

**Order of the
Inter-American Court of Human Rights*
of August 4, 2008
Case of Yatama v. Nicaragua
(Monitoring Compliance with Judgment)**

HAVING SEEN:

1. The Judgment on the merits, reparations, and costs (hereinafter "the Judgment") delivered on June 23, 2005 by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal").
2. The Order handed down by the Court on November 29, 2006, whereby it declared, *inter alia*:
 3. That [...] it woul[d] keep open the proceeding for monitoring compliance with the reparation measures pending fulfillment in the instant case, to wit:
 - a) the adoption, within a reasonable time, of such legislative measures as may be necessary to provide for a simple, prompt, and effective judicial remedy to review the decisions adopted by the Supreme Electoral Council that may affect human rights, such as the right to participate in government, in compliance with the relevant legal and treaty guarantees, and to repeal any provisions that prevent said remedy from being sought (*ninth operative paragraph of Judgment of June 23, 2005*);
 - b) the amendment to Electoral Act No. 331 of 2000, so that it clearly regulates the consequences of non-compliance with electoral participation requirements, the procedures to be followed by the Supreme Electoral Council in finding such non-compliance, and the reasoned decisions to be adopted by said Council in that regard, as well as the rights of those whose participation is affected by a decision of the State (*tenth operative paragraph of the Judgment of June 23, 2005*);
 - c) the reform of the regulation of those requirements established in Electoral Act No. 331 of 2000 that were found to be in violation of the American Convention and the adoption of such measures as may be required for the members of indigenous and ethnic communities to be able to effectively take part in election processes according to their values, customs, and traditions (*eleventh operative paragraph of Judgment of June 23, 2005*);
 - d) payment of the compensation set for pecuniary and non-pecuniary damages, which amount is to be paid to the YATAMA organization, which shall distribute it as appropriate (*twelfth operative paragraph of Judgment of June 23, 2005*);
 - e) payment of the amount due on account of costs and expenses incurred as a result of the proceedings started before the domestic courts and the Inter-American system for the protection of human rights to the YATAMA organization, which shall deliver to CENIDH and CEJIL the portion thereof required to reimburse them for the expenses they incurred (*thirteenth operative paragraph of Judgment of June 23, 2005*); and
 - f) the duty to publicize via broadcast by a radio station with widespread coverage on the Atlantic Coast certain paragraphs of Chapters VII (Proven Facts), IX and X, and the operative paragraphs of the Judgment, in Spanish, Miskito, Sumo, Rama, and English, at least four times at intervals of two weeks between each broadcast (*eighth operative paragraph of the Judgment of June 23, 2005*).

* Judge Diego García-Sayán informed the Court that due to reasons beyond his control he would not be able to participate in the deliberation and signing of this Order.

3. The briefs of March 14, 2007 and January 25, 2008, whereby the Republic of Nicaragua (hereinafter the "State" or "Nicaragua") submitted its report on compliance with Judgment.

4. The briefs of April 13, 2007 and March 11, 2008, whereby the victims' representatives (hereinafter "the representatives") submitted their observations on the State's reports (*supra* Having Seen clause 3).

5. The briefs of April 30, 2007 and April 11, 2008, whereby the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or the "Commission") submitted its observations on the State's reports (*supra* Having Seen clause 3).

6. The brief of July 16, 2008, whereby the representatives requested the Court to summon a hearing to monitor compliance with the Judgment delivered in the instant case.

CONSIDERING:

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

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

3. That pursuant to the provisions of Article 67 of the American Convention, judgments rendered by the Court are to be fully and promptly complied with by the State. Furthermore, Article 68(1) of the American Convention sets forth that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties." For that purpose, the States must guarantee the implementation of the Court's decisions at the domestic level.¹

4. That the obligation to comply with the decisions of the Court conforms to a basic legal principle of the law of the international responsibility of the States, as supported by international case law, under which the States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as stated by the Court in prior cases and set forth in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of States Parties to fully comply with the decisions of the Court are binding on all State powers and organs.³

¹ Cf. *Case of Baena-Ricardo et al v. Panama. Competence*. Judgment of November 28, 2003, Series C No. 104, para. 131; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Monitoring Compliance with Judgment. Order of the Court of May 7, 2008, Considering clause 3; and *Case of Claude-Reyes et al. v. Chile*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of June 10, 2008, Considering clause 3.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Articles 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Raxcacó-Reyes v. Guatemala*. Monitoring Compliance

5. That the States Parties to the American Convention must secure compliance with the provisions thereof and their effects (*effet utile*) at the domestic law level. This principle applies not only in relation to the substantive provisions of human rights treaties (i.e. those dealing with the protected rights), but also in relation to procedural rules, such as those concerning compliance with the decisions of the Court. Such obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, taking into consideration the special nature of human rights treaties.⁴

6. That the States Parties to the Convention that have accepted the binding jurisdiction of the Court are under a duty to fulfill the obligations established by the Court. This obligation includes the State's duty to report on the measures adopted to comply with the decisions of the Court. Timely fulfillment of the State's obligation to report to the Court on the manner in which it is complying with each of the obligations ordered by the latter is essential to assess the progress made in compliance with the Judgment as a whole.⁵

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7. That pursuant to the eighth operative paragraph of the Judgment, the State must publicize via broadcast by a radio station with widespread coverage on the Atlantic Coast, certain sections of said Judgment in Spanish, Miskito, Sumo, Rama, and English, at least four times at intervals of two weeks between each broadcast.

8. That in Order of November 29, 2006 (*supra* Having Seen clause 2), the Court deemed it necessary that the State prove compliance with its obligation to broadcast certain sections of the Judgment so that 1) the name of the broadcasting radio station and 2) the dates and languages of the broadcasts can be identified.

9. That in its reports of March 14, 2007 and January 25, 2008 (*supra* Having Seen clause 3), the State informed that it had publicized the Judgment of the Court, the number of times and at the intervals ordered therein, by the broadcast radio stations and in the languages detailed below:

- in Puerto Cabezas, by Radio Caribe, in Spanish and Miskito;
- in Bluefields, by Radio Zinica in English and Spanish;
- in Bonanza, by Radio Stereo Pis-Pis, four broadcasts in Spanish and Mayagna;
- in Rosita, by Radio Rosita, sixteen mentions in Spanish and Mayagna; and

with Judgment. Order of the Court of May 9, 2008, Considering clause 4; and *Case of Claude-Reyes et al.* Monitoring Compliance with Judgment, *supra* note 1, Considering clause 5.

³ Cf. *Case of Baena-Ricardo et al.* Competence, *supra* note 1, para. 60; *Case of the Mayagna (Sumo) Awas Tingni Community.* Monitoring Compliance with Judgment, *supra* note 1, Considering clause 5; and *Case of Claude-Reyes et al.* Monitoring Compliance with Judgment, *supra* note 1, Considering clause 5.

⁴ Cf. *Case of Ivcher-Bronstein v. Peru.* Competence. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Raxcacó-Reyes.* Monitoring Compliance with Judgment, *supra* note 2, Considering clause 43, and *Case of Claude-Reyes et al.* Monitoring Compliance with Judgment, *supra* note 1, Considering clause 6.

⁵ Cf. *Case of Barrios Altos v. Peru.* Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of September 22, 2005, Considering clause 7; *Case of Gómez-Paquiyaury.* Monitoring Compliance with Judgment. Order of the Inter-American Court of May 3, 2008, Considering clause 7; and *Case of Claude-Reyes et al.* Monitoring Compliance with Judgment, *supra* note 1, Considering clause 7.

- in Siuna, by Radio Stereo Siuna, from June 16 to July 16, 2006, in Spanish and Mayagna.

Regarding the foregoing, the State of Nicaragua forwarded the receipts for the payments made to such radio stations. Furthermore, the State pointed out that the translation of the Judgment into the above languages as ordered by the Court had been made jointly with the representatives of YATAMA and that the broadcast of the Judgment in the Rama language was still pending.

10. The representatives pointed out that though "receipts showing broadcasting services have been submitted, [they] do not indicate the date, time [or] intervals [...] at which such broadcasts were made, nor have recordings thereof been submit[ted] [...]." Therefore, they requested that the State submits "recordings which prove that said broadcasts were made and which indicate the date of such broadcasts." Finally, they requested that the State be reminded that the Judgment must be promptly broadcast in Rama.

11. That in its observations the Commission stated (*supra* Having Seen clause 5) that from the "information submitted by the State it cannot be concluded that the obligations ordered by the Court have been fully complied with."

12. That, though the State has submitted accurate information regarding the name of the radio stations and the languages in which the Judgment was broadcast, it has not as yet given the dates on which the above broadcasts were made. This information is necessary so that the Court may deem this obligation to have been complied with.

13. That in accordance with the reports submitted by the State (*supra* Considering clause 9), the obligation to publicize the Judgment in Rama is still pending compliance.

14. That it is necessary that the State submit further information to the Court with regard to the broadcast of the Judgment in Rama, as well as to the dates of all broadcasts of the Judgment, as ordered in the eighth operative paragraph thereof.

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15. That in Order of November 29, 2006 (*supra* Having Seen 2), the Court requested the State to submit up-to-date information on its compliance with the obligations ordered in the following operative paragraphs of the Judgment, namely:

- a) The adoption, within a reasonable time, of such legislative measures as may be necessary to provide for a simple, prompt, and effective judicial remedy to review the decisions adopted by the Supreme Electoral Council that may affect human rights, such as the right to participate in government, in compliance with the relevant legal and treaty guarantees, and to repeal any provisions that prevent said remedy from being sought (*ninth operative paragraph of Judgment of June 23, 2005*);

b) The amendment to Electoral Act No. 331 of 2000, so that it clearly regulates the consequences of non-compliance with electoral participation requirements, the procedures to be followed by the Supreme Electoral Council in finding such non-compliance, and the reasoned decisions to be adopted by said Council, as well as the rights of those whose participation is affected by a decision of the State (*tenth operative paragraph of the Judgment of June 23, 2005*); and

c) The reform of the regulation of those requirements established in Electoral Act No. 331 of 2000 that were found to be in violation of the American Convention and the adoption of such measures as may be required for the members of indigenous and ethnic communities to be able to effectively take part in election processes according to their values, customs, and traditions (*eleventh operative paragraph of Judgment of June 23, 2005*).

16. That in its report of January 25, 2008 (*supra* Having Seen clause 3), the State informed that "it had formed an inter-institutional work team made up of representatives of the National Assembly of the Republic, the Supreme Electoral Council, the Attorney General's Office, and the Ministry of Foreign Affairs who are working on the discussion and study of the amendment to the Electoral Act." The State further pointed out that "the amendment to the Electoral Act is a complex process, as it entails the amendment to Article 173 of the Political Constitution and the amendment to Article 5 of the Amparo Act No. 49 in force," whereby the inter-institutional work team "is drawing up a work plan to be carried out during 2008 so that the possibility of including the amendment on the legislative agenda may be considered." As an Annex to its report of January 25, 2008, the State forwarded a draft of the bill of amendment to the Electoral Act. Besides, in its report of March 14, 2007, the State of Nicaragua argued that it is necessary that the proposal for the amendment to the Electoral Act be formulated after "due consultation with and participation of the indigenous communities." In particular, it acknowledged that, "the participation of YATAMA is of the utmost importance so that the objectives of the amendment proposed may be achieved."

17. That in their observations on the State's reports (*supra* Having Seen clause 4), the representatives pointed out that since its report of January 2006, the State has referred to a draft bill to amend the Electoral Act which is still in the planning stage and for which purpose a work team is being formed, whereby they consider that these operative paragraphs have not been complied with. Furthermore, they reiterated that said bill of amendment to the Electoral Act should must be drafted in consultation with the leaders of YATAMA and of the indigenous peoples, and that the State "must adopt the necessary measures so that the Indigenous Communities of the Atlantic Coast may participate in the discussion and adoption of the legislative reforms" referred to in the Judgment of the Court.

18. That the Commission expressed its concern for the lack of information showing progress in the compliance with the above-mentioned operative paragraphs of the Judgment rendered by the Court and argued that it is imperative that "pertinent information be provided about the actions adopted by the State in order to comply with said provisions within a reasonable time." Furthermore, the Commission took into consideration that the State had formed a work team and that it had prepared a draft bill of amendment, but expressed its concern about the lack of participation of the indigenous communities in said process. In this regard, it pointed out that it is necessary

that the draft bills be made available to the indigenous peoples and that the State be required to submit "information regarding the measures to be adopted in order to enable said communities to take part in the process of legislative reforms."

19. That a draft bill has been proposed to amend Article 173 of the Political Constitution of Nicaragua and Electoral Act No. 331. Notwithstanding, the Court has not been furnished with information on the progress made in relation to the work plan that was drawn up by the inter-institutional work team in order to consider the possibility of including said amendment bill on the 2008 legislative agenda.

20. That it is necessary that the State provide the Court with up-to-date information on the legislative measures adopted in order to comply with this reparation measure.

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21. That in Order of November 29, 2006 (*supra* Having Seen clause 2), the Court requested the State to submit up-to-date information on the compliance with the following operative paragraphs of the Judgment:

a) Payment of compensation as pecuniary and non-pecuniary damages, which is to be paid to the YATAMA organization, which shall distribute it as appropriate (*twelfth operative paragraph of the Judgment of June 23, 2005*), and

b) Payment of the amount set as costs and expenses incurred as a result of the proceedings started before the domestic courts and the Inter-American system for the protection of human rights to the YATAMA organization, which shall subsequently deliver to CENIDH and CEJIL such portion thereof as may be required to reimburse them for the expenses they incurred (*thirteenth paragraph of the Judgment of June 23, 2005*).

22. That in its report of January 25, 2008 (*supra* Having Seen clause 3), the State pointed out that "the Treasury and Public Credit Department was requested to include [the] amounts [corresponding to compensation] in the 2008 National Budget; notwithstanding [this] has not as yet been passed by the Legislative Assembly."

23. That in their observations of March 11, 2008 (*supra* Having Seen clause 4), the representatives pointed out that "nearly three years have passed since Judgment was rendered and [...] the State has not included said amounts in the 2007 and 2008 general budgets."

24. That in its observations of April 11, 2008 (*supra* Having Seen clause 5), the Commission "reiterat[ed] that it is imperative that, pursuant to the *pacta sunt servanda* principle and in light of the time period that has elapsed, the State promptly adopt all such measures as may be necessary to fully comply with the provisions of the Judgment rendered by the Inter-American Court."

25. That the State has not complied with the twelfth and thirteenth operative paragraphs of the Judgment. The State was to pay the amounts due as compensation for pecuniary and non-pecuniary damages, as well as the amount set as reimbursement of costs and expenses within one year as from notice of the Judgment. Should the State

fall into arrears with its payments, pursuant to the provisions of the Judgment banking default interest rates in effect in Nicaragua shall be paid on the amounts due.

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26. That it is imperative that the State submits up-to-date information on the following obligations pending fulfillment:

- a) The adoption, within a reasonable time, of such legislative measures as may be necessary to provide for a simple, prompt, and effective judicial remedy to review the decisions adopted by the Supreme Electoral Council which may affect human rights, such as the right to participate in government, in compliance with the relevant legal and treaty guarantees, and to repeal any provisions preventing said remedy from being sought (*ninth operative paragraph of Judgment of June 23, 2005*);
- b) The amendment to Electoral Act No. 331 of 2000 so that it clearly regulates the consequences of non-compliance with electoral participation requirements, the procedures to be followed by the Supreme Electoral Council in finding such non-compliance, and the reasoned decisions to be adopted by said Council in that regard, as well as the rights of those whose participation is affected by a decision of the State (*tenth operative paragraph of the Judgment of June 23, 2005*);
- c) The reform of the regulation of those requirements established in Electoral Act No. 331 of 2000 that were found to be in violation of the American Convention and the adoption of such measures as may be required for the members of indigenous and ethnic communities to be able to effectively take part in election processes in accordance with their values, customs, and traditions (*eleventh operative paragraph of Judgment of June 23, 2005*);
- d) Payment of the compensation set for pecuniary and non-pecuniary damage, which amount is to be paid to the YATAMA organization, which shall distribute it as appropriate (*twelfth operative paragraph of Judgment of June 23, 2005*);
- e) Payment of the amount due on account of costs and expenses incurred as a result of the proceedings started before the domestic courts and the Inter-American system for the protection of human rights to the YATAMA organization, which shall subsequently deliver to CENIDH and CEJIL such portion thereof as may be required to reimburse them for the expenses they incurred (*thirteenth operative paragraph of Judgment of June 23, 2005*); and
- f) The duty to publicize via broadcast by a radio station with widespread coverage on the Atlantic Coast the paragraphs stated in Chapter VII (Proven Facts), Chapters IX and X, and the operative paragraphs of the Judgment (*eighth operative paragraph of the Judgment of June 23, 2005*).

27. That the representatives requested the Court to summon the parties to a hearing to monitor compliance with Judgment (*supra* Having Seen clause 6).

28. That compliance with Judgment as a whole shall be assessed once the pertinent information on the reparation measures pending fulfillment has been submitted.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECLARES:

1. That in accordance with the provisions set forth in Considering clause 26 of this Order, it will keep open the proceeding for monitoring compliance with the following obligations pending fulfillment in the instant case:

- a) The adoption, within a reasonable time, of such legislative measures as may be necessary to provide for a simple, prompt, and effective judicial remedy to review the decisions adopted by the Supreme Electoral Council which may affect human rights, such as the right to participate in government, in compliance with the relevant legal and treaty guarantees, and to repeal any provisions preventing said remedy from being sought (*ninth operative paragraph of Judgment of June 23, 2005*);
- b) The amendment to Electoral Act No. 331 of 2000 so that it clearly regulates the consequences of non-compliance with electoral participation requirements, the procedures to be followed by the Supreme Electoral Council in finding such non-compliance, and the reasoned decisions to be adopted by said Council in that regard, as well as the rights of those whose participation is affected by a decision of the State (*tenth operative paragraph of the Judgment of June 23, 2005*);
- c) The reform of the regulation of those requirements established in Electoral Act No. 331 of 2000 that were found to be in violation of the American Convention and the adoption of such measures as may be required for the members of indigenous and ethnic communities to be able to effectively take part in election processes in accordance with their values, customs, and traditions (*eleventh operative paragraph of Judgment of June 23, 2005*);
- d) Payment of the compensation set for pecuniary and non-pecuniary damage, which amount is to be paid to the YATAMA organization, which shall distribute it as appropriate (*twelfth operative paragraph of Judgment of June 23, 2005*);
- e) Payment of the amount due on account of costs and expenses incurred as a result of the proceedings started before the domestic courts and the Inter-American system for the protection of human rights to the YATAMA organization,

which shall subsequently deliver to CENIDH and CEJIL such portion thereof as may be required to reimburse them for the expenses they incurred (*thirteenth operative paragraph of Judgment of June 23, 2005*); and

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

AND DECIDES:

1. To call upon the State of Nicaragua to adopt all such measures as may be necessary to promptly, effectively, and fully comply with the measures of reparation pending compliance, as stated in paragraph No. 1 *supra* and ordered by the Court in the Judgment on the merits, reparations and costs of June 23, 2005 and in this Order, under the provisions of Article 68(1) of the American Convention on Human Rights.

2. To request the State of Nicaragua to submit a report to the Inter-American Court of Human Rights, no later than December 8, 2008 informing about all such measures as may have been adopted to fully comply with the reparations ordered by this Court which are pending fulfillment, in accordance with the provisions of Considering clauses No. 14, 20 and 26 and of paragraph No. 1 *supra*.

3. To request the representatives of the victims and the Inter-American Commission on Human Rights to submit their observations on the report of the State of Nicaragua referred to in the preceding operative paragraph, within a period of four and six weeks, respectively, as from the date on which said report was received.

4. To continue monitoring the reparation measures ordered in the Judgment on the merits, reparations and costs of June 23, 2005 that are still pending compliance.

5. To consider the possibility of summoning a private hearing to monitor compliance with the Judgment ordered in the instant case, in which case the parties shall be duly notified thereof.

6. To request the Secretariat of the Court to notify this Order to the State of Nicaragua, the Inter-American Commission on Human Rights, and the representatives of the victims.

Cecilia Medina-Quiroga
President

Sergio García-Ramírez

Manuel E. Ventura-Robles

Leonardo A. Franco

Margarette May Macaulay

Rhadys Abreu-Blondet

Pablo Saavedra-Alessandri
Secretary

So ordered,

Cecilia Medina-Quiroga
President

Pablo Saavedra-Alessandri
Secretary