



EMBASSY OF NICARAGUA
THE HAGUE

11 October 2013
Ref: HOL-EMB-196

Excellency,

I have the honour to refer to the proceedings listed in the Court's docket as *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica) Proceedings joined with Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*. In particular this Note refers to the Order of the Court dated 30 September 2013 Ref: 142552, for the opening of public hearings on the request made by Costa Rica for new provisional measures.

Nicaragua would like to point out that although it has filed a case against Costa Rica for the construction of a Road (Road 1856)¹, the damage done to the River by the construction of this road also constitutes an independent aggravation of the dispute under consideration in the case concerning the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. The damages caused by the road are an inextricable part of the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, as explained in Nicaragua's pleadings, Costa Rica's road works have caused a surge in the San Juan River's sediment load requiring Nicaragua to take active efforts, including dredging, to maintain the quality and quantity of the river's waters.

As the Court recalled in its Order of 17 April 2013:

"Both cases are based on facts relating to works being carried out in, along, or in close proximity to the San Juan River, namely the dredging of the river by Nicaragua and the construction of a road along its right bank by Costa Rica. Both sets of proceedings are about the effect of the aforementioned works on the local environment and on the free

¹ See the *Application of the Republic of Nicaragua instituting Proceedings against the Republic of Costa Rica*, 21 December 2011.



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navigation on, and access to, the San Juan River. In this regard, both Parties refer to the risk of sedimentation of the San Juan River.

In the present case and in the Nicaragua v. Costa Rica case, the Parties make reference, in addition, to the harmful environmental effect of the works in and along the San Juan River on the fragile fluvial ecosystem (including protected nature preserves in and along the river).²

Nicaragua pointed out in its Counter Memorial of 6 August 2012 in the dispute concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* that the construction by Costa Rica of a 160 km road running along the margin of the San Juan River constituted the most egregious violation of the Order of the Court of 8 March 2011, which indicated unanimously that:

*"(3) Each Party shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve"[.]*³

As the Court is aware, Costa Rica has repeatedly refused to give Nicaragua appropriate information on the road works. Indeed, it has denied that it has any obligation to prepare an Environmental Impact Assessment or to provide such a document to Nicaragua. As Nicaragua reported, it sent an international team of environmental scientists and road construction experts to inspect the River in October 2012. They confirmed that Costa Rica had not taken measures to stop or even mitigate the serious harms caused to the San Juan de Nicaragua River⁴. Furthermore, in anticipation of the second heavy rainy season since the construction of the road began, Nicaragua sent the same team on a second mission in May 2013. The second mission

² I.C.J., Order, 17 April 2013, *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, *Joinder of Proceedings*, paras. 20-21.

³ Order of 8 March 2011 concerning the Request for the Indication of Provisional Measures, para.86 (3).

⁴ G. Mathias Kondolf, Danny Hagans, Bill Weaver and Eileen Weppner, "Environmental Impacts of Juan Rafael Mora Porras Route 1856, Costa Rica, on the Río San Juan, Nicaragua," December 2012 ("Kondolf Report"), (NM, Vol. II, Annex I).



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underscored the urgent need for the mitigation measures previously presented by Nicaragua to the Court.

As the rainy season enters into its heaviest stage washing even greater quantities of sediment and run-off into the river's waters, Costa Rica has still not provided the necessary information to Nicaragua, nor has it taken the necessary actions along the 160 km road to avoid or mitigate the irreparable damage that is being inflicted on the river and its surrounding environment, including on navigation and the health and wellbeing of the population living along its margins.

I have the honour of drawing the attention of the Court to the fact that in the context of Costa Rica's request for a modification of the 8 March 2011 provisional measures Order of the Court⁵, Nicaragua itself made a request for a modification of the provisional measures. The Court decided not to examine Nicaragua's request because "even if the situation invoked in the *Nicaragua v. Costa Rica* case were to justify the indication of provisional measures, the appropriate method of securing that is not the modification of the Order made in the *Costa Rica v. Nicaragua* case."⁶ In accordance with this decision, Nicaragua requests not the modification of the existing measures, but the adoption of new provisional measures linked with the *Nicaragua v. Costa Rica* case.

Since Costa Rica is once more attempting to modify the provisional measures, initially adopted in *Costa Rica v. Nicaragua*, Nicaragua believes that the oral hearings that will take place from 14 to 17 October 2013 will provide an appropriate forum for the consideration of Nicaragua's request for the indication of the measures necessary in order to avoid a continued and irreparable damage to Nicaragua's rights.

⁵ *Request for the Modification of the Order of 8 March 2011* in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, 21 May 2013.

⁶ I.C.J., Order, 16 July 2013, *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) / Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Provisional Measures*, para. 28.



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The measures indicated below are known and will not take Costa Rica by surprise. Nicaragua has been pointing out the need for information sharing and remedial measures from the moment the road works began, and it has requested them in one way or another in both cases that have been joined and are presently before the Court.

Nicaragua, therefore, respectfully requests the Court, as a matter of urgency to prevent further damage to the River and to avoid aggravation of the dispute, to order the following provisional measures:

- (1) that Costa Rica immediately and unconditionally provides Nicaragua with the Environmental Impact Assessment Study and all technical reports and assessments on the measures necessary to mitigate significant environmental harm to the River,
- (2) that Costa Rica immediately takes the following emergency measures:
 - (a) Reduce the rate and frequency of road fill failure slumps and landslides where the road crosses the steeper hill slopes, especially in locations where failed or eroded soil materials have been or could potentially be delivered to the Río San Juan.
 - (b) Eliminate or significantly reduce the risk of future erosion and sediment delivery at all stream crossings along Route 1856.
 - (c) Immediately reduce road surface erosion and sediment delivery by improving dispersion of concentrated road runoff and increasing the number and frequency of road drainage structures.
 - (d) Control surface erosion and resultant sediment delivery from bare soil areas that were exposed during clearing, grubbing and construction activities in the last several years.



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- (3) Order Costa Rica not to renew any construction activities of the road while the Court is seized of the present case.

Nicaragua reserves its right to amend and modify the measures sought in light of any situation that might arise.

Please accept, Excellency, the assurances of my highest consideration.

Carlos J. ARGUELLO GÓMEZ
Agent
Republic of Nicaragua

**His Excellency
Mr. Philippe Couvereur
Registrar
International Court of Justice
Peace Palace
The Hague**