

Lemoth Morris et al. (Miskitos Divers) v. Honduras

ABSTRACT¹

This case is about dozens of Miskitos, an indigenous people living in remote areas of the Caribbean coast of Honduras, who, over almost two decades, were the victims of diving accidents while fishing for lobsters. All the victims suffered injuries or death and were compensated a pittance. Honduras agreed to a comprehensive friendly settlement of the case, including reparations. Nonetheless, the Court still found Honduras in violation of several articles of the American Convention, including Article 26 for violation of the victims' right to health and social security.

I. FACTS

A. Chronology of Events

1. Events pertaining to Mr. Opario Lemoth Morris

Before May 2, 2001: Mr. Lemoth Morris works as a diver on the *Capya María*, a fishing vessel owned by Mr. Geovany Py Gop.²

May 2, 2001: Mr. Lemoth Morris dies after working a deep dive.³ Mr. Py Gop sends 2,000.00 lempiras (approximately \$128.80) for Mr. Lemoth Morris to the Departmental Civil Court of Puerto Lempira on the same day.⁴

February 19, 2002: The National Preventive Police Force regional station produces a death record indicating that Mr. Lemoth Morris's death was caused by diving.⁵

October 15, 2014: In an interview, Ms. Augustina Saldaña Morris states that the amount which Py Gop sent was only enough to pay for burial expenses.⁶ Additionally, Ms. Saldaña Morris says that neither the Court of Justice of the Peace nor the Civil Court of Puerto Lempira has ordered any compensation despite the filing of judicial proceedings at both.⁷ Ms. Saldaña Morris also indicates the Civil Court claimed Mr. Lemoth Morris's case file had disappeared.⁸

2. Events pertaining to Mr. Flaviano Martínez López

August 22, 1992: Mr. Martínez López suffers an accident during work on Mr. Arcadio Waldemar Molina's fishing vessel, the *Mosquitia Express*.⁹ After a 21-stroke deep dive and

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² Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, Report No. 64/18, Inter-Am. Comm'n H.R., Case 12.738, ¶ 54 (May 8, 2008).

³ *Id.*

⁴ *Id.* ¶ 55.

⁵ *Id.* ¶¶ 54, 54, n.34.

⁶ *Id.* ¶ 55.

⁷ *Id.* ¶ 56.

⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 56.

⁹ *Id.* ¶ 57.

finishing two cylinders of oxygen, he experiences dizziness, vomiting, and chest pains.¹⁰ Additionally, his extremities are numb.¹¹

August 29, 1992: Mr. Martínez López is taken to Vicente D'Antoni Hospital in La Ceiba.¹² Medical records indicate a diagnosis decompression sickness, musculoskeletal sequelae, and light-sensitive migraines.¹³ Additionally, Mr. Martínez López receives a diagnosis of post-traumatic lower back pain, multi-deficiency syndrome, and an underwater injury to his lower spinal cord.¹⁴ However, he is not taken to a hyperbaric chamber.¹⁵

April 13, 1993: Mr. Martínez López files a claim against Mr. Waldemar Molina with the Office of Occupational Hygiene and Safety of La Ceiba.¹⁶

May 28, 1995: Mr. Waldemar Molina is subpoenaed to a settlement hearing by the Regional Labor Affairs Department.¹⁷

December 12, 1995: Mr. Waldemar Molina is ordered to pay 211,485.00 lempiras (approximately \$23,581.29) by the General Department for Social Security.¹⁸ Also, Mr. Martínez López is entitled to one-year of temporary disability.¹⁹

March 21, 1996: Mr. Martínez López files a complaint at the Local Civil Court for Labor Affairs for compensation regarding his occupational accident and legal expenses.²⁰

May 9, 1996: Mr. Waldemar Molina does not appear at the labor court for a settlement hearing despite being subpoenaed; the court finds him in contempt.²¹

May 30, 1996: Mr. Waldemar Molina fails to appear at another settlement hearing, and the due process hearing proceeds in his absence.²² Mr. Martínez López submits his evidence.²³

June 21, 1996: Mr. Martínez López's witnesses present statements in a hearing.²⁴

July 25, 1996: The *Mosquita Express*, which the Inspector General notes is owned by Mr. Waldemar Molina, is inspected to collect evidence.²⁵

October 22, 1996: Mr. Waldemar Molina is ordered to pay 125,925.00 lempiras (approximately \$10,274.58) for Mr. Martínez López's temporary disability, as well as

¹⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 57.

¹¹ *Id.*

¹² *Id.* ¶ 58.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 59.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 60.

²¹ *Id.*

²² Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 61.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

85,000.00 lempiras (approximately \$6,935.39) as compensation for the accident.²⁶ The amount is reduced by 10,000.00 lempiras (approximately \$815.93) to account for what Mr. Waldemar Molina had already given to Mr. Martínez López after the accident.²⁷

December 9, 1997: The court requests a lien on Mr. Waldemar Molina's bank accounts.²⁸

February 11, 2002: Several banks report that Mr. Waldemar Molina does not have any accounts on which to place liens.²⁹

October 15, 2014: In an interview, Mr. Martínez López states that the judgment has not been enforced, and he has thus not received the compensation he was awarded and to which he is entitled.³⁰ Because he did not receive the money, Mr. Martínez López states he had no choice but to return to work, and that diving was the only job available to him.³¹ As a result of this necessity, he suffered three more diving related injuries during this time period.³² Now, his health is very poor, he has difficulty walking, and pays for his medication out of pocket.³³ His financial situation sometimes requires him to go days without eating because, having never received compensation from the judgment, he does not have enough money to buy food.³⁴

3. Events pertaining to Mr. Carcoth Padmoe Miller

June 20, 1993: Mr. Padmoe Miller is employed by a company, Apolo Bees, and experiences an accident while working on a fishing vessel called the *Bisal*.³⁵ At the time of the accident he is in Jamaica.³⁶ The accident results in severe back pain, and Mr. Padmoe Miller is hospitalized for eighteen days while still in Jamaica.³⁷ He is not taken to a hyperbaric chamber during his hospital stay despite suffering from decompression sickness and experiencing neurological sequelae in his lower limbs and pelvic girdle.³⁸

August 8, 1994: In the city of Comayagua, Mr. Padmoe Miller files a claim regarding the accident with the Office of Occupational Hygiene and Health.³⁹ The Office issues a summons to the vessel's owner, but no one appears.⁴⁰

March 20, 1995: The Labor Inspector determines Mr. Padmoe Miller is entitled to 43,232.50 lempiras (approximately \$4,879.85) in compensation, calculated by Article 454 of the Labor Code.⁴¹

²⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 62.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* ¶ 63.

³¹ *Id.*

³² Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 63.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* ¶ 64.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶¶ 64-65.

³⁹ *Id.* ¶ 66.

⁴⁰ *Id.*

⁴¹ *Id.* ¶ 67.

April 26, 1995: The General Social Security Department of Comayaguela ruled Mr. Padmoe Miller's compensation claim admissible and ordered his employer to compensate him.⁴²

1999: Mr. Padmoe Miller suffers a second accident and experiences such severe chest pain that he is unable to speak.⁴³ This injury results in Mr. Padmoe Miller being paralyzed for three days on the boat until it arrives in Roatán a week later.⁴⁴ Once in the city, he receives treatment in a hyperbaric chamber.⁴⁵ The physician treating Mr. Padmoe Miller determines he will not recover from this injury because too much time had passed before receiving care.⁴⁶ According to his brother, Mr. Padmoe Miller is pressured by the *Bisal*'s owner and a Ministry of Labor representative to settle for 70,000.00 lempiras (approximately \$4,925.01) of compensation.⁴⁷ He receives only 50,000.00 lempiras (approximately \$3,517.86), which does not even cover his medical expenses.⁴⁸ Mr. Padmoe Miller is also told by the Ministry of Labor representative that he will be unable to file further claims because the *Bisal*'s owner was leaving the country.⁴⁹

August 6, 2012: In an interview, Mr. Padmoe Miller states that he has not received compensation for his damages.⁵⁰ He also speaks about his difficulty walking; he is only able to walk with crutches and purchases medication for his knee pain with his own money.⁵¹ As a result, he is unable to work and receives support from his family.⁵²

4. Events pertaining to Mr. Amistero Bans Valeriano

September 4, 2000: Mr. Bans Valeriano suffers an accident while working and diving on a vessel owned by Mr. Roberto Pino.⁵³ He experiences chest pain and is unable to move his limbs.⁵⁴ The ship captain does not attempt to rescue him.⁵⁵ However, his fellow co-divers take Mr. Bans Valeriano to Roatán, where he spends two days in a hyperbaric chamber.⁵⁶ He is later transferred to the hospital in La Ceiba where physicians determine he is suffering from decompression sequelae.⁵⁷ Mr. Bans Valeriano has to request a loan to pay for his treatment expenses.⁵⁸

December 13, 2000: Mr. Bans Valeriano files a claim with the Office of Occupational Hygiene and Safety for compensation for the accident he suffered.⁵⁹

⁴² Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 68.

⁴³ *Id.* ¶ 69.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* ¶ 70.

⁴⁷ *Id.* ¶ 71.

⁴⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 71.

⁴⁹ *Id.*

⁵⁰ *Id.* ¶ 68; Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 432, "Facts Related to the Victims" ¶ 4. (August 31, 2021).

⁵¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 72.

⁵² *Id.*

⁵³ *Id.* ¶¶ 73, 75.

⁵⁴ *Id.* ¶ 73.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 73.

⁵⁸ *Id.*

⁵⁹ *Id.* ¶ 74.

December 18, 2000: Although the Labor Inspector holds a hearing on the matter, Mr. Pino does not appear.⁶⁰

January 5, 2001: The Labor Inspector concludes that Mr. Pino must pay 112,161.00 lempiras (approximately \$7,404.53) to Mr. Bans Valeriano and gives him three days to respond.⁶¹ Mr. Pino refuses to sign the compensation award documents.⁶²

September 4, 2001: Mr. Bans Valeriano files a complaint to the Local Civil Court for Labor Affairs.⁶³

October 11, 2001: Through a letter sent to the Merchant Marine Department, the Local Civil Court for Labor Affairs requests that Mr. Pino's fishing vessel, the *Pelican*, be detained and not be granted permission to sail or operate.⁶⁴

December 29, 2001: The Health and Social Security Department issues a Certification of Diagnosis which indicates that Mr. Bans Valeriano suffered from decompression sickness from his accident and that he requires physical rehabilitation to recover.⁶⁵

January 2, 2002: Mr. Pino responds to the labor complaint and claims that he does not have an employer-employee relationship with Mr. Bans Valeriano and that he does not own the *Pelican*.⁶⁶

March 6, 2002: The Occupational Medicine Service of the General Social Security diagnoses that Mr. Bans Valeriano's decompression sickness causes osteotendinous hyperreflexia, paresthesia of the lower right limb, and difficulty walking.⁶⁷

2008: Mr. Bans Valeriano begins suffering from hypertension and needs medication he cannot afford.⁶⁸

2012: Mr. Bans Valeriano suffers from kidney ailments, painful urination, and headaches; he continues to have difficulty walking and uses a walking stick.⁶⁹ He also pays for medications on his own.⁷⁰ He cannot work because of his conditions, so his children must support him.⁷¹

5. Events pertaining to Mr. Rolando Mónico Thomas

September 5, 1999: Mr. Mónico Thomas suffers an accident while diving as a worker on the fishing vessel, the *Arnold I*.⁷² He experiences numbness in half of his body after surfacing from

⁶⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 74.

⁶¹ *Id.* ¶ 75.

⁶² *Id.*

⁶³ *Id.* ¶ 77.

⁶⁴ *Id.*

⁶⁵ *Id.* ¶ 76.

⁶⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 78.

⁶⁷ *Id.*

⁶⁸ *Id.* ¶ 79.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 80.

a deep dive.⁷³ Mr. Mónico Thomas asks the vessel owner to transport him to a city where he can receive treatment in a hyperbaric chamber.⁷⁴

September 8, 1999: After three days, Mr. Mónico Thomas is taken to the hyperbaric chamber and stays there for ten days.⁷⁵

April 11, 2000: In the city of La Ceiba, department of Atlántida, Mr. Mónico Thomas appears before Labor Inspector No. II to describe the accident on the *Arnold I*.⁷⁶ He states that he accepted 35,000.00 lempiras (approximately \$2,252.50) from his employer because he needed medicine and treatment.⁷⁷ He conveys that the funds were insufficient to cover the costs of his injury.⁷⁸ The vessel owner does not appear to the hearing as required by the Labor Inspector's summons.⁷⁹

June 22, 2000: The Labor Inspector determines that Mr. Mónico Thomas should receive 65,401.65 lempiras (approximately \$4,407.63) for temporary disability and 114,222.60 lempiras (approximately \$7,697.83) for compensation.⁸⁰

July 28, 2000: A representative for the *Arnold I*'s owner signs a pledge to pay the amount owed to Mr. Mónico Thomas as set by the Labor Inspector.⁸¹

August 28, 2000: The Labor Inspector visits *Arnold I*'s managing company, InterMarine S.A., to inquire about its failure to pay the compensation awarded to Mr. Mónico Thomas.⁸² Counsel for InterMarine S.A. claims they could not make payment because the fishing vessel had not returned, but they would be able to pay by August 30, 2000.⁸³

August 30, 2000: InterMarine S.A. fails to appear before the Labor Inspector, and the Labor Inspector declares that Mr. Mónico Thomas can pursue his claim further with the relevant authorities.⁸⁴

August 6, 2012: In an interview, Mr. Mónico Thomas states the proceedings never moved forward.⁸⁵ He continues to experience difficulty walking, as well as dizziness, and pays for his medical treatment and medications himself.⁸⁶

⁷³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 80.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* ¶ 81.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 81.

⁸⁰ *Id.* ¶ 82.

⁸¹ *Id.*

⁸² *Id.* ¶ 83.

⁸³ *Id.*

⁸⁴ *Id.* ¶ 84.

⁸⁵ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 85.

⁸⁶ *Id.*

6. Events pertaining to Mr. Ralph Valderramos Álvarez

February 1, 1996: Mr. Valderramos Álvarez suffers an accident while working as a diver on Ms. Sharon Delan Elwin's fishing vessel, the *Morning Mistery*.⁸⁷ After a 140-foot deep dive, he starts feeling ill, experiencing pain in his lower back and legs.⁸⁸ He subsequently loses consciousness and is taken to Islas de Bahía, where he is treated in a hyperbaric chamber.⁸⁹

October 11, 1996: Mr. Valderramos Álvarez files a complaint with the Local Civil Court for Labor Affairs of La Ceiba for compensation against Ms. Delan Elwin.⁹⁰

October 22 & 23, 1996: Witnesses provide statements to the court, and the Court orders that the *Morning Mistery* be impounded.⁹¹

January 15, 1997: Following a settlement hearing, Ms. Delan Elwin files appeal arguing that the court lacks jurisdiction.⁹² The appeal is granted.⁹³

January 16, 1997: Mr. Valderramos Álvarez appeals the court's ruling.⁹⁴

January 17, 1997: Mr. Valderramos Álvarez's appeal is ruled inadmissible.⁹⁵

January 22, 1997: The order for the impoundment of *Morning Mistery* is cancelled.⁹⁶ The proceedings do not produce any results for Mr. Valderramos Álvarez.⁹⁷

7. Events pertaining to Mr. Timoteo Lemus Pisatty

November 2, 2002: Mr. Lemus Pisatty suffers an accident while working on a fishing vessel owned by Mr. Horacio Gilbert Wood, the *Miss Anis*.⁹⁸ After surfacing from a 115-foot-dive, Mr. Lemus Pisatty's lower limbs are paralyzed.⁹⁹

November 3, 2002: Mr. Lemus Pisatty is transferred to a hospital in Roatán and receives treatment in a hyperbaric chamber.¹⁰⁰ He receives sixteen rounds of treatment while hospitalized, but it does not result in recovery.¹⁰¹ The physicians diagnose him with paralytic ailments, decompression sickness, and urinary sepsis.¹⁰²

⁸⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 86.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* ¶ 87.

⁹¹ *Id.*

⁹² *Id.* ¶ 88.

⁹³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 88.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* ¶ 89.

⁹⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 89.

¹⁰⁰ *Id.* ¶ 90.

¹⁰¹ *Id.*

¹⁰² *Id.*

November 26, 2002: Mr. Gilbert Wood, as Mr. Lemus Pisatty's employer, agrees to pay him 10,000.00 lempiras (approximately \$593.94) and a monthly stipend until Mr. Lemus Pisatty recovers.¹⁰³

December 24, 2002: The Puerto Lempira hospital records show that Mr. Lemus Pisatty suffers from decompression sickness and paralysis.¹⁰⁴ In labor proceedings filed by Mr. Lemus Pisatty, his father indicates that his son is not receiving medical care services for either ailment.¹⁰⁵

2003: Mr. Lemus Pisatty dies after his health declines due to the accident.¹⁰⁶ The funeral expenses amount to 40,631.61 lempiras (approximately \$2,402.74) and Mr. Gilbert Wood pays only 2,764.00 lempiras (approximately \$163.45).¹⁰⁷

November 18, 2004: Mr. Lemus Pisatty's partner and children file a complaint with the Local Civil Court for Labor Affairs of La Ceiba, seeking compensation against Mr. Gilbert Wood.¹⁰⁸

November 23, 2004: The court subpoenas Mr. Gilbert Wood and orders him to pay 5,000.00 lempiras (approximately \$269.65) as a provisional pension until the full amount for the claim can be paid.¹⁰⁹

December 10, 2004: The witnesses named in the complaint submit statements.¹¹⁰

April 12, 2005: The General Merchant Marine Department certifies the registration of *Miss Anis* and Mr. Lemus Pisatty's family submits a request for the impoundment of the vessel.¹¹¹ However, the Judge denies this request because the fishing vessel had additional owners besides Mr. Gilbert Wood who were not connected to the proceedings.¹¹² The judge requests Mr. Gilbert Wood to pay Mr. Lemus Pisatty's family a monthly deposit of 5,000.00 lempiras (approximately \$265.54).¹¹³

October 14, 2014: In an interview, Mr. Lemus Pisatty's father, Mr. Richard Lemus Pisatty, states that payments were never made to the family.¹¹⁴

8. Events pertaining to Mr. Ex Dereck Claro

October 20, 1995: Mr. Dereck Claro suffers an accident while working on *Chávez Junior*, Ms. Martha Chávez's fishing vessel.¹¹⁵ After a deep dive, he begins experiencing headaches, dizziness, and vomiting.¹¹⁶ He also feels weak and numb in all four limbs.¹¹⁷ Days later, he is

¹⁰³ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Report on Merits, ¶ 90.

¹⁰⁴ *Id.* ¶ 91.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* ¶ 92.

¹⁰⁹ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Report on Merits, ¶ 92.

¹¹⁰ *Id.*

¹¹¹ *Id.* ¶ 93.

¹¹² *Id.* ¶ 94.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Report on Merits, ¶ 95.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

taken to a hospital in Roatán, where he stays for a week and receives treatment in a hyperbaric chamber.¹¹⁸ The physicians treating Mr. Dereck Claro determine that he is suffering from symptoms of decompression sickness.¹¹⁹ Ms. Chávez pays for Mr. Dereck Claro's transportation to the hospital and his medical care expenses; she further promises to pay Mr. Dereck Claro compensation, but she never does.¹²⁰

August 2, 1996: Mr. Dereck Claro files a claim against Ms. Chávez for the accident with the Labor Inspector.¹²¹

January 7, 1997: The Occupational Medicine Department declares Mr. Dereck Claro as permanently partially disabled.¹²² The muscle strength in his legs continues to decline, as does the muscular hypertrophy of his lower left leg, and lack of sensitivity in his lower limbs.¹²³

February 5, 1997: The General Social Security Department determines Mr. Dereck Claro should be awarded a total amount of 125,356.00 lempiras (approximately \$9,083.40) for temporary disability and compensation.¹²⁴

October 22, 1997: As a result of Ms. Chávez's failure to pay, Mr. Dereck Claro files a complaint with the Departmental Civil Court of Gracias a Dios for the compensation he is entitled to.¹²⁵

June 25, 1998: Ms. Chávez's attorney objects to the complaint based on a lack of standing or representation of Ms. Chávez.¹²⁶ The attorney states that the complaint should not be aimed at Ms. Chávez, but rather her representative, Ms. Marta Elvia Zelaya Rivero.¹²⁷

August 22, 2003: The Departmental Civil Court issues a report containing information regarding the duration of this claim and that no intervention has been made for over five years.¹²⁸

August 28, 2003: The judge rules *ex officio* for the case to be archived because the proceeding on the merits had expired.¹²⁹

August 6, 2012: In an interview, Mr. Dereck Claro states he continues to suffer with back pain and difficulty walking, and that he purchases his medications himself.¹³⁰

¹¹⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 96.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* ¶ 97.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 97.

¹²⁵ *Id.* ¶ 98.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* ¶ 99.

¹²⁹ *Id.*

¹³⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 100.

9. Events pertaining to Mr. Hildo Ambrosio Trino, Mr. Andrés Miranda Clemente, Mr. Lorenzo Leman Bonaparte, Mr. Bernardo Julián Trino, Mr. José Trino Pérez Nacril, Mr. Rómulo Flores Henríquez, and Mr. Amilton Bonaparte Clemente

March 15, 2000: Mr. Ambrosio Trino, Mr. Miranda Clemente, Mr. Leman Bonaparte, Mr. Julián Trino, Mr. Pérez Nacril, Mr. Flores Henríquez, and Mr. Bonaparte Clemente are employed as divers on Mr. Lewis Delano Gough's fishing vessel, known as the *Langoster* or *Capital Lewis*.¹³¹ The ship ignites from a butane tank explosion and the above-listed divers jump overboard.¹³² Six of the divers drown and are not recovered or found; only Mr. Ambrosio Trino's burnt remains are recovered and buried.¹³³

Only the captain is rescued by a man who, according to Mr. Bonaparte Clemente's mother, is an intermediary who hires divers.¹³⁴ When she confronts him, the man threatens her with a gun and demands that she not report the incident.¹³⁵

February 25, 2002: Family members of the seven deceased file a complaint with the Departmental Civil Court against Mr. Delano Gough.¹³⁶

2008: A report indicates that these proceedings are still in the initial stage.¹³⁷ The attorney representing the victims states the standstill is caused by Mr. Delano Gough's acquisition of additional assets and their undetermined potential to be seized.¹³⁸

2012 & 2014: In interviews with the victims' family members, they state that their claims have not progressed and that they were not awarded compensation for the accident and the loss of the divers' lives.¹³⁹ According to Mr. Pérez Nacril's wife, the ship captain is unable to pay because his vessel was destroyed in the fire.¹⁴⁰

10. Events pertaining to Mr. Leonel Saty Méndez

March 12, 2001: Mr. Saty Méndez suffers an accident while working on Carlos Arturo Fiallos's fishing vessel, the *Yodano*.¹⁴¹ After surfacing from a deep dive, his body becomes numb, but the captain refuses to transport him to a hospital.¹⁴²

March 15, 2001: Mr. Saty Méndez is transported to a hospital with a hyperbaric chamber in Roatán three days after the accident.¹⁴³ He stays in the hospital for almost one whole month.¹⁴⁴

¹³¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 101.

¹³² *Id.*

¹³³ *Id.* ¶ 102.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* ¶ 103.

¹³⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 103.

¹³⁸ *Id.*

¹³⁹ *Id.* ¶ 104.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* ¶ 105.

¹⁴² *Id.*

¹⁴³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 105.

¹⁴⁴ *Id.*

March 26, 2001: The hospital produces a medical certificate that indicates Mr. Saty Méndez experienced severe paralysis in his lower limbs and decompression sickness.¹⁴⁵

May 22, 2001: Mr. Saty Méndez files a claim with the Occupational Hygiene and Safety Department.¹⁴⁶

May 24, 2001: Only Mr. Saty Méndez and the Labor Inspector appear at the hearing which is held.¹⁴⁷ At this time, Mr. Arturo Fiallos has fifteen other open proceedings against him for other accidents experienced by Miskito Divers.¹⁴⁸

October 15, 2014: In an interview, Mr. Saty Méndez states that Mr. Arturo Fiallos had given him a check for 50,000.00 lempiras (approximately \$2,347.07), but it bounced when he tried to cash it.¹⁴⁹ Mr. Saty Méndez notes that he only received 10,000.000 lempiras (approximately \$469.41), which did not cover his medical expenses.¹⁵⁰ He does not receive further compensation.¹⁵¹ Additionally, he mentions that the other proceedings did not continue.¹⁵² Mr. Saty Méndez continues to experience difficulty walking and urinating.¹⁵³

11. Events pertaining to Mr. David Esteban Bradley

May 28, 2004: Mr. Esteban Bradley suffers an accident while working on Mr. Edwin Sanches and Mr. Tano Bodden's lobster fishing vessel, the *Ledy Glenda*.¹⁵⁴ After surfacing from a deep dive, he experiences dizziness and is transported to the hospital in Roatán for hyperbaric chamber treatment, where he stays for twenty-five days.¹⁵⁵

July 30, 2004: The medical report for Mr. Bradley indicates that he suffers from decompression sickness and requires physical therapy.¹⁵⁶

Undated: Mr. Bradley files a compensation claim with the Labor Inspector, but the proceedings do not move forward.¹⁵⁷

12. Events pertaining to Mr. Evecleto Londres Yumidal

November 22, 2002: Mr. Londres Yumidal suffers an accident while working on Carlos Casimiro's fishing vessel, *Mis Luci*.¹⁵⁸ He experiences dizziness after surfacing from a deep dive, but the captain refuses to help him, saying that Mr. Londres Yumidal's pains are insignificant.¹⁵⁹ Other divers transport Mr. Londres Yumidal to the Puerto Lemira Hospital.¹⁶⁰

¹⁴⁵ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 106, n.140.

¹⁴⁶ *Id.* ¶ 107.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* ¶ 106.

¹⁵⁰ *Id.*

¹⁵¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 107.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* ¶ 108.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* ¶ 109.

¹⁵⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 109.

¹⁵⁸ *Id.* ¶ 110.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

The physicians indicate that he suffers from barotrauma with sequelae and a 30% walking disability.¹⁶¹

November 28, 2022: Mr. Londres Yumidal requests compensation for his accident with the Labor Inspector.¹⁶²

August 6, 2012: Ms. Terna Gutiérrez Beckham, Mr. Londres Yumidal's wife, states in an interview that Mr. Londres Yumidal never received compensation.¹⁶³ He is bedridden and deaf.¹⁶⁴ Mr. Londres Yumidal's eyesight is deteriorating.¹⁶⁵ He is not receiving medical assistance and does not take medications.¹⁶⁶

13. Events pertaining to Mr. Arpin Robles Tayaton

November 11, 2002: Mr. Robles Tayaton suffers an accident while working on a fishing vessel, the *Capital Dan*.¹⁶⁷ After surfacing from a deep dive, he experiences numbness on the right side of his body and is unable to move his legs.¹⁶⁸

November 15, 2002: Four days after his accident, Mr. Robles Tayaton is transported to the Puerto Lempira hospital and he pays for his medical care on his own, which totals in 8,324.00 lempiras (approximately \$493.66).¹⁶⁹

November 29, 2002: Mr. Robles Tayaton experiences pain from monoparesis of his right pelvic limb.¹⁷⁰ The physicians conclude he requires treatment through neurotropic medication, analgesics, and physical therapy.¹⁷¹

March 20, 2004: Mr. Robles Tayaton files a claim to the Labor Inspector against the *Capital Dan*'s owner requesting compensation for the accident.¹⁷²

2004: Mr. Robles Tayaton experiences a second accident and bursts his eardrum during a deep dive.¹⁷³ He stays on the vessel and does not receive medical attention.¹⁷⁴ He is taken to a medical center later where the physician tells him he cannot continue diving due to his severe condition.¹⁷⁵

October 14, 2014: In an interview, Mr. Robles Tayaton states he has not received compensation for either accident.¹⁷⁶ He continues to experience kidney pain and dizziness and cannot hear

¹⁶¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 111.

¹⁶² *Id.* ¶ 112.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 113.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* ¶ 114.

¹⁷¹ *Id.*

¹⁷² *Id.* ¶ 115.

¹⁷³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 116.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

well in one ear.¹⁷⁷ Mr. Robles Tayaton is no longer able to work, and his children support him.¹⁷⁸ He cannot afford the medication he is required to take.¹⁷⁹

14. Events pertaining to Mr. Daniel Flores Reyes

2002: Mr. Flores Reyes suffers an accident while working on Mr. Jaime Javier Thomson Sevellón's fishing vessel, the *M/N Southwest*.¹⁸⁰ After surfacing from a deep dive, he experiences dizziness and loses consciousness.¹⁸¹ Five days later, he is transported to the hospital in Roatán for treatment in the hyperbaric chamber.¹⁸²

April 2003: A medical report indicates Mr. Flores Reyes suffered from barotrauma after his accident.¹⁸³ Additionally, the report notes that he experiences lower back pain and changes in his urination.¹⁸⁴ The physician recommends he take neurotropic drugs, analgesics, and receive physical therapy.¹⁸⁵

May 29, 2003: After Mr. Flores Reyes goes to the Labor Inspector, Mr. Thompson Sevellón agrees to pay him 28,063.00 lempiras (approximately \$1,631.47) in compensation for the accident.¹⁸⁶

October 15, 2014: In an interview, Mr. Flores Reyes says that he never received any compensation at first.¹⁸⁷ Then, after reporting this to the Ministry of Labor of La Ceiba, he receives 15,000.00 lempiras (approximately \$705.48).¹⁸⁸ This amount does not cover the medical expenses that he has incurred.¹⁸⁹ Mr. Flores Reyes also states that he suffers from ongoing dizziness and headaches.¹⁹⁰

15. Events pertaining to Mr. Fredy Federico Salazar

May 26, 2003: Mr. Federico Salazar suffers an accident while working on Mr. Eduardo Saúl Ariaz's fishing vessel, the *Apolo #1*.¹⁹¹ After resurfacing from a deep dive, he experiences dizziness, and the captain tells him to "lie down and rest."¹⁹² He continues to dive thereafter.¹⁹³ He was transported to Roatán but did not receive medical attention.¹⁹⁴

¹⁷⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 116.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* ¶ 117.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 118.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* ¶ 119.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 119.

¹⁹⁰ *Id.* ¶ 120.

¹⁹¹ *Id.* ¶ 121.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

August 1, 2003: A medical report indicates Mr. Salazar suffered barotrauma from his accident and that it will take six to eight months for him to recover if he receives medical attention.¹⁹⁵

August 6, 2003: Mr. Salazar files a claim with the Labor Inspector for compensation from his accident.¹⁹⁶

August 6, 2012: In an interview, Mr. Salazar states that the proceedings from his claim never moved forward and that he has not received compensation.¹⁹⁷ Additionally, he continues to suffer from headaches, and he pays for his medical care and medications himself.¹⁹⁸ He is unable to work due to his health issues, and he is supported by his wife and in-laws.¹⁹⁹

16. Events pertaining to Mr. Cooper Cresencio

March 19, 1999: Mr. Cresencio suffers an accident while working on Mr. Brusito Borden's fishing vessel, the *Sars*.²⁰⁰ After resurfacing from a deep dive, he experiences severe chest pain, but Mr. Borden does not let him rest and tells him to "stop being lazy."²⁰¹ He continues diving thereafter and loses consciousness upon surfacing.²⁰² A week after the incident, he is taken to Roatán and stays in the hyperbaric chamber.²⁰³ Mr. Cresencio suffers from decompression sickness, his strength declines, he experiences incontinence and intestinal obstruction.²⁰⁴ The physician recommends to Mr. Cresencio to discontinue work as a diver because his ailments are so severe.²⁰⁵ He does not receive money or support from the vessel's owner to pay for his medical expenses.²⁰⁶

September 8, 2003: Mr. Cresencio files a claim for compensation with the Labor Inspector.²⁰⁷

September 9, 2003: Mr. Borden is summoned but does not appear, and so the Labor Inspector calculates Mr. Cresencio's compensation.²⁰⁸

October 15, 2014: In an interview, Mr. Cresencio indicates that he has not received any compensation.²⁰⁹ He continues to suffer from neck pain, nausea from the pain, hypertension, and headaches caused by noise.²¹⁰ His eyesight is declining, and he continues to pay for his medications himself.²¹¹

¹⁹⁵ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 122.

¹⁹⁶ *Id.* ¶ 123.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* ¶ 124.

¹⁹⁹ *Id.*

²⁰⁰ *Id.* ¶ 125.

²⁰¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 125.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* ¶ 126.

²⁰⁵ *Id.*

²⁰⁶ *Id.* ¶ 125.

²⁰⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 127.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.* ¶ 128.

²¹¹ *Id.*

17. Events pertaining to Mr. Félix Osorio Presby

September 1, 1995: Mr. Osorio Presby suffers an accident while working on Mr. Haylock Merren's fishing vessel, the *Pioner*.²¹² After resurfacing from a deep dive, he experiences dizziness, difficulty hearing, vomiting, headaches, and pain in his eyes.²¹³

September 5, 1995: Mr. Osorio Presby is taken to Moravian Evangelical Clinic (Clínica Evangélica Morava) in the city of Ahuas.²¹⁴ Mr. Merren does not pay for his medical expenses, and Mr. Osorio Presby is compensated only 700 lempiras (approximately \$77.21).²¹⁵ Mr. Osorio Presby is diagnosed with decompression sickness.²¹⁶

November 20, 1995: Mr. Osorio Presby files a complaint to the Labor Inspector for compensation.²¹⁷ He also files a complaint with the Departmental Civil Court.²¹⁸

June 7, 1996: Mr. Osorio Presby requests for the court to impound the *Pioner* and to seize Mr. Merren's bank accounts.²¹⁹

August 23, 1996: The court grants Mr. Osorio Presby's request and places a lien on Mr. Merren's bank accounts.²²⁰

June 23, 1997: A request is made to several banking institutions to report if Mr. Merren has any bank accounts.²²¹

June 26, 1997: Atlántida S.A. of La Ceiba reports that a bank account belonging to Mr. Merren has 19,228.04 lempiras (approximately \$1,344.12) in it.²²²

August 28, 2003: The court archives Mr. Osorio Presby's case because no action has been made in three years.²²³

18. Events pertaining to Mr. Onasis Cooper Brown

December 7, 2001: Mr. Cooper Brown suffers an accident while working on Mr. Marlon Talun Haylock's fishing vessel, the *Flamingo I*.²²⁴ After resurfacing from a deep dive, he experiences dizziness and pain throughout his body.²²⁵ He is taken to the Puerto Lempira hospital where physicians determine he suffers from decompression sickness and a walking disability caused by the diving accident.²²⁶

²¹² Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 129

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.* ¶ 130.

²¹⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 130.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.* ¶ 131.

²²² *Id.*

²²³ *Id.*

²²⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 132.

²²⁵ *Id.*

²²⁶ *Id.*

Undated: Mr. Cooper Brown files a claim to the Labor Inspector for compensation from Mr. Haylock.²²⁷ Mr. Cooper Brown is compensated only 1,500 lempiras (approximately \$94.25), which does not cover his medical expenses.²²⁸

March 11, 2004: The Secretariat for Labor Affairs and Social Security determines Mr. Cooper Brown is entitled to 153,708.32 lempiras (approximately \$8,475.02) in compensation for his accident.²²⁹

December 30, 2004: Mr. Haylock's failure to appear at the Labor Inspector hearing is reported.²³⁰ The proceedings do not produce results for Mr. Cooper Brown.²³¹

2004: Mr. Cooper Brown dies after suffering from paralysis for years caused by decompression sickness.²³²

19. Events pertaining to Mr. Saipón Richard Toledo

January 15, 2004: Mr. Richard Toledo suffers an accident while working on Mr. Marco Antonio Bonilla's fishing vessel, the *Digna América*.²³³ After surfacing from a deep dive, he passes out and never regains consciousness.²³⁴ Mr. Richard Toledo's family is notified that he has died while working and they are given his remains three days after the accident.²³⁵

March 29, 2004: Mr. Richard Toledo's father files a claim to the Labor Inspector for compensation against Mr. Antonio Bonilla.²³⁶ The Secretariat for Labor Affairs and Social Security find that Mr. Richard Toledo's family is entitled to 51,495.00 lempiras (approximately \$2,811.06) in compensation.²³⁷

May 2, 2004: Mr. Antonio Bonilla agrees with Mr. Richard Toledo's mother to pay 53,495.00 lempiras (approximately \$2,964.44) in compensation.²³⁸ The agreement indicates a prior payment of 30,000.00 lempiras (approximately \$1,662.46), but Mr. Richard Toledo's sister considers the amount insufficient.²³⁹

20. Events pertaining to Mr. Efraín Rosales Kirington

December 9, 2004: Mr. Rosales Kirington suffers an accident while working on Mr. Antonio Bonilla's fishing vessel, the *Ledy América*.²⁴⁰ After resurfacing from a deep dive, he passes out

²²⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 133.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* ¶ 134.

²³³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 135.

²³⁴ *Id.*

²³⁵ *Id.* ¶ 136.

²³⁶ *Id.* ¶ 137.

²³⁷ *Id.*

²³⁸ *Id.* ¶ 138.

²³⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 138.

²⁴⁰ *Id.* ¶ 139.

and remains unconscious for four hours.²⁴¹ Mr. Bonilla refuses to transport him to a hyperbaric chamber.²⁴²

December 10, 2004: Mr. Rosales Kirington has to travel fifteen hours to a hospital with a hyperbaric chamber to start treatment for decompression sickness; Mr. Bonilla does not pay for the expenses incurred.²⁴³ Mr. Rosales Kirington experiences a drastic decline in his eyesight.²⁴⁴

February 12, 2004: Mr. Rosales Kirington files a claim with the Labor Inspector.²⁴⁵

March 17, 2004: Mr. Bonilla's failure to appear is noted in the hearing records, and the proceedings do not produce results for Mr. Rosales Kirington.²⁴⁶

21. Events pertaining to Mr. Melesio Pamistan Maick

March 7, 2003: Mr. Pamistan Maick suffers an accident while working on Mr. Pedro García and Ms. Loly Torres's fishing vessel, the *Marisco 11*.²⁴⁷ After resurfacing from a deep dive, Mr. Pamistan Maick experiences dizziness and numbness in his body.²⁴⁸

March 12, 2003: Mr. Pamistan Maick is transported to a hospital in Roatán and spends a month in the hospital.²⁴⁹ Mr. García and Ms. Torres pay Mr. Pamistan Maick 5,980.00 lempiras (approximately \$349.28).²⁵⁰

March 25, 2003: A medical certificate indicates that Mr. Pamistan Maick suffers from decompression sickness, and he is unable to walk.²⁵¹ He receives treatment in a hyperbaric chamber.²⁵²

October 14, 2003: The Puerto Lempira Hospital certifies Mr. Pamistan Maick suffers from a 40% walking disability.²⁵³

February 26, 2004: Mr. Pamistan Maick files a claim to the Labor Inspector.²⁵⁴

March 1, 2004: The Secretariat for Labor Affairs and Social Security rules that Mr. Pamistan Maick is entitled to 19,859.08 lempiras (approximately \$1,118.40) in compensation.²⁵⁵ Mr. García and Ms. Torres do not appear for the hearings.²⁵⁶

²⁴¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 139.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.* ¶ 140.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 141.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.* ¶ 142.

²⁵² *Id.*

²⁵³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 142.

²⁵⁴ *Id.* ¶ 143.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

August 6, 2012: Mr. Pamistan Maick's brother, Mr. Pablo Padilla Morti Maick, states in an interview that his brother suffered a severe urinary infection and pain in his spinal column such that he requires a walking stick.²⁵⁷ Additionally, he states Mr. Pamistan Maick receives only privately obtained medical care and purchases his medications on his own.²⁵⁸

22. Events pertaining to Mr. Willy Gómez Pastor

February 11, 2003: Mr. Gómez Pastor suffers an accident while working on a fishing vessel, the *Marylu 1*.²⁵⁹ After surfacing from a deep dive, he loses consciousness.²⁶⁰

February 12, 2003: Mr. Gómez Pastor is transported to Roatán and is hospitalized for a month due to his decompression sickness.²⁶¹ He receives treatment in the hyperbaric chamber.²⁶² The *Marylu 1*'s owner pledges to pay for Mr. Gómez Pastor's medical expenses but never does.²⁶³ He continues to suffer from a neurogenic bowel and bladder, and he walks with crutches because of poor balance.²⁶⁴

October 1, 2003: Mr. Gómez Pastor files a claim to the Labor Inspector for compensation.²⁶⁵

January 27, 2004: Reports indicate that the vessel's owner fails to appear at the hearings.²⁶⁶

July 13, 2004: The Secretariat for Labor Affairs and Social Security determines that Mr. Gómez Pastor is entitled to 197,690.35 lempiras (approximately \$11,015.98) in compensation because of his 80% walking disability.²⁶⁷

August 6, 2012: In an interview, Mr. Gómez Pastor indicates he never received compensation because the vessel's owner left to the United States.²⁶⁸ He continues to suffer from constant chest pain, and pain in his neck and legs.²⁶⁹ He cannot walk well and often stumbles.²⁷⁰ Mr. Gómez Pastor does not receive medical treatment for the pain he suffers and purchases his medications himself.²⁷¹

23. Events pertaining to Mr. Licar Méndez

December 12, 2003: Mr. Licar Méndez, sixteen years of age, is reprimanded by the captain of Mr. Darwin's fishing vessel for letting another diver go missing.²⁷² The captain leaves Licar in

²⁵⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 144.

²⁵⁸ *Id.*

²⁵⁹ *Id.* ¶ 145.

²⁶⁰ *Id.*

²⁶¹ *Id.* ¶¶ 145-146.

²⁶² *Id.* ¶ 146.

²⁶³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 145.

²⁶⁴ *Id.* ¶ 146.

²⁶⁵ *Id.* ¶ 147.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.* ¶ 148.

²⁶⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 148.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.* ¶ 149.

a dugout canoe as punishment while he leaves to find the other diver.²⁷³ While the captain is gone, Licar disappears.²⁷⁴

January 21, 2004: Licar father files a claim to the Labor Inspector for information regarding his son's disappearance.²⁷⁵ The proceedings, however, are unproductive.²⁷⁶

24. Events pertaining to Mr. Roberto Flores Esteban

February 23, 2000: Mr. Flores Esteban suffers an accident while working on Mr. Rafael Zapata's fishing vessel, the *Capitán Zapata*.²⁷⁷ After surfacing from a deep dive, he feels one of his legs become numb.²⁷⁸

February 24, 2000: Mr. Flores Esteban is transported to Cauquira where he is hospitalized for two weeks and receives treatment in a hyperbaric chamber.²⁷⁹ He experiences decompression sickness and a 30% alteration in his walking.²⁸⁰

November 17, 2003: Mr. Flores Esteban files a claim to the Labor Inspector against Mr. Zapata, who had paid him only 4,000.00 lempiras (approximately \$227.50) as compensation.²⁸¹

April 1, 2004: The Secretariat for Labor Affairs and Social Security notes Mr. Zapata's failure to appear.²⁸² The proceedings do not produce results for Mr. Flores Esteban.²⁸³

August 6, 2012: In an interview, Mr. Flores Esteban's wife states that he is bedridden, unable to move his limbs, and is not receiving medical care.²⁸⁴

25. Events pertaining to Mr. Daniel Dereck

November 5, 2000: Mr. Daniel Dereck suffers an accident while working on Mr. Jaime Thomson's fishing vessel, the *South West*.²⁸⁵ After resurfacing from a deep dive, he experiences full body paralysis.²⁸⁶

November 6, 2000: Mr. Dereck is transported to Roatán, is hospitalized over a week, and receives hyperbaric chamber treatment.²⁸⁷ The physicians indicate he suffers from decompression sickness and a declining strength in his lower limbs, which prevents him from

²⁷³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 149.

²⁷⁴ *Id.*

²⁷⁵ *Id.* ¶ 150.

²⁷⁶ *Id.*

²⁷⁷ *Id.* ¶ 151.

²⁷⁸ *Id.*

²⁷⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 151.

²⁸⁰ *Id.*

²⁸¹ *Id.* ¶ 152.

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.* ¶ 153.

²⁸⁵ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 154.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

standing on his own.²⁸⁸ Mr. Thomson does not pay Mr. Dereck any compensation and offers only that he may resume employment; Mr. Dereck accepts because he needs the work.²⁸⁹

2004: Mr. Dereck suffers a second accident which results in a hernia and an infection that causes him to be unable to urinate.²⁹⁰ He has to create his own catheter by cutting and using a power cable.²⁹¹ Ultimately, he seeks treatment at Puerto Lempira Hospital, for which Mr. Thompson does not pay.²⁹²

April 28, 2004: Mr. Dereck files a claim to the Secretariat for Labor Affairs and Social Security of La Ceiba for his accident in 2000.²⁹³

August 6, 2012: In an interview, Mr. Dereck states that he has only received 3,000.00 lempiras (approximately \$157.91) in compensation from Mr. Thompson, an amount insufficient to pay for his medical expenses.²⁹⁴ He continues to struggle walking.²⁹⁵

26. Events pertaining to Mr. Eran Herrera Palisto

August 8, 2002: Mr. Herrera Palisto dies after suffering an accident while working on Mr. Brux Borden's fishing vessel, the *Ms. Denese*.²⁹⁶

Undated, 2002: Ms. Sofía Flores Palisto, Mr. Herrera Palisto's mother, files a complaint to the Labor Inspector for compensation against Mr. Borden.²⁹⁷

November 5, 2002: Mr. Borden is subpoenaed and fails to appear; the proceedings do not produce results for Ms. Flores Palisto.²⁹⁸

27. Events pertaining to Mr. Bernardo Blakus Emos

November 5, 2002: Mr. Blakus Emos suffers an accident while working on Mr. Paulino Adalid Hernández Reyes's fishing vessel, the *Capitán Dago*.²⁹⁹ There is a storm, and lightning strikes near Mr. Blakus Emos, causing him to fall in the water.³⁰⁰ When he resurfaces, Mr. Blakus Emos is bleeding and dies later that day.³⁰¹

December 8, 2003: Ms. Renelda Carlos Herrera, Mr. Blakus Emos's wife, files a claim with the Labor Inspector.³⁰² Mr. Hernández Reyes pledges to pay 120,000 lempiras (approximately \$6,866.29) to Ms. Herrera.³⁰³

²⁸⁸ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Report on Merits, ¶ 155.

²⁸⁹ *Id.* ¶ 156.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.* ¶ 157.

²⁹⁴ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Report on Merits, ¶ 157.

²⁹⁵ *Id.*

²⁹⁶ *Id.* ¶ 158.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.* ¶ 159.

³⁰⁰ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Report on Merits, ¶ 159.

³⁰¹ *Id.*

³⁰² *Id.* ¶ 160.

³⁰³ *Id.*

October 15, 2014: In an interview, Ms. Herrera states that she received 65,000 lempiras (approximately \$3,057.08) from Mr. Hernández.³⁰⁴ She also states she filed a complaint with the Secretariat for Labor Affairs, but the proceedings did not produce results for her.³⁰⁵

28. Events pertaining to Mr. Alí Herrera Ayanco

Undated: Mr. Herrera Ayanco dies after suffering an accident while working on Mr. Gary Douglas Hynds fishing vessel, the *Arlie Jr. Third*.³⁰⁶

Before April 1, 2003: Ms. Marlene Alemán Laines, Mr. Herrera Ayanco's wife, receives 23,000.00 lempiras (approximately \$1,326.70) in compensation from Mr. Hynds.³⁰⁷

April 1, 2003: Ms. Alemán Laines goes to the Labor Inspector and Mr. Hynds signs a pledge to pay 46,560.00 lempiras (approximately \$2,685.70) in compensation.³⁰⁸ It is unknown whether he has paid the full amount.³⁰⁹

29. Events pertaining to Mr. Mármol Williams García

Undated: Mr. Williams García dies after suffering an accident while working on Marco Antonio Bonilla Castillo's fishing vessel, the *Digna América*.³¹⁰

January 26, 2004: Ms. Clara Inés Wilson Dario, Mr. Williams García's wife, and Mr. Bonilla Castillo sign a pledge for him to pay 131,174.40 lempiras (approximately \$7,404.52) for compensation, which he pays in full the same day.³¹¹

30. Events pertaining to Mr. José Martínez Lopez

November 8, 2003: Mr. José Martínez Lopez suffers an accident while working on Mr. Paulino Adalid Hernández Reyes's fishing vessel, the *Mister Marvin*.³¹² After resurfacing from a deep dive, Mr. Martínez Lopez loses consciousness and does not receive immediate medical attention; he later dies while being transported to a medical center.³¹³

February 17, 2004: Ms. Emilia Urbina Mena, Mr. Martínez Lopez's partner, goes to the Labor Inspector and signs a pledge with Mr. Hernández Reyes, who promises payment of 100,000 lempiras (approximately \$5,822.03) as compensation and makes full payment the same day.³¹⁴ Ms. Edatina Martínez Lopez, Mr. Martínez Lopez's sister, considers the amount insufficient

³⁰⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 160.

³⁰⁵ *Id.*

³⁰⁶ *Id.* ¶ 161.

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 162.

³¹¹ *Id.*

³¹² *Id.* ¶ 163

³¹³ *Id.*

³¹⁴ *Id.* ¶ 164.

to cover all expenses incurred by her brother's death.³¹⁵ She files a complaint to the Ministry of Labor of La Ceiba, but the complaint produces no results for her.³¹⁶

31. Events pertaining to Mr. Alfredo Francisco Brown

May 5, 2004: Ms. Leolinda Paulisa Manister, Mr. Brown's sister, goes to the Labor Inspector after Mr. Brown dies while working on a fishing vessel, the *Kathia Maria*.³¹⁷ She and the vessel's owner, Mr. Abraham Yovany Campigotte, sign a pledge in which the owner promises to pay 40,000 lempiras (approximately \$2,247.49) as compensation.³¹⁸ Mr. Campigotte agrees to pay half now, and the other half on the following day.³¹⁹ It is unknown whether he tendered complete payment.³²⁰

32. Events pertaining to Mr. Próspero Bendles Marcelino

March 23, 2003: Mr. Bendles Marcelino suffers an accident while working on Víctor Boden's fishing vessel, the *Sharay*.³²¹ After resurfacing from a deep dive, Mr. Bendles Marcelino loses consciousness and receives oxygen while still on the vessel but then dies the same day.³²²

March 27, 2003: Mr. Bendles Marcelino's remains are returned to his wife, Ms. Melvina Cristina Guerrero.³²³

April 28, 2003: Ms. Guerrero files a claim with the Labor Inspector and notes that she received only 6,000.00 lempiras (approximately \$351.08) for Mr. Bendles Marcelino's burial expenses.³²⁴

April 30, 2003: The Secretariat for Labor Affairs and Social Security rules that Ms. Guerrero is entitled to 834,154.50 lempiras (approximately \$48,501.12) in compensation from Mr. Boden.³²⁵

May 2, 2003: Mr. Boden signs a pledge agreeing to pay Ms. Guerrero 120,000 lempiras (approximately \$7,004.81).³²⁶ Ms. Guerrero receives 50,000.00 lempiras (approximately \$2,918.67), and Mr. Boden pledges the rest will be paid by August.³²⁷ It is unknown whether Mr. Boden paid the full amount.³²⁸

³¹⁵ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 164.

³¹⁶ *Id.*

³¹⁷ *Id.* ¶ 165.

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 166.

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.* ¶ 167.

³²⁵ *Id.* ¶ 168.

³²⁶ *Id.*

³²⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 168.

³²⁸ *Id.*

33. Events pertaining to Mr. Ramón Allen Ferman

December 11, 2002: Mr. Allen Ferman dies after suffering decompression sickness while working on Mr. Manuel Pereira Jaylock's fishing vessel, the *Tiburón Walker*.³²⁹

May 5, 2004: Ms. Eleba Ferman Paisano, Mr. Ferman's wife, goes to the Labor Inspector where and signs a pledge with Mr. Pereira, who agrees to pay 144,000.00 lempiras (approximately \$8,090.96) in compensation.³³⁰ He pays 24,000.00 lempiras (approximately \$1,348.49) and says the rest will be paid later to compensate for funeral expenses.³³¹

34. Events pertaining to Mr. Roger Gómez Alfred

December 10, 2002: Mr. Gómez Alfred suffers an accident while working on Abraham Geovanny Compegoth's fishing vessel, the *Capitán Dan*.³³² After resurfacing from a deep dive, Mr. Gómez Alfred experiences illness and bodily paralysis thereafter.³³³

December 11, 2002: Mr. Gómez Alfred is transported to the Puerto Lempira Hospital where he remains almost two weeks, but the hospital does not have a hyperbaric chamber.³³⁴

December 27, 2002: Mr. Gómez Alfred dies.³³⁵

March 18, 2003: Mr. Especel Bradle Valeriano, Mr. Gómez Alfred's brother-in-law, files a claim to the Labor Inspector on behalf of Mr. Gómez Alfred's wife, Ms. Vilma Greham Velásquez.³³⁶ Mr. Bradle Valeriano contends Mr. Compegoth has paid only 20,000 lempiras (approximately \$1,121.34), merely half of Mr. Gómez Alfred's funeral expenses.³³⁷

April 23, 2003: Ms. Greham Velásquez and Mr. Compegoth sign a pledge in which Mr. Compegoth promises to pay 120,500.00 lempiras (approximately \$7,045.70) in compensation.³³⁸ Mr. Compegoth represents that he would pay 20,000.00 lempiras (approximately \$1,169.41) on the day he signs the pledge and the rest over the course of five months.³³⁹

October 15, 2014: In an interview, Ms. Greham Velásquez states that she has not received payments from Mr. Compegoth and that she still owes money to other people for Mr. Gómez Alfred's funeral expenses.³⁴⁰

³²⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 169.

³³⁰ *Id.* ¶ 170.

³³¹ *Id.*

³³² *Id.* ¶ 171.

³³³ *Id.*

³³⁴ *Id.* ¶ 172.

³³⁵ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 172.

³³⁶ *Id.* ¶ 173.

³³⁷ *Id.*

³³⁸ *Id.* ¶ 174.

³³⁹ *Id.*

³⁴⁰ *Id.*

35. Events pertaining to Mr. Carlos Castellón Cárdenas

August 11, 1996: Mr. Carlos Castellón Cárdenas begins working as a fishing diver on Ms. Basima Hilsaca's vessel, the *Sea House*.³⁴¹

2000: Mr. Castellón Cárdenas suffers an accident and receives treatment in a hyperbaric chamber.³⁴² He is diagnosed in September with decompression sickness and later files a claim to the Office of Occupational Hygiene and Safety.³⁴³

February 15, 2001: Mr. Castellón Cárdenas signs a pledge with Ms. Hilsaca, who agrees to pay 40,000.00 lempiras (approximately \$2,607.78).³⁴⁴ She pays 3,000.00 lempiras (approximately \$195.58) and indicates that she will make further payments in March and August.³⁴⁵

October 5, 2001: The Occupational Medicine Service rules Mr. Castellón Cárdenas suffers from a 70% disability.³⁴⁶

October 15, 2001: The Secretariat for Labor Affairs and Social Security rules Mr. Castellón Cárdenas is entitled to 227,850.00 lempiras (approximately \$13,950.59) in compensation.³⁴⁷

November 20, 2001: Mr. Castellón Cárdenas files a complaint for compensation due to Ms. Hilsaca's failure to make payments as pledged.³⁴⁸ She responds by claiming she never owned the *Sea House*, but the court finds this inadmissible because she acknowledges her ownership of the vessel in the pledge she signed.³⁴⁹ She fails to appear at the settlement hearing.³⁵⁰

April 17, 2002: Ms. Hilsaca again contends that she was not the owner of the *Sea House* at the time Mr. Castellón Cárdenas was injured and that she signed the pledge only as a partner of the company Sociedad Hermanos Hilsaca.³⁵¹

May 24, 2002: The court orders Ms. Hilsaca to pay 37,000.00 lempiras (approximately \$2,278.66) as compensation.³⁵²

August 29, 2002: Mr. Castellón Cárdenas's representative requests for the court to order liens on Ms. Hilsaca's bank accounts.³⁵³

³⁴¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 175.

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.* ¶ 177.

³⁴⁵ *Id.* ¶ 176.

³⁴⁶ *Id.*

³⁴⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 176.

³⁴⁸ *Id.* ¶ 178.

³⁴⁹ *Id.* ¶ 179.

³⁵⁰ *Id.*

³⁵¹ *Id.* ¶ 180.

³⁵² *Id.*

³⁵³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 181.

2002: Mr. Castellón Cárdenas has difficulty walking, he cannot work, and his health worsens because he cannot afford medical care.³⁵⁴ Soon thereafter, he dies.³⁵⁵

August 6, 2012: Mr. Dany Castellón Masier, Mr. Castellón Cárdenas's son, has not received payments for compensation.³⁵⁶

36. Events pertaining to Mr. Timoteo Salazar Zelaya

2002: Mr. Salazar Zelaya suffers a fatal accident while working on the fishing vessel *Omar Phillips*.³⁵⁷ Mr. Salazar Zelaya's next of kin reaches a settlement for 100,000 lempiras (approximately \$6,296.39) as compensation, but they do not receive any payment.³⁵⁸

B. Other Relevant Facts

The Miskito indigenous people populate a rural region in Honduras, the department of Gracias de Dios.³⁵⁹ In 2003, the Miskito population was about 40,000.³⁶⁰ The World Bank and United Nations Development Program reports high rates of poverty and a lack of resources which would promote health, wealth, and wellness in the region.³⁶¹ Due to its geographical location, there are hardly any job opportunities, which is the reason why the main source of income for Miskito families is through diver-based fishing for lobster, Honduras's main economic driver.³⁶² Miskito divers are known to be the best free divers in the world, and Miskito men start learning to dive when they are fourteen years of age.³⁶³

However, the occupation brings great risk to the health and safety of those who participate.³⁶⁴ Types of illness that occur because of diving include decompression sickness and barotrauma, among many others.³⁶⁵ These illnesses occur because of the pressure that their bodies undergo while deep diving.³⁶⁶ Decompression sickness can result in the decomposition of bony tissue in the arms or legs and even irreversible paralysis.³⁶⁷ The appropriate treatment for a diver who experiences decompression sickness is the hyperbaric chamber.³⁶⁸ The chamber changes the atmospheric pressure to simulate underwater pressure diving conditions, and the length of time spent in the chamber depends on the injury suffered while diving.³⁶⁹

The Pan American Health Organization (PAHO) provides guidelines to ensure the safety of the divers, such as measures of bodily fitness.³⁷⁰ Responsibility is placed on the vessel captains to ensure oxygen tanks are on board.³⁷¹ The National Human Rights Commissioner (Comisionado Nacional de los Derechos Humanos; "CONADEH") and the Honduran Miskito

³⁵⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 181.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.* ¶ 183.

³⁵⁸ *Id.*

³⁵⁹ *Id.* ¶ 31.

³⁶⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 31.

³⁶¹ *Id.* ¶ 32.

³⁶² *Id.* ¶¶ 32, 34

³⁶³ *Id.* ¶ 34.

³⁶⁴ *Id.* ¶ 35.

³⁶⁵ *Id.*

³⁶⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 36.

³⁶⁷ *Id.*

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.* ¶ 37.

³⁷¹ *Id.*

Association for Injured Divers (Asociación Miskitos Hondureños de Buzos Lisiados; “AMHBLI”) report that Miskito people who have begun being recruited as divers do not receive training on safe diving techniques or measures to ensure their safety while deep diving.³⁷² When the divers are injured, a high percentage do not receive compensation for injuries and, in some cases, the injuries result in death.³⁷³

In 2001, the state of Honduras attempted to remedy this grave situation by adopting laws that mandate minimum safety and health requirements, with penalties to the employers and vessel operators.³⁷⁴ However, in 2004 PAHO found conditions still had not improved and had possibly worsened considering the rise of drug use to mitigate the pain being experienced by now disabled divers.³⁷⁵ The International Labor Organization produced a report in 2007 that provided data which showed that 40% of divers would experience an accident, and 10% were likely to die.³⁷⁶ Also, 4,500 Miskito children at this time had a father who was disabled or had died as a result of diving, creating a higher risk of child labor exploitation.³⁷⁷

In a 2015 report, the Inter-American Commission on Human Rights produced information regarding the Miskito divers’ situation and noted that Honduras has the highest rate of divers suffering from decompression sickness in the world.³⁷⁸ Additionally, the State does not keep track of the data relating to accidents or death while diving.³⁷⁹ There is no remedy for a person who is injured while diving, and they experience a drastic change in their quality of life alongside their family.³⁸⁰ A 2001 AMHBLI report showed that, on average, the total compensation received by the divers killed or injured amounts to about 1% of what they should have been entitled to.³⁸¹

II. PROCEDURAL HISTORY

A. *Before the Commission*

November 5, 2004: The Commission receives a petition lodged by AMHBLI, the Association of Miskito Women (Asociación de Mujeres Miskitas), Miskito Indian Mairin Asla Takanka; “MIMAT”), and the Council of Elders (Almuk Nani Asla Takanka).³⁸²

December 18, 2007: The Center for Justice and International Law (CEJIL) becomes a co-petitioner.³⁸³

November 12, 2009: The Commission adopts Admissibility Report 121/09.³⁸⁴ The Commission finds the petition admissible over the State’s objection that domestic remedies have not yet been exhausted.³⁸⁵

³⁷² Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 38.

³⁷³ *Id.* ¶¶ 44, 45.

³⁷⁴ *Id.* ¶¶ 41, 42.

³⁷⁵ *Id.* ¶ 44.

³⁷⁶ *Id.* ¶ 45.

³⁷⁷ *Id.*

³⁷⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶ 47.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.* ¶ 50.

³⁸² Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(a).

³⁸³ *Id.*

³⁸⁴ *Id.* ¶ 2(b).

³⁸⁵ Lemoth Morris et al. (Miskito Divers) v. Honduras, Admissibility Report, Report No. 121/09, Inter-Am. Comm’n H.R., Case No. 12.738, ¶¶ 3-4 (November 12, 2009).

May 8, 2018: The Commission delivers Merits Report 64/18.³⁸⁶ Though the State argues that it has an adequate system governing labor relations between workers and employers, the Commission finds the State in violation of Articles 4.1 (Prohibition of Arbitrary Deprivation of Life), 5.1 (Right to Physical, Mental, and Moral Integrity), 6.1 (Prohibition of Slavery, Slave-Trade, Traffic in Women and Involuntary Servitude), 6.2 (Prohibition of Forced or Compulsory Labor), 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 19 (Rights of the Child), 24 (Right to Equal Protection), 25.1 (Right of Recourse Before a Competent Court), and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights), all in relation to Articles 1.1 (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention.³⁸⁷ The Commission recommends that the State do the following: 1) make full reparations to the victims, 2) provide physical and mental health services to those surviving and use all means available to determine the fate of those missing, 3) fully investigate the circumstances surrounding the violations, 4) adopt measures to prevent reoccurrence of violations, 5) undertake an informational workers' rights campaign, and 6) reimburse the Commission's legal assistance fund.³⁸⁸

June 25, 2018: The Commission notifies the State of the Merits Report and grants it two months to comply with its recommendations.³⁸⁹ After being granted three extensions, the State fails to request further extension and provides no specific information regarding progress towards compliance.³⁹⁰

B. Before the Court

May 24, 2019: The Commission submits the case to the Court after the State failed to adopt its recommendations.³⁹¹

June 15, 2020: The State rejects the alleged violations and the requests for reparations.³⁹²

December 17, 2020: The President of the Court calls for a public hearing to consider the case on the merits and potential reparations and costs.³⁹³ The Court hears final oral arguments.³⁹⁴

March 25, 2021: The Court receives a request for endorsement of the friendly settlement agreement signed by the State and Petitioners.³⁹⁵

March 30, 2021: The Court admits the request for endorsement.³⁹⁶

April 15, 2021: The parties present their observations on the friendly settlement agreement.³⁹⁷

³⁸⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(c).

³⁸⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, ¶¶ 3-4.

³⁸⁸ *Id.* ¶ 308.

³⁸⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(d).

³⁹⁰ *Id.*

³⁹¹ *Id.* ¶ 3.

³⁹² *Id.* ¶ 7.

³⁹³ *Id.* ¶ 8.

³⁹⁴ *Id.*

³⁹⁵ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 9.

³⁹⁶ *Id.*

³⁹⁷ *Id.* ¶ 10.

1. Violations Alleged by Commission³⁹⁸

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)
 Article 5(1) (Right to Physical, Mental, and Moral Integrity)
 Article 8(1) (Right to a Fair Trial)
 Article 19 (Rights of the Child)
 Article 24 (Right to Equal Protection)
 Article 25(1) (Right to Judicial Protection)
 Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights)
all in relation to:
 Article 1(1) (Obligation to Respect Rights)
 Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims³⁹⁹

Same violations alleged by Commission.

III. MERITS

A. Composition of the Court

Elizabeth Odio Benito, President
 L. Patricio Pazmiño Freire, Vice-President
 Eduardo Vio Grossi, Judge
 Humberto Antonio Sierra Porto, Judge
 Eduardo Ferrer Mac-Gregor Poisot, Judge
 Eugenio Raúl Zaffaroni, Judge
 Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary
 Romina I. Sijniensky, Deputy Secretary

B. Decision on the Merits

August 31, 2021: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.⁴⁰⁰

The Court found unanimously that Honduras had violated:

Article 4(1) (Prohibition of the Arbitrary Deprivation of Life), Article 5(1) (Right to Physical, Mental, and Moral Integrity), and Article 19 (Rights of the Child) in relation to

³⁹⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 13.

³⁹⁹ *Id.* ¶ 6. Association of Disabled Honduran Miskito Divers (Asociación de Miskitos Hondureños de Buzos Lisiados; “AMHBLI”), *Miskito Indiang Mairin Asla Takanka* (MIMAT), the Council of Elders, the Jesuit Reflection, Investigation and Communication Team in Honduras (Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús en Honduras; “ERIC-SJ”), and CEJIL served as representatives for the victims.

⁴⁰⁰ *Id.* ¶ 1.

Article 1(1) and Article 2 of the Convention, to the detriment of Mr. Lemoth Morris and all named victims,⁴⁰¹ because:

The Court had previously determined that the right to life is fundamental to the American Convention, as it is a necessary prerequisite to the exercise of any other right.⁴⁰² Thus, the State had a duty to regulate and supervise dangerous activities that pose significant risk to life and personal integrity.⁴⁰³ As violations of the right to life may be committed to varying degrees, the mental and physical detriments inflicted on victims will vary in intensity and must be proved in each case.⁴⁰⁴

The Court emphasized three points. First, since 2001, the State has passed health and safety regulations specifically for the protection of divers.⁴⁰⁵ After reviewing the Labor Code and the Occupational Safety and Health Regulations for Underwater Fishing, the Court found the regulatory framework and obligations imposed on employers to be adequate.⁴⁰⁶ However, there was no information evidencing the State's successful and effective implementation of those regulations to ensure the health and safety of Miskito divers.⁴⁰⁷

Second, the State failed to implement measures to oversee that boats transporting divers who suffered accidents complied with relevant safety regulations.⁴⁰⁸ The State's negligent conduct permitted fishing activities to be performed outside of domestic legislation, thus endangering the victim's lives and personal integrity.⁴⁰⁹ This negligence precipitated the State's responsibility for the injuries, permanent disabilities, and deaths of the victims.⁴¹⁰ Accordingly, the State acknowledged its responsibility.⁴¹¹

Third, Licar Méndez disappeared at the age of sixteen after being abandoned on the boat where he was working.⁴¹² The Committee on the Rights of the Child stressed the importance of protecting minors from human rights violations, especially when they are working in the business sector.⁴¹³ Minors like Licar are exposed to perilous circumstances when underwater lobster fishing; hazards include sun exposure, humidity, and the possibility of injury while diving without proper protection, among other things.⁴¹⁴ Children often resort to using drugs and alcohol to manage the burdens of their work duties.⁴¹⁵

The State thus acknowledged responsibility for the following: (1) violations of the right to personal integrity for thirty-four divers who suffered accidents while on deep dives, leading to decompression sickness and other related ailments; (2) violations of the right to life for twelve divers who died after such accidents; (3) violations of the right to life for seven Miskito divers

⁴⁰¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 60.

⁴⁰² *Id.* ¶ 54.

⁴⁰³ *Id.* ¶ 55.

⁴⁰⁴ *Id.* ¶¶ 54-55.

⁴⁰⁵ *Id.* ¶ 56.

⁴⁰⁶ *Id.* ¶¶ 56-57.

⁴⁰⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 57.

⁴⁰⁸ *Id.* ¶ 58.

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

⁴¹² *Id.* ¶ 59.

⁴¹³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 59.

⁴¹⁴ *Id.*

⁴¹⁵ *Id.*

who died during the explosion aboard the fishing vessel Lancaster; and (4) violations of Licar Méndez's right to life and rights as a child when he disappeared after being abandoned as a punishment.⁴¹⁶

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) and Article 24 (Right to Equal Protection) in relation to Article 1(1) and Article 2 of the Convention, to the detriment of Mr. Lemoth Morris and all named victims,⁴¹⁷ because:

*The Court engaged in a three-part analysis regarding the State's Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) violation: (i) the right to be employed and work under equitable and satisfactory conditions which guarantee protection of employee health, hygiene, and safety; (ii) the right to wellness and social security; (iii) the right to equality and a workplace free from discrimination.*⁴¹⁸

*First, the right to fair working conditions has been referenced in the Charter of the Organization of American States (OAS) to a sufficient degree that the right is hence protected under Article 26 of the American Convention of Human Rights.*⁴¹⁹ *Additionally, the Court points to several instances in international law that define the right to work as a human right, as listed in the Protocol of San Salvador, the Universal Declaration on Human Rights, and the International Covenant on Economic, Social and Cultural Rights.*⁴²⁰ *Honduras is party to the Labour Inspection Convention of 1947, which requires protection of a worker's wages, fair hours, and working conditions.*⁴²¹ *Similarly, the State is party to the International Labor Organization Convention on the Worst Forms of Child Labour of 1999, which requires that states immediately and effectively prohibit and eliminate the exploitation of children in the workplace.*⁴²²

*Fair working conditions have been enshrined in the constitutions and legislation of those States which have accepted the Court's jurisdiction.*⁴²³ *Indeed, the State's Fishing Regulations and Title V of the State's Labor Code established rights which obligates employers to protect worker from occupational hazards.*⁴²⁴

*Here, the Miskito divers were subject to dangerous working conditions in violation of legislated safety standards.*⁴²⁵ *The divers did not receive proper training before working on fishing vessels, were equipped with deficient equipment, were malnourished while onboard the vessels, and were mistreated by their captains.*⁴²⁶ *Thus, the State failed its regulatory duty to guarantee the right to be employed and work under equitable and satisfactory conditions which protect an employee's health, hygiene, and safety.*⁴²⁷ *This constituted a violation of Article 26*

⁴¹⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 60.

⁴¹⁷ *Id.* "Declares" ¶ 3.

⁴¹⁸ *Id.* ¶ 67.

⁴¹⁹ *Id.* ¶ 68.

⁴²⁰ *Id.* ¶ 69.

⁴²¹ *Id.* ¶ 70.

⁴²² *Id.* ¶ 71.

⁴²³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 75.

⁴²⁴ *Id.*

⁴²⁵ *Id.* ¶ 76.

⁴²⁶ *Id.*

⁴²⁷ *Id.* ¶ 78.

*(Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention.*⁴²⁸

Second, the Court distinguished the rights to health and to social security, both of which the State violated of under Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).⁴²⁹ The right to health is protected under this article because Articles 34(i), 34(l), and 45(h) of the OAS Charter specifically reference the right to health.⁴³⁰ Additional references to the right to health are made in the American Declaration, the Protocol of San Salvador, and Article 145 of the Honduran Constitution.⁴³¹ The right to health obligated the State to provide quality health services and medical care towards improving its population's overall well-being.⁴³² This obligation also encompasses a duty to pay particular attention to vulnerable and marginalized populations within the State.⁴³³

The marginalized group here was the Miskito community which engaged in underwater fishing activities. The PAHO produced recommendations for the State regarding its international obligation to respect the health of divers who suffer accidents.⁴³⁴ These recommendations involved protecting the divers, providing early diagnosis and adequate treatment for job injuries, and the rehabilitation of those who suffered sustaining injuries.⁴³⁵ The primary treatment for deep diving accidents was treatment in a hyperbaric chamber and recovery focusing on social reintegration.⁴³⁶

Regarding the right to social security, the Court referenced Articles 3(j), 45(b), and 46 of the OAS Charter to establish the right to social security under Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights).⁴³⁷ The Court further recognized the protection of social security in the American Declaration, The Protocol of San Salvador, the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and in the Honduran Constitution.⁴³⁸

The Court defined the right to social security as the right that protects an individual from future harmful circumstances by guaranteeing income security.⁴³⁹ Specifically, the Court noted a duty on the State to maintain a social security system that includes protections for workers who are become disabled due to work injuries, and that workers should be entitled to adequate benefits, including health services and income support.⁴⁴⁰

Here, the Court identified several instances that impaired the victims' right to health and social security. The State acknowledged that none of the thirty-four named victims who suffered an accident while diving received immediate medical attention, though they presented symptoms

⁴²⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 78.

⁴²⁹ *Id.* ¶¶ 80, 97.

⁴³⁰ *Id.* ¶¶ 79-80.

⁴³¹ *Id.* ¶¶ 81-82.

⁴³² *Id.* ¶ 83.

⁴³³ *Id.*

⁴³⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 84.

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ *Id.* ¶¶ 85-86.

⁴³⁸ *Id.* ¶¶ 87-89.

⁴³⁹ *Id.* ¶ 90.

⁴⁴⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 90-91.

of decompression sickness.⁴⁴¹ The State failed to conduct inspections of the fishing vessels, despite being required to by Fishing Regulations.⁴⁴² The State was well aware of the challenges the divers faced regarding medical care access and did not take steps to remedy the issues.⁴⁴³ The State also failed its obligations to prevent and treat disabilities through adequate healthcare services and to rehabilitate and reintegrate those injured while entering back into society and the workforce.⁴⁴⁴ Indeed, the State neglected to maintain a health system which could provide preventative and curative services to those who suffered accidents and those who had a disability as a result.⁴⁴⁵ There was a complete absence of any social security program in the La Mosquitia region because the divers were not documented employees with working contracts.⁴⁴⁶ Thus, the victims were not served by the Honduran social security system, thus the State violated their rights to health and social security provided under Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the Convention.⁴⁴⁷

Regarding the rights to equality and to a workplace free from discrimination, the Court emphasized connection between the unified human family and the dignity of the individual.⁴⁴⁸ The Court strongly condemned any circumstance that would lead to the privileging of one group of people such that another would be deprived of human rights.⁴⁴⁹ States must not create situations of discrimination, whether *de facto* or *de jure*.⁴⁵⁰ International law has evolved to include non-discrimination as a foundational legal principal.⁴⁵¹

The rights to equality and to non-discrimination involves two concepts: elimination of arbitrary differential treatment and the remedying of conditions of historic inequality experienced by marginalized groups.⁴⁵² The Court made clear that not every instance of differential treatment is discriminatory, but only those which are not objective and have no reasonable justification or legitimate purpose.⁴⁵³ Still, States have a special obligation to take affirmative action to protect groups who face discrimination.⁴⁵⁴ Ethnic origin is a protected category from discrimination; indigenous populations fall under this category.⁴⁵⁵ While individuals experiencing poverty and or those who have a disability are not part of a protected class of individuals, the Convention does not preclude prohibition of discrimination on these grounds because poverty relates to “economic status” and the list included Article 1(1)(Obligation to Respect Rights) of the Convention is merely illustrative.⁴⁵⁶ Consequently, States have the obligation to adopt measures protecting groups of people facing a specific challenges, disparities, and discriminatory circumstances.⁴⁵⁷

⁴⁴¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 92.

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.* ¶¶ 93-95.

⁴⁴⁵ *Id.* ¶ 96.

⁴⁴⁶ *Id.*

⁴⁴⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 97.

⁴⁴⁸ *Id.* ¶ 98.

⁴⁴⁹ *Id.*

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.* ¶ 99.

⁴⁵³ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 100.

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.* ¶ 101.

⁴⁵⁶ *Id.* ¶ 102.

⁴⁵⁷ *Id.* ¶ 103.

Here, the victims were part of the indigenous community of La Mosquitia.⁴⁵⁸ Diver jobs were the main, and possibly only, employment option, making them particularly vulnerable to the abusive circumstances.⁴⁵⁹ The State acknowledged that its general neglect, the lack of government funded resources, the failure to adopt measures of reform in this underserved region constituted a human rights violation and act of discrimination.⁴⁶⁰ Studies done by the Office of the United Nations High Commissioner for Human Rights and the World Bank concluded there was structural and intersectional discrimination in the region of La Mosquitia, an indigenous community which was severely neglected by its State government.⁴⁶¹

The Court also recognized a violation of the right to equal protection under Article 24 (Right to Equal Protection).⁴⁶² This right is two dimensional: it establishes equality before the law and requires the implementation of measures to alleviate the discrimination and marginalization faced by legally protected groups.⁴⁶³ The State has the obligation to actively engage in solving the issues of exclusion to achieve material equality.⁴⁶⁴

Here, the Court did not find any measures taken by the State to effectively address the structural inequality experienced by the victims despite being aware of the vulnerabilities faced by individuals from the region of La Mosquitia, including poverty, illiteracy, and unemployment.⁴⁶⁵ The lack of oversight in dangerous working conditions, the risk to the lives and personal integrity faced by the victims, and the lack of available rehabilitative services all constituted a violation of the victims' right to equal protection under Article 24 (Right to Equal Protection).⁴⁶⁶

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Patricio Pazmiño Freire

In a separate opinion, Judge Pazmiño Freire held that the Court correctly endorsed the friendly settlement agreement and recognized the reparation interests in the case.⁴⁶⁷ He wrote his opinion to address two points regarding compliance monitoring: (1) the progression of business and human rights as they relate to the rules of attribution of responsibility and (2) public policy and the role reparations have in cases involving business and human rights.⁴⁶⁸ Judge Pazmiño Freire points out that there have been an increasing number of cases relating to human rights violations committed against indigenous communities by business and corporations.⁴⁶⁹ He noted the challenge of holding the state accountable for actions committed by private companies despite the impact these companies have on vulnerable communities.⁴⁷⁰ Two cases against Brazil involving human exploitation exemplified how international law can

⁴⁵⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 104.

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.* ¶¶ 105-107.

⁴⁶² *Id.* ¶ 108.

⁴⁶³ *Id.*

⁴⁶⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 108.

⁴⁶⁵ *Id.* ¶ 109.

⁴⁶⁶ *Id.* ¶ 110.

⁴⁶⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge L. Patricio Pazmiño Freire, Inter-Am. Ct. H.R. (ser. C) No. 432, ¶ 1 (August 31, 2021).

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.* ¶ 2.

⁴⁷⁰ *Id.*

be used to address human rights violations and the prohibition of slavery as *ius cogens*.⁴⁷¹ Judge Pazmiño Freire makes it clear that the most significant and affected aspect of an exploitative human rights violation is the victim.⁴⁷² After analyzing the connection between the State, the people, and the corporations, he noted the State's obligation to guarantee human rights, but left open whether companies may be responsible for the violations against individual rights set forth in international law.⁴⁷³

Additionally, Judge Pazmiño Freire wrote on the reparations that companies owe victims of human rights violations committed by them.⁴⁷⁴ In some cases, the cost of the reparations might be shared by the company and the State.⁴⁷⁵ While recognizing that the Court lacks the authority to compel companies to engage in social development projects to support reparations, Judge Pazmiño Freire addressed the challenge of holding companies accountable, especially within Central America.⁴⁷⁶

2. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi held that the Court correctly endorsed the friendly settlement agreement.⁴⁷⁷ He notes justiciability issues with Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) and argued that this case cannot be used as precedent in any other case unless they are procedurally similar.⁴⁷⁸

3. Concurring Opinion of Judge Humberto Sierra Porto

In a separate opinion, Judge Sierra Porto held that the Court correctly endorsed the friendly settlement agreement.⁴⁷⁹ He disagreed, however, with the justiciability of Article 26 due to legal contradictions and inconsistencies.⁴⁸⁰ Judge Sierra Porto contended that a violation of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) should be limited to only the obligation of progressivity, and not those encompassed by the Economic, Social, Cultural, and Environmental Rights (ESCER) that the Court based its analysis on.⁴⁸¹ The Court also never established criteria differentiating when progressivity or ESCER analysis is necessary.⁴⁸² He also argued that a State's obligation should not be determined by the materialized benefits in prior case law; instead, obligations should be set at a level that the State is actually capable of providing.⁴⁸³

⁴⁷¹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge L. Patricio Pazmiño Freire, ¶ 3.

⁴⁷² *Id.* ¶ 4.

⁴⁷³ *Id.* ¶ 5.

⁴⁷⁴ *Id.* ¶ 6.

⁴⁷⁵ *Id.*

⁴⁷⁶ *Id.* ¶¶ 7-8.

⁴⁷⁷ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 432, ¶ 1, (August 31, 2021).

⁴⁷⁸ *Id.*

⁴⁷⁹ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, Separation Opinion of Judge Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 432, ¶ 1 (August 31, 2021).

⁴⁸⁰ *Id.* ¶¶ 2-3.

⁴⁸¹ *Id.* ¶ 4.

⁴⁸² *Id.* ¶ 5.

⁴⁸³ *Id.* ¶ 6.

IV. REPARATIONS

The Court ruled unanimously to endorse the friendly settlement agreement.⁴⁸⁴ Through that agreement, the Court determined that the State had the following obligations:

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

1. Provide Medical and Psychological Treatment

In the friendly settlement agreement, Honduras agreed to provide comprehensive and specialized medical treatment to all victims who suffered harm, free of charge.⁴⁸⁵ At a minimum, the State must provide medical consultations, required medicines, prostheses, and any other treatment necessary for the victim to enjoy the highest quality of health the State's public system can provide.⁴⁸⁶ The State must begin providing treatment immediately and continuously, for as long as necessary.⁴⁸⁷ All victims living with disabilities shall be provided rehabilitation treatment as to ensure their full integration in society.⁴⁸⁸ Additionally, treatment provided to any victim shall be particularized to their individual and special needs.⁴⁸⁹

The State is required to identify the medical centers closest to where the victims live and ensure they are adequately staffed with personnel and equipment to provide the necessary services.⁴⁹⁰ If services cannot be accessed in a victim's immediate area, the State shall bear the costs of transportation, food, and lodging for the victim to obtain care in another region of the country.⁴⁹¹

The care provided must be culturally relevant and consider the customs, traditions, and language of the Miskito people, as well as their traditional medicinal practices.⁴⁹²

2. Provide Educational Scholarships

In the friendly settlement agreement, Honduras agreed to award educational scholarships to the named victims' children and/or grandchildren.⁴⁹³ The scholarships will cover expenses for the whole duration of the beneficiary's education, or until the beneficiary is satisfied.⁴⁹⁴ Should the continuity of a scholarship be jeopardized due to a beneficiary's academic performance such that the parties cannot agree on continuity, the issue will be submitted to the Court for an opinion.⁴⁹⁵ The scholarship program will begin one year after the friendly settlement agreement has been signed.⁴⁹⁶ Implementation must be executed so as to effectively encourage participation of the victims' children and/or grandchildren to receive their full entitlement.⁴⁹⁷

⁴⁸⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 112-115.

⁴⁸⁵ *Id.* ¶ 116.

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.*

⁴⁹⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 116.

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.* ¶ 117.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.*

⁴⁹⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 117.

⁴⁹⁷ *Id.*

3. Productivity Projects

In the friendly settlement agreement, Honduras agreed to implement productivity projects that enable the victims to support themselves in a dignified manner, in collaboration with the Alliance for the Development of the Honduran Mosquitia (Alianza para el Desarrollo de la Moskitia Hondureña; “ADMH”).⁴⁹⁸ During all phases of development, the program shall include the victims’ input to ensure that ownership and management of the projects stays with the victims.⁴⁹⁹ The State will work with the parties to provide technical assistance.⁵⁰⁰

Written program materials shall be provided in the Miskito and Spanish languages.⁵⁰¹ The programs must be fully operational one year after the parties sign the friendly settlement agreement.⁵⁰² The State will provide financing for as long as necessary for the sustainability for the projects and effectiveness will be evaluated by the victims and their representative organizations.⁵⁰³

4. Provide Housing

In the friendly settlement agreement, Honduras agreed to provide housing to the named victims in this case.⁵⁰⁴ For the forty-two named victims, thirty-nine homes have been provided, and three remain pending.⁵⁰⁵ The State will have a maximum of one year to provide the remaining homes.⁵⁰⁶ The State will provide any remodeling work necessary to maintain the livability and accessibility of the homes, especially for those victims who are now disabled and require adaptations, such as access ramps.⁵⁰⁷ The homes will, at a minimum, have running water, electricity, and drainage mechanisms where possible.⁵⁰⁸ The State will also grant full ownership titles to the department of Gracias a Dios and the communal lands.⁵⁰⁹

5. Production of a Documentary

In the friendly settlement agreement, Honduras agreed to produce and broadcast a documentary to inform the Honduran society on the struggles faced by the Miskito people.⁵¹⁰ The State considers this to be a validation of the experiences of the divers and their right to safe employment conditions and proper, quality health care.⁵¹¹ The purpose is also to reduce the stigma surrounding the divers who now suffer from disabilities and educate others on the State’s obligations arising from the friendly settlement agreement and this judgment.⁵¹² The documentary will use IACHR documentation and proven facts to inform the script and content.⁵¹³

⁴⁹⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 118.

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.*

⁵⁰² *Id.*

⁵⁰³ *Id.*

⁵⁰⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 119.

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 120.

⁵¹¹ *Id.*

⁵¹² *Id.*

⁵¹³ *Id.*

The script and content must be approved by the representative organizations before production.⁵¹⁴ The documentary shall be no shorter than 20 minutes and available in the Miskito and Spanish languages.⁵¹⁵ It will not be made public without the approval of the named victims in this case, their family members (if the victim is deceased), or their representative.⁵¹⁶ The documentary is to be disseminated nationally and locally.⁵¹⁷ The production shall begin no more than six months after the parties sign the friendly settlement agreement and completed one year thereafter.⁵¹⁸ It then must be broadcasted at a minimum twice a week over three months on both radio and television.⁵¹⁹

6. Public Act of Acknowledgment

In the friendly settlement agreement, Honduras agreed to hold a public ceremony where the highest authorities and senior institutional representatives are to acknowledge international responsibility and apologize to the victims and their families.⁵²⁰ The State must also publicly commit to the protection of the rights of all Miskito divers who have been affected.⁵²¹ This ceremony shall be held in Puerto Lempira by the end of 2021, on a date and with details agreed upon by the victims.⁵²² The State also agreed to have translators for those who only speak the Miskito language.⁵²³ The State promised to guarantee access to the ceremony through a broadcast on the national television channel and radio station and transportation to the event.⁵²⁴

7. Publication and Dissemination of Judgment

In the friendly settlement agreement, Honduras agreed to publish this judgment's official summary in the Official Gazette, on the State's main institutions' websites, and two nationally circulated daily newspapers, in Spanish and the Miskito languages.⁵²⁵ The State must do so within six months of the judgment and shall notify the Court of its compliance.⁵²⁶

8. Inclusion in Existing Social Programs

In the friendly settlement agreement, Honduras agreed to include the forty-two named victims or, if deceased, their next of kin, in social benefits programs aimed at supporting persons facing social exclusion or vulnerability.⁵²⁷ The State will collaborate with representative organizations make the programs relevant to the Miskito population and the victims who suffered injuries, such as decompression sickness.⁵²⁸ The representative organizations will also take part in drafting regulations for voucher distribution.⁵²⁹

⁵¹⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 120.

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*

⁵¹⁹ *Id.*

⁵²⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 121.

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ *Id.*

⁵²⁴ *Id.*

⁵²⁵ *Id.* ¶¶ 122-123.

⁵²⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 123.

⁵²⁷ *Id.* ¶ 133.

⁵²⁸ *Id.*

⁵²⁹ *Id.*

9. Measures to Regulate Industrial Fishing in the Miskito Territory

In the friendly settlement agreement, Honduras agreed to conduct an analysis of the systemic barriers creating issues in underwater fishing, the primary economic means available to the Miskito people.⁵³⁰ The State will use a framework provided by the ADMH and work in conjunction with representative organizations possessing expertise in the matter.⁵³¹ The analysis is to be completed within a maximum of six months from the signing of the friendly settlement agreement and the results are to be made public.⁵³² Based on the results of the analysis, public policy proposals will be made within one year to address the issues and eradicate the harm indefinitely.⁵³³

Additionally, the State is to conduct a census on the present situation of the Miskito divers.⁵³⁴ This will provide accurate information to better monitor compliance with newly implemented regulations.⁵³⁵ Also, the State will collect data on active divers, divers who suffer from disabilities, families with members who have died from diving, and the employers and companies responsible for the injuries of the divers.⁵³⁶ This data will be updated continuously.⁵³⁷

Further, the State will implement a permanent program to supervise and oversee fishing companies who operate on land and the high seas to ensure compliance with international human rights standards.⁵³⁸ State appointed public servants will conduct labor compliance inspections due to the natural hazards of the diving occupation to prevent future accidents and illnesses.⁵³⁹ The measures put in place will also ensure adequate remedy when labor regulations are violated.⁵⁴⁰

Within two years of the parties signing the friendly settlement agreement, the State will establish the Safe Fishing Certification Program.⁵⁴¹ This State operated program will ensure the rights to integrity and life of the divers and will aim to prevent future accidents.⁵⁴² Certification will be contingent on the physical and mental health of diving personnel, participation in a safe diving course, and knowledge of maritime safety and work skills.⁵⁴³ Fishing companies will be required to adopt fishing regulations, human rights policies, and due diligence processes to avoid human rights violations.⁵⁴⁴

10. Improving the Health System for Inclusive Social Development

In the friendly settlement agreement, Honduras agreed to implement a more robust public health system in La Mosquitia to ensure there is adequate infrastructure to provide care in the region.⁵⁴⁵ The health centers will be sufficiently staffed and provide culturally relevant training

⁵³⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 134.

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.* ¶ 135.

⁵³⁵ *Id.*

⁵³⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 135.

⁵³⁷ *Id.*

⁵³⁸ *Id.* ¶ 136.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.* ¶ 137.

⁵⁴² Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 137.

⁵⁴³ *Id.*

⁵⁴⁴ *Id.* ¶ 138.

⁵⁴⁵ *Id.* ¶ 140.

to care for the local community members.⁵⁴⁶ In addition to a more comprehensive medical care program, there will be sufficient personnel to care for individuals who are unable to leave their homes due to permanent disabilities.⁵⁴⁷

The Puerto Lempira hospital will be updated with the equipment necessary to provide care to individuals who suffer diving accidents.⁵⁴⁸ The State will strengthen the hyperbaric chamber treatment offered at the hospital to ensure access to the hyperbaric chamber in the event of an accident, free of charge.⁵⁴⁹ The State will also maintain and update the chamber as needed and provide trained staff to operate the chamber.⁵⁵⁰

The State will also undertake to comply with the Protocol for the Prevention and Care of Persons with Decompression Sickness.⁵⁵¹ Adaptations will be based on expert opinions will be made within six months of the signing of the friendly settlement agreement.⁵⁵² The Court emphasized that disabilities are created by society, not the individual.⁵⁵³ The State must take into consideration the existing barriers that prevent disabled individuals from exercising their rights to their fullest potential and implement policies to remedy the challenges they face.⁵⁵⁴

11. Awareness and Sensitization Campaign

Honduras agreed to, within six months of the parties signing the friendly settlement agreement, design and implement an informational campaign to notify Honduran society of the systemic human rights violations faced by Miskito divers.⁵⁵⁵ The campaign will stress the importance of protecting the rights of indigenous and disabled persons.⁵⁵⁶ This will be a national campaign and the information disseminated will be provided in both Spanish and Miskito languages.⁵⁵⁷

12. Continued Investigation of the Facts to Prosecute Those Responsible

In the friendly settlement agreement, Honduras agreed to diligently pursue all necessary courses of action to identify the individuals responsible for the divers' injuries.⁵⁵⁸ These individuals are to be punished, criminally or civilly, as appropriate.⁵⁵⁹

13. Exhaustive Search of Missing Victims

In the friendly settlement agreement, Honduras agreed to undertake a diligent search for the seven victims who are still missing, including the sixteen-year-old child.⁵⁶⁰ The State will

⁵⁴⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 140.

⁵⁴⁷ *Id.* ¶ 137.

⁵⁴⁸ *Id.* ¶ 141.

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.* ¶ 142.

⁵⁵² Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 142.

⁵⁵³ *Id.* ¶ 143.

⁵⁵⁴ *Id.*

⁵⁵⁵ *Id.* ¶ 144.

⁵⁵⁶ *Id.*

⁵⁵⁷ *Id.*

⁵⁵⁸ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 145.

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.* ¶¶ 146-147.

work in conjunction with the victims' families.⁵⁶¹ The search should begin no more than six months after the signing of the friendly settlement agreement.⁵⁶²

14. Adoption of Measures to Ensure Access to Justice

In the friendly settlement agreement, Honduras agreed to take all relevant actions and measures to ensure access to justice for the Miskito population.⁵⁶³ In compliance with this commitment, the Court ordered Honduras to do the following: (1) ensure the right of workers to file labor disputes to competent judicial authorities; (2) provide a specialized forum with exclusive jurisdiction over labor matters; (3) take consideration of gender in labor dispute resolutions; (4) implement specialized procedures which account for the complexities of labor issues; (5) distribute evidentiary burdens to comport with the power imbalance inherent in labor relations; (6) guarantee free labor justice; and (7) a State guaranteed right to a specialized defense.⁵⁶⁴ Competent translators must be provided to interpret legal matters.⁵⁶⁵

15. Strengthening the Education System

In the friendly settlement agreement, Honduras agreed to provide free education in La Mosquitia to alleviate the educational lag that perpetuates inequality and poverty in the region.⁵⁶⁶ The State will also continue to support the Mistruk National University of Agriculture and the photovoltaic project there.⁵⁶⁷ The Ministry of Education and ADMH will work cooperatively to increase the educational budget throughout the Gracias a Dios department to provide the schools with adequate facilities and teaching staff who speak Miskito.⁵⁶⁸ The educational programs will be of a high quality and culturally relevant to students in the region.⁵⁶⁹ The State will present a plan of action within twelve months of the parties signing the friendly settlement agreement.⁵⁷⁰

16. Adoption of Measures to Ensure Access to all Public Institutions

In the friendly settlement agreement, Honduras agreed to determine the modifications necessary to ensure persons with disabilities have equal access to public spaces.⁵⁷¹ Within three years, all modifications should be completed under a universal design.⁵⁷² Any new public institutions shall be constructed following this universal design.⁵⁷³

⁵⁶¹ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 146-147.

⁵⁶² *Id.* ¶ 147.

⁵⁶³ *Id.* ¶ 148.

⁵⁶⁴ *Id.* ¶ 149.

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.* ¶ 150.

⁵⁶⁷ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 150.

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.*

⁵⁷¹ *Id.* ¶ 151.

⁵⁷² *Id.*

⁵⁷³ Lemoth Morris et al. (*Miskito Divers*) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 151.

B. Compensation

The friendly settlement agreement, as endorsed by the Court, awarded financial damages for non-pecuniary damages, pecuniary damages, and costs and expenses.⁵⁷⁴ The representatives of the victims requested the compensation award amounts to be kept confidential in the judgment.⁵⁷⁵ The following are descriptions of the amounts endorsed by the court:

1. Non-Pecuniary Damages

The friendly settlement agreement awarded direct compensation to the forty-two named victims, and each of the named families.⁵⁷⁶ The amounts agreed upon were determined by prior jurisprudence of this Court.⁵⁷⁷

2. Pecuniary Damages

The State acknowledged the loss of income and expenses incurred as a result of the accidents suffered by the victims.⁵⁷⁸ The friendly settlement agreement awarded direct compensation to the forty-two named victims and 230 named family members listed in the annex of the report.⁵⁷⁹ If the victim is deceased, then compensation will be awarded equally to any surviving family members.⁵⁸⁰ If the victims or their families have not yet been reachable, the State will continue making efforts to contact them for the purpose of compensation distribution.⁵⁸¹ After five years, if the State is unable to contact a named beneficiary, the amount will be distributed to the Miskito associations signatory to the friendly settlement agreement for the benefit of the Miskito people.⁵⁸²

The friendly settlement agreement guaranteed payment in two disbursements: 35% in the 2021 fiscal year and 65% in 2022.⁵⁸³ Should there be a failure to make payment, a beneficiary may seek a ruling by this Court to address any pecuniary consequences and additional suffering caused.⁵⁸⁴

3. Costs and Expenses

The Court determined a set amount to be awarded as payment of costs and expenses to AMHBLI, which must be paid within six months of the judgment.⁵⁸⁵

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

[Confidential]

⁵⁷⁴ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 124.

⁵⁷⁵ *Id.* ¶ 16.

⁵⁷⁶ *Id.* ¶ 125.

⁵⁷⁷ *Id.*

⁵⁷⁸ *Id.* ¶ 126.

⁵⁷⁹ *Id.* ¶ 127.

⁵⁸⁰ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 127.

⁵⁸¹ *Id.*

⁵⁸² *Id.*

⁵⁸³ *Id.* ¶ 128.

⁵⁸⁴ *Id.* ¶ 129.

⁵⁸⁵ *Id.* ¶ 132.

C. Deadlines

The State is required to pay the awarded compensation for pecuniary damages, non-pecuniary damages, costs and expenses, within one year of this judgment.⁵⁸⁶

V. LIST OF DOCUMENTS

A. Inter-American Court

1. Decisions on Merits, Reparations and Costs

Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 432 (August 31, 2021).

Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, Concurring Opinion of Judge L. Patricio Pazmiño Freire, Inter-Am Ct. H.R. (ser. C) No. 432 (August 31, 2021).

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2. Court Order on Evidence

Lemoth Morris et al. (Miskito Divers) v. Honduras, Resolution of the President, Inter-Am. Ct. H.R. (ser. C.) (December 17, 2020).

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

Lemoth Morris et al. (Miskito Divers) v. Honduras, Admissibility Report, Report No. 121/09, Inter-Am. Comm'n H.R., Case No. 12.738 (November 12, 2009).

3. Provisional Measures

[None]

4. Report on Merits

⁵⁸⁶ Lemoth Morris et al. (Miskito Divers) v. Honduras, Preliminary Objections, Merits, Reparations, and Costs, ¶ 152.

Lemoth Morris et al. (Miskito Divers) v. Honduras, Report on Merits, Report No. 64/18, Inter-Am. Comm'n H.R., Case 12.738 (May 8, 2008).

5. Application to the Court

Lemoth Morris et al. (Miskito Divers) v. Honduras, Letter of Submission, Inter-Am. Comm'n H.R., Case No. 12.738 (May 24, 2019).