

Garífuna Punta Piedra Community and its Members v. Honduras

ABSTRACT¹

As the case of the Garífuna Triunfo de la Cruz Community and its Members v. Honduras, this case is about land rights of a group of Garifunas, a mixed-race indigenous community living on the Caribbean coast of Honduras. The Punta Piedra Community also had a dispute with another Garifuna Community, the Rio Miel Community, over title, use of land, and the assassination of a member of the Punta Piedra Community. Eventually, the Court ruled against Honduras, finding violations of the American Convention.

I. FACTS

A. Chronology of Events

1920: The Garífuna Community of Punta Piedra (hereinafter “the Community”) is a community of indigenous people living along the Caribbean coast of Honduras.² The Garífuna people are mixed-race descendants of West African, Central African, Caribbean, European, and Arawak people.³ At this time, Honduras gives the Community a communal title for a tract of land measuring approximately 800 hectares, protected only under agrarian regulations.⁴

October 13, 1992: The Community requests the State recognize its ancestral land.⁵

1. Mildred Lima Gonzalez, Author; Michelle Gonzalez, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Garifuna Community of Punta Piedra and its Members v. Honduras, Report on Merits, Report No. 30/13, Inter-Am. Comm’n H.R., Case No. 12.761, ¶ 29 (Mar. 21, 2013).

3. *Id.*

4. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 304, ¶ 92 (Oct. 8, 2015).

5. *Id.* ¶¶ 92-93.

1993: The Rio Miel Community encroaches on the Community's land.⁶ Also known as the "*ladinos*," the Rio Miel Community is composed of non-indigenous peasants and cattle ranchers, who settle in territories that are agriculturally rich.⁷ The State gives the Rio Miel Community members the right to tracts of land that belong to the Punta Piedra Community.⁸

December 16, 1993: The National Agrarian Institute (*El Instituto Nacional Agrario*; "INA") approves the Community's request to recognize their ancestral land, awarding final property title to the Community.⁹ The tract of land in the final title includes the same 800 hectares that were previously granted under the communal title.¹⁰ Additionally, the final title guarantees "the right of ownership, possession, easement, accessory rights, use and other *in rem* rights inherent to the property" to the Community.¹¹ The final title also contains terms requiring the integrity of the forests, sources of water, and the quality of the beaches to be maintained and requires the preservation of the natural conditions of the territory.¹²

January 21, 1994: The title is recorded in the Register of Property, Mortgage and Preventive Entries.¹³

December 6, 1999: The INA grants approval for an expansion of the Community's property from about 800 hectares to 1,513.54 hectares and 5.445 square meters.¹⁴

January 3, 2000: The expansion of the Community's land is recorded as final in the Register of Property, Mortgages and Preemptive Entries.¹⁵

6. Garifuna Community of Punta Piedra and its Members v. Honduras, Report on Merits, ¶ 51.

7. *Id.* ¶ 10.

8. Garifuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs. ¶ 102.

9. Garifuna Community of Punta Piedra and its Members v. Honduras, Report on Merits, ¶ 41.

10. *Id.*

11. *Id.* ¶ 42.

12. *Id.*

13. *Id.* ¶ 41.

14. Garifuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 93.

15. Garifuna Community of Punta Piedra and its Members v. Honduras, Report on Merits, ¶ 44.

In the title, it is also stipulated that 670 hectares occupied by the Rio Miel Community would be excluded from the area of expansion.¹⁶

After some time, the INA executes a public instrument of rectification of title, invalidating the exclusionary term, and making the 670 hectares part of the expansion awarded to the Community.¹⁷ This causes heated disputes between the Community and the Rio Miel Community.¹⁸

April 7, 2001: An *ad hoc* Inter-Institutional Commission, composed of representatives of the INA, the National Human Rights Commission, and the Social Ministry of the Diocese of Trujillo, meet to examine legal documents and to hopefully bring forth a peaceful resolution of the dispute between the Community and the Rio Miel Community.¹⁹

The *ad hoc* Inter-Institutional Commission drafts a conciliatory agreement for the disputing communities, referred to as the “Agreement of Commitment.”²⁰ It stipulates that the State is required to pay the Rio Miel Community for the improvements made on the Community’s land while inhabiting the space, including erection of housing infrastructures and creation of public services including roads, potable water, and electric energy,²¹ and that the State must assist the Rio Miel Community with their relocation to another land.²²

December 13, 2001: The Community and the Rio Miel Community sign the “Agreement of Commitment.”²³ The State also signs the agreement, committing itself to the successful execution of the agreement so that the two communities would not need to seek the assistance of any other judicial or administrative channels.²⁴

2001-2007: The Community is threatened, harassed and attacked by the Rio Miel Community.²⁵ Over time, the Community brings multiple requests before State courts to enforce their right to full enjoyment of

16. *Id.*

17. *Id.*

18. *Id.* ¶¶ 60-61.

19. *Id.* ¶ 63.

20. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 219.

21. *Id.* ¶¶ 192, 309.

22. Garífuna Community of Punta Piedra and its Members v. Honduras, Report on Merits, ¶ 64.

23. *Id.*

24. *Id.* ¶ 248.

25. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 130.

their land guaranteed under their title against the Rio Miel Community so they could “peaceably use and enjoy” the territory.²⁶

2002: The INA decides that the improvements made on the land by the Rio Miel Community totaled approximately \$819,986.48, which is deemed to be sufficient to reimburse the Rio Miel Community.²⁷

April 18, 2002: Deputies submit a motion to the National Congress for the approval of the amounts in the “2012 General Budget of Revenue and Expenditures of the Republic” for the INA, which does not include the \$819,986.48.²⁸

August 24, 2002: The Pro-Improvement Civic Association of the Community asks the Minister Director of the INA to reinstate the negotiating process for settlement given the lack of progress and the arrival of more outsiders to the Community’s land.²⁹

October 2, 2002: The Minister Director of the INA supports the approval of the budget item to the “2012 General Budget of Revenue and Expenditures of the Republic.”³⁰

May 26, 2003: The INA communicates to the Fraternal Black Honduran Organization (*Organizacion Fraternal Negra Hondurena*; “OFRANEH”), a representative of the Community, that the monetary request is not incorporated into their budget.³¹

May 22, 2003: Mr. Felix Ordonez Suazo, coordinator and member of the Community board, files a complaint with the Prosecutor’s Office of Trujillo against Mr. Luis Portrillo for usurpation of land, alleging that Mr. Portrillo is seizing an area that rightfully belongs to the Community.³²

26. *Id.*

27. Garífuna Punta Piedra Community and its Members v. Honduras, Report on Merits, ¶ 13. Converted from 13,168,982.84 *lempiras* at https://www.gpo.gov/fdsys/pkg/GOVPUB-T63_100-fab63240b6208a926bd391a4d87ad4e2/pdf/GOVPUB-T63_100-fab63240b6208a926bd391a4d87ad4e2.pdf.

28. *Id.* ¶ 68.

29. *Id.* ¶ 70.

30. *Id.* ¶ 69.

31. *Id.* ¶ 70.

32. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 133.

September 3, 2003: The Pro-Improvement Civic Association of the Community informs the INA that the Rio Miel Community is not following the Agreement of Commitment because they continue to cut down trees from the forest and sell the Community's land to third parties.³³ They submit requests with the INA for a field inspection to update their prior assessments regarding the dispute.³⁴

2004: The State adopts the Property Law of 2004, approved under Decree No. 82-2004, which defines indigenous lands as inalienable, unencumbered, and imprescriptible.³⁵ The property law requires that “in the event that that State intends to exploit natural resources” in the indigenous territories, the community members must be informed and consulted with prior to any inspection or exploitation regarding the benefits and harms to which they may be exposed.³⁶

In addition to the Property Law of 2004, the State must also do the following when it comes to any “development, investment, exploration or extraction plan” of indigenous territories: (1) implement an adequate and participatory process that guarantees a right to question; (2) complete a social impact and preliminary environmental study; and (3) share benefits that result from the exploitation of natural resources, where necessary.³⁷ Further, Article 14 of ILO Convention 169 is another safeguard for indigenous territories, requiring the State to take measures to safeguard indigenous communities' property, or property traditionally used by them.³⁸

March 7, 2006: After the Community's request to Congress of the Republic to adopt the required budget for the INA, the President of the Community's Civil Association announces in a public hearing that the INA claimed it did not have money to solve the problem.³⁹ He also announces that after the Community held a march on the Capital, Congress verbally agreed to deliver the money.⁴⁰ However, it is never incorporated into the budget.⁴¹

33. Garífuna Punta Piedra Community and its Members v. Honduras, Report on Merits, ¶ 70.

34. *Id.*

35. *Id.* ¶ 82.

36. Garífuna Punta Piedra Community and its members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 220.

37. *Id.* ¶ 215.

38. *Id.* ¶ 208.

39. Garífuna Punta Piedra Community and its Members v. Honduras, Report on Merits, ¶ 67.

40. *Id.*

41. *Id.* ¶ 71.

A Punta Piedra Community member, Mr. Benito Bernandez, speaks on the record regarding the increasing danger arising from the land dispute.⁴² Mr. Bernandez testifies about the death of his father by the “intruders,” and requests added security to protect the Community from the Rio Miel Community.⁴³

June 7, 2007: A reassessment report is issued after investigating claims that the Rio Miel Community expanded further into the Community’s territory.⁴⁴ The report indicates that the Rio Miel Community expanded as wide as 612.13 hectares, while the Community totals only 653.24 hectares of their respective 1,513.54 hectares.⁴⁵

June 11, 2007: Mr. Ordonez Suazo is killed by three gunshot wounds.⁴⁶ Witnesses allege that the perpetrator is Mr. David Portrillo Chacon, the son of Mr. Portrillo, whom Mr. Ordonez Suazo lodged a complaint against in 2003.⁴⁷ Witness statements also mention various threats made by Mr. Portrillo towards Mr. Ordonez Suazo over the land dispute.⁴⁸

June 13, 2007: Mr. Marcial Martinez Suazo, Mr. Ordonez Suazo’s brother, lodges an administrative complaint over the death of Mr. Ordonez Suazo, stemming from the land dispute between the two communities.⁴⁹ The Ethnic Prosecutor’s Office also receives a felony complaint from OFRANEH against Mr. Portrillo Chacon and his father, Mr. Potrillo.⁵⁰

June 26, 2007: The Ethnic Prosecutor’s Office launches a police investigation into Mr. Ordonez Suazo’s death.⁵¹ However, because of lack of transportation, the investigation is not carried out.⁵²

July 23, 2007: An INA employee issues an assessment report, indicating that the tract of land occupied by the Rio Miel Community

42. *Id.* ¶ 78.

43. *Id.*

44. *Id.* ¶ 75.

45. Garifuna Punta Piedra Community and its Members v. Honduras, Report on Merits, ¶ 75.

46. Garifuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs ¶ 137.

47. *Id.*

48. *Id.* ¶ 138.

49. *Id.* ¶ 143.

50. *Id.* ¶ 144.

51. *Id.* ¶ 145.

52. Garifuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 145.

presents “a high degree of soil erosion,” particularly in areas used for cattle ranching and grass cultivation, and shows “advancement and destruction of the forest.”⁵³

August 13, 2007: After the Prosecutor’s Office of Trujillo issues an arrest warrant for Mr. Portrillo Chacon, a court date of August 18, 2011 is set for witness statements, and the exhumation of Mr. Ordonez Suazo’s corpse is ordered.⁵⁴

December 19, 2007: The INA requests approximately \$902,820.50 for additional improvements made on the land by the Rio Miel Community.⁵⁵ The request awaits approval.⁵⁶

2010: The Prosecutor’s Office of Trujillo requests the exhumation of Mr. Ordonez Suazo’s body four times, but the requests are not approved despite the court order.⁵⁷

April 13, 2010: The Community lodges a complaint with the Ethnic Prosecutor’s Office against the Rio Miel Community for constructing a road that cuts through the Community’s land.⁵⁸ The Ethnic Prosecutor’s Office only investigates insofar as it takes pictures of the road and confirms the construction was not authorized by the Mayor.⁵⁹

A separate complaint is lodged by the Community against the Rio Miel Community when the Rio Miel Community members continue to construct the road.⁶⁰

October–December 2010: Further investigation into the construction of the road does not take place because there is a lack of funds.⁶¹

53. *Id.* ¶ 76.

54. *Id.* ¶ 137.

55. *Garífuna Punta Piedra Community and its Members v. Honduras*, Report on the Merits, ¶ 24; Converted from 17,108,448.58 *lempiras* at <https://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/1207.pdf>.

56. *Id.*

57. *Garífuna Punta Piedra Community and its Members v. Honduras*, Preliminary Objections, Merits, Reparations and Costs, ¶ 299.

58. *Garífuna Punta Piedra Community and its Members v. Honduras*, Report on Merits, ¶ 80.

59. *Garífuna Punta Piedra Community and its Members v. Honduras*, Preliminary Objections, Merits, Reparations and Costs, ¶ 157.

60. *Id.* ¶ 155.

61. *Garífuna Community of Punta Piedra and its Members v. Honduras*, Report on Merits, ¶ 81.

June 3 and 4, 2013: Two years after the Community lodged its complaint with the Ethnic Prosecutor's Office, an investigation into the road construction takes place.⁶² It is formally determined that the Rio Miel Community was not authorized to construct the road.⁶³

June 7, 2013: The Ministry of Finance determines that the poor economic situation of the public finances does not allow the State to remove third parties from the Community's land.⁶⁴

The Ethnic Prosecutor sends a letter to the Prosecutor's Office of Trujillo requesting information regarding the status of the complaint lodged by Mr. Ordonez Suazo.⁶⁵ The letter is not answered.⁶⁶

June 17, 2013–September 2013: Two letters requesting reconsideration and approval of the additional monetary request are sent.⁶⁷

September 12, 2013–October 10, 2013: The Ministry of Finance ratifies the refusal of the additional monetary request.⁶⁸

Approx. 2015: Although court orders are issued on August 21, 2007 regarding the investigation into the death of Mr. Ordonez Suazo, the criminal proceedings are stuck before the judge of first instance.⁶⁹ Significant steps have yet to be made into the investigation of the death of Mr. Ordonez Suazo.⁷⁰

B. Other Relevant Facts

The Community attempts to protect its ancestral territories from invasions from other communities also affected by the national political climate.⁷¹ During his presidency, Manuel Zelaya prevents United States

62. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 309.

63. *Id.*

64. *Id.* ¶ 123.

65. *Id.* ¶ 135.

66. *Id.* ¶ 134.

67. *Id.*

68. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 135.

69. *Id.* ¶ 301.

70. *Id.*

71. *Garífuna Communities of Honduras Resist Corporate Land Grabs*, Council on Hemispheric Affairs, <http://www.coha.org/Garifuna-communities-of-honduras-resist-corporate-land-grabs/> (last visited Sept. 29, 2017).

and Canadian investments.⁷² Following the end of Manuel Zelaya's term in 2009, two right wing presidents are elected, and the focus shifts from progressive land and labor reforms to foreign investments.⁷³ Since 2009, the political agenda has allowed accommodations for United States and Canadian investors, encouraging usurpation of indigenous lands.⁷⁴ Given the ecological richness of the Community's land, it attracts varying foreign investments, ranging from tourist centers to development of natural resource extraction industries.⁷⁵ Development projects are presented to the Honduran constituents as a conduit for economic growth and employment opportunities.⁷⁶

Around this time Caxina S.A. Corporation, a mining company, began non-metallic mining extraction in an area that requires concession from the Community without advising the Community beforehand.⁷⁷ The Community contends that the mining company started exploration activities without conducting an environmental impact study, as required by the courts.⁷⁸ Previously instated legislation, including Article 82 of the General Mining Law, does not require the State to abide by the concession requirements set out by the Court or Property Law 2004 until the exploitation phase.⁷⁹ The mining company contends it remains in the exploration phase, and does not owe the Community a concession.⁸⁰

II. PROCEDURAL HISTORY

A. Before the Commission

October 29, 2003: OFRANEH files a petition against the State on behalf of the Community with the Inter-American Commission of Human Rights.⁸¹

March 24, 2010: The Commission declares the petition admissible in Admissibility Report No. 63/10.⁸²

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 212.

78. *Id.*

79. *Id.* ¶¶ 214, 344-45.

80. *Id.*

81. Garífuna Community of Punta Piedra and its Members v. Honduras, Report on Merits, ¶

1.

June 15, 2007: OFRANEH requests the Commission order precautionary measures to protect the Community, as its members still receive death threats.⁸³

September 13, 2007: The Commission orders the precautionary measures and contends it will continue to monitor the compliance of these measures.⁸⁴

March 21, 2013: The Commission issues its Report on Merits No. 30/13, and concludes that the State violated Article 21 (Right to Property) because the State did not provide effective protection of the Community's land from third parties and Article 25 (Right to Judicial Protection) because the State did not provide adequate and effective remedies to the Community.⁸⁵ The Commission recommends, in pertinent part, that the State adopts measures to repair damages and to assist in the prevention of discriminatory acts against the Punta Piedra Community members.⁸⁶

Additionally, the State accepted partial international responsibility.⁸⁷

B. Before the Court

October 1, 2013: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁸

The State raises preliminary objections, claiming that the Community: (1) has not exhausted administrative domestic remedies; and (2) any ruling against the State regarding the death of Mr. Ordonez Suazo is invalid because the State has a pending arrest warrant against his perpetrator.⁸⁹ However, the Court denies the State's preliminary objections because: (1) the State failed to identify which additional remedies are available to the victims⁹⁰; and (2) the State unjustifiably delayed the investigation into Mr. Ordonez Suazo's death.⁹¹

82. *Id.* ¶ 2.

83. *Id.* ¶ 11.

84. *Id.*

85. *Id.* ¶ 110, "Conclusions" ¶¶ 1-2.

86. *Id.* ¶ 128; "Recommendations" ¶¶ 1-6.

87. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 43-49.

88. *Id.* ¶ 1.

89. *Id.* ¶ 22.

90. *Id.* ¶ 32.

91. *Id.* ¶ 34.

1. Violations Alleged by the Commission⁹²

Article 8 (Right to a Fair Trial)

Article 21 (Right to Property)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁹³

Same Violations Alleged by Commission.

III. MERITS

A. Composition of the Court

Humberto Antonio Sierra Porto, President

Roberto F. Caldas, Vice President

Manuel E. Ventura Robles, Judge

Diego Garcia-Sayán, Judge

Alberto Pérez Pérez, Judge

Eduardo Vio Grossi, Judge

Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segares Rodriguez, Deputy Secretary

B. Decision on the Merits

October 8, 2015: The Court issues its Decision on Preliminary Objections, Merits, Reparations and Costs.⁹⁴

The Court unanimously rejected the State's preliminary objections, because:

92. Garífuna Community of Punta Piedra and its Members v. Honduras, Report on Merits, ¶ 127.

93. *Id.* ¶¶ 1, 207, 260, 284. *See also* Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs.

94. *See generally* Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs.

The State failed to identify what additional administrative remedies the Community had.⁹⁵ Additionally, the Court notes that the State also failed to identify the respective national authorities who would be able to resolve the Community's case.⁹⁶

On the issue of exhaustion of domestic remedies as to the death of Mr. Ordonez Suazo, the Court notes that this exception is only established by the State's own breach of unjustified delay.⁹⁷ Therefore, the Court dismisses the preliminary objection.⁹⁸

Lastly, the State made statements regarding the granting of an extension of land to the Community with knowledge that the Rio Miel Community was in possession of it, and failed to clear the land beforehand.⁹⁹ Given the State's admissions, the Court accepts the statements as partial acknowledgement on behalf of the State.¹⁰⁰

The Court found unanimously that the State had violated:

Article 21 (Right to Property), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of the Community,¹⁰¹ because:

Article 21 (Right to Property) protects the right to use and enjoy the collective ownership of land.¹⁰² The State failed to take appropriate measures to ensure that third parties did not occupy the Community's territory, despite knowing of third party interference.¹⁰³ Furthermore, the Community's traditional way of life, including their close ties to their land and natural resources, is essential to their survival.¹⁰⁴ Therefore, encroachment kept them from using and enjoying their land.¹⁰⁵

95. *Id.*

96. *Id.*

97. *Id.* ¶ 34.

98. *Id.*

99. *Id.* ¶ 44.

100. *Garifuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs*, ¶ 372.

101. *Id.* "Operative Paragraphs" ¶ 2.

102. *Id.* ¶ 165.

103. *Id.* "Operative Paragraphs" ¶ 1.

104. *Id.* ¶ 167.

105. *Id.* ¶ 189.

Similarly, Article 21 (Right to Property) also includes the right to communal property.¹⁰⁶ Although the State had legislation requiring the concession and consultation of indigenous communities prior to activities that may disturb indigenous land, the Court acknowledged that the State also had regulatory provisions that undermined this principle.¹⁰⁷ For example, mining regulations allowed circumvention of the process by providing consultations with the indigenous communities at the exploitation phase, rather than earlier exploration stages prior to authorization.¹⁰⁸ The Court relayed the importance of consultations by stating that it is not only reinforced as a conventional obligation but as a principle recognized by international law.¹⁰⁹ Therefore, the State is required to provide adequate and effective mechanisms to ensure the consultation process is not evaded.¹¹⁰

Since the State failed to ensure the Community was consulted prior to alterations and explorations on their land and failed to take appropriate measures to prevent encroachment, the State violated Article 21(Right to Property).¹¹¹

Article 25(1) (Right of Recourse Before a Competent Court) and 25(2) (Rights Must Be Enforced by Competent Authorities), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the Community,¹¹² because:

*The State failed to provide adequate administrative, judicial, or other domestic recourse for the Community.*¹¹³ *The Agreement of Commitment was the State's attempt to resolve the dispute between the two communities by contracting to pay to the Rio Miel Community for any improvements made on the land, relocate the Rio Miel families, and create a list of requests and work schedules to ensure the completion of the resolution.*¹¹⁴ *The State signed the Agreement of Commitment, thereby committing itself its successful execution.*¹¹⁵

106. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 215.

107. *Id.* ¶ 222.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* ¶ 224.

112. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 224.

113. *Id.* ¶ 236.

114. *Id.* ¶ 237.

115. *Id.* ¶ 248.

However, the State's lack of involvement in executing the agreement and the State's failure to rely on judicial channels¹¹⁶ undermined the agreement, and kept the communities from resolving their conflict.¹¹⁷ Therefore, the State failed to execute and produce the intended result of the agreement in a complete and comprehensive manner without delay.¹¹⁸ Because of this, the Court ruled the State violated Articles 25(1) (Right of Recourse Before a Competent Court) and 25(2) (Rights Must Be Enforced by Competent Authorities).¹¹⁹

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the Community,¹²⁰ because:

The authorities failed to take adequate steps to fully investigate the complaints lodged by the Community members regarding the death of Mr. Ordonez Suazo.¹²¹ An initial investigation revealed only basic facts detailing parts of the incident, an alleged perpetrator, and firearm injuries found on the body.¹²² However, the report did not contain important findings, such as reasons for Mr. Ordonez Suazo's death,¹²³ and the investigation was lacking overall.¹²⁴

Additionally, the Prosecutor's Office of Trujillo made four attempts to proceed with the case, but it ultimately was never executed.¹²⁵ After eight years of failed attempts, the case finally went before a judge of first instance.¹²⁶ The Court recognized that the judicial proceedings regarding Mr. Ordonez Suazo's death extended past a reasonable time, thereby breaching judicial guarantees.¹²⁷

116. *Id.* ¶ 251.

117. *Id.*

118. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 251.

119. *Id.* "Operative Paragraphs" ¶ 2.

120. *Id.*

121. *Id.* ¶ 301.

122. *Id.* ¶ 296.

123. *Id.* ¶ 295.

124. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶¶ 294-95.

125. *Id.* ¶ 299.

126. *Id.* ¶ 301.

127. *Id.* ¶¶ 299-300.

The Court found that the State failed to adequately investigate Mr. Ordonez Suazo's death within a reasonable period of time.¹²⁸ The State violated the principle of due diligence by taking more than five years to review the complaints filed, and still have not concluded the investigations or proceedings.¹²⁹

An additional complaint was also lodged by the Community with the Ethnic Prosecutor's Office, requesting a police order to inspect land in their community where an unauthorized road junction was being built, thus alleging the crime of abuse of authority and delay in investigations.¹³⁰ However, two years passed before the land was inspected,¹³¹ and only then was it determined that there was no authorization for the construction of any road in that area.¹³² The Court noted that at the time of its deliberations, four years had passed and the Community remained without any notification regarding the outcome of this investigation, despite it being formally closed.¹³³ Therefore, the State was not acting within a reasonable time, given that it failed to notify the Community of the status of the closed file.¹³⁴ Accordingly, the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection).¹³⁵

The Court found unanimously that the State had not violated:

Article 4 (Right to Life), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of the Community,¹³⁶ because:

Although neither the Commission nor the victims' representatives raised a violation of Article 4 (Right to Life), the Court determined that the violence surrounding Mr. Ordonez Suazo's death could give rise to a violation of his right to life.¹³⁷ In order for there to be a violation of

128. *Id.* ¶ 301.

129. *Id.* ¶ 306.

130. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 309.

131. *Id.*

132. *Id.* ¶ 310.

133. *Id.*

134. *Id.*

135. *Id.* ¶ 312.

136. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 310.

137. *Id.* ¶ 260.

Article 4 (Right to Life), there must have been an immediate risk of life to Mr. Ordonez Suazo.¹³⁸ This means that authorities must have known or should have known of that risk, and there was a lack of necessary steps taken, within their powers, to prevent such a risk.¹³⁹ Here, the State was not given any notice that a life-threatening situation was occurring.¹⁴⁰ The Court noted that thirteen State institutions were on notice regarding different parts of the conflict between the two communities,¹⁴¹ yet, there were no complaints or inferences suggesting there was a life-threatening situation.¹⁴² The Court further pointed out that the mere occurrence of such an event does not automatically indicate a violation of that right.¹⁴³ Accordingly, the Court determined there was no evidence to indicate that the State could have or should have known of the particular situation of risk of life of Mr. Ordonez Suazo.¹⁴⁴ Thus, the State did not violate Article 4 (Right to Life) to the detriment of Mr. Ordonez Suazo.¹⁴⁵

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Articles 1(1) (Obligation of Non-Discrimination), 21 (Right to Property), and 25 (Right to Judicial Protection) of the Convention, to the detriment of the Community,¹⁴⁶ because:

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in this context, relates to the legislation in force at the time title was granted and the legislation at the time the opinion was written.¹⁴⁷ Regarding the legislation in force at the time title was granted; Article 14 of ILO Convention 169 was entered into force and deemed the State must take measures to safeguard indigenous communities' property, or property traditionally used by them.¹⁴⁸ Additionally, the State's own Constitution references Article 14 of ILO Convention 169.¹⁴⁹ Given that the dispute lied mainly in the extension of the title, the express reference to Article

138. *Id.* ¶ 276.

139. *Id.* ¶ 278.

140. *Id.*

141. *Id.* ¶ 276.

142. *Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 276.*

143. *Id.*

144. *Id.*

145. *Id.* ¶ 279.

146. *Id.*

147. *Id.* ¶ 207.

148. *Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 208.*

149. *Id.*

14 in the State's Constitution provided sufficient protection and guarantee to the Community's property rights.¹⁵⁰

Regarding the legislation at the time the opinion was written, Property Law of 2004 was in effect, which attributed indigenous lands as inalienable, unencumbered, and imprescriptible.¹⁵¹ Although specific conflict resolutions between the Community and the Rio Miel Community were not explicit in the abovementioned legislation, neither piece of legislation was contended nor was there an issue regarding their interpretation.¹⁵² Therefore, there was adequate legislation in force.¹⁵³

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi elaborated on the Court's reasons for dismissing the State's preliminary objections.¹⁵⁴

Regarding the first preliminary objection, failure to exhaust administrative domestic remedies, Judge Vio Grossi clarified that the State's preliminary objection was dismissed because the State evaded responding to allegations in the Community's petition.¹⁵⁵ Judge Vio Grossi stated that the State's obligations, as detailed in the Agreement of Commitment, included compensating the Rio Miel Community for its work on the land.¹⁵⁶ However, the State neither returned the Community its territory nor did it compensate the Community for the occupation of that territory.¹⁵⁷ Furthermore, Judge Vio Grossi noted that it was the State's obligation to see the Agreement of Commitment was fully and completely executed.¹⁵⁸ Lastly, Judge Vio Grossi argued that because the Community had to seek other recourses to execute the Agreement of Commitment, the agreement was futile because it did not serve its purpose of being a proper legal resolution.¹⁵⁹

150. *Id.* ¶ 209.

151. *Id.* ¶ 210.

152. *Id.*

153. *Id.*

154. Garífuna Punta Piedra Community and its Members v. Honduras, Merits, Reparations and Costs, Separate Opinion of Judge Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 304, Section A (Oct. 8, 2015).

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

As to the State's second preliminary objection, failure to exhaust domestic remedies regarding the death of Mr. Ordonez Suazo, Judge Vio Grossi argued the State could not claim the Community failed to exhaust domestic remedies, because the facts of the case were not proven.¹⁶⁰ Judge Vio Grossi departs from the Judgment, stating that the rejection of the State's preliminary objection should not have been based on the delay of criminal investigations, but rather, because the exception was unfounded.¹⁶¹

IV. REPARATIONS

The Court ruled unanimously that Honduras had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Guarantee Full and Effective Ownership to the Community

The Court ordered the State eliminate any obstacles or interferences with the disputed territory by providing the Community with full and effective ownership of the land.¹⁶² First, the Court ordered the State to adopt any administrative, legislative, financial, or human resource measures necessary to give the Community its titled territory.¹⁶³

Second, the Court ordered the State to immediately and effectively ensure the territory currently inhabited by the Community does not encounter any intrusions or interferences by third parties that may compromise the existence, value, or use of the land.¹⁶⁴

Third, to ensure the Community's full and effective ownership, the Court ordered the State to provide payment for improvement and relocation of the third parties located on the Community's land.¹⁶⁵

Fourth, the Court ordered the State to assess whether the Rio Miel Community could purchase or expropriate the lands.¹⁶⁶

160. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Vio Grossi, Section B.

161. *Id.*

162. Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, ¶ 324.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

Fifth, the Court ordered the State to develop an agreement between the two communities to create a peaceful and harmonious coexistence.¹⁶⁷

2. Create a Community Development Fund

The Court ordered the State to create a collective fund so that reparations could be made on both the individual and collective level.¹⁶⁸ The fund is to serve four main purposes: (1) increase agricultural or other productivity in the Community; (2) improve the Community's infrastructure; (3) restore deforested area; and (4) benefit the Community in any other relevant way.¹⁶⁹ The State was ordered to allocate 1.5 million dollars to benefit the titled territory of the Community¹⁷⁰ and the parties are required to submit an annual report detailing the projects where the money will be invested.¹⁷¹

3. Publish the Judgment

The Court ordered the State to publish the official summary of this Judgment.¹⁷² The Court provided several criteria for the State to follow, including translating the Judgment into the Garífuna language, publishing the Judgment in a widely circulated national newspaper, and making the Judgment accessible for at least one year on an official website of the State.¹⁷³ The Court also ordered the State to publish the Judgment through a radio station with wide coverage in the Community, where it could be transmitted every first Sunday of the month for at least three months.¹⁷⁴

4. Complete Proper Criminal Investigation Procedures

In regards to any issues brought forth in the Judgment, the Court ordered the State to continue taking necessary steps to conduct criminal

167. *Id.* ¶ 326.

168. *Garífuna Punta Piedra Community and its Members v. Honduras*, Preliminary Objections, Merits, Reparations and Costs, ¶ 334.

169. *Id.* ¶ 333.

170. *Id.* ¶ 335.

171. *Id.* ¶ 336.

172. *Id.* ¶ 338.

173. *Id.*

174. *Garífuna Punta Piedra Community and its Members v. Honduras*, Preliminary Objections, Merits, Reparations and Costs, ¶ 339.

investigations and punish perpetrators when appropriate.¹⁷⁵ However, the Court would only supervise the completion of criminal proceedings as to the death of Mr. Ordonez Suazo.¹⁷⁶

5. Reform Unclear Regulation

The Court ordered the State to reform Article 82 of the Regulations to the General Mining Law so that it does not hinder the right to consultation.¹⁷⁷ The Court indicated that Article 82 conflicted with Article 50, in that consultation must occur prior to the authorization of exploration or exploration programs.¹⁷⁸

6. Develop Clear Registration of Property Titles

The Court ordered the State to create adequate mechanisms to ensure clarity in the State's land registry so that there is no confusion regarding property ownership in rural areas.¹⁷⁹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary and Non-Pecuniary Damages

The Court decided not to award pecuniary or non-pecuniary damages because, in part, the State did not violate Article 4 (Right to Life).¹⁸⁰ Rather, the Court ruled that the aforementioned Community Development Fund was appropriate to compensate the Community.¹⁸¹ The Court ruled the State must deposit \$1.5 million dollars into the fund for the Community's use.¹⁸²

175. *Id.* ¶ 353.

176. *Id.*

177. *Id.* ¶¶ 344-45.

178. *Id.*

179. *Id.* ¶ 347.

180. *Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs*, ¶ 354.

181. *Id.* ¶ 332.

182. *Id.* ¶¶ 332, 335.

2. Costs and Expenses

The Court awarded \$10,000 to compensate the Community and its representatives for the national and international litigation costs that they incurred.¹⁸³ The Court also ordered the State to reimburse the Victims' Legal Assistance Fund \$8,543.06 for expenses incurred in connection with the presentation of evidence.¹⁸⁴

3. Total Compensation (including Costs and Expenses ordered):

\$ 1,518,543.06

C. Deadlines

The State must provide full title of the disputed territory to the Community within thirty months.¹⁸⁵

The State must allocate \$1.5 million dollars to the Community's development fund within three years.¹⁸⁶

The State must pay costs and expenses within one year of notification of the Judgment.¹⁸⁷

The State must reimburse the Victims' Legal Assistance Fund for the \$8,543.06 it provided to the representatives of the Community within ninety days.¹⁸⁸

The State must publish the Judgment within six months.¹⁸⁹ Further, the State must broadcast the Judgment via the radio every first Sunday of the month for at least three months, and must notify the representatives of the Community at least two weeks in advance of the date and station of each broadcasting.¹⁹⁰

V. INTERPRETATION AND REVISION OF JUDGMENT

[NONE]

183. *Id.* ¶ 364.

184. *Id.* ¶ 368.

185. *Id.* ¶ 324.

186. *Garífuna Punta Piera Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs*, ¶ 335.

187. *Id.* ¶ 364.

188. *Id.* ¶ 368.

189. *Id.* ¶ 339.

190. *Id.*

VI. COMPLIANCE AND FOLLOW-UP

September 1, 2016: The State complied with its obligation to reimburse the Victims' Legal Assistance Fund.¹⁹¹ However, the State failed to pay the full amount required, missing \$15.¹⁹² Although the lack of funds was attributed to banking fees, the State was obligated to make full payment of the original indicated amount of \$8,543.06.¹⁹³ Additionally, the State submitted the payment past the ninety-day expiration date, and therefore, was ordered to pay interest for the delayed time.¹⁹⁴ Although the State was found to have complied with their obligation, the State was required to pay the missing sum.¹⁹⁵

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Garífuna Punta Piedra Community and its Members v. Honduras, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 304, \(Oct. 8, 2015\).](#)

[Garífuna Punta Piedra Community and its Members v. Honduras, Merits, Reparations and Costs, Separate Opinion of Judge Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 304, \(Oct. 8, 2015\).](#)

3. Provisional Measures

[Garífuna Punta Piedra Community and its Members v. Honduras, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(May 30, 2014\).](#)

191. Garífuna Punta Piedra Community and its Members and Garífuna Truinfo De La Cruz Community and its Members v. Honduras, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. ¶ 3 (Sept. 1, 2).

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

[Garífuna Punta Piedra Community and its Members v. Honduras, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(July 31, 2014\).](#)

[Garífuna Punta Piedra Community and its Members and Garífuna Truinfo De La Cruz Community and its members v. Honduras, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Sept. 1, 2016\).](#)

[Garífuna Punta Piedra Community and its Members v. Honduras, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 14, 2014\).](#)

4. Compliance Monitoring

[Garífuna Punta Piedra Community and its Members and Garífuna Truinfo De La Cruz Community and its Members v. Honduras, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 1, 2016\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Garífuna Community of Punta Piedra and its Members v. Honduras, Admissibility Report, Report No. 63/10, Inter-Am. Comm'n H.R., Case No. 12.761, \(March 24, 2010\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Garífuna Community of Punta Piedra and its Members v. Honduras, Report on Merits, Report No. 30/13, Inter-Am. Comm'n H.R., Case No. 12.761, \(Mar. 21, 2013\).](#)

5. Application to the Court

[Garífuna Community of Punta Piedra and its Members v. Honduras, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.761, \(July 8, 2013\).](#)

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Honduras: Programa de Administracion de Tierras de Honduras, The Inspection Panel, June 12, 2007, available at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/HondurasFINALINVESTIGATIONREPORTSpanishTrad.pdf>.