

**REPORT No. 76/12**  
**CASE 12.548**  
**MERITS**  
**GARÍFUNA COMMUNITY OF "TRIUNFO DE LA CRUZ" AND ITS MEMBERS**  
**HONDURAS**

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November 7, 2012

**I. SUMMARY**

1. On October 29, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission" or the "IACHR") received a petition from the Honduran Black Fraternal Organization [*Organización Fraternal Negra Hondureña*] (hereinafter "the petitioner" or "OFRANEH") alleging the liability on the part of the State of Honduras (hereinafter "Honduran State," "Honduras," or the "State") for violating, to the detriment of the Garífuna Communities of Cayos Cochinos, Punta Piedra, and Triunfo de la Cruz and their members, 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 thereof, and, as a standard of interpretation, Convention 169 of the International Labour Organization (hereinafter "ILO Convention 169") concerning Indigenous and Tribal Peoples in Independent Countries.

2. On December 19, 2003, the IACHR decided to divide the petition into three separate parts, each referring to a separate community and its members, with a separate registration number assigned to each. The number assigned to the Garífuna Community of Triunfo de la Cruz was 906-03. It was declared admissible on March 14, 2006. In its Admissibility Report No. 29/06, the IACHR concluded that it had jurisdiction to hear the petition and it decided to admit the complaint alleging violation of Articles 8, 21 and 25 of the American Convention in relation to Article 1 and 2 of that international instrument, to the detriment of the Garífuna Community of Triunfo de la Cruz and its members (hereinafter the "Triunfo de la Cruz Community," "Triunfo de la Cruz," or "Community")<sup>1</sup>.

3. The petitioner alleges that, despite the numerous actions pursued, the State has not granted title in fee simple (*dominio pleno*) of all the Community's ancestral lands, denying recognition above all of its functional habitat. It alleges, furthermore, that even those areas for which a title deed was granted have been repeatedly invaded by outsiders and unlawfully sold by public authorities and third parties, because they adjoin the Caribbean Sea and therefore have tourism potential. For that reason, the petitioner argues that the State of Honduras has denied the Triunfo de la Cruz Community its right to the property and peaceful possession of its land, and has failed to ensure due guarantees and judicial protection.

4. For its part, the State contends that it does not deny the rights of the Garífuna people and that this is shown by the titles in fee simple it has granted the Triunfo de la Cruz, Community and by the establishment of a set of rules to protect the territories occupied by the various ethnic and Garífuna communities. As regards the alleged obstacles preventing access to judicial organs and mechanisms, the State asserts that the petitioner has made use of domestic remedies, as shown by the records of the bodies to which it has resorted. Therefore, the State requests a statement that the human rights violations alleged by the petition did not take place.

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<sup>1</sup> IACHR, Admissibility Report No. 29/06, March 14, 2006, Petition 906-03, Garífuna Community of Triunfo de la Cruz, Honduras.

5. After examining the positions of the parties and analyzing the evidence submitted, and pursuant to Article 50 of the American Convention, the IACHR concludes in this report that the State of Honduras is responsible for violation of the rights established in Articles 8, 21, and 25 of the American Convention in relation to Articles 1.1 and 2 thereof, to the detriment of the alleged victims.

## II. PROCESSING BY THE IACHR

6. On March 14, 2006, the Commission approved Admissibility Report No. 29/06, which concluded that the petition referring to the Garífuna Community of Triunfo de la Cruz and its members was admissible. The report was forwarded to the parties on March 22, 2006, at which point, pursuant to Article 38.2 of its Rules of Procedure in force at that time, the Commission placed itself at the disposal of the parties with a view to facilitating a friendly settlement.

7. Following notification of the admissibility report, the IACHR received information from the petitioner on the following dates: May 30 and October 31, 2006; April 20, May 30, August 17, and August 28, 2007; May 19, June 12, September 26, and October 16, 2008; May 12, May 26, and June 3, 2009; July 19 and August 6, 2010; January 4, January 13, January 19, March 7, May 2, and May 24, 2011; and March 9, 2012. Those communications were duly forwarded to the State. The State's observations were received by the IACHR on the following dates: August 10, 2006; March 8, May 14, and August 16, 2007; January 4, 2008; February 6, 2009; October 20, 2010; and February 18, March 8, May 24, August 24, and October 28, 2011. Those communications were, in turn, duly forwarded to the petitioner.

8. During the processing of this case before the Commission, two public hearings were held and attended by both parties. The first, during the admissibility of the petition phase, was held on October 18, 2005, during the 123<sup>rd</sup> period of sessions of the IACHR<sup>2</sup>. In the merits stage, a second public hearing was held on March 2, 2007, during the 127<sup>th</sup> regular period of sessions of the IACHR<sup>3</sup>. On that occasion, the petitioner submitted the testimony of three members of the Triunfo de la Cruz Community - Beatriz Ramos Bernardez, José Ángel Castro, and Jerson Selvin Benedit López- as well the expert reports of Edmund Taylor Gordon y Clarisa Vegas.

9. On March 8, 2007, the Commission received an *amicus curiae* presented by *The Center on Housing Rights and Evictions* and *Minority Rights Groups International*.

### A. Precautionary measures

10. During the hearing on admissibility of the petition held on October 18, 2005, the petitioner asked for precautionary measures to be granted to safeguard the rights of the Community. Specifically, the petitioner requested that the State be prohibited from entering into deeds and contracts involving the Community's real estate given the imminent danger of irreparable damage being done to the Community's cultural and physical survival. The petitioner also referred to the State's failure to intervene following the Community's complaints, the entry into force of a property law that would be detrimental to the rights of the Garífuna communities, and the new tourism mega projects in the area. On October 21, 2005, the petitioner submitted additional information relating to its request.

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<sup>2</sup> IACHR, Public Hearing on October 18, 2005 on "Petition 906/03 – Garífuna Community of Triunfo de la Cruz, Honduras", 123<sup>rd</sup> period of sessions of the IACHR.

<sup>3</sup> IACHR, Public Hearing on March 2, 2007 on "Case 12.548 – Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. See Hearing at: <http://www.oas.org/en/iachr/default.asp>.

11. On November 10, 2005, the IACHR requested that the State submit its observations regarding the application for precautionary measures. On January 25, 2006, in a communication dated November 18, 2005, the State expressed the view that it was unnecessary to adopt precautionary measures because domestic protection mechanisms were sufficient to guarantee the Community's property rights. However, on March 30, 2006, the State reported that:

[...] following the investigations carried out by the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage of the Office of the Attorney General (*Ministerio Público*), which led to the conclusion that the situation in Tela Bay, the area where the Triunfo de la Cruz Community] is located, has changed and it is recommended that the measures requested by the petitioners should be adopted, the Secretariat of Security is consequently being asked to implement those measures<sup>4</sup>.

12. On April 28, 2006, the Commission requested the adoption of precautionary measures on behalf of the Garífuna Community of Triunfo de la Cruz and requested that the State

[a]dopt any measures needed to protect and respect the Triunfo de la Cruz Community's property rights over ancestral lands pertaining to it. In particular, [that] it take any necessary measures to avoid or suspend execution of any judicial or administrative action that might affect the Triunfo de la Cruz Community's ancestral property rights until such time as the organs of the inter-American human rights system reach a final decision in Case No. 12.548.

13. On May 17, 2006, the State informed the IACHR that, pursuant to the request for precautionary measures, the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage had consulted with the petitioner with a view to agreeing on and adopting those measures and asking the Mayor's Office in the town of Tela, in the department of Atlántida, not to issue resolutions affecting the title of the Community of Triunfo de la Cruz and to urge the local Property Registry not to make entries affecting the Community's property rights. The State also announced that it would coordinate with other government entities regarding the possibility of asking the respective Court to issue a ban on entering into acts or contracts concerning the Community's property titles.

14. Both parties informed the IACHR regarding implementation of the precautionary measures granted. The petitioner presented information on the following dates: October 21, 2005; January 24, April 6, June 2, June 9, August 17, and August 23, 2006; May 19, 2008; May 26, June 3, June 19, and November 17, 2009; January 11, March 17, July 19, and September 21, 2010; July 19 and September 21, 2010; January 11, January 13, March 28, April 15, August 5, and October 3, 2011; and March 9, 2012. For its part, the State presented additional information on the following dates: January 25, March 30, May 17, June 30, August 10, and September 1, 2006; July 8, August 17, and October 1, 2010; February 15, April 6, April 14, and June 21, 2011; and January 27, 2012. The IACHR continues to monitor the situation.

### **III. POSITIONS OF THE PARTIES**

#### **A. The petitioner**

15. According to the petitioner, the Garífuna people have been living in Honduras since 1797. The petitioner adds that by 1805 the Triunfo de la Cruz Community, made up of Garífunas from various parts of the Department of Colón, was living in what is now know as the town of Tela. In 1885, the Triunfo de la Cruz Community was displaced by the *Cuyamel Fruit* international

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<sup>4</sup> Written communication of the State in the precautionary measures proceedings of March 30, 2006, received by the IACHR on March 31, 2006.

company, which forced it to resettle in Cerro Triunfo de la Cruz, where it is now located, in the municipal district of Tela, Department of Atlántida.

16. The petitioner asserts that the Garífuna Community of Triunfo de la Cruz has historically occupied a territory of approximately 2,840 hectares, comprising areas that constitute its functional habitat, such as Punta Izopo, Río Plátano and Cerro El Tigre, where a number of exotic animals are to be found and where "manaca" -- a material they use to build their traditional dwellings -- is extracted. The petitioner says that the Garífuna of Triunfo de la Cruz typically live off agriculture, using the "barbecho" slash and burn crop rotation method, hunting, fishing, and tourism-related activities.

17. Actions to obtain legal recognition of the Community's ancestral lands began with a claim to a national allotment for communal land filed on December 9, 1946, pursuant to the Agrarian Law of that time. The petitioner goes on to say that, based on that application, in 1950 the President of the Republic resolved to grant an area of 380 hectares, 51 ares, and 82.68 centiares as communal lands (*ejidos*). The petitioner adds that on September 28, 1979, at the Community's behest, the National Agrarian Institute (hereinafter "the INA") granted a deed "guaranteeing occupancy" for 126.40 hectares of the land historically occupied by the Community under a titling program implemented by the State with a view to regularizing title to ancestral lands occupied by the indigenous and Garífuna communities.

18. The petitioner points out that on October 29, 1993, at the Community's request, the INA granted "definitive title in fee simple" of the land previously granted as communal land. It adds that, according to the same title deed, the deed was granted on condition that sale or donation of the land only be authorized for tourism projects approved by the Honduran Tourism Institute (hereinafter "the IHT") and for descendants of the Community awarded the deed. According to the petitioner, on January 22, 2001, it submitted another demand for an expansion of the fee simple title already granted, by virtue of which, on September 27, 2001, the INA granted definitive title in fee simple to a "property pertaining to the State under domestic law," comprising three lots located in the village of Triunfo de la Cruz covering an area of 234 hectares, 48 ares, and 76.03 centiares. The petitioner adds that the same title deed established that the land granted constitutes an inalienable heritage of the Community benefited by the award, except when ownership is transferred for the purpose of constructing homes for homeless members of the Community, and that, likewise, any transfer of ownership by home-owners must be to members of the Community. In both cases, according to the petitioner, the transfer must be approved by the Management Board of the Community Council (*Junta Directiva del Patronato*), and that approval must be recorded in the deed transferring ownership.

19. The petitioner claims that the titles granted do not cover all the Community's ancestral land and, above all, do not include its functional habitat. It alleges, furthermore, that even though it granted title, the State did not reorganize the situation on the ground, so that much of the Community's land remains in the hands of *ladinos* or non-Garífunas, who have gradually taken over their land. In addition, the petitioner states that a number of authorities carried out acts detrimental to the Community's property and possession of its ancestral land, such as selling lots to private individuals and tour operators.

20. In particular, the petitioner states that, at the request of the Municipality of Tela, the INA approved a 3,219.80 hectare expansion of that town's urban perimeter, through resolution No. 055-1989 of April 24, 1989. The petitioner maintains that operative section 2 of that resolution ordered that "the land awarded to beneficiaries of the Agrarian Reform prior to this resolution is to be excluded from the demarcated urban area until they have been paid for in full." Based on that, it asserts that the 126.40 hectares for which the Community was granted a "guarantee of occupancy" should have been excluded from the expansion. It maintains that the Honduran Tourism

Institute ratified the expansion of the urban perimeter through resolution No. 002 of January 17, 1992. It argues that said authorization was illegal because the Community of Triunfo de la Cruz was not informed and no effort was made to obtain its consent, despite the fact that that decision affected its ancestral territory, recognized as communal land (*ejido*) since 1950. It points out that the failure to notify the Community preventing it from lodging appeals against the decision.

21. The petitioner says that when its urban limits were enlarged, the Municipality of Tela interpreted that the lands of the Community of Triunfo de la Cruz had become its property and allotted plots to third parties. Specifically, in 1997, the Municipality allotted a 22.87 *manzanas* plot of Community land to the Tela Municipal Workers Trade Union. The petitioner asserts that, as a result of that allotment, the Community has been harassed and threatened by armed individuals. Those acts were reported to the Criminal Investigation Bureau, which failed to investigate them. The petitioner states that on September 5, 2002 the Community filed an administrative appeal requesting annulment of the aforementioned agreement but no ruling has yet been made.

22. In addition, it alleges that the Municipality bought parcels of land from Community members who had no authority to sell and proceeded to transfer that land to the company *Inversiones y Desarrollo El Triunfo S. A.* (hereinafter "IDETRISA") for a tourist project known as "Club Marbella." The petitioner states that some members were forced to sell land under threats and duress and that those who opposed the sale were slandered and murdered, as in the case of community leaders Jesús Álvarez and Oscar Brega, or unlawfully arrested, as in the case of Alfredo López. It adds that those actions created an atmosphere of fear and insecurity that persists in the area. According to the petitioner, IDETRISA built houses and fenced off the area to prevent Community members from using and farming the land.

23. The petitioner states that on September 17, 1994, the Community lodged a complaint with the Prosecutor's Office for Ethnic Groups against the illegal sales. It led to criminal charges being brought by the Attorney General's Office before the Court of First Instance in Tela on June 11, 1996 for ongoing abuse of office, fraud and aggravated fraud to the detriment of the public administration, the Garífuna Community of Triunfo de la Cruz, and private individuals. The petitioner points out that on October 15, 1996, an incarceration order was issued against the municipal officials who had taken part in the fraudulent sales. However, on appeal, the decision was reversed and that last decision was upheld by a higher court. No notice of this last decision was given to the Community, which found out about it through informal channels on July 8, 2003.

24. The petitioner further states that in 1986 the Community asked the INA to donate 25 *manzanas* of the guaranteed occupancy tract of land to the peasant cooperative association called "El Esfuerzo" (hereinafter "El Esfuerzo Cooperative"), made up of low-income women from the Community. The petitioner says that that land was allotted to the group of women on May 18, 1987 through a provisional deed of occupancy and that ever since then the women have cultivated the land to feed themselves and their families. However, the petitioner claims, with the acquiescence of the Municipality, third parties unlawfully sold that land to private individuals who then lodged complaints against the cooperatives for trespassing. The petitioner claims that members of the cooperative have repeatedly been threatened and have had their crops destroyed. It says those acts were reported to the Criminal Investigation Bureaus, to no avail.

25. It adds that, with a view to illegally acquiring the Community's land, the Municipality of Tela backed the establishment of a parallel Community Council and interfered with the election of its Management Board. The petitioner goes on to say that the parallel Management Board was registered by the Municipality and that, despite requests by the Community for registration of the Management Board it elected in its traditional Council, the Municipality has refused to register it and has confirmed the parallel Management Board with a view to it authorizing the illegal sales.

26. The petitioner maintains that the State is also responsible for violating the property rights of the Community and its members by decreeing the creation of a protected area, the Punta Izopo National Park, which includes land claimed by the Community. It adds that the protected area was established without the Community being given notice in an assembly and that that action has prevented legal reconnaissance of the area. The petitioner states that, although the Community and the State had an agreement on co-managing the Park that agreement has not been kept to and the establishment of the protected area has restricted access of members of the Community to Punta Izopo, to the detriment of their tradition and culture.

27. Furthermore, on pretext of executing tourism projects in the area, the Community is threatened with being deprived of its habitat and affected by profound changes to the environment. Specifically, the petitioner mentions execution of the Tela Bay project, which, it alleges, was not discussed in an assembly with the Community, although it runs alongside its ancestral lands, and which poses a grave environmental threat as it involves filling in 80 hectares of the Micos lagoon, causing serious flooding in the area.

28. The petitioner points out that in 1994, to stop the dispossession of their lands, the Community formed a Committee to Defend the Land of Triunfo (hereinafter "CODETT"). CODETT requested certification of the sale of Community land, collected testimony and documentary evidence, and reported cases to the Municipality, INA, and the Prosecutor's Office for Ethnic Groups, to no avail. The petitioner argues that there have been numerous obstacles to accessing effective judicial protection, such as permanent harassment by the authorities, the disappearance of dossiers, persecution of community leaders, the pressure exerted due to the expectation of considerable financial gain on the part of the power elite involved in these transactions, and the refusal of lawyers to defend the Community for fear of reprisals.

29. The petitioner argues that the actions the Community was able to lodge have not been effective, resulting in a continual violation of the right of the Garífuna Community of Triunfo de la Cruz to peaceably enjoy the territory it has traditionally occupied, even the part recognized by the State itself. The petitioner maintains that domestic legislation provides no appropriate mechanism for guaranteeing the Community's property rights or for affording adequate legal protection to its members. It points out that recognition of property rights over the Community's ancestral lands has been achieved through Agrarian Reform laws that recognize agrarian concepts rather than those pertaining to customary law. It adds that the Agrarian Reform Law envisages the concept of idleness or uncultivated land, which is the main ground for appropriating communal land. As most of the land was not being farmed, it was taken over by the INA for redistribution for peasants, thereby affecting the Garífuna communities land and functional habitat.

30. Based on the above, the petitioner requests that the State of Honduras be declared internationally responsible for violating Articles 1, 8, 21, and 25 of the American Convention, using ILO Convention 169 as a complementary standard of interpretation.

## **B. The State**

31. For its part, the State argues that it has not violated the rights to property, judicial guarantees and judicial protection established in the American Convention to the detriment of the Community of Triunfo de la Cruz. It maintains that, through the National Agrarian Institute, "the body responsible for regulating land tenure on behalf of the indigenous communities and black peoples," it has taken steps to vindicate the ancestral lands of the indigenous peoples of Honduras, guaranteeing the rights established in the Political Constitution of the States and in Convention No. 169 of the ILO.

32. In particular, it points out that, on November 29, 1950, the Constitutional president of the Republic, without prejudice to the right of third parties, approved actions to claim and measure the land requested by the Village of Triunfo as communal land (*ejido*), amounting to 380.52 hectares, " with the Village being obliged to formally demarcate the corresponding boundaries separating the land from that adjacent to it." The State affirms that on September 28, 1979, the IMA granted the Community a deed guaranteeing occupancy of 126.40 hectares, thereby "recognizing the possession the Community had exercised since the last century."

33. It states that on October 29, 1993, the INA granted the community a definitive title in fee simple of an area of 380 hectares, 51 ares, and 82.68 centiares, and that on September 26, 2001 it granted it title to 234 hectares, 48 ares, and 76.03 centiares, divided into three lots, in response to the Community's request for an extension of title. The State emphasizes that it has granted the Garífuna Community of Triunfo de la Cruz fee simple title to a total area of 615 hectares in order to guarantee the "right to its territorial space." It adds that if the Community considers that its territory is larger, it should file the corresponding application with the INA, the state entity that will process it.

34. It states that the expansion granted to the Community of Triunfo de la Cruz in 2001 did not include an area of 408 hectares, 39 ares, and 10.20 centiares granted to the Municipality of Tela through INA resolution No. 055-89 of April 24, 1989, approved by the Honduran Institute of Tourism in resolution No. 002 of January 17, 1992, due to the fact that the expansion of the urban area was an act prior to the issuance of the title deed granted to the Community.

35. In addition, the State reports that on January 7, 2002, the Community asked for allocation, by way of expropriation, of an area totaling 22 *manzanas* that was granted in fee simple by the Municipality of Tela to its municipal labor union. It adds that, for that reason, the trade union objected to the enlargement, but its objection was overruled by the INA. On July 15, 2003, the INA admitted the request for allocation by way of expropriation and on December 7, 2007 the INA issued the expropriation resolution in favor of the Community.

36. The State also maintains that part of the areas considered ancestral by the Garífuna communities are occupied by non-indigenous people who hold "legal documents supporting their ownership," such as documents drawn up by notaries or title deeds in fee simple that, it argues, cannot be ignored. The State further asserts that part of the process of land titling by the INA in favor of the Garífuna communities entails a phase of clearing the title of encumbrances (*fase de saneamiento*) in which payment is made based on the value of the land and of improvements made by its occupants. However, it indicates that this stage requires substantial financial outlays, which the INA cannot afford.

37. The State emphasizes that it does not deny the rights of the Garífuna people and that it is one of the few States to have issued fee simple deeds to indigenous communities, free of charge. The State points out that, even before ratification of ILO Convention No. 169, there were provisions under domestic law, in the Constitution and in agrarian legislation, that protect the rights of the indigenous peoples. It also asserts that "the right to property is directly related to legal certainty, because the image that indigenous peoples have of the land goes far beyond just the plot on which they perform collective work. When they talk of land they mean the territory in which they live, work, have their sources of water, breed animals; the place where their forests and resources are, where their livelihood comes from."

38. As regards the existence of two councils in the Community, the State maintains that both are made up exclusively of members of the Garífuna ethnic group, with differing views regarding representation of the Community, and it points out that, according to its own

observations, "[m]any of the Community's internal problems are due to the existence of two Councils, one legally constituted, the other not."

39. With respect to the protected areas, the State points out that, in order to establish the Jeannette Kawas, Punta Izopo, Cuervo, and Salado National Park, and in accordance with domestic law, a "consensus-building and socialization process" was conducted, beginning essentially with the neighboring communities. It adds that the Jeannette Kawas National Park authority comprises a series of institutions involved in conservation, including OFRANEH, which, according to the State is one of the principal representatives of the Garífuna Communities. The State deduces from that that the aforementioned Park was established with their approval.

40. The State further asserts that, pursuant to the Rules of Procedure of the National System of Protected Areas of Honduras (hereinafter "SINAPH"), it is currently working on definition of the boundaries and demarcation of a series of protected areas "with a view to safeguarding the communities' goods and services." It reports that the Secretariat of Natural Resources and Environment (hereinafter "SERNA") has denied a series of title deed claims requested by the INA on behalf of the Community in the area that includes the Punta Izopo National Park because the land is located in a special protection area.

41. As regards the Tela Bay Project, the State points out that the Master Plan for Development of Tourism in the area, drawn up in the 1970s before the bay was declared a protected area and before SERNA was founded, was "shared and shaped by a consensus-building process with the principal stakeholders in the area," including the Community of Triunfo de la Cruz. One of the commitments arrived at was to grant the Garífuna communities in the area a 7 percent stake in the project, in which the Councils would also be represented as partners.

42. Furthermore, the State maintains that the complaints filed by the petitioner were addressed through the domestic mechanisms provided for under Honduran law. Specifically, the complaint lodged by the petitioner with the Prosecutor's Office for Ethnic Groups on September 17, 1994 against the municipal authorities for having allotted 22.87 *manzanas* to the Municipal Workers' Union led to the case being dismissed as not constituting a criminal offense.

43. Regarding the criminal proceedings relating to the sale of Community land to IDETRISA, the State points out that the Attorney General's office brought a criminal action suit through the Special Prosecutor's Office for Ethnic Groups against the former Mayor and members of the municipal council for alleged abuse of office, fraud, and aggravated fraud to the detriment of the Public Administration and the Triunfo de la Cruz Community. It stated that a commitment order was issued for the crime of abuse of office, while the proceedings for fraud and aggravated fraud were dismissed. The State adds that that ruling was appealed by the Attorney General's office and by the accused. The La Ceiba Court of Appeals dismissed the Attorney General's appeal and admitted the appeal lodged by the accused, reversing the commitment order against them for abuse of authority to the detriment of the Community of Triunfo de la Cruz. The State reports that finally the Attorney General's Office filed an amparo suit before the Supreme Court of Justice, which denied the appeal, thereby concluding the case.

44. As regards the alleged absence of a simple and effective remedy before competent judges or tribunals, and alleged obstacles to access to judicial organs and mechanisms, the State asserts that the petitioner has made use of domestic remedies, as shown by the records of the bodies to which it has resorted, as, for instance in the case of the actions brought before the Office of the Attorney General and the INA, which demonstrate that the State has not violated the right to judicial guarantees and judicial protection.

45. Therefore, the State requests a statement by the IACHR that the human rights violations alleged by the petitioner did not take place.

#### IV. ESTABLISHED FACTS

46. Pursuant to Article 43.1 of its Rules of procedure, the IACHR will examine the arguments and evidence presented by the parties, the information obtained during the hearings held in its 123rd<sup>o</sup> and 127th<sup>o</sup> period of sessions, and information that is a matter of public knowledge<sup>5</sup>.

47. At the same time, bearing in mind that the file on precautionary measures on behalf of the Garífuna Community of Triunfo de la Cruz and its members was processed by the IACHR, the Commission deems it necessary to recall that the Inter-American Court of Human Rights has pointed out that "The evidence submitted during all stages of the proceeding has been included in a single body of evidence, for it to be considered as a whole, which means that the documents supplied by the parties with regard to the preliminary objections and the provisional measures are also part of the body of evidence in the instant case."<sup>6</sup>

48. Consequently, the Commission considers that the State of Honduras, as a party in both proceedings, has had an opportunity to debate and contest the evidence presented by the petitioners and that therefore a procedural balance exists between the parties. That being so, the Commission includes in the body of evidence that furnished by the parties in the precautionary measures proceedings.

#### A. The Garífuna People in Honduras

49. Honduras is a multiethnic and pluricultural State comprising people who are of *mestizos*, indigenous, and of African descent. Estimates vary as to the size of the Garífuna population in Honduras. According to the census conducted by the National Institute of Statistics in 2001, 46,448 people described themselves as Garífuna, while other sources estimate a population of approximately 98,000.<sup>7</sup>

50. The Garífuna people date back to the Eighteenth Century and are the result of syncretism between indigenous and African peoples. In 1635, two ships carrying people from Africa to work as slaves were shipwrecked off the island of Saint Vincent. At the time, the island was inhabited by descendants of the Arawak Indian people and the Kalinagu indigenous people. The latter, who were originally from South America, had invaded the island in the Thirteenth Century. The descendants of the fusion between indigenous and African people were called Karaphunas. In 1797, Great Britain took control of the island of Saint Vincent and the Karaphunas were deported to the island of Roatán. From Roatán, they emigrated to the mainland of what today constitutes

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<sup>5</sup> Article 43.1 of the Rules of Procedure of the IACHR states: The Commission will deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

<sup>6</sup> I/A Court H.R. *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107; paragraph 68. See *inter alia Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and reparations. Judgment of June 27, 2012. Series C No. 245; paragraph 48.

<sup>7</sup> National Institute of Statistics. 2001 *Census. Database Redatam*. Available at: <http://www.ine.gob.hn/drupal/node/301>. Caribbean Central America Research Council. *Diagnostic Study on Land Use and Tenancy in the Garífuna and Miskito Communities of Honduras 2002-2003*. Available at: <http://ccarconline.org/Honduraseng.htm>. p. 34.

Honduran territory, through Trujillo and all along the northern coast of Honduras and toward the Caribbean shores of Guatemala and Belize.<sup>8</sup>

51. The union between Africans and Amerindians in Saint Vincent made the Garífunas a specific ethnic group and culture. The Garífunas see themselves as an indigenous people with an African culture.<sup>9</sup>

52. The Garífuna people lives in 46 rural communities along the Atlantic shore or Caribbean coast, in the departments of Cortés, Atlántida, Colón, and Gracias a Dios and increasingly large numbers of Garífunas live in cities, such as La Ceiba, Tela, Cortés, Trujillo, San Pedro Sula, and Tegucigalpa. Between 50,000 and 100,000 Honduran Garífunas are thought to be living in the United States, especially in New York.<sup>10</sup>

53. The Garífuna people in Honduras has maintained its own cultural manifestations, its social and cultural organization and institutions, its way of life, cosmovision, practices, customs, ceremonial rites, language, clothing, and its special relation to the earth.<sup>11</sup>

54. For the Garífuna people, the earth is fundamental for its survival, there is a permanent shared experience with the earth in harmony with the natural resources in its territory. This close relationship is reflected in the Garífuna people's belief that "[t]he earth is the mother, is life, [...] A Garífuna without land is not a Garífuna, a Garífuna without sea is not a Garífuna"<sup>12</sup>.

55. The Garífunas maintain traditional community ways of working the land and other work patterns and activities that reflect their origins, their homeland on the Northern coast of Honduras, and their unique culture.<sup>13</sup> Their economy consists, inter alia, of small-scale fishing, the

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<sup>8</sup> See *inter alia* Caribbean Central America Research Council. *Diagnostic Study on Land Use and Tenancy in the Garífuna and Miskito Communities of Honduras 2002-2003*. Available at: <http://ccarconline.org/Honduraseng.htm>. p. 31; Testimony of Gregoria Flores Martínez in the *Alfredo Lopéz v. Honduras Case* provided at the public hearing on the merits and possible reparations and costs held before the Inter-American Court on June 28 and 29, 2005; I/A Court H.R. *López Álvarez v. Honduras*. Judgment of February 1<sup>st</sup>, 2006. Series C No. 141; paragraph 54.1; Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. pp. 17-19. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008; Ethnic Poverty in Honduras, Utta von Gleich and Ernesto Gálvez. Indigenous Peoples and Community Development Unit. Inter-American Development Bank, Department of Sustainability. Washington, D.C., September 1999. Available at: <http://www.bvsde.paho.org/bvsacd/cd47/etnica.pdf>; Presented to the Sub-commission on the Promotion and Protection of Human Rights. Working Group on Minorities. United Nations. 10<sup>th</sup> Session. 1 – 5 March, 2004. Available at: <http://www.ohchr.org/EN/Issues/Minorities/Pages/10WGMminorities.aspx>

<sup>9</sup> Testimony of Gregoria Flores Martínez in the *Alfredo Lopéz v. Honduras Case* provided at the public hearing on the merits and possible reparations and costs held before the Inter-American Court on June 28 and 29, 2005.

<sup>10</sup> Ethnic poverty in Honduras, Utta von Gleich and Ernesto Gálvez. Indigenous Peoples and Community Development Unit. Inter-American Development Bank, Department of Sustainability. Washington, D.C., September 1999. p. 2. Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. p. 20. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008.

<sup>11</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>12</sup> Testimony of Gregoria Flores Martínez in the *Alfredo Lopéz v. Honduras Case* provided at the public hearing on the merits and possible reparations and costs held before the Inter-American Court on June 28 and 29, 2005. See *inter alia* Annex 3. A legal opinion on the situation of the Garífuna territories of Honduras, in particular the Triunfo and Tornabé communities. Appendix 26 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>13</sup> Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. p. 21. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008.

growing of rice, cassava, bananas, and yucca, and hunting of small marine and forest animals such as deer, agoutis, turtles, and manatees.<sup>14</sup>

56. The beach and the sea are part of the Garífunas cultural and ethnic identity, because, apart from being vital to their subsistence, they are linked to their history and for that reason figure prominently in religious ceremonies and other acts commemorating their arrival by sea in Central America.<sup>15</sup>

57. The Garífuna people's identity is reinforced by the fact that they speak a language of their own based on the "Amerindian Arawak and Carib languages" and incorporating French, Spanish, and English words,<sup>16</sup> and by ancestral organizational patterns associated with cultural manifestations, such as certain dance routines that play an important part not just in preserving the culture but also in the communication and oral transmission of their history. Given the cultural value of the Garífuna language, dance, and music, based on an oral culture, the United Nations Organization for Education, Science and Culture (UNESCO) recognized it in 2001 as a masterpiece of the oral and intangible heritage of humanity.<sup>17</sup>

58. The Garífuna communities possess different forms of social organization, some traditional and others born of the need to defend their rights and territories. Matriarchy is the dominant form in their culture, which considerably strengthens the role of women in education, politics, the economy, and social affairs, in all of which they participate alongside the men.<sup>18</sup> At the same time, Garífuna culture accepts masculine polygamy.<sup>19</sup>

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<sup>14</sup> Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. p. 21-25. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008. In addition, I/A Court H.R. *López Álvarez v. Honduras Case*. Judgment of February 1<sup>st</sup>, 2006. Series C No. 141; paragraph 54.1.

<sup>15</sup> González, Nancie. *Sojourners of the Caribbean: Ethnogenesis and Ethnohistory of the Garífunas*. University of Illinois Press. Urbana and Chicago: 1988. In: Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. p. 23. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008.

<sup>16</sup> According to UNESCO, "The Garífuna language belongs to the Arawakan group of languages and has survived centuries of discrimination and linguistic domination. It is rich in tales (úraga) originally recited during wakes or large gatherings. The melodies bring together African and Amerindian elements, and the texts are a veritable repository of the history and traditional knowledge of the Garífuna, such as cassava-growing, fishing, canoe-building and the construction of baked mud houses. There is also a considerable amount of satire in these songs, which are accompanied by various drums and dances, which the spectators may join in". UNESCO, Masterpiece of the Intangible Cultural Heritage of Humanity – "Language, dance and music of the Garífuna". Available at: <http://www.unesco.org/culture/ich/en/RL/00001> .

<sup>17</sup> See UNESCO, Masterpiece of the Intangible Cultural Heritage of Humanity – "Language, dance and music of the Garífuna". Available at: <http://www.unesco.org/culture/ich/en/RL/00001> .

<sup>18</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>19</sup> I/A Court H.R. *López Álvarez v. Honduras Case*. Judgment of February 1<sup>st</sup>, 2006. Series C No. 141; paragraph 54.1.

**B. The Garífuna Community of Triunfo de la Cruz: territory, organization, and mode of subsistence**

59. The Garífuna Community of Triunfo de la Cruz is located in the Department of Atlántida, Municipality of Tela, on the Caribbean coast. The town known as Tela today was founded as “Triunfo de la Cruz” by the Spaniards on May 3, 1524. In 1805 it was inhabited by Garífunas, most of whom had come from the Department of Colón.<sup>20</sup> The Garífunas began to be displaced in 1880 and went and re-founded the “Triunfo de la Cruz” Community in the area they occupy today.<sup>21</sup>

60. The Triunfo de la Cruz Community borders to the north with the Caribbean sea; to the south, with Cerro El Tigre; to the east, with the Punta Izopo National Park; and to the west, with Cerro Triunfo de la Cruz.<sup>22</sup> Thus it is located between Cerro Triunfo de la Cruz, which has been declared a historical monument, and the Cerro Punta Izopo buffer zone, which was declared a “National Park” protected area in 2001.

61. Triunfo de la Cruz is one of the largest Garífuna communities in Honduras and is a focal point for the reproduction of Garífuna culture.<sup>23</sup> It is a rural area with a population of approximately ten thousand (10,000) inhabitants who have maintained their own cultural forms, organization, and social and cultural institutions, ways of life, cosmovisions, practices, customs, ceremonial rites, language, clothing and special relation to the land.<sup>24</sup>

62. The Garífunas of Triunfo de la Cruz subsist on agriculture, hunting, small-scale fishing – out at sea and in the Plátano River – and tourism-related activities. These activities provide for the community’s needs and some products are traded in Tela and the city of San Pedro

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<sup>20</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the “Ethnography of the Triunfo de la Cruz Community”. Appendix 1 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006. Some authors indicate that even in 1789 some Garífunas already occupied a neighborhood in the area known today as Tela. - López, García, Víctor. *La bahía del Puerto del Sol y la masacre de los Garífunas de San Juan* [The bay of Puerto del Sol and the Massacre of the Garífunas of San Juan]. Guaymura Editorial. Honduras. 1994. p. 13. Cited by: Caribbean Central America Research Council. *Diagnostic Study on Land Use and Tenancy in the Garífuna and Miskito Communities of Honduras 2002-2003*. Available at: <http://ccarconline.org/Honduraseng.htm>. pp. 32-33.

<sup>21</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the “Ethnography of the Triunfo de la Cruz Community”. Appendix 1 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006. According to a study carried out by the *Caribbean Central America Research Council*, between 1860 and 1880, the Garífuna families lived in the main ports known today as the Tela and La Ceiba areas. As the population increased, the Garífuna people were pushed out of the ports (...) establishing thriving villages near the ports in order to keep up their commercial activities and maintain their livelihoods. Here, they united with other Garífuna people originating from other parts of the coast. When the large agro-industrial companies such as United Fruit, Standard Fruit, and Cuyamel Fruit Company established set up their operations in the beginning of the XIX Century, the contemporary Garífuna communities of this area had already been established (...) At: Caribbean Central America Research Council. *Diagnostic Study on Land Use and Tenancy in the Garífuna and Miskito Communities of Honduras 2002-2003*. Available at: <http://ccarconline.org/Honduraseng.htm>. p. 33.

<sup>22</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the “Ethnography of the Triunfo de la Cruz Community”. Appendix 1 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>23</sup> IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on “Case 12.548 – Garífuna Community of Triunfo de la Cruz, Honduras”, 127<sup>th</sup> period of sessions. Expert appraisal by Edmund Taylor Gordon.

<sup>24</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the “Ethnography of the Triunfo de la Cruz Community”. Appendix 1 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

Sula.<sup>25</sup> Although farming has always been part of the Garífunas' life, the loss of their lands has meant that it is now less prominent than it once was.

They used to grow more bananas, cassava, old cocoyam, sweet potato, and other tubers. These losses were caused by the seizure of land by outsiders who arrived in the community and found it to be a suitable place for agriculture and building homes.<sup>26</sup>

63. Traditionally, the Garífunas cultivated the land using a slash and burn, crop rotation method, which is described by the petitioner as follows:

The Garífunas used the slash and burn system in which part of the land is left fallow in order to maintain a sustainable form of production and an acceptable ratio between yield at harvest and the work time invested. The combination of these factors means that a vast tract of land has to be available to practice this production strategy.<sup>27</sup>

64. The members of the Triunfo de la Cruz Community also engage in secondary activities, such as the sale of coconut bread and cassava bread and producing and sell craft work. The traditional economy of the community is based on reciprocity in the provision of manpower, redistribution of food in times of scarcity and communal property of natural resources.<sup>28</sup> In addition, remittances of money from abroad are one of the chief means of subsistence and of improvement to homes.<sup>29</sup>

65. The territory occupied by the Community has been collectively possessed since ancestral time. The Community identifies as its ancestral territory an area of approximately two thousand eight hundred and forty (2,840) hectares, which covers the both the housing area and the functional habit they have used historically.<sup>30</sup> Within this territory, the Community regards the areas

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<sup>25</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>26</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. Likewise, Beatriz Ramos Bernárdez, a member of the Community, stated in her testimony to the IACHR: "The Garífuna people live off cassava, yam, coco-yam, sweet potato, and coconut; from cassava we make bread and cake. We use coconut to make oil and we also sell it to buy food we cannot produce in the Community. [...] Today, in order to survive we have to buy cassava from people in the shop outside the Community; we buy coconut. There is poverty in Triunfo because our way of life, our life is farming and fishing." IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 – Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Testimony of Beatriz Ramos Bernárdez.

<sup>27</sup> Written document containing observations on the merits presented by the petitioner before the IACHR, May 23, 2006, p. 6. Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. p. 21. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008.

<sup>28</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>29</sup> According to the information provided by both parties, "approximately 55% of families support themselves financially through remittances sent by family members residing abroad, particularly in the United States". - Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>30</sup> Annex 2. Map developed by the *Caribbean Central America Research Council* as part of the study on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 – Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Expert appraisal by Edmund Taylor Gordon.

around Cerro El Tigre, Cerro Punta Izopo, and the River Plátano as particularly important for traditional hunting, fishing, and plant gathering activities.<sup>31</sup>

66. The members of the Community consider that the land is a sacred heritage of the community and it is distributed according to customary law. Traditionally, they did not bother to document the land, since every member of the community had a plot assigned to him to cultivate and the rights to it were progressively acquired and transferred from one generation to another.

Land was assigned by inheritance. Parents passed it on to their children. Lots were not sold. If someone wanted to work, he was given a piece to cultivate, growing cassava on a large scale, and to build his dwelling. They planted crops close to the River Plátano and in Cerro El Tigre, mainly cassava, banana, sugar cane and pineapple for their own consumption.<sup>32</sup>

67. The culture and tradition of the Garífuna Community of Triunfo de la Cruz are essentially oral. However, given third parties' interest in their territories, they had to make arrangements for titling their lands and documenting their rights. In that way, they were obliged to alter their oral tradition and adopt the legal mechanisms found in Honduras to support and document their claims.

68. The Triunfo de la Cruz Community practices the following forms of social organization:

a. The Community Council for the Improvement of the Community of Triunfo de la Cruz: Its responsibility is to promote and organize projects, plans, and programs designed to further the physical, environmental, and cultural development of the Community and to contribute to the maintenance and security of communal property – the Community's land – , through the rational use of existing natural resources. The Community Council was granted legal standing as an *asociación civil* (legally incorporated body for other than commercial purposes) and its Statute was approved through Resolution No. 231-96, adopted by the Secretariat of the Interior and Justice on January 27, 1997.<sup>33</sup>

b. The General Assembly of the Community of Triunfo de la Cruz: The Assembly comprises all [male and female] members of the Community and is the Council's supreme deliberating and decision-making body.

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<sup>31</sup> The President of the Community Council from 1990 to 1992 said in a statement to the Prosecutor for Ethnic Groups: "The Community was fighting for recognition of land from Cerro El Triunfo de la Cruz to Cerro El Izopo, because according to their ancestors they possessed all that land for agriculture." [Annex 4. Statements taken by the Principal Prosecutor in Tela. Annex 19 of the initial petition dated October 27, 2003, received by the IACHR October 29, 2003.] In addition, according to the information provided by both parties: "Historically, according to the map, the lands now occupied by numerous mestizo (*ladino*) families in the area known as Canahuati belonged to the community of Triunfo de la Cruz, like the land located in the southern part of the Community around Cerro El Tigre, where several mestizo families have been living for some time. They were part of the area used by the Community for agriculture[sic]". [Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.] In addition, see IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 – Garifuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Expert appraisal by Edmund Taylor Gordon.

<sup>32</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>33</sup> Annex 5. Certification of Resolution No. 231-96 dated January 27, 1997. Files for application with the National Agrarian Institute No. 47891, pp.5-11. Appendix 8 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

c. The Council of Elders: This traditional body advises and guides the Community and its organizations.

d. The Committee to Defend the Land of Triunfo de la Cruz (CODETT): This Committee is responsible for matters to do with the land and its officers are appointed by the General Assembly of the Community. CODETT was established as a result of the need to defend the Community's land.<sup>34</sup>

**C. The process of recognizing and titling the territory of the Triunfo de la Cruz Community and its members**

69. Starting in the mid-1900s, the Triunfo de la Cruz Community began taking steps to obtain recognition of its rights over the lands it has occupied since ancestral times. That involved undertaking a series of administrative and judicial actions to elicit recognition from the Honduran State and effective guarantees to the Community's traditional lands, within the domestic regulatory framework. According to the evidence presented by the parties, the procedures carried out and the titles obtained by the Community are as follows:

**1. The granting of ejido title to 380 hectares, 51 ares, and 82.78 centiares (1946 – 1950)**

70. The first action undertaken by the Community to obtain recognition of its communal lands it occupied was the request filed with the State for an "ejido title." According to the information provided by the parties, the ejido system – which was established in Honduras by the Agrarian Law of 1898 and remained essentially unchanged in the Agrarian Law promulgated in 1924 – did not confer full property rights; rather, the land pertaining to the State was transferred to the communities and municipalities for their use and enjoyment, while the State retained the property right<sup>35</sup>. Furthermore, the amount of land that could be declared communal land (*ejido*) was limited, so that the titles granted did not cover the full extend of the Garífunas' ancestral lands.<sup>36</sup>

71. Under these provisions, on December 9, 1946, the "Deputy Mayor of the Village [of El Triunfo, as] the legal representative of its inhabitants," applied to the Tax and Customs Authority (Administración de Rentas y Aduana) for an ejido title to the land occupied by the Community.<sup>37</sup> That application specifically requested the following:

The village I represent and which was founded long ago is located on national land. Both the center and the surroundings lack communal land (*terrenos ejidales*), although there are more than nine hundred inhabitants[...] This village and its surroundings are national land,

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<sup>34</sup> Testimony of Gregoria Flores Martínez in the *Alfredo Lopéz v. Honduras Case* provided at the public hearing held before the Inter-American Court on June 28, 2005.

<sup>35</sup> Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. p. 78, footnote 153. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008.

<sup>36</sup> Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. p. 30, footnote 61. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008. On this, the petitioner stated that: "The Agrarian Law established that those entitled to obtain land in the form of community-owned lots of one square league in size were the inhabitants of a municipality or village devoid of communal land, with a population of more than 100 inhabitants and with two houses functioning as a school (Articles, 3,4,5, and 6.)". Document containing observations of the petitioner, dated May 23, 2006, p.9.

<sup>37</sup> According to the IACHR, said application was filed based on article 20 of the Agrarian Reform Law, and articles 35, 36, 37, 38 and 39 of the Agrarian Rules of Procedure, currently in effect.

encompassing an area of approximately two kilometers bordering, to the north, with the sea shore; to the south, with land pertaining to Francisco Ewen and the Tela Railroad Company; to the east, with possessions of Marcial Blanco, today pertaining to his heirs; and to the west, with land pertaining to Francisco Ewen[...]<sup>38</sup>

72. On November 29, 1950, the President of the Republic approved the claim proceedings and the surveyor's measurements of the land requested by the Community of Triunfo de la Cruz, totaling 380 hectares, 51 ares, and 82.78 centiares, as follows:

[...] Resolves to approve without prejudice to the rights of third parties the claim proceedings and the surveyor's measurements of the land requested for communal land (ejidos) by the village of Triunfo located in the district of Tela, Department of Atlántida, bordering, to the north, with the sea shore; to the south, with land pertaining to Francisco Ewen and the Tela Railroad Company; to the east, with possessions of Marcial Blanco, today pertaining to his heirs; and to the west, with land pertaining to Francisco Ewen, encompassing three hundred and eighty hectares, fifty-one ares, and eighty-two point seven eight centiares; [...] to grant said land as communal land (ejido) to the village of Triunfo, with that village being responsible for formally demarcating the corresponding boundaries separating that land from the surrounding lots; it being forbidden, furthermore to uproot the forests that are less than twenty meters from rivers and springs [sic]<sup>39</sup>.

73. The ejido title granted was registered on October 6, 1951 in the Register of Property, Mortgages, and Provisional Property Registration.<sup>40</sup> The IACHR notes that the title granted mainly encompassed the area occupied by the Community's dwellings, not its functional habitat.

## **2. Request for adjudication during the first Agrarian Reform legislation period (1962-1974)**

74. On June 27, 1969, fifty members of the Community of Triunfo de la Cruz filed an application with INA's Regional Agrarian Office requesting the establishment of an "agricultural population center." In that application, they wrote that "for the past 58 years, some of us and our forebears worked on national land encompassing approximately 200 *manzanas* bordering, to the north, with the Caribbean Sea or Sea of the Antilles; to the south and east with marshland also belonging to the Nation; and to the west, with land owned by the heirs of Marcial Blanco." According to information at the disposal of the IACHR, the area requested, known as "Plátano River" or "Plátano River Sandbank," lies to the east of the area awarded as communal land.<sup>41</sup> This

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<sup>38</sup> Annex 6. Claim to national land for communal land of the Village of Triunfo de la Cruz, presented by the Deputy Mayor, José Martínez Lino, to the Revenue and Customs Administrator, dated December 9, 1946. Annex 2 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003; File 2000-81 addressed to the National Agrarian Institute, pp. 159-160 and 2. Annex 7 of the petitioner's writ dated May 23, 2006, received by the IACHR on May 30, 2006; and Annex 7. File certification 19 of the National Archives of Honduras, issued by the Director of the National Archives of Honduras on May 18, 2006. Appendix 5 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>39</sup> Annex 8. Certification of entry No2, 402 pages 368 to 370 of volume 11 of the book of the Registry Office of Property, Mortgages and Provisional Property Registration, issued on April 13, 1993. Annex 6 of the petitioner's written communication dated May 23, 2006, received by the IACHR on May 30, 2006; and Annex 7. Certification of File 19 of the National Archives of Honduras, issued by the Director of the National Archives of Honduras on May 18, 2006. Appendix 5 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>40</sup> Annex 8. Certification of entry No2, 402 pages 368 to 370 of volume 11 of the book of the Registry Office of Property, Mortgages and Provisional Property Registration, issued on April 13, 1993. Annex 6 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>41</sup> Annex 9. Request for the establishment of an agricultural population center, dated June 27, 1969. File 2000-81 addressed to the National Agrarian Institute, pages 1 and 2. Appendix 7 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. In addition, see Annex 10. "Analysis of the Garifuna Communities' Applications for Full Ownership" prepared by the Honduran Tourism Institute on April 23, 1996. Annex 24 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

request, found in dossier No. 2000-81, was filed pursuant to the Agrarian Reform Law adopted through Decree Law No. 2-62, published on November 1, 1962.

75. In June and November 1969, members of the Community asked the same institution for “protection against acts to evict” them from the aforementioned land, carried out, they alleged, on instructions from the general manager of MACERICA S. de R. L. [limited partnership trading company] (hereinafter “MACERICA”)<sup>42</sup>. According to the information at the IACHR’s disposal, the INA Director conducted an on-the-spot inspection in which he ascertained that steps had been taken by said enterprise to fence off the area and then proceeded to adopt Decision No. 14 of May 7, 1970, which resolved to protect the members of the Community who had filed for protection “with respect to their occupation of the land known as ‘El Triunfo de la Cruz,’ located in the immediate vicinity of the village of the same name,” and to “grant equal protection to the other peasants occupying the land in question,” thereby recognizing possession by the Garífuna Community.<sup>43</sup>

76. For its part, MACERICA submitted documentation in the proceedings to attest property of a 50-hectare lot of the same land requested by the Community of Triunfo de la Cruz, which the company had purchased from private individuals. According to the information at the IACHR’s disposal, between 1970 and 1975 the INA looked into the registry office records relating to the area requested by the Community and on May 25, 1984 INA’s Legal Department issued Legal Opinion No. AL-329/84, which established that “the document submitted in order to attest private ownership of the Plátano River Sandbank lot does not constitute a sufficiently valid title[...]so that it is lawful to presume that it is property of the State[...],”<sup>44</sup>

77. While these proceedings were under way, it was ascertained that the land requested by the Community fell within the urban perimeter of the Municipality of Tela by virtue of Resolution No. 055-89 adopted by the IMA on April 24, 1989 and that 44.00 hectares had been sold to a company (see *below* section IV.D.1). The Honduran Tourism Institute filed a query with the Attorney General’s Office regarding the legality of the sales, which triggered an investigation by the Office of the Comptroller General of the Republic.<sup>45</sup>

78. On March 25, 1996, the INA decided to suspend processing of the adjudication in favor of the Community of Triunfo de la Cruz “until the Attorney General’s Office and the Office of the Comptroller General jointly analyze and pronounce on the situation that has arisen.”<sup>46</sup> INA’s last intervention in this process of which the IACHR is aware is a request for information filed by INA’s

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<sup>42</sup> Annex 9. Application for protection against eviction dated June 27, 1969 and November 28, 1969. File 2000-81 with the National Agrarian Institute, unnumbered page and pp. 18-19. Appendix 7 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>43</sup> Annex 9. Request for the establishment of an agricultural population center, dated June 27, 1969. File 2000-81 addressed to the National Agrarian Institute, pages 32 and 33. Appendix 7 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>44</sup> Annex 9. Expert opinion No. AL-329/84 issued by the Legal Department of the National Agrarian Institute on May 25, 1984. File 2000-81 with the National Agrarian Institute, pp. 216 to 219. Appendix 7 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>45</sup> Annex 10. “Analysis of the Garífuna Communities’ Applications for Full Ownership” prepared by the Honduran Tourism Institute on April 23, 1996. Annex 24 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>46</sup> Annex 9. Decision of the National Agrarian Institute dated March 25, 1996. File 2000-81 with the National Agrarian Institute, page 252. Appendix 7 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

General Secretariat with the Attorney General's Office on June 3, 1998. According to the information at the IACHR's disposal, that request went unanswered.<sup>47</sup>

**3. Granting of a title guaranteeing occupancy of 126.40 hectares during the second period of agrarian reform legislation (1974-1979)**

79. Through Decree Law No. 170-74 of December 30, 1974, the Honduran State adopted a new Agrarian Reform Law, which has been in effect since January 14, 1975. Article 36 of the 1975 Agrarian Reform Law established that:

Land that, on the date this law enters into force is occupied by villages or hamlets whose existence does not derive from a labor contract between those occupying that land and its owner shall be expropriate and awarded to the respective community.

Portions of the property that have been or are being cultivated by persons living in the vicinity of the villages or hamlets shall be covered by the provisions of the foregoing paragraph.<sup>48</sup>

80. Based on those provisions, the Garífuna Community of Triunfo de la Cruz filed an application with the INA, which resulted in that institution granting the Community a "guarantee of occupancy" title to 126.40 hectares on September 28, 1979. That title reads as follows:

The Executive Director of the National Agrarian Institute, in the exercise of the powers conferred on him by Article 135.b and Article 144.a and g, in conjunction with Article 36 of the Agrarian Reform Law, grants to the Garífuna Community of Triunfo de la Cruz guarantee of occupancy of the 126.40 hectare plot located in the Village of Triunfo de la Cruz, Municipality of Tela, Department of Atlántida, with the following borders: to the north, with the Caribbean Sea; to the south, with Roberto Yuin and the Standard Fruit Company; to the east, with the River Plátano; and to the west, with Roberto Yuin.<sup>49</sup>

81. Thus the guarantee of occupancy title was given to the Community in recognition of the fact that it was an area occupied and cultivated by its members, as provided in the above-mentioned Article 36 of the Agrarian Reform Law. The IACHR notes that the area for which the guarantee of occupancy title was granted is located in the far east portion of the land previously granted as communal land (*ejido*), within the area that the Community considers it has historically occupied.

**4. Granting of definitive title in fee simple to 380 hectares, 51 ares, and 82.68 centiares (1992-1996)**

82. The 1975 Agrarian Reform Law was amended by the Law to Modernize and Develop the Agricultural Sector, adopted by Decree No. 31-92 of March 5, 1992, in effect since April 6, 1992.<sup>50</sup> Regarding the Garífuna communities, amended Article 92 reads as follows:

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<sup>47</sup> Annex 9. Request for information by the National Agrarian Institute to the Attorney General of the Republic (Procurador General de la República) on June 3<sup>rd</sup>, 1998. File 2000-81 with the National Agrarian Institute, page 466. Appendix 7 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>48</sup> Article 36 of the Agrarian Reform Law, issued on December 30, 1974, through Decree-law No. 170, in effect since January 14, 1975.

<sup>49</sup> Annex 11. Guarantee of occupancy title granted by the National Agrarian Institute on September 29, 2003. Annex 4 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003; and Annex 6 of the petitioner's written communication dated May 23, 2006, received by the IACHR on May 30, 2006.

<sup>50</sup> Law on the Modernization and Development of the Agricultural Sector. Available at: [http://www.ina.hn/userfiles/file/nuevos/ley\\_para\\_la\\_modernizacion\\_y\\_desarrollo\\_del\\_sector\\_agricola\\_lmdsa.pdf](http://www.ina.hn/userfiles/file/nuevos/ley_para_la_modernizacion_y_desarrollo_del_sector_agricola_lmdsa.pdf).

Article 92. [...] The ethnic communities that can attest that they have occupied the land on which they are settled for the period of at least three years indicated in amended Article 15 of this Law shall receive titles to full ownership of the land granted completely free of charge by the National Agrarian Institute by the deadline indicated in said Article 15.<sup>51</sup>

83. On November 11, 1992, the Triunfo de la Cruz Community applied for full ownership title to the 380 hectares, 51 ares, and 82.68 centiares granted as communal land in 1950.<sup>52</sup> That application was admitted by the INA in a note dated January 29, 1993 and registered with the number 25235.

84. On October 29, 1993, the INA issued a "definitive full ownership title" in favor of the Triunfo de la Cruz Community to the area requested, establishing its boundaries as follows: "North: Caribbean Sea; South: National Land; East: National Land; and West: National Land."<sup>53</sup> The award was free of charge and included the transfer of "ownership, possession, easement, appurtenances, uses, and other rights in rem inherent to the real estate." Furthermore, the title issued specified that:

Notwithstanding the definitive nature of this transfer of title, this title remains subject to the following conditions: A) If the sale or donation of lots within the land adjudicated were to be permitted, they shall only be authorized for tourism projects duly approved by the Honduran Tourism Institute and for descendants of the beneficiary ethnic community; B) That respect be shown for the integrity of the forest, in order to ensure the existence of sources of water; for the quality of the beaches; for the stability of the land on steep slopes; and the habitat for local fauna, thereby preserving natural environmental conditions.<sup>54</sup>

85. On September 11, 1996, the title was registered in the Real Estate Registry.<sup>55</sup>

**5. Requests for extension of full ownership title and the granting of title in fee simple to 234 hectares, 48 ares, and 76.03 centiares (1997-2001)**

86. According to the information at the IACHR's disposal, the Triunfo de la Cruz Community and its members subsequently filed at least three applications with the INA with a view to obtaining title in fee simple to the rest of the land they had historically occupied. According to

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<sup>51</sup> According to the information presented by the parties, in accordance with this legislation, "between 1993 and 2004, 36 Garifuna communities and 6 Garifuna Peasant Cooperative Associations in the Departments of Atlantida, Colon, Cortes, Gracias a Dios and in the Bay Islands obtained full communal property title". Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. Attached to the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008.

<sup>52</sup> Annex 12. Application for definitive full ownership title dated November 11, 1992. Application No. 25235 submitted to the National Agrarian Institute, pp.1-3. Annex A to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>53</sup> Annex 13. Definitive full ownership title granted by the National Agrarian Institute on October 29, 2003. Application No. 25235 submitted to the National Agrarian Institute, pages 64 and 65. Annex 5 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003; Annex 7 of the petitioner's written communication dated May 23, 2006, received by the IACHR on May 30, 2006; and Annex A to the document containing the State's observations on the merits dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>54</sup> Annex 13. Definitive full ownership title granted by the National Agrarian Institute on October 29, 2003. Application No. 25235 submitted to the National Agrarian Institute, pages 64 and 65. Annex 5 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003; Annex 7 of the petitioner's written communication dated May 23, 2006, received by the IACHR on May 30, 2006; and Annex A to the document containing the State's observations on the merits dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>55</sup> Annex 5. Application No. 57426 submitted to the National Agrarian Institute, page 351. Appendix 8 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

the information in the IACHR file, two of those applications went unanswered and the last led to the granting of definitive full ownership title to 234 hectares, 48 ares, and 76.03 centiares.

87. Thus, according to the evidence submitted, on September 8, 1997, a representative of the Triunfo de la Cruz Community filed an application with the INA to be granted “definitive title in fee simple to the land they peaceably occupy,” consisting of an area measuring 600 hectares, with the following boundaries: to the north, property of the Community, Caribbean Sea and River Plátano; to the south, Cerro El Tigre and kilometer 7; to the east, River Plátano and kilometer 7; and to the west, Cerro Triunfo de la Cruz and Laguna Negra.<sup>56</sup> According to the information at the IACHR’s disposal, on December 5, 1997, the INA admitted the application and ordered that an agrarian commissioner be appointed to measure the land occupied by the Community.<sup>57</sup> However, the IACHR was not notified whether this action actually was taken, nor was it informed of any subsequent steps to address the application.

88. At the same time, on July 8, 1998, in her capacity as President of the Community Council, Ms. Damacia Ramírez Morales filed an application with the INA to be awarded a fee simple title to the 126.40 hectares for which a guarantee of occupancy had been granted in 1979<sup>58</sup>. According to the information provided by the parties, the first action taken by the INA was, at the request of the Community itself, to serve an injunction on the Municipality of Tela on July 29, 1999 to provide information regarding the juridical nature of the area, given that at that time the municipal urban perimeter had been expanded (see *below*, section IV.D.1)<sup>59</sup>. Once the Municipality had responded to that request, on August 29, 1999 the Community asked for a determination regarding the legal status of the plot it had requested. Based on the information in the file with the IACHR, this request went unanswered.

89. On April 4, 2000, the Community requested that an agrarian commissioner be appointed to conduct a field inspection and measure or re-measure the property and it reiterated that request on May 22, 2000.<sup>60</sup> In response, and “with a view to determining and locating the measurement lines for the fee simple title already granted to said Garífuna Community,” on July 4, 2000 an Agrarian Commission re-measured the area granted in 1993.<sup>61</sup> According to the technical report drawn up by INA’s Head of Land Registry and Measurement following the re-measurement, the lands identified by the Community during the field inspection were more extensive than those

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<sup>56</sup> Annex 5. Application for definitive full ownership title to 600 hectares dated August 28, 1997. Application file No. 47891, with the National Agrarian Institute, pages 1 and 2. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>57</sup> Annex 5. Ruling of the National Agrarian Institute dated December 5, 1997. Application file No. 47891, with the National Agrarian Institute, pages 16. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>58</sup> Annex 5. Application for definitive full ownership title to 126.40 hectares dated July 8, 1998. Application File No. 10357 with the National Agrarian Institute, pages 18 to 20. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006. In the application it says that the guarantee of occupancy was granted in 1969. However, the title in the file is dated 1979.

<sup>59</sup> Annex 5. Injunction of the National Agrarian Institute to the Municipality of Tela dated July 29, 1999. Application file No. 10357, with the National Agrarian Institute, pages 283. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>60</sup> Annex 5. Communications presented by the Triunfo de la Cruz community to the National Agrarian Institute on April 4, 2000 and May 22, 2000. Application file No. 10357, with the National Agrarian Institute, pages 302 and 306. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>61</sup> Annex 5. Injunction of the National Agrarian Institute to the Municipality of Tela, dated July 29, 1999. Application File No. 10357 with the National Agrarian Institute, pages 351 to 353. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

for which the aforementioned title had been granted. It was also ascertained that numerous non-Garifuna people were occupying Community land.<sup>62</sup>

90. According to the information at the IACHR's disposal, further field inspections were carried out in the Community in May and June 2001 in order to "conduct the measurements and locate the points and boundaries that the Garifunas recognize as an area in expansion." According to the report of June 2001, drawn up on the basis of those inspection visits, Community members identified as the land for which they were requesting title "the entire beach area, part of the Protected Areas of Cerro Triunfo de la Cruz and Cerro Punta Izopo, such that the outside boundaries were as follows: north: the beach on the shore of the Caribbean Sea or Sea of the Antilles; south, the paved highway in front of Cerro El Tigre; east, Cerro Punta Izopo; and west, Cerro Triunfo de la Cruz." The IACHR notes that, as recorded in the aforementioned report, at that time, there were 187 *ladinos* or non-Garifunas living in the Community.<sup>63</sup> The IACHR was not informed of any subsequent action taken to conclude this process.

91. On January 22, 2001, the Community Council filed another application (numbered 57426) with the INA for title to the Community's ancestral lands.<sup>64</sup> The IACHR notes that this time the Community did not mention the surface area, but instead identified the following boundaries to the expanded area requested: "to the north, Caribbean Sea or Sea of the Antilles; to the south, telephone line behind Cerro El Tigre; to the east, Cerro Punta Izopo; and to the west, Cerro El Triunfo de la Cruz."<sup>65</sup> The IACHR observes that those boundaries generally speaking coincide with the territory historically occupied by the Community.<sup>66</sup>

92. According to a memorandum of July 5, 2001, INA's Department of Land Registry and Measurement took measurements, "witnessed by[...] the Council, members of the Community and persons from land bordering on the site." According to the map that comes with that Report, the lands requested fall into the following four areas:<sup>67</sup>

- A1 Area within the urban perimeter  
Covering 408 hectares, 3.9 ares, and 10.20 centiares  
[...]
- A2 Area outside the urban perimeter

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<sup>62</sup> Annex 5. Report prepared by the Head of Land Registry and Measurement for the Head of the Agrarian Records Office (*Catastro Agrario*) of the National Agrarian Institute. Application File No. 10357 with the National Agrarian Institute, pages 367 to 371. Appendix 8 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>63</sup> Annex 5. Report prepared by José Joel Vásquez, an expert in sectoral business re-engineering in Tela, for the Regional Head of the INA's Atlantic Shore Division, dated July 26, 2001. Application File No. 10357 with the National Agrarian Institute, pages 483 to 500. Annex 8 of the petitioner's written communication dated May 23, 2006, received by the IACHR on May 30, 2006; and Annex 10 of the petitioner's written communication dated May 23, 2006, received by the IACHR on May 30, 2006.

<sup>64</sup> Annex 16. Request for extension of the definitive full ownership title, dated January 22, 2001. Application No. 57426 submitted to the National Agrarian Institute, pp.1-3. Annex B to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>65</sup> Annex 16. Request for extension of the definitive full ownership title, dated January 22, 2001. Application No. 57426 submitted to the National Agrarian Institute, pp.1-3. Annex B to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>66</sup> Annex 2. Map developed by the *Caribbean Central America Research Council* as part of the study on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>67</sup> Annex 16. Memorandum prepared by the Head of the INA's Land Registry and Measurement Department, dated July 5 2001. Application No. 57426 submitted to the National Agrarian Institute, pages 121 to 127. Annex B to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

Covering 155 hectares, 8.2 ares, and 74.74 centiares

[...]

A3 Inside the Punta Izopo National Park

Covering 33 hectares, 33 ares, and 78.98 centiares

[...]

A4 Inside the Punta Izopo National Park [which covers part of Cerro Punta Izopo]

Covering 45 hectares, 32 ares, and 22.31 centiares

[...]

93. Through resolution No. 213-2001 of September 26, 2001, the Executive Director of the INA resolved "to adjudicate to the Community Council for the Improvement of the Community of Triunfo de la Cruz, definitively and free of charge, a nationally owned area of land consisting of three lots"<sup>68</sup>. According to the information at the IACHR's disposal, those lots correspond to the aforementioned Areas A2, A3, and A4 and altogether comprise 234 hectares, 48 ares, and 76.03 centiares. The IACHR further notes that the "A1" lot, which is regarded as within the urban perimeter of the Municipality of Tela, was not included in the expansion. Pursuant to that resolution, on September 27, 2001, the INA granted "definitive fee simple title to the Community Council for the Improvement of the Community of Triunfo de la Cruz."<sup>69</sup> That title, which is in the IACHR file, establishes that:

[The INA] transfers ownership, possession, easement, appurtenances, uses, and other rights in rem inherent to the real estate[...]. This title deed is the inalienable heritage of the beneficiary community, except in cases in which transfer of ownership is effected for the purpose of building housing for the members of that community who have no dwelling; likewise, transfers of ownership by home-owners must be to members of the community. In both cases, approval by the Management Board of the Community Council, is required and must figure in the ownership transfer deed. The Community Council shall have first option to purchase ownership of houses put up for sale.<sup>70</sup>

94. The IACHR notes that said title was granted pursuant to Article 346 of the Constitution of the Republic, Article 92 of the Agrarian Reform Law amended by the Law to Modernize and Develop the Agricultural Sector,<sup>71</sup> and ILO Convention 169.

95. Subsequently, at the Community's request, the title deed was amended with a view to it being granted in favor of the "Garífuna Community of Triunfo de la Cruz," rather than the

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<sup>68</sup> Annex !6. Resolution No. 213-2001 dated September 26, 2001. Application No. 57426 submitted to the National Agrarian Institute, pages 133 and 134. Annex B to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>69</sup> According to that title, the lots have the following boundaries and are of the following sizes: "Lot 1, one hundred and fifty-five hectares, eighty-two ares, seventy-four point seventy-four centiares (155 hectares, 82 ares, and 74.74 centiares). NORTH: Mangrove swamp in the Punta Izopo National Park and the Tela urban radius. SOUTH: Cerro El Tigre EAST: Mangrove swamp in the Punta Izopo National Park WEST: Tela urban radius. "Lot 2, thirty-three hectares, thirty-three ares, seventy-eight point ninety-eight centiares (33 hectares, 33 ares, and 78.98 centiares). NORTH: [illegible] SOUTH: Mangrove swamp in the Punta Izopo National Park EAST: Mangrove swamp in the Punta Izopo National Park WEST: Caribbean Sea until the highest tide line. Lot 3 covering forty-five hectares, thirty-two ares, twenty-two point thirty-one centiares (45 hectares, 32 ares, and 22.31 centiares). NORTH: Caribbean Sea until the highest tide line SOUTH: Río Hicaque EAST: Mangrove swamp in the Punta Izopo National Park WEST: Caribbean Sea until the highest tide line." Annex !4. Definitive full ownership title granted by the National Agrarian Institute on September 27, 2001. Appendix 8 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>70</sup> Annex 14. Definitive full ownership title granted by the National Agrarian Institute on September 27, 2001. Appendix 8 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>71</sup> Specifically, reference is made to Articles "1, 5, 8, 135.b, 144.a and g of the Agrarian Reform Law of 92 and of the same body of law amended by Decree 31-92 of the National Congress, containing the Law on the Modernization and Development of the Agricultural Sector." -

Community Council. Likewise, a phrase was added to the above-mentioned paragraph, to read as follows:

The Community Council shall have first option to purchase ownership of houses put up for sale, but may not sell to third person individuals or juristic persons; it may only sell to members of the beneficiary Garífuna community."<sup>72</sup>

96. From the above, the IACHR observes that since 1950 the State of Honduras granted fee simple and "guarantee of occupancy" deeds to the Community and its members, recognizing its possession of, at least, part of its ancestral territory. According to information provided by the petitioner, and not contested by the State, the territory historically occupied by the Community and its members has a total area of approximately 2,840 hectares,<sup>73</sup> of which, so far, 615 hectares and 28.71 centiares have been granted in fee simple.

97. Parallel to the process of recognition of the Community's property of its ancestral lands, provisions and programs were adopted that were aimed at regularizing and titling private property in Honduras – such as the Property Law, adopted by Decree No. 82-2004 of June 29, 2004 and the Land Administration Program in Honduras. These were opposed by the Garífuna communities in Honduras, including Triunfo de la Cruz, which considered that they ran counter to the process of recognition of their territorial rights.<sup>74</sup>

#### **D. Issues regarding the territory of the Triunfo de la Cruz Community and its members**

98. Despite the titles granted by the State of Honduras to the Garífuna Community of Triunfo de la Cruz in recognition of its ancestral possession of its territory, all these years the Community has been unable to peaceably possess it because of lack of defined boundaries and actual demarcation, clearing of encumbrances, and effective protection by the State. As this section will show, all those defects have resulted in the gradual dispossession of the Community's ancestral lands carried out by State authorities and, with their acquiescence, by private individuals.

99. The situation got much worse after 1990, when the authorities began granting title deeds to land possessed by the Community to tourism conglomerates and individuals, triggering a series of actions by communal and national Garífuna organizations to denounce the violations of their rights and to claim their ancestral lands.<sup>75</sup>

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<sup>72</sup> Annex !4. Definitive full ownership title granted by the National Agrarian Institute on September 27, 2001. modified on October 6, 2001. Application No. 57426 submitted to the National Agrarian Institute, pages 153 to 155. Annex B to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>73</sup> Annex 2. Map developed by the *Caribbean Central America Research Council* as part of the study on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 – Garífuna Community of Triunfo de la Cruz, Honduras", 127th period of sessions. Expert appraisal by Edmund Taylor Gordon.

<sup>74</sup> The information provided indicates, specifically, that on October 18, 2003 a consultation workshop was held on the draft of Decree No. 84-2000, in which the representatives of the Garífuna communities expressed their opposition to promulgation of the law. Likewise OFRANEH [the Fraternal Black Organization of Honduras], as a federation whose members are elected by the Garífuna people, filed a request with the Inspection Panel of the World Bank, the entity financing the Land Administration Program in Honduras (PATH). Annex 15. Request for inspection addressed to the Inspection Panel of the World Bank]. Appendix 2 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>75</sup> I/A Court H.R., *López Álvarez et al v. Honduras*, Provisional Measures, Resolution of the Court of September 21, 2005. IACHR, Admissibility Report 39/07, dated July 24, 2007, Petition Case 1118-03, Garífuna Community of Cayos Cochino and its members, Honduras. Honduras, Justice fails indigenous people, Amnesty International, September 1999. AI Index: AMR 37/10/99/s. Distr. SC/CO/GR.

100. The denunciations focused above all on: (i) the consequences of the expansion of the urban perimeter of the Municipality of Tela in connection with the Marbella Project, the Tela Municipal Workers Trade Union, and El Esfuerzo Cooperative; (ii) the interference of the Municipality of Tela when it established and maintained a parallel Management Board of the Community Council; (iii) the planning and execution of tourism projects; (iv) the establishment of the Punta Izopo protected area; and (v) harassment, threats, and the murder of community authorities and leaders for having acted in defense of their ancestral territory.

**1. Expansion of the urban perimeter of the Municipality of Tela and its consequences regarding the ancestral territory of the Triunfo de la Cruz Community and its members**

101. At the request of the Municipality of Tela, on September 26, 1979, the INA adopted Decision No. 164, in which it decided – pursuant to Article 13.c of the Agrarian Reform Law of 1975<sup>76</sup>– “[...] to use an area of approximately 1,380.4 hectares in order to expand the urban perimeter of the town of Puerto de Tela, in the Department of Atlántida between 1980 and 1990, a period that could be extended depending on the future needs of said town.”<sup>77</sup>

102. On May 25, 1987, the Municipality of Tela asked the INA to expand its urban perimeter, based on a proposal put forward by the Office of the Directorate General for Urban Planning, a dependency of the Ministry of Communication, Public Works and Transportation, because of the population growth in the Municipality.<sup>78</sup> Through resolution No. 055-1989 of April 24, 1989, the INA authorized a 3,219.80 hectare expansion, citing as legal grounds, *inter alia*, the aforementioned article of the 1975 Agrarian Reform Law.<sup>79</sup> Said resolution also resolved as follows:

SECOND: To exclude from the demarcated urban area the lands allocated to the beneficiaries of the Agrarian Reform prior to this resolution until the total value of those lands has been paid. THIRD: The present statement is made without prejudice to the property and possession right that individuals or juristic persons may have inside the demarcated area. FOURTH: To copy this resolution to the Ministry of Culture and Tourism for it to grant its approval, as this includes a tourism zone; the respective plan should be attached thereto.<sup>80</sup>

103. Pursuant to operative paragraph 4 of the resolution, on January 17 1992, the Honduran Tourism Institute adopted resolution No. 002, in which it resolved to approve the demarcation of the urban perimeter, excluding from the expansion area “approximately 40 hectares that overlap with the Lacetilla Botanical Garden and Research Center.” The IHT also resolved that “it is recommended that the Guidelines for the Urban Development of the Town of Tela, drawn up by the Town Planning Directorate in March 1979, be used as a pattern to follow for land planning.

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<sup>76</sup> Said provision literally states: “Excluded from the provisions of Article 12 [referring to land eligible for agrarian reform] are: c) Communal land (*tierras ejidales*) that the National Agrarian Institute devotes to that purpose in accordance with demographic growth plans, after hearing what the municipalities concerned have to say.” Honduran Agrarian Reform Law, Decree-Law N° 170/74 dated December 30, 1974, in effect since January 14 1975. Available at: <http://faolex.fao.org/docs/pdf/hon5175.pdf>.

<sup>77</sup> Annex 16. Decision No. 164 of the National Agrarian Institute dated September 26, 1979. File 57426 with the National Agrarian Institute, pp. 292 to 293. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>78</sup> Annex 17. Resolution number 055-89 of the National Agrarian Institute, dated April 24, 1989. Annex 7 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>79</sup> Annex 17. Resolution number 055-89 of the National Agrarian Institute, dated April 24, 1989. Annex 7 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>80</sup> Annex 17. Resolution number 055-89 of the National Agrarian Institute, dated April 24, 1989. Annex 7 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003; and Annex ? of the document containing the State’s observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

Under those Guidelines, advantage would be taken of the area's tourism potential inside a new urban perimeter."<sup>81</sup>

104. The information at the IACHR's disposal indicates that the expansion of the inner core of the Municipality encompassed a large part of the territory ancestrally occupied by the Triunfo de la Cruz Community. The Commission notes, moreover, that it included areas for which the Community even had title deeds recognizing that occupancy – in particular, the ejido title of 1950 and the occupancy guarantee of 1979 –, as well as areas whose titling in the Community's name was being processed by the INA, such as the application filed in 1969.<sup>82</sup>

105. The IACHR observes that, as a consequence of the expansion of the urban core, a public deed was issued regarding the area allocated to the Municipality on January 30, 1992<sup>83</sup> and registered in the Real Estate and Commercial Registry in Tela.<sup>84</sup> As a result of that document, the lands ancestrally occupied by the Garífuna Community of Triunfo de la Cruz that were included in the expansion of the inner core were henceforth regarded as urban lands (*ejido urbano*), administered by the Municipality of Tela.

106. The expansion of the Municipality's urban core was done without consulting the Community. On that, the President of the Community Council from 1990 to 1992 commented that:

The urban core of Tela was expanded by the Mayor's Office, headed by Mr. Inés Tinoco, during the Ancona del Hoyo Presidency. [...] When we [members of the Community Council] realized that that was the Mayor's intention, we objected, but it was too late, because the Municipal Decree expanding Tela's urban core had already been issued.<sup>85</sup>

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<sup>81</sup> Annex 18. Resolution 002 of the Honduran Tourism Institute, dated January 17, 1992. Annex 8 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>82</sup> Regarding the maps the IACHR has at its disposal, see Annex 16. Memorandum prepared by the Head of Land Registry and Measurement of the National Agrarian Institute, dated July 5, 2001. Application No. 57426 submitted to the National Agrarian Institute, pages 121 to 127. Annex B to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007. Regarding inclusion of the area allocated to the Community as communal land in the expansion of the urban core, see Annex 9. Expert Opinion DAT 018-98 provided by the Division of Legal Services of the Land Title Department of the National Agrarian Institute \_ dated January 22, 1998. File 2000-81 addressed to the National Agrarian Institute, pages 462 and 463. Annex 7 of the petitioner's writ dated May 23, 2006, received by the IACHR on May 30, 2006; Annex 19. Summary of the facts alleged in the complaint. Annex 44 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. As for information regarding the inclusion of the 126.40 hectares granted by the National Agrarian Institute in guarantee of occupancy, see Annex 20. Document titled "La Comunidad histórica del Triunfo de la Cruz fundada el 3 de mayo de 1524 lugar donde se encuentra el histórico Cerro Triunfo de la Cruz" [The historic Community of Triunfo de la Cruz, founded on May 3, 1524 where the historic Cerro Triunfo de la Cruz site is located], produced by the Land Defense Committee of Triunfo de la Cruz. Annex 12 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>83</sup> Annex 21. Notarized deed No. 9 dated January 30, 1992. Annex 9 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003; and Annex ? of the document containing the State's observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>84</sup> Annex 9. Memorandum of the Honduran Tourism Institute dated March 6, 1996. File 2000-81 with the National Agrarian Institute, pp. 243 to 247. Appendix 7 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>85</sup> Annex 4. Statements taken by the Principal Prosecutor in Tela. Annex 19 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Annex 20. Document produced by the Land Defense Committee of Triunfo de la Cruz titled "La Comunidad histórica del Triunfo de la Cruz fundada el 3 de mayo de 1524 lugar donde se encuentra el histórico Cerro Triunfo de la Cruz" [The historic Community of Triunfo de la Cruz, founded on May 3, 1524 where the historic Cerro Triunfo de la Cruz site is located]". Annex 12 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". p.78. Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. Annex 22. Communiqué of the Management Board of the Community dated April 10, 2007. Annex of the petitioner's written communication dated April 19, 2007, received on April 20, 2007.

107. The Commission notes, based on the information in the file, that by virtue of the expansion of its urban core and under its interpretation of Article 70 of the Municipalities Law,<sup>86</sup> the Municipality transferred plots pertaining to the ancestral territory of the Garífuna Community to private individuals.

**a) The Tela Municipality, IDETRISA, and the Marbella project**

108. Specifically, according to the information in the file with the IACHR, between August 1993 and July 1995, the Municipality of Tela sold off no fewer than forty-two point two (42.2) hectares of ancestral lands of the Triunfo de la Cruz Community,<sup>87</sup> that were primarily used to grow traditional Garífuna food crops.<sup>88</sup> Those sales were effected through forty notarized bills of sale totaling approximately nine hundred and eighty-five thousand, three hundred and eighty-five point five seven lempiras (L. 985,385.57) in favor of the Inversiones y Desarrollo el Triunfo S.A. de C.V. company (hereinafter “IDETRISA”) – directly and through its partners – with a view to that land being used to execute a tourism project called “Club Marbella.”<sup>89</sup> The information at the

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<sup>86</sup> Article 70, first and second paragraphs, Decree No. 018-90, no the Municipalities Law: Urban communal land real estate, private possession of which has not been legalized, is hereby transferred in full ownership to the municipalities who urban perimeter is already demarcated when this law enters into force. Without prejudice to the provisions of this Article, in the case of urban communal land real estate in the possession of private individuals who do not however have full ownership, the municipality may, at the request of those individuals, grant full ownership in return for a sum of money to be determined by the Municipality, which price shall not be less than ten percent (10%) of the most recent registered value or, failing that, of the real value of the real estate, exclusive, in both cases, of improvements made at the possessor's expense. In the case of urban properties located in marginalized areas, the value of the real estate shall be the price, which shall not be more than 10% of the Registry value of the real estate, exclusive of improvements made by the possessor. No one may purchase more than one lot of 500 square meters in marginalized areas. Excepted from the foregoing provisions are urban communal lands acquired by individuals or juristic persons through State or municipal concessions, which lands shall be transferred to the Municipality once the concession period expires. Municipalities Law, adopted through Decree No. 134-90 of November 19, 1990 and amended by Decree No. 125-2000 of October 6, 2000. Source: Judiciary of Honduras. Electronic Center for Judicial Documentation and Information - CEDIJ. Available at: <http://www.poderjudicial.gob.hn/institucional/organizacion/dependencias/cedij/Leyes/Documents/LEY%20DE%20MUNICIPALI%20DADES.pdf>.

<sup>87</sup> The area referred to does not include the area sold by the Municipality of Tela to El Triunfo Investments and Development Ltd in the amount of 708.07 lempiras given that the total area involved in the transaction is not indicated. Annex 9. Notarized deed 194 dated December, 7 1994. File 2000-81 with the National Agrarian Institute, pages 403-407. Appendix 7 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>88</sup> Annex 23. Complaint lodged with the Office of the Prosecutor for Ethnic Groups and Cultural Heritage of Honduras on September 17, 1994. Annex 16 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on “Case 12.548 –Garífuna community of Triunfo de la Cruz, Honduras”, 127<sup>th</sup> period of sessions. Expert appraisal by Edmund Taylor Gordon.

<sup>89</sup> Specifically, the information in the file with the IACHR indicates that IDETRISA, through its General Manager, Georges Andonie, purchased no less than 379,306.22 m<sup>2</sup>(three hundred and seventy-nine thousand three hundred and six point 22 square meters). [That area does not include the area sold by the Municipality of Tela to IDETRISA in the amount of 708.07 lempiras, because the total area involved in the transaction is not shown. Annex 9. Notarized deeds 129, 130, 131, 132, 133, 134, 135 and 136 of August 17, 1993; notarized deeds 151, 152, 153 and 154 of September 24, 1993; notarized deeds 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of February 15, 1994; notarized deed 80 of June 20, 1994; notarized deed 92 of July 7, 1994; notarized deeds 194, 195, 196, 197, 198, 199, 200 and 201 of December 7, 1994; and notarized deeds 71, 72, 73 and 74 of July 12, 1995. File 2000-81 with the National Agrarian Institute, pages 280-458. Annex 7 of the petitioner's writ dated May 23, 2006, received by the IACHR on May 30, 2006]; Commercial corporation Multiproyectos S. A. de C. V., through Georges Andonie acting in a semi-official capacity, bought 13,267.03 m<sup>2</sup> (thirteen thousand two hundred and sixty seven point zero three square meters [Annex 9. Notarized deed 139 of August 17, 1993. File 2000-81 with the National Agrarian Institute, pages 330-334. Annex 7 of the petitioner's writ dated May 23, 2006, received by the IACHR on May 30, 2006]; Georges Andonie, in his own capacity, purchased 9,132.32 m<sup>2</sup> (nine thousand one hundred and thirty-two point three two square meters) [Annex 9. Notarized deed granted to Georges Andoni, dated August 17, 1993. File 2000-81 with the National Agrarian Institute, pages 265-269]; Jorge Shibli Canahuati purchased 10,798.16 m<sup>2</sup> (ten thousand seven hundred and ninety-eight point one six square meters) [Annex 9. Notarized deed 138 granted to Jorge Shibli Canahuati on August 17, 1993. File 2000-81 with the National Agrarian Institute, pages 325-329. Annex 7 of the petitioner's writ dated May 23, 2006, received by the IACHR on May 30, 2006]; and Roberto Larach Chahin purchased 9,551.96 m<sup>2</sup> (nine thousand five hundred and fifty-one point nine six square meters) [Annex 9. Notarized deed

IACHR's disposal indicates, moreover, that 33 hectares of the land sold by the Municipality to IDETRISA overlapped with land that MACERICA alleged it owned in the proceedings brought by the Community before the INA in 1969 (see *above* IV.C.2)<sup>90</sup>.

109. At the same time, a series of harassments, threats, and acts of violence began against members of the Community, instigated by those who had acquired its ancestral lands in order to force them to leave the areas they had bought from the Municipality. Indeed, according to the information at the IACHR's disposal, heavy pressure was exerted to oblige members of the Community to surrender the community lands on which they worked in exchange for varying sums of money, ignoring their traditionally collective ownership of the land. Those who resisted were intimidated and threatened; there were even reprisals, such as the destruction of their crops, thereby lowering the Community's consumption of its traditional produce.<sup>91</sup> In a public hearing before the Inter-American Court, attended by representatives of the Honduran State, regarding the *Alfredo López v. Honduras*, the Garífuna leader, Gregoria Flores, gave the following description of the aforementioned violence:

Starting in the 1990s, a whole process of harassment began because, when the Municipality sold the land to the entrepreneurs, they needed to evict the Garífunas who were growing coconuts and cassava in the area. So they began to slash their plants and burn the coconut palms to frighten the members of the Community into leaving the area, saying that if they went they would get checks of 750 or 800 lempiras and that the land no longer belonged to the Community, but rather to the Municipal Mayor's office, so that if they did not accept the money, they would have to leave anyway. Those were the first threats the Community received.<sup>92</sup>

***i) Criminal proceedings before the Office of the Prosecutor for Ethnic Groups and Cultural Heritage of the Office of the Attorney General on account of illegal sales of land***

110. On September 17, 1994, the Committee for the Defense of the Land, CODETT, filed a complaint with the Office of the Prosecutor for Ethnic Groups and Cultural Heritage of the Office of the Attorney General (hereinafter "Office of the Prosecutor for Ethnic Groups") regarding sales conducted by the Municipality, in which it stated that:

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128 granted to Roberto Larach Chahin. File 2000-81 with the National Agrarian Institute, pages 270-274. Appendix 7 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>90</sup> Annex 10. "Analysis of the Garífuna Communities' Applications for Full Ownership" prepared by the Honduran Tourism Institute on April 23, 1996. Annex 24 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>91</sup> The complaint lodged by the Land Defense Committee of Triunfo de la Cruz (CODETT) regarding these acts states that: "Before the sale of arable land to the aforementioned businesses at the beginning of 1993, between 45 and 50 families benefited directly from farming activities, and, indirectly, the whole Community did. Since that land was sold, there is a shortage of cassava and its by-products, so its price has gone up. One should mention that cassava bread is the staple food in our culture. So we are severely affected [by the] local shortage [sic]." Annex 23. Complaint lodged with the Office of the Prosecutor for Ethnic Groups and Cultural Heritage of Honduras] on September 17, 1994. Annex 16 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>92</sup> Testimony of Gregoria Flores Martínez at the public hearing held before the Inter-American Court on June 28, 2005, in Case *Alfredo López v. Honduras*. Along the same lines, Beatriz Ramos Bernárdez, member of the community, stated in her testimony before the IACHR: "They arrived with the complicity of a persons who was working as a magistrate, a Garífuna of Triunfo de la Cruz, together with the Mayor. They went to the Community to intimidate the people, telling them that if they did not sell their land, it would be taken away from them without payment. Those who objected were told that they had to hand over their I.D. so that they could regularize the lot they were working on. Many fell for that trap and were surprised to find them coming to their homes at midnight to give them a handful of one-lempira notes totaling 200, 300, 500, or 1,000 lempiras and that was all the payment they made to many who had been working for years in the Community and their forebears before them. Those who objected had their cassava slashed and set fire to." IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 –Garífuna community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Testimony of Beatriz Ramos Bernárdez.

Our Committee considers that this sale of land was illegal because, although took part in the sale of land, the local authorities in Triunfo de la Cruz, did not inform the members of the Community about it, as was their duty. No assembly of the Community was held to study the sales plan or elicit its approval, contrary to custom, nor was the people told about the expansion of the urban core of Tela [sic]<sup>93</sup>.

111. According to the evidence provided, pursuant to that complaint, the Chief Public Prosecutor of Tela sent a memorandum to the Prosecutor for Ethnic Groups on December 15, 1994, informing him of the sales carried out by the Municipal Mayor's Office in Tela to IDETRISA.<sup>94</sup> In light of that memo, on December 16, 1994, the Prosecutor for Ethnic Groups asked the Chief Public Prosecutor in Tela, through Official Letter FEEPC-005/94, to conduct investigations.<sup>95</sup>

112. . On January 30, 1995, Alfredo López Álvarez, President of CODETT, and Gregoria Flores, wrote to the Prosecutor for Ethnic Groups of the Office of the Attorney General asking for information regarding the status of investigations "given that the Triunfo de la Cruz Community's problem had not been resolved." According to the information at the disposal of the IACHR, the Chief Public Prosecutor in Tela took statements from the municipal authorities involved in the illegal sales and from members of the Community between February 15 and April 18, 1995.<sup>96</sup>

113. On June 11, 1996, the Office of the Attorney General, through the Office of the Prosecutor for Ethnic Groups, instigated criminal proceedings under public law before the Sectional Court of First Instance in Tela charging the former Municipal Mayor of Tela, Orlando Díaz Madrid, nine municipal councilors during his time in office, and José Manuel Flores Arguelles, the then current Municipal Mayor of Tela, and 11 councilors in his period, with the crimes of misuse of authority, fraud, and aggravated fraud.<sup>97</sup> According to those charges, the crimes had been committed to the detriment of the "Public Administration, the Community of Triunfo de la Cruz, and private individuals," because they had involved issuing and implementing resolutions contrary to the

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<sup>93</sup> That same complaint contained a request for investigation into a second case of illegal sales by members of the Community of 38 manzanas in the south-east part of Triunfo de la Cruz to "David Zaccaro Morlachi." Annex 23. Complaint filed with the Public Prosecutor's Office for Ethnic Groups and Cultural Heritage on September 17, 1994. Annex 16 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Community leaders said they had received threats as a result of this complaint. - Annex 20. Document titled "La Comunidad histórica del Triunfo de la Cruz fundada el 3 de mayo de 1524 lugar donde se encuentra el histórico Cerro Triunfo de la Cruz" [The historic Community of Triunfo de la Cruz, founded on May 3, 1524 where the historic Cerro Triunfo de la Cruz site is located]" produced by the Land Defense Committee of Triunfo de la Cruz. Annex 12 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>94</sup> Annex 24. Memorandum from the Chief Prosecutor in Tela on the "Preliminary Report on Alleged Illegal Sales of Land of the Garífuna Community of Triunfo de la Cruz" dated December 15, 1994. Annex 17 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>95</sup> Annex 25. Official Letter FEEPC-005/94 from the Public Prosecutor's Office for Ethnic Groups and Cultural Heritage to the Chief Prosecutor in the Office of the Attorney General, dated December 16, 1994. Annex 17 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>96</sup> In particular, statements contained in the file made to the Chief Prosecutor in the Office of the Attorney General on the following dates and by the following people: - (i) Francisco Bernardez Estrada, President of the Management Board of the Triunfo de la Cruz Community in 1993, February 15, 1995; (ii) Margarito Rafael Colon Bermúdez, municipal councilman, February 15, 1995; (iii) Jorge Romero Romero, in his legal capacity as Acting Mayor chairing meetings in the absence of the mayor, April 18, 1995; (iv) Ambrosio Martínez, President of the Management Board of Triunfo de la Cruz between 1990 and 1992, February 22, 1995; (v) Jesús Álvarez Roche, Deputy Mayor of the Community of Triunfo de la Cruz, March 6, 1995; (vi) Orlando Díaz Madrid, Mayor of Tela, March 15, 1995; (vii) José Manuel Flores Arguelles, Mayor of Tela, April 6, 1995; (viii) Arístides Najjar Cruz, Head of the Municipal Land Registry Department in the Municipal Mayor's office in Tela, April 18, 1995. Annex 4. Statements taken by the Principal Prosecutor in Tela. Annex 19 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>97</sup> Annex 26. Criminal charges filed by the Public Prosecutor's Office for Ethnic Groups on June 11, 1996. Annex 25 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

laws in force, giving full ownership to private persons of land in the possession of the Community."<sup>98</sup>

114. At the request of the Prosecutor for Ethnic Groups, filed on October 10, 1996,<sup>99</sup> the Sectional Court of First Instance in Tela sent the Coordinator of the Criminal Investigation Bureau a note on October 15, 1996, ordering the arrest of the accused.<sup>100</sup> On October 16 and 17, 1996, the Sectional Court of First Instance in Tela issued incarceration orders against the accused solely for the crime of misuse of authority to the detriment of the Community.<sup>101</sup>

115. The Office of the Attorney General filed an appeal, dated October 30, 1996, against the incarceration orders issued by the aforementioned Court, requesting the arrest of the persons accused of "continuous crimes of misuse of authority, fraud, aggravated fraud, and forgery of public documents."<sup>102</sup> For their part, the accused filed a motion for appeal on the grounds that they considered that there was no circumstantial evidence of the commission of crime, "not even the crime of misusing authority."<sup>103</sup>

116. On March 3, 1997, the Court of Appeals in La Ceiba resolved not to admit the appeal filed by the Office of the Attorney General and revoked the incarceration orders issued against those accused of misuse of authority. In particular, the IACHR observes that the Court considered that that crime had not been committed, based on the following:

[T]here is no entry in it [referring to the Public Registry] from which evidence could be deduced that the sales carried out by the Municipality of Tela, to which this trial refers, affect in any way the lands protected in the respective deed [a reference to the full ownership title deed granted by the INA on October 29, 1993], or that the Garífuna Community as such has had legal preference for obtaining full ownership of the aforementioned real estate; and since that evidence is lacking, there is nothing that properly attests to the existence of the crime of misuse of authority in the manner stated in the accusation. For that reason, it must of necessity be concluded that the incarceration orders being appealed against were issued without conclusive evidence of a crime having been committed.<sup>104</sup>

117. Against that decision, on June 2, 1997, the Office of the Attorney General filed an *amparo* action with the Supreme Court of Justice for protection of a right guaranteed by the

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<sup>98</sup> Annex 26. Criminal charges filed by the Public Prosecutor's Office for Ethnic Groups on June 11, 1996. Annex 25 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>99</sup> Annex 27. Request for the issuance of arrest warrants by the Prosecutor in the Office of the Attorney General to the Sectional Court of First Instance in Tela dated October 10, 1996. Annex 30 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>100</sup> Annex 28. Communication between the Sectional Court of First Instance and the Coordinator of the Criminal Investigation Bureau dated October 15, 1996. Annex 32 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>101</sup> Annex 29. Motion for appeal against the incarceration order filed by the Office of the Attorney General on October 30, 1996. Annex 33 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>102</sup> Annex 29. Motion for appeal against the incarceration order filed by the Office of the Attorney General on October 30, 1996. Annex 33 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. According to the judgment ruling on the motion for appeal, representatives of MACERICA S. DE R. L also filed a motion for appeal as they considered that charges of misuse of authority, breach of officials' duties and fraud" should also be brought. Annex 30. Sentence by the Court of Appeals of La Ceiba of March 3, 1997. Annex 34 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>103</sup> Annex 30. Sentence by the Court of Appeals of La Ceiba of March 3, 1997. Annex 34 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>104</sup> Annex 30. Sentence by the Court of Appeals of La Ceiba of March 3, 1997. Annex 34 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

Constitution, which was ratified in a document dated September 16, 1997.<sup>105</sup> On June 4, 1997, the Supreme Court admitted the amparo action<sup>106</sup> and on December 4, 1997 that court denied it, considering that “when they availed themselves of the constitutional guarantees, the latter were not limited, restricted, or denied.” The Supreme Court likewise considered that:

[...] The judgment being appealed does not impair either the letter or the spirit of the Constitutional obligation of the State of Honduras to recognize, foster, and guarantee the existence of ownership in the broadest social function sense, because the conflict of interest was not decided by any judicial ruling, much less the one challenged, in favor of or against either of the parties to the dispute [...].<sup>107</sup>

118. On November 27, 1998, the Sectional Court of First Instance in Tela dismissed the proceedings against the staff and former staff of the Municipal Mayor’s Office in Tela, a ruling that was confirmed by the Court of Appeals in La Ceiba on April 30, 1999.<sup>108</sup>

***ii) Other actions conducted by the Community and its members, and subsequent events***

119. The Community of Triunfo de la Cruz also filed complaints with other authorities. On July 25, 2001, the Community Council filed a complaint with the National Human Rights Commissioner against the Mayor of the Municipality of Tela for misuse of authority. The Commissioner requested information on the situation from the Mayor referred to and the INA.<sup>109</sup> Likewise, in a communication dated November 30, 1998, the Community Council complained to the Attorney General about illegal sales of the Garífunas’ land and the uncertainty surrounding its territory, given “the lack of collective titling, expansion, and re-measurement that we have repeatedly requested from the relevant institutions to no avail.”<sup>110</sup>

120. Nevertheless, the IACHR has not been informed of actions undertaken by those authorities to effectively investigate the facts giving rise to the complaints and avert a recurrence of similar deeds. Rather, the information at the Commission’s disposal indicates that the municipal authorities took further actions that to this day prevent peaceful possession by the Community of this part of its ancestral territory, even after the IACHR granted precautionary measures on April 28, 2006.

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<sup>105</sup> That remedy alleged violation of Article 90 first paragraph, of the Constitution of Honduras –referring to the guarantee of Due Process - because, despite having ascertained sales by the Municipality to IDETRISA in an amount far higher than the legal maximum of 500 m<sup>2</sup> allowed for a person in “marginalized areas” - under Article 70 of the Municipalities Law - , the Court of Appeals of La Ceiba revoked the incarceration orders. Annex 31. The amparo action brought on June 2, 1997 and writ “formalizing the application for amparo” of September 16, 1997. Annex 35 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>106</sup> Annex 32. Certification of Minutes of Meeting No. 61 held by the Supreme Court on December 2, 1997. Annex E to the State’s writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>107</sup> Annex 32. Certification of Minutes of Meeting No. 61 held by the Supreme Court on December 2, 1997. Annex E to the State’s writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>108</sup> Annex 33. Certification of sentence of the Court of Appeals dated April 30, 1999. Annex 37 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>109</sup> Annex 34. Communication from the Honduran National Commission of Human Rights to the Mayor of the Municipality of Tela on August 1<sup>st</sup>, 2001. Annex 43 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>110</sup> Annex 35. Communication from the Pro-Improvement Community Council of Triunfo de la Cruz to the Attorney General on November 30, 1998. Annex 36 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

121. It is clear, based on the evidence presented, that on July 6, 2006, the Municipality of Tela approved the signing of a transaction with the IDETRISA and MACERICA to solve a dispute between the two companies regarding ownership of the area.<sup>111</sup> That transaction resulted in public deed No. 46 of August 17, 2006, which can be found in the file with the IACHR.<sup>112</sup> On October 4, 2006, the Municipality decided to render null and void the agreement under which it decided to sign the aforementioned contract.<sup>113</sup> Nevertheless, according to the information at the IACHR's disposal, on August 28, 2006, the contract was registered in the Real Estate and Commercial Registry in Tela, and on October 18, 2006, it was registered in the Register of Property, Mortgages, and Provisional Property Registration of the same Public Registry Office.<sup>114</sup>

122. Furthermore, the information at the IACHR's disposal indicates that construction work on the tourism project subsequently resumed.<sup>115</sup> Based on information provided by the petitioner and not contested by the State, the IACHR notes that construction is currently under way in this part of the Garifuna Community's ancestral territory. It also notes that the companies apparently conducting these works with the authorization of the Municipality of Tela, have allegedly closed access roads to the beach used by members of the Community, thereby preventing them from carrying out their traditional fishing activities.<sup>116</sup>

**a) The Tela Municipal Workers Trade Union**

123. At a meeting held on January 15, 1998, the Municipality of Tela decided to transfer to the Tela Municipality Employees and Workers Trade Union (hereinafter "Trade Union" or "Trade Union of the Municipality") 22.81 *manzanas* located in the territory claimed by the Community, with

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<sup>111</sup> Annex 36. Certification of Minutes No. 18 point 10 of the meeting held by the Municipality of Tela on September, 29 2006. Annex of the petitioner's written communication in the precautionary measures proceedings of September 14, 2011, received by the IACHR on October 3, 2011.

<sup>112</sup> Annex 37. Notarized deed No. 46 on "[s]ettlement of litigation, decision to invalidate the purchase of several real estate properties and annulment of the corresponding entries in the Registry, rectification of boundaries, award of part of a property to a litigant, pursuant to the arrangement and commitment to grant a gratuitous bailment contract" signed by Macerica, Idetrisa and the Municipality of Tela on August 17, 2006. Annex of the petitioner's written communication in the precautionary measures proceedings of September 14, 2011, received by the IACHR on October 3, 2011.

<sup>113</sup> Annex 36. Certification of Minutes No. 18 point 10 of the meeting held by the Municipality of Tela on September, 29 2006. Annex of the petitioner's written communication in the precautionary measures proceedings of September 14, 2011, received by the IACHR on October 3, 2011.

<sup>114</sup> Annex 37. Notarized deed No. 46 on "[s]ettlement of litigation, decision to invalidate the purchase of several real estate properties and annulment of the corresponding entries in the Registry, rectification of boundaries, award of part of a property to a litigant, pursuant to the arrangement and commitment to grant a gratuitous bailment contract" signed by Macerica, Idetrisa and the Municipality of Tela on August 17, 2006. Annex of the petitioner's written communication in the precautionary measures proceedings of September 14, 2011, received by the IACHR on October 3, 2011.

<sup>115</sup> Annex 38. Public complaint by the Management Board on February 12, 2007. Attached to the petitioner's written communication of August 16, 2007, received by the IACHR on August 17, 2007. IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 – Garifuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Testimony of Jerson Selvit Bénédict. Annex 39. Article titled "Desisten de juicios para reiniciar proyectos turísticos en puerto de Tela". [Lawsuits waived in order to resume tourism projects in the Port of Tela] Annex of the petitioner's written communication in the precautionary measures proceedings of August 13, 2006, received by the IACHR on August 22, 2006.

<sup>116</sup> Annex 40. Communiqué of the Management Board of the Community dated February 24, 2012. Annex to the petitioner's written communication dated March 9, 2012, received on the same date; Annex 41. Photographs of a poster which reads: "Beach access road. Authorized by the Municipality of Tela; ceded, set up, and financed by IDETRISA" and "Private property. Forbidden to use to access the beach." Annex of the petitioner's writ dated March 9, 2012, received on the same date; Press release titled "Construcción de muro en Triunfo de la Cruz viola medidas cautelares dictadas por la IACHR", [Construction of wall in Triunfo de la Cruz violates precautionary measures issued by the IACHR] August 2<sup>nd</sup>, 2011. With regard to that, the petitioner said: "In recent months, a perimeter wall is being built that is about 500 meters long by 300 meters. Bursts of heavy arms fire are often heard on the site." Petitioner's writ in the precautionary measures proceedings of August 5, 2011.

a view to executing a "general housing plan, as a social outreach project for all the employees and workers of this Municipality."<sup>117</sup> Said transfer was effected through notarized deed No. 33 of January 22, 1999.<sup>118</sup> Between October 2001 and August 2002, the trade union, for its part, proceeded to grant its members full ownership of various lots within that area, as shown by the notarized deeds in the file.<sup>119</sup>

124. The Community of Triunfo de la Cruz objected to this transfer and filed administrative and judicial actions aimed at recovering the land and obtaining an investigation into the facts. In particular, according to the State, on September 17, 1994 the Community filed a complaint with the Office of the Prosecutor for Ethnic Groups and the Attorney General's Office decided to close the case as it did not involve any criminal act, arguing as follows:

a. The resolution issued by the Municipality of Tela is not considered a crime, because the 22 *manzanas* of land are not included in the title deed granted to the Garífuna Community, making criminal action impossible.

b. The criminal act that the Attorney General's Office could prosecute is illegal appropriation of property, but that is not feasible because the Tela Municipal Workers Trade Union has title deeds over the contested property. [...] the petitioner should have pursued an action to recover property (*acción de dominio*) with the competent authority for civil law cases.<sup>120</sup>

125. Furthermore, based on information provided by the petitioners, on February 4 1998 Martín Morales Martínez, Deputy Mayor of the Community, filed a complaint for misuse of authority with the Criminal Investigation Bureau, in which he affirmed that the Municipality of Tela had brought machinery into the area without the Community's knowledge.<sup>121</sup> As regards the administrative actions filed by the Community, the following appear in the dossier with the IACHR:

***i) Expropriation proceedings with the INA***

126. On January 7, 2002, the Community asked the INA to encumber the 22.87 *manzanas* by means of expropriation.<sup>122</sup> In a ruling dated October 17, 2002, the INA's Regional Agrarian Office for the Atlantic Shore Zone resolved to suspend the proceedings because it considered that the area claimed by the Community had been transferred by notarized deed granted

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<sup>117</sup> Annex 42. Certification of Minutes No. 2 of the meetings held by the Municipality of Tela on January 15, 1998. Annex 60 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>118</sup> Annex 16. Notarized deed No. 33 dated January 22, 1999. File 57426 with the National Agrarian Institute, pp. 486 to 489. Appendix 8 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>119</sup> Annex 16. Notarized deeds granted by the President of the Trade Union of Tela to its members. File relating to application No. 57426 submitted to the National Agrarian Institute, pp. 219 - 460. Annex B to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>120</sup> Written communication containing the State's observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>121</sup> Specifically, he stated that: "on January 23, [1998] the Municipality brought in a machine to work on a piece of land belonging to the Garífuna community in that sector, without consulting with the community authorities. Apparently, they intend to make a settlement there. We wanted to talk to the Mayor but couldn't. And we have legitimate papers showing that this land belongs to us. Little by little, with actions like these. they are going to leave us with very little land. That is not fair." Annex 43. Complaint made by Martín Morales Martínez on January 23, 1998. Annex 61 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>122</sup> Annex 16. Request for appropriation of 22 *manzanas* via expropriation in favor of the Triunfo de la Cruz community, dated January 7, 2002. File relating to application No. 57426 with the National Agrarian Institute, pp. 162 - 163. Annex B to the State's writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

by the Mayor to the Trade Union and for that reason it decided that it was up to “the Community in question to exhaust administrative, and where appropriate judicial, proceedings in order to obtain annulment of the aforementioned notarized deed.”<sup>123</sup>

127. However, the information at the IACHR’s disposal indicates that the proceedings continued because, on November 5, 2002, the President of the Trade Union filed an objection to the Community’s request,<sup>124</sup> which was declared inadmissible on November 5, 2002. Subsequently, in Legal Opinion No. 47/03 of July 14, 2003, the INA’s Head of Legal Services and Land Appropriation recommended admitting the request for expropriation, based on ILO Convention No. 169 and Article 346 of the Constitution.<sup>125</sup> On July 15, 2003, the above-mentioned Regional Office of the INA authorized the start of appropriation proceedings,<sup>126</sup> and consequently dispatched requests for information regarding the legal status of the property to Tela Municipal Mayor’s Office, the Real Estate and Commercial Registry Office in Tela, the Head of Regional Taxation in the Office of the Executive Director of Revenue, and the Department of Collections and Revenue.<sup>127</sup>

128. Regarding subsequent actions, the State affirmed that on December 7, 2007, the INA issued an expropriation resolution on behalf of the Community of Triunfo de la Cruz. However, that resolution was not submitted for the proceedings with the IACHR.<sup>128</sup>

***ii) Administrative proceeding for annulment before the Municipality of Tela***

129. On September 6, 2002, the President of the Community Council filed an administrative claim with the Municipality of Tela for annulment of the decision by which the Municipality granted the 22 *manzanas* of land to the Trade Union.<sup>129</sup> The IACHR notes that, in that complaint, reference was made to ancestral possession by the Community of Triunfo de la Cruz and to the culturally different nature of the Community given that it “has its own way of life, language, customs, and culture.” Also mentioned was consideration of the obligations undertaken by the State of Honduras when it ratified ILO Convention No. 169.<sup>130</sup>

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<sup>123</sup> Annex 16. Ruling of the Agrarian Regional Office for the Atlantic Shore area of the National Agrarian Institute on October 17, 2002. File relating to application No. 57426 submitted to the National Agrarian Institute, page 200. Annex B to the State’s writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>124</sup> Annex 44. Written statement of opposition from the Trade Union of Employees and Workers of the Municipality of Tela dated November 4, 2002. File relating to application No. 57426 submitted to the National Agrarian Institute, pp. 201 - 204. Annex B containing the State’s observations on the merits dated March 8, 2007, received by the IACHR on March 9, 2007 and Annex 6 on the State’s initial response dated March 25, 2004, received on March 31, 2004.

<sup>125</sup> Annex 45. Expert opinion No. 47/03 provided by the head of the Legal Services and Land Appropriation of the National Agrarian Institute on July 14, 2003. Annex 14 of the petitioner’s written communication dated May 23, 2006, received by the IACHR on May 30, 2006; and file relating to application No. 57426 with the the National Agrarian Institute, page 490. Annex B to the State’s writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>126</sup> Annex 16. Ruling of July 15, 2003. File relating to application No. 57426 submitted to the National Agrarian Institute, page 491. Annex B to the State’s writ containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>127</sup> Annex 16. File relating to application No. 57426 submitted to the National Agrarian Institute, pp. 492 - 513. Annex B containing the State’s observations on the merits dated March 8, 2007, received by the IACHR on March 9, 2007 and Annex 6 on the State’s initial response dated March 25, 2004, received on March 31, 2004.

<sup>128</sup> Written communication of the State dated January 4, 2008, received by the IACHR on January 7, 2008.

<sup>129</sup> Annex 46. Administrative claim for a declaration of annulment dated September 5, 2002. Annex 74 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>130</sup> Annex 46. Administrative claim for a declaration of annulment dated September 5, 2002. Annex 74 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

130. According to information in the file with the IACHR, on December 11, 2006, the Office of the Attorney General of the Republic issued an opinion in favor of the requested declaration of annulment.<sup>131</sup> The IACHR was not informed that this process had effectively ended. On the contrary, according to the petitioner, despite the Attorney General's favorable opinion, the Municipality did not proceed to declare the decision null and void, an assertion the State did not contest.<sup>132</sup>

131. In addition, the IACHR notes that the INA expressly recognized the Community's ancestral ownership of the 22 *manzanas*, as attested by the "Special Act" signed on September 19, 2001 with authorities of Triunfo de la Cruz and Garífuna Organizations,<sup>133</sup> a recognition of which the Tela Municipality and the Workers Trade Union were notified.<sup>134</sup> The IACHR further observes that both the INA<sup>135</sup> and the Municipal Mayor's Office<sup>136</sup> undertook to take steps to help the Community recover the 22 *manzanas*. Likewise, on September 28, 2006, OFRANEH, representing the Garífuna Communities in Honduras, and Government authorities, signed a "memorandum of understanding" which, with respect to the Triunfo de la Cruz Community, reads as follows:

1.) Compliance with the Precautionary Measures in Triunfo de la Cruz, above all with regard to annulment of the Municipality's decision granting the 22 *manzanas* to its workers. After having listened to the representatives of the Office of the Attorney General and the Deputy Attorney General of the Republic regarding this matter, the Government undertook, through the INA, to provide technical legal assistance for the annulment of the decision by the Municipality of Tela with respect to the 22 *manzanas* granted to that Municipality's trade union and for the judicial action for annulment of that deed, which must be instigated by no later than Monday, October 1 of this year  
[...]

OFRANEH requests that consideration be given to all the irregularities committed by the Mayor's Office so that it can be penalized for misuse of authority.

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<sup>131</sup> Annex 47. Opinion provided by the Attorney General's Office on December 11, 2006, relating to file No. 10112006-65. Petitioner's written communication of August 16, 2007, received by the IACHR on August 17, 2007.

<sup>132</sup> Furthermore, the IACHR observes that in its written communication of February 4, 2008, the State asserted that the Municipality of Tela had not ruled on the administrative claim submitted to it. Written communication of the State dated January 4, 2008, received by the IACHR on January 7, 2008. For further information, see the petitioner's written communication of January 4, 2011, received on January 11, 2011.

<sup>133</sup> As indicated in point 1 of the "Special Act" signed on September 19, 2001 by the Minister-Director of the National Agrarian Institute, the Management Board of the Community, the Fraternal Black Organization of Honduras and the Land Defense Committee of Triunfo de la Cruz, "in the framework of ILO Convention No. 169, the National Agrarian Institute recognizes the ancestral property of Garífuna Community of Triunfo de la Cruz in Lot A1 (which includes the 22 *manzanas* claimed by the Trade Union of the Municipality of Tela and requested in expansion by the Community)". Annex 48. Special Act signed by the National Agrarian Institute on September 19, 2001. Annex 68 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003; and Application No. 57426 submitted to the National Agrarian Institute, pages 156 and 157. Annex B to the State's written communication containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007.

<sup>134</sup> Annex 49. Communication addressed from the National Agrarian Institute to the Trade Union of Workers of the Municipality of Tela on July 15, 2002. Annex 69 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003]. Similar Communications was addressed to the Mayor of the Municipality on July 17, 2002. Annex 50. Communication from the National Agrarian Institute to the Mayor of the Municipality on July 16, 2002, received on July 17, 2002. Annex 70 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003].

<sup>135</sup> Annex 48. Special Act signed by the National Agrarian Institute on September 19, 2001. Annex 68 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003; and Application No. 57426 addressed to the National Agrarian Institute, pages 156 and 157. Annex B containing observations of the petitioner on the merits by the State dated March 8, 2007, received by the IACHR on March 9, 2007]. Annex 51. Point 1 of the Special Act signed by the Minister-Director of the National Agrarian Institute on July 9, 2003. Annex 78 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>136</sup> Annex 52. Memorandum of Commitment signed by the Municipal Mayor's Office in Tela. Annex 73 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

On the subject of security in connection with the precautionary measures imposed by the Inter-American Commission on Human Rights, it was agreed that the Under-Secretary for Security and representatives of the Garífuna Communities would hold a meeting to decide on mechanisms for complying with said measures [...].<sup>137</sup>

132. Notwithstanding the above, according to information at the IACHR's disposal, as of the date of this report, the Community of Triunfo de la Cruz and its members do not have peaceable possession of the 22 *manzanas*.

**iii) Complaints of harassment and threats against leaders and members of the Community related to its claim to the 22 manzanas**

133. The actions taken by the Community in defense of its ancestral lands led people connected with the Trade Union to engage in constant threats, harassment, and acts of violence against Garífuna Community members, authorities, and leaders. This situation was described by José Angel Castro, President of the Community Council from 2005 to 2007, as follows, in testimony given to the IACHR:

The members of the Municipal Trade Union go and wreak havoc in the 22 *manzanas*. They cut down anything they find, threaten the leaders and other people they find there, and the children have to run and look for their parents on the beach, which is where they normally work. We go and complain to the Prosecutor's Office in Tela and they never come to help us.

<sup>138</sup>

134. According to the information at the IACHR's disposal, several members and leaders of the Community lodged complaints with the Attorney General's Office and sent messages to government authorities regarding acts of violence related to the dispute over the 22 *manzanas*. Indeed, on June 22, 2000, Raymundo Domínguez filed a complaint with the Criminal Investigation Bureau (*Dirección General de Investigación Criminal*, hereinafter "D.G.I.C.") regarding "death threats and threats to harm him" from members of the Trade Union.<sup>139</sup> On May 23, 2000, the Community Council wrote to the President of the Supreme Court of Justice to notify him of further acts of violence.<sup>140</sup> Likewise, on March 26, 2001, Gregoria Flores Martínez, acting in her capacity as Coordinator General of OFRANEH, lodged a complaint with the Office of the Attorney General regarding "harassment, threats to leaders, and an eviction order."<sup>141</sup> On that occasion, she explicitly asked the Office of the Attorney General:

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<sup>137</sup> Annex 53. Memorandum of Understanding between the Fraternal Black Organization of Honduras and the authorities of the Honduran Government, dated September 28, 2006. Annex of the petitioner's written communication dated October 16, 2006, received by the IACHR on October 31, 2006.

<sup>138</sup> IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 –Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Testimony of José Ángel Castro.

<sup>139</sup> Specifically, he complained that on June 18, 2000, members of the Trade Union attempted to evict them, threatening them with "machetes and pistols." He added that, because the Community resisted, "they destroyed the plantations and the huts built by members of the Community. It was the third time they had done this." Annex 54. Complaint dated June 22, 2000 lodged by Raymundo Domínguez. Annex 64 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>140</sup> Specifically, they said they were surprised by the execution of "an eviction order, arrest warrant, the burning down of the huts. They slashed the crops and threatened to kill us in our own Community." Annex 55. Letter from the Management Board to the President of the Supreme Court of Justice dated May 23, 2000. Annex 45 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>141</sup> In particular, she alleged that "ever since the community began recovering its land [a reference to the 22 *manzanas*] there was a campaign to harass and persecute the community leaders. In addition, the municipality has made several attempts to evict the Community from the 22 *manzanas* area. Annex 56. Complaint dated March 22, 2001, presented by OFRANEH on March 26, 2001. Annex 45 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

To guarantee the safety and physical and psychological integrity of the leaders and managers of the Triunfo de la Cruz Community [...], to stop the attempts at eviction and the harassment by the Municipality of Tela of our Garffuna brothers and sisters in Triunfo de la Cruz, because they are protected in their historical and legal right to recover the land that historically belongs to them [...]. We hold the Municipality of Tela responsible for any physical, moral and psychological harm suffered by the leaders and Community of Triunfo resulting from an eviction.<sup>142</sup>

135. According to a public complaint by the Community Council, on May 27, 2006, armed members of the Trade Union arrived in the area of the 22 *manzanas*, threatening to burn down homes and the Community meeting hall. The same document states that the Prosecutor's Office had not patrolled the area for the previous two years.<sup>143</sup> Regarding these occurrences, the State asserted in August 2007 that a complaint had been lodged with the D.G.I.C. However, it did not subsequently inform the IACHR of the results of the investigation.<sup>144</sup> As the incidents continued, on May 28, 2007 Alfredo López Álvarez complained to the D.G.I.C. that the day before people connected with the Municipal Trade Union had entered the area and destroyed the crops.<sup>145</sup>

136. Despite the numerous complaints lodged and the gravity of the acts denounced, the IACHR was not informed of any actions undertaken to throw light on what had happened and, where applicable, punish those responsible. On the contrary, there is a note in the file with the IACHR from the Council to the Prosecutor General, dated May 14, 2009, which asserts "the Government's failure to administer justice through the D.G.I.C., the Office of the Public Prosecutor, the Office of the Prosecutor for Ethnic Groups, and the authorities responsible for investigation, to follow up on and address the complaints."<sup>146</sup>

### c) The "El Esfuerzo" Peasant Cooperative Association

137. On November 6, 1986, the Community of Triunfo de la Cruz proposed to the INA that twenty-five (25) *manzanas* that formed part of the 126.40 hectares granted to the Community in 1979 under guarantee of occupancy be surrendered to the "El Esfuerzo" cooperative comprise of low-income women members of the same Community. In accepting the proposal, on April 20,

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<sup>142</sup> Annex 56. Complaint of March 22, 2001 presented by the Fraternal Black Organization of Honduras on March 26, 2001. Annex 45 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>143</sup> Annex 57. Public Complaint by the Management Board of the Community on May 30, 2006. Attached to the petitioner's written communication dated June 21, 2006, received by the IACHR on June 23, 2006.

<sup>144</sup> Written communication of the State dated August 16, 2007, received by the IACHR on August 17, 2007.

<sup>145</sup> Annex 58. Complaint to the DGIC [Honduran Criminal Investigation Bureau] for damage to property perpetrated on May 28, 2007. Annex of the petitioner's written communication dated May 30, 2007, received by the IACHR on the same date. The public complaint lodged by the Council concerning these incidents states that on May 27, 2007 approximately 20 members of the Municipal Trade Union "broke into the 22 *manzanas* area to destroy fences and the crops that families had sown with great effort, and threatened to kill those working there as well as the leaders who came to see what damage had been done, so that there was a fierce clash between the two sides, while the police just came to gather signatures so that they could report that they were providing security, when the fact is that they were conspicuously absent when they were most needed. The police do not patrol the area in dispute, despite a commitment to do so entered into with the Attorney General's Office, precisely to prevent members of the aforementioned Trade Union breaking into the area in question." Annex 59. Public Complaint by the Management Board of the Community on May 28, 2007. Annex of the petitioner's written communication dated May 30, 2007, received by the IACHR on the same date.

<sup>146</sup> Annex 60. Letter from the Management Board of the Community to the Attorney General dated May 14, 2009. Annex of the petitioner's written communication dated June 2<sup>nd</sup>, 2009, received by the IACHR on June 3<sup>rd</sup>, 2009.

1987, the INA gave the cooperative possession of the 25 *manzanas*,<sup>147</sup> and certified that fact with a “Provisional Possession Certificate” issued on May 18, 1987.<sup>148</sup>

138. From that time on, the women in the cooperative used the area to grow such products as cassava, rice, corn, and coconuts, to feed their families. On February 28, 1996, the group of women formally constituted themselves as a peasant cooperative association called “El Esfuerzo,” pursuant to the Agrarian Reform Law and the Peasant Cooperative Association Statute, contained in Decree Law No. 170 of December 30, 1974 and Decision No. 121 of February 24, 1976.<sup>149</sup>

139. As a result of the expansion of the urban perimeter of the Municipality of Tela, at the beginning of 2001, the aforementioned land was claimed by a private individual, who proceeded to sell it to third parties.<sup>150</sup> The women members of the cooperative complained, through the Community authorities, that their crops had been destroyed by being burned down and by cattle that had been let onto the area they used for sowing, and that they had been harassed by persons alleging that they owned the 25 *manzanas*. On February 18, 2002, Ramón Edgardo Benedit Cayetano, President of the Community Council, specifically denounced these incidents to the D.G.I.C.<sup>151</sup> According to the information at the IACHR’s disposal, in February and March 2002, the Office of the Prosecutor for Ethnic Groups took statements from the women in the cooperative and other members of the Community.<sup>152</sup> Subsequently, on February 27, 2003, Mario Valerio, acting in his capacity as President of the Community, complained to the Coordinator of Prosecutors in the Attorney General’s Office in Tela about the destruction of crops carried out on February 24, 2003.<sup>153</sup> In addition, according to a public complaint lodged on May 24, 2003, third parties had threatened members of the Community Council and CODETT on May 13, 2003 because of their defense of the 25 *manzanas*.<sup>154</sup>

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<sup>147</sup> Annex 61. Certificate issued by the National Agrarian Institute on October 6, 1988. Annex 50 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>148</sup> The aforementioned certificate states that possession was granted to the “El Esfuerzo” Peasant Cooperative Association group as a “beneficiary of the Agrarian Reform [...] with notice that the land may not be sold, transferred, encumbered, or mortgaged.” According to the provisional possession certificate in the file with the IACHR the 25 *manzanas* had the following boundaries: “TO THE NORTH: with the road to the River Plátano sandbank; TO THE SOUTH: Land of the Garifuna Community of Triunfo de la Cruz; TO THE EAST: Euracia Bonilla and TO THE WEST: with Catarino Alvarez”. Annex 62. Certificate of Provisional Possession issued by the National Agrarian Institute on May 18, 1987. Annex 49 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>149</sup> Annex 63. Certificate of incorporation of the “El Esfuerzo” Peasant Cooperative Association, dated July 31, 1996. Annex 51 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>150</sup> According to the information at the IACHR’s disposal, Efraín Saravia sold part of the 25 *manzanas* to Fernando Azcona, Governor of the Department of Atlántida, and Cristina Isabel Morales, who lodged a complaint for the crime of encroachment against the women’s cooperative. Initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Annex 64. Public complaint by the Management Board of the Community and the Land Defense Committee of Triunfo de la Cruz on February 18, 2002. Annex 52 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003; and Annex 65. Declarations before the Public Prosecutor’s Office for Ethnic Groups. Annex 54 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>151</sup> Annex 66. Complaint 219-2002 filed on February 18, 2002 before the Criminal Investigation Bureau. Annex 53 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. On this, see also Annex 64. Public announcement by the Management Board of the Community and the Land Defense Committee of Triunfo de la Cruz on February 18, 2002. Annex 52 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>152</sup> Annex 65. Declarations before the Public Prosecutor’s Office for Ethnic Groups. Annex 54 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>153</sup> Annex 67. Complaint lodged with the Public Prosecutor’s Office of Tela dated February 27, 2003. Annex 56 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>154</sup> Specifically, it is asserted that these individuals threatened Secundino Torres, President of the Land Defense Committee of Triunfo de la Cruz and Vice-President of the Management Board; Edgardo Benedit, former President of the Management Board and Vice-President of the Land Defense Committee of Triunfo de la Cruz; as well as Teresa Reyes and

140. On May 16, 2003, an agreement was signed between the private individuals interested in the land, the Community Council. CODETT, OFRANEH, and the “El Esfuerzo” cooperative, in which it was agreed that the land claimed would be “peacefully split among the parties” and that out of prudence a commission would be formed to demarcate the land in dispute.<sup>155</sup> However, according to the information at the IACHR’s disposal, the conflicts over the 25 *manzanas* continued, because, judging by the evidence submitted, on May 4, 2009, Alfredo López Álvarez denounced the sale of that land by unauthorized persons. At the same time he asserted that on April 28, 2009, six armed men had arrived to measure them.<sup>156</sup> Those same incidents were denounced by the Council to the Prosecutor General on May 14, 2009.<sup>157</sup>

141. From the foregoing paragraphs, the IACHR concludes that the Community of Triunfo de la Cruz and its members are engaged in numerous land disputes with third parties and national and local authorities that, as of now, have not been resolved, even though many years have elapsed. Apart from those already mentioned, the information provided by the parties indicates that there are several more disputes triggered by sales of the Community’s ancestral lands, such as Cerro Triunfo de la Cruz.<sup>158</sup>

142. At the same time, the IACHR notes that, as a result, one of the biggest problems facing the Community today is the presence on its ancestral lands of numerous *ladinos* and non-Garifunas, even in the areas granted to it in full ownership. The IACHR file contains a series of reports issued by Honduran Government authorities documenting occupation by third parties of the

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Valentina Álvarez, both members of the Land Defense Committee of Triunfo de la Cruz. Annex 68. Public complaint of May 24, 2003. Annex 57 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>155</sup> Annex 69. “Agreements and Resolutions of the General Assembly” dated May 16, 2003. Annex 58 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>156</sup> Annex 70. Complaint 532-09 lodged on May 4, 2002 with the Criminal Investigation Bureau. Annex of the petitioner’s written communication dated May 12, 2009, received by the IACHR on the same date.

<sup>157</sup> Specifically, he asserted that “heavily armed individuals from outside the Community came to make topographical measurement and notifications regarding the El Esfuerzo cooperatives 25 *manzanas* of land. This began on Tuesday, April 28 and is still going on, approved by a parallel Council imposed by the Municipality of Tela, headed by Mr. [BM][sic]”. Annex 60. Letter from the Management Board of the Community to the Attorney General dated May 14, 2009. Annex of the petitioner’s written communication dated June 2<sup>nd</sup>, 2009, received by the IACHR on June 3<sup>rd</sup>, 2009.

<sup>158</sup> According to information provided by the petitioner, Cerro Triunfo de la Cruz was acquired by the Maloff brothers, who “are excavating the hill that we regard as a national monument of the Garífuna Communities.” [Annex 20. Document entitled “La Comunidad histórica del Triunfo de la Cruz fundada el 3 de mayo de 1524 lugar donde se encuentra el histórico Cerro Triunfo de la Cruz” [The historical community of Triunfo de la Cruz, founded on May 3, 1524, where the historic Triunfo de la Cruz hill is located], produced by the Land Defense Committee of Triunfo de la Cruz. Annex 12 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003; and Annex 71. Communiqué of the Land Defense Committee of Triunfo de la Cruz dated July 26, 1994. Appendix 26 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006. According to the information at the IACHR’s disposal, on October 15, 1992 the Municipality of Tela sold 4.10 *manzanas* of land claimed by the Community to a private person. [Annex 72. Record of Certificate No. 23 point 4 issued by the Municipality of Tela on October 15, 1992. Annexes of the State presented on October 20, 2010. Annex 73. Official Letter No. D-DNIC-015-2010 of the Office of the Director of the Criminal Investigation Bureau of the Secretariat of Security dated January 21, 2010. Annex to the written communication of the State in the precautionary measures proceedings of July 2<sup>nd</sup>, 2010, received by the IACHR on July 8, 2010]. The IACHR file also contains memorandum FEEPC-37/99 of July 8, 1999, sent by Edith Rodríguez Valle, Chief Prosecutor at the Attorney General’s Office, to Gilberto Sánchez, Public Prosecutor for Ethnic Groups and Cultural Heritage of Honduras, stating that “members of the Municipality of the Town of Tela, taking advantage of the expansion of the urban core of the Garífuna Community of Triunfo de la Cruz have issued titles to a number of individuals, including municipal employees and officials, within the full ownership area that the National Agrarian Institute granted to the black people (*sic*) as communal land, wherefore and for the sake of coordinated unity in government actions, it is requested that these facts be investigated. [Annex 74. Memorandum FEEPC-37/99 of July 8, 1999]. The IACHR does not concur with the term used by the author of this quotation.

territory of the Community of Triunfo de la Cruz, such as INA reports<sup>159</sup> and documents drawn up by the IHT.<sup>160</sup>

143. The IACHR notes in particular that the report to the Regional Head of the Atlantic Shore Department of the INA, dated July 26, 2001, states that in the area for which title had been issued to the Community there were 187 mestizo or non-Garifuna people, of whom “37 possessed a deed of sale [...], 3 had title deeds [...], 10 had full ownership documents, 1 had a substitute title, 17 had received donations.” The report even noted that “there are people who have plots but do not live in the area” and “there are persons with more than one plot.”<sup>161</sup> According to the evidence in the file, on more than one occasion government authorities had expressly undertaken to regularize the Community’s ancestral lands,<sup>162</sup> in spite of which the IACHR has not been notified that such a regularization has been carried out.

144. The above resulted in a situation of permanent conflict triggered by third parties interested in the Community’s land and characterized by constant threats, harassment, and acts of violence. According to the information at the IACHR’s disposal, third parties who had purchased lots in Garifuna ancestral lands even filed complaints for illegal appropriation or other crimes that led to arrest warrants being issued and executed against members of the Community<sup>163</sup>

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<sup>159</sup> Annex 5. Report produced by the Head of Land Registry and Measurement for the Head of the Agrarian Registry Office of the National Agrarian Institute. Application File No. 10357 with the National Agrarian Institute, pages 367 to 371. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006. Annex 5. Report produced by José Joel Vasquez, expert in business re-engineering in the Tela sector for the Regional Head of the National Agrarian Institute’s Atlantic Shore Division on July 26, 2001. Application File No. 10357 with the National Agrarian Institute, pages 483 to 500. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006. Annex 75. Memorandum from the Head of the Agrarian Registry to the Head of Land Registry and Measurement of the National Agrarian Institute dated September 12, 2000. Annex 46 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Annex 16. List of private individuals in the Triunfo de la Cruz Community. File 57426 with the National Agrarian Institute, pp. 333 to 345. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>160</sup> The IHT ascertained “occupancy by mestizo [*ladinos*] and foreigners who have built fully equipped beach houses, with swimming pools.” Annex 10. “Analysis of the Garifuna Communities’ Applications for Full Ownership” prepared by the Honduran Tourism Institute on April 23, 1996. Annex 24 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>161</sup> Annex 5. Report sent by José Joel Vasquez, expert in business re-engineering in the Tela sector, to the Regional Head of the National Agrarian Institute’s Atlantic Shore Division on July 26, 2001. Application File No. 10357 with the National Agrarian Institute, pp. 483 to 500. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>162</sup> Annex 129. Certificate of commitments signed by the Public Prosecutor’s Office for Ethnic Groups and Cultural Heritage of Honduras and the Garifuna People through the Fraternal Black Organization of Honduras on September 19, 2001, in which it undertakes to assist the Community Council of Triunfo de la Cruz in the “land titling, regularization, and expansion proceedings” before the National Agrarian Institute. Annex 48. Special Act signed with the National Agrarian Institute dated September 19, 2001. Annex 68 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003; and Application No. 57426 presented before the National Agrarian Institute, pp. 156 to 157. Annex B to the State’s written communication containing its observations on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007. Annex 51. Item 2 of the Special Act signed by the Minister Director of the National Agrarian Institute on July 9, 2003. Annex 78 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003].

<sup>163</sup> Pursuant to a complaint for encroachment filed by a person who bought a lot within the 22 *manzanas* from the Municipal Trade Union, on February 15, 2008 two members of the Community were arrested and freed the following day. [Annex 76. Order to release a detainee issued by the Prosecutor’s Office in Tela on February 16, 2008. Written communication of the petitioner dated March 25, 2008, received by the IACHR on the same date]. The Judge of the Sectional Court of First Instance in Tela stated that “There is a file numbered 3398, which refers to the dispute in question [a reference to the 22 *manzanas*]. However, given that what it instituted was a criminal action (for the crime of encroachment), yet from the investigation it transpired that the dispute could not be resolved in criminal proceedings, this court revoked the incarceration order issued against some of the accused and lifted the arrest warrants issued against others. In this case, the accused were inhabitants of Triunfo de la Cruz, in whose regard it is incumbent upon this court to dismiss the case against them and to issue the order for their release, together with an explanation that no further arrest warrants will be issued against them in relation to this case No. 3398, nor will they be evicted.” [Annex 77. Communiqué of the Judge of the Sectional Court of First Instance in Tela. Annex 71 of the initial petition dated October 27, 2003, received by the IACHR on

145. Based on information in the file, the IACHR further observes that the Community repeatedly wrote to government authorities asking for an end to sales of its ancestral lands and to the registration of such transactions in the public Registry, as well as for regularization of its lands.<sup>164</sup> It is also documented that, on June 9, 2006, after the IACHR had granted precautionary measures, the Departmental Governor of Atlántida expressly requested the Mayor of Tela – at the behest of the Secretary of State for the Interior and Justice, following a request to him from the Deputy Attorney General of the Republic – to “refrain from granting full ownership rights to the aforementioned Community’s land until the inter-American human rights system reached a final decision.”<sup>165</sup> It is further documented that, on December 4, 2007, an entry was made in the Real Estate Register “banning acts and contracts as a precautionary measure granted by the Inter-American Commission on Human Rights.”<sup>166</sup> Despite that, as the IACHR noted above, acts continued to be performed that affected peaceable possession of the ancestral lands of the Community of Triunfo de la Cruz (see above paragraphs 121, 122, 135, 136, and 140).<sup>167</sup>

146. The IACHR notes that the conflicts and theft of the Community’s ancestral territory have had a detrimental effect on the traditional life style of the Garífunas of Triunfo de la Cruz, as well as on the highest traditional expressions of its culture. According to information provided by the parties, “cassava bread can no longer be produced as easily as before for lack of land on which

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October 29, 2003]. Along the same lines, see the written communication containing observations of the State on the merits, dated March 8, 2007, received by the IACHR on March 9, 2007; Annex 56. Complaint dated March 22, 2001 lodged by the Fraternal Black Organization of Honduras on March 26, 2001. Annex 45 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003; Annex 78. Official letter FEEPC-58-02 from the Public Prosecutor’s Office for Ethnic Groups and Cultural Heritage of Honduras to the Public Prosecutor of the Public Prosecutor’s Office of Tela, dated February 26, 2002. Annex 80 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003; Annex 79. Complaint 708-09 presented to the Criminal Investigation Bureau. Annexes of the State presented on October 20, 2010 and written communication of the State in the precautionary measures proceedings dated July 2<sup>nd</sup>, 2010, received by the IACHR on July 8, 2010.

<sup>164</sup> Annex 80. Communication from the Management Board of the Community to the Land Registry of Tela on June 8, 1998. Annex 81 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Annex 81. Pronouncement by the Land Defense Committee of Triunfo de la Cruz dated June 7, 1995. Annex 21 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Likewise, on June 26, 2000 the National Agrarian Institute requested the Municipal Mayor of Tela to: “[...] refrain from taking any actions relating to the distribution of these lands until measurement thereof is completed, their true legal status is ascertained, and an agreement is then reached between this Institute and the Municipality.” Annex 82. Communication from the National Agrarian Institute to the Municipal Mayor of Tela on June 26, 2000. Annex 65 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>165</sup> Annex 83. Official letter No. 10/2006 from the Assistant Attorney General of the Republic to the Ministry of the Interior and Justice dated May 9, 2006; Official letter No. 113-DSM from the Ministry of the Interior and Justice to the Governor of the Department of Atlántida dated June 6, 2006; Letter from the Governor of the Department of Atlántida to the Municipal Mayor of Tela dated June 9, 2006. Annexes of the Writ of the State presented on October 20, 2010. Annex 84. Communication by the Public Prosecutor’s Office for Ethnic Groups and Cultural Heritage of Honduras to the Mayor of Tela on August 10, 2010. Annex of the Writ of the State on October 1<sup>st</sup>, 2010, received by the IACHR on October 8, 2010.

<sup>166</sup> Annex 85. Certification of entry No. 394, volume 23 of the Property Registry on May 28, 2009. Annexes presented by the State on October 20, 2010.

<sup>167</sup> Jerson Selvit Benedit López in the testimony provided at the hearing before the IACHR, stated that, after precautionary measures had been granted, on January 10, 2007, the Mayor granted a foreign national full ownership to a piece of the Community’s land. IACHR, Public Hearing dated March 2, 2007 on “Case 12.548 –Garífuna Community of Triunfo de la Cruz, Honduras”, 127<sup>th</sup> period of sessions. Testimony of Jerson Selvit Benedit. To prove that land had been sold after precautionary measures had been granted, the petitioner presented a private deed of sale for a piece of land located in the “Las Delicias” district of Triunfo de la Cruz, by José Manuel Arguelles to Dennis Dupuis on January 10, 2007. The State contested the argument that State authorities had participated in the transaction because it was a matter of a private deed of sale that is not registered in the Public Registries. The petitioners answers that “Despite the private nature of the transaction alleged by the State, it is evident that the State is involved through the Municipality of Tela, in the latter’s collection of taxes on land transactions, defying the precautionary measures granted by the Honorable Commission.”

to plant and harvest cassava and the land is a central and essential part of the Garífunas' unique way of life throughout the more than two centuries of their history."<sup>168</sup>

## **2. Parallel Management Board of the Community Council of the Triunfo de la Cruz Community**

147. As the IACHR has noted previously, throughout the whole process of attempts by the Community of Triunfo de la Cruz and its members to recover their ancestral territory, the Municipality of Tela has systematically disregarded their ancestral occupancy and engaged in actions clearly opposed to their territorial claims. At least since the late 1970s – as attested by Decision No. 164 of the INA in 1979, taken at the behest of the Municipality –, the latter sought to expand its urban perimeter to include ancestral territory of the Community.<sup>169</sup> The expansion of the municipal core in 1989 led – as has been conclusively proved – to the Municipality of Tela conducting numerous sales of land historically occupied by the Triunfo de la Cruz Community, despite the constant opposition and objection shown by its authorities and members.

148. In that context, according to the information at the IACHR's disposal, in February 2005, the General Assembly of the Community Council – the highest authority according to Article 9 of its Statute – elected the slate headed by José Ángel Castro as the Management Board of the Council for 2005 to 2007.<sup>170</sup> Information provided by the petitioner and not contested by the State indicates that this Management Board was registered in the Municipality of Tela.<sup>171</sup> However, according to the communiqué issued on March 30, 2006 by the elected Management Board, the group that lost the election had allegedly sponsored the creation of a "parallel community council," sympathetic to the financial interests of the Municipality and tourism entrepreneurs, headed by a member of the Community whom the IACHR will refer to as "BM", for the purpose of selling Community land.<sup>172</sup>

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<sup>168</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community". Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>169</sup> As stated by expert Edmund Taylor Gordon in the hearing before the IACHR, this was due to the municipal governments' need to expand in order to be able to sell land and collect land taxes, so as to have revenue to finance government activities. This was the beginning of the political and economic parallelism. On the political front, to this day there exists a parallel Council. Economically, when foreigners arrived and the land acquired value for tourism purposes, a parallel private property system emerged in this Community. [IACHR, Public Hearing dated March 2, 2007 on "Case 12.548 –Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Expert appraisal by Edmund Taylor Gordon].

<sup>170</sup> Annex 86. Communication from the Pro-Improvement Community Council of Triunfo de la Cruz on March 30, 2006. Appendix 21 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. Annex 87. Communication from the Pro-Improvement Community Council of Triunfo de la Cruz to the Governor of the Department of Atlántida on April 19, 2006. Appendix 24 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>171</sup> IACHR, Public Hearing dated March 2, 2007 on "Case 12.548 –Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Testimony of José Ángel Castro. Annex 88. Public statement by the Management Board of the Community on May 21, 2009. Annex of the petitioner's written communication dated June 2<sup>o</sup>, 2009, received by the IACHR on June 3, 2009.

<sup>172</sup> On this, in a public statement dated March 30, 2006 the Management Board of the Community stated that: "the Nationalist Party-oriented Municipal Mayor's Office proceeded to register the parallel board to suit the interests of a small group of alleged microentrepreneurs in the tourism industry with the same political affiliation – just like the current municipal administration in Tela – who, in light of the alleged arrival of tourism industry investments in the area, are scheming to overthrow councils and in this way consolidate the current eviction of the Garífuna communities in the area." Annex 86. Communiqué of the Pro-Improvement Community Council of Triunfo de la Cruz on March 30, 2006. Appendix 21 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. Likewise, Annex 22. Communiqué of the Management Board of the Community on April 10, 2007. Annex of the petitioner's written communication dated April 19, 2007, received on April 20, 2007.

149. It transpires from the file with the Commission that, on March 9, 2006, the Governance and Transparency Manager of the Municipality of Tela convened a meeting to “evaluate the situation of the Assembly given the existence of the two Boards and to appoint the one that the people regards as its representative.” According to a statement by that official, “an invitation was sent to the incoming and outgoing Management Boards to attend the meeting together with the General Assembly.”<sup>173</sup> Along the same lines, José Ángel Castro stated in his testimony to the IACHR that:

The Tela Municipality established a parallel community council against the will of the Community of Triunfo de la Cruz, because the Community had elected a council in a democratic and transparent manner that the Municipality recognized in the first year, after which the Municipality, through the Municipal Department of Governance and Transparency, financed and signed on to a parallel council.<sup>174</sup>

150. The IACHR observes that, from then on and at least until June 19, the Management Board headed by BM continued to be registered in the Tela Municipality, according to the Municipality’s own records.<sup>175</sup>

151. According to the information at the IACHR’s disposal, two elections of the Management Board of the Community Council were held in this period, in 2007 and in 2009, resulting on both occasions in the election of Teresa Reyes.<sup>176</sup> The file with the IACHR indicates that in both cases the Management Board chaired by Teresa Reyes filed requests with the Municipality of Tela for “registration and recognition,” on May 16, 2008 and February 20, 2009, respectively.<sup>177</sup> The information in the file with the IACHR indicates that, through a resolution dated December 23, 2008, the Municipality dismissed the first request for registration,<sup>178</sup> and the IACHR deduces that the second request was also in vain because it ascertained that the Management Board of BM remained registered in June 2009. The IACHR also notes that, given the Municipality’s

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<sup>173</sup> Annex 89. Report on the visit of the Manager for Governance and Transparency of the Municipality of Tela on March 9, 2006. Annex of the written communication of the State, dated February 18, 2011, and received by the IACHR on February 28, 2011.

<sup>174</sup> IACHR, Public Hearing dated March 2, 2007 on “Case 12.548 –Garífuna Community of Triunfo de la Cruz, Honduras”, 127<sup>th</sup> period of sessions. Testimony of José Ángel Castro.

<sup>175</sup> Annex 90. Registration record by the Board of Directors of the Management Board of the Community on February 16, 2007. Annex of the petitioner’s written communication dated April 19, 2007, received by the IACHR on April 20, 2007. Annex 91. Record of the registration of the Board of Directors of the Community Council on May 12, 2008, according to which the Management Board headed by BM was registered for the period from May 7, 2008 to May 7, 2009. Annex of the petitioner’s written communication dated June 2, 2009, received by the IACHR on June 3, 2009 and Annex of the written communication of the State dated February 18, 2011, received by the IACHR on February 28, 2011. Annex 92. Record of the registration of the Community Council issued by the Municipality of Tela on June 19, 2009. Annexes presented by the State on October 20, 2010.

<sup>176</sup> Annex 93. Copy of the Opening Act. Record of the election of the Council Management Board of El Triunfo de la Cruz for the 2007-2009 period, and Closing Act. Annex of the petitioner’s written communication dated April 19, 2007, received on April 20, 2007. Annex 94. Certification of the Secretariat of Minutes of the Council, dated February 19, 2007, according to which on February 9, 2011 the Management Board, led by Teresa Reyes, was elected. Annex of the written communication of the State, dated February 18, 2011, and received by the IACHR on February 28, 2011. Annex 95. Public statement of the Management Board of the Community on February 12, 2009. Annex of the petitioner’s written communication dated June 2, 2009, received by the IACHR on June 3, 2009.

<sup>177</sup> Annex 96. Application for Registration and Recognition of the Management Board of the Council presented on May 16, 2008. Annex of the written communication of the State dated February 18, 2011, received by the IACHR on February 28, 2011. Annex 94 Certification of the Secretariat of Minutes of the Council dated February 19, 2007. Annex of the written communication of the State, dated February 18, 2011, and received by the IACHR on February 28, 2011. Annex 97. Application for Registration and Recognition of the Management Board of the Council dated February 20, 2009. Annex of the written communication of the State dated February 18, 2011, received by the IACHR on February 28, 2011.

<sup>178</sup> Annex 98. Resolution issued by the Municipality on December 23, 2008. Written communication of the State dated February 18, 2011, received by the IACHR on February 28, 2011.

refusal, the Management Board chaired by Teresa Reyes was also registered with the Unit for Registration and Monitoring of Civil Associations of the Secretariat of the Interior and Justice.<sup>179</sup>

152. Furthermore, according to the information for the IACHR's disposal, on March 25, 2010 the General Assembly of the Community Council met to resolve the issue of the existence of two Management Boards. According to the information at the disposal of the IACHR, a new vote was taken at that meeting between Teresa Reyes and BM, with the former being elected.<sup>180</sup> On March 29, 2010, the elected Management Board filed a request for registration with the Municipality of Tela.<sup>181</sup> Nevertheless, the IACHR notes that the Municipality again refused to register it, because, as both parties assert, the Management Board linked to BM is currently still registered with the Municipality.<sup>182</sup>

153. Authorities and members of the Community complained of numerous illegal acts committed by BM or related persons, such as charging toll fees using Municipality officials,<sup>183</sup> damage to the Community center,<sup>184</sup> the authorization with Municipality support of sales of land granted in full ownership to the Community,<sup>185</sup> as well as acts of violence committed in connection

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<sup>179</sup> Annex 99. Attestation of the Management Board issued by the Civil Associations Registration and Monitoring Unit of the Ministry of the Interior and Justice on June 15, 2007. Attached to the petitioner's written communication of August 16, 2007, received by the IACHR on August 17, 2007. Annex 100. Official Letter SS-006-08 issued by the Ministry of the Interior and Justice on February 4, 2008. Annex of the written communication of the State on February 18, 2011, received by the IACHR on February 28, 2011. Annex 101. Record of Management Board issued by the Civil Associations Registration and Monitoring Unit of the Ministry of the Interior and Population on May 13, 2009. Annex of the petitioner's written communication dated September 3<sup>rd</sup>, 2010, received by the IACHR on September 21, 2010.

<sup>180</sup> Annex 102. Item in the minutes of the General Assembly of the Management Board of the Community on March 25, 2010. Annex of the petitioner's written communication in the precautionary measures proceedings of September 3, 2010, received by the IACHR on September 21, 2010.

<sup>181</sup> Annex 103. Application for registration of the Management Board of the Council before the Municipality of Tela on March 29, 2010. Annex of the petitioner's written communication in the precautionary measures proceedings of September 3, 2010, received by the IACHR on September 21, 2010.

<sup>182</sup> The petitioner's writ in the precautionary measures proceedings of March 9, 2012 and Writ of the State in the precautionary measures proceedings of February 15, 2011.

<sup>183</sup> Annex 104. Complaint 708-06 presented on April 17, 2006 before the Criminal Investigation Bureau. Appendix 23 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>184</sup> Annex 105. Complaint 618-06 presented on April 3<sup>rd</sup>, 2006 before the Criminal Investigation Bureau. Appendix 24 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>185</sup> Annex 106. Complaint 006-2011 presented by Teresa Reyes. Annex of the petitioner's written communication dated January 4, 2011, received on January 11, 2011. In that regard, in the IACHR file there is a communication from the Management Board headed by Teresa Reyes to the Fraternal Black Organization of Honduras which states that "among cases of illegal sales of land, we can mention: -the case of Jorge López, authorized by [BM] to purchase from the seller René González, land owned by the women's El Esfuerzo cooperative; a complaint was lodged and nothing was done[...] The case of the Gómez Cisneros family, authorized by [BM] to purchase land in the El Potrero district; now they intend to build hotels. This case, too, was denounced and again the authorities did nothing. - The case of the Ferrufino family in the El Potrero district, - The case of Ricardo Félix, in the agricultural area. - The case of Antonio Fuentes Posas in the Las Delicias district. And there are other cases not yet investigated, inside the Community's full ownership area and after precautionary measures were granted." Annex 107. Annex of the petitioner's writ dated January 4, 2011, received on January 11, 2011.

with the sales of Community land.<sup>186</sup> On April 7, 2011, a complaint was filed regarding the burning down of the home of Teresa Reyes and Alfredo López.<sup>187</sup>

154. On January 6, 2010, a member of the Community complained to the Office of the Special Prosecutor for Ethnic Groups that unknown people had set fire to the Community radio "Faluma Bimetu" (Sweet Coconut) that same day.<sup>188</sup> On April 24, 2010, Alfredo López filed a complaint regarding the same incident with the D.G.I.C.<sup>189</sup> According to the State, as a result of the investigations, three suspects were identified and the file was remitted to the Office of the Attorney General. Still pending was the issuance of the Prosecutor's injunction to the respective Court.<sup>190</sup>

155. In addition, on April 19, 2006, the Management Board chaired by José Ángel Castro, together with more than 300 members of the Community, notified the Governor of the Department of Atlántida of the existence of a parallel council directed by people with interests opposed to those of the Community,<sup>191</sup> and in June 2007 they wrote to the Ministry of Security denouncing the presence of a "parallel community council" which was "authorizing sales behind the Community's back."<sup>192</sup>

156. The IACHR cannot fail to note that, as Teresa Reyes said, "the situation has got worse since the Municipality imposed [a] parallel Council and refused to recognize the Council legally elected and registered with the Department of the Interior and Justice."<sup>193</sup> The State itself

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<sup>186</sup> Annex 108. Complaint 844-10 before the Criminal Investigation Bureau, dated July 13, 2010. Annex of the petitioner's written communication dated July 14, 2010, received by the IACHR on July 19, 2010. Regarding this complaint No. 844-10, the State reported that on July 13, 2010 an on-site inspection was conducted; on September 1, 2010 statements were taken from Alfredo López, as the offended party, and on September 1, 2010 a certificate was signed "authorizing the Office of the Attorney General to prosecute if urged to do so by the victim (*delito dependiente de instancia particular*)". [Annexes presented by the State on October 20, 2010]. Annex 60. Letter from the Management Board of the Community to the Attorney General dated May 14, 2009. Annex of the petitioner's writ dated June 2<sup>nd</sup>, 2009, received by the IACHR on June 3<sup>rd</sup>, 2009. Annex 70. Complaint 532-09 presented before the Criminal Investigation Bureau, dated May 4, 2009. Annex of the petitioner's written communication dated May 12, 2009, received by the IACHR on the same date.

<sup>187</sup> Annex 108. Complaint No. 108-2011 of January 11, 2011. Annex of the petitioner's written communication dated April 11, 2011, received by the IACHR on May 2, 2011. On this, the State asserted that the Public Prosecutor for Ethnic Groups took statements from the offended parties and carried out an on-site inspection. Written communication of the State in the precautionary measures proceedings of January 27, 2012.

<sup>188</sup> In this regard, according to the on-site inspection certificate, on January 6, 2010 the Criminal Investigation Bureau conduct an investigation on the premises of the radio station, and ascertained the damage done by the fire. Annex 110. Complaint 0801-2010-00796 lodged by Secundino Torres on January 6, 2010 and on-site inspection certificate of the Criminal Investigation Bureau dated January 6, 2010. Annexes of the written communication of the State dated February 18, 2011, received by the IACHR on February 28, 2011.

<sup>189</sup> Annex 111. Complaint No. 514-10 filed by Alfredo López with the Criminal Investigation Bureau on April 24, 2010. Annex of the petitioner's written communication dated September 3, 2010, received by the IACHR on September 21, 2010.

<sup>190</sup> Written communication of the State in the precautionary measures proceedings of February 15, 2011, received by the IACHR on the same date.

<sup>191</sup> At the time they stated that, despite the communications to the Municipality, advising it of the situation, the Municipality registered the parallel Council, a move that has triggered "a deep division within this Community, chaos, and anxiety, fostering hate, violence in society, and corruption." For that reason they requested immediate annulment of the "parallel Council," that the Municipality desist from interfering in the Community, and investigation into the complaints submitted. Annex 87. Communication from the Pro-Improvement Community Council of Triunfo de la Cruz to the Governor of the Department of Atlántida on April 19, 2006. Appendix 22 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>192</sup> Annex 112. Communication directed to the Minister of Security in June 2007. Attached to the petitioner's written communication of August 16, 2007, received by the IACHR on August 17, 2007.

<sup>193</sup> Annex 113. Urgent Complaint by the Pro-Improvement Community Council on January 4, 2011. Annex of the petitioner's written communication dated January 4, 2011, received on January 11, 2011.

indicated in the proceedings before the IACHR that “many of the problems arising in the Community are being caused by the existence of two Councils, one that is legally constituted and the other which is not”<sup>194</sup> and that “it has been discerned that the root of the problem is the existence of two Councils of the Community of Triunfo de la Cruz, constituted exclusively by people of the Garífuna ethnic group and the fact that they cannot agree on which one authentically represents the Community.”<sup>195</sup>

157. In light of the above, the IACHR considers that it has been proved that the Municipality of Tela sponsored the establishment and ongoing existence of a “parallel Council” in the Community, as a result of which there were further denunciations of illegal sales of Community land and of acts of violence against members of the Community.

### 3. Tourism Projects

158. The territory traditionally occupied by the Community of Triunfo de la Cruz and, in general, Tela Bay historically inhabited by Garífuna communities has in recent years become an area of considerable interest for tourism projects.<sup>196</sup> The information provided by the parties refers to the planning and execution of tourism projects and mega projects that would allegedly directly affect the Community and were even being executed in its ancestral territory.

159. As attested in foregoing paragraphs, ancestral lands of the Community were sold by the Municipality to IDETRISA for the “Club Marbella” tourism project. According to information provided by the parties, that company arranged with the IHT,<sup>197</sup> the Secretariat of State for the Environment,<sup>198</sup> and the Tela Municipality,<sup>199</sup> to obtain the permits needed to execute the project. Furthermore, as the IACHR previously ascertained, following a contract entered into with the Municipality, construction has resumed in the area inside the ancestral territory of the Community.

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<sup>194</sup> Written communication of the State in the precautionary measures proceedings dated July 2, 2010, received by the IACHR on July 8, 2010.

<sup>195</sup> Written communication of the State in the precautionary measures proceedings dated February 15, 2011, received by the IACHR on the same date.

<sup>196</sup> According to the information presented by the parties, “the Garífunas communities all along the Atlantic coast are threatened with eviction from their habitat (*espacio vital*), on pretext of conducting tourism development projects in the areas in which they are settled; while it is true that such projects generate financial benefits for the country, the consequences at the ethnic groups and social level are unforeseeable, unless there is respect for the right of said communities to life and respect for their ancestral habitat.. Annex 5. Application for full ownership title to 600 hectares, dated August 28, 1997. Application file No. 47891, with the National Agrarian Institute, pp.1 and 2. Appendix 8 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>197</sup> Annex 10. “Analysis of the Garífuna Communities Applications for Full Ownership” produced by the Honduran Tourism Institute on April 23, 1996. Annex 24 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>198</sup> According to a certificate issued by the Secretariat of State for the Environment, dated June 21, 1996, an application was being processed for an environmental permit for “Club Marbella” project. Annex 114. Evidence from Secretariat of State for the Environment dated June 21, 1996. Annex 28 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Annex 115. Technical Report No. 186/95 from the Secretariat of State for the Environment dated August 25, 1995. Appendix 17 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>199</sup> According to the information at the IACHR’s disposal, on January 15, 1996 the Municipality of Tela granted that company a construction permit, which was later cancelled. Annex 116. Communication from the Mayor of the Municipality of Tela to El Triunfo Investments and Development Ltd on June 12, 1996. Annex 27 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

160. At the same time, according to information provided by the parties, as of August 2005,<sup>200</sup> a tourism mega project was being implemented in Tela Bay called “Los Micos Beach & Golf Resort” or “Tela Bay.”<sup>201</sup> On August 4, 2005, Executive Decree No. PCM-022-2005 was published, containing the President of the Republic’s order to establish and demarcate the “Tela Bay Special Treatment Area,” “with a primarily tourism-oriented approach,” in order to improve implementation of the project.<sup>202</sup>

161. In that regard, the State asserted that the tourism development master plan for the area, worked out in the 1970s, was “shown to and agreed upon by the main stakeholders in the area,” which include the Triunfo de la Cruz Community. It added that one of the commitments undertaken was to grant the Garifuna communities a 7% share and to allow the Community Councils representation as partners of the project.<sup>203</sup> The State affirmed that an environmental impact assessment (hereinafter, “EIA”) had been prepared and that it “went through a [series] of consultations, reviews, and environmental audits, which meant that the EIA improved to a point at which it was acceptable.”<sup>204</sup> The State also pointed out that the “communities affected” by the project participated in the EIA consultation process and “they reached the conclusion that the EIA covered the most important aspects to be considered, so that they agreed to accept it.”<sup>205</sup>

162. However, the State did not provide the proceedings before the IACHR with evidence backing those assertions. It only provided an EIA conducted by ECOMAC-CINSA, which regards the Triunfo de la Cruz Community as an “area of major impact” of the project because, like other Garifuna communities, it is located in the adjacent area.<sup>206</sup> With respect to this EIA, the IACHR has received a technical report prepared by the “Protection of Lancetilla, Punta Sal, and Texiguat Foundation” (hereinafter, “PROLANSATE”), a nongovernmental organization responsible for managing the Punta Izopo National Park, dated September 28, 2005. The IACHR notes that, according to that document, PROLANSATE considers that there are serious shortcomings in the EIA and questions the viability of the project due to the grave environmental damage it could wreak. As regards the “participation and sharing process with affected sectors,” the report states that:

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<sup>200</sup> According to the fourth “Whereas” paragraph of Executive Decree No. PCM-022-2005 of August 4, 2005, project execution began that year. Annex 117. Executive Order No. PCM-022-2005 published on August 4, 2005. Annex 7 of the petitioner’s written communication in the precautionary measures proceedings dated August 1<sup>st</sup>, 2005, received by the IACHR on October 21, 2005.

<sup>201</sup> According to the information provided, because prior to the “Los Micos Beach & Golf Resort Project” there was an earlier Bahía de Tela Project for which a “Master Plan” had been presented in 1994. The petitioner’s written communication dated October 13, 2008, received by the IACHR on October 15, 2008. In addition, see Annex 118. Environmental Impact Assessment Study of the Los Micos & Golf Resort, produced by ECOMAC-CINSA. p. 1. Annex of the petitioner’s written communication in the precautionary measures proceedings dated August 1<sup>st</sup>, 2005, received by the IACHR on October 21, 2005.

<sup>202</sup> Annex 117. Executive Order No. PCM-022-2005 published on August 4, 2005. Annex 7 of the petitioner’s written communication in the precautionary measures proceedings dated August 1<sup>st</sup>, 2005, received by the IACHR on October 21, 2005.

<sup>203</sup> Written communication of the State dated January 4, 2008, received by the IACHR on January 7, 2008.

<sup>204</sup> Written communication of the State dated January 4, 2008, received by the IACHR on January 7, 2008.

<sup>205</sup> Written communication of the State dated January 4, 2008, received by the IACHR on January 7, 2008.

<sup>206</sup> According to that study, the project’s service area is divided into two parts: “(1) the communities adjoining the project site (area of most impact); and (2) the communities that, although they are not adjoining, could easily provide manpower or other services or goods to tourism enterprises or, in some cases, services directly to tourists. The adjoining communities include, from the far eastern side, Miami, Tornabé, San Juan, Tela and Triunfo de la Cruz. As these will be the communities most directly impacted, all of them will be included in the study and surveys.” Annex 118. Environmental Impact Assessment Study of the Los Micos & Golf Resort, produced by ECOMAC-CINSA. p. 29. Annex of the petitioner’s written communication in the precautionary measures proceedings dated August 1<sup>st</sup>, 2005, received by the IACHR on October 21, 2005.

There has been little transparency in the consultation process and scant dissemination of information, so that the citizen participation process has been deficient. The brief and irregular information process (rather than consultation) conducted in April 2004 in a number of workshops which, with no transparency, the affected sectors were invited to attend separately (because the PROLANSATE Foundation was not allowed to attend the meetings held in the communities), was the only 'participation moment,' which is insufficient and demonstrates a lack of respect for the population of Tela Bay in general and the communities neighboring the project, in particular.<sup>207</sup>

163. Likewise, information provided by the petitioner shows the Triunfo de la Cruz Community's opposition to the project, as well as the lack of information regarding its implementation. Here the IACHR underscores the "General Assembly public communiqué" of May 22, 2009 which states that "the Community resolutely opposes the Tela Bay project, repudiates the environmental disaster it is creating, and rejects the 7% share because we do not even know what is involved."<sup>208</sup>

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

164. The State of Honduras has adopted legislative measures to establish protected natural areas designed to "conserve those natural areas that, in addition to their scenic beauty are essential for the sustained development of human settlements and the survival of wild species of both flora and fauna,"<sup>209</sup> pursuant to Article 340 of the Constitution.<sup>210</sup> According to information provided by the parties, there are 107 protected areas in Honduras, each of which is generally divided into three zones: a buffer zone, a cultural zone, and a central zone; with economic activity only being allowed in the first two zones based on an environmental management plan.<sup>211</sup> According to OFRANEH, 28 of the 46 Garífuna communities existing in Honduras are located in the nucleus of protected areas or in their buffer zone.<sup>212</sup>

165. The State has signed co-administration agreements with nongovernmental organizations, giving them responsibility for supervising implementation of the environmental management plan. For its part, the State remains responsible for overall management through the

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<sup>207</sup> Annex 119. Technical report produced by the Protection of Lancetilla, Punta Sal and Texpiguat Foundation on the environmental impact of the Los Micos Beach & Golf Resort Project dated September 28, 2005. Annex of the petitioner's written communication dated October 13, 2008, received by the IACHR on October 15, 2008.

<sup>208</sup> Annex 120. Public Communiqué of the General Assembly of the Management Board of the Community Council, dated May 22, 2009. Annex of the petitioner's written communication in the precautionary measures proceedings dated June 2<sup>nd</sup>, 2009, received by the IACHR on June 3<sup>rd</sup>, 2009. Likewise, according to a communication in the IACHR's file, the Community Council reported that it disavowed the signature allegedly provided in Roatan on April 12, 2008 by the person who heads the "parallel Council," given that the Community had not been consulted on the matter. Annex 121. Communication from the Community Council to the Fraternal Black Organization of Honduras on June 5, 2008. Annex of the petitioner's written communication dated June 10, 2008, received by the IACHR on June 12, 2008.

<sup>209</sup> Executive Agreement No. 1118-92, of June 1, 1992, published on August 7, 1992.

<sup>210</sup> Article 340 of the Constitution of the Republic of Honduras - The technical and rational exploitation of the natural resources of the Nation is declared to be of public utility and necessity. The State shall regulate their development in accordance with the social interest and shall establish the conditions for their grant to individuals. The reforestation of the country and the conservation of forests are declared to be of national convenience and collective interest.

<sup>211</sup> Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. pp. 85-86. Annex of the petitioner's written communication of October 13, 2008, received by the IACHR on October 15, 2008.

<sup>212</sup> Annex 15. Application for inspection addressed to the Inspection Panel of the World Bank. Appendix 2 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. In addition, the petitioner's written communication dated August 16, 2007, received by the IACHR on August 17, 2007.

Administración Forestal del Estado-Corporación Hondureña de Desarrollo Forestal (hereinafter, AFE-COHDEFOR).<sup>213</sup>

166. Through Executive Decision No. 1118-92, of June 1, 1992, published on August 7, 1992, the President of the Republic instructed the Corporación Hondureña de Desarrollo Forestal to “begin the procedures established in the applicable laws, with a view to declaring 22 natural zones, including the ‘Punta Izopo Wildlife Refuge’ as protected forest areas in their specific category.”<sup>214</sup>

167. On December 29, 2000, through Decree No. 261-2000, the National Congress gave instructions to establish the “Punta Izopo” Natural Protected Area, in the national park category and to integrate it with the National Protected Areas System of Honduras. According to that Decree, the Punta Izopo National Park covers an area of eighteen thousand eight hundred and twenty hectares (18,820.00 hectares) and is located in the extreme north-west of the Department of Atlántida, in the Municipality of Arizona, Tela and Esparta.<sup>215</sup>

168. Decree No. 261-2000 establishes that “those who live in the Punta Izopo protected Natural Area, as well as in a buffer zone and own or possess real estate shall conserve their rights but must strictly abide by the management plans”<sup>216</sup> and that “in the event of sale the State shall have the right of first refusal.”<sup>217</sup> For its part, Article 13 provides for “instructing the National Agrarian Institute (INA) to grant full ownership to those currently possessing properties that are not legalized, that do not pose a risk to this law’s objectives and are not included in the central zone of the Punta Izopo National Park.”<sup>218</sup> Regarding the use of natural resources, Decree No. 261-2000 establishes that “the extraction of marine and terrestrial fauna and flora and other natural resources shall be regulated” in the buffer zone of the National Park in accordance with the management plan and objectives pursued by regulations on the subject.<sup>219</sup>

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<sup>213</sup> Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007, p.86. Annex of the petitioner’s written communication of October 13, 2008, received by the IACHR on October 15, 2008.

<sup>214</sup> Article 1. j of Executive Agreement No. 1118-92, dated June 1<sup>st</sup>, 1992, published on August 7, 1992.

<sup>215</sup> Annex 122. Articles 1 and 4 of Decree No. 261-2000 published in the *Gaceta*, official journal, on March 13, 2001. Annex of the written communication of the State dated February 6, 2009. According to the second “Whereas” paragraph of Decree No. 261-2000, Punta Izopo “constitutes a coastal wetlands ecosystem comprising flood plains, flooded tropical forests, fresh water swamps, peat bogs, and estuaries, which perform a function in the water cycle, absorb overflows and control the periodic flooding from the River Lean, thereby helping to ensure water supplies throughout the year. The area also constitutes an important wildlife refuge for many species that are threatened and in danger of extinction, as well as being a place of recreation and a tourist attraction.” It is located just a few kilometers from the Cuero y Salado and Jannette Kawas wetlands, categorized, respectively, as a Wildlife Refuge and a National Park. Protection of Lancetilla, Punta Sal and Texpiguat Foundation. *Diagnóstico de la situación legal y tenencia de la tierra en el Parque Nacional Punta Izopo Honduras [Diagnostic Assessment of Legal Status and Land Tenure in the Punta Izopo National Park, Honduras]*, 2000. Available at: [http://pdf.usaid.gov/pdf\\_docs/PNACM703.pdf](http://pdf.usaid.gov/pdf_docs/PNACM703.pdf).

<sup>216</sup> Article 10 of Act No. 261-2000. Annex 122. Annex of the written communication of the State dated February 6, 2009.

<sup>217</sup> Article 10 of Act No. 261-2000. Annex 122. Annex of the written communication of the State dated February 6, 2009.

<sup>218</sup> Article 13 of Act No. 261-2000. Annex 122. Annex of the written communication of the State dated February 6, 2009.

<sup>219</sup> Article 9 of Act No. 261-2000. Annex 122. Annex of the written communication of the State dated February 6, 2009. Regarding this matter, article 14 states: “Without prejudice to the laws in effect for environmental conservation of natural resources, it is forbidden to use areas in the buffer zone in ways that pose a risk for the central area; for that reason, the Secretariat of State for Natural Resources and the Environment will rule on any form of future development in accordance with the laws in effect, regulations and other provisions of the competent authorities.”

169. The Punta Izopo National Park is administered by the nongovernmental organization “Protection of Lancetilla, Punta Sal, and Texiguat” Foundation (PROLANSATE), under an agreement signed with COHDEFOR on November 20, 1996.<sup>220</sup>

170. According to the information at the disposal of the IACHR, the area making up the Punta Izopo National Park overlaps with part of the territory historically occupied by the Garífuna Community of Triunfo de la Cruz, located in the far eastern section, and that it constitutes an area traditionally used for hunting and gathering activities. Furthermore, it is adjacent to a major fishing area for the Community.<sup>221</sup>

171. The petitioner claimed that the Triunfo de la Cruz Community was not consulted regarding the establishment of the Punta Izopo Park.<sup>222</sup> In support of that statement, she presented a document drawn up by CODETT stating:

We have become aware thanks to investigations by the Committee [in Defense of the Land of Triunfo –CODETT, that Cerro Punta Izopo will be declared a wildlife protection area, when in the study carried out by the UNAH, they treat Garífunas like some kind of species of animal to be researched.<sup>223</sup>

172. For its part, the State pointed out that, for the establishment of Jeannette Kawas, Punta Izopo, and Cuervo y Salado National Parks a “consensus building and sharing process” was conducted, especially with the communities neighboring the park.<sup>224</sup> However, the State presented no evidence to support that claim.

173. According to information provided by the parties, many zones in the protected area have been fenced off and access has been denied to members of the Community, many of whom have not even tried to enter for fear of the security guards.<sup>225</sup> That fear is allegedly related to the

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<sup>220</sup> Protection of Lancetilla, Punta Sal and Texiguat Foundation. *Diagnóstico de la situación legal y tenencia de la tierra en el Parque Nacional Punta Izopo Honduras. [Diagnostic Assessment of Legal Status and Land Tenure in the Punta Izopo National Park, Honduras]*, 2000. Available at: [http://pdf.usaid.gov/pdf\\_docs/PNACM703.pdf](http://pdf.usaid.gov/pdf_docs/PNACM703.pdf) and <http://www.prolansate.org/donde-trabajamos/parque-nacional-punta-izopo>; and Annex 119. Technical report by the Protection of Lancetilla, Punta Sal and Texiguat Foundation for the study on the environmental impact of the Los Micos Beach & Golf Resort Project. September 28, 2005. Annex of the petitioner’s written communication of October 13, 2008, received by the IACHR on October 15, 2008.

<sup>221</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the “Ethnography of the Triunfo de la Cruz Community”. Appendix 1 of the petitioner’s written communication of May 23, 2006, received by the IACHR on May 30, 2006. Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. pp. 83-84. Annex of the petitioner’s written communication of October 13, 2008, received by the IACHR on October 15, 2008. Annex 122. Article 6 of Act No. 261-2000 published by the *Gaceta*, official journal, dated March 13, 2001. Annex of the written communication of the State dated February 6, 2009.

<sup>222</sup> Writ containing observations of the petitioner dated May 23, 2006, received on May 30, 2006 and the petitioner’s written communication dated August 16, 2007, received by the IACHR on August 17, 2007.

<sup>223</sup> Annex 20. Document produced by the Land Defense Committee of Triunfo de la Cruz titled “La Comunidad histórica del Triunfo de la Cruz fundada el 3 de mayo de 1524 lugar donde se encuentra el histórico Cerro Triunfo de la Cruz” [The historic Community of Triunfo de la Cruz, founded on May 3, 1524 where the historic Cerro Triunfo de la Cruz site is located]. Annex 12 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003. p. 9.

<sup>224</sup> Written communication of the State dated January 4, 2008, received by the IACHR on January 7, 2008.

<sup>225</sup> On this, the information provided by the parties states: “The Panel was informed by the local communities, and has found confirmation of these allegations in the Central American and Caribbean Research Council (CACRC) study, financed by the Bank, that many parts of this protected area have been fenced off and access prohibited. The members of the community of Triunfo have no access to this area, except to the ocean areas, although they claim this is land that belongs to the community. Many Garífuna residents of Triunfo de la Cruz have not visited this section of their territory for years because they are afraid of security guards. Annex 1. The Inspection Panel of the World Bank. *Investigation Report on*

occurrence of acts of violence in other protected areas.<sup>226</sup> According to information provided by the parties, restricting access to the area by members of the Community has prevented them from carrying out their traditional cultural practices.<sup>227</sup>

174. The information at the disposal of the IACHR indicates that, despite their having been declared a protected area, several areas of the Park are allegedly being occupied by third parties. They include areas claimed by the Community as ancestral lands.<sup>228</sup> Allegedly, orders have been given for certain areas of the Park to be used for tourism.<sup>229</sup>

## **6. The situation of indigenous leaders and authorities defending the ancestral lands of the Triunfo de la Cruz Community**

175. Various international organizations have pronounced on the violence, persecution, and harassment endured by the Garífuna people for defending its land.<sup>230</sup> The former Special Rapporteur of the United Nations on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, described in his report of March 2005 the fear shown by the indigenous representatives of the Garífuna communities of Cayos Cochino (Bay Islands), Tornabé and Miami (Tela Bay), Triunfo de la Cruz and San Juan (Municipality of Tela), and Punta Piedra (Municipality of Colón), with regard to economic development projects, such as tourism, mining, and agricultural projects, that lead to dispossession of their land. In his report, the Rapporteur writes:

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*Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. pp. 83-84. Annex of the petitioner's written communication from October 13, 2008, received by the IACHR on October 15, 2008.

<sup>226</sup> According to a communiqué from the Fraternal Black Organization of Honduras, on September 24, 2008, eight fishermen from the Garífuna Community of Triunfo de la Cruz were fishing off the protected area Cuero y Salado National Park when they were detained by soldiers. Then "without a word the soldiers began shooting at them", killing Guillermo Norales Herrera. In that communiqué, they demand a thorough investigation into the facts and a stop to persecution of artisanal fishermen. Annex 123. Communiqué from the Fraternal Black Organization of Honduras, on September 25, 2008. The petitioner's written communication dated September 26, 2008, received the IACHR on the same date.

<sup>227</sup> The situation is described in the study produced by the *Central American and Caribbean Research Council* in the following manner: "The Community considers that the reforms undertaken in the country with respect to protected areas have greatly affected the Garífunas in the Community because they no longer have the same access to the ancestral lands they used to farm and where they obtained the materials needed to build their homes. They regard that in a way as a loss of their culture, because they can no longer get the bark they need to build their homes, their homes can no longer be made of the same material." Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community" p.12. Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006.

<sup>228</sup> Annex 2. Study by the *Caribbean Central America Research Council* on the "Ethnography of the Triunfo de la Cruz Community" p.78. Appendix 1 of the petitioner's written communication of May 23, 2006, received by the IACHR on May 30, 2006. IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 –Garífuna community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Testimony of José Ángel Castro. Annex 1. The Inspection Panel of the World Bank. *Investigation Report on Honduras: Land Administration Program*. Investigation Report No. 39933-HN. June 12, 2007. pp. 83-84. Annex of the petitioner's written communication from October 13, 2008, received by the IACHR on October 15, 2008.

<sup>229</sup> The Punta Izopo National Park was included in Executive Decree No. PCM-022-2005, which established the "Special Regime Area of 'Bahía de Tela'", as an area "with a primarily tourism-oriented approach" designed to achieve execution of the Bahía de Tela project, according to the text of the decree. Annex 117. Articles 3, 4, Executive Order No. PCM-022-2005 published on August 4, 2005.

<sup>230</sup> In 1999, Amnesty International expressed its concern over the abuses against indigenous people in Honduras, including in its report references to the Garífuna Community. In its report, the acts of concern for Amnesty International fall into three categories: "1. killings of indigenous people (some 25 in the current decade) by individuals or groups allegedly linked to local authorities and the military; 2. abuses by private individuals, including death threats and intimidation, with the alleged or apparent collusion of local officials; 3. cases where inadequate care has been taken by official agencies to protect indigenous groups from becoming victims of human rights violations". Honduras, *Justice Fails Indigenous People*, Amnesty International, September 1999. AI Index: AMR 37/10/99/s. Distr. SC/CO/GR.

[...] because of their complaints about the occupation of land belonging to them [...] It is alleged that the Garífuna leaders have been persecuted or even murdered by politicians or soldiers, or else by farm or hotel owners who covet the communities' lands, for making their demands.<sup>231</sup>

176. Along the same lines, the former Special Representative of the United Nations Secretary-General for Human Rights Defenders, Hina Jilani, has on several occasions referred to violence against human rights defenders in Honduras.<sup>232</sup> Likewise the Special Rapporteur on Extrajudicial, summary, or arbitrary executions has stressed that "The situation of Honduran human rights defenders has been difficult in the last few years, with several activists having received death threats."<sup>233</sup> In her special report on her mission to Honduras, the Special Rapporteur emphasized that she had received information regarding cases of indigenous activists being murdered at the behest of powerful landowners and businessmen. According to that information to which the Rapporteur had access, "In most of these cases, it was alleged that the perpetrators enjoyed virtual de facto immunity from prosecution because of their social status and political connections."<sup>234</sup>

177. Furthermore, according to the report of the United Nations Working Group on the Universal Periodic Review regarding Honduras, of January 4, 2011, the States that took part in the dialogue more than once voiced their concern at the situation of human rights defenders in Honduras.<sup>235</sup> At the time, the State delegation expressed "concern about the allegations concerning threats and aggression against [...] human rights defenders, and called on them to report such practices to the relevant national bodies with a view to prevention, investigation and the punishment of those found responsible."<sup>236</sup> That report recommended, inter alia, taking "prompt and effective steps to protect human rights defenders from violent attacks" and to throw light on those acts.<sup>237</sup>

178. For its part, the Inter-American Court of Human Rights established in its judgment in the *López Álvarez v. Honduras* case that "there have been complaints of threats and attacks against the life of the defenders of the human rights of the Garífunas."<sup>238</sup> Likewise, the IACHR has constantly monitored the situation of human rights defenders in Honduras and has received

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<sup>231</sup> United Nations. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène. *Report on Mission to Honduras*. E/CN.4/2005/18/Add.5. March 22, 2005. paragraph 19.

<sup>232</sup> United Nations, Commission on Human Rights, Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Annual Report 2004, Doc E/CN.4/2005/101, paragraph 49 and United Nations, Commission on Human Rights, Report submitted by the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Annual Report 2003, Doc E/CN.4/2004/94. paragraph 76.

<sup>233</sup> United Nations, Commission on Human Rights, Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, Addendum, Mission to Honduras, Document E/CN.4/2003/3/Add.2, June 14, 2002, paragraph 67.

<sup>234</sup> United Nations, Commission on Human Rights, Report of the Special Rapporteur on Extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, Addendum, Mission to Honduras, Document E/CN.4/2003/3/Add.2, June 14, 2002, paragraph 63.

<sup>235</sup> United Nations, Human Rights Council. Universal Periodic Review. *Report of the Working Group on the Universal Periodic Review: Honduras*. A/HRC/16/10. January 4, 2011. paragraphs 30, 35, 44, 53 and 68.

<sup>236</sup> United Nations, Human Rights Council. Universal Periodic Review. *Report of the Working Group on the Universal Periodic Review: Honduras*. A/HRC/16/10. January 4, 2011. paragraph 20.

<sup>237</sup> United Nations, Human Rights Council. Universal Periodic Review. *Report of the Working Group on the Universal Periodic Review: Honduras*. A/HRC/16/10. January 4, 2011. paragraphs 82.29, 82.30, 82.31, 82.33, 82.67, 82.80, 83.9.

<sup>238</sup> I/A Court H.R. *Alfredo López v. Honduras Case*. Judgment of February 1<sup>st</sup>, 2006. Series C No. 141. paragraph 54.3.

worrying information about the existence of attacks, threats, and harassment against social leaders and human rights defenders.<sup>239</sup>

179. In that context, given that title deeds for ancestral lands of the Triunfo de la Cruz Community were being given away, communal and national Garífuna organizations carried out a series of actions aimed at denouncing the violations of which they were victims and claiming their ancestral lands, as mentioned by the IACHR in this report.<sup>240</sup> In addition, as the IACHR has documented above, since the 1990s there has been a permanent state of conflict triggered by third parties interested in the community lands, who are carrying out constant threats and acts of violence.<sup>241</sup> These incidents were repeatedly denounced and State authorities even expressly acknowledged the insecurity to which the Community was subjected.<sup>242</sup>

180. In particular, Community authorities and leaders have been victims of numerous threats, persecution, and harassment that have even resulted in their being killed. The information in the file with the IACHR documents the murder of at least four members of the Community for reasons relating to the defense of their land: Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez and Julio Alberto Morales.

181. Regarding Oscar Brega, there is a memorandum in the IACHR file, dated October 9, 1996, in which the Coordinator of the Office of the Attorney General informed the Office of the Special Prosecutor for Ethnic Groups that on October 8 of that same year Carlos Colón, a native of the El Triunfo village, reported that Oscar Brega had been murdered by unidentified people. According to the same document, "investigation officials, the Prosecutor on duty, the coroner, and the judge [...] appeared at the scene of the crime, where we ascertained that the crime was committed approximately 30 meters away from the turnoff to Ensanada and Triunfo and that the victim was Mr. OSCAR BREGA [...]."<sup>243</sup>

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<sup>239</sup> IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. paragraph 30; IACHR. *Annual Report 2010. Chapter IV. Honduras*. paragraphs 448-459. IACHR. *Annual Report 2011. Chapter IV. Honduras*. paragraphs 373-382.

<sup>240</sup> In the petitioner's: "the lack of land tenure security for the Garífuna communities has created a tense atmosphere, characterized by anxiety and grave threats to the bodily integrity of the community leaders." The petitioner's written communication dated January 2<sup>nd</sup>, 2006, received by the IACHR on January 26, 2006.

<sup>241</sup> José Ángel Castro had this to say in the hearing before the IACHR: "There is a lot of fear, even when we convene meetings, because people say that the municipality will send people. What's more, sometimes people from the Trade Union come to threaten people. Most people are afraid, even we leaders are frightened and our families have lived under a constant threat." IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 –Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Testimony of José Ángel Castro.

<sup>242</sup> The file with the IACHR contains Official Letter FEEPC-35/2000, of February 1<sup>st</sup>, 2000, in which the Public Prosecutor for Ethnic Groups and Cultural Heritage of Honduras asked the Executive Director of the National Agrarian Institute to intervene as a matter of urgency "[...]so that the Community can take physical possession of the land to which it was given title, because persons from outside the Community and local authorities are encroaching on their land, triggering conflicts that may end in crimes being committed [Annex 124. Official Letter FEEPC-35/2000 from the Public Prosecutor for Ethnic Groups and Cultural Heritage to the National Agrarian Institute dated February 1<sup>st</sup>, 2000. Annex 38 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003]. That request was subsequently reiterated in Official Letter FEEPC-74/2000 of February 24, 2000 "because the aforementioned problem is getting worse". [Annex 125. Official Letter FEEPC-74/2000 from the Public Prosecutor for Ethnic Groups and Cultural Heritage to the National Agrarian Institute dated February 24, 2000. Annex 38 of the petition initially dated October 27, 2003, received by the IACHR on October 29, 2003].

<sup>243</sup> According to the aforementioned note, the person who died: "Mr. OSCAR BREGA was driving in his own vehicle toward the paved road, when he was intercepted by unknown persons, who shot and killed him inside his car. [...] According to the coroner, there were five bullet wounds from a firearm (caliber unknown). The body was then taken to the Forensic Medicine Office in the city of San Pedro Sula, for an autopsy. At 6:00 a.m. on October 9 of this year, another inspection of the scene of the crime was carried out and three bullet cases were found corresponding to AK47 rifles. Given that suspicious finding, the cases will be sent to the Ballistics Section for Scientific Analysis. Annex 126. Memorandum from the Principal Prosecutor to the Public Prosecutor for Ethnic Groups dated October 9, 1996. Annex 31 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

182. Regarding Jesús Álvarez Roche, according to the evidence provided by the parties, on January 30, 1995, CODETT submitted a writ to the Prosecutor for Ethnic Groups in the investigation into the Municipality's sales to IDETRISA (see above, VI.E.a.i), which expressly demanded "investigation into the attempted murder of the Deputy Mayor of the Community of Triunfo de la Cruz, JESUS ALVAREZ, due to his resolute opposition to the illegal sales of land." CODETT also presented testimony signed by him in which he refers to the possible link between the attack on his life and his opposition to the sales of the Community lands.<sup>244</sup> It also transpires from the file with the IACHR that Jesús Álvarez appeared before the Office of the Attorney General on March 17, 1995 to make a statement regarding the subject of the investigation. The IACHR notes that the sworn statement contains the following:

ASKED: whether it was true that he suffered an attack on his life for his defense of the lands of El Triunfo de la Cruz, and if so, that he say who was responsible for said attack.

REPLY: that it was true that he suffered an attempt on his life and grave injuries to his left arm and hip, whether he was driving on that day and that he suffered the attack on February 4, 1990 [...]

183. At that time he also asserted that "he believes the instigator of the attack was Don Heriberto Díaz [former Mayor of Tela] because he was interested in the lands of Triunfo de la Cruz."<sup>245</sup> According to information at the IACHR's disposal, on May 9, 1997 unknown persons shot Jesús Álvarez and as a result of that attack he died on May 11, 1997.<sup>246</sup>

184. Regarding the deaths of Jorge Castillo and Julio Alberto Morales, there is a press release, dated October 28, 1997, indicating that according to the National Coordinator of OFRANEH both men were murdered in Triunfo de la Cruz on October 22, 1997 and so far "the authorities have not thrown light on the circumstances of the crime nor have they captured those responsible. The organization argues that these crimes should be seen in connection with the land issue confronting Garífuna communities on the Atlantic Coast."<sup>247</sup>

185. At the same time, the IACHR considers that the arbitrary arrest of Garífuna leaders has been used to intimidate those engaged in activities in defense of their land. In the IACHR's opinion, the case of Alfredo López Álvarez, settled by the Inter-American Court in its judgment of

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<sup>244</sup> Annex 126. Brief from the Land Defense Committee of Triunfo de la Cruz to the Public Prosecutor for Ethnic Groups dated January 30, 1995. Annex 18 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>245</sup> Annex 4. Statements taken by the Principal Prosecutor in Tela. Annex 19 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>246</sup> Action in the Alfredo López Álvarez versus the State of Honduras Case, filed by the IACHR before the Inter-American Court on July 7, 2003. Testimony of Gregoria Flores Martínez in the *Alfredo López v. Honduras Case* provided at the public hearing held before the Inter-American Court on June 28, 2005. With regard to these incidents, according to a press release in the file with the IACHR, the Public Prosecutor for Ethnic Groups and Cultural Heritage of Honduras, Mr. Eduardo Villanueva, said he was worried because there had been attempts to murder ethnic leaders, given that "four have died since last April." He went on to say that Jesús Álvarez, a Garífuna leader, "had been attacked twice and had died following the second attack, which took place in Triunfo de la Cruz, in the jurisdiction of Tela". Published in the "El Tiempo" newspaper on May 21, 1997.

<sup>247</sup> Annex 128. El Diario publication, dated October 28, 1997. Annex 79 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003. Furthermore, with respect to these incidents, the IACHR ascertained in the action brought in the Alfredo López Álvarez case that Jorge Castillo Jiménez, another Garífuna leader in the Triunfo de la Cruz Land Defense Committee had been murdered on October 21, 1997 when he was on his way home accompanied by a minor, Julian Morales; they were ambushed, tied up, tortured, and riddled with bullets. These murders were denounced to the Office of the Attorney General. To date, these murders have not been investigated and those responsible have not been brought to trial. Action brought in the Alfredo López Álvarez versus the State of Honduras Case, filed by the IACHR before the Inter-American Court on July 7, 2003.

February 1, 2006, illustrates this situation. As the IACHR ascertained at the time, Alfredo López Álvarez was arbitrarily arrested in April 1997, after having received a series of threats and harassment designed to make him give up his work in defense of the Triunfo de la Cruz Community's land.<sup>248</sup> Regarding the way in which Alfredo's arrest affected the Community's fight to defend its ancestral land, Gregoria Flores, President of OFRANEH, stated in testimony to the Court that:

The arrest of Alfredo López had a huge impact on the Community. Alfredo's arrest was something instilled fear into us and at the same time paralyzed many of the activities we were engaged in at that time. In the case of Triunfo de la Cruz, we had a meeting to prevent the surrender of part of our habitat to Miguel Facusse as a private protected area. It was, however, surrendered when Alfredo was in prison. CODETT suspended its activities for a long time while we recovered strength, because we met and began to pity ourselves, and pity those who had been murdered, we lamented the absence of Alfredo but even the elders told us "if we continue pitying ourselves they are going to destroy us all, we must continue fighting because ultimately it is not Alfredo's fight, but that of the Community." That helped us pull ourselves together. There is also an organization, the unit of Community Councils, that Alfredo coordinated, which also came to a halt. For OFRANEH, Alfredo was the vice president, for us it was a very difficult situation. Not only were organizations affected, but the Community as well.<sup>249</sup>

186. The IACHR also recalls, that, during the processing of the aforementioned case, Gregoria Flores, who was supposed to appear as a witness on June 28, 2005 at the hearing before the Court, received threats and was later the victim of an attack on May 30, 2005, in which she was shot in her right arm.<sup>250</sup> On June 13, 2005, the Inter-American Court resolved to adopt the following provisional measures:

Require "that the State adopt, without delay, the measures necessary to protect the life and personal integrity of Mr. Alfredo López Álvarez, and Mrs. Teresa Reyes Reyes and Gregoria Flores Martínez, who would appear as witnesses before the Inter-American Court in the public hearing that would be held as of June 28, 2005," with respect to the López Álvarez case.<sup>251</sup>

187. Given the extremely serious situation, on September 21, 2005, the Court reiterated its order, requesting that the State implement the measures needed to protect the life and personal integrity of Messrs Alfredo López Álvarez, Teresa Reyes Reyes and Gregoria Flores Martínez, all members of OFRANEH and of the Garífuna Community of Triunfo de la Cruz. At that time, the Court required the State to:

a) Extend the measures necessary to protect the life and personal integrity of the mother and daughters of Mrs. Gregoria Flores Martínez;

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<sup>248</sup> IACHR, Declaration presented before the I/A Court H.R. in the Alfredo López Álvarez v. Honduras Case, July 7, 2003, paragraph 48.

<sup>249</sup> Testimony of Gregoria Flores Martínez on the *Alfredo López v. Honduras Case* provided at the public hearing held before the Inter-American Court on June 28, 2005.

<sup>250</sup> I/A Court H.R. *López Álvarez et al v. Honduras*, Provisional Measures, Court's Resolution dated September 21, 2005. Specifically, as the Court was told at the time: On May 27 2005, when Ms. Gregoria Flores Martínez was talking to Mr. Crisanto Meléndez, a member of a Garífuna community and collaborator of the Honduran Ministry of Culture, and when she told him that OFRANEH was not prepared to desist in its fight for the recovery of Garífuna lands, Mr. Meléndez allegedly told Ms. Flores Martínez that: "They went and looked for me so that I would talk [to her] and tell [her] that she has to stop [...] and desist from fighting for the land and against the Honduras. Land Administration Program." I/A Court H.R., *López Álvarez et al v. Honduras*, Provisional Measures, Court's Resolution dated September 21, 2005.

<sup>251</sup> I/A Court H.R. *López Álvarez et al v. Honduras*, Provisional Measures, Court's Resolution dated June 13, 2005 and September 21, 2005.

- b) Ensure and effectively implement the conditions needed for Ms. Gregoria Flores Martínez, who has been forced to move to another area, to return safely to her home;
- c) Investigate without delay the incidents that led to the adoption and maintenance of these provisional measures, with a view to identifying the culprits and punishing them accordingly.<sup>252</sup>[.]

188. On January 26, 2009, the Inter-American Court decided to lift the provisional measures ordered in 2005.<sup>253</sup>

189. The information at the IACHR's disposal further indicates that fear of being subjected to more threats and attacks led to Garífuna leaders leaving the Community and even in some cases to leave the country, as is the case of Gregoria Flores, Coordinator of OFRANEH, who according to the information given to the IACHR obtained refugee status in the United States.<sup>254</sup> The IACHR also understands that, as a consequence of the documented persecution of Garífuna authorities and leaders for their activities in defense of their land, attorneys have been afraid to represent the Community in these proceedings precisely in order to avoid reprisals and themselves become victims of similar acts of violence. All this adds to the difficulties endured by the Community for the recognition and defense of its ancestral lands.

## V. ANALYSIS OF LAW

### A. Prior Issues

190. The Garífuna people, the product of cultural syncretism between indigenous and African peoples, has asserted its rights in Honduras as an indigenous people. As was shown above, the Garífuna people has preserved its own cultural forms, organizations, and social and cultural institutions, way of life, cosmovision, habits, customs, ceremonial rights, language, clothing, and special relationship to the land. Those factors make the Garífunas a unique culture and ethnic group, whose members share social, cultural, and economic characteristics not found in other sectors of Honduran society, particularly the special relationship with the land they occupied historically, as well as their collective notion of ancestral property. The indigenous character of the Garífuna people has not been controverted by the State of Honduras in this case.

191. The organs of the inter-American human rights system have maintained, based on article 1.1 of the Convention, that the members of indigenous and tribal peoples need certain special measures to guarantee the full exercise of their rights, especially respect for the enjoyment of their property rights, in order to guarantee their physical and cultural survival.<sup>255</sup> Therefore, the

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<sup>252</sup> I/A Court H.R. *López Álvarez et al v. Honduras*, Provisional Measures, Court's Resolution dated June 13, 2005 and September 21, 2005.

<sup>253</sup> I/A Court H.R. *López Álvarez et al v. Honduras*, Provisional Measures, Court's Resolution dated January 26, 2009.

<sup>254</sup> IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 –Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. In addition, in the proceedings regarding provisional measure prescribed by the Court with regard to the *López Álvarez et al v. Honduras Case*, the petitioner stated "that the State has not complied with the provisional measures on behalf of Ms. Gregoria Flores Martínez, who, fearing for her safety, after what happened on May 27 and 30, 2005, "has had to leave the country given the Honduran State's failure to act". I/A Court H.R., *López Álvarez et al v. Honduras*, Provisional Measures, Court's Resolution dated September 21, 2005. paragraph 12. On this, Beatriz Ramos Bernárdez had the following to say in her testimony before the IACHR: "The leaders first had to flee the Community, and then the country, because they were persecuted, imprisoned on more than 10 occasions, then the idea was to hound them down and kill them. They had to leave the country to save their lives. [...]". IACHR, Public Hearing dated March 2<sup>nd</sup>, 2007 on "Case 12.548 – Garífuna Community of Triunfo de la Cruz, Honduras", 127<sup>th</sup> period of sessions. Testimony of Beatriz Ramos Bernárdez.

<sup>255</sup> I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001. Series C No. 79, paragraphs 148-149, and 151; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, paragraphs 118-121 and 131; and *Case of the Yakye Axa*

Commission will analyze the case of the Garífuna Community of Triunfo de la Cruz, bearing in mind the jurisprudence of the inter-American system concerning the rights of indigenous peoples and their distinct social, cultural, and economic characteristics, including their special ties to their ancestral territories.

192. The Commission also notes that the facts established in this report refer to historical processes that are ongoing. Nevertheless, the Commission will analyze them in light of the obligations assumed by the Honduran State since it ratified the American Convention on September 8, 1977

**A. Article 21 of the Convention, in conjunction with Article 1.1 and 1.2 of the same instrument**

**1. The territorial rights of the indigenous peoples in the inter-American human rights system**

193. The jurisprudence of the inter-American human rights system has repeatedly recognized the right of indigenous peoples to own their ancestral territories and the duty to protect that right arising out of Article 21 of the American Convention. In that regard, the IACHR has asserted that indigenous and tribal peoples have a communal property right to the lands that they have traditionally used and occupied, and that “the character of these rights is a function of customary land use patterns and tenure.”<sup>256</sup> Along the same lines, the Inter-American Court has pointed out that among indigenous peoples there is a communitarian tradition regarding a communal form of collective property of land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community.”<sup>257</sup>

194. In addition to their collective notion of property, the indigenous peoples have a special, unique, and internationally protected relationship with their ancestral territories, which is not found in non-indigenous peoples. This special and unique relationship between indigenous peoples and their traditional territories is protected under international law. As the IACHR and the Inter-American Court have affirmed, preservation of the special ties between the indigenous communities and their lands and resources is linked to the very survival of these peoples and therefore “warrants special measures of protection.”<sup>258</sup> The property right of indigenous and tribal peoples protects their

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*Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, paragraphs 124, 131, 135-137, and 154.

<sup>256</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 151. See *inter alia* IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, paragraph 130; and IACHR, Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, paragraph 160.

<sup>257</sup> I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001. Series C No. 79. paragraph 149. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, paragraph 131; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paragraph 118; *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of August 24, 2010 Series C No. 214, paragraphs 85-87; *Case of the Saramaka People v. Suriname.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 85; *Case of the Kichwa People of Sarayaku v. Ecuador.* Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, paragraph 145.

<sup>258</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, paragraph 128; I/A Court H.R. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua.* Judgment of August 31, 2001. Series C No. 79. paragraph 149. Also see I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paragraph 222.

close ties to their territories and to the natural resources related to their culture that are found there.<sup>259</sup>

195. The right to territory includes the use and enjoyment of its natural resources and is directly related, even as a prerequisite, with the rights to a dignified existence, food, water, health, and life.<sup>260</sup> For that reason, the IACHR has pointed out that “relations to its land and resources are protected by other rights set forth in the American Convention, such as the right to life, honor, and dignity, freedom of conscience and religion, freedom of association, rights of the family, and freedom of movement and residence.”<sup>261</sup>

196. The protection of property rights, guarantees, and judicial protection is reinforced by the general obligation to respect the human rights established by Article 1.1 of the Convention. Moreover, Article 2 of the American Convention establishes that were the exercise of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States’ Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.<sup>262</sup>

## **2. Right to collective property of the Community of Triunfo de la Cruz and its members**

197. The Honduran Constitution of 1982 recognizes the existence of indigenous peoples and the importance of preserving and stimulating their culture.<sup>263</sup> In Article 346, the Constitution recognizes the property right of the indigenous peoples and establishes the obligation to issue regulations to protect the rights and interests of the indigenous communities found in the country. That provision states:

It is the duty of the State to enact measures to protect the rights and interests of indigenous communities in the country, especially of the land and forests where they settled.

198. In addition to the Constitution, there are provisions under domestic law that recognize the territorial rights of the indigenous peoples, especially the aforementioned Article 92 of the Modernization and Development of the Agrarian Sector Law of 1992,<sup>264</sup> and the Property Law,

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<sup>259</sup> IACHR, Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia. Doc. OEA/Ser.L/V/II.135, Doc. 40, August 7, 2009, paragraph 156. I/A Court H.R. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment of August 31, 2001. Series C No. 79. paragraph 148. I/A Court H.R. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs*. Judgment of June 17, 2005. Series C No. 125, paragraph 137. I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, paragraphs 118, 121.

<sup>260</sup> IACHR, *Democracy and Human Rights in Venezuela*, 2009. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paragraphs 1076-1080.

<sup>261</sup> IACHR, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009.

<sup>262</sup> IACHR, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 43.

<sup>263</sup> Constitution of Honduras, Article 173- The State will preserve and stimulate native cultures, as well as genuine expressions of national folklore, popular art and crafts.

<sup>264</sup> Article 92 of the Agricultural Modernization Law, Decree 31-92, establishes that title deeds will be granted to ethnic communities free of charge: “The ethnic communities that demonstrate occupancy of the land they are settled on for no less than the three-year period referred to in amended Article 15 of this Law shall receive full ownership title deeds completely free of charge and issued by the National Agrarian Institute within the period stipulated in the aforementioned Article 15.”

adopted via Decree No. 82-2004 of June 29, 2004, Chapter III of which – Articles 93 to 102 – refers to the “process of regularizing ownership of real estate for the indigenous and Afro-Honduran peoples.” That law recognizes the traditional communal land system of the indigenous and Afro-Honduran peoples, under which the land is inalienable, nonseizable and imprescriptible.<sup>265</sup> It also recognizes the special importance of those peoples’ relationship with the land for their cultures and spiritual values.<sup>266</sup>

199. In its written communications to the IACHR, the State of Honduras has similarly recognized the importance of territory as a guarantee for the survival of indigenous peoples:

The indigenous peoples’ notion of the land extends far beyond the plot they farm collectively. For that reason, when they speak of land, they refer to the territory where they live, work, have their sources of water, breed animals and to the place where their forests, resources and other means of sustenance are found.<sup>267</sup>

200. In addition, through Decree No. 26-94 of May 10, 1994, published on July 30, 1994, Honduras ratified the International Labour Organization’s Convention No. 169 concerning indigenous and tribal peoples in Independent Countries. This Convention has been in force for the Honduran State since March 28, 1995. When it ratified that Convention, the State undertook to adopt special measures to guarantee the effective, unrestricted enjoyment of human rights and fundamental freedoms for indigenous peoples, and to include measures promoting the full exercise of their social, economic, and cultural rights, and respect for their social and cultural identity, customs, traditions, and institution. Regarding the right to property, Article 14 of the Convention establishes:

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.

201. Convention No. 169, which forms part of Honduran domestic law, also establishes obligations to consult and facilitate the participation of the indigenous peoples in matters affecting them, as well as a series of provisions relating to rights to their land, effective protection with respect to hiring and employment, social security and health services, education, and educational facilities.

202. For the above reasons, the Commission considers that the right to property established in Article 21 of the American Convention includes the right to community property, in accordance with the Honduran Constitution and legislation. This consideration concurs with the views of the Inter-American Court which has stated the following:

Applying the aforementioned criteria, the Court has considered that the close ties the members of indigenous communities have with their traditional lands and the natural resources associated with their culture, as well as the incorporeal elements deriving there from, must be secured under Article 21 of the American Convention. The culture of the members of indigenous communities reflects a particular way of life, of being, seeing and acting in the world, the starting point of which is their close relationship with their traditional lands and natural resources, not only because they are their main means of survival, but also

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<sup>265</sup> Property Law, Decree 82-2004 of June 29, 2004. Article 100.

<sup>266</sup> Property Law, Decree 82-2004 of June 29, 2004. Article 93.

<sup>267</sup> Document containing the State’s observations, presented on January 7, 2008.

because they form part of their worldview, of their religiousness, and consequently, of their cultural identity.<sup>268</sup>

203. In light of the above, it is clear that the Honduran legal system expressly recognizes, and obliges the State to guarantee, the Indigenous peoples' right to property, including that of the Garífuna Community of Triunfo de la Cruz. By virtue of Articles 21 and 29 of the American Convention, those provisions are protected by the Convention.

204. Based on the facts considered proved in the instant case, the IACHR observes that State authorities took part in actions and omissions that deprived the Community of Triunfo de la Cruz and its members of recognition of its right to its ancestral property, as well as the use and effective enjoyment of their lands and natural resources. It further considers that that has to do with the existence of shortcomings in the legal framework that have prevented the Garífuna people in Honduras and, in particular, the Community of Triunfo de la Cruz, from being able to protect the territories they have historically occupied. The IACHR will now proceed to analyze compliance with those obligations by the State and will point out, where applicable, related shortcomings in the domestic legal order.

**i) Right to a suitable and culturally appropriate title deed for its ancestral territory**

205. As the IACHR and Inter-American Court have established, by virtue of Article 21 of the American Convention, the indigenous peoples are entitled to tenure rights and ownership over the land and resources they have occupied historically; therefore, they have the right to be legally recognized as the owners of their territories and to obtain formal legal title to their lands and to have these titles duly registered.<sup>269</sup> The collective right to property of indigenous lands implies a collective title to territory, that is, the recognition of an equally collective title to property over such lands that reflects the community property of the land, with due respect for indigenous peoples' forms of internal organization with regard to land tenure.<sup>270</sup>

206. The IACHR has also pointed out that, with respect to indigenous and tribal peoples, States are obliged to "grant lands, at no cost, of sufficient extent and quality to conserve and develop their ways of life."<sup>271</sup> Lands shall be deemed of sufficient extent and quality if they guarantee for the members of the Community the ongoing exercise of the activities from which they derive their sustenance and which enable them to preserve their culture.<sup>272</sup>

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<sup>268</sup> I/A Court H.R. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment of August 31, 2001. Series C No. 79. paragraph 149. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs*. Judgment of June 17, 2005. Series C No. 125, paragraph 137; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, paragraph 118.

<sup>269</sup> See *inter alia* I/A Court H.R. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment of August 31, 2001. Series C No. 79. paragraph 137; IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 115.

<sup>270</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 194. IACHR, *Second Report on the Situation of Human Rights in Peru*. Doc. OEA/Ser.L/V/II.106, Doc. 59 rev., June 2<sup>nd</sup>, 2000, paragraph 39 ; IACHR, *Third Report on the Situation of Human Rights in Paraguay*. Doc. OEA/Ser.L/V/II.110, Doc. 52, March 9, 2001, paragraph 45.

<sup>271</sup> IACHR, *Third Report on the Situation of Human Rights in Paraguay*. Doc. OEA/Ser.L/V/II.110, Doc. 52, March 9, 2001, Chapter IX, paragraph 50, Recommendation 1.

<sup>272</sup> The IACHR has thus recommended States "[t]o promptly adopt any such measures as may be necessary to enforce the right to property and possession of the ancestral territory of the Sawhoyamaxa Indigenous Community of the Enxet-Lengua people and its members, specifically to delimit, demarcate and convey them title to their lands pursuant to their customary law, values, usage and customs, and to guarantee the members of the Community the exercise of their traditional subsistence activities". [IACHR, Report No. 73/04, *Case of the Sawhoyamaxa Indigenous Community (Paraguay), October 19, 2004, Recommendation 1. Referenced in: I/A Court H.R. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, paragraph 8].

207. Pursuant to inter-American human rights instruments, indigenous and tribal peoples are entitled to recognition and protection of “their particular versions of the right to the use and enjoyment of goods resulting from each people’s culture, habits, customs and beliefs.”<sup>273</sup> There is not just one way to use and enjoy protected goods; both ownership of and the ways in which territories are possessed by indigenous and tribal peoples may differ from a non-indigenous notion of ownership, but they are protected by the right to property.<sup>274</sup> The unique relationship between the indigenous and their traditional territory “may include the traditional use or presence, be it through spiritual or ceremonial ties; settlements or sporadic cultivation; seasonal or nomadic gathering, hunting and fishing; the use of natural resources associated with their customs and any other element characterizing their culture.”<sup>275</sup> Each of these modalities is protected by Article 21 of the Convention.<sup>276</sup>

208. Since it constitutes a prerequisite for the development of indigenous peoples’ own forms of subsistence, the granting of a suitable and culturally appropriate territorial title deed enables those peoples and their members to access food, water, and their traditional health and healing systems. The IACHR has explained that “the continued utilization of traditional collective systems for the control and use of territory are in many instances essential to the individual and collective well-being, and indeed the survival of indigenous peoples,”<sup>277</sup> and have to do with the “capacity for providing the resources which sustain life” for the people concerned,<sup>278</sup> as well as the “geographic space necessary for the cultural and social reproduction of the group.”<sup>279</sup> It is equally

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<sup>273</sup> I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paragraph 120.

<sup>274</sup> I/A *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paragraph 120.

<sup>275</sup> I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paragraph 131.

<sup>276</sup> See *inter alia* IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, paragraph 130; IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 151. I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paragraph 120. This interpretation is backed by other international instruments illustrating international attitudes to the part played by traditional land tenure systems in modern human rights protection systems; see, for instance, Article 14.1 of ILO Convention No. 169 and Article 27 of the International Covenant on Civil and Political Rights ratified by Honduras on August 25, 1997. On this, the human rights committee has explained that “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples” [Human Rights Committee, General Comment No. 23: Rights of Minorities (Article 27 of the International Covenant on Civil and Political Rights), 08/04/94, Doc. United Nations CCPR/C/21/Rev. 1/Add.5, paragraph 7; cited in IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, paragraph 130, footnote No. 97], inasmuch as hunting, fishing, and gathering are an essential element of indigenous culture [I/A Court H.R. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations, and Costs.* Judgment of June 17, 2005. Series C No. 125, paragraph 140]. This complex notion of indigenous property rights is also reflected in the United Nations Declaration, according to which “Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.” [United Nations Declaration, above, note 1, article 26.2].

<sup>277</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann v. United States, December 27, 2002, paragraph 128.

<sup>278</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann v. United States, December 27, 2002, paragraph 128.

<sup>279</sup> IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, paragraph 128.

important that the territory granted to the indigenous peoples be sufficiently large and in one place, that is to say, it should not be fragmented, in order for those peoples to enjoy the full exercise of their ancestral ways of life.

209. In the instant case, as is considered proven, the Community has ancestrally possessed the territory it occupies, and has kept its own forms of social and cultural organization, preserving its traditions, way of life, and relationship to the land. It has also been ascertained that, starting in 1946, the Community embarked on the process of achieving recognition of its rights to the lands it has historically occupied.

210. The IACHR notes that, given the nonexistence of specific legislation regarding the ancestral property of indigenous peoples in Honduran law – with the exception of the recent specific provisions referred to above –, the Community has all along had to avail itself of the mainly agrarian laws available to protect its rights to its ancestral lands, by filing applications with the National Agrarian Institute. Indeed, as the proven facts show, that legislation has consisted of the 1924 Agrarian Law, the 1962 Agrarian Reform Law, the 1974 Agrarian Reform Law, and the 1992 Modernization and Development of the Agrarian Sector Law.

211. The IACHR notes that, as a result of those efforts, the Community managed to achieve an ejido title to part of its ancestral territory in 1950, and a guarantee of occupancy title for another area in 1979, neither of which actually recognized its property right; instead, they awarded limited rights to the use and enjoyment of the land. On this, the IACHR recalls that, as the Inter-American Court has explained, there must be full recognition of the property right of indigenous peoples and there must be legal certainty as to its stability; for that reason the provisions of the American Convention are not satisfied when it is substituted by other legal constructs that grant limited rights and are revocable, such as those mentioned above.<sup>280</sup>

212. The IACHR notes that it was only recently, in 1993 and 2001, under the and Development of the Agrarian Sector Law of 1992, that the State granted the Community two full ownership titles to a total of 615 hectares and 28.71 centiares, whereas the territory claimed by the Community as one occupied since ancestral times covers an area of approximately 2,840 hectares, as considered proven in the foregoing paragraphs. Thus, the IACHR notes that, as of the date of this report, almost 66 years have elapsed since the Community filed its first application, a period of time that the IACHR also considers to be excessive, not having even resulted in recognition of the whole of the ancestral territory.

213. In this regard, the State pointed out that if the Community considered it had more territory, it should file the corresponding application with the INA, the State body that would process its request. Nevertheless, the IACHR observes from the evidence at its disposal that, contrary to the State's assertion, the Community lodging the petition applied to that body on more than one occasion requesting titling of the historically occupied territory. In particular, in the proceedings with the INA regarding the application filed on July 8, 1998, the Community identified its ancestral territory during field inspections carried out by officials from the Institute. Likewise, in the application for titling filed on January 22, 2001, the Community described and identified its ancestral territory.

214. From the information at its disposal, the IACHR notes that the part of the territory that was not recognized by the State, generally speaking, coincides with the area used by the Community to conduct its traditional subsistence activities, such as hunting, fishing, and

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<sup>280</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 113.

agriculture. However, from the first application for titling known to the Commission, that filed in 1946, the Community asked for recognition “of both the area of the population and its surroundings,” but only the area occupied by dwellings was titled. It also notes that, subsequently, the Community repetitively filed applications to achieve legal recognition of its functional habitat, such as the request for adjudication of 1969, the request that gave rise to the granting of an occupancy guarantee in 1979, the applications submitted to the INA in 1997, 1998, and 2001.

215. In the IACHR’s opinion, this has to do with application of agrarian legislation, which is based on productive use and exploitation of the land, to address the Community’s territorial claim. Foreign to this legislation, are the Community’s specific ties to and use of the land resulting from its culture, habits, customs, and beliefs. Here, the IACHR recalls that, as the Court has pointed out:

Members of tribal and indigenous communities have the right to own the natural resources they have traditionally used within their territory for the same reasons that they have a right to own the land they have traditionally used and occupied for centuries. Without them, the very physical and cultural survival of such peoples is at stake.<sup>281</sup>

216. In the instant case, as a result of the failure to grant a suitable and culturally appropriate title, the Community has been prevented from continuing to carry out its traditional subsistence activities, such as fishing, hunting, the gathering of medicinal plants, and the extraction of resources needed for the construction of its dwellings, all of which are necessary for the development and exercise of its culture. The IACHR must also point out that, as ascertained above, the insufficiency and inadequacy of the land titled, together with the destruction of the Community’s crops by third parties in its territory, even led some members of the Community to abandon traditional farming practices and to a shortage of traditional food stuffs, all of which are factors needed for the preservation of the Garifuna people’s culture.

217. In light of the above, the IACHR considers that the belated recognition of part of the ancestral territory and the denial of a single title based on historical occupation and customary use of the territory by the Community of Triunfo de la Cruz and its members, to ensure the preservation of its traditional way of life, constituted a violation of Article 21 of the American Convention in connection with Articles 1.1 and 2 thereof.

**ii) Right to the delimitation, demarcation, and effective protection of the exclusively indigenous ancestral territory**

218. As the IACHR has pointed out, ensuring effective enjoyment of territorial property by the indigenous peoples and their members is one of the ultimate objectives of judicial protection of this right. The States are obliged to adopt special measures to guarantee effective enjoyment of the territorial property of the indigenous peoples.<sup>282</sup> For this reason, the IACHR has emphasized that “demarcation and legal registry of the indigenous lands is in fact only the first step in the

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<sup>281</sup> I/A Court H.R., *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, paragraph 137; I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, paragraph 121. Likewise, the Court has stated that: “[...]the cultural and economic survival of indigenous and tribal peoples, and their members, depend on their access and use of the natural resources in their territory “that are related to their culture and are found therein”, and that Article 21 protects their right to such natural resources”. I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraphs 85-96; I/A Court H.R., *Case of the Yakye Axa Indigenous Community*. Judgment of June 17, 2005. Series C No. 125, paragraph 137, and I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community*. Judgment of March 29, 2006. Series C No. 146, paragraph 118.

<sup>282</sup> IACHR, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 86.

establishment and real defense of those areas," since effective property and possession are continually threatened, encroached upon, or curtailed by various *de facto* or legal actions<sup>283</sup>

219. The IACHR has also pointed out that indigenous and tribal peoples have a right to be protected from conflicts with third parties over the land, by being promptly granted a title deed and by means of expeditious delimitation and demarcation of their land, so as to prevent conflicts and attacks by others.<sup>284</sup> In that same context, indigenous or tribal peoples and their members are entitled to have their territory reserved for themselves, without the existence on their land of settlements or the presence of third parties or nonindigenous settlers. The State has a corresponding obligation to prevent the invasion or colonization of the indigenous or tribal territory by other persons and to take the steps and actions needed to relocate the nonindigenous inhabitants of the territory that are currently settled there.<sup>285</sup> The IACHR has described the invasions and illegal intrusion by nonindigenous settlers as threats, encroachment upon, and curtailment of the rights to property and effective possession of the territory by indigenous and tribal peoples that the State is obliged to monitor and prevent.<sup>286</sup>

220. In the case at hand, the IACHR observes that, despite the existence of constitutional and legal provisions that recognize the right of the Triunfo de la Cruz Community to communal property, and even recognize its traditional forms of land tenure, the Community has not maintained peaceable occupancy and tenure of the Community's ancestral lands. In the IACHR's opinion, that happened because of failure of the State authority to comply with its duties regarding the territorial rights of the Garífuna Community, such as (i) the lack of determination and timely delimitation of titled lands, (ii) the lack of legal certainty in the titles granted, (iii) restrictions on access to areas of the ancestral territory due to the establishment of protected areas, and (iv) failure to effectively protect their territory against occupation and dispossession by third parties and to guarantee that it be exclusively indigenous.

221. As regards the first factor, according to the information at the disposal of the IACHR, proceedings with the INA for the adjudication of lands to the Community did not lead to effective delimitation and demarcation of the areas to which title was granted. Indeed, as we saw in the section on proven facts, in July 2000, at the Community's own request, a Commission was appointed to "determine and locate the measurement lines for the full ownership title [of 1993]." Here, the IACHR recalls that, as it has previously pointed out, the obligation of the State to recognize and guarantee the indigenous peoples' exercise of the right to communal property "necessarily requires the State to effectively delimit and demarcate the territory to which the people's property right extends and to take the appropriate measures to protect the right of the people [concerned] in their territory."<sup>287</sup> The IACHR considers that delimiting part of the ancestral territory seven years after its titling does not meet that obligation, apart from the fact that the State

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<sup>283</sup> IACHR, *Report on the Situation of Human Rights in Brazil*. Doc. OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, paragraph 33.

<sup>284</sup> IACHR, *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paragraph 1137 – Recommendation 2. IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 113.

<sup>285</sup> IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 114.

<sup>286</sup> IACHR, *Report on the Situation of Human Rights in Brazil*. Doc. OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, Chapter VI, paragraphs 33, 40. IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 114.

<sup>287</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 132.

has not proven to this day that the total ancestral territory of the Community has effectively been delimited and demarcated.

222. As regards the lack of legal certainty of the titles granted, the IACHR notes that the full ownership title of 1993 was granted to the Community "subject to the condition that if the sale or donation of parcels [...] is allowed, it will be authorized for tourism projects approved by the Honduran Tourism Institute in favor of descendants of the beneficiary ethnic community." It also notes that with the expansion of the radius of the Municipality of Tela, in Resolution No. 002 of January 17, 1992, the IHT recommended following, "with respect to land use patents [...] the Urban Development Guidelines for the town of Tela [...] which envisage exploiting the tourism potential of the area inside the new urban perimeter."<sup>288</sup>

223. Along these same lines, the 2004 Property Law – the general regulatory framework applicable to the territorial rights of indigenous and afro-Honduran peoples in Honduras – recognizes the communal system with respect to indigenous land and establishes that an end may be put to it "in order to authorize leasing to third parties or contracts of another kind that enable the Community to participate in investments contributing to its development."<sup>289</sup>

224. The IACHR considers that the inclusion of these kinds of clauses in the communal title, and the application of provisions encouraging tourism in indigenous territories are incompatible with the effective security and legal certainty that must characterize the title deed to which the indigenous peoples are entitled. In this regard, the IACHR has expressly indicated that the legal stability of the lands is impaired when the law fails to guarantee the inalienable nature of the communal lands and allows communities to dispose of them freely and to establish collateral, mortgages, or other liens on them, or to lease them.<sup>290</sup> As pointed out by the former Special United Nations Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, Doudou Diène, in his report of March 22, 2005, in the case of the Garífuna communities in Honduras, this has translated into constant fear of being dispossessed of their ancestral lands.

[...] The possibility of owning their ancestral lands is a central and pressing preoccupation of the Garífuna. Some progress has been made thanks to recognition of the rights of some communities, but several other communities, such as those in Cayos Cochinos (Islas de la Bahía de Tela), Triunfo de la Cruz and San Juan (municipality of Tela) and Punta Piedra (municipality of Colón), live in fear of being dispossessed of their lands, which are coveted by powerful farm and hotel owners.<sup>291</sup>

[...]

Representatives of indigenous peoples have expressed their fear that big economic development projects, particularly in the fields of tourism, mining and farming, will contribute

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<sup>288</sup> Annex 18. Resolution 002 of the Honduran Tourism Institute, dated January 17, 1992. Annex 8 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

<sup>289</sup> Property Law, Decree 82-2004 of June 29, 2004. Article 100 – It is declared unrecognized that the communal land regime traditionally followed by these peoples includes the inalienable, unseizable, and imprescriptible nature of the land. Nevertheless, the communities themselves may terminate this communal system, authorize leasing to third parties, or authorize contracts of another kind that enable the community to participate in investments contributing to its development.

<sup>290</sup> IACHR, *Second Report on the Situation of Human Rights in Peru*. Doc. OEA/Ser.L/V/II.106, Doc. 59 rev., June 2<sup>nd</sup>, 2000, paragraph 18. IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 89.

<sup>291</sup> United Nations. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène. *Report on Mission to Honduras*. E/CN.4/2005/18/Add.5. March 22, 2005. paragraph 19.

to dispossessing them of their lands. There is indeed a growing pressure on these peoples to sell their lands to businesses [...].<sup>292</sup>

225. At the same time, the IACHR notes that one of the impediments to full enjoyment of the ancestral territory has to do with the establishment of a protected area in Punta Izopo, and the intrusting of its management to a private foundation, PROLANSATE. Here, the IACHR observes that, although Decree No. 261-2000 establishes that the owners or possessors in the Punta Izopo Protected Natural Area “will preserve their rights,” it also orders the INA “to grant full ownership title to current possessors of properties that have not been legalized,” with the sole exception of those included in the central zone of the National Park. Considering that, as has been deemed proven, part of the ancestral lands of the Community are located in the buffer zone of this protected area, the IACHR considers that the adoption of measures aimed at giving titles to third parties in the area are contrary to the Community’s territorial rights.

226. In addition, the IACHR notes that, based on the agreement signed with PROLANSATE and laws and regulations on the subject,<sup>293</sup> the establishment of the Punta Izopo Park involved restricting the rights to use and enjoyment of the area by members of the Community, who in practice have not been able to exercise those rights. As the IACHR previously ascertained, the Community has been prevented from conducting its cultural and economic subsistence activities in Punta Izopo. Moreover, several areas of that Park have been used for purposes other than environmental conservation.

227. At the same time, as has been shown, one of the main impediments to peaceable possession by the Community has been the presence of and gradual appropriation by mestizos “ladinos” and non-Garifunas in its ancestral territory. The IACHR considers it a proven fact that competent authorities were aware of the presence of numerous mestizos in indigenous lands. The Community repeatedly requested clearing of encumbrances of its lands, to which the authorities expressly committed themselves. Nevertheless, the State provided no evidence to the IACHR that this had taken place. On the contrary, it received information pointing to the persistence of numerous conflicts with third parties related to land tenure and access.<sup>294</sup>

228. Without denying that fact or the right of the Garífuna communities to their ancestral property, the State of Honduras maintained before the IACHR that “effective implementation of those rights presupposes a process requiring [...] the deployment of financial resources that the State has not had in order to effectively implement the right which the Honduran State does not dispute.”<sup>295</sup> The Commission takes note of this statement by Honduras, but stresses that States may not use domestic circumstances to justify their failure to comply with their international obligations. The IACHR likewise recalls that the Inter-American Court has ruled that States have

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<sup>292</sup> United Nations. Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène. *Report on Mission to Honduras*. E/CN.4/2005/18/Add.5. March 22, 2005. paragraph 22.

<sup>293</sup> Articles 9 and 10 of Decree No. 261-2000. Likewise, the Property Law establishes, with respect to protected areas located on lands of the indigenous and afro-Honduran peoples, that they will be managed jointly with the State, abiding by the land use planning regulations which establish limits on use and titling for general interest reasons. Property Law Decree No. 82-2004 of June 15, 2004, Article 101.

<sup>294</sup> Likewise, in the concluding observations on Honduras in 2006, the Human Rights Committee stated that: “[...]The State party should guarantee members of indigenous communities the full exercise of the right to enjoy their own culture. It should take the necessary steps to resolve the problems related to ancestral indigenous lands”. United Nations, Human Rights Committee. Considerations of Reports Submitted By States Parties Under Article 40 of the Covenant. *Concluding Observations*. CCPR/C/HND/CO/1, December 13, 2006, paragraph 19.

<sup>295</sup> IACHR, Hearing dated October 18, 2005 on “Petition 906/03 - Garífuna Community of Triunfo de la Cruz, Honduras”, 123<sup>rd</sup> period of sessions.

the duty to ensure an accessible and simple procedure [referring to the procedure for processing the indigenous peoples' land-related claims] and to provide competent authorities with the technical and material conditions necessary to respond timely to the requests filed in the framework of said procedure.<sup>296</sup>

229. The State also argued that it cannot disregard the rights of non-indigenous occupants who have "legal documents attesting to their ownership," such as notarized deeds or full ownership papers. The IACHR concurs with the State to the extent that, as the Court has said, both "the private property of individuals" and the "community property of the members of the indigenous communities" are supported by the American Convention. However, as established in the jurisprudence of the inter-American system, when these rights conflict, the problem must be resolved in accordance with the principles governing restrictions on human rights.<sup>297</sup>

230. In this regard, the IACHR emphasizes that, as the Court has pointed out, it is necessary to take into account that "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."<sup>298</sup> Priority has to be given, first and foremost to the indigenous and tribal peoples' recovery of their ancestral lands. In addition, consideration must be given to the fact that indigenous and tribal peoples have a right to a guarantee that their ownership of the territory may not, in principle, be overridden by the property rights of third parties,<sup>299</sup> and that they, on the contrary, have the right to live freely in their ancestral territories. As the Court says:

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, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.<sup>300</sup>

231. The IACHR considers that domestic legislation contains provisions that run counter to the above. Indeed, the Property Law establishes that if third parties are present on communal lands the tenure of indigenous and afro-Honduran peoples shall take preference over titles issued to third parties that never possess them.<sup>301</sup> Yet, third parties with title deeds for these peoples' land and who have had tenure or possessed the land are entitled to continue possessing and using it.<sup>302</sup> Moreover, the law establishes that a third party that has received a title deed for communal land, which is such that it can be annulled, shall be compensated, prior to the return of the lands to the

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<sup>296</sup> I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paragraph 109. Likewise, the IACHR has pointed out that States are obliged to ensure the availability of the funds and resources needed to comply with their constitutional and international obligations vis-à-vis the territorial rights of indigenous and tribal peoples. IACHR, *Third Report on the Situation of Human Rights in Paraguay.* Doc. OEA/Ser./L/VII.110, Doc. 52, March 9, 2001, paragraph 50 – Recommendation 2.

<sup>297</sup> I/A Court H.R., *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of August 24, 2010 Series C No. 214, paragraph 143.

<sup>298</sup> I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs.* Judgment of March 29, 2006. Series C No. 146, paragraph 128.

<sup>299</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 115.

<sup>300</sup> *Case of the Mayagna (Sumo) Awá Tingni Community.* Judgment of August 31, 2001. Series C No. 79, paragraph 149. See also in: I/A Court H.R., *Case of the Sawhoyamaya Indigenous Community.* Judgment of March 29, 2006. Series C No. 146, paragraph 222.

<sup>301</sup> Property Law decree 82-2004 of June 15, 2004. Article 96.

<sup>302</sup> Property Law decree 82-2004 of June 15, 2004. Article 97.

affected communities, for any improvements that party has made. In contrast, third parties in indigenous lands that have no title at all may negotiate staying on with the community.<sup>303</sup> In the IACHR's opinion, such provisions render the preferential right of the indigenous peoples based on ancestral possession of their lands illusory. Nor do they assist its right to collective ownership of an exclusively indigenous territory.

232. In addition to the above, the IACHR points out that, as we shall see in the following paragraph, it was precisely the actions of State authorities that led to overlapping titles to the Community's ancestral territory, as well as to the existence of numerous conflicts triggered by nonindigenous persons that have taken possession through fraud and/or violence.

233. In light of the above considerations, the IACHR concludes that the State of Honduras did not guarantee the delimitation, demarcation, and effective protection of the Community's ancestral lands, not even those to which it has title because of the legal uncertainty of those titles, which led to overlapping titles and frequent illegal occupation of indigenous lands. This has kept the Community in a state of permanent conflict due to the acts of private individuals and public authorities, depriving it the effective exercise of its right to property and peaceable possession, contravening Article 21 of the Convention.

**iii) Impairment of the ancestral territory due to the expansion of the urban core and the sale of community lands**

234. As shown in the section on proven facts, parallel to the Triunfo de la Cruz Community's territorial claims, State authorities performed actions that directly contravened its rights. In particular, as the IACHR considers proven, through Resolution No. 055-1989 of April 24, 1989, the INA authorized the expansion of the urban core of the Municipality of Tela by 3,219.80 hectares, a decision approved by the IHT on January 17, 1992. The IACHR has ascertained from the evidence provided that the expansion of the urban core of Tela encompassed a large part of the Community's ancestral territory. It also considers that it has been proved that on January 30, 1992 a notarized deed was granted to the Municipality, for the area awarded, which led to the Municipality selling off plots of land to private individuals.

235. Regarding this, the State argued that the expansion of the urban core of the Municipality did not impair the Triunfo de la Cruz Community's rights, because the first title in fee simple was granted to it in 1993, four year after the INA resolution authorizing the expansion of the municipal core. The IACHR considers that that argument should be dismissed because, as the organs of the inter-American system have consistently established, indigenous territorial property is a form of property that is not based on official recognition by the State, but rather on the traditional use and possession of the land and resources; the territories of indigenous and tribal peoples "are theirs by right of their ancestral use or occupancy."<sup>304</sup> The right to indigenous communal property is based also on indigenous juridical cultures, and on their ancestral property systems, regardless of State recognition; the origin of the property rights of indigenous and tribal peoples is to be found, therefore, in the customary land tenure system that has traditionally existed among communities.<sup>305</sup>

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<sup>303</sup> Property Law decree 82-2004 of June 15, 2004. Articles 98 and 99.

<sup>304</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Stengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 34, June 28, 2007, paragraph 231.

<sup>305</sup> See *inter alia*, I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 96; IACHR, Pleadings before the Inter-American Court of Human Rights in the case of *Awas Tingni v. Nicaragua*. Referred to in: I/A Court H.R. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment of August 31, 2001. Series C No. 79. Paragraph 140(a); IACHR, Report No. 40/04, Case 12.053, *Maya Indigenous Communities of the Toledo District (Belize)*, October 12, 2004, paragraph 115.

That being so, the Court has asserted that “the traditional possession by the indigenous peoples of their lands has the same effects as a title of full ownership granted by the State.”<sup>306</sup>

236. Along the same lines, the IACHR considers that the fact that the Triunfo de la Cruz Community did not have a title deed officially recognized by the authorities at the time of the expansion in no way exempts the State of Honduras from its international liability, because, as the jurisprudence of the inter-American system has established, the guarantees protecting the right to property under inter-American human rights instruments may be effectively invoked by the indigenous peoples with respect to the territories that belong to them but have not yet been officially titled, demarcated, or delimited by the State.<sup>307</sup> Indeed, for the IACHR States have a special obligation to protect untitled indigenous territories from any act that could impair or diminish their existence, value, use, or enjoyment of goods, including existing natural resources, because those peoples have communal property rights to land and natural resources based on traditional patents of use and ancestral occupancy.<sup>308</sup>

237. Without prejudice to the above, the IACHR observes that, as shown in the proven facts Section, at the time the INA adopted Resolution No. 055-1989, the Triunfo de la Cruz Community had the ejido title granted in 1950 to 380.82 hectares, in which its occupancy was recognized. Likewise, such possession had been recognized with respect to 126.40 hectares, by virtue of the occupancy guarantee granted by the INA in 1979, pursuant to the Agrarian Reform Law. It also notes that, at that time, the application for a title to the River Plátano area, filed by the Community in 1969 was being processed at the INA. Nevertheless, the same institution approved the expansion to the detriment of the Community’s rights, despite the fact that point 3 of the aforementioned resolution established that it was granted “without prejudice to any property and possession right of natural or juristic persons in the delimited area.”

238. Furthermore, the IACHR observes that point 2 of Resolution No. 055-1989 provided for the exclusion from the urban radius of “land previously granted to beneficiaries of the Agrarian Reform [...] until they have been paid for in full.” According to that, at least the 126.40 hectare area granted to the Community as a beneficiary of the Agrarian Reform should have been excluded from the expansion. Alternatively, the total value of the land should have been paid. Nevertheless, from the information at the IACHR’s disposal, this circumstance was not even considered as a way of guaranteeing the Community’s rights.

239. In the IACHR’s opinion, the expansion of the urban core represented total disregard of the legal obligations undertaken by the State and, in particular, of the Community’s well known territorial claims and considerably exacerbated its legal uncertainty. The IACHR has pointed to the establishment of municipalities in indigenous areas for state reasons precisely as a factor hampering their “recognition and consolidation.”<sup>309</sup> It has also considered that it runs counter to legal certainty

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<sup>306</sup> I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment of August 31, 2001. Series C No. 79, paragraph 151; I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, paragraph 128. I/A Court H.R. *Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of August 24, 2010 Series C No. 214, paragraph 109.

<sup>307</sup> IACHR, Action filed with the I/A Court H.R in the *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. April 26, 2010, paragraph 125. IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraphs 142 and 153.

<sup>308</sup> IACHR, *Indigenous and Tribal Peoples’ Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 68.

<sup>309</sup> IACHR, *Report on the Situation of Human Rights in Brazil*. Doc. OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, paragraphs 40-43, 83-Recommendation 5.

of the indigenous peoples' title deeds.<sup>310</sup> Moreover, in this specific case, the IACHR notes that this measure prevented titling of the Community's ancestral lands, because, as transpires from the proceedings begun with the INA in January 2001, lot A1 – considered “within the urban perimeter” and containing the 22 *manzanas* in dispute – was excluded from the title granted.

240. The Commission notes that once these lands had been declared urban, they came under the jurisdiction of the Municipality of Tela and therefore became subject to the legislation on such land. Here, the IACHR points out that, pursuant to the aforementioned article 70 of the Municipalities Law, adopted through Decree No.134-90 of November 19, 1990,<sup>311</sup> “urban communal land real estate in which possession by private individuals was not legalized become fully owned by a municipality whose urban perimeter had been determined when this law came into force,” thereby affecting the Community's ancestral lands to which no title had been granted. It also notes that the same provision authorized the Municipality to grant full ownership of “urban communal land real estate in the possession of private individuals without full ownership title [...] after payment of an amount to be determined by the Municipality [...].” This made it possible for outsiders occupying Garífuna land to obtain full ownership titles in return for payments to Municipality.

241. The Community's property right with respect to land to which it had title was also impaired because, as shown earlier, State authorities granted ownership titles to private persons. As the INA ascertained, by 2001, at least 10 non-Garífuna individuals had full ownership titles in this area. This happened despite the fact that the collective titles of 1993 and 2001 expressly prohibited sales to persons who were not members of the Community, while the title granted in 2001 further required “approval by the Management Board of the Community Council, which approval had to be included in the ownership transfer instrument.”

242. The IACHR considers it a particularly serious matter that State agents, in their attempt to sell Community land, took part in and fostered the creation and maintenance of a “parallel council.” In the IACHR's view, that constituted grave interference in the political and social organization of the Community which triggered divisions within the Community that were to last until now. It further understands that the pressure exerted on members of the Community to force them to sell ancestral lands, and the actions of State agents – both municipal and Public Registry officials – to achieve such sales, affected the Triunfo de la Cruz Community's form of succession, in that it contravened the Garífuna people's collective conception of its land, in which land is a sacred heritage of the Community and should be distributed according to customary law. It added an economic valuation dimension foreign to the Community, thereby affecting its self identity.<sup>312</sup>

243. The IACHR considers it right to include restrictions on the sale of indigenous territory in the title deed in as much as it provides legal certainty, and it also appreciates the existence of a provision in the Property Law establishing that “no authority may issue or register a title in favor of

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<sup>310</sup> IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 91.

<sup>311</sup> Law on Municipalities, adopted through Decree No. 134-90 on November 19, 1990 and modified by Decree No. 125-2000 on October 6, 2000. Source: Judiciary of Honduras. Electronic Center for Judicial Documentation and Information - CEDIJ. Available at: <http://www.poderjudicial.gob.hn/institucional/organizacion/dependencias/cedij/Leyes/Documents/LEY%20DE%20MUNICIPALI%20DADES.pdf>.

<sup>312</sup> Thus, Mario Valerio, a former President of the Community Council, stated “for us, splitting the land runs counter to the very existence of our community and all the values that go with it.” Annex 67. Complaint lodged with the Office of the Attorney General in Tela dated February 27, 2003. Annex 56 of the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

third parties in community lands.”<sup>313</sup> Nevertheless, the IACHR stresses that the adoption of provisions is not sufficient to comply with States’ international obligations. As has been stated previously, based on Article 2 of the Convention, the Indigenous peoples are entitled to effective implementation of the law. Under that provision States must ensure effective, practical implementation of the constitutional, legal, and regulatory provisions in its domestic law establishing the rights of indigenous and tribal peoples and their members, thereby ensuring the effective enjoyment of such rights.<sup>314</sup>

244. It was clear to the IACHR, that, for the members of the Community, the expansion of the urban core exacerbated the situation of conflict, insecurity, and anxiety they are experiencing 30 years after that decision was taken. The situation referred to manifests itself in numerous ways that have been documented throughout this report.

245. As shown above, the Community of Triunfo de la Cruz has constantly complained to administrative and judicial authorities regarding acts of harassment and violence perpetrated by government officials and private individuals coveting their ancestral lands. Specifically, the file with the IACHR contains multiple complaints to State authorities regarding acts such as sales of Community land, attempts to dispossess the Community, destruction of crops, and threats using firearms and harassment, all of which clearly testify to the confrontational and insecure situation that exists in the Community’s ancestral territory.

246. The IACHR likewise observes that the Community was prevented from routinely carrying out such traditional subsistence activities as fishing, the gathering of food, and the cultivation of crops, which were even destroyed by third parties bent on achieving eviction from the areas sold to them. The IACHR recalls that, as it pointed out in a previous occasion, “from the standpoint of human rights, a small corn field deserves the same respect as the private property of a person that a bank account or a modern factory receives [...],”<sup>315</sup> which is even truer of practices relating to the preservation of the Garifuna peoples’ culture. The Community was also prevented from exercising peaceable possession of its territory due to denunciations of encroachment, whereby the historical occupants, paradoxically were considered to have invaded their land.

247. Another grave consequence noted by the IACHR is that the expansion of the urban core gave rise to severe pressure, threats, and even the murder and arrest of community leaders and authorities. As the Commission has previously pointed out, many of the attacks against the lives and personal integrity of indigenous leaders “are intended to dissuade them from engaging in activities to defend and protect their lands and natural resources, and to defend their right to autonomy and cultural identity.”<sup>316</sup> In the IACHR’s opinion, this case illustrates the effect of aggression, attacks, and harassment against leaders, because they not only seriously undermine cultural integrity; they also weaken unity in the Community regarding the defense of its rights.<sup>317</sup>

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<sup>313</sup> Property Law decree 82-2004 of June 15, 2004 article 102.

<sup>314</sup> IACHR, *Democracy and Human Rights in Venezuela, 2009*. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paragraph 1062. See also: IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II, Doc. 34, June 28, 2007, paragraphs 134, 149, 220, 297 - Recommendation 4.

<sup>315</sup> IACHR, *Report on the Situation of Human Rights in Guatemala, 1993*. OEA/Ser.L/V/II.83. Doc. 16 rev. 1, June 1993.

<sup>316</sup> IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. paragraph 298.

<sup>317</sup> IACHR. *Second Report on the Situation of Human Rights Defenders in the Americas*. OEA/Ser.L/V/II. Doc. 66. December 31, 2011. paragraph 298.

248. Accordingly, the Commission considers that these facts are evidence of grave harm done, in this case, to the Community's ancestral property right. They form part of a complex and lengthy fight for the recognition and defense of the Garífunas' ancestral lands, in which the Community, as a collective entity, and its individual leaders and members had other rights impaired, such as their rights to life, personal integrity, political participation or freedom of association. They also reaffirm the Commission's pronouncements regarding the close link between indigenous peoples' right to territory and their effective and peaceable possession, along with other rights protected by the Convention.

249. In light of the foregoing considerations, the Commission concludes that the State of Honduras violated Article 21 of the American Convention, in conjunction with Articles 1.1 and 2 of the same instrument, to the detriment of the Garífuna Community of Triunfo de la Cruz and its members.

**3. Right to prior, free, and informed consultation of the Community of Triunfo de la Cruz and its members regarding decisions affecting their ancestral territory and natural resources**

250. The IACHR and the inter-American Court have elaborated on the content and scope of Article 21 of the Convention, in connection with the right of indigenous peoples to use and enjoy their territory, by interpreting the provisions of said Article progressively, in such a way as to permit the enjoyment and exercise of the rights recognized by the State in other treaties, such as the ILO Convention No. 169. Through that Convention and developments in regulations and case law, international law has endowed the duty to engage in prior consultations with the indigenous peoples regarding situations that affect their territory with specific content.

251. In this regard, the Commission has asserted the duty of States to consult indigenous peoples regarding any activity or economic project that affects their lands and natural resources, including cases in which the State seeks to exploit mineral resources. The right to consultation comprises the positive duty of States to provide suitable and effective mechanisms for obtaining prior, free, and informed consent in accordance with the customs and traditions of the indigenous peoples before undertaking activities that may adversely affect their interests or their rights to their lands, territory or natural resources.<sup>318</sup>

252. The Commission has applied these principles in different contexts, including in connection with infrastructure or development mega projects, such as highways, canals, dams, ports, and similar projects, as well as to concessions for the exploration or exploitation of natural resources in ancestral lands that may have an especially profound effect on indigenous peoples by endangering their territories and ecosystems located therein, particularly when the ecological fragility of their territories is combined with their demographic weakness.<sup>319</sup> For that reason, the IACHR has pointed to the connection between the negative effects of development and investment

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<sup>318</sup> See *inter alia* IACHR, Report on Ecuador 1997 Conclusions of Chapter IX. Human Rights issues of special relevance to the indigenous inhabitants of the country and Conclusions of Chapter VIII; IACHR, Report on the Situation of Human Rights in Colombia, Chapter X, 1999. Recommendation No. 4.; IACHR, Final Merits Report N° 75/02, Case 11.140, Mary and Carrie Dann (United States), Annual Report of the IACHR 2002, paragraph 140; IACHR, Final Merits Report No. 40/04, Case 12.053. Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 142. Belize ratified Convention No. 169 in 1991; IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Chapter IV, Rights of Indigenous Peoples and Peasant Communities, paragraph 248. Bolivia ratified Convention No. 169 of the International Labour Organization in 1991; IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, Chapter IX.

<sup>319</sup> IACHR, Third Report on the Situation of Human Rights in Colombia. Doc. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, paragraphs 33-35.

plans and projects in indigenous or tribal territories, as well as of natural resource exploration and exploitation concessions, and violations of multiple and individual and collective human rights.<sup>320</sup> It has also concluded that the environmental damage caused by natural resource exploration and exploitation concessions exacerbates the violations of communal property right by the authorities, and render them internationally liable.<sup>321</sup> In this regard, the IACHR has reiterated that it “acknowledges the importance of economic development for the prosperity of the populations of this Hemisphere;”<sup>322</sup> but it also acknowledges that “at the same time, development activities must be accompanied by appropriate and effective measures to ensure that they do not proceed at the expense of the fundamental rights of persons who may be particularly and negatively affected, including indigenous communities and the environment upon which they depend for their physical, cultural and spiritual well-being.”<sup>323</sup>

253. For its part, in the cases of the *Saramaka People v. Suriname* and *the Kichwa Indigenous People of Sarayaku v Ecuador*, the inter-American Court has established that in the event of restrictions or limitations on the exercise of the indigenous peoples’ property right to their lands, territories, and natural resources, the States have a duty to comply with the provision of certain guarantees. First, the Court has pointed out that States must comply with the requirements established for instances of expropriation in Article 21 of the American Convention on Human Rights. As the Court explained “the protection of the right to property under Article 21 of the Convention is not absolute [...] Although the Court recognizes the interconnectedness between the right of members of indigenous and tribal peoples to the use and enjoyment of their lands and their right to those resources necessary for their survival, said property rights, like many other rights recognized in the Convention, are subject to certain limitations and restrictions. In this sense, Article 21 of the Convention states that the “law may subordinate [the] use and enjoyment [of property] to the interest of society”. Thus, the Court has previously held that, in accordance with Article 21 of the Convention, a State may restrict the use and enjoyment of the right to property where the restrictions: a) previously established by law; b) necessary; c) proportional, and d) with the aim of achieving a legitimate objective in a democratic society.”<sup>324</sup>

254. The second requirement that is binding upon States is to ensure that the granting of a concession does not affect the survival of the indigenous or tribal people concerned in accordance with its ancestral way of life. As the inter-American Court states, “another crucial factor to be considered is whether the restriction amounts to a denial of their traditions and customs in a way

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<sup>320</sup> For example, they have concluded that the right to live in dignity is violated when development projects cause environmental pollution and harmful effects on basic subsistence activities, affecting the health of the indigenous and tribal peoples in the territories where those projects are carried out. [IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, paragraph 250]. In particular, mention was made of “adverse effects on health and production systems; changes in domestic migration patterns; a decline in the quantity and quality of water sources; impoverishment of soils for farming; a reduction in fishing, animal life, plant life, and biodiversity in general, and disruption of the balance that forms the basis of ethnic and cultural reproduction.” These constitute violations of the human rights of the indigenous peoples living in the places where mining, timber, and oil projects are conducted. [IACHR, Follow-up report - *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser.L/V/II.135, Doc. 40, August 7, 2009, paragraph 158].

<sup>321</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 148.

<sup>322</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 150.

<sup>323</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 150.

<sup>324</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 127. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraph 156.

that endangers the very survival of the group and its members.”<sup>325</sup> As the Court pointed out in its interpretation judgment in the Saramaka case, the notion of “survival” is not to be equated with mere physical subsistence but “must be understood as the ability of the Saramaka to “preserve, protect and guarantee the special relationship that [they] have with their territory”, so that “they may continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected guaranteed and protected [...]”. That is, the term “survival” in this context signifies much more than physical survival.”<sup>326</sup> Likewise, for the IACHR “the term ‘survival’ does not refer only to the obligation of the State to ensure the right to life of the victims, but rather to take all the appropriate measures to ensure the continuance of the relationship of the indigenous people with their land or their culture.”<sup>327</sup>

255. The third guarantee established by the Court contains three obligations. According to the Court, “in accordance with Article 1(1) of the Convention, in order to guarantee that restrictions to the property rights of the members of the [indigenous or tribal peoples] by the issuance of concessions within their territory does not amount to a denial of their survival as a tribal people, the State must abide by the following three safeguards: First, the State must ensure the effective participation of the members of the [people concerned], in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan [...] within the [ancestral] territory. Second, the State must guarantee that the [members of the people concerned] will receive a reasonable benefit from any such plan within their territory. Thirdly, the State must ensure that no concession will be issued within [the ancestral] territory unless and until independent and technically capable entities, with the State’s supervision, perform a prior environmental and social impact assessment. These safeguards are intended to preserve, protect and guarantee the special relationship that the members of the [people concerned] have with their territory, which in turn ensures their survival as a tribal people.”<sup>328</sup> These three conditions are complementary requirements designed to guarantee their survival as indigenous and tribal peoples.<sup>329</sup>

256. With respect to the first requirement, the organs of the inter-American system have specifically established that indigenous and tribal peoples have a right to “be involved in the processes of design, implementation, and evaluation of development projects carried out on their lands and ancestral territories,”<sup>330</sup> and that the State must guarantee that “indigenous peoples be consulted on any matters that might affect them,”<sup>331</sup> “noting that the purpose of such consultations should be to obtain their free and informed consent.”<sup>332</sup> Through the consultation process the

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<sup>325</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 128. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraph 156.

<sup>326</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, paragraph 37.

<sup>327</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, paragraph 29.

<sup>328</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 129. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraph 157.

<sup>329</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, paragraph 38.

<sup>330</sup> IACHR, *Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, paragraph 157.

<sup>331</sup> IACHR, *Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, paragraph 157.

<sup>332</sup> IACHR, *Follow-Up Report – Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, paragraph 157. See *inter alia* IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 143.

participation of the indigenous and tribal peoples must be guaranteed “in all decisions on natural resource projects on their lands and territories, from design, through tendering and award, to execution and evaluation.”<sup>333</sup>

257. For the Court, effective participation consists precisely in the right of the indigenous peoples to prior consultation “in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan [...] within [ancestral] territory [...]”<sup>334</sup> The Court has also considered that, in the case of large scale investment or development plans that would have a major impact within the [indigenous] territory, the State has the obligation, not only to consult the indigenous people, but also to obtain its prior, free, and informed consent, in accordance with its customs and traditions.<sup>335</sup>

258. In this regard, the Court has emphasized that “the obligation to consult, in addition to being a conventional standard, is also a general principle of International Law” and that “nowadays the obligation of States to carry out special and differentiated consultation processes when certain interests of indigenous peoples and communities are to be affected is an obligation that has been clearly recognized.”<sup>336</sup> The Court has also specified that “it is the State’s obligation - and not that of the Indigenous Peoples- to effectively demonstrate, in this specific case, that all aspects of the right to prior consultation were effectively guaranteed.”<sup>337</sup>

259. In order to be consistent with inter-American human rights law, the consultation with the indigenous peoples must fulfill certain requirements: it must be prior, that is to say, it must be conducted “from the first stages of planning or preparation of the proposed measures, so that the indigenous peoples can truly participate in and influence the decision-making process;”<sup>338</sup> it must be culturally appropriate and take the traditional methods used by the people concerned to take decisions, as well as their own forms of representation;<sup>339</sup> it must be informed, which requires that full and accurate information be provided to the communities consulted regarding the nature and consequences of the process;<sup>340</sup> and the consultation must be conducted in good faith and for the

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<sup>333</sup> IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, paragraph 248.

<sup>334</sup> I/A Court H.R., *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraphs 127, 128. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraphs 159-167.

<sup>335</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 134.

<sup>336</sup> I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraphs 164 and 165.

<sup>337</sup> I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraph 179.

<sup>338</sup> I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraph 167 and paragraph 180-182. I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 133.

<sup>339</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraphs 27, 131, 133, 154. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraphs 201-202.

<sup>340</sup> IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, paragraph 142. I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 133. IACHR, *Report on the Situation of Human Rights in Ecuador*. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997. IACHR, *Report on the Situation of*

purpose of reaching an agreement.<sup>341</sup> Regarding the good faith requirement, the Court has emphasized specifically that said requirement “is incompatible with practices such as attempts to disintegrate the social cohesion of the affected communities, whether it is through the corruption of communal leaders or the establishment of parallel leaderships, or through negotiations with individual members of the community that are contrary to international standards.”<sup>342</sup>

260. The second component presupposes the establishment of mechanisms for participation in the benefits of the project for the communities or peoples affected by the extraction of natural resources or the investment or development plans or projects.<sup>343</sup> In the Court’s opinion, “[...] the notion of sharing benefits [...] is inherent to the right of compensation recognized under Article 21.2 of the Convention” and “extends not only to the total deprivation of property title by way of expropriation by the State, for example, but also to the deprivation of the regular use and enjoyment of such property.”<sup>344</sup>

261. The third guarantee is the carrying out of a prior social and environmental impact assessment by “independent and technically capable entities, with the State’s supervision.”<sup>345</sup> The ultimate purpose of social and environmental impact studies is to “preserve, protect and guarantee the special relationship” of the indigenous peoples with their territories and to guarantee their subsistence as peoples.<sup>346</sup> For the Inter-American Court, Article 21 of the American Convention, in conjunction with Article 1.1, is violated when the State does not conduct or supervise environmental and social assessments prior to the granting of concessions.<sup>347</sup> It has also determined that environmental and social impact studies must be conducted prior to approval of the respective

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*Human Rights in Ecuador*. Doc. OEA/Ser.L/V/II.96, Doc. 10 rev.1, April 24, 1997. IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, paragraph 248.

<sup>341</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 133. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraphs 185-187.

<sup>342</sup> I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraph 186.

<sup>343</sup> IACHR, *Democracy and Human Rights in Venezuela, 2009*. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paragraph 1137, Recommendations 5 and 6; IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, paragraphs 248 and 297, Recommendations 5 and 6.

<sup>344</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraphs 138-139. Según advierte la Corte en dicha sentencia, en este mismo sentido se han pronunciado distintos órganos internacionales de derechos humanos. See *inter alia* United Nations, Committee on the Elimination of Racial Discrimination, *Observations of the Reports submitted by States parties under article 9 of the Convention. Concluding Observations on Ecuador*, paragraph 16. United Nations, Report of the Special Rapporteur on the situation of human Rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen, submitted in accordance with Commission resolution 2001/65 (Fifty-ninth session), United Nations Doc. E/CN.4/2003/90, January 21, 2003, paragraph 66.

<sup>345</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 129. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraph 205.

<sup>346</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, paragraph 40. IACHR, *Access to Justice and Social Inclusion: The Road Towards Strengthening Democracy In Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, paragraph 254.

<sup>347</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, paragraph 154.

plans,<sup>348</sup> and it requires States to allow indigenous peoples to take part in those prior social and environmental impact studies.<sup>349</sup> In general terms, social and environmental impact assessments “must respect the traditions and culture [of the indigenous or tribal] people concerned,”<sup>350</sup> and their findings must be shared with the communities so that they can make an informed decision.

262. In the instant case, the IACHR has deemed it proven that the Garífuna Community of Triunfo de la Cruz has possessed its ancestral territory ancestrally, a circumstance that was acknowledged by the State when it granted full ownership titles to at least part of this territory, and during this process. The IACHR further notes, based on the proven facts, that a series of decisions have been taken regarding the territory historically occupied by the Garífuna Community which affected or restricted its collective property right. Those measures have to do specifically with planning and execution of tourism projects and mega projects; with the creation of a protected area in part of the ancestral territory; and sales of community land. In none of these cases did the State demonstrate to the IACHR that it had fulfilled the aforementioned minimum requirements established by the inter-American system.

263. Indeed, with respect to the “Club Marbella” tourism project, the IACHR was not informed of any prior, free, and informed consultation process having been carried out with the Community, in accordance with its own customs and traditions. Rather, it has been considered proven that the Community repeatedly opposed the surrender of its ancestral lands to IDETRISA and has brought numerous actions to recover them. Likewise, with respect to the planning and execution of the “Los Micos Beach & Golf Resort,” as we ascertained above, the State asserted that the area’s tourism development master plan was “discussed with and agreed to by the principle stakeholders in the area,” including the Triunfo de la Cruz Community; that it was agreed to give the Garífuna Communities a 7% share in the project, while the Community Councils would be represented as partners in the project; and that the EIA “went through a [series] of consultations, reviews, and environmental audits which meant that the EIA progressively improved to a point at which it became acceptable.” However, the State did not provide evidence supporting those assertions. The evidence at the IACHR’s disposal indicates that the Triunfo de la Cruz Community is considered the zone “most impacted by” the project, and the only EIA submitted describes the serious environmental impact it would generate and a “participation and socialization process” that does not meet the aforementioned standards.

264. Regarding the establishment of a protected area in Punta Izopo, it is regarded as a proven fact that the decision was taken by the President of the Republic through Executive Decision No. 1118-92 of June 1<sup>st</sup>, 1992, and the National Congress approved its establishment through Decree No. 261-2000 of December 29, 2000. The State pointed out that a “consensus building and socialization process” took place. However, it did not provide proof of that process to the IACHR, in accordance with the aforementioned standards of the inter-American system, despite the fact that, as the IACHR ascertained, the establishment of the protected area involved restricting access to the area which prevented the Community from exercising its traditional cultural practices.

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<sup>348</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, paragraph 41. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. paragraph 205-206.

<sup>349</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, paragraph 133; I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, paragraph 16.

<sup>350</sup> I/A Court H.R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs. Judgment of August 12, 2008 Series C No. 185, paragraph 41.

265. With respect to the sale of community land, the State also failed to demonstrate that it had complied with its obligations. On the contrary, as already indicated by the IACHR in this report, such sales were conducted with complete disregard for the Community's right to its ancestral property. There were even interferences in the political organization and life of the Community that were completely contrary to the aforementioned principles.

266. For these reasons, the IACHR concludes that the State violated the right to property established in Article 21 of the Convention, to the detriment of the Community of Triunfo de la Cruz and its members because it failed to ensure their effective participation, in accordance with their customs and traditions, in connection with plans and decisions that affect their traditional lands.

**D. Articles 8 and 25 of the Convention in conjunction with Articles 1.1 and 2 thereof**

**1. Procedures related to the collective property of the Community of Triunfo de la Cruz and its members**

267. As established by the Inter-American Court in its case law with respect to indigenous peoples, the obligations established in Articles 8 and 25 of the Convention assume that States grant effective protection taking into account their particular features and economic and social characteristics, as well as their particularly vulnerable situation, their customary law, values, habits, and customs.<sup>351</sup> In addition, the jurisprudence of the inter-American human rights system has determined that indigenous and tribal peoples have a right to effective and expeditious administrative mechanisms to protect, guarantee, and promote their rights regarding ancestral territories. Such mechanisms should make it possible to conduct the processes needed for the recognition, titling, demarcation, and delimitation of their territorial property.<sup>352</sup>

268. Furthermore, according to inter-American system case law, States are obliged to adopt measures designed to guarantee and give legal certainty to the rights of indigenous and tribal peoples with respect to ownership of their properties, inter alia by establishing special, fast, and effective mechanisms and procedures to resolve legal claims on said property. As the Inter-American Court has pointed out, the aforementioned procedures must comply with the due legal process and the same applies to any other procedure in which a ruling might affect the rights of persons. The effective remedies that States must provide under Article 25 of the American Convention legal "must be substantiated according to the rules of due legal process (Article 8 of the Convention."<sup>353</sup>

269. The aforementioned procedures must comply with the rules of due legal process established in Articles 8 and 25 of the American Convention.<sup>354</sup> In that regard, the Inter-American

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<sup>351</sup> I/A Court H.R. *Case of the Yakye Axa Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 63. I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, paragraphs 82, 83.

<sup>352</sup> I/A Court H.R. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations, and Costs. Judgment of August 31, 2001. Series C No. 79, paragraph 138. *Case of the Yakye Axa Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 143. IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 335.

<sup>353</sup> I/A Court H.R. *Case of the Yakye Axa Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 62. *Case of the Sawhoyamaya Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, paragraphs 82, 83.

<sup>354</sup> I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, paragraphs 81, 82.

Court has specified that due legal process must be followed in administrative procedures and in any other procedure in which the outcome could affect the rights of the persons.<sup>355</sup> Given that requirement, the inter-American system's case law has identified a series of characteristics required of these administrative mechanisms under Articles 8, 25, 1.1, and 2 of the American Convention.

270. These mechanisms and special procedures need to be effective. The Inter-American Court has examined, in light of the requirements for effective and prompt recourse established in Article 25 of the American Convention, whether the States have established administrative procedures for titling, delimiting, and demarcating indigenous land, and if they do whether they implement such procedures in practice;<sup>356</sup> and it has explained that, for compliance with requirements established in Article 25, it is not sufficient for there to be legal provisions that recognize and protect indigenous property – it is necessary that specific and clearly regulated procedures are in place for such matters as the titling or demarcation of lands occupied by indigenous groups that take their particular characteristics into account,<sup>357</sup> and that such procedures in practice effectively allow enjoyment of the right to territorial – that is to say, that in addition to the official existence of procedures, those procedures must yield results or responses to violations of legally recognized rights.<sup>358</sup>

271. In light of the above, the IACHR will analyze compliance with the obligations of the State of Honduras, checking, first, whether an appropriate procedure for titling, demarcating, and delimiting the collective property of the Garífuna Community of Triunfo de la Cruz is in place, and, second, the effectiveness of that mechanism. Finally, it will refer to compliance with those obligations in the remedies brought for the recovery of the ancestral lands that the IACHR is aware of.

272. With respect to the former, as the IACHR has previously ascertained, the adjudication of ancestral lands to the Community of Triunfo de la Cruz resulted from the filing of various applications with the INA, based on existing agrarian legislation. As mentioned earlier, that legislation consisted specifically in the 1924 Agrarian Law, the 1962 Agrarian Reform Law, the 1974 Agrarian Reform Law, and the 1992 Modernization and Development of the Agrarian Sector Law.

273. In the IACHR's opinion, the procedures resulting from those applications do not amount to a suitable remedy for the recognition of indigenous property, in the above-mentioned terms, as they do not constitute specific mechanisms for addressing the titling of land occupied by

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<sup>355</sup> I/A Court H.R. *Case of the Yakye Axa Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 62. I/A Court H.R. *Case of Baena Ricardo et al v. Panama*. Merits, Reparations, and Costs. Judgment of February 2<sup>nd</sup>, 2001. Series C No. 72, paragraph 127. I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, paragraphs 82, 83. The effective remedies that the State must provide under Article 25 of the American Convention "must be implemented in accordance with the rules of due legal process (Article 8 of the Convention)" [I/A Court H.R. *Case of the Yakye Axa Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, paragraph 62]. The Inter-American Court has indicated that the domestic administrative procedures that must comply with the guarantees of due legal process include, for instance, the procedures for recognizing indigenous leaders, procedures for recognizing legal status, and the procedures for restitution of land [I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, paragraphs 81, 82].

<sup>356</sup> I/A Court H.R. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations, and Costs. Judgment of August 31, 2001. Series C No. 79, paragraph 115.

<sup>357</sup> I/A Court H.R. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations, and Costs. Judgment of August 31, 2001. Series C No. 79, paragraphs 122, 123.

<sup>358</sup> I/A Court H.R. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010 Series C No. 214, paragraph 140.

the indigenous peoples or its demarcation, taking into account their particular characteristics, based on historical occupation of the land. They constitute, rather, a general mechanism for individual property titling, based on productive exploitation of the land, ignoring the special, unique, and internationally protected relationship between indigenous peoples and their ancestral territories, which is not found in the case of nonindigenous peoples. Similarly, the Court has pointed out in relation to indigenous territorial claim procedures that they invoke agrarian legislation, “wherein the yardstick is whether or not the claimed lands are rationally exploited, regardless of considerations specific to the indigenous peoples, such as what lands mean for them.”<sup>359</sup>

274. The Commission is well aware that the nonexistence of an appropriate remedy for recognition of indigenous ownership that takes the particular characteristics into account meant that the indigenous Community had considerable difficulty accessing justice, considering the oral tradition of the Garífuna Community of Triunfo de la Cruz, the language, scarcity of financial resources, and the fear expressed by lawyers regarding possible reprisals. Moreover, the Commission notes that the Garífuna culture is essentially oral, and, given the interest of third parties in their territories, they had to make arrangements for titling their lands and documenting their rights. In that way, they were forced to adapt their oral tradition and pursue existing legal mechanisms to substantiate and document their claims.

275. With respect to effectiveness, the IACHR notes that it is a documented fact that the territorial claims of the Community of Triunfo de la Cruz date back to 1946, and for decades the Community has filed at least seven applications with the Honduran authorities for recognition of its ancestral land. It has also been documented that over a period of time --1979, 1993 y 2001—it was given various titles recognizing its ancestral possession as well as its collective ownership of 615 hectares and 28.51 centiares. In the IACHR’s opinion, in the instant case, the lack of effectiveness of the mechanism that exists under domestic law is demonstrated by the fact that it was necessary to file multiple applications with the INA, given that the process was not designed for recognition of indigenous ownership based on historical occupation criteria. It notes that the territorial claim process, taken as a whole, began in 1946 and is still unfinished, given that even now the Community lacks a collective title deed to its ancestral territory.

276. The above also has to do with the applications filed by the Community and not resolved in a timely fashion by the INA, which made it necessary to file further applications. Thus, as was shown in the proven facts Section, for example, on June 27 1969, a file was submitted for adjudication of the river Plátano area, a process that was suspended in March 1996. The IACHR believes that at least at that time -- 27 years after the process began and almost 19 years after ratification of the American Convention by Honduras -- proceedings were still pending. Likewise, it is considered proven that on September 8, 1997 and July 8, 1998 the Community filed applications with the INA for titling of part of the ancestral territory without it being shown that the proceedings ended with a final decision.

277. In addition, the IACHR considers that the ineffectiveness of the proceedings with the INA is shown, as was indicated earlier, by the fact that they did not lead to the effective demarcation, delimitation, and regularization of the titled areas, which prevented peaceable possession of the land. Although the State argued that the administrative procedure involved a regularization phase ending in compensation of improvements carried out by outsiders on the Community’s land, it was not proved in the instant case that such regularization actually took place. On the contrary, the State itself asserted that it had not been carried out because of the economic

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<sup>359</sup> I/A Court H.R. *Case of the Sawhoyamaya Indigenous Community v Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, paragraph 104. Likewise, see *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010 Series C No. 214, paragraph 146.

outlays involved. Nevertheless, as the IACHR indicated, States may not use domestic circumstances as an excuse for failing to comply with their international organizations.

278. In addition to the actions undertaken for recognition of its ancestral lands, from the facts deemed to be proven, the IACHR notes that the Community began two administrative proceedings to achieve recovery of the *22 manzanas* granted by the Municipality to its Trade Union. As the IACHR has ascertained with respect to the expropriation proceedings initiated with the INA on January 7, 2002, according to the State, that Institute issued an expropriation resolution on December 7, 2007, that is to say almost 6 years later. In the IACHR's opinion, that such a length of time is clearly unwarranted for proceedings of that nature. Likewise, in order to recover the *22 manzanas* the Community filed an action for annulment of the corresponding decision with the Municipality. The IACHR notes that only four years after the claim was presented did the Office of the Attorney General of the Republic issue an opinion in favor of annulment and that, despite that, according to information at the IACHR's disposal, 10 years after the process began no decision putting an end to the process had been issued.

279. In light of Articles 25 and 8.1 of the Convention and of the provisions of ILO Convention No. 169, the IACHR considers that the Honduran State did not comply with the obligation to provide the Triunfo de la Cruz Community with a remedy taking into account its particular nature, its economic and social characteristics, its customary law, values, habits, and customs, and which in turn would be effective in solving its territorial claim, while guaranteeing the Community's right to be heard with due guarantees and keeping to a reasonable schedule for guaranteeing its rights and obligations. Therefore, the Commission concludes that the State violated Articles 25 and 8 of the American Convention to the detriment of the Community of Triunfo de la Cruz and its members, in conjunction with Articles 1.1 and 2 thereof.

## **2. Proceedings regarding criminal complaints lodged by the Community of Triunfo de la Cruz and its members**

280. The Inter-American Court has established that anyone who has suffered a violation of his or her human rights has the right "to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention."<sup>360</sup> The protection of these rights is reinforced by the general obligation to respect and guarantee them, established in Article 1.1 of the American Convention. On that, the Inter-American Court has established that:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society..." That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, for the determination of his rights, whatever their nature.<sup>361</sup>

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<sup>360</sup> I/A Court H.R., *Case of Barrios Altos v. Peru*. Judgment of March 14, 2001. Series C No. 75, paragraph 48.

<sup>361</sup> I/A Court H.R., *Case of Loayza Tamayo. Reparations*. Judgment of November 27, 1998. Series C No. 42, paragraph 169; I/A Court H.R. *Velásquez Rodríguez Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1. paragraph 91; I/A Court H.R., *Case of Fairén Garbí and Solís Corrales. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 2, paragraph 90.

281. The Inter-American Court has interpreted Article 25 as guaranteeing a simple and prompt recourse for the protection of rights, but also an effective recourse for protecting individuals from acts of the State that violate their fundamental rights.<sup>362</sup> For that reason, the right to judicial protection is considered to be an extremely important right since it becomes a fundamental mechanism for exercising the defense of any other right that has been violated by bringing appropriate actions or remedies before the competent judicial authority.

282. Consequently, the States' Parties have the obligation to take all kinds of measures to ensure that nobody is deprived of judicial protection and from exercising his or her right to a simple and effective recourse.<sup>363</sup> According to the jurisprudence of the Inter-American Court, the State has the obligation to ensure that "each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events."<sup>364</sup>

283. As the Court has repeatedly pointed out, it is an obligation with respect to means, and not outcomes, that the State should adopt as a juridical obligation of its own and not as a simple formality destined to fail from the start.<sup>365</sup> In that sense, the investigation must be carried out with due diligence, and in an effective, serious, and impartial manner,<sup>366</sup> and within reasonable time limits.<sup>367</sup> Moreover, the Inter-American Court has established that "domestic proceedings must be considered as a whole and the duty of the international tribunal is to find out if all proceedings were carried out in compliance with international provisions,"<sup>368</sup> since the right to effective judicial protection must be construed in such a way as to "to avoid undue delays and obstructions that lead to impunity, thus frustrating due judicial protection of human rights."<sup>369</sup>

284. Along those same lines, the IACHR has indicated that, specifically in relation to indigenous peoples, when disputes over the land arise with third parties, the former have a right to obtain protection and reparation through appropriate and effective procedures; to be guaranteed the effective enjoyment of their right to property; to effective investigation and punishment of those

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<sup>362</sup> I/A Court H.R., *Tibi v. Ecuador Case*. Judgment of September 7, 2004. Series C No. 114, paragraph 130; "Five Pensioners" Case. Judgment of February 28, 2003. Series C No. 98, paragraph 126.

<sup>363</sup> I/A Court H.R., *Case of Barrios Altos v. Peru*. Judgment of March 14, 2001. Series C No. 75, paragraph 43.

<sup>364</sup> I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3<sup>rd</sup>, 2009. Series C No. 196, paragraph 101.

<sup>365</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 131; and I/A Court H.R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

<sup>366</sup> I/A Court H.R. *Case of García Prieto et al v. El Salvador*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101; I/A Court H.R., *Case of the Gómez Paquiyaui Brothers v. Peru*. Judgment of July 8, 2004. Series C No. 110, paragraph 146; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 130.

<sup>367</sup> I/A Court H.R. *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court H.R., *Case of the Rochela Massacre v. Colombia*. Judgment of May 11, 2007. Series C. No. 163. Paragraph 146; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

<sup>368</sup> I/A Court H.R. *Case of Baldeón García v. Peru*. Judgment of April 6, 2006. Series C No. 147, paragraph 142.

<sup>369</sup> I/A Court H.R. *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, paragraph 210. I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, paragraph 115.

responsible for attacks; and to the establishment of swift and effective special mechanisms for resolving legal conflicts regarding the ownership of their land.<sup>370</sup> In the same vein, Article 18 of the ILO's Convention No. 169, ratified by the State of Honduras, establishes that "Adequate penalties shall be established by law for unauthorized intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences."

285. In the matter under review, the IACHR notes that the Triunfo de la Cruz Community lodged a series of complaints regarding encroachments on its right to property relating mainly to: (i) the sales of ancestral lands; (ii) threats, aggression, harassment, and persecution against its authorities and leaders as a consequence of their actions in defense of their ancestral lands; and (iii) the constant violence and insecurity generated by third parties on its territory.

286. Indeed, as regards the first complaint, it has been documented before the IACHR that part of the ancestral lands of the Community were sold by State authorities to businesses and third parties, without the Community's authorization. On this, the Commission observes that, through CODETT, the Community filed a criminal complaint with the Office of the Prosecutor for Ethnic Groups regarding the sale of Community land to IDETRISA, which ended with a case against the municipal officials involved being dismissed. It also observes from the facts deemed proven that the Office of the Attorney General of the Republic became aware of those sales, which led to the Office of the Comptroller General of the Republic initiating an investigation. The IACHR was not informed of any effective outcome of that investigation. In addition, in a communication dated November 30, 1998, the Community Council denounced such sales to the Attorney General. The IACHR is unaware of any actions taken to effectively investigate the alleged occurrences.

287. Although it transpires from the evidence in the file that State authorities directly participated in this and other sales of indigenous land, the IACHR understands that so far responsibility has not been assigned nor have the corresponding punishments been imposed, where applicable, on the State authorities involved in the gradual dispossession of Garífuna ancestral lands. The IACHR notes that that is the case even though such sales rendered the Community and its members seriously vulnerable and despite the State authorities expressly recognizing that the lands sold in the area of the 22 *manzanas* formed part of the Community's ancestral property and were returned to it, as the State itself affirmed.

288. It is also a documented fact that, as a result of the territorial dispute, members of the Triunfo de la Cruz Community complained to State authorities regarding acts of harassment, persecution, threats and even murders of leaders who opposed the theft of Community land. As the IACHR pointed out, the attacks on indigenous leaders seek to curtail activities aimed at defending and protecting natural territories and resources and to weaken the Community's resolve to defend its rights. Here, the Commission stresses that the most effective way of protecting human rights defenders is to investigate acts of violence against them effectively and to punish those responsible.<sup>371</sup>

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<sup>370</sup> IACHR, *Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II.Doc.56/09, December 30, 2009, paragraph 113. IACHR, *Democracy and Human Rights in Venezuela*, 2009. Doc. OEA/Ser.L/V/II, Doc. 54, December 30, 2009, paragraphs 1062-1066; 1071; 1137 – Recommendations 1 to 4. IACHR, *Third Report on the Situation of Human Rights in Colombia*. Doc. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, February 26, 1999, paragraphs 21-27 and Recommendation 3.

<sup>371</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas* OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006. Likewise, the Office of the High Commissioner for Human Rights has indicated that the lack of investigation and punishment of those responsible for violations against human rights defenders "constitutes the factor that places the defenders at greatest risk, since it leaves them defenseless and unprotected." OHCHR. *Defending Human Rights: Caught Between Commitment and Risk*. Executive Summary, paragraph 7. <http://www.hchr.org.mx/documentos/libros/informepdf.pdf>.

289. At the same time, the sales of indigenous land and the lack of protection against occupation of its ancestral territories by non-Garífunas triggered a situation of permanent conflict. As the Community denounced, that situation was characterized by the irruption of armed men into indigenous territory, the destruction of crops, the bringing in of machinery against the Community's will, the burning down of houses, along with other acts of violence that prevented peaceable possession of the Community's ancestral territory.

290. In short, during the years under review in the instant case, the IACHR received multiple complaints filed with police and prosecutors which describe a plethora of acts of permanent and related violence, which together mount to a generalized lack of protection of the ancestral territory of the Garífuna Community of Triunfo de la Cruz. Despite the numerous complaints in the file with the IACHR, in no case did the State report that a serious, effective, and prompt investigation was carried out to ascertain the truth and determine responsibilities. In this regard, the IACHR recalls the Inter-American Court's assertion that:

[...]Proceedings followed through up until their conclusion and that fulfill their purpose are the clearest sign of zero tolerance for human rights violations, contribute to the reparation of the victims, and show society that justice has been done. The imposing of an appropriate punishment duly founded and proportionate to the seriousness of the facts, by the competent authority, permits verification that the sentence imposed is not arbitrary, thus ensuring that it does not become a type of de facto impunity. In this regard, the Court has emphasized that administrative or criminal sanctions play an important role in creating the type of institutional culture and competence required to deal with the factors that explain certain structural contexts of violence.<sup>372</sup>

291. In light of the above, the IACHR observes that the prolonged and repetitive nature of the acts of violence, persecution, and illegal sale of land, indicate that the State's failure to respond to the complaints filed meant that the attempt of the Community and its members to find protection and see justice done was in vain. In the IACHR's opinion, in practice, the legal system was not an effective option for the protection of the indigenous territory. That has had multiple consequences for the members and leaders of the Garífuna Community of Triunfo de la Cruz, as indicated throughout this report.

292. The IACHR considers, based on the information at its disposal, that the failure of the State to respond to the remedies attempted, left the alleged victims unprotected and has led to the Community of Triunfo de la Cruz and its members being left in a situation of continuous uncertainty, anxiety, and fear.

293. In light of the above, the Commission concludes that the Honduran State has not guaranteed adequate and effective remedy for responding to claims on ancestral territory and claims to land titled in favor of the Garífuna Community of Triunfo de la Cruz, nor has it carried out the investigations relating to the complaints lodged by the Community and its members for damage to property and threats, attacks, harassment, and persecution. This has prevented them from being heard in proceedings with due guarantees, so that the Commission concludes that the State of Honduras violated Articles 25 and 8 of the American Convention.

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<sup>372</sup> I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 26, 2010. paragraph 153.

## **VI. CONCLUSIONS**

294. By virtue of the considerations of fact and law established in this report, the Inter-American Commission on Human Rights concludes that:

1. The State of Honduras violated the right to property established in Article 21 of the American Convention on Human Rights, in conjunction with Articles 1.1 and 2 thereof, to the detriment of the Garífuna Community of Triunfo de la Cruz and its members, for not having provided effective access to a collective property title to its ancestral territory; and for having refrained from delimiting, demarcating, and protecting it effectively.

2. The State of Honduras violated Article 21 of the American Convention, in conjunction with Article 1.1 thereof to the detriment of the Garífuna Community of Triunfo de la Cruz and its members by having taken decisions regarding measures that affected its territory, without satisfying the requirements established under inter-American law, such as conducting expropriation proceedings; not threatening the subsistence of indigenous communities; conducting prior, free, and informed consultations, as well as social and environmental impact assessments; and guaranteeing the participation of the indigenous in the benefits resulting from the concessions granted.

3. The State of Honduras violated Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 thereof, to the detriment of the Garífuna Community of Triunfo de la Cruz and its members, due to failure to provide an appropriate and effective procedure for the recognition, titling, demarcation, and delimitation of the territory claimed by the alleged victims, that would make it possible to guarantee peaceable possession and recovery of its ancestral land.

4. The State of Honduras violated Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 thereof, to the detriment of the Garífuna Community of Triunfo de la Cruz and its members due to failure to conduct a serious, effective and prompt investigation intended to ascertain the truth and determine responsibilities with respect to the complaints filed by Community members and leaders.

## **I. RECOMMENDATIONS**

295. Based on the analysis and conclusions of this report,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF HONDURAS:**

1. Adopt as soon as possible the measures needed to give effect to the right to communal property and possession of the Garífuna Community of Triunfo de la Cruz and its members with respect to its ancestral territory; and, in particular, the legislative, administrative, or other measures needed for the appropriate delimitation, demarcation, and titling of its lands, in accordance with its customary law, values, habits, and customs and to guarantee to members of the Community the development and continuity of its cosmovision in such a way that they can continue their traditional lifestyle, in keeping with their distinct cultural identity, social structure, economic system, customs, beliefs, and traditions.

2. Establish, with the participation of indigenous peoples, legislative or other measures needed to give effect to the right to prior, free, informed, and good faith consultation, in accordance with international human rights standards.

3. Adopt an affective and simple recourse that protects the right of the indigenous peoples of Honduras to claim and gain access to their traditional territories and that protects those territories against actions by the State or third parties that violate their right to property.

4. Investigate and punish those responsible for the threats, harassments, acts of violence and intimidation, and damage done to the property of members of the Community of Triunfo de la Cruz and especially its leaders and authorities.

5. Make reparation, both individual and collective, for the consequences of the violation of the aforementioned rights.

6. Adopt any measures needed to avoid similar acts occurring in the future, in line with its duty to prevent and guarantee fundamental rights recognized in the American Convention.