

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JUNE 30, 2011**

CASE OF YATAMA v. NICARAGUA

MONITORING COMPLIANCE WITH JUDGMENT

HAVING SEEN:

1. The Judgment on Preliminary Objections, Merits, Reparations and Costs (hereinafter "the Judgment") passed by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on June 23, 2005.

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

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

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

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

2. The Court shall keep the monitoring process open for the outstanding points indicated in the previous declarative point, as well as the monitoring process for the following:

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

b) To reform the Electoral Law No. 331 of 2000 so that it clearly regulates the consequences of not fulfilling the requisites of electoral participation, the procedures that must be observed by the Supreme Electoral Board to determine such non-compliance, and the decisions that must be taken by the Board in this regard, as well as the rights of those persons whose participation is affected by a State ruling (*Operative Paragraph 10 of the Judgment*[...]);

c) To reform the regulation of the requirements provided for in Electoral Law No. 331 of 2000 that were declared to be in violation of the American Convention and to adopt the necessary measures so that members of the indigenous and ethnic communities can participate in electoral processes in an effective manner, taking into account their traditions, uses, and customs (*Operative Paragraph 11 of the Judgment*[...]);

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

[And ruled:]

1. To request that the State of Nicaragua adopt all measures necessary to effectively and promptly comply with those points ordered by the Court in the Judgment that are still outstanding [...], in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

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

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

[...]

3. The brief of September 30, 2010, whereby the Republic of Nicaragua (hereinafter "the State" or "Nicaragua") requested an extension from the Court for presenting its "Detailed Timeline of Actions to Fully Comply with the Judgment" (*infra* Having Seen 5).

4. The briefs of September 21 and December 21, 2010, whereby the representatives of the victims (hereinafter "the representatives") requested that the Tribunal order the State to present the timeline requested in the Court's Order of May 28, 2010 (*supra* Having Seen 2, 3; and, *infra* Having Seen 5).

5. The letter from the Secretariat of the Court (hereinafter "the Secretariat") of September 23, 2010, whereby it reminded the State that the period within which to present the detailed and comprehensive timeline of steps to fully comply with the Judgment had expired (*supra* Having Seen 2), and, pursuant to instructions from the President of the Tribunal, the State was requested to submit this timeline as soon as possible. In addition, the Secretariat's letter of October 4, 2010, in which, pursuant to instructions from the President, it granted the State an extension up until November 1, 2010 to submit the timeline. Finally, the Secretariat's letter of January 25, 2011, in which, pursuant to instructions from the President, it requested once again that the State submit the timeline as soon as possible, given that the Court intended to analyze the State's compliance with the Judgment during its regular session of hearings to be held from February 21 to March 5, 2011.

CONSIDERING:

1. Monitoring compliance with its decisions is an inherent power to the jurisdictional functions of the Court.

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

3. In accordance with the provisions of Article 67 of the American Convention, the State should fully and promptly comply with the Court's Judgments. Furthermore, Article 68(1) of the American Convention stipulates that "[t]he State Parties to the Convention undertake to comply with the Court's decisions in any case to which they are parties." To this end, States should ensure the domestic implementation of provisions set forth in the Court's rulings.¹

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Radilla Pacheco v. Mexico. Monitoring Compliance with Judgment*. Order of the Court of May 19, 2011,

4. The obligation to comply with the Tribunal's rulings conforms to a basic principle of international law, supported by international jurisprudence, under which States must abide by their international treaty obligations in good faith (*pacta sunt servanda*) and, as set forth by this Court and in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot, for domestic reasons, neglect their pre-established international responsibility.² The treaty obligations of State Parties are binding on all branches and bodies of the State.³

5. The States Parties to the Convention must ensure compliance with its conventional provisions and their effectiveness (*effet utile*) within their respective domestic legal systems. This principle applies not only to the substantive provisions of human rights treaties (i.e., those addressing protected rights), but also to procedural provisions, such as those concerning compliance with the Court's decisions. These obligations should be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

6. The States Parties to the Convention that have recognized the contentious jurisdiction of the Court have a duty to comply with the obligations provided for by the Court. This includes the duty of the State to inform the Court about the measures taken to comply with the Court's Orders. Timely fulfillment of the State's obligation to advise the Court how it is complying with each of the points it ordered is essential in order to assess the state of compliance with the Judgment as a whole.⁵

A. Adoption of all measures necessary to effectively and promptly comply with the points of the Judgment that are outstanding and inform the Court thereon.

7. During the private hearing held on May 26, 2010 regarding the present case, the State expressed its commitment to providing the Court, within three months, with a detailed and comprehensive timeline of action taken to fully comply with the Judgment. As something it deemed to be useful and favorable for this process, in its Order of May 28, 2010 (*supra* Having Seen 2), the Court took up the State's proposal and ordered that the timeline be presented by September 6, 2010. However, the Court indicated that it would

Considering Clause 3, and *Case of Caso Castillo Páez v. Peru. Monitoring Compliance with Judgment*. Order of the Court of May 19, 2011, Considering Clause 3.

² Cf. *International responsibility for the issuance and application of laws that violate the Convention* (Art. 1 and 2 of the American Convention on Human Rights). Advisory Opinion AO-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Radilla Pacheco v. Mexico*, *supra* note 1, Considering Clause 5, and *Case of Caso Castillo Páez v. Peru*, *supra* note 1, Considering Clause 4.

³ Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999, Considering Clause 3; *Case of Radilla Pacheco v. Mexico*, *supra* note 1, Considering Clause 5, and *Case of Caso Castillo Páez v. Peru*, *supra* note 1, Considering Clause 4.

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgement of the Inter-American Court of Human Rights of September 24, 1999. Series C No. 54, para. 37; *Case of Radilla Pacheco v. Mexico*, *supra* note 1, Considering Clause 6, and *Case of Caso Castillo Páez v. Peru*, *supra* note 1, Considering Clause 5.

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 Garibaldi v. Brazil. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of February 22, 2011, Considering Clause 7, and *Case of Caso Castillo Páez v. Peru*, *supra* note 1, Considering Clause 6.

also be necessary, within this three-month period proposed by the State, that the latter define its short, medium, and long-term goals to promptly and fully comply with its outstanding obligations. On the understanding that this would require the efforts of various State agencies, the Court mandated that once this timeline was submitted, the State should report once every four months on its progress with the goals set out in the timeline, as well as reporting on compliance with the points of the Judgment pending fulfillment.

8. Following the Court's Order of May 28, 2010 (*supra* Having Seen 2 to 5), it is apparent that the State has twice been asked to present its timeline and that, despite having asked the Court for an extension, this document was yet to be submitted. In this respect, approximately nine months have passed since the original period for submission expired, and about one year has passed since the Court's last Order on monitoring compliance in this case. Furthermore, the Court notes that it has not received any information from the State on the steps it has taken to comply with any of the outstanding obligations, except that which concerns the presentation of the timeline that the State itself proposed.

9. In order to guarantee the implementation of the reparation measures so ordered, this Court must be able to verify and obtain information on the implementation of the Judgment.⁶ In the present case, the State has not been honoring its treaty obligation to inform the Court as to the manner in which it is fulfilling the outstanding reparation measures (*supra* Having Seen 2).

10. In light of the foregoing and given the Court lacks sufficient mechanisms to supervise full compliance with the Judgment, it is imperative that the State provide information in a timely and detailed fashion on all the steps it has taken to date to achieve compliance, regardless of whether it has submitted its timeline to the Court. In this respect, the Tribunal reminds the State that the Judgment provides for specific reparation measures that are themselves independent from the design and implementation of the timeline.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercising its authority to monitor compliance with its decisions in accordance with Articles 33, 61(1), 62(3), 65, 67, and 68(1) of the American Convention on Human Rights, Articles 24 and 30 of the Statute, and Articles 31(2) and 69 of its Rules of Procedure,

RULES:

1. To request that the State of Nicaragua adopt all measures necessary to effectively and promptly comply with those points that are outstanding, as stated in Having Seen 2 of

⁶ Cf. *Case of Neira Alegria et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 19, 2009, Considering Clause 20; *Case of the Miguel Castro Castro Prison v. Peru. Monitoring Compliance with Judgment*. Order of the President-in-Office of December 21, 2010, Considering Clause 16, and *Case of Caso Castillo Páez v. Peru*, *supra* note 1, Considering Clause 10.

this Order, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights.

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

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

4. To request that the representatives of the victims and the Inter-American Commission on Human Rights submit their relevant observations on the State report mentioned in Operative Paragraphs 2 and 3, within four and six weeks, respectively, following the receipt of said report.

5. To continue monitoring the outstanding obligations of the Judgment.

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

Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary