

**REPORT N° 125/01**

CASE 12.388

YATAMA

NICARAGUA

December 3, 2001

**I. SUMMARY**

1. On April 26, 2001, the organization Yabti Tasba Masraka Nanih Asia Takanka, YATAMA, the *Centro Nicaragüense de Derechos Humanos* (CENIDH), and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) submitted to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) a petition against the Republic of Nicaragua (hereinafter the “Nicaraguan State”, “Nicaragua,” or “the State”) for the alleged violation of rights enshrined in Articles XX (right to vote and participate in government) and XXI (right to assemble) of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”) and in Articles 8 (right to a fair trial), 23 (political rights), 24 (equality before the law), and 25 (judicial protection), in conjunction with Article 1(1) (obligation to respect the rights) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”).<sup>1</sup> The complaint is related to alleged irregularities committed by the Supreme Electoral Council and the courts of justice of Nicaragua, to the detriment of the victims’ political rights.

2. With respect to admissibility, the petitioners allege that their petition is admissible because it meets the requirements set forth at Article 46 of the Convention. The Nicaraguan State failed to avail itself of the procedural opportunity afforded by the Convention to make arguments related to admissibility.

3. The Commission, after analyzing the petition, the parties’ positions, and the requirements set out at Articles 46 and 47 of the Convention, concluded that it is competent to hear the claim, and declared the petition admissible.

**II. PROCESSING BEFORE THE COMMISSION**

4. On April 26, 2001, the Commission received the complaint by the petitioners against the Nicaraguan State, and by note of May 15, 2001, proceeded to send the State the pertinent parts of the petition, and to request that, as provided in Article 30 of the Commission’s Rules of Procedure (hereinafter “the Rules of Procedure”), it make its observations within two months so as to determine how to proceed with the complaint. On August 9, 2001, the Commission reiterated to the State that it should make observations on the petition, and gave it an additional 15 days to do so. The Nicaraguan State did not exercise the option to make observations on the petition within the procedural opportunity and time frame afforded by Article 48 of the Convention and Article 30 of the Rules of Procedure. Nor did the State request an extension of the time period.

**III. THE PARTIES’ POSITIONS**

**A. The petitioners**

5. In the complaint, the petitioners state that YATAMA<sup>2</sup> is an indigenous regional political party<sup>3</sup> in the autonomous regions of the Atlantic region of Nicaragua, and that it decided to run candidates in the two electoral regions of that larger region, for the elections for mayor and deputy mayor (of the municipal governments), and members of the municipal councils, to be held November 5, 2000. YATAMA ran candidates in the North Atlantic Autonomous Region

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1 The petitioners note that the Nicaraguan State also violated the rights enshrined in Articles 21, 25, 26, and 27 of the International Covenant on Civil and Political Rights, of the United Nations, and Convention N° 169, concerning Indigenous and Tribal Peoples in Independent Countries, of the International Labor Organization. Nonetheless, in the final section of this application setting forth the relief sought, they ask the IACHR to declare that the Nicaraguan State has violated the above-noted articles of the Convention and the Declaration.

2 The acronym “YATAMA” is the abbreviation, in Miskito, of Yabti Tasba Masraka Nanih Asia Takanka, which mean “organization of the children of mother earth.”

3 On May 4, 2000, the Supreme Electoral Council of Nicaragua gave legal recognition to the indigenous organization YATAMA as a regional political party.

(hereinafter “the RAAN”)<sup>4</sup> within the legal time limit set in the call for municipal elections;<sup>5</sup> these were not challenged, and the list was published in the written media, as ordered by the Electoral Law of Nicaragua. In the South Atlantic Autonomous Region (hereinafter “RAAS”), YATAMA decided to participate<sup>6</sup> in an alliance with two other regional political parties, the *Partido Indígena Multiétnico* (PIM) and the *Partido de Pueblos Costeños* (PPC). The PIM decided to withdraw from the agreement before the alliance was formally established, and the PPC, when registering candidates, did not get the number of signatures established by the Electoral Law of Nicaragua to participate in the elections. As the alliance did not materialize, YATAMA, with full powers to participate in the November 2000 elections, on July 20 sent the Supreme Electoral Council (hereinafter “the CSE”) an urgent communication requesting that it be authorized to participate in the RAAS individually, using only its name, emblem, and list of candidates. The CSE did not answer the request; accordingly, it was repeated on July 31, August 8, and August 9, 2000.

6. On August 15, 2000, the CSE handed down a resolution in which it resolved: First, not to approve YATAMA's request to register as YATAMA candidates those presented by the YATAMA/PPC Alliance in the South Atlantic Autonomous Region, and second, not to register the candidates submitted by YATAMA in the North Atlantic Autonomous Region. The CSE based its resolution on the failure of the *Partido de los Pueblos Costeños* to obtain the number of signatures required of political parties for participating in elections, under Nicaragua's Electoral Law, and that the candidates presented by YATAMA did not cover the percentage of municipalities and candidacies required by the Electoral Law.

7. On August 18, 2000, the petitioners filed a motion for review (*recurso de revisión*) before the Supreme Electoral Council against the above-mentioned resolution, yet it did not obtain a response within the period provided for in Nicaraguan legislation. On August 30, 2000, YATAMA brought an *amparo* action against the CSE before the Court of Appeals, North Atlantic District, Civil and Labor Chamber, for its above-noted resolution of August 15. On October 11, the appellate court decided to process the appeal, and suspended the effects of the resolution challenged. The Supreme Court, on October 25, 2000, declared that the *amparo* action pursued by YATAMA was unfounded; it based its decision on the final paragraph of Article 173 of the Constitution of Nicaragua, which notes: “No appeal shall be taken, regular or special, of the rulings of the Supreme Council on electoral matters.” YATAMA was notified of that decision on October 26, 2000.

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4 YATAMA candidates to the RAAN: Municipality of Puerto Cabezas: Rodolfo Spear Smith, for mayor; Anicia Matamoros Bushey, for deputy-mayor; Ovencio Maikell Barwell, Elmer Emsly Blanco, Winston Joel Livy, Roberto Labonte Centeno, Minario Emsly Wilson, for the municipal council. Municipality of San Juan del Río Coco Waspan: Calistro Osorio Bans M., for deputy mayor; Diego Guzmán Vanegas Allington, Gilberto Williams Jirón, Lucio Alfred Lacayo Kitler, Armando Thomas, Bernaldo García Pantin, Remigio Narciso Zepeda, Antonio Reyes Waldan, Antonio Avila Gutiérrez, for the municipal council. Municipality of Bonanza: Mario Peralta Bands, for mayor; Jorge Chacón Wilson, candidate for deputy mayor; Ceferino Wilson Bell, Patricio López Dixon, Icasio Dixon Reyes, for municipal council. Municipality of Rosita: Cristina Poveda Montiel, for mayor; Edison Johnny Anderson, Andrés López Martínez, for deputy mayor.

5 The deadline for submission of candidates was July 15, 2000.

6 YATAMA's candidates to the RAAS were: Municipality of Bluefields: Manuel Salvador Paguagua García, for mayor, Yahaira Yvonne Amador Gadea, for deputy mayor; Eustacio Flores Wilson, Ashmet Alexander Ally, Julio Cesar Delagado Pacheco, Israel Díaz Amador, Angela Gibson Morales, Reynaldo Lagos Amador, Eduardo Alexander Siu Estrada, Isabel Reyna Estrada Colindres, Lillian Elizabeth Francis Wilson, Carlos John Omeir, Nelly Sánchez Castillo, Flor Deliz Bravo Carr, William Wong López, Genny Mitchell Omeir, Sergio Warren León Corea, Olga Orelia Shepperd Hodgson, for municipal council. Municipality of El Tortuguero: Gorge Antonio Gutiérrez Robledo, for mayor, Pastora Carmen García Guillén, for deputy mayor, Jacinta Pérez González, Juana María Jirón Rodríguez, Alejandro Miranda Reyes, Sandra Esther Reyes López, Emelina Valle Solano, Andrea Lira Gaitán, Guillermina López García, and Hilda María Miranda Reyes, for municipal council. Municipality of Sandy Bay Sirpi Desembocadura: Roberto Chow Molina, for mayor; Edward Nixon Ellis Brooks, for deputy mayor; Kramwel Frank James, Donald Wilson Martínez Roland, Cristina Josefina Hills Thompson, Carolina Socorro Hurtado Rocha, Carlos Julian Prudo, Norman Marcelina Inglish, Belarmino Young Richard, and Hipólito García López, for municipal council. Municipality of Laguna de Perlas: Rodolfo Chang Bennett, for mayor; Alonso Florencio Willis Tucker, for deputy mayor; Liston Hooker Allen, Constantino Franklin Humpheys Hodgson, Jason Kenred Gutiérrez Peralta, Arlen Joan Peralta Davis, William Martín, Catalina Hamphys, Ilva Bernard, and Wilma Taylor, for municipal council. Municipality of Kukra Hill: Juan Casterio Reyes Craford, for mayor; José Mateo López Rigby, for deputy mayor; Dionicio Márquez Méndez, Ruth Vargas Smith, Leonor Hayde Maesk Thompson, Miguel Amador Huete, Alicia Reyes, Roberto Ramos Renis, Hilda Estela Méndez, and Samuel Walter Lemos Fedrick, for municipal council. Municipality of Com Island: Dayne Wiston Cash Cassanova, for mayor; Cristina Morris Anisal, for deputy mayor; Lorenzo Fidencio Britton Calderon, Keston Orville López Lewis, Lowell Alvin Rigby Downs, Marlene del Socorro Hebert Escorcía, Vaden Davis Downs White, Erick Alvaro Archobol Lavonte, and Olga María Leyman Francis, for municipal council. Municipality of La Cruz de Río Grande: Exibia Alarcón Herrera, for mayor; Gloria Maritza Colindres Romero, for deputy mayor; Angela Barbarina Hurtado, Juan Francisco Díaz Matamoro, Marcelino Lanzas Amador, Juan Carlos Loaisiga, Digno Díaz González, Gloria Isabel Lira Díaz, Maritza Colado Plazaola, and Teodora Duarte Sequeira, for municipal council.

8. The petitioners allege that their petition is admissible because domestic remedies have been exhausted as per Article 46(1)(a) of the Convention.

#### **B. The State**

9. The State did not present observations or arguments on the petition within the two months granted by the Commission, nor did it seek an extension of that term.

### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

#### **A. Preliminary considerations**

10. The Commission regrets that the Nicaraguan State has not availed itself of the procedural opportunity provided for at Article 48 of the Convention and Article 30 of the Rules of Procedure, its right to send information, make observations, controvert or challenge the admissibility of the complaint submitted by the petitioners, failing to avail itself of the procedural rights afforded by the inter-American system of human rights. The Commission considers that the State has tacitly waived its right to controvert or call into question the admissibility requirements of the petition.

#### **B. Competence *ratione loci*, *ratione personae*, *ratione temporis* and *ratione materiae* of the Commission**

11. The petitioners are authorized by Article 44 of the American Convention to present complaints to the Commission. The complaint indicates as alleged victims individuals with respect to whom the Nicaraguan State undertook to respect and guarantee the rights enshrined in the Convention. As regards the State, the Commission observes that Nicaragua is a state party to the American Convention, having ratified it September 25, 1979. Accordingly, the Commission is competent *ratione personae* to examine the petition.

12. The Commission is competent *ratione loci* to hear this petition insofar as it alleges violations of rights protected in the American Convention in the territory of Nicaragua, which is a state party.

13. The Commission is competent *ratione temporis* insofar as the facts alleged in the petition took place when the obligation to respect and ensure the rights established in the Convention was already in force for the Nicaraguan State.

14. With respect to competence *ratione materiae*, the petitioners ask the Commission to declare that the State violated the rights to a fair trial (Article 8), political rights (Article 23), equality before the law (Article 24), and judicial protection (Article 25), and the obligation to respect the rights (Article 1(1)), established in the Convention, as well as the right to vote and to participation in government (Article XX) and the right of assembly (Article XXI) of the Declaration.

15. The Commission considers that once the Convention entered into force for the State, the Convention, and not the Declaration, became the primary source of law applicable by the Commission,<sup>7</sup> so long as the petition refers to an alleged violation of rights that are identical in both instruments,<sup>8</sup> and not a continuing violation. In the instant case, there is similarity in the subject matter as between the provisions of the Declaration and the Convention invoked by the petitioners. Accordingly, the right to vote and participate in government (Article XX) and the right of assembly (Article XXI), enshrined in the Declaration, are subsumed in the provisions that provide for the rights protected at Articles 23 and 15 of the Convention.

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7 The I/A Court H.R. has indicated: "For the States Parties to the Convention, the specific source of their obligations with respect to the protection of human rights is, in principle, the Convention itself." Advisory Opinion OC-10/89 (Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights), of July 14, 1989, para. 46.

8 The I/A Court H.R. has stated that "these States cannot escape the obligations they have as members of the OAS under the Declaration, notwithstanding the fact that the Convention is the governing instrument for the States Parties thereto." Advisory Opinion OC-10/89, of July 14, 1989, para. 46.

Therefore, as regards those violations of the Declaration, the Commission shall refer only to the provisions of the Convention.

16. In view of the foregoing, the Commission is competent *ratione materiae* because the petition alleges violations of human rights contained in Articles 8, 15, 23, 24, and 25 of the American Convention.

### **C. Admissibility requirements**

#### **a. Exhaustion of domestic remedies**

17. Article 46(1)(a) of the Convention establishes that one of the requirements for admitting a petition is “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

18. The petitioners allege that they have exhausted domestic remedies.

19. The Commission observes that the State has not raised any objection arguing that this requirement has not been met, which is tantamount to a tacit waiver of the right to call into question or challenge the admissibility of the complaint. In view of the foregoing, the Commission determines that the petition analyzed satisfies the requirements set forth at Article 46(1)(a) of the Convention. Further, the Commission verifies that the remedies provided for by Nicaraguan legislation for such cases have been exhausted.

#### **D. Time period for submission**

20. Article 46(1)(b) of the American Convention provides that one of the requirements for the admissibility of a petition is that it must be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

21. In the petition under study, the IACHR has established that there has been a tacit waiver on the part of the Nicaraguan State of its right to invoke the objection of failure to exhaust domestic remedies; accordingly, the requirement of Article 46(1)(b) of the American Convention does not apply.

22. Nonetheless, the Convention requirements for exhaustion of domestic remedies and submission within six months of notification of the judgment exhausting domestic remedies are independent. Therefore, the Inter-American Commission must determine whether the petition under study was submitted within a reasonable time. In this regard, the IACHR observes that the original communication from the petitioner was received April 26, 2001. Considering the particular circumstances of the petition under analysis, especially considering that the Supreme Court, on October 26, 2000, gave notice of the resolution that declared the *amparo* action filed by YATAMA to be unfounded, the IACHR considers that it was submitted within a reasonable time.

23. In view of the foregoing, the Commission determines that the petition analyzed meets the requirement set out at Article 46(1)(b) of the Convention.

#### **E. Duplication of procedures and *res judicata***

24. Articles 46(1)(c) and 47(d) of the Convention establish as admissibility requirements that the subject matter of the petition or communication must not be pending before another international body for settlement, and that it not be substantially the same as a prior petition already examined by the Commission or by another international organization.

25. It does not appear from the record that the subject matter of this petition is pending before another international procedure for settlement, or that it reproduces a petition already examined by the Commission or by any other international organization. As the State has failed to answer, no challenge has been raised alleging failure to satisfy this requirement.

26. Accordingly, the Commission concludes that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

## **F. Characterization of the facts alleged**

27. Article 47(b) of the Convention establishes that any petition will be inadmissible that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.”

28. The Commission considers that the petitioners’ allegations, if proven, could tend to establish a violation of the rights guaranteed in Articles 8, 15, 23, 24, and 25 of the Convention, in conjunction with Article 1(1) of the Convention.

29. Based on the foregoing, the Commission considers that the requirements established at Article 47(b) and (c) of the American Convention have been satisfied.

## **V. CONCLUSIONS**

30. The Commission concludes that it is competent to take cognizance of the complaint submitted by the petitioners, and that the petition is admissible under Articles 46 and 47 of the Convention.

31. Based on the foregoing arguments of fact and law, and without prejudging on the merits,

## **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

### **DECIDES:**

1. To declare admissible the petitioners’ complaint regarding the alleged violation of Articles 8, 15, 23, 24, 25, and 1(1) of the Convention, to the detriment of the candidates to mayor, deputy mayor, and municipal council presented by YATAMA for the municipal elections of November 5, 2000, in the North Atlantic Autonomous Region and the South Atlantic Autonomous Region.

2. To give notice of this decision to the Nicaraguan State and to the petitioners.

3. To continue with the analysis of the merits of this case.

4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Adopted by the Inter-American Commission on Human Rights, December 3, 2001. (Signed): Claudio Grossman, President; Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Robert Goldman, Peter Laurie, and Julio Prado Vallejo.