INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE PUNTA PIEDRA GARIFUNA COMMUNITY AND ITS MEMBERS *v.* HONDURAS

JUDGMENT OF OCTOBER 5, 2015
(Preliminary objections, merits, reparations and costs)

In the case of the Punta Piedra *Garifuna Community and its members*,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") composed as follows:

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 Convention" or "the "American Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter the "Rules of Procedure") delivers this judgment, structured as follows:

CASE OF THE PUNTA PIEDRA GARIFUNA COMMUNITY AND ITS MEMBERS
***v.* HONDURAS**
TABLE OF CONTENTS

I
INTRODUCTION OF THE CASE AND PURPOSE OF THE APPLICATION

1. *The case submitted to the Court.* On October 1, 2013, the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") submitted to the jurisdiction of the Inter-American Court of Human Rights the case of the *Punta Piedra Garifuna Community and its members* against the Republic of Honduras (hereinafter, "the State" or "Honduras"). According to the Commission, this case relates to the State's international responsibility for the violation of the right to property of the Punta Piedra Garifuna community (hereinafter, "the community" or "the Punta Piedra community"), as a result of the failure to comply with the obligation to guarantee rights because it had granted full title to the land to the community in 1993 and 1999 without having freed the land of encumbrances (*saneamiento*) satisfactorily,[1] even though it was aware that non-indigenous third parties occupied part of the lands and territories that were titled. According to the Commission, as a result of this situation, the community only exercises effective ownership over half the territory titled by the State, with the subsequent negative effects on their way of life, livelihood, culture, and traditional customs and practices. The Commission also indicated that the continuing occupation by non-indigenous people had created a conflictive situation that had resulted in threats, harassment and even the death of a member of the Punta Piedra community. Moreover, the Commission argued that the State had reneged on the agreements made to clear the title, and that the community had not had an effective remedy to achieve the peaceful possession of their lands and territories.

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 *Organización Fraternal Negra Hondureña* (hereinafter "OFRANEH"), against Honduras for the violation of Articles 8, 21 and 25 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in relation to Article 1(1) of this international instrument and International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples (hereinafter "ILO Convention No. 169"), to the detriment of the Garifuna Communities of Cayos Cochinos, Punta Piedra and Triunfo de la Cruz. On December 19, 2003, the Commission decided to separate the petitions into three separate matters, one for each community, and assigned each one a separate case number.
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> *b) Precautionary measures.* On June 15, 2007, OFRANEH requested the adoption of precautionary measures on behalf of the Punta Piedra Garifuna community and, in particular, one of its members, Marcos Bonifacio Castillo, because he had received death threats. On August 20, 2007, the Commission granted precautionary measures in favor of Marcos Bonifacio Castillo (MC-109-07) and continues monitoring them to date.

[1] For the purposes of this case, the Inter-American Court will understand the word "*saneamiento*" (clearing title/freeing the land of encumbrances), as a way of ensuring the use and enjoyment of collective property pursuant to Article 21 of the American Convention.

c) Admissibility Report. On March 24, 2010, the Commission issued Admissibility Report No. 63/10, in the matter of the Punta Piedra community, finding that it was competent to hear the petition and deciding to admit the claim concerning the presumed violation of Articles 21 and 25 of the Convention, in relation to Articles 1 and 2 of this instrument.

d) Merits Report. On March 21, 2013, the Commission adopted Merits Report No. 30/13, under Article 50 of the American Convention (hereinafter "the Merits Report" or "Report 30/13") in which it reached a series of conclusions and made several recommendations to the State, namely:

Conclusions:

> i) The State had violated the right to property recognized in Article 21 of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the Punta Piedra community.
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> ii) The State had violated the right to judicial protection recognized in Article 25 of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the Punta Piedra community.

Recommendations:

i) Adopt, as soon as possible, the necessary measures to make effective the right to property of the Punta Piedra community and, in particular, measures to clear the title.
ii) Take the necessary steps to prevent the Punta Piedra community from being subjected to discriminatory acts and, in particular, from being exposed to acts of violence by third parties owing to their ethnic origin.
iii) Adopt an effective and simple remedy that protects the right of the indigenous peoples to claim and gain access to their traditional territories and that protects them from actions by the State or third parties.
iv) Investigate and punish those responsible for the threats, harassment, acts of violence and harm to the Punta Piedra community.
v) Make individual and collective reparation for the consequences of the violation of the said rights.
vi) Take the necessary measures to prevent the occurrence of similar acts in the future.

e) Notification to the State. The Merits Report was notified to the State on April 1, 2013, granting it two months to provide information on the measures adopted to comply with the recommendations.

f) Request for an extension and report on compliance. On June 26, 2013, the State requested an extension in order to comply with the recommendations. The Commission granted a three-month extension and also asked the State to present a report on the progress made by September 1, 2013. However, no report was presented.

g) Submission of the case to the Court. On October 1, 2013, the Commission submitted this case to the jurisdiction of the Inter-American Court. The

Commission appointed Commissioner Tracy Robinson and Executive Secretary Emilio Álvarez Icaza L., as its delegates, and Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, Isabel Madariaga and Cristina Blanco as legal advisors.

3. *The Inter-American Commission's requests.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations mentioned in its Merits Report and to order the State to comply with the recommendations indicated in that document as measures of reparation (*supra* para. 2).

II
PROCEEDINGS BEFORE THE COURT

4. *Notification to the State and to the representatives of the presumed victims.*[2] On February 5, 2013, the State and the representatives of the presumed victims (hereinafter "the representatives") were notified of the submission of this case by the Commission

5. *Brief with pleadings, motions and evidence*. On January 3, 2014, the representatives submitted the brief with pleadings, motions and evidence (hereinafter "pleadings and motions brief") in which they requested access to the Victims Legal Assistance Fund of the Inter-American Court (hereinafter "the Assistance Fund").

6. *Answering brief.* On April 10, 2014, the State filed its brief with preliminary objections, answering the submission of the case, and with observations on the pleadings and motions brief (hereinafter "the answering brief").[3] In this brief, the State filed a preliminary objection on the failure to exhaust domestic remedies.

7. *Brief with observations on the preliminary objections.* On May 15 and 22, 2014, the Commission and the representatives, respectively, forwarded their observations on the preliminary objection filed by the State.

8. *Assistance Fund*. In an order of May 30, 2014,[4] the President of the Court declared admissible the representatives' request to access the Assistance Fund so that the necessary financial assistance would be granted for two representatives to attend the public hearings and for the presentation of a maximum of three statements and one expert opinion.

9. *Request to adopt provisional measures.* On July 19, 2014, the representatives asked the Court to adopt provisional measures in favor of Miriam Merced Miranda Chamorro and other members of OFRANEH, as a result of an alleged kidnapping by a group of armed men in the community of Vallecito, municipality of Limon, department

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[2] For this case, the accredited representatives are Miriam Miranda Chamorro, OFRANEH Coordinator and Christian Callejas Escojo, legal advisor.

[3] In a communication of November 28, 2013, the State appointed Ricardo Rodriguez as its Agent and Kelvin Aguirre as Deputy Agent. Then, in a communication of January 27, 2014, the State appointed Abraham Alvarenga Urbina as its Agent and Jorge Abilio Serrano Villanueva as Deputy Agent.

[4] *Case of the Punta Piedra Garifuna Community and its members v. Honduras.* Order of the President of the Inter-American Court of Human Rights concerning the Victims' Legal Assistance Fund of May 30, 2014. Available at: http://www.corteidh.or.cr/docs/asuntos/garifuna_fv_14.pdf

of Colon. In an order of November 14, 2014,[5] the Court decided to reject the request for provisional measures because: (i) the State had provided security and protection to avoid any reprisals through the intervention of members of the Xatruch Military Unit; (ii) the incidents occurred in a community other than the Punta Piedra Garifuna community, and (iii) there was insufficient evidence to prove a relationship or connection between the incidents that had occurred and the participation of Miriam Miranda and other members of OFRANEH as representatives in this case, or a direct relationship with the situations alleged herein.

10. *Call to a public hearing.* In an order of July 31, 2014,[6] the Court's President decided, among other matters: (i) to transfer to the instant case the expert opinion of Jose Aylwin previously provided at the public hearing in the case of the *Triunfo de la Cruz Garifuna Community and its members v. Honduras*; (ii) to require the statements of eleven presumed victims offered by the representatives, two witnesses offered by the State and one expert witness offered by the representatives to be provided before notary public or traditional authorities of the Punta Piedra Garifuna community, and (iii) to call the parties to a public hearing to receive the statements of two presumed victims proposed by the representatives and an expert opinion proposed by the Commission. In a communication of August 21, 2014, the Commission asked the Court to allow James Anaya to render his expert opinion in a different manner. Accordingly, the Court decided that his opinion be presented by affidavit.[7] The statements made before notary public and traditional authorities were received on August 22 and 25 and September 11, 2014.[8]

11. *Request to joinder cases.* In a communication of August 11, 2014, the representatives asked the Court to joinder the cases of the *Punta Piedra Garifuna Community* and the *Triunfo de la Cruz Garifuna Community as* they considered that the requirements established in Article 30 of the Court's Rules of Procedure had been met. In a note of the Secretariat of August 29, 2014, the parties were informed that "due to the different and specific characteristics of each case, as well as the actual procedural stage of each one, the full Court has considered it unnecessary to joinder the cases."

12. *Public hearing.* The public hearing was held on September 2, 2014, in Asunción, Paraguay, during the Court's 51st special session. At the hearing, the Court received the statements of presumed victims Lidia Palacios and Doroteo Thomas Rodriguez proposed by the representatives, as well as the final oral observations and arguments of the Commission, the representatives and the State.

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[5] *Case of the Punta Piedra Garifuna Community and its members v. Honduras.* Order of the Inter-American Court of Human Rights of November 14, 2014. Available at: http://www.corteidh.or.cr/docs/medidas/garifuna_se_02.pdf

[6] *Case of the Punta Piedra Garifuna Community and its members v. Honduras.* Order of the President of the Inter-American Court of Human Rights of July 31, 2014. Available at: http://www.corteidh.or.cr/docs/asuntos/garifuna_31_07_14.pdf

[7] In a communication of August 21, 2014, the Commission advised that expert witness James Anaya "would be unable to travel to Paraguay to provide his expert opinion at the public hearing" and therefore asked the Court to allow the expert witness to provide his opinion by electronic audiovisual means, or else by affidavit. In a note of the Secretariat of August 28, 2014, the Commission was informed that the full Court had decided that the expert witness should provide his opinion "by affidavit, because the reason for the need to change [the way in which the expert opinion would be provided] had not been justified."

[8] In a Secretariat note of August 28, 2014, it was recorded that "the representatives have not forwarded the statements of Roberto Mejia Castillo and Juliana Suazo Montero, presumed victims in the case, pursuant to the first operative paragraph of the President of the Court's order dated July 31, 2014."

13. *Final written arguments and observations.* On October 2, 2014, the representatives and the State presented their final written arguments and annexes, as well as helpful evidence requested during the public hearing of the case, and the Commission presented its final written observations.[9]

14. *Observations on the annexes.* In communications of November 10 and 14, 2014, the Commission and the State submitted their observations on the annexes to the final written arguments and on the helpful evidence. The representatives did not present observations.

15. *Helpful evidence*. On December 3, 2014, following the instructions of the Court's President and based on Article 58(b) of the Court's Rules of Procedure, the Secretariat asked the State and the representatives to present documentation as helpful evidence.[10] In communications of December 16 and 17, 2014, the State and the representatives forwarded some of the documentation requested.[11]

16. *Supervening facts.* In a communication of February 25, 2015, the representatives provided documentation on mining activities as helpful evidence. The corresponding observations of the State were received on June 10, 2015.

17. *Report of the American Association for the Advancement of Science*. On October 24, 2014, based on Article 58(c) of the Court's Rules of Procedure, the American Association for the Advancement of Science was asked to prepare a report in order to obtain additional information by satellite imagery analysis on the changes in the territory of the Punta Piedra Garifuna community between 1993 and the present (hereinafter "AAAS Report"). This report was transmitted to the parties on March 10, 2015, so that they could forward any observations they deemed pertinent, and these were received on May 15, 2015.

18. *Disbursements from the Assistance Fund*. On March 10, 2015, the report on disbursements from the Court's Legal Assistance Fund was sent to the State. On April 28, 2015, the State presented its observations.

19. *On-site procedure in the Punta Piedra Garifuna community.* In its answering brief, the State proposed an on-site inspection in the territory of the Punta Piedra

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[9] The Court's Secretariat noted that the parties had not forwarded: (a) updated information on the number of hectares occupied by the inhabitants of the village of Rio Miel; (b) the ownership titles of the lands of Ambrocio Thomas Castillo and Sergia Zapata Martinez, and (c) information on the creation of Sierra Rio Tinto National Park, as well as the approximate number of hectares occupied by the park within the territory of the Punta Piedra community. The parties were requested to forward this information by October 31, 2014.

[10] The documentation that the State was asked to provide as helpful evidence was as follows: (1) the Ethnic Prosecutor's conclusions about the vulnerability of the inhabitants of Rio Miel in File No. 0801-2010-12292; (2) File No. 0801-2010-12739; (3) investigations and criminal proceedings instituted due to the usurpation complaint by Félix Ordonez Suazo; (4) information on the creation of Sierra Rio Tinto National Park; (5) domestic regulations concerning: (a) the *amparo* proceeding; (b) the administrative proceeding for the execution of the extrajudicial conciliation agreement; (c) the "declaratory judgment" or civil action; (d) the procedure to declare a public deed null and void; (e) the existence of any other procedure, either expropriation or land claim, and (f) the procedural legitimacy of collective groups, in this case, indigenous communities; (5) copy of the Agrarian Reform Act, the Modernization and Development of the Agricultural Sector Act, the Property Act and the Amparo Act, in force at the time of the events and at present; (6) regulations and information concerning the National Agrarian Institute (INA) and the Property Institute (IP). Additionally, the representatives were asked to submit their opinion on whether the Sierra Rio Tinto National Park was located within the territory of Punta Piedra community.

[11] The representatives did not forward evidence on the location of the Sierra Rio Tinto National Park.

community. Therefore, on August 25, 2015, a delegation from the Court carried out this procedure to observe some areas of the territory claimed and to meet with the parties, the Commission, and various authorities and villagers.[12] First, the delegation overflew the territory related to the facts of the case. On its arrival, the delegation was received by numerous members of the Punta Piedra community. Later on, a meeting was held where different members of the community expressed their opinions regarding the problem areas in this case to the Court's delegation. Then, the delegation visited the area of Cusuna where the Punta Piedra II non-metallic exploration concession would allegedly be located. Lastly, the delegation visited some parts of the village of Rio Miel (hereinafter also "the village of Rio Miel" or "Rio Miel") and listened to the opinions of several inhabitants. On September 4, 18 and 22, 2015, the Court received the parties' observations on the visit.

20. *Deliberation of the case.* The Court began to deliberate this judgment on October 5, 2015.

III
JURISDICTION

21. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3) of the American Convention because Honduras has been a State Party to the American Convention since September 8, 1977, and accepted the Court's contentious jurisdiction on September 9, 1981.

IV
PRELIMINAY OBJECTION
ALLEGED FAILURE TO EXHAUST DOMESTIC REMEDIES

A. Arguments of the parties and of the Commission

22. The ***State*** did not include a specific independent section on preliminary objections. However, in the conclusions to its answering brief, it argued that there had been a failure to exhaust domestic remedies with regard to the alleged violation of the right to property because the presumed victims had "not taken advantage of the actions or remedies established in the domestic jurisdiction, as they […] had not filed claims before the domestic authorities and there is no evidence that a final judgment or resolution had denied such claims." The State also argued that judicial proceedings were underway in relation to the death of Félix Ordóñez Suazo and an arrest warrant was pending execution against the individual presumably responsible. Therefore, a ruling by the Inter-American Court was not appropriate.

23. The ***Commission*** noted that the only mention in the State's answering brief that could be understood as a preliminary objection related to the alleged violation of the right to property. It indicated that: (i) it had been amply demonstrated that the Punta Piedra community had filed complaints on many occasions; (ii) before both the

[12] The Court's delegation that visited the community consisted of the President of the Court, Judge Humberto Antonio Sierra Porto; Alexei Julio, the Secretariat's Legal Counsel; Jorge Calderón Gamboa, lawyer and Secretariat Coordinator, and Cecilia La Hoz Barrera, Secretariat lawyer. The State was represented by Jorge Abilio Serrano Villanueva, Assistant Attorney General, and Jesus Flores, INA engineer. The Inter-American Commission was represented by Commissioner James Cavallaro and Erick Acuña, Commission Advisor. In addition, Miriam Miranda, OFRANEH General Coordinator, and other community leaders were present on behalf of the representatives.

Commission and the Court, the State had failed to comply with its obligation to specify the remedies to be exhausted and to prove that they were appropriate and effective, and (iii) considering that numerous actions had been taken that had failed to provide an answer, and agreements had been signed that had not been implemented, the Commission considered that, as decided in its Admissibility Report, the exception established in Article 46(2)(a) of the Convention that "the domestic legislation of the State concerned does not afford due process of law for the protection of the rights that have allegedly been violated" was applicable in this case.

24. The ***representatives*** indicated their understanding that the failure to exhaust domestic remedies was the only preliminary objection filed by the State. They indicated that the State had contradicted itself by arguing that domestic remedies had not been exhausted because, in the section on the right to judicial protection in its answering brief, it had acknowledged the actions taken by the community before the National Agrarian Institute and the Public Prosecution Service. They also pointed out that the State had failed to indicate the suitable and effective remedies that were available to resolve the case at the domestic level. Finally, they argued that there was no adequate domestic legislation to protect and defend the rights of indigenous peoples.

B. Considerations of the Court

25. In this chapter, the Court will analyze the two preliminary objections filed by the State in its answering brief that relate to: (1) the failure to exhaust domestic remedies to free the territory of the Punta Piedra community of encumbrances, and (2) the failure to exhaust domestic remedies in connection with the death of Félix Ordoñez Suazo.

26. Article 46(1)(a) of the Convention establishes that admission by the Commission of a petition lodged in accordance with Articles 44 or 45 of the Convention is subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.[13] However, this supposes that such remedies must exist formally and also that they must be adequate and effective owing to the exceptions set out in Article 46(2) of the Convention.[14]

27. The Court recalls that the rule of prior exhaustion of domestic remedies was conceived in the State's interests, because it seeks to exempt it from responding before an international organ for acts that are attributed to it before having had the chance to rectify them by its own means.[15] However, for a preliminary objection of failure to exhaust domestic remedies to be admissible, the State must not only specify

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[13] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 85, and *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 298, para. 27.

[14] *Cf. Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 63; and *Case of* Expelled Dominicans and Haitians *v.* Dominican Republic. *Preliminary objections, merits, reparations and costs.* Judgment of August 28, 2014. Series C N. 282, para. 30.

[15] *Cf. Case of Velásquez Rodríguez, Merits, supra,* para. 61, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288, para. 43.

the domestic remedies that remain to be exhausted, but must also demonstrate that they were available and adequate, appropriate and effective.[16]

28. In addition, in its consistent case law, the Court has maintained that an objection to the exercise of its jurisdiction based on the supposed failure to exhaust domestic remedies must be presented at the appropriate procedural moment; that is, during the admissibility procedure before the Commission;[17] therefore, it is understood that following this appropriate procedural moment, the principle of procedural preclusion comes into operation.[18]

29. Accordingly, the Court notes that during the admissibility stage of the petition before the Commission, in a brief of August 19, 2004, the State alleged that even "if […it had] not complied with its obligations to the Punta Piedra Garifuna community by paying the compensation of thirteen million one hundred and sixty-eight thousand nine hundred and eighty-two lempiras with eighty-four cents (Lps. 13,168,982.84),[19] before the community instituted legal proceedings, an administrative action should have been filed with the corresponding authority or entity, as established in articles 146, 147, 148 and 149 of Title V of the Administrative Procedure Act. If this is rejected, the interested party may file the corresponding legal action in order to obtain the right recognized in the conciliation arrangement."[20] This argument was reiterated in a brief dated October 28, 2004.[21]

30. In its Admissibility Report of March 24, 2010, the Commission considered that the State had alleged failure to exhaust an administrative remedy and that, when this had been exhausted, a judicial action should have been filed; however, this was only mentioned in general terms. In addition, it considered that the presumed victims did not have an adequate mechanism to require the State to protect their territory and, pursuant to Article 46(2)(a) of the American Convention, this constituted grounds for an exception to the rule of prior exhaustion of domestic remedies.

31. The Court notes that, during the admissibility procedure before the Inter-American Commission, the State had argued failure to exhaust an administrative remedy to claim payment of compensation. In this regard, the Court agrees with the

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16 *Cf. Case of Velásquez Rodríguez, Merits, supra,* paras. 88 and 91, and *Case of Gonzales Lluy et al., supra***,** para. 31.

17 *Cf. Case of Velásquez Rodríguez, Preliminary objections, supra***,** paras. 88 and 89, and *Case of Gonzales Lluy et al., supra***,** para. 27.

18 Cf. Case of Mémoli v. Argentina. Preliminary objections, merits, reparations and costs. Judgment of August 22, 2013. Series C N. 265, para. 47, and Case of the Human Rights Defender et al. v. Guatemala. Preliminary objections, merits, reparations and costs**.** Judgment of August 28, 2014. Series C N. 283, para. 20.

19 The Court noted that this amount related to the INA assessment of the improvements made by the inhabitants of Rio Miel in 2001 (*infra* para. 115).

20 *Cf.* The State's brief before the IACHR of August 19, 2004 (evidence file, folio 357).

21 On that occasion, the State argued that "the conflict involving the lands of the Punta Piedra Garifuna community was not settled by the procedure provided for in the Arbitration and Conciliation Act, but rather by an *Ad Hoc* Interinstitutional Commission and representatives of ODECO and OFRANEH, that made an appraisal of the useful improvements made by the said Garifuna community and added a budget for administrative expenses. Therefore, this was considered the equivalent to extrajudicial conciliation, so that the interested parties could access the administrative procedure, as provided for in the Law on Administrative Procedure […]; and the text of article 146 expressly establishes that the State shall not be sued under private law without a prior administrative claim with the respective authority or entity having been filed. […] The said extrajudicial agreement should in no way be construed as the 'exhaustion of domestic remedies' established in [Article] 46(1)(a) of the American Convention on Human Rights." *Cf.* The State's brief before the IACHR of October 28, 2004 (evidence file, folios 331 and 332).

Commission that the State's reference to the administrative remedy to obtain compensation was not a suitable remedy for the community's attempt to recover the occupied territory or to claim compensation.

32. In addition, the Court finds that the references to the exhaustion of domestic remedies made by the State in its answering brief were very general, without indicating the remedies that the presumed victims could file or the national authorities who had jurisdiction to decide them. The Court recalls that when the State refers to the existence of a domestic remedy that has not been exhausted, it must not only indicate this at the proper moment, but also identify the remedy in question precisely and demonstrate how it would be adequate and effective to protect the persons in the situation denounced.[22] Therefore, the Court rejects the preliminary objection filed by the State.

33. Also, the Court noted the following with regard to the preliminary objection related to the failure to exhaust domestic remedies in connection with the death of Félix Ordóñez Suazo: (i) the initial petition was lodged before the Commission on October 29, 2003; (ii) the death of Félix Ordóñez Suazo occurred on June 11, 2007; (iii) the petitioners informed the Commission of the death of Mr. Ordoñez the day after the fact; (iv) in the Merits Report, the Commission referred to the death of Félix Ordoñez Suazo and the corresponding criminal investigation; (v) in its answering brief, the State indicated that the respective criminal proceedings were still at the initial investigation stage, without justifying this delay, and (vi) the State has not informed the Court of any further progress made in the investigation into the death of Mr. Ordoñez.

34. Based on the foregoing, and taking into account that, according to the State, the criminal proceedings are at the initial investigation stage even though eight years have passed since they began, the Court finds that the exception to the exhaustion of domestic remedies set forth in Article 46(2)(c) of the American Convention is applicable, owing to the unwarranted delay in the criminal investigation. Therefore, the Court rejects the preliminary objection filed by the State and will rule in this regard in the corresponding section of the chapter on merits (*infra* paras. 291 to 302).

V
THE STATE'S PARTIAL ACKNOWLEDGMENT OF RESPONSIBILITY

A. Arguments of the parties and the Commission

35. The ***State,*** in its answering brief, indicated that "it acquiesce[d] partially to the fact and claim consisting in the payment of improvements to free of encumbrances the [Punta Piedra [Garifuna] community's right to ownership of its territory because, in this case, the State of Honduras has maintained an objective and consistent position that this right is not in dispute, and neither is the granting of a legal title recognizing this right; rather, the dispute relates to the obligation to ensure peaceful possession by granting clear title to the land of protecting it effectively *vis-à-vis* third parties."

36. Regarding the facts, the State pointed out that on "December 16, 1993, [… it had] granted the Punta Piedra Garifuna community full ownership of an area of 800.64 hectares. Subsequently, on December 6, 1999, it granted full ownership of a further

[22] Cf. Case of Expelled Dominicans and Haitians, supra, para. 30.

extension of rural land […] covering 1,513.54 hectares, based on article 14 of ILO Convention 169 […] recognizing the community's right to a functional habitat; however, the granting of the said title had originated the land ownership conflict with the inhabitants of the village of Rio Miel who, when the last title was granted, possessed 600 hectares.

37. Regarding the legal arguments, the State indicated that it had ensured the right to property of the Punta Piedra Garifuna community, but "failed to ensure its peaceful possession by freeing the land of encumbrances." However, in the conclusions to its answering brief, it indicated that it had not violated Article 21 of the American Convention.

38. Regarding the measures of reparations, the State proposed to conduct a new appraisal of the improvements made by the inhabitants of the village of Rio Miel and, in addition, to allocate the sum of five or six millions lempiras to acquire a plot of land to relocate them. However, it rejected the other reparations requested by the representatives because, at the time of the settlement, the peasant farmers of the village of Rio Miel occupied a territory of approximately 3.48 hectares and not 600 hectares as indicated by the representatives, and this reduced the claim for compensation due to destruction of crops.

39. During the public hearing in the case, the State indicated that it "has never acknowledged and does not acknowledge violating the right to property of the Punta Piedra Garifuna community." Also, it made the following proposals: (i) "that the Punta Piedra Garifuna community accept that the State […] pay it for the land that is currently occupied by the Rio Miel inhabitants and the said land becomes the property of the inhabitants of Rio Miel"; (ii) "that the Punta Piedra Garifuna community accept that the State […] grant it an area of land equal to the one occupied by the inhabitants of Rio Miel in another place adjacent to their previous title," or (iii) "that the Rio Miel community […] pay the Punta Piedra Garifuna community an annual rent for the land they occupy."

40. Subsequently, in its final written arguments, the State asserted that "in view of the claims made by the Punta Piedra Garifuna community, it assumed the obligation to provide clear title to the territory granted to them." It also indicated that it had not violated the right to property of the Punta Piedra community because, since issuing the title extending the area, it had clearly established that the community possessed full ownership over the area that they occupied, but not over the areas occupied by the inhabitants of Rio Miel. However, in the same brief, the State indicated that, under Honduran law, it was incumbent on the grantor of a property title to free the property in question of encumbrances and, therefore, in the instant case, this obligation was the responsibility of the State of Honduras.

41. The ***Commission*** indicated that "the State had presented an "acquiescence" to one fact of the case – namely, that it had failed to ensure peaceful possession of the territory by clearing the title – and one claim related to the payment of improvements. However, based on the language used by the State, it was not clear whether this "acquiescence" also refers to the legal effects of the said fact."

42. The ***representatives*** pointed out that "the State seems to accept that it [did] not comply with the obligation to guarantee effective possession; however, it concludes that it did not violate Article 21 of the Convention […]. Therefore, it is not clear whether or not it 'acquiesces,' considering that, in matters relating to indigenous

peoples, this guarantee of possession is a fundamental part of the right to collective ownership. Nevertheless, the representatives considered that the State [had] acknowledged the fact that it had failed to free the land of encumbrances as required in order to ensure the peaceful possession of the territory recognized to [the community]."

B. Considerations of the Court

43. According to Articles 62 and 64 of the Rules of Procedure, and in the exercise of its powers for the international protection of human rights, a matter that transcends the intentions of the parties,[23] the Court must ensure that acts of acquiescence are acceptable for the purposes of the inter-American system for the protection of human rights. In this task, it is not restricted to merely confirming, recording or taking note of the acknowledgement made by the State, or to verifying the formal conditions of such acts, but it must also relate them to the nature and severity of the violations that have been alleged, the demands and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties, in order to clarify, insofar as possible and in the exercise of its jurisdiction, the truth of what happened.[24] Thus, an acknowledgement cannot limit, either directly or indirectly, the exercise of the Court's authority to hear the case that has been submitted to it, and to decide whether there has been a violation of a right or freedom protected by the Convention.[25]

44. As to the acknowledgment of facts, the Court notes that, in its answering brief, the State asserted that it had granted two full property titles to the Punta Piedra Garifuna community: the first for an area of 800.64 hectares and the second for an area of 1,513.54 hectares. However, it acknowledged that it had failed to free the land granted to the community of encumbrances, because the inhabitants of the village of Rio Miel possessed part of it. However, the State was inconsistent in its references to the area of territory that was occupied by third parties because, first, it indicated that 600 hectares were occupied and then that only 3.48 hectares were occupied (*supra* paras. 36 and 38).

45. In this regard, the Court finds that this acknowledgment of facts produces full legal effects pursuant to Articles 62 and 64 of the Court's Rules of Procedure. However, although the conflict involving these facts has been partially resolved, as well as the failure to free the land of encumbrances, considering that the State has rejected the other facts of the case, the Court finds it pertinent to make a comprehensive and detailed determination of those facts, bearing in mind those that have been acknowledged, because this will contribute to making reparation to the victims and to preventing the repetition of similar facts.[26]

46. Regarding the possible acknowledgment of the violation of rights, the State accepted that "it fail[ed] to guarantee [the] peaceful possession [of the community's territory] by freeing the land of encumbrances" (*supra* para. 37) and that "when

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[23] Cf. Case of Huilca Tecse v. Peru. Merits, reparations and costs. Judgment of March 3, 2005. Series C No. 121, para. 42, and Case of *Gonzales Lluy et al., supra*, para. 49.

[24] Cf. Case of Kimel v. Argentina. Merits, reparations and costs. Judgment of May 2, 2008. Series C No. 177, para. 24, and Case of *Gonzales Lluy et al., supra*, para. 49.

[25] Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 105, and Case of *Gonzales Lluy et al., supra*, para. 49.

[26] *Cf. Case of Myma Mack Chang, supra, para.* 116 and *Case of Rodriguez Vera et al. (Disappeared from the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 33**.**

granting the property title of full ownership to the Punta Piedra Garifuna community through the National Agrarian Institute (hereinafter "INA") it fail[ed] to clarify the situation of the land occupied by inhabitants of the village of Rio Miel; [consequently,] the title deed was defective as regards land ownership. In the Court's opinion the said acknowledgement has legal consequences that have an impact on the violation of the right to property of the Punta Piedra community. Therefore, the Court will analyze the scope of the violations alleged by the Commission and the representatives in the following chapters (*infra* paras. 180 to 202).

47. Lastly, regarding the claims for reparations, the Court takes note that, initially, the State offered to update the appraisal of the useful and necessary improvements made by the inhabitants of Rio Miel and to allocate a sum of money to purchase a piece of land in order to relocate the inhabitants of the village of Rio Miel. However, during the public hearing of the case, it changed its position in relation to the one indicated in its answering brief.

48. The State's initial proposal referred to a relocation of the members of the village of Rio Miel who were on territory belonging to the Punta Piedra community. However, the three proposals presented later at the public hearing entailed the inhabitants of Rio Miel remaining on the territory to which the Punta Piedra community had been granted title.

49. Consequently, the Court finds that the dispute presented subsists as regards the possible reparations in the case and will, therefore, rule on the matter.

VI
PRELIMINARY CONSIDERATIONS

50. In this chapter, the Court will make some preliminary consideration on: (a) the State's alleged failure to recognize the Punta Piedra Garifuna community as an original people, and (b) some elements of the factual framework related to the "Sierra Rio Tinto" National Park; the "Los Chorros" hydroelectric project; the BG Group's oil exploration activities, and the new Fisheries Act.

A. The State's alleged failure to recognize the Punta Piedra Garifuna community as original people

A.1 Arguments of the parties and of the Commission

51. During the public hearing of the instant case, the ***State*** indicated that "the Punta Piedra Garifuna community is not an original people of Honduras or of the Central American region. The land claimed by them […] belonged to the Misquita indigenous community." Consequently, "[t]heir right to the territory they occupy is exactly the same as the right to land that is occupied by the inhabitants of Rio Miel or any other Honduran." Subsequently, in its final written arguments, the State asserted that "the Punta Piedra Garifuna community is not an original community of Honduras or of the region; therefore, it cannot be considered an indigenous people." It also indicated that "since it is not an original people, it cannot invoke the right to ancestral lands."[27]

[27] In addition, in a communication of November 10, 2014, sent to the Court the same day, the State indicated that it has not changed its position, insofar as domestic law does not distinguish between

52. In response, the ***Commission*** emphasized that "the State had not contested the indigenous status of the community either in the context of its claims at the domestic level or during the inter-American procedure before the Commission." In addition, the State had not questioned the indigenous nature of the community in its answering brief before the Inter-American Court. Moreover, the [Commission] noted that the definitive ownership title granted to the community by the State in 1999 was based on Article 14 of ILO Convention 169." Consequently, the Commission argued that, owing to the substantial changes in the State's position before the Court, the principle of *estoppel* should be applied.

53. The ***representatives*** pointed out that "[t]his change of position by the State […] entails converting the matter into a case of an individual nature and of civil or agrarian law that would prejudice [the Punta Piedra community]; for this reason, we consider that the rule of [*estoppel*] should be applied and the indigenous nature of the Garifuna people be considered proven.

A.2 Considerations of the Court

54. The Court notes that in the 1999 definitive ownership title, the State indicated that the legal grounds for granting the territory included ILO Convention 169.[28] Also, in its Merits Report, the Commission indicated that "[t]he indigenous nature of the Garifuna people is not in dispute in the instant case." Then, in its answering brief before the Court, the State indicated that it "recognizes that the indigenous and Afro-Honduran peoples, including the Punta Piedra Garifuna community and its members, continue to face serious challenges […]." However, following the public hearing held on September 2, 2014, the State argued, for the first time during the procedure before the inter-American system, that the Punta Piedra Garifuna community was not an original people of Honduras or of the region and therefore, could not be considered an indigenous people or invoke the right to ancestral lands.

55. Based on the above, the Court recalls that the logical and adequate functioning of the inter-American human rights system signifies that, as a "system," the parties must present their positions and information on the facts coherently and in keeping with the principles of good faith and legal certainty in order to ensure an adequate substantiation of the cases for the other parties and the inter-American organs.[29] In addition, under international practice, when a party to a litigation adopts a certain position that results in detriment to himself or benefits the opposing party, he may not then, based on the principle of estoppel, assume another position contradictory to the first.[30]

56. Accordingly, pursuant to the principles of *estoppel*, good faith, procedural equality and legal certainty, the Court considers that, in this case, the State cannot

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indigenous and Afro-Honduran or Afro-descendant people. In this context, it found it pertinent to clarify that "Garifuna communities are considered to be differentiated communities but not original indigenous people."

[28] *Cf.* Definitive ownership title of December 6, 1999 (evidence file, folio 26).

[29] Cf. Case of Acevedo Jaramillo et al. v. Peru. Preliminary objections, merits, reparations and costs. Judgment of February 7, 2006. Series C No. 144, para. 167 and Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations. Judgment of November 30, 2012. Series C No. 259, para. 144.

[30] *Cf. Case of Neira Alegría et al. v. Peru. Preliminary objections*. Judgment of December 11, 1991. Series C No. 13, para. 29 *and Case of Garcia and family members v. Guatemala*. Merits, reparations and Costs. Judgment of November 29, 2012. Series C No. 258, para. 31.

make such substantial changes in the positions it took in the domestic proceedings, before the Inter-American Commission[31] and before the Court in its answering brief by, following the public hearing before the Court, presenting a hypothesis concerning non-recognition of the Punta Piedra Garifuna community as an indigenous or tribal people.

57. Therefore, the Court rejects this new argument presented by the State, notwithstanding the considerations in the chapter of this judgment on the facts.

B. Admissibility of some facts of the factual framework

B.1 Exclusion of the facts and arguments related to "Sierra Rio Tinto" National Park

58. In the chapter on proven facts of its Merits Report of March 21, 2003, the ***Commission*** noted that Decision 007-2011 of the National Institute of Forest Conservation and Development, Protected Areas and Wildlife had declared the "Sierra Rio Tinto" National Park a protected area, and that this covers part of the Garifuna territory. Also, even though no legal effects had been granted to this fact in the Merits Report, during the public hearing the Commission indicated that "a forest reserve has been created in part of the community's territory without prior consultation."

59. The ***representatives*** added that the said decision had been published in the Gazette on July 5, 2011, and even though the Executive's decision had not been validated by the National Congress, they considered that the fact that it had been published in the Gazette was a sign that the State had executed legal acts involving the Garifuna territory.

60. The ***State*** made no reference to the "Sierra Rio Tinto" National Park in its answering brief.

61. During the public hearing of the case, the Court asked the parties to provide precise information on the location of the said national park and the area of the territory of the Punta Piedra community that would presumably be affected.

62. On November 10, 2014, the State indicated that the location of the National Park did not cover the territory titled in favor of the Punta Piedra community and provided a map to support this assertion. Despite repeated requests by the Court's Secretariat,[32] the representatives failed to forward evidence to support their position.

63. Taking into account the information provided by the State as helpful evidence and given the absence of evidence to support the representatives' position, the Court noted that the "Sierra Rio Tinto" National Park was located outside the territory titled to the Punta Piedra community. It observed that the territory titled to the community is located to the north of the Tinto River, whereas the Sierra Rio Tinto National Park is located to the south of that river. The Court has no additional evidence which would link the "Sierra Rio Tinto" National Park and the territory titled to the community.

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[31] Cf. Case of Neira Alegria et al. v. Peru, supra, para. 29, and Case of the Santo Domingo Massacre, supra, para. 148.

[32] *Cf.* Secretariat notes of October 24 and December 3 and 19, 2014 (merits file, folios 589, 690 and 706).

64. Therefore, the Court will exclude the facts and arguments related to the creation of the "Sierra Rio Tinto" National Park from the analysis of the instant case.

B.2 Request to incorporate facts related to the "Los Chorros" Hydroelectric Project; mining exploration and exploitation activities and the Fisheries Act

65. In their pleadings and motions brief filed before the Court on January 3, 2014, the ***representatives*** provided information on presumed facts that were not included within the factual framework of the Merits Report submitted by the Commission, namely: (1) the presumed construction of the "Los Chorros" hydroelectric dam on the Sico River; (2) the commencement of mining exploration and exploitation activities by the "BG Group" oil company in the continental shelf in front of La Mosquitia, and (3) the approval of a draft Fisheries Law by the Opinions Committee of the Honduran Congress. Subsequently, during the public hearing of the case on September 2, 2014, the representatives reported that: (1) the "Los Chorros" hydroelectric dam project had been announced in February 2011 and would presumably flood the southern margin of the ancestral territory of the Punta Piedra community; (2) in July 2014, the commencement of exploration activities by the "BG Group" oil company was announced, and (3) on August 20, 2014, the Fisheries Law was enacted presumably allowing industrial fishing within three miles of the coast. Lastly, with their final written arguments presented to the Court on October 2, 2014, the representatives provided three newspaper articles as evidence.[33]

66. Neither the ***State*** nor the ***Commission*** presented observations in this regard.

67. The Court recalls that the factual framework of the proceedings before it is constituted by the facts contained in the Merits Report submitted to its consideration. Consequently, it is not admissible for the parties to submit new facts that differ from those contained in this report, without prejudice to contributing new facts that explain, clarify or reject those that have been mentioned in the report and submitted to the Court's consideration. The exception to this principle are facts that are classified as supervening, or when the parties later become aware of facts or obtain access to evidence on them, provided these are related to the facts in these proceedings.[34]

68. Regarding the "Los Chorros" hydroelectric dam; first, the Court considers that the presentation of these facts is not intended to explain or clarify the central issue of the case, namely, the failure to free the territory titled to the Punta Piedra community of encumbrances. Second, although the facts occurred in February 2011 according to the representatives, the Court has verified that the first reference in this regard was made in a brief of June 5, 2013, that the representatives submitted to the Inter-American Commission in response to the Merits Report issued on March 21, 2013. Consequently, the Court considers that the presumed facts related to the "Los Chorros" hydroelectric dam were not supervening to the issue of the Merits Report, and are

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[33] Regarding the "Los Chorros" hydroelectric project, see newspaper article, available at http://www.newsinamerica.com/pgint.php?id=10908. Regarding oil exploration activities, see press release available at http://www.elheraldo.hn/inicio/443116-331/bg-group-iniciara-exploracion-petrolera-en-la-mosquitia-de-honduras. Regarding the enactment of the Fisheries Law, see newspaper article available at http://www.latribuna.hn/2014/08/20/sustituyen-nueva-ley-de-pesca/.

[34] Cf. *Case of the "Five Pensioners" v. Peru. Merits, reparations and costs.* Judgment of February 28, 2003. Series C No. 98, para. 153 and Case of Rodriguez Vera et al. (Disappeared from the Palace of Justice), supra, para. 47.

unrelated to the other facts of the proceedings. Therefore, their inclusion within the factual framework of the instant case is inadmissible.

69. With regard to the mining exploration activities in front of the coast of La Mosquitia and the enactment of the Fisheries Law in Honduras, the Court considers that, as argued by the representatives, these facts are supervening insofar as they occurred after the issue of the Merits Report. However, the Court considers that the alleged facts are unrelated to the central issue of the case. In addition, the Court lacks sufficient evidence to rule on the presumed impacts that those facts might have on the territory of the Punta Piedra Garifuna community. Consequently, their inclusion in the factual framework of this case is inadmissible.

VII
EVIDENCE

A. Documentary, testimonial and expert evidence

70. The Court received diverse documents presented as evidence by the Commission, the representatives and the State, attached to their principal briefs (*supra* paras. 2.g, 5 and 6). The Court also received the documents it had requested as helpful evidence, based on Article 58 of the Rules of Procedure (*supra* paras. 13 and 15) as well as some documents following the on-site procedure (*infra* para. 73). In addition, the Court received: (1) the statements of witnesses Jesús Ramón Flores and Everardo Diaz Bonilla proposed by the State; (2) the opinion of expert witness Christopher Loperena proposed by the representatives; (3) the statements of presumed victims Antonio Bernárdez Suazo; Armando Castillo Núñez; Dionisia Avila Castillo; Edelberta Ávila Castillo; Edito Suazo Ávila; Guillermo Martinez Batiz; Joaquin Thomas Rodriguez; Paulino Mejía Castillo; Santos Ávila Castillo and Santos Celi Suazo Castillo proposed by the representatives, and (4) the opinion of expert witness James Anaya proposed by the Commission. Regarding the evidence provided during the public hearing, the Court received the statements of presumed victims Lidia Palacios and Doroteo Thomas Rodriguez proposed by the representatives. In addition, the Court incorporated the expert opinion of José Aylwin previously provided in the case of the *Triunfo de la Cruz Garifuna Community and its members v. Honduras.*[35]

B. Admission of the evidence

B. 1 Admission of the documentary evidence

71. In this case, as in others, the Court admits those documents submitted by the parties and the Commission at the appropriate procedural moment that have not been contested or challenged, and the authenticity of which has not been questioned.[36] The documents requested by the Court, and that were provided by the parties after the public hearing and the on-site visit, are incorporated into the body of evidence pursuant to Article 58 of the Rules of Procedure (*supra* paras. 15 and 19).

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[35] The purpose of these statements was established in the order of the President of July 31, 2014, *supra,* para. 10.

[36] Cf. Case of Velásquez Rodríguez, Merits, supra, para. 140, 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. 12.

72. Regarding the newspaper articles, the Court has considered that they may be assessed when they refer to well-known public facts or declarations by State officials, or when they corroborate aspects related to the case. Therefore, the Court decides to admit those documents that are complete or that, at least, permit their source and date of the publication to be verified.[37]

73. Also, in application of Article 58 of the Court's Rules of Procedure, the following documents are incorporated into the case file: (1) the AAAS Report on the changes that have occurred in the territory of the Punta Piedra Garifuna community from 1993 to date; (2) the Regulations to the Honduran Property Act; (3) Executive Decree 035-2001 of August 28, 2001; (4) file No. 6714-2003 on the usurpation complaint filed against Luis Portillo that prejudiced Félix Ordóñez Suazo,[38] and (5) five certifications of public deeds related to presumed sales of lots located in the village of Rio Miel**.**

B.2 Admission of the testimonial and expert evidence

74. The Court finds it pertinent to admit the statements made during the public hearing, and before notary public and traditional authorities, insofar as they relate to the purpose defined by the President in the order requiring them (*supra* paras. 10 and 12) and the purpose of this case. The Court also admits the statements made during the on-site visit.

B.3 Admission of the evidence related to mining exploration activities

75. In a communication of February 25, 2015, the representatives informed the Court of the intention to conduct mining exploration and extraction activities on part of the territory of the Punta Piedra community. As evidence of this, they provided a document entitled "Consolidated Annual Statement, DAC-2014," prepared by the CAXINA S.A. Mining Corporation and dated January 27, 2015. This document indicates that, on December 4, 2014, CAXINA S.A. Mining Corporation received mining exploration license No. 105/12/2014 to execute activities in the "Punta Piedra II" mining concession over an area of 800 hectares for a period of 10 years. The documentation provided by the representatives was forwarded to the Commission and the State so that they could send their observations. Also, during the on-site procedure, the Court received a map in this regard from the State and visited one of the areas where the mining exploration activities would be executed.

76. Taking into consideration the information provided by the representatives, together with the observations of the Commission and the State, the Court finds that the facts alleged with regard to the "Punta Piedra II non-metallic mining concession" occurred after the presentation of the pleadings and motions brief and the public hearing in this case. Therefore, the Court considers that, pursuant to Article 57(2) of the Court's Rules of Procedure, the evidence and information was presented as

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[37] *Cf. Case of Velásquez Rodríguez, Merits, supra,* para. 146, and *Case of Omar Humberto Maldonado Vargas et al., supra,* para. 41**.** In this regard, they provided the newspaper articles mentioned in para. 65.

[38] The Court notes that, in the Merits Report, the Commission refers to the complaints filed at the domestic level and the State's failure to conduct an investigation which prejudiced the members of the Punta Piedra community. In addition, during the proceedings before the Court, the State mentioned the existence of an usurpation complaint filed by Félix Ordóñez Suazo against Luis Portillo in 2003. Regarding these facts, the Court finds that the information provided by the State concerning the existence of the usurpation complaint completes and clarifies the domestic proceedings that form part of the factual framework of the said Merits Report (*infra* paras. 133 to 136).

supervening facts and, in consequence, it determines that it is admissible and will refer to this in the chapter on Facts (*infra* paras. 125 to 129).

C. Assessment of the evidence

77. Based on its consistent case law regarding the evidence and its assessment,[39] the Court will examine and assess the documentary probative elements forwarded by the parties and the Commission, the statements, testimony and expert opinions, and also the helpful evidence requested by the Court and incorporated into the case file, when establishing the facts of the case and ruling on the merits. To this end, it will abide by the principles of sound judicial discretion within the corresponding legal framework, taking into account the body of evidence and the arguments made in the case.[40]

78. In addition, pursuant to the Court's case law, the statements made by the presumed victims cannot be assessed separately but rather together with all the evidence in the proceedings, insofar as they may provide further information on the presumed violations and their consequences.[41]

79. The statements, together with the information and documentation received during the on-site procedure, will be assessed based on the particular circumstances in which they were produced.[42] In this regard, the Court has incorporated into the case file the video with the images filmed by the State during the on-site procedure and forwarded this to the parties.

80. Regarding the documentation forwarded together with the parties' observations on the visit, the Court will analyze this in keeping with the rules of sound judicial discretion and insofar as it complements the specific objectives of the visit.

VIII
FACTS

81. In this chapter, the Court will establish the facts of the instant case, based on the factual framework that the Commission submitted to it, taking into consideration the body of evidence, and the arguments of the representatives and the State. To this end, the facts will be described in the following chapters: (1) the Garifuna people in Honduras and the Punta Piedra Garifuna community; (2) the State's recognition and titling of the territory of the Punta Piedra community; (3) the occupation of the territory titled to the Punta Piedra Garifuna community by inhabitants of the village of Rio Miel; (4) the steps taken to free the territory of Punta Piedra community of encumbrances; (5) the "Punta Piedra II" non-metallic mining concession, and (6) the complaints filed at the domestic level as a result of the conflict between the Punta Piedra community and the inhabitants of Rio Miel.

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39 *Cf. Case of* the*" White Van" (Paniagua Morales et al.) v. Guatemala, Merits.* Judgment of March 8, 1998. Series C, No. 37, paras. 69 to 76, and *Case of Omar Humberto Maldonado Vargas et al., supra,* para. 16**.**

40 *Cf. Case of the "White Van" (Paniagua Morales et al), Merits, supra,* para. 76, and *Case of Omar Humberto Maldonado Vargas et al.*, *supra*, para. 16.

41 *Cf. Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C. No. 33, para. 43, and *Case of Omar Humberto Maldonado Vargas et al., supra,* para. 16.

42 Cf. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 49.

A. The Garifuna people in Honduras and the Punta Piedra Garifuna community

A.1 Background

82. Honduras is a multi-ethnic and multicultural nation composed mainly of mestizos, indigenous peoples and Afro-descendants. Estimates of the total Garifuna population in Honduras vary. According to the 2001 census conducted by the National Institute of Statistics, "more than 49,000 people self-identified themselves as Garifuna,"[43] while other sources estimated a population of 98,000;[44] still others have assessed the number of Garifuna differently.[45]

83. The Garifuna people originated in the 18th century from the union of Africans from Spanish vessels shipwrecked on the island of Saint Vincent in 1635 and the Amerindians who inhabited the area before colonization - Arawak and Kalinagu indigenous peoples. The Karaphunas were the descendants of these peoples and when, in 1797, Great Britain took control of the island of Saint Vincent, they were deported to the island of Roatan. From there, they emigrated to the mainland, to what is today Honduras, and then settled all along the northern coast of Honduras and toward the Caribbean coast of Guatemala, Nicaragua and Belize.[46] Nowadays, the Garifuna people consists of approximated 40 communities[47] located along the Atlantic coast or coastal area of the Caribbean in the departments of Cortes, Atlantida, Colon and Gracias a

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[43] *Cf.* World Bank Inspection Panel. Investigation Report. Honduras: Land Administration Project. Report No. 39933-HN, June 12, 2007, p. 17, para. 74. Available at http://documents1.worldbank.org/curated/en/585261468032177524/pdf/399330HN0INSPR200710003.pdf.

[44] *Cf.* World Bank Inspection Panel. Investigation Report. Honduras: Land Administration Project, *supra*, p.17, para. 74, in the case of the 98,000 number, referred to a 1973 study conducted by the Central American and Caribbean Research Council (CACRC), and Ethnic Poverty in Honduras, Utta von Gleich and Ernesto Galvez. Indigenous Peoples and Community Development Unit. Inter-American Development Bank (IDB), Sustainable Development Department, Washington, D.C., September 1999, pp. 1 and 2. Available at http://www.bvsde.paho.org/bvsacd/cd47/etnica.pdf.

[45] *Cf.* World Bank Inspection Panel. Investigation Report. Honduras:: Land Administration Project, *supra*, p.17, para. 74. This report indicates that, according to the Project Appraisal Document of the Bank-financed Honduras: Judicial Branch Modernization Project (IDA Credit No. 4098-HO approved by the Board of Directors on July 7, 2005), the Garifuna population was estimated to be between 100,000 and 190,000. *Cf.* Ethnic Poverty in Honduras, Utta von Gleich and Ernesto Galvez. Indigenous, supra, p. 2. Also, according to an OFRANEH press release of September 1993, pursuant to an INA newsletter, as following the census there were 49,952 Garifuna. This press release indicated that the said figure was not exact because, at that date, approximately 200,000 Garifuna were living in the area. *Cf.* OFRANEH press release published on September 18, 2013, entitled: "*Afrodescendientes o Garífunas: raza o cultura."* Available at: https://ofraneh.wordpress.com/2013/09/18/afrodescendientes-o-garifunas-raza-o-cultura/. This press release cites the World Bank's February 2006 report entitled " Beyond averages: Afro-descendants in Latin America," available at: http://siteresources.worldbank.org/INTLACAFROLATINSINSPA/Resources/Honduras_Final.pdf.

[46] *Cf.* World Bank Inspection Panel. Investigation Report. Honduras:: Land Administration Project, *supra*, p.19, para. 82; Ethnic Poverty in Honduras, Utta von Gleich and Ernesto Galvez, *supra,* p.35 and Presentation to the UN Sub-Commission on the Promotion and Protection of Human Rights. Working Group on Minorities. Tenth Session. March 1 to 5, 2004. Available at: http://www2.ohchr.org/english/issues/minorities/docs/OFRANEH3a.doc.

[47] *Cf.* Motion sponsored by Deputies Olegario López Róchez, Erick Mauricio Rodríguez, Samuel Martínez, Jorge Leonídas García, among others, and introduced before the National Congress on April 18, 2002 (evidence file, folio 5) and Affidavit made by expert witness Christopher Loperena on August 22, 2014 (merits file, folio 432). The said motion was introduced by a group of deputies to request the National Congress to approve a budget item of Lps.13,168,982.84 in the 2002 General Income and Expenses Budget, to be approved by the Legislative Assembly. The purpose of this was to proceed to free the territory of the Punta Piedra Garifuna community of encumbrances (by payment of the improvements made by the Rio Miel inhabitants who occupied part of the territory titled to the said community) based on the valuation made by INA in 2001.

Dios; moreover, a growing number of Garifuna live in cities such as La Ceiba, Tela, Cortes, Trujillo, San Pedro Sula and Tegucigalpa.[48]

84. The Garifuna people constitute a distinct ethnic group and culture, the product of syncretism between indigenous and African peoples, that has asserted its rights as an indigenous people in Honduras. The Garifuna self-identify as an indigenous people, successors to the Caribbean islanders, with some cultural expressions of African origin, and self-identification is a subjective criterion and one of the fundamental criteria established in Article 1(2) of ILO Convention 169 in order to be considered an indigenous or tribal people.[49]

85. Additionally, Article 1(1) of ILO Convention No. 169 establishes objective criteria[50] to describe the peoples it seeks to protect. Thus, the identity of the Garifuna people is reinforced by having their own language, which "belongs to the Arawak family of languages"[51] and by its forms of traditional organization based on cultural

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[48] *Cf.* World Bank Inspection Panel. Investigation Report. Honduras:: Land Administration Project, *supra*, p. 19, para. 82, referring to 38 communities; Ethnic Poverty in Honduras, Utta von Gleich and Ernesto Gálvez, *supra,* pp. 2 and 36, referring to 40 communities, 36 of which were mostly Garifuna and Presentation before the Sub-Commission for the promotion and protection of human rights. Working Group on Minorities, *supra,* referring to 46 communities.

[49] Article 1(2) of ILO Convention 169 establishes self-identification as a subjective criterion, as follows "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply." *Cf.* International Labour Organization (ILO), Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, adopted on June 27, 1989 and in force since September 5, 1991. Available at: http://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169. Honduras has ratified Convention No. 169, which entered into force in that State on March 28, 1995. The dates on which Honduras ratified the ILO Conventions are available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102675. Likewise, Article 33(1) of the United Nations Declaration on the Rights of Indigenous Peoples establishes that "Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions". *Cf.* United Nations, General Assembly Resolution A/Res/61/295 of 13 September 2007. Honduras voted in favor of the adoption of this Declaration. Available at: https://undocs.org/A/RES/61/295.

[50] There are several criteria that establish what is understood by "indigenous people" or "tribal people". Article 1(1) of ILO Convention No. 169 established some objective criteria and indicates that the it applies 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 which 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 own social, economic, cultural and political institutions." *Cf.* ILO, "The Rights of Indigenous and Tribal Peoples in Practice. A guide to ILO Convention No. 169." Programme to promote ILO Convention No. 169 (PRO 169) International Labour Standards Department, 2009, p. 9 and 10. Available at: http://www.ilo.org/indigenous/Resources/Guidelinesandmanuals/WCMS_113014/lang--es/index.htm. In addition, to identify indigenous peoples, it is essential to take into account their traditional lifestyles, customs and way of life that differ from other segments of the national population (such as their subsistence practices, language and customs); their distinctive social organization and political institutions, and the fact of having historical continuity with pre-invasion and pre-colonial societies. *Cf. Basic Principles of ILO Convention No. 169*. Available at: http://www.ilo.org/indigenous/Conventions/no169/lang--es/index.htm.

[51] According to UNESCO, "The Garifuna language belongs to the Arawak family of languages and has survived centuries of linguistic persecution and domination. It possesses great richness of *úragas*, stories that were recited during evening or large social gatherings. The melodies meld African and Amerindian elements and the texts are a veritable treasure trove of history and traditional knowledge of the Garifuna on the cultivation of *manioc*, fisheries, canoe building and baked clay brick home-building. There is also a heavy satirical component in the songs that are sung to the beat of drums and are accompanied by dance in which spectators take part." *Cf.* UNESCO, Masterpieces of the oral and intangible heritage of humanity – "The language, dance and music of the Garifuna", p. 17. Available at: http://unesdoc.unesco.org/images/0014/001473/147344s.pdf. Referred to in the Merits Report (merits file, folio 13, para. 36).

expressions, such as dance and music, that play an important role in the oral transmission of their history and traditions.[52]

86. The Garifuna people have a special relationship with the Earth, natural resources, the forest, beach and sea. Apart from being vital for their subsistence, the latter are linked to their history because they figure prominently in their religious ceremonies and other rites commemorating their arrival in Central America by sea.[53] This close relationship is reflected in their belief that "[t]he Earth is the mother," so that it is not possible to separate agricultural production from social and cultural reproduction.[54]

87. The Garifuna communities maintain the traditional communal uses of the land and other patterns of work that reflect their origins, their home on the Caribbean coast of Honduras, and their culture.[55] According to expert witness Christopher Loperena "[h]istorically, community members moved in groups to the crop-growing areas and worked the land collectively; but today [following the occupation of some of their lands by third parties], the communities […] are trying [to expand] the use of the land to try and halt land usurpation." Consequently, many communities have changed the way they administer the territory and have abandoned collective fallowing in favor of scattered fallowing.[56]

88. The Garifuna economy consists, *inter alia*, of traditional fishing, cultivation of rice, cassava, banana, yucca and avocado, and the hunting of small forest and sea animals, such as deer, agoutis, turtles and manatees.[57]

89. Expert witness James Anaya, former UN Special Rapporteur on the rights of indigenous peoples, indicated that:

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52 *Cf.* UNESCO, Masterpieces of the oral and intangible heritage of humanity, *supra*, p. 17. Referred to in the Merits Report (merits file, folio 13, para. 36).

53 *Cf.* González, Nancie, Sojourners of the Caribbean: Ethnogenesis and Ethnohistory of the Garifuna. University of Illinois Press, Urbana and Chicago, 1998. In: World Bank Inspection Panel. Investigation Report. Honduras: Land Administration Project, *supra*, p. 23.

54 *Cf.* Affidavit made by expert witness Christopher Loperena on August 22, 2014 (merits file, folio 440) and statement made by Lidia Palacios at the public hearing held before the Inter-American Court on September 2, 2014.

55 *Cf.* World Bank Inspection Panel. Investigation Report. Honduras: Land Administration Project, *supra*, p 21.

56 *Cf.* Affidavit made by expert witness Christopher Loperena on August 22, 2014 (merits file, folios 441 and 442). The *barbecho* (fallowing) is a technique in which land is left without sowing for one or more vegetative cycles and the goal is to allow the land to recover and store organic matter while retaining moisture. In this respect, Doroteo Thomas, a member of the Punta Piedra Garifuna community, stated during the public hearing that "our Garifuna community is accustomed to work the land at the beginning of the year. At that time, the community works the land using a system we call fallowing (*barbecho)*, because we don't use technical systems […]; we let the land rest sufficiently so it fertilizes itself and then we work the land again. People always used this technique because they said: in such a year we are going to work such land for three or four years, while the other part rests. Then, when the community was ready to plant its crops, strangers arrived; […] they invaded the lands that were ready for sowing […]. […] We did different types of work: there were exclusives areas to plant rice; another area to plant yucca, which is one of the main crops used to feed the community, and we worked the lands in groups. I repeat, we did this so as not to destroy the forests and to let the land rest. [W]hen we speak of fallowing, we leave the land on which we have worked for four years to rest for around ten or twelve years and then return to it in twelve or thirteen years."

57 *Cf. Mutatis mutandis, Case of López Álvarez, supra*, para. 54.1, and World Bank Inspection Panel. Investigation Report. Honduras: Land Administration Project, *supra*, pp. 21 to 25.

> "The Garifuna people share many of the same characteristics as those other groups that are, undoubtedly, original indigenous peoples […] [and,] to the extent that the Garifuna people share the characteristics of those groups generally recognized as indigenous peoples, the same standards for the protection of property should be applied […] as those applicable to the indigenous peoples under international law. [He also indicated that] even if the Garifuna people could not be considered an original people in Honduras, […] in any case, [it] could be considered a tribal people […] [and the protection and standards of ILO Convention No. 169], including those relating to property, are equally applicable to both indigenous and tribal peoples."[58]

90. Specifically, the Punta Piedra Garifuna community is one of the communities that form part of the Garifuna people and its members are located in the municipality of Iriona, department of Colon, on the shores of the Caribbean Sea.[59] The Punta Piedra community constituted the first settlement of the Garifuna people in the region, and the founding members first settled in Uraco, near the River *Mabougati* (ancestral name of Rio Miel), and then to the east of Rio Miel, in its current location.[60] The parties agree that the Punta Piedra community dates back to 1797.[61] During the public hearing in this case, a member of the community stated that the Punta Piedra population was approximately 5,000[62] at that time, while the State indicated that the community consisted of 64 families, equivalent to 385 inhabitants. During the on-site visit to the territory of the community, Eduarda Ávila stated that the community consisted of 6,000 individuals, including 400 school-age children.

91. The Court recalls that the right to communal property recognized in Article 21 of the Convention and the series of rights embodied in ILO Convention No. 169 apply indistinctly to both indigenous and tribal peoples; therefore, the State's failure to recognize the community as an original people has no impact whatsoever on the rights to which the community and its members are entitled or the corresponding State obligations.[63] Consequently, and based on the decision already made by this Court (*supra* paras. 54 to 57) the Court will analyze the case bearing in mind the nature of indigenous or tribal people of the Punta Piedra Garifuna community.

B. State recognition and titling of the territory of the Punta Piedra Garifuna community

92. During the 1920s, the State of Honduras granted the Punta Piedra community, through a communal title (*título ejidal*), the right to the use and enjoyment of a piece of land of slightly more than 800 hectares under the agrarian laws in force. There is no exact information about the year in which it was granted.[64] The communal title did not

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58 *Cf.* Affidavit made by expert witness James Anaya on September 11, 2014 (merits file, folio 531).

59 *Cf.* Map with the geographical location of the Punta Piedra community prepared by INA on July 12, 2007 (evidence file, folio 11).

60 *Cf.* Affidavit made by expert witness Christopher Loperena on August 22, 2014 (merits file, folios 433 and 434).

61 Christopher Loperena, expert in anthropological studies of the Garifuna culture and territoriality, indicated that Punta Piedra was founded in 1799. *Cf.* Affidavit made by expert witness Christopher Loperena on August 22, 2014 (merits file, folio 433).

62 *Cf.* Statement of Doroteo Thomas Rodríguez during the public hearing held before the Inter-American Court on September 2, 2014.

63 Honduras ratified ILO Convention No. 169 and voted in favor of the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (*supra,* para. 84).

64 *Cf.* OFRANEH, press release of June 12, 2007, indicating that the Punta Piedra community had a communal title dating back to 1921 (evidence file, folio 13). The State affirmed that, "on December 26, 1922, [the State of Honduras] awarded the Punta Piedra community a right to the use and enjoyment of

recognize the ownership rights of the Punta Piedra community. Later, according to information provided by the parties, the Punta Piedra community asked the State to recognize the ownership of their ancestral territory and its expansion; accordingly, on October 13, 1992, and July 8, 1999, respectively, the files were opened to grant title.[65] Consequently, the State awarded two full ownership titles to the community, one in 1993 and another expanding the area in 1999.

B.1 Definitive full ownership title awarded in 1993 (800 hectares and 748 m2)

93. On October 13, 1992, case file No. 25239 was opened and, on December 16, 1993, the National Agrarian Institute transferred to the Punta Piedra Garifuna community "the ownership, possession, easement, accessories, uses and other real rights" over the area corresponding to the communal title previously awarded of 800 hectares and 748 m2 by a definitive title of ownership.[66] The area titled is located in the municipality of Iriona, Colón Department, adjacent in the north to the Caribbean Sea. The title was recorded in the Colon Property, Mortgages and Preventive Annotations Register on January 21, 1994.[67]

94. The Agrarian Reform Act[68] of December 1974 (hereinafter "Agrarian Reform Act"), and the Agricultural Sector Modernization and Development Act[69] of March 5, 1992 (hereinafter the "Agricultural Modernization Act") provided the legal grounds for titling this territory.[70] Article 65 of the Agricultural Modernization Act, which amended article 92 of the Agrarian Reform Act, provides that "[t]he ethnic communities that prove that they have occupied the lands on which they are settled for the period of no less than three years indicated in the amended article 15 of this law shall be awarded full property titles, completely free of charge, by the National Agrarian Institute within the time frame stipulated in the said article 15."[71]

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their territory by means of a communal title" (merits file, folio 570). *Cf.* Statement by Doroteo Thomas: "[…] The ancestors gave us a document for the land. […] The Government gave us this ancestral document in 1921 […]." IACHR, March 7, 2006, public hearing on "Petition 1119/03–Punta Piedra Garifuna Community, Honduras," 124th regular period of sessions of the IACHR (merits file, folio 15, footnote 21).

65 *Cf.* Definitive full ownership title awarded by INA on December 16, 1993, identified by file No. 25239 and Definitive ownership title awarded by INA on December 6, 1999, identified by file No. 52147-10775 (evidence file, folios 15 and 26 respectively).

66 *Cf.* Definitive ownership title of December 16, 1993, *supra*, which provides that "[h]aving verified by the procedures recorded in file No. 25239 opened on October 13, 1992, that the "Punta Piedra" Garifuna community meets the legal requirements to be awarded land under the agrarian reform, hereby is granted: the definitive title of full ownership" (evidence file, folio 15).

67 *Cf.* Definitive ownership title of December 16, 1993, *supra* (evidence file, folio 18) .

68 *Cf.* Agrarian Reform Act, Decree Law 170-74 of December 30, 1974 (evidence file, folios 1853 to 1905).

69 *Cf.* Agricultural Sector Modernization and Development Act, Decree No.31-92 of March 5, 1992, which amended some articles of the Agrarian Reform Act (evidence file, folios 2242 to 2279) .

70 The 1993 property title also indicated as the legal grounds: "[article] 346 of the Constitution; articles 1, 5 and 6(b), 7, 8, 135(b) and (i), and 144(a) and (g) of the Agrarian Reform Act, and 15, 79 and 92 of the same instrument amended by Decree 31-92 [Agricultural Sector Modernization and Development Act]." *Cf.* Definitive ownership title of December 16, 1993, *supra (*evidence file, folio 15*).* Article 346 of the Constitution establishes that "[i]t is the duty of the State to prescribe measures to protect the rights and interests of the country's indigenous communities, especially the lands and forests where they may be settled" (merits file, folio 181).

71 This establishes that "[t]he National Agrarian Institute shall require the return of all rural lands, whether national or communal, that are illegally occupied by private individuals. Nevertheless, anyone who duly proves to the said Institute that they themselves have peacefully occupied national or communal lands that are or have been exploited for a period of no less than three years, shall have the right that the corresponding area be sold to them, provided that it does not exceed 200 hectares and is not included among the exclusions established in article 13 of this law. The sale's price and conditions shall be determined

95. The award of titles was free of charge. However, the title deed established that: "[d]espite the definitive nature of this transfer, this title is subject to the following conditions: (a) that should sale or donation of lots of the awarded piece of land be permitted, [this] is only authorized for tourism projects duly approved by the Honduran Institute of Tourism and to descendants of the beneficiary ethnic community; (b) that the integrity of the forests must be respected to safeguard the existence of the water sources and the quality of the beaches, the stability of steep slopes, and the habitat of local fauna, thus preserving the site's natural conditions."[72]

B.2 Definitive ownership title awarded in 1999 (1,513 hectares and 5,445.03 m2)

96. On July 8, 1999, file No. 52147-10775 was opened based on the Punta Piedra community's request to expand the area originally awarded. Consequently, on December 6, 1999, INA granted the community a definitive ownership title awarding it "ownership, possession, easements, accessories, uses and other inherent real rights" over an additional area of 1,513 hectares and 5,445.03 m2,[73] also located in the municipality of Iriona, department of Colon, on the northern border of the lands titled to the Punta Piedra community in 1993. This title deed was recorded in the Colon Real Estate and Commercial Property, Mortgages and Preventive Annotations Register on January 3, 2000.[74]

97. The title was granted free of charge and based on the previously mentioned laws (*supra* para. 94), as well as article 14 of ILO Convention No. 169.[75] The title expressly established that it constituted an inalienable asset of the community, with the exception of ownership transfers among its members, and that sales to natural or legal third parties was not possible.[76]

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by the National Agrarian Institute pursuant to article 92 of this law; if the full price is not paid, the balance shall be guaranteed with a mortgage calculated on the sale's price. In any case, title of full ownership shall be granted and recorded in the corresponding Property Register no later than six months after the date of the sale. The benefit granted in this article shall not be accorded to those persons who are owners of one or more rural lots when their area is equal to or greater than the area indicated in the second paragraph of this article; if the area is less, they shall have the right to be awarded and granted title to that portion of national or communal lands that they were occupying that completes the area indicated. In addition, anyone against whom it is proved that, since the Agricultural Modernization Act came into force, they have carried out logging, clearing or other activities that deplete forested lands to convert them to agricultural uses contrary to the rational use, conservation and management of forested areas, shall be excluded from the benefit established in this article. The provisions of this law shall also apply to those who occupy national or communal rural land with a title by adverse possession. In the case of forested lands, the National Agrarian Institute shall act in accordance with the State Forestry Administration to ensure that they are conserved as such."

72 *Cf.* Definitive ownership title of December 16, 1993, *supra* (evidence file, folio 16).

73 *Cf.* Definitive ownership title of December 6, 1999, *supra,* establishing that: "Having verified by the procedures on record in File No. 52147-10775 opened on July 8, 1999, that the Punta Piedra Garifuna community meets the legal requirements to be awarded land under the Agrarian Reform, hereby grants: "definitive ownership title" (evidence file, folio 26).

74 *Cf.* Definitive ownership title of December 6, 1999, *supra* (evidence file, folio 28). Additional regulations indicated in the title deed were article 346 of the Honduran Constitution; articles 1, 5, 8, 135(b), 144(a) and (g) of the Agrarian Reform Act and also article 92 amended by the 1992 Agricultural Modernization Act.

75 *Cf.* Definitive ownership title of December 6, 1999, *supra* (evidence file, folio 26).

76 "This ownership title constitutes an inalienable asset of the beneficiary community, except in those cases in which transfer of ownership is effected for the purpose of building housing and public works for the members of the said community who require this; also, any transfer of ownership made by the owners of the houses must be to members of the community. In both instances, the approval of the Board of Directors of the Development Association must be obtained, and this must be recorded on the deed transferring

98. Although the title granted full ownership over the territory awarded, it contained a first exclusion clause indicating that: "[t]he lot described includes an area of 46 hectares and 1296.66 m2 and, because full title over this has been awarded to: Ambrocio Thomas Castillo, with two (2) lots, one of 22 hectares and 6,575.06 m2 and the other of 3 hectares and 6,197.99 m2,[77] and Sergia Zapata Martínez, with one lot of 19 hectares with 8,523.61 m2,[78] this area does not form part of this title.[79] In addition, on December 22, 1999, a certification issued by the Regional Land Officer clarified that although the Punta Piedra community had originally requested expansion of full ownership over 3,000 additional hectares, the demarcated area was only 1,559 hectares and 6741.69 m2, from which the lots granted to Ambrocio Thomas Castillo and Sergia Zapata Martinez were deducted. Therefore, the expansion in favor of the community only covered 1,513 hectares and 5445.03 m2 of the total requested.[80]

99. In addition, the 1999 ownership title included a second exclusion clause, which read: "the areas occupied and exploited by individuals who do not belong to the community are excluded from the title, and the State reserves the right to dispose of these in order to award them to the occupants who meet the legal requirements."[81] This exclusion clause did not establish the number of hectares occupied by third parties.

100. In light of the second exclusion clause, Edito Suazo Ávila, as President and legal representative of the Punta Piedra Community Development Association (hereinafter "the Punta Piedra Development Association"), requested rectification of the title and the request was decided in his favor. In his decision, the INA Executive Director

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ownership. The Development Association shall have preferential right to acquire the ownership of any houses that are on sale, but may not sell them to natural or legal third parties and may only do so to the members of the beneficiary Garifuna community." Definitive ownership title of December 6, 1999, *supra (*evidence file, folio 27 to 28).

77 Ambrocio Thomas Castillo has an ownership title issued on March 3, 1994, for an area of 22 hectares and 6,575.06 m2. *Cf.* Definitive ownership title granted by INA to Ambrocio Thomas Castillo on March 3, 1994 (merits file, folios 636 and 637). In addition, he has a second ownership title issued on July 22, 1998, for an area of 3 hectares and 6,197.99 m2. *Cf.* Definitive ownership title granted by INA to Ambrocio Thomas Castillo on July 22, 1998 (merits file, folios 634 and 635). However, the 2007 cadastral survey concluded that the territory granted to Ambrocio Thomas with full ownership consisted of 68.06 hectares. Nevertheless, this information is not consistent with the property title deeds issued to him and provided by the State. *Cf.* Final report of the cadastral survey of the area titled in the expansion in favor of the Punta Piedra Garifuna community on July 12, 2007 (evidence file, folio 38). Additionally, even though the 1999 expansion title mentions two lots titled to third parties, the representatives indicated that Ambrocio Thomas Castillo has been awarded three lots: one equal to slightly more than 22 hectares; another lot of slightly more than 75 hectares, and a third of slightly more than 3 hectares. Regarding Sergia Zapata Martinez, the representatives alleged that he owned a lot of slightly more than 19 hectares. Furthermore, the representatives explained that, since the definitive ownership titles had not been annulled, the right in favor of third parties remained in force and that the only way to annul the title deeds was by using civil mechanisms that fail to recognize the collective and ancestral dimension of the indigenous territories. The Court does not have enough evidence to prove the said assertions as to whether these hectares refer to an area that is occupied or possessed *de facto*, though not titled.

78 Additionally, Sergia Zapata Martinez acquired from Beato Gonzalo Castillo Guity, by a deed of sale, a lot measuring 19 hectares and 8,523.61 m2. *Cf.* Record of transfer of ownership of April 23, 1997, in favor of Sergia Zapata Ramirez (merits file, folios 625 to 627). The original ownership title in the name of Mr. Castillo Guity dated back to June 19, 1996. *Cf.* Definitive ownership title granted by INA to Beato Gonzalo Castillo Guity on June 19, 1996 (merits file, folios 630).

79 Definitive ownership title of December 6, 1999, *supra (*evidence file, folio 27).

80 *Cf.* Certification issued by the Regional Land Officer of the National Agrarian Institute on August 22. 1999 (merits file, folio 632).

81 Definitive ownership title of December 6, 1999, *supra (*evidence file, folio 27). The legal requirements are mentioned in the footnote of page 31.

acknowledged that there had been "an involuntary error when establishing among the conditions of the title," the exclusion of the areas occupied and exploited by individuals who did not belong to the Punta Piedra community. Consequently, on January 11, 2000, this clause was "eliminated and annulled."[82] As a result of this rectification, the ownership title that the State had granted to the Punta Piedra community in 1999 covered the total area awarded, merely retaining the exclusion of the area titled to Ambrocio Thomas Castillo and Sergia Zapata Martinez (*supra* para. 98).

101. Based on the above, the State granted the Punta Piedra Garifuna community two ownership titles, one in 1993 and the other in 1999, covering 800 hectares and 748 m2, and 1,513 hectares and 4,503 m2, respectively, for a total of just over 2,314 hectares; both of them valid at this time.

C. Occupation of the territory titled to the Punta Piedra Garifuna community by the inhabitants of the village of Rio Miel

102. According to different testimonies, the occupation of the territories of the Punta Piedra community by third parties presumably began around 1993,[83] following the arrival of the first settlers in the area known as "Entrerrios," from where they allegedly emigrated in 1993 to traditional crop-production lands located on the banks of the River Miel, currently territory titled to the community. This occupation resulted in the community known as "Rio Miel," which led to a land ownership dispute between the two communities.[84] However, based on the "Summary of the socio-economic survey" of the village of Rio Miel conducted by INA in June 2007, and statements by the settlers, at least 32 occupants, together with their dependents, had presumably been occupying the area since 1987.[85] Also, during the on-site visit, some people said they had been living in the area for 30 years. Consequently, the Court is unable to verify the exact year in which those settlers (who have also been called "*ladinos*"[86] by members of the Punta Piedra community and in several of the State's briefs[87]) first settled in the territory titled to the Punta Piedra community, despite some indications that third parties had settled on the land before the title expanding the territory had been granted.

103. Currently, the village of Rio Miel has approximately 400 inhabitants, according to a statement made by Petronilo Lopez, President of the Rio Miel Development

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82 Rectification of the definitive ownership title granted by INA on January 11, 2000 (evidence file, folio 23).

83 During the public hearing, Lidia Palacios stated that "invaders started to arrive in our community, in our lands, in 1993." Also, Doroteo Thomas pointed out that "Punta Piedra's problems started in 1993, due to an invasion. […] Land that had belonged to the Punta Piedra community was invaded by outsiders." Statement by Lidia Palacios during the public hearing held before the Inter-American Court on September 2, 2014, and statement by Doroteo Thomas Rodriguez during the public hearing held before the Inter-American Court on September 2, 2014. *Cf.* Affidavits made by Dionisia Ávila Castillo and Edito Suazo Ávila on August 20 and 21, 2014, respectively (merits file, folios 464 and 488). Also, expert witness Christopher Loperena indicated that "the *ladino* community of Rio Miel was founded in 1993." Affidavit made by expert witness Christopher Loperena on August 22, 2014 (merits file, folios 440 to 442).

84 *Cf.* Undertaking signed by the communities of Punta Piedra and Rio Miel on December 13, 2001 (evidence file, folio 30).

85 *Cf.* Summary of the socio-economic survey of the village of Rio Miel conducted by INA in June 2007 (evidence file, folios 748 to 750).

86 Although the word "*ladino*" has been used by members of the Punta Piedra community and in several of the State's briefs, the Court will refer to these individuals also as "third party occupants," "inhabitants of Rio Miel," "inhabitants of the village of Rio Miel" and "Rio Miel peasant farmers."

87 *Cf.* The State's brief of March 25, 2004, received by the Commission on March 31, 2004 (evidence file, folios 428 and 429).

Association during the on-site visit in this case.[88] This information is consistent with the Field Report of the National Agrarian Institute of May 9, 2013 (hereinafter "2013 Field Report"), because its researchers indicated that the inhabitants of the village of Rio Miel had told them that the village had about 400 inhabitants, including adults and children.[89] During the on-site visit, the Court's delegation were able to observe the existence of crops and livestock on areas exploited by the Rio Miel villagers.

104. The village of Rio Miel is an established community with diverse infrastructure including a school, drinking water, roads, churches of different denominations, a football field and houses[90] initially built with local construction materials (earth and wood, wattle and daub) but these have gradually been replaced by houses built with industrial construction materials.[91] Also, "[b]etween 2007 and [2013] 30 new homes were built, which signified a 29% population growth […]." Accordingly, the INA field report of 2013 concluded that "[g]reat attention must be paid to the problems of the inhabitants owing to the population growth over time, both as regards their homes[, and] the land they work." This report also indicated that the inhabitants of Rio Miel had stated that they had been paying for "property to the municipality of Iriona, Colon […]" and that they "ha[d] been buying and selling houses and land among themselves. Supposedly with beneficial ownership documents granted by the municipality of Iriona."[92]

105. Following the visit, the State sent the Court a copy of five supposed property titles granted to individuals in the village of Rio Miel in 1991, 1992, 1993, 1998 and 2006.[93] These property titles had not been presented by the State previously and

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88 In its brief with final arguments, the State indicated that Rio Miel has approximately 355 inhabitants, with 71 household heads. However, according to the "Summary of the socio-economic survey – assessment of improvements and cadastral survey" of June 2007, at that date the village of Rio Miel had around 374 inhabitants. *Cf.* Socio-economic survey – assessment of improvements and cadastral survey prepared by INA in June 2007 (evidence file, folios 756 to 758).

89 *Cf.* INA Field report of May 9, 2013 (evidence file, folios 1453 and 1454).

90 *Cf.* Memorandum presented by the Agricultural Research and Appraisal section to the INA Minister-Director on December 5, 2006 (evidence file, folios 63 to 65); Appraisal sent by the Agricultural Researcher to the INA Minister-Director on July 23, 2007 (evidence file, folios 93 and 94) and INA Field report of May 9, 2013, *supra (*evidence file, folios 1453 and 1454). Photographs of the different infrastructure built in the village of Rio Miel are included in some of these reports.

91 *Cf.* Appraisal sent by the Agricultural Researcher to the INA Minister-Director on July 23, 2007 (evidence file, folios 93 to 100) and INA Field report of May 9, 2013, *supra (*evidence file, folios 1453 and 1454).

92 INA Field report of May 9, 2013, *supra (*evidence file, folios 1453 and 1454).

93 These titles correspond to: (a) Certified copy of Public Deed 478 dated May 22, 1991, authorized by Notary Public Kenneth July Brooks, in which Marcial Cacho Gutierrez, acting as mayor of Iriona, department of Colon, sells to Alejandro del Cid Aleman a 10,000-hectare lot located in the village of Rio Miel, recorded as number 99 of volume LXXIX of the Real Estate and Commercial Property Registry of the department of Colon (merits file, folio 1157); (b) Certified copy of Public Deed 324 dated October 22, 1992, authorized by Notary Public Kenneth July Brooks, by which Marcial Cacho Gutierrez, acting as mayor of Iriona, department of Colon, sells to Jose Cupertino Melgar a 10,000-hectare lot located in the village of Rio Miel, recorded as number 5 of volume XCVII of the Real Estate and Commercial Property Registry of the department of Colon (merits file, folio 1153); (c) Certified Copy of Public Deed 162 dated December 1, 1993, authorized by Notary Public Rene Corea Cortes, by which Bernardo Pastor acting as mayor of Limón, department of Colon, sells to Jose Abrahan Ramos Romero a lot measuring 97 hectares and 61 m2 located in the village of Rio Miel, recorded as number 69 of volume CXXVII of the Real Estate and Commercial Property Registry of the department of Colon (merits file, folio 1144); (d) Certified copy of the property title dated June 30, 1998, issued by Anibal Delgado Fiallos acting as Executive Director of the National Agrarian Institute, granting Jose Antonio Santiago Lemus a definitive ownership title for a lot measuring 45 hectares and 96 m2 located in the village of Rio Miel, recorded as number 77 of volume 316 of the Real Estate and Commercial Property Registry of the department of Colon (merits file, folio 1163), and (e) Certified copy of Public Deed 422 dated November 1, 2006, authorized by Notary Public Isidoro Palma Florentino, by which Juan Francisco Cruz sells to Dionisio Mejia Sanchez a 60-hectare lot located in the village of Rio Miel, recorded as number 12 of

were not included in the cadastral survey reports or in the exclusion clauses of the 1999 property title. The representatives did not contest the existence or authenticity of these title deeds and indicated that their issue was just one more example of the failure to guarantee the inalienability of the Garifuna ancestral territories and the profound inefficiency in the land registration system in Honduras.

106. Based on the above and the evidence submitted, the Court notes that the parties agree that part of the territory granted to the Punta Piedra community is occupied by third parties, most of whom do not have any property title, unlike Sergia Zapata Martinez, and Ambrocio Thomas Castillo who presumably was Garifuna and had sold his lands to third parties (*supra* para. 98). Nevertheless, contradictory versions exist as to the number of hectares occupied by third parties who do not holding full ownership titles, especially with regard to the more than 1,513 hectares granted in 1999 (*infra* para. 107).

107. Owing to the lack of updated evidence submitted by the parties, the Court is unable to determine with certainty the exact area of the territory currently occupied by the inhabitants of Rio Miel.[94] However, based on documents prepared by the State, in particular by INA, and the evidence in the file before this Court, at December 2001, the area occupied by the peasant farmers in Rio Miel totaled 605 hectares.[95] Subsequently, the July 12, 2007, "Final Report of the cadastral survey of the expanded area titled to the Punta Piedra Garifuna community"[96] (hereinafter the "2007 cadastral report"), concluded that, of the more than 1,513 hectares awarded in 1999, 612.13 hectares were occupied by third parties, and only 653.24 hectares by the Punta Piedra Garifuna community. This report also concluded that, within the expanded area, 177.98 hectares corresponded to forests that were also possessed by inhabitants of Rio Miel.[97] Therefore, even though the Court does not have sufficient evidence to determine with certainty the area currently occupied, it has been proved that at least in 2007 a total of 790.11 hectares of the expanded area of the Punta Piedra community was occupied by

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volume 656 of the Real Estate and Commercial Property Registry of the department of Colon (merits file, folio 1139).

94 In this regard, during the procedure before the Inter-American Commission, the State indicated different numbers of hectares occupied by third parties: (a) in the brief filed by the State on July 19, 2007, in a working meeting during the 128th regular period of sessions, first, it mentioned an area of 670 hectares (merits file, folio 18, para. 52); (b) in the same brief, it stated that 790.11 hectares have been occupied for at least 25 years (evidence file, folios 717 and 718), and (c) in the brief filed by the State before the Commission on August 19, 2011, it indicated that 278.40 hectares were occupied (evidence file, folios 526 and 527). However, before the Court, the State alleged that, when the 1999 expansion title was awarded, the inhabitants of the village of Rio Miel were in possession of 600 hectares (merits file, folio 169). Also, according to the conclusions of the 2007 cadastral report, the State had established that the area occupied by third parties within the expanded territory amounted to 612.13 hectares (evidence file, folio 38). In its brief with final arguments, the State ratified that, currently, the inhabitants of Rio Miel occupy a total of 612.13 hectares (merits file, folio 581). Meanwhile, the representatives initially asserted that third parties had invaded around 670 hectares in 1993; this territory covered the community's working areas and yucca-cultivation areas (merits file, folio 103). Despite this, in their final written arguments, they indicated that, currently, "the total area occupied by the Rio Miel settlers correspond[ed] to the entire area of the 1999 expansion title, […] which amount[ed] to 1,500 hectares that the settlers have exploited" (merits file, folio 545).

95 *Cf.* Undertaking signed on December 13, 2001, *supra*, which established that: "[…] we find that the Rio Miel community occupies lands covering an area of 605 hectares" (evidence file, folio 30).

96 The Cadastral report of July 12, 2007, was prepared "only with the Rio Miel villagers, without the presence of the Punta Piedra Garifuna" in order to avoid conflicts between the two communities. *Cf.* Final Report on cadastral survey of the expanded area titled to the Punta Piedra Garifuna community of July 12, 2007 (evidence file, folios 36 and 37).

97 *Cf.* Cadastral report of July 12, 2007, *supra (*evidence file, folio 38) and Map of the geographic location of the Punta Piedra Garifuna community, prepared by INA on July 12, 2007 (evidence file, folio 11).

third parties.[98] This did not include the territories awarded to Ambrocio Thomas Castillo and Sergia Zapata Martinez.[99] Also, part of the territory granted in the first ownership title – at least 8.34 hectares – is occupied by third parties.[100] This information was ratified during the on-site visit in this case, although the parties have not provided information updated to the present.

108. The Court also assessed various satellite images provided in the AAAS report (*supra* para. 17). These images corresponded to 1993 to 2013 and were taken over the total area granted to the Punta Piedra Garifuna community, which corresponded to 800 hectares granted by the 1993 title (Zone 1) and the 1,513 hectares and 5,445.03 m2 granted by the 1999 expansion title (Zone 2).[101]

109. Regarding the area corresponding to the expansion title deed, this was divided into two areas. The first, Zone 2-A, covering 612.13 hectares occupied by the village of Rio Miel, 177.98 hectares corresponding to wooded areas, 68.06 hectares owned by Ambrocio Thomas and 2.13 hectares of highways and tracks, according to the 2007 INA Cadastral Report. The second, Zone 2-B, consisting of an area of 653.24 hectares that, at the date of the cadastral report, corresponded to the Garifuna territory that has allegedly been occupied by Rio Miel inhabitants. Taking this into account and based on the information provided by the AAAS Report (see annex 2), the Court notes that: (a) in Zone 2-A, where the village of Rio Miel is located, visible structures increased from approximately 92 in 2002 to 134 in 2013; (b) in Zone 2-B, the number of structures also increased from an average of 7 structures to 21 in 2013, which corresponds to a 200% increase; (c) an increase in cleared land was evident in Zone 2-B, in the area that was previously wooded, increasing from 78.15 hectares in 2002 to 262.57 hectares in 2013, and (d) lastly, the area identified as crop-producing land in Zone 2-B, also increased by approximately 100% between 2002 and 2013, expanding from 6.28 hectares to 13.16 hectares. This will be analyzed in the corresponding section of the chapter on merits (*infra* para. 195 to 197).

D. Steps taken to free the territory of the Punta Piedra Garifuna community of encumbrances

110. Given that part of the 1,513.54 hectares granted by the 1999 title deed had been occupied by third parties, the Punta Piedra community took several steps to free their ancestral territory of encumbrances and, thereby, use and enjoy it peacefully. These steps included the 2001 signature of an undertaking; requests to the National Congress that it adopt budget items; requests to INA for information; adoption of a memorandum of understanding in 2006, and participation in working meetings to obtain clear title to their territory.

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98 The 790.11 hectares are calculated adding the 612.13 hectares occupied by third parties to the 177.98 hectares of forested areas also occupied by Rio Miel inhabitants.

99 To the contrary, the 2007 Cadastral report indicated that the territory occupied with full ownership by Ambrocio Thomas Castillo, was located within the expanded area of just over 1,513 hectares titled to the Punta Piedra community, and even calculated that the total number of hectares was 68.06 hectares, which is greater than the number established in the first exclusion clause of the 1999 title deed and in the corresponding property titles. However, according to the clarification of December 1999 (*supra,* para. 98), the area titled to Ambrocio Thomas Castillo and Sergia Zapata Martinez was presumably not included in the slightly more than 1,513 hectares of the 1999 title deed.

100 *Cf.* Cadastral report of July 12, 2007, *supra (*evidence file, folios 39 and 40).

101 *Cf.* Report on the assessment of satellite imagery regarding changes in land use within and around the Garifuna territory in Honduras: 1993-2013. Report of January 2015 prepared by the Geospatial Technologies and Human Rights Project of the American Association for the Advancement of Science (merits file, folios 776 and 777).

111. As a result of these measures, the State, through INA and the National Congress, took various actions aimed at freeing the territory titled to the Punta Piedra indigenous community of encumbrances. Among the actions taken by the State, two interinstitutional commissions were created (2001 and 2007); a memorandum of understanding (2006) and two special memoranda (2007) were adopted, and working meetings were held during which some agreements were signed between the state authorities, the Punta Piedra community and the inhabitants of Rio Miel. In this regard, INA undertook to assess the territory occupied by third parties to identify who was occupying the territory, the area they occupied, and the amount represented by third-party improvements in order to pay for these. Based on these agreements, INA carried out two appraisals of the improvements made in Rio Miel, in 2001 and 2007,[102] and tried to carry out a third appraisal in 2013; however, this could not be carried out due to opposition by the inhabitants.[103] INA also submitted requests to the National Congress and the Finance Ministry for the creation of a budget item in order to compensate the improvements established by the appraisals; however, this was not adopted.

112. Based on the above, in the following sections, the Court will analyze the steps taken to obtain clear title.

D.1 Ad Hoc Interinstitutional Commission and Undertaking signed on December 13, 2001

113. On April 7, 2001, an Ad Hoc Interinstitutional Commission was established composed of INA representatives, the National Human Rights Commissioner and the Social Outreach Program of the Diocese of Trujillo, "as a conciliation and consensus-building body in the effort to reach a peaceful solution to the conflict"[104] between the Punta Piedra and Rio Miel communities. Accordingly, on December 13, 2001, the Ad Hoc Interinstitutional Commission, the representatives of the Punta Piedra community, the village of Rio Miel, OFRANEH and the *Organización de Desarrollo Étnico Comunitario* (ODECO) met in order to seek a solution to the existing conflict, and this resulted in the "Undertaking signed on December 13, 2001" (hereinafter "the 2001 Undertaking")

114. During the above meeting, the participants acknowledged the existence of a problem between the communities of Rio Miel and Punta Piedra, a situation that no longer related solely to the land "but that now jeopardize[d] the physical integrity and property of the inhabitants of the two communities present." Furthermore, it was recognized "that the problem [materialized] when [INA] granted a title of full ownership of 1,513 hectares to the Punta Piedra Garifuna community without having freed the land of encumbrances; in other words, paying the occupants from the Rio Miel community for improvements."[105] Therefore, an undertaking was signed stipulating the following: (a) a peaceful and out-of-court solution to the conflict would be sought; (b) the State would be required to comply with its obligation to the Punta Piedra community to clear the land of encumbrances, paying for the improvements and

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102 *Cf.* Appraisal addressed by the Agricultural Researcher to the INA Minister-Director on July 23, 2007 (evidence file, folio 93).

103 *Cf.* INA Field report of May 9, 2013 (evidence file, folio 1454).

104 *Cf.* Undertaking signed on December 13, 2001, *supra (*evidence file, folio 31).

105 *Cf.* Undertaking signed on December 13, 2001, *supra (*evidence file, folios 30 and 31).

relocating the Rio Miel peasant farmers, and (c) a list of demands would be drawn up and a timetable for the activities required to comply with the commitments made.[106]

115. To comply with the said commitments, in 2001, the National Agrarian Institute appraised the improvements made by the occupants and these were estimated to represent Lps.13,168,982.84.[107] On February 21, 2002, OFRANEH sent a letter to the INA Minister-Director requesting "a copy of the appraisal of the Rio Miel improvements," in order to take the "necessary steps to obtain approval of the budget item for the respective compensation."[108] In light of this, members of the Punta Piedra community held a march to Tegucigalpa on April 16, 2002, to ask the National Congress and other authorities of the Executive to resolve the case.[109] As a result of this, on April 18, 2002, a group of deputies introduced a motion before the National Congress for the approval of a budget item in the "2002 General Budget of Income and Expenditure of the Republic" for INA to proceed to free the lands claimed by the Punta Piedra community of encumbrances.[110]

116. On August 24, 2002, and September 5, 2003, the representative of the Punta Piedra Community Development Association asked INA to reactivate negotiations to clear the lands and to intervene because there had been an increase in the arrival of outsiders,[111] as well as logging and the sale of Garifuna lands to third parties by the peasant farmers.[112]

117. On August 29, 2002, the chairman of the National Congress Budget Committee sent INA the draft Decree on "Development of the Garifuna People" to obtain its

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106 The conclusions and decisions adopted by the December 13, 2001, undertaking were as follows: "(a) the representatives of the two communities, the Interinstitutional Commission, ODECO and OFRANEH, recognize that the search for a peaceful and out-of-court solution to the problem is one of the alternatives that we should all undertake to achieve as an effective way to resolve the dispute; (b) the representatives of the above organizations and institutions recognize that the State is obliged to clear the title granted to the Punta Piedra community by paying the Rio Miel inhabitants for the improvements so that the Garifuna community can fully exercise the ownership rights established in their ancestral documentation and granted by the National Agrarian Institute; (c) the State, through the National Agrarian Institute, must diligently seek a lot where the families who have been compensated can be relocated; furthermore, through the competent institutions, all efforts must be made to support the right to housing, health, education, water and the other benefits that ensure appropriate conditions for the relocated population and so that, once and for all, the Punta Piedra community is able to exercise ownership over the lands claimed, [and] (d) to follow up on the commitments made, this Commission is authorized to draw up a list of demands and a timetable with the actions and field activities necessary to resolve the conflict, and also to establish the mechanisms for carrying out the pertinent steps." *Cf.* Undertaking signed on December 13, 2001, *supra (*evidence file, folio 32).

107 *Cf.* Motion signed by Deputies of the National Congress, *supra (*evidence file, folio 7); INA official letter No. DE-274 of October 2, 2002 (evidence file, folio 52) and Tables relating to the appraisal of improvements and operating expenses for compensation to the village of Rio Miel, undated (evidence file, folios 734 to 737). Equivalent to approximately US$605,241.97 according to the exchange rate updated to November 2015.

108 *Cf.* Letter sent by OFRANEH to the INA Minister-Director on February 21, 2002 (evidence file, folio 42).

109 *Cf.* Letter sent by OFRANEH to the National Congress on October 1, 2002 (evidence file, folio 56). Also, during the hearing before the Commission the member of the Punta Piedra community, Edito Suazo Ávila, indicated that a peaceful protest march had been held. *Cf.* IACHR, Public hearing of March 7, 2006, on "Petition 1119/03 – Punta Piedra Garifuna Community, Honduras," 124th regular session of the IACHR (merits file, folio 21).

110 *Cf.* Motion signed by Deputies before the National Congress, *supra (*evidence file, folios 5 to 7).

111 *Cf.* Letter sent by the Punta Piedra Development Association to the INA Minister-Director on August 24, 2002 (evidence file, folio 54).

112 *Cf.* Letter sent by the Punta Piedra Development Association to the INA Minister-Director on September 5, 2003 (evidence file, folio 61).

opinion in this regard.[113] In communications of September 4 and October 2, 2002, INA expressed its support for approval of the budget item to pay the necessary improvements in order to clear the communal lands of the Punta Piedra community of encumbrances.[114]

118. On October 1, 2002, and May 14, 2003, the Punta Piedra community sent letters to the National Congress and to INA, respectively, to find out whether the budget item had been approved.[115] On May 26, 2003, INA informed the Punta Piedra community that the item had not been incorporated into its budget[116] and, on June 29, 2004, INA submitted a request to the President of the National Congress to adopt this item in order to free the land of encumbrances.[117]

D.2 2006 Memorandum of Understanding, Special Agreement with the village of Rio Miel of April 20, 2007, and subsequent actions

119. To follow up on the commitments made in the 2001 Undertaking, on September 28, 2006, a "Memorandum of Understanding" was signed by the *Organización Fraternal Negra Hondureña* (OFRANEH) and the government authorities (hereinafter "2006 Memorandum of Understanding") ratifying the need to comply with the commitments made concerning the Punta Piedra community as regards the approval of a budget item for freeing the territory of encumbrances[118] and the need to make a new appraisal.

120. In light of the 2006 Memorandum of Understanding, from November 30 to December 3, 2006, representatives of INA and the Attorney General's Office entered into new negotiations with the Rio Miel inhabitants and visited the territory to update the appraisal; however the inhabitants opposed this.[119] Additionally, on January 22, February 20 and June 8, 2007, meetings were held between State authorities and OFRANEH in order to ratify the need for a new appraisal and coordinate this.[120] The meeting of February 20, 2007, was attended by a representative of the Punta Piedra

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113 *Cf.* Letter sent by the chairman of the Budget Committee of the National Congress to INA on August 29, 2002 (evidence file, folio 44).

114 *Cf.* Letters of the INA Minister-Director of September 4 and October 2, 2002 (evidence file, folios 50 and 52, respectively).

115 *Cf.* Letter sent by OFRANEH to the National Congress on October 1, 2002 (evidence file, folios 56 and 57) and Letter sent by the INA Minister-Director to OFRANEH on May 26, 2003 (evidence file, folio 59).

116 *Cf.* Letter sent by the INA Minister-Director to OFRANEH on May 26, 2003 (evidence file, folio 59).

117 *Cf.* Letter sent by the INA Minister-Director to the President of the National Congress on June 29, 2004 (evidence file, folios 1344 and 1345).

118 On September 28, 2006, the representatives of OFRANEH, and of various Garifuna communities, including Punta Piedra, and of the Government adopted the 2006 Memorandum of Understanding. In the Memorandum, the parties reached different agreements to obtain the adoption of the budget item to pay the compensations for the improvements made by the inhabitants of Rio Miel. *Cf.* Memorandum of Understanding between the *Organización Fraternal Negra Hondureña* (OFRANEH) and government authorities of September 28, 2006 (evidence file, folios 120, 123 and 124).

119 In this regard, the inhabitants of Rio Miel indicated that they "strongly opposed accepting it, considering it an abuse of authority, because they [were] not invaders […] [their] rights had been violated during previous governments, including them in an expansion granted to the Punta Piedra community in 1999 when [their] community was already settled on the said lands, and had been recognized by the municipality of Iriona long before. A title had been granted without conducting the corresponding field study." *Cf.* Memorandum presented by the Agricultural Research and Appraisals Section to the INA Minister-Director on December 5, 2006 (evidence file, folios 63 to 65).

120 *Cf.* Memorandum of January 22, 2007, on the follow-up to the commitments made in the memorandum of understanding of September 28, 2006, and Special agreement of June 8, 2007, on the follow-up to the commitments made under the September 28, 2006 memorandum of understanding (evidence file, folios 74 to 83).

community and an interinstitutional commission was set up.[121] This commission met with the mayor of Port Iriona and Rio Miel representatives on March 14, 2007, but without the participation of representatives of the Punta Piedra community or of OFRANEH, and adopted a resolution indicating that the inhabitants of Rio Miel contested the first appraisal made in 2001. However, during that meeting it was agreed to continuing taking the necessary actions to resolve the problem between the two communities in a conciliatory way.[122]

121. On April 20, 2007, the INA Minister-Director, together with various state officials[123] and representatives of the Rio Miel community signed a "Special Agreement" establishing the following, *inter alia*: (a) INA expressed its intention of reaching a "friendly settlement" to resolve the conflict between the Garifuna and the third party occupants; (b) to this end, INA undertook "to define the area of the village, the occupants, the lands worked, the origin of possession, the number of dependents, and the value of the improvements made to the land occupied by each member of the Rio Miel community; these actions would start within ten working days at the latest; (c) it was decided to arrange a meeting with the two communities to resolve the problem, and (d) the opposition of the Rio Miel community to the intention to evict them was again recorded, and therefore, it was "reaffirmed that any action on this issue w[ould] be strictly subject to a judicial ruling or decision issued by the competent courts, that was final or *res judicata*."[124]

122. Owing to the actions taken to update the appraisal, the Rio Miel inhabitants agreed to a second appraisal.[125] Consequently, in May and June 2007, an INA agricultural committee inspected the area, following which it prepared the 2007 cadastral survey (*supra* paras. 107 and 111) and a new "Appraisal report"[126] dated July 23, 2007. The report concluded that the improvements made by the Rio Miel inhabitants consisting of houses and social infrastructure amounted to 17,108,848.58 lempira.[127] It also established that the land held by the Rio Miel inhabitants revealed "a high degree of erosion, specifically the upper parts and areas recently cleared for cattle raising (grass cultivation)," and also that "during the inspection, the clearance of land and destruction of the forest in the traditional manner (burning) was also evident."[128]

123. Based on the updated appraisal and in order to free the territory of the Punta Piedra community of encumbrances, on December 19, 2007, the INA Minister-Director asked the Ministry of Finance to allocate an additional sum to the budget of this institution of 17,108,448.58 lempiras.[129] His request was not answered; therefore, on

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121 This Interinstitutional Commission was composed of representatives of INA, the Ministry of the Environment and Natural Resources (SERNA), the Attorney General's Office, the Ministry of the Interior, the Public Prosecution Service and OFRANEH (evidence file, folios 67 to 69).

122 *Cf.* Special agreement of March 14, 2007 (evidence file, folio 71). The meeting was not attended by representatives of either OFRANEH or the Punta Piedra Garifuna community.

123 Including, representatives of the Ministry of Foreign Affairs, the Ministry of Security, the mayor of Port Iriona and the Supreme Court of Justice.

124 *Cf.* Special agreement of April 20, 2007 (evidence file, folio 87).

125 *Cf.* Official letter DE-099-2007 of June 7, 2007 (evidence file, folio 90).

126 *Cf.* Appraisal report addressed by the Agricultural Researcher to the INA Minister-Director on July 23, 2007 (evidence file, folios 93 to 102).

127 Equivalent to approximately US$786,316.86, according to the November 2015 exchange rate.

128 *Cf.* Appraisal report addressed by the Agricultural Researcher to the INA Minister-Director on July 23, 2007 (evidence file, folios 93 and 94).

129 *Cf.* Official letter No. DE-255-2007 addressed by the INA Minister-Director to the Ministry of Finance of December 19, 2007 (evidence file, folio 1336).

May 16, 2013, INA repeated the initial request.[130] On June 7, 2013, the Finance Ministry concluded that given the Public Administration's difficult economic situation no funds were available to respond to this request that entailed additional resources to those already included in the national budget.[131] Following two requests for reconsideration dated June 17 and September 9, 2013,[132] the Finance Ministry ratified the refusal to create a new budget item on September 12 and October 10, 2013.[133] Therefore, the budget item was not created and the territory of the Punta Piedra Garifuna community was not freed of encumbrances, as the State has acknowledged before this Court (*supra* para. 37).

124. In their observations on the on-site procedure, the representatives emphasized that the leaders of the Rio Miel Development Association had initially told the Court's delegation that they would be willing to receive payment for the improvements and relocate if the State gave them good quality land because an agreement existed and this was verified by the Court's delegation. However, later during the same procedure, members of that village indicated that they did not want to go, because they had made significant investments in its development and growth.

E. "Punta Piedra II" non-metallic mining concession

125. On December 4, 2014, by resolution No. 105/12/2014 of the Honduran Institute of Geology and Mines, the mining corporation, CAXINA S.A., was granted a concession for non-metallic mining exploration, under which it intended to execute the project known as "Punta Piedra II." The concession was granted for ten years, renewable at the contractor's request, over an area of 800 hectares.[134]

126. With regard to its location, according to the State, the territory of the Punta Piedra community does not form part of the area granted in concession because there are 1.25 kilometers between the nearest points of the two territories. However, during the on-site procedure conducted in the instant case, the State (Jesus Flores, INA engineer) gave the Court's delegation a map on which it was verified that the area granted in concession covered part of the eastern border of the Punta Piedra community's territory, according to both the 1993 definitive title and its 1999 expansion[135] (see Annex 3).

127. It was also noted that the "Punta Piedra II" project was at the stage of exploration and determination of the financial feasibility of the deposit to be exploited.

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130 *Cf.* Official letter No. DE-42-2013 addressed by the INA Minister-Director to the Ministry of Finance of May 16, 2013 (evidence file, folios 1342 and 1343).

131 *Cf.* Official letter No. 070-DGP-ID addressed by the INA Minister-Director to the Ministry of Finance on June 7, 2013 (evidence file, folio 1339).

132 *Cf.* Official letters No. DE-058-2013 of June 17, 2013, and No. DE-088-2013 of September 9, 2013, addressed by the INA Minister-Director to the Ministry of Finance (evidence file, folios 1337 and 1338, respectively).

133 *Cf.* Official letters No. 097-DGP-ID of September 12, 2013, and No. 158-DGP-ID of October 10, 2013, addressed by the Ministry of Finance to the INA Minister-Director (evidence file, folios 1340 and 1341, respectively).

134 *Cf.* "Consolidated Annual Financial Statement, DAC-2014," prepared by CAXINA S.A., mining corporation, on January 27, 2015 (merits file, folio 756 and 757).

135 *Cf.* Map of the territory titled to the Punta Piedra Garifuna community handed over during the on-site procedure of August 25, 2015 (merits file, folio 1126).

When that stage was completed, an environmental impact assessment would be prepared in order to obtain the environmental permit for the exploitation project.[136]

128. According to the information received during the on-site procedure, the risks associated with potential mining activities related to the contamination of a hydrographic micro-basin that supplies both the Punta Piedra community and the Cosuna community.[137]

129. Additionally, during the on-site procedure, the Court's delegation was informed that the members of the Punta Piedra and Cosuna communities had not been consulted about the mining exploration project because, according to the State, pursuant to domestic law, in particular article 82 of the Regulations to the General Mining Law, such consultations are carried out when exploitation activities are about to start, but not prior to exploration activities[138] (*infra* para. 221).

F. Complaints filed at the domestic level as a result of the conflict

130. The occupation of part of the territory belonging to the Punta Piedra community by the inhabitants of Rio Miel gave rise to a land tenure dispute between the two communities and, consequently, to a conflictive situation that then resulted in violence in the area, characterized by threats and harassment by the peasant farmers.[139] This conflict led to the death of a member of the Punta Piedra Garifuna community, Félix Ordoñez Suazo, on June 11, 2007. The State was informed of this situation in documents issued by INA and other authorities, as will be described in the corresponding section of this judgment (*infra* paras. 271 and 276).

131. Furthermore, even though, during the on-site procedure, the inhabitants of Rio Miel indicated that their relations with the "Punta Piedra brothers" were peaceful, the representatives indicated in their observations on the visit that "it [was] not true that there [was] harmony between the communities" and that "the sense of security during

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136 *Cf.* "Consolidated Annual Financial Statement, DAC-2014," prepared by CAXINA S.A., mining corporation, on January 27, 2015 (merits file, folio 760).

137 *Cf.* Video of the on-site procedure of August 25, 2015, third segment, 14:00 min.

138 *Cf.* Video of the on-site procedure of August 25, 2015, fourth segment, 01:00 min.

139 In this regard, during the public hearing in the case, Lidia Palacios, member of the Punta Piedra Garifuna community, stated that "[the threats were] made by the invaders, the death threats and the constant threats, are from invaders, outsiders. Several friends and people in the community have been threatened. Our children also, because they are armed; they shoot at us and make us nervous […]"; there were constant [threats], since they passed by and shot at us in order to scare us; therefore, we feel threatened, because they do not threaten us verbally, but use their weapons and for us, that is a direct death threat; that's why we say this, also this is why we are afraid and can no longer use our lands." *Cf.* Statement by Lidia Palacios during the public hearing held before the Inter-American Court on September 2, 2014. Also, Doroteo Thomas Rodriguez, member of the Punta Piedra Garifuna community, stated during the public hearing that, "as a result of that invasion, we lost the harmony we used to have in our community, because before the invasion, we lived peacefully, there were no problems. But, with the invasion, the community began to feel afraid due to the threats and intimidation […]." *Cf.* Statement by Doroteo Thomas Rodriguez during the public hearing held before the Inter-American Court on September 2, 2014. Similarly, various members of the Punta Piedra Garifuna community stated in affidavits that they continued to receive threats from third party occupants, who harassed them and kept them in a constant state of fear because the latter were always armed. *Cf.* Affidavits provided by Dionisia Ávila Castillo and Antonia Bernárdez Suazo on August 20, 2014, and by Santos Ávila Castillo, Santos Celi Suazo Castillo, Edito Suazo Ávila and Paulino Mejía Castillo on August 21, 2014 (merits file, folios 465, 481, 476, 478, 479, 489, 494 and 495, respectively). In addition, in a public statement, OFRANEH indicated that "[t]he conflict has lasted over 15 years, exacerbating race relations and fostering violence, without the Honduran State having taken any relevant steps to date to resolve the territorial problem that afflicts the Garifuna community […]." *Cf.* Public statement by OFRANEH of June 12, 2007 (evidence file, folio 13).

the visit [was due to the fact that] the army was present in the area"; they also indicated that "the presence of the settlers ha[d] not been peaceful."

132. The conflictive situation resulted in the filing of five complaints that the Court will describe in the following sections: (a) 2003 complaint concerning usurpation and threats against Félix Ordóñez Suazo and complaint owing to his 2007 murder; (b) 2010 complaint concerning usurpation and threats against Paulino Mejía and the Punta Piedra Garifuna community, and (c) 2010 complaint concerning abuse of authority due to the construction of a highway cutting through the territory of the Punta Piedra Garifuna community.

F.1. Land usurpation complaint, and investigation and criminal proceedings owing to the death of Félix Ordóñez Suazo

F.1.1 2003 land usurpation complaint

133. On May 22, 2003, Félix Ordóñez Suazo filed complaint No. 188-2003 against Luis Portillo with the General Directorate of Criminal Investigation (hereinafter "the DGIC") of the Ministry of Security in Trujillo, for the presumed offense of usurpation on his lands.[140] According to the complaint, in May 2003, Luis Portillo, who was a landowner in the area, wanted to take over an area of between 2 and 5.5 acres, located in the Punta Piedra community.[141] Also, on July 11, 2003, this complaint was registered as case No. 6714-2003 before the Special Prosecutor for Ethnic Affairs and Heritage (hereinafter, "the Ethnic Affairs Prosecutor").[142]

134. On July 11, 2003, the Ethnic Affairs Prosecutor issued an order requiring a police investigation for the DGIC to investigate the facts. In this regard, he gave an order for some procedures to be conducted, the most important of which were: identifying the accused; taking the statements of the accused, witnesses and victim; appraising the damage and he specifically ordered that this investigation be overseen by the Trujillo Prosecutor; obtaining maps and the property titles of the parties in dispute, and the inspection of the site.[143]

135. On September 10, 2014, the Trujillo Prosecutor received a communication from the Ethnic Affairs Prosecutor dated June 7, 2013, requesting information on the progress and current status of the complaint for the offense of usurpation.[144] The file does not contain an answer to this request.

136. As helpful evidence, the Court asked the State to provide a complete copy of the case file of the usurpation complaint. Based on the evidence forwarded, the Court notes from the information in that case file, that the procedures ordered by the Ethnic Affairs Prosecutor were not carried out. The Court has no additional and updated

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140 *Cf.* Complaint concerning usurpation No. 188-2003 filed on May 22, 2003 (case file, folio 2483).

141 *Cf.* Complaint concerning usurpation No. 188-2003 filed in May 2003 (case file, folio 2483). The State pointed out that the area presumably encroached on was located within the slightly more than 800 hectares titled to the Punta Piedra community in 1993 (evidence file, folio 1434).

142 *Cf.* Document of the Ethnic Affairs Prosecutor of July 11, 2003, and Police Investigation Request issued by the Special Ethnic Affairs Prosecutor of July 11, 2003 (evidence file, folios 2480 to 2481).

143 *Cf.* Order of the Special Ethnic Affairs Prosecutor requiring a police investigation of July 11, 2003 (evidence file, folios 2481 and 2482).

144 *Cf.* Official letter No. FEEPC-559-2014 of the Ethnic Affairs Prosecutor of June 7, 2013 (evidence file, folio 1622).

information regarding the status of the complaint following the death of Félix Ordóñez Suazo.

F.1.2 Death of Félix Ordóñez Suazo

137. According to the evidence provided by the parties, the Court notes that Félix Ordóñez Suazo, coordinator and board member of the Punta Piedra Community Development Association,[145] died on June 11, 2007, due to three bullet wounds.[146] According to the testimony of Marcos Bonifacio Castillo, the only witness to Félix Ordóñez Suazo's death, this occurred on the said date, at around 7.30 a.m. However, the death certificate gives the time of death as 11.00 a.m.[147]

138. In addition, according to the version of the facts recounted by Marcos Bonifacio Castillo, on June 11, 2007, at around 7.30 a.m., he was helping Félix Ordóñez Suazo repair a wire fence on a property located in a place known as El Castillo, adjacent to Punta Piedra.[148] On a nearby path, they both saw Luis Portillo's son, David Portillo Chacón, 25 years of age, who lived in Rio Miel. He was armed, carrying a rifle. On finishing their task, Félix Ordóñez Suazo and Marcos Bonifacio Castillo headed towards Punta Piedra and after walking for around five minutes, the latter, who was three meters behind Félix Ordoñez, heard a gunshot and saw Félix drop the chainsaw he was carrying.[149] Marcos Bonifacio Castillo stated that he ran towards the bushes to save his life, from where he heard three more shots. He then returned to the village where he told the people what had happened. Doroteo Thomas also stated that he had heard three shots, and then met Marcos Bonifacio Castillo who told him what had happened.[150] According to the statement made by Marcos Bonifacio Castillo, the author of the shots was presumably David Portillo Chacón.[151]

139. According to statements made by Marcos Bonifacio Castillo, Nieves Oswaldo Bonifacio Castillo and Marcial Martínez Suazo, Félix Ordóñez Suazo's death was due to the land dispute between the latter and Luis Portillo and his son, David Portillo Chacón.[152] This dispute had been reported to the Public Prosecution Service in an usurpation complaint[153] (*supra* para. 133). Marcos Bonifacio Castillo indicated that "Félix had already been threatened by Luis Portillo, David Portillo Chacón's father, and the problem they had was over a piece of land, because they had taken some of Félix's land and he had reported the problem to the Prosecution Service."[154]

140. On June 15, 2007, OFRANEH asked the Inter-American Commission to adopt precautionary measures "in favor of the Punta Piedra community and, in particular […]

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145 *Cf.* Record of corpse removal of June 11, 2007 (evidence file, folio 1565).

146 The record of corpse removal of June 11, 2007, indicated the presence of the following gunshot wounds: a shot in the right side; a shot in the chest with exit wound, and a "finishing off" shot in the right ear. *Cf.* Record of corpse removal of June 11, 2007 and Death certificate of July 14, 2007 (evidence file, folios 1559 and 1565). *Cf.* Statement of Marcos Bonifacio Castillo of July 5, 2007 (evidence file, folios 1542 to 1545).

147 *Cf.* Death certificate of July 14, 2007 (evidence file, folio 1559).

148 *Cf.* Statement of Marcos Bonifacio Castillo of July 5, 2007 (evidence file, folio 1545).

149 *Cf.* Statement of Marcos Bonifacio Castillo of July 5, 2007 (evidence file, folio 1546).

150 *Cf.* Statement of Doroteo Thomas Rodriguez of July 3, 2007 (evidence file, folios 1546 and 1547).

151 *Cf.* Statement of Marcos Bonifacio Castillo of July 5, 2007 (evidence file, folios 1544 and 1545).

152 *Cf.* Statements of Marcial Martínez Suazo of July 14, 2007; Nieves Oswaldo Bonifacio Castillo of July 3, 2007, and Marcos Bonifacio Castillo of July 5, 2007 (evidence file, folios 1537, 1539 and 1545, respectively).

153 *Cf.* Statement of Marcial Martinez Suazo of July 14, 2007 (evidence file, folio 1537).

154 *Cf.* Statement of Marcos Bonifacio Castillo of July 5, 2007 (evidence file, folio 1543).

Marcos Bonifacio Castillo […] who had received death threats owing to the crime."[155] The request was registered as No. MC-109-07. On August 20, 2007, the Commission adopted such measures and ordered the State to take the necessary steps to ensure the life and physical integrity of Marcos Bonifacio Castillo and to report on the actions taken to clarify the facts that warranted the adoption of those measures: namely, the murder of Félix Ordóñez Suazo and the death threats presumably received by Marcos Bonifacio Castillo.[156]

F.1.3 Preliminary investigation and criminal proceedings for the death of Félix Ordóñez Suazo

141. On June 11, 2007, at around 3.30 p.m., the magistrate of the municipality of Iriona, department of Colon, went to the area of "El Castillo" in the jurisdiction of Punta Piedra where the incident occurred to carry out the removal of the corpse, which was identified by witnesses and family members as the body of Félix Ordóñez Suazo.[157] According to the record of the removal of the corpse, when the magistrate arrived at the area where the incident occurred, he noted the presence of agents from the Iriona municipal police headquarters; moreover, due to the difficulty of access and the delay, Félix Ordóñez Suazo's body had been moved by the community's inhabitants. When the authorities arrived, they examined the body and cordoned off an area of approximately two meters.[158]

142. Neither the prosecutor from the Public Prosecution Service, nor the medical examiner, were present at the procedure to remove the corpse and, in their absence, the magistrate recorded: (a) the existence of gunshot injuries: "a shot to the right side, a shot to the chest with an exit wound, and a shot […] in the right ear" (at around 4.30 p.m., authorization was given to return Félix Ordóñez Suazo's body to his relatives,[159] without conducting an autopsy), and (b) the existence of two 16 mm caliber cartridges cases[160] found by an assistant at the scene of the crime, which were handed over to the Magistrates' Court.[161] The Court has no information of any appraisal or other procedure performed on the evidence collected.

143. On June 13, 2007, Marcial Martínez Suazo, Félix Ordóñez Suazo's brother, filed an "administrative complaint" for the "violent" death of his brother, in an area that was in dispute with the Rio Miel community, "owing to the land dispute between the two communities."[162] According to the complaint, Félix Ordóñez Suazo had allegedly been

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155 *Cf.* Request for precautionary measures presented by OFRANEH on June 15, 2007 (evidence file, folio 1578).

156 *Cf.* IACHR, Decision to adopt precautionary measures in favor of Marcos Bonifacio Castillo of August 20, 2007 (evidence file, folios 1576 and 1577). The State indicated that it had determined "that the aggrieved party had not filed a complaint, and an *ex-officio* investigation could not be conducted [into the threats against Marcos Bonifacio Castillo] because it was an offense that could be prosecuted by the Public Prosecution Service at the victim's request." *Cf.* Official letter No. FGR/LR-542-07 from the Prosecutor General to the Assistant Attorney General of August 31, 2007 (evidence file, folio 1582).

157 *Cf.* Record of corpse removal of June 11, 2007 (evidence file, folios 1564 and 1565).

158 *Cf.* Record of corpse removal of June 11, 2007 (evidence file, folios 1564 to 1566).

159 *Cf.* Record of corpse removal of June 11, 2007 (evidence file, folio 1566).

160 According to the statement of Nieves Oswaldo Bonifacio Castillo, after her brother, Marcos Bonifacio Castillo, had informed her about what had happened, she went to the scene of the crime, where three rifle shell cases were found. *Cf.* Statements of Nieves Oswaldo Bonifacio Castillo of July 3, 2007, and of Marcos Bonifacio Castillo of July 5, 2007 (evidence file, folios 1537, 1539 and 1545, respectively).

161 *Cf.* Record of corpse removal of June 11, 2007 (evidence file, folio 1566).

162 Complaint concerning the death of Félix Ordóñez Suazo filed by Marcial Martínez Suazo before the Magistrates' Court on June 13, 2007 (evidence file, folio 1549).

murdered following a series of threats by Luis Portillo's family, due to problems arising from the fact that their lands were contiguous; it also established that Marcos Bonifacio Castillo was the only witness to the murder that, according to the complainant, was attributed to David Portillo Chacón, Luis Portillo's son, both from Rio Miel.[163]

144. On the same date, the Ethnic Affairs Prosecutor received a complaint against Luis Portillo and David Portillo Chacón filed via email by OFRANEH for the crime of the murder of Félix Ordóñez Suazo, which was registered as No. 7277-2007, and forwarded to the Prosecution Service Director General the same day.[164] Finally, it was assigned to the local Prosecutor of Trujillo, Colón.[165] The complaint was registered by the Trujillo Prosecutor as No. 0273-2007 and by the General Directorate of Criminal Investigation as No. TJC 310-07.[166]

145. On June 26, 2007 the Ethnic Affairs Prosecutor issued an order requesting a police investigation for the DGIC to conduct certain procedures,[167] which were postponed due to lack of transportation.[168] Regarding the procedures ordered, in July 2007, the DGCI took four statements[169] and prepared reports in which it concluded that a thorough inspection of the scene of the crime, and the localization and capture of Luis and David Portillo Chacón remained pending.[170] Also, on July 16, 2007, the Trujillo Prosecutor issued an order requiring the police investigation to be expanded,[171] principally to individualize David Portillo Chacón, to obtain the record of the corpse removal prepared by the Iriona magistrate, to parcel up the cartridges cases that had been collected maintaining the chain of custody, and to inspect the scene of the crime; all within ten days. These procedures were not conducted.

146. Additionally, the Trujillo Prosecutor: (a) submitted to the Trujillo Trial Court (hereinafter "the Trial Court") a "request to file charges" against David Portillo Chacón as alleged perpetrator of the crime of the murder of Félix Ordóñez Suazo under No. 057-2007;[172] (b) requested the issue of the corresponding arrest warrants and, therefore, on August 13, 2007, the Trial Court issued an arrest warrant against David

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163 *Cf.* Complaint concerning the death of Félix Ordóñez Suazo filed by Marcial Martínez Suazo before the Magistrates' Court on June 13, 2007 (evidence file, folio 1549).

164 *Cf.* Memorandum No. FEEPC-130-2007 of the Ethnic Affairs Prosecutor of June 13, 2007 (evidence file, folio 1517).

165 *Cf.* Memorandum No. FLT-12-007 of the Trujillo Local Prosecutor of July 16, 2007 (evidence file, folio 1558).

166 *Cf.* Memorandum of the Trujillo Local Prosecutor of July 16, 2007 (evidence file, folio 1570).

167 Including: identify the accused, their criminal records; take statements from witnesses and the accused; collect evidence. *Cf.* Order requesting police investigation of complaint No. 7277 of June 13, 2007 (evidence file, folio 1551).

168 *Cf.* Memorandum No. FLT-03-007 of the Trujillo Local Prosecutor of June 26, 2007 (evidence file, folios 1525 and 1526). The procedures were rescheduled after obtaining the Navy's support.

169 *Cf.* Statements of Doroteo Thomas Rodriguez of July 3, 2007; Nieves Oswaldo Bonifacio Castillo of July 3, 2007; Marcos Bonifacio Castillo of July 5, 2007, and Marcial Martinez Suazo of July 14, 2007 (evidence file, folios 1546 and 1547; 1538 to 1541; 1542 to 1545, and 1536 and 1537, respectively).

170 *Cf.* Report of July 5, 2007, and report of July 12, 2007, of the General Directorate of Criminal Investigations (DGIC) (evidence file, folios 1552 to 1554 and 1528 and 1529, respectively).

171 *Cf.* Order requesting expansion of the police investigation issued by the Trujillo Public Prosecution Service on July 16, 2007 (evidence file, folio 1569).

172 The case was registered by the Magistrates' Court as No. 057-2007. *Cf.* Request to file formal charges of July 26, 2007 (evidence file, folios 1555 to 1557). According to deputy inspector Celma E. Trochez's report to the DNIC, during the working visit to different Garifuna communities of the department of Colon from February 8 to 12, 2010, it was reported that a copy of the warrant for the arrest of David Portillo Chacón for the murder of Félix Ordóñez Suazo had been left in the Trujillo DNIC offices, because he no longer lived at the address provided. *Cf.* Report to the National Directorate of Criminal Investigation of February 16, 2007 (evidence file, folio 1617).

Portillo Chacón;[173] (c) on March 24, 2011, requested the said court to hold a hearing to receive witness statements under the pre-trial evidence protocol, in order to receive Marcos Bonifacio Castillo's statement,[174] as requested by the Ethnic Affairs Prosecutor.[175] This hearing was scheduled for August 18, 2011;[176] however, the Court has no information on whether it was held; (d) urgently required the Regional Directorate of Forensic Medicine to appoint an expert to exhume the corpse of Félix Ordóñez Suazo, as requested by the Ethnic Affairs Prosecutor, to perform an autopsy, which had not been done at the time of his death.[177] However, on August 12, 2011, the Prosecutor advised that he had not received any response in this regard.[178]

147. Meanwhile, the Ethnic Affairs Prosecutor: (a) requested execution of the arrest warrant on four occasions;[179] nevertheless, to date, this has not been executed; (b) owing to the lack of response to his request for information, directly required the Forensic Medicine Directorate to appoint a forensic expert to perform the exhumation and autopsy of the corpse of Félix Ordóñez Suazo;[180] (c) asked the Trujillo Prosecutor, at least four times, to provide information on execution of the procedures required in the case,[181] and (d) requested the National Directorate of Criminal Investigation to forward the photographic record of the accused on May 13, 2013, and September 16, 2014. These were the last actions taken in the case, according to the evidence on file before the Court.

148. According to the State, the investigation into the death of Félix Ordóñez Suazo is still underway, and both the exhumation and the execution of the arrest warrant are pending at this time.

F.2 Complaint for the offenses of usurpation and threats to the detriment of Pauline Mejia and the Punta Piedra Garifuna community

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173 *Cf.* Arrest warrant issued by the Trujillo Trial Court of August 13, 2007 (evidence file, folio 1574).

174 *Cf.* Request from the Trujillo Prosecutor to the Trial Court to summon a witness to give pre-trial evidence of March 24, 2011 (evidence file, folios 1592 to 1594).

175 *Cf.* Memorandum No. FEEPC-206-2011 of the Ethnic Affairs Prosecutor of March 2, 2011 (evidence file, folio 1590). This request was answered by the Trujillo Prosecutor on March 28, 2011. *Cf.* Letter No. CFLT-17-2011 addressed by the Trujillo Prosecutor to the Ethnic Affairs Prosecutor of March 28, 2011 (evidence file, folio 1588).

176 *Cf.* Letter from the Trujillo Prosecutor to the Ethnic Affairs Prosecutor of August 12, 2011 (evidence file, folio 1596).

177 *Cf.* Memorandum No. FEEPC-206-2011 of the Special Ethnic Affairs Prosecutor of March 2, 2011 (evidence file, folio 1590).

178 *Cf.* Letter from the Trujillo Prosecutor to the Ethnic Affairs Prosecutor of August 12, 2011 (evidence file, folio 1596).

179 *Cf.* Official letter No. FEEPC-371-2007 of the Special Ethnic Affairs Prosecutor of August 28, 2007; Official letter No. FEEPC-110-09 of the Special Ethnic Affairs Prosecutor of February 25, 2009; Official letter No. FEEPC-79-2010 of the Special Prosecutor for Ethnic Group of February 5, 2010, and Official letter No. FEEPC-220-2013 of the Special Prosecutor for Ethnic Group of April 16, 2013 (evidence file, folios 1575, 1586, 1587 and 1611).

180 *Cf.* Official letter No. FEEPC-556-2011 of the Ethnic Affairs Prosecutor of August 19, 2011 (evidence file, folio 1604).

181 *Cf.* Official letter No.. FEEPC-551-2011 of the Ethnic Affairs Prosecutor of August 10, 2011(evidence file, folio 1595); Official letter No. FEEPC-226-2013 of the Ethnic Affairs Prosecutor of April 22, 2013 (evidence file, folio 1612); Memorandum No. FEEPC-136-2013 of the Ethnic Affairs Prosecutor of May 15, 2013 (evidence file, folio 1619), and Official letter No. FEEPC-OF-558-2014 of the Ethnic Affairs Prosecutor of September 9, 2014 (evidence file, folio 1621). Only the first official letter was answered on August 12, 2011. *Cf.* Letter from the Trujillo Prosecutor to the Ethnic Affairs Prosecutor of August 12, 2011 (evidence file, folio 1596).

149. On April 13, 2010, Edito Suazo Ávila, representative of the Punta Piedra Community Development Association filed a complaint before the Public Prosecution Service against "*ladinos* or outsiders" for the offenses of usurpation and threats owing to the invasion of the community's lands and because the community was "receiving threats" as a result of this dispute. Inquiry No. 0801-2010-12292 was therefore opened.[182]

150. Also, on April 16, 2010, Edito Suazo Ávila and Antonio Bernárdez Suazo, members of the Punta Piedra community, filed a complaint against Alejandro Ortiz, Efraín Ortiz and Calín Ortiz before the Ethnic Affairs Prosecutor owing to threats against Paulino Mejía, member of their community. According to the complaint, registered as No. 0810-2010-12739, the said individuals had invaded lands belonging to the community, particularly a part of the territory that the Development Association had granted to Paulino Mejía so that he could work it. The complaint indicated that the said individuals had allegedly threatened Paulino Mejía telling him to leave and hand the lands over to them, otherwise he would suffer the same fate as Félix Ordóñez, presumably murdered previously due to a land dispute.[183]

151. Regarding the complaint for usurpation and threats against the Punta Piedra community (complaint No. 0801-2010-12292), on April 13, 2010, the Ethnic Affairs Prosecutor issued an order requiring a police investigation and ordered the General Directorate of Criminal Investigation to conduct a series of procedures in order to investigate the presumed usurpation on the area by third party occupants.[184]

152. With regard to the complaint of threats against Paulino Mejía (complaint No. 0801-2010-12739), on April 17, 2010, the Ethnic Affairs Prosecutor issued an order requiring a series of pertinent preliminary procedures[185] (*infra* para. 304). The two complaints, the one on usurpation and threats against the Punta Piedra community, and the other on threats against Paulino Mejía, were investigated jointly as No. 0801-2010-12292.

153. On June 3 and 4, 2013, DNIC agents visited the area of the facts, as requested by the Ethnic Affairs Prosecutor,[186] and took the statements of four members of the Punta Piedra community.[187] The statements were consistent in indicating that, since 1993, part of the community's territory had been occupied by outsiders, who had allegedly threatened its members on several occasions.

154. As a consequence of the visit to the area of the facts, the DNIC agents issued two records of the police procedure,[188] and a report for the Ethnic Affairs Prosecutor[189]

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182 *Cf.* Complaint No. 0801-2010-12291 filed on April 13, 2010 (evidence file, folio 109).

183 *Cf.* Complaint No. 0801-2010-12739 filed on April 16, 2010 (evidence file, folios 111, 2443 to 2445).

184 The procedures ordered included: to identify the accused, to take statements from witnesses, to verify the community's ownership titles, and to inspect the scene of the crime. *Cf.* Request for a police investigation of complaint No. 0801-2010-122292 of April 13, 2010 (evidence file, folio 1671).

185 *Cf.* Request for a police investigation of complaint No. 0801-2010-12739 of April 17, 2010 (evidence file, folios 2446 to 2477).

186 *Cf.* Official letter FEEPC 324/2013 and Official letter FEEPC 355/2013 of the Ethnic Affairs Prosecutor of May 24 and June 7, 2013 (evidence file, folio 1641 and 1645).

187 *Cf.* Statement of Edito Suazo Ávila of June 3, 2013; statement of Antonio Bernárdez Suazo of June 3, 2013; statement of Andrés Álvarez Bernárdez of June 3, 2013, and statement of Isabel Bernárdez Martínez of June 3, 2013 (evidence file, folios 1648 to 1664).

188 *Cf.* Record of police procedure of June 3, 2013 (evidence file, folios 1665 and 1666) and Record of police procedure of June 4, 2013 (evidence file, folios 1667 to 1669).

in which they recorded that: (a) Paulino Mejía did not come forward to testify before the DNIC agents present in the area, even though his presence was requested; (b) neither the DNIC offices nor the offices of the Public Prosecution Service of Trujillo had any record of, or conducted proceedings in relation to, the complaints concerning usurpation and threats; (c) the planned procedures could not be conducted because the DNIC agents were unable to return to the area of Punta Piedra owing to lack of fuel; (d) the area presumably encroached upon by the Ortiz family was not inspected and the accused were not fully identified. The Court has no further information on this process.

F.3 Complaint for abuse of authority owing to the construction of a highway cutting through the territory of the Punta Piedra Garifuna community

155. On October 19, 2010, Edito Suazo Ávila and Antonio Bernárdez Suazo filed a complaint for the offense of abuse of authority before the Ethnic Affairs Prosecutor, and requested an investigation of the presumed "construction of a highway that would cut through land owned by the Punta Piedra Garifuna community, currently known as Rio Miel, without due consultation of the community as established in Convention 169 […]."[190] The complaint was registered as No. 0801-2010-34463.

156. In this regard, the Ethnic Affairs Prosecutor: (a) issued a request for a police investigation on November 3, 2010, ordering the DGIC to take several actions, such as: taking statements from witnesses and the complainant; requesting information about whether the mayor's office had authorized the construction of a highway and the relevant documentation, as well as information about a prior consultation of the community with regard to the construction and the pertinent evidence that it had been conducted;[191] (b) asked the INA Minister-Director to inspect the lands belonging to the communities to determine the areas encroached upon; initially, this was not done owing to a lack of travel expenses;[192] (c) issued a requirement for a police investigation on May 14, 2013, reiterating the procedures previously requested and ordering the DGIC to take new actions, such as: an on-site inspection and a request for information about those in charge of the highway construction;[193] (d) requested the Ministry of Public Works, Transportation and Housing (SOPTRAVI) of the area, to forward information about the unit and personnel in charge of the construction of the highway in 2010.[194] The next day, the Director General of Highways advised that there was no project in the Punta Piedra community;[195] (e) required the Iriona mayor to submit a copy of the 2010 highway construction permit;[196] in response, the deputy

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189 *Cf.* Report of the National Directorate of Criminal Investigation of June 14, 2013, presented at the request of the Ethnic Affairs Prosecutor (evidence file, folios 1644, 1646 and 1647). Also, the Ethnic Affairs Prosecutor asked the DNIC to obtain the photographic records of Efraín and Alejandro Ortiz. This request was not answered, according to the Court's files. *Cf.* Request to execute procedures of the Ethnic Affairs Prosecutor of June 12, 2013 (evidence file, folios 1642 and 1643).

190 *Cf.* Complaint of April 10, 2010, filed on October 19, 2010 (evidence file, folio 1482).

191 *Cf.* Request for police investigation of complaint No. 0801-2010-34463 of November 3, 2010 (evidence file, folios 1484 to 1485).

192 *Cf.* State's brief to the Commission of February 18, 2011 (evidence file, folios 551 and 552).

193 *Cf.* Request for police investigation of complaint No. 0801-2010-34463 of May 14, 2013 *(*evidence file, folios 1484, 1485 and 1487).

194 *Cf.* Official letter No. FEEPC-OF-65-2013 of the Ethnic Affairs Prosecutor of May 15, 2013 (evidence file, folio 1486).

195 *Cf.* Official letter DGC 0861-2013 of SOPTRAVI of May 16, 2013 (evidence file, folio 1488).

196 *Cf.* Official letter No. FEEPC-OF-319-2013 of the Ethnic Affairs Prosecutor, dated May 23, 2013, received on June 3, 2013 (evidence file, folio 1495).

mayor advised that the mayor's office had not issued any type of permit and it had no supporting documentation in this regard.[197]

157. Regarding the actions ordered, the DNIC agents inspected the area of Rio Miel, and, as a result: (a) confirmed the existence of a cutting for a highway in front of a place called "*Pulperia y Hospedaje La Única*." This highway went to "El Rio Tinto Negro" passing through the "Cerro Castillo" sector, near Paulino Mejía's properties. Nevertheless, the agents were unable to reach the end of it owing to the presumed presence in the area of armed individuals; (b) they took photographs of the cutting made for the highway, and (c) they recorded that the mayor's office had not authorized any construction. This was reported to the Ethnic Affairs Prosecutor on August 1, 2013.[198] The Court has no further information on this process.

IX
MERITS

158. Based on the rights of the Convention alleged in the instant case, the Court will make the following analysis: (1) Right to collective property in relation to Articles 1(1) and 2 of the American Convention; (2) Right to judicial protection in relation to Articles 1(1) and 2 of the American Convention, and (3) Right to life, judicial guarantees and judicial protection.

IX-1
RIGHT TO COLLECTIVE PROPERTY IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION

A. Arguments of the Commission and the parties

159. The ***Commission*** indicated that the State had violated Article 21 of the Convention to the detriment of the Punta Piedra Garifuna community because, even though the State's recognition of the community's right to property is not in dispute in this case, the State has violated its obligation to ensure peaceful possession of their territory by freeing it of encumbrances and providing effective protection from third parties. This means that, from 1993 to date, the Punta Piedra Garifuna community not only has been unable to control the territory it has historically occupied effectively and peacefully, but also its members are experiencing a situation of insecurity that jeopardizes their rights to life and personal integrity. Added to this, the Commission indicated that the right to collective property included freeing the indigenous people's ancestral territory of encumbrances; in other words, ensuring that they could effectively enjoy their traditional territory peacefully.

160. The ***representatives*** agreed with the Commission in general. They accepted the fact that the State has proposed solutions but, unlike the Commission, they argued that such solutions were not clearly defined by law or effective in practice; therefore, they were doomed to failure inasmuch as they were not appropriate mechanisms to provide an adequate answer. The State had failed to ensure peaceful possession of the indigenous territory since it had not investigated the complaints, had taken ineffective

197 *Cf.* Letter of the Iriona municipality of June 3, 2013 (evidence file, folio 1496).

198 *Cf.* Record of police inspection of June 3, 2013 (evidence file, folios 1497 and 1498); Request for information from the Ethnic Affairs Prosecutor of June 19, 2013 (evidence file, folio 1489) and Report of the National Directorate of Criminal Investigation of August 1, 2013, presented at the request of the Ethnic Affairs Prosecutor (evidence file, folios 1490 and 1491).

actions, and had allowed violence to occur by failing to comply with its obligations. They added that, "regarding the safeguard in favor of third parties that was eliminated from the second title, the Court should apply the principle of the continuity of States (or identity of States), since the said clause was eliminated by an administrative decision of the Honduran State signifying real progress in the recognition of indigenous rights in Honduras, rather than by a decision of a former Minister in his personal capacity by which the State sought "to disregard its final decisions and ignore the ancestral, ownership and conventional rights of the Punta Piedra Garifuna, [which] would represent an unacceptable regression."

161. The ***State*** acknowledged the need to ensure the peaceful possession of the territories of the indigenous communities by freeing them of encumbrances and, therefore, pursuant to the laws of Honduras, it has the obligation to free the area occupied by the inhabitants of the village of Rio Miel of encumbrances. The State indicated that it had tried to clear the title granted to the Punta Piedra Garifuna community and, to this end, on two occasions, it had agreed on the value of the improvements to be paid to the Rio Miel inhabitants. It indicated that, currently, it was unaware of the value of the improvements that, over their 20-year occupation of those lands, had been made by the Rio Miel inhabitants. However, it had planned to again update the appraisal so as to be able to propose payment for the improvements, and to purchase land in another location to resettle them and try to avoid outbreaks of violence between the two communities. Subsequently, in its final arguments, it underlined that "the Honduran State committed a deprivation of rights" by amending the title granting the community an expansion, because this constituted a violation of the Rio Miel inhabitants' right of occupation and, therefore, of the right granting them full ownership of the said land. The Honduran State insisted that it had not violated the right to property of the Punta Piedra community because it was not occupying the land claimed when it was titled and is not occupying it at this moment either; therefore, the community has no right to the land they claim being freed of encumbrances.

B. Considerations of the Court

162. First, the Court repeats that, as established in the section on the State's partial acknowledgement of responsibility, this produced legal effects as regards the violation of the right to property, recognized in Article 21 of the Convention (*supra* para. 45). However, in this chapter, the Court will analyze the arguments of the parties and the Commission in order to determine its scope. In addition, the dispute with regard to Articles 1(1) and 2 of the Convention persists, and this will be examined together with the arguments in the corresponding section (*infra* para. 203 to 211). Also, pursuant to the prior consideration (*supra* para. 56) and proven facts (*supra* para. 91), the standards for indigenous and tribal rights are applicable to the Punta Piedra Garifuna community.

163. Furthermore, three main disputes exist in light of the position of the parties and the Commission. The first consists in determining the scope of the State's obligation to ensure the use and enjoyment of the property titled to the Punta Piedra Garifuna community *vis-à-vis* third parties, owing to its alleged inability to possess its traditional territory peacefully; the second relates to the compatibility of the applicable domestic laws with the American Convention; and the third relates to the moment at which the right to prior consultation should be implemented. It is worth noting that, in this case, the Commission did not present the situation of the Rio Miel inhabitants – as a population settled in the territory – as a relevant fact, and the Court will take this into account when deciding on a solution to the instant case.

164. The Court will analyze these disputes in the following chapters: (a) the right to collective indigenous and tribal property; (b) the guarantee of the use and enjoyment of collective property and the failure to free the Garifuna territory of encumbrances; (c) Honduran property ownership regulations, and (d) the obligation to ensure the right to consultation and cultural identity.

B.1 The right to collective indigenous and tribal property

165. The Court recalls its case law in this matter in the sense that Article 21 of the American Convention protects the close relationship that indigenous peoples have with their lands, as well as with the natural resources and the intangible elements derived from them. Indigenous peoples have a community-based tradition of the collective ownership of the land; thus, land is not owned by the individual but by the group and its community.[199] These notions of land ownership and possession do not necessarily conform to the classic concept of ownership, 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 use and enjoyment of property based on the culture, practices, customs and beliefs of each people, would be tantamount to maintaining that there is only one way to use and dispose of property, which, in turn, would render protection under this provision illusory for millions of people.[200]

166. The Court has taken into account that indigenous groups, by the fact of 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, the relationship with the land is not merely a matter of possession and production but a material and spiritual element that they should enjoy fully, even to preserve their cultural legacy and transmit it to future generations.[201] "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, their cultural identity";[202] consequently, the protection and guarantee of the right [to the use and enjoyment of their territory] is necessary to ensure [not only] their survival,"[203] but also their development and evolution as a people.

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199 Cf. Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, reparations and costs. Judgment of August 31, 2001. Series C No. 79, para. 148, 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, para. 111.

200 Cf. Case of the Sawhoyamaxa Indigenous Community 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 their Members, supra, para. 111.

201 Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra, para. 149 and Case of the *Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 86.

202 *Case of the Yakye Axa Indigenous Community, supra, para.* 135, and Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their Members, supra, para. 112.

203 Cf. Case of the Yakye Axa Indigenous Community, supra, paras. 124, 135 and 137 and Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra, para. 112.

167. Given the intrinsic connection that 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 life, and that their distinctive cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected by the States.[204]

168. This Court's consistent case law has repeatedly recognized the right of indigenous peoples to ownership of their traditional territories and the duty of protection arising from Article 21 of the American Convention in light of the provisions of ILO Convention No. 169,[205] the United Nations Declaration on the Rights of Indigenous Peoples, as well as the rights recognized by the State in its domestic laws or in other relevant instruments and international decisions,[206] thereby constituting the *corpus juris* that defines the obligations of the State Parties to the American Convention, in relation to the protection of the rights of indigenous peoples. Therefore, when examining the meaning and scope of Article 21 of the Convention in this case, the Court will take into account, in light of the said general rules of interpretation established in Article 29(b) of this instrument and as it has done previously,[207] the aforementioned special significance of communal ownership of the land for indigenous peoples, as well as the alleged measures taken by the State to ensure that those rights are fully effective.[208]

B.2 The guarantee of the use and enjoyment of collective property

169. The Court has interpreted Article 21 of the Convention establishing that the State obligation to take measures to ensure the right to property of indigenous peoples necessarily entails, based on the principle of legal certainty, that it must demarcate, delimit and title the territories of indigenous and tribal communities.[209] In addition, the Court has explained that it is necessary to materialize the territorial rights of indigenous peoples by the adoption of the legislative and administrative measures required to create an effective delimitation and demarcation mechanism that recognizes such rights in practice. The foregoing, taking into account the recognition of indigenous rights to communal property, must be ensured by granting a formal title to property or another similar form of State recognition, which provides legal certainty to

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204 *Cf. Case of the Yakye Axa Indigenous Community, supra,* paras. 124, 135 and 137, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra,* para. 112.

205 *Cf.* ILO, Convention No.169 on indigenous and tribal peoples, *supra,* Article 18.

206 *Inter alia,* UN, United Nations Permanent Forum on Indigenous Issues; UN. Human Rights Committee; UN Committee on the Elimination of Racial Discrimination; UN. Special Rapporteur on the rights of indigenous peoples; UN Office of the United Nations High Commissioner; IACHR, IACHR Rapporteurship on the Rights of the Indigenous Peoples; American Declaration of the Rights and Duties of Man.

207 *Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra,* para. 148, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra*, para. 113.

208 *Cf. Case of the Yakye Axa Indigenous Community, supra,* para. 124, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra,* para. 113.

209 *Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra,* paras. 153 and 164, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra,* para. 119.

indigenous land tenure *vis-à-vis* the acts of third parties or of State agents, and "this merely abstract or legal recognition of indigenous lands, territories or resources, is practically meaningless if the property is not physically delimited and established."[210]

170. In the instant case, there is no dispute regarding the duty to delimit, demarcate and title the territory, because the State has already met these obligations and the territory in question is currently titled in favor of the said Garifuna community. However, it is necessary to define the relevance and scope of the obligation to effectively ensure the use and enjoyment of the indigenous property which is directly recognized by Article 21 of the American Convention.

B.2.1 Obligation to ensure the use and enjoyment of collective property under international law

171. In this section, the Court will refer to the principal general standards concerning the use and enjoyment of indigenous and tribal property, notwithstanding the specific considerations applicable to this particular case.

172. Regarding the use and enjoyment of indigenous and tribal territory, the Court recalls its case law according to which, *inter alia*: "(1) traditional possession of their lands by indigenous people has equivalent effects to those of a State-granted full property title; (2) traditional possession entitles indigenous people to demand official recognition and registration of property title; (3) the members of indigenous peoples who have unwillingly left their traditional lands, or lost possession thereof, retain property rights thereto, even though they lack legal title, unless the lands have been lawfully transferred to third parties in good faith, and (4) 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."[211] Additionally, in the *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua,* the Court found that States must guarantee effective ownership by the indigenous peoples and refrain from acts which could result in agents of the State itself or third parties acting with its acquiescence or its tolerance, affecting the existence, value, use or enjoyment of the territory.[212] In the *Case of the Saramaka People v. Suriname*, it was established that States must guarantee the right of indigenous peoples to effectively own and control their territory without outside interference of any kind.[213] In the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, the Court established that States must ensure the right of the indigenous peoples to control and use their territory and natural resources.[214] The Inter-American Commission has also ruled in this regard.[215]

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210 *Cf. Case of the Yakye Axa Indigenous Community, supra,* para. 143, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra, para. 135.*

211 *Cf. Case of the Sawhoyamaxa Indigenous Community, supra,* para. 128, and *Case of the Xákmok Kásek Indigenous Community*, *supra,* para. 109..

212 *Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra,* para. 164, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra*, para. 232.

213 *Case of the Saramaka People v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of November 28, 2007. Series C No. 172, para. 115.

214 *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and reparations.* Judgment of June 27, 2012. Series C No. 245, para. 146.

215 In its Report on Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources, the Inter-American Commission systematized some criteria to be taken into account whenever there are property disputes with third parties. The Commission indicated that "indigenous and tribal peoples

173. In addition, Article 14(1) of ILO Convention No. 169 establishes that "[…] 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." Article 14(2) provides that "[g]overnments shall […] guarantee effective protection of their rights of ownership and possession." Also, Article 17(3) establishes that "persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them." According to Article 18, "[a]dequate penalties shall be established by law for unauthorized invasion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences."

174. Similarly, Article 26 of the United Nations Declaration on the Rights of Indigenous People, establishes "the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired," as well as the right to own, use, develop and control the lands. Consequently, States must ensure the legal recognition and protection of those lands, respecting the customs, traditions and land tenure systems of the indigenous peoples.[216]

175. Also, in its General Recommendation No. 23, the Committee on the Elimination of Racial Discrimination called upon States to "recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources [and, where they have been deprived of their lands without their free and informed consent], to take steps to return those lands and territories."[217]

176. The United Nations Special Rapporteur on the rights of indigenous peoples has emphasized the obligation to secure use and enjoyment of indigenous and tribal property, when this is occupied by third parties, through clearing the title to the land.[218] Moreover, in his expert opinion provided to the Court, former Special Rapporteur James Anaya emphasized the States' duty to guarantee the right to collective property of indigenous peoples *vis-a-vis* invasion by non-indigenous persons, and also the duty to resolve any conflict arising from such situations.[219]

177. Meanwhile, expert witness José Aylwin indicated (*supra* para. 10) that:

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and their members have a right to have their territory reserved for them, and to be free from settlements or the presence of third parties or non-indigenous colonizers within their territories." It indicated that, as a result of this right, "the State has a corresponding obligation to prevent the invasion or colonization of indigenous or tribal territory by other persons." Consequently, it established that the State must "carry out the necessary actions to relocate those non-indigenous inhabitants of the territory who have settled there." IACHR, Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System, *supra,* para. 114.

[216] *Cf.* United Nations Declaration on the Rights of Indigenous Peoples, Resolution 61/295, adopted by the United Nations General Assembly on September 13, 2007, article 26. Available at: https://digitallibrary.un.org/record/606782?ln=en. The United Nations Permanent Forum on Indigenous Issues has emphasized the obligation of States to protect such lands from interference by any institution, corporation or individual. *Cf.* UN Permanent Forum. Follow-up report on indigenous peoples and the right to participate in decision-making, with a focus on extractive industries.

[217] UN, Committee on the Elimination of Racial Discrimination, General Recommendation No. 23, Rights of indigenous peoples, UN Doc A/52/18 annex V, Recommendation 5. Available at: http://hrlibrary.umn.edu/gencomm/genrexxiii.htm

[218] *Cf.* UN. Mandate of the Special Rapporteur on the rights of indigenous peoples. Communication of May 10, 2013. Available at: https://spdb.ohchr.org/hrdb/24th/public_-_UA_Nicaragua_10.05.13(1.2013).pdf

[219] Expert opinion provide to the Court by James Anaya (merits file, folio 527).

> "States must also prevent appropriation and invasion of [indigenous] lands and territories by third parties […]. [Likewise,] [i]ndigenous peoples have the right to be protected by States from attacks by third parties in the context of property conflicts, to this end adopting special measures, paying special attention to their particular situation of vulnerability." […]. [The obligation to free the territories of encumbrances] is a reality common to many indigenous lands that have been occupied traditionally [and in which], during the identification and demarcation processes third parties' properties are found, many of which are illegal, although sometimes occupied in good faith […]. States have diverse obligations, including relocation [of the third party], payment of compensation when improvements haves been made, and also prevention of any conflicts that may arise as a result of this invasion of such areas by third parties."

178. The Court takes note of the countries in the region, such as Colombia, that have expressly recognized the obligation to free the land of encumbrances in their domestic law to ensure the use and enjoyment of collective property. Thus, in June 2013, the Constitutional Court of Colombia issued Judgment T-387/13, in which, based on some of the case law previously mentioned,[220] it determined that the State was bound to protect the collective territories and indicated that the right to collective property comprised the obligation to provide clear title and protect the land from the actions of third parties.[221]

179. The Court has verified that international consensus exists on the inalienability and imprescriptibility of indigenous territories in order to protect the use and enjoyment of indigenous territory. Honduras and several other countries in the region have also legislation in this sense; for example, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Honduras, Paraguay, Peru and Venezuela.[222]

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[220] The Constitutional Court of Colombia in its Judgment T-387/13, pursuant to the case law of the Inter-American Court and the authorized interpretation made by the Inter-American Commission on Human Rights and the Committee for the Elimination of Racial Discrimination, indicated that: "(i) Possession is not necessary for the indigenous peoples to claim the delimitation and protection of their territory; (ii) indigenous peoples have the right to restitution of their territories when these have passed into the hands of third parties; (iii) the right to restitution subsists while the relationship that connects them to the territory subsists and/or until the *de facto* obstacles disappear, such as the violence that has prevented them from using their territories; (iv) it is necessary to consider whether the limitation to the right to property affects other rights. According to the standards of the Inter-American Court, to establish whether a limitation of the right to property is in keeping with the American Convention, it must meet the requirements of legality, necessity, proportionality and the achievement of a legitimate objective in a democratic society." Available at: http://corteconstitucional.gov.co/relatoria/2013/T-387-13.

[221] *Cf.* Constitutional Court of Colombia, Judgment T-38713, paras. 9, 10 and 11.

[222] *Cf.* Honduras: Decree No. 82-2004, 2004 "Property Act," available at: https://www.ccit.hn/wp-content/uploads/2013/12/LEY-DE-PROPIEDAD.pdf; Argentina: 1853 Constitution of the Argentine Nation, art. 75.17, available at: http://www.senado.gov.ar/deInteres; 1994 Constitution of the province of Chaco, art. 37, available at: http://www.intertournet.com.ar/argentina/constitucion_chaco.htm; 1994 Constitution of the province of Chubut, article 34, available at: http://www.legischubut2.gov.ar/documentos/Constitucion_provincial.pdf; 1986 Constitution of the province of Salta, article 15.I, available at: http://www.cmagistraturasalta.gov.ar/images/uploads/constitucion-provincial.pdf; No. 4086 of 1966 of the province of Salta, available at: http://digesto.diputadosalta.gob.ar/leyes/4086.pdf; 1957 Constitution of the province of Formosa, article 79, available at: http://mininterior.gov.ar/provincias/formosa/cp-formosa.pdf; Law 2727 (1989), of the province of Misiones, available at: http://www.diputadosmisiones.gov.ar/digesto_juridico/documentos/218.pdf; Bolivia: New Political Constitution of the Plurinational State of Bolivia (2008), article 394.III, available at: http://www.harmonywithnatureun.org/content/documents/159Bolivia%20Consitucion.pdf; Law No. 1715 (1996), Law of the National Agrarian Reform Service, available at: http://bolivia.infoleyes.com/shownorm.php?id=1274; Brazil: 1988 Political Constitution of the Federative Republic of Brazil, article 231.4, available at: http://www.acnur.org/t3/fileadmin/scripts/doc.php?file=Pdf/0507; Chile: Law 19.253 (1993), which "[e]stablishes provisions for the protection, promotion and development of indigenous peoples and creates the national indigenous development corporation" (amended on March 25, 2014), available at: http://www.leychile.cl/Navegar?idNorma=30620; Colombia: 1991

B.2.2 The guarantee of use and enjoyment by freeing land of encumbrances in Honduras and the 2001 Undertaking

180. The Court notes that there is no explicit concept of "clearing the title" "or freeing the land of encumbrances" in relation to indigenous territories under the laws of Honduras.[223] However, the undertaking signed on December 13, 2001 (*supra* paras. 113 and 114),[224] refers to the scope of this obligation as follows:

> "The State is obliged to clear the title granted to the Punta Piedra community by paying the inhabitants of the village of Rio Miel for the improvements made so that the Garifuna community [of Punta Piedra] can exercise the right of full ownership accorded to it by the ancestral documentation and granted to it by the National Agrarian Institute.
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> […] The State, through the National Agrarian Institute, must diligently seek a piece of land where the compensated families may be relocated; also, through the competent institutions, every effort must be made to support the right to housing, health, education, water and other benefits that ensures the appropriate conditions for the relocated population, and so that once and for all the Punta Piedra community is able to exercise its ownership over the lands claimed."

181. Based on the above, the Court reiterates the State's obligation to ensure the effective use and enjoyment of the right to indigenous and tribal property. To this end, it may adopt different measures including, clearing the title. For the purposes of this case, the Court understands that clearing the title or freeing the land of encumbrances consists of a process that results in the State's obligation to remove any type of interference on the territory in question. In particular, this process is implemented by the legitimate owner having full possession and, if appropriate and as agreed, by the

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Constitution, articles 63 and 329, available at: http://www.constitucioncolombia.com/_indice.php; Decree 2164 (1995), available at: http://www.incoder.gov.co/documentos/A%C3%91O_2015/_MODIFICACION%20WEB%202015/NORMOGRAMA/Decreto%202164%20de%201995%20%20Reglamento%20de%20Tierras%20para%20Ind%C3%ADgenas.pdf; Costa Rica: Law 6172 (1977), Indigenous Peoples Act, available at: http://www.wipo.int/wipolex/es/text.jsp?file_id=221055; Ecuador: 2008 Constitution of Ecuador, article 57.4, available at: http://www.asambleanacional.gov.ec/documentos/__constitucion_de_bolsillo.pdf; Paraguay: 1992 National Constitution of Paraguay, article 64, available at: http://www.oas.org/juridico/spanish/par_res3.htm; Peru: Legislative Decree No. 295 of 1984, Peruvian Civil Code, available at: http://spij.minjus.gob.pe/CLP/contenidos.dll/demo/coleccion00000.htm/tomo00006.htm/sumilla00008.htm?f=templates$fn=document-frame.htm$3.0#JD_ccsctu; Decree Law No. 22175 (1978), Native Communities and Agrarian Development of the Jungle and the Edge of the Jungle Act, available at: http://www.iadb.org/Research/legislacionindigena/leyn/docs/PERU-Decreto-Ley-22175-78-ley-Comunidades-Nativas-.pdf; Venezuela: 1999 Constitution of the Bolivarian Republic of Venezuela, article 119, available at: http://www.cne.gob.ve/web/normativa_electoral/constitucion/titulo3.php#art119, and "2005 Organic Law of Indigenous Peoples and Communities" available at: http://www.unes.edu.ve/bibliotecaunes/custodia/leyes/ley34.pdf. *Cf. Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra,* para. 142.

[223] The Honduran Civil Code defines freeing of encumbrances in cases of sales as follows: (a) art. 1620 provides that the vendor is obliged to deliver the object sold free of encumbrances; (b) art. 1631 establishes that, based on the freeing of encumbrances referred to in article 1620, the vendor shall be liable for any hidden defects or flaws in the item sold to a good faith purchaser. Nevertheless, this mechanism is regulated in the Honduran Civil Code only in relation to: (a) the action for recovery or ownership (art. 879); (b) the distribution of assets (arts. 1257.2 and 1258); (c) donations (arts. 1329 and 1330); (d) sales, in cases of both eviction and hidden defects or liens (arts. 1620, 1631-1633, 1635, 1637, 1638, 1641, 1643, 1644 and 1652); (e) transmission of credits and other intangible assets (art. 1672), and (f) leases (arts. 1683, 1696 and1700); there is no reference to freeing indigenous lands of encumbrances.

[224] In this regard, see also Executive Decision No. 035-2001 of August 28, 2001.

payment of improvements and relocation of third party occupants, so that the Punta Piedra community may use and enjoy its collective property in a peaceful and effective manner.

B.3 Inability of the Punta Piedra community to use and enjoy its territory

182. In light of the fact that the State has acknowledged its obligation to ensure the use and enjoyment of the land by freeing it of encumbrances (*supra* para. 114), the Court will analyze the moment at which the State became aware of third-party occupation of the territory in question in order to proceed to remove the non-indigenous occupants.

183. The Court notes that, according to several statements, the Rio Miel occupation began between 1987 and 1993 (*supra* para. 102); however, there are no official records of this. It is worth recalling that it was in 1993 that the Punta Piedra community received its first title, for an area of approximately 800 hectares over a territory for which it had possessed a communal title (*título ejidal*) since 1920 (*supra* para. 92). Subsequently, as certified by INA on December 22, 1999, in file No. 10775–52147,[225] the Punta Piedra community requested the expansion of its territory over an area of 3,000 hectares. However, only 1,513 additional hectares were demarcated and titled – expressly excluding 46 hectares belonging to individuals who had a title to land in the area – and the boundaries were defined (*supra* paras. 96 and 98). The total area of the territory titled to the Punta Piedra community amounted to 2,314 hectares (*supra* para. 101). It should be noted that, in the expansion title of December 6, 1999, the exclusionary clause which was revoked on January 11, 2000 (*supra* para. 100) stipulated that "the areas occupied and exploited by individuals who are not members of the community shall be excluded from the area awarded, and the State reserves the right to dispose of them in order to award them to the occupants who meet the legal requirements." Neither the number of people nor the area occupied were specified.

184. In addition, due to occupation claims, in 2001, the parties signed an undertaking (*supra* para. 114), in order to free the territory granted of encumbrances and to prevent conflicts, and also, in 2006, a memorandum of understanding[226] for the same purpose, in which the problem of third-party occupation was explicitly reiterated (*supra* para. 119). In 2007, INA issued the report of the cadastral survey, recording the increase in third-party occupation of the area granted by the second title. In addition, since the problems persisted, the case was lodged before the Inter-American Commission on October 29, 2003. The Admissibility Report was issued on March 24, 2010, and the Merits Report on March 21, 2013, describing the seriousness of the situation as a result of the failure to free the land of encumbrances. Lastly, according to the 2013 field report, the village of Rio Miel had developed infrastructure for utilities such as water and electricity.

185. The Court notes that the State was aware of the third-party occupation of the area, at least following the evaluation of the 1999 expansion request; and then, with the final title deed on January 5, 2000. Subsequently, once the territory had been

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225 *Cf.* INA note of December 22, 1999 (merits file, folio 632).

226 The measures requested to clear the title were the signature of an undertaking in 2001; requests to the National Congress to adopt budget items; requests to INA for information; adoption of a memorandum of understanding in 2006, and participation in working meetings to establish how the territory would be freed of encumbrances.

titled, the State was informed on several occasions about the continued and increasing third-party occupation of part of the territory claimed and titled, without acting with due diligence to protect this territory and/or reach a final solution.

186. Regarding the moment when the State should have freed the territory of encumbrances: in the instant case, the Court takes note that, prior to the second expansion title, the State failed to clearly demarcate the areas that were supposedly occupied by third parties in order to prevent and to resolve the problem of the increasing occupation by measures aimed at ensuring the use and enjoyment of the territory prior to its titling. Nevertheless, the Court considers that, although the measure of freeing the land of encumbrances should generally – and according to each case – be taken prior to titling a property, ultimately, it is once the territory has been titled that the State had the indisputable obligation to free the titled territory of encumbrances in order to ensure the Punta Piedra community's effective use and enjoyment of their communal property. The State should have complied with this obligation *ex officio* and with extreme diligence, while also protecting the rights of third parties.[227]

187. Regarding the measures adopted by the State: even though the State achieved the 2001 agreement and the 2006 undertaking between the parties in order to pay the improvements made by the Rio Miel community and relocate them, the Court notes that the State failed to assume this commitment as its inherent duty or take sustained measures to achieve its "*effet utile";* rather, this reveals that the said undertaking was made as a formality preordained to be ineffective because, for example, when the National Congress was asked to adopt the corresponding budget, this was never done (*supra* paras. 118 and 123). Also, according to the State, it is the presumed victims who should file remedies in cases of non-compliance by the State, thereby delegating to the presumed victims the responsibility assumed by the State in the agreements reached (*infra* para. 230).

188. In this regard, the Court reiterates the acknowledgement made by Honduras, in which it stated that:

> The State of Honduras acquiesces partially to the fact and claim consisting in the payment of improvements to free of encumbrances the Punta Piedra community's right to ownership of its territory because, in this case, the State of Honduras has maintained an objective and consistent position that this right is not in dispute and neither is the granting of a legal title recognizing this right; rather the dispute relates to the obligation to ensure peaceful possession by granting clear title to the land and protecting it effectively *vis-à-vis* third parties (*supra* para. 35).

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[227] In this regard, the United Nations Committee on Economic, Social and Cultural Rights has indicated the need for a legal framework compatible with Article 11 of the Covenant. The Committee considered that the procedural protections which should be applied in relation to forced evictions include: (a) an opportunity for genuine consultation with those affected; (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction; (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected; (d) especially where groups of people are involved, government officials or their representatives to be present during an eviction; (e) all persons carrying out the eviction to be properly identified; (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise; (g) provision of legal remedies, and (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the court. *Cf.* United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 7 (1997), para. 15.

189. Therefore, the failure to ensure the use and enjoyment of property because the State did not to free the Punta Piedra community's territory of encumbrances for more than 15 years, as well as the failure to execute the aforementioned agreements, created serious tensions between the communities in question. This has prevented the Punta Piedra community from enjoying the effective possession and protection of its territory *vis-à-vis* third parties in violation of the right to collective property.

B.3.1 Increase in third-party occupation of the territory titled

190. The 2007 cadastral survey report provided information regarding the area occupied by third parties at that time. However, a dispute exists as to the territory granted in the second title that, following the said report and at the present time, is allegedly occupied by third parties who are not members of the Punta Piedra community. The Court will now make the relevant analysis.

191. In their final arguments, the ***representatives*** indicated that "the total area occupied by Rio Miel settlers corresponded to the whole area of the 1999 expansion […] which the settlers have used to make fenced pastures for extensive cattle raising, for housing and for crop production. Occupation occurred at three distinct times: prior to 1993 there was no settler invasions; from 1993 to 2003, the first settlers established themselves; and from 2003 to date, those lands were sold to new settlers […]." In their observations on the on-site procedure, the representatives emphasized that, from the overflight made during the visit, it possible "to observe that the region is totally covered by African palm monocultures, and the houses of the Rio Miel community in the hills, as well as vast areas of pasture and plowed lands. None of the agricultural activities correspond to the way the Garifuna cultivate the land."

192. Meanwhile, in its final arguments, the ***State*** pointed out that it was a proven fact, based on the statements of members of the Garifuna community, that the lands they claim had been occupied and exploited by the Rio Miel inhabitants since 1993 and the INA Cadastral Report "verified the existence of an area of approximately 612.13 hectares that was occupied by those inhabitants." According to the State, the current occupation by Rio Miel inhabitants "is defined as a consolidated settlement owing to the construction of housing infrastructure, with permanent constructions and public services such as potable water and electricity […]. At present, there are 71 heads of household for a total of 355 inhabitants who jointly occupy 612.13 hectares that are used for cattle raising, and cultivation of African palm, plantains and rice."

193. The Court takes note that during the hearing in this case, the representatives asked presumed victim, Doroteo Thomas Rodriguez, about the size of the area occupied by the Rio Miel settlers and he answered:

> "[i]n the expansion title [of 1,500 hectares], the Punta Piedra community is not working even an inch of land because it is in the hands of the invaders and when we make a claim we are always told, "you have the documents but we have the land."

194. Meanwhile, in answer to the State's question about the occupation of the land granted in the 1999 expansion title deed by the Rio Miel inhabitants, presumed victim Lidia Palacios answered that:

"The invaders were already there but they grabbed our land – they invaded; those who were there before [were] Garifuna; and they also grabbed a large part of what is currently in the expansion."

195. According to the proven facts in the instant case, the Court notes that from 2007 to date, the village of Rio Miel has experienced a population growth, as indicated in the 2013 field report, with 30 new houses, equivalent to a population increase of 29% (*supra* para. 104). Also, according to the AAAS report, the structures in the area covered by the second title that, previously, had not been inhabited by people from Rio Miel (zone 2-B), had increased from 7 in 2002 to 21 in 2013. The said report also mentioned an increase in the deforestation of areas that previously were wooded and in the reserve zone (*supra* para. 109). In the course of the on-site procedure conducted by the Court, an overflight of the area of the expansion title was made which corroborated that several parts of this area were deforested and/or used to grow crops. Also, several members of the village of Rio Miel indicated that some of the said increases in the occupation of the expansion area corresponded to plots that Garifuna people had rented out to them in that area so that they could work the land. According to the representatives, these "actions prove the failure to ensure effective security and legal stability, because the stability of the lands has not been guaranteed."

196. Even though the Court does not have updated information on whether this growth entailed greater occupation of territory by the Rio Miel villagers and, specifically of zone 2-B (the expansion territory), it finds it logical to infer that the said areas have been progressively occupied by settlers who are not members of the Punta Piedra Garifuna community and are being used mainly for cattle and crops.

197. Therefore, the Court notes that there has been a gradual increase in the third-party occupation by outsiders to the community of the territory included in the second title deed granted in 1999, following the increase recorded in the 2007 Cadastral Report.

B.3.2 The lands titled to Ambrocio Thomas Castillo and Sergia Zapata Martinez, as well as others mentioned

198. The ***representatives*** requested the restitution of all the territory corresponding to the second title, including certain lots previously titled to third parties.

199. It is worth recalling that the property title granted by the State in 1999 expressly excluded 46 hectares 1296.66 m2 which had been titled to two private individuals: (i) Ambrocio Thomas Castillo, who had two lots, one of 22 hectares and 6,575.06 m2 and the other of 3 hectares and 6,197.99 m2, and (ii) Sergia Zapata Martinez, who owned one lot of 19 hectares and 8,523.61 m2 (*supra* para. 98). It should be noted that, during the visit, several people indicated that Ambrocio Thomas Castillo was Garifuna and that he had already sold his lot to a third party who lives there now (*supra* para. 106).

200. The Court notes that, in the instant case, the Punta Piedra community did not object to the recognition of the lots of Ambrocio Thomas Castillo and Sergia Zapata Martinez in the second property title (*supra* para. 100), which reveals that this has not been contested before any domestic instance or the land claimed; therefore, it is not incumbent on the Court to rule in this regard.

201. Following the visit, the State sent the Court a copy of five supposed property titles granted to people from the village of Rio Miel corresponding to the years 1991, 1992, 1993, 1998 and 2006 (*supra* para. 105). In view of the fact that the State had not mentioned them previously and there is no evidence of them in the cadastral reports or property titles in the file, the Court has no evidence to assess them. However, as indicated by the representatives (*supra* para. 105), this demonstrates the lack of clarity in the Honduran land registration system which could be permitting an overlap of titles in rural areas, with the social consequences that this entails as regards legal certainty and societal security.

B.4 Conclusion regarding the guarantee of the use and enjoyment of collective property

202. Based on the above, the State is responsible for the violation of Article 21 of the American Convention to the detriment of the Punta Piedra community and its members, in view of its failure to ensure the use and enjoyment of communal property.

C. Honduran property laws in light of Article 2 of the American Convention in relation to Articles 1(1) and 21 of this instrument

C.1 Arguments of the Commission and the parties

203. The ***Commission*** argued that, despite the existence of constitutional and statutory provisions recognizing the right of the Punta Piedra community to communal property, and recognition of their traditional forms of land ownership, the community has not been able to use and enjoy its lands peacefully. The Commission noted that the indigenous peoples' right to property is recognized by the following provisions: article 346 of the Constitution, article 92 of the Agricultural Sector Modernization and Development Act and articles 93 to 102 of chapter III of the 2004 Property Act. It also indicated that ILO Convention No. 169 entered into force in Honduras in 1995. In relation to the 2004 Property Act, the Commission alleged that the indigenous peoples had not been consulted about this and expressed its concern regarding its provisions because it established that "third parties who have a property title to land of these peoples and who have owned and possessed that land have the right to continue possessing and exploiting it," and also that third parties on indigenous lands who do not possess any title may negotiate their presence with the community. Therefore, some provisions "render illusory the preferential right of indigenous peoples based on the ancestral possession of their lands and, furthermore, fail to facilitate their right to the collective ownership of an exclusively indigenous territory."

204. The ***representatives*** did not agree with the Commission that the community had its rights guaranteed under domestic law. To the contrary, they considered that, according to international standards, domestic legislation did not ensure the territorial rights of the Garifuna people and failed to comply with the guarantee of respect for their rights. This was the case of the Honduran Constitution that privileged a development model that excluded the model followed by the indigenous peoples. The representatives also mentioned that article 92 of the 1995 Agricultural Sector Modernization and Development Act, "d[id] not adequately ensure these rights because, according to the preceding analysis, [it was] insufficient *vis-à-vis* the civil rationale underlying the existing regulations." They also alleged that the indigenous peoples had not been consulted about the 2004 Property Act; rather "it was merely subject to a socialization process" during which the indigenous peoples had indicated

that they rejected it, indicating that, under this law, their land titles [were] vulnerable because it established legal formulas for the fragmentation of the Garifuna territories and permitted the regularization of lands possessed – even if irregularly – by third parties, as in the case of the Rio Miel settlers. The representatives also argued that the criteria of "inalienability, imprescriptibility and immunity from seizure" recognized by this law, was subject "to the willingness of the communities, as these criteria could disappear with the approval of, for example, an executive committee"; this meant that the law failed to guarantee the inalienability of communal lands and instead allowed communities to dispose of them freely, to establish liens, mortgages or other encumbrances, or to lease them.

205. The ***State*** indicated that it had based its actions on different laws that regulated this matter and pointed out that it had acted in compliance with ILO Convention No. 169, to which it had been a party since 1995. Additionally, it considered that article 346 of the Constitution, article 92 of the Agricultural Sector Modernization and Development Act, and the provisions of chapter III of the Property Act regarding the "Land regularization process for indigenous peoples and Afro-Hondurans" which establishes the process for regularizing indigenous territories, were sufficient to guarantee territorial rights. In this respect, the State argued that it did not need to adapt its legal system, because its laws were duly aligned with the American Convention.

C.2 Considerations of the Court

206. Regarding Article 2 of the American Convention, the Court has indicated that this 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 the rights and freedoms protect by the Convention.[228] In other words, "[t]he general duty [derived from this article] entails the adoption of measures of two kinds: on the one hand, the elimination of norms and practices that in any way violate the guarantees established in the Convention and, on the other hand, the promulgation of norms and the development of practices conducive to the effective observance of those guarantees."[229]

207. In view of the arguments of the parties, the Court notes that both the Commission and the representatives had merely indicated briefly and in general some provisions that, according to them, could be contrary to the Convention, without providing further arguments applicable to the instant case. Nevertheless, those arguments relate to two moments: (a) the laws in force when the titles were awarded, and b) the current legislation.

208. Regarding the first moment, the Court notes that article 346 of the Honduran Constitution provided for the protection of the rights and interests of the indigenous communities, especially of the lands and forests where they were settled.[230] However,

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[228] Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs. Judgment of January 29, 1997. Series C No. 30, para. 51, and Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra, para. 192. and *Case of Tarazona Arrieta et al. v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of October 15, 2014. Series C No. 286, para. 153.

[229] Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs. Judgment of May 30, 1999. Series C No. 52, para. 207, and Case of *Tarazona Arrieta et al., supra,* para. 153.

[230] Article 346 of the 1982 Constitution of Honduras stipulates that: "[i]t is the obligation of the State to adopt measures to protect the rights and interests of the indigenous communities that exist in the

the regulations in force at that time, especially the Agricultural Sector Modernization and Development Act,[231] do not reveal any specific substantive provision that textually regulates the protection of the indigenous communal lands from invasion by third parties.

209. Nevertheless, it is worth noting that, among other provisions, the expansion title expressly mentions article 14 of ILO Convention No. 169 which stipulates the obligation of the State to take measures to safeguard the right of the indigenous peoples to use their lands that are "not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities" (*supra,* para. 97). Therefore, the Court considers that, since the dispute relates mainly to the second title, the express references to article 346 of the Constitution, international obligations such as article 14 of ILO Convention No. 169, and the creation of the *ad hoc* interinstitutional commissions, represented a sufficient protection framework in the instant case for the State to be able to protect and ensure the right to property of the Punta Piedra community. Therefore, for the purposes of this case, non-compliance by the State with Article 2 of the Convention has not been proved in relation to the substantive laws in force at that time.

210. Regarding the laws in force at present, the Court takes note that, in addition to the constitutional mandate previously mentioned, the 2004 Property Act[232] and its regulations[233] expressly recognize the communal regime of indigenous lands to be inalienable, indivisible and immune from seizure, as well as the importance that their relationship with the lands has for their culture and their spiritual values. Moreover, Honduras ratified ILO Convention No. 169 in 1994,[234] and it entered into force in 1995; it also voted in favor of the United Nations Declaration on the Rights of Indigenous Peoples during the 2007 UN General Assembly. However, although the representatives and the Commission indicated some articles of the Property Act that might be ambiguous or inconsistent, the Court notes that no provision of this instrument was applied to this specific case; therefore, a ruling in abstract is not appropriate. Also, the Court notes that it will not rule on the argument of the Commission and representatives concerning the failure to consult the Property Act and its supposed "socialization," because insufficient arguments and evidence were provided in that regard.

211. Based on the above, the Court considers that it does not have specific and consistent elements to analyze the supposed incompatibility of the said laws. Therefore, for the effects of this case, no direct violation by the substantive legislation applicable to this matter has been proved in relation to Article 2 of the American Convention, in connection with Articles 1(1) and 21 of this instrument. However, the

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country, especially the lands and forests where they are settled." Available at: http://www.oas.org/dil/esp/Constitucion_de_Honduras.pdf.

231 Article 92 of this Law recognizes the right of "ethnic" communities, who prove occupation of the lands where they are settled for a period of three years, to receive property title free of charge. However, it does not include any provision on measures to protect such lands. *Cf.* Agricultural Sector Modernization and Development Act, *supra.*

232 Adopted by Decree No. 82-2004 of June 29, 2004. Available at: https://www.ccit.hn/wp-content/uploads/2013/12/LEY-DE-PROPIEDAD.pdf.

233 Regulations to the Property Act (C.D.I.P Resolution No. 003-2010). Available at: http://www.poderjudicial.gob.hn/CEDIJ/Documents/Reglamento%20Ley%20de%20Propiedad.pdf

234 Adopted by Decree No. 26-94 of the National Congress on May 10, 1994, published in the Official Gazette "La Gaceta" on July 30, 1994. ILO Convention No. 169 entered into force in Honduras on March 28, 1995 (*supra,* para. 84).

Court notes the relevance of due interpretation of the laws and application of control of conventionality, in light of the Court's case law and the applicable international standards, to ensure indigenous and tribal communal property rights.

D. Obligation to ensure the right to consultation and cultural identity

D.1 Arguments of the parties and the Commission

212. The ***representatives*** argued that the Caxina S.A. corporation had been conducting activities aimed at non-metallic mining extraction in a concession area that included ancestral lands titled to the Punta Piedra and Cusuna communities. In this regard, they added that the activities had been carried out with the State's authorization but without conducting a process of prior, free and informed consultation of the community. They also indicated that the mining company had carried out exploration activities without an environmental impact assessment having been made.

213. The ***Commission*** noted with concern that, on December 4, 2014, the Caxina Mining Corporation had received mining exploration rights in an area that included part of the traditional territory of the Punta Piedra community. In addition, it mentioned that the said mining exploitation authorization, which was already registered before the Institute of Geology and Mines of Honduras, had been granted without any kind of consultation with the community. Therefore, the Commission considered that this situation revealed the State's continuing acts and omissions that adversely affected the communal property of the Punta Piedra Garifuna community.

214. Meanwhile, the ***State*** argued that the supposed mining concession was at the stage of exploration and gathering information to verify the project's feasibility. In this regard, the company's exploration activities had led to the conclusion that the ore body that it eventually intended to extract covered 4.9 hectares, and was located 1.25 kilometers from the Punta Piedra community. The State also indicated that, according to articles 11, 29, 50 and 51 of the General Mining Law, and article 82 of the Regulations to this Law, if the current exploration process were converted into an exploitation stage, an environmental impact assessment would be made and the inhabitants affected would be consulted in a prior, free and informed manner. Also, during the on-site procedure, the State repeated that, according to its domestic legislation, no consultation was required at the exploration phase; rather, this was only necessary at the exploitation phase.[235]

D.2 Considerations of the Court

215. The Court has established that the State must comply with the following safeguards in relation to any plans for development, investment, exploration or extraction in traditional territories of indigenous or tribal communities: (i) conduct an adequate and participative process that guarantees the right to consultation; (ii) make a prior environmental and social impact assessment, and (iii) if applicable, transfer a reasonable share of the benefits produced by the exploitation of the natural resources.[236]

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[235] *Cf.* Video containing images filmed by the State during the on-site procedure conducted on August 25, 2015 (merits file, folio 1127).

[236] Cf. Case of the Saramaka People v. Suriname, para. 129, and Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, supra, paras. 157 and 177.

216. Regarding prior consultation, this Court has indicated that the State must guarantee this, by allowing participation in all stages of the planning and implementation of a project that may affect the territory on which an indigenous or tribal community is settled, or other rights that are essential for their survival as a people. These discussion and consensus-building processes must be conducted as of the initial stages of the design or planning of the proposed measure, so that the indigenous peoples can truly participate in and influence the decision-making process, in keeping with the relevant international standards.[237] As to their characteristics, the Court has established that the consultation must be carried out in advance, in good faith, and with the aim of reaching an adequate, accessible and informed agreement.[238] In particular, in the case of the *Kichwa Indigenous People of Sarayaku v. Ecuador*, the Court determined the State's responsibility because it had granted a private oil company a permit to carry out oil exploration activities in their territory without having consulted them previously.[239]

217. In particular, regarding the moment at which consultation must be conducted, Article 15(2) of ILO Convention No. 169 indicates that "[w]hen the State retains ownership of mineral or sub-surface resources, 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 the resources pertaining to their land."

218. In view of the foregoing, the Court considers that consultation must be conducted prior to any exploration project that could affect the traditional territory of indigenous or tribal communities.

219. In the instant case, the Court noted that, on December 4, 2014, the mining corporation, Caxina S.A., obtained a 10-year non-metallic mining exploration concession over an area of 800 hectares that included part of the eastern edge of the two property titles granted to the Punta Piedra community (*supra* para. 125). This concession expressly authorized the company to use the subsoil and to carry out mining, geological, geophysical and other activities in the concession area.[240] In this regard, the Court considers that, owing to the purpose of the concession, the subsequent stages could directly affect the community's territory, during the 10 years for which it was granted. Therefore, in this specific case, the situation required prior consultation of the community.

220. Regarding domestic law, the Court notes that, in general, article 95 of the 2004 Property Act provides that "[i]f the State intends to exploit the natural resources in the territories of [the indigenous and Afro-Honduran] peoples, it shall inform and consult [them] regarding the potential beneficial and negative impacts prior to authorizing any exploration or exploitation."[241] Also, the regulations of this law refer to consultation without specifying the moment.[242] Meanwhile, section 50 of the General Mining Act

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237 Cf. Case of the Kichwa Indigenous People of Sarayaku, supra, para. 167.

238 Cf. Case of the Kichwa Indigenous People of Sarayaku, supra, para. 178.

239 Cf. Case of the Kichwa Indigenous People of Sarayaku, supra, paras. 211 and 232.

240 *Cf.* "Consolidated Annual Financial Statement, DAC-2014" prepared by Caxina S.A., mining corporation, on January 27, 2015 (merits file, folio 757-759).

241 Article 95 of the Honduran Property Act (evidence file, folio 2312).

242 In this regard, article 264 establishes that: "If the State authorizes any type of exploitation as a result of which the native indigenous or Afro-Honduran peoples suffer harm, they shall receive fair compensation" (evidence file, folio 2551). In addition, article 267 stipulations: "[…] Any activity that may

establishes that "[t]he granting of mining concessions may not impair the guarantee of private property and municipal property established in the Constitution and developed in the Civil Code and the international treaties on the rights of indigenous and Afro-descendant peoples; particularly [ILO] Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples."[243]

221. However, article 82 of the Regulations to the General Mining Act provides that "[p]rior to any decision to grant an exploitation concession, the mining authority shall ask the relevant municipal council and the population to conduct a consultation within sixty (60) calendar days at the latest. The decision adopted by the consultation is binding for the granting of the exploitation concession. Citizens domiciled in the municipality or municipalities consulted may take part in the consultation if they are registered as such on the electoral roll for the last general election. If the consultation of the citizens results in opposition to the exploitation, three (3) years must pass before another consultation can be held."[244]

222. Based on the foregoing, the Court notes that although the laws of Honduras recognize that indigenous and Afro-Honduran peoples have the right to be consulted and relates this to the international standards, the regulatory provisions for mining indicate that consultation will be carried out during the stage immediately preceding authorization of mining exploitation. Accordingly, this regulation fails to specify the standards analyzed for the right to consultation, particularly those indicated in the *Case of the Saramaka People v. Suriname* and the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, according to which consultation must take place during the first stages of the project; that is, prior to the authorization of prospection or exploration programs with the exceptions mentioned previously (*supra,* para. 218). Furthermore, the Court has indicated that in addition to constituting a treaty-based obligation, consultation is also a general principle of international law[245] with which States must comply, regardless of whether it is expressly regulated in their legislation. Consequently, States are required to have adequate and effective mechanisms to guarantee the consultation process in such cases, whether or not it is stipulated by law.

223. In this regard, already in the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador,*[246] the Court noted that several Member States of the Organization of American States, including Argentina, Bolivia, Chile, Colombia, Mexico, Nicaragua, Paraguay, Peru and Venezuela, had incorporated these standards into their domestic laws, and other countries through their highest courts, including: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Guatemala, Mexico, Peru and

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directly or indirectly affect the members of an ethnic community shall be subject to socialization and consultation" (evidence file, folio 2552). Finally, article 268 establishes: "For the native indigenous or Afro-Honduran people to grant any type of contract, the third party shall present a development project to the highest legitimate authority that represents the ethnic group with the necessary information on the nature, purpose and scope of the activities, as well as the benefits that the peoples and communities involved would receive, and the potential environmental, social, cultural and any other kind of harm and the conditions for its reparation, so that this may be evaluated and analyzed by the respective people or community prior to its subsequent ratification by the Property Institute at the request of the highest authority" (evidence file folio 2552).

243 Section 50 of the General Mining Act of Honduras (merits file, folio 1017).

244 Article 82 of the Regulations to the General Mining Act of Honduras (merits file, folio 1004).

245 Cf. Case of the Kichwa Indigenous People of Sarayaku, supra, para. 164.

246 Cf. Case of the Kichwa Indigenous People of Sarayaku, supra, para. 164.

Venezuela, have incorporated the obligation of prior consultation with indigenous communities on any administrative or legislative measure that directly affects them.

224. Consequently, the Court has verified that the State did not conduct an adequate and effective process to ensure the right to consultation of the Punta Piedra Garifuna community with regard to the exploration project on its territory. In addition, domestic laws lacked precision regarding the stages prior to the consultation and this resulted in non-compliance with this right for the effects of this case. Therefore, the Court concludes that the State is responsible for the violation of the right to communal property recognized in Article 21 of the Convention, as well as of Articles 1(1) and 2 of this instrument, in relation to the right to cultural identity,[247] to the detriment of the Punta Piedra community and its members.

IX-2
RIGHT TO JUDICIAL PROTECTION IN RELATION TO ARTICLES 1(1) AND 2 OF THE AMERICAN CONVENTION

225. In this chapter, the Court will analyze the disputes relating to the violation of Article 25 of the Convention in relation to Articles 1(1) and 2 of this treaty and, to this end, it will assess the procedures for the protection of the property of the Punta Piedra community *vis-à-vis* third parties and the mechanisms used to achieve the return of their lands.

A. Arguments of the parties and the Commission

226. The ***Commission*** concluded that the State had violated Article 25 of the Convention, in relation to Articles 1(1) and 2 of this instrument, owing to its failure to guarantee an adequate and effective remedy to respond to the territorial demands and the claims for the land titled in favor of the Punta Piedra Garifuna community. In this regard, the Commission indicated that the ancestral territories of the Punta Piedra community, titled by INA in 1993 and 1999, had not been freed of encumbrances even though the community had taken various steps, at the administrative level, before INA and other State authorities to obtain clear title. The Commission indicated that the State had created two *ad hoc* commissions, signed agreements according priority to negotiation and conciliation between the two communities (Punta Piedra and Rio Miel) and required INA to conduct two appraisals of the improvements made by the third-party occupants from Rio Miel. Nevertheless, the Commission argued that these measures had not been either adequate or effective because they did not allow the ancestral territory of the Punta Piedra community to be freed of encumbrances and protected.

227. In particular, the Commission indicated that the creation of the interinstitutional commissions was insufficient and did not provide legal certainty to the interested parties owing to their temporary nature and lack of authority clearly defined by law, so that, in light of the refusal of the Rio Miel peasant farmers to abandon the area in exchange for payment for the improvements, the Punta Piedra community had no remedy allowing them to recover their ancestral territory.

228. The ***representatives*** agreed, in general, with the Commission's arguments and added that the Punta Piedra community had submitted, in good faith, to the processes

[247] *Cf. Case of the Kichwa Indigenous People of Sarayaku, supra,* paras. 217 and 220.

proposed by the State in view of the lack of suitable mechanisms that would permit an adequate solution to the conflict. In addition, they indicated that measures had been taken at the administrative, judicial and legislative level that had not achieved the desired effects, even though interinstitutional commissions had been created, complaints had been filed, and funds had been requested from the National Congress to free the land of encumbrances. Therefore, 21 years after the conflict had commenced, it was evident that the actions taken by the State had been sporadic and ineffective and resulted in complete lack of protection for the community.

229. In its answering brief, the ***State*** denied having violated the right to a simple and effective remedy because documentation existed showing that the Punta Piedra community and its members had availed themselves of the procedures established in the laws of Honduras, and that their requests had been answered, as in the case of those submitted to INA and the Public Prosecution Service. It also indicated that Honduran laws "establishe[d] the right to a simple and prompt recourse, or any other simple [and] effective recourse to a competent judge or court for protection against acts that violate fundamental rights […]."

230. In its brief with final arguments, the State reintroduced arguments it had presented during the admissibility procedure before the Commission, in which it indicated that the commitments made as a result of the *ad hoc* commissions were similar to an "out-of-court conciliation" equivalent to *res judicata*. Therefore, payment of the sum agreed on by the public administration should have been sought using the administrative mechanism established in articles 146 to 149 of the Law on Administrative Procedure before resorting to a civil action. In the same brief, the State argued that if someone does not comply with an obligation, it was through the courts that compliance should be sought and Honduras was not an exception. In addition, the State argued that the Punta Piedra community's right to land was the same as that of any other Honduran national, because it was not an original indigenous people. Consequently, the State indicated that it was for private law and the civil courts to resolve the land dispute that existed, through a civil action demanding ownership, by "declaratory proceedings," and even the Rio Miel inhabitants could have claimed acquisitive prescription or usucaption, because they had occupied the said territories for more than 20 years. Additionally, the State indicated, in general, that the *amparo* proceeding, regulated in article 183 of the Constitution, was another remedy available, as well as "other guarantees and remedies that [could have been] used," without specifying them or describing their content.

B. Considerations of the Court

231. The Court has indicated repeatedly that States Parties are obliged to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8(1)), all in keeping with the general obligation of those States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1).[248] The absence of an effective remedy for the violation of the

[248] *Cf. Case of Velásquez Rodríguez, Preliminary objections, supra,* para. 91, and *Case of López Lone et al. v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of October 5, 2015. Series No. 302, para. 245.

rights recognized by the Convention constitutes a violation of this instrument by the State Party in which such a situation occurs.[249]

232. The Court has interpreted that the scope of the State's obligation to provide a judicial remedy, established in Article 25 of the Convention, is not restricted to the mere existence of courts or formal proceedings; rather, the State must also adopt positive measures to ensure that those remedies are effective to decide whether human rights have been violated and to provide a possible reparation.[250] Based on this article, two specific State responsibilities can be identified: the first, that States must establish by law and ensure due application of effective remedies before the competent authorities that protect all persons subject to their jurisdiction from acts that violate their fundamental rights or that lead to the determination of the latter's rights and obligations.[251] The second, that they must guarantee the means to execute the respective decisions and judgments issued by those competent authorities so that the rights that are declared or recognized are protected effectively.[252]

233. In relation to indigenous and tribal peoples, this Court has established in its case law that States have the obligation to establish appropriate procedures within their domestic legal system to process their land claims, derived from the general obligation to ensure rights established in Articles 1 and 2 of the Convention.[253] The remedies provided by the State should represent a real possibility[254] for the indigenous and tribal communities to be able to defend their rights and exercise effective control over their territory without any outside interference.[255]

B.1 The proceedings to protect the property of the Punta Piedra Garifuna community from third parties by providing clear title

234. Based on the foregoing, in this chapter the Court will analyze the disputes related to the violation of Article 25 of the Convention, in relation to Articles 1(1) and 2 of this treaty. Therefore, it will assess: (a) the suitability and effectiveness of the *Ad Hoc* Interinstitutional Commission and the conciliation agreements; (b) the execution of the commitments made, and (c) the alleged lack of an adequate and effective remedy under domestic law in this case.

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249 *Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra,* para. 113, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra,* paras. 193 and 198.

250 *Cf. Case of Velásquez Rodríguez, Merits, supra, paras. 63, 68 and 81 and Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra,* para. 165.

251 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala, Merits.* Judgment of November 19, 1999. Series C, No. 63, para. 237, and *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2015. Series C No. 297, para. 196**.**

252 *Cf. Case of the "Street Children" (Villagrán Morales et al.), supra,* para. 237 and *Case of Wong Ho Wing, supra,* para. 196.

253 *Cf. Case of the Yakye Axa Indigenous Community, supra,* para. *102, and Case of the Sawhoyamaxa Indigenous Community, supra,* para. 109.

254 *Cf. Case of the Constitutional Court v. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 55, para. 90, and *Case of the Xákmok Kásek Indigenous Community, supra*, para. 144.

255 *Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra,* paras. 148 to 153, and *Case of* the *Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra*, para. 112.

B.1.1 The Ad Hoc Interinstitutional Commission and other measures taken to free the territory of the Punta Piedra Garifuna community of encumbrances

235. The Court reiterates that the Punta Piedra Garifuna community received two property titles in 1993 and 1999. However, part of the territory titled to them was owned by third parties; in other words, the territory was titled without the State having freed it of encumbrances. In this case, the obligation to provide clear title has been considered an obligation *ex officio* of the State, as this Court has established (*supra* para. 186).

236. In this regard, even though Honduras has ratified ILO Convention No. 169, the Court notes that the State has not proved that the administrative, judicial or other domestic remedies that existed at the time of the facts were compatible, or applied in keeping, with the relevant standards in order to ensure the right to property of the Punta Piedra community by protecting its full use and enjoyment. However, the Court notes that, in this situation and as an example of its efforts to comply with its obligation to free the territory titled to the Punta Piedra community of encumbrances, the State created an *Ad Hoc* Interinstitutional Commission as a conciliation mechanism in order to achieve a peaceful, consensual and out-of-court solution to the problem and also undertook to respect a series of agreements adopted also by the inhabitants of the Punta Piedra and Rio Miel communities in an undertaking dated December 13, 2001.

237. Specifically, in this undertaking the Honduran State recognized that it "[was] obliged to free the land of encumbrances for the Punta Piedra community by paying the inhabitants of Rio Miel for improvements"; that INA "should diligently seek a lot where the compensated families could be relocated," and that, "to follow up on the agreements made herein, [the Inter-Institutional] Commission was authorized to prepare a list of requests and a work schedule […] [to] guarantee a solution to the conflict […]."[256]

238. Also, the purpose of holding subsequent meetings, signing the 2006 memorandum of understanding and creating an Interinstitutional Commission in 2007, was to implement the said agreements in order to comply with the State's obligation *ex officio* to free the land titled of encumbrances (*supra* para. 111). The State even recognized in its final arguments that, since the title had a land ownership defect, the State was obliged to resolve this (*supra* para. 40).

239. In this regard, the Court will refer to the suitability and effectiveness of the conciliation mechanisms available at the time of the events, in particular the creation of the 2001 *Ad Hoc* Interinstitutional Commission and the conciliation agreements adopted. The Court has established that the existing remedies must be adequate and suitable, which means that "the function of these remedies, within the domestic legal system, must be suitable to protect the legal situation violated. Numerous remedies exist in all legal systems, but not all of them are applicable in every circumstance. […] A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or to lead to a result that is manifestly absurd or unreasonable."[257]

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256 *Cf.* Undertaking signed on December 13, 2001, *supra (*evidence file, folio 32).

257 *Case of Velásquez Rodríguez, Merits, supra* para. 64 and *Case of Brewer Carias v. Venezuela. Preliminary objections*. Judgment of May 26, 2014. Series C No. 278, para. 86.

240. The suitability of a conciliation agreement in cases with similar characteristics to this one would be that it constituted an adequate and prompt remedy to protect the legal situation that was infringed; in other words, to resolve the existing conflict and free the territory of the Punta Piedra community of encumbrances, thereby to achieve a reasonable result with the consent of the parties.[258]

241. Moreover, the Court has indicated that "[a] remedy must also be effective – that is, capable of producing the result for which it was conceived."[259] In this respect, the commitments adopted in this case had the potential or capacity to produce the result for which they were conceived; that is, to make the corresponding appraisals, to pay for the useful improvements and, if applicable, to relocate the inhabitants of Rio Miel. Indeed, under the 2001 undertaking, the Honduran State, the Punta Piedra community and the Rio Miel community agreed to this (*supra* paras. 113 and 114). Therefore, by making those commitments, the State did not merely act as a mediator, but also acted as a party bound by them.

242. The establishment of a conciliation mechanism, in the absence of any other suitable and effective mechanism for this specific case, meant the establishment of an accessible, straightforward, potentially rapid and simple *ad hoc* remedy with the direct participation of the indigenous people resulting in the adoption of specific binding agreements with the potential or capacity to produce the result for which they were conceived; in other words, to resolve the existing conflict and free the territory of Punta Piedra community of encumbrances. Therefore, the Court considers that the conciliation mechanism was adequate and suitable for this case. However, the Court notes that, in practice, the said agreements were not executed – mainly by the State – and, therefore, the conciliation mechanism turned out to be an ineffective remedy. Indeed, the Court has indicated that an effective remedy may become ineffective if it is subordinated to procedural requirements that make it inapplicable, or if it is powerless to obligate the authorities.[260] The Court will now rule on this matter.

B.1.1.1 The guarantee of compliance with decisions that consider the remedy admissible (Article 25(2)(c) of the American Convention)

243. The Court notes that it was the Honduran State itself that referred to the 2001 undertaking as an "out-of-court conciliation" and indicated that "the conciliation agreement reach[ed] by the parties had the effects of *res judicata* and enforceability,"[261]

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[258] The United Nations Development Programme has indicated that access to justice must not be limited to obtaining a remedy through formal institutions of justice; rather access to justice is a process that needs to be adapted to a particular context so that the process enables people to claim and obtain a fair solution. Moreover, it is of great importance that the existing remedies, including dispute resolution mechanisms, are effective and in conformity with human rights standards [including the standards of Articles 8 and 25 of the American Convention]. *Cf.* UNDP: Programming for Justice: Access for All. *A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, 2005. Available at*: https://www.un.org/ruleoflaw/files/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf.

[259] Case of Velásquez Rodríguez, Merits, supra, para. 66, and Case of the Human Rights Defender et al., supra, para. 157.

[260] Cf. Case of Velásquez Rodríguez, Merits, supra, para. 66 and Case of Brewer Carias, supra, para. 87.

[261] *Cf.* Briefs submitted by the State to the Commission, received on March 31, August 19 and October 28, 2004 (evidence file, folios 428 to 430, 355 to 358 and 324 to 326, respectively). In the brief dated August 19, 2004, the State referred to article 4 of the Conciliation and Arbitration Act, which provides that "[t]he agreement reached by the parties by conciliation shall have the nature of *res judicata* and enforceability with the same effects as a final judgment".

pursuant to article 4 of the Conciliation and Arbitration Act. Therefore, in the words of the State itself, this agreement was equivalent to a final judgment, and should have been complied with. The Court considers that the 2001 agreements constituted decisions that found the available *ad hoc* remedy to be appropriate. Those decisions signified commitments that entailed the implementation of specific actions by the parties, and especially by the State, Consequently, the State had the obligation to ensure their fulfillment and execution, pursuant to Article 25(2)(c) of the American Convention, which stipulates that "[t]he States Parties undertake […]: (c) to ensure that the competent authorities shall enforce such remedies when granted."

244. The Court considers that the guarantee of enforcement is applicable to compliance with any decision that finds the available remedy to be appropriate,[262] such as the decision in the instant case, pursuant to the previous considerations. The procedure should be intended to implement the protection of the right recognized in the ruling by applying this appropriately.[263] Therefore, pursuant to Article 25(2)(c), the effectiveness of a judicial or any other decision will depend on their execution,[264] which should be considered an integral part of the right of access to justice;[265] the contrary would suppose the denial of the right involved.[266] In addition, the Court has indicated that to achieve the full effectiveness of the judgment, its implementation must be complete, perfect, comprehensive, and prompt.[267]

245. Therefore, the State is responsible for ensuring the means to execute the decisions issued by the competent authorities so that the rights declared or recognized are truly protected[268] in order to grant certainty about the right or dispute examined in the specific case.[269]

246. Indeed, despite the State's obligation to comply with the agreements reached in the 2001 undertaking and that it had accorded such agreements the equivalence of a final judgment, the Court notes that the State failed to execute the actions it had undertaken to implement, which were reiterated in the 2006 memorandum of understanding (*supra* para. 119) because, even though it had conducted two appraisals (in 2001 and 2007) in order to pay the improvements made by the inhabitants of Rio Miel, it failed to look for an alternative piece of land to relocate them and to achieve the adoption of the budget item to pay for the improvements owing to the refusal by the corresponding entities, such as the National Congress and the Finance Ministry (*supra* paras. 118 and 123).

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[262] In its case law on Article 25, the Court has referred to the application of the right to judicial protection within the framework of procedures other than judicial proceedings. In this regard, the Court has interpreted that "the right to simple and prompt recourse, or any other effective recourse" and Article 25 as a whole, must be understood in its broadest sense. *Cf. Case of the Yakye Axa Indigenous Community, supra,* paras. 65 and 98, *Case of the Xámok Kásek Indigenous Community, supra,* paras. 144 to 145 and 154.

[263] *Cf. Case of Baena Ricardo et al. v. Panama. Jurisdiction*. Judgment of November 28, 2003. Series C No. 104, paras. 73, 74 and 82, and *Case of Wong Ho Wing, supra,* para. 198.

[264] Cf. Mutatis mutandis, Case of Baena Ricardo et al., Jurisdiction, supra, para. 82 and Case of Wong Ho Wing, supra, para. 198.

[265] *Cf. Mutatis mutandis, Case of Baena Ricardo et al., Jurisdiction, supra,* para. 82 and *Case of Wong Ho Wing, supra,* para. 198**.**

[266] Cf. Case of Baena Ricardo et al., Jurisdiction, supra, para. 82 and Case of Wong Ho Wing, supra, para. 196.

[267] Cf. Case of Mejia Idrovo v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of July 5, 2011. Series C N. 228, para. 105, and *Case of Furlan and family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2012. Series C N. 246, para. 210.

[268] Cf. Case of the "Street Children" (Villagrán Morales et al), supra, para. 237 and Case of Wong Ho Wing, supra, para. 196.

[269] Cf. Case of Acevedo Jaramillo et al., supra, para. 167 and Case of Wong Ho Wing, supra, para. 196.

247. Furthermore, the Court notes that no clear measures existed for the execution of the agreements.[270] Nevertheless, it understands that other state institutions were involved in approval of the budget item and payment of the amount estimated based on the appraisals (*supra* paras. 118 and 123).

248. In this regard, the Court considers that in a system based on the principle of the rule of law, all public authorities, within their terms of reference, must abide by decisions adopted in out-of-court conciliation mechanisms such as those in the instant case. Furthermore, they should promote and execute them without undermining the meaning and scope of the decisions or unduly delaying their execution[271] in order to grant the Punta Piedra community certainty with regard to the right or dispute and, consequently, one of the effects of such mechanisms is its enforceability and the need to comply with it. Similarly, the Court considers that conciliation agreements such as this one, by which the State itself was bound, should be effective and, therefore, be adopted by mechanisms that permit their direct execution, without requiring other administrative or judicial actions to be taken[272] (*supra* para. 230). Therefore, it is not valid for the State to allege this requirement based on its own non-compliance, or on other reasons such as the lack of financial resources, to the detriment of the legal obligations with the status of *res judicata* assumed in the 2001 conciliation agreements and in violation of the principles of good faith and the practical effects (*effet utile*) of the said agreements.[273]

249. The Court has also indicated that rulings must be the executed without undue obstruction or delay in order to achieve their purpose in a prompt, simple and comprehensive manner.[274] This is particularly important in cases involving indigenous matters because the special situation of vulnerability in which these peoples may find

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[270] Neither the 2001 undertaking nor the subsequent meetings established clearly the competences, functions and mechanisms that the Interinstitutional Commission or other authorities would have to execute the commitments made by the State (*supra,* para. 114). The 2001 undertaking only established that the Interinstitutional Commission was authorized to prepare a list of demands and a work schedule to resolve the conflict.

[271] *Cf. Mutatis mutandis, Case of Mejía Idrovo, supra*, para. 106. *Cf.* also: in the *Case of Inmobiliare Saffi v. Italy*, the European Court of Human Rights (ECHR) established that: "[i]n conclusion, while it may be accepted that Contracting States may [...] intervene in proceedings for the enforcement of a judicial decision, the consequence of such intervention should not be that execution is prevented, invalidated or unduly delayed or, still less, that the substance of the decision is undermined." *Cf.* ECHR, *Case of Inmobiliare Saffi v. Italy,* No. 22774/93, Judgment of July 28, 1999, para. 74.

[272] In its brief with final arguments before the Court, the State indicated that the prior administrative proceeding should be used in order for the State to comply with the "agreement" by which it was bound. The State did not establish what the suitable and effective judicial remedy was that should be used after having exhausted the administrative procedure. In its final arguments, the State also argued that the representatives had not used the existing domestic remedies available to any Honduran and merely indicated in general terms the existence of remedies such as "ownership claims before the civil courts," "the application for amparo," "a declaratory proceeding," and "other guarantees and remedies that may be used," without specifying how they would be adequate and effective in the specific case. These arguments were not raised at the admissibility stage before the Commission.

[273] *Cf. Case of the Constitutional Court, Jurisdiction, supra,* para. 36, and *Case of Rochac Hernandez et al. v. El Salvador. Merits, reparations and costs.* Judgment of October 14, 2014. Series C No. 285, para. 162.

[274] *Cf. Case of Mejía Idrovo, supra*, para. 105, citing ECHR, *Case of Matheus v. France* (No. 62740/01), Judgment of March 31, 2005, para. 58. According to the principles proposed by the Consultative Council of European Judges (CCJE), a consultative body of the Committee of Ministers of the Council of Europe in matters related to the independence, impartiality and professional capacity of judges, "enforcement of judicial decisions should be fair, swift, effective and proportionate" (*Cf.* Opinion No. 13 (2010), *On the role of judges in the enforcement of judicial decisions.* Available at: https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE(2010)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864.

themselves could, in itself, give rise to obstacles not only to access to justice, but also to achieve the execution of the decisions adopted. In this regard, the State must consider situations that could signify an obstacle for these peoples, such as: limitations to physical access to administrative and judicial facilities (distance, difficulties of access);[275] complexity and diversity of instances to be exhausted; high costs of processing judicial proceedings and hiring lawyers, and monolingualism in judicial proceedings.[276] Accordingly, the Court finds that the need to exhaust other remedies to obtain compliance with the obligations that the State has already assumed, obstructs them instead of promoting their execution and this may result in an excessive or exaggerated effort that prejudices the Punta Piedra community.

250. In addition, the Court considers that the State's arguments regarding the failure to file an administrative complaint and other judicial remedies (*supra* para. 230) are time-barred because they were not submitted to the Court at the appropriate procedural moment, that is in the State's answering brief. Also, they did not form part of the arguments concerning the corresponding preliminary objections; rather, they are arguments that the State incorporated into its final written arguments to defend itself.

251. Based on the foregoing, the Court considers that, for the effects of this case, the conciliation agreements adopted were appropriate to achieve the freeing of the indigenous territory of encumbrances that corresponded to the State *ex officio*. However, the failure to implement the agreements by which the Honduran State was bound, in other words, the lack of direct execution without requiring the filing of other judicial proceedings, made them ineffective, and this prevented the Punta Piedra Garifuna community from truly using and enjoying the territory titled to it. Therefore, the State violated Article 25(1) and 25(2)(c) of the American Convention, in relation to Article 1(1) of this instrument to the detriment of the Punta Piedra Garifuna community and its members.

B.1.2 Alleged lack of a domestic remedy to protect the territories of the Punta Piedra Garifuna community vis-à-vis third parties (Article 2 in relation to Articles 1(1) and 25 of the Convention)

252. As this Court has indicated, the State alleged in general terms the existence of domestic remedies when the property titles were issued (1993 and 1999) (*supra* paras. 229 and 230) that, according to Honduras, could protect the Punta Piedra Garifuna community's right to property. However, although the State provided norms in relation to those remedies, it did not demonstrate how they ensured full use and

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[275] States must guarantee indigenous and tribal peoples physical access to administrative or judicial facilities or centers for the administration of justice in charge of investigations, as well as ensuring their participation in the processing of judicial, administrative or any other type of procedures, without this entailing excessive or exaggerated efforts for the victims due to distance, access roads to the said institutions or the high costs of proceedings. *Cf. Mutatis mutandis, Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, para. 100.

[276] States must ensure that members of the community understand and are understood in legal proceedings, by providing them with interpreters or other effective means. *Cf. Case of Tiu Tojín, supra,* paras. 92 and 100; *Case of Fernández Ortega et al. v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of August 30, 2010. Series C No. 215, paras. 200 to 201; *Case of Rosendo Cantu et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, paras. 184 and 185. Also, Article 12 of ILO Convention No. 169 provides that "[t]he people concerned shall be safeguarded against the abuse of rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means."

enjoyment of the right to property of the Punta Piedra community. Therefore, the Court does not have sufficient evidence regarding the normative design of the ordinary general remedies alleged to know whether they are adapted to, or interpreted in keeping with, the relevant standards of the Convention; therefore, it is not appropriate to rule in this regard.

253. Moreover, regarding the alleged violation of Article 2 of the American Convention, the Court notes that although neither the representatives nor the Commission submitted specific arguments about the procedure under the Property Act, in force as of June 29, 2004, the Court notes that the State mentioned the third paragraph of article 102 of the act, which provides that "[a]ny conflict arising between these peoples and third parties concerning communal lands shall be submitted to the special procedure created by this law." The said procedure is regulated in articles 110 and 111 of its Title VI "Procedures for jurisdictional dispute resolution."[277] These articles establish the stages and terms of the procedure to resolve conflicts arising from the law itself. Consequently, the Court understands that, as of the entry into force of the act, a specific procedure existed to resolve disputes between indigenous and Afro-Honduran people and third parties with regard to communal lands.

254. Even though this law does not expressly indicate the characteristics of the remedy in relation to the standards applicable to resolve the territorial conflict between the Punta Piedra community and the Rio Miel community, the Court notes that, to date, no provision of the law has been applied to this specific case; therefore, it is not appropriate to rule in the abstract. Also, it has not been shown that this law has been interpreted in a way that has prejudiced the indigenous communities in Honduras.

255. Based on the foregoing, the Court considers that it does not have specific consistent elements to analyze the supposed incompatibility of the procedural norms; therefore, a direct violation of Article 2 of the American Convention, in connection with Articles 1(1) and 25 of this instrument has not been demonstrated in the instant case. However, the Court reiterates the relevance of due interpretation of the laws and application of control of conventionality in light of the Court's case law and the standards applicable to indigenous matters that it has established.

IX-3
RIGHTS TO LIFE, JUDICIAL GUARANTEES AND JUDICIAL PROTECTION

256. In this chapter he Court will analyze the disputes relating to the violation of Articles 4, 8 and 25 of the Convention. To this end, it will examine: (a) the right to life of

[277] Article 110 of the 2004 Property Act provides that "[a]ny matter related to this law shall be heard by the civil courts and be subject to the following special procedure: 1. When the written application has been filed, its admissibility shall be determined in two (2) days or its rectification shall be ordered within three (3) working days; 2. Once the application has been admitted, the respondent shall be summoned and required to answer it within three (3) working days. 3. Once the application has been answered, a date shall be set for a hearing to be held within five (5) working days of the answer. 4. During this hearing, the parties may establish the facts and file the arguments and objections they deem pertinent; then, evidence shall be proposed and provided; 5. If the parties are unable to provide all the evidence they proposed during the hearing, this will be suspended as often as necessary until all the proposed evidence has been produced, although this stage cannot exceed thirty (30) working days, and 6. Once the hearing has concluded, within five (5) working days, the judge shall set a judgment hearing during which he may rule on the main issue and any motions or objections. Any actions subsequent to the answer to the application shall be notified to the parties in stages, and the Court must expedite the proceedings *ex officio.*" In addition, article 111 of the 2004 Property Act indicates that "[t]he only remedy available against the said judgment shall be a cassation appeal *per saltum* before the Supreme Court of Justice" (evidence file, folios 2315 and 2316).

Félix Ordóñez Suazo; (b) the investigations and criminal proceedings derived from his death, and (c) due diligence and a reasonable time in relation to the criminal complaints filed at the domestic level for the offenses of usurpation, threats and abuse of authority.

A. The alleged violation of the right to life of Félix Ordóñez Suazo

A.1 Arguments of the parties and the Commission

257. The ***representatives*** indicated in their pleadings and motions brief that "in different documents, the State recognized the existence of a dangerous situation for the members of Punta Piedra community and did nothing to prevent the violent acts that resulted in the violation [of the right to life]." They argued that "the element of arbitrariness contemplated in Article 4 [of the Convention] is found in the State's omission to investigate the complaints and resolve the conflict satisfactorily." Therefore, the representatives considered that, "by acquiescence and omission, the Honduran State incurred in arbitrariness, and should therefore be declared internationally responsible for having violated Article 4 in relation to Article 1(1) of the Convention." Likewise, in their final written arguments, they indicated that "[t]he factual framework established by the [Commission] in its Merits Report indicates that, for reasons directly related to the defense of the land, Félix Ordóñez was murdered at a fairly advanced and [tense] moment of the conflict, and due to the State's inaction and, even, its position in favor of the settlers; therefore, it had not protected the life of the leaders and, for this reason, [they] consider[ed] that the State had violated Article 4 of the [American Convention]."

258. In its Merits Report, the ***Commission*** did not rule specifically on the violation of Article 4 of the Convention to the detriment of Félix Ordóñez Suazo.[278] However, during the public hearing of the case, it indicated that "the death of Félix Ordóñez forms part of the factual framework of the Merits Report [and] legal consequences had been determined in the section on judicial protection among the different remedies that the Commission examined; therefore, the Court would be fully authorized to rule on Article 4 if it so wishes." Subsequently in its final written observations, it indicated that "the members of the community have been unable to live peacefully in their territory. To the contrary, the tensions with the settlers and other third parties have created a situation of risk to life and personal integrity for the members of the community, and the murder of one of its members, Félix Ordóñez, took place in this context."

259. The ***State*** in its answering brief did not refer specifically to the violation of Article 4 of the Convention. However, it indicated that "[i]n relation to the death of Félix Ordóñez […] the case has been filed before the courts and an arrest warrant issued against the person allegedly responsible; therefore, it is not appropriate for the Inter-American Court to rule on an ongoing case." During the public hearing, the State indicated that "[t]he death of Félix Ordóñez in 2007 was an isolated fact, a result of an altercation with another Honduran."

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[278] The Court noted that the facts related to the said violations were brought to the Commission's attention and notified to the State for its respective observations. *Cf.* Brief of the petitioners presented to the Commission on June 14, 2007 (evidence file, folios 788 and 789); communication of the Commission requesting the State to provide information of June 15, 2007 (evidence file, folio 787) and State's brief presented to the Commission on July 3, 2007 (evidence file, folios 697 and 698).

A.2 Considerations of the Court

260. The Court recalls that the presumed victims and their representatives may cite the violation of rights other than those included in the Merits Report, provided these relate to the facts contained in that document.[279] In this regard, in the chapter of the Merits Report on proven facts, the Commission indicated that "the information provided by the parties indicates that there is an ongoing situation of conflict provoked by third parties with an interest in the lands of the community, which is characterized by constant threats, harassment and violent acts." Additionally, it referred to the undertaking of December 13, 2001;[280] the statements of Benito Bernárdez[281] and Doroteo Thomas provided during the public hearing before the Commission,[282] and the murder of Félix Ordóñez Suazo in June, 2007 and the corresponding criminal investigation.[283] Based on the foregoing, the Court considers that, by arguing the presumed violation of Article 4(1) of the Convention, the representatives referred to facts that were mentioned within the factual framework established by the Commission in the Merits Report and therefore, the Court will proceed to rule in this regard.

261. The Court recalls that the obligation to ensure free and full exercise of human rights goes beyond the relationship between the State's agents and the persons subject to its jurisdiction, also encompassing the obligation to prevent, in the private sphere, third parties from violating the protected rights.[284] Nevertheless, it is evident that the State cannot be held responsible for every human rights violation committed between private individuals subject to its jurisdiction. Indeed, the State's treaty-based obligation to ensure rights does not entail its unlimited responsibility for any incident or act by private individuals, because its obligation to adopt measures of prevention and protection is conditioned by its awareness of a situation of real and imminent danger for a specific individual or group of individuals, and on the reasonable possibility of preventing or avoiding that danger. In other words, even though an act or omission of a private individual has the legal consequence of violating certain human rights of another individual, this is not automatically attributable to the State; rather the specific circumstances of the case must be examined together with the implementation of the said obligations of guarantee.[285]

262. The Court has held that the right to life is a fundamental human right, and its full enjoyment is essential for the enjoyment of all the other human rights. Owing to the fundamental role assigned to this right in the Convention, States have the

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279 Cf. Case of the "Five Pensioners", supra, para. 155, and Case of *Gonzales Lluy et al., supra*, para. 37.

280 The undertaking placed on record that "problems have been arising that not only involve the land dispute, but also jeopardize the physical integrity and some of the property of the inhabitants of the communities." *Cf.* Undertaking signed on December 13, 2001, *supra (*evidence file, folio 26).

281 In this statement, he indicated that "[e]very day the children of the community are harassed by the invaders. They harassed [his] father with high-caliber weapons" (merits file, folio 26).

282 In this statement, he mentioned that "[w]hen we received the news that the invaders were there, we went to talk to them politely, [but] they told us they were going to kill us" (merits file, folio 18).

283 In this regard, the Commission indicated that "in this conflictive context, the murder of the member of the Punta Piedra Garifuna community, Félix Ordóñez Suazo, was reported in June 2007, and the authorities were informed of the incident – both the General Directorate of Criminal Investigation and the Special Prosecutor for Ethnic Affairs and Heritage – and the investigation is still pending before both entities" (merits file, folio 26).

284 Cf. Case of the "Mapiripán Massacre" v. Colombia. Judgment of September 15, 2005.Series C. No. 134, para. 111, and Case of *Gonzales Lluy et al., supra***,** para. 170.

285 Cf. 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 *Gonzales Lluy et al., supra***,** para. 170.

obligation to guarantee the creation of the conditions required to ensure that violations of this right do not occur.[286]

263. According to the Court's case law, it is not necessary to determine the guilt of the perpetrators or their intention in order to establish whether a violation of the right to life has been produced; nor is it necessary to identify individually the agents to whom the acts that violated that right are attributed. Rather it is sufficient to demonstrate that acts or omissions have been verified that have allowed the perpetration of those violations or that a State obligation exists that has not been complied with.[287]

264. In this respect, the Court notes that, on June 11, 2007, Félix Ordóñez Suazo, who was coordinator and board member of the Punta Piedra Community Development Association, died as a result of three bullet wounds. According to the statements of several members of the Punta Piedra community, Félix Ordóñez Suazo's death was the result of the land conflict that existed between him and two members of the village of Rio Miel and, owing to the tense situation, Mr. Ordóñez has been receiving threats (*supra* paras. 137 to 139).

265. Based on the foregoing, the Court will analyze whether, in this case, the requirements were met for the State to have had the positive responsibility to prevent the violation of the right to life of Félix Ordóñez Suazo. To this end, it is necessary to ascertain whether, at the time of the events: (i) there was a situation of real and imminent danger for the life of Félix Ordóñez Suazo; (ii) the authorities knew or should have known, and (iii) they failed to adopt the reasonable and necessary measures to prevent or avoid this danger.[288] To verify this, the Court will take into account the possible situation of special vulnerability, the cause of death, and the corresponding causal nexus between these factors.[289]

266. The Court has noted that the statements of the Punta Piedra community members are consistent in indicating that, in the context of the land usurpation and the death of Félix Ordóñez Suazo, the inhabitants of the village of Rio Miel have constantly threatened them, with verbal threats and the use of firearms. As a result of this situation, the community lives in a state of fear, and has restricted the use of their territory; moreover, the effects still continue.[290]

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[286] Cf. Case of the "Street Children" (Villagrán Morales et al.), supra, para. 144, and Case of Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary objections, merits, reparations and costs. Judgment of November 28, 2012. Series C No. 257, para. 172.

[287] Cf. Case of Velásquez Rodríguez, Merits, supra, paras. 134, 172 and 173; and Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs. Judgment of April 17, 2015; Series C No. 292, para. 280**.**

[288] Cf. Case of the Pueblo Bello Massacre, supra, para. 123, and Case of Rodriguez Vera et al. (Disappeared from the Palace of Justice), supra, para. 523.

[289] *Cf. Case of the Xákmok Kásek Indigenous Community, supra*, para. 227.

[290] *Cf.* Statement of Nieves Oswaldo Bonifacio Castillo of July 3, 2007 (evidence file, folio 1539); statement of Marcos Bonifacio Castillo of July 5, 2007 (evidence file, folio 1545); statement of Marcial Martínez Suazo of July 14, 2007 (evidence file, folio 1537); statement of Armando Castillo Núñez of August 21, 2014 (merits file, folio 462); statement of Dionisia Ávila Castillo of August 20, 2014 (merits file, folio 465); statement of Edelberta Ávila Castillo of August 21, 2014 (merits file, folio 466); statement of Edito Suazo Ávila of August 21, 2014 (merits file, folio 469); statement of Joaquín Thomas Rodríguez of August 21, 2014 (merits file, folio 472); statement of Santos Ávila Castillo of August 21, 2014 (merits file, folio 476); statement of Santos Celi Suazo Castillo of August 21, 2014 (merits file, folio 478); statement of Antonio Bernárdez Suazo of August 20, 2014 (merits file, folio 481); statement of Paulino Mejía Castillo of August 21, 2014 (merits file, folio 494); statement of Lidia Palacios during the public hearing held before the Inter-American Court on September 2, 2014; statement of Doroteo Thomas Rodríguez during the public

267. In this regard, in the affidavit he submitted to the Court, Armando Castillo, member of the Punta Piedra community, indicated that "[h]e died there [...]. Félix Ordóñez because he fought. He was a leader and that is why they killed him, so that [he would leave] them everything and not continue fighting. Félix defended his people with his life. […] They killed the people together with our brother Felix."[291]

268. Also, Paulino Mejía, a member of the Punta Piedra community and presumed victim in a complaint for usurpation and threats (*supra* para. 150) stated in the affidavit he submitted to the Court that he "personally experienced the massacre of [his] friend Félix Ordóñez; [they were] next to each other in the same field. This harassment still continues. Heavily armed men pass by frequently uttering threats, as if they were hunting deer or other animals. […] They just pass by shooting at the hills. Only God knows how they have not shot someone from the [community]."[292]

269. Also, during the public hearing before the Inter-American Commission on March 7, 2006, Benito Bernárdez, a member of the Punta Piedra community, stated that "[e]very day the children of the community are harassed by the invaders, they harassed [his] father with high-caliber weapons." He also stated that he is sure that when they return to Honduras, the invaders are going to realize that community members attended the hearing before the Commission and, consequently, they will be threatened.

270. The Court considers that the failure to free the territory of encumbrances has resulted in a generalized situation of danger for the Punta Piedra Garifuna community, characterized by threats and acts of harassment against individuals. Félix Ordóñez Suazo's death occurred in this context. Based on the foregoing, the Court will now determine the degree of awareness that the State had about the situation of risk observed.

271. In this regard, the Court notes that the undertaking of December 13, 2001, signed by the *Ad Hoc* Interinstitutional Commission[293] and the representatives of the Rio Miel and Punta Piedra communities, recorded that the problems "jeopardized the physical integrity and possessions of the inhabitants of the communities represented" (*supra* para. 114).

272. The Court also verified that on May 22, 2003, Félix Ordóñez Suazo had filed a complaint before the General Directorate of Criminal Investigation against Luis Portillo, a member of the village of Rio Miel, for the presumed perpetration of the offense of land usurpation.[294] The complaint established that, in May 2003, Luis Portillo had tried to appropriate an area of approximately 2 to 5.5 hectares, located in the Punta Piedra

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hearing before the Inter-American Court on September 2, 2014, and statements made by Dionisia Castillo Ávila, Edito Suazo, Benito Bernárdez, Eduarda Ávila, and Joaquín Thomas during the on-site visit conducted on August 25, 2015 (merits file, folio 1127).

[291] Statement of Armando Castillo Nuñez of August 21, 2014 (merits file, folio 462).

[292] Statement of Paulino Mejía Castillo of August 21, 2014 (merits file, folios 494 and 495).

[293] Composed of representatives of INA, the National Human Rights Commissioner and the Social Outreach Program of the Trujillo Diocese (*supra,* para. 113).

[294] The Court has verified that the offense of usurpation established in the Honduran Criminal Code stipulates the following: "Article 227. Anyone occupying real estate or a right *in rem* shall be punished with two (2) to four (4) years' imprisonment, notwithstanding that, as soon as the corresponding right in the case has been proved, the judge hearing the case shall order eviction from the property in question or the re-establishment of the right usurped." Available at: http://www.ccit.hn/wp-content/uploads/2013/12/Codigo-Pena-Honduras.pdf.

community (*supra* para. 133). The Court notes that the State did not conduct any significant procedure to clarify the facts and to punish those responsible, in violation of the principles of due diligence and reasonable time (*infra* para. 290).

273. The Court has also verified that, when lodging the petition before the Commission on October 29, 2003 (*supra* para. 2.a), the representatives indicated that the land tenure conflict with the village of Rio Miel had "planted the seeds of violence and desperation in the [Punta Piedra community]."[295] The petition was notified to the State on January 30, 2004.

274. In addition, the Court noted that on September 28, 2006, representatives of OFRANEH and different Garifuna communities, including the Punta Piedra community, held a meeting with State authorities[296] to follow up on the requests submitted to the President of the Republic.[297] However, the memorandum of understanding signed by the parties does not reveal any element related to the existing situation of risk in the Punta Piedra Garifuna community or the specific situation of Félix Ordóñez Suazo.

275. On April 20, 2007, a meeting was held with the participation of Government authorities[298] and representatives of the village of Rio Miel. During the meeting, it was agreed that "[INA would] seek to reach a friendly settlement to resolve the conflict […], to avoid incidents that could disturb the peace between the two communities, as has persisted to date [and that] INA and the municipality of Port Iriona, [would] organize a meeting with the two communities (Rio Miel and Punta Piedra), for the purpose of reaching a friendly settlement of the problem."[299]

276. Based on the above, the Court has verified that, prior to the death of Félix Ordóñez Suazo, at least 13 state institutions[300] were aware of different components of the conflict, and the General Directorate of Criminal Investigation were particularly aware of the situation of Félix Ordóñez Suazo in relation to the offense of land usurpation in 2003. However, the information provided to the Court reveals that none of the authorities had specific information of a situation that would jeopardize the life of Mr. Ordóñez, but this occurred in 2007.

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295 *Cf.* Petition lodged before the Commission on October 29, 2003 (evidence file, folio 500).

296 Namely: 1) the Minister for the Environment and Natural Resources; 2) the Minister for Security; 3) the Minister for Foreign Affairs; 4) the Assistant Attorney General; 5) the Director of the Honduran Social Investment Fund; 6) the Minister for Tourism; 7) the Minister for Public Works, Transportation and Housing; 8) the Assistant to the President for Social Affairs; 9) the Director of Public Prosecution Service; 10) the Ethnic Peoples Prosecutor of the Public Prosecution Service; 11) General Directorate of the Property Registry; 12) the Director of the National Agrarian Institute; and 13) the Vice Minister for Governance and Justice. *Cf.* Memorandum of understanding between OFRANEH and Government authorities of September 28, 2006 (evidence file, folio 121).

297 Regarding Punta Piedra, the issue addressed was compliance with the adoption of the budget item for freeing the Punta Piedra territory of encumbrances. *Cf.* Memorandum of understanding between OFRANEH and Government authorities of September 28, 2006 (evidence file, folio 123).

298 Namely: 1) the National Agrarian Institute; 2) the Ministry of Foreign Affairs; 3) the Ministry of Security; 4) the Supreme Court of Justice, and 5) the Mayor's Office of Port Iriona. *Cf.* Special agreement of April 20, 2007 (evidence file, folio 87).

299 *Cf.* Special agreement of April 20, 2007 (evidence file, folio 87).

300 Namely: 1) The Ministry of Security; 2) the Attorney General's Office; 3) the Prosecutors Directorate of the Public Prosecution Service; 4) the Ethnic Affairs Prosecutor of the Public Prosecution Service; 5) the Mayor's Office of Port Iriona; 6) the National Agrarian Institute; 7) the Ministry of Foreign Affairs; 8) the Ministry of the Environment and Natural Resources; 9) the Honduran Social Investment Fund; 10) the Ministry of Tourism; 11) the Ministry of Public Works, Transportation and Housing; 12) the General Directorate of the Property Registry, and 13) the Vice Minister of Governance and Justice.

277. In this regard, the Court recalls that although an act or omission by a private individual may result in the violation of certain rights of another individual, the responsibility for this violation cannot automatically be attributed to the State, because the particular circumstances of the case and the implementation of the obligation to ensure rights must be taken into account. The Court also recalls that the obligation of prevention is one of means or conduct and that non-compliance is not proved by the mere fact that a right has been violated (*supra* para. 261).

278. The Court recalls that Félix Ordóñez Suazo had filed judicial proceedings in relation to the alleged land usurpation. However, this complaint did not contain allegations relating to a possible life-threatening situation, and the definition of usurpation in the criminal code does not reveal elements indicating that it was accompanied by threats, intimidation or any type of violence. Also, although the death of Félix Ordóñez Suazo represented an escalation in the acts of violence in the area, which exacerbated the situation of risk and uncertainty of the members of the Punta Piedra community, this Court considers that, prior to his death, there was insufficient evidence to allow it to be determined that the State knew or should have known of the situation of real and immediate danger specifically to Félix Ordóñez Suazo.

279. Therefore, from the evidence submitted to this Court, it is not possible to prove that the State failed to comply with its obligation of guarantee to the detriment of Félix Ordóñez Suazo, pursuant to Article 4(1) of the American Convention, in relation to Article 1(1) of this instrument.

280. Nevertheless, the Court notes that in the course of the proceedings before the Court, and also during the on-site visit, the members of the Punta Piedra community have consistently stated that they have been threatened by the inhabitants of the village of Rio Miel (*supra* para. 266). In this regard, the Court recalls that States have the permanent and constant duty to comply with their general obligations under Article 1(1) of the Convention to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.[301] Consequently, the State has a special obligation to ensure the rights of people who are at risk and must expedite the investigations necessary to clarify the facts and, as appropriate, punish those responsible,[302] as well as provide the means to allow those living in the territory in question to coexist harmoniously.

B. Due diligence and reasonable time in relation to the domestic criminal complaints, especially the investigations and criminal proceedings relating to the death of Félix Ordóñez Suazo (Articles 8 and 25 of the American Convention)

B.1 Arguments of the parties and the Commission

281. The ***Commission*** emphasized the absence of an investigation into the complaints filed by the Punta Piedra Garifuna community and its members as a result of the conflictive situation and the threats and harassment. The Commission

[301] *Cf. Case of Velásquez Rodríguez v. Honduras.* Order of the Court of January 15, 1988, Considering clause 3 and *Case of Gonzales Lluy et al. v. Ecuador.* Order of the Inter-American Court of Human Rights of September 2, 2015, Considering clause 27**.**

[302] *Cf. Case of Velásquez Rodríguez,* Order of the Court of January 15, 1988, Considering clause 3 and *Matter of Giraldo Cardona et al. v. Colombia**.*** Order of the Inter-American Court of Human Rights of January 28, 2015, Considering clause 40**.**

considered that the absence of an adequate and effective remedy to free the community's ancestral territory of encumbrances and to protect it had exacerbated the conflictive situation that the State had been aware of since the failure to comply with the first undertaking of December 13, 2001, and had increased the climate of tension and violence in the area caused by third parties interested in the ancestral lands. The Commission indicated that the community members had been victims of acts of violence and threats that had been reported to the State authorities on various occasions. The Commission indicated that the State had failed to conduct a comprehensive investigation into the complaints, which were stalled, promoting a situation of impunity. It concluded that the State had not provided evidence of a serious, effective, diligent and prompt investigation aimed at discovering the truth and determining responsibilities; therefore the presumed victims were left unprotected. It is worth pointing out that the Commission did not include the alleged violation of Article 8 (judicial guarantees) in its Merits Report (*infra* para. 284).

282. The ***representatives*** indicated that the Punta Piedra community and OFRANEH had filed complaints regarding threats perpetrated by Rio Miel inhabitants, as well as the murder of Félix Ordóñez Suazo, and the construction of a highway in the community's territory, but no serious investigation had been conducted in this regard. Therefore, the representatives considered that "[…] the treatment that the state authorities accorded to the threats and murder of members of the community" and the fact that, to date, they had not "[…] opened the investigations," also represented a violation of Articles 8 and 25 of the Convention in relation to Articles 1(1) and 2 of this instrument.

283. Regarding the criminal complaints filed by the Punta Piedra community and some of its members, the ***State*** indicated that the investigations into the complaints for the offense of threats against Paulino Mejía and land usurpation to the detriment of Félix Ordóñez Suazo, had been inconclusive to date. Regarding the complaint concerning the construction of a highway, it indicated that the offense of abuse of authority had not been constituted because the construction had not been carried out by any state official. Regarding the complaint of land usurpation to the detriment of the whole Punta Piedra community, the State concluded that, to address the occupation by third parties, who were also vulnerable and enjoyed the right to State protection, the solution was not a criminal complaint, because the latter could request acquisitive prescription. Lastly, regarding the murder of Félix Ordóñez Suazo, the State argued that a preliminary investigation was underway against the presumed perpetrator, and an arrest warrant had been issued against him that was pending execution; therefore, the said investigations remained pending.

B.2 Considerations of the Court

284. The presumed victims' representatives asked the Court to declare the violation of Articles 8 and 25 of the American Convention. However, the analysis of Article 8 did not form part of the Merits Report submitted by the Commission (*supra* para. 2.d). Nevertheless, based on consistent case law on this matter,[303] when the representatives alleged the presumed violation of Article 8 of the Convention, they referred to the factual framework described by the Commission in its Merits Report; therefore, it is pertinent for the Court to rule on this aspect.

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303 *Cf. Case of the Five Pensioners, supra,* para. 155 and *Case of González Lluy et al., supra,* para. 37.

285. The Court has indicated that the obligation to investigate, prosecute and, as appropriate, punish those responsible for human rights violations is one of the positive measures States must adopt to ensure the rights recognized in the Convention,[304] pursuant to Article 1(1) of this instrument. This obligation must be assumed by the State as its inherent legal duty and not as a mere formality preordained to be ineffective or as a step taken by private interests that is dependent upon the initiative of the victim or his family or upon their offer of proof.[305] This obligation remains whosoever the agent or private individual eventually found responsible for the violation.[306] Additionally, due diligence requires that the entity conducting the investigation take all the necessary actions and make all the inquiries required to achieve the result sought[307] within a reasonable time.[308]

286. Based on the above, the Court will examine the alleged violation of Articles 8 and 25 and, to this end, it will make its analysis assessing: (a) the 2003 land usurpation complaint, and also due diligence and a reasonable time during the 2007 investigations and criminal proceedings relating to the death of Félix Ordóñez Suazo, and (b) due diligence and a reasonable time in relation to the 2010 complaints of land usurpation and threats to the detriment of Paulino Mejía and the Punta Piedra Garifuna community and its members, as well as the 2010 complaint of abuse of authority to the detriment of the said community and its members.

B.2.1 2003 complaint for the offense of land usurpation, investigations and criminal proceedings relating to the death of Félix Ordóñez Suazo

B.2.1.1 Investigations into the 2003 complaint of usurpation

287. The Court has verified that, on May 22, 2003, Félix Ordóñez Suazo filed complaint No. 188-2003 against Luis Portillo for the presumed perpetration of the offense of land usurpation[309] against himself and the Punta Piedra community because Mr. Portillo had tried to appropriate an area of approximately 2 to 5.5 hectares located within the community's territory (*supra* para. 133).

288. Based on this complaint, on July 11, 2003, the Ethnic Affairs Prosecutor issued an order requiring a police investigation for the DGIC to open an investigation into the facts. He also ordered that certain procedures be carried out (*supra* para. 134), the most important and basic of these being: identifying the accused, taking his statement

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304 Cf. Case of Velásquez Rodríguez, Merits, supra, paras. 166 and 167, and Case of González Lluy et al., supra, para. 168.

305 Cf. Case of Velásquez Rodríguez, Merits, supra, para. 177, and Case of González Lluy et al., supra, para. 168.

306 *Cf., Case of Velásquez Rodríguez, Merits, supra,* para. 177, and *Case of Espinoza Gonzáles v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 289, para. 238.

307 Cf. Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs. Judgment of March 1, 2005. Series C No. 120, paras. 65 and 83, and *Case of Espinoza Gonzáles, supra,* para. 238.

308 *Case of the Serrano Cruz Sisters, supra*, paras. 65 and 83, and *Case of Espinoza Gonzáles, supra,* para. 290.

309 The offense of usurpation established in the Honduran Criminal Code stipulates the following: "Article 227. Anyone occupying real estate or a right *in rem* shall be punished with two (2) to four (4) years' imprisonment, notwithstanding that, as soon as the corresponding right in the case has been proved, the judge hearing the case shall order eviction from the property in question or the re-establishment of the right usurped." Available at: http://www.ccit.hn/wp-content/uploads/2013/12/Codigo-Pena-Honduras.pdf

and that of the victim, obtaining maps and ownership documents from the parties in dispute, and inspecting the site.

289. The Court considers that the filing of a criminal complaint requires the entity conducting the investigation to take all those actions and make all those inquiries that are required to achieve the result sought within a reasonable time.[310] However, the Court understands that even though, based on the information collected during the initial actions, the entity in charge of the investigation could decide not to continue the investigation if it found this to be appropriate, it is essential that it execute the minimum procedures that will allow it to have sufficient information concerning the presumed perpetration of an offense. According to the evidence in the case file, the Court has verified that, in the instant case, the property titles issued to the Punta Piedra community were obtained, but no other procedure was conducted by the corresponding authorities to gather minimum information about what happened.

290. Accordingly, the Court notes that the State did not take any relevant measure to clarify the facts and punish those responsible. Therefore, 11 years after the usurpation complaint was filed, the State has not ruled on it, in violation of the principles of due diligence and reasonable time. Also, even though Félix Ordóñez Suazo died in June 2007, the Court has no additional and updated information regarding the status of the land usurpation complaint following his death[311] and notes that this complaint was not joined to the investigations conducted as a result of his death.

B.2.1.2 Investigations and criminal proceedings in relation to the death of Félix Ordóñez Suazo

291. The Court has established that Félix Ordóñez Suazo died on June 11, 2007, between 7.30 and 11.00 a.m., as a result of three bullets wounds (*supra* para. 137). According to statements by the only witness to the crime, the presumed perpetrator was David Portillo Chacón, the son of Luis Portillo – Félix Ordóñez Suazo having accused the latter of land usurpation in 2003 (*supra* paras. 133, 138 and 139). The Court notes that, as a result of this, two complaints were filed and an investigation and criminal proceedings were initiated to clarify the facts and punish those responsible; however, this is still at the investigation stage. Consequently, based on the arguments of the Commission and the parties, the Court will analyze: (a) the presumed omissions in the initial investigation procedures, and (b) the presumed irregularities in the criminal proceedings and the reasonable time.

292. Regarding the initial procedures, the Court has established that, in the context of the obligation to investigate a death, a real determination to discover the truth with due diligence should be demonstrated as of the initial procedures.[312] Also, regarding

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310 Cf.. *Case of the Serrano Cruz Sisters, supra*, para 65 and 83, and *Case of Espinoza Gonzáles, supra,* para. 238 and 290.

311 It is on record that on September 10, 2014, during the investigation into his death, the Trujillo Prosecutor received an official letter from the Ethnic Affairs Prosecutor requesting information on the progress and actual status of the land usurpation complaint. The Court's case file does not reveal that he received any response to this request.

312 Cf. Case of Juan Humberto Sánchez *v. Honduras. Preliminary objections, merits, reparations and costs.* Judgment of June 7, 2003. Series C No.99. para. 127, and Case of the Human Rights Defender et al., supra, para 204. In this regard, the Court has established the guidelines that must be observed in an investigation into a violent death. The State authorities who conduct an investigation of this type must, at least, inter alia: (i) identify the victim; (ii) recover and preserve evidentiary material related to the death to aid in any possible criminal investigation of those responsible; (iii) identify possible witnesses and obtain

the handling of the scene of the crime[313] and the victim's body, certain basic and essential procedures must be performed to preserve all the evidence that could contribute to the success of the investigation,[314] such as the autopsy and the removal of the corpse.

293. Based on the foregoing, the Court notes that at around 3.30 p.m. on the day of the facts, the magistrate of the Iriona municipality arrived at the site of the facts known as "El Castillo" to conduct the procedure of the removal of Félix Ordóñez Suazo's corpse. The magistrate recorded the presence of agents of the Iriona Municipal Headquarters, and the absence of the prosecutor and the forensic doctor. In addition, he established that when he arrived at the site of the incident, the inhabitants had moved Félix Ordóñez Suazo's body; accordingly, the Court understands that the body was inspected in a place other than where the death occurred.

294. From the report on the removal of the corpse, the Court notes that the magistrate recorded the gunshot wounds in Félix Ordóñez Suazo's body (*supra* para. 142) and that the assistant collected two 16 mm caliber cartridges cases at the site, which were taken to the magistrate's court. Regarding the said evidence, the Court emphasizes that the evidence in the case file does not reveal that any forensic firearm examination was carried out on the bullets or any ballistic tests. Also there is no indication that any other evidence was gathered from the scene of the crime.

295. Additionally, the Court notes that Félix Ordóñez Suazo's body was delivered to his family at 4.30 p.m. on the day of this death; in other words, one hour after the procedure to remove the body had commenced without an autopsy having been performed. In this regard, the Court has indicated that the autopsy is one of the basic and essential forensic procedures that must be performed to obtain evidence that could contribute to the success of the investigations, because its purpose is to collect information to identify the deceased, and the hour, date, cause and manner of death and it must respect certain basic formalities.[315] Even though the magistrate described the gunshot wounds in the record of the removal of the body, no forensic doctor or competent authority established the cause of death; a relevant element to determine in

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their statements concerning the death; (iv) determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, and (v) distinguish between natural death, accidental death, suicide and homicide. The autopsies and analysis of human remains must be carried out systematically by competent professionals, using the most appropriate procedures. Cf. United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary (Minnesota Protocol), UN Doc. E/ST/CSDHA/.12 (1991). Available at: en:http://www.ohchr.org/EN/Issues/Executions/Folios/RevisionoftheUNManualPreventionExtraLegalArbitrary.aspx.

313 Cf. Case of Juan Humberto Sánchez, supra, para. 127 and Case of Landaeta Mejías Brothers et al., supra, para. 228.

314 In this regard, international standards indicate that, regarding the scene of the crime, the investigator must, at least: photograph the scene, and any other physical evidence and the body as it was found and after it has been moved; collect and preserve any samples of blood, hair, fibers and threads or other clues; examine the scene for shoe impressions or any other impressions of an evidentiary nature, and prepare a report detailing any observations at the scene, actions of investigators and disposition of all evidence recovered. The Minnesota Protocol establishes, among other obligations, that, when investigating a crime scene the area around the body should be closed off, and only the investigator and his staff be allowed entry into the area. *Cf. Case of González et al. ("Cotton Field") v. México. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series No. 205, para. 301, and *Case of Landaeta Mejías Brothers et al., supra,* para. 228. *Cf.* Minnesota Protocol, *supra*.

315 An autopsy must respect certain basic formal procedures, such as indicating the date and time it starts and ends, as well as the place where it is performed and the name of the official who performs it. Furthermore, *inter alia,* it is necessary to photograph the body comprehensively; x-ray the body, the bag or wrappings, and then undress it [if applicable] and record any injuries. *Cf. Case of González et al. ("Cotton Field"), supra,* para. 310, and *Case of the Human Rights Defender et al., supra,* para. 204.

this case. There is no evidence of any other initial procedure being conducted to collect evidence.

296. The Court also notes that, on June 13, 2007, two complaints were filed in relation to the death of Félix Ordóñez Suazo (*supra* paras. 143 and 144); accordingly, on June 26 that year, the Ethnic Affairs Prosecutor issued an order requiring a police investigation and asking the DGIC to conduct several procedures. Initially, these procedures could not be conducted due to lack of transportation and logistical support, and only four statements were obtained, including that of the only witness in the case, Marcos Bonifacio Castillo. The DGIC also established the failure to make a thorough inspection of the scene of the crime. The Court notes that the site of the incident was not inspected and no forensic examination was made of the cartridge cases collected maintaining the corresponding chain of custody, as required by the Trujillo Prosecutor in his order requiring the expansion of the police investigation of July 16, 2007, (*supra* para. 145).

297. The Court has indicated that it is the actions taken by the authorities in charge of the investigation nearest to the time of an incident that usually provide the most adequate indications to facilitate the identification of probative elements in the case. Therefore, the Court finds that the omissions committed during the initial procedures could constitute a breach of the duty to investigate the facts that occurred[316] in violation of the obligation to investigate with due diligence.

298. Additionally, the Court notes that the DGIC indicated that the possible motive of the death was related to the existing land disputes, a line of investigation that was not followed up on during the proceedings, despite the land usurpation complaint filed in 2003 against the father of the presumed perpetrator of the crime. The Court notes that, despite the evidence indicating a relationship between the motive for the crime against Félix Ordóñez Suazo and the 2003 land usurpation complaint, the authorities did not investigate these incidents together or conduct an inquiry aimed at proving this relationship.[317] Although the Court has indicated that "[i]nvestigating with due diligence requires taking other murders into account and establishing some type of connection between them,"[318] it finds that this same principle entails taking into account what happened in any other offense that could help clarify the facts and determine responsibilities. This should be expedited *ex officio*, without the victims or their next of kin having to assume this initiative.[319]

299. Regarding the irregularities and delays in the criminal proceedings, the Court notes that they can be attributed mainly to the actions of the courts. Indeed, on July 26, 2007, the Trujillo Prosecutor filed charges against David Portillo Chacon, as alleged perpetrator of the crime of the murder of Félix Ordóñez Suazo, before the Trial Court. Accordingly, on August 13, 2007, the Trial Court issued the corresponding arrest warrant. However, to date, this has not been executed, even though the Ethnic Affairs Prosecutor has requested its execution on four occasions (*supra* para. 147).

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316 *Cf. Case of the "Mapiripán Massacre" v. Colombia, supra*, para. 228, and *Case of the Landaeta Mejías Brothers et al., supra,* para. 261.

317 *Cf. Case of the Barrios Family, supra,* para. 253, and *Case of the Landaeta Mejías Brothers et al., supra, para. 224.*

318 *Cf. Case of González et al. ("Cotton Field"), supra,* para. 368; *inter alia, Case of the Barrios Family, supra, para. 253, and Case of the Landaeta Mejías Brothers et al., supra, para. 224.*

319 *Cf. Case of González et al. ("Cotton Field"), supra,* para. 368; *inter alia, Case of the Barrios Family, supra,* para. 253, and *Case of the Landaeta Mejías Brothers et al., supra,* paras. 224 to 225.

300. Likewise, the case file before this Court does not reveal that, in the criminal proceedings before the Magistrates' Court, the hearing requested by the Trujillo Prosecutor in order to receive the statement of Marcos Bonifacio Castillo, only witness in the case, as pre-trial evidence, and ordered for August 18, 2011, was actually held. In addition, the Court notes that, since 2010, both the Ethnic Affairs Prosecutor and the Trujillo Prosecutor have requested the exhumation of Félix Ordóñez Suazo's body in order to perform the respective autopsy. However, even though this request was submitted to the Regional Director of Forensic Medicine on two occasions as an urgent matter, and even though the Ethnic Affairs Prosecutor has repeated his requests for information about this procedure on four occasions, the exhumation of the body remains pending to date (*supra* paras. 146 to 148).

301. The Court notes that more than eight years after the facts, the criminal proceedings are at the investigation stage before the Trial Court and no relevant procedures have been conducted. In this regard, it considers that a prolonged delay, such as the one in this case, constitutes – in principle - a violation of judicial guarantees, thereby contravening the reasonable time.[320]

302. Based on the foregoing, the Court has verified that, at the start of the investigation into the death of Félix Ordóñez Suazo, significant evidence was not collected, and no relevant procedures have been conducted subsequently at the judicial level; therefore, the State failed to conduct a thorough and diligent investigation. All of this has resulted in a serious breach of the duty to investigate the facts, which could also affect the immediacy of the evidence, the possibility of obtaining reliable information, and the loss of evidence or the impossibility of collecting it, owing to the passage of time. The Court considers that these omissions and irregularities prove that the State failed to take effective measures during the investigations and criminal proceedings in the case. The Court also concludes that the State failed to comply with the reasonable time due to the existence of procedural delays in the prosecution of the case. Consequently, the Court considers that the State is internationally responsible for the violation of the rights established in Articles 8(1) and 25(1) of the American Convention to the detriment of Félix Ordóñez Suazo and the members of the Punta Piedra community.

B.2.2. 2010 complaints concerning land usurpation and threats and also abuse of authority to the detriment of the Punta Piedra Garifuna community and its members

303. The Court has verified that, on April 13 and 16 and October 19, 2010, the Punta Piedra community, through its development association, filed three complaints, respectively: (a) for usurpation owing to the invasion of lands belonging to the community and for threats by the Rio Miel "*ladinos* or outsiders" as a result of the land conflict; (b) for perpetration of the offense of proffering death threats against Paulino Mejía, a member of the Punta Piedra community, by three individuals from Rio Miel, and (c) for perpetration of the presumed offense of abuse of authority when investigating the presumed construction of a highway that cut through the territory of

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320 *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs. Judgment of June 21, 2002. Series C. No. 94,* para. 145, 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. 217.

the Rio Miel community without having conducted the prior consultation (*supra* paras. 149, 150 and 155).

B.2.2.1 Complaint concerning land usurpation and threats to the detriment of the members of the Punta Piedra Garifuna community and complaint of threats against Paulino Mejía

304. Regarding the complaint concerning land usurpation and threats to the detriment of the Punta Piedra community, the Court has verified that, on April 13, 2010, the Ethnic Affairs Prosecutor issued an order requiring different procedures; in particular the inspection of the site of the facts (*supra* para. 151). Also, in relation to the complaint of threats against Paulino Mejía, on April 17, 2010, the Ethnic Affairs Prosecutor issued an order, sent to the DGIC agents on two occasions, requiring a series of pertinent initial procedures.[321] The Court notes that the investigations into the two complaints were conducted jointly; it will therefore analyze them in this way.

305. The Court notes that DNIC agents attached to the Ethnic Affairs Prosecution Service in Tegucigalpa inspected the area on June 3 and 4, 2013, more than three years after the two complaints had been filed. This was presumably the only procedure conducted in the investigation of both cases. During the inspection, the agents went to the Punta Piedra community and took the statements of four witnesses (*supra* para. 153) all of whom stated that, since 1993, part of the community's territory had been occupied by third parties; namely, inhabitants of the area of Rio Miel. In particular, they stated that Alejandro, Efraín and Calín Ortiz had threatened not only different members of the community, but also Paulino Mejia to force him to abandon his lands, which bordered those they occupied, in the El Castillo sector in Punta Piedra. According to the statements, the Rio Miel occupants had issued death threats against the community[322] showing them their rifles, telling them that they "will never leave" and that if any of the community left where they were, they would kill them.[323]

306. The DNIC agents could only take the statements of four witnesses because, due to lack of fuel, they were unable to return to the Punta Piedra area to conclude the planned procedures; in other words, they were unable to take Paulino Mejía's statement; they did not inspect the area presumably usurped by the Ortiz family, and they did not fully identify the individuals who had been accused (*supra* para. 154). The agents even recorded that neither the DNIC offices in Trujillo nor the offices of the Public Prosecution Service in Trujillo, knew of, or had recorded or conducted procedures in relation to the complaints concerning land usurpation and threats. To date, the Court notes that no relevant procedure has been conducted after June 2013, almost five years after the facts, in violation of the principles of due diligence and reasonable time.[324]

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321 Among the most important: (a) identifying and taking the statements of the accused (Alejandro Ortiz, Efraín Ortiz and Calín Ortiz); (b) taking the statements of witnesses; (c) identifying and inspecting the site of the lots on which Paulino Mejía worked; the capacity in which they were handed over by the Punta Piedra community, and who possesses them actually, and (d) obtaining the community's property titles.

322 *Cf. Statement of* Antonio Bernárdez Suazo of June 3, 2013, and Statement of Andrés Álvarez Bernárdez of June 3, 2013 (evidence file, folios 1655, 1659 and 1660).

323 *Cf. Statement of* Andrés Álvarez Bernárdez of June 3, 2013 (evidence file, folios 1659 and 1660).

324 In addition, referring exclusively to land usurpation to the detriment of the whole Punta Piedra community, the State advised that, in the opinion of the Ethnic Affairs Prosecutor, "the territory [referred to in the complaint of usurpation was] occupied by a Rio Miel peasant farmer community, which [was] also vulnerable and also deserv[ed] the State's protection […]. In this regard, they agree[d] that the solution to this problem [was] not filing a criminal action, because the occupants […] could claim acquisitive prescription

307. The Court also notes that, despite the statements of community members reporting the existence of threats, even death threats, against them, the State did not conduct additional procedures to clarify the facts. In this regard, the Court recalls that the State obligation to investigate must be complied with diligently to avoid impunity and the repetition of facts such as these.[325] Therefore, owing to the existence of threats presumably made up until the present, the Court reminds the State of its general obligations under Article 1(1) of the Convention,[326] and the special obligation to ensure the rights of people who are at risk[327] (*supra* para. 280).

308. Based on the foregoing, the Court concludes that the State acted in violation of the principle of due diligence by failing to conduct the relevant procedures to clarify the facts and determine the corresponding responsibilities. In addition, the State violated the principle of a reasonable time given that, more than five years after the aforementioned complaints had been filed, the State has not concluded the investigations or the procedures initiated on behalf of the Punta Piedra community.

B.2.2.2 Complaint concerning abuse of authority to the detriment of the members of the Punta Piedra Garifuna community

309. Regarding the complaint concerning abuse of authority[328] in relation to the construction of a highway without the respective prior consultation, the Court notes that, even though on November 3 of that same year, the Ethnic Affairs Prosecutor issued an order requiring a series of procedures, including the inspection of the lands on which the highway was being constructed, none of them were carried out due to the "lack of travel expenses." It was not until early June 2013, in other words more than two years after the complaint was filed, that the authorities carried out the inspection of the area and took photographs. This confirmed the existence of a highway cutting in front of a place called "*Pulperia y Hospedaje La Única*" within the Punta Piedra community's territory. However, both the General Director of Highways and the Deputy Mayor of the municipality of Iriona informed the Ethnic Affairs Prosecutor that the said institutions had not authorized the construction of a highway in the area (*supra* para. 156).

[…]." It is worth noting that this opinion was issued in an internal memorandum and does not constitute a formal decision regarding the complaint that was filed. *Cf.* Memorandum No. FEEPC-108-2014 of the Special Ethnic Affairs and Cultural Heritage Prosecutor addressed to the Coordinator of the International Affairs Unit, to report on the actual status of the domestic complaints, dated October 2, 2014 (evidence file, folios 2327 to 2329).

325 *Cf. Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs. Judgment of July 1, 2006. Series C No. 148,* para. 300 and *Case of the Landaeta Mejías Brothers et al., supra,* para. 216.

326 *Cf. Case of Velázquez Rodríguez v. Honduras*. Order of the Court of January 15, 1988, considering clause 3, and *Matter of Giraldo Cardona et al.* Order of the Inter-American Court of Human Right of January 28, 2015, considering clause 40.

327 Cf. Case of Velásquez Rodríguez. Order, supra, considering clause 3, and Matter of Giraldo Cardona et al., supra, considering clause 40.

328 The complaint concerning the construction of a highway does not contain the specific article on abuse of authority. However, Chapter III "Abuse of authority and violation of the duties of public officials" of the Honduran Criminal Code regulates this type of criminal offense in articles 349 to 357. The article that would apply, in general, to the instant case is the following: "Article 349. The public official or employee who: (1) fails to comply with orders, judgments, judicial decisions, resolutions, agreements or decrees issued by the judicial or administrative authorities within their terms of reference and in keeping with legal formalities; (2) who issues or executes orders, judgments, judicial decisions, resolutions, agreements or decrees contrary to the Constitution or the law or refrains from complying with the provisions of any of the said legal instruments, or (3) omits, refuses or delay any action that he/she should execute pursuant to the duties of his/her position, shall be punished with 3 to 6 years' imprisonment and special disqualification for twice the length of the prison sentence; […]."

310. The Court has corroborated that, according to Memorandum No. FEEPC-108-2014 – which the State provided to this Court – the Ethnic Affairs Prosecutor indicated that no public authority had authorized the construction of this highway and that, according to the inquiries made by the investigators, the situation did not constitute the offense of abuse of authority […]."[329] Based on the evidence in the case file, the Court notes that the petitioners were not advised of either the findings of the inspection of the area or the conclusion regarding the non-constitution of the offense of abuse of authority, and this could have prevented them from making use of the available remedies to appeal that decision.

311. The Court considers that the failure to notify the decision on the complaint filed for the alleged perpetration of the offense of abuse of authority, as well as the delay in the commencement of the investigation, violated the right of access to justice and the principle of a reasonable time because, more than four years after the complaint was filed, the State has not notified the Punta Piedra community or its representatives that the proceedings have concluded.

312. Based on the above, the Court finds that the State is responsible for the violation of Articles 8 and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the Punta Piedra Garifuna community and its members.

X
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

313. Pursuant to Article 63(1) of the American Convention,[330] the Court has indicated that any violation of an international obligation that has caused harm entails the duty to provide adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[331]

314. 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 that has been proved, and the measures requested to redress the respective harm. Therefore, the Court must observe this concurrence in order to rule appropriately and according to law.[332]

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329 *Cf.* Memorandum No. FEEPC-108-2014 of the Ethnic Affairs Prosecutor addressed to the Coordinator of the International Affairs Unit, to inform about the current status of the complaints at the domestic level, of October 2, 2014 (evidence file, folios 2327 to 2328).

330 Article 63(1) of the American Convention establishes that "[I]f 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."

331 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Omar Humberto Maldonado Vargas et al., supra,* para. 149**.**

332 *Cf. Case of Ticona Estrada et al. v. Bolivia**. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Omar Humberto Maldonado Vargas et al., supra,* para. 149**.**

315. Based on the preceding considerations regarding the partial acknowledgment made by the State (*supra* paras. 43 to 49) and the violations of the American Convention declared in Chapter IX of this judgment, the Court will proceed to examine the arguments and recommendations presented by the Inter-American Commission, the claims of the victims' representatives, and the arguments of the State, in light of the criteria established in its case law as regards the nature and scope of the obligation to make reparation, in order to establish measures designed to redress the harm caused to the victims.[333]

316. The Court considers that, in this type of case, reparation must recognize the need to reinforce the cultural identity of indigenous and tribal peoples, guaranteeing control of their own institutions, cultures, traditions and territories, in order to contribute to their development in keeping with their life projects and their present and future needs. The Court also recognizes that the situation of indigenous peoples varies according to national and regional particularities and the different historical and cultural traditions. Consequently, the Court considers that the measures of reparation granted must provide effective mechanisms from an ethnic perspective that allow them to define their priorities as regards their development and evolution as a people.

A. Injured Party

317. Pursuant to Article 63(1) of the Convention, the Court considers that the "injured party" is the person who has been declared the victim of the violation of any right recognized in the Convention. Therefore, this Court considers that the Punta Piedra Garifuna community and its members are the injured party and, individually, Félix Ordóñez Suazo, and as victims of the violations declared in Chapter IX they will be the beneficiaries of the reparations ordered by the Court below.

B. Restitution

318. The ***Commission*** asked the Court to order the State to adopt, as soon as possible, the necessary measures to give effect to the right of the Punta Piedra Garifuna community and its members' to communal ownership and possession of their ancestral territory. In particular, the State must adopt the legislative, administrative and other measures necessary to truly free it of encumbrances, in accordance with their customary law, values, practices and customs. It must also guarantee that the members of the community are able to continue leading their traditional way of life, in keeping with their distinctive cultural identity, social structure, economic system, customs, beliefs and traditions.

319. In its written final observations, the Commission considered that the State should: (1) adopt the necessary measures to identify, as soon as possible, the totality of the territory invaded; (2) provide the necessary human and financial resources to relocate the people of Rio Miel, consulting with them about all the other possibilities that will prevent or, at least, minimize the need to resort to violence, and (3) adopt the necessary measures to prevent violation of the rights to life and integrity during relocation, as well as establishing trusted channels of communication. In this regard, the Commission considered that the establishment of specific time frames for each of these stages of the judgment would significantly assist compliance and the definitive

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[333] *Cf. Case of Velásquez Rodríguez. reparations and costs, supra,* paras. 25 and 26, and *Case of Gonzales Lluy et al., supra***,** para. 344**.**

return of the community's lands. It also indicated that, "following the relocation of the Rio Miel inhabitants, the State must adopt the necessary measures to prevent new invasions of the community's territory by third parties. Likewise, the State must refrain from taking decision that affect this territory without conducting a prior, free and informed consultation in order to obtain its consent."

320. The ***representatives*** requested: (a) total restitution of the Punta Piedra community's lands that are in the hands of the inhabitants of Rio Miel; (b) annulment of all land titles granted to third parties over communally titled land (in all the Garifuna communities), and (c) legal recognition of the possession of ancestral land of all the Garifuna communities. In their final written arguments, the representatives asked that the entire territory of the Punta Piedra community be freed of encumbrances, considering not only the areas invaded by new settlers, but also the other areas possessed by third parties, the forest and the functional habitat. To this end, they requested the establishment of comprehensive mechanisms to relocate the new settlers, and the necessary security measures to protect the life and integrity of the members of Rio Miel, and the establishment of specific time frames to free the land of encumbrances. They also requested the immediate adoption of comprehensive measures to prevent the continuation of the conflict in the area and so that, when the lands have been returned, there will be no further invasions of the Garifuna territories.

321. In its answering brief, the ***State*** "propose[d] to again update the appraisal of the improvements made by the [Rio Miel inhabitants] and also to allocate an additional five (5,000,000.00 Lps.) to six million lempiras (6,000,000.00 Lps.) to purchase a property to relocate the members of the village of Rio Miel. However, during the public hearing of the case, the State made the following proposals: (i) "that the Punta Piedra Garifuna community accept that the State […] pay it for the land that is currently occupied by the Rio Miel inhabitants and the said land becomes the property of the inhabitants of Rio Miel"; (ii) "that the Punta Piedra Garifuna community accept that the State […] grant it an area of land equal to the one occupied by the inhabitants of Rio Miel in another place adjacent to their previous title," or (iii) "that the Rio Miel community […] pay the Punta Piedra Garifuna community an annual rent for the land they occupy."

322. In Chapter IX, the Court determined that the State had violated Articles 21 and 25 of the Convention because it had failed to ensure the use and enjoyment of communal property by freeing it of encumbrances, and because it had failed to execute the agreements reached (*supra* paras. 189, 202 and 251); therefore, these omissions allowed a gradual increase in the occupation of the communal territory, depriving the Punta Piedra community of the peaceful and effective use and enjoyment of its territory (*supra* paras. 189 and 197). The Court also noted that more than 15 years have passed since the State assumed the obligation to free the territory of encumbrances and, at this time, other settlers are established in that area.

323. The Court finds that, in order to achieve full reparation for the violations that have been proved by the restoration of the violated rights, it is incumbent on the State to free of encumbrances the traditional lands that the State titled to the Punta Piedra community and to ensure implementation of the agreements reached. The State must comply with this obligation to free the territory of encumbrances *ex officio* and with extreme diligence (*supra* para. 186). In this regard, the State must remove any type of obstacle or intervention in the territory in question (*supra* para. 181); in particular, by ensuring the full and effective ownership of the members of the Punta Piedra

community and, if appropriate and as agreed, by the payment of the improvements made by the third-party occupants and their relocation with due guarantees.

324. To this end, the State must:

a) Take all the necessary administrative, legislative, financial, and human resource measures to fully restore the titled territory to the Punta Piedra community, ensuring peaceful, full and effective use and enjoyment of the territory,[334] within no more than 30 months of notification of this judgment.

b) Ensure, immediately and effectively, that the territory currently in the possession of the Punta Piedra community does not undergo any invasion, additional expansion, interference or adverse effects by third parties or State agents that could impair the existence, value, use or enjoyment of its territory.[335]

c) Proceed to pay for the improvements and relocate the third-party settlers with due guarantees, within no more than two years of notification of this judgment.

d) If it is proved that legitimate property titles existed in the village of Rio Miel prior to the award of the second title to the Punta Piedra community, pursuant to the Court's case law, the State must assess the possibility of purchasing or expropriating those lands, for public purposes or social interest.[336]

325. If, for objective and well-founded reasons,[337] all or partial return of the territory occupied by third parties is not possible, the State must, exceptionally, offer the Punta Piedra community alternative lands of the same or greater physical quality, adjacent to the titled territory, free of any tangible or formal defects, and duly titled in its favor. The State must deliver the lands, chosen consensually with the Punta Piedra community in keeping with the community's own forms of consultation and decision-making, values, practices and customs.[338] When agreement has been reached, this measure must be executed within one year of notification of the Punta Piedra community's consent. Also, when these lands are handed over, the State must include an integral development plan for the alternative territory drawn up by mutual agreement with the community, which is additional to the development fund ordered below (*infra* paras. 332 to 336). The State must bear the costs of the relocation, and any expenses corresponding to loss or damage suffered as a result of the granting of the said alternative lands.[339]

326. Notwithstanding the foregoing, the State must draw up, with the mutual agreement of the Punta Piedra community and the village of Rio Miel, rules for peaceful and harmonious coexistence in the territory in question that respect the practices and customs of the Punta Piedra community, and also the preventive mechanisms required to avoid any third-party interference in the Garifuna territory.

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334 *Cf. Case of the Sawhoyamaxa Indigenous Community, supra,* para. 210; and *Case of the Xákmok Kásek Indigenous Community*, *supra,* para. 281

335 *Cf. Case of the Mayagna (Sumo) Awas Tingni Community, supra*, para. 164.

336 Cf. *Case of the Yakye Axa Indigenous Community, supra,* para. 217; and *Case of the Xákmok Kásek Indigenous Community*, *supra,* para. 286.

337 Cf. *Case of the Yakye Axa Indigenous Community, supra,* para. 217; and *Case of the Xákmok Kásek Indigenous Community*, *supra,* para. 286. See also, Article 16 of ILO Convention No. 169.

338 Cf. *Case of the Yakye Axa Indigenous Community*, *supra,* para. 217; and *Case of the Xákmok Kásek Indigenous Community*, *supra,* para. 286.

339 *Cf.* Article 16.5 of ILO Convention No. 169.

327. Regarding the failure to consult the Punta Piedra II exploration project that includes part of the Punta Piedra community's territory, the State must halt any activity that has not been previously consulted and, when applicable, proceed to carry out this consultation pursuant to the Court's case law.[340]

328. The State must, within three months of notification of this judgment, set in motion the necessary coordination mechanisms between the decision-making institutions with competence in the matter, to ensure the effectiveness of the measures established previously, including: freeing the territory of encumbrances, guaranteeing the integrity of the communal territory and, if appropriate, participating in the implementation of the said development plan.

C. Collective compensation through a development fund

329. The ***Commission*** asked the Court to order the State to make reparation, both individually and collectively, for the consequences of the violation of the aforementioned rights, as a result of the failure to free the community's ancestral territory of encumbrances and of the damage caused to the territory itself by the actions of third parties. In addition, in its final written observations, the Commission indicated that this obligation sought to compensate the harm suffered as a result of the impossibility of the community enjoying peaceful possession of an important part of its territory for more than 20 years.

330. The ***representatives*** requested reparation for consequential damages in relation to the financial losses suffered by the community, as a collective, due to the lack of access to and traditional usufruct of the natural resources. Additionally, they requested a series of measures of reparations in order to: (a) improve productive capacity;[341] (b) restore the forested area;[342] (c) improve the electricity service;[343] (d) prevent natural disasters;[344] (e) build a recreation park with a lighting system, and (f)

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340 Cf. *Case of the Saramaka People, supra,* para. 194.d) and *Case of the Kichwa Indigenous People of Sarayaku*, *supra,* para. 299**.**

341 Namely: (i) to grow rice, 100 hectares with its respective plough, processor, pulping machine, storage silos, warehouses and a truck for distribution to stores open to the Garifuna people; (ii) to grow plantain, 100 hectares with packing plant for processing and preparing for stores and distribution; (iii) to grow yucca, 200 hectares with a factory and packing plant for the preparation of cassava and to flavor, bag up and use all the products derived from yucca; (iv) to grow tall Pacific coconut palm resistant to lethal yellowing, 100 hectares with the corresponding processing plant for preparing desiccated coconut, bottling the water and manufacturing coconut-based products, as well as coconut oil and its packaging, coconut tablets and their packaging, and others; (v) to grow fruit trees and vegetables, 100 hectares with the assistance of the community's agronomists for all categories, together with the different manufacturing plants; (vi) a pig raising project with its own infrastructure (sheds, slaughterhouse and cold room); (vii) a project for raising laying hens with its own infrastructure (sheds); (viii) a project to raise and fatten chickens for sale with its own infrastructure (sheds, slaughterhouse and cold storage room); (ix) a project to raise tilapia with its corresponding infrastructure, for times of scarcity due to the closed season for artisanal fishing; (x) a fishing project that includes four motorboats, four engines, nets and fishing gear, sonars, radars, GPS, cold storage room and a vehicle for transportation and sales; (xi) US$500,000 seed capital for the different businesses that will be operating in the area recovered by the Punta Piedra Garifuna community.

342 Namely: (i) reforestation of 178 hectares with Ficus, Santa Maria, teak, Guanacaste, cojoba and ceiba trees, and (ii) dredging of all river basins within the Rio Miel area and reforestation of the area from the river basin to the mouth with bamboo.

343 Namely: A central power generation plant for the entire village with its infrastructure (posts, cables, and connection to the houses in order to provide them with electricity).

344 Namely: (i) reforestation of the beach area with trees to create a protective barrier against bad weather and climate change with different types of trees such as icaco, *coccoloba uvifera*, nance, cashew

establish a cultural center and museum. The representatives also indicated that the development association was an imposed form of municipal organization.

331. The ***State*** rejected, in general, the claims submitted by the Commission and the representatives.

332. Given that the State was found responsible for the violation of Articles 21 and 25 of the Convention, as well as the fact that the purpose of all the different measures of reparation requested by the representatives is to develop and improve the productivity of the community's territory (*supra* para. 316), as it has in previous cases,[345] the Court finds it appropriate to analyze the said 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. This fund is additional to any other present or future benefit that may correspond to the Punta Piedra community as a result of the general duty of the State to promote development.

333. In view of the measures of reparation requested by the Commission and the representatives, the dispossession of its territory, the damage caused to the territory and the fact that "[i]ndigenous peoples have a right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources,"[346] the Court orders that the fund have the following objectives: (i) to develop projects aimed at increasing agricultural or any other kind of productivity in the community; (ii) to improve the community's infrastructure based on its present and future needs; (iii) to restore the deforested areas, and (iv) others that are considered pertinent to benefit the Punta Piedra community.

334. The State must adopt all the necessary administrative, legislative, financial and human resource measures to implement this fund. Therefore, within three months of notification of this judgment, it must appoint an authority with the required competence to administer the fund. For its part, the Punta Piedra community must elect its representatives for the discussions with the State to ensure that the fund is implemented in keeping with the community's wishes.

335. The State must allocate the sum of US$1,500,000 (one million five hundred thousand United States dollars) to this fund, to be invested for the benefit of the territory titled to the Punta Piedra community within at most three years of notification of this judgment.

336. Lastly, the Court establishes that the parties must forward the Court an annual report during the execution period describing the projects in which the sum allocated to the Fund will be invested.

D. Satisfaction: publication and broadcasting of the judgment

337. Neither the ***representatives*** nor the ***Commission*** or the ***State*** referred to this measure of reparation.

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and almond, and (ii) the creation of a shelter with all necessary infrastructure for cases of natural disasters in the high area of the village, the location to be determined by the people of the community.

345 *Cf. Case of the Yakye Axa Indigenous Community, supra,* para. 205; and *Case of the Xákmok Kásek Indigenous Community*, *supra,* para. 323.

346 *Cf.* Article 29(1) of the United Nations Declaration on the Rights of Indigenous Peoples of September 13, 2007.

338. Nevertheless, owing to the violations declared in this judgment, the Court deems it pertinent to order, as it has in other cases,[347] that the State publish, within six months of notification of this judgment: (a) the official summary of this judgment prepared by the Court in Spanish, which the State must translate into Garifuna[348] and publish, once, in both languages in the Official Gazette and, in Spanish, in a national newspaper with widespread circulation in Honduras, and (b) this judgment, in its entirety in Spanish on an official website of the State, available for one year.

339. Furthermore, the Court finds it appropriate to establish, as in other cases,[349] that the State publicize the official summary of this judgment in Spanish and Garifuna by broadcasting it on a radio station with extensive coverage in the Punta Piedra community. This broadcast must be made on the first Sunday of the month for at least three months. The State must previously inform the representatives, with at least two weeks' notice, of the radio station on which the broadcast will be made and the date and time. The State must comply with this measure within six months of notification of this judgment.

E. Guarantees of non-repetition

340. The ***Commission*** asked the Court to order the State to "[a]dopt the necessary measures to prevent similar acts from happening in the future, in keeping with the duty to prevent and ensure the fundamental rights recognized in the American Convention." In particular, it recommended that the State: (i) "adopt a simple and effective remedy that protects the right of the indigenous peoples of Honduras to claim and accede to their traditional territories and that permits the protection of these territories from actions by the State or third parties that infringe their right to property," and (ii) "take the necessary steps to prevent the Punta Piedra Garifuna community and its members from being subject to discriminatory acts and, in particular, being exposed to acts of violence by third parties owing to their ethnic origin." In its final written observations, the Commission emphasized that "some provisions of the 2004 Property Act could undermine the concepts of the indivisibility, imprescriptibility and inalienability included in the act itself. The [Commission] note[d] with concern [that] some of the provisions of the said act would allow for the possibility of non-indigenous persons obtaining recognition of ownership of indigenous territories based on continuous possession."

341. In their pleadings and motions brief, the ***representatives*** asked that the State: (i) adopt effective mechanisms for the Garifuna people to claim their right to land ownership, respecting their own forms of customary law, practices and customs; (ii) repeal chapter III of the Property Act on the "Procedure for regularizing real estate for indigenous and Afro-Honduran peoples," (iii) enact a law, agreed upon in consultation with the indigenous peoples, that conforms to Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); moreover,

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[347] *Cf. Case of Cantoral Benavidez v. Peru. reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Omar Humberto Maldonado Vargas et al., supra,* para. 162.

[348] Cf. Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs. Judgment of October 24, 2012. Series C No. 251, para. 263; and Case of Liakat Ali Alibux v. Suriname. Preliminary objection, merits, reparations and costs. Judgment of January 30, 2014. Series C No. 276, para. 147.

[349] *Cf. Case of the Yakye Axa Indigenous Community, supra,* para. 227, and *Case of the Kuna Indigenous People of Madungandí and the Emberá Indigenous People of Bayano and their members, supra,* para. 217.

the State must guarantee the application of this law in good faith; (iv) pay attention to processes that emerge from the communities in order to legislate and enforce the right to prior, free and informed consultation in keeping with the standards, case law and other sources of international human rights law, with the communities' participation in the legislative process; (v) implement programs agreed upon with the Garifuna people that generate significant impact and historical memory in society; (vi) exclude the Garifuna communities from the municipal town centers, and (vii) adopt a multi-communal title for the area of Iriona and Gracias a Dios that would encompass 15 adjoining communities. Subsequently, in their final written arguments, the representatives added the following guarantees of non-repetition: (i) abandon any measure that has an impact on the territories without a prior, free and informed consultation; (ii) repeal the Property Act because its provisions render the scope of an eventual judgment of the Court illusory and would allow the repetition of facts such as the ones of this case.

342. For its part, the ***State*** objected to the request to repeal chapter III of the Property Act, on the "Procedure for regularizing real estate for indigenous and Afro-Honduran peoples," and related laws, because the Punta Piedra community "should avail itself of the actions or remedies established by domestic law, as it has not […] lodged requests before the competent national authorities and there is no record that these have been denied in a final ruling or decision." The State also rejected, in general, the other measures of non-repetition proposed by the representatives.

E.1 Adaptation of domestic law

343. With regard to the request to adapt domestic law, the Court considered that none of the provisions of the Property Act and its Regulations were applied to the instant case; therefore, it has insufficient elements concerning the regulations currently in force to conclude that the State failed to comply with Article 2 of the American Convention (*supra* paras. 211 and 254). Consequently, owing to the lack of a causal nexus between the facts and the violations that have been established, it is not appropriate to order this measure.

344. Regarding the norms concerning prior, free and informed consultation, the Court considered that article 82 of the Regulations to the General Mining Act was imprecise as regards the stages prior to consultation, in contradiction with the provisions of article 50 of this act which refers to the relevant international standards. Therefore, the Court concluded that the State was responsible for the violation of the right to communal property and of Articles 1(1) and 2 of the Convention, as well as the right to cultural identity (*supra* para. 224).

345. Consequently, the State must, within a reasonable time, adopt all sufficient and necessary measures to ensure that its mining regulations do not impair the right to consultation, in the sense that this should be conducted even before prospection or exploration programs are authorized.

346. In this regard, the Court recalls that when interpreting the laws applicable to indigenous matters, the judges and organs involved in all levels of the administration of justice are bound to exercise *ex officio* a "control of conventionality" between domestic law and the American Convention, evidently within their respective terms of reference and the corresponding procedural regulations. In this task, the judges and organs involved in the administration of justice must take into account not only the treaty, but also how it has been interpreted by the Inter-American Court, the ultimate

interpreter of the American Convention.[350] The foregoing is especially applicable to the interpretation of mining legislation in light of the standards described in this judgment (*supra* para. 222).

E.2 Creation of effective mechanisms for regulation of the Property Registry

347. In view of the fact that the examination of the facts of the case revealed a lack of clarity in the Honduran Property Registry that could be permitting an overlapping of titles in rural areas (*supra* para. 201), the Court deems it pertinent to order the State to create adequate mechanisms to avoid similar actions in the future having adverse effects on the right to property in rural areas such as those analyzed in this case.

E. 3 Other measures requested

348. Regarding the other measures of reparation indicated in this section related to the community's historical memory, the exclusion from the municipal town centers, and the adoption of a multi-communal title for the area of Iriona and Gracias a Dios, the Court considers that the delivery of this judgment and the reparations ordered herein are sufficient and adequate for the instant case; therefore, it does not find it necessary to order the measures requested.

F. Obligation to investigate the facts, identify, prosecute and, as appropriate, punish those responsible

349. The ***Commission*** asked the Court to order the State to investigate and punish those responsible for the threats, harassment, acts of violence and intimidation, and damage to the property of the Punta Piedra community and its members.

350. The ***representatives*** asked the Court to order the State to investigate and punish the threats, harassment, acts of violence, repression and murders of members of the Punta Piedra community and to investigate and punish the state agents who, by act or omission, contributed to the impunity surrounding the violations in this case.

351. Meanwhile, the ***State*** indicated that it "is more than willing to investigate and punish those responsible for the threats, harassment, acts of violence and intimidation, and damage caused to the property of the Punta Piedra Garifuna community and its members."

352. Regarding the complaint for land usurpation and the criminal proceedings concerning the death of Félix Ordóñez Suazo, and the complaints related to land usurpation, threats and abuse of authority to the detriment of the Punta Piedra Garifuna community, in the instant case the Court has found the State responsible for the violation of the rights recognized in Articles 8(1) and 25(1) of the Convention, because the omissions and irregularities in the proceedings clearly revealed the ineffectiveness of the actions taken by the State to clarify the facts and punish those responsible (*supra* paras. 302, 308 and 312).

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[350] *Cf. Case of Almonacid Arellano et al.,* para. 124 and *Case of Expelled Dominicans and Haitians*, *supra,* para. 311.

353. Based on the above, taking into account this Court's case law[351] and that the different judicial proceedings analyzed are still pending judgment, the Court establishes that the State must continue, and conduct with the greatest diligence and within a reasonable time, the criminal investigations into the facts analyzed in this judgment. To this end, the State must undertake in all seriousness all the necessary actions to identify, prosecute, and as appropriate, punish the perpetrators and participants in those facts. However, the Court determines that this measure of reparation will only be monitored in relation to the criminal proceedings concerning the death of Félix Ordóñez Suazo.

G. Request for compensation for the death of Félix Ordóñez Suazo

354. The ***representatives*** requested reparation for pecuniary damage in relation to the economic losses caused to the members of Félix Ordóñez Suazo's family due to his murder which occurred in the context of the conflict. They also requested reparation for loss of earnings and non-pecuniary damages for the psychological consequences suffered by the members of the murdered victim's family and the community leaders who had been threatened.

355. The ***State*** rejected, in general terms, the claims for compensation submitted in the pleadings and motions brief.

356. The ***Commission*** did not refer to this measure of reparation.

357. In the instant case, the Court did not find the State responsible for the violation of the obligation to ensure the right to life of Félix Ordóñez Suazo. Consequently, in the absence of a causal nexus with the violations that have been proved, it is not appropriate to award compensation for loss of earnings and non-pecuniary damage as requested by the representatives.

H. Costs and expenses

358. The ***representatives*** indicated that the State must reimburse the costs and expenses incurred by the members of the community during the processing of the case before the Commission and the Court. In their final written arguments, the representatives indicated that the costs and expenses amounted to US$90,000.00 (ninety thousand United States dollars).

359. The ***State*** indicated that it trusted that, when the dispute had been decided, the Court would recognize to the party who prevailed the right to reimbursement of any expenses that it might have incurred as a result of the proceedings; however, should the Court find that the parties had reasonable grounds for litigating, it trusted that they would be exempt from such payment.

360. The ***Commission*** did not refer to this measure of reparation.

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[351] Cf. *Case of the Miguel Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160, para. 441, and *Case of Omar Humberto Maldonado Vargas et al., supra,* para. 155.

361. The Court reiterates that, according to its case law,[352] costs and expenses form part of the concept of reparation, because the actions taken by the victims in order to obtain justice, at both the domestic and the international level, entail disbursements that must be compensated when the international responsibility of the State is declared in a judgment. Regarding the reimbursement of costs and expenses, it corresponds to the Court to make a prudent assessment of their scope, which comprises the expenses incurred before the authorities of the domestic jurisdiction, and also those incurred during the processing of the case before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made on the basis of the equity principle and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.[353]

362. In addition, the Court reiterates that it is not sufficient merely to forward probative documents; rather the parties are required to include 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.[354] The Court has also determined 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 opportunity granted to them, that is, in the pleadings and motions brief, without prejudice to those claims being updated subsequently, in keeping with the new costs and expenses incurred during the proceedings before this Court."[355]

363. In the instant case, the Court has verified that, in their final written arguments, the representatives indicated that "[t]he documentary information to support [the] expenses will be presented in a formal settlement document which will be sent to the Court from Honduras by courier." However, this information was never received. Therefore, the Court has no probative elements to determine the expenses incurred.

364. Consequently, the Court decides to establish the sum of US$10,000.00 (ten thousand United States dollars) for the work carried out in litigating this case at the domestic and international levels, and the State must pay this to the representatives within one year of notification of this judgment.

365. In addition, the Court considers that, during the proceeding on monitoring compliance with judgment, it may establish that the State should reimburse the victims or their representatives for any reasonable expenses incurred during that procedural stage.

I. Reimbursement of expenses to the Victims' Legal Assistance Fund

366. The ***representatives*** requested access to the Victims' Legal Assistance Fund of the Court to cover certain expenses related to the presentation of evidence. In an order of May 30, 2014, the President of the Court authorized financial assistance from

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352 Cf. Case of Velásquez Rodríguez. Reparations and costs, supra, para. 42, and Case of Omar Humberto Maldonado Vargas et al., supra, para. *181.*

353 Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C N. 39, para. 82, and Case of Omar Humberto Maldonado Vargas et al., supra, para. 181.

354 Cf. *Case of Chaparro Álvarez and Lapo Íñiguez. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2007. Series C No. 170, para**.** 277, and Case of Omar Humberto Maldonado Vargas et al., supra, para. 182**.**

355 Case of Chaparro Alvarez and Lapo Iñiguez, supra, para. 275, and Case of Omar Humberto Maldonado Vargas et al., supra, para**.** 182.

the Fund for the appearance at the public hearing of two representatives, and for the presentation of a maximum of three statements and one expert opinion.

367. The **State** was able to present its observations on the disbursements made in this case, which amounted to US$8,543.06 (eight thousand five hundred and forty-three United States dollars and six cents). In this regard, the State indicated that it trusted that, when the dispute had been decided, the Court would recognize to the party who prevailed the right to reimbursement of any expenses that it might have incurred as a result of the proceedings; however, should the Court find that the parties had reasonable grounds for litigating, it trusted that they would be exempt from such payment. Therefore, in application of Article 5 of the Rules for the Operation of the Fund, the Court must evaluate whether it is appropriate to order the respondent State to reimburse the disbursements made from the Legal Assistance Fund in this case.

368. Based on the violations declared in this judgment and that the requirements to access the Fund were met, the Court orders the State to reimburse the said Fund the sum of US$8,543.06 (eight thousand five hundred and forty-three United States dollars and six cents) for the expenses incurred. This amount must be reimbursed to the Inter-American Court within 90 days of notification of this judgment.

J. Method of compliance with the payments ordered

369. The State must comply with its pecuniary obligations by payment in lempiras or the equivalent in Unites States dollars, using the exchange rate in force on the New York Stock Exchange (United States of America) the day before the payment to make the respective calculation. If, for reasons that can be attributed to the beneficiaries of reimbursements or their heirs, it is not possible to pay the amounts established within the indicated time frame, the State shall deposit those amounts in their favor in a deposit account or certificate in a solvent Honduran financial institution, in United States dollars, and under the most favorable financial conditions allowed by banking law and practice. If the corresponding amounts are not claimed, after 10 years, the amounts shall be returned to the State with the interest accrued.

370. The amounts allocated in this judgment to reimburse costs and expenses shall be delivered to the representatives in full, as established in this judgment, without any deductions arising from possible taxes or charges.

371. If the State should fall in arrears with regard to the Community Development Fund, the payment of costs and expenses or the reimbursement of the expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Honduras.

XI
OPERATIVE PARAGRAPHS

372. Therefore:

THE COURT,
DECIDES:

Unanimously,

1. To accept the partial acknowledgment of international responsibility made by the State, pursuant to paragraphs 43 to 49 of this judgment.

2. To reject the preliminary objection filed by the State regarding "failure to exhaust domestic remedies" to ensure the use and enjoyment of the territory of the Punta Piedra Garifuna community and its members, pursuant to paragraphs 29 to 32 of this judgment.

3. To reject the preliminary objection filed by the State regarding "failure to exhaust domestic remedies" in relation to the death of Félix Ordóñez Suazo, pursuant paragraphs 33 and 34 of this judgment.

DECLARES,

Unanimously that:

4. The State is responsible for the violation of the right to collective property, recognized in Article 21 of the American Convention, and of Articles 1(1) and 2 of this instrument, as well as the right to cultural identity, to the detriment of the Punta Piedra Garifuna community and its members, pursuant to paragraphs 162 to 202 and 215 to 224 of this judgment.

5. The State is responsible for the violation of the right to judicial protection recognized in Article 25(1) and 25(2)(c) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the Punta Piedra Garifuna community and its members, pursuant to paragraphs 235 to 251 of this judgment.

6. The State is responsible for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the Punta Piedra Garifuna community and its members and, in particular, of Félix Ordóñez Suazo, pursuant to paragraphs 284 to 312 of this judgment.

7. The State is not responsible for the violation of the obligation to ensure the right to life recognized Article 4 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Félix Ordóñez Suazo, pursuant to paragraphs 260 to 280 of this judgment.

8. The State is not responsible for the violation of the obligation to adapt its domestic legislation established in Article 2 of the American Convention, in relation to Articles 1(1), 21 and 25 of this instrument, pursuant to paragraphs 206 to 211 and 252 to 255 of this judgment.

AND ESTABLISHES,

Unanimously that:

9. This judgment is *per se* a form of reparation

10. The State shall ensure the use and enjoyment of the traditional lands that the State titled to the Punta Piedra Garifuna community by freeing them of encumbrances. This obligation must be fulfilled *ex officio* and immediately, pursuant to the terms and time frames established in paragraphs 322 to 326 of this judgment.

11. The State shall halt any activity related to the Punta Piedra II exploration project that has not been previously consulted, pursuant to paragraph 327 of this judgment.

12. The State shall create a community development fund in favor of the members of the Punta Piedra Garifuna community, pursuant to the terms and time frames established in paragraphs 332 to 336 of this judgment.

13. The State shall set in motion the necessary inter-institutional coordination mechanisms to ensure the effectiveness of the measures established above, within three months of notification of this judgment, pursuant to paragraph 328 of this judgment.

14. The State shall, within six months, make the publications and broadcasts indicated in paragraphs 338 and 339 of this judgment.

15. The State shall, within a reasonable time, adopt the sufficient and necessary measures to ensure that its mining regulations do not impair the right to consultation, pursuant to paragraphs 344 to 346 of this judgment.

16. The State shall, within a reasonable time, create adequate mechanisms to regulate its property registration system, pursuant to paragraph 347 of this judgment.

17. The State shall continue and conclude, within a reasonable time, the investigation into the death of Félix Ordóñez Suazo and the other complaints filed in the domestic jurisdiction and, as appropriate, punish those responsible, pursuant to paragraph 353 of this judgment.

18. The State shall pay the amount established in paragraph 364 of this judgment to reimburse costs and expenses within of one year of its notification.

19. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount disbursed during the processing of the instant case, pursuant to paragraph 368 of this judgment.

20. The State shall forward the Court a report on the measures adopted to comply with this judgment within one year of its notification.

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

Done at San José, Costa Rica, on October 8, 2015, in the Spanish language.

Judge Eduardo Vio Grossi advised the Court of his Concurring Opinion, which accompanies this judgment.

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

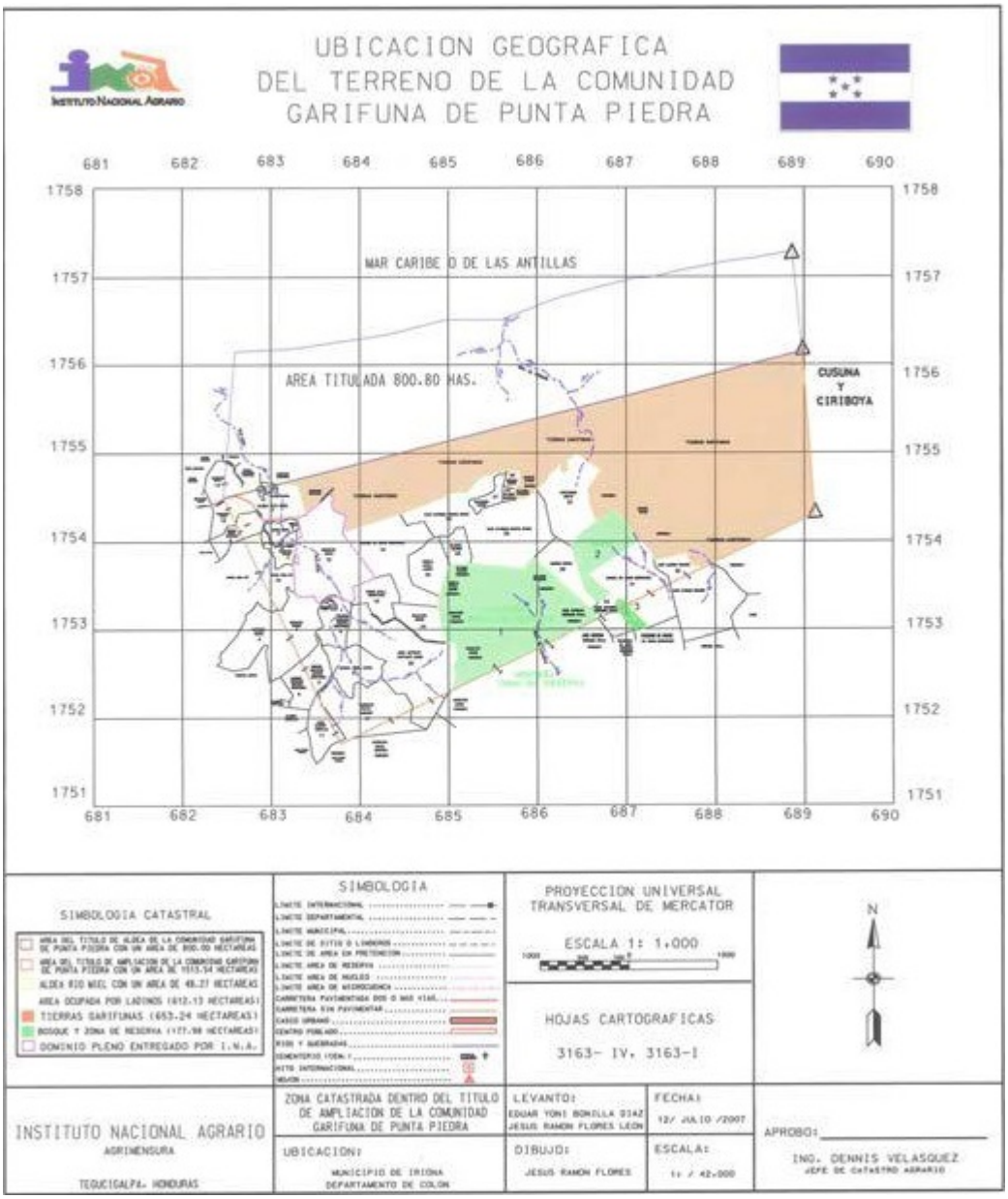
So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary

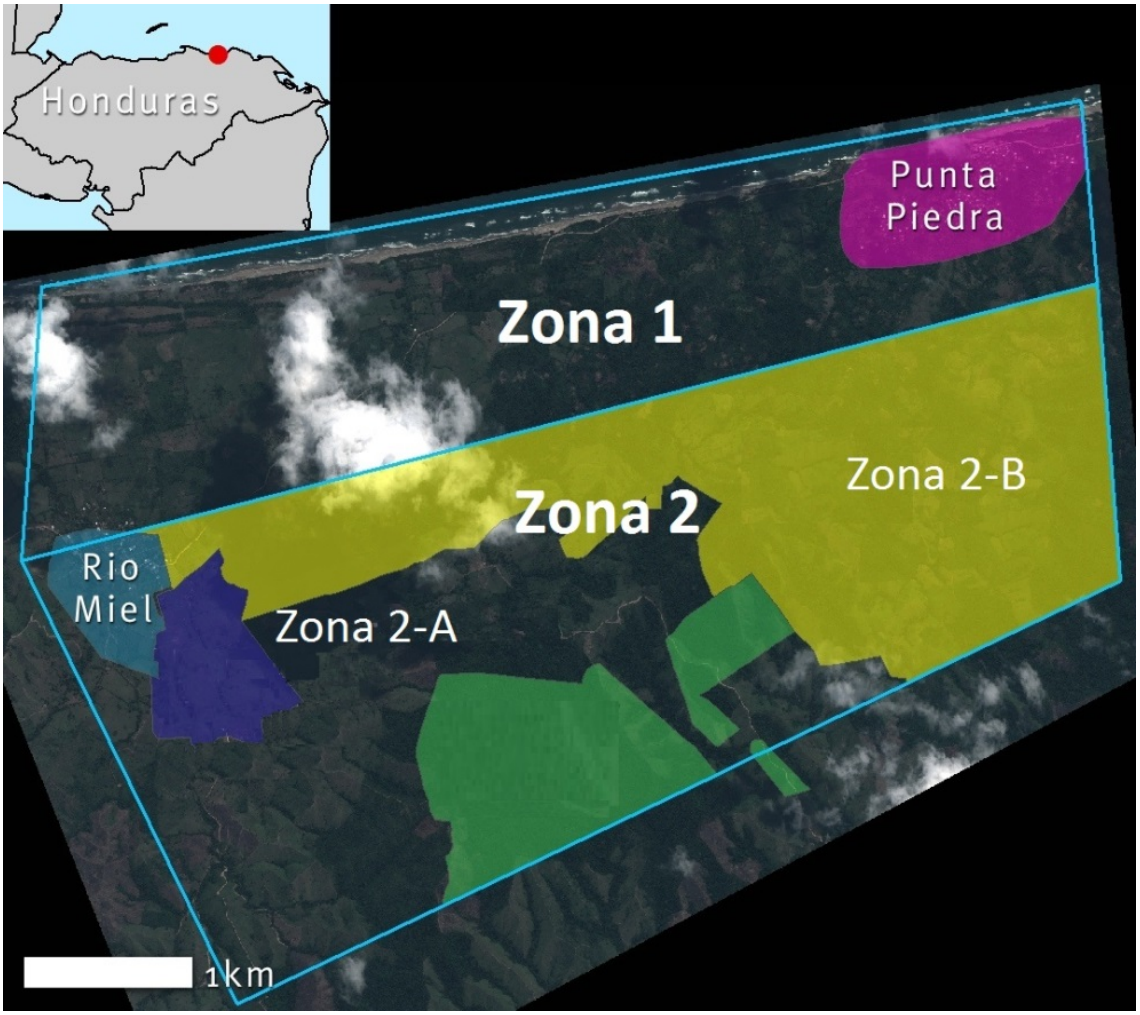
XII
ANNEXES

ANNEX I
GEOGRAPHICAL LOCATION OF THE LAND OF THE GARIFUNA COMMUNITY OF PUNTA PIEDRA



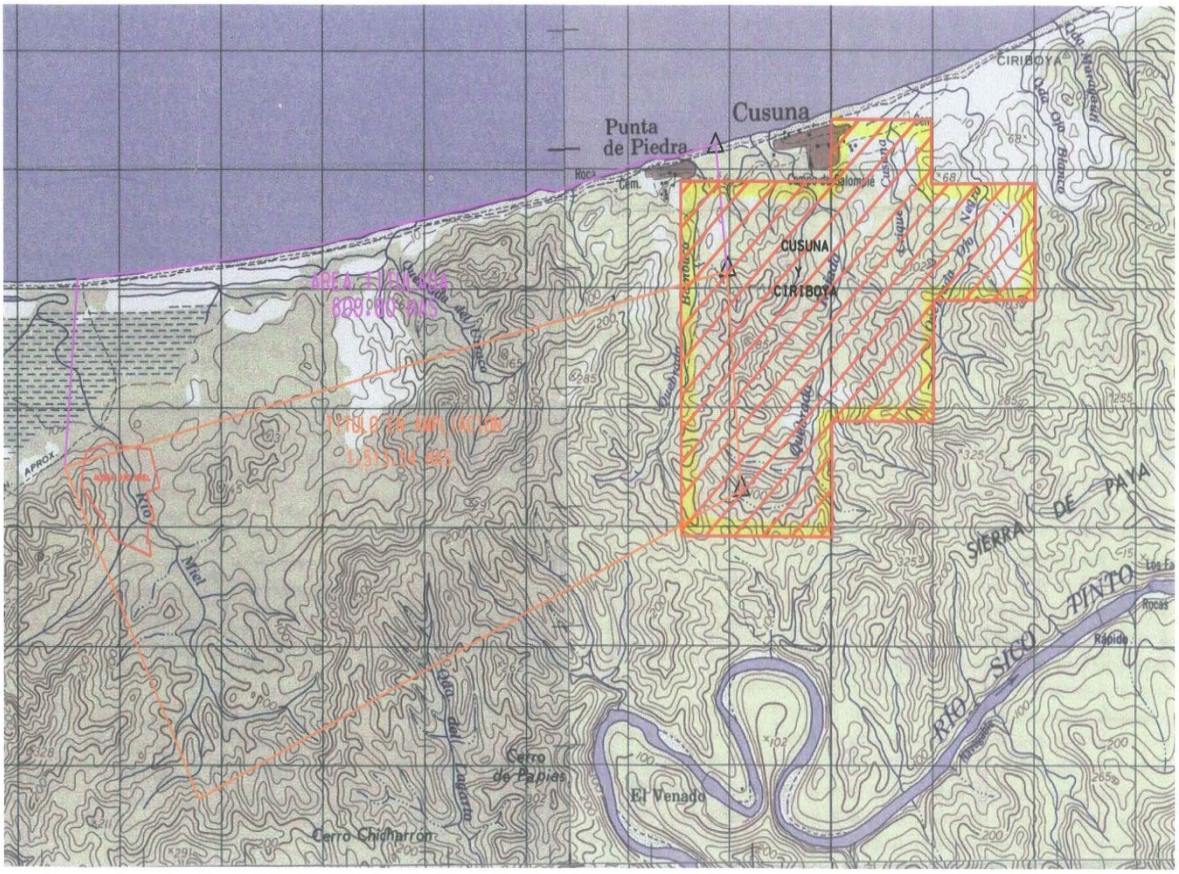
Note: This map is included for illustrative purposes only. It was provided by the State with its final written arguments. In the map, it is possible to observe the two properties titled to the Punta Piedra Garifuna community, as well as the area occupied by the inhabitants of the village of Rio Miel, according to the 2007 Cadastral Report.

ANNEX II



Note: This map is included for illustrative purposes only. It was provided as an annex to the AAAS Report, and was adapted by the Inter-American Court's Secretariat to indicate Zones 1, 2, 2-A and 2-B.

ANNEX III



Note: This map is included por illustrative purposes only. It was presented by the State during the on-site procedure. It delimits the area granted under concession to CAXINA S.A., a mining company, for the development of the project known as "Punta Piedra II."

CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI,
INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF THE PUNTA PIEDRA GARIFUNA COMMUNITY AND ITS MEMBERS
***v.* HONDURAS, JUDGMENT OF OCTOBER 5, 2015**
(Preliminary objections, merits, reparations and costs)

This opinion, which concurs with the judgment in this case, is issued because, although the undersigned agrees with the reasons established in the judgment to reject the preliminary objections filed by the State based on "failure to exhaust domestic remedies" both "to ensure the use and enjoyment of the territory of the Punta Piedra Garifuna community and its members,"[1] and "concerning the death of Félix Ordóñez Suazo,"[2] he considers that there are additional reasons to adopt those decisions.

In addition, this concurring opinion is issued in order to place on record the undersigned's interpretation of the terminology used in operative paragraphs 4 and 8 of this judgment in relation to the State's responsibility.

A. Failure to exhaust domestic remedies to ensure the use and enjoyment of the territory of the Punta Piedra Garifuna community and its members.

Regarding the first preliminary objection filed by the State, it is worth indicating that this was included in the State's briefs of March 25, August 17 and October 27, 2004; that is, in the answering brief or brief with observations[3] on the initial petition dated October 29, 2003,[4] and in other supplementary documents.

Therefore, in keeping with the opinions expressed in other separate opinions and reiterated herein,[5] it can be affirmed that, although the presentation of the said preliminary objection was filed by the State at the proper moment, it did not truly constitute a preliminary objection to what had been alleged and described in the petition.

In other words, the "administrative remedy to obtain payment of the compensation," which the State argued had not been previously exhausted, not only "was not a suitable remedy for the community's attempt to recover the occupied territory or to claim compensation"[6] but, in addition, it did not respond to the allegations made in the petition. Indeed, as regards compliance with the rule of prior exhaustion of domestic remedies, the petition alleged that, based on the agreements reached with the State to

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1 Operative paragraph 2.
2 Operative paragraph 3.
3 Hereinafter "the answering brief."
4 Hereinafter "the petition."
5 Dissenting opinion of Judge Eduardo Vio Grossi, *Case of Galindo Cárdenas et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of October 2, 2015. Series C. No. 301; Dissenting opinion of Judge Eduardo Vio Grossi, *Case of the Campesino Community of Santa Barbara v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C. No. 299; Dissenting Opinion of Judge Eduardo Vio Grossi, *Case of Wong Ho Wing v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of June 30, 2015. Series C. No. 297; Dissenting Opinion of Judge Eduardo Vio Grossi, *Case of Cruz Sanchez et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of April 17, 2015. Series C No.292; Dissenting Opinion of Judge Eduardo Vio Gross, *Case of Liakat Alibux v. Suriname. Preliminary objections, merits, reparations and costs.* Judgment of January 30, 2014. Series C. No. 276; Dissenting Opinion of Judge Eduardo Vio Grossi, *Case of Diaz Peña v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of June 26, 2012. Series C No. 244.
6 Para. 31. Hereinafter "para." will indicated "paragraph of the judgment."

resolve the conflict concerning ownership of the land, it was not necessary to exhaust them in order to enforce compliance with what had already been agreed.

In this regard, it should be noted that it should evidently be understood that, with this agreement, the rule of prior exhaustion of domestic remedies was complied with or, in any case, following the signature of the agreement, it was not necessary to comply with the said rule. To the contrary, the purpose of the conciliation agreement would not have been to resolve the conflict and could merely have been an instrument to prolong it. In other words, in this hypothesis, having to resort to other national instances to enforce compliance with what the State had agreed to would entail returning the case to the adversarial stage – to a new trial – this time of an administrative nature. Therefore, what was agreed on by the State would not have the significance of a real and effective undertaking, given that it did not grant legal security and certainty and was insufficient for the purpose sought.

In this regard, since it ended a conflict and, therefore, ruled out the need to resort to the courts or pertinent jurisdictional instances, the conciliation agreement signified that it considered exhausted the remedies that could have been filed with such instances.

It is also pertinent to note that the execution of agreements made by the State is an obligation of the State and not of the other party. Having reached an agreement, it was for the State to take all necessary measures to comply with its commitments. This is dictated by the principle of good faith. To this end, the principle of *pacta sunt servanda* (agreements must be kept) is equally applicable, and also that no State may invoke its internal law to justify its failure to comply with an international obligation, or invoke it to fail to comply with what it has agreed to in the domestic sphere and alleged in the international sphere.

Consequently and in the situation described in the instant case, there would be no domestic remedy to exhaust; in other words, the rule of prior exhaustion of domestic remedies would not be applicable to this case.

B. Failure to exhaust domestic remedies in relation to the death of Félix Ordóñez Suazo

Regarding the objection filed by the State in relation to the death of Félix Ordóñez Suazo, it should be recalled that this constituted a supervening fact in the case;[7] therefore, once it occurred, the appropriate action was not to file a preliminary objection in the case as the State did, but rather to argue the need to lodge a new petition before the Commission.

Naturally, as repeatedly indicated,[8] the petitioner must comply with the rule of prior exhaustion of domestic remedies before lodging a petition with the Commission and, evidently, this was not possible in this case. However, neither could the State argue the need for the prior exhaustion of domestic remedies in the said objection, nor could any of the reasons to rule out this obligation be invoked.

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7 Para. 33.

8 Footnote No. 5.

In addition, at the time of Mr. Ordóñez's death, his connection to the facts of the case had not yet proved; therefore, at that time, it was not possible to argue the failure to exhaust domestic remedies or one of the grounds on which this is not required.

Similarly, therefore, the reference made in the judgment to Article 46(2)(c) of the Convention, based on the unjustified delay in the criminal investigations, was not appropriate to reject the said preliminary objection filed by the State.

In the instant case, the appropriate course of action was also to reject this objection as unfounded and not merely because it did not comply with the provisions of the said Article 46(2)(c).

C. Terminology used in operative paragraphs 4 to 8 of this judgment in relation to the State's responsibility

In operative paragraphs 4 to 6 of the judgment, the Court indicates that "[t]he State is responsible for the violation of the rights" mentioned and in operative paragraph 7 and 8, the Court asserts that "[t]he State is not responsible" regarding the respective obligations mentioned.

Therefore, the judgment fails to mention the word "internationally" that has been used in other rulings before the word "responsible."

The undersigned has accepted the foregoing understanding that the responsibility that may be verified in a judgment of the Inter-American Court of Human Rights[9] is always and only international.

In fact, according to Article 62(3) of the American Convention on Human Rights,[10] "[t]he jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it." The Court's jurisdiction therefore consists in interpreting and applying a treaty so that, for this purpose, the provisions of Article 27 of the Vienna Convention on the Law of Treaties are fully applicable; namely: "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

Moreover, Article 63(1) of the Convention provides that "[i]f 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".

While Article 68(1) of the Convention establishes that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties."

In addition, Article 65 of the Convention indicates that in the annual report that the Court must submit to the General Assembly of the Organization of American States, "[i]t shall specify, in particular, the cases in which a State has not complied with its judgments."

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9 Hereinafter "the Court".

10 Hereinafter "the Convention".

Therefore, the said provisions of the Convention reveal that the Court has jurisdiction with regard to an international legal instrument; that the States Parties must comply with its rulings in the respective cases submitted to its consideration,[11] and that if they do not comply with them, such violations of the international obligation to obey them must be indicated to an international instance; namely, the General Assembly of the Organization of American States. Thus, the Court's sphere of action is the international sphere.

In sum, the undersigned has accepted the elimination of the word "internationally" from the aforementioned operative paragraphs and with regard to the State's responsibility declared by the Court in the understanding that this responsibility can only be international.

Eduardo Vio Grossi
Judge

Pablo Saavedra Alessandri
Secretary

[11] This wording is no different from that generally used in international law expressed, in particular, in the provisions of Article 50 of the Statute of the International Court of Justice: "The decision of the Court has no binding force except between the parties and in respect of that particular case." Therefore, regarding States that are not parties to a conflict, case law is a subsidiary source of international law. Article 38.1.d of the said Statute indicates that: "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." On this basis, the Court's judgments are not of a supra-national nature; in other words, they are not directly applicable or enforceable in the territory of the States Parties to the Convention; rather, the action of the State is required to that end.