

YATAMA v. Nicaragua

ABSTRACT¹

This case involves the exclusion of candidates for mayors, deputy mayors, and councilors who were part of the indigenous regional political party, Yapti Tasba Masraka Nanih Asla Takanka (“YATAMA”) from participating in the municipal elections held on November 5, 2000 in the North Atlantic and the South Atlantic Autonomous Regions. The individuals affected filed several recourses against this decision, however, the Supreme Court of Justice of Nicaragua declared that their claims were inadmissible. The Court ultimately found that the State violated the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

January 24, 2000: A new electoral law (the “Electoral Act of 2000”) goes into effect only allowing groups to participate in the electoral process that are considered political parties by law.² However, political parties are a form of social organization that is not characteristic of the indigenous and ethnic communities of the Atlantic Coast of Nicaragua.³

March 8, 2000: Nine members of the indigenous organization known as Yapti Tasba Masraka Nanih Aslatakanka (“YATAMA”) draft, sign, and have notarized a statute for their organization with the aim of being recognized as a “Regional Political Party” in accordance with the Electoral Act of 2000.⁴

May 4, 2000: The Supreme Electoral Council (“SEC”) issues a resolution granting YATAMA legal status as a regional political party and al-

1. Shauna Bendinelli, Author; Kathryn Benson, Melissa Kurata, & Jennifer Toghian, Editors, Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 124(20) (June 23, 2005).

3. *Id.*

4. *Id.* ¶ 124(26).

lowing it to “enjoy the rights and privileges granted to it by the Constitution, the Electoral Act of 2000, and the other laws of the Republic.”⁵

June 13, 2000: YATAMA forms an electoral alliance with the Coastal People Party (“PPC”) and the Indigenous Multiethnic Party (“PIM”) to participate in the November 2000 elections in the South Atlantic Autonomous Region (“RAAS”).⁶

July 11, 2000: YATAMA informs the President of the SEC that “the YATAMA party in the RAAS 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.”⁷ Consequently, it requests the SEC to issue instructions to the appropriate individuals to notify the other two parties that YATAMA will participate alone in the November 5, 2000 elections.⁸

July 14, 2000: PPC and YATAMA present a further communication to the SEC advising the President of the name of their alliance, the head of their alliance, and the fact that PIM has decided to withdraw from their alliance.⁹ They indicate that “[these were] the latest decisions taken by the alliance and, if there were any inconsistencies with previous communications, this communication prevails over the others.”¹⁰

July 15, 2000: YATAMA presents a list of candidates to the North Atlantic Autonomous Region (“RAAN”) and RAAS Regional Electoral Council as required by law.¹¹

July 17, 2000: PIM informs the President of the SEC that it has decided to participate in the municipal elections of November 5, 2000 alone.¹²

July 18, 2000: The SEC notifies PPC that it has not obtained the requisite signatures to be considered a political party and cancels its juridical personality, making it ineligible to participate in the November 5, 2000

5. *Id.* ¶ 124(28).

6. *Id.* ¶ 124(33).

7. *Id.* ¶ 124(37).

8. *Id.*

9. *Id.* ¶ 124(38).

10. *Id.*

11. *Id.* ¶ 124(31).

12. *Id.* ¶ 124(38).

elections.¹³ YATAMA is never notified of this decision.¹⁴

Between July 31, 2000 and August 11, 2000: YATAMA requests authorization to participate in the November 5, 2000 elections in the RAAN and the RAAS several times and requests that their alliance candidates be registered for YATAMA.¹⁵

August 15, 2000: The SEC issues a resolution excluding YATAMA from the November 5, 2000 elections in both the RAAN and the RAAS.¹⁶ The SEC does not give YATAMA the opportunity to “proceed to correct the defects or to substitute the candidates” pursuant to the Electoral Act of 2000.¹⁷ This causes tension that has repercussions on the national and international scene.¹⁸ There are confrontations with the police, protests, and arrests of protesters who question the decision.¹⁹

August 18, 2000: YATAMA files an appeal for review of the decision with the SEC, but never receives a response.²⁰

August 30, 2000: YATAMA files writs of *amparo* in regional appellate courts, but the SEC quashes these appeals, and the Constitutional Chamber of the Supreme Court of Justice eventually declares the claims unlawful because the SEC’s resolution is related to electoral issues, and Nicaragua’s constitution does not provide jurisdiction to regular courts to hear electoral claims.²¹

B. Other Relevant Facts

Some indigenous and ethnic communities that form part of YATAMA, or to which the organization caters, do not have a road network, and most of the access routes to its territories are by river.²² There is no public transport, which increases the cost of access to most of

13. *Id.* ¶ 124(46).

14. *Id.*

15. *Id.* ¶¶ 124(47)-(50)

16. *Id.* ¶ 124(51).

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* ¶ 124(54).

21. *Id.* ¶¶ 124(55)-(61).

22. *Id.* ¶ 124(19).

these widely spread out communities.²³ However, the candidates selected by YATAMA maintain direct, personal contact with the communities that select them, and YATAMA carries out its business according to the oral tradition.²⁴

YATAMA first participated in the regional elections in Nicaragua in 1990, took part in the elections again in 1994, and participated in the municipal elections for the first time in 1996.²⁵ It participated in these elections in the category of “public subscription association” under the provisions of the 1990 and 1996 electoral laws.²⁶ This gave political participation to any organization assembling a minimum of five percent of the voters on the electoral roll of the respective electoral district or registered on the voters’ list in the preceding election.²⁷

In November 2002, the Supreme Court of Justice of Nicaragua declared certain provisions of the 2000 Electoral Act unconstitutional on the grounds that they violated Nicaraguans’ political guarantees and interfered with their individual rights.²⁸ Specifically, the requirement for three percent of signatures for a political party to obtain legal status and the requirement of three percent of voters’ signatures for the presentation of candidates excluded political parties that, for one reason or another, were unable to obtain the number of signatures required from electoral options in future campaigns.²⁹

In the November 2004 elections, YATAMA won three mayorships in the largest municipalities of the RAAN and a majority of councilmen positions in all municipalities.³⁰

II. PROCEDURAL HISTORY

A. *Before the Commission*

April 26, 2001: YATAMA, the Centro Nicaragüense de Derechos Humanos (“CENIDH”), and the Center for Justice and International Law (“CEJIL”) file a petition before the Commission.³¹

23. *Id.*

24. *Id.*

25. *Id.* ¶ 124(17).

26. *Id.* ¶ 124(18).

27. *Id.*

28. *Id.* ¶ 124(75).

29. *Id.*

30. *Id.* ¶ 124(73).

31. *Id.* ¶ 5.

December 3, 2001: The Commission declares the case admissible,³² because the State does 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 Procedure³³

March 3, 2003: The Commission issues its Report on Merits No. 24/03.³⁴ It recommends the State to: (1) adopt measures to establish recourse to contest the resolutions of the SEC without limitations regarding the matter contested; (2) adopt measures to promote and facilitate the electoral participation of the indigenous people and the organizations that represent them; (3) compensate the victims; and (4) adopt measures to avoid similar events occurring in the future.³⁵

B. Before the Court

June 17, 2003: The Commission submits the case to the Court after the State fails to adopt its recommendations.³⁶

1. Violations Alleged by Commission³⁷

Article 8 (Right to a Fair Trial)

Article 23 (Right to Participate in Government)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

2. Violations Alleged by Representatives of the Victims³⁸

Same Violations Alleged by Commission, plus:

Article 24 (Right to Equal Protection)

32. *Id.* ¶ 6.

33. *Id.* ¶ 69.

34. *Id.* ¶ 7.

35. *Id.*

36. *Id.* ¶ 13.

37. *Id.* ¶ 2.

38. *Id.* ¶ 179(f). Ms. Viviana Krsticevic, Ms. Soraya Long, Ms. Gisela De Leon, Mr. Will Bloomfield, and Mr. Norwin Solano serve as representatives of the victims. *Id.* at 7.

September 2, 2003: The State designates Mr. Alejandro Montiel Argüello as Judge *ad hoc*.³⁹

December 17, 2003: The State files the following preliminary objections: (1) lack of jurisdiction of the Inter-American Court of Human Rights; (2) absence of the admissibility requirements established in Article 46 of the American Convention; (3) illegitimacy of the representatives; (4) lack of right of action; and (5) obscurity of the application and its expansion.⁴⁰

III. MERITS

A. Composition of the Court

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice President
Oliver H. Jackman, Judge
Antônio Augusto Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Diego García-Sayán, Judge
Alejandro Montiel Argüello, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on Merits

June 23, 2005: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁴¹

The Court unanimously rejected the preliminary objections,⁴² because:

The Court rejected the first and fourth preliminary objections, lack of jurisdiction of the Court and lack of right of action, respectively, be-

39. *Id.* ¶ 15.

40. *Id.* ¶ 55.

41. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs.

42. *Id.* ¶ 104.

cause the objections referred to the merits of the case,⁴³ and the facts described by the Commission occurred after the State had accepted the Court's jurisdiction.⁴⁴ Next, the Court rejected the second preliminary objection, absence of the admissibility requirements established in Article 46 of the American Convention, because the State did not allege the failure to exhaust domestic remedies, but rather submitted arguments on issues related to the merits.⁴⁵ Additionally, the Court rejected the third preliminary objection, illegitimacy of the representatives, because it found that the alleged victims granted valid powers of attorney, and the fact that some of the alleged victims had not granted a power of attorney did not require the Court to abstain from hearing the case.⁴⁶ Finally, the Court rejected the fifth preliminary objection, obscurity of the application and its expansion, because it is a function of the Court to determine whether the State complied with the obligation to adapt its domestic laws.⁴⁷

The Court found by seven votes to one⁴⁸ that Nicaragua had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Articles 1(1) and 2 of the Convention, to the detriment of YATAMA,⁴⁹ because:

*Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the American Convention establishes that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal.*⁵⁰

*Here, the decisions of the SEC 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 November 2000 municipal elections.*⁵¹ *When the SEC decided that YATAMA had not complied with the requirements*

43. *Id.* ¶ 63.

44. *Id.* ¶ 64.

45. *Id.* ¶ 71.

46. *Id.* ¶ 95.

47. *Id.* ¶ 102.

48. Judge *ad hoc* Alejandro Montiel Argüello was the dissenting vote. *Id.* "Operative Paragraphs" ¶¶ 2-5.

49. *Id.* ¶ 164.

50. *Id.* ¶ 145.

51. *Id.* ¶ 151.

of the Electoral Act of 2000 when registering its candidates in the RAAS and RAAN, it did not grant YATAMA the opportunity to correct the existing defect, and further, did not notify YATAMA of the resolution issued by the SEC on July 18, 2000 that excluded the PCC from participating in elections, even though PPC headed the alliance with YATAMA in the RAAS.⁵² Because YATAMA obtained its legal status within the time limit established by the Electoral Act of 2000 in order to take part in the elections, the SEC should have indicated the specific requirement of the Electoral Act of 2000 that YATAMA had not complied with and the reasons for that determination.⁵³

Accordingly, the Court deemed that the decisions of the SEC were not consistent with the Convention's established parameters and violated judicial guarantees of the candidates.⁵⁴

Articles 23 (Right to Participate in Government) and 24 (Right to Equal Protection), in relation to Articles 1(1) and 2 of the Convention, to the detriment of YATAMA,⁵⁵ because:

Article 23 (Right to Participate in Government) of the Convention establishes that every citizen has the right to participate in public affairs, to vote and be elected to positions, and to have access to the public service of the State.⁵⁶ Article 24 (Right to Equal Protection) of the Convention establishes that all individuals are entitled to equal protection of the law without discrimination.⁵⁷ The Court understands these rights in conjunction with Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) to require the State to guarantee the enjoyment of political rights, under general conditions of equality, and adopt the necessary measures to ensure the full exercise of those rights.⁵⁸

The Court noted that when examining these rights, it must be acknowledged that the victims here are members of indigenous and ethnic communities who face serious difficulties because they differ from most of

52. *Id.* ¶ 162.

53. *Id.* ¶ 159.

54. *Id.* ¶ 164.

55. *Id.* ¶ 229.

56. *Id.* ¶ 181.

57. *Id.* ¶ 182.

58. *Id.* ¶ 201.

*the population, placing them in a situation of vulnerability and marginalization.*⁵⁹

Imposing requirements for exercising political rights is not an undue restriction per se because these rights are not absolute; however, the regulation of political rights must respect the principles of legality, necessity, and proportionality.⁶⁰ Here, the Electoral Act of 2000 placed maximum limitations on the possibility of participating in the municipal elections and the State acknowledges the need to reform this act.⁶¹ The Court found that the Act is ambiguous because it does not clearly establish the consequences of non-compliance with certain requirements set forth for those who participate through a party and those who do so through an alliance of parties; therefore, this law does not allow the voter to have an understanding of the process and encourages arbitrary and discretionary application through contradictory interpretations.⁶²

Furthermore, the Electoral Act of 2000 only permits political parties to participate in the electoral process; this form of organization is not characteristic of the indigenous communities.⁶³ While YATAMA was able to gain legal status as a political party, the Court noted that the requirements to do so disregarded the customs, organization, and culture of the candidates proposed by YATAMA.⁶⁴ Organizations or groups, not just political parties, that take part in the life of the State, such as the electoral process, must have aims that are compatible with the rights and freedoms established in the Convention.⁶⁵ The State's restrictions on participation through a political party impeded the YATAMA members' full exercise of the right to be elected and the State did not justify this restriction with a useful or legitimate purpose.⁶⁶ Therefore, the Court determined that the restriction imposed on YATAMA constituted an undue limitation of the exercise of a political right and is an unnecessary restriction of the right to be elected.⁶⁷ Further, the Court indicated that any requirement for political participation designed for political parties, which cannot be fulfilled by groups with a

59. *Id.* ¶ 202.

60. *Id.* ¶ 206.

61. *Id.* ¶ 210.

62. *Id.* ¶ 212.

63. *Id.* ¶ 214.

64. *Id.*

65. *Id.* ¶ 216.

66. *Id.* ¶ 218.

67. *Id.* ¶ 219.

*different form of organization is contrary to Articles 23 (Right to Participate in Government) and 24 (Right to Equal Protection) of the American Convention to the extent that it limits the full range of political rights more than necessary and acts as an impediment for citizens to participate effectively in the conduct of political affairs.*⁶⁸

The Court found that YATAMA candidates were affected by legal and de facto discrimination, which impeded their equal participation in the November 2000 elections,⁶⁹ due to the State's application and regulation of the Electoral Act of 2000 in a discriminatory way.⁷⁰

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Articles 1(1) and 2 of the Convention, to the detriment of YATAMA,⁷¹ because:

Article 25(1) (Right of Recourse Before a Competent Court) of the American Convention indicates that everyone has the right to simple and prompt recourse to a competent court or tribunal for protection against acts that violate the person's fundamental rights recognized by the State's constitution or laws.⁷² In order to comply with this article, it is not sufficient that the recourses exist formally, but they must actually be effective.⁷³ Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention requires the State to adapt its domestic laws to guarantee the rights embodied in the Convention.

Here, there was no judicial remedy against the SEC's resolution that excluded YATAMA from participating in the 2000 municipal elections because the State Constitution established that the resolutions of the SEC on electoral matters are not subject to ordinary or special recourses.⁷⁴ The Court stated, however, that this does not mean the SEC should not be subject to judicial controls as are the other branches of the government.⁷⁵

68. *Id.* ¶ 220.

69. *Id.* ¶ 224.

70. *Id.* ¶ 229.

71. *Id.* ¶ 176.

72. *Id.* ¶ 165.

73. *Id.* ¶ 169.

74. *Id.* ¶¶ 172-173

75. *Id.* ¶ 173

Accordingly, the Court stated that the SEC must be subject to some jurisdictional control to determine whether its actions had been adopted for the protection of the rights and minimum guarantees provided by the Court, as well as those established by the State's legislation.⁷⁶

The Court did not rule on:

Article 25(2)(c) (Remedies Must Be Enforced) of the American Convention,⁷⁷ because:

*The Commission's allegation of facts did not support a finding of a violation of Article 25(2)(c) (Remedies Must Be Enforced).*⁷⁸

C. Dissenting and Concurring Opinions

1. Dissenting Opinion of Judge *Ad Hoc* Alejandro Montiel Argüello

In a dissenting opinion, Judge *ad hoc* Montiel Argüello noted that there was no violation of Articles 8 (Right to a Fair Trial) or 23(2) (Exceptions to Right to Participate in Government) because he believed that the SEC exercised its power to deny registration to YATAMA candidates by applying regulations permitted under the American Convention.⁷⁹

Judge *ad hoc* Montiel Argüello also stated that he did not believe there was a violation of Article 24 (Right to Equal Protection) because it was the application of equality that demanded the indigenous candidates meet the same requirement as non-indigenous ones.⁸⁰

Regarding Article 25 (Right to Judicial Protection), Judge *ad hoc* Montiel Argüello cautioned that the State's electoral laws established appeals against lower electoral officials, which could reach the SEC, and the exclusion of writs of *amparo* in electoral issues was intended to avoid a party politicization of the judicial branch (i.e., the Court could not examine the SEC's resolution because it would convert the Court

76. *Id.* ¶ 175.

77. *Id.* ¶ 177.

78. *Id.*

79. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Montiel Argüello, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 2 (June 23, 2005).

80. *Id.* ¶ 5.

into an appeals court).⁸¹

Finally, under Article 63(1), Judge *ad hoc* Montiel Argüello stated that the Court should not have ordered the publication of its decision, reform of the State's legislation, and adoption of other methods because these actions constituted promotion of human rights rather than reparation to the victims.⁸² Material and non-material damages were not justified in the absence of a human rights violation.⁸³

2. Concurring Opinion of Judge Sergio García Ramírez

In a separation opinion, Judge García Ramírez argued that when put into context with other cases, this case represented the final stage of a struggle that indigenous people had dealt with due to discrimination.⁸⁴ Thus, when examining issues such as this one, it was imperative that the Court refer to case law.⁸⁵

3. Separate Concurring Opinion of Judge Oliver H. Jackman

In a separate opinion, Judge Jackman argued that requiring citizens to belong to political parties or organizations violated the right to vote and to be elected regardless of whether the requirement could or could not be complied with by groups with a different form of organization.⁸⁶

4. Separation Opinion of Judge Antônio Augusto Cançado Trindade

In a separate opinion Judge Cançado Trindade stated that the right of the individual to international justice under the American Convention is safeguarded both by relevant treaty-based norms and by the Court's resolve to prevent undue restrictions to that right.⁸⁷ These safeguards have contributed to the process of humanization of international law and

81. *Id.* ¶ 8.

82. *Id.* ¶ 9.

83. *Id.*

84. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶¶ 25-27 (June 23, 2005).

85. *Id.* ¶ 33.

86. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Separate Concurring Opinion of Judge Oliver H. Jackman, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 4 (June 23, 2005).

87. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Antônio Augusto Cançado Trindade, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 5 (June 23, 2005).

constitute definitive contributions in the “conquest of contemporary civilization within the framework of the American Convention.”⁸⁸

He went on to say that modernly, judicial recognition of the *jus cogens* nature of the basic principles of equality and non-discrimination is evident in case law on advisory matters and also in the cases heard by the Court, as attested to by the judgment of this case.⁸⁹

5. Concurring Opinion of Judge Diego García-Sayán

In a separate opinion, Judge García-Sayán explained that this was the first case this Court heard on the issue of political rights, and the State had an obligation to eliminate practices or norms with a discriminatory effect.⁹⁰

Judge García-Sayán highlighted that it is necessary to guarantee access to public office to everyone “under general conditions of equality,” meaning specific measures should be taken to facilitate access to public office of the sectors of the population that may face special disadvantages.⁹¹

Therefore, Judge García-Sayán believed that public access to service should not apply only to appointments or designations by the authority but also to the public service that is exercised by popular election.⁹²

IV. REPARATIONS

The Court ruled by seven votes to one⁹³ that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

88. *Id.*

89. *Id.* ¶ 9.

90. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Diego García-Sayán, Inter-Am. Ct. H.R. (ser. C) No. 127, ¶ 1 (June 23, 2005).

91. *Id.* ¶ 29.

92. *Id.* ¶ 30.

93. Judge *ad hoc* Alejandro Montiel Argüello was the dissenting vote. YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 127, “Operative Paragraphs” ¶¶ 6-15 (June 23, 2005).

1. Publish the Judgment

The Court ordered that the State must publish specified paragraphs and sections of the Court's decision in the *Diario Oficial* and other newspapers with national circulation, and must post the decision on its website.⁹⁴ In addition, the State must read paragraphs and sections of the Court's decision at least four times, with two weeks between each reading, on radio stations with wide coverage on the Atlantic Coast.⁹⁵

2. Adopt Legislative Measures

The Court declared that the State must adopt legislative measures to control SEC decisions that affect human rights and repeal the provisions that impeded this appeals process.⁹⁶

3. Reform Regulations

The Court mandated that the Electoral Act be reformed to regulate the consequences of non-compliance with the requirements for electoral participation, the procedures that the SEC should use to determine such non-compliance, and the decisions that the SEC should adopt in that regard.⁹⁷ The Court also ordered the State to reform the regulation of the requirements of the law that were declared to be violations of the American Convention and adopt measures so that members of the indigenous communities could participate in electoral processes, taking into consideration their traditions, uses, and customs in a democratic society.⁹⁸

B. Compensation

The Court awarded the following amounts:

1. Pecuniary and Non-Pecuniary Damages

The Court determined that the State owed \$80,000 to YATAMA, for both pecuniary and non-pecuniary damages, for money spent by the candidates and other members for the campaign and for the frustration

94. *Id.* ¶ 252.

95. *Id.* ¶ 253.

96. *Id.* ¶ 254.

97. *Id.* ¶ 258.

98. *Id.* ¶ 259.

the candidates felt after being excluded from participating in the elections when they were representing their communities.⁹⁹

2. Costs and Expenses

The Court determined that the State owed \$15,000 to YATAMA for costs and expenses; YATAMA was required to deliver to CENIDH and CEJIL the part that corresponds to them to compensate their expenses.¹⁰⁰

3. Total Compensation (including Costs and Expenses ordered):

\$95,000

C. Deadlines

The Court ordered the State to pay the compensation for pecuniary and non-pecuniary damages and the reimbursement of costs and expenses and to publish the Judgment as ordered by the Court within one year of notification of the Judgment.¹⁰¹

Additionally, the Court ordered the State to implement the measures of reparation relating to the creation of simple, prompt, and effective judicial recourse against decisions of the SEC and reform of the Electoral Act of 2000 within a reasonable time.¹⁰²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 29, 2006: The Court deemed that the State had fully complied with its obligation to publish the Judgment in a newspaper¹⁰³ and had partially complied with its duty to publicize the Judgment via radio

99. *Id.* ¶¶ 247-248.

100. *Id.* ¶ 265.

101. *Id.* ¶ 266.

102. *Id.* ¶ 267.

103. YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., “Declares” ¶ 1 (Nov. 29, 2006).

broadcast.¹⁰⁴ The Court kept open the proceeding for monitoring compliance with regard to the following obligations: (1) to adopt legislative measures providing effective recourse against SEC decisions; (2) to reform the Electoral Act of 2000; (3) to broadcast the Judgment on the radio; (4) to pay pecuniary and non-pecuniary damages; and (5) to pay costs and expenses.¹⁰⁵

August 4, 2008: The Court kept open the proceeding for monitoring compliance with regard to the following obligations: (1) to adopt legislative measures providing effective recourse against SEC decisions; (2) to reform the Electoral Act of 2000; (3) to broadcast the Judgment on the radio; (4) to pay pecuniary and non-pecuniary damages; and (5) to pay costs and expenses.¹⁰⁶

April 21, 2010: Because the State did not submit sufficient information regarding its compliance with the Judgment, the Court determined it was necessary to hold a private hearing on May 26, 2010 with the State, the representatives, and the Commission in order to gain more information about the specific details and issues regarding the State's compliance with each obligation.¹⁰⁷

May 28, 2010: The Court decided that the State had partially complied with payment of pecuniary and non-pecuniary damages and payment of costs and expenses.¹⁰⁸ The Court kept open the proceeding for monitoring compliance with regard to the following obligations: (1) to adopt legislative measures providing effective recourse against SEC decisions; (2) to reform the 2000 Electoral Act; and (3) to broadcast the Judgment on the radio.¹⁰⁹

June 30, 2011: The Court determined that the State had not yet adopted all measures necessary to comply with the outstanding points in the Or-

104. *Id.* "Declares" ¶ 2.

105. *Id.* "Declares" ¶ 3.

106. YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (Aug. 4, 2008).

107. YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct. H.R., "Considerando Que" ¶¶ 24-25, "Resuelve" ¶ 1 (Apr. 21, 2010) (Available only in Spanish).

108. YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares" ¶ 1 (May 28, 2010).

109. *Id.* "Declares" ¶ 2.

der of the Court¹¹⁰ dated May 28, 2010.¹¹¹ The Court requested that the State submit a report presenting information on the steps it has taken to comply with the remaining points of the Judgment¹¹² and to submit a report once every four months after regarding compliance with outstanding points.¹¹³

August 22, 2013: The Court determined that the State had not complied with its obligation to inform the Court of the measures taken to comply with its pending reparations.¹¹⁴ The Court decided to continue monitoring the State's compliance with the following obligations: (1) to publicize the Judgment via a radio station; (2) to reform the legislation so that decisions of the SEC observe the guarantees of the American Convention; (3) to reform the 2000 Electoral Act as required by the Judgment; (4) to pay YATAMA the pecuniary and non-pecuniary damages owed; and (5) to pay costs and expenses as required.¹¹⁵ Finally, the Court requested the State to submit to it a report indicating the measures taken to comply with the reparations set forth in the Judgment.¹¹⁶

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Decisions on Preliminary Objections, Merits, Reparations and Costs

[YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 127 \(June 23, 2005\).](#)

[YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Dissenting Opinion of Judge Ad Hoc Alejandro Montiel Argüello, Inter-Am. Ct. H.R. \(ser. C\) No. 127 \(June 23, 2005\).](#)

[YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations](#)

110. YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Rules" ¶ 1 (June 30, 2011).

111. *Id.* "Having Seen" ¶ 2.

112. *Id.* "Rules" ¶ 2.

113. *Id.* "Rules" ¶ 3.

114. YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares That" ¶ 1 (Aug. 22, 2013).

115. *Id.* "Declares That" ¶¶ 2(a)-(f).

116. *Id.* "And Decides To" ¶ 2.

[and Costs, Concurring Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 127 \(June 23, 2005\).](#)

[YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Separate Concurring Opinion of Judge Oliver H. Jackman, Inter-Am. Ct. H.R. \(ser. C\) No. 127 \(June 23, 2005\).](#)

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[YATAMA v. Nicaragua, Preliminary Objections, Merits, Reparations and Costs, Concurring Opinion of Judge Diego García-Sayán, Inter-Am. Ct. H.R. \(ser. C\) No. 127 \(June 23, 2005\).](#)

2. Provisional Measures

[None]

3. Compliance Monitoring

[YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 22, 2013\).](#)

[YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 30, 2011\).](#)

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[YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 4, 2008\).](#)

[YATAMA v. Nicaragua, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 29, 2006\).](#)

4. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[YATAMA v. Nicaragua, Admissibility Report, Report No. 125/01, Inter-Am. Comm'n H.R., Case No. 12.388 \(Dec. 3, 2001\).](#)

3. Provisional Measures

[None]

4. Report on the Merits

[Not Available]

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

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