INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE GARÍFUNA COMMUNITY OF TRIUNFO DE LA CRUZ AND ITS MEMBERS V. HONDURAS

JUDGMENT OF OCTOBER 8, 2015
(Merits, Reparations, and Costs)

In the *Case of the Garífuna Community of Triunfo de la Cruz and its members,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", "the Court", or "the Tribunal"), composed of the following judges:

Humberto Antonio Sierra Porto, President;
Roberto F. Caldas, Vice President;
Manuel E. Ventura Robles, Judge;
Diego García-Sayán, Judge;
Alberto Pérez Pérez, Judge;
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 65, and 67 of the Rules of Procedure of the Court (hereinafter also "the Rules of Procedure"), delivers this judgment.

CASE OF THE GARÍFUNA COMMUNITY OF TRIUNFO DE LA CRUZ AND ITS MEMBERS V. HONDURAS

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* – On February 21, 2013 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court of Human Rights the case of the *Garífuna Community of Triunfo de la Cruz and its members* against the Republic of Honduras (hereinafter "the State" or "Honduras"). According to the Commission, the case relates to Honduras' alleged international responsibility because the aforementioned community did not have a title deed over their traditional territory that could be considered suitable and culturally adequate; the acknowledgment of said territory took too long and up to this date they continued to be denied a single title over the entirety of the territory. Additionally, the Community was not able to maintain a peaceful occupation and possession of their traditional lands, due to (i) the alleged lack of determination and timely delimitation of the titled lands, (ii) the alleged lack of legal certainty in the titles granted, (iii) the alleged restrictions in access to areas of the traditional territory due to the creation of protected areas, and (iv) the alleged omission to effectively protect their territory against occupation and stripping by third parties. On the other hand, the case refers to the alleged lack of a prior, free, and informed consultation regarding the adoption of decisions such as the planning and execution of tourism projects and megaprojects, the creation of a protected area, and the alleged sale of community lands. Finally, the Community did not have access to an appeal that would take into consideration its specific characteristics regarding collective property, or an effective access to justice regarding the complaints for the alleged sales of traditional lands, threats and harassment allegedly suffered by the authorities of the Community because of their activities in defense of the lands, and the insecurity and violence caused by third parties in the territory.

2. *Procedure before the Commission.* – The procedure before the Commission was as follows:

a. *Petition.* – On October 29, 2003, the Commission received a petition lodged by the Black Honduran Fraternal Organization (hereinafter "the petitioner" or "OFRANEH").[1]

b. *Admissibility Report*. – On March 14, 2006, the Commission adopted Admissibility Report Nº. 29/06.[2]

c. *Precautionary Measures.* – On October 18, 2005, the petitioner requested the ordering of precautionary measures to protect the Community's rights,[3] and on April 28, 2006, the Commission requested that the State adopt the measures necessary to protect and respect the property right over the traditional lands belonging to the Community of Triunfo de la Cruz.[4]

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[1] This petition was lodged due to alleged violations of human rights, in detriment of the Garífuna Communities of Cayos Cochinos, Punta Piedra, and Triunfo de la Cruz, and its members. On December 19, 2003, the Commission decided to divide the petition into three separate matters.

[2] In this Report, the Commission declared the admissibility of the petition regarding the Garífuna Community of Triunfo de la Cruz and its members, for the alleged violation of Articles 8, 21, and 25 of the American Convention, in connection to Articles 1 and 2 of the same instrument.

[3] Specifically, the petitioner requested that the State be forbidden from carrying out actions and contracts on the Community's real estate given the alleged imminent danger of irreparable damage to its cultural and physical survival. Likewise, it mentioned the alleged lack of action by the State regarding the Community's complaints, the enactment of a property law in detriment of the Community's rights, and new tourism projects in the area.

[4] The Commission informed, in its Merits Report, that it continues to follow-up on the situation.

d. *Report on the Merits*. – On November 7, 2012 the Commission adopted Merits Report Nº. 76/12, in the terms of Article 50 of the Convention (hereinafter "the Merits Report"), in which it reached a series of conclusions and made several recommendations to the State:

i. Conclusions. - The Commission concluded that the State was responsible for the alleged violation of the following human rights set forth in the American Convention:

- the right to property enshrined in Article 21 of the American Convention, in relation to Articles 1(1) and 2 of the same, in detriment of the Garífuna Community of Triunfo de la Cruz and its members, for allegedly not having granted them effective access to a collective property deed over their ancestral territory; as well as for allegedly having abstained from effectively delimiting, demarcating, and protecting it;
- the right to property enshrined in Article 21 of the American Convention, in connection to Article 1(1) of the same, in detriment of the Garífuna Community of Triunfo de la Cruz and its members, upon allegedly making decisions regarding measures that affected their territories, without complying with the requirements set forth in Inter-American law; such as, expropriation procedures; not threatening the survival of indigenous communities; making prior, free, and informed consultations, as well as social and environmental impact studies, and guaranteeing the participation of indigenous communities in the benefits derived from the concessions granted;
- the rights to a fair trial and to judicial protection enshrined in Articles 8 and 25 of the American Convention, in connection to Articles 1(1) and 2 of the same, in detriment of the Garífuna Community of Triunfo de la Cruz Community and its members, due to the alleged lack of provision of an adequate and effective procedure for the acknowledgment, titling, and demarcation of the territories reclaimed by the alleged victims, thus guaranteeing the pacific possession and recovery of their ancestral territory;
- The rights to a fair trial and to judicial protection enshrined in Articles 8 and 25 of the American Convention, in relation to Article 1(1) of the same, in detriment of the Garífuna Community of Triunfo de la Cruz Community and its members, due to the alleged lack of a serious, effective, and prompt investigation into the truth and determination of responsibilities with regard to the complaints filed by the members and leaders of the Community.

ii. Recommendations. - The Commission recommended that the State:

- Adopt, as soon as possible, the measures necessary to make effective the right to community property and the possession of the Garífuna Community of Triunfo de la Cruz and its members, with regard to their ancestral territory, and specifically, the legislative, administrative, or any other measures necessary to adequately delimit, demarcate, and title their lands, pursuant to their customary law, values, uses, and customs, and guarantee the members of the Community the development and continuity of their cosmovision so they may continue to live their traditional lifestyle, as per their cultural identity, social structure, economic system, customs, beliefs, and distinctive traditions;
- Establish, with the participation of the indigenous groups, the legislative or other measures necessary to make effective the right to a prior, free, informed consultation in good faith, as per the international human rights' standards;
- Investigate and punish those responsible for the threats, harassments, acts of violence and intimidation, and damages to the property of the members of the Community of Triunfo de la Cruz, and specifically, the leaders and authorities;
- Repair, both individually and collectively, the consequences of the violation to the mentioned rights;
- Adopt the measures necessary to avoid similar acts from occurring in the future pursuant to the duty to prevent and guarantee the fundamental rights acknowledged in the American Convention.

e. *Notification to the State.* – The Merits Report was notified to the State on November 21, 2012, granting it two months to report on compliance with the recommendations. The State requested an extension, which was granted until February 14, 2013. On the date on which the case was submitted to the Court, the State had not yet presented its report.

f. *Submission to the Court.* – On February 21, 2013 the Commission submitted all the facts and alleged human rights' violations described in the Merits Report to the jurisdiction of the Inter-American Court "owing to the need to obtain justice for the victims given the lack of information regarding compliance with the recommendations by the State."

3. *Request of the Inter-American Commission.* – Based on the aforementioned, the Commission asked the Court to declare Honduras' international responsibility for the alleged violation of the rights previously stated in the conclusions of the Merits Report. Additionally, the Commission requested that the Court order the State to comply with certain measures of reparation, which will be detailed and analyzed in the corresponding chapter.

II
PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and the representatives.* – The submission of the case by the Commission was notified to the State and the representatives on May 8, 2013.

5. *Brief with pleadings, motions, and evidence.* – On July 8, 2013, the representatives presented their brief with pleadings, motions, and evidence[5] (hereinafter "pleadings and motions brief"), in the terms of Articles 25 and 40 of the Rules of Procedure of the Court.

6. *Answering brief.* – On October 1, 2013 the State submitted to the Court its answering brief to the submission of the case and to the pleadings and motions brief (hereinafter "answer" or "answering brief"), in the terms of Article 41 of the Court's Rules of Procedure.[6]

7. *Resorting to the Legal Aid Fund.* – Through Order of December 18, 2013, the President accepted the request filed by the alleged victims, through their representatives, to resort to the Court's Legal Aid Fund for Victims, and it approved the granting of the economic aid necessary for a maximum of two representatives and for the offering of a maximum of three statements, either in hearing or through affidavit. Afterwards, in the Order of the President of the Court of April 7, 2014, it was stated that said aid would be assigned to cover the travel and lodging expenses necessary so the alleged victim José Ángel Castro and the witness Clara Eugenia Flores, could attend the public hearing to be held on May 20, 2014 at the Court's headquarters.

8. *Public hearing.* – Through the mentioned Order of April 7, 2014, the President of the Court ordered to receive statements offered before a notary public (*affidavit*) from four alleged victims and six witnesses, proposed by the representatives, as well as an informative witness offered by the State. In this Order the President also summoned the parties and the Commission to a public hearing held on May 20, 2014 during the 103rd Ordinary Sessions of the Court, which were held at its headquarters.[7] The statements of an alleged victim and a witness, proposed by the representatives, an expert witness proposed by the Commission, and an informative witness offered by the State, were received at the hearing, as well as the

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[5] The representatives sent the pleadings and motions brief by e-mail. Through communication received on July 18, 2013, the representatives forwarded the original brief and its annexes to the Court.

[6] The State sent its answering brief by e-mail. Through communication received on October 4, 2013, the State forwarded the original brief and its annexes to the Court. Likewise, through a brief of June 10, 2013 the State appointed Mrs. Ethel Deras Enamorado, Attorney General of the Republic, as agent, and Mr. Ricardo Rodríguez, Deputy Attorney General of the Republic, as Alternate Agent. In the answering brief the State appointed Mr. Kelvin Fabricio Aguirre Córdova as assistant to the Alternate Agent.

[7] Those who appeared at this hearing were: a) for the Inter-American Commission: Rose-Marie B. Antoine, Commissioner; Silvia Serrano Guzmán and Jorge Meza Flores, lawyers of the Executive Secretariat; b) for the representatives of the alleged victims: Mirian Miranda Chamorro, Representative; Christian Callejas Escoto, Representative; Alfredo López, Cultural Advisor; Teresa Reyes, Translator; Claudia Jiménez, Assistant; Andrea Gutiérrez Baltodano, Assistant, and c) for the State of Honduras: Jorge Abilio Serrano Villanueva, Deputy Attorney General of the Nation; Kelvin Fabricio Aguirre Córdova, Attorney General of the Nation; Ramón Valladares Reino, Ambassador; Juan Alberto Lara Bueso, Ambassador of Honduras in Costa Rica; Ligia Pitsikalis Midence, Office of the Public Prosecutor; Roy Murillo Hale, National Agrarian Institute.

observations and oral final arguments of the Commission, the representatives of the alleged victims, and the State, respectively.

9. *Request for Provisional Measures.* – Through communication of August 6, 2014 the representatives asked the Court to order "precautionary measures" in favor of the Garífuna Community of Barra Vieja, since that Community was "about to be evicted by elements assigned to the Ministry of Security of Honduras." On October 14, 2014 the Court dismissed the mentioned request given it was inadmissible in consideration of the fact that it could not be concluded that there was a relationship with the object of the contentious case of the *Garífuna Community of Triunfo de la Cruz*, given that said case "does not refer to the Garífuna Community of Barra Vieja or the lands inhabited by that Community."[8]

10. *Request for accumulation.* – Through communication of August 11, 2014 the representatives asked the Court to merge the cases of the *Garífuna Community of Punta Piedra* and the *Garífuna Community of Triunfo de la Cruz*, given they considered they met the assumptions defined in Article 30 of the Court's Rules of Procedure. In this sense, through a note of the Secretariat of August 29, 2014, the parties were informed that by virtue of the specific and distinct characteristics of each case, as well as the procedural stage in which they were in, the Court in full considered the merging unnecessary.

11. *Amici Curiae.* – The Court received six *amici curiae* briefs, presented by: 1) Keri Brondo; 2) Mark David Anderson; 3) the State of Guatemala;[9] 4) Christopher Loperena; 5) the Honduras Accompaniment Project (PROAH),[10] and 6) Sandra Cuffe.

12. *Final written arguments and observations.* – On June 20, 2014, the representatives and the State presented their respective final written arguments, and the Inter-American Commission forwarded its final written observations. On that same day, the representatives sent some annexes to said arguments[11] and on June 23, 2014 the Commission presented an "extension of José Aylwin's expert testimony." On August 11, 2014, the State presented its observations to the annexes forwarded by the representatives. On their part, neither the representatives nor the Commission presented observations to what was forwarded.

13. *Evidence to facilitate adjudication of the case.* – Through a note from the Secretariat of July 18, 2014 the State was asked to provide certain information as evidence to facilitate adjudication of the case, which was received at the Secretariat on August 1, 2014.[12]

14. *Contributions in application of the Aid Fund*. – Through a note of the Secretariat on September 26, 2014 the State was forwarded the report on the contributions made in application of the Legal Aid Fund for Victims, granting the State until October 2, 2014 to present the corresponding observations. Through its brief of that same date, the State informed "it did not have any observations to make" to that report.

15. *Visit diligence to the Garífuna Community of Triunfo de la Cruz*. – The State asked the Court at the public hearing that "in order to facilitate adjudication of the case, […] to have a fair judgment according to the legal reality, […] it carry out an inspection *in loco* to verify respect to the precautionary measures ordered by the Inter-American Commission, […] the physical reality of the communities, the protected areas ordered and turned into national

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[8] *Matter of the Garífuna de Barra Vieja Community*. Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of October 14, 2014, whereas clause number ten.

[9] The brief was signed by Antonio Arenales Forno, President of the Presidential Commission for the Coordination of the Executive's Power in Human Rights Issues (COPREDEH).

[10] The brief was signed by Marine Pezet, Coordinator of PROAH.

[11] The originals of the annexes forwarded by the representatives were received on June 25, 2014.

[12] The originals of the mentioned evidence were received on August 12, 2014.

parks, the lifestyle and how the Garífunas and non-Garífunas live side by side." Said request was reiterated by the State in its final written arguments. The representatives indicated, in this sense, that "the Community would be thrilled to receive this Court." The Commission did not make observations in this regard. Through communication of June 30, 2015, the Court in full ordered a diligence *in situ* at the Community pursuant to Articles 58(a) and 58(b) of the Rules of Procedure of the Court with the purpose of a) observing some of the areas of the territory claimed by the Community, and b) holding a meeting with the parties, the Commission, and different authorities and residents.

16. On August 21 and 22, 2015 a delegation from the Court, accompanied by delegations from the Commission, the representatives, and the State, visited the Garífuna Community of Triunfo de la Cruz.[13] During that visit, the Court's delegation was received at a traditional ceremony at the community center of the Garífuna Community of Triunfo de la Cruz. Additionally, the mentioned delegation interviewed the parties, different local authorities, and local residents. Likewise, along with the parties and the Inter-American Commission it travelled by boat, by foot, and by car to different areas to observe *in situ* the areas of the territory in dispute. Taking advantage of the summons and the presence of a great number of local residents, the President of the Court and the delegation spontaneously talked to local residents, leader, and authorities who accompanied them in their journey during the judicial diligence.

17. *Deliberation of the present case.* – The Court began deliberating this judgment on October 6, 2015.

III
JURISDICTION

18. The Court is competent to hear this case pursuant to Article 62(3) of the Convention, because Honduras has been a State Party to the Convention since September 5, 1977 and accepted the contentious jurisdiction of the Court on September 9, 1981.

IV
PRELIMINARY CONSIDERATIONS

A. Regarding the arguments of the State stating that the Garífuna Community of Triunfo de la Cruz is not considered "native people"

19. The State, in its final oral arguments during the public hearing held in this case, mentioned that "the native people located in the Tela Bay were the Hicaque people" and that "Honduras has complied giving [the Garífuna Community of Triunfo de la Cruz] a right despite

[13] The Court's delegation that carried out the visit was made up by the President of the Court, Judge Humberto Antonio Sierra Porto, the Secretary Pablo Saavedra Alessandri, the Legal Director Alexei Julio Estrada; Bruno Rodríguez and Jorge Errandonea, Lawyers of the Secretariat. Additionally, on behalf of the State of Honduras Jorge Abilio Serrano Villanueva, Deputy Attorney General of the Nation; Oscar Bonilla Landa, Mario Alberto Fuentes Morales, Municipal Mayor of Tela; arco Tulio Luque, Manager of the Municipal Department of the Cadastre; Danny Gualberto Varela, Municipal Legal Prosecutor; Gladys Dolores López, Municipal Secretary; Gerber Antony Gainor Brooks, Airport Commission; Hugo Varela, Tela Property Registry were present. For the Inter-American Commission those present were Tracy Susanne Robinson, Commissioner; Silvia Serrano Guzmán and Erick Acuña, Lawyers of the Secretariat of the Commission. Additionally, the following were present on behalf of the representatives, Miriam Miranda, Selvin López, Margarita Videa, Aurelia Arzu, Jessica García, Amada Ermelinda López, Felix Valentin, Annie Bird, ChungWha Hong, Jovanna García Soto, Hudson Miralda Sánchez, Medeleine David Estanislao Alvarez López, Julian Eramos Castillo, Mily Samara Lambert, Elvin Goevany Aquino, Angel Castro, Teresa Reyes, Secundino Torres, Alfredo López, Cesar Benedith, Beatriz Ramos, Olivia Ramos, and Francis López.

not being native people." Afterwards, in its final written arguments, the State reiterated that the mentioned Community "[were] not native people," but people "that conserv[e] a community state," reason for which they do not have the right to ancestral property they are claiming over [specific] lands."

20. In their final written arguments, the representatives indicated that the State "[would] disqualify the condition of indigenous of the Garífuna people and refer to them as a mere ethnic minority, categorizing them simply as afro-descendants."[14] They added that the State did not argue it at the correct procedural moment, given it had it "at its disposal throughout the entire proceeding before the Inter-American Commission and the majority of the procedure before this Court and that it did not contest it at any time, being until the moment of the statements that it [sought] to introduce arguments it did not include in its answer," which the representatives considered "[a] violation to the principle of procedural loyalty and good faith."[15] Additionally, they argued that "[t]he State itself, throughout the proceedings, has acknowledged the right of the Community of Triunfo de la Cruz, thus a change in their theory of the case at this time is unacceptable"[16] and that "the argument introduced in a time-barred manner by the State regarding the alleged possession of the land by the Hicaque people [would] not be admissible."[17]

21. In its final oral observations, the Commission indicated "the seriousness of the fact that the State in this hearing tried […] to question the indigenous nature of the Garífuna Community of Triunfo de la Cruz, which has not only reclaimed its rights as such […] before domestic authorities but […] has [also] turned to the […] Inter-American Court in its quality of indigenous people, because that is how they self-identify."[18] Additionally, in its final written arguments, it added that "the fact that [the Community] is the result of a syncretism between indigenous people that used and occupied the land prior to the colonization [and] afro-descendent communities, and that they had gone through a series of adaptations to their historic realities, does not eliminate the condition of indigenous people nor do they rest relevance from the criterion of self-identification." Finally, the Commission reiterated that "neither within the framework of the domestic claims nor within the framework of the Inter-American proceeding before the Commission, the State presented any controversy whatsoever regarding the indigenous nature of the Community" and that "[t]his controversy was first brought forward by the State before the Inter-American Court," therefore "this change in the State's position can be considered in light of the *estoppel* principle."

22. This Court verified that in fact the State presented the argument that the Community was not an indigenous or native group for the first time at the public hearing held before it. As has been previously stated by the Court, and since the State had access to the probative elements and this does not refer to supervening events, if, in the answering brief it submits to the Court, it presents a position that is contradictory with regard to the one maintained

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[14] The representatives referred specifically to a census performed in 2013.

[15] It is important to mention that the State, in its brief of August 11, 2014 (merits file, folio 1049), responded to this argument made by the representatives. However, said brief was forwarded in response to a note from the Secretariat requesting its observations to the annexes to the representatives' final written arguments and a brief forwarded by the Commission.

[16] Regarding the mentioned "change in their theory", the representatives linked it to "historical information that the Garífuna people does not acknowledge because it is not precise and because there is documentary evidence that proves the Garífuna's right over those territories."

[17] The representatives added that "the land occupied by Triunfo de la Cruz was abandoned by the Hicaque people when they retreated to the mountains due to the violent colonization process by the Spaniards."

[18] In its submission of the case, the Commission indicated that the Community is a "differentiated ethnic group" that has "asserted its rights in Honduras as an indigenous group and said nature was not put up to debate before the [Commission]." Additionally, in its Merits Report in the chapter on "Proven facts" it referred to how the Garífuna "identify themselves as an indigenous group of African culture."

before the Commission, it could impair the functioning of the inter-American system and the principle of equality of arms in the proceedings before the Court, because the opposing party and the Commission cannot change their positions or their offer of evidence. Thus, both the representatives and the Inter-American Commission acted in the proceedings before the latter based on that position adopted by the State in which it did not contest the nature of indigenous people of the Community and, under those terms, the Commission prepared the Merits Report and, subsequently, submitted the case to the Court. In this sense, the Court recalls that pursuant to international practice, a State that has adopted a specific position, which has legal effects, cannot later, by virtue of the estoppel principle, assume another behavior that contradicts the first one and that changes the state of things on which the other party based its actions.[19]

23. Therefore, in accordance with the principles of *estoppel*, good faith, procedural equality, and legal certainty, in this case the Court considers that the State cannot substantially change its position regarding that stated in the domestic proceedings, before the Inter-American Commission, and before the Court in its answering brief, upon presenting at the public hearing before the Court a hypothesis related to the disregard of the Garífuna Community of Triunfo de la Cruz as indigenous or tribal people. Thus, the Court rejects this new argument presented by the State, without detriment to that stated in the chapter on Facts of this judgment.

B. Regarding the facts related to the "Indura Beach and Golf Resort" project

24. In its Merits Report, the Commission stated that as of August 2005 a tourism megaproject called "[t]he Micos Beach & Golf Resort" or "Tela Bay" would be executed at the Tela Bay. The representatives stated that the current name for this project is "Indura Beach and Golf Resort" and that it was "carried out without consulting the Community" and that "the execution of the project was rejected by the members of the Community."

25. On the other hand, the Court verified that on August 6, 2014 the representatives asked the Court to order provisional measures in favor of the Garífuna Community of Barra Vieja, given that said Community was "about to be evicted by elements assigned to the Ministry of Security of Honduras" and they stated that "this situation w[ould be] related to the case of [the Garífuna Community of] Triunfo de la Cruz and other [G]arífuna [C]ommunities in the Tela Bay." As indicated in said request, the Community of Barra Vieja was located "at the entrance" of the Tela Bay tourism project, allegedly "one of the main reasons for the eviction of the Garífuna communities."[20]

26. On October 14, 2014, the Court dismissed the request for provisional measures filed in favor of the Garífuna Community of Barra Vieja since it was inadmissible, given the fact that it cannot be concluded that there is a "relationship with the object of the" contentious "case" of the *Garífuna Community of Triunfo de la Cruz,* since that case "does not refer to the Garífuna Community of Barra Vieja or the lands inhabited by that Community."[21] This Court specifically verified with regard to the relationship between the facts that serve as basis for the request for provisional measures and the contentious case, which the representatives provided, in response to a request for additional information from the Court, a map that shows the location of the Garífuna Communities of Barra Vieja and Triunfo de la Cruz, as well as the

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[19] *Cfr. Case of Neira Alegría et al. v. Peru. Preliminary Objections.* Judgment of December 11, 1991. Series C No. 13, para. 29, and *Case of the Massacre of Santo Domingo v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment of November 30, 2012. Series C Nº. 259, paras. 146 and 148.

[20] Brief of the representatives of August 6, 2014.

[21] *Matter of the Garífuna Community of Barra Vieja.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of October 14, 2014, whereas clause number ten.

"impact zone [of the] Tela Bay project" and that "[f]rom this map it can be concluded that the two Garífuna Communities are located in different parts of the Tela Bay."[22]

27. On the other hand, in the *in situ* visit carried out by a Court delegation (*supra* para. 15) to the territories of the Garífuna Triunfo de la Cruz Community, as well as other locations among which was the "Indura Beach and Gold Resort" project, it was able to verify that in fact this tourism project was located on the other side of the Tela Bay, several kilometers away from the Triunfo de la Cruz Community and the territories in controversy in this case. Therefore, this Court will not go on record regarding the alleged violations in reference to this tourism project.

V
EVIDENCE

A. Documentary, testimonial, and expert evidence

28. The Court received diverse documents presented as evidence by the Commission, the representatives, and the State attached to their main briefs, as well as to the representatives' final written arguments, as evidence to facilitate adjudication of the case and attachments to the State's observations regarding the visit *in situ.* Similarly, the Court received the statements offered before notary public (*affidavit*) by four (4) alleged victims,[23] six (6) witnesses,[24] and a statement offered for informative purposes.[25] With regard to the evidence provided at the public hearing, the Court received the statements of the alleged victim José Ángel Castro, the witness Clara Eugenia Flores, the expert witness José Aylwin and the statement offered for informative purposes by Oscar Orlando Bonilla Landa. During the visit *in situ* to the areas related to the facts of the case (*supra* para. 15), several documents were handed over to the Court's delegation. The recording of the development of the evidentiary diligence *in situ* was annexed to the case file and transmitted to the parties and the Commission. In the chapter on Facts in this judgment, the Court will refer to the evidence forwarded in the case of the *Garífuna Community of Punta Piedra and its members v. Honduras*, currently in process before it, only in what refers to the general aspects of the Garífuna people in Honduras.

B. Admission of the evidence

29. The Court admits the documents presented by the parties and the Commission at the appropriate procedural time, whose admissibility was not questioned or objected.[26] Regarding some documents introduced through electronic links that may be consulted up to the date on which the judgment is issued, the Court has established that, if any of the parties or the Commission provides at least the document's direct electronic link it cites as evidence and it is possible to access it, legal certainty or procedural equality are not affected because it is

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22 *Matter of the Garífuna Community of Barra Vieja.* Provisional Measures regarding Honduras. Order of the Inter-American Court of Human Rights of October 14, 2014, whereas clause number nine.

23 The alleged victims are: Olivia Ramos Bernardez, Teresa Reyes Reyes, Beatriz Ramos Bernardez, and Secundino Torres Amaya.

24 The witnesses are: Alfredo López Álvarez, Francis Secundina López Martínez, Ilaria Cacho Amaya, Dionicio Álvarez García, Cesar Leonel Benedit Zúñiga, and Doris Rinabett Benedict.

25 The person offering a statement of an informative nature is Mr. Ismael Zepeda Ordoñez.

26 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 1, 2015. Series C No. 299, para. 74.

immediately accessible by the Court, by the other party, or the Commission.[27] In this case, there was no objection or observations by the parties or the Commission regarding the admissibility of these documents.

30. Similarly, the Court considers it appropriate to admit the statements given at the public hearing and before a notary public (*supra* para. 8), since they adjust to the object defined by the President in the Order that indicated they be received[28] and to the object of this case.

31. In what refers to the documents delivered during the public hearing by the person offering his statement with informative purposes, Oscar Orlando Bonilla Landa, the Court takes note that said documents were forwarded to the parties and the Commission. The Court admits said documents as part of his statement, given they consider them useful for the resolution of this case.

32. Regarding the annexes to the final written arguments presented by the representatives on June 20, 2014, this Court verifies that they refer to supervening information that can also be useful for the resolution of the case, reason for which it admits said documentary evidence, with the exception of the following documents, which do not have that nature and with regard to which the representatives did not justify that due to force majeure or serious hindrance they did not present that evidence at the correct procedural moment: i) a blueprint of the property belonging to Mr. V. H. of February, 2013, ii) an authorization from the Environmental Municipal Unit of the Municipality of Tela of October 19, 2012, iii) a statement offered by Mr. V. H. on December 27, 2012, and iv) a public notice from the Committee for the Defense of Triunfeña Lands of September 20, 2004.

33. On the other hand, on June 23, 2014, the Commission presented an "extension of the expert statement offered by José Aylwin," which had been given at the public hearing. Through a note of the Secretariat of July 18, 2014 said brief was forwarded to the parties and they were given until August 1, 2014 to present the observations considered relevant. The State requested an extension, which was granted, and forwarded said observations on August 11, 2014 and did not object the admissibility of the mentioned brief. The representatives did not present observations. The Court considers that the mentioned extension can be useful for the resolution of this case, and therefore admits the brief presented by the Commission as part of the statement offered by the expert witness José Aylwin.

34. Additionally, on January 9, 2015, the State presented a brief about an "interview held by a Television company that operates in the city of Tela […], to Mrs. Clara Flores Sánchez, in the Community of Triunfo de la Cruz, in her position of President of the Board of said community." In this sense, on January 13, 2014 the State presented a DVD with a recording of the mentioned interview and on the 20th of that same month and year it forwarded a brief to which it attached a "certificate" signed by the "[p]resenter of Panorama Morning News", indicating that said interview had been carried out on November 15, 2014. Through a note from the Secretariat dated January 21, 2015 it gave the representatives and the Commission time until February 2, 2015 so the representatives and Commission could present their observations. The representatives and the Commission forwarded those observations on that same date. This Court verified that this is supervening information, and it admits the mentioned evidence presented by the State.

35. With regard to the documents collected during the visit *in situ* on August 21 and 22, 2015, these were transmitted through a note of the Secretariat of September 3, 2015, and the State, the representatives, and the Commission were given until September 11, 2015 to

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[27] *Cfr. Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs.* Judgment of July 4, 2007. Series C No. 165, para. 26, and *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 1, 2015. Series C No. 299, para. 75.

[28] The objects of the statements are defined in the Order of the President of the Court of March 26, 2014.

forward their observations regarding their content. The Court considers that the documents collected may be useful for the resolution of the case; therefore, pursuant to Article 58(a) of the Rules of Procedure, the Court considers it appropriate to admit the documents provided, which were included in the corresponding case file.

C. Assessment of the Evidence

36. Based on the provisions of Articles 46, 47, 48, 50, 51, 52, 57 of the Rules of Procedure of the Court, and on its consistent case law concerning evidence and its assessment, the Court will examine and assess the documentary probative elements forwarded by the parties and the Commission at the correct procedural moments, the statements and expert opinions provided through affidavits and at the public hearing. To this end, it will abide by the principles of sound judicial discretion, within the corresponding legal framework, taking into account all the evidence and arguments that have been presented.[29] Similarly, the statements offered by the alleged victims will be assessed within the context of the evidence of the proceedings provided they can offer greater information on the alleged violations and their consequences.[30]

37. With regard to the *in situ* procedure (*supra* para. 15) aimed at obtaining additional information about the situation of the presumed victims and the places where some of the facts alleged in this case took place, the information received will be evaluated based on the circumstances in which they were produced. Thus, in accordance with this Court's case-law, the statements made by the municipality authorities, members of the Community of Triunfo de la Cruz, and stakeholders cannot be assessed in isolation, but rather within the context of the evidence as a whole, because they are useful insofar as they can provide additional information about the alleged facts, the alleged violations, and their consequences.[31]

38. On the other hand, with regard to the other diligences carried out during the visit *in situ*, whose objective was to directly verify the location of the territories over which the controversies of the present case verse, the Court considers that they have offered a general vision of an important illustrative nature that can dimension, understand, and delimit the specific facts that make up the basis of the alleged violations presented to it. In this line, the Court grants validity to said diligences and assesses them within the totality of the evidence of the proceeding and under the rules of sound judgment.

39. Regarding the interview given by Mrs. Clara Flores (*supra* para. 34), the State indicated that it was "carried out in the Spanish language by the same person that gave their statement at the Public Hearing" and that "the OFRANEH [had] request[ed] [t]he Court […] it appoint a translator fluent in the Garífuna tongue since the witness Clara Eugenia Flores could not speak Spanish," but that the mentioned interview "proves that [the witness] […] speaks and perfectly understands the Spanish language." In this sense, the State requested that the Court consider "that the witness has violated the oath or sworn statement offered before [this

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[29] *Cfr. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37 para. 76, and *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 1, 2015. Series C No. 299, para. 82.

[30] *Cfr. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 1, 2015. Series C No. 299, para. 82.

[31] *Cfr. Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 17, 2012. Series C. 245, para. 49.

Court] […], and pursuant to that stated in Article 54 of [its] Rules of Procedure […], inform the State of Honduras of said facts so it may implement [said] State's legislation."[32]

40. The representatives referred to, among others, "a violation to the principle of good procedural faith by the State of Honduras, by trying to discredit a testimony with subjective assessments without any legal grounds and dishonestly," that they were trying to "once more disregard the right to express [themselves] in [their] own language," and they denounced "th[at] act of the State as a serious reprisal against the victims, those offering their statement, and the representatives." The aforementioned would also evidence "an intelligence follow-up to those who have offered their statements and the representatives in the case" and "[t]he recording of [the] video indicate[s] that the State carr[ied] out inquiries directly related with the participation of those offering their statements in the international proceedings as reprisal for their testimonies." The representatives indicated that this would result in a violation of Article 53 of the Rules of Procedure of the Court.

41. The Commission indicated that the representatives' request to admit an interpreter of the Garífuna language to translate the statement of witness Flores at the public hearing had been granted by the President of the Court at the meeting prior to it and that "at said meeting the State [had] not question[ed] the participation of an interpreter for Mrs. Flores." It added that "the decision to allow a person to use an interpreter at a hearing does not necessarily derive from the fact that he or she does not speak the official language of the case, but of a greater fluency that allows for a greater possibility to express oneself in one's own language, in this case the Garífuna language" which would be "an important expression of the cultural identity of said indigenous people" and it added that "the statement offered by Mrs. Flores at the public hearing was made respecting the Court's regulatory norms."

42. It is important to mention that this Court will not go on record regarding the content of the interview carried out with Mrs. Flores, given that it can be concluded from the State's brief that it only presented said evidence to prove that the witness speaks the Spanish language as grounds for its request regarding Article 54 of the Rules of Procedure of the Court. In this sense, this Court verifies that the witness, in her statement offered at the public hearing, never referred to her knowledge of the Spanish language, thus her statement cannot be considered a false deposition in the terms of Article 54 of the Rules of Procedure of the Court. As a result, the State's mentioned request is denied. Similarly, the Court recalls that the freedom of expression implies the right of people to use the language of their choice when expressing their thoughts[33] and that, in that sense, a person offering their statement may do so in the language they are most fluent in so they may express themselves adequately.

43. On the other hand, the State is reminded, as was informed to the witness before offering her statement at the public hearing, that Article 53 of the Rules of Procedure of the Court regarding the "[p]rotection of alleged victims, witnesses, expert witnesses, representatives, and legal advisers" indicates that "[s]tates may not institute proceedings

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[32] Article 54 of the Rules of Procedure of the Court refers to the "failure to appear or false testimony" and indicates that: "[w]hen a person summoned to appear or declare before the Court fails to appear or refuses to render a statement without legitimate cause, or when, in the opinion of the Court, he or she has violated his or her oath or solemn declaration, the Court shall inform the State with jurisdiction over that witness so that appropriate action may be taken under the relevant domestic legislation."

[33] *Cfr. Case of López Álvarez v. Honduras. Merits, Reparations, and Costs.* Judgment of February 1, 2006, Series C Nº. 141, para. 164. Additionally, this Court points out that the presenter of the show mentioned that the interview had been carried out "completely in the Spanish language," which was in fact proven with the recording of the interview. However, the representatives, in their brief of May 5, 2014, which was forwarded to the State through a note from the Secretariat of the 8th day of that same month and year, requested that an interpreter be accepted to translate the statement of witness Flores who "despite speaking Spanish saw her cultural expression limited in the Spanish language." Therefore, the Court verifies that the representatives never denied that the witness spoke Spanish, even though in a limited manner in some aspects.

against witnesses, expert witnesses, or alleged victims, or their representatives or legal advisers, nor exert pressure on them or on their families on account of statements, opinions, or legal defenses presented to the Court."

44. Finally, the statement offered by the witness Flores will be assessed within the evidence of this case and according to the rules of sound judgment.

VI
FACTS

45. In this chapter the Court will refer, in what is relevant, to certain facts related to events that occurred prior to the State's acceptance of the Court's contentious jurisdiction, which will only be taken into consideration to help clarify the factual framework of this case. In this sense, the facts are presented as per the following order: a) Garífuna People in Honduras and the Garífuna Community of Triunfo de la Cruz; b) The process of acknowledgment and titling of the territory of the Community of Triunfo de la Cruz and its members, and c) Problems presented with reference to the territory of the Community of Triunfo de la Cruz and its members.

A. The Garífuna People in Honduras and the Garífuna Community of Triunfo de la Cruz

46. Honduras has a multiethnic and pluricultural composition, and it is made up mainly by mestizo, indigenous, and afro-descendent people. There are diverse estimates on the total number of people that make up the Garífuna population in Honduras. According to the census carried out by the National Statistics Institute in 2001, 49,000 people self-identified as Garífunas, while other sources estimate an approximate population of 98,000 people,[34] even though there are also other estimates of the number of Garífunas.[35]

47. The origin of the Garífuna People dates back to the XVIII century, from the joining of Africans that came in Spanish ships that shipwrecked on Saint Vincent Island in 1635 and the American Indians that lived in the area since before colonization, specifically the Indian populations of Arawak and Kalinagu. The union of these groups resulted in the Karaphunas, who when Great Britain took control of Saint Vincent Island in 1797 were deported to Roatán Island and from there they immigrated to dry land in the territory currently known as Honduras, settling along the Northern Honduran coast and toward the Caribbean coast of Guatemala, Nicaragua, and Belize.[36] Currently, the Garífuna people are made up by approximately 40 communities extended throughout the Atlantic coast or the Caribbean

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[34] *Cfr.* Ethnical poverty in Honduras, Utta von Gleich and Ernesto Gálvez. Unit of Indigenous People and Community Development. Inter-American Development Bank, Department of Sustainable Development, September 1999, p. 1-2, referenced to in the Merits Report (merits file, folio 18); World Bank Inspection Panel, Research Report – Honduras Program for the Administration of Lands, Report N° 39933-HN of June 12, 2007 (evidence file, folio 154), referring to the number of 98,000 people in a study of the *Central American and Caribbean Research Council* (CACRC) of 1993.

[35] *Cfr.* World Bank Inspection Panel, Research Report - Honduras Program for the Administration of Lands, Report N° 39933-HN of June 12, 2007 (evidence file, folio 154), in reference to a Project Assessment Document of the project financed by the Bank, Honduras: Project for the Modernization of the Judiciary Power (AIF Credit No. 4098-HO approved by the Board of Directors on July 7, 2005) which estimates that the Garífuna population ascends to between 100,000 and 190,000 people.

[36] *Cfr.* World Bank Inspection Panel, Research Report on the Honduras Program for the Administration of Lands, Report N° 39933-HN of June 12, 2007 (evidence file, folios 154 through 157), and Ethnical poverty in Honduras, Utta von Gleich and Ernesto Gálvez. Unit of Indigenous People and Community Development. Inter-American Development Bank, Department of Sustainable Development, September 1999, p. 35, referenced in the Merits Report (merits file, folio 18).

coastal area, covering the Departments of Cortés, Atlántida, Colón, and Gracias a Dios; additionally, a growing number of Garífunas live in cities such as La Ceiba, Tela, Cortés, Trujillo, San Pedro Sula, and Tegucigalpa.[37]

48. The Garífuna people are a differentiated culture and ethnical group, resulting from a mix between indigenous and Africans, who have defended their rights in Honduras as an indigenous group.[38] The Garífunas identify themselves as an indigenous group that has inherited the insular Caribbean, with some cultural manifestations of African origin, being self-identification a subjective criterion and one of the main determining criteria included in Article 1(2) of Convention 169 of the ILO, in order to be considered indigenous or tribal peoples.[39]

49. Similarly, Article 1(1) of Convention 169 of the ILO establishes objective criteria[40] to describe the peoples it seeks to protect. In this sense, the identity of the Garífuna people is reinforced by its own language, which "belongs to the family of Arawak languages" and by its traditional forms of organization revolving around cultural manifestations, such as dancing and music, which play an important role in the oral transmission of their history and traditions.[41]

50. The Garífunas have a special relationship with the land, natural resources, the forest, the beach, and the sea. The latter, besides having a fundamental value for their survival, are

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[37] *Cfr*. World Bank Inspection Panel, Research Report on the Honduras program for the Administration of Lands, Report N° 39933-HN, of June 12, 2007 (evidence file, folio 157), in reference to 38 communities, and Ethnical poverty in Honduras, Utta von Gleich and Ernesto Gálvez. Unit of Indigenous People and Community Development. Inter-American Development Bank, Department of Sustainable Development, September 1999, p. 2, 36, referenced in the Merits Report (merits file, folio 18), in reference to 40 settlements, 36 of them in their majority Garífuna; Sub-commission for the promotion and protection of human rights. Work Group on Minorities, 10th session, March 2004, referenced in the Merits Report (merits file, folio 18), in reference to 46 communities.

[38] *Cfr*. Merits Report (merits file, folio 60); Brief of Pleadings and Motions (merits file, folio 195).

[39] Article 1(2) of Convention 169 of the ILO defines the subjective criterion of self-identification, according to which "[s]elf-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply," International Labor Organization (ILO), Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, adopted on June 27, 1989 and in force since September 5, 1991. Similarly, the United Nations Declaration on the Rights of Indigenous Peoples, in its Article 33(1) states that "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions," A/Res/61/295, September 13, 2007, Resolution adopted by the General Assembly of the United Nations.

[40] There are several criteria that help understand what "indigenous peoples" or "tribal peoples" means. Article 1(1) of Convention 169 of the ILO provides certain objective criteria, stating it will apply to "a) tribal peoples in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations that inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their social, economic, cultural, and political institutions." International Labor Organization (ILO), "The Rights of Indigenous and Tribal Peoples in Practice – A guide to ILO Convention No. 169," Department of International Labor Regulations 2009, p. 9-10. Additionally, to the effect of identifying indigenous people one must consider their traditional lifestyles; their culture and lifestyle different to those of other segments of the national population (forms of survival, language, customs, among others); their social organization and their own political institutions, and living in historical continuity in a specific area, or before it was "invaded" by others or others came to the area. *Cfr*. International Labor Organization. Convention Nº. 169, "The Basic Principles of ILO Convention 169 – Identification of Indigenous and Tribal Peoples."

[41] "The Garífuna language belongs to the family of Arawak languages and it has survived centuries of persecution and linguistic domination. They have a great wealth of úragas, tales that were narrated during evening events or large meetings. The melodies bring together African and Native American elements, and the texts are a true reservoir of history and the traditional knowledge of the Garífunas regarding the cultivation of mandioca, fishing, manufacturing of canoes, and the construction of homes made of fired clay. There is also a strong satirical in the songs that are sung to the rhythm of drums and they are accompanied of dances in which the spectators participate." UNESCO, Immaterial Cultural Heritage, "The language, dances, and music of the Garífunas," referenced in the Merits Report (merits file, folio 20).

linked to their history, since they are essential for their religious ceremonies and ceremonies that commemorate their arrival by sea to Central America.[42] This close relationship is reflected in the belief that the "[t]he land is [their] mother," and therefore it is impossible to disassociate agricultural production from social and cultural reproduction.[43]

51. The communities of the Garífuna people maintain their traditional community uses of the land and other work patterns that reflect their origins, their home on the Honduran Caribbean coast, and their culture.[44] According to the expert witness Christopher Loperena "[h]istorically, the members of the community have moved in groups to the agricultural production area and they would work the land collectively, but today, [after the occupation of some of their lands by third parties], the communities […] are trying to disperse the use of the land to try to stop it from being usurped," reason for which many communities have changed the administration of the land and they have stopped cultivating through collective fallowing, in exchange for dispersed fallowing.[45]

52. The expert James Anaya, former Special Rapporteur of the United Nations for the rights of indigenous people stated:

> "the Garífuna people have a lot of the same characteristics as other groups that are irrefutably native peoples […] Given that the Garífuna People share the characteristics of those groups generally acknowledged as indigenous peoples they must enjoy the same standards of protection of property […] applicable to indigenous people in international regulations." Additionally, he mentioned that [i]n any case, the Garífuna People can be classified as a 'tribal' group […] and that the standards of [Convention 169 of the ILO], including those regarding property, apply equally to indigenous or tribal peoples."[46]

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[42] *Cfr.* World Bank Inspection Panel, Research Report – Honduras Land Administration Program, Report N° 39933-HN of June 12, 2007 (evidence file, folios 159 to 160).

[43] *Cfr.* Statement offered before notary public (*affidavit)* by the expert witness Christopher Loperena on August 22, 2014 (merits file of the *Case of the Garífuna Community of Punta Piedra and its members v. Honduras*, folio 440), and the statement offered before the Inter-American Court by Lidia Palacios, during the public hearing held on September 2, 2014 in the *Case of the Garífuna Community of Punta Piedra and its members v. Honduras*.

[44] *Cfr.* World Bank Inspection Panel, Research Report – Honduras Land Administration Program, Report N° 39933-HN of June 12, 2007 (evidence file, folio 119).

[45] *Cfr.* Statement offered before notary public *(affidavit)* by the expert witness Christopher Loperena on August 22, 2014 (merits file of the *Case of the Garífuna Community of Punta Piedra and its members v. Honduras,* folios 441 to 442). Fallowing is a technique through which the land is not cultivated for one or several cycles on order to recover and store organic material and humidity. In this sense, Mr. Doroteo Thomas, member of the Garífuna Community of Punta Piedra, stated during the public hearing in that case that "as is accustomed, our [G]arífuna community has the custom to do its work at the beginning of the year. Then, the community works on a system we call fallowing, because we do not use technical systems. This means, that we let the land rest and fertilize itself in order to work it again. People always used it and said, during a specific year we are going to go to a certain location to work during three or four years while the other part rests. When the community, in those times was ready to start planting, strangers came and invaded the lands that were ready to be sowed, resulting in the invasion." […] "[W]e had several types of jobs. In those areas where we planted, there were areas exclusively for planting rice. And we would plant it in groups, as I said before, we did it like that in order to avoid destroying forests or to let the land rest, we did it in the form of farrows. When we talk about farrowing, we would let a part of the land that had been worked for four years to rest between ten and twelve years, in order to come back again in twelve to thirteen years." Statement issued before the Inter-American Court by Doroteo Thomas Rodríguez, during the public hearing held on September 2, 2014 in the *Case of the Garífuna Community of Punta Piedra and its members v. Honduras.*

[46] *Cfr.* Statement given before notary public (*affidavit)* by the expert witness James Anaya on September 11, 2014 (merits file of the *Case of the Garífuna Community of Punta Piedra and its members v. Honduras*, folio 531).

53. The Garífuna economy is made up, among others, by traditional fishing, the cultivation of mandioc, banana, yuca, and avocado, as well as the hunting of small sea and forest animals, such as deer, agouti, turtles, and manatees.[47]

54. The Garífuna Community of Triunfo de la Cruz is located in the Department of Atlántida, Municipality of Tela, on the shores of the Caribbean Sea. According to the information included in the case file, we can see that on May 3, 1524 "Triunfo de la Cruz" was founded by Spaniards where the city of Tela is currently located. In 1805 this area was populated by Garífunas, who as of 1880 were displaced and formed the "Triunfo de la Cruz" Community again at the location currently occupied by them.[48] It has a rural nature and has an approximate population of 10,000. The Garífuna of Triunfo de la Cruz practice activities such as agriculture, traditional fishing, and tourism activities.[49]

55. Regarding the ancestral territory of the Community, there are two different versions, on one hand the representatives and the Commission argued that it is located in the area demarcated as follows, to the North with the Caribbean Sea, to the South with the El Tigre mountain, to the East with the Punta Izopo national park, and to the West with the Triunfo de la Cruz mountain, covering 2,840 hectares that include "the housing area […] [and] the functional habitat," acknowledging as such the areas around the El Tigre mountain, the Punta Izopo mountain, and the Plátano river.[50] On its part, the State rejected that the Garífuna territory was the one indicated, since the report prepared by the Central American and Caribbean Research Council (CACRC), which includes a map based on which the representatives and the Commission made their arguments regarding the ancestral territory "is not a final document, but an approximation whose content is based on the unilateral version of the interested parties."[51]

56. The Community of the Triunfo de la Cruz is constituted through the following forms of social organization: A) Board for the Proactive Improvement of the Community of Triunfo de la Cruz: its responsibility is to promote and manage projects, plans, and programs oriented toward the development of the community, as well as contribute to maintenance and improvement of communal goods; B) the General Assembly of the Community of Triunfo de la Cruz made up by all members of the Community and it is the maximum deliberation and decision body of the Board; C) the Council of the Elderly: traditional structure and advising and guiding entity of the community and its organizations, and D) the Committee for the Defense of the Lands of Triunfo de la Cruz (hereinafter "CODETT"), in charge of matters regarding the land and its board of directors is appointed by the Community's general assembly.[52]

57. On the other hand, this Court recalls that the protection offered with regard to the right to collective property in Article 21 of the Convention and Convention 169 of the ILO, is the same regardless of the classification of the holders of said right as indigenous or tribal peoples or Community, reason for which the lack of acknowledgment by the State of the Community as a native community has no incidence on the rights it and its members are

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[47] *Cfr.* World Bank Inspection Panel. Research Report – Honduras Land Administration Program. Report No. 39933- HN, June 12, 2007 (evidence file, folios 119 to 120).

[48] *Cfr.* Central American and Caribbean Research Council, "*Ethnography Triunfo de la Cruz Community*" (evidence file, folio 278).

[49] *Cfr.* Central American and Caribbean Research Council, "*Ethnography Triunfo de la Cruz Community*" (evidence file, folio 276).

[50] *Cfr*. Merits Report (merits file, folios 20 to 22); *Cfr*. Brief of Pleadings and Motions (merits file, folio 192).

[51] State's Final Written Arguments (merits report, folio 934).

[52] *Cfr*. Merits Report (merits file, folios 22 to 23).

entitled to, or on the state's corresponding obligations.[53] In this sense, and based on the decisions already made by this Court (*supra* paras. 22 and 23), the Court will analyze the case taking into account the nature of indigenous or tribal peoples of the Garífuna Community of Triunfo de la Cruz.

B. The process of acknowledgment and titling of the land of the Community of Triunfo de la Cruz and its members

58. Since the year 1950, the State of Honduras started to grant deeds in favor of the Community of Triunfo de la Cruz and its members. A total of 615 hectares and 28.71 square meters have been granted up to this date in "full ownership" and 128.40 hectares in the concept of "guarantee of occupation". Below, the Court will refer to the requests and the acknowledgment and titling procedures for the territory of the Community of Triunfo de la Cruz and its members from 1946 up to today.

B.1. Granting of a communal title over 380 hectares, 51 areas, and 82.68 square meters (1950)

59. On December 9, 1946, the Community requested a communal title over the area occupied by it.[54] On November 29, 1950, the President of the Republic approved the request, for an extension of 380 hectares, 51 areas, 82.68 square meters, in the quality of communal land "being [the town of El Triunfo] in the obligation to formally delimit the corresponding boundaries to distinguish the land from the adjoining lands, forbidding them from uprooting the forests located at less than twenty meters from rivers and water sources."[55] The communal title was recorded on October 6, 1951 in the Registry of the Real Estate and Mercantile Property.[56]

B.2. Request of allocation during the first legislation on agrarian reform (1969)

60. On June 27, 1969, as per the Law on AgrarianReform of 1962,[57] fifty members of the Community of Triunfo de la Cruz presented a request before the Agrarian Coordinator in charge of the Northwestern Zone for the creation of a "center of agricultural population," in which they stated that for 58 years some of the members of the Community or their ascendents worked on "a national territory with an approximate area of two hundred blocks,"[58]

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[53] Honduras ratified Convention 169 of the ILO on March 28, 1995, which came into force for Honduras, as stated in Article 38 of the Convention, on March 28, 1996. Additionally, Honduras approved the United Nations Declaration on the Rights of Indigenous People of September 13, 2007.

[54] *Cfr.* Claim of a national land for communal titles of the Triunfo community, filed by the auxiliary mayor of this town José Martínez Lino before the income and customs administrator, on December 9, 1946 (evidence file, folios 1000 to 1001). Director of the National Archive of Honduras, certification of May 18, 2006 (evidence file, folio 1008).

[55] *Cfr*. Registry of Real Estate and Mercantile Property, certification of April 13, 1993 (evidence file, folios 1026 to 1027). Director of the National Archive of Honduras, certification of May 18, 2006 (evidence file, folio 1023).

[56] *Cfr.* Registry of Real Estate and Mercantile Property, certification of April 13, 1993 (evidence file, folio 1027).

[57] *Cfr*. World Bank Inspection Panel. Research Report - Honduras Land Administration Program. Report No. 39933- HN, June 12, 2007 (evidence file, folio 215). The mentioned Law *inter alia* defined the acknowledgment of the property of indigenous communities over land, forests, waters, and communal lands enjoyed by them at that time, either with a title deed or mere immemorial occupation.

[58] *Cfr.* Request for the creation of an agricultural population center, of June 27, 1969 (evidence file, folios 1030 to 1031).

which according to the Commission is known as "Río Plátano" or "Barra de Río Plátano" and it is to the East of the area allocated as communal land.[59]

61. On the other hand, it can be concluded from the evidence that through deed of property sale of July 6, 1969 the company MACERICA S. de R.L., acquired a plot of land of approximately 50 hectares in surface, located at "Río Plátano." This deed was registered on July 8th of that same year before the Property Registry.[60] Additionally, according to that indicated by the manager of the company Macerica, on October 6, 1969 those lands were partially occupied by "colored-skin peasants."[61]

62. Moreover, it can be seen in the evidence that in June 1969, members of the Community requested protection from the INA against eviction actions from the mentioned land,[62] which, as stated by them, were being carried out as per instructions of the manager of the commercial entity MACERICA S. de R.L.[63]

63. On May 7, 1970, the INA considered as proven "the occupation for several years by the peasants of the land referred to as 'El triunfo de la Cruz'" and "pursuant to that stated in the Law on Agricultural Reform in force, the National Agricultural Institute is compelled to protect small and mid-size producers who have been and are occupying, for more than a year, lands of any domain, exploiting them as per the social function of the land and with the owner's consent" ruled: 1. to protect the members of the Community in the occupation of said lands, and 2. grant "equal protection to the other peasants who occupied the land in question,"[64] said protection was granted "while the property requested by them was demarcated from the one claimed by the Company MACERICA S. DE R. L."[65]

64. On October 19, 1971, the INA acknowledged the legitimate possession of 50 hectares in the "Río Plátano" land to the Company MACERICA and recommended "that the mentioned property be demarcated and that the residents of the Community of El Triunfo de la Cruz be protected in the rest of the land, so they may carry out agricultural activities in peace and the Company can develop the tourism complex it has planned."[66]

65. On May 25, 1984, the INA issued a new pronouncement indicated that "the document presented [by the company Macerica] to prove the private domain of the Barra de Río Plátano

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59 *Cfr*. Merits Report (merits report, folios 24 to 25).

60 *Cfr.* Certified copy of public sales deed N°55 of July 6, 1969, (evidence file, folios 1075 and 1078).

61 Document of the manager of Macerica S. de R.L., addressed to the Director of the INA of October 6, 1969 (evidence file, folio 1069).

62 *Cfr.* Request 81/2000 for the creation of an agricultural population center – protection against eviction (evidence file, folios 1034 to 1035).

63 *Cfr*. National Agrarian Institute, Northwestern Regional Agricultural Office, document of the Agricultural Public Prosecutor addressed to the Director of the INA of November 20, 1969 (evidence file, folio 1037); Document from the manager of Macerica S. de R.L., addressed to the Director of the INA of October 6, 1969 (evidence file, folio 1069) in which it requested "that the colored-skin peasants be ordered to evacuate [the land referred to as Río Plátano]."

64 *Cfr.* National Agrarian Institute, Agreement No. 14 of May 7, 1970 (evidence file, folios 1066 to 1067).

65 *Cfr.* Honduran Institute of Tourism, Research report on file No. 2000 from the INA and related to the creation of the agricultural population center for the residents of El Triunfo de la Cruz, Tela, Atlántida, and opposition of the company MACERICA, of March 6, 1996 (evidence file, folio 1340).

66 *Cfr.* Honduran Institute of Tourism, Research report on file No. 2000 from the INA and related to the creation of the agricultural population center for the residents of El Triunfo de la Cruz, Tela, Atlántida, and opposition of the company MACERICA, of March 6, 1996 (evidence file, folio 1340).

land is not sufficient proof of property […], reason for which it can be assumed it is the State's domain."[67]

66. Later, on March 6, 1996, the Honduran Institute of Tourism indicated with regard to the request for the creation of an agricultural population center presented by the Community of Triunfo de la Cruz, that the land requested by the Community was located within the urban perimeter of the Municipality of Tela, which was registered in favor of said Municipality. On that occasion a copy of the case file was also forwarded to the Office of the Attorney General of the Republic and the Comptroller General of the Republic, and the INA was asked to "suspend the procedures until the legal analysis of the previously stated institutions was concluded."[68]

67. The Comptroller General of the Republic started an investigation on the legality of the sales, reason for which the INA decided to maintain "in suspense the allocation procedure in favor of the Community", until "the Office of the Attorney General of the Republic and the Comptroller General have analyzed and jointly defined the situation presented.[69]" There is no updated information regarding this procedure.

B.3. Granting of the title of "guarantee of occupation" on 126.40 hectares during the second legislation of agrarian reform (1979)

68. Based on the new Agrarian Reform Law, the Community presented a request before the INA which resulted in said institution extending a title of "guarantee of occupation" over 126.40 hectares, located on the Eastern extreme of the lands previously given as communal land, within the area acknowledged by the Community as historically occupied on September 28, 1979.[70]

B.4. Granting of a definitive title of full ownership over 380 hectares, 51 areas, 82.68 square meters (1993)

69. Based on the Law for the Modernization and Development of the Agricultural Sector, on October 29, 1993 the Community was freely extended a "definitive title deed in full ownership" over the 380 hectares, 51 areas, 83.69 square meters granted as communal land in 1950, stating that "in the event that the sale or donation of the plots of the land allocated were permitted, it is authorized only for tourism projects duly approved by the Honduran Institute of Tourism and to descendants of the benefited Ethnic Community;" respecting the natural resources in order to preserve "the natural conditions of the location."[71]

B.5. Requests to extend the title of full ownership and granting of a title of full ownership over 234 hectares, 48 areas, and 76.03 square meters (1997-2001)

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67 *Cfr.* National Agrarian Institute, Legal Advice, report N° AL-329/84, of May 25, 1984 (evidence file, folios 1306 and 1309).

68 *Cfr.* Honduran Institute of Tourism, Research report on file No. 2000 from the INA and related to the creation of the agricultural population center for the residents of El Triunfo de la Cruz, Tela, Atlántida, and opposition of the company MACERICA, of March 6, 1996 (evidence file, folios 1339 to 1342).

69 *Cfr.* Document from the Comptroller General of the Republic addressed to the Honduran Institute of Tourism of February 29, 1996 (evidence file, folio 1345); National Agrarian Institute, decision of March 25, 1996 (evidence file, folio 1348).

70 *Cfr.* National Agrarian Institute, deed of guarantee occupation in favor of the Garífuna Community of "Triunfo de la Cruz", of September 28, 1979 (evidence file, folio 1726).

71 *Cfr.* National Agrarian Institute, final property deed of full ownership in favor of the Garífuna Community of "Triunfo de la Cruz", of October 29, 1993 (evidence file, folios 1734 to 1736).

70. On August 28, 1997 and July 8, 1998, the Community of Triunfo de la Cruz and its members requested a deed of full ownership before the INA over the rest of the lands it stated it had historically occupied. The first request referred to an area of approximately 600 hectares and the second request to an area of 126.40 hectares they already possessed in guarantee of occupation (*supra* para. 68).[72] On September 27, 2001, the INA approved the granting of a final property deed in full ownership over three plots of land covering a total of 234 hectares, 48 areas, and 76.03 square meters,[73] and this title deed states it is an unalienable patrimony belonging to the community, unless the transfer of domain is done in favor of members of the community with the approval of the Board of Directors of the Trustee.[74]

71. Moreover, on January 22, 2001, the Garífuna Community of Triunfo de la Cruz and its members requested the expansion of the full title deed that had been granted in the year 1993[75] (*supra* para. 69). That request was filed before the INA and does not specify the exact area to which it refers. The request merely indicates that "the boundaries of the land expansion" would be: to the North: Caribbean Sea or Antilles Sea, to the South: Telephone line behind el Tigre Mountain, to the East: Punta Izopo Mountain, and to the West: Triunfo de la Cruz Mountain. The request in question mentions that at that moment the Community was "in possession of a communal land with a total area of Three Hundred and Eighty Hectares, Fifty-One Areas, Eighty-two point sixty-one Square meters (380 hectares)" and that "due to the current growth of its population it was necessary to expand said area for its residents to have access to land in order to build their homes, but especially in order to cultivate the land for their survival and the development of other activities related to their idiosyncrasy and culture, within the framework of their rights according to Convention 169 of the ILO."[76]

72. Specifically, this request referred to Article 19 (a) of Convention 169 of the ILO,[77], which states that "[n]ational agrarian programs shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to: (a) the provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their number."[78]

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[72] *Cfr.* Request No. 47891 of a final property deed in full ownership presented before the INA, of August 28, 1997 (evidence file, folios 353 to 355); Request No. 10357 of full ownership presented before the INA, of July 8, 1998 (evidence file, folios 376 to 379).

[73] *Cfr.* National Agrarian Institute, final property deed in full ownership in favor of the Garífuna Community of Triunfo de la Cruz, case file No. 57426, of September 27, 2001 (evidence file, folios 1739 to 1742). The first plot of 155 hectares, 82 areas, and 74.74 square meters, the second plot of 33 hectares, 33 areas, and 78.98 square meters, and the third plot of 45 hectares, 32 areas, and 22.31 square meters.

[74] *Cfr.* National Agrarian Institute, final property deed in full ownership in favor of the Garífuna Community of Triunfo de la Cruz, case file No. 57426, of September 27, 2001 (evidence file, folio 1741).

[75] *Cfr.* Request for expansion of the deed presented before the INA on January 22, 2001 (evidence file, folios 1760 to 1761 and 1763).

[76] *Cfr.* Request for expansion of the deed presented before the INA on January 22, 2001 (evidence file, folio 1761).

[77] *Cfr.* Request for expansion of the deed presented before the INA on January 22, 2001 (evidence file, folio 1762).

[78] International Labor Organization (ILO), Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, adopted on June 27, 1989 and in force since September 5, 1991.

C. Problems presented with regard to the territory of the Garífuna Community of Triunfo de la Cruz and its members

C.1. Expansion of the urban radius of the Municipality of Tela and its alleged consequences regarding the traditional territory of the Community of Triunfo de la Cruz and its members

73. As stated by the representatives and the Commission, without objection from the State, on September 26, 1979 the INA decided to destine an area of approximately 1380.4 hectares to the expansion of the urban radius of the Municipality of Tela. On April 24, 1989, the INA authorized the expansion of the municipality's urban radius in 3,219.80 hectares, even though the resolution "[e]xcluded from the demarcated urban radius the lands allocated to beneficiaries of the Agrarian Reform prior to this resolution, until their total value has been paid for," this "without detriment of the property or possession rights of individuals or corporations within the demarcated area."[79] The aforementioned was approved by the Honduran Institute of Tourism, excluding 40 hectares from the area expanded.[80] The growth of the Municipality's urban area covered part of the territory the Community states it has traditionally occupied, including areas over which it had title deeds of full ownership and occupation.[81]

C.1.1. Municipality of Tela, the company IDETRISA, and the Marbella project

74. Between August 1993 and July 1995, the Municipality of Tela sold around 44 hectares of land, which were in part from the area granted in guarantee of occupation in the year 1979 (*supra* para. 68), to the company Inversiones y Desarrollos El Triunfo S.A. de C.V. (IDETRISA) and third parties for the execution of the tourism project "Club Marbella". [82]

75. On September 17, 1994, the CODETT filed a complaint before the Public Prosecutors' Office for Ethnic Groups regarding the sale of communal lands.[83] In June 1996, the Public Prosecutors' Office filed before the Sectional First Instance Court an accusation for the continuous crimes of abuse of authority, simple fraud and aggravated fraud against several authorities and former authorities of the Municipality of Tela.[84] In October 1996, the Sectional First Instance Court of Tela issued a commitment order against those accused of the crime of

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79 *Cfr.* National Agrarian Institute, certification of Resolution N° 055-89, of April 24, 1989 (evidence file, folios 2038 to 2039).

80 *Cfr.* Honduran Institute of Tourism, certification of Resolution No. 002 of January 17, 1992 (evidence file, folio 2041).

81 *Cfr.* National Agrarian Institute, Legal Services Division, Department of Land Affectations, Report DAT 018-98, of January 22, 1998 (evidence file, 1713); CODETT, "The Historical Community of Triunfo de la Cruz founded on May 3, 1524 – where the historical Triunfo de la Cruz mountain is located" (evidence file, folio 2212).

82 *Cfr*. Certified copies of public sales deeds granted by the Municipality of Tela in favor of IDETRISA and third parties (evidence file, folios 1367 to 1707); Document from the General Attorney-at-Fact for Legal Matters of IDETRISA addressed to the Executive Director of the INA, of August 22, 1997 (evidence file, folio 1350); Honduran Institute of Tourism, "Analysis of the requests of full ownership of the Garífuna Communities" (evidence file, folio 1723); Inter-American Development Bank, Analysis of sociocultural impacts of the National Program for Sustainable Tourism within the Garífuna Communities of the Tela Bay, July 2006 (evidence file, folio 6140).

83 *Cfr.* Committee for the defense of Triunfeña Lands (CODETT), complaint addressed to the Public Prosecutor for Ethnic Groups of September 17, 1994 (evidence file, folios 2224 to 2227); Committee for the defense of Triunfeña Lands, "*The Historical Community of Triunfo de la Cruz founded on May 3, 1524 – where the historical Triunfo de la Cruz mountain is located"* (evidence file, folio 2213).

84 *Cfr.* Public Prosecutors' Office, criminal charges, of June 11, 1996 (evidence file, folios 2235 to 2243).

abuse of authority in detriment of the Community,[85] an order against which both the Public Prosecutors' Office and the defendants filed an appeal.[86] On march 3, 1997, the Court of Appeals of la Ceiba ruled the appeal filed by the Public Prosecutors' Office inadmissible and revoked the commitment orders issued against the defendants.[87] The Public Prosecutors' Office filed a writ of protection against this decision on June 2, 1997 before the Supreme Court of Justice,[88] which was denied on December 4th of that same year.[89] Later on, the final acquittal of the officials and former officials of the Office of the Mayor of the Municipality of Tela was decided.[90]

76. Additionally, the Community also filed a complaint for these actions before the National Human Rights Commission,[91] and the Office of the Attorney General of the State.[92]

77. On July 6, 2006, the Municipal Corporation of Tela approved the signing of a transaction with the companies IDETRISA and MACERICA[93] to solve the controversy between them over the property of the area; said transaction was set forth in a public instrument on August 17, 2006.[94] On September 29, 2006, the Municipal Corporation decided to annul the agreement through which it had decided to sign this contract.[95]

C.1.2. Workers' union of the Municipality of Tela

78. On January 15, 1997, the Municipal Corporation of Tela agreed to transfer to the Workers and Employees' Union of the Municipality of Tela 22.81 blocks of land located in the territory reclaimed by the Community.[96] Said transfer became effective on January 22,

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85 *Cfr.* Sectional First Instance Court of Tela, trial document addressed to the Coordinator of the Head of Criminal Investigation of October 15, 1996 (evidence file, 2247).

86 *Cfr.* Public Prosecutors' Office, appeal of October 30, 1996 (evidence file, folios 2249 to 2255); Court of Appeals of la Ceiba, judgment of March 3, 1997 (evidence file, folio 2263).

87 *Cfr.* Court of Appeals of la Ceiba, judgment of March 3, 1997 (evidence file, folios 2262 to 2263).

88 *Cfr.* Special Prosecutor of the Public Prosecutors' Office, writ of protection of June 2, 1997 (evidence file, folios 2266 to 2267); Head Prosecutor of the Public Prosecutors' Office, formalization of the writ of protection of September 16, 1997 (evidence file, folios 2268 to 2272).

89 *Cfr.* General Secretariat of the Supreme Court of Justice, certification of resolution Nº. 61 of December 4, 1997 (evidence file, folios 2274 to 2289).

90 *Cfr.* Secretariat of the First Instance Court of Tela, certification of the certification of the secretariat of the Court of Appeals of la Ceiba of judgment of April 30, 1999, of August 12, 1999 (evidence file, folios 2292 to 2294); Secretariat of Foreign Affairs of the Republic of Honduras, State's brief of observations of March 8, 2007 (evidence file, folio 3705).

91 *Cfr.* National Human Rights Commissioner, document addressed to the Mayor of the Municipality of Tela of August 1, 2001 (evidence file, folio 2296).

92 *Cfr.* Board for the improvement of Triunfo de la Cruz, brief of November 30, 1998 (evidence file, folio 2301).

93 *Cfr.* Municipal Secretariat of Tela, certification of the preamble of minutes N° 18 item 10, ordinary meeting held by the Municipal Corporation of Tela on September 29, 2006, dated October 4, 2006 (evidence file, folio 2305); "Parties desist from restarting tourism projects at Port of Tela, business owners and municipal government sign agreement," article, La Ceiba.com of August 22, 2006 (evidence file, folio 2367).

94 *Cfr.* Certified copy of public deed Nº. 46 for the transaction of disputes, agreement for the invalidation of the sale of several properties and cancellation of their registry inscriptions, correction of polygons, allocation of part of a property to litigant by virtue of the agreement and commitment to grant a commodatum contract, granted by MACERICA, IDETRISA, and the Municipality of Tela, of August 17, 2006 (evidence file, folios 2307 to 2357)

95 *Cfr.* Municipal Secretariat of Tela, certification of the preamble of minutes N° 18 item 10, ordinary meeting held by the Municipal Corporation of Tela on September 29, 2006, dated October 4, 2006 (evidence file, folio 2305).

96 *Cfr.* Municipal Secretariat of Tela, certification of the preamble item N° 7 of the Report of minutes N° 2, of January 15, 1997, of January 22, 1998 (evidence file, folio 1987).

1998,[97] moment when the Union transferred to its affiliates full ownership over different plots of land.[98]

79. Because of this transfer to the Employees and Workers' Union of the Municipality of Tela of 22.81 blocks located within the territory reclaimed by the Community, several legal and administrative procedures were started.

a) Criminal complaint

80. On February 4, 1998, a member of the Community filed a complaint for abuse of authority before the Office of Criminal Investigation of the Public Prosecutors' Office stating that the Municipality of Tela had introduced machinery in the area.[99]

b) Expropriation procedure before the National Agrarian Institute

81. On January 7, 2002, the Community asked the INA to dwell the 22 blocks through expropriation,[100] recommending it declare as admitted the request for expropriation, referring to the investigations that determined that the property is private and that it was not being currently exploited because it was in dispute.[101]

c) *Administrative procedure for the nullity of the agreement before the Municipality of Tela*

82. On September 6, 2002, the Community of Triunfo de la Cruz filed an administrative nullity complaint before the Municipality of Tela against the agreement through which the Municipal Corporation assigned the 22 blocks to the Union.[102] Currently, it was verified during the visit *in situ* (*supra* para. 15) that this plot of land is occupied by the Community.

d) Complaints filed due to harassment and threats to leaders and members of the Community regarding the complaint for the 22 blocks of land

83. Additionally, different members and leaders of the Community filed complaints before the Public Prosecutors' Office and addressed communications to other state authorities regarding death threats and threats of violence, "harassment, threats to leaders, and an eviction order," destruction of crops, among other acts of violence related to the dispute over 22 blocks.[103]

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97 *Cfr.* Certified copy of public deed N° 33 for the transfer of full ownership, granted by the municipal mayor of Tela in favor of the Workers and Employees' Union of the Municipality of Tela, of January 22, 1998 (evidence file, folios 1983 to 1986).

98 *Cfr*. Public sales deeds granted by the Employees and Workers' Union of the Municipality of Tela in favor of third parties (evidence file, folios 2055 to 2201).

99 *Cfr.* Public Prosecutors' Office, Office of Criminal Investigation, complaint by an auxiliary of the Triunfo de la Cruz village of February 4, 1998 (evidence file, folio 2376).

100 *Cfr.* Request for dwelling through expropriation of twenty-two blocks of land in favor of the Community of Triunfo de la Cruz of January 7, 2002 (evidence file, folios 1980 to 1981).

101 *Cfr.* National Agrarian Institute, Report N° 47/03, of July 14, 2003 (evidence file, folio 2386).

102 *Cfr.* Administrative complaint requesting the agreement of the municipal corporation that disposes of the 22-block piece of land and its transfer to the municipality union be declared null, of September 5, 2002 (evidence file, folios 2389 to 2391).

103 *Cfr*. Board for the improvement of the Triunfo de la Cruz Village, brief addressed to the President of the Supreme Court of Justice, of May 23, 2000 (evidence file, folio 2431); Fraternal Honduran Black Organization (OFRANEH), Filing of a complaint for harassment, threats to leaders, and order of eviction against the Community of

C.2. Peasant associative production company "El Esfuerzo"

84. On November 6, 1986, the Community of Triunfo de la Cruz proposed to the INA it return 25 blocks that were part of the 126.40 hectares handed over in 1979 to the Community under guarantee of occupation, so they could be granted to the "El Esfuerzo" cooperative, made up by low-income women of the same Community. On April 20, 1987 the INA handed over possession of the 25 blocks to the Cooperative.[104] From that moment on, the women of the cooperative used the area to farm products to provide sustenance to their families. Since approximately the year 2000, said land was claimed by an individual, who proceeded to sell it to third parties. The women of the Cooperative claimed they suffered the destruction of crops, as well as acts of harassment promoted by those who argued they were entitled to the 25 blocks, actions that have been denounced in repeated occasions by the members of the Community.[105]

C.3. Alleged creation of a Board of Directors parallel to the Board of the Community of Triunfo de la Cruz

85. In February 2005, the General Assembly of the Board chose the list presided by José Ángel Castro as Board of Directors of the Foundation for the 2005-2007 period and it was later registered before the Municipality of Tela. The group that did not win the elections created a second foundation directed by a member of the Community by the name of B.M.,[106] which continued to be registered before the Municipality of Tela.[107] In 2007 and 2009 elections were held for the Board of Directors of the Foundation and Teresa Reyes was elected both times;[108] on both occasions requests for the "registration and acknowledgment" were

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Triunfo de la Cruz, of March 22, 2001 (evidence file, folios 2426 to 2427); Board for the improvement of the Garífuna Community of Triunfo de la Cruz, public complaint of May 30, 2006 (evidence file, folio 2433); Inter-American Commission, statement of José Ángel Castro offered at the public hearing of March 2, 2007 (evidence file, folio 3569).

104 *Cfr.* National Agrarian Institute, Certification of October 6, 1988 (evidence file, folio 2446); National Agrarian Institute, Document of provisional possession, of May 8, 1987 (evidence file, folio 2449 to 2450).

105 *Cfr.* Foundation for the improvement of the Garífuna Community of Triunfo de la Cruz, Public accusation of February 18, 2002 (evidence file, folio 2458); Public Prosecutors' Office, Local Prosecutors' Office of Tela, Statements of defendants and witnesses, February and March 2002 (evidence file, folios 2460 to 2477); Brief from the auxiliary Prosecutor for Ethnic Groups and cultural heritage addressed to the Public Prosecutors' Office. Coordinator of the Public Prosecutors' Office of Tela of February 4, 2002 (evidence file, folio 7097); Garífuna Community of Triunfo de la Cruz, Public accusation, May 14, 2003 (evidence file, folio 7098). Secretariat of security, General Office of Criminal Investigation, Complaint for misappropriation of lands, of February 18, 2002 (evidence file, folio 2479); Complaint regarding damages addressed to the Public Prosecutors' Office of Tela, Coordinator of Public Prosecutors, of February 27, 2003 (evidence file, folio 2481 to 2482); Secretariat of security, General Office of Criminal Investigation, Complaint, of May 4, 2008 (evidence file, folio 2488). In this sense, in its Answering Brief the State indicated that: "[m]any of the Community's problems have their origin in internal conflicts of the same communities, for example, the assignment of land to individuals in the Cooperativa del Esfuerzo was carried out by a member of the Community of Triunfo de la Cruz, which results in the solution to the conflict created be found in the reclaiming through civil courts or through the use of the domestic jurisdiction of those same communities instead of through a criminal action by the Public Prosecutors' Office" (evidence file, folio 292).

106 *Cfr.* Statement offered before the Inter-American Court by José Ángel Castro, during the public hearing held on May 20, 2014; Foundation for the Improvement of the Garífuna Community of Triunfo de la Cruz, Public accusation, of May 21, 2009 (evidence file, folio 2548); Foundation for the improvement of Triunfo de la Cruz, Public Press Release of March 30, 2006 (evidence file, folios 2530 to 2531).

107 *Cfr.* Municipality of Tela, Certification, of February 16, 2007 (evidence file, folio 2552); Municipality of Tela, Certification of May 7, 2008 (evidence file, folio 2554); Municipal Mayor's Office of Tela, Citizen commission of transparency, Certification of June 19, 2009 (evidence file, folio 2556).

108 *Cfr.* Board of dignitaries of Triunfo de la Cruz, Opening minutes and Closing minutes (of the election process for the new authorities of the foundation of Triunfo de la Cruz) of February 9, 2007 (evidence file, folios 2558 and 2565); Foundation for the improvement of the Garífuna Community of Triunfo de la Cruz, Certification of February 19, 2007 (evidence file, folio 2567); Foundation for the improvement of the Garífuna Community of Triunfo de la Cruz "The celebration of the 210 anniversary of the handing over of the future of the Garífuna people, of April 10,

presented,[109] without there being evidence of the results. The Board of Directors presided by Teresa Reyes was registered in 2007 before the Unit of Registration and Follow-up of Civil Associations of the Secretariat of the Interior and Justice.[110] On March 25, 2010, the General Assembly of the Foundation of the Community met with the purpose of solving the problem of the existence of two Board of Directors, a new vote was held between Teresa Reyes and B.M., and the former was elected.[111] On March 29, 2010, a request was presented for the registration of the elected Board to the Mayor of Tela.[112] Authorities and members of the Community denounced various illegal acts allegedly committed by B.M. or related people.[113]

C.4. Creation of the protected area "Punta Izopo National Park"

86. On December 28, 2000, the National Congress created the Natural Protected Area of "Punta Izopo", under the category of national park and included it within the National System of Protected Areas of Honduras. It has a territorial extension of 18,820.00 has[114] and its area overlaps with the territory allegedly occupied historically by the Garífuna Community of Triunfo de la Cruz.[115] The decree that creates the Punta Izopo National Park states that: "those who live in the Natural Protected Area of Punta Izopo, as well as in the buffer zone, and are owners or possessors of land, will maintain their rights, but must strictly respect the corresponding management plans," and it indicates that the INA will grant "full ownerships" to those who possess properties that have not been legalized and are not within the central area of the Punta Izopo National Park.[116] The park is administrated by the non-governmental organization PROLANSATE.[117]

2007 (evidence file, folio 2222); Foundation for the improvement of the Garífuna Community of Triunfo de la Cruz, public communication of February 12, 2009 (evidence file, folio 2569).

109 *Cfr.* Request for the registration and acknowledgment of a board of directors of the foundation for the improvement of the Triunfo de la Cruz village, of May 16, 2008 (evidence file, folio 2571); Request for the registration and acknowledgment of a board of directors of the foundation for the improvement of the Triunfo de la Cruz village, of February 20, 2009 (evidence file, folios 2573 to 2574).

110 *Cfr.* Secretariat of the Interior and Justice, Unit of registration and follow-up of civil associations, Certification of registry of June 15, 2007 (evidence file, 2579); Secretariat of the State in the Offices of the Interior and Justice, brief of February 4, 2008 (evidence file, folio 2581).

111 *Cfr.* Foundation for the improvement of the Garífuna Community of Triunfo de la Cruz, Item of the minutes of the general assembly of March 25, 2010 (evidence file, folio 2586).

112 *Cfr.* Foundation for the improvement of the Garífuna Community of Triunfo de la Cruz, Request for registration of the board of directors of the foundation, of March 29, 2010 (evidence file, folio 2592).

113 *Cfr.* Secretariat of security, General office of criminal investigation, Complaint for illegal charges of April 17, 2006 (evidence file, folio 2594); Secretariat of security, General office of criminal investigation, Complaint for damages of April 31, 2006 (evidence file, folio 2596); Secretariat of security, General office of criminal investigation, Complaint (evidence file, folio 2598); Foundation for the improvement of the Garífuna Community of Triunfo de la Cruz, brief addressed to the President of OFRANEH (evidence file, folios 2600 to 2601); Foundation for the improvement of the Garífuna Community of Triunfo de la Cruz, brief addressed to the Office of the Attorney General of May 14, 2009 (evidence file, folio 2444); Local Prosecutors' Office of Tela, Complaint brief, of April 11, 2011 (evidence file, folios 2605 to 2606).

114 *Cfr.* National Congress, Decree Nº. 261-2000, The Gazette Nº. 29.427, Official Newspaper of the Republic of Honduras, Articles 1 and 4 of March 13, 2001 (evidence file, folios 2693 to 2694).

115 *Cfr.* World Bank Inspection Panel, Research Report – Honduras Land Administration Program, Report N° 39933-HN of June 12, 2007 (evidence file, folios 220 to 221); Central American and Caribbean Research Council, *"Ethnography of the Community of Triunfo de la Cruz" (evidence file*, folio 282 to 283).

116 *Cfr*. National Congress, Decree Nº. 261-2000, The Gazette Nº. 29.427, Official Newspaper of the Republic of Honduras, Articles 10 and 13, of March 13, 2001 (evidence file, folio 2695).

117 *Cfr.* Technical report of the Foundation PROLANSATE for the environmental impact study of the Los Micos beach & golf resort project, of September 28, 2005 (evidence file, folio 2666); Central American and Caribbean Research Council, *"Ethnography of the Community of Triunfo de la Cruz*" (evidence file, folio 282).

87. Moreover, from the evidence file it can be concluded that the following are among the specific objectives of the creation of the park: promote the coordination and actions oriented to achieving a correct community participation, especially from the populations located in the Park's buffer zone; as well as favor the sustainable management of habitats and biodiversity resources.[118] The two basic management zones, the central zone, and the buffer zone are divided into sub-zones, as per the management plan of the Punta Izopo National Park, which defines the zoning.[119]

C.5. Situation of indigenous leaders and authorities for the defense of the traditional lands of the Community of Triunfo de la Cruz

88. It can be verified in the body of evidence that within the framework of the previously stated facts four homicides were committed against members of the Community of Triunfo de la Cruz: Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez, and Julio Alberto Morales.[120] Additionally, complaints were filed because of the usurpation of lands, which were the object of some diligences by the Prosecutors' Office for Ethnic Groups when it becomes aware of them.[121]

C.6. "Laguna Negra" and "Playa Escondida" Tourism Projects

89. On the other hand, the Court verified that the body of evidence of the present case includes information regarding a complex of condominiums named "Playa Escondida", which was built next to the territory titled in full ownership in the year 1993 to the Community of Triunfo de la Cruz, in the territory claimed as traditional territory in this case.[122] The Court's delegation that made the visit *in situ* could verify the location and nature of the buildings (*supra* para. 15). Moreover, the evidence file also includes information related to the real estate project named "Laguna Negra" even though the Court does not have greater documentation on its exact location and nature.[123]

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[118] *Cfr*. National Congress, Decree Nº. 261-2000, The Gazette Nº. 29.427, Official Newspaper of the Republic of Honduras, Articles 3(5) and (6), of March 13, 2001 (evidence file, folios 2693 to 2694).

[119] *Cfr*. National Institute for Conservation and Forest Development, Protected Areas and Wildlife – Management Plan of the Punta Izopo National Park 2012-2016, May 2012 (evidence file, folios 7866 and 7913 to 7930). The central area is divided into the following sub-areas: (i) of absolute conservation, (ii) of recovery, and (iii) of conservation of species of economic interest. The buffer zone is divided into the following sub-areas: (i) of ecotourism, (ii) of historical-cultural interest, (iii) of multiple uses, (iv) of comprehensive community development, (v) of recovery, (vi) privately protected, (vii) of traditional marine fishing, and (viii) of administration.

[120] *Cfr.* Public Prosecutors' Office, memorandum addressed to the Special Prosecutors' Office of Ethnic Groups and Cultural Heritage, of October 9, 1996 (evidence file, folio 2706); Committee for the Defense of Triunfeña Lands (CODETT), brief addressed to the Prosecutor for Ethnic Groups, of January 30, 1995 (evidence file, folio 2708); Public Prosecutors' Office, Main Public Prosecutor, Interrogation, of March 16, 1995 (evidence file, folios 326 to 327); News article, "*People request that murder of Garífunas be solved"* (evidence file, folio 2710); "Cases of people murdered," document presented by the representatives (evidence file, folios 7743 to 7744).

[121] *Cfr*. Public Prosecutors' Office, Prosecutor for Ethnic Groups and Cultural Heritage, brief addressed to the Executive Director of the INA of February 1, 2000 (evidence file, folio 2702); Public Prosecutors' Office, Prosecutor for Ethnic Groups and Cultural Heritage, brief addressed to the Executive Director of the INA, dated February 24, 2000 (evidence file, folio 2704).

[122] *Cfr.* Foundation for the Improvement of the Garífuna Community of Triunfo de la Cruz, "Current situation of the Community of Triunfo de la Cruz" (evidence file, folio 8334). The Court's delegation was able to observe in its visit *in situ* that in fact the condominium project had been built and has some people currently occupying the housing units.

[123] *Cfr.* Foundation for the Improvement of the Garífuna Community of Triunfo de la Cruz, "Current situation of the Community of Triunfo de la Cruz" (evidence file, folio 8334). During the visit *in situ* by the Court's Delegation it visited: i) the place named "Laguna Negra", and ii) the project named "Laguna Negra"; which are related to that informed by the representatives; however, the Court is not clear of the exact location of the mentioned project.

VII
MERITS

90. In attention to the violations of the rights enshrined in the Convention alleged in this case, the Court will carry out the following analysis: 1) The right to collective property; 2) The duty to adopt domestic legal regulations; 3) The right to life of Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez, and Julio Alberto Morales, and 4) the Right to a fair process and judicial protection.

VII-1
RIGHT TO COLLECTIVE PROPERTY
(Article 21 of the Convention in relation to Articles 1(1) and 2)

A. Arguments of the parties of and of the Commission

91. The *Commission* observed that state authorities have participated in actions and omissions that have prevented the acknowledgment of the Community's right to their traditional property, as well as the effective use and enjoyment of their lands and natural resources. The Commission indicated that the territory occupied by the Community has been possessed by them traditionally and it has maintained its own ways of social and cultural organization, its traditions, lifestyle, and relationship with the land. It also indicated that it had been proven that the Community started the process to achieve acknowledgment of rights over the lands it has historically occupied since 1946 and that it obtained a communal title deed for part of its traditional lands in 1950 and a title deed of guarantee of occupation over another area in 1979, which did not acknowledge per se their right to property, but rights limited to the use and enjoyment of the lands. It indicated that it was not until 1993 and 2001 that the State granted the Community title deeds of full ownership over 615 hectares and 28.71 square meters, while the territory reclaimed by the Community accounts for an approximate surface of de 2,840 hectares. Additionally, the Commission stated that the part of the territory that was not acknowledged by the State coincides, in general, with the area used by the Community for its traditional subsistence activities, such as hunting, fishing, and agriculture.

92. Moreover, the *Commission* referred to the alleged non-compliance by the State with duties related to the Community's territorial rights, such as: lack of timely determination and delimitation of the titled lands, lack of judicial certainty in the title deeds granted, restrictions in access to parts of the traditional territory due to the creation of protected areas[124] and the omission to effectively protect its territory against the occupation and stripping by third parties, and guarantee that it be exclusively indigenous. Additionally, the Commission observed that pursuant to the legislation in force at the time of the expansion of the urban area of Tela, at least 126.40 hectares of the area given to the Community as beneficiary of the Agrarian Reform should be excluded from the expansion, or in its defect full payment should have been made as per the value of the land. Likewise, the Commission indicated that the Community's right to property over the lands titled in their favor was infringed when state

[124] It considered that one of the hindrances for full enjoyment of the traditional territory is related to the creation of a protected area in Punta Izopo, and the handing over of its administration to the private foundation PROLANSATE. In that sense, it reiterated that the adoption of measures addressed to the titling for third parties within the Punta Izopo Natural Protected Area is contrary to the Community's territorial rights given that part of the Community's traditional lands is within this area's buffer zone. It also stated that the creation of the park entails a restriction to the rights to use and enjoy the area by part of the Community's members and that the Community was prevented from carrying out its activities of cultural and economic subsistence at Punta Izopo, and additionally, several of its areas have been destined to purposes different to environmental conservation.

authorities granted deeds of domain to private individuals. It added that this occurred despite the express prohibition included in the collective title deeds of 1993 and 2001 to transfer the same to people who were not members of the Community.

93. Additionally, the *Commission* argued that the State did not previously, freely, and in an informed manner consult with the Community regarding the adoption of decisions that would affect or restrict their right to the collective property. These decisions would include the planning and execution of tourism projects and megaprojects, the creation of a protected area in part of the traditional territory, and the sales of community lands, referring also to the fact that "[t]he expansion of the urban area of the Municipality would [have] occur[ed] without consulting the Community." Furthermore, in what refers to the creation of the protected area of Punta Izopo, it states that, even though the State had indicated that there was a negotiation and socialization process, no evidence was presented in this sense. Finally, it considered that "the beach and marine portions should not be excluded a priori from the possibility to be acknowledged as natural territories and resources used by indigenous peoples for their subsistence activities."

94. The *representatives* added that the lack of delimitation and demarcation has occurred mainly because of state omissions since "the delimitation of only a part of the territory occurred 7 years after a title deed was granted to the community, without having delimited the total area of the territory, without including the ancestral territory, and based on information in which the territory had already been reduced by the invasions suffered." The representatives referred to the Marbella and "Los Micos Beach and Golf Resort" tourism projects and indicated that "[t]he state and private actions in this sense started in the seventies, but no prior, free, and informed consultations have been carried out by the State before or after having taken on international obligations with the ratification of Convention 169 of the ILO, which demands these consultations." Additionally, they argued that "the proposal for the allocation of the urban area was presented without the Community's consent."

95. Finally, the *representatives* argued in general terms that "[t]he State of Honduras has been implementing a practice of turning meetings with the leaders of indigenous federations into socializations of programs and projects it later classifies as consultations." The representatives also argued that "despite the opposition of the Garífuna people, which in a consultation process requested by representatives of the same peoples stated their emphatic opposition to the Law [on Property of 2004] […] the government imposed an information process of what at that time was a bill," which was prepared "with a methodology not agreed on and with criteria that reduced the possibilities of a prior, free, and informed consultation, replacing it with something it referred to as Indigenous Table," thus violating "the principle of good faith enshrined in Article 6(2) of Convention [169 of the ILO]."

96. The *State* indicated that, pursuant to Article 346 of the Honduran Constitution, it had issued measures of protection for the rights and interests of the Community, both progressively and as per its legal and economic capacities, as proven with the title deeds of domain granted to it. Similarly, it stated that the land titling process for the Garífuna Communities involves three stages: titling, expansion, and remediation. With regard to the last stage, it made emphasis that there are several non-Garífuna occupants in the area claimed who have legal documents that prove their property rights, who are also protected by the national legislation.

97. The *State* also argued that within the area claimed by the Community as traditional area, there are beaches and seas, regarding which "according to the Theory of the Properties of Public Use included in the national civil legislation of most countries […] the appropriation of said areas is not possible nor can a title deed of domain be issued over them, and they are not within the realm of trade of humans, instead they are for the use of the entire nation,"

and that Article 617 of the Civil Code of Honduras *inter alia* states that "the adjacent sea and its beaches are national properties of public use or public properties." The State concluded by saying that the national legislation acknowledges the right of the Garífuna peoples to fully access and use the sea and beach areas, "but it cannot issue a title deed of domain for its exclusive use and possession because they cannot be the object of appropriation."

98. Moreover, the *State* indicated in general terms that the titles granted by the INA to the indigenous and afro-Honduran populations in communal property have been duly recorded in the Agrarian Registry, as well as in the Registry of Real Estate and Mercantile Property, and therefore are valid before third parties and, in the event of any misappropriation, they may turn to the corresponding instances to file the respective claims. With regard to the alleged lack of prior consultation, the State argued that for the construction of the Punta Izopo National Park it held a free, prior, and informed consultation with the Community and that, regarding its Management Plan, "for the elaboration and execution of said management plan, socialization workshops w[ere] held with the communities of the area, including the foundation of Triunfo de la Cruz, and said area has been incorporated into execution through the Community Consulting councils."[125] It added that "the Secretariat of the State and the Justice and Human Rights Offices have programmed and defined a methodology to develop workshops in four areas, including those of the Community of Triunfo de la Cruz, which will be carried out with the participation of the petitioners OFRANEH."

B. Considerations of the Court

99. Below, the Court will analyze the arguments of the parties and of the Commission in the following order: 1) Standards applicable to the right to communal property; 2) Considerations regarding the Community's traditional territory; 3) The alleged lack of demarcation and delimitation of the lands titled in favor of the Community and the territories that were acknowledged by the State as traditional; 4) The alleged lack of protection of the Community's territory against third parties, and 5) The obligation to guarantee the right to consultation with regard to the right to communal property of the Garífuna Community of Triunfo de la Cruz.

B.1. Standards applicable to the right to communal property

100. The Court recalls its case-law in this matter, in the sense that Article 21 of the American Convention protects the close relationship indigenous peoples have with their lands, as well as with natural resources and the intangible elements derived from them. The indigenous and tribal peoples have a community-based tradition relating to a communal form of collective land ownership; thus, land is not owned by the individual but by the group and its community.[126] These notions of land ownership and possession do not necessarily conform to the classic concept of property, but the Court has established that they deserve equal protection under Article 21 of the American Convention. Ignoring the specific forms of the right to the use and enjoyment of property based on culture, practices, customs, and beliefs of each people, would be tantamount to maintaining that there is only one way to use and

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[125] The State made reference to the "Management Plan of the Punta Izopo National Park 2012-2016 updated through Agreement number 040-2012, in force for a 12-year period, specifically from 2013-2024".

[126] *Cfr. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations, and Costs.* Judgment of August 31, 2001. Series C No. 79, paras. 148 and 149, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of October 14, 2014. Series C No. 284, para. 111.

dispose of property, which, in turn, would render protection under this provision illusory for millions of people.[127]

101. The Court has taken into consideration that indigenous groups, based on their very existence, have the right to live freely in their own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possessions and production, but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.[128] The culture of the members of indigenous communities directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because these are their main means of subsistence , but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity.[129]

102. Given the intrinsic connection that the members of indigenous and tribal peoples have with their territory, the protection of property rights and the use and enjoyment thereof is necessary to ensure their survival. This connection between the territory and the natural resources that indigenous and tribal peoples have traditionally used and that are necessary for their physical and cultural survival and the development and continuation of their worldview must be protected under Article 21 of the Convention to ensure that they can continue their traditional way of living, and that their distinctive cultural identity, social structure, economic system, customs, beliefs, and traditions are respected, guaranteed, and protected by the States.[130]

103. This Court's case law has repeatedly acknowledged the right to property of indigenous peoples over their traditional territories, and the duty of protection that results from Article 21 of the American Convention in the light of the regulations of Convention 169 of the ILO, the Declaration of the United Nations on the Rights of Indigenous Peoples, as well as the rights acknowledged by the States in their domestic legislations or in other international instruments and decisions, thus establishing a *corpus juris* that defines the obligations of the States Parties to the American Convention, in relation to the protection of the indigenous peoples' right to property.[131] Therefore, upon analyzing the content and scope of Article 21 of the Convention in this case, the Court will take into consideration, in light of the general rules of interpretation established in Article 29(b) of this instrument and as it has done

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127 *Cfr. Case of the Indigenous Community of Sawhoyamaxa v. Paraguay. Merits, Reparations, and Costs.* Judgment of March 29, 2006. Series C No. 146, para. 120, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama*, para. 111.

128 *Cfr*. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, para. 149, and *Case of the Indigenous Community of Xákmok Kásek v. Paraguay. Merits, Reparations, and Costs.* Judgment of August 24, 2010. Series C No. 214, para. 86.

129 *Cfr*. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, para. 135, and *Case of the Indigenous Community of Xákmok Kásek v. Paraguay*, para. 174.

130 *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay*, para. 124, 135, and 137, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama,* para. 112.

131 *Cfr*. *Juridical Condition and Rights of Undocumented Migrants.* Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 120, *Case of the Yakye Axa Indigenous Community v. Paraguay,* para. 127 and 128, *Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 17, 2012. Series C. 245, para. 164, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama, paras. 118 and 142.*

previously,[132] the aforementioned special significance of the communal ownership of the land for the indigenous peoples, as well as the measures taken by the State to ensure that the said right is fully effective.[133]

104. Additionally, the Court has interpreted Article 21 of the Convention to establish that the obligation of the States to take measures to ensure the right to property of the indigenous peoples necessarily entails, based on the principle of legal certainty, that the State must demarcate, delimit, and title the territories of indigenous and tribal communities. In addition, the Court has explained that it is necessary to materialize the territorial rights of indigenous peoples through the adoption of the legislative and administrative measures required to create an effective mechanism for delimitation, demarcation, and titling that will acknowledge those rights in practice.[134] The aforementioned considering that the acknowledgment of indigenous communal property rights must be guaranteed through the granting of a formal title deed or another similar form of state acknowledgment that must grant legal certainty to the indigenous possession of the land against actions of third parties and State agents, since a merely abstract or juridical recognition of indigenous lands, territories, or resources, is practically meaningless if the property is not physically delimited and established.[135]

105. The Court also recalls its case law concerning the communal ownership of indigenous lands, according to which it has indicated *inter alia*, that: 1) the effects of the traditional possession of indigenous peoples of their lands are equivalent to the title of full ownership granted by the State; 2) traditional possession grants indigenous peoples the right to demand official recognition of ownership and its registration; 3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, maintain property rights thereto, even though they lack legal title unless the lands have been lawfully transferred to third parties in good faith; 4) the State shall delimit, demarcate, and grant collective title to the land to the members of indigenous communities,[136] and 5) the members of indigenous peoples who have unwillingly lost possession of their lands, when those lands have been lawfully transferred to innocent third parties, are entitled to restitution thereof or to obtain other lands of equal extension and quality.[137] With regard to the aforementioned, the Court has held that it is not a privilege to use the land, which can be taken away by the State or countered by third party property rights, but a right of the members of indigenous and tribal peoples to obtain title to their territory to ensure the permanent use and enjoyment of this land.[138]

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[132] *Cfr. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, para. 148, and Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama, para. 113.*

[133] *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay,* para. 124, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama*, para. 113.

[134] *Cfr. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua,* paras. 153 and 164, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama*, paras. 119 and 166.

[135] *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay*, para. 143, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama*, para. 135.

[136] *Cfr. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of June 15, 2005. Series C. 124, para. 209*; Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, paras. 151 and 153, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama.* para. 117.

[137] *Cfr. Case of the Sawhoyamaxa Indigenous Community v. Paraguay,* para. 128, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay,* para. 109.

[138] *Cfr. Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of June 15, 2005. Series C. 124, para. 209, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama.* para. 135.

106. In this same sense, the Court has held that the State's failure to effectively delimit and demarcate the boundaries of the territory over which a right to collective property of an indigenous people exists may create a permanent climate of uncertainty among the members of the above-mentioned peoples, because they have no certainty as to where their right to communal property extends geographically and, consequently, they do not know the area over which they may freely use and enjoy the respective properties.[139]

107. Additionally, in the *Case of the Kuna Indigenous People of Madungandí and Emberá de Bayano and its members v. Panama*, the Court pointed out that various Member States of the Organization of American States that had accepted the Court's compulsory jurisdiction – for example, Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, Paraguay, Peru, and Venezuela – had, in some way, incorporated the obligations to delimit, demarcate, and title indigenous lands into their domestic laws, at least in the 1970s, 1980s, 1990s, and 2000s, and the States have clearly recognized their obligation to delimit, demarcate, and title indigenous lands.[140]

108. With regard to the obligations that arise from stipulations of Honduran domestic law, the Court verified that the Constitution of 1982, currently in force, states in Article 346 that "[i]t is the duty of the State to adopt measures for the protection of the rights and interests of the indigenous communities in the country, especially of the lands and forests in which they are settled."[141] Similarly, the Law for the Modernization and Development of the Agricultural Sector of 1992 stated in Article 65 the reform of Article 92 of the Law on Agrarian Reform so it would include *inter alia* the following "[t]he ethnical communities that prove the occupation of the lands where they are settled, for the time period of no less than three years stated in Article 15 of this Law as per its reforms, will receive property titles in full ownership without cost, issued by the National Agrarian Institute in the time period defined in the aforementioned Article 15" and the Law on Agrarian Reform was in fact reformed in that sense.[142]

109. Additionally, the Law on Property, approved by Decree N° 82-2004 of May 28th, 2004 states in Article 93 that "[t]he State, based on the special importance the relationship with the land has for cultures and their spiritual values, acknowledges the right indigenous and afro-Honduran peoples have over the lands they have traditionally possessed, provided it is not prohibited by law." Moreover, Article 94 of the same Law states that "the property rights over the lands of these peoples will be titled in their favor collectively. The members of the communities have a right of possession and usufruct according to the traditional forms of possession of communal property."[143]

B.2. Considerations regarding the Community's traditional territory

110. As stated in the chapter on Facts, it has been proven that: a) in 1946 the Community of Triunfo de la Cruz requested the granting of a communal title over the land occupied by

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139 *Cfr. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, para. 153, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama.* para. 136.

140 *Cfr*. *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama.* para. 118.

141 Political Constitution of the Republic of Honduras, Article 346.

142 Law for the Modernization and Development of the Agricultural Sector, National Congress, Decree Nº. 31-92, of March 5, 1992, The Gazette Nº. 26713 of April 6, 1992, Article 65; Law on Agrarian Reform, The Head of State with his Cabinet, Executive Order Nº. 170, of December 30, 1974, The Gazette Nº. 21482 of January 8, 1975, Article 92.

143 Law on Property, National Congress, Decree Nº. 82-2004, of May 28, 2004, Articles 93 and 94.

them, and in 1950 that request was approved over a territory covering an approximate extension of 380 hectares, in the nature of common land; b) in 1969, the Community presented before the INA a request for the creation of an "agricultural population center" over an approximate area of two hundred blocks to the East of the territory granted as common land; c) the Community presented a request before the INA that resulted in the granting, in 1979, of a title in "guarantee of occupation" over 126.40 hectares, located on the Eastern end of the lands previously granted as common land; d) in 1993 the Community was issued a "definitive title deed in full ownership" over the approximately 380 hectares granted as common land in 1950; e) in 1997 the Community presented before the INA a request to obtain a title of full ownership over approximately 600 hectares; f) in 1998, the Community presented a request for full ownership over a piece of land of 126.40 hectares it already possessed in guarantee of occupation; g) in 2001, the INA granted a definitive title in full ownership over approximately 234 hectares, divided into three areas (designated Plots A2, A3, and A4 in a map prepared by the INA)[144] (*supra* para. 70), and h) prior to granting the titles in the year 2021 over the mentioned areas A2, A3, and A4, it can be seen in the evidence that in January of that year the Garífuna Community of Triunfo de la Cruz requested an extension of the title of full ownership that had been granted to it in the year 1993, without there being precise knowledge of the extension that corresponds to that request (*supra* para. 71). Therefore, since 1946 the Community has presented at a national level different requests for the allocation of lands, which in total add up to approximately 980 hectares, of which it was granted around 614 hectares in "full ownership" and 126 hectares in "guarantee of occupation."

111. However, and without detriment of the above, the Court confirmed that the representatives and the Commission stated that the Community's traditional territory should have an extension of 2840 hectares. It can be proven that this evaluation is done based on a report prepared by the Central American and Caribbean Research Council (CACRC) on the Community's traditional lands in the year 2002 (*supra* para. 55), even though only a report from that same institution from the year 2006 that includes a map of the 2002 report, which refers to the 2840 hectares, was forwarded.[145]

112. Similarly, the Court points out that said information was included for the first time during the processing of the case before the Commission, in an annex to a brief forwarded by the petitioners to the Commission on May 23, 2006.[146] On its part, the State rejects that the Garífuna territory is the one indicated given that the report of the CARC "is not a definitive document, but an approximation whose content is based on the unilateral version of the interested parties."

113. With regard to the evidence used as grounds for the report of the CARC of 2002, it does not specify the sources for the elaboration of the above-mentioned map; the report of the World Bank's Inspection Panel only indicates that the "study/diagnosis of lands carried out by the Central American and Caribbean Research Council (CACRC), was based on a participative method in order to map the territorial claims of 25 Garífuna and Misquita communities along the Northern coast."[147]

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144 *Cfr*. National Agrarian Institute, Memorandum, of July 5, 2001 (evidence file, folios 1938 and 1941), states that Plots A3 and A4, requested by the Community in its expansion, are located within the Punta Izopo national park.

145 *Cfr*. Central American and Caribbean Research Council, "*Ethnography of the Community of Triunfo de la Cruz*" (evidence file, folios 276 to 297).

146 *Cfr*. Evidence file (folio 3347).

147 World Bank Inspection Panel, Research Report – Honduras Land Management Program, Report N° 39933-HN of June 12, 2007 (evidence file, folio 149).

114. Moreover, on July 5, 2001, within the framework of the final presentation of the measures carried out at the Garífuna Community of Triunfo de la Cruz, the INA prepared a blueprint identifying four areas that make up the expansion request filed by the Community of Triunfo de la Cruz (*supra* para. 110). Specifically, it mentions the areas: A1 of an extension of around 408 hectares and that refers to the "area requested in expansion by the Community of Triunfo de la Cruz, located within the expansion of the Urban area of Tela;" A2 of an extension of around 155 hectares, which corresponds to the area requested in expansion "adjacent to the mangrove of the Janneth Kawas park," and "beyond the urban perimeter of Tela;" A3 of an extension of around 33 hectares, which corresponds to the area requested in expansion located within the Punta Izopo National Park, and A4 of an extension of around 45 hectares, which corresponds "to the area requested in expansion that covers part of the Punta Izopo mountain and is located within the Punta Izopo National park"[148] (*infra* Map Annex).

115. Similarly, in the chapter on Facts, it was confirmed that on September 27, 2001 the INA approved the granting of a definitive title of full ownership over three plots of land that cover 234 hectares, 48 areas, and 76.03 square meters, whose surface corresponds to areas A2, A3, and A4 (*infra* Map Annex) (*supra* para. 70). On the other hand, through a special agreement of September 19, 2001, the INA indicated that, "within the framework of Convention 169 of the ILO, it acknowledges the ancestral property of the Garífuna Community of Triunfo de la Cruz over plot A1," reason for which "it undertakes the responsibility to carry out a study regarding possession of the land in plot A1 obtained by people not belonging to the community according to the blueprints prepared by the National Agrarian Institute on July 4, 2001" and that "[o]nce it determined the legality of the public deeds, had them annulled by the competent judicial authority, and remediated, it would be allocated in favor of the community."[149]

116. The aforementioned allows the Court to reach several conclusions. First, from the evidence presented it cannot be assumed that the Garífuna Community of Triunfo de la Cruz presented domestic requests in reference to the territorial extension included in the Merits Report and in the Brief of Pleadings and Arguments, namely 2840 hectares. Second, the different requests filed by the Community throughout the years (1946, 1969, 1997, 1998, and 2001) refer to significantly smaller territorial extensions, specifically: 380 hectares, 128 hectares, 600 hectares, and 126 hectares, that jointly do not add up to 2840 hectares. Third, the Court points out that the request presented in January 2001 (*supra* para. 71) was not based on the fact that the territory claimed was traditional, but instead that "due to the growth in population it is necessary to expand [the] area [titled in 1993,] so its residents can have access to the land in order to build their homes, but especially so they may cultivate it for their subsistence and carry out other activities related to their idiosyncrasy and culture."[150] Fourth, the Court cannot ignore that the request related to the alleged 2840-hectare traditional territory was presented for the first time before the bodies of the Inter-American System of human rights, and after the issuing of the Admissibility Report (*supra* para. 2). Finally, plot A1 of 408 hectares has been acknowledged as traditional territory by the INA, but it was not allocated to the Community.

117. Due to all of the above, the Court concludes that it lacks sufficient evidentiary elements to determine the actual extension of the traditional territory of the Garífuna Community of Triunfo de la Cruz. Therefore, to the effect of analyzing the State's international responsibility regarding the Community's right to collective property, it will be considered that the traditional territory of the Garífuna Community of Triunfo de la Cruz covers at least the following areas:

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148 National Agrarian Institute, Memorandum of July 5, 2001 (evidence file, folios 1938 and 1941).

149 National Agrarian Institute, Special Agreement of September 19, 2001 (evidence file, folio 1974).

150 Request expansion of title presented by the INA of January 22, 2001 (evidence file, folio 1761).

a) the territories that were granted to the Community in full ownership and in guarantee of occupation (*supra* paras. 68, 69, and 70), and b) the territories that the State itself acknowledged domestically as the Community's traditional territory (Plot A1 of 408 hectares) (*supra* para. 115 and *infra* Map Annex).

118. Without detriment to that stated, it is necessary to clarify that the aforementioned is defined only to the effects of analyzing the State's international responsibility in this case, pursuant to the evidence forwarded to the Court. Similarly, that conclusion does not prevent other authorities from acknowledging that the traditional territory of the Community of Triunfo de la Cruz may have greater dimensions, if this were the case, in other judicial or extrajudicial proceedings.

B.3. The alleged lack of demarcation and delimitation of the lands titled in favor of the Community and the territories that were acknowledged as traditional by the State

119. Regarding the arguments related to the alleged lack of titling, delimitation, and demarcation of the traditional territories of the Community of Triunfo de la Cruz, the Court recalls that: a) on September 9, 1981 the State of Honduras acknowledged the contentious jurisdiction of this Court (*supra* para. 18); b) since the adoption of the Constitution of 1982, the State was compelled to "adopt measures for the protection of the rights and interests of the indigenous communities in the country, especially of the lands and forests in which they are settled" (*supra* para. 108); c) the Law on Agrarian Reform, modified by the Law for the Modernization and Development of the Agricultural Sector of 1992, indicates in its Article 92 that the State would be obliged to title in full ownership the territories of "[t]he ethnical communities that prove the occupation of the land where they are settled for a period of no less than three years," and d) Honduras ratified Convention 169 of the ILO on March 28, 1995, which went into force for Honduras on March 28, 1996, and whose Article 38 compels States to recognize to indigenous and tribal peoples the right to property and possession of the lands traditionally occupied by them, for which they must adopt the measures necessary to determine said lands and guarantee the effective protection of their property and possession rights.

120. From the aforementioned it can be concluded that, pursuant to the mentioned regulations, there is no doubt that the domestic obligation to demarcate and delimit the territories of indigenous communities exists since, at least, the adoption of the Constitution of 1982, date on which the State had already acknowledged the Court's contentious jurisdiction. The basis for this can be found in the fact that the constitutionally-established obligation to adopt measures of protection of the rights and interests of the existing indigenous communities in the country means that the State, in order to guarantee these communities their right to property over the lands where they are settled, must guarantee the use and enjoyment of their properties, which necessarily implies, in attention to the principle of legal certainty, that the State must demarcate and delimit the territories of indigenous and tribal communities.

121. Regarding this specific matter, the Court has previously stated that "a merely abstract or juridical recognition of indigenous lands, territories, or resources, is practically meaningless if the property is not physically delimited and established" (*supra* para. 104).[151]

122. On the other hand, the domestic obligation to title the territories claimed by the indigenous communities is in force as of the year 1992 with the adoption of the Law for the Modernization and Development of the Agricultural Sector. Regarding the international

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[151] *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay,* para. 143; *Case of the Saramaka People v. Suriname*, para. 116, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and its members v. Panama,* para. 135.

obligation to title, demarcate, and delimit, it exists as of the moment in which Convention 169 of the ILO came into force on March 28, 1996, having been ratified by Honduras in the year 1995.

123. Below, the Court will analyze the State's obligations regarding each of the following territories, which refer to the facts of the case: a) Land given in a communal manner in 1950 and in full ownership in 1993; b) Plot A1 and land given in guarantee of occupation in the year 1979; c) Plot A2, acknowledged in full ownership in 2001: d) Plots A3 and A4, acknowledged in full ownership in 2001, and e) Seas and beaches.

B.3.1. Land given in a communal manner in 1950 and in full ownership in 1993

124. In this case it has been proven that in 1993, one year after the emerging of the domestic obligation to title (*supra* para. 119), the INA titled in favor of the Community of Triunfo de la Cruz the approximately 380 hectares of territory that had been granted to it as communal land in the year 1950 (*supra* para. 59). Therefore, the Court considers that the State did not violate its obligation to title said territory.

125. With regard to the demarcation and delimitation of that territory, the Court verified that it was not until the year 2000, 18 years after the corresponding domestic obligation appeared, and 6 years after the international obligation emerged, that an Agrarian Commissioner was appointed to carry out "the remeasurement of the communal lands of the Garífuna Community of Triunfo de la Cruz,"[152] which was carried out that same year.[153] Therefore, the State is responsible for the violation of Article 21 of the Convention, in relation to Article 1(1) of the same, for having failed to comply with its obligation to delimit and demarcate that area during the mentioned period of time.

B.3.2. Plot A1 and land given in Guarantee of Occupation in the year 1979

126. As previously stated, in the year 2001 the INA acknowledged that plot A1 of approximately 408 hectares was traditional territory of the Community of Triunfo de la Cruz (*supra* para. 115). However, up to this date, it has not been demarcated, delimited, or titled, even though the State was compelled to do so since 1982 and 1992, respectively, at a national level, and since 1996 internationally (*supra* para. 119). Therefore, the State is responsible for the violation of Article 21 of the Convention, in relation to Article 1(1) of the same, for having failed to comply with its obligation to title, delimit, and demarcate that area. Similarly, it cannot be concluded from the evidence received that the INA assessed, in the case of a possible real impossibility to grant those titles, and pursuant to that established by Convention 169 of the ILO in its Article 16,[154] the need to grant alternative lands or compensations for the traditional territory that was not being allocated to the Community. With regard to the land given in guarantee of occupation in the year 1979, the Court observes it is within plot A1 (*infra* Map Annex), reason for which the same conclusion is reached for that area.

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[152] Document from the Agrarian Commissioner addressed to the regional agrarian office of La Ceiba of July 3, 2000 (evidence file, folio 761).

[153] *Cfr.* Signature pages of the people present at "the location of two expansion sites of the Garífuna Community of Triunfo de la Cruz," "the location of three spots of the Common Lands of the Garífuna Community of Triunfo de la Cruz," and "the inspection of boundary markers and boundaries" (evidence file, folios 801 to 806).

[154] Article 16 of Convention 169 of the ILO states: "3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist. 4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees."

127. Finally, it is important to point out that lack of titling of the land included in plot A1 in benefit of the Community of Triunfo de la Cruz is especially serious given that the other non-adjacent territories titled in its favor are divided and fractioned without a continuous relationship between them. Plot "A1" is a territorial extension adjacent to the other plots of land granted in full ownership to the Community (*infra* Map Annex), and it would also make it possible for there to be a geographical prolongation between them. In that sense, it is reasonable to infer that said lack of continuity between the different territories granted to them makes the correct use and enjoyment by the members of the Community of Triunfo de la Cruz difficult. Therefore, lack of titling of plot A1 also has a negative impact on the use and enjoyment of the other territories granted in full ownership to the Community.

B.3.3. Plot A2 acknowledged in full ownership in 2001

128. The evidence proves that the Community of Triunfo de la Cruz requested in full ownership, among others, the area corresponding to Plot A2 (133 hectares) in the year 1997 (*supra* para. 70). In 2001, the State granted full ownership over the mentioned Plot (*supra* para. 70) and delimited it.[155] There is no information regarding its demarcation.

129. The Court considers that the time elapsed between the request of full ownership in 1997 and the effective titling by the State in 2001 is not unreasonable, reason for which it considers that the State is not responsible for the violation of its obligation to title and delimit the Plot of land referred to as A2 (*infra* Map Annex), and it cannot issue judgment regarding the alleged lack of demarcation due to lack of sufficient information elements.

B.3.4. Plots A3 and A4, acknowledged in full ownership in 2001

130. In what refers to areas A3 and A4, of approximately 33 hectares and 45 hectares, respectively, the Court observes that their full ownership was granted without there being a formal request from the Community. Therefore, it shall not issue judgment regarding the obligation to title those lands. Regarding the obligation to delimit, it has been proven that they were delimited in 2001.[156] There is no information on their demarcation. The Court considers that the State is not responsible for the violation of its obligation to title, demarcate, and delimit the Plots of land A3 and A4 (*infra* Map Annex).

B.3.5. Requests of full ownership over sea and land

131. The Court recalls that the representatives and the Commission requested that the Court acknowledge part of the sea and beach as traditional territory of the Community of Triunfo de la Cruz. The State argued that the domestic legislation states that seas and beaches are public property, and it is impossible to issue a title of domain for its exclusive use and possession, given they cannot be the object of appropriation, even though the legislation acknowledges the right of the Garífuna communities to access them.

132. This Court verified that, in this case, the culture and economy of the Garífuna peoples, including the Garífuna Community of Triunfo de la Cruz, are made up, among others, by traditional fishing and the hunting of small sea animals, such as turtles and manatees. In this sense, the beach and the ocean are part of the identity of the Garífuna ethnicity, because they have an essential value for their subsistence, and they are also related to their history and religion. In this sense, it can be seen in the evidence that "due to the Garífuna history,

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155 *Cfr.* National Agrarian Institute, Memorandum of July 5, 2001 (evidence file, folios 1938 to 1941).

156 *Cfr.* National Agrarian Institute, Memorandum of July 5, 2001 (evidence file, folios 1938 to 1941).

the beaches are an important element of their religious ceremonies" and that "the places of Garífuna residence adjacent to beaches are at the heart of this marine culture."[157]

133. In that same sense, the presumed victim Ángel Castro stated that the Community's "survival" depended on the land, as well as "the seas for fishing" and that "[t]he ocean is […] part of the Garífuna culture.[158] He also stated that their exploitation of the sea is "under the norms of our use and customs" and that they are "limited in the exploitation of nature," in the sense that they obtain "what [they] need for [their] sustenance […] [and they do so] in a traditional manner." In this sense, he specified that the percentage of the Community dedicated to the sea "[h]as currently been reduced little by little, but we are talking about 75%." Moreover, there are "third parties that […] exploit these areas, but in an industrial manner."

134. Regarding the alleged traditional territory, which would include some degree of seas and beaches, as indicated, this Court will only issue judgment on the alleged violations to the right to communal property related to the territories granted to the Community in full ownership and in guarantee of occupation, and over those that the State itself acknowledged domestically as traditional territory corresponding to the Community (Plot A1 of 408 hectares) (*infra* Map Annex and *supra* para. 117).

135. Without detriment to the above, the Court recalls that its case law regarding the territories of indigenous and tribal peoples has referred to land areas, which, in their case, include rivers, lakes, or natural resources of an aquatic nature. In that same sense, Article 14(1) of Convention 169 of the ILO generally states that "1. [t]he rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities."

136. Similarly, the United Nations Declaration of the Rights of Indigenous Peoples states in Article 25 that "[i]ndigenous people have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas and other resources and to uphold their responsibilities to future generations in this regard." On its part, the United Nations' Human Rights Committee has dealt with the relationship of indigenous or tribal peoples with fishing resources and their use of water resources in some cases such as, for example, in the cases of *Apirana Mahuika et. al. v. New Zealand (Communication No. 547/1993)* and *Angela Poma Poma v. Peru (Communication No. 1457/2006)*.[159] In these cases, the Committee has acknowledged that Article 27 of the Covenant on Civil and Political Rights (PIDCP) protects the development of traditional economic and social rights in a joint manner as part of the right to have their own cultural lifestyle, that is, as cultural expressions an indigenous community of peoples could have.

137. Therefore, even though in this case the Court considers it is not necessary to issue judgment on the alleged violation of Article 21 of the Convention, in relation to Article 1(1) of

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[157] World Bank Inspection Panel, Research Report – Honduras Land Administration Program, Report N° 39933-HN of June 12, 2007 (evidence file, folios 159 to 160).

[158] Statement offered before the Inter-American Court by José Ángel Castro, during the public hearing held on May 20, 2014. Mr. Castro stated that: "[t]he Garífuna communities in Honduras are distributed all along the Atlantic coast, even in Guatemala, Belize, and part of Nicaragua, given that since the sea is part of our culture, we feel very good in front of the sea for recreation, the breeze, and many other things."

[159] *Cfr.* United Nations, Human Rights Committee, Communication No. 547/1993 (*Apirana Mahuika et al. v. New Zealand*), UN Doc. CCPR/C/70/D/547/1993, of November 16, 2000, para. 9(3); United Nations, Human Rights Committee, Communication No. 1457/2006 (*Angela Poma Poma v. Peru*), UN Doc. CCPR/C/95/D/1457/2006, of April 24, 2009, paras. 2(1) and 7(3).

the same, in detriment of the Community and its members, due to the State's failure to guarantee free access to or delimit, demarcate, and title parts of the beach and sea, it is relevant to recall that States must guarantee the use, enjoyment, and usage under equal conditions and without discrimination of the beaches and coastal seas, as well as other resources traditionally used, pursuant to their uses and customs.

B.4. The alleged lack of protection of the Community's territory with regard to third parties

138. Regarding the arguments related to the presumed lack of protection of the territory of the Community of Triunfo de la Cruz regarding third parties, the Court reiterates that since the year 1982 the State was in the obligation to guarantee the use and enjoyment of the territories where the indigenous communities were settled (*supra* para. 119), and that as of the year 1996, the State had an international obligation to guarantee the use and enjoyment of the territory of indigenous communities by virtue of that stated in Convention 169 of the ILO (*supra* para. 119).

139. The representatives and the Commission have referred to several sales or overlapping of property deeds related to the territories object of this controversy. Consequently, there are problems with the following title deeds: a) the sale of 50 hectares of land to the company MACERICA in the year 1969; b) the sale of approximately 44 hectares to the company IDETRISA in the year 1993, and c) the transfer of 22 blocks to the workers' union of the Municipality of Tela.

140. With regard to these three areas, it is important to mention that they are all located in plot A1 (*infra* Map Annex), which was acknowledged by the INA as traditional territory of the Community of Triunfo de la Cruz in the year 2001 (*supra* para. 115).

B.4.1. The sale of 50 hectares[160] of land to the company MACERICA in the year 1969

141. It can be concluded from the body of evidence that on July 6, 1969 the company MACERICA acquired a property of around 50 hectares located in the area named "Río Plátano". It can be concluded from the facts that, in June 1969, members of the Community of Triunfo de la Cruz requested protection from the INA against acts of eviction from the property that had been acquired by the commercial corporation MACERICA. Subsequently, the Director of the INA adopted Agreement Nº. 14 of May 7, 1970, though which it decided to protect the members of the Community in the occupation exercised by them over the property, as well as "grant equal protection to the other peasants that occupy the land in question" (*supra* para. 63).

142. On the other hand, on September 28, 1979, the INA issued in favor of the Community a title in "guarantee of occupation" over 126.40 hectares, located on the Eastern extreme of the lands previously granted as communal lands (*supra* para. 59). That area of 126.40 hectares overlaps in part with the area where the company MACERICA was located. It can be concluded from this that upon acknowledging the title deed in guarantee of occupation, the State acquired the obligation to ensure the effective use and enjoyment of that property. That obligation cannot be ignored, and the enjoyment cannot be obviated because a private property title has been granted in those lands.[161]

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[160] In the year 1995 the area was remeasured, indicating that it corresponded to 56.76 hectares, and that the difference of 5.39 hectares was due to a natural mudslide that increased the area, (evidence file, folios 8813 and 8814).

[161] *Cfr. Case of the Kuna indigenous people of Madungandí and the Emberá people of Bayano and their members v. Panama,* para. 142.

143. Similarly, on May 25, 1984 the INA issued Report 329/84, through which it stated that "the document presented [by the company Macerica] to prove its private ownership of the property Barra de Río Plátano is not a sufficiently valid title […] thus it can be assumed it is of the State's domain" (*supra* para. 65).

144. Regarding the territory where the company Macerica is currently located, the Court verified that the Community of Triunfo de la Cruz could not fully exercise its right to use and enjoy the title in guarantee of occupation granted to it in the year 1979. This based on the fact that: i) said area was occupied by the company Macerica, ii) said area was in dispute since the year 1969, and iii) there was a title in favor of the company Macerica whose ability to prove possession of that plot was not clear. That situation lasted beyond the year 1982, moment as of which the State was obliged to adopt measures of protection of the rights and interests of the country's indigenous communities and especially of the lands and forests where they were settled, pursuant to that stated in Article 346 of the Constitution (*supra* para. 108).

145. Therefore, the Court considers that the State is responsible for not having guaranteed the Community's right to property concerning the title granted in guarantee of occupation in the year 1979, which overlaps with the area where the territory occupied by the company Macerica is located, in violation of Article 21 of the Convention, in relation to Article 1(1) of the same.

146. The Court specifies that the State's acceptance of responsibility for not having ensured the pacific possession of the territory granted in guarantee of occupation to the Community does not imply a pronouncement on the rights of individuals who already had a private title deed over part of those lands. In this matter, the Court refers only to the responsibility of the State of Honduras for having issued a title of occupation over a territory that could not be occupied in whole and concerning which there was not full legal certainty regarding its property.

B.4.2. The sale of approximately 44 hectares to the company IDETRISA in the year 1993

147. As stated in the chapter on Facts, (*supra* chapter VI) between August 1993 and July 1995 the Municipality of Tela sold approximately 44 hectares of lands found within the area granted in guarantee of occupation in the year 1979, in favor of the company IDETRISA, for the execution of the "Club Marbella" tourism project (*supra* para. 74).

148. As in the previous chapter, the Court concludes that the Community of Triunfo de la Cruz could not fully exercise the right of use and enjoyment that results from the title granted in guarantee of occupation in the year 1979, since the Municipality sold, after the year 1979, part of that territory to the company IDETRISA for the development of tourism projects. Therefore, the Court considers that the State is responsible for not having ensured the Community's right to property, in relation to the title granted in guarantee of occupation in the year 1979 that overlaps with the area where the territory occupied by the company Idetrisa is located, in violation of Article 21 of the Convention, in relation to Article 1(1) of the same.

B.4.3. The transfer of 22 blocks to the workers' union of the Municipality of Tela

149. In what refers to the sale of 22 blocks to the workers' union of the Municipality of Tela, it can be concluded from the evidence that on January 15, 1997, the Municipal Corporation of Tela agreed to transfer 22.81 blocks located in the territory reclaimed by the Community and occupied in part by it to the Employees and Workers' Union (*supra* para. 78).

150. The Court verified, as indicated by the INA in the year 2001, that said area is located within the urban area of Tela,[162] which is part of Plot A1 considered by that same institution traditional territory of the Community of Triunfo de la Cruz (*supra* para. 115). Moreover, the allocation of the 22 blocks over part of the Community's traditional territory occurred after Honduras' ratification of Convention 169 of the ILO. At the time of that event, Honduras had already acquired the international commitment to guarantee the right to property of indigenous communities over their traditional territories (*supra* para. 119).

151. Therefore, the Court concludes that the State is responsible for having violated the duty to guarantee the right to property of the Community of Triunfo de la Cruz, enshrined in Article 21 of the Convention, in relation to Article 1(1) of the same instrument upon allowing the allocation of a title deed over a plot located within the territory acknowledged by a state body as traditional and occupied in part by the members of the Community.

152. Concerning this matter, the Court recalls that the State's responsibility in relation to the area where the 22 blocks that were allocated to the workers' union of the municipality are located must be understood without detriment to the rights of affected third parties to obtain a compensation or indemnification pursuant to Honduras' domestic legislation.

B.4.4. Conclusion

153. According to that indicated in the previous sections, the State is responsible for the violation to the duty to ensure the use and enjoyment of the territories granted to the Community in guarantee of occupation in the year 1979 and, as of the year 1996, for not guaranteeing the use and enjoyment of the Community's traditional territories acknowledged as such by the INA in the year 2001, in relation to Article 1(1) of the same.

B.5. The obligation to guarantee the right to consultation, in relation to the right to communal property of the Garífuna Community of Triunfo de la Cruz

154. With regard to the right to collective property, it is necessary to reiterate that it is not absolute and that, when States impose limitations or restrictions on the exercise of the rights of indigenous peoples to the ownership of their lands, territories, and natural resources, certain guidelines must be respected, which must be established by law, necessary, proportionate, and aimed at achieving a legitimate objective in a democratic society.[163] Additionally, the first paragraph of Article 21 of the Convention establishes the right to property and points out as attributes of property its use and enjoyment and includes a limit to such property's attributes, which is social interest.[164] Additionally, the second paragraph refers to the expropriation of property and the requirements to ensure that this action by the State may be considered justified.[165]

155. Moreover, when referring to the right to collective property of indigenous and tribal peoples, it must also be understood that a limitation or restriction to that right may not imply

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[162] *Cfr.* National Agrarian Institute, Memorandum of July 5, 2001 (evidence file, folio 1936).

[163] *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay, para.* 144, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 156.

[164] *Cfr. Case of Salvador Chiriboga v. Ecuador*. *Preliminary Objection and Mertis.* Judgment of May 6, 2008. Series C No. 179, para. 55, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*. *Preliminary Objections, Merits, Reparations, and Costs.* Judgment of June 22, 2015. Series C. No. 293, para. 336.

[165] *Cfr. Case of Salvador Chiriboga v. Ecuador*, para. 55, *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela,* para. 336.

a denial of their right to exist as a people.[166] Thus, the Court has stated that, besides the criteria mentioned, the State must verify that those restrictions or limitations do not imply said denial.

156. Specifically, the Court indicated that, to ensure that the exploration or extraction of natural resources in ancestral territories did not entail a negation of the survival of indigenous people as such, the State must comply with the following safeguards: i) conduct an appropriate and participatory process that guarantees the right to consultation, particularly, among other cases, with regard to development or large-scale investment plans; ii) conduct an environmental impact assessment; and iii) as appropriate, reasonably share the benefits produced by the exploitation of natural resources, as determined by the community itself according to its customs and traditions.[167]

157. In this case, no specific arguments have been presented regarding the mentioned criteria to determine the validity of the restrictions to the Community's communal property, but only concerning the alleged failure of the State to comply with some of the mentioned safeguards that must be considered when dealing with restrictions to the right to collective property of indigenous and tribal peoples. Therefore, in this chapter we shall analyze the State's alleged failure to comply with those safeguards, namely: i) conduct an adequate and participatory process that guarantees the right to consultation, and ii) the execution of an environmental impact assessment.

B.5.1. The adequate and participatory process to guarantee the right to consultation

158. The Court has previously stated, in the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, that the right to consultation of indigenous and tribal peoples, in addition to being a treaty-based provision, is also a general principle of international law[168] that is based, among others, on the close relationship said communities have with their land and on the respect of their rights to collective property and cultural identity. Said rights must be especially respected in a multicultural, pluralistic, and democratic society.[169] This means that States have an obligation to ensure that indigenous and tribal peoples may participate in the decisions regarding measures that could affect their rights, especially their right to communal property, pursuant to their values, customs, and forms of organization. In this sense, Convention 169 of the ILO acknowledges the aspirations of indigenous and tribal peoples to "exercise control over their own institutions, ways of life, and economic development and to maintain and develop their identities, languages, and religions, within the framework of the States in which they live."[170] Additionally, pursuant to Article 6(1) of Convention 169 of the ILO, "[i]n applying the provisions of this Convention, governments shall: a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly."[171]

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166 *Cfr. Case of the Saramaka People v. Suriname*, para. 128, y *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 156.

167 *Cfr. Case of the Saramaka People v. Suriname*, para. 129, y *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 157.

168 *Cfr*. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 164.

169 *Cfr*. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 217.

170 Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, Whereas Clause number five.

171 Similarly, paragraph 2 of Article 6 of Convention 169 of the ILO states that: "The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures" and Article 15(2) of this same

159. It is important to recall that the obligation to consult indigenous and tribal peoples is directly related to the general obligation to guarantee the free and full exercise of the rights recognized in Article 1(1) of the Convention. This entails the State's duty to appropriately organize the entire governmental apparatus and to structure its laws and institutions[172] so that indigenous and tribal communities can be consulted effectively, in accordance with the relevant international standards. This is necessary to create channels for sustained, effective, and reliable dialogue with the indigenous and tribal peoples in the consultation and participation processes through their representative institutions.[173]

160. Additionally, and specifically regarding the right to collective property, the State must guarantee these rights to consultation and participation at all stages of the planning and implementation of a project or measure that may affect the territory on which and indigenous or tribal community is settled, or other rights essential to their survival as people. This must be conducted from the first stages of the planning or preparation of the proposed measure or project, so that the indigenous peoples can truly participate in and influence the decision-making process, in accordance with the relevant international standards. In this regard, the State must ensure that the rights of indigenous and tribal peoples are not ignored in any other activity or agreement reached with private individuals, or in the context of decisions of the public authorities that would affect their rights and interests. Therefore, as applicable, the State must also carry out the tasks of inspection and supervision of their application and, when pertinent, deploy effective means to safeguard those rights through the corresponding judicial organs.[174] In what refers to its characteristics, the Court has stated that the consultation must be of a prior nature, be carried out in good faith, with the aim of reaching an agreement, appropriate, accessible, and informed.[175]

161. The Court verified that even though the domestic obligation to guarantee the right to the effective use and enjoyment of property to indigenous and tribal peoples exists since 1982, it was at least on March 28, 1996 that Honduras acquired the international commitment to guarantee the right to consultation upon the coming into force of Convention 169 of the ILO, ratified by that State on March 28, 1995.

B.5.2. Application of the right to consultation of the Garífuna Community of Triunfo de la Cruz

162. In this case we must determine if the State complied or not with the obligation of guaranteeing the right to consultation of the Garífuna Community of Triunfo de la Cruz, taking into consideration some of the essential elements of that right, and remembering that some of the elements of Inter-American case law and norms, State practice, and the evolution of international law are: a) the prior nature of the consultation; b) good faith and the aim of

convention states that "[i]n cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities and shall receive fair compensation for any damages which they may sustain as a result of such activities."

172 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 166, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 166.

173 *Cfr. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 166.

174 *Cfr. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 167.

175 *Cfr. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 178.

reaching an agreement; c) appropriate and accessible consultation; d) the environmental impact assessment, and e) informed consultation.[176]

163. Regarding the aforementioned, this Court recalls that it is the obligation of the State, and not of the indigenous peoples, to prove that all aspects of the right to prior consultation were effectively guaranteed in this specific case.[177] Non-compliance of the obligation to consult, or the execution of the consultation without observing its fundamental characteristics, may compromise the States' international responsibility.

164. Below, we will analyze the alleged lack of consultation to the Community regarding: i) the "Marbella", "Laguna Negra", and "Playa Escondida" tourism projects; ii) the "Punta Izopo" protected area; iii) the expansion of the urban area and the sales of properties, and iv) approval of the Law on Property in the year 2004.

(i) The "Marbella" and "Playa Escondida" tourism projects

165. Regarding the "Marbella" project it is proven in the evidence that, between August 1993 and July 1995, the Municipality of Tela sold approximately 44 hectares of lands within the area granted in guarantee of occupation in the year 1979, in favor of the company IDETRISA, for the execution of the "Club Marbella" tourism project (*supra* para. 74). The process to obtain the licenses required was in course in the year 1996.[178] In what refers to the "Playa Escondida" tourism project (*supra* para. 89), the representatives argued that it was in construction in the year 2013.[179] During the visit *in situ* (*supra* para. 15), it was verified that the construction had been finished and it was occupied.

166. In the years 1996 (March 28, 1996) and 2013, there was already an international obligation for the State, as of the going into effect for Honduras of Convention 169 of the ILO to conduct a consultation process with the Community (*supra* para. 119). Likewise, it can be concluded from the evidentiary elements provided that the company IDETRISA and the Marbella project are located within the area designated "Plot A1" (*infra* Map Annex), which has been recognized by the State as traditional lands belonging to the Community (*supra* para. 115). In that same sense, it can be seen in the evidence that the Playa Escondido project was also developed on the territory of that same "Plot A1" (*infra* Map Annex).

167. Therefore, the State should have consulted with the Community regarding the "Marbella" and "Playa Escondida" projects prior to their execution, given they were developed within their traditional territory and evidence that said consultations were carried out was not provided. Consequently, the Court verifies that the right to consultation of the Community and its members has been violated by the State, in relation to the development of these two projects. The Court will not issue a ruling on the alleged lack of consultation regarding the "Laguna Negra" project since it does not have enough documentation on its exact location (*supra* para. 89).

(ii) The "Punta Izopo" protected area

168. Regarding the Punta Izopo protected area and national park, it can be concluded from the evidence that it was created by the National Congress on December 29, 2000, through

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176 *Cfr. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, párr. 178.

177 *Cfr. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, párr. 179.

178 *Cfr*. Secretariat of State in the Environmental Office. Legal Certification of June 21, 1996 (evidence file, folio 2618).

179 *Cfr*. Document "Case of Playa Escondida", annex to the Brief of Pleadings and Motions (evidence file, folio 7670).

Decree N° 261-2000 (*supra* para. 86). The State indicated that the Secretary of State through its Offices of Justice and Human Rights had programmed a method to carry out workshops and provided evidence that said workshops referred to, among others "Punta Izopo".[180] Even though the State argued that these would be "carr[ied] out with the participation of the petitioners OFRANEH," it did not present evidentiary elements proving that a consultation process was carried out with the Community regarding the creation of the national park and the preparation of the Management Plan.

169. On the contrary, a document prepared by the CODETT states that "we have become aware through investigations of the [CODETT] that the Punta Izopo Mountain will be declared a wildlife protection area."[181] Similarly, the presumed victim Ángel Castro stated at this case's public hearing that "[w]e are not aware of the [environmental or social impact] study [regarding Punta Izopo,] because it was carried out without any type of consultation to the Communities of Triunfo de la Cruz." Additionally, the witness Clara Flores stated, in general terms with regard to the making of decisions on the Community's territory that "[n]o, no consultation has been carried out."[182]

170. The Court verified that, at least since March 28, 1996, the State had an international obligation to carry out a consultation procedure with the Community. The Decree that created the national park dates from the year 2000. Additionally, it can be concluded from the evidence provided that a part of the lands granted by the State to the Community in full ownership in 1993 overlap with a certain part of the protected area, thus affecting it directly. Therefore, lack of consultation with the Garífuna Community of Triunfo de la Cruz, regarding the creation of the Punta Izopo protected area, constitutes a violation of their right to consultation, for which the State of Honduras is responsible.

171. Regarding the Management Plan for this national park, there is no evidence that said Plan was consulted with the Community. This Court recalls Article 6 of Convention 169 of the ILO and Article 32(1) of the United Nations Declaration on the Rights of Indigenous Peoples and points out that the latter states that the peoples "have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources." The Management Plan constitutes a measure that can affect the Community's lands and their right to make decisions considered convenient and relevant in this sense, reason for which it should have been consulted with the Community, at least regarding the part of the national park that overlaps with the lands granted by the State to the Community. Therefore, the State's inability to consult with the Garífuna Community of Triunfo de la Cruz on the Management Plan of the "Punta Izopo" protected area constitutes a violation of their right to consultation.

172. Additionally, the representatives referred to the "Punta Izopo resort" project. They indicated that around 39,611.02 m^2 of land were sold to the company "Punta Hisopo Resort R.L. de C.V." and other individuals.[183] However, the Court does not have the necessary evidentiary elements to determine if said project directly affected the Community, thus it cannot issue a judgment regarding a possible violation of the right to consultation.

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180 *Cfr*. Secretary of State in the Offices of Justice and Human Rights (evidence file, folios 8030 to 8031).

181 Defense Committee of the Triunfeña Lands (CODETT), "The Historic Community of Triunfo de la Cruz founded on May 3, 1524 – location of the historic Triunfo de la Cruz Mountain" (evidence file, folios 2212 to 2214).

182 Statement offered before the Inter-American by José Ángel Castro, during the public hearing held on May 20, 2014, and statement offered before the Inter-American Court by Clara Eugenia Flores, during the public hearing held on May 20, 2014.

183 *Cfr*. Document "Case of the Punta Izopo resort", annex to the Brief of Pleadings and Motions (evidence file, folio 7600).

173. It is important to point out that, even if the State would have proven that the previously stated socialization or information workshops (*supra* para. 93) were in fact carried out with the presence of the Community's legitimate representatives, this Court recalls that the mere socialization with the Community or providing information to it does not necessarily comply with the minimum elements of an adequate prior consultation, given it does not constitute a genuine dialogue as part of a participative process with the aim of reaching an agreement.

(iii) The expansion of the urban area and the sale of lands

174. Regarding the expansion of the urban area, the presumed victim Ángel Castro stated in the public hearing that there was "a municipalization in the case of the Garífuna territory," which "[w]as carried out without consultation, the municipality did it without consultation and took over a great part of our lands" and that "the extension of the urban area was not even socialized with the Community."[184]

175. The Court verified that the mentioned expansion of the urban area took place, among others, in the properties designated "Plot A1" (*infra* Map Annex), recognized as traditional lands of the Community by the State. However, said expansion was ordered through resolution N° 055-89 issued by the INA in the year 1989 (*supra* para. 73), therefore this administrative measure was adopted prior to the existence of the State of Honduras' international obligation to consult the Community. Thus, the alleged absence of a consultation process regarding said expansion does not constitute, in itself, a violation to the Community's right to consultation.

(iv) The approval of the Law on Property in the year 2004

176. The Court warns that it will not issue judgment regarding the representatives' argument of the lack of consultation of the Law on Property and the alleged "information process", given that sufficient arguments or evidence was not presented in this sense.

B.5.3. The realization of an environmental impact study

177. The report prepared within the framework of the "National Sustainable Tourism Program" of the Inter-American Development Bank states that "[t]he (H0-0195) program has not generated legal studies on the possible negative impacts this program could have on ethnic communities in general, and on Garífuna communities located within the radius of the program specifically" and that "a study detailing the local situation of the territorial and coastal rights of these communities" would be required "to protect them, along with an analysis of the sociocultural impacts of the tourism program."[185]

178. Regarding the "Marbella" project, it was indicated that terms of reference would be prepared to carry out an environmental impact study,[186] but they were not presented nor was the environmental impact study provided, reason for which it was not proven that said study was in fact carried out nor were its conclusions handed over.

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[184] Statement offered before the Inter-American Court by José Ángel Castro, during the public hearing held on May 20, 2014.

[185] Inter-American Development Bank, National Sustainable Tourism Program (HO-0195), "Analysis of Sociocultural Impacts of the National Sustainable Tourism Program between the Garífuna Communities of Tela Bay", of July 2006 (evidence file, folio 6105).

[186] *Cfr.* Secretary of State in the Office of the Environment, Technical report N°. 186/95, of August 25, 1995 (evidence file, folios 2620 to 2623).

179. In what refers to the obligation to carry out environmental impact studies, Article 7(3) of Convention 169 of the ILO states that "[g]overnments shall ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural, and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities." Thus, the Court has previously established that the execution of those studies is one of the safeguards to ensure that the restrictions imposed on indigenous or tribal communities regarding the right to property do not entail a negation of the survival of their survival of the indigenous people as such.[187]

180. Additionally, the Court has pointed out that the importance of these studies lies in the fact that they "serve to assess the possible damage or impact a proposed development or investment project may have on the property in question and on the community. [However, their] purpose is not only to have some objective measure of such possible impact on the land and the people, but also, […] 'ensure that members of the […] people are aware of the possible risks, including environmental and health risks'," so they may give their opinion on the project in question within an "informed and voluntary" consultation process.[188] Moreover, the Court has stated that the environmental impact studies must: conform to the relevant international standards and best practices in this sense, respect the traditions and culture of the indigenous and tribal peoples, and be completed prior to the granting of the concession or license, as one of the objectives for requiring such studies is that the State guarantee the Community's right to be informed about all the proposed projects in their territory and to their effective participation in the process of granting concessions or licenses.[189]

181. In this case, the State had to guarantee that no activity related with the realization of tourism projects such as the "Marbella" and "Playa Escondida" projects be carried out within the Community's properties until independent, technically capable entities under the State's supervision had completed a prior social and environmental impact study. In this sense, the Court points out that it was not proven that the impact study required regarding those projects was carried out.

B.5.4. Conclusion

182. The Court has verified that an adequate and effective procedure to guarantee the right to consultation of the Community, through its own institutions and representatives was not carried out in any of the planning or execution of the "Marbella" and "Playa Escondida" tourism projects, the adoption of the Decree that defined the Punta Izopo protected area, and the approval of the Management Plan, with regard to the part that overlaps with the Community's properties over which the State had issued a title deed in 1993. Therefore, this Court determines that the State has violated Article 21, in relation to Article 1(1) of the Convention for not having carried out a prior consultation process or an environmental impact study, nor ordering that, in the case in question the benefits of the mentioned projects be shared pursuant to international standards, in detriment of the Garífuna Community of Triunfo de la Cruz and its members.

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187 *Cfr*. *Case of the Saramaka People v. Suriname,* para. 129, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 157.

188 *Cfr. Case of the Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 12, 2008, Series C No. 185, para. 40.

189 *Cfr. Case of the Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs*, para. 41.

VII-2
OBLIGATION TO ADOPT DOMESTIC LEGAL PROVISIONS
(Article 2 of the Convention, in relation to Articles 1(1), 21, 8, and 25)

A. Arguments of the parties and of the Commission

183. The Commission referred to a "lack of provision of an adequate and effective procedure for the acknowledgment, titling, demarcation, and delimitation of the territories reclaimed by the presumed victims, […] which would guarantee the pacific possession and recovery of their [traditional] territory."[190] It added that "the existence of deficiencies in the legal framework […] has prevented […] the Community […], from protecting the territories historically occupied by it." Additionally, it added that Honduras' "agrarian legislation" was based on the use and productive exploitation of the land" and therefore "it is foreign [to the] specific forms of relationship and use of the land, characteristic of the culture, uses, customs, and beliefs [of the Community]"[191] and that "[s]aid legal framework does not comprehend the scope of the collective property of the indigenous people and therefore excludes territories, natural resources historically used."[192] Likewise, it made reference to some provisions of the Law on Property of 2004, specifically its Article 100 that "[would] affect the legal certainty of the lands upon not ensuring the non-alienability of communal lands and allowing free disposition by the communities, the establishment of pledges or mortgages or other encumbrances, or their lease."[193]

184. The *representative* argued that "[t]he absence of effective, specific, and regulated procedures for the titling of indigenous communal lands causes general uncertainty." They also indicated with regard to existing legislation that "even though it acknowledges the communal land regimen of indigenous communities, it includes grave exceptions that restrict this acknowledgment, thus violating international principles, standards, and instruments," since despite having ratified Convention 169 of the ILO and approved the United Nations' Declaration on the Rights of Indigenous People, Honduras had not "included in its domestic regulations an adaptation as per the mentioned treaties."[194] The representatives referred specifically to several provisions of the Law on Property, which include "exceptions, conditions, and repealing and restrictive provisions"[195] and they especially mentioned Article 100 of this

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[190] The Commission made the mentioned argument regarding an alleged violation of Articles 8 and 25 of the Convention, in relation to Articles 1(1) and 2 of the same. Additionally, it argued that the State had violated Article 21 of the Convention, in relation to Articles 1(1) and 2 of the same "for not having […] provided [the Community and its members] effective access to a collective property deed over their traditional territory; as well as for having refrained from delimiting, demarcating, and protecting it in an effective manner."

[191] The Commission added that "the Garífuna culture is basically oral and given the interests of third parties in their territories, they were forced to carry out procedures to title their lands and document their rights, thus being required to adapt their oral tradition and follow the existing legal mechanisms to substantiate and document their claims."

[192] It added that "[a]s a result of this" the Community was able to obtain a communal title deed and a title deed in guarantee of occupation "which did not acknowledge their right to property as such, but limited rights to the use and enjoyment of the lands."

[193] The Commission added that "the inclusion of this type of clauses in the communal deed, as well as the application of the regulations that promote the use of indigenous territories for tourism purposes, are not compatible with the effective safety and legal certainty that must characterize the title deed the indigenous people are entitled to."

[194] Similarly, the representatives argued that "the necessary constitutional reform that will grant a higher hierarchy to indigenous matters, with the acknowledgment of a pluricultural nature, the customary law, and their own traditional ways of organization and economic development, but above all and especially the rights to communal property over their territories, has not yet been made."

[195] The representatives mentioned, among others, that the "regularization" referred to in this Law on Property "would only take into consideration aspects of physical possession of those lands and not the historical possession

Law, which would allow "Communities themselves to end the […] communal regimen" and that "the State [would] use [a] positive legal norm that would normally benefit the peoples, […] and it [would] interpret it and apply it in a manner such that it [would] affect the peoples." Finally, the representatives indicated that "[a]s a policy of the eight administrations that have been in office in Honduras after the ratification of Convention [169 of the ILO], they have all avoided the matter of the enforcement of the right to consultation [and] prior, free, and informed consent."

185. On the other hand, the *State* in general terms referred to the fact that the Constitution "establishes several principles under which it protects and guarantees the protection of the human rights of indigenous peoples, their lands and natural resources" and that "these rights were reaffirmed […] through ratification of Convention 169 of the ILO." It added that the State "through the [INA], executing entity of the agrarian policy, carries out actions oriented toward the recognition of [traditional] lands of the indigenous and Afro-Honduran communities."[196] Likewise, it indicated that the "INA, upon executing its measure through a technical commission [defines] the boundaries of the area to title to each Community by preparing a map [and] the delimitation of the boundaries is done once the title is granted prior request of the interested parties by providing the labor and materials necessary. The institution forwards it again to the agrarian commission." Regarding the legislative measures adopted by the State, it referred, among others, to the creation of the Secretary of State's Offices of Indigenous and Afro-Honduran Peoples and reforms to the Criminal Code to "add as an aggravating circumstance that the crime be committed with hate or contempt because of their belonging to indigenous and afro-descendent peoples."[197]

186. Finally, with regard to the right to prior consultation, the *State* indicated that "despite the ratification […] of Convention 169 of the ILO, as well as the signing of the United Nations' Declaration on the Rights of Indigenous People, the State did not include in its domestic regulation an adaptation as per the mentioned treaties; [since] formally the declaration is not a binding document for the States because since it is not an International Treaty it has the category of Declaration, which grants it an important political, ethical, and moral value for all states members of the United Nations, but it does not create direct legal obligations."

B. Considerations of the Court

187. The Court recalls that Article 2 of the Convention obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to those rights and freedoms

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and other rights of those peoples" and that several of its provisions "[would] threaten the obligations taken on by the State in different international instruments." The representatives indicated that "on December 15th of the year 2008, once again the Garífuna communities, represented by the OFRANEH […] filed a constitutional motion against the regulation of the Law on Property, which was declared inadmissible by the Constitutional Court on February 8, 2011, basically substantiating its judgment on civil court regulations." This constitutional motion as well as the decision issued by the Constitutional Court in this regard have not been included in the case file.

196 The State indicated that the titling process for the Communities' lands consists of three stages, without referring to the relevant regulations. Namely, titling (including recording before the registry), the "expansion" that refers to "an extension of the national or communal areas in parts that are not occupied, which are State property and that have been the habitat of Garífuna Communities," and "restructuring" that refers to a "process through which the value of the land is paid for and improvements are introduced by the occupants."

197 Additionally, the State referred to other regulations, for example regarding non-discrimination, and several training sessions carried out and addressed to several public officials.

protected by the Convention.[198]. In other words, the States not only have the positive obligation to adopt the legislative measures necessary to guarantee the exercise of the rights established in the Convention but must also avoid enacting laws that prevent the free exercise of those rights and eliminating or amending laws that protect them.[199] In short, "the State must adopt the measures necessary to make effective the exercise of the rights and freedoms recognized in the Convention."[200]

188. Below, the Court will analyze the alleged violation of Article 2 of the Convention, in relation to Articles 21, 8, and 25 of the same, regarding (i) the alleged lack of a procedure to delimit, demarcate, and title and protect the lands, and (ii) the regulations on the prior, free, and informed consultation.

B.1. Procedure to delimit, demarcate, and title the lands

189. Regarding the State's obligation to delimit, demarcate, and title the lands of the indigenous peoples, the Court has previously stated that, at least since the Law on Agrarian Reform of 1974 came into force, which defined the right to property of said peoples, and subsequently when the Honduran Constitution of 1982 came into force acknowledging their rights regarding their lands, there was an obligation to delimit and demarcate the territories of indigenous and tribal communities within Honduras' domestic legislation.

190. Likewise, it is undoubtable that at least since the year 1996, when Convention 169 of the ILO when into force for Honduras, 12 months after its ratification (*supra* para. 119), the State had an international obligation to define a procedure that would regulate the delimitation, demarcation, and titling of the lands in favor of the indigenous and tribal peoples, to guarantee their effective enjoyment.

191. The Court verified that the State referred to the fact that the "National Agrarian Institute (INA), executing entity of the agrarian policy," is who "carries out actions oriented to the recognition of the communities' indigenous [and traditional] lands" and briefly made mention to the procedure for the delimitation and demarcation without referring to the applicable legislation. In this sense, it verified that the Law on Agrarian Reform of 1974 refers to the titling of indigenous and tribal lands and to the verification of the boundaries of plots not necessarily indigenous or tribal.[201] Additionally, the Law on Property refers, among others, to a "regularization" process that could include the delimitation and titling of lands in general terms.[202]

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198 *Cfr. Case of Genie Lacayo v. Nicaragua. Merits, Reparations, and Costs.* Judgment of January 29, 1997. Series C No. 30, para. 51, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of October 5, 2015. Series C No. 302, para. 213.

199 *Cfr. Case of Chocrón Chocrón v. Venezuela*, para. 140, and *Case of López Lone et al v. Honduras,* para. 213.

200 Case of the Las Dos Erres Massacre v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 24, 2009. Series C No. 211, para. 240.

201 Article 92 of said Law states that: "[t]he ethnic communities that prove the occupation of the lands where they are settled, for a period of at least three years […] will receive the property deeds in full ownership without cost, issued by the National Agrarian Institute within the time period stated in Article 15 [of the stated Law]." Additionally, among others, Article 152 of the same Law refers to the verification of the boundaries of plots, although not specifically on indigenous lands, indicating that: "[t]he National Agrarian Cadastral Registry will examine the titles and blueprints of the rural plots of any domain and will carry out the verifications and revisions of the extension and boundaries of private, national, and common lands, as well as of autonomous and semi-autonomous institutions."

202 Article 72 of the same law states that: "[t]he regularization process will include the following stages: 1 Declaration of an irregular plot registered in the cadaster; 2 Declaration of Regularization: which determines the legal nature, delimitation, and extension of the area subject to regularization; 3 Census Survey: Socioeconomic survey of the residents; 4 Appointment of facilitators of the regularization process by the community; 5 Definition of the titling form: individual, collective, or combined by part of the community benefited, 6 Application of the regularization mechanisms defined in this title; 7 Payment of compensation in the event of expropriation; and, 8 Titling and

192. However, the Court states that from 1981, year in which Honduras acknowledged the Court's competence, up to 1992, the Law on Agrarian Reform of 1974 was in force. Under the mentioned Law only one request was filed by the Community for the granting of a guarantee of occupation, which -as stated by the representatives themselves[203]- was granted in 1979. Therefore, the Court will not issue a judgment regarding the mentioned regulations since its alleged deficiency did not translate into violations in this case.

193. On the other hand, in 1993 and 2001, respectively, when the Law for the Modernization and Development of the Agricultural Sector of 1992 was already in force, the Garífuna Community of Triunfo de la Cruz was granted two title deeds in "full ownership" over properties. The Commission and the representatives argued that this Law, as well as the laws on Agrarian Reform, did not include adequate provisions regarding the property of traditional lands, among others, because it had an agrarian nature, without explaining why this would be contrary to the Convention or how it would have resulted in violations of rights in this case. Therefore, the Court will not issue judgment on the mentioned provision and its compatibility with the American Convention.

194. The Commission and the representatives made several arguments referring to the Law on Property of 2004. There is no evidence that the alleged deficiencies of that Law resulted in violations in this case. This Court recalls that the objective of its contentious jurisdiction is not to revise national legislations in abstract, but to solve specific cases in which an act of the State, executed against specific people or, in its case an Indigenous Community, contrary to the Convention is claimed. Therefore, upon hearing of the merits of the case, the Court examines if the State's behavior was in accordance or not with the Convention, in relation to the legislation in force at the time of the facts. Given that in this case there is no evidence that the Law on Property of 2004 was applied to the Community and its members within the framework of the facts of this case, this Court will not issue a judgment on its compatibility with the Convention.

195. Consequently, the Court will not issue a judgment on the State's alleged responsibility for the purported violation of Article 2 of the Convention, in relation to Articles 1(1), 21, 8, and 25 of the same, for the alleged failure to adopt domestic provisions that allow for the delimitation, demarcation, and titling of collective lands, in detriment of the Garífuna Community of Triunfo de la Cruz and its members.

B.2. Regulations and/or practices regarding the right to prior consultation

196. Since 1996, when Convention 169 of the ILO went into force for Honduras (*supra* para. 119), the State was in the obligation, in its case, and following the standards defined in that international instrument, to consult with the country's indigenous and tribal communities and include in its domestic regulations a procedure that would make the right to consultation effective. The Court verified that in this case there was a violation to Article 21 of the

registration." Similarly, Article 73 states: "[t]he regularization process will be started ex officio or upon request of the party by the Property Institute (IP) through a National Plot Regularization Program in urban and rural lands included in some of the following cases: 1 In those of a private nature whose possessors lack a document that can be registered; 2 Those whose legal nature is not defined in which human settlements can be found; 3 In those of private nature in dispute by individuals where human settlements are located; 4 In those of private nature whose possessors meet the requirements to acquire by statute of limitation; 5 The common lands; 6 The rural national ones possessed by individuals for up to twenty-five (25) hectares; 7 Those that lacking a title deed are possessed by ethnic groups; 8 Properties of a fiscal nature with human settlements."

[203] The representatives stated that the mentioned provision "marked a setback," but "[h]owever, it was in that time that Triunfo de la Cruz received a guarantee of occupation for its Community in the year 1979," even though they point out that "only the boundaries and measurements of the urban area were recorded" and that Article 27 of that regulation "in theory would protect indigenous communities […] but was drawn up so generically that it was not suitable to actually protect the communities."

Convention due to lack of a prior consultation with the Garífuna Community of Triunfo de la Cruz regarding the planning and execution of the "Marbella" tourism project, as well as the creation of the "Punta Izopo" protected area, and the approval of its Management Plan (*supra* para. 87).

197. Likewise, it can be seen in the arguments and the evidence provided, that it was not until the year 2004 when the Law on Property in Honduras was enacted, which in Article 95 refers to: "[i]f the State expects to exploit natural resources on the lands of these peoples, it must inform them and consult them [sic] of the benefits and damages that could occur before authorizing any inspection or exploitation. If it was to authorize any type of exploitation, the peoples must receive a fair compensation for any damage resulting from these activities."

198. Additionally, this Court verifies that the State mentioned in its response brief that it assumed the commitment to create a commission that would, among others, be in charge of "regulating […] the prior, free, and informed consultation enshrined in Convention 169 of the [ILO]" and of "establishing the procedures and obligations of the consultation and the participation of indigenous communities." In other words, the State acknowledges that at the time of its response in this case, it did not have regulatory provisions or practices of another nature that would allow it to make effective the right of the indigenous and tribal peoples to consultation. However, the Court recalls that in this judgment the State was declared responsible for the violation of the right to communal property for not having carried out prior consultations within the framework of the "Club Marbella" project as of the year 1996 and for the creation of the Punta Izopo National Park in the year 2000, which are prior to the adoption of the Law on Property of 2004.

199. Therefore, it can be concluded from the aforementioned that in what refers to the period prior to the adoption of the Law on Property of 2004, the State is responsible for non-compliance of its obligation to adopt domestic legal provisions, enshrined in Article 2 of the American Convention, in relation to the declared violation of the rights to consultation and to property in detriment of the Garífuna Community of Triunfo de la Cruz and its members, due to the absence of adequate regulations or practices to ensure an effective consultation procedure at the time of the facts, which resulted in the violations proven in the corresponding chapter of this judgment.

200. Regarding the period following the year 2004, since the mentioned regulations were not applied to the facts of the case, nor could they have been given the historical moment in which they occurred, the Court will not issue judgment on the State's alleged responsibility for the alleged violation of Article 2 of the Convention, in relation to Articles 1(1), 21, 8, and 25 of the same.

VII-3
THE RIGHT TO LIFE OF OSCAR BREGA, JESÚS ÁLVAREZ ROCHE, JORGE CASTILLO JIMÉNEZ AND JULIO ALBERTO MORALES
(Article 4 of the Convention in relation to Article 1(1))

A. Arguments of the parties and of the Commission

201. The *representatives* argued that "even though the Inter-American Commission did not consider the filing of the case for violations to Article 4 of the American Convention in relation to Article 1(1) of the same the murder of at least four community leaders in direct relationship with the work carried out by them to defend their lands" was "indubitably proven."[204] In this

[204] In its briefs of pleadings and motions, although not in its submission, the representatives also referred to the fact that "it ha[d] been evidenced […] that there were violations to the right to […] personal integrity Art. 5(1),"

sense, they considered that the State "ha[d] violated its negative obligation in what refers to the right to life given it presupposes that no individual should be arbitrarily deprived of their life, which is even worse considering that the violation of this right was committed with the intent to cause intimidation to the rest of the Community." The representatives identified the people murdered as Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez, and Julio Alberto Morales.

202. The *Commission* included the murder of these individuals in the chapter on "[p]roven facts" of its Merits Report, but it did not argue the violation to the right to life nor did it make observations regarding the representatives' argument in this sense. In general terms, in the chapters titled "[r]ight to collective property of the Community of Triunfo de la Cruz and its members" and "[p]rocesses regarding the criminal complaints filed by the Community of Triunfo de la Cruz and its members" of the Merits Report, the Commission referred to the threats and murders of leaders of that Community and considered that "these facts make evident the grave violation of the right to [traditional] property of the Community in this case" and that they "are part of the complex and long fight undertaken for the acknowledgment and defense of the [traditional] Garífuna lands, in which the Community, as a whole, and its leaders and members, considered individually, saw other rights affected, such as the right to life [and] personal integrity."[205]

203. The *State* did not directly make observations regarding this alleged violation even though it referred to the investigation procedures related to those alleged homicides in the chapter on the alleged violation to Articles 8(1) and 25 (*infra* paras. 215 and following).

B. Considerations of the Court

204. The Court recalls its constant case law according to which the possibility to change or vary the legal classification of the facts object of a specific case is permitted within the framework of proceedings before the Inter-American System and that the presumed victims and their representatives may invoke the violation of rights different to the ones included in the application or the Merits Report, provided they abide by the facts contained in said document, because the presumed victims are the holders of all the rights recognized in the Convention.[206]

205. Additionally, Article 35(1) of the Rules of Procedure of the Court states that the case will be presented to it through the submission of the Merits Report, which shall include "the identification of the presumed victims." Thus, it corresponds to the Commission to, at the appropriate time, precisely identify the alleged victims in a case before the Court[207] and it is

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in reference to the Commission's observation in its Merits Report regarding the fact that "numerous threats, persecutions, and harassments" had occurred against Community authorities and leaders "resulting in some cases in their death." However, the representatives did not present arguments in this sense, reason for which this reference will be taken into consideration in the analysis regarding the alleged violation to Articles 8 and 25 of the Convention, in relation to the claims filed by the Community for these threats.

[205] The Commission also referred to this violation of other rights, including the right to life, in its lodging of the case. Additionally, at the public hearing and in its final observations it referred to the fact that the conflict in the area by lack of acknowledgment of the Community's lands not only put in danger the territory's integrity, but also the lives and personal safety of the leaders and members of the Community.

[206] *Cfr. Case of the "Five Pensioners" v. Peru. Merits, Reparations, and Costs.* Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Norín Catrimán et al. (leaders, members, and activists of the Mapuche indigenous people) v. Chile. Merits, Reparations, and Costs.* Judgment of May 29, 2014. Series C No. 279, para. 38.

[207] *Cfr. Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of J. v. Peru. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of November 27, 2013. Series C No. 275, para. 23.

the Court's constant jurisprudence that the presumed victims must be indicated in the Merits Report in accordance with Article 50 of the Convention.[208]

206. This Court verifies that the alleged murders of Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez, and Julio Alberto Morales are part of the factual framework of the case, given that the Commission in the chapter on "[p]roven facts" of its Merits Report referred to the fact that "the information present in the case file before the C[ommission] refers to the murder of at least four members of the Community due to causes related to the defense of their property" and identified the four people mentioned.

207. On the other hand, the representatives referred to the death of Mr. Santos Castillo, who was murdered on May or June 2nd, 1997.[209] However, limited information in this sense was provided[210] and the Commission did not identify this person in its Merits Report. By virtue of the aforementioned, the Court will only analyze the alleged violation to the right to life of Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez, and Julio Alberto Morales.

208. The Court recalls that Article 1(1) of the Convention indicates that the States are obliged to respect and guarantee the human rights acknowledged in it.[211] Regarding the right to life, these obligations not only presume that the State must respect them (negative obligation), but also requires the States to take all necessary measures to guarantee them (positive obligation).[212] As part of the obligation to guarantee, the State has a legal duty to "take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment, and to ensure the victim adequate compensation."[213]

209. In this sense, this obligation to guarantee goes beyond the relationship between the State's agents and the persons under its jurisdiction, as it is also reflected in the positive obligation of the State to prevent, in the private realm, that third parties violate protected juridical rights.[214] This does not mean that a State would be responsible for all the human rights violations committed between individuals within its jurisdiction, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals- or that the State should have been aware of that situation of real and imminent danger-[215] and by the reasonable possibilities of preventing or avoiding that danger.

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208 *Cfr. Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 20, 2007. Series C No. 168, para. 65, and *Case of J. v. Peru*, para. 23.

209 In its final written arguments, the representatives referred first to "at least four" people murdered and later to "at least five". Additionally, the representatives referred to the death of "Zacarias Santos" on June 2, 1997 (evidence file, folio 7743).

210 The representatives referred to the fact that Mr. Santos "[w]as murdered within his home," that "[h]e was gunned down by unidentified men" and that "[t]he crime was never solved" (evidence file, folio 7743).

211 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 163, and *Case of Gutiérrez and family v. Argentina,* para. 76.

212 *Cfr. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala,* para. 139, and *Case of Castillo González v. Venezuel*a, para. 122.

213 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 174, and *Case of the Massacre of Santo Domingo v. Colombia. Preliminary Objections, Merits, and Reparations, para.* 189.

214 *Cfr. Case of the Mapiripán Massacre v. Colombia,* para. 111, and *Case of Luna López v. Honduras,* para. 120.

215 *Cfr. Case of the Pueblo Bello Massacre v. Colombia*, *Merits, Reparations, and Costs.* Judgment of January 31, 2006. Series C No. 140*,* para.123, and *Case of Luna López v. Honduras*, para. 123. *Cfr.* ECHR*, Case of Kiliç v. Turkey*, No.

210. In this case, to assess if, regarding the mentioned persons, that risk and knowledge existed, or should have existed by the State, the Court verified that the representatives did not present any additional information on the murders of the four people before the Court. With regard to the murder of Mr. Oscar Brega there is information on his murder in a memorandum dated October 9, 1996 from the Public Prosecutors' Office to the Special Prosecutors' Office on Ethnic Matters.[216] Similarly, regarding the murders of Messrs. Jorge Castillo and Julio Alberto Morales, there is an undated press article[217] included in the evidence referring to the fact that "on October 22nd the Garífunas Jorge Castillo and Julio Alberto Morales were murdered in Triunfo de la Cruz,"[218] without any other information.

211. Therefore, this Court does not have sufficient evidentiary elements to determine if the State had, or should have had, knowledge of an actual and imminent situation of danger regarding Messrs. Brega, Castillo, and Morales, and thus cannot issue a ruling on the alleged violation by the State of the right to life, in detriment of these three people.

212. In what refers to the alleged murder of Jesús Álvarez Roche, there is in the case file a document from the CODETT addressed to the Prosecutor of Ethnic Matters dated January 30, 1995, requesting the investigation of "the attempted murder perpetrated against the Auxiliary Mayor of the Triunfo de la Cruz Community, Jesús Álvarez, due to his determined opposition to the illegal sales of land."[219] Additionally, this Court has a statement from Jesús Álvarez made before the Public Prosecutors' Office on March 16, 1995, from which it can be concluded that they asked him "if it [was] true that due to the opposition stated by him in defense of the lands of El Triunfo de la Cruz he had suffered [an] attempt against his life" and he replied he had suffered "an attempt of murder from which he had serious injuries on his left arm and hip," on February 4, 1994.[220]

213. Regarding his death, the Commission indicated in its Merits Report that almost three years after the attack, on May 9, 1997, strangers had fired shots at Jesús Álvarez, who died

22492/93, Judgment of March 28, 2000, paras. 62 and 63, and *Osman v. United Kingdom*, No. 23452/94, Judgment of October 28, 1998, paras. 115 and 116.

216 This document refers to the fact that Mr. Oscar Brega's murder occurred on October 8, 1996. The representatives in their brief of pleadings and motions stated it occurred a day later and in an annex to this brief they referred to the date of October 8, 1996. In that annex, the representatives said that "[h]e was the person murdered by strangers at the community entrance when returning from Tela from running his normal errands when he was ambushed by some strangers, who seemed to be waiting for him and shot him." Moreover, they stated he was buried in Triunfo de la Cruz on October 10 "after the autopsy carried out in San Pedro Sula, without having its results" (evidence file, folio 7743).

217 The Commission in its Merits Report stated that the article was from October 28, 1997.

218 The representatives, in the brief of pleadings and motion, stated that Jorge Castillo and Julio Alberto Morales were murdered on October 21, 1998 and in an annex to said brief they mentioned they died on October 21, 1997. This latter document also mentioned that he "received several anonymous threats and suffered an attack the night prior to his death" and that [h]e informed he had filed a complaint before the Police the following day regarding the attack, and upon his return to Tela men were waiting to murder him" and that "they shot at him, the young boy, Julio Alberto Morales, when becoming aware of the danger they were in got nervous and tried to run away; that was when they shot him too and they both died." (evidence file, folio 7744).

219 Brief of January 30, 1995 addressed to the Prosecutor for Ethnic Matters (evidence file, folio 2708).

220 In his statement, Mr. Álvarez indicated that: "he was driving his vehicle toward the community of [T]riunfo de la [C]ruz and later […] he was surprised by two individuals who shot at him and that one of them was pointing at him […] with a shotgun and the other individual who was carrying a 3-57 gun was the one that shot at him, and that they thought he was already dead and that was when he shot his gun, but was not able to hit any of the criminals and that he was able to recognize both individuals […] and that one of them could identify him and it was an individual that goes by the nickname El [C]hino and that he could identify him at any time" (evidence file, folio 327).

as a result of that attack on May 11, 1997.[221] No arguments or information was presented that would allow us to conclude that the situation of actual and imminent risk subsisted during those three years.

214. Therefore, the Court considers that even though it can infer that there was a real and imminent risk to Mr. Jesús Álvarez's life in the year 1994, and that the State was aware of it, it does not have sufficient evidence to prove the permanence of that risk during the three-year period up to his death. Thus, the Court does not issue a ruling regarding the alleged violation by the State to the obligation to prevent and the right to life, enshrined in Article 4, in relation to Article 1(1) of the Convention, in detriment of Mr. Jesús Álvarez.

VII-4
RIGHT TO A FAIR TRIAL AND TO JUDICIAL PROTECTION
(Article 8(1) and 25 of the Convention in relation to Articles 1(1) and 2)

A. Arguments of the parties and of the Commission

215. The *Commission* argued that the allocation of traditional lands to the Triunfo de la Cruz Community was done through the filing of different requests before the INA, based on the existing agrarian legislation, specifically the Agrarian Law of 1924, the Law on Agrarian Reform of 1962, the Law on Agrarian Reform of 1974, and the Law on the Modernization and Development of the Agricultural Sector of 1992. The Commission added that the procedures resulting from these requests are not equal to an appropriate recourse for the acknowledgment of indigenous property, given they are not specific mechanisms that can respond to the titling of lands occupied by indigenous and tribal peoples or their demarcation, considering their specific characteristics, based on the historical occupation of the land. The Commission also argued that it is, instead, a general mechanism for the titling of individual property, based on the productive use of the land, which ignores the special, unique, and internationally protected relationship the indigenous and tribal peoples have with their traditional territories, which is absent in the case of non-indigenous people.

216. Regarding effectiveness, it stated that it was proven that the territorial reclaiming process of the Triunfo de la Cruz Community dates to 1946 and that for decades the Community had filed seven requests before the Honduran authorities for the acknowledgment of their traditional territory. The Commission indicated that lack of effectiveness of the existing mechanism in the domestic legislation is proven simply by the fact that the filing of multiple requests before the INA were necessary given that the process was not designed for the recognition of indigenous properties, based on historical occupation criteria. It pointed out that the territorial recognition process, considered as a whole, started in 1946 and has not yet terminated, since up to this date the Community does not have a collective property title deed over its traditional territory.[222]

217. Additionally, the *Commission* indicated that lack of effectiveness of the procedures followed before the INA can be seen in the fact that they did not result in the demarcation,

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[221] The Commission referred to a publication in the Newspaper "El Tiempo" of May 21, 1997, which is not found in the case file. On the other hand, the representatives mentioned, in their brief of pleading and arguments, that Jesús Álvarez was murdered on April 24, 1997.

[222] For example, as verified in the proven facts, on June 27, 1969 a request was presented for the granting of the Río Plátano area, process which was suspended in March 1996 and up to this date -27 years after it was started and close to 19 years after ratification of the American Convention by Honduras- was still pending. Likewise, as considered proven, on September 8, 1997 and July 8, 1998 the Community presented before the INA requests for titling of part of its traditional territory, without there being evidence that the procedures started because of these requests have been concluded with the issuing of a final and definitive decision.

delimitation, and reparation of the titled areas, thus preventing the peaceful possession of the lands. On the other hand, as stated by the Commission, even though the State argued that the administrative proceeding implied a reparation phase that concluded with compensation for the improvements made by outsiders to the Community's lands, it was not proven in this case that it was in fact carried out. On the contrary, the State itself pointed out its lack of execution due to the economic outlays it implied.

218. Similarly, it stated that the Community started two administrative proceedings to recover the 22 blocks granted by the Municipality to the Workers' Union. It argued, regarding the expropriation process started before the INA on January 7, 2002, that an expropriation order was not issued by that entity until December 7, 2007, almost six years later, as indicated by the State, and that said period was "without a doubt" unreasonable for a process of that nature. It also recalled that to recover the 22 blocks granted to the Workers' Union of the Municipality of Tela, the Community filed an appeal of annulment of the agreement before the Municipality. The Commission observed that it was not until four years after it was filed that the Office of the Attorney General of the Republic issued a favorable opinion and that, despite that, ten years after the process was started a final decision had not yet been issued.

219. Due to the aforementioned, the *Commission* concluded that the State of Honduras did not comply with the obligation to provide the Community of Triunfo de la Cruz with a recourse that took into consideration their distinctive features, their economic and social characteristics, their common law, values, uses, and customs, that was, in turn, effective in solving their territorial claim, ensuring the Community's right to be heard with their due guarantees and adjusted to a reasonable time period to guarantee their rights and obligations. Therefore, the Commission concluded that the State violated Articles 25 and 8 of the American Convention in detriment of the Community of Triunfo de la Cruz and its members, in relation to Articles 1(1) and 2 of the same.

220. Moreover, the *Commission* observed that the Community of Triunfo de la Cruz filed a series of claims regarding infringement of their right to property, related mainly to (i) the sale of traditional lands;[223] (ii) threats, aggressions, harassment, and persecution suffered by their authorities and leaders as a consequence of their activities in defense of traditional lands;[224] and (iii) the constant violence and unsafety generated by third parties in their territory.

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[223] The Commission recalled it has been proven that part of the Community's traditional lands had been the object of sales promoted by state authorities to companies and third parties without their authorization and that the Community, through the CODETT, presented a criminal complaint before the Public Prosecutors' Office of Ethnic Matters for the sale of community lands to the company IDETRISA, which concluded with the final acquittal of the municipal officials involved. It also verified that based on the facts considered proven, the Office of the Attorney General of the Republic became aware of these sales, which led to the Office of the Attorney General of the Republic starting an investigation whose effective culmination was not reported. The Commission added that from the evidence included in the case file it can be concluded that state authorities participated directly in this and other sales of indigenous lands, and that up to this date responsibility has not been determined nor have the corresponding sanctions, if appropriate, been applied to the state authorities implied in the gradual stripping of traditional Garífuna lands. Similarly, it indicated that this occurred despite the fact that those sales have resulted in a situation of grave vulnerability for the Community and its members, and that state authorities expressly acknowledged that the lands sold in the 22-block area were the Community's traditional property, which, as indicated by the State itself, were returned to it.

[224] Moreover, the Commission indicated that it has been proven that, as a consequence of the territorial conflict presented, members of the Community of the Triunfo de la Cruz denounced before state authorities acts of harassment, persecution, threats, and even murders of leaders that were against the stripping of community lands. It recalled that because of the sale of indigenous lands and lack of protection against occupation of its traditional territories by non-Garífuna peoples, there was a situation of permanent conflict. As denounced by the Community, that situation was characterized by the invasion of armed people in indigenous territories, the destruction of crops, the introduction of machinery against the Community's will, the burning of homes, among other acts of violence, that prevented them from enjoying a pacific possession of their traditional territory.

221. It summarized the above indicating that during the years in question in this case, multiple claims filed before police and prosecuting agents were presented indicating a variety of non-isolated, permanent acts of violence that occur within a general situation of vulnerability of the traditional territory of the Garífuna Community of Triunfo de la Cruz. It argued that despite the numerous claims found in the case file, the State did not inform, in any of the cases, of its execution of a serious, effective investigation without any delays addressed to finding out the truth and determining responsibilities. Considering the above, the Commission observed that the prolonged and repetitive nature of the acts of violence, persecution, and illegal sale of the lands, make it evident that the lack of action on the State's behalf regarding the complaints filed made the search for protection and obtainment of justice by the Community and its members unsuccessful. Therefore, it concluded that in practice, the judicial system did not offer an effective response for the protection of the indigenous territory, which has resulted in multiple consequences for the members and leaders of the Garífuna Community of Triunfo de la Cruz. The Commission, based on the information it had access to, considered that the lack of a State response to the recourses filed left the presumed victims in a vulnerable situation that has led its members to remain in a continuous situation of uncertainty, anxiety, and fear.

222. By virtue of the aforementioned, the *Commission* concluded that the Honduran State had not guaranteed an adequate and effective recourse to respond to the claims of ancestral territory and the recognition of the lands titled in favor of the Community, nor had it carried out the corresponding investigations regarding the claims filed for property damages and threats, harassment, and persecution suffered, preventing them from being heard in a proceeding with due guarantees; thus the Commission considered that the State violated Articles 25 and 8 of the American Convention.

223. The *representatives* agreed with the Commission's statements and indicated that the State had failed to comply with the obligations of respect and guarantee enshrined in Article 1(1) and the duty to adopt domestic provisions enshrined in Article 2, in relation to Articles 8 and 25. They stated that, as per the facts denounced, they consider that the State has not guaranteed the victims of this case an effective recourse to respond to the Community's claims regarding its rights to lands and natural resources.

224. On its part, the *State* argued, with regard to the proceedings referring to the Community's collective property, that in some cases in which individuals have possession and a title deed over the Community's lands, the omission in the filing of the public criminal action is preceded by adjective stipulation number 54 of the Code on Criminal Proceedings, which states that in the event of a duplicity of title deeds, the conflicts must be solved before the civil courts, given that an irregular purchase of the land by an individual eliminates the animus to usurp that is present in violent possession processes. Regarding the proceedings that refer to the criminal claims filed by the Community and its members, the State pointed out that the arguments made by the representatives and the Commission "lack grounds and veracity, given that [in this case], in both criminal and administrative matters, the proceedings defined in the State's legal code were used […], the requests that [have] been presented have been answered, both those presented before the Public Prosecutors' Office and [INA], which can be verified in the respective case files and in the case of the latter institution, it keeps the case files that contain records, actions, and administrative procedures carried out by it."

225. It also indicated that the Garífuna community as well as the rest of Hondurans have always had access to all recourses and guarantees existing in the legislation and the Constitution of the Republic, in that sense, with regard to the 22 blocks the mayor's office of Tela granted its union in sale and of which the Garífuna Community of Triunfo de la Cruz requested expropriation; up to this date the domestic proceedings have not been exhausted by the petitioners since they have the writ of protection against the resolution issued by the

National Agrarian Council open or in compliance with this resolution, they may demand annulment of the title deed issued by the Mayor's Office of Tela to its union.

B. Considerations of the Court

226. The Court has consistently expressed that the States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).[225]

227. Similarly, this Court's case law has stated in other cases that indigenous and tribal peoples have the right to have effective and expedite mechanisms to protect, guarantee, and promote their rights over indigenous lands, through which they may carry out the acknowledgment, titling, demarcation, and delimitation processes of their territorial right.[226] The procedures mentioned must comply with the rules of the due process of law enshrined in Articles 8 and 25 of the American Convention.[227]

228. Likewise, the Court has reiterated that the right of every person to a simple and rapid recourse or any other effective remedy before competent judges or courts that will protect them from acts that violate their fundamental rights "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention."[228] Also, in what regards indigenous and tribal peoples, it is essential for the States to grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs.[229]

229. Moreover, the Court has previously set forth that the obligation to investigate and, if necessary, prosecute and punish those responsible for human rights violations, is one of the positive measures that the State must take to ensure the rights recognized in the Convention,[230] pursuant to Article 1(1) of that instrument. This duty is an obligation that must be assumed by the State as its own legal duty and not a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the initiative of the victim or his family, or upon their offer of proof.[231]

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225 *Cfr. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 1, para. 91 and *Case of Omar Humberto Maldonado Vargas et al. v. Chile. Merits, Reparations, and Costs.* Judgment of September 2, 2015. Series C No. 300, para. 75.

226 *Cfr. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. *Merits, Reparations, and Costs.* Judgment of August 31, 2001. Series C No. 79, para. 138, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of August 24, 2010. Series C No. 214, para. 109.

227 *Cfr. Case of Godínez Cruz v. Honduras. Preliminary Objections.* Judgment of June 26, 1987. Series C No. 3, para. 92, and *Case of Human Rights Defender et al. v. Guatemala,* para. 199.

228 *Case of Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, para. 82, and *Case of Liakat Ali Alibux v. Surinam. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of January 30, 2014. Series C No. 276, para. 42.

229 *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs,* para. 63, and *Case of the Kichwa de Sarayaku Indigenous People v. Ecuador*, para. 264.

230 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits*, paras. 166 and 167, and *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of May 19, 2014. Series C No. 277, para. 183.

231 *Cfr. Case of Velásquez Rodríguez v. Honduras. Merits*, para. 177, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, para. 216.

230. The Court has also established that the obligation to investigate, and the corresponding right of the presumed victims or their next of kin is evident not only from the treaty-based norms of international law that are binding for the States Parties, but also arise from domestic laws concerning the duty to investigate *ex officio* certain unlawful conducts, and from norms that allow the victims or their next of kin to file complaints or submit claims, evidence or petitions or take any other step in order to play a procedural role in the criminal investigation to establish the truth of the events.[232]

231. In this case, the representatives and the Commission argued that the State is responsible for the violation of the rights enshrined in Articles 8(1) and 25 of the Convention, in relation to 1(1) of the same due to the following: a) the alleged lack of effectiveness of the remedies to obtain recognition of communal property; b) the alleged lack of effectiveness of the judicial and administrative actions regarding the sales and allocation of traditional lands to third parties, and c) the alleged lack of investigation of the threats and murders of members of the Community of Triunfo de la Cruz. Below, the Court will analyze the alleged violations in that order.

B.1. The alleged lack of effectiveness of the remedies to obtain recognition of communal property

232. First, the Court verifies that the arguments regarding the existence of an adequate procedure for the titling, demarcation, and delimitation of the collective property of the Garífuna Community of Triunfo de la Cruz were already analyzed in Chapter VII-2 on the duty to adopt domestic provisions. In this chapter reference will be made only to the effectiveness of the stated mechanisms.

233. From 1946 to 2001 the Community of Triunfo de la Cruz filed several requests for the titling of different territories:

a) in 1946 the Community requested the granting of a communal title deed over 380 hectares corresponding to the land occupied by them (*supra* para. 59);

b) on June 27, 1969, under the protection of the Law on Agrarian Reform, fifty members of the Community of Triunfo de la Cruz filed a request before the Regional Agrarian Office of the INA for the creation of an "agricultural population center" (*supra* para. 60), which was still unresolved in 1996 (*supra* para. 66). There is no information on this procedure's current status;

c) in 1979 the Community filed a request before the INA that resulted in that institution issuing the Community a title of "guarantee of occupation" over 126.40 hectares on September 28, 1979 (*supra* para. 68);

d) in 1993, the Community requested, based on the Law for the Modernization and Development of the Agricultural Sector of 1992, the granting of a final deed of full ownership over the 380 hectares granted as communal land in 1950. On October 29, 1993 the Community was issued, without cost, a "final property deed in full ownership" over that area (*supra* para. 69);

e) on August 28, 1997 and on July 8, 1998, the Community of Triunfo de la Cruz and its members requested a title deed of full ownership before the INA for the rest of the lands they stated they had historically occupied in 1997 and 1998. The first request referred to a 600-hectare area and the second request to a land of 126.40 hectares they already possessed in guarantee of occupation (*supra* para. 70). On September

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[232] *Cfr. Case of the Barrios Family v. Venezuela,* para. 80, and *Case of Veliz Franco et al. v. Guatemala*, para. 184.

27, 2001, the INA approved the granting of a final title deed of full ownership over three plots of land covering 234 hectares that refer to one of the requests, and there is no evidence of a ruling being issued regarding the second request, and

f) on January 22, 2001, the Garífuna Community of Triunfo de la Cruz and its members requested the extension of the title deed of full ownership that had been granted in the year 1993. The Court has not been provided evidence that the INA issued a ruling on this request (*supra* para. 71).

234. Regarding the aforementioned, the Court recalls it does not have competence to hear of the recourses filed prior to September 9, 1981, date on which the State of Honduras acknowledged the Court's contentious jurisdiction.

235. On the other hand, the Court verifies that three of the requests filed by the Garífuna Community of Triunfo de la Cruz did not receive any answer whatsoever from the State. Therefore, this Court considers that the State is responsible for the violation of Article 8(1) of the Convention, in relation to Article 1(1) of that same instrument, for the requests that did not receive any answer whatsoever from the INA, namely: those filed on June 27, 1969, July 8, 1998, and January 22, 2001.

236. All the other requests received a response in maximum periods of four years, which in this Court's opinion is reasonable, taking into consideration the complexity of the matters they dealt with.

237. Regarding the request filed on August 28, 1997, it has been verified that it refers to an extension of 600 hectares and that the INA, in the year 2001, only granted an extension of full ownership over 234 hectares. The Commission and the representatives indicated that this land recognition procedure was not effective because the Community was not granted the totality of the land requested, but instead a smaller extension. The Court recalls that, in general terms, Article 8(1) of the American Convention includes "a material aspect of protection, which means that the State must guarantee that the decision produced by the proceedings satisfies the end for which it was conceived. The latter does not mean that the right must always be granted, but rather that the capacity of the body to produce the result for which it was conceived be guaranteed."[233] In that sense, it is not sufficient to argue that the domestic court did not approve all requirements included in a titling request to automatically conclude that there is a non-compliance with Article 8(1) of the Convention.

238. Without detriment of the aforementioned, in this case the Court recalls that in the chapter on merits regarding the right to communal property, it concluded that the State was responsible for not having titled plot A1 (*infra* Map Annex) that had been acknowledged as traditional territory by the INA (*supra* para. 115). In that sense, it is reasonable to consider that the decision of July 5, 2001 through which the INA rejected the request for domain over plot A1 (*infra* Map Annex) in favor of the Community of Triunfo de la Cruz did not take into consideration that the traditional nature of that territory implied acknowledging the Community's right to property taking into account its own specificities and social characteristics. On this specific matter, the Court recalls that, "as regards indigenous and tribal peoples, it is essential for the States to grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs."[234]

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[233] *Cfr. Case of Barbani Duarte et al. v. Uruguay. Merits, Reparations, and Costs.* Judgment of October 13, 2011. Series C No. 234, para. 122, and *Case of the Kuna Indigenous People of Madungandí y the Emberá Indigenous People of Bayano and its Members v. Panama,* para. 178.

[234] *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs,* para. 63, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 264.

239. It catches the Court's attention that in that same document the INA specified that plot A1 (*infra* Map Annex) corresponds to the traditional territory of the Community of Triunfo de la Cruz. However, it did not grant this fact any specific legal consequence. Likewise, it cannot be concluded from the evidence that the INA assessed, in the case of an eventual actual impossibility to grant those titles, pursuant to that established in Convention 169 of the ILO, the eventual need to grant alternative lands or compensations for the traditional territory that was not being allocated to the Community.

240. Therefore, this Court considers that the State is responsible for the violation of Article 8(1) of the Convention, in relation to Article 1(1) of that same instrument, in detriment of the Community of Triunfo de la Cruz and its members, due to the resolution of the request for full ownership filed on August 28, 1997, which did not consider the traditional nature of one of the plots of land referred to in it.

B.2. The alleged lack of effectiveness of the judicial and administrative actions regarding the sales and allocations of traditional lands to third parties

241. The Court considers as proven that part of the traditional lands of the Community of Triunfo de la Cruz had been the object of sales and allocations promoted by state authorities to third parties and companies (*supra* para. 139).

242. Regarding the arguments on the judicial and administrative actions concerning the sales and allocation of traditional lands to third parties, the Court verifies that: a) as a result of the transfer to the Employees and Workers' Union of the Municipality of Tela of 22 blocks located in the territory claimed by the Community, several judicial and administrative proceedings were presented (*supra* paras. 80 to 83); b) actions were filed before the Prosecutor's Office of Ethnic Matters because of the establishment of the company IDETRIS in the Barra del Río Plátano (*supra* para. 75), and c) a procedure before the INA between the community and the private company MACERICA regarding the territories located in the Barra del Río Plátano is still pending (*supra* para. 67).

243. Concerning the actions related to the 22 blocks allocated to the Workers' Union of the municipality of Tela, there is evidence that on September 17, 1994 CODETT filed a criminal action before the Public Prosecutor's Office for Ethnic Matters, which determined the case would be closed given it was not a criminal offense (*supra* para. 75), and that on February 4, 1998 the Community filed a complaint for abuse of authority before the Office of Criminal Investigation stating that the Municipality of Tela had introduced machinery into the area without the Community's consent (*supra* para. 80). The Court does not have additional information regarding this claim, which was filed approximately 17 years ago.

244. Likewise, there is evidence that in September 1994, CODETT filed a claim before the Public Prosecutor's Office of Ethnic Matters regarding the sales executed by the municipality of Tela to the company IDETRISA of part of the territory granted in guarantee of occupation in 1979, which was resolved with the final acquittal of the employees and former employees of the Municipal Mayor's Office of Tela on November 26, 1998 (*supra* para. 75).

245. Regarding the different criminal proceedings initiated, the Court pointed out that evidentiary elements allowing the Court to infer that the acquittals and lack of determination of those responsible occurred due to fraud in the proceedings or any other violation of the judicial guarantees included in the Convention were not presented. On the contrary, the representatives and the Commission only argued that these procedures did not result in convictions of the alleged responsible parties for the facts without providing any other type of arguments. Thus, the Court lacks the elements to carry out an analysis on the conformity or not of those proceedings with that established in Article 8(1) of the American Convention.

246. On the other hand, on January 7, 2002 the Community requested the INA affectation through expropriation of the 22 blocks, recommending that the INA declare the request for expropriation admissible. On July 15, 2003 that entity declared the start of the affectation process admissible. The investigations determined that the land is of a private legal nature, located within the area of the Municipality of Tela, and it is currently not being exploited because it is in conflict (*supra* para. 81). Similarly, on September 6, 2002 the Community filed an administrative complaint of nullity before the Municipality of Tela regarding the agreement through which the Municipal Corporation assigned the 22 blocks to the Union (*supra* para. 82). In this sense, the State argued that up to this date the domestic procedure has not been exhausted by the petitioners, since they have pending the writ of protection against the resolution of the National Agrarian Council or, accepting this resolution, they can request the nullity of the title issued by the Mayor's Office of Tela to its Union. The Court does not have updated information regarding this last administrative procedure started approximately 13 years ago.

247. Likewise, the Community also denounced the facts of the sale to the company IDETRISA of lands titled in guarantee of occupation in favor of the Community, before the National Human Rights Commissioner in the year 2001, as well as the Office of the Attorney General of the Nation (*supra* para. 76). The Court does not have greater information regarding these claims 14 years after they were denounced.

248. Concerning the administrative actions involved in the territorial dispute between the company MACERICA, on one hand, and the Community, on the other, the Court verifies that on May 25, 1984 the INA issued a Report in which it boasted that the land of Barra del Río Plátano was within the State's domain, and during the proceedings it was verified that the land requested by the Community was located within the urban perimeter of the Municipality of Tela, by virtue of the resolution adopted by the INA on April 24, 1989, of which 44 hectares had been sold to a company (*supra* para. 74). The National Comptroller's Office started an investigation on the legality of the sales, reason for which in 1996 the INA decided to suspend the procedure of the request for allocation in favor of the Community (*supra* para. 67), until the Office of the Attorney General of the Nation and the National Comptroller could jointly analyze and define the situation in question. The Court does not have updated information regarding this procedure even 19 years after it was suspended.

249. Moreover, the Court verifies that several criminal and administrative proceedings did not offer the petitioners a procedural response after more than 13 years (administrative claim for nullity of September 6, 2002, *supra* para. 82); 14 years (claim before the National Human Rights Commissioner in 2001, *supra* para. 76); 17 years (claim against abuse of authority before the Office of Criminal Investigation of February 4, 1998, *supra* para. 80), and 19 years (start of the investigation by the National Comptroller's Office in 1996, *supra* para. 67) since they were started or since there was information on the last procedural action.

250. The Court reiterates its case law that states that lack of reasonability in the time it takes to carry out a proceeding constitutes, in principle, a violation of judicial guarantees. This Court has consistently taken into consideration four elements to determine whether the time has been reasonable: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the actions of the judicial authorities, and iv) the effects on the legal situation of the persons involved in the proceedings.[235]

251. In this case, the Court considers that the lack of procedural response from the State during those periods of time cannot be justified by the complexity of the case or the activity

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[235] *Cfr. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs.* Judgment of November 27, 2008. Series C No. 192, para. 155, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 27, 2014. Series C No. 281, para. 246.

of the interested parties. Even though it is reasonable to consider that the proceedings mentioned refer to complex issues that involve rights over traditional properties, this Court considers that the State is responsible for the violation of the rights enshrined in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of that same instrument, given the duration of the judicial and administrative actions regarding the sales and allocations of traditional lands to third parties beyond a reasonable period of time, in detriment of the Community of Triunfo de la Cruz and its members.

B.3. The investigations related to the alleged threats and deaths against members of the Community of Triunfo de la Cruz

252. The Court recalls that in the chapter on facts it indicated that several complaints had been filed regarding acts of violence and threats against members of the Community of Triunfo de la Cruz (*supra* para. 88), without there being information on whether they were investigated and the status of those investigations. On the other hand, there is no evidence that the State initiated the investigations for the murders of Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez y Julio Alberto Morales *ex officio* (*supra* para. 88). The State had the procedural opportunity to refer to those investigations and did not present any information in that sense.

253. Therefore, the Court finds that the State is responsible for the violation of the rights enshrined in Articles 8(1) and 25 of the Convention, in relation to Article 1(1) of that same instrument, for the failure to investigate the acts denounced by the Community and its members, and for not having started the investigations for the murders of Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez, and Julio Alberto Morales *ex officio.*

VIII
REPARATIONS
(Application of Article 63(1) of the American Convention)

254. Based on Article 63(1) of the Convention,[236] the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make adequate reparation[237] and that this provision "reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility."[238] Additionally, this Court has established that the reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and the measures requested to redress the respective harm. Accordingly, the Court must analyze the concurrence of these factors in order to rule appropriately and in keeping with law.[239]

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[236] Article 63(1) of the American Convention states: "If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

[237] *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 25, and *Case of López Lone et al. v. Honduras. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of October 05, 2015. Series C No. 302, para. 286.

[238] *Case of Castillo Páez v. Peru. Reparations and Costs,* para. 50, and *Case of López Lone et al. v. Honduras*, para. 286.

[239] *Cfr. Case of Ticona Estrada et al. v. Bolivia*. *Merits, Reparations, and Costs,* para. 110, and *Case of López Lone et al. v. Honduras*, para. 288.

255. Reparation of the harm caused by the violation of an international obligation requires, insofar as possible, full restitution, which consists in the restoration of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to redress the consequences of those violations.[240] Therefore, the Court has found it necessary to grant different measures of reparation in order to redress the harm integrally so that, in addition to pecuniary compensation, measures of restitution, rehabilitation, and satisfaction and guarantees of non-repetition have special relevance for the harm caused.[241]

256. Therefore, and without detriment to any form of reparation agreed on later by the State and the victims, in consideration of the violations of the American Convention declared in this judgment, the Court will proceed to issue the measures addressed to repairing the damages caused. In this sense, it will take into consideration the claims presented by the Commission and the representatives, together with the arguments of the State, in light of the criteria established in the Court's case-law concerning the nature and scope of the obligation to make reparation.[242]

A. Injured Party

257. Pursuant to Article 63(1) of the American Convention, this Court considers that anyone who has been declared a victim of the violation of any right recognized therein is an injured party. Therefore, this Court considers that the Garífuna Community of Triunfo de la Cruz and its members are the injured party, who as victims of the violations declared in this judgment, shall be considered beneficiaries of the reparations that the Court orders.

B. Measures of restitution: demarcation and titling of lands

258. The *Commission* recommended to the State that it "[a]dopt, as soon as possible, the measures necessary to make the right to communal property and the possession of the Garífuna Community of Triunfo de la Cruz and its members effective with regard to their [traditional] territory." Likewise, it indicated that "taking into consideration that the beach and sea are an essential part of the cultural and […] subsistence activities of the Garífuna Community of Triunfo de la Cruz, it is necessary that the State, upon complying with the measures of reparation related to the acknowledgment and titling that is still pending, abstain from excluding from all consideration the beach and marine portions regarding which the Community has provided evidence of its historical use."[243] The *representatives* requested that the Court order the State "[t]o hand over to the Indigenous Community of Triunfo de la Cruz of the Garífuna People, without cost, the lands claimed, including their [traditional] habitat or missing part of their [traditional] territory, to complete the Community's territorial right over a total surface of 2.840 hectares, which implies the legal acknowledgment of the Community's territory […], as per the [traditional] boundary." The *State* did not present observations regarding this measure of reparation.

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240 *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 26, and *Case of López Lone et al. v. Honduras,* para. 287.

241 *Cfr. Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations, and Costs,* para. 294, and *Case of López Lone et al. v. Honduras,* para. 287.

242 *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs,* paras. 25 to 27, and *Case of López Lone et al. v. Honduras,* para. 289.

243 The Commission added that the Community's rights regarding the beaches or marine strips "ha[ve] been a subject of constant debates" but that, even though "it can be complex, what the State is trying to do is exclude them a priori of all debate in matters of acknowledgment, titling, and demarcation."

259. The Court refers to that stated regarding the Community's ancestral territory in the Chapter on Merits concerning the right to communal property, and it indicates that the State must proceed to demarcate the lands over which the Community's collective property has been granted in full ownership and in guarantee of occupation. This must be implemented within a maximum period of two (2) years computed as of the notification of this judgment and with full participation of the Community, taking into consideration its customary law, uses, and customs.

260. Similarly, this Court orders, with regard to the area designated "Plot A1" (*infra* Map Annex) that was acknowledged as traditional territory of the Community of Triunfo de la Cruz by the INA (*supra* para. 115), that the State grant the Community within a period of two (2) years computed as of the notification of this judgment, a collective property deed over that land, which must be duly delimited and demarcated.

261. If in compliance with this measure of reparation the State must carry out expropriation proceedings or procedures necessary to relocate third parties that may have title deeds of full ownership over plots included in plot A1 (*infra* Map Annex), including the 22 blocks allocated to the Workers' Union of the Municipality of Tela (*supra* para. 78), and the plots of land belonging to the companies MACERICA and IDETRIS, the State must pay the corresponding compensations to the affected parties, pursuant to the stipulations of domestic legislation. The Court recalls its case law, according to which the "restriction of the right of private individuals to private property might be necessary to attain the collective objective of preserving cultural identities in a democratic and pluralist society, in the sense given to this by the American Convention," implying the State's obligation to pay "fair compensation to those affected, pursuant to Article 21(1) of the Convention."[244]

262. If, due to duly motivated reasons, the State considers it is not possible to carry out the titling of all or part of plot A1 (*infra* Map Annex), it shall grant a collective property title deed to the Community over alternative lands of the same size and quality than those not granted. For the implementation of this measure, the State shall consult with the Community of Triunfo de la Cruz and its members through a procedure that complies with international standards in this matter.

263. Without detriment of the aforementioned, the State shall develop, in agreement with the Community of Triunfo de la Cruz, rules for a peaceful and harmonious coexistence in the territory in question thus making sure that those who are not part of the Community respect the uses and customs of the Community of Triunfo de la Cruz; additionally it must develop the necessary mechanisms of prevention to avoid any damage by third parties to the Garífuna territory.

264. The Court recalls that, as long as the mentioned lands have not been demarcated and, when appropriate, adequately titled in favor of the Community of Triunfo de la Cruz, the State must abstain from carrying out actions that could result in agents of the State itself, or third parties acting with its acquiescence or tolerance, affecting the existence, value, use, or enjoyment of the lands that should be returned to them and those over which they currently hold title deeds.

C. Obligation to investigate the facts that resulted in the violations and identify, prosecute, and, if appropriate, punish those responsible

265. The *Commission* asked the Court to order the State to investigate and punish those responsible for "the threats, harassments, acts of violence and intimidation, and damages

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[244] *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, para. 148.

caused to the property of the members of the Community […] and, especially, its leaders and authorities." The *representatives* stated, in general terms, they agreed "*in totum* with the claims of reparation for the rights violated […] presented before the […] Court by the […] Commission," but they did not make specific arguments regarding this measure of reparation. The *State* did not make observations in this sense.

266. The Court determined in this judgment that the State had failed to comply with its duty to investigate the deaths of Messrs. Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez, and Julio Alberto Morales, as well as the acts of violence denounced by the Community of Triunfo de la Cruz, in violation of that stated in Articles 8(1) and 25 of the Convention (*supra* para. 253).

267. Therefore, as has been indicated by it on other opportunities,[245] the Court orders the State to open an investigation on the death of Mr. Jesús Álvarez and Messrs. Óscar Brega, Jorge Castillo Jiménez, and Julio Alberto Morales, to determine the possible criminal responsibilities and, if appropriate, effectively apply the punishments and consequences set forth in the law. This obligation must be complied with in a reasonable period of time. Without detriment of the above, the Court recalls that it has been its constant case law that those facts that do not constitute grave violations to human rights are subject to the statute of limitation stipulated in the State's domestic legislations.[246] However, in this case, the Court does not have enough sufficiently precise factual and legal elements to determine the statute of limitation of the criminal action that could be applied, if it were the situation, to this case, or the conventionality of that statute of limitation.

D. Measures of satisfaction and guarantees of non-repetition

D.1. Measures of Satisfaction

268. The Court will determine measures that seek to repair the harmful effects that are neither of a financial nor pecuniary nature, as well as measures of a public nature or repercussion.[247] In this sense, considering the circumstances of the case *sub judice*, in attention to the harmful effects to the Garífuna Community of Triunfo de la Cruz and its members and the non-financial or non-pecuniary consequences resulting from the violations to the American Convention declared in their detriment, the Court considers it necessary to analyze the appropriateness of the measures of satisfaction and guarantees of non-repetition. Additionally, international case law, and specifically the Court's case law, has repeatedly established that the judgment constitutes *per se* a form of reparation.[248]

269. The Court takes note of the Commission's recommendation to repair the consequences of the violation of the rights stated both individually and collectively. The representatives added that "it would be necessary to consider the customary law of the community affected" when determining the individual and collective measures of reparation. The State did not present any specific arguments in this sense.

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[245] *Cfr. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 174, and *Case of Mendoza et al. v. Argentina,* para. 344.

[246] *Cfr. Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations, and Costs.* Judgment of November 22, 2007. Series C No. 171, para. 111, and *Case of Vera Vera et al. v. Ecuador. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of May 19, 2011. Series C No. 226, para. 117.

[247] *Cfr. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs,* para. 84, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile,* para. 157.

[248] *Cfr. Case of Neira Alegría et al. v. Peru. Reparations and Costs,* para. 56, and *Case of López Lone et al. v. Honduras,* para. 320.

D.1.1. Publication of the judgment

270. The parties and the *Commission* did not refer to this measure of reparation.

271. However, the Court considers it appropriate to order, as it has done in other cases,[249] that the State must publish, within six months of notification of this judgment: a) the official summary of this judgment prepared by the Court in the Official Gazette and in a newspaper with widespread circulation, and b) this judgment in its entirety, to be available for at least one year, on an official website of the State.

272. Furthermore, the Court considers it appropriate, as it has ordered in other cases,[250], that the State publicize, through a radio station with widespread coverage in the lands of the Garífuna Community of Triunfo de la Cruz, the official summary of the judgment, in Spanish and in the Garífuna language. The radio broadcast must be made on the first Sunday of every month, during at least three months. The State shall previously inform the representatives, at least two weeks in advance, the date, time, and station of this broadcast. The State must comply with this measure within the six months following notification of this judgment.

D.1.2. Public act of acknowledgment of responsibility

273. The *representatives* requested the Court to order that the State "issue a public acknowledgment to the Garífuna Community and its members through a symbolic act, previously agreed on with the petitioners and the victims." The *State* and the *Commission* did not refer to this measure of reparation.

274. The Court orders, as it has done in other cases, that the State must carry out a public act of international acknowledgement in which it must refer to the human rights' violations declared in this judgment.[251] The determination of the date, place, and details of the act must be consulted with and previously agreed on with the Garífuna Community of Triunfo de la Cruz. The act must be carried out in a public ceremony with the presence of high State authorities and members of the Community. Additionally, this act must take into consideration the traditions, uses, and customs of the Community and be both in Spanish and the Garífuna language.[252] The State has one year as of the notification of this judgment to comply with this measure.

D.2. Guarantees of non-repetition

D.2.1. Request for adjustment of domestic legislation

275. The *Commission* requested that the Court order the State "[t]o adopt as soon as possible the measures necessary to make the right to communal property and possession of the Garífuna Community of Triunfo de la Cruz and its members effective regarding their [traditional] territory," referring specifically to "the legislative, administrative, or any other measure necessary to adequately delimit, demarcate, and title their lands, according to their

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249 *Cfr. Case of Cantoral Benavides v. Peru*. Reparations and Costs. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of López Lone et al. v. Honduras*, para. 303.

250 *Cfr.* Case of the *Yakye Axa Indigenous Community v. Paraguay,* para. 227, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 308.

251 *Cfr. Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations, and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 469, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile*, para. 160.

252 *Cfr. Case of the Plan de Sánchez Massacre v. Guatemala. Reparations.* Judgment of November 19, 1004. Series C No. 116, para. 101, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 305.

customary law, values, and customs." Additionally, it referred to the State "[a]dopt[ing] an effective and simple remedy that protects the right of indigenous people of Honduras to reclaim and access their traditional territories and to protect those territories against actions of the State or third parties that violate their right to property." Additionally, it requested the State adopt "with the participation of the indigenous peoples, the legislative or any other measures, necessary to make effective the right to a prior, free, informed consultation carried out in good faith, pursuant to the standards of international human rights."

276. The *representatives* requested that the Court order the State to adopt "the legislative, administrative, and any other measure necessary to create a judicial mechanism to make the right of indigenous [and tribal] peoples […]to property over their [traditional] habitat or [traditional] territory effective, according to their customary law, values, uses, and customs" and, more specifically, "create an effective and efficient remedy that will allow indigenous and tribal peoples of Honduras to access their [traditional] habitat according to the rights acknowledged in the Inter-American human rights regulations."[253] Additionally, they requested "to adopt in their domestic legislation […] the legislative, administrative, or any other measure necessary to make the right to a prior, free, and informed consultation effective," more specifically, the "[a]pproval of a [l]aw reached by consensus for the [c]onsultation of the country's indigenous people in accordance with Convention 169 [of the ILO] and UNDRIP, and that the State guarantee good faith in the application of that law." Furthermore, they requested the "[r]epeal of the protected areas and national parks that cover Garífuna territories and that were created without consultation" and the [a]nnulment of all titles issued to third parties over the community title deeds [in all Garífuna communities]." Finally, they requested it order "actions at the highest level in legislative matters reforming the Constitution of the Republic, granting the pluriculturalism, multiculturalism and sociological multinationality of the peoples a constitutional rank."

277. The *State* did not refer specifically to this measure of reparation.

278. In this case, the Court declared the violation of Article 2, in relation to Articles 21 and 1(1) of the Convention due to the absence of a practice or regulation in the corresponding domestic legal system regarding the right to a prior, free, and informed consultation with indigenous and tribal peoples, which resulted in violations in this specific case prior to the adoption of the law on property in the year 2004 (*supra* para. 199).

279. However, the Court stated it would not issue a ruling regarding the period after the year 2004 because there is no evidence that the Law on Property of 2004 was applied to the Community and its members (*supra* párr. 200), and therefore the Court will not refer to the measure of reparation requested by the representatives.

280. On the other hand, regarding the representatives' request for the "[r]epeal of the protected areas and national parks that cover the Garífuna territories, which were created without consultation," this Court orders the State to guarantee the Community's free access, use, and enjoyment of its collective property in the parts that overlap with an area of the Punta Izopo National Park.

281. Regarding the other measures of reparation requested, in what refers to the adjustment of the domestic legislation, this Court considers it shall not order them since they are not related to the human rights' violations determined in this judgment. In reference to the measure requested for the "[a]nnulment of all title deeds issued to third parties over community title deeds [in all the Garífuna communities]," the Court verifies that this is not related to the facts of the case in what refers to other Garífuna communities different to that

[253] In this sense, they added that "[i]t is urgent that a law that will effectively protect indigenous territorial property in its broadest sense be decreed. The necessary institutions must be created, and the existing ones must be strengthened."

of Triunfo de la Cruz. Regarding this Community, the Court reiterates its case law that states that it cannot decide if the right to traditional property of the members of an indigenous or tribal Community are over the right to private property of third parties or vice versa, since the Court is not a domestic court that can solve controversies between individuals. That task corresponds exclusively to domestic jurisdiction.

282. Finally, taking into consideration that there is evidence within the facts of the case of a lack of clarity at the Property Registry of Honduras that could be allowing the overlapping of title deeds in the areas in question in this case, the Court considers it appropriate to order the State to create the mechanisms necessary to avoid similar facts from generating future violations to the right to property in rural areas such as the ones analyzed in this case.

D.2.2 Other measures requested

283. The *Commission* requested, in its final written observations[254] that the Court order, among others: (i) acknowledgement of the totality of the territory the Community has historically used and occupied, (ii) guarantee that both the title deed previously granted and the one to be granted include full guarantees to ensure they will not be alienated, sold, or titled without a prior, free, and informed consultation, (iii) issuance of the measures necessary to respond to the Community's demands of restitution and reparation due to the granting of lands in concession for tourism projects, the granting of title deeds to non-indigenous third parties, and the expansion of the urban area, iv) immediate adoption, in consultation with the Community, of the measures necessary to respond to the situation of conflict present in the area, and v) allocation, without delay, of the budget necessary to make sure the lands and territories are of exclusive indigenous use and occupation.

284. The *representatives,* in their brief of pleadings and motions, requested the Court to order the State to "[l]egally acknowledge the [traditional] territorial possession of each of the Garífuna communities," and "provide the area claimed by the Community […] with basic utilities, including drinkable water and sanitary infrastructure, a health center, a school, [and] a community radio station." Additionally, in their final written arguments, they requested that the Court order the "acknowledgment of the marine territory and beaches since their use and possession are part of the cosmovision of the Garífuna people" and the "suspension of laws and programs that are about to be approved by the National Congress affecting indigenous peoples and failing to acknowledge the CPLI."

285. The Court verified that the measures stated by the Commission were requested in a time-barred manner, since they were not included in their lodging of the case or in the Report on Merits, and therefore they are dismissed. Regarding the measures requested by the representatives in their brief of pleadings and arguments, this Court considers that it is not appropriate to order them, since they are not related to the facts of the case or the human rights' violations established in this judgment. In reference to the measures stated by these in their final written arguments, the Court points out that they were requested in a time-barred manner given they were not included in the brief of pleadings and arguments, and therefore they are dismissed.

E. Collective compensation through a community development fund

286. The *Commission* referred in general terms to the State repairing "the consequences of the violation of the rights stated both individually and collectively."

[254] The Commission in its final oral observations made at the public hearing referred, at least in part, to these measures of reparation.

287. The *representatives* requested that the Court summon "a hearing with the purpose of hearing the statements of witnesses and the reports of expert witnesses on the cultural dimension of the Community," spreading upon the record "the Community's decision […] that the benefits of the measures issued in compensation in this case, reach the group of expanded families that make up the community," and that "[i]f the […] Court does not summon a hearing on reparations" they request "it set an amount in equity to determine the compensatory amount […] in the concept of consequential damages and lost wages."[255] The representatives concluded that the amount of the pecuniary damage "[would] conservatively ascend" to US$ 900,000 (nine hundred thousand dollars of the United States of America). Additionally, the representatives requested that the State "create a fund destined to covering the remediation of the lands to be recovered from third parties, estimated over the totality of the extension claimed by the community," indicating the areas that should be included in that remediation. The State did not make observations regarding this measure of reparation. Additionally, they asked that the Court "order in equity the amount of the compensation corresponding to the moral damages caused to the Garífuna Community of Triunfo de la Cruz and its members, for the suffering, anguish, and indignities they have been submitted to during the years in which they have seen their right to use, enjoy, and dispose of their territory limited as well as all other violations argued." They concluded that the amount of the non-pecuniary damage "[would] conservatively ascend" to US$ 1,400,000 (one million four hundred thousand dollars of the United States of America).

288. The *State* did not make observations regarding this measure of reparation.

289. In its case law, the Court has developed the concept of pecuniary and non-pecuniary damage and the situations in which it must be compensated. This Court has established that pecuniary damage covers "the loss of, or detriment to, the earnings of the victims, the expenses incurred as a result of the facts, the consequences of a pecuniary nature that have a causal nexus to the facts of the case."[256] Similarly, regarding non-pecuniary damage, this Court has understood that this "may include the suffering and affliction caused to the direct victim and his family, the impairment of values that are very significant for the individuals, and also the changes of a non-pecuniary nature in the living conditions of the victim or his family."[257]

290. In this judgment, when solving the claims regarding pecuniary damage, the Court will take into consideration the body of evidence of this case, the case law of the Court itself, and the arguments made by the parties.

291. Regarding the representatives' request to summon a hearing concerning the compensations requested, the Court considers that this case does not have the characteristics necessary to carry out such a hearing, therefore it dismisses this request and will rule on relevant aspects in this judgment.

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[255] Regarding consequential damages, the representatives referred to the actions and diligences carried out by members of the Community to hold meetings with public authorities and other communities, for which they had to move to another location. Likewise, they stated that "evidence of pecuniary damages […] is complex to verify, in terms of the lifestyle and economic model the Community follows based on a traditional model that lacks rigid accounting or economic formalities." However, they stated that the migration of youngsters due to the lack of means of survival and the reduction of the territory, the damages to the territory and its natural resources, effects of the standstill of productive activities during the eighteen years of the domestic and international proceedings, and the lack of access to food production areas must be taken into consideration.

[256] *Cfr. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of López Lone et al. v. Honduras*, para. 314.

[257] *Cfr. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of López Lone et al. v. Honduras*, para. 320.

292. Concerning pecuniary damage, taking into consideration that the representatives did not provide enough evidence to determine the exact amounts regarding each of the violations declared, the Court considers that the damages suffered by the Community and its members can be defined as lost wages since they could not fully enjoy their lands economically due to the lack of demarcation, titling (regarding plot A1) (*infra* Map Annex), the sale of parts of their lands to third parties, and the lack of consultation for the "Marbella" and "Playa Escondida" tourism projects and part of the Punta Izopo national park, as well as its Management Plan.

293. Regarding the non-pecuniary damage, the Court verifies that the request made by the representatives in their final arguments was presented in a time-barred manner. However, this Court, in order to assess the possible non-pecuniary damages caused in the case *sub judice*, has taken into consideration the statements offered by Ángel Castro Martínez and Clara Eugenia Flores before this Court during the public hearing, and by Messrs. Olivia Ramos, Teresa Reyes, Beatriz Ramos, Secundino Torres, Alfredo López, Francis Secundina López, Ilaria Cacho, Dionicio Álvarez, César Benedit Zúñiga, and Doris Rinabett Benedict in their statements given before a notary public, since the damages caused to them are representative of those caused to the rest of the victims, who all belong to the Garífuna Community of Triunfo de la Cruz.

294. The Court refers to its considerations regarding the violation of Article 21, in relation to Article 1(1) of the Convention. The lack of demarcation of the lands over which a collective property title deed was granted to the Community of Triunfo de la Cruz, as well as the lack of titling of plot "A1" (*infra* Map Annex) acknowledged as traditional territory by the State, as well as the lack of protection of those lands against third parties, negatively affected the use and enjoyment of the territorial rights of the Community and its members, which the Court will take into consideration upon defining the non-pecuniary damage. Moreover, the Court observes that the special meaning the land has for indigenous and tribal peoples in general, and for the Garífuna Community of Triunfo de la Cruz in particular, implies that all denial to the enjoyment or exercise of their territorial rights entails a damage to very important values for the members of those peoples, who are in danger of losing or suffering irreparable damages to their life and cultural identity and to the cultural heritage to be passed on to future generations.

295. Given that the State was found responsible of the violation of Articles 2, 21, 8, and 25 of the Convention, as that the variety of measures of reparation requested by the representatives seek to, as a whole, benefit the Community of Triunfo de la Cruz, the Court considers it appropriate to analyze those measures in light of the creation of a Community development fund as compensation for the pecuniary and non-pecuniary damage suffered by the members of the Community. In this sense, this Fund is additional to any other present or future benefit that may correspond to the Community of Triunfo de la Cruz in relation to the State's general development duties.

296. Regarding the aforementioned, the Court points out that, in view of: dispossession of their territory; ii) the damages caused to it, and iii) that indigenous people have the right to conservation and protection of the environment and the productive capacity of their territories and natural resources;[258] the Fund must be destined, pursuant to the agreements reached with the Community of Triunfo de la Cruz, to: i) developing projects oriented towards increasing agricultural or any other productivity in the Community; ii) improve the Community's infrastructure according to its present and future needs; iii) restore the

[258] *Cfr*. Article 29 subparagraph 1 of the United National Declaration on the rights of Indigenous Peoples of September 13, 2007.

deforested areas, and iv) others considered appropriate in benefit of the Community of Triunfo de la Cruz.

297. The State shall adopt all administrative, legislative, financial, and human resources measures necessary for the implementation of this Fund, for which, within the three months following the notification of this judgment, it must appoint an authority with competence in the matter, in charge of its administration. On its part, the Community of Triunfo de la Cruz must appoint a representative as liaison with the State for the implementation of the Fund in accordance with the Community's wishes.

298. For this Fund, the State shall destine the amount of US$ 1,500,000 (one million five hundred thousand dollars of the United States of America), which must be invested in benefit of the territory titled to the Community of Triunfo de la Cruz in a period no greater than three years as of the notification of this judgment.

299. Finally, the parties must forward to the Court a yearly report during the execution period detailing the projects in which it will invest the amount destined to the Fund.

F. Costs and expenses

300. The *representatives* requested that the Court order the State "payment of the costs originated at a domestic level in the processing of the judicial and administrative proceedings followed by the victims or their representatives domestically, as well as those originated internationally in processing the case before the Commission and […] before the […] Court," referring to a total of US$ 50,000 (fifty thousand dollars of the United States of America).[259] The *State* and the *Commission* did not refer to the costs and expenses.

301. The Court reiterates that, according to its case law,[260] costs and expenses form part of the concept of reparation, because the actions taken by the victims to obtain justice, at both the domestic and international level, entail disbursements that must be compensated when the international responsibility of the State is declared in a judgment against it. Regarding reimbursement of expenses, it is up to the Court to make a prudent estimate of their specific extent, which includes expenses generated before the domestic courts, as well as those generated during the processes before the Inter-American system, taking into consideration the circumstances of the case and the nature of international jurisdiction for the protection of human rights. This assessment can be made on an equitable basis and considering the expenses stated by the parties, provided their *quantum* is reasonable.[261]

302. Furthermore, the Court recalls that it is not sufficient to merely forward probative documents, rather the parties are required to submit arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.[262] Moreover, the Court has stated that "the claims of the victims or their representatives for costs and expenses and the supporting evidence must be submitted to the Court at the first procedural moment granted to them; that is, with the motions and pleadings brief; nevertheless, those claims may be

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[259] The representatives stated the amounts related to the expenses incurred during the proceedings before the Commission, domestic jurisdiction, and before the Court.

[260] *Cfr. Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C No 39, para. 79,* and *Case of López Lone et al. v. Honduras,* para. 330.

[261] *Cfr. Case of Garrido and Baigorria v. Argentina. Reparations and Costs,* para. 82, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile,* para. 181.

[262] *Cfr. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 277, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile*, para. 182.

updated subsequently based on new costs and expenses incurred due to the proceedings before this Court."[263]

303. Regarding the expenses incurred in at a domestic level, the representatives referred only to "[e]xpenses for domestic jurisdiction" for US$ 25,000, and in what refers to the expenses incurred in at an international level to "[t]rips to Washington D.C., during the proceedings before the Commission" for US$ 10,000; "[c]ommunications" for US$ 1,500; "[p]aperworks and deliveries" for US$ 1,500; and "[l]egal fees" for US$ 2,000. Additionally, they referred to "[e]xpenses for the proceedings" before this Court, for US$ 10,000. The Court verified that the representatives did not provide evidence regarding the mentioned expenses and that the only receipts sent for these expenses correspond to the disbursements made by the Legal Aid Fund for Victims. Therefore, the Court does not have the evidentiary support necessary to determine the expenses incurred in.

304. Thus, the Court decides to set a total of US$ 10,000 (ten thousand dollars of the United States of America), for the tasks carried out in the litigation of the case both nationally and internationally, which the State must pay to the representatives in a six-month period as of the notification of this judgment. The Court considers that, in the monitoring of compliance of this judgment, it may order the State to reimburse the victims or their representatives for the reasonable expenses incurred in by them in that procedural stage.

G. Reimbursement of expenses to the Legal Aid Fund for Victims

305. The Garífuna Community of Triunfo de la Cruz and its members, through their representatives, requested support from the Court's Legal Aid Fund for Victims to "cover funds for the litigation in this case, due to the lack of economic possibilities to face the expenses generated from it," specifically "those related to air transportation, lodging, and food for the victim's representative and the witnesses accepted by the […] Court."

306. Through a Resolution of December 18, 2013, the President of the Court accepted the request filed by the victims and approved the granting of the economic help necessary for the assistance of a maximum of two representatives and the presentation of a maximum of three statements, either at the hearing or through affidavit.

307. According to the information included in the report on disbursements made in this case, they ascended to USD$ 1,677.97 (one thousand six hundred and seventy-seven dollars and ninety-seven cents of the United States of America). The State had the opportunity, up to October 2, 2014, to present its observations to the disbursements made in this case and, through its brief of that same date, informed "it did not have any observations to make."

308. It corresponds to the Court, in application of Article 5 of the Rules of Procedure of the Fund, to assess the requirements for ordering the respondent State the reimbursement to the Legal Aid Fund for Victims of the disbursements in which it has incurred. Based on the violations declared in this judgment, the Court orders the State the reimbursement to that Fund of the amount of US $ 1,677.97 (one thousand six hundred and seventy-seven dollars and ninety-seven cents of the United States of America) for the expenses incurred in. This amount must be reimbursed to the Inter-American Court in a ninety-day period as of the notification of this judgment.

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[263] *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador,* para. 275, and *Case of Omar Humberto Maldonado Vargas et al. v. Chile*, para. 182.

H. Means of complying with the payments ordered

309. The State must comply with its pecuniary obligation through payment in Lempiras or its equivalent in dollars of the United States of America, using for the respective calculation the exchange rate in force on the New York Stock Exchange (United States of America) the day before the payment is made. If for causes that can be attributed to the beneficiaries of the reimbursements or their heirs, it is not possible to pay the amounts established within the indicated timeframe, the State shall deposit said amounts in their favor in an account or deposit certificate in a solvent Honduran financial institution, in United States dollars, and in the most favorable financial conditions allowed by banking laws and practices. If the corresponding compensation is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

310. The amounts allocated in this judgment as reimbursement for costs and expenses must be delivered to the representatives in full, as established in this judgment, without any deductions due to eventual taxes or charges.

311. If the State falls in arrears with regard to the Community Development Fund, costs and expenses, or reimbursement of expenses to the Legal Aid Fund for Victims, it must pay interest on the amount owed corresponding to bank interest on arrears in the Republic of Honduras.

312. According to its constant practice, The Court reserves the right inherent to its attributions and derived from Article 65 of the American Convention to monitor full compliance with this judgment. The case will be considered concluded once the State has fully complied with that stated in this judgment.

313. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

IX
OPERATIVE PARAGRAPHS

Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The State is responsible for the violation of the right to collective property, enshrined in Article 21 of the American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same, in detriment of the Garífuna Community of Triunfo de la Cruz and its members, in the terms of paragraphs 99 to 182 of this judgment.

2. The State is responsible for the violation of the rights to a fair trial and judicial protection, enshrined in Articles 8(1) and 25 of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, in detriment of the Garífuna Community of Triunfo de la Cruz and its members, in the terms of paragraphs 226 to 253 of this judgment.

3. The State is responsible for the violation of the obligation to adopt domestic legal stipulations, enshrined in Article 2 of the American Convention on Human Rights, in relation to Articles 1(1), 21, 8, and 25 of that same instrument, in detriment of the Garífuna Community of Triunfo de la Cruz and its members, in the terms of paragraphs 187 to 200 of this judgment.

4. The State is not responsible for the violation of the right to life, enshrined in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) of that same instrument, in detriment of Messrs. Jesús Álvarez Roche, Oscar Brega, Jorge Castillo Jiménez, and Julio Alberto Morales, in the terms of paragraphs 204 to 214 of this judgment.

AND ESTABLISHES

unanimously, that:

5. This judgment constitutes, *per se,* a form of reparation.

6. The State shall, within a two-year term computed as of the notification of this judgment, proceed to demarcate the lands over which collective property has been granted to the Community of Triunfo de la Cruz in full ownership and guarantee of occupation, with their full participation and taking into consideration the Community's customary law, uses, and customs, pursuant to paragraph 259 of this judgment.

7. The State shall, within a two-year term computed as of the notification of this judgment, grant the Community of Triunfo de la Cruz a collective property title deed duly delimited and demarcated over the area designated as "Plot A1" (*infra* Map Annex), pursuant to paragraphs 260 to 264 of this judgment.

8. The State shall, within a reasonable period of time, start the investigations related to the death of Mr. Jesús Álvarez and Messrs. Óscar Brega, Jorge Castillo Jiménez, and Julio Alberto Morales, in order to determine the possible criminal responsibilities and, if it were the case, effectively apply the punishments and consequences established by law, pursuant to paragraphs 266 and 267 of this judgment.

9. The State shall make the publications and radio broadcast within a 6-month term, as of the notification of this judgment, in the terms of paragraphs 271 and 272 of this judgment.

10. The Court shall, within a one-year period computed as of the notification of this judgment, carry out a public ack of acknowledgment of international responsibility, pursuant to that stated in paragraph 274 of this judgment.

11. The State shall guarantee free access, use, and enjoyment of the collective property by the Community of Triunfo de la Cruz in the part of its territory that overlaps with an area of the Punta Izopo National Park, pursuant to that stated in paragraph 280 of this judgment.

12. The State shall, within a reasonable period of time, create adequate mechanisms to regulate its Property Registry system in the terms stated in paragraph 282 of this judgment.

13. The State shall create a Community development fund in favor of the members of the Garífuna Community of Triunfo de la Cruz, in the terms and periods stated in paragraphs 289 to 299 of this judgment.

14. The State shall pay the amounts set for the concept of reimbursement of costs and expenses within a one-year term, computed as of the notification of the judgment and in the terms indicated in paragraph 304 of this judgment.

15. The State shall, within a ninety-day period, reimburse the amount spent during the processing of this case to the Legal Aid Fund for Victims of the Inter-American Court of Human Rights pursuant to paragraph 308 of this judgment.

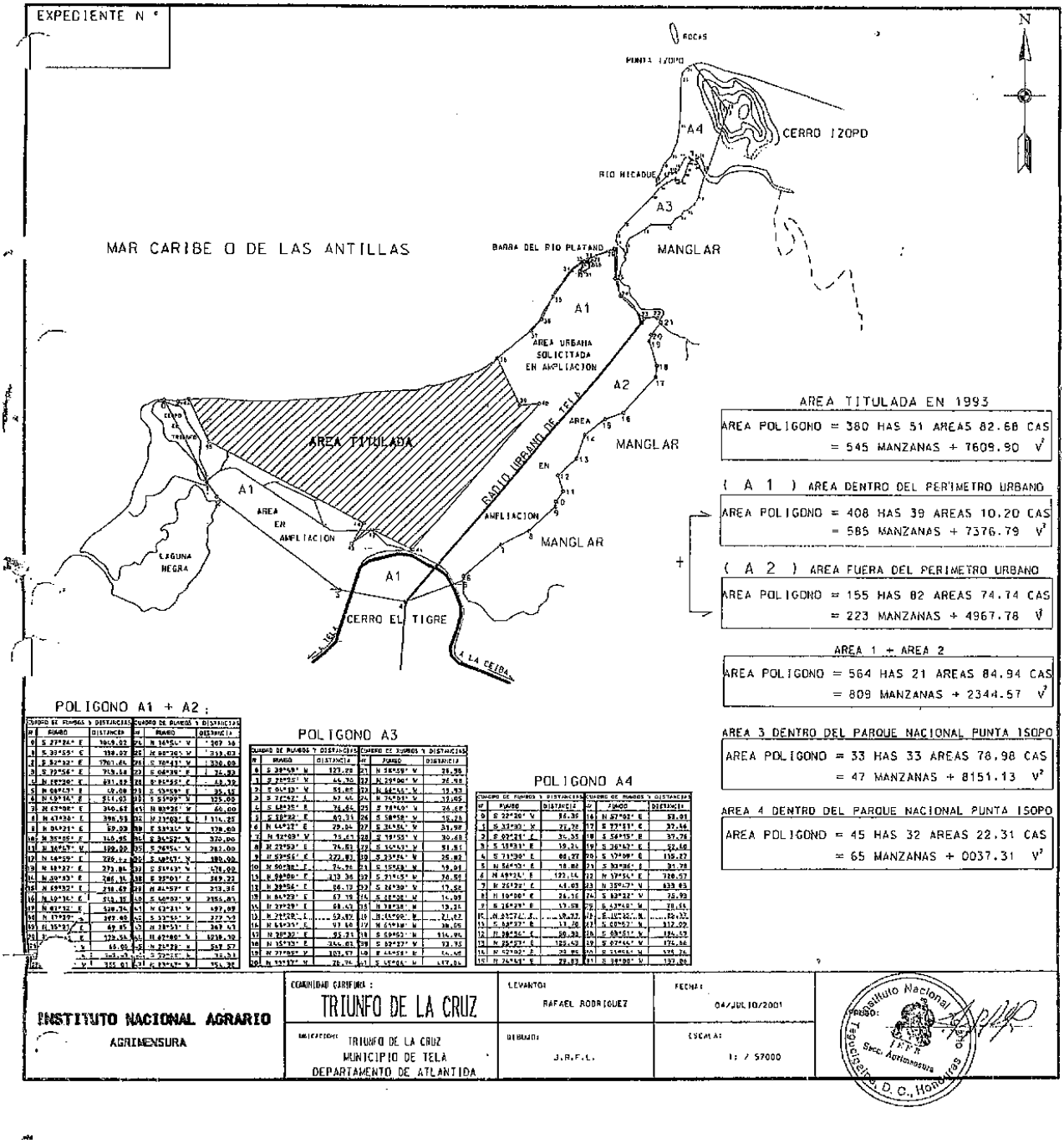
16. The State shall, within one year of notification of this judgment, provide the Court with a report on the measures adopted to comply with it.

17. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights and will consider this case closed when the State has complied fully with all its provisions.

Judge Humberto Antonio Sierra Porto informed the Court of his concurring opinion, which accompanies this judgment.

Issued in Spanish in San José, Costa Rica, on October 8, 2015.

X
MAP ANNEX[264]



[264] This map has been prepared by the INA and was included in a document dated July 5, 2001 regarding the request for expansion of full ownership by the Community of Triunfo de la Cruz in 1997. In it, plots A1, A2, A3, and A4, as well as the area titled in 1993, are identified.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Diego García-Sayán

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary

CONCURRING OPINION OF JUDGE HUMBERTO ANTONIO SIERRA PORTO

JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE GARÍFUNA COMMUNITY OF TRIUNFO DE LA CRUZ AND ITS MEMBERS V. HONDURAS

JUDGMENT OF OCTOBER 8, 2015

(*Merits, Reparations, and Costs*)

A. Introduction

1. The purpose of this concurring opinion is to point out certain aspects of the case that, in my opinion, deserve special attention. These aspects refer to: i) the inconsistencies in the submission of the case and the importance of the diligence *in situ*; ii) the logics of the measure of collective reparation consisting in the creation of a community development fund, and y iii) the problems of delimitation and "remediation" of lands as an expression of a social situation.

B. The inconsistencies in the submission of the case and the importance of the diligence *in situ*

2. It is important to point out an aspect of the case that refers to the entire proceedings and the circumstances in which the Court must decide the cases submitted to its jurisdiction. In this sense, I will go on to analyze: i) the inconsistencies in the submission of the case, and -related to this- ii) the importance of the diligence *in situ*.

(i) The inconsistencies in the submission of the case

3. The decisions of the Inter-American Court, in an ample sense, have several purposes. Among them, we can list the following as examples: i) the declaration and condemnation of the States for the existence of violations to the human rights set forth in the American Convention; ii) the construction of logics for the understanding of human rights and actions (expressed as guarantees of non-repetition) for the Court and the States, as well as the creation and perfectioning of the standards or case law that contribute to building the *Inter-American corpus iuris* (understood as minimum or basic elements regarding the scope of the rights included in the Convention; iii) the seeking of justice through the making of decisions that are fair with the parties in the litigation and, indirectly, with all other citizens, and iv) the resolution and prevention of conflicts, or at least a contribution to this (judgments cannot perpetuate or create new social conflicts).

4. To achieve these goals, it is necessary that the Court have all the essential factual elements to issue judgments that are fair and resolve the controversies brought forth before it. This means that the submission of the case before the Court, especially in what refers to "Proven facts", must include the information necessary for the Court to

adequately comply with its duty. Specifically, when a case refers to claims over lands that are possibly inhabited by different groups of people (indigenous or tribal groups and peasants or settlers, as in this case), the factual circumstances should be verified, as far as possible, before the mentioned submission of the case before the Court.

5. In this case, from the assertion of the facts in the factual framework of the Merits Report by the Inter-American Commission the actual situation of the territory claimed by the Garífuna Community of Triunfo de la Cruz is not clear, especially regarding third parties inhabiting the lands in dispute and the scope of this situation, the number of said third party inhabitants, the extension of the lands occupied by them, and the circumstances presented by them as grounds for their presence. This situation was not clarified in the Commission's other briefs and interventions. This means that, in absence of other means of evidence in the case file, the Court initially did not have enough clarity regarding the factual situation in which the human rights' violations object of the controversy allegedly occurred.

6. The references in the Merits Report, specifically regarding the presence of third parties in the territory claimed by the Community, were related in their majority to certain sales of lands to those third parties. For example, the Commission stated in general terms that there had been a "gradual dispossession of the ancestral lands, carried out partly by state authorities themselves and, with its acquiescence, by individuals,"[1] and more specifically indicated that "the situation became notoriously worse with the granting by public authorities of property deeds over areas possessed by the Community to tourism business groups and individuals."[2] Additionally, the Commission stated that "by virtue of the expansion of its urban area […] the Municipality transferred to individuals different plots of land belonging to the ancestral territory of the Garífuna Community"[3] and that "one of the greatest problems the Community currently faces is the presence of multiple ladino or non-Garífuna people in their ancestral territory, even in those areas granted in full ownership."[4]

7. Despite these references, it was not clear what the current situation regarding the different areas was or where the third parties and the members of the Community were specifically settled, respectively. Likewise, from the information provided it could not be adequately defined who the different owners and occupants of the lands claimed by the Community were or their different realities regarding their use and occupation.

8. In this regard, it must be analyzed that if the Court does not have sufficient information concerning the situation in which the people involved in the facts of the case live, it would be difficult to issue a judgment that takes into consideration all circumstances relevant to the resolution of the issue presented. Moreover, it is necessary to avoid, as much as possible, that judicial decisions become a seed for social confrontation or to promote situations of conflict. As previously indicated, judgments of the Inter-American Court try to do justice in the case submitted to its jurisdiction, avoiding damages to third parties that do not participate in the litigation of the case.

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1 Merits Report, para. 98.

2 Merits Report, para. 99. See also Merits Report, para. 108.

3 Merits Report, para. 107. See also Merits Report, para. 123.

4 Merits Report, para. 142.

9. Having said this, the Court recalls it is an international Court and its duty is not to decide on domestic conflicts regarding the property of lands that are part of the States' national territory. In this sense, the Court has stated in its case law that it cannot decide that the property rights to traditional lands of the members of the indigenous or tribal Communities prevail over the right to property of private owners or *vice* versa, since the Court is not a domestic judicial authority with jurisdiction to decide disputes among private parties, since this power is vested exclusively in the State.[5]

10. Even though the main objectives of the judgments issued by the Court are the assessment regarding the violation or not of the human rights enshrined in the American Convention and the resolution of the controversies brought before it, an additional or supplementary objective is the prevention of possible conflicts between the different inhabitants of the regions in dispute. In order to achieve these objectives, it is necessary that the factual circumstances be verified prior to the submission of the case before the Court, especially when dealing with human rights claims related to property rights and, in general, matters regarding lands, so that the information presented in the Merits Report clearly indicates the location of those lands and the distinctive features of its possession, use, and property by the indigenous or tribal Community and third parties, as well as the conflicts derived from this.

(ii) The importance of the diligence in situ

11. When there isn't a clarity such on the factual situation of the case that will allow the Court to issue its judgment adequately taking into consideration that situation, it becomes more important to gather the necessary evidence in that regard. In this sense, I want to point out the convenience of the visits *in situ* the Court has carried out. These visits allow the Court to obtain first-hand knowledge of the distinctive features of the locations in dispute and their locality. Specifically, the opportunity the Court has through these visits to acquire information that could only be obtained through this mechanism is very valuable, including information on the residents and authorities of these lands. In this sense, it is important to point out the importance of the principle of immediacy, which does not have to be reduced to the statements received by the Court at public hearings, especially in cases as complex as this one.

12. For the first time in the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* the Court carried out a diligence *in situ* whose main purpose was to take measures aimed at obtaining additional information about the situation of the presumed victims and the places where some of the alleged events took place.[6]

13. In this case, the State had requested a diligence be carried out in the following terms: "in order to facilitate adjudication of the case, […] to have a fair judgment according to the legal reality, […] it carry out an inspection *in loco* to verify respect to the precautionary measures ordered by the Inter-American Commission, […] the

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[5] *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of March 29, 2006. Series C No. 146, para. 136. Similarly, the Court has stated that this does not mean that every time there is a conflict between the territorial interests of private individuals or of the State and those of the members of the indigenous communities, the latter must prevail over the former. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, para. 149.

[6] *Cfr. Case of the Kichwa Indigenous People v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, para. 20.

physical reality of the communities, the protected areas ordered and turned into national parks, the lifestyle and how the Garífunas and non-Garífunas live side by side." The Court granted this request and ordered the diligence *in situ* given the nature of the controversies and its complexities, as well as the need to have more evidence. Specifically, its purpose was to: a) observe some of the areas of the territory claimed by the Community, and b) hold a meeting with the parties, the Commission, and different authorities and residents.[7]

14. In this judgment, the Court established that the diligence *in situ* had been valuable because it "offer[ed] a general vision of an important illustrative nature that can dimension, understand, and delimit the specific facts that make up the basis of the alleged violations presented to it."[8] More specifically, through the information obtained from this diligence it was able to verify that the "Indura Beach and Golf Resort" tourism project was not located within the traditional territory claimed by the Community. Upon carrying out the diligence *in situ,* the Court could determine that "this tourism project was located on the other side of the Tela Bay, several kilometers away from the Triunfo de la Cruz Community and the territories in controversy in this case." Therefore, the Court did not go on record regarding the alleged violations related to this tourism project.[9]

15. Additionally, from the information obtained during the mentioned diligence regarding the "Playa Escondida" tourism project, the Court "could verify the location and nature of the buildings"[10] and "it was verified that the construction had been finished and it was occupied."[11] On the other hand, it could not verify the exact location of the real estate project "Laguna Negra" during the visit.[12]

16. If the Court had not carried out the diligence *in situ* and, thus obtained the necessary information, it would not have been able to verify the circumstances and facts of the case corresponding to the lands in dispute and it could not have established the merits of the alleged violations to human rights, as well as the possible appropriateness of certain measures of reparations.

17. Due to the complexity of the cases related to traditional lands of indigenous and tribal peoples, especially when they are partially occupied by third parties, it is convenient that the bodies of the Inter-American System act with as much care as possible and verify with even greater attention the parties' arguments and the evidence referent to the areas in dispute. Visits *in situ* by the Court that allow it to get to know, analyze, and broaden its understanding of the situations of third parties residing in the lands claimed by the Community may be helpful in this sense. This is necessary to try to avoid, within the Court's duties or procedural competences, that the decision offered by it result ineffective or unfair regarding those third parties that are not part of the litigation before the Court.

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7 Paras. 15 to 16 of the judgment.

8 Para. 38 of the judgment.

9 Para. 27 of the judgment.

10 Para. 89 of the judgment.

11 Para. 165 of the judgment.

12 Para. 89 of the judgment.

18. These third parties are not a part of the litigation of the case before the Court and therefore any possible violations to their rights are not part of the factual framework of the case submitted to the Court and cannot be resolved by it due to formal considerations of the design of the Inter-American Human Rights System.

19. Taking into consideration all the above, it is desirable that the Court continue with its practice of carrying out this type of diligences in cases in which it is useful or necessary to clarify the factual situation, contribute to the achievement of the purposes of Judgments issued by the Court, especially in what refers to the determination of possible violations to human rights and the resolution of the controversies presented. Likewise, it may be convenient, and on occasions necessary, to consider the possibility of carrying out these types of judicial diligences during the monitoring of compliance of Judgments by the Court, precisely to verify the situation *in situ* after the issuing of the judgment and to guarantee that its implementation at a domestic level does not result in activities that may damage third parties.

C. The logic of the collective measure of reparation consisting in the creation of a Community development fund

20. In the judgment, the Court ordered as a measure of reparation for pecuniary and non-pecuniary damages a collective compensation through a Community development fund. In the following paragraphs, I would like to present some aspects regarding the legal nature of this measure of reparation and, specifically, point out the distinction or difference between this measure of reparation and the States' permanent and general obligations to guarantee its citizens' human rights.

21. For these purposes, below we will analyze: i) the difference between the collective reparation and the States' general obligations in matters of human rights; ii) the Court's case law regarding the juridical personality of indigenous or tribal peoples and collective damage, and iii) aspects regarding the administration of the Community Development Fund.

(i) The difference between collective reparation and the States' general obligations in matters of human rights

22. In the judgment, the following measure of reparation was ordered:

> Given that the State was found responsible of the violation of Articles 2, 21, 8, and 25 of the Convention, as well as that due to the fact that the variety of measures of reparation requested by the representatives seek to, as a whole, benefit the Community of Triunfo de la Cruz, the Court considers it appropriate to analyze those measures in light of the creation of a Community development fund as compensation for the pecuniary and non-pecuniary damage suffered by the members of the Community. In this sense, this Fund is additional to any other present or future benefit that may correspond to the Community of Triunfo de la Cruz in relation to the State's general development duties.[13]

23. Additionally, taking into consideration: "i) dispossession of their territory; ii) the damages caused to it, and iii) that indigenous people have the right to conservation and protection of the environment and the productive capacity of their territories and natural resources," the Court established that "the Fund must be destined, pursuant to the agreements reached with the Community of Triunfo de la Cruz, to: i) developing projects

[13] Para. 295 of the judgment.

oriented towards increasing agricultural or any other productivity in the Community; ii) improve the Community's infrastructure according to its present and future needs; iii) restore the deforested areas, and iv) others considered appropriate in benefit of the Community of Triunfo de la Cruz."[14]

24. Furthermore, the judgment indicates that the State shall destine a specific amount for investment "in benefit of the territory titled to the Community of Triunfo de la Cruz" and that the parties must "forward to the Court a yearly report during the execution period detailing the projects in which it will invest the amount destined to the Fund."[15]

25. Now, the reason behind this measure of reparation ordered by the Court is that it reflects the understanding that the main or first adequate reparation to make good a damage suffered by indigenous or tribal peoples collectively, is a collective reparation.

26. In this sense, it is important to point out some of the characteristics of collective reparation, for example that: i) it must be considered as independent from the reparation for the damages that may have been suffered by the members of the Community as individuals; ii) its objective is the reparation of damages that, based on the characteristics of indigenous and tribal peoples themselves (especially their relationship with traditional lands), are collective and require specific measures of reparation; iii) they seek to protect and be implemented according to the Community's customs and cultural identity; iv) they have a purpose related to the strengthening of the Community's social and economic situation, and v) the Community effectively participates, through its legitimate representatives, in the decisions made regarding the implementation of the collective reparation granted.

27. The acknowledgment that indigenous or tribal peoples, as such, can be entitled to a right to reparation is enshrined, *inter alia,* in Article 28(1) of the United Nations Declaration on the Rights of Indigenous People that states that: "[i]ndigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair, and equitable compensation." Moreover, its Article 40 states that "[i]ndigenous peoples have the right to […] effective remedies for all infringements of their individual and collective rights" and that "[s]uch a decision shall give due consideration to the customs, traditions, rules, and legal system of the indigenous peoples concerned."[16] In this same sense, Articles 15 and 16 of Convention 169 of the ILO refer to compensations of which the peoples or communities are the beneficiaries.

28. The legal concept of collective reparation corresponds to the understanding that: i) indigenous communities are entitled to human rights; ii) these rights are different to the rights of each member of the Community and to the addition of these, and iii) these rights are not assimilable to the collective rights of other social groups.[17] Additionally, we must recall that the damage suffered by an indigenous or tribal community is collective, but this does not mean it is less concrete. The difference with the damage suffered by an individual is that collective damage is caused to a group as a whole and it is not comparable to the sum of individual damages.

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[14] Para. 296 of the judgment.

[15] Paras. 298 to 299 of the judgment.

[16] See also Articles 20(2) and 32(3) of the United Nations Declaration on the Rights of Indigenous Peoples.

[17] Constitutional Court of Colombia, judgment T-514 of 2009.

29. After having pointed out some of the elements of a collective reparation, it is especially important to emphasize the difference between this reparation and the States' general duties in human rights' issues. The beneficiaries of these State obligations are generally citizens and other people under the State's jurisdiction. Similarly, the State can implement public policies addressed to favoring certain groups in dealing with social and economic inequalities.

30. For example, Article 2 of Convention 169 of the ILO establishes the States' duty to adopt measures that, *inter alia,* promote "full realization of the social, economic, and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions; and […] that assist the members of the people concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life." These types of measures are directed to improving the quality of life and general wellbeing of the members of indigenous and tribal peoples and, therefore, can have a compensating effect. However, they cannot be confused with collective reparation.

31. In this case, the measure of reparation ordered consisting in the creation of a Community development fund is not addressed to the State implementing measures to improve the life situation of the Garífuna Community of Triunfo de la Cruz and the other residents of the area. The aforementioned is, in the end, a permanent obligation of the State regarding all its citizens and Garífuna citizens in particular.

32. The main difference between a collective reparation and a public policy addressed to economic and social development lies in the fact that the objective of the first one is to repair a specific damage caused by a violation perpetrated by the State of a right included in the American Convention, in detriment of the Community and its members, while the second one is addressed to implementing a general obligation of the State in human rights matters (specifically economic, social, and cultural rights).

33. The judgment stated that the measure of reparation of the creation of a Community development fund is the result of a violation by the State of several rights enshrined in the Convention (namely the rights included in Articles 2, 21, 8, and 25 of the same). Therefore, the implementation of this Fund cannot substitute or replace the public policy measures taken, or to be taken, by the State to improve the situation of the Garífuna Community of Triunfo de la Cruz and the other Hondurans who live in the area in question in the judgment. Said public policy measures are the State's responsibility and are necessary to improve the quality of life of the residents of the region, as well as to avoid conflicts between them. Therefore, these public policies can promote a peaceful coexistence between the different ethnic groups that live in the country (see my comments *infra* on the delimitation of lands as a social issue).

34. This means that the creation of the Fund is a pecuniary measure of reparation additional to the mentioned general obligations of the State. This was expressed in the judgment when the Court stated that the Fund must be used to carry out works and services of a collective interest "independently of the public works put aside in the national budget for that region."[18] Similarly, it was considered that the Community development fund is "additional to any other present or future benefit that may

[18] *Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs.* Judgment of July 4, 2007. Series C No. 165, para. 168.

correspond to the Community of Triunfo de la Cruz in relation to the State's general development duties."[19]

35. Therefore, the State cannot equate this measure of reparation with its general duties in human rights matters. A similar confusion could result in a situation in which no specific compensation would be granted to the Garífuna Community of Triunfo de la Cruz, or the public policies addressed to improving their living conditions could be weakened. If this were the case, the State would fail to comply with its duty to fulfill the measures of reparation ordered in the judgment.

(ii) The development of the Court's case law regarding the juridical personality of indigenous or tribal peoples and collective damage

36. The general rule when human rights of indigenous and tribal peoples are violated, causing a collective damage, must be to grant a collective reparation and not a compensation to individuals or its members. This understanding has also been reflected in the development of the Court's case law on this matter.

37. In the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua* the Court ordered the State, as a pecuniary measure of reparation for non-pecuniary damage, to invest a certain amount in "works or services of collective interest for the benefit of the Community."[20] Subsequently, in the *Case of the Yakye Axa Indigenous Community v. Paraguay* it ordered the creation of a "community development fund" for those purposes,[21] which it has repeated in other cases related to indigenous peoples.[22]

38. Now, the meaning of this measure of reparation resides in the specific relationship that exists between: i) the rights of the indigenous peoples that are exercised in a communal manner, especially the right to collective property, ii) the bearers of those rights and, therefore, the beneficiaries of the measure of reparation when they are violated, and iii) the specific damage caused by the violation of those rights.

39. Regarding the right to collective property, in the *Case of Mayagna v. Nicaragua* it was acknowledged that the protection provided by Article 21 of the American Convention extends to the collective property of indigenous peoples. In this sense, the Court stated that:

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19 Para. 295 of the judgment.

20 *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations, and Costs.* Judgment of August 31, 2001. Series C No. 79, para. 167.

21 *Cfr. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, para. 205. This judgment also ordered the creation of a fund destined to the acquisition of the lands to be handed over to the Yakye Axa Community (para. 218).

22 *Cfr. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of March 29, 2006. Series C No. 146, para. 224; *Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs.* Judgment of July 4, 2007. Series C No. 165, para. 168; *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 28, 2007. Series C No. 172, para. 201; *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of August 24, 2010. Series C No. 214, para. 323; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, paras. 317 and 323, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of October 14, 2014. Series C No. 284, paras. 240 and 247 (in these two last cases the pecuniary reparation for material and unmaterial damages was given to an existing association of the Sarayaku People and to the representatives of the indigenous communities, respectively). See also *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations.* Judgment of November 19, 2004. Series C No. 116, para. 104 (regarding the endowment of resources for the collective memory of members of the Community or their representatives).

> [a]mong indigenous peoples there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community. Indigenous groups, by the fact of their very existence, have the right to live freely in the own territory; the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.[23]

40. In consideration of the above and national legislation, the Court established that "the members of the Awas Tingni Community have a communal property right to the lands they currently inhabit."[24] Since then, this acknowledgment of the right to collective property has been repeated in subsequent cases dealing with indigenous and tribal peoples and constitutes one of the most significant advances in human rights matters, for which this Court's case law stands out.

41. Regarding those entitled to the right to communal property, despite the acknowledgment of the special characteristics of the indigenous culture in reference to the property of its land, the Court considered that those entitled to that right were the members of the indigenous or tribal Community and not the Community itself. Thus, the violation to Article 21 of the American Convention was declared in detriment of the members of the Community,[25] who were generally identified, but also referred to simply based on this condition.[26]

42. This posture assumed by the Court was in agreement with the idea in force at that time according to which human rights were always only individual rights, even when referring to indigenous or tribal peoples. In this line of ideas, the United Nations Human Rights Committee established, regarding Article 27 of the International Covenant on Civil and Political Rights, that: "persons belonging to these minorities [ethnic, religious, or linguistic] shall not be denied the right, in community with the other members of their group, that corresponds to them" and that the mentioned Article "establishes and recognizes a right which is conferred on individuals belonging to minority groups."[27]

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[23] *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations, and Costs.* Judgment of August 31, 2001. Series C No. 79, para. 149.

[24] *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations, and Costs.* Judgment of August 31, 2001. Series C No. 79, para. 153.

[25] *Cfr. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations, and Costs.* Judgment of August 31, 2001. Series C No. 79, para. 155; *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of June 15, 2005. Series C No. 124, para. 176; *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, para. 189, and *Case of the Sawhoyamaxa Indigenous Community v. Paraguay.* Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, para. 204; *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 28, 2007. Series C No. 172, para. 189, and *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of August 24, 2010. Series C No. 214, para. 278.

[26] *Cfr. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 28, 2007. Series C No. 172, para. 188: "given the size and geographic diversity of the Saramaka people and, particularly, the collective nature of reparations to be ordered in the present case, the Court does not find it necessary in the instant case to individually name the members of the Saramaka people in order to recognize them as injured party. Nevertheless, the Court observes that the members of the Saramaka people are identifiable in accordance with Saramaka customary law."

[27] United Nations, Human Rights Committee, General Comment No. 23, U.N. Doc. CCPR/C/21/Rev.l/Add.S, of April 26, 1994, para. 1.

43. Following this line of reasoning, in previous cases, the Court has ordered -for example- the creation of trusts in a case dealing with tribal peoples, with a Foundation serving as trustee in charge of administrating or distributing reparations for material and unmaterial damages. These reparations were ordered in benefit of certain individuals that were members of the Community, but not in benefit of the Community itself.[28] Similarly, the Court has ordered the payment of a specific amount for the concept of pecuniary and non-pecuniary damages to the organization of an indigenous Community for its subsequent distribution to the members of the Community, beneficiaries of the compensation.[29]

44. Regarding the specific damage caused by the violation of human rights in cases dealing with indigenous and tribal peoples, previous judgments not always acknowledged that a non-pecuniary damage had been caused to the Community as a whole.[30] However, at least since the *Case of the Plan de Sánchez Massacre v. Guatemala,* the Court has established that: "[g]iven that the victims in this case are members of the Mayan people, this Court considers that an important component of the individual reparation is the reparation that the Court will now grant to the members of the community as a whole."[31]

45. Later, in the *Case of the Saramaka People v. Suriname* the Court recognized, upon determining non-pecuniary damage, the specific manner in which that damage manifests itself when dealing with indigenous or tribal peoples and considered the impact the violations of human rights had in that case on the People as a whole. In this sense, it established that those violations constituted "a denigration of their basic cultural and spiritual values" and that "the immaterial damage caused to the Saramaka people by these alterations to the very fabric of their society entitles them to a just compensation."[32] However, it ordered payment of the reparations to members of the Community.

46. The Court had already established the importance of acknowledging the juridical personality of the members of an indigenous community,[33] and in the *Case of Saramaka* it recognized this importance specifically in reference to the indigenous or tribal peoples themselves, being able to exercise said rights such as the right to collective property.[34] The Court established that acknowledgment of the juridical personality of the Peoples "is a natural consequence of the recognition of the right of members of indigenous and tribal groups to enjoy certain rights in a communal manner."[35] Additionally, it established that that the recognition of the juridical personality of only the individual members of an indigenous or tribal community "fails to take into account the manner in which members

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[28] *Cfr. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs.* Judgment of September 10, 1993. Series C No. 15, paras. 100 to 108.

[29] *Cfr. Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of June 23, 2005. Series C No. 127, para. 248.

[30] *Cfr. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs.* Judgment of September 10, 1993. Series C No. 15, paras. 83 to 84.

[31] *Cfr*. *Case of the Plan de Sánchez Massacre v. Guatemala. Reparations.* Judgment of November 19, 2004. Series C No. 116, para. 86.

[32] *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 28, 2007. Series C No. 172, para. 200.

[33] *Cfr*. *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, paras. 187 to 194.

[34] *Cfr. Case of the Saramaka People v. Suriname,* para. 167.

[35] *Case of the Saramaka People v. Suriname,* para. 172.

of indigenous and tribal peoples in general […] enjoy and exercise a particular right; that is, the right to use and enjoy property collectively in accordance with their ancestral traditions."[36]

47. As previously stated by the Court, recognition of juridical personality is essential, since the breach of said recognition "implies the absolute denial of the possibility of being the holder of such rights and of assuming obligations, and renders individuals vulnerable to the non-observance of the same by the State or by individuals." The States must guarantee "the legal and administrative conditions that may secure for them the exercise of such right" especially to "those persons in situations of vulnerability, exclusion, and discrimination."[37]

48. For the first time in the *Case of the Kichwa Indigenous Community of Sarayaku v. Ecuador*, the Court established that the violation of the rights to consultation, to indigenous community property, and to cultural identity, but also to the judicial guarantees and judicial protection, had been perpetrated in detriment of the Kichwa Indigenous People of Sarayaku.[38]

49. Additionally, the Court established that the injured party was the Community and considered that:

> On previous occasions, in cases concerning indigenous and tribal communities or peoples, the Court has declared violations to the detriment of the members of indigenous or tribal communities and peoples. However, international law on indigenous or tribal communities and peoples recognizes rights to the peoples as collective subjects of international law and not only as members of such communities or peoples. In view of the fact that indigenous or tribal communities and peoples, united by their particular ways of life and identity, exercise some rights recognized by the Convention on a collective basis, the Court points out that the legal considerations expressed or indicated in this Judgment should be understood from that collective perspective.[39]

50. Upon ordering pecuniary reparations for non-pecuniary damages, the Court considered the specific damage caused in detriment of the Community, referring to "the suffering caused to the People and to their cultural identity, the impact on their territory, […] as well as the changes caused in their living conditions and way of life."[40]

51. This important development was made, as stated by the Court, following the corresponding international regulations, referring specifically to Article 3(1) of Convention 169 of the ILO, which states that: "[i]ndigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination

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[36] *Case of the Saramaka People v. Suriname,* paras. 168 to 169.

[37] *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, paras. 188 to 189; *Cfr*. *Case of the Girls Yean and Bosico v. Dominican Republic.* Judgment of September 8, 2005. Series C No. 130*,* para. 179, and *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 179.

[38] *Cfr*. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 27, 2012. Series C No. 245, para. 341(2) and (4).

[39] *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 27, 2012. Series C No. 245, para. 231.

[40] *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations.* Judgment of June 27, 2012. Series C No. 245, para. 323. See also *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of October 14, 2014. Series C No. 284, para. 246.

to male and female members of these peoples;"[41] and to Article 1 of the United Nations Declaration on the Rights of Indigenous Peoples: "[i]ndigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law."[42]

52. In subsequent cases, as well as in this judgment, the Court has repeated that the injured party is the indigenous or tribal Peoples and their members.[43]

53. Taking this into consideration, it can be verified that in the Court's case law there is now an agreement between the right to collective property and those entitled to this right, namely the Community and its members, who are also beneficiaries of the measures of reparation. It is also acknowledged that the impact of the violations on the Community have a specific nature that must be recognized. It is necessary to add this to the collective compensation.

54. Collective compensation is maybe the only way in which the specific damage suffered by the Community as a whole, which is different to the damage suffered by its members as individuals, can be adequately redressed, even when they are both intimately related.[44] As established by the Court in the *Case of the Yakye Axa Indigenous Community v. Paraguay:* "reparations take on a special collective significance"[45] when they refer to an indigenous or tribal group.

55. In fact, only granting individual reparations in cases of indigenous or tribal peoples, besides being inconsistent with their world view and collective way of life, may affect the communities' social and cultural fabric and cause division between its members because it is contrary to their customs and traditions. Therefore, the collective compensation measure, ordered in this case through a Community development fund, and not the payment of individual reparations to its members, must be the general rule in cases dealing with indigenous and tribal peoples,. The most obvious exception to this general rule would be the cases dealing with specific damages caused in detriment of certain individuals, members of a Community.

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41 International Labor Organization (ILO), Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, adopted on June 27, 1989 and in force since September 5, 1991.

42 The Court also referred to United Nations, Committee on Economic, Social, and Cultural Rights, General Comment No. 17, U.N. Doc. E/C.12/GC/17, of November 2006, paras. 7, 8, and 32; General Comment No. 21, U.N. Doc. E/C.12/GC/21, of November 2009, paras. 8 to 9; African Charter on Human and Peoples' Rights of 1986, Articles 20 to 22.

43 *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of October 14, 2014. Series C No. 284, para. 209; *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. *Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 20, 2013. Series C No. 270, fourth operative paragraph and para. 257.

44 *Cfr*. United Nations, Human Rights Committee, General Comment No. 23, U.N. Doc. CCPR/C/21/Rev.l/Add.S, of April 26, 1994, para. 6(2): "[a]lthough the rights protected under Article 27 [of the Covenant on Civil and Political Rights] are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language, or religion."

45 *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, para. 188.

(iii) Aspects regarding the administration of the Community development fund

56. In previous cases, for the first time in the *Case of the Yakye Axa Indigenous Community v. Paraguay,* the Court ordered, along with the creation of a Community development fund, the establishment of an "implementation committee" which would determine "[t]he specific components of said projects [educational, housing, agricultural, and health in benefit of the members of the Community]." The mentioned committee would have a representative appointed by the victims, another by the State, and a "third member appointed by agreement between the victims and the State."[46]

57. In this case, the Court ordered that the State shall "appoint an authority with competence in the matter, in charge of the administration" of the Community development fund. On its part, the Community of Triunfo de la Cruz "must appoint a representative as liaison with the State."[47] Even though the importance of collective reparation in cases of indigenous or tribal peoples has been pointed out, the usefulness of this measure of reparation depends on its effective implementation. The latter requires a continuous and transparent communication between the State and the Community's representatives, and both parties must provide sufficient information regarding the activities carried out for the implementation of the Fund and the investment and development plans executed within its framework.

58. This implementation requires an effective use of infrastructure, knowledge, and the means at the State's disposal. This makes the acceleration and coordination necessary for the creation of the Fund and the implementation of the projects easier. In this sense, the Community development fund is a figure that takes advantage of the state's structure and its efficacy, efficiency, and economy.

59. Having said this, it is important to point out that it is the Community who must decide on its own development. The judgment states that the Fund is primarily for: "i) developing projects oriented towards increasing agricultural or any other productivity in the Community; ii) improve the Community's infrastructure according to its present and future needs; iii) restore the deforested areas, and iv) others considered appropriate in benefit of the Community of Triunfo de la Cruz."[48]

60. In this regard, it is important to mention that Convention 169 of the ILO recognizes the aspirations of Indigenous Peoples to "exercise control over their own institutions, ways of life, and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live"[49] and that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and well as the United Nations Declaration on

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[46] *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, paras. 205 to 206. See also: *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of March 29, 2006. Series C No. 146, paras. 224 to 225; *Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 28, 2007. Series C No. 172, para. 202; *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of August 24, 2010. Series C No. 214, paras. 323 to 324.

[47] Para. 297 of the judgment.

[48] Para. 296 of the judgment.

[49] Convention Nº 169 of the ILO, whereas paragraph number five.

the Rights of Indigenous Peoples contemplate the right of the Peoples to freely pursue their economic, social, and cultural development.[50]

61. In this same sense, the Court has established in previous cases that, regarding the Fund "[t]he manner in which the State will make the foregoing reparation is to be decided by the State itself, as long as the spirit of the reparation meant to […] be observed and the Community to which he belonged may benefit from works or services thereby chosen, without the State interfering with the purposes for which the Community may want to use such funds."[51]

62. Therefore, it is important that the implementation of the Fund and any investment plan made be consulted and have the Community's effective participation, taking into consideration international standards for consultations. Namely, said consultation must be of a prior nature, be carried out in good faith, with the aim of reaching an agreement, appropriate, accessible, and informed.[52]

63. The foregoing was included in the judgment regarding the development projects, mentioning that they would be carried out "as agreed with the Community of Triunfo de la Cruz" and that "the implementation of the Fund would be done as defined by the Community."[53] It is important that the implementation be in accordance with the Community's customs. If not, the sense of this form of collective compensation as a measure to redress the specific damage caused in detriment of the indigenous or tribal peoples would lose its essence.

D. Problems of delimitation and "remediation" of lands as an expression of a social situation

64. The majority of the cases that deal with human rights committed in detriment of indigenous and tribal peoples or their members submitted to the jurisdiction of the Court refer to, among others, the delimitation, demarcation, and titling of traditional lands.[54] Within the factual framework of several of these cases we can find the historical circumstances that led, at least partially, to the current situation faced by these peoples, including their insecurity regarding the use and property of their lands. These factual frameworks also let us observe the domestic situations in the corresponding countries that probably contribute to maintaining their situations of insecurity and marginalization.

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[50] International Covenant on Civil and Political Rights, Article 1(1); International Covenant on Economic, Social, and Cultural Rights, Article 1(1), and United Nations Declaration on the Rights of Indigenous Peoples, considering paragraphs number six, nine, ten, 16 and Articles 3 to 5. The Human Rights Committee stated that the right to self-determination enshrined in Article 1 of the International Covenant on Civil and Political Rights "is a right that belongs to the peoples."

[51] *Case of Escué Zapata v. Colombia. Interpretation of the Judgment on Merits, Reparations, and Costs.* Judgment of May 5, 2008. Series C No. 178, para. 21. See also, *Case of Aloeboetoe et al. v. Suriname. Reparations and Costs.* Judgment of September 10, 1993. Series C No. 15, para. 108 in which the Court indicated that the State "shall not be permitted to restrict or tax the activities of the Foundation or the operation of the trust funds beyond current levels, nor shall it modify any conditions currently in force nor interfere in the Foundation's decisions, except in ways that would be favorable to it."

[52] Para. 160 of the judgment, and *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,* para. 178.

[53] Paras. 296 and 297 of the judgment.

[54] *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua; Case of the Yakye Axa Indigenous Community v. Paraguay; Case of the Sawhoyamaxa Indigenous Community v. Paraguay*; *Case of the Saramaka People v. Suriname; Case of the Xákmok Kásek Indigenous Community v. Paraguay*; *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous Bayano and their Members v. Panama.*

65. In this sense, problems of delimitation, demarcation, titling, and "remediation" of lands inhabited by indigenous or tribal communities and third parties should not be understood as merely legal problems, but as expressions of more complex situations, such as the cohabiting of different ethnic groups in many of the region's countries. In this sense, the Court has previously stated that the right of indigenous peoples to a cultural identity must be assured in a multicultural, pluralistic, and democratic society.[55]

66. The foregoing also means that the solution to this type of problems must be handled by States in a comprehensive manner, not only as a legal matter.

67. It can be concluded from the facts of this case that the problems and conflicts regarding the right to property and use of the Community's traditional territory are only one of the aspects of the situation that exists in the region. It seems that the underlying issue in these conflicts is an absence of public policies -or lack of their consistent and adequate implementation- in matters of registration, redistribution of lands, education, creation of spaces for the integration and dialogue between indigenous and non-indigenous communities.

68. To find solutions to these conflicts it is necessary to define comprehensive public policies and cohabiting strategies that go beyond the delimitation and demarcation of plots of land and are addressed at avoiding permanent situations of conflict. The help of different experts including, among others, sociologists and social workers, is necessary. Understanding that the rights of indigenous and tribal peoples cannot be understood as privileges over the rights of the rest of the population, the States must diffuse and implement the policies addressed at avoiding situations of inequality, thus guaranteeing the effective enjoyment of the rights of all citizens, both of indigenous and non-indigenous communities.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Secretary

[55] *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, para. 159.