

REPORT No. 30/13
CASE 12.761
MERITS
GARIFUNA COMMUNITY OF PUNTA PIEDRA AND ITS MEMBERS
HONDURAS

I.	SUMMARY	1
II.	PROCEEDINGS BEFORE THE IACHR	2
III.	POSITION OF THE PARTIES	2
	A. Petitioner	2
	B. The State	4
IV.	PROVEN FACTS	6
	A. Garifuna People in Honduras: territory, organization and means of subsistence	6
	B. Garifuna Community of Punta Piedra	8
	C. Process of recognition and titling of the territory of the Punta Piedra Community and its members by the State	9
	1. Communal Title	9
	2. 1993 Fee Simple Title to 800 Hectares and 748 Square Meters	9
	3. 1999 Final Title in Fee Simple to 1,513 Hectares and 5,445.03 Square Meters	10
	D. Occupation of the Territory of the Punta Piedra Community by Third Parties	11
	E. Efforts by the Garifuna Community of Punta Piedra to Clear Title of its Territory ...	14
	1. <i>Ad Hoc</i> Inter-Institutional Commission and Commitment Agreement of December 13, 2001	14
	2. Special Agreement with the Peasant Community of Rio Miel of April 20, 2007 and Updating the Assessment	19
	G. Conflict Situation	20
V.	ANALYSIS OF LAW	22
	A. Preliminary Issues	22
	B. Article 21 of the Convention, in connection with Articles 1.1 and 2 thereof	23
	1. Territorial Rights of Indigenous Peoples in the Inter-American Human Rights System	23
	2. Right to Collective Property of the Punta Piedra Community and its Members	24
	C. Article 25 of the American Convention, in connection with Articles 1.1 and 2 of this Instrument	29
VI.	CONCLUSIONS	34
VII.	RECOMMENDATIONS	34

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March 21, 2013

I. SUMMARY

1. On October 29, 2003, the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission" or "IACHR") received a petition lodged by the Organización Fraternal Negra Hondureña (hereinafter the "petitioner" or "OFRRANEH"), against the State of Honduras (hereinafter the "Honduran State," "Honduras" or the "State") for violation of Articles 8, 21 and 25 of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention"), in connection with Article 1.1 of this international instrument and, for purposes of interpretation, International Labor Organization Convention 169 on Indigenous and Tribal Peoples in Independent Countries (hereinafter "ILO Convention 169"), to the detriment of the Garifuna Communities of Cayos Cochinos, Punta Piedra and Triunfo de la Cruz, and their members.

2. On December 19, 2003, the IACHR decided to sever the claims submitted by each Garifuna Community, and assign each one a separate case number. The petition of the Garifuna Community of Punta Piedra was assigned 1119-03. With respect to the Garifuna Community of Punta Piedra and its members (hereinafter the "Punta Piedra Community," "Punta Piedra" or the "Community"), on March 24, 2010, the IACHR issued Admissibility Report No. 63/10,¹ finding that it was competent to hear the petition and deciding to admit the claim on the alleged violation of Articles 21 and 25 of the American Convention, in connection with Articles 1 and 2 of this international instrument.

3. In the instant case, the petitioner argued that even though the ancestral territory of the Punta Piedra Community has been recognized and titled by the State, the State has not ensured the Community's effective and quiet enjoyment of its territory. This is because a group of individuals has been intruding onto the territory since 1993, and the State has not taken any of the necessary steps to clear the property title and the State's inaction has given rise to a climate of conflict.

4. In response, the State claimed that it has not violated the rights of the Punta Piedra Community because it has granted two property titles in fee simple over an area totaling 2,314.18 hectares and has undertaken numerous efforts to clear title to the territory. Additionally, it asserts that investigations are being conducted into the crimes of violence reported to the relevant authorities.

5. In this report, after examining the positions of the parties and analyzing the evidence in the case file, the IACHR concludes, pursuant to Article 50 of the American Convention, that the Honduran State is responsible for the violation of the rights set forth in Articles 21 and 25 of the American Convention, in connection with Articles 1.1 and 2 of this instrument, to the detriment of the Punta Piedra Community and its members.

¹ IACHR, Admissibility Report No. 63/10, March 24, 2010, Petition 1119-03, Garifuna Community of Punta Piedra and its Members, Honduras.

II. PROCEEDINGS BEFORE THE IACHR

6. On March 24, 2010, the IACHR approved Admissibility Report No. 63/10, finding the petition pertaining to the Garifuna Community of Punta Piedra and its members to be admissible. The report was forwarded to the parties on April 16, 2010, and in accordance with Article 37.4 of its Rules of Procedure, the Commission placed itself at the disposal of the parties in order to facilitate a possible process of friendly settlement to the matter.

7. Following notification of the admissibility report, the IACHR received information from the petitioner on the following dates: August 6 and September 27, 2010, January 3 and May 2, 2011, and November 19, 2012. The IACHR received observations from the State on the following dates: October 13, 2010, February 18 and August 22, 2011. These communications were duly forwarded to the parties.

8. During the proceedings before the Commission, a public hearing was held on March 7, 2006, at the 124th regular session, where the petitioner offered the testimony of the following three members of the Punta Piedra Community: Doroteo Tomas, Edito Suazo and Benito Bernárdez.² Additionally, two working meetings were held: on March 5, 2007, during the 127th regular period of sessions and on July 19, 2007, during the 128th regular period of sessions of the IACHR.

- Friendly Settlement Procedure

10. At the public hearing held on March 7, 2006, the parties agreed to engage in a friendly settlement procedure. On March 8, 2006, the IACHR received the proposed friendly settlement put forth by the petitioner. On March 26, 2007, the petitioner expressed its interest in withdrawing from the effort to reach a friendly settlement and going forward with the processing of the petition, alleging failure to make any progress. At the working meeting of July 20, 2007, which was attended by both parties, the petitioners reiterated their decision.

- Precautionary Measure 109-07

11. On June 15, 2007, the petitioner requested the adoption of precautionary measures on behalf of the Garifuna Community of Punta Piedra and, in particular, one of its members, Marcos Bonifacio Castillo, because he had been the target of death threats. On August 20, 2007, the IACHR granted precautionary measures on behalf of Marcos Bonifacio Castillo.³ On September 13, 2007, Honduras forwarded its reply. As of the date of the instant report, the IACHR is continuing to monitor compliance with the precautionary measures it granted.

III. POSITION OF THE PARTIES

A. Petitioner

9. The petitioner claims that the presence of the Garifuna people in Honduras dates back to 1797 and that, in particular, the Garifuna Community of Punta Piedra has occupied its territory for approximately two centuries, located in what is currently the Municipality of Iriona,

² IACHR, Public Hearing on March 7, 2006 in re "Petition 1119/03 – Garifuna Community of Punta Piedra, Honduras," 124th regular session of the IACHR.

³ Specifically, the Commission requested the Honduran State 1) to Adopt the necessary measures to ensure the life and safety of Mr. Marcos Bonifacio Castillo; 2) Arrange for the measures to be adopted along with the beneficiary and the petitioners and, 3) report on the actions adopted in order to clarify by judicial means the incidents that warrant adoption of precautionary measures.

Department of Colon, Honduras. It notes that the State recognized the historic occupation of the Community by means of two legal titles in fee simple granted by the National Agrarian Institute (hereinafter, "INA") in 1993 and 1999.

10. It reports that, as of the early 1900s, the settling by non-indigenous peasants was authorized in the area known as "Entrerrios," made up of the territories located between the Sico and Paulaya Rivers and partially overlapping the buffer zone of Rio Platano Biological Reserve. It further notes that, as a consequence, forests and watersheds in the area were devastated and it led to a constant influx of peasants and cattle ranchers –also known as "*ladinos*"- into the lands historically occupied by the Garifuna Communities, especially into the areas used for their subsistence activities.

11. Within this context, the petitioner asserts that in December 1993, a group of peasants forcibly took possession of traditional crop-production lands or "*trabajaderos*" ('work lands') located on the banks of the Miel River (hereinafter "peasants or settlers of the Miel River"), which are part of the ancestral territory of the Garifuna Community of Punta Piedra. It alleges that this posed serious threats to the physical and cultural survival of the community. It claims that the National Agrarian Institute had granted legal title to the intruders for plots of land and these plots were then conveyed to a member of the armed forces, who in turn sold them to a palm tree processing company owner.

12. The petitioner emphasizes that the land encroachment has given rise to a situation of ongoing violence and insecurity in the Community, which has manifested itself in the form of threats and assaults against the Garifuna of Punta Piedra. As an example of the climate of conflict, it reports the murder of Félix Ordóñez Suazo in June 2007, allegedly at the hands of Rio Miel settlers, which was reported to the competent authorities and has allegedly gone unpunished. In this same context, it notes that Marcos Bonifacio, a member of the Community and witness to the aforementioned murder, has been the target of continuous death threats, which made it necessary to seek precautionary measures from the IACHR.

13. The petitioner asserts that the Punta Piedra Community has taken numerous actions with the State in order to recover the lands from encroachment. As a result of these efforts, it reports that on December 13, 2001, a "Commitment Agreement" (*acta de compromiso*) was entered into between the representatives of the Punta Piedra Community, Rio Miel peasants, the INA, the Garifuna organizations OFRANEH and the Organization for Ethnic Community Development (hereinafter "ODECO") in order to work out a final solution to the conflict. It notes that in said document, the INA undertook to relocate the peasants of Rio Miel and compensate them for improvements made on the Garifuna lands they encroached upon, in the amount of 13,168,982.84 lempiras, based on the assessment conducted by the INA itself. It contends that, in order for the INA to honor said commitment, the Community itself requested the National Congress to grant the necessary funding and, consequently, the Congress approved a motion to create the appropriate budget item. It contends that even though "the Ministry of Finance apparently provided the money," the INA did not move forward in resolving the situation, but used the resources instead for purposes other than payment of compensation.

14. The petitioner adds that in light of the breach of commitment, the Community and the petitioner subsequently had to engage in efforts to reach a new agreement with the State, which crystalized in the "Agreement of understanding" of September 28, 2006 wherein the INA once again made the commitment to clear the title to the ancestral lands of the Garifuna Community of Punta Piedra, but this commitment has not been honored. It further asserts that on March 14, 2007, representatives of the INA and other state agencies conducted an on-site visit to the area for the purpose of "restarting the negotiation process with the individuals of Rio Miel without the

participation of the Punta Piedra Community.” It notes that on this occasion, the Rio Miel peasants opposed conducting a new assessment of the value.

15. In short, the petitioner asserts that despite numerous efforts made by the petitioner and the Punta Piedra Community, the State has not as yet complied with its commitments, which “has led to a resurgence of outbreaks of violence in the area” and “has intensified the existing racism by mestizos toward the Garifuna.” The petitioner stresses that “the constant lack of effective protection by the State in order to safeguard the rights of the Punta Piedra Community and the lack of response to the incessant conflict over the ancestral territory of the Community has led to increased insecurity and violence in the area and has provoked violent threats, confrontations and deaths.”

16. Concerning the alleged violation of Article 21 of the American Convention, the petitioner contends that the issue of land tenure stems from the impediment to peaceable possession of the territory historically occupied by the Garifuna Community as a result of encroachment of third parties. It claims that even though titling of collectively-owned lands constitutes the essential starting point, the formal titles are not in and of themselves enough to ensure in practice “the culture, economy, land and a social security for the Garifuna.”

17. In connection with Article 2 of the American Convention, it argues that national legislation includes no specific provision that may be applicable to indigenous peoples and that the domestic law is “inadequate for the achievement of indigenous territorial rights,” because “it does not expressly recognize the existence of collective rights [and] only contains scattered provisions with respect to ethnic peoples.” As examples of this, it cites Article 92 of the Law of Agricultural Modernization and Development, Article 65 of the Agrarian Reform Law, and Article 71 of the Environmental Law.

18. With regard to the right to judicial protection, the petitioner claims that no independent institutions exist in Honduras which, in addition to granting titles, settle existing disputes by ensuring the demarcation of and compensation for lands. It contends that the complaints filed pertaining to the acts of violence against members of the Community, such as the murder of Félix Ordóñez, remain in impunity. Consequently, it asserts “the serious crisis that Honduras is suffering in the area of application of justice places us, the indigenous peoples, in a weak position, which is gradually leading us to disappear as a differentiated culture.”

19. It concludes that the “State has shown that it has been aware of the territorial dispute in Punta Piedra for at least 15 years and, thus far, has not taken the necessary measures to effectively ensure and protect the collective rights that allow for the peaceable use and quiet enjoyment of the ancestral territories of the Punta Piedra Community. Based on the foregoing arguments, it requests that international responsibility be found for violation of Articles 21 and 25 of the American Convention, in connection with Articles 1.1 and 2 thereof, using ILO Convention 169 as a complementary interpretative norm.

B. The State

20. In response, the State alleges that under the rule of law and abiding by international treaties, “it has always taken into account the legal nature of ownership rights of [the] Community [of Punta Piedra],” which it claims has been demonstrated by the granting of legal title to it. It contends that the issue of land tenure began with “the arrival of the first [peasant] settlers of the community known as Rio Miel, who are known to the residents of Punta Piedra as *ladinos*.” It adds that, in light of this arrival, several efforts have been made to settle the dispute and clear title to the lands.

21. Specifically, the State notes that on December 26, 1922, in enforcing the Agrarian Law that was in effect at the time, it granted the Community communal property title (*título ejidal*) to an area totaling 800.64 hectares for its use and enjoyment and that, on December 16, 1993, the INA upgraded said title to fee simple absolute, that is full title. It asserts that as an “expansion of their territory,” on December 6, 1999, the INA granted the Community a second legal title in fee simple to a rural tract of land, which legally belonged to the Nation, encompassing 1,513.54 hectares and bordering the northern boundary of the previously granted land title.

22. It claims that, within the perimeter of the expansion awarded to the Community in 1999, “an area of approximately 670 hectares was included, the possession of which the residents of the Rio Miel Community held and hold as of the present time.” It notes that, consequently, this area was excluded from the legal title granted, which stipulated that “the State may dispose of it [this area] in order to legalize its tenure on behalf of any persons that may fulfill the legal requirements.” However, it contends that, subsequently, the title was cleared to invalidate the part excluding the hectares occupied and exploited by the Rio Miel peasants and, thereby, the entire area became owned in fee simple by the Punta Piedra Community. It emphasizes that the land area titled to Punta Piedra totals 2,314.18 hectares, “of which the Village of Rio Miel occupies only 278.40 hectares [...] and, therefore, the area over which the Community is unable to exercise its territorial rights of use and enjoyment and possession is negligible.”

23. The State notes that in order to reach a solution to the dispute, on April 7, 2001, an *ad hoc* Inter-Institutional Commission was created and was made up of representatives of the INA, the Garifuna Community of Punta Piedra, the town of Rio Miel, OFRANEH and ODECO. It adds that said Commission was successful at getting an agreement signed that is equivalent to an “out-of-court conciliation settlement,” under which arrangements were made with the INA to conduct an assessment of the improvements made by the occupants of the Rio Miel area, which assessed the total amount at 13,168,982.84 lempiras. It reports that the Chairman of the National Congressional Budget Committee forwarded the Preliminary Opinion on the Draft “Garifuna Development” Decree to the INA and that said entity issued a favorable opinion in response. It claims, nonetheless, “the line item was never incorporated into the budget of the institution for clearing of Punta Piedra’s title, which is why said compensation for clearing of title has not been paid out.”

24. The State claims that it subsequently took several steps aimed at working out the problem of land tenure. In this regard, it reports that on January 22, 2007, the INA entered into an agreement with OFRANEH to create an Inter-Institutional Commission, which held meetings with representatives of the village of Rio Miel. It notes that on July 12, 2007, the INA issued a new assessment for a total of 17,108,448.58 lempiras, which was submitted to the Secretariat of Finances on December 14, 2007, and has not been approved.

25. As for the claim of the assaults of which the Community has been the target, the State reports that the brother of Félix Ordóñez Suazo filed a criminal complaint for his murder (Complaint No. 310-07), “and therefore investigations to lead to clarification of the aforementioned death are being conducted by the General Directorate of Criminal Investigation at present.” It adds “the Office of the Public Prosecutor was aware of the incidents through the complaint received [...] by the Special Prosecutor for Ethnic Groups and Cultural Assets, lodged by OFRANEH.” It notes that, as a consequence, two investigations have been opened, one by the Local District Attorney’s Office of Trujillo, and the other at the Special Office of the Prosecutor for Ethnic Groups and Cultural Assets, registered under case number 7277-2007, which are currently ongoing.

26. With regard to the arguments of law, without specifically referring to the articles that were found admissible by the IACHR, the State claims that “it considers the solution to the problem of the communities in conflict [to be] an unavoidable obligation, and that the outcome thereof requires the good will of the local communities involved, in which both parties in conflict

claim to have the same or a greater right.” It notes that under Article 15 of the Law of Agrarian Reform, “anyone who occupies and exploits national or communal lands, for three years, has the right to be awarded the corresponding surface area.” It argues that this provision of the law and Article 103 of the Constitution, which provides for the right to property, protects the Community of Rio Miel and other occupants who have “legal ownership based on duly recorded public deeds.” It notes “it ratifies its commitment to continue the diligent path to seek a solution to the conflict between both communities, emphasizing the path of any negotiation, that does not violate the law on the subject matter.”

IV. PROVEN FACTS

27. In keeping with Article 43.1 of its Rules of Procedure, the IACHR shall examine the arguments and evidence introduced by the parties, the information obtained during the hearing held at the 124th regular session of the IACHR,⁴ and other information that is a matter of public knowledge.⁵

A. Garifuna People in Honduras: territory, organization and means of subsistence

28. Honduras is a multi-ethnic and multicultural nation made up of mestizos, indigenous peoples and afrodescendants. Estimates of the total population of the Garifuna people in Honduras vary widely. According to the census conducted by the National Institute of Statistics in 2001, 46,448 individuals identify themselves as Garifuna, while other sources estimate the total population to be 98,000 persons.⁶

29. The origin of the Garifuna people dates back to the 18th Century and springs from the syncretism between indigenous and African peoples. In 1635, two Spanish vessels that were transporting people from Africa to perform slave labor, shipwrecked on the Island of San Vicente. At the time, the Island was inhabited by Arawak and Kalinagu Indigenous people. The Kalinagu people, who hailed from South America, invaded the island in the 13th Century. The descendants of the intermixing of indigenous with African were called Karaphuna. In 1797, Great Britain took control of San Vicente Island and the Karaphunas were deported to Roatan Island. From Roatan, they emigrated to the mainland, settling in what is today Trujillo, Honduras, and subsequently spread out along the northern Honduran coast and toward the Guatemalan and Belizean Caribbean coast.⁷

⁴ IACHR, Public Hearing on March 7, 2006 regarding “Petition 1119/03 – Garifuna Community of Punta Piedra, Honduras, 124th regular session of the IACHR.

⁵ Article 43.1 of the IACHR Rules of Procedure establishes: “The Commission shall 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.”

⁶ National Institute of Statistics. *2001 Census. Redatam Data Base*. Available at: <http://www.ine.gob.hn/drupal/node/301>.

⁷ Testimony of Gregoria Flores Martinez given at the public hearing on the merits and reparation and costs held at the Inter-American Court on June 28 and 29, 2005 in the Case of *Alfredo Lopez v. Honduras*; IA Ct. of HR, *Case of Lopez Alvarez v. Honduras*. Judgment February 1, 2006. Series C No. 141. Par. 54.1; Ethnic Poverty in Honduras, Utta von Gleich and Ernesto Gálvez. Indigenous Peoples and Community Development Unit. Inter-American Development Bank, Department of Sustainable Development. Washington, D.C., September 1999. Available at <http://www.bvsde.paho.org/bvsacd/cd47/etnica.pdf>; Presentation before the Sub-Commission on the Promotion and Protection of Human Rights. Working Group on Minorities. UN. 10th Session. March 1 – 5, 2004. Available at: <http://www2.ohchr.org/english/issues/minorities/docs/OFRANEH3a.doc>.

30. The union between Africans and the Amerindians of San Vicente made the Garifuna a distinct culture and ethnic group. The Garifuna self identify as an indigenous people of African culture.⁸

31. The Garifuna people of Honduras live in rural communities located along the Atlantic seaboard or coastal area of the Caribbean in the Departments of Cortes, Atlantida, Colon and Gracias a Dios and a growing number of Garifuna live in cities such as La Ceiba, Tela, Cortes, Trujillo, San Pedro Sula and Tegucigalpa.

32. The Garifuna people in Honduras has preserved its own cultural forms, organization and social and cultural institutions, way of life, worldview, practices, customs, ceremonial observances, language, dress and a special relationship with the land.⁹

33. To Garifuna communities, the land is fundamental to their survival. They are in permanent communion with the land and a harmonious relationship with the natural resources on their territory. This close relationship is reflected in the belief of the Garifuna that "the land is the mother of life, [...] the Garifuna without land is not Garifuna, the Garifuna without sea is not Garifuna."¹⁰

34. The Garifuna preserve the traditional community use of the land and other labor patterns and activities that reflect their origins, their home on the northern coast of Honduras, and their unique culture.¹¹ The economy is based on, among other things, artisanal fishing, cultivation of rice, cassava, bananas and yucca, and hunting for small game in the sea and forests, such as deer, agoutis, turtles and manatees.¹²

35. The beach and the sea are part of the Garifuna ethnic and cultural identity, because in addition to their essential role for subsistence, they are linked to their history and, therefore, are important elements in religious ceremonies and commemorations of their arrival by sea to Central America.¹³

36. The identity of the Garifuna people is reinforced by the existence of their own language, which is based on "the Arawak and Caribbean Amerindian languages, and incorporates

⁸ Testimony of Gregoria Flores Martínez given at the public hearing on the merits and reparation and costs held at the Inter-American Court on June 28 and 29, 2005 in the Case of *Alfredo Lopez v. Honduras*.

⁹ See Caribbean Central America Research Council. *Diagnostic Study on Land Use and Tenure in Garifuna and Miskita Communities of Honduras 2002-2003*. Available at: <http://ccarconline.org/Honduraseng.htm>.

¹⁰ Testimony of Gregoria Flores Martínez given at the public hearing on the merits and reparation and costs held at the Inter-American Court on June 28 and 29, 2005 in the Case of *Alfredo Lopez v. Honduras*.

¹¹ World Bank Review Inspection Panel. *Investigation Report on Honduras Land Administration Project*. Report No. 39933-HN. June 12, 2007. p. 21. Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/HondurasFINALINVESTIGATIONREPORTSpanishTrad.pdf>.

¹² World Bank Inspection Panel. *Investigation Report on the Honduras Land Administration Project*. Report No. 39933-HN. June 12, 2007. pgs. 21-25. Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/HondurasFINALINVESTIGATIONREPORTSpanishTrad.pdf> Also, IA Ct. of HR, *Case of López Álvarez v. Honduras*. Judgment of September 1, 2006. Series C No. 141. par. 54.1.

¹³ González, Nancie. *Sojourners of the Caribbean: Ethnogenesis and Ethnohistory of the garifunas*. University of Illinois Press. Urbana and Chicago: 1988. At: World Bank Inspection Panel. *Investigation Report on Honduras Land Administration Project*. Report No. 39933-HN. June 12, 2007. p. 23. Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/HondurasFINALINVESTIGATIONREPORTSpanishTrad.pdf>.

words from French, Spanish and English,"¹⁴ and by the forms of ancestral organization surrounding cultural expressions, such as the dance tableaux, that play an important role not only in the preservation of culture, but also in communication and oral transmission of their history. Given the cultural value that Garifuna language, dance and music represent, based on an oral culture, the United Nations Organization for Education Science and Culture (UNESCO) declared them Masterpieces of the Oral and Intangible Heritage of Humanity in 2001.¹⁵

37. The Garifuna communities possess different forms of social organization, some of which are of a traditional nature, while others have been the product of the need to defend their rights and territories. Matriarchy prevails in their culture, considerably reinforcing the role of women in the area of education, politics, economics and social issues, aspects in which women participate jointly along side of men.¹⁶ Moreover, masculine polygamy (polyandry) is admissible within the Garifuna culture.¹⁷

The Garifuna people of Honduras is located along the Atlantic coast of Honduras and consists of approximately 200,000 inhabitants, [who have] spread out into 46 communities, over the course of more than 205 years. It is part of the Honduran cultural identity.

Historically it has been characterized as a peaceful people, respectful of nature and the areas inhabited by said people hold natural resources that allow them to re-create and develop their culture.

Due to the importance of natural resources for the development of the Garifuna people and for the Honduran people in general, it is necessary for the State to take measures aimed at ensuring the preservation of said natural resources.¹⁸ [sic]

B. Garifuna Community of Punta Piedra

38. The Garifuna Community of Punta Piedra is located in the Municipality of Iriona, Department of Colon, on the shores of the Caribbean Sea¹⁹ and it is made up of approximately 1,500 individuals.²⁰ The parties agree that the Punta Piedra Community has inhabited the area since time immemorial.

¹⁴ According to UNESCO, "The Garifuna language belongs to the Arawak family of languages and has survived centuries of linguistic persecution and domination. It possesses great richness of *úragas*, stories that were recited during evening or large social gatherings. The melodies meld African and American Indian elements and the texts are a veritable treasure trove of history and traditional knowledge of the Garifuna on the cultivation of manioc, fisheries, canoe building and baked clay brick home-building. There is also a heavy satirical component in the songs that are sung to the beat of drums and are accompanied by dance in which spectators take part." UNESCO, Masterpieces of the oral and intangible heritage of humanity – "The language, dance and music of the Garifuna." Available at: <http://www.unesco.org/culture/ich/index.php?lg=ES&cp=HN>.

¹⁵ See UNESCO, Masterpieces of the oral and intangible heritage of humanity – "The language, dance and music of the Garifuna." Available at: <http://www.unesco.org/culture/ich/index.php?lg=ES&cp=HN>.

¹⁶ See Caribbean Central America Research Council. *Diagnostic Study on Land Use and Tenure in Garifuna and Miskita Communities of Honduras 2002-2003*. Available at: <http://ccarconline.org/Honduraseng.htm>.

¹⁷ IA Court of HR. *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141. par. 54.1.

¹⁸ Annex 1. Motion endorsed by Deputies Olegario López Róchez, Erick Mauricio Rodríguez, Samuel Martínez, Jorge Leonidas García, among others, and introduced on April 18, 2002, in the National Congress. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

¹⁹ Annex 2. Map of "geographic location of the land of the Garifuna Community of Punta Piedra" prepared by the INA on July 12, 2007. Annexes of the submission by the State on July 19, 2007, during the working meeting of the 128th regular Session.

²⁰ IACHR, Admissibility Report No. 63/10, March 24, 2010, Petition 1119-03, Garifuna Community Pnunta Piedra and its members, Honduras, par. 32.

C. Process of recognition and titling of the territory of the Punta Piedra Community and its members by the State

39. The Garifuna Community of Punta Piedra has brought several actions before the Honduran State to achieve recognition and effective assurance of the territory it has historically occupied, on the basis of legal provisions provided under domestic law. In response, the State has recognized and granted title to the territory of the Community through several different legal transactions, which are explained hereunder, based on the evidence introduced by the parties:

1. Communal Title

40. Pursuant to the Agrarian Law in force during the 1920s, the State of Honduras granted the Punta Piedra Community, through a communal title (*título ejidal*), the right of use and enjoyment to a tract of land of slightly more than 800 hectares. The State claims that the communal title is dated December 26, 1922, while the petitioners claim it is from 1921; however, both are in agreement as to the communal nature of the document, as well as the area to which it applied.²¹

2. 1993 Fee Simple Title to 800 Hectares and 748 Square Meters

41. In response to a request made on October 13, 1992 by the Community,²² on December 16, 1993, the INA awarded final property title to the Garifuna Community of Punta Piedra to the same area as in the communal title, to wit, 800 hectares and 748 square meters. The final title in fee simple absolute was recorded in the Register of Property, Mortgages and Preventive Entries on January 21, 1994.²³

42. The tract of land of the property title that was granted is adjacent to the following: North: Caribbean Sea; south: national government-owned land; east: Ejidos de Cusuna; and west: national government-owned lands and former riverbed of the Miel River. It was awarded without valuable consideration, as a gift, and “the right of ownership, possession, easement, accessory rights, use and other *in rem* rights inherent to the property were ceded.” In the title, the following terms were set forth:

Notwithstanding the dispositive nature of this cession of property rights, the instant title is subject to the following conditions: A) That should sale or donation of lots of the awarded tract of land be permitted, it may only be authorized for tourism projects duly approved by the Honduran Institute of Tourism and to descendants of the beneficiary Ethnic community. B)

²¹ Witness Doroteo Tomas stated in this regard the following: “[...] The ancestors gave us a document for the land. [...] This ancestral document that we have, the government gave it in 1921 [...]”. [IACHR, Public Hearing on March 7, 2006 in re “Petition 1119/03 – Garifuna Community of Punta Piedra, Honduras”, 124th Regular Period of Sessions of the IACHR]. Also see, public statement of OFRANEH of June 12, 2007, asserting that Punta Piedra has a communal title that dates back to 1921. [Annex 3. Public statement of OFRANEH of June 12, 2007. Annex of submission of the petitioner of June 12, 2007, received by the IACHR on June 14, 2007]. In response, the State claimed that “on December 26, 1922, the State of Honduras [...] granted to the Punta Piedra Community a communal title (use and enjoyment) to a tract of land 800 hectares and a fraction.” Document submitted by the State of Honduras on July 19, 2007, during the working meeting of the 128th regular session.

²² Annex 4. “Appearing on record in Case file No. 25239 opened on OCTOBER 13, 1992 that the GARIFUNA COMMUNITY “PUNTA PIEDRA” meets the legal requirements to be awarded land under the Agrarian Reform, hereby GRANTS: PROPERTY TITLE IN FEE SIMPLE ABSOLUTE.” See in: Final property title granted by the INA on December 16, 1993, identified by Case File No. 25239. Annex to submissions introduced by the State on July 19, 2007, during the working meeting of the 128th regular session.

²³ Annex 4. Final property title granted by the INA on December 16, 1993, identified with Case File No. 25239. Annex to submissions introduced by the State on July 19, 2007, during the working meeting of the 128th regular session.

That the integrity of the forests be respected in order to ensure the existence of the sources of water, the quality of the beaches, as well as the stability of the slopes of the watershed and the habitat of the local fauna, thus preserving the natural conditions of the location.²⁴

43. The title was granted under the Law of Agrarian Reform, approved under Decree-Law No. 170-74 of December 30, 1974, in force as of January 14, 1975, which was amended by the Law for the Modernization and Development of the Agricultural Sector, approved under Decree No. 31-92 of March 5, 1992, in force as of April 6, 1992.²⁵ As it pertains to the Garifuna communities, amended Article 92 establishes that:

Article 92. [...] The ethnic communities that prove occupation of the lands where they are settled, for a period of time no less than three years as set forth in amended Article 15 of this Law, shall receive the property titles in fee simple absolute totally for free, [which shall be] extended by the National Agrarian Institute within the time period stipulated in Article 15 above.²⁶

3. 1999 Final Title in Fee Simple to 1,513 Hectares and 5,445.03 Square Meters

44. The Punta Piedra Community requested the INA to expand the awarded area²⁷ and on December 6, 1999, said institution granted it final property title in fee simple to the rural land legally belonging to the nation with a surface area of 1,513 hectares and 5,445.03 square meters, which was recorded in the Register of Property, Mortgages and Preemptive Entries on January 3, 2000. The new area awarded was adjacent to the following: North: private lands of the Punta Piedra Community; south: national government-owned lands or reservation areas; east: lands of the Cusuna Community; and west: national government-owned land.²⁸ Pursuant to the title, the “right of ownership, possession, easement, accessory rights, uses and other *in rem* rights inherent to the property were ceded.”

45. The 1999 title was granted under Article 346 of the Constitution of Honduras, Article 92 and others of the Law of Agrarian Reform and Article 14 of ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries.²⁹

²⁴ Annex 4. Final property title granted by the INA on December 16, 1993, identified with Case file No. 25239. Annex to submission introduced by the State on July 19, 2007, during the working meeting of the 128th regular session.

²⁵ Law for the Modernization and Development of the Agricultural Sector. Source: INA, Legal framework. Available at: http://www.ina.hn/userfiles/file/nuevos/ley_para_la_modernizacion_y_desarrollo_del_sector_agricola_lmdsa.pdf.

²⁶ Based on the available information, pursuant to this legislation, “between 1993 and 2004, 36 Garifuna communities and 6 Garifuna Peasant Community Partnership Entreprises in the Departments of Atlántida, Colón, Cortés, Gracias a Dios and Islas de la Bahía obtained communal fee simple property title.” See World Bank Inspection Panel. *Investigation Report on the Honduras Land Administration Project*. Report No. 39933-HN. Available at: <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/HondurasFINALINVESTIGATIONREPORTSpanishTrad.pdf>.

²⁷ “[...] Attorney ANIBAL DELGADO FIALLOS acting in his capacity as legal representative states that on the basis of the Request for lands submitted by the Patronato Pro-Mejoramiento de La Comunidad Punta de Piedra [Punta Piedra Community ‘Pro-Improvement Civic Association’], corporate legal status number 274-96, in case file number 10775-52147, FINAL PROPERTY TITLE IN FEE SIMPLE ABSOLUTE was granted to them [...]”. Annex 5. Rectification of final property title in fee simple granted by the INA on January 11, 2000. Annex to the initial petition dated October 29, 2003, and Annexes to the submission introduced by the State on July 19, 2007, during the working meeting of the 128th Regular Period of Sessions.

²⁸ Annex 6. Final property title granted by the INA on December 6, 1999, identified with Case file No. 52147-10775. Annexes to the submission introduced by the State on July 19, 2007, during the working meeting of the 128th regular session.

²⁹ Annex 6. Final property title granted by the INA on December 6, 1999, identified by Case file No. 52147-10775. Annexes to the submission introduced by the State on July 19, 2007, during the working meeting of the 128th regular session.

46. The title provided for the exclusion of 46 hectares and 1296.66 square meters that were titled in fee simple to two private individuals³⁰ and included the following clause:

[...] the land surface areas occupied and exploited by individuals not belonging to the Community are excluded, with the State reserving the right to dispose of them in order to award them to the occupants that fulfill the legal requirements.³¹

47. On January 11, 2000, through its Executive Director and by means of public deed, the INA deleted the clause that excluded the surface areas of land occupied or exploited by individuals not belonging to the Punta Piedra Community from the fee simple title of 1999. In the rectified deed, it was put on record that the inclusion of said clause had been the result of an involuntary error and therefore was being deleted and was invalidated.

"[...] in the Final Property Title in fee simple mentioned in the previous Clause, there was an involuntary error in establishing in the conditions of the Title the following paragraph "the land surface areas occupied and exploited by individuals not belonging to the Community are excluded, with the State reserving the right to dispose of them in order to award them to the occupants that fulfill the legal requirements," which is hereby deleted and invalidated."³²

48. As a result of the rectification, the fee simple title granted by the state to the Punta Piedra Community in 1999 encompassed, without any exception, the total surface area of land that was handed over.

49. Consequently, the parties have proven by means of public instruments that the State granted to the Garifuna Community of Punta Piedra two property titles in fee simple, both in force as of the present date. The first one in 1993 for a surface area of 800 hectares and a fraction and the second one in 1999 for a surface area of 1,513 hectares and a fraction, for a total of 2,314 hectares and a fraction.

D. Occupation of the Territory of the Punta Piedra Community by Third Parties

50. Based on the information provided by the parties, in early 1990s, the area of Rio Miel located within the territory being claimed as ancestral lands of the Garifuna Community of

³⁰ In this regard, the title provides, verbatim, that: "On the land described there is included a surface area of FORTY SIX HECTARES, TWELVE HUNDRED AND NINETY SIX POINT SIX SQUARE METERS (46 Hcts. 1296.66 square meters), which because they were titled in fee simple to mssrs: Ambrocio Thomas Castillos, with two (2) plots of land, one 22 hectares and 6,575.06 square meters and the other 3 Hectares with 6,197.99 square meters and Sergia Zapata Martínez with one plot of land of 19 Hectares with 8,523.61 square meters; they are not part of the instant award." Annex 6. Final property title granted by the INA on December 6, 1999, identified with Case file No. 52147-10775. Annexes to the submission filed by the State on July 19, 2007, during the working meeting of the 128th Regular Period of Sessions.

³¹ Additionally, the title establishes that: "This property title constitutes an inalienable asset of the beneficiary community, except in those instances in which transfer of the right of ownership is done for the purpose of building housing for the members of said community who lack housing, likewise, transfer of the right of ownership done by the owners of the houses must be to the benefit of members of the community. In both instances, there must be approval of the Board of Directors of the Civic Association (Patronato), which must appear on record in the instrument of transfer of the right of ownership. The Civic Association shall have preferential right to acquire the right of ownership of any houses that are put up for sale but may not sell them to third party natural persons or artificial entities, but may only do so to members of the beneficiary Garifuna community." Annex 6. Final property title granted by the INA on December 6, 1999, identified with Case file No. 52147-10775. Annexes to the submission introduced by the State on July 19, 2007, during the working meeting of the 128th regular session.

³² Annex 5. Rectification of the final property title in fee simple granted by the INA on January 11, 2000. Annexes to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003, and Annexes to the submissions introduced by the State on July 19, 2007, during the working meeting of the 128th Regular Period of Sessions.

Punta Piedra, was encroached upon by peasants, also known as "*ladinos*."³³ In its initial reply to the IACHR, the State noted:

"The problem of land tenure of the Garifuna Community of Punta Piedra originates with the arrival of the first [non-indigenous] settlers of the community that is known as Rio Miel, who the members of Punta Piedra know as *ladinos*."³⁴

51. Regarding the presence of peasants in the Rio Miel area, Doroteo Tomas, member of the Punta Piedra Community, stated the following at the public hearing before the IACHR:

We are here today because of a problem that has come to our community in 1993. The problem that has come to our land [is that] the children of our community came with reports that the intruders were taking over the land, that is the legacy of our ancestors. [...] When we received the news that the intruders were there, we of the community went to talk with them politely, they told us they were going to kill us [...]³⁵.

52. The State explained during the processing of the instant case that in the title of fee simple ownership granted by the INA to the Punta Piedra Community in 1999 to a surface area of land of 1,513 hectares, "an area of approximately 670 hectares was included, the possession of which was held, at that time and is held as of the present date, by the residents of the Community of RIO MIEL. – In the title pertaining to the expansion, it was stipulated that these 670 hectares were excluded from the area awarded and that the State could dispose of it [the area] in order to legalize the tenure thereof to the benefit of individuals who meet the legal requirements. However, subsequently, the National Agrarian Institute issued a Public Instrument of rectification of title [...] action which invalidated the provision of the exclusion of those 670 hectares occupied and exploited by the "RIO MIEL" community, and consequently became the property in fee simple of the Punta Piedra Community, under the title of 1,513 hectares."

53. Consequently, the Commission notes that the parties to the instant case agree that part of the territory recognized and titled by the State in favor of the Garifuna Community of Punta Piedra, since the beginning of the 1990s, has been occupied by peasants who intruded into the area. They also agree that there is at least one piece of land titled by the INA in favor of a third party in fee simple within the territory of the Punta Piedra Community.

54. Moreover, the evidence shows that the Garifuna territory of Punta Piedra encompasses part of the area called "Sierra Rio Tinto" Forest Reserve. However, the parties have not submitted evidence regarding the declaration or creation of said Forest Reserve as a protected area. Additionally, based on information that is a matter of public knowledge, the National Institute of Forest Conservation and Development, Protected Areas and Wildlife issued Decision 007-2011, published in the Official Gazette on July 5, 2011 in order to declare the "Sierra Tinto National Park"

³³ According to the commitment agreement of December 13, 2001, entered into by state officials, "[...] with the arrival of the first settlers in the community that we recognize as Rio Miel, the problem of land tenure between the community of Punta Piedra and Rio Miel began [...]". Annex 7. Commitment agreement of December 13, 2001. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

³⁴ Initial reply of the State of March 25, 2004, received on March 31, 2004.

³⁵ IACHR, Public Hearing on March 7, 2006 in re "Petition 1119/03 – Garifuna Community of Punta Piedra, Honduras", 124th Regular Period of Sessions of the IACHR.

to be a protected area,"³⁶ which encompasses part of the territory of the Punta Piedra Community, and there is no evidence in the records of the case that the community or communities involved have been consulted.³⁷

55. Without prejudice to the foregoing, the Commission notes that the arguments and evidence of the petitioner are focused on occupation by third parties of the territory of the Garifuna Community of Punta Piedra.

56. In fact, based on the information provided by the parties, it is apparent that the area of expansion occupied by peasants in Rio Miel, in December 2001, totaled 605 hectares.³⁸ On July 12, 2007, the INA reported that within the area encompassed in the final fee simple title handed over to the Punta Piedra Community for 1,513 hectares and 5,445.03 square meters, the land was divided up as follows:

"The table below summarizes how the land was made up and distributed, as to the area of expansion of Punta Piedra:

AREA OCCUPIED BY LADINOS WITHIN THE EXPANSION	612.13 HAS.
GARIFUNAS LANDS WITHIN AREA OF EXPANSION	653.24 HAS.
WOODED AREA WITHIN AREA OF EXPANSION	177.98 HAS.
LAND OF AMBROCIO TOMAS OWNED IN FEE SIMPLE	68.06 HAS
AREA BETWEEN HIGHWAY AND TRACKS	2.13 HAS.
TOTAL	1,513.54 HAS.

The area of forest or mountain (177.98 hectares) is currently in possession of members of the Rio Miel Community. The Titled Area of the Expansion of Punta Piedra is adjacent to the following:

North:	Private Lands of the Garifuna Community of Punta Piedra.
South:	Reserve Zone.
East:	Garifuna Community of Cusuna and Ciriboya.
West:	Municipalities of Limón a Irióna. ³⁹

57. The INA attached to the same report a list of the "OCCUPANTS OF THE VILLAGE OF RIO MIEL WITHIN THE TITLE OF EXPANSION OF PUNTA PIEDRA," which totaled approximately 33 persons.⁴⁰

³⁶ See in La Tribuna, May 22, 2011, "[Reserva Forestal Sierra Río Tinto: Se impulsa proceso para declararla legalmente como un parque nacional](http://old.latribuna.hn/2011/05/22/reserva-forestal-sierra-rio-tinto-se-impulsa-proceso-para-declararla-legalmente-como-un-parque-nacional/)". Available at: <http://old.latribuna.hn/2011/05/22/reserva-forestal-sierra-rio-tinto-se-impulsa-proceso-para-declararla-legalmente-como-un-parque-nacional/>

Also see Decision 007-2011 of the National Institute of Forest Conservation and Development. Protected Areas and Wildlife. [La Gaceta, Diario Oficial de la República de Honduras de fecha 5 de julio de 2011](http://www.tsc.gob.hn/leyes/Declarar%20como%20area%20protegida%20el%20Parque%20Nacional%20Sierra%20Rio%20Tinto%20Irióna%20Colon.pdf). Available at: <http://www.tsc.gob.hn/leyes/Declarar%20como%20area%20protegida%20el%20Parque%20Nacional%20Sierra%20Rio%20Tinto%20Irióna%20Colon.pdf>.

³⁷ In this regard, see Article 101 of the Honduran Law of Property, Decree 82 of May 28, 2004, which establishes: Management of protected areas that are located within the lands of these peoples shall be done jointly with the State, while respecting the provisions of territorial law that define any infringement on use or titling for reasons of public interest. Available at: http://www.congresonacional.hn/index.php?option=com_wrapper&view=wrapper&Itemid=66.

³⁸ Annex 7. Commitment agreement of Decembver 13, 2001. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

³⁹ Annex 8. Final report of cadastral survey of the area titled in the expansion in favor of the Garifuna Community of Punta Piedra of July 12, 2007. Annex to the submission of observations on the merits from the State dated October 13, 2010, received by the IACHR on the same date.

58. Graphically, the locations are described by the INA on the Map of “geographic location of the land of the Garifuna Community of Punta Piedra” drawn up by said institution and dated July 12, 2007.⁴¹

59. Consequently, based on documents originating from the State, it is on record that the Garifuna Community of Punta Piedra possesses 653.24 hectares of the 1,513.54 that were given by the State in fee simple in 1999, while the rest were occupied by third parties, either as a result of encroachment, or by means of a property title to right of ownership issued by the State to third parties. The IACHR notes that the State asserts in a note dated August 22, 2011, that “the Rio Miel Village only occupies Two Hundred and Seventy Eight point Forty hectares (278.40).” However, this figure is not consistent with several documents provided by the State itself and drawn up by the INA, the specialized entity in charge of the management of land title clearing.

60. Based on the foregoing, the IACHR understands that what is in dispute in the instant matter is not the right of property of the Punta Piedra Community over the territory that it occupies, nor the granting of a legal title that recognizes such a right, but rather the obligation to ensure peaceable possession through clearing of title and its effective protection vis-à-vis third parties.

E. Efforts by the Garifuna Community of Punta Piedra to Clear Title of its Territory

61. The Punta Piedra Community brought several proceedings before the state authorities in order to clear the title to their territory and be able to peaceably use and enjoy their ancestral territory. In fact, on this topic, the State reported that:

As a consequence of the rights granted and in order to assert them, the Garifuna Community of “PUNTA PIEDRA” filed with the State of Honduras through the National Agrarian Institute, a petition for clearing of title of the area in reference.⁴²

62. As a result of the proceedings brought by the Community, the INA and the National Congress took several steps aimed at clearing the property title for the Punta Piedra Community. In this regard, the petitioner noted:

“The land issue of Punta Piedra has become an eternal pilgrimage by the community to the National Congress, demanding that the illegally occupied lands be returned.”⁴³

1. *Ad Hoc* Inter-Institutional Commission and Commitment Agreement of December 13, 2001

63. On April 7, 2001, an *Ad Hoc* Inter-Institutional Commission, made up of representatives of the INA, the National Human Rights Commissioner and the Social Ministry of the

...continuation

⁴⁰ Annex 8. Final report of cadastral survey of the area titled in the expansion in favor of the Garifuna Community of Punta Piedra of July 12, 2007. Annex to the submission of observations on the merits from the State dated October 13, 2010, received by the IACHR on the same date.

⁴¹ Annex 2. Annexes to the submission introduced by the State on July 19, 2007, during the working meeting of the 128th Regular Period of Sessions.

⁴² Submission introduced by the State on July 19, 2007, during the working meeting of the 128th Regular Period of Sessions.

⁴³ Initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

Diocese of Trujillo, was established, "as a body of conciliation and consensus-building in the effort to reach a peaceful solution to the conflict."⁴⁴ Based on the information provided:

This Commission viewed the legal documents that constitute the titles, deeds, bills of sale and purchase, some failing to meet the formal requirements usually demanded in legal matters and issued a report interpreting the rights that the inhabitants of the communities are entitled to.⁴⁵

64. On November 26, 2001, the Inter-Institutional Commission met "with the residents of both communities in order to reach a consensus on possible alternatives, which if endorsed by both communities, may put an end to the dispute." On December 13, 2001, representatives of the Community of Punta Piedra and the peasant settlers of Rio Miel signed an "Agreement of commitment," along with the members of said Commission and the Garifuna organizations OFRANEH and ODECO.⁴⁶ The aforementioned document establishes, among other items, the following:

b. The representatives of the above listed organizations and institutions recognize that the State is obligated to conduct the process to clear the property title to the benefit of the Punta Piedra community by paying the inhabitants of Rio Miel for the improvements so that the Garifuna community can fully exercise their right of property that is granted to it by the ancestral documentation and the ownership granted to it by the National Agrarian Institute.

c. The State, through the National Agrarian Institute, must conduct a more diligent search for a property where the compensated families may relocate to, and also, through the competent institutions, all efforts must be made to support the right to housing, health, education, water and of other benefits to ensure appropriate conditions of the relocated population and that once and for all the community of Punta Piedra may be able to exercise its right to ownership over the areas being claimed.⁴⁷

65. As a follow up to the agreement, on February 21, 2002, OFRANEH requested from the Minister Director of the INA an assessment of the improvements to the town of Rio Miel, "in order to establish mechanisms to attain approval of a budget amount for the respective compensation."⁴⁸

66. According to the State, the "INA, for the purpose of settling the issue raised between the Punta Piedra community and the Village of Rio Miel, conducted an assessment of the improvements made by the *ladino* occupants, which yielded the amount of Thirteen million, one hundred and sixty-eight thousand, nine hundred and eighty-two lempiras with eighty-four cents (Lps.13,168,982.84)."⁴⁹

⁴⁴ Annex 7. Commitment agreement of December 13, 2001. Annex to the initial petition, received by the IACHR on October 29, 2003.

⁴⁵ Annex 7. Commitment agreement of December 13, 2001. Annex to the initial petition, received by the IACHR on October 29, 2003.

⁴⁶ Annex 7. Commitment agreement of December 13, 2001. Annex to the initial petition, received by the IACHR on October 29, 2003.

⁴⁷ Anexo 7. Commitment agreement of December 13, 2001. Annex to the initial petition, received by the IACHR on October 29, 2003.

⁴⁸ Annex 9. Letter sent by OFRANEH to the Minister Director of the INA dated February 21, 2002. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

⁴⁹ Submission of observations on the merits from the State dated October 13, 2010, received by the IACHR on the same date.

67. Consequently, the Punta Piedra Community filed a request with the Congress of the Republic to adopt the required budget item for the INA. Edito Suazo Avila, the President of the Community Civic Association of Punta Piedra stated at the public hearing before the IACHR:

"[...] after everything that had happened we went to the INA office where they claimed to us that they didn't have any money to solve the problem. We met with the people and decided to hold a march on the capital to ask the President to pay for all of the errors that had been committed. We asked the government to make the problem right, the Congress agreed to deliver the money [...]"⁵⁰.

68. On April 18, 2002, a group of Deputies introduced a motion before the National Congress for the approval of a budget item in the "2012 General Budget of Revenue and Expenditures of the Republic" for the INA to proceed to payments of compensation to clear the title to the land claimed by the Punta Piedra Community.⁵¹ In the motion, the following is set forth:

[...]

Whereas, for the indigenous peoples, the concept of conservation and sustainable use of biodiversity is not just an empty concept, much less a commercial one. These concepts, to indigenous peoples, are closely tied to spirituality and respect for mother earth. Life, territory, knowledge and collective rights are inseparable. Article 8 of the Convention on Biodiversity (CBD) recognizes this fundamental principle.

Whereas, the Honduran State in May 1994 ratified International Labor Organization (ILO) Convention 169, international legal instrument that recognizes the collective rights of the indigenous and tribal peoples of the world.

Whereas, the community of Punta Piedra, for more than 10 years has been facing a land tenure dispute, which arose as a result of a group of persons from outside of the community, who took possession of the production lands of said community. And that said dispute has kept the Garifuna community in a state of unrest.

Whereas, on December 13, 2001, a meeting between the representatives of the community of Punta Piedra and the *ladinos* of Rio Miel took place, along with the representatives of the INA of Sinaloa. Both parties reached important decisions toward solving the problem. At said meeting, it was agreed that the State should proceed to provide compensation to clear title to the lands in order to finally settle the dispute.

Whereas, at the meeting held with the Minister Director of the National Agrarian Institute (INA), representatives of the Garifuna communities, of the OFRANEH, of CONPAH and the National Congress, to examine the petition filed by the Garifuna representatives before the national congress, it was agreed to base the introduction of said motion on the existing assessment of the Punta Piedra community,

[...]

THEREFORE WE INTRODUCE THE FOLLOWING MOTION, TO THE SOVEREIGN NATIONAL CONGRESS

Approval of a budget item of Lps.13,168,982.84 in the 2002 General Budget of Revenue and Expenditures of the Republic, to be approved by this Legislative Session soon, in order to

⁵⁰ IACHR, Public Hearing dated March 7, 2006 in re "Petition 1119/03 – Garifuna Community of Punta Piedra, Honduras", 124th regular session of the IACHR, Testimony of Edito Suazo Avila.

⁵¹ Annex 1. Motion sponsored by Deputies Olegario López Róchez, Erick Mauricio Rodríguez, Samuel Martínez, Jorge Leonidas García, among others and introduced on April 18, 2002 before the National Congress. Annex to the initial petition dated October 27, 2003, received by IACHR on October 29, 2003, and Annex to submission of observations on the merits from the State dated October 13, 2010, received by the IACHR on the same date.

proceed to the payment of compensation to the Punta Piedra Garifuna Community based on the existing assessment conducted by the INA, which shall be distributed as follows:

Lps, 8,887,662.84 for the title clearing compensation itself
Lps, 4,271,330.00 operational expenses for the compensation. [...] ⁵² [sic]

69. Based on the evidence in the case file, on August 26, 2002, the Chairman of the Budget Committee of the National Congress submitted to the INA the Draft "Garifuna People Development" Decree" in order for it to issue its opinion thereon,⁵³ which was issued on September 4, 2002 and was favorable.⁵⁴ On October 2, 2002, the Minister Director of the INA expressed once again his support for the motion introduced to approve a budget item to enable clearing of the title of the collectively owned lands of the Punta Piedra Community.⁵⁵

70. In parallel, both the Garifuna Community and the petitioning organization sent several communications to state officials reporting on how the encroachment by the *ladinos* of Rio Miel was growing more serious. In fact, on August 24, 2002, the Pro-Improvement Civic Association of the Punta Piedra Community requested the Minister Director of the INA "to reopen the negotiating process for settlement of the dispute of Rio Miel [...] which had remained inactive over the past few months. We have noticed the arrival of more outsiders to Rio Miel thus increasing the risk of conflict."⁵⁶ Likewise, in a note of October 1, 2002, OFRANEH requested the Congress to approve the necessary budget⁵⁷ and on May 14, 2003, it requested information from the Minister Director of the INA, which was answered on May 26, 2003 indicating that the budget had not been incorporated.⁵⁸ Additionally, on September 3, 2003, the Pro-Improvement Civic Association of the Community communicated to the INA that despite the agreements reached with the occupants of the Rio Miel area and the INA, *ladinos* were continuing to log the forests and sell off Garifuna land to third parties and, therefore, it requested that a field inspection be conducted to verify the new problems.⁵⁹

⁵² Motion sponsored by Deputies Olegario López Róchez, Erick Mauricio Rodríguez, Samuel Martínez, Jorge Leonidas García, among others, and introduced on April 18, 2002, before the National Congress. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

⁵³ Annex 10. Letter sent by the Budget Committee of the National Congress to the INA dated August 26, 2002. Annex to the initial reply of the State of March 25, 2004, received on March 31, 2004.

⁵⁴ Annex 11. Letter sent by the Minister Director of the INA to the National Congress dated September 4, 2002. Annex to the initial reply of the State of March 25, 2004, received on March 31, 2004.

⁵⁵ Annex 12. Letter sent by the Minister Director of the INA to the National Congress dated October 2, 2002. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

⁵⁶ Annex 13. Letter sent by the Pro-Improvement Civil Association of the Punta Piedra to the Minister Director of the INA of August 24, 2002. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

⁵⁷ Annex 14. Letter sent by OFRANEH to the Minister Director of the INA dated February 21, 2002. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

⁵⁸ Annex 15. Letter sent by the Minister Director of the INA to OFRANEH dated May 26, 2003. Annex to the initial reply of the State of March 25, 2004, received on March 31, 2004.

⁵⁹ Annex 16. Letter sent by the Pro-Improvement Civil Association of the Community to the Minister Director of the INA dated September 3, 2003. Annex to the initial reply of the State of March 25, 2004, received on March 31, 2004. In this regard, the records before the IACHR show that, on September 10, 2003, the Minister Director of the INA issued instructions to the Regional Chief in order for him to conduct an *in locu* investigation; nonetheless, no evidence is before the IACHR of such an investigation actually being conducted. Annex 10. Communication addressed by the Minister Director of the INA to the Regional Chief for Bajo Aguan dated September 10, 2003. Annex to the initial reply of the State of March 25, 2004, received on March 31, 2004.

71. Notwithstanding, the evidence in the case file and the consistent statements made by the parties indicate that, despite numerous efforts, compensation was not paid by the INA.⁶⁰ On this score, the State reported that “the item was never incorporated into the budget of the institution [INA] for the compensation and clearing of the title of Punta Piedra and, therefore, said compensation was not paid.”⁶¹

72. As indicated in the information provided by the parties, state officials subsequently took further steps with the settlers of Rio Miel in order to update the assessment. In fact, from November 30 to December 3, 2006, INA officials and the Office of the Attorney General of the Republic reached out to the community of Rio Miel to conduct a re-assessment of the improvements made by it, which it opposed.⁶² Similarly, on March 14, 2007, a meeting of an Inter-Institutional Commission was held⁶³ with the Mayor of the City of Iriona Puerto and representatives of the peasant community of Rio Miel, where these representatives expressed their opposition to updating the assessment made in 2001. On that occasion, it was agreed “[to continue] with the effort and necessary steps in order to find new common ground with the residents of both communities to make it possible to reach a consensus on options for solving the problem in a balanced way.”⁶⁴

73. At the same time, based on the information provided by the parties, on January 22 and June 8, 2007, meetings were held with the attendance of state officials and OFRANEH.⁶⁵ At the meeting of June 8, it was noted that “[...] an assessment is being conducted in the area and the plan is for that activity to continue next week [...]”⁶⁶.

⁶⁰ See Annex 15. Letter sent by the Minister Director of the INA to OFRANEH dated May 26, 2003. Annex to the initial reply of the State of March 25, 2004, received on March 31, 2004. In this regard, Edito Suazo Avila, President of the Civic Association of the Community of Punta Piedra stated at the public hearing before the IACHR: “We asked the government for money to fix the problem, the Congress accepted granting the money and handed it over to finances and they [handed it over] to the INA so that the compensation would be paid, we are still waiting for the INA and it never arrived. We went back and asked again and they said that they had used it to pay their workers [and] that is why we are here today, because of all of these abuses.” IACHR, Public Hearing of March 7, 2006 in re “Petition 1119/03 – Garifuna Community of Punta Piedra, Honduras,” 124th regular session of the IACHR. Testimony of Edito Suazo Avila. Additionally, the State asserted that “[...] the item was never incorporated into the budget of the institution for the compensation of Punta Piedra, which is why said compensation has not been paid.” Initial reply of the State of March 25, 2004, received on March 31, 2004 and submission of observations on the merits from the State dated October 13, 2010, received by the IACHR on the same date. Also see Annex 3. Public statement of OFRANEH of June 12, 2007. Annex to the submission of the petitioner of June 12, 2007, received by the IACHR on June 14, 2007; and observations on the merits from the petitioner dated September 8, 2010, received by the IACHR on September 27, 2010.

⁶¹ Submission of the observations of the State on the merits dated October 13, 2010, received by the IACHR on the same date.

⁶² Annex 18. Memorandum submitted by the Agronomic Investigation and Assessment Section to the Minister Director of the INA dated December 5, 2006. Annex to the submission of the State dated April 19, 2007, received by the IACHR on April 23, 2007.

⁶³ Based on the information provided, the creation of said Inter-Institutional Commission was decided at a meeting held on February 20, 2007 between representatives of the INA, SERNA, the Office of the Attorney General of the Republic, the Secretariat of the Interior, Office of the Special Prosecutor for Ethnic Matters and the Punta Piedra Community. Annex 19. Aide-memoire of February 20, 2007 regarding “Issues Punta Piedra Garifuna Community.” Annex to the submission of the State on the merits dated October 13, 2010, received by the IACHR on the same date.

⁶⁴ Annex 20. Special agreement of March 14, 2007. Annex to the submission of the State dated April 19, 2007, received by the IACHR on April 23, 2007.

⁶⁵ Annex 21. Aide-memoire on follow-up to the commitment agreement of January 22, 2007. Annex to the State’s submission of observations on the merits dated October 13, 2010, received by the IACHR on the same date; and Annex 22. Special agreement on follow-up to the commitments made by the Government of the Republic of June 8, 2007. Annex to the submission of the petitioner submitted on March 23, 2007.

⁶⁶ Annex 22. Special agreement on follow-up to the commitments taken on by the Government of the Republic with OFRANEH. June 8, 2007. Annex to the submission of the petitioner submitted on March 23, 2007.

2. Special Agreement with the Peasant Community of Río Miel of April 20, 2007 and Updating the Assessment

74. On April 20, 2007, different State officials –including the Minister Director of the INA- and representatives of the peasant community of Río Miel entered into a “special agreement” which established, among other things, the following:

1. The National Agrarian Institute seeks to reach a friendly settlement to the conflict between the members of the Garifuna community of Punta Piedra and the village of Río Miel, in order to avoid incidents that disturb the peace between both communities, as has been maintained up to the present date.

2. For this purpose, the surface area of the village, the occupants, the work lands (trabajaderos), the origin of possession, the number of dependents, the value of improvements to the area of the land that is occupied by each member of the Río Miel community shall be defined, and will begin within a period no later than ten business days.

3. The INA and the Municipal Government of Iruya Puerto, will arrange a meeting with both communities (Río Miel and Punta Piedra), for the purpose of reaching a friendly settlement of the problem.

[...]

5. The community of Río Miel puts on the record its absolute rejection of any attempt to evict its residents and the government representatives for their part reaffirm that any action on this issue is strictly subject to a judicial ruling, issued by the competent courts, the nature of which is dispositive or *res judicata*.⁶⁷

75. Pursuant to Official Letter DE-099-2007 of June 7, 2007, issued by the Vice Minister of the INA, an agrarian commission conducted an investigation in the village of Río Miel in order to update the assessment.⁶⁸ In a memorandum of July 12, 2007, the “Final report of the cadastral survey of the area titled in the expansion in favor of the Garifuna Community of Punta Piedra,” which was drafted by INA employees, was submitted. According to said report, at that time “the area occupied by the *ladinos* within the expansion zone” was 612.13 hectares, while the “Garifuna lands within the expansion area” totaled 653.24 hectares.⁶⁹ In this report, it was also established that “the wooded or mountain area (177.98 hectares) is currently in the possession of members of the Río Miel Community.”⁷⁰

76. Additionally, according to the “Assessment Report” issued by an agronomist, an INA employee, and addressed to the Director of said institution on July 23, 2007, conducted “in accordance with the Order dated May 2, 2007 for the purposes of performing an assessment of improvements in areas occupied by the members of the Río Miel Community,” established with regard to the characteristics of the tract of land, that it presents “a high degree of soil erosion, specifically the upper parts and areas recently cleared for cattle ranching and grass cultivation,” and

⁶⁷ Annex 23. Special agreement of April 20, 2007. Annex to the submission of the State dated April 27, 2007, received by the IACHR on April 30, 2007.

⁶⁸ Annex 24. Official Letter DE-099-2007 of June 7, 2007 sent by the Vice Minister of the INA to the Assistant Attorney General of the Institutional Working Group on Human Rights of the Office of the Attorney General of the Republic. Annex to the submission of the State dated June 27, 2007, received by the IACHR on the same date.

⁶⁹ Annex 8. Final report of cadastral survey of the area titled in the expansion in favor of the Garifuna Community of Punta Piedra of July 12, 2007. Annex to the submission of observations on the merits from the State dated October 13, 2010, received by the IACHR on the same date.

⁷⁰ Annex 8. Final report of cadastral survey of the area titled in the expansion in favor of the Garifuna Community of Punta Piedra of July 12, 2007. Annex to the submission of observations on the merits from the State dated October 13, 2010, received by the IACHR on the same date.

this report also states that “during the inspection visit, the advancement and destruction of the forest in the traditional manner (burning) was also evident.”⁷¹

77. On December 19, 2007, the INA Minister-Director requested the Office of Finance in the Secretariat of State the allocation of an additional sum in the budget of said institution of 17,108,448.58 lempiras, based on the new assessment conducted to provide compensation and clearing title to the territory of the Punta Piedra Community. On this topic, the State reported that the amount of the assessment was submitted to the Secretariat of Finances on December 14, 2007, and has not been approved as of the present date.”⁷²

G. Conflict Situation

78. In addition to the foregoing, the information provided by the parties indicates that there exists an ongoing situation of conflict provoked by third parties with an interest in the lands of the Community, which is characterized by constant threats, harassment and violent acts.⁷³ In fact, pursuant to the Agreement of commitment of December 13, 2001, signed by State officials, “from that point in time [referring to the arrival of the first peasants in Rio Miel] up to the present date, problems have been arising that not only involve the land dispute, but that also jeopardizes the safety and some of the property of the inhabitants of the communities.”⁷⁴ Additionally, with respect to the situation of insecurity in the Community, witness Benito Bernandez stated at the public hearing before the IACHR that:

Every day the children of the community are persecuted by the intruders, they never stop building houses and cutting down trees. They persecuted my dad until they killed him with high-caliber guns [...]. The intruders release their animals on Garifuna lands. I am sure that when we get back to Honduras the intruders are going to realize [that we attended the hearing] and we will be threatened and we are requesting more security for me and my family because the intruders level threats every day against the children of the community.⁷⁵

79. Within this context of conflict, criminal complaints were brought for the murder of Punta Piedra Garifuna Community member Félix Ordóñez Suazo in June 2007,⁷⁶ and the crime was brought to the attention of the authorities, both at the General Office of Criminal Investigation and

⁷¹ Annex 25. Report on the Assessment addressed to the Minister Director of the INA by the Agronomic Investigator, dated July 23, 2007. Annex to the State’s submission of observations on the merits dated August 22, 2011.

⁷² Submission of the State dated February 18, 2011. For its part, in its note of January 3, 2011, the petitioner indicated that “[...] in 2007 an attempt was made to resolve the situation, and a new assessment was successfully performed, which was submitted to the Secretariat for Finances in December 2007, and was not approved.”

⁷³ On this score, in the public statement regarding these incidents, OFRANEH stated that: “The conflict has stretched out over fifteen years, exacerbating race relations and fostering violence, without the Honduran State thus far taking any relevant steps to solve the territorial issue that afflicts the Garifuna community. While the days go by, blood is flowing.” Annex 3. Public statement of OFRANEH of June 12, 2007. Annex to the submission of the petitioner of June 12, 2007, received by the IACHR on June 14, 2007.

⁷⁴ Annex 7. Agreement of commitment of December 13, 2001. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

⁷⁵ IACHR, Public Hearing on March 7, 2006 in re “Petition 1119/03 – Garifuna Community of Punta Piedra, Honduras”, 124th regular session of the IACHR.

⁷⁶ On this score, statements of Marcos Bonifacio Castillo, a member of the Garifuna Community, who witnessed the events and attested that Félix Ordóñez was murdered by residents of Rio Miel, were introduced. He also asserted that Félix Ordóñez “had already been threatened [...], and the problem that he had was over the plot of land because they had taken part of the land from Don Félix. Don Félix reported the problem to the office of the prosecuting attorney.” Annex 26. Statements of Marcos Bonifacio Castillo. Annexes to the submission introduced by the petitioner on July 19, 2007, during the working meeting at the 128th regular session.

the Office of the Special Prosecutor for Ethnic Groups and Property, where the investigation is still pending.

80. Additionally, the information in the case file before the IACHR indicates that on April 13, 2010, leaders of the Community filed a complaint with the Office of the Public Prosecutor for usurpation of lands, identified with No. 0801-2010-12292, against "*ladinos* or outsiders."⁷⁷ It is also part of the record that on the same date, they reported to the Office of the Special Prosecutor for Ethnic Groups "the construction of a road that cuts through land owned by the Garifuna community of Punta Piedra, currently known as Rio Miel, without the appropriate prior consultation of the community, as required under Convention 169 [...]"⁷⁸. Additionally, they reported "Paulino Mejía, a member of the Garifuna Community of Punta Piedra, was receiving death threats from three *ladinos* that have encroached on land belonging to the Garifuna community in Punta Piedra. [...] telling him that if he doesn't leave there the same thing is going to happen to him as to Félix Ordóñez [...]"⁷⁸.

81. With respect to the investigations conducted, based on the information provided, from October to December 2010, at the request of the Office of the Prosecutor for Ethnic Groups, officials of the General Directorate of Criminal Investigations and the INA were appointed to conduct an on-site inspection of the land and determine the areas that were usurped by private individuals. However, according to the State's assertions, the inspection tour "could not be conducted [...] due to a lack of travel expense and per diem expense money for the persons appointed to conduct those inspections."⁷⁹

82. Moreover, the IACHR notes that concurrent with the process of recognition of the ancestral property of the Punta Piedra Community, legal provisions and programs were approved, which were aimed at regularizing and titling private property in Honduras —such as the Law of Property, approved under Decree No. 82-2004 of June 29, 2004 and the Honduras Land Administration Program- which the Garifuna communities opposed, including the Punta Piedra Community, because they believe that they ran counter to the recognition of their territorial rights."⁸⁰ Specifically, the petitioner argues that the indigenous and tribal peoples of Honduras were not consulted about the 2004 Property Law; that it granted specific rights to non-indigenous individuals occupying indigenous lands and that Article 100 thereof enables the ancestral territory of these peoples to be split up into tiny plots. Said article establishes that:

It is declared and recognized that the communal regime of lands, which these peoples traditionally possess implies the inalienability, unattachability and imprescriptibility thereof.

⁷⁷ On that occasion, they asserted that "[...] the *ladinos* of that area have come and encroached on the lands that belong to us and despite the fact that this problem goes back fifteen years, and the Inter-American Court was aware of the fact but the problem is that it [the community] is the target of threats over said conflict" [sic]. Annex 27. Complaint No. 0801-2010-12292, filed on April 13, 2010. Annex to the submission of the petitioner dated July 19, 2010, received by the IACHR on August 6, 2010.

⁷⁸ Annex 27. Complaint No. 0801-2010-12292, filed on April 12, 2010. Annex to the submission of the petitioner dated July 19, 2010, received by the IACHR on August 6, 2010.

⁷⁹ Submission of the State dated February 18, 2011.

⁸⁰ On this score, see Annex 28. Note of OFRANEH to the Director of the Program of Support to the Indigenous and Black Peoples, PAPIN, of October 5, 2006. Annex to the submission of the petitioner of October 13, 2006, received by the IACHR on October 31, 2006; and Annex 29. Agreement of understanding between OFRANEH and authorities of the Government of Honduras of September 28, 2006, item pertaining to the "Honduras Land Administration Program (PATH)." Annex to the submission of the petitioner dated October 16, 2006, received by the IACHR on October 31, 2006.

Notwithstanding, the same communities may put an end to the communal regime, authorize leasing to third parties or authorize contracts of another nature that enable the participation of the community in investments that contribute to its development.

83. Based on the foregoing paragraphs, the IACHR notes that the competent State authorities did not guarantee through clearing of title, the peaceable possession of the ancestral territories of the Community vis-à-vis the occupation thereof by third parties, either at the time of granting fee simple title of ownership to the Punta Piedra Community, or subsequently.⁸¹ This is evident, particularly, in the agreement of commitment entered into on December 6, 1999 with different State authorities –including the INA- in which it is asserted that the property title in fee simple to 1,513 hectares was granted “without having completed the respective clearing of title, that is to say, making payment to the occupiers of the community of Rio Miel for improvements.”⁸² Likewise, in a report prepared by INA officials, it is stated that “within the area referenced above [referring to the territory historically occupied by the Garifuna communities] it must be asserted that under the last administrations, titles of expansion were issued without considering the existing Garifuna occupation; inasmuch as the correct thing to do in that case was to execute prior clearing of title or exclude those areas. This has given rise to conflicts between the Garifuna residents and *ladinos*.”⁸³

V. ANALYSIS OF LAW

A. Preliminary Issues

84. The Garifuna people, the product of cultural syncretism between indigenous and African peoples, has asserted its rights in Honduras as an Indigenous people. As has been established, the Garifuna people has preserved its own cultural forms, organization and social and cultural institutions, way of life, worldview, practices, customs, ceremonial observances, language, dress and a special relationship with the land. These elements make the Garifuna a distinct culture and ethnic group, whose members share with each other social, cultural and economic characteristics not found in other segments of Honduran society, particularly the special relationship to the lands they have traditionally occupied, as well as the collective concept of ancestral property. The indigenous status of the Garifuna people has not been disputed by the Honduran State in the instant case.

85. The bodies of the Inter-American human rights system have held, on the basis of Article 1.1 of the convention, that the members of indigenous and tribal peoples require certain special measures in order to ensure full exercise of their rights, especially respect for the enjoyment of their property rights, in order to ensure their physical and cultural survival.⁸⁴ Accordingly, the Commission shall analyze the case of the Garifuna Community of Punta Piedra by bearing in mind

⁸¹ Annex 2. Map of “geographic location of the land of the Garifuna Community of Punta Piedra” drawn by the INA on July 12, 2007. Annexes to the submission introduced by the State on July 19, 2007, during the working meeting of the 128th Regular Period of Sessions.

⁸² Annex 7. Agreement of commitment of Decemeber 13, 2001. Annex to the initial petition dated October 27, 2003, received by the IACHR on October 29, 2003.

⁸³ Annex 30. Communication addressed to the Minister Director of the INA by the assessor of the Exectuvie Office of the INA dated June 23, 2010. Annex to the submission of the petitioners observations on the merits dated September 8, 2010, received by the IACHR on September 27, 2010..

⁸⁴ IA Court of HR, *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment August 31, 2001. Series C No. 79, pars. 148-149, and 151; *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment March 29, 2006. Series C No. 146, pars. 118-121 and 131; and *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment June 17, 2005. Series C No. 125, pars. 124, 131, 135-137, and 154.

the legal precedents of the Inter-American system with respect to the rights of indigenous peoples, in accordance with their distinct social, cultural and economic characteristics, including the special relationship they have with their ancestral territories.

B. Article 21 of the Convention, in connection with Articles 1.1 and 2 thereof

1. Territorial Rights of Indigenous Peoples in the Inter-American Human Rights System

86. The legal precedents of the Inter-American system have consistently recognized indigenous peoples' property right to their ancestral territories, and the duty to protect emanating from Article 21 of the American Convention. In this context, 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."⁸⁵ Similarly, the Inter-American Court has held that "there is a communitarian tradition regarding a communal form of collective property of the land, in the sense that ownership of the land is not centered on an individual but rather on the group and its community."⁸⁶

87. In addition to the collective concept of property, indigenous peoples have a special, unique and internationally protected relationship with their ancestral territories, which is non-existent in the case of non-indigenous people. This special and unique relationship between indigenous peoples and their traditional territories is internationally protected. As affirmed by the IACHR and the Inter-American Court, the preservation of the special connection between indigenous communities and their lands and resources is linked to the very existence of these peoples and, therefore, "warrants special measures of protection."⁸⁷ The right to property of indigenous and tribal peoples protects this close tie that they have with their territories and with the natural resources associated with their culture that are located on them.⁸⁸

88. The protection of property rights, fair trial and judicial protection rights is reinforced by the general obligation to respect human rights, as provided for in Article 1.1 of the Convention. Likewise, Article 2 of the American Convention establishes that where the exercise of the rights or

⁸⁵ IACHR, Report No. 40/04, Case 12.053, *Mayan Indigenous Communities of the Toledo District (Belice)*, October 12, 2004, par. 151. See *inter alia* IACHR, Report No. 75/02, Case 11.140, *Mary and Carrie Dann (United States)*, December 27, 2002, par. 130; and IACHR, *Follow-up Report– Access to Justice and Social Inclusion: The road toward strengthening democracy in Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, par. 160.

⁸⁶ IA Court of HR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment August 31, 2001. Series C No. 79. par. 149. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits Reparations and Costs. Judgment June 17, 2005. Series C No. 125, par. 131; *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment March, 2006. Series C No. 146. par. 118; *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010 Series C No. 214, pars. 85-87; *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 28, 2007. Series C No. 172, par. 85; *Case of the Kichwa de Sarayaku Indigenous Community v. Ecuador*. Merits and Reparations. Judgment June 27, 2012. Series C No. 245, par. 145.

⁸⁷ IACHR, Report No. 75/02, Case 11.140, *Mary and Carrie Dann (United States)*, December 27, 2002, par. 128; IA Court of HR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment August 31, 2001. Series C No. 79. par. 149. Also see IA Court of HR, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment March 29, 2006. Series C No. 146, par. 222.

⁸⁸ IACHR, *Follow-up Report – Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*. Doc. OEA/Ser/L/V/II.135, Doc. 40, August 7, 2009, par. 156. IA Court of HR, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment August 31, 2001. Series C No. 79, par. 148. IA Court of HR, *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment July 17, 2005. Series C No. 125, par. 137. IA Court of HR, *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment March 29, 2006. Series C No. 146, pars. 118, 121.

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 the Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.⁸⁹

89. Additionally, both the IACHR and the Inter-American Court have established that indigenous peoples, as collective subjects who are separate and distinct from their individual members, are entitled to rights recognized by the American Convention. In this connection, in the judgment of the *Case of the Kichwa de Sarayaku Indigenous People v. Ecuador*, the Inter-American Court stated that “international standards regarding indigenous peoples and communities recognizes the right of peoples as collective subjects of International Law and not only their members.” Moreover, the Court clarified that “because indigenous or tribal peoples and communities, who are cohesively bound by their particular ways of life and identity, exercise some rights recognized by the Convention in a collective dimension, the Court holds that considerations of law expressed or interpreted in the instant Judgment must be understood from said collective perspective.”⁹⁰ Accordingly, as it has done in previous matters, the IACHR shall examine the instant matter from a collective perspective.⁹¹

2. Right to Collective Property of the Punta Piedra Community and its Members

90. The Honduran Constitution of 1982 recognizes the existence of indigenous peoples and the importance of preserving and encouraging their culture.⁹² Article 346 of the Constitution recognizes the right to property of indigenous peoples and establishes the obligation to take measures to protect the rights and interests of existing indigenous communities in the country. Said provision reads as follows:

It is the duty of the State to pass measures to protect the rights and interests of existing indigenous communities in the country, especially of the lands and forests where they are settled.

91. In addition to the constitutional provision, other domestic legal provisions recognize territorial rights of indigenous peoples, particularly, Article 92 of the 1992 Law of Modernization and Development of the Agrarian Sector,⁹³ and the Law of Property, approved under Decree No. 82-

⁸⁹ IACHR, *Rights of Indigenous and Tribal Peoples to 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, par. 43.

⁹⁰ IA Court of HR, *Case of the Kichwa de Sarayaku Indigenous People v. Ecuador*. Merits and Reparations. Judgment June 27, 2012. Series C No. 245. par. 231.

⁹¹ In this regard, see IACHR, Application brought before the IA Court of HR in the Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, June 4, 1998; IACHR, Application brought before the IA Court of HR in the Case of the Yakye Axa Indigenous Community v. Paraguay, March 17, 2003; IACHR, Report No. 40/04, Case 12.053, Mayan Indigenous Communities of the District of Toledo v. Belize, October 12, 2004; IACHR, Application brought before the IA Court of HR in the Case of the Sawhoyamaya Indigenous Community v. Paraguay, February 2005; IACHR, Application brought before the IA Court of HR in the Case of the Saramaka People v. Suriname, June 23, 2006; IACHR, Application brought before the IA Court of HR in the Case of the Xákmok Kásek Indigenous Community v. Paraguay, July 3, 2009; IACHR, Application brought before the IA Court of HR in the Case of the Kichwa de Sarayaku People and its members v. Ecuador, April 26, 2010.

⁹² Political Constitution of Honduras, Article 173.- The State shall preserve and encourage native cultures, as well as genuine expressions of national folklore, traditional art and handicrafts.

⁹³ Article 92 of the law of Modernization and Development of the Agrarian Sector, Decree 31-92, provides that the granting of titles to ethnic communities shall be free: “Ethnic communities that prove occupation of the lands where they are settled, for a period no shorter than three years as set forth in amended Article 15 of this Law, shall receive property title in fee simple totally for free, issued by the National Agrarian Institute within the time period stipulated in the aforementioned Article 15.”

2004, specifically Articles 93-102, of Chapter III, which refers to the “process of regularization of real property for indigenous and Afro-Honduran peoples.” This law recognizes a communal regime of lands that indigenous and Afro-Honduran peoples have traditionally possessed, the rights to which are described as inalienable, unattachable and unlapsable,⁹⁴ as well as recognizing the special importance that the relationship with the lands has for the peoples’ culture and spiritual values.⁹⁵

92. Furthermore, under Decree No. 26-94 of May 10, 1994, published on July 30, 1994, Honduras ratified International Labor Organization Convention 169 on Indigenous and Tribal Peoples in Independent Countries. This Convention has been in force in the Honduran State since March 28, 1995. In ratifying this Convention, the State undertook to adopt special measures to ensure effective enjoyment without restriction of the fundamental human rights and freedoms of indigenous peoples, as well as to include measures that promote the full realization of their social, economic and cultural rights, respecting their social and cultural identity, their customs, traditions and institutions. With regard to the right of ownership, Article 14 of the ILO 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.

93. ILO Convention 169, which is part of Honduran domestic legislation, also establishes obligations of consultation and participation of indigenous peoples in matters that affect them and several provisions pertain to rights to their lands, effective protection in the area of contracting and employment, social security and services of health, education and means of education.

94. In the instant case, the ancestral presence of the Garifuna Community of Punta Piedra has not been disputed by the State, nor has it introduced any evidence to contradict or challenge the evidence proving their longstanding link to the land. On the contrary, the State has expressly recognized before the IACHR that the Community is entitled to collective ownership over the territory it has historically occupied, and this recognition is reflected by its granting in 1993 and 1999 of full title in fee simple to 800.64 hectares and 1,513.54 hectares respectively.

95. As was noted, in the instant matter, the property right of the Punta Piedra Community over its territory is not at issue, nor is the granting legal ownership title that recognizes such a right, but rather the obligation to ensure peaceable possession through clearing of title and effective protection from third parties.

96. In this regard, the IACHR has held that ensuring effective enjoyment of territorial property by indigenous or tribal peoples and their members is one of the ultimate objectives of this right’s legal protection. States have the obligation to adopt special measures to secure the real and effective enjoyment of indigenous peoples’ right to territorial property.⁹⁶ For this reason, the IACHR has emphasized that “the demarcation and legal registry of the indigenous lands is in fact only the first step in its establishment and real defense,” given that the ownership and effective possession are constantly being threatened, usurped or eroded by various *de facto* or legal acts.⁹⁷

⁹⁴ Law of Property, Decree 82-2004 of June 29, 2004. Article 100.

⁹⁵ Law of Property, Decree 82-2004 of June 29, 2004. Article 93.

⁹⁶ IACHR, *Indigenous and Tribal Peoples’s 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, par. 86.

⁹⁷ IACHR, *Report on the Human Rights Situation in Brazil*. Doc. OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, par. 33.

97. The IACHR has also held that indigenous or tribal peoples have the right to be protected from conflicts with third parties over land, through prompt granting of property title, and delimitation and demarcation of their lands without delay, in order to prevent conflicts and attack by others.⁹⁸ In this same vein, indigenous or tribal peoples and their members are entitled to their territory being reserved for themselves, without there being within their lands any settlements or the presence of third parties or non-indigenous settlers. The State has the obligation to prevent the encroachment or settlement of indigenous or tribal territory by other individuals, and to take the necessary steps and actions to relocate those non-indigenous inhabitants that may be settled on it.⁹⁹ The IACHR has viewed encroachment and illegal intrusion of non-indigenous settlers as threats, usurpation and infringement of the rights to property and effective possession of the territory of the indigenous and tribal peoples, that the State is obliged to control and prevent.¹⁰⁰

98. In the matter under consideration, the IACHR notes that, despite the existence of constitutional and statutory provisions recognizing the right of the Punta Piedra Community to communal property, and even the recognition of their traditional forms of land tenure, the Community has not been able to use and enjoy their lands peacefully. In the view of the IACHR, this was the result of the failure of State authorities to fulfill their duty as to the territorial rights of the Garifuna Community, mainly the failure to provide effective protection of their territory from occupation and unlawful dispossession by third parties, and to ensure that it [the territory] be exclusively indigenous by means of the respective clearing of title.

99. In fact, as has been established, the principal fact that has impeded the Community's peaceful possession is the presence and gradual appropriation by non-Garifuna *ladinos* on their ancestral territory, especially in the area known as Rio Miel. Based on facts considered proven by the IACHR, the competent authorities were aware of the presence of many *ladino* individuals on indigenous lands. The Community repeatedly requested that their title be cleared, to which the authorities expressly committed, at least through the "Agreement of commitment" of December 13, 2001, and the "Agreement of understanding" of September 28, 2006. Nonetheless, the State failed to prove to the IACHR that it effectively carried out these agreements; rather, on the contrary, information was introduced indicating that this conflict is still going on, nearly twenty years after the first incidents of encroachment.

100. Far from denying this fact or the right of the Punta Piedra Community to obtaining clean title to its ancestral territory, the State of Honduras recognized before the IACHR that the conflicts arose with "the arrival of the first settlers of the community that is known as Rio Miel," but argued that the area occupied by the Village of Rio Miel where "the Community is unable to exercise the rights of use, enjoyment and possession is negligible."

⁹⁸ IACHR, *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II, Doc. 54, September 30, 2009, par. 1137 – Recommendation 2. IACHR, *Indigenous and Tribal Peoples's 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, par. 113.

⁹⁹ IACHR, *Democracy and Human Rights in Venezuela*. Doc. OEA/Ser.L/V/II, Doc. 54, September 30, 2009, par. 1137 – Recommendation 2. IACHR, *Indigenous and Tribal Peoples's 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, par. 114.

¹⁰⁰ IACHR, *Report on the Human Rights Situation in Brazil*. Doc. OEA/Ser.L/V/II.97, Doc. 29 rev. 1, September 29, 1997, Chapter VI, pars. 33 40. IACHR, *Indigenous and Tribal Peoples's 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, par. 114.

101. Under Inter-American human rights instruments, indigenous and tribal peoples have the right to recognition and protection of “their specific versions of use and enjoyment of property, springing from the culture, uses, customs and beliefs of each people.”¹⁰¹ There is not only one way to use and enjoy protected property; both property and the ways of possession of the territories by the indigenous and tribal peoples may be different from the non-indigenous concept of ownership, but they are protected by the right to property.¹⁰² The unique relationship between the indigenous and their traditional territory “may include 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.”¹⁰³ Any of these forms is protected by Article 21 of the Convention.¹⁰⁴

102. In the instant case, it is necessary to note that because the bodies of the Inter-American system have consistently held that indigenous territorial ownership is a form of property that is not based on official recognition of the State, rather on traditional use and ownership of lands and resources; the territories of indigenous and tribal peoples “are theirs by right of their ancestral use and occupancy.”¹⁰⁵ The right to communal property is also based on indigenous legal cultures, and on their ancestral systems of property, regardless of recognition by the State; the source of the property rights of indigenous and tribal peoples is found, therefore, in the customary system of land tenure that has traditionally existed among the communities.¹⁰⁶ Accordingly, the

¹⁰¹ IA Court of HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment March 29, 2006. Series C No. 146, par. 120.

¹⁰² IA Court of HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment March 29, 2006. Series C No. 146, par. 120.

¹⁰³ IA Court of HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment March 29, 2006. Series C No. 146, par. 131.

¹⁰⁴ See *inter alia* IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, par. 130; IACHR, Report No. 40/04, Case 12.053, Mayan Indigenous Communities of the District of Toledo (Belize), October 12, 2004, par. 151. IA Court of HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment March 29, 2006. Series C No. 146, par.120. This interpretative approach is backed in wording of other international instruments, which reflect international attitudes toward the role of traditional land tenure systems in modern human rights protection systems; for example, Article 14.1 of Convention 169, and Article 27 of the International Covenant on Civil and Political Rights, ratified by Honduras on August 25, 1997. In this regard, the Human Rights Committee has explained that “culture is expressed in many ways, including a particular way of life related to the use of the resources of the earth, especially in the case of indigenous peoples” [Human Rights Committee, General Comment No. 23: The Rights of Minorities (Article 27 ICCPR), 08/04/94, Doc. UN CCPR/C/21/Rev. 1/Add.5, par. 7; cited in IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, par. 130, footnote No. 97]. Consequently, protection of culturaleal rights of an indigneous people may include protection of ways of relating to the territory through traditional activities such as fishing or hunting [Human Rights Committee, General Comment No. 23: The Rights of Minorities (Article 27 of the ICCPR), 08/04/94, Doc. UN CCPR/C/21/Rev. 1/Add.5, par 7; cited in IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, par. 130, footnote No. 97], to the extent that hunting, fishing and gathering are an essential element of indigenous culture [IA Court of HR. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment June 17, 2005. Series C No. 125, par. 140]. This complex notion of the right to indigenous property is also reflected in the United Nations Declaration, which establishes that “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, *supra* note 1, Article 26.2].

¹⁰⁵ IACHR, *Access to Justice and Social Inclusion: The Road toward Strengthening Democracy in Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, June 28, 2007, par. 231.

¹⁰⁶ See *inter alia*, IA Court of HR. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 28, 2007. Series C No. 172, par. 96; IACHR, Arguments before the Inter-American Court of Human Rights en the case of *Awas Tingni v. Nicaragua*. Reference in: IA Court of HR. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment August 31, 2001. Series C No. 79, par. 140(a); IACHR, Report No. 40/04, Case 12.053, Mayan Indigenous Communities of the District of Toledo (Belize), October 12, 2004, par. 115.

Court has held that “traditional possession of their lands by indigenous people has equivalent effects to those of a state-granted full property title.”¹⁰⁷

103. In this context, the fact that the Punta Piedra Community did not have at the time of the encroachment of Rio Miel a formally recognized property title by the authorities, does not relieve the Honduran State of international responsibility, inasmuch as based on the legal precedents of the system, guarantees of protection of the right to property under Inter-American human rights instruments can be made fully effective by the indigenous peoples with respect to territories that are theirs but that are not yet titled formally, demarcated or delimited by the State.¹⁰⁸

104. The State alleged that it cannot disregard the rights of the occupants of Rio Miel who have been holding possession for decades and those of other occupants who hold “legal ownership protected by duly recorded deeds.” The IACHR concurs with the State to the extent that, as has been expressed by the Court, both “private property of private individuals” as well as “community property of the members of indigenous communities” are protected by the American Convention. Nonetheless, as has been established in the case law of the Inter-American system, when these rights are at odds with each other, the problem must be resolved in accordance with the principles that govern limits on human rights.¹⁰⁹

105. In this same vein, in view of the recognized fact of the occupancy by third parties of areas of the ancestral territory belonging to the Punta Piedra Community, as well as the deterioration of the territory as a result of burning of forests, the State did take steps to clear title of the territory and pay the occupants for the improvements they made and move them elsewhere. However, as of the date of this Report, the State has not complied with said actions.

106. Moreover, it must be taken into account that indigenous and tribal peoples have the right to their ownership of territory not being, in principle, trumped by the real property rights of third parties,¹¹⁰ but rather they are entitled to live freely in their ancestral territories, as has been explained by the Court as follows:

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.¹¹¹

¹⁰⁷ IA Court of HR. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment August 31, 2001. Series C No. 79, par. 151; IA Court of HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment March 29, 2006. Series C No. 146, par. 128. IA Court of HR. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010 Series C No. 214, par. 109.

¹⁰⁸ IACHR, Application filed before the IA Court of HR in the case of the Kichwa de Sarayaku People and its Members v. Ecuador, April 26, 2010, par 125. IACHR, Report No. 40/04, Case 12.053, Mayan Indigenous Communities of the District of Toledo (Belize), October 12, 2004, pars. 142 and 153.

¹⁰⁹ IA Court of HR. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010 Series C No. 214, par. 143.

¹¹⁰ IA Court of HR. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment November 28, 2007. Series C No. 172, par. 115.

¹¹¹ *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Judgment August 31, 2001. Series C No. 79, par. 149. Also see in: IA Court of HR. *Case of the Sawhoyamaya Indigenous Community*. Judgment March 29, 2006. Series C No. 146, par. 222.

107. In this regard, the IACHR notes that the 2004 Law of Property, Chapter III on the process of regularization of real property for indigenous and Afro-Honduran peoples, recognizes certain rights; specifically, Article 93 establishes that:

The State, due to the special importance that their relationship with the lands has for cultures and spiritual values, recognizes the right that indigenous and Afro-Honduran peoples have over the lands that they traditionally possess and that the law does not prohibit.

108. However, the Commission notes that the indigenous and tribal peoples were not consulted with respect to the aforementioned law, even though the State of Honduras ratified ILO Convention 169 in 1995 and despite the legal precedents of the Inter-American human rights system on the subject matter. Additionally, it views with concern the provisions of the Law of Property regarding the presence of third parties on communal properties of indigenous and Afro-Honduran peoples. On this point, the law provides that the rights of property and tenure of these peoples shall preempt such titles as may be granted to third parties, who never possessed them;¹¹² however, third parties, who have property title to lands of these peoples and who have owned and possessed the land, do have the right to continue to possess and exploit them.¹¹³ The law further establishes that a third party, who has received property title over communal lands, which because of its characteristics can be invalidated, shall be compensated for improvements prior to return of the lands to the affected communities; while, third parties on indigenous lands that do not possess any title may negotiate remaining in the community.¹¹⁴ In the opinion of the IACHR, such provisions render illusory the preferential right of indigenous peoples based on the ancestral possession of their lands and neither do such provisions favor their right to collective property of an exclusively indigenous territory.

109. One of the consequences of the lack of effective protection and clearing of title to the territory historically occupied by the Punta Piedra Community is that it has given rise to a situation of insecurity and violence. The Commission notes that, as the Garifuna Community reported, such harassment and violence caused by the interests of *ladinos* or non garifuna in the ancestral territory were exacerbated by the discrimination against the Garifuna people because of their ethnic origin. As has been shown, members of the Punta Piedra Community reported to the state authorities acts of harassment and violence perpetrated by private individuals in an effort to unlawfully take their ancestral lands away from them, which clearly shows the situation of conflict and insecurity existing on the ancestral territory, and which impedes the peaceful use and enjoyment thereof.

110. In short, the IACHR finds that the State of Honduras did not provide effective protection of the ancestral lands of the Punta Piedra Community from occupation by third parties, nor did it guarantee the peaceful possession thereof through the respective clearing of title, which kept the Community in a situation of permanent conflict. Accordingly, the Commission concludes that the State of Honduras violated Article 21 of the American Convention, in connection with Articles 1.1 and 2 of this instrument, to the detriment of the Garifuna Community of Punta Piedra and its members.

C. Article 25 of the American Convention, in connection with Articles 1.1 and 2 of this Instrument

¹¹² Law of Property decree 82-2004 of June 15, 2004, Article 96..

¹¹³ Law of Property decree 82-2004 of June 15, 2004, Article 97.

¹¹⁴ Law of Property decree 82-2004 of June 15, 2004, Articles 98 and 99.

111. Pursuant to the findings of the Inter-American Court in its legal precedents, Article 25.1 of the American Convention provides for the obligation of States Parties to “guarantee, to all persons under their jurisdiction, an effective judicial recourse against acts that violate their fundamental rights.”¹¹⁵ The Court has emphasized as well that the existence of this guarantee “is one of the basic pillars, not only of the American Convention, but also the rule of law in a democratic society,”¹¹⁶ and that the inexistence of such effective remedies, “places the person in a status of lack of defense.”¹¹⁷ Additionally, it has held that:

Article 25 of the Convention is closely linked to the general obligations under Articles 1.1 and 2 of the Convention, attributing functions of protection to the domestic law of the State Parties, which results from the fact that the State is responsible for designing and providing an effective recourse, as well as to ensure the due application of such recourse by the judicial authorities. In that sense, according to Article 25 of the Convention, the domestic legislation shall assure due application of effective recourse before the competent authorities in order to protect all persons under its jurisdiction against any acts violating their fundamental rights or involving the determination of their rights and obligations.

112. As regards indigenous and tribal peoples, the obligations under Article 25 of the American Convention assume that States grant effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values, and customs.¹¹⁸ Moreover, the jurisprudence of the Inter-American human rights system has determined that indigenous and tribal peoples have the right to effective and expeditious mechanisms to protect, ensure and promote their rights over ancestral territories, through which they are able to carry out the processes of recognition, titling, demarcation and delimitation of their territorial property.¹¹⁹

113. Likewise, pursuant to the jurisprudence of the Inter-American system, States are obligated to adopt measures to ensure and provide legal certainty to the rights of indigenous and tribal peoples with respect to legal ownership of their properties, among other things, by establishing special, timely and effective mechanisms and procedures to settle legal claims over such property. As established by the Inter-American Court, the aforementioned procedures must

¹¹⁵ See *inter alia* IA Court of HR. *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment June 26, 1987. Series C No.1, par 91; *Massacre of las Dos Erres v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs. Judgment November 24, 2009. Series C No. 211, par. 104; *Case of Chitay Nech et al v. Guatemala*, Preliminary Objections, Merits, Reparations and Costs. Judgment May 25, 2010. Series C No. 212, par. 190; and *Case of the Xákmok Kásek. Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010 Series C No. 214, par. 139.

¹¹⁶ See *inter alia* IA Court of HR. *Case of Castillo Páez v. Peru*. Merits. Judgment November 3, 1997. Series C No. 34, par. 82; *Case of Escher et al v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment July 6, 2009. Series C No. 200, par. 195, and *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment November 20, 2009. Series C No. 207, par. 128.

¹¹⁷ See *inter alia* IA Court of HR. *Case of Palamara Iribarne v. Chile*. Merits, Reparations and Costs. Judgment November de, 2005. Series C No. 162, par. 183, and *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment November 20, 2009. Series C No. 207, par. 128.

¹¹⁸ IA Court of HR. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment June 17, 2005. Series C No. 125, par. 63. IA Court of HR. *Case of the Sawhoyamaya Indigenous Community*. Judgment March 29, 2006. Series C No. 146, pars. 82, 83.

¹¹⁹ IA Court of HR. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment August 31, 2001. Series C No. 79, par. 138. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment June 17, 2005. Series C No. 125, par. 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, Decmeber 30, 2009, par. 335.

adhere to the standards of due process of the law, as must do any other procedure, the decision of which may affect the rights of individuals.¹²⁰

114. These special mechanisms and procedures must be effective. The Inter-American Court has examined, in light of the requirements of effectiveness and reasonable time set forth in Article 25 of the American Convention, whether or not States have established administrative procedures for the titling, delimitation and demarcation of indigenous lands, and if so, whether or not they are implemented in practice;¹²¹ and it has explained that in order to meet the requirements set forth in Article 25, it is not enough that legal provisions that recognize and protect indigenous property are in place – it is necessary that specific and clearly regulated procedures exist, for matters such as the titling or demarcation of lands occupied by indigenous peoples, taking into account their specific characteristics,¹²² and that such procedures be effective in practice to enable the enjoyment of the right to territorial property – that is to say, that in addition to the formal existence of the procedures, they must yield results or responses to violations of legally recognized rights.¹²³

115. In the matter under examination, the IACHR notes that the petitioner OFRANEH and the Punta Piedra Community, in accordance with the mechanisms afforded to them by domestic law, undertook the necessary steps for recognition by the State by means of title to legal ownership of the territory of the Community, which came about when the INA granted title in 1993 and 1999, respectively. As mentioned earlier, that legislation consisted specifically in the Law of Agrarian Reform, approved under Decree-Law No. 170-74 of December 30, 1974, in force as of January 14, 1975, which was amended by the Law for the Modernization and Development of the Agricultural Sector, approved under Decree No. 31-92 of March 5, 1992, in force as of April 6, 1992.

116. As the IACHR has noted, in the present case the principal controversy refers to the failure to clear title of the ancestral territories of the Community, especially the area granted in 1999. In that regard, the IACHR notes that the above-mentioned legislation, based upon which the 1999 title was granted, contains provisions related to the actions taken by the INA for the clearing of titles of fee simple that such State institution provides, among them those referring to the “appraisal of expropriated or acquired lands” and its forms of payment.¹²⁴ However, as it has been deemed proven, for years, as born out by the facts, several efforts were made before the INA and other State authorities to get the State to fulfill its duty to clear the titles of ownership granted to the Community, especially the one of 1999. These actions included the filing of a complaint for usurpation in 2010 with the appropriate authority.

117. To be certain, the Commission notes that the proven facts show that the State response to resolving the intrusion in Rio Miel and clearing title to the Garifuna lands, for most part involved the establishment of *ad-hoc* commissions; executing of commitment agreements between State authorities, the Garifuna Community of Punta Piedra and the peasants settled in Rio Miel,

¹²⁰ IA Court of HR. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment June 17, 2005. Series C No. 125, par. 62. *Case of the Sawhoyamaya Indigenous Community*. Merits, Reparation and Costs. Judgment March 29, 2006. Series C No. 146, pars. 82 and 83.

¹²¹ IA Court of HR. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment August 31, 2001. Series C No. 79, par. 115.

¹²² IA Court of HR. *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment August 31, 2001. Series C No. 79, pars. 122 and 123.

¹²³ IA Court of HR. *Case of the Xákmok Kásek. Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010 Series C No. 214, par. 140.

¹²⁴ See articles 64 to 78 of the Law of Agrarian Reform, amended by the Law for the Modernization and Development of the Agricultural Sector.

giving a high priority to negotiation and mediation between both communities; different efforts of the INA aimed at identifying the third parties who are occupying the territory of the Garifuna of Punta Piedra and assess the improvements made by them; as well as some steps taken by the authorities of the Office of the Public Prosecutor with regard to the complaint for usurpation brought by the Community in 2010.

118. In fact, as the IACHR has established as fact in the preceding paragraphs, in April 2001, the *ad-hoc* Inter-Institutional Commission made up of INA representatives, the National Human Rights Commissioner and the Social Ministries of the Diocese of Trujillo, was established “as a body of conciliation and consensus-building in the effort to reach a peaceful solution to the conflict.” Later, on February 20, 2007, an agreement was reached to create an Inter-Institutional Commission made up of representatives from the INA, SERNA, Office of the Attorney General of the Republic, Secretariat of the Interior, Office of the Prosecutor for Ethnic Groups and the Punta Piedra Community. Furthermore, as corroborated by the facts, a total of three commitments were reached: (i) on December 13, 2001, between State authorities, the petitioning organization and the Punta Piedra Community; (ii) on September 28, 2006, between State authorities, the petitioning organization and the Punta Piedra Community; and (iii) on April 20, 2007, between the State authorities and representatives of the Rio Miel peasants. In addition, the INA made no less than two assessments to determine the improvements to be paid to clear the property title.

119. However, as the Commission has deemed proven, this clearing of title was not done effectively. In the opinion of the IACHR, the foregoing does not represent an adequate and effective mechanism as described above, since it does not enable the clearing of title and effective protection of the ancestral territory of the Garifuna Community of Punta Piedra, without taking into account their particular profile, their economic and social characteristics, as well as their customary law, values, practices and customs. Based on the legal precedents cited above, the IACHR deems as insufficient the creation of “commissions,” which due to their very nature are temporary entities, lacking any authority clearly established by law, and which do not contribute to legal certainty of territorial rights of indigenous and tribal peoples. This being so, in light of the refusal of the peasants of Rio Miel to abandon the area in exchange for payment for the improvements made by them, the Punta Piedra Community had no effective remedy to recover its ancestral territory, which took into account particular aspects of indigenous peoples, such as the special significance that the lands hold for them. On this score, it must be recalled that in the cases referred to the Inter-American Court against Paraguay, said Court specifically identified as one of the “structural problems” of the administrative procedure for claims to traditional indigenous lands “subjecting [it] [...] to the existence of a voluntary agreement between the parties.”¹²⁵

120. The IACHR notes that the lack of a mechanism to protect and clear title to the Garifuna lands, due to the ineffectiveness of the actions of the State after nearly twenty years from the time of the first intrusions into Rio Miel, generated the exacerbation of the situation. This is evident, in other ways as well, in that the failure to comply with the first commitment entered into on December 13, 2001 and payment of the amount assessed for the improvements to the land, contributed to generating a climate of increased tension and violence, bolstering the peasants’ resistance to abandoning the area, and to raising the amount to be paid for the improvements made.

121. On a separate matter, the IACHR has deemed proven the existence of a permanent conflict situation caused by third parties interested in the ancestral lands of the Community,

¹²⁵ IA Court of HR. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparation and Costs. Judgment June 17, 2005. Series C No. 125, par. 97; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment March 29, 2006. Series C No. 146, par. 104; and *Case of the Xákmok Kásek. Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment August 24, 2010 Series C No. 214, pars. 151-152.

characterized by constant threats, harassment, and violent actions. It is a credited fact that this situation was known by the State of Honduras, as shown in the “Commitment Agreement” of December 13, 2001, executed by state authorities, which states that “from that point in time [referring to the arrival of the first peasants in Rio Miel] up to the present date, problems have been arising that not only involve the land dispute, but that also jeopardizes the safety and some of the property of the inhabitants of the communities.”

122. Additionally, according to the facts deemed proven, members of the Punta Piedra Community reported these acts to the state authorities on multiple occasions, as shown in the report filed in connection with the murder of Félix Ordóñez Suazo, a member of the Community, in June 2007; the report for unlawful occupation filed by the leaders of the Community on April 13, 2010; and the one presented on the same date for death threats against a member of the Community by no garifunas who had invaded community lands. The State indicated in the proceedings before the IACHR, in relation to the report for the death of Félix Ordóñez, that the investigation was pending at the General Directorate of Criminal Investigation, and the Special Prosecutor for Ethnicities and Patrimony; and, in connection with the April 2010 reports, it informed that a visit to the lands was programmed, which “could not be carried out ... for lack of travel expenses and transportation for the people assigned to carry out those activities.”

123. In this regard, the IACHR recalls that 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.¹²⁶ 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.

124. 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.¹²⁷ 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.”¹²⁸ 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.¹²⁹ In that sense, the investigation must be carried out with due diligence, and in an effective, serious, and impartial manner.¹³⁰

¹²⁶ 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.

¹²⁷ I/A Court H.R., *Case of Barrios Altos v. Peru*. Judgment of March 14, 2001. Series C No. 75, paragraph 43.

¹²⁸ I/A Court H.R., *Case of Kawas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3rd, 2009. Series C No. 196, paragraph 101.

¹²⁹ 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.

¹³⁰ 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 Paquiyauri 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.

125. Pursuant to the foregoing, the IACHR notes that, during the years relevant for this case, numerous reports were filed with state agencies, which tell of a multiplicity of acts of violence encompassed in the situation of lack of protection of the ancestral territory of the Punta Piedra Garifuna Community. However, based on the evidence of reports contained in the file of the IACHR, in none of the cases did the State notify regarding the undertaking of a serious and effective investigation, without delays and directed at uncovering the truth and assigning liabilities. The IACHR considers, based on the information at its disposal, that the lack of a State response to the attempted remedies, left the victims in a situation of lack of protection and has resulted in the Community of Punta Piedra and its members remaining in a continuous situation of uncertainty, desperation and fear, in relation to both the lack of control of their territories as well as the continuity of the conflict situation.

126. In light of the above, the Commission concludes that the Honduran State has not guaranteed adequate and effective remedy for responding to claims to land titled in favor of the Garifuna Community of Punta Piedra, 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 Article 25 of the American Convention, in relation with articles 1.1 and 2.

VI. CONCLUSIONS

127. Based on the considerations of fact and law set forth in the instant report, the Inter-American Commission on Human Rights concludes that:

1. The State of Honduras violated the right to property enshrined in Article 21 of the American Convention on Human Rights, in connection with Articles 1.1 and 2 thereof, to the detriment of the Garifuna Community of Punta Piedra and its members.

2. The State of Honduras violated the right to judicial protection enshrined in Article 25 of the American Convention on Human Rights, in connection with Articles 1.1 and 2 thereof, to the detriment of the Garifuna Community of Punta Piedra and its members.

VII. RECOMMENDATIONS

128. Based on the analysis and conclusions in the instant report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE STATE OF HONDURAS TO:

1. Adopt as soon as possible the necessary measures to make effective the right to communal property and possession of the Garifuna Community of Punta Piedra and its members, with respect to their ancestral territory; and, in particular, the legislative, administrative and other measures necessary to effectively clear their title, in accordance with their customary law, values, practices and customs and ensure the members of the Community to be able to continue to lead their traditional way of life, in keeping with their cultural identity, social structure, economic system, distinct customs, beliefs and traditions.

2. Take the necessary steps to prevent that the Garifuna Community of Punta Piedra and its members are subject to discriminatory acts and, in particular, are exposed to violence by third parties by virtue of their ethnic origin.

3. Adopt an effective and simple remedy that protects the right of indigenous peoples of Honduras to claim and gain access to their traditional territories and provide for effective protection of said territories from actions of the State or third parties that infringe their right of property.

4. Investigate and punish those responsible for the threats, harassment, acts of violence and intimidation, and damage to the property of the Community of Punta Piedra and its members.

5. Redress individually and collectively the consequences of the violation of the aforementioned rights. Especially, consider the damages caused to the members of the Garifuna Community of Punta Piedra as a result of the failure to clear title of their ancestral territory as well as the damages caused on the territory itself by the acts of third parties.

6. Adopt the necessary measures to prevent similar acts from happening in the future, in keeping with the duty to prevent and ensure the fundamental rights recognized in the American Convention.