the OAS, democracy and respect for the essential human rights were conceived as interdependent. This connection is present in the preamble to the Charter, in the American Declaration of the Rights and Duties of Man and, particularly, in the American Convention on Human Rights. The 1959 Declaration of Santiago described this conceptual unity between human rights and democracy when defining inter-American democratic standards. Subsequently, Resolution 991, "Rights and democracy," established that the members of the OAS should strengthen their democratic systems through the full respect for human rights.

5. This is the context for the provisions of Article 23 of the Convention on political rights. It is a significant component of a broad normative process for the conceptual affirmation of

political rights which, evidently, are not exhausted by the contents of the provisions of the Convention. Based on the grounds and findings set out in the judgment, the Court considers correctly that this is one of the rights violated by the State of Nicaragua in the instant case. The grounds for the violation of political rights in YATAMA v. Nicaragua make it advisable to consider the plentiful body of arguments and opinions that have been developed in the inter-American system over recent decades concerning the exercise of political rights in the affirmation of democracy, one of the essential obligations of the States Parties to the inter-American system.

6. Throughout the 1990s, democratic values were reaffirmed at the global and inter-American levels. Within the inter-American system, important decisions were adopted at the hemispheric Summits and at the OAS General Assemblies designed to strengthen democratic principles, and the first steps were taken to produce what was later, with the Inter-American Democratic Charter, called the "collective defense of democracy." In this process, Resolution 1080 of 1991, the 1992 Protocol of Washington, and Resolution 1753 of 2000 in relation to the case of Peru stand out. This process has gradually consolidated the notion that there is no opposition between the principle of non-intervention and the defense of democracy and human rights, among other reasons because the commitments to defend human rights and democracy are made by countries in the free exercise of their sovereignty.

7. It is a well-known fact that the list of human rights has never been static. It has gradually been defined and embodied in legal instruments with the development over time of society, the organization of the State, and the evolution of political regimes. This explains why we are currently seeing the development and expansion of political rights, and even what some have called the "human right to democracy." This development is expressed in the Inter-American Democratic Charter, the juridical instrument that the inter-American system has engendered to strengthen democracy and related rights. Its first article stipulates that: "The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it."

8. Following the same rationale, the inter-American system has been defining and refining the concept of democracy, strengthening the evolutive meaning of political rights above and beyond the text of the provisions of Article 23 of the Convention. This development has to be borne in mind when deciding a contentious case on the matter as, indeed, the Court has done in this judgment.

9. In this case, the Court has ruled on the alleged violation of political rights (Article 23 of the Convention) and on equality before the law (Article 24 of the Convention), in addition to the violation of Articles 8 and 25. This separate opinion does not need to repeat the findings of the Court that are set out in the judgment in the Case of YATAMA. As I pointed out above, I fully share the content of this judgment and refer to it. Nevertheless, it gives rise to some reflections of a general nature on political rights that are prompted by this specific case.

10. Article 23 of the American Convention on Human Rights stipulates a series of State obligations with regard to political rights. These are grouped into three types of rights which entail State obligations as a logical counterpart: (1) to take part in the conduct of public affairs,

directly or through freely chosen representatives (Art. 23(1)(a); (2) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters (Art. 23(1)(b), and; (c) to have access, under general conditions of equality, to the public service of [one's] country (Art. 23(1)(c). In this judgment, the Court declares that all the rights embodied in Article 23(1) have been violated. The Court also declares that Article 24 of the Convention has been violated as regards the right to equality and non-discrimination.

11. A first general consideration is that, in this case, the political rights which the Court considers that Nicaragua has violated have been violated twice. On the one hand, because the provisions of Electoral Act No. 331 of 2000 violated Article 23 owing to the ambiguity of several of its provisions, the obstacles that it established to the electoral participation of organizations other than political parties, and the requirements that it establishes for the presentation of candidates in at least 80% of the municipalities of the respective districts and 80% of the total number of candidacies. On the other hand, because the State has failed to comply with its obligation, established in Article 1(1) and 2 in relation to Article 23, to produce the appropriate conditions and mechanisms for the participation in public affairs of those who wished to be candidates in the Atlantic Coast of Nicaragua as members or representatives of YATAMA, an organization that represents the indigenous peoples of this region of the country.

12. The right to participate in Government, as all juridical categories, has evolved and has been reformulated with historical and social progress. Indeed, its conceptualization has been enhanced over the period that has elapsed since the adoption of the Convention almost 40 years ago. Although, in the initial instruments of the OAS, the reference to representative democracy and political rights was almost exhausted in the right to vote and be elected, the text of the Convention was already an important step in the evolutive meaning of political rights including other important components such as the nature of elections ("…genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voter..." Art. 23(1)(b)).

13. In recent years, this evolution has developed substantially the concept of the right to take part in the conduct of public affairs, which, nowadays, is a reference point that includes a very wide variety of components that can range from the right to support the removal of elected authorities, to supervise public administration, to have access to public information, to propose initiatives, to express opinions, etc. Indeed, the broad and general concept of the right "to take part in the conduct of public affairs," as it appears in the Convention, has been refined and expanded.

14. At the beginning of the twenty-first century, the member countries of the Inter-American system share an important characteristic that was almost exceptional when the American Convention on Human Rights was adopted in 1969: all the Governments have been democratically elected. The actual context, resulting from complex political and social processes, has given place to new problems and challenges as regards the participation of the citizen in the conduct of public affairs. This has had an impact on the provisions of the fundamental juridical instruments of the inter-American system.

15. It was in this context that the Inter-American Democratic Charter emerged, adopted by consensus by all the countries of the system in 2001, following a broad consultation process of civil society throughout the continent. In this and other aspects, the Charter embodied conceptual developments which, at that time, were derived from this new situation, giving a new formal dimension to a series of juridical categories, and constituting a transcendental landmark in the inter-American system as regards the evolutive content of political rights. Among other aspects, the Democratic Charter develops the concept of the said right to take part in the conduct of public affairs and, as a counterpart, the State's obligations in this regard.

16. The Inter-American Democratic Charter emphasizes the importance of the citizen's participation as a permanent process that strengthens democracy. Thus, the Charter declares that "Representative democracy is strengthened and deepened by permanent, ethical, and responsible participation of the citizenry within a legal framework conforming to the respective constitutional order" (Article 2). This general declaration acquires a fundamental teleological meaning for the conceptual development of political rights that the Charter itself establishes in its Article 4. The foregoing constitutes an approach based on consensual expression, which is directly related to the interpretation and application of a broad provision such as the one contained in Article 23 of the American Convention.

17. Indeed, Article 4 of the Inter-American Democratic Charter enumerates a series of "essential components" of the exercise of democracy that express the conceptual development of the right to take part in the conduct of public affairs, and that are condensed in this inter-American instrument. It underscores a series of State obligations which are merely the counterpart of the rights of citizens: "...Transparency in government activities, probity, responsible public administration on the part of governments, respect for social rights, and freedom of expression and of the press." In the absence of progress in clarifications such as these, which the American community has adopted consensually, it is evident that the said right to take part in the conduct of public affairs would be frozen in time, and not reflect the changing requirements of the democracies in our region.

18. The second component of political rights, as expressed in Article 23 of the Convention, is "to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters" (underlining added). This provision refers us to one of the fundamental requirements of representative democracy that has inspired the normative and purposes of the inter-American system since its conception. It stresses that elections should be genuine and periodic and also the characteristics of the vote: universal, equal and secret, in order to comply with a requirement that is also mentioned in Article 23: to guarantee the free expression of the will of the voters. It is evident that, unless this essential ingredient is present, other forms of participation would be weakened as they would not encounter, in elections, a way to build strong democracies for assuming and exercising public office.

19. In this judgment, the Court has revealed clearly the findings that lead it to conclude that, in this case, the State of Nicaragua has violated the norm cited in the preceding paragraph. Consequently, I refer to this reasoning and these conclusions. In this regard, Article 23 is very clearly formulated and the proven facts show that this violation occurred. Nevertheless, taking

into account the complexities of political processes in general, and of electoral processes in particular, it cannot be ignored that the components established in the said provision of Article 23 are, at this point in juridical evolution, insufficient and the countries of the inter-American system have understood this.

20. The wealth of the political, social and juridical processes that the region has undergone has been expressed in a parallel process of refinement of the fundamental characteristics of electoral processes and the vote of the citizen. The varied and eventful course of the political processes has revealed that, in order to guarantee "the free expression of the will of the voters," the component of "universal and equal suffrage by secret ballot" was essential but, also, insufficient, given the very different threats and difficulties posed by the reality. Thus, the difficulties – or facilities – of access to means of communication, the complexities in the registration of candidates or the characteristics of the electoral rolls, became serious problems in a context in which, owing to the new political context, "universal and equal suffrage by secret ballot" no longer appeared to be an issue.

21. Therefore, as in other components of the political rights mentioned in Article 23(1) of the Convention, the fundamental concept of the "free expression of the will of the voters" has been enhanced by important institutional evolutions in domestic law and in the inter-American system itself in light of which this general provision of the Convention must be interpreted and applied, with regard to both the rights of the citizens and the obligations of the State. As regards the right to take part in the conduct of public affairs, the Inter-American Democratic Charter has summarized and expressed the current consensual status in the inter-American system with regard to the "free expression of the will of the voters."

22. Indeed, the Charter reiterates principles that coincide in general with the contents of the Convention when it indicates that: "Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government" (Article 3).

23. As we can see, at least two important aspects of the requirements that the Convention already contained were clarified and developed by the Inter-American Democratic Charter: (a) not only the access to power but also its exercise should be subject to the rule of law; in this way, the "legitimacy of exercise" is added as an inter-American principle to the already recognized "legitimacy of origin"; (b) the pluralistic system of political parties and organizations. The political parties merit a specific additional consideration in the Charter, since it stipulates that "The strengthening of political parties and other political organizations is a priority for democracy. Special attention will be paid to the problems associated with the high cost of election campaigns and the establishment of a balanced and transparent system for their financing" (Article 5, underlining added). Reading the American Convention in light of these conceptual evolutions that the inter-American consensus has expressed in the Democratic Charter shows that the free expression of the will of the electors would be affected if authorities

elected under the rule of law (legitimacy of origin) exercise their functions in violation of the rule of law.

24. In relation to political parties and organizations, this is an absolutely central issue that has direct repercussions as regards the rights of those who tried unsuccessfully to be candidates for YATAMA on the Atlantic Coast of Nicaragua. Curiously, this issue is not mentioned explicitly in the OAS Charter or in the American Convention. However, the conceptual essence of representative democracy presumes and requires ways of representation that, in light of the provisions of the Democratic Charter, would be the parties and "other political organizations" that should be protected and also strengthened according to the provisions of Article 5.

25. With regard to political parties and "other political organizations," a first issue to mention is that, since they are considered essential elements for channeling the free will of the voters, it is the State's obligation to provide the conditions for strengthening these means of representation; contrario sensu, to abstain from adopting measures that could weaken them. The Democratic Charter mentions explicitly the issue of the financing of electoral campaigns as a matter to which attention should be paid, and also emphasizes the need to ensure "the establishment of a balanced and transparent system for their financing." Without mentioning it, the Democratic Charter is conveying that, faced with possible imbalances and inequalities, a counterbalancing system should be ensured in order to achieve the desired equality. Accordingly, this clearly calls for effective actions that preferably benefit those affected by such imbalances and inequalities.

26. In the instant case, it has been proved that YATAMA's form of organization in order to take part in the 2000 electoral process met with difficulties owing to the provisions of Electoral Act No. 331 of 2000. This violated the rights of those who intended to be candidates, and affected the principle that it is possible to organize in ways other than political parties in order to exercise the right to take part in the conduct of public affairs, in this case prejudicing an organization that represented the indigenous peoples of this part of Nicaragua. Consequently, the State not only obstructed their participation but also did not adopt the necessary measures to facilitate the participation of an organization such as YATAMA.

27. In this line of reasoning, it should be understood that granting the necessary facilities to the so-called "political organizations" is designed to generate the conditions for expanding and consolidating the participation of the citizens in the conduct of public affairs. This should not be understood as opposing but rather as complementing the existence of the political parties and strengthening them, since they are a necessary means of representation and participation in a democratic society. In this perspective, it is perfectly legitimate and concordant with the letter and spirit of the Convention that, within the national system of laws, there are homogeneous norms that emphasize the participation of political parties in the electoral processes as well as regulations designed to strengthen their representative and democratic nature, without detriment to their independence from the State. In addition, it is legitimate that domestic laws should include legal provisions concerning "other political organizations," aimed at facilitating the participation of specific sectors of society, as could be the case of the indigenous peoples.

28. The third component of political rights protected by Article 23 of the Convention stipulates that every citizen should "… have access, under general conditions of equality, to the

public service of his country" (underlining added). This aspect of political rights has to be understood systematically in relation to both the other explicit components of the political rights contained in Article 23(1), and the rest of the Convention and the inter-American legal system, in particular Article 24 of the Convention which refers to the right to equality and non-discrimination.

29. In this regard, when considering the provision of Article 23 on the "general conditions of equality," this should be referred to two aspects that can and should be understood concurrently and simultaneously. First, the norm establishes that it is necessary to guarantee access to public office to everyone "under general conditions of equality." This means that specific measures should be promulgated to facilitate the access to public office of the sectors of the population that may face special disadvantages and, thus, inequality – as could be the case of the indigenous peoples. In this case, it has been proved that Nicaragua did not adopt such measures; to the contrary, the 2000 Electoral Act created obstacles to this access.

30. Second, this general provision on access to public service, consistent with Article 29 of the Convention should be interpreted not only in relation to appointments or designations by the authority but also with reference to the public service that is exercised by popular election. In other words, the Court does not accept a restrictive interpretation referring only to public office or positions derived from appointments and designations. This is, without doubt, the meaning of this provision that seeks, precisely, to stress the principle of equality in the specific sphere of public service.

31. The above should be read and interpreted in close connection with the provisions of Article 24 of the Convention as regards equality and non-discrimination. As the judgment states, Article 24 of the Convention prohibits discrimination de facto and de jure with the obligation that this entails for the State to respect the said principle of equality and non-discrimination for all the rights embodied in the Convention and in all domestic laws that it adopts. In this regard, the provisions of Article 23(1)(c) are designed to emphasize the significance that the Convention accords to the principle of equality and non-discrimination in the right to take part in the conduct of public affairs.

32. Consequently, given the proven facts in this case in light of the reasoning derived from the provisions of Article 23(1)(c) concerning the general conditions of equality and of Article 24 concerning equality and non-discrimination, the State's obligation not to tolerate practices or norms that could have a discriminatory effect is clear. This should not be understood as contrary to homogeneous rules and conditions for all of society and all citizens with regard to the full exercise of political rights.

Diego García-Sayán
Judge

Pablo Saavedra-Alessandri
Secretary