

**REPORT No. 64/18**  
**CASE 12.738**  
REPORT ON THE MERITS  
OPARIO LEMOTH MORRIS AND OTHERS (MISKITO DIVERS)  
HONDURAS  
MAY 8, 2018

**I. SUMMARY**

1. On November 5, 2004, the Inter-American Commission on Human Rights (hereinafter the Commission or the IACHR) received a petition filed by Arquímedes García López, Cendela López Milton, and Bans López Solaisa (hereinafter the petitioners). Afterwards, the Center for Justice and International Law (CEJIL) was established. The petition alleged that the State of Honduras (hereinafter the State or the Honduran State) was responsible for violating several rights to the detriment of the divers of the Miskito indigenous people who live in the department of Gracias a Dios.

2. According to the petitioners, the State failed to fulfill its obligation to oversee the working conditions of the divers of the Miskito indigenous people who are engaged in underwater fishing. They pointed out that these persons were the victims of labor exploitation, which has led to the deaths of many of them or to physical disabilities, a situation which has not been duly addressed by the State. They added that domestic proceedings have not been effective in securing reparations and justice. They alleged that the case is part of a structural problem of poverty, neglect, and exclusion that the State has not tackled.

3. As for the State, it pointed out that it did not incur any international responsibility because it has a legal system that adequately governs labor ties between employers and workers, including the situation of the Miskito divers. It contended that, at all times, their rights were respected and that, in those cases where abuses were reported, sound and diligent investigations were conducted to determine who was responsible in order to determine compensation for their benefit.

4. After examining available information, the Commission concluded that the State of Honduras is responsible for the violation of the rights to life, personal integrity, prohibition of slavery and servitude, a fair trial, protection of the family, rights of the child, equality and non-discrimination, judicial protection, and the progressive development of the rights to health and work as enshrined in Articles 4.1, 5.1, 6.1, 6.2, 8.1, 19, 24, 25.1, and 26 of the American Convention on Human Rights (hereinafter the American Convention or the Convention), in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument, to the detriment of the persons who are specified throughout the present report and its annexes. The Commission made the respective recommendations.

**II. PROCEEDINGS BEFORE THE IACHR**

5. On November 5, 2004, the Commission received the initial petition. The proceedings, from the filing of the petition up to the decision on admissibility, are explained in detail in the report on admissibility 121/09 issued on November 12, 2009.<sup>1</sup>

6. On December 2, 2009, the Commission notified the report to the parties. The petitioners submitted their observations on April 2, 2010. The State submitted its observations on the merits on October 8, 2010. Afterwards, the IACHR received communications from both parties, which were duly forwarded to the respective parties. On October 24, 2011, a hearing was held, attended by both parties, in the framework of the Commission's 143<sup>rd</sup> period of sessions. The State of Honduras indicated, in the stage of the merits, on various

---

<sup>1</sup> IACHR, Report No, 121/09, Petition 1186-04, Admissibility, Opario Lemoth Morris and others (Miskito Divers), Honduras, November 12, 2009. Available at: <https://www.cidh.oas.org/annualrep/2009sp/Honduras1186-04.sp.htm>. In this report, the IACHR ruled that the petition was admissible in connection with the possible violation of the rights enshrined in Articles 4, 5, 6.2, 8, 17.1, 19, 24, 25, and 26 of the American Convention in connection with the obligations set forth in Articles 1.1 and 2 of the same instrument.

occasions, its willingness to start friendly settlement proceedings. The petitioners indicated that they did not wish to engage in this type of proceedings, and its last communication was dated March 23, 2018.

### III. POSITION OF THE PARTIES

#### A. Petitioners

7. They alleged many rights violations to the detriment of 42 divers of the Miskito indigenous people and their relatives who live in the department of Gracias a Dios. They pointed out that these violations took place in a context where private enterprises were hiring these persons to carry out underwater fishing activities and that they subjected them to labor exploitation, to which they were vulnerable because of the poverty and exclusion prevailing in the area.

8. They specified that this labor exploitation was based on the pathetic wages they were paid and deplorable working conditions, leading to the death of several divers and physical impacts which became disabilities for others. Among the conditions alleged by the petitioners, the following are noteworthy: i) the absence of supervision over the diving equipment; ii) abusive treatment by ship captains who required them to dive more than 40 meters deep into the sea; iii) accidents under the effects of drugs, which were permitted and facilitated by ship captains; iv) absence of training; v) failure to provide first aid services when accidents occurred; vi) absence of logistics for the immediate transfer of the person involved in the accident; vii) failure to abide by basic diving safety standards (such as diving with a partner, ongoing access to a vessel equipped with emergency and evaluation systems); and ix) absence of an ambulance with a decompression chamber.

9. According to the petitioners, the State was aware of this situation many years ago and, in spite of that, it refrained from duly supervising and inspecting the activities of the companies working in the area and, specifically, from examining their labor ties with the alleged victims. They added that, although deaths and physical disabilities were reported in the context of this exploitation, the State did not provide any effective response. The context, the facts of the present case, and the proceedings under domestic law are specified in detail in the section entitled "Facts alleged." The petitioners' principal arguments of law are summarized below.

10. In connection with the **right to life**, they alleged that the death of 24 Miskito divers can be imputed directly to the State because it did not adopt the necessary measures for their protection by supervising and inspecting their labor ties and, in some cases, by providing an immediate response to the respective accidents. Likewise, they pointed out that Honduras violated the right to a decent life of the surviving Miskito divers who have remained with physical disabilities and have not received any response for their rehabilitation and empowerment.

11. Regarding the **right to physical integrity**, along the same line as above, they argued that the State violated this right because it had not taken the prevention measures needed to prevent the accidents that led to the physical disabilities of the divers who survived the accidents. In addition, they contended that there was no adequate treatment for their health. In particular, they stressed that they did not benefit from any medical assistance on the fishing vessels nor did they receive any timely treatment in the decompression chamber. They indicated that they had to wait a week and that the treatment was not free of charge.

12. As for the **rights of the child**, they stated that this right was violated when the child Licar Méndez Gutiérrez disappeared. They reported that the child Méndez worked as a *cayuco* [diver's oxygen tank assistant working from a canoe] and disappeared allegedly because he had been abandoned as a punishment meted out by the captain of the fishing vessel where he was working. They added that no investigation of the case was duly conducted.

13. Regarding the **prohibition of slavery and servitude**, in the stage of the merits, the petitioners alleged that the work carried out by the Miskito divers can be viewed as forced labor because it meets the two requirements enshrined in international standards. In particular, they stressed that: i) fishing by diving is the only work that the Miskitos living in the area can do; and ii) they work under conditions that fail completely to provide for their safety under an oppressive system.

14. In connection with the **rights to a fair trial and judicial protection**, they pointed out that, despite awareness about the accidents, deaths, and the disappearance of one of the victims, no criminal investigations of the case were opened ex officio in order to clarify the truth of the facts, to identify those persons responsible, or to impose the corresponding sanctions. The petitioners contended that the administrative resources were inadequate and ineffective to remedy the violations that had been committed.

15. As due process violations in administrative cases, they pointed out the excessive delay in some of them and also that the divers and their next of kin did not benefit from any free legal counsel that the Labor Affairs Prosecution Service should have provided. In addition, they pointed out that the alleged victims did not have any access to translators to communicate with the civil servants, who only speak Spanish. They reported that, in the area, there are no courts and that, in order to reach them, they had to travel to Puerto Lempira or La Ceiba, which are very far away, which is especially difficult for those who have a disability.

16. They contended that, in most cases, the failure of the administrative authorities to apply standards of due diligence has been a determining factor in preventing the administrative stage from being completed. They pointed out that, because the employers did not appear in court and could not be identified because of the absence of any contract or official registration, the additional steps to exhaust administrative proceedings so that judicial proceedings could be filed were not taken. They added that the few compensations ordered in the administrative context were negligible and, in some cases, were not paid because the State did not proceed to place liens on the employers. They contended that this establishes a failure to comply with rulings under domestic law.

17. As for the **right to equality and nondiscrimination**, they alleged that the Miskitos suffer from triple discrimination, as persons belonging to indigenous peoples, living in poverty, and suffering from disabilities. They pointed out that the State has not adopted positive measures to roll back this situation and, on the contrary, the Miskitos engaged in underwater fishing activities do not benefit from any type of protection.

18. In connection with the **right to the progressive development of economic, social, and cultural rights**, the petitioners contended that Article 26 of the American Convention must be interpreted broadly, examining state policies, not merely regulations. They pointed out that the State has not taken the least measures to ensure basic levels of the right to work, neither before nor after the accidents of the Miskitos. They indicated that the diving takes place in precarious labor conditions that jeopardize their lives, personal integrity, and health.

19. They also alleged that the State has not adopted the minimum safety measures to ensure basic levels of the right to social security because: i) employers do not sign any employment contracts with the divers; ii) the exercise of the activity is not subject to any minimum controls by the authorities to ensure that the companies fulfill their obligations and guarantee the protection that social security could provide them with; iii) corrective measures have not been adopted to punish the employers for their failure to affiliate the divers to the social security system; iv) minimum measures have not been taken to guarantee the right of persons with disabilities to social security; and v) no measures have been taken so that the surviving victims can engage in other work activities, thus leaving them completely neglected and without any livelihood to support their families.

20. Regarding the **duty to adopt provisions under domestic law**, they alleged no effective public regulations or policies in terms of labor, health, or social security have been designed or implemented.

21. With respect to the **right to protection of the family**, the petitioners base their allegation on the implications that the accidents of the Miskitos have for the nuclear family.

## **B. State**

22. The State did not challenge the deaths of the divers or the physical impacts leading to disabilities in the surviving divers. It contended that, without detriment to it, these incidents could not be attributed to the State because they were the outcome of accidents that happened in the framework of private-sector business activities. It sometimes argued that it has been determined that “the deaths (...) are due to professional carelessness.” It contended that, because of that, it has provided training so that divers can be fully aware of the time-limits and the decompression tables, because “they are the only ones who can take the decision when to come back up.”

23. It indicated that it provided medical care to the surviving Miskitos and that the Department of Occupational Hygiene and Safety of the Secretariat for Labor Affairs has coordinated actions with the medical services that have served the population of workers who have been exposed to professional risks, for the purpose of having an up-to-date register of affected workers.

24. It also added that there are 27 rural health centers in the department of Gracias a Dios, 18 medical-dental health centers, and that the Hospital of Puerto Lempira now has, since 2009, a hyperbaric chamber that was donated by the United States. It reported that, with this chamber, 65 divers were taken care of, and that 99% recovered their faculties. According to the documentation received by the Commission, none of the alleged victims received that treatment.

25. Nor does the State deny the conditions in which the diving activities are taking place, according to the terms described by the petitioners. It contended that, because of this situation, it has adopted various measures such as inspections and training. It also recognized that said actions can be hampered by the difficulty of accessing the area. The State submitted information on the various measures and standards that it is implementing to prevent further accidents. It also referred to social security, health, and labor policies focusing on underwater fishing.

26. The State pointed out that, although it has adopted these measures, it is not always possible to fully prevent every accident. It explained that, to a large extent, the satisfaction stemming from the hiring of the Miskitos depends on their bargaining power. It also stressed that, in a highly remote area such as that of Mosquitia, it is much more difficult for the State to regulate the work of these persons. It added that, in some cases “the divers themselves overestimate their own physical capabilities leading to the adverse outcomes that you already know of.”

27. In connection with the allegation of the existence of forced labor, the State argued that it conducts inspections of the fishing vessels, aimed at finding out whether or not i) there is a contract signed between the employer and the worker; ii) they have the occupational safety regulations for underwater fishing; iii) the certificate from the safe diving course; and iv) the medical certificate for occupational fitness, the diving equipment and personal assistance, the radio and communication system, and first aid services.

28. The State reported that, before resorting to judicial proceedings, administrative claims must be filed with the Secretariat for Labor Affairs and Social Security. It explained that, if the employer does not show up for the hearings or if a settlement is not reached, the worker is given an affidavit indicating that the administrative proceedings have been completed, thus authorizing the worker to go to the labor affair courts and file a work-related lawsuit. It alleged that, in the present case, the Miskitos did not go to the judicial body for lack of initiative, not because of the State’s failure to provide due diligence nor because of problems in the administrative jurisdiction. Furthermore, the State pointed out that, if no legal defense is available, the Labor Affairs Prosecution Service is in charge of providing assistance and the petitioners cannot allege that there is mistrust in said institution.

29. It also alleged that, according to its Constitution, interpreters must be provided in those cases where they are required. It contended that most of the civil servants of the judicial system of the department of Gracias a Dios are from and live in the area, as a result of which they all speak the Miskito language. It

contended that, although there are difficulties in terms of transportation, it is not true that the Miskitos who suffer from physical disabilities cannot travel to the administrative or judicial offices.

30. As for the alleged failure to implement judgments, the State pointed out that, if the parties do not identify the assets on which to place liens, the judge himself cannot undertake these investigations. The State contended that the difficulty of implementing a favorable judgment affects not only the Miskitos. It pointed out that there have been judgments favorable to the State and that they have not been implemented because of the insolvency of the persons referred to. It also pointed out that, in some cases, the proceedings ended in settlement, as a result of which compensation payments were made.

#### **IV. FACTS ALLEGED**

##### **A. The Miskito indigenous people in the department of Gracias a Dios**

31. The Miskitos are a binational indigenous people and they occupy territories on both sides of the Honduras-Nicaragua border. By 2003, Honduras had a population of about 40,000 Miskitos, who are for the most part in the rural area of the department of Gracias de Dios.<sup>2</sup> This department has a surface area of 16,999 km<sup>2</sup> and has six municipalities: Puerto Lempira, Juan Francisco Bulnes, Brus Laguna, Villeda Morales, Ahuas, and Wampusirpe.<sup>3</sup>

32. According to reports from the World Bank and the United Nations Development Programme (hereinafter UNDP), in 2003, the department of Gracias de Dios had high rates of poverty, illiteracy, unemployment, chronic malnutrition, absence of sanitation services and energy, absence of sources of water and sanitation, among other aspects. In 2003, although it is the second largest department of Honduras, it only had one hospital, located in the department's capital, the municipality of Puerto Lempira.<sup>4</sup> According to a report by the Pan American Health Organization (hereinafter PAHO), there are not many possibilities for formal job opportunities, and because of its geographic location and the high costs of travelling there, there is no meaningful government presence or control.<sup>5</sup>

33. As for the IACHR, on the occasion of its onsite visit between December 1 and 5, 2014, it continued to document that this region, with most of the population belonging to the Miskito indigenous population, continues to be one of the poorest and remotest areas of Honduras, without any highway connecting it to the rest of the country and only accessible by air or sea.<sup>6</sup>

##### **B. Underwater fishing by Miskito divers, the conditions in which they work, their impacts, and proceedings under domestic law**

34. According to PAHO, the export of lobsters is one of the main sources of income for Honduras.<sup>7</sup> The petitioners indicated that, at the beginning, the lobsters were caught using traditional methods,<sup>8</sup> but because of the rapid and highly valued marketing of lobsters, diver-based fishing started being used, which is an activity principally engaged in by the Miskitos,<sup>9</sup> who have exceptional diving skills and are known as the best skin divers [free divers] in the world.<sup>10</sup> The IACHR also documented this situation, pointing out that lobster

---

<sup>2</sup> AMHBLI Project to Clarify the Legal Situation of Multiple Labor Complaint Cases Filed by Divers with the Ministry of Labor, September 24, 2003. Annex to the communication from the petitioners received on November 5, 2004.

<sup>3</sup> Communication from the petitioners received on November 5, 2004.

<sup>4</sup> World Bank. Conceptual framework for intervention in indigenous and black communities with the project "facilitating trade and increasing competitiveness." 2003. Annex to the communication from the petitioners of April 2, 2010. United Nations Development Programme. Report on Human Development in Honduras, 2003. Annex to the communication from the petitioners of April 2, 2010.

<sup>5</sup> Pan American Health Organization. Human Rights and Disability among Indigenous Peoples. Integral Healthcare Services for the Miskito Divers in Honduras. 2004. Available at: [http://cidbimena.desastres.hn/filemgmt/files/MISKITO\\_Derechos.pdf](http://cidbimena.desastres.hn/filemgmt/files/MISKITO_Derechos.pdf)

<sup>6</sup> IACHR. Report on the Situation of Human Rights in Honduras. OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015, para. 427.

<sup>7</sup> Pan American Health Organization. Human Rights and Disability among Indigenous Peoples. Integral Healthcare Services for the Miskito Divers in Honduras. 2004. Available at: [http://cidbimena.desastres.hn/filemgmt/files/MISKITO\\_Derechos.pdf](http://cidbimena.desastres.hn/filemgmt/files/MISKITO_Derechos.pdf)

<sup>8</sup> Communication from the petitioners received on November 5, 2004.

<sup>9</sup> Pan American Health Organization. Human Rights and Disability among Indigenous Peoples. Integral Healthcare Services for the Miskito Divers in Honduras. 2004. Available at: [http://cidbimena.desastres.hn/filemgmt/files/MISKITO\\_Derechos.pdf](http://cidbimena.desastres.hn/filemgmt/files/MISKITO_Derechos.pdf)

<sup>10</sup> Communication from the petitioners received on November 5, 2004.

fishing constitutes the principal source of work in the area, “especially for Miskito men, who start this kind of activity when they are about 14 years old.”<sup>11</sup>

35. According to PAHO, the illnesses that can appear from deep diving, as in the case of the Miskito divers, are as follows: i) drowning; ii) arterial gas embolism (AGE); iii) lung overpressure; iv) the bends (decompression sickness) (DCS); v) hypothermia; vi) barotrauma; v) carbon monoxide poisoning, among others.<sup>12</sup>

36. Several of these problems occur because of high underwater pressure, in particular decompression; the appropriate treatment is to put the diver in a hyperbaric chamber.<sup>13</sup> Inside the hyperbaric chamber the atmospheric pressure is changed in order to simulate diving conditions so that when the diver is inside he can breathe in oxygen and exhale carbon dioxide. The length of the time of treatment depends a great deal on each patient and each injury.<sup>14</sup> Although access to treatment in hyperbaric chambers is indispensable in cases of very deep diving, the role of the rehabilitation services that are carried out afterwards is essential for the adequate recovery of the divers.<sup>15</sup> The impacts of decompression include the destruction of bony tissue, mainly in the arms or legs, which can lead to irreversible paralysis.<sup>16</sup> In certain cases, the injury is so severe that it cannot be remedied, even with appropriate treatment.<sup>17</sup>

37. According to PAHO, most accidents are preventable by ensuring sound bodily fitness and suitable training. For preventive purposes, the divers must: i) refrain from drinking alcohol, smoking, or using illicit drugs; ii) always dive with someone else; iii) speed of ascent must be slower than 60 feet per minute; iv) no ascending above sea level; v) no more than three dives per day; and vi) keep contact between the vessel and the shore. In addition, the vessels must carry oxygen tanks on board and the equipment must be reviewed periodically.<sup>18</sup>

38. The National Human Rights Commissioner (*Comisionado Nacional de los Derechos Humanos*, hereinafter CONADEH) and the Honduran Miskito Association for Injured Divers (*Asociación Miskitos Hondureños de Buzos Lisiados*, hereinafter la AMHBLI) indicated that, since 2001, when the Miskitos began to be recruited to be divers they have not received any training on diving techniques or safety measures to be adopted, especially when they engage in very deep diving; in addition, in the area, there is no school or training center for safe diving. CONADEH, in its 2001 report, pointed out that the Miskito divers did not receive any medical assistance from their employers and that, in the event of an accident during their diving activities, their right to rehabilitation treatment is not recognized. It also indicated that a high percentage of persons impacted did not receive any compensation for the injuries sustained.<sup>19</sup> According to the Honduran Miskito Association for Injured Divers, most Miskitos with a disability earn their livelihood by begging.<sup>20</sup>

39. According to the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage (*Fiscalía Especial de Etnias y Patrimonio Cultural*), in its 2001 report, the Miskitos receive 45 lempiras per

<sup>11</sup> IACHR. Report on the Situation of Human Rights in Honduras. OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015. Para. 428.

<sup>12</sup> Pan American Health Organization. Human Rights and Disability among Indigenous Peoples. Integral Healthcare Services for the Miskito Divers in Honduras. 2004. Available at: [http://cidbimena.desastres.hn/filegmt/files/MISKITO\\_Derechos.pdf](http://cidbimena.desastres.hn/filegmt/files/MISKITO_Derechos.pdf)

<sup>13</sup> Merck Manual of Medical Information—Home Edition. Accidents and injuries. Diving injuries. Annex to the communication from the petitioners received on November 5, 2004.

<sup>14</sup> Interview with Rafael Díaz, physician at the Cornerstone Hyperbaric Chamber and Medical Clinic, on January 25, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>15</sup> Pan American Health Organization. Human Rights and Disability among Indigenous Peoples. Integral Healthcare Services for the Miskito Divers in Honduras. 2004. Available at: [http://cidbimena.desastres.hn/filegmt/files/MISKITO\\_Derechos.pdf](http://cidbimena.desastres.hn/filegmt/files/MISKITO_Derechos.pdf)

<sup>16</sup> Merck Manual of Medical Information—Home Edition. Accidents and injuries. Diving injuries. Annex to the communication from the petitioners received on November 5, 2004.

<sup>17</sup> Merck Manual of Medical Information—Home Edition. Accidents and injuries. Diving injuries. Annex to the communication from the petitioners received on November 5, 2004.

<sup>18</sup> Pan American Health Organization. Human Rights and Disability among Indigenous Peoples. Integral Healthcare Services for the Miskito Divers in Honduras. 2004. Available at: [http://cidbimena.desastres.hn/filegmt/files/MISKITO\\_Derechos.pdf](http://cidbimena.desastres.hn/filegmt/files/MISKITO_Derechos.pdf)

<sup>19</sup> National Human Rights Commissioner of Honduras (CONADEH). Final Report. Organizational Capacity Building of Ethnic Groups and Divers of the Department of Gracias a Dios, Honduras. 2001. Annex to the communication from the petitioners received on November 5, 2004.

<sup>20</sup> AMHBLI Project to Clarify the Legal Situation of Multiple Labor Complaint Cases Filed by Divers with the Ministry of Labor, September 24, 2003. Annex to the communication from the petitioners received on November 5, 2004.

pound of lobster, money with which they must also pay the *cayuquero* [child assistant in a small dugout canoe]. It added that the divers worked between 12 and 17 full days without a break and that their work was imposed upon them by the ship's captain. In addition, it stressed that they only receive their wages when the product has been paid for by the packing company and until that happens, the owners of the vessels give the divers "loans" in the form of food, liquor, and clothes and that afterwards these amounts were discounted from the divers when their wages were paid.

40. According to the Prosecution Service itself and the Inter-American Development Bank, in 2001, it was recorded that the following diving regulations were breached: i) absence of adequate nutrition and on occasion bad food; ii) drug use encouraged by the ship captains themselves; iii) vessel capacities exceeded; iv) the quality of the diving equipment is not inspected and accidents have occurred as a result of the exploding SCUBA cylinders and system obstruction; and v) ship captains require the divers, under threat including with firearms, to deep dive down to 140 feet (more than 40 meters).<sup>21</sup>

41. On May 30, 2001, Executive Agreement No. STSS 116-01 was issued by the State Secretariat in the Offices for Labor Affairs and Social Security, whereby the Occupational Safety and Health Regulations for Underwater Fishing were adopted. In one of the considering clauses, the following is indicated:

That, because of the high rate and severity of the professional risks recorded in underwater fishing activities, there is an urgent need to establish standards of a regulatory nature to facilitate the enforcement of Title V and the other provisions appearing in the Labor Code on the protection of the health of workers to tackle the risks stemming from underwater fishing working conditions.

42. The Regulation sets forth the minimum safety and health requirements that must be met to carry out activities in fishing vessels. It indicates that failure to fulfill the obligations of the employers shall be punished by the Secretariat for Labor Affairs and Social Security, which shall evaluate and score the infringements and impose sanctions enforcing the provisions set forth in the Labor Code.<sup>22</sup>

43. In August 2002, the Secretariat for Labor Affairs and Social Security, the Secretariat for Governance and Justice, the organization Handicap International, and AMHBLI met to agree on commitments to be made to improve the situation of the Miskito divers. In the minutes of said meeting, it was agreed that "it is a responsibility of the State to coordinate the search for a solution to the problem of the injured divers of Moskitia" and that it is necessary to establish a compensation fund that would make it possible to provide better living conditions to the affected persons. It also pointed out that "it is indispensable to have an ambulance ship that has a decompression chamber."<sup>23</sup>

44. Despite the above, PAHO, in its 2004 report, pointed out that: i) the Miskito divers continued to not receive any suitable training by the companies hiring them; ii) they were using obsolete diving equipment without suitable maintenance; and iii) they would stay in very deep water for too long and would return to the surface too quickly, in breach of diving safety regulations. In the same report, it was indicated that, because of this situation, 97% of the Miskito divers have shown signs of some degree of the bends (decompression sickness), and at least 4,200 Miskitos have presented a disability. PAHO also contended that the rise in use of cocaine, marijuana, and liquor to mitigate secondary pain associated with decompression sickness is an aggravating element.<sup>24</sup>

45. A 2007 report from the International Labor Organization (hereinafter ILO) continues to refer to the problem. Therefore, it indicates that the owners of the fishing vessels, for the most part U.S. and European

---

<sup>21</sup> Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage. Inter-American Development Bank. Study on the Problems of the Divers of La Mosquitia Region on Honduras. Honduras. 2001. Annex to the communication from the petitioners received on November 5, 2004.

<sup>22</sup> Occupational Safety and Health Regulations for Underwater Fishing. Available at: <http://faolex.fao.org/docs/pdf/hon33886.pdf>

<sup>23</sup> Minutes of the meeting of August 13, 2002. Annex to the communication from the petitioners received on November 5, 2004.

<sup>24</sup> Pan American Health Organization. Human Rights and Disability among Indigenous Peoples. Integral Healthcare Services for the Miskito Divers in Honduras. 2004. Available at: [http://cidbimena.desastres.hn/filegmt/files/MISKITO\\_Derechos.pdf](http://cidbimena.desastres.hn/filegmt/files/MISKITO_Derechos.pdf)

companies, recruit young Miskito males to be divers, who are taken in small dugout canoes called *cayucos* to the fishing vessels. According to this report, the Miskito divers did not have any access to a hyperbaric chamber because the only one in the department is for private use. In the same report, it was indicated that, out of every 10 divers, 4 would have an accident and at least one of the latter would die. The ILO contended that on September 2007 about 4,500 Miskito children were experiencing a situation of great vulnerability because their fathers had a disability or had died. It added that the rates of child labor are high in that area because Miskito children work as *cayuqueros*, that is, taking the dugout canoe (*cayuco*) in which the diving equipment is carried. The children also work as offloaders of ships at the ports.<sup>25</sup>

46. In its observations in 2014, the United Nations Committee on the Elimination of Racial Discrimination pointed out that it “regrets the lack of information about measures taken to assist divers who have developed a disability and to prevent this abusive practice” and voiced its concern about the situation of the Miskito divers “who suffer work injuries because minimum safe diving conditions are not in place.”<sup>26</sup>

47. As for the IACHR, in its 2015 report on the Situation of the Human Rights in Honduras, it continued to document this situation, taking into account a series of testimonies according to which the only source of work is diving, which continues to be carried out without minimum safety conditions. On the basis of information received by the IACHR from its onsite visit, it highlights the following:

(...) the work of the divers takes place informally without any contract or safety, and involves the use of defective equipment and exploitation. (...) the equipment used for diving is old and does not benefit from any maintenance, nor is there adequate training, which is provided by co-workers who have not had any training either. The divers spend periods of time diving extending from 12 to 17 days and in order to fish larger amounts of seafood, they have to stay for a long time deep in the sea and go back to the surface very quickly against diving safety standards. All of this takes place without due supervision by the State. Therefore, divers run the risk of suffering from preventable accidents such as drowning or decompression sickness.

(...) as a result of these conditions, various Miskito divers have died or sustained permanent physical and mental injuries. (...)

The absence of rehabilitation measures and a hyperbaric chamber that would be able to immediately help divers suffering from decompression sickness in La Mosquitia has led to permanent disabilities for hundreds of them over the years. Nevertheless, neither the company selling the lobsters that gives them work nor the State has adopted measures to prevent this situation from continuing or to take care of those suffering from some type of disability.

The Commission was informed that, in 2013, 20 persons were reported dead as a result of underwater fishing accidents and about 400 persons were reported injured. Honduras is the country that has the world's highest number of persons suffering from decompression sickness. Likewise the State does not keep a log with information about accidents sustained or the number of divers injured or killed.

The IACHR learned as well that, once the Miskito divers are physically disabled for life, they find no empowerment, rehabilitation, medical care, or any other employment alternatives (...).

Even when they start living as injured persons, because of the absence of other job alternatives, on many occasions Miskito divers continue to carry out their respective activities. According to information received by the Commission, the above leads to worsening of the disability and even more severe impacts on the family, such as difficulties in ensuring access to education for those who depend on them financially and breakup of the nuclear family.

<sup>25</sup> International Labor Organization. Child Labor and Indigenous Peoples. The Case of Honduras. 2007. Available at: [http://www.unicef.org/honduras/pueblos\\_indigenas.pdf](http://www.unicef.org/honduras/pueblos_indigenas.pdf)

<sup>26</sup> United Nations, Committee on the Elimination of Racial Discrimination. Concluding observations on the combined initial and second to fifth periodic reports of Honduras, 13 March 2014.

According to the information received, there are no mechanisms to supervise the working conditions of the Miskito divers. Also, there is little presence of the State in the area to offer protection and judicial guarantees for the divers. The State indicated that it would examine the subject in depth to find a solution.<sup>27</sup>

48. As for the resources available to the Miskito divers, AMHBLI pointed out that the proceeding to secure compensation is as follows: i) filing the labor complaint at the office of the Secretariat for Labor Affairs in La Ceiba or Tegucigalpa; ii) subpoenaing the employer so he can admit or not admit the fact; iii) medical ruling of temporary disability and for compensation; iv) calculating the labor entitlements by the Secretariat for Labor Affairs based on the data submitted by the worker; v) notifying the employer; and vi) submitting the labor complaint.<sup>28</sup>

49. The State Secretariat in the Offices for Labor Affairs and Social Security indicated that most compensations paid to Miskito divers have been agreed upon without having done the calculation pertaining to each case, because the claimants had to be evaluated by specialized physicians of the Ministry of Labor.<sup>29</sup>

50. AMHBLI also contended in its report that, in 2001, the Miskito divers with disabilities received between 2,000 and 20,000 lempiras in the framework of a supposed agreement outside formal proceedings, amounts that are equivalent to about 1% of the real amount of the harm. AMHBLI explained that disabled divers accept these agreements because of their needs, whereas formal proceedings might require delays of between six months and one year, and also because they do not benefit from the advisory services they need in their own language. It added that, on many occasions, the affected diver is misled by the employer who verbally offers to provide him further economic support, and there are clues indicating that certain employees of the Secretariat are bribed and collude with the employers in the above-mentioned settlements.<sup>30</sup>

### **C. On the situation of the alleged victims**

51. For the facts alleged below, the IACHR takes note of the documentation submitted by both parties, including letters of administrative or judicial case files and statements made by the alleged victims or their next of kin. The IACHR observes that, in some cases, there are inaccuracies about the dates of the accidents, as well as minimum differences in the names of the alleged victims. The Commission believes that these inaccuracies do not undermine the consistency of the information provided. Furthermore, the IACHR stresses that the State of Honduras has not challenged the occurrence of the facts described below.

52. In addition, throughout the proceedings, the petitioners referred to 43 alleged victims but they did not submit specific information about one of them, Especel Bradle Valeriano. The Commission observes that, from the case file, it has emerged as a reference that Mr. Bradle Valeriano submitted to the authorities under domestic law information about the decease of his brother-in-law Roger Gómez Alfred, one of the alleged victims of the case. In addition, the IACHR observes that the petitioners stated that it does not have information on the circumstances and consequences of the accidents suffered by Mr. Bradle Valeriano and that they have not had access to the respective administrative or judicial records.<sup>31</sup> Consequently, said person will only be considered as an alleged victim as a relative of Mr. Gómez, as indicated in the only annex.

53. In that regard, the IACHR proceeds to engage in specifying the alleged facts about the situation of 42 alleged victims and their next of kin, including in each case the information available about each one of them, the accident(s) of each, and the response obtained from the state authorities.

<sup>27</sup> IACHR. Report on the Situation of Human Rights in Honduras. OEA/Ser.L/V/II. Doc. 42/15. December 31, 2015. Paragraphs 427-435.

<sup>28</sup> AMHBLI Report. Review of the Situation of Injured Divers of the Miskito Area. Annex to the communication from the petitioners received on November 5, 2004.

<sup>29</sup> Secretary of State in the Offices for Labor Affairs and Social Security. General Social Security Department. Annex to the documentation submitted by the State at the hearing held during the 143<sup>rd</sup> Period of Sessions of the IACHR.

<sup>30</sup> AMHBLI Report. Review of the Situation of Injured Divers of the Miskito Area. Annex to the communication from the petitioners received on November 5, 2004. Regarding irregularities in administrative proceedings, see also: Communication from AMHBLI and Handicap International of October 11, 2003. Annex to the communication from the petitioners received on November 5, 2004.

<sup>31</sup> Observations on the merits from the petitioners, April 2, 2010.

## 1. Opario Lemoth Morris

54. In 2001, Opario Lemoth Morris was working as a diver for the fishing vessel *Copya María* owned by Geovany Py Gop.<sup>32</sup> On May 2, 2001, Mr. Lemoth Morris died after a very deep dive.<sup>33</sup> According to the records of the Principal Guard's Office of Departmental Police Station No. 9 of the National Preventive Police Force headquartered at Puerto Lempira, in the department of Gracias a Dios, the death of Opario Lemoth Morris "was caused by diving."<sup>34</sup>

55. On that same day, May 2, 2001, the Departmental Civil Court of Puerto Lempira received 2,000.00 lempiras from Mr. Geovany Py Gop for Opario Lemoth Morris.<sup>35</sup> Agustina Saldaña Morris stated that the amount received barely paid for burial expenses.<sup>36</sup>

56. Agustina Saldaña also indicated that, although judicial proceedings had been filed with the Court of Justice of the Peace and the Civil Court Judge, no steps were taken and the payment of compensation was not ordered.<sup>37</sup> Ms. Saldaña added that the Civil Court Judge told her that the case file had gone missing.<sup>38</sup>

## 2. Flaviano Martínez López

57. From the labor complaint filed by Flaviano Martínez it has been concluded that, on August 22, 1992, he had an accident while working on the fishing vessel *Mosquitia Express* owned by Arcadio Waldemar Molina. He indicated that, when surfacing after having dived to a depth of 21 strokes and after having finished two cylinders of oxygen, he started feeling acute dizziness, vomiting, and severe chest pain.<sup>39</sup> He pointed out that his extremities were numb.<sup>40</sup>

58. Mr. Martínez indicated that, a week after the accident, he was taken to the Vicente D'Antoni Hospital in the city of La Ceiba.<sup>41</sup> He claimed that he was not taken to a hyperbaric chamber.<sup>42</sup> According to medical certificates, Mr. Martínez was diagnosed with the bends (decompression sickness), light-sensitive migraines, and musculoskeletal sequelae, as well as post-traumatic low back pain, multi-deficiency syndrome, and a history of lower spinal cord underwater injury.<sup>43</sup>

---

<sup>32</sup> Death record issued by Departmental Headquarters No. 9 of the National Preventive Police Force of the Secretariat for Security on February 19, 2002. Annex to the initial petition received on November 5, 2004.

<sup>33</sup> Legalization of death certificate, September 24, 2002, issued by the National Vital Statistics Office. Annex to the initial petition received on November 5, 2004.

<sup>34</sup> Death record issued by Departmental Headquarters No. 9 of the National Preventive Police Force of the Secretariat for Security on February 19, 2002. Annex to the initial petition received on November 5, 2004.

<sup>35</sup> Receipt in the amount of 2,000 lempiras dated May 2, 2001, stamped with the seal of the Secretariat of the Supreme Court of Justice. Annex to the initial petition received on November 5, 2004.

<sup>36</sup> Interview with Agustina Saldaña Morris on October 15, 2014. Audio No. 1. Annex to communication from the petitioners, February 12, 2015.

<sup>37</sup> Interview with Agustina Saldaña Morris on October 15, 2014. Audio No. 1. Annex to communication from the petitioners, February 12, 2015.

<sup>38</sup> Interview with Agustina Saldaña Morris on October 15, 2014. Audio No. 1. Annex to communication from the petitioners, February 12, 2015.

<sup>39</sup> Regular labor complaint filed with the court of first instance for seizure of compensation for occupational accident and temporary disability, signed with the fingerprint presumably belonging to Flaviano Martínez López, dated March 20, 2001. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>40</sup> Interview with Flaviano Martínez López on October 15, 2014. Audio No.14. Annex to communication from the petitioners, February 12, 2015.

<sup>41</sup> Regular labor complaint filed with the court of first instance for seizure of compensation for occupational accident and temporary disability, signed with the fingerprint presumably belonging to Flaviano Martínez López, dated March 20, 1996. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>42</sup> Interview with Flaviano Martínez López on October 15, 2014. Audio No. 14. Annex to communication from the petitioners, February 12, 2015.

<sup>43</sup> Medical certificated issued by Dr. Miguel A. Sierra of the Honduran Medical Association on April 2, 1993. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions and communication from the petitioners, February 12, 2015. Report from the Vicente D'Antoni Hospital, January 30, 1996. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions and to the initial petition received on November 5, 2004..

59. On April 13, 1993, Mr. Martínez appeared before the Office of Occupational Hygiene and Safety of La Ceiba to file a compensation claim for occupational accident against Arcadio Waldemar Molina Valladares.<sup>44</sup> On May 28, 1995, the Regional Labor Affairs Department subpoenaed Mr. Molina to appear at a settlement hearing.<sup>45</sup> On December 12, 1995, the General Department for Social Security sentenced Mr. Molina to pay 211,485.00 lempiras and indicated that Mr. Martínez should be entitled to a one-year temporary disability.<sup>46</sup>

60. On March 21, 1996, Mr. Martínez filed a labor complaint to receive compensation for the occupational accident and trial expenses.<sup>47</sup> On May 9, that same year, the court found Mr. Molina in contempt of court, because he did not appear at the proceedings although he had been subpoenaed and summoned to a settlement hearing.<sup>48</sup>

61. On May 30, 1996, the hearing was held and the respondent did not appear.<sup>49</sup> The court declared the due process hearing was open and in session so that the parties could exercise their respective rights.<sup>50</sup> The alleged victim, through his attorney, submitted his evidence.<sup>51</sup> On June 21, 1996, a hearing was held to take statements from the witnesses presented by Mr. Martínez.<sup>52</sup> On July 25, 1996, the fishing vessel *Mosquita Express* was inspected as evidence.<sup>53</sup> The Inspector General indicated that he had noted that Mr. Molina was the owner of the vessel when the accident had occurred.<sup>54</sup>

62. On October 22, 1996, the court sentenced Mr. Molina to pay 125,925.00 lempiras for temporary disability and 85,000.00 lempiras as compensation.<sup>55</sup> It indicated that the 10,000.00 lempiras that Mr. Molina had given to Mr. Martínez after the accident had occurred should be discounted from said amount.<sup>56</sup> On September 25, 1997, the court required Mr. Molina to pay the amount set.<sup>57</sup> On December 9, 1997, the court requested placing a lien on his bank accounts,<sup>58</sup> but on February 11, 2002, various banking institutions reported that Mr. Molina did not have any savings accounts.<sup>59</sup>

63. The alleged victim stated that, in 2014, the judgment still had not been enforced and that he had not received any money. He also stated that, between 1992 and 2011, he had three further diving-related

---

<sup>44</sup> Record of appearance on April 13, 1993 issued by the Head of the Labor Inspection Section on May 30, 1996. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>45</sup> Subpoena for Arcadio Molina by the Regional Director for Labor Affairs issued on May 28, 1995. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>46</sup> Certification of calculation of compensation by the Administrative Secretariat of the General Social Security Department, December 12, 1995. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>47</sup> Regular labor complaint filed with the court of first instance to order seize of compensation for occupational accident and temporary disability bearing the fingerprint presumably belonging to Flaviano Martínez López, date March 20, 1996. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>48</sup> Agreement of May 9, 1996 of the Local Civil Court for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>49</sup> Minutes of the settlement hearing and due process hearing of May 30, 1996 of the Civil Court for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>50</sup> Minutes of the settlement hearing and due process hearing of May 30, 1996 of the Civil Court for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>51</sup> Minutes of the settlement hearing and due process hearing of May 30, 1996 of the Civil Court for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>52</sup> Witness hearing of June 21, 1996 of the Civil Court for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>53</sup> Inspection record of July 25, 1996 signed by the Judge and Secretary of the Civil Court for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>54</sup> Inspection record of July 25, 1996 signed by the Judge and Secretary of the Civil Court for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>55</sup> Judgment of October 2, 1996 by the Civil Court Judge for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>56</sup> Judgment of October 2, 1996 by the Civil Court Judge for Labor Affairs. Annex to the initial petition received on November 5, 2004.

<sup>57</sup> Record of order for payment from the writ receiver of the Civil Court of September 23, 1996 and September 30, 1997. Annex to the initial petition received on November 5, 2004.

<sup>58</sup> Appearance before the Local Civil Court for Labor Affairs where placement of a lien is requested on December 9, 1997. Annex to the initial petition received on November 5, 2004.

<sup>59</sup> Agreement of February 7, 2002 of the Civil Court for Labor Affairs whereby instructions are given to contact various banks, as well as issue various official letters from the Civil Court for Labor Affairs to Banks, all on February 11, 2002, along with responses to the above communications from various dates. Annexes to the initial petition received on November 5, 2004.

accidents.<sup>60</sup> He pointed out that he had to go back to diving because he had no money, and he had to accept that because there was no other job available.<sup>61</sup> He indicated that, on one occasion, in 1995, two weeks elapsed before he was taken to a hyperbaric chamber.<sup>62</sup> He added that he had not received any compensation for these accidents, that his health is very poor, that it is very hard for him to walk, and that he has to pay for his medicines himself. He contended that, sometimes, he goes days without eating because he has no money and does not receive any type of support.<sup>63</sup>

### 3. Carcoth Padmoe Miller

64. Carcoth Padmoe Miller stated that, on June 20, 1993, while working for the company Apolo Bees on the fishing vessel *Bisal* owned by Krelyn Macnab, he had an accident. He pointed out that, after diving, he felt severe back pain and because he was in Jamaica at the time, he was taken to a hospital of that country where he was hospitalized for 18 days.<sup>64</sup> He contended that he was not taken to a hyperbaric chamber.<sup>65</sup>

65. According to the medical record, Mr. Padmoe was suffering from “decompression sickness (...) with neurological sequelae (...) of his lower limbs predominantly proximal and at the pelvic girdle.”<sup>66</sup>

66. Mr. Padmoe contended that, on August 8, 1994, he filed a claim with the Office of Occupational Hygiene and Health of the city of Comayaguela, Municipality of the Central District, because of the accident. The owner of the vessel did not appear despite summons issued by the Office.<sup>67</sup>

67. On March 20, 1995, the Labor Inspector, at the request of the Occupational Hygiene and Safety Inspection Service, calculated the compensation by virtue of Article 454 of the Labor Code, indicating that Mr. Padmoe was entitled to compensation in the amount of 43,232.50 lempiras.<sup>68</sup>

68. On April 26, 1995, the General Social Security Department of Comayaguela ruled that the compensation claim filed for occupational accident was admissible and ordered the employer to pay the compensation that had been set.<sup>69</sup> According to a statement by Mr. Padmoe, in 2012 he still had not received any compensation for the damages caused.<sup>70</sup>

69. In addition to said incident, Carcoth Padmoe Miller declared that, in 1999, he again had an accident while he was diving. He indicated that when he surfaced, he felt severe chest pain and he could not speak. He contended that his other coworkers who were in the fishing vessel where he was working took him to his bed and afterwards they immersed him 30 meters in the sea because that was a practice used at the time

---

<sup>60</sup> Interview with Flaviano Martínez López on October 15, 2014. Audio No. 14. Annex to the communication from the petitioners, February 12, 2015.

<sup>61</sup> Interview with Flaviano Martínez López on October 15, 2014. Audio No. 14. Annex to the communication from the petitioners, February 12, 2015.

<sup>62</sup> CEJIL. Interview with Flaviano Martínez in Puerto Lempira on January 15, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>63</sup> Interview with Flaviano Martínez López on October 15, 2014. Audio No. 14. Annex to the communication from the petitioners of February 12, 2015.

<sup>64</sup> Certification from the Secretariat of the Regional Department for Labor Affairs for documents relative to Carcoth Padmoe Miller of September 8, 1995. Annex to the initial petition received on November 5, 2004.

<sup>65</sup> Interview with Carcoth Padmoe Miller on October 15, 2014. Audio No. 15. Annex to the communication from the petitioners of February 12, 2015.

<sup>66</sup> Medical record on Carcoth Padmoe Miller from Escuela Hospital, August 25, 1994. Annex to the initial petition received on November 5, 2004.

<sup>67</sup> Certification from the Secretariat of the Regional Department for Labor Affairs for documents relative to Carcoth Padmoe Miller, September 8, 1995. Annex to the initial petition received on November 5, 2004.

<sup>68</sup> Certification from the Secretariat of the Regional Department for Labor Affairs for documents relative to Carcoth Padmoe Miller, September 8, 1995. Annex to the initial petition received on November 5, 2004.

<sup>69</sup> Certification from the Secretariat of the Regional Department for Labor Affairs for documents relative to Carcoth Padmoe Miller, September 8, 1995. Annex to the initial petition received on November 5, 2004.

<sup>70</sup> Interview with Carcoth Padmoe Miller on October 15, 2014. Audio No. 15. Annex to the communication from the petitioners of February 12, 2015.

to make him capable of moving. He added that he was on the vessel paralyzed for three days and that, after a week, he arrived at the city of Roatán to be taken care of in the hyperbaric chamber.<sup>71</sup>

70. He contended that the physician who attended him told him that too much time had elapsed since his accident without having been taken to a health center<sup>72</sup> and that, because of the delay in receiving care, he was not able to recover.<sup>73</sup> He stressed that the owner of the vessel discounted the treatment given from his wages.<sup>74</sup>

71. His brother, Adam Miller, contended that Carcoth was pressured by the owner of the vessel and a representative of the Ministry of Labor to sign a compensation agreement in the amount of 70,000.00 lempiras.<sup>75</sup> Carcoth Padmoe Miller stated that he had received only 50,000.00 lempiras and that said amount was extremely low because it did not even cover medical expenses.<sup>76</sup> He indicated that both the owner of the vessel and the representative of the Ministry of Labor had told him he could not file any more claims because the owner of the vessel was about to leave the country.<sup>77</sup>

72. Mr. Carcoth stated in 2012 that he was walking with crutches and with much difficulty, that he has to take pills that he buys himself for knee pain, that he has no work, and that his family is supporting him.<sup>78</sup>

#### **4. Amistero Bans Valeriano**

73. Amistero Bans Valeriano indicated that, on September 4, 2000, he had an accident while he was diving. He described that, after some very deep dives, he started feeling chest pain and he could not move his limbs.<sup>79</sup> He contended that the ship captain did not rescue him and that it was only later, after three days had elapsed, at the insistence of the other divers, that he was taken to Roatán, where he was in a hyperbaric chamber for two days, and then he was transferred to the hospital of La Ceiba.<sup>80</sup> He indicated that the physicians had determined that he was suffering from decompression sequelae.<sup>81</sup> Mr. Valeriano contended that he had to ask for a loan to pay for the expenses of his treatment.<sup>82</sup>

74. On December 13, 2000, Amistero Bans Valeriano filed a claim for compensation with the Office of Occupational Hygiene and Safety for the occupational accident that had occurred to him. On December 18, 2000, a hearing was held with the Labor Inspector, at which the owner of the vessel did not appear.<sup>83</sup>

---

<sup>71</sup> CEJIL. Interview with Carcoth Padmoe in Puerto Lempira on January 16, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>72</sup> Interview with Carcoth Padmoe Miller on August 6, 2012. Audio No. 7. Annex to the communication from the petitioners of February 12, 2015.

<sup>73</sup> CEJIL. Interview with Carcoth Padmoe in Puerto Lempira on January 16, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>74</sup> CEJIL. Interview with Carcoth Padmoe in Puerto Lempira on January 16, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>75</sup> CEJIL. Interview with Carcoth Padmoe in Puerto Lempira on January 16, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>76</sup> Interview with Carcoth Padmoe Miller on October 15, 2014. Audio No. 15. Annex to the communication from the petitioners of February 12, 2015.

<sup>77</sup> CEJIL. Interview with Carcoth Padmoe in Puerto Lempira on January 16, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>78</sup> Interview with Carcoth Padmoe Miller on August 6, 2012. Audio No. 7. Annex to the communication from the petitioners of February 12, 2015.

<sup>79</sup> Certification of the appearance record of December 13, 2000 issued by the Secretariat for Occupational Hygiene and Safety. Annex to the initial petition received on November 5, 2004.

<sup>80</sup> CEJIL. Interview with Amistero Bans on January 17, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>81</sup> CEJIL. Interview with Amistero Bans on January 17, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>82</sup> Labor complaint filed on September 4, 2001 by Amistero Bans Valeriano. Annex to the initial petition received on November 5, 2004.

<sup>83</sup> Certification of the appearance record issued by the Secretariat for Occupational Hygiene and Safety on December 18, 2000. Annex to the initial petition received on November 5, 2004.

75. On January 5, 2001, the Labor Inspector presented the calculation made for the temporary disability, indicating that the owner of the vessel had to pay 112,161.00 lempiras.<sup>84</sup> This amount was notified to the owner of the vessel, Roberto Pino, granting him a three-day deadline to respond. The notification document indicates that “Mr. (...) did not sign the present document because he did not want to.”<sup>85</sup>

76. On December 29, 2001, the medical diagnosis for Amistero Bans Valeriano was issued indicating that, on September 4, 2000, he suffered from decompression sickness when surfacing from the sea where he was diving and that he needed physical rehabilitation.<sup>86</sup>

77. On September 4, 2001, Mr. Valeriano filed a labor complaint with the Local Civil Court Judge for Labor Affairs against the owner of the vessel, Roberto Pino.<sup>87</sup> On October 11, 2001, the Local Civil Court Judge for Labor Affairs transmitted an official letter to the Merchant Marine Department, requesting “its collaboration in not granting the fishing vessel *Pelican*, painted white, owned by Roberto Pino, permission to sail and to proceed with its detention.”<sup>88</sup>

78. On January 2, 2002, Mr. Pino submitted his response to the labor complaint, indicating that he had no employer-employee relationship with the complainant and that he was not the owner of the fishing vessel *Pelican*.<sup>89</sup> On March 6, 2002, the Occupational Medicine Service of the General Social Security Department issued a diagnosis indicating that, because of the decompression sickness he had suffered, Mr. Valeriano exhibited the following sequelae: osteotendinous hyperreflexia and lower right limb paresthesia and slight difficulty in walking.<sup>90</sup>

79. Mr. Valeriano stated that, by 2008, he was suffering from high blood pressure and had to take medicines regularly although he could not buy them for lack of money.<sup>91</sup> In 2012, he pointed out that he suffered from kidney ailments, pain when urinating, and headaches. He added that he had difficulty walking and that was why he used a walking stick and he stressed that he has to buy his own medicines himself.<sup>92</sup> He indicated that because of his situation he cannot work, and therefore his children support him.<sup>93</sup>

## 5. Rolando Mónico Thomas

80. Rolando Mónico Thomas stated that, on September 5, 1999, he had an accident while working as a fishing diver on the fishing vessel *Arnold I*. He described how, after a very deep dive, half of his body was numb and he asked the owner of the vessel, to no effect, to take him to the city where there was a hyperbaric chamber.<sup>94</sup> Mr. Thomas stated that it was only later, three days after the accident, that he was taken to the hyperbaric chamber where he stayed for 10 days.<sup>95</sup>

---

<sup>84</sup> Certification of the calculation of temporary disability drawn up by Labor Inspector II on January 5, 2001, issued by the Hygiene and Social Security Department on May 3, 2001. Annex to the initial petition received on November 5, 2004.

<sup>85</sup> Certification of the writ of notification by Labor Inspector II on January 9, 2001, issued by the Hygiene and Social Security Department on May 4, 2001. Annex to the initial petition received on November 5, 2004.

<sup>86</sup> Certification of Diagnosis of Friday, December 29, 2000, issued by the Health and Social Security Department on May 4, 2001. Annex to the initial petition received on November 5, 2004.

<sup>87</sup> Labor complaint filed on September 4, 2001 by Amistero Bans Valeriano. Annex to the initial petition received on November 5, 2004.

<sup>88</sup> Letter of October 11, 2001 addressed to the Merchant Marine Department. Annex to the initial petition received on November 5, 2004.

<sup>89</sup> Response to the complaint on January 2, 2002 by Roberto Jaime Pino Merren. Annex to the initial petition received on November 5, 2004.

<sup>90</sup> Diagnosis for Amistero Bans Valeriano of March 6, 2002 from the Occupational Medicine Service. Annex to the initial petition received on November 5, 2004.

<sup>91</sup> CEJIL. Interview with Amistero Bans on January 17, 2008. Annex to the communication from the petitioners of April 2, 2010.

<sup>92</sup> Interview with Amistero Bans Valeriano on August 6, 2012. Audio No. 12. Annex to the communication from the petitioners of February 12, 2015.

<sup>93</sup> Interview with Amistero Bans Valeriano on August 6, 2012. Audio No. 12. Annex to the communication from the petitioners of February 12, 2015.

<sup>94</sup> Record of appearance of Rolando Mónico Thomas on April 12, 2001 before Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>95</sup> Interview with Rolando Mónico Thomas on August 6, 2012. Audio No. 16. Annex to the communication from the petitioners dated February 12, 2015.

81. On April 11, 2000, Rolando Mónico Thomas appeared before Labor Inspector No. II of the city of La Ceiba, in the department of Atlántida, in order to describe the occupational accident he had had. He indicated that the company paid him 3,500.00 lempiras and that he accepted it because he was “in very great need of medicines and treatment” because of the accident. He contended that, without detriment to the above, said amount was insufficient to pay for his treatment or to cover the costs of his illnesses. The following day, it was recorded that the owner of the vessel had not appeared at the hearing to which he was summoned.<sup>96</sup>

82. On June 22, 2000, the calculation for temporary disability was set in the amount of 65,401.65 lempiras and for compensation in the amount of 114,222.60 lempiras.<sup>97</sup> On July 28, 2000, a pledge to pay compensation was signed by Rolando Mónico Thomas and the representative of the owner of the fishing vessel *Arnold I*.<sup>98</sup>

83. On August 28, 2000, the Labor Inspector appeared at the company InterMarine S.A. which manages the fishing vessel *Arnold I*. It was indicated that the purpose of the visit was to obtain information about the failure to pay the advance amount for the compensation that had been set. The company’s legal counsel replied that the fishing vessels had not returned and because of that the payment could not be made, but that on August 30, 2000, payment would be made.<sup>99</sup>

84. On the above-mentioned date, the employer did not appear before the Labor Inspector, as a result of which this authority ordered that “Mr. Rolando Mónico Thomas was free to exercise his rights before the relevant authorities.”<sup>100</sup>

85. Mr. Thomas stated in 2012 that the proceedings did not move forward and that he never received any compensation. He also pointed out that he could not walk without difficulty, that he often feels dizzy, and that he has to pay for his doctor’s appointments and medicines himself.<sup>101</sup>

## **6. Ralph Valderramos Álvarez**

86. Ralph Valderramos indicated that, on February 1, 1996, he had an accident while working as a diver on the fishing vessel *Morning Mistery* owned by Sharon Delan Elwin. He indicated that, after deep diving down to 140 feet, he started feeling very ill, with low back pain, acute pain in his lower limbs and immediately thereafter he passed out, after which he was taken to Islas de Bahía where he was treated in a hyperbaric chamber.<sup>102</sup>

87. On October 11, 1996, Ralph Valderramos filed a labor complaint with the Local Civil Court for Labor Affairs of La Ceiba for payment of compensation against the owner of the vessel. On October 22 and 23, 1996, the witnesses submitted by the complainant made their statements, and the order to impound the fishing vessel *Morning Mistery* was issued.<sup>103</sup>

88. On January 15, 1997, a settlement hearing was held and the respondent filed an appeal declaring that the court did not have jurisdiction, which was ruled admissible. The following day, Mr.

---

<sup>96</sup> Record of appearance of Rolando Mónico Thomas on April 12, 2001 before Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>97</sup> Calculation of temporary disability and compensation for Rolando Mónico Thomas on June 22, 2000 issued by Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>98</sup> Pledge to pay compensation of July 28, 2000 by José Francisco Zelaya before Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>99</sup> Report of Labor Inspector II to the Head of the Regional Occupational Hygiene and Safety Inspection Service of August 28, 2000. Annex to the initial petition received on November 5, 2004.

<sup>100</sup> Record of failure to appear on August 30, 2000 drawn up by Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>101</sup> Interview with Rolando Mónico Thomas on August 6, 2012. Audio No. 16. Annex to the communication from the petitioners of February 12, 2015.

<sup>102</sup> Regular labor complaint filed by Ralph Valderramos Alvarez against Sharon Delan Elwin on July 18, 2003 with the Departmental Civil Court. Annex to the initial petition received on November 5, 2004.

<sup>103</sup> Special Report. Complaint 475-IGJT-PJ-08. “Case of Miskito Divers.” General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State’s Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

Valderramos appealed, but this appeal was ruled inadmissible on January 17, 1997. Likewise, on January 22, 1997, the impoundment of the vessel was cancelled.<sup>104</sup> From available information, the IACHR understands that these proceedings did not produce any results.

## 7. Timoteo Lemus Pisatty

89. On November 2, 2002, Timoteo Lemus Pisatty had an occupational accident on the fishing vessel *Miss Anis* owned by Horacio Gilbert Wood. According to documentation submitted to the Commission, Mr. Pisatty was deep diving down to 115 feet and had used five cylinders of compressed air. It indicates that, when surfacing, Mr. Pisatty's lower limbs became paralyzed.<sup>105</sup>

90. On the following day, the alleged victim was transferred to the hospital of Roatán and placed in a hyperbaric chamber, receiving 16 treatments in the hospital but without any evidence of recovery. He was diagnosed with "paralytic ailments secondary to DCS and urinary sepsis."<sup>106</sup> On November 26, 2002, Mr. Gilbert recognized his relationship as an employer of Timoteo Lemus Pisatty and accepted to pay him 10,000.00 lempiras and give him a monthly stipend until he recovered.<sup>107</sup>

91. On December 24, 2002, the hospital of Puerto Lempira recorded that Mr. Pisatty was suffering from decompression sickness and paralysis.<sup>108</sup> His father indicated that his son was paralyzed and bedridden since the accident, that he was not receiving any medical care services, that any medicine he needed he had to buy it himself, and that his health declined until his death in 2003. He indicated that the expenses for the funeral amounted to 40,631.61 lempiras, of which the owner of the vessel paid 2,764.00.<sup>109</sup>

92. On November 18, 2004, the children and partner of Mr. Lemus filed a complaint with the Local Civil Court Judge for Labor Affairs of La Ceiba for payment of compensation for the fatal occupational accident against Mr. Gilbert. On November 23, 2004, the court subpoenaed the respondent and ordered him to pay a provisional pension for the benefit of the complainants in the amount of 5,000.00 lempiras until the full amount of the claim was paid. On December 10, 2004, statements were taken from the witnesses submitted by the complainants. The judge requested that, prior to ordering a precautionary measure of preventive impoundment, steps be taken to verify if the vessel being so ordered was owned by the respondent.<sup>110</sup>

93. On April 12, 2005, the complainants submitted an affidavit from the Ship Registry Department of the General Merchant Marine Department certifying the registration of the fishing vessel *Miss Anis*, as a result of which they reiterated their request for preventive impoundment.<sup>111</sup>

94. That same day, the judge decided to order the prohibition of undertaking proceedings or entering into contracts with respect to the property rights of Mr. Gilbert Wood and turned down the request for ordering an impoundment because, according to the registration submitted, the fishing vessel also belonged to other persons with no connection to the proceedings. Without detriment to the above, he requested the respondent to make a monthly deposit in the amount of 5,000.00 lempiras.<sup>112</sup> The father of the alleged victim

---

<sup>104</sup> Special Report. Complaint 475-IGJT-PJ-08. "Case of Miskito Divers." General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>105</sup> Labor proceedings filed by Timoteo Lemus Pisatty against Horacio Gilbert Wood. Annex to the initial petition received on November 5, 2004.

<sup>106</sup> Labor proceedings filed by Timoteo Lemus Pisatty against Horacio Gilbert Wood. Annex to the initial petition received on November 5, 2004.

<sup>107</sup> Private agreement between Horacio G. Wood and Timoteo Lemus Pisatty, November 26, 2002. Annex to the initial petition received on November 5, 2004.

<sup>108</sup> Record from the Hospital of Puerto Lempira, December 24, 2002. Annex to the initial petition received on November 5, 2004.

<sup>109</sup> Labor proceedings filed by Timoteo Lemus Pisatty against Horacio Gilbert Wood. Annex to the initial petition received on November 5, 2004.

<sup>110</sup> Special Report. Complaint 475-IGJT-PJ-08. "Case of Miskito Divers." General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>111</sup> Special Report. Complaint 475-IGJT-PJ-08. "Case of Miskito Divers." General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>112</sup> Special Report. Complaint 475-IGJT-PJ-08. "Case of Miskito Divers." General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

stated in 2014 that said payments were never made.<sup>113</sup> From available information, it is apparent that these proceedings did not produce any results.

## **8. Ex Dereck Claro**

95. Ex Dereck Claro stated that, on October 20, 1995, he had an accident while working as a diver on the fishing vessel *Chávez Junior* owned by Ms. Martha Chávez. He indicated that, after a very deep dive, he started having severe headaches and dizziness, vomiting, and feeling weakness and numbness in both his upper and lower limbs.<sup>114</sup>

96. He indicated that, several days later, he was taken to the hyperbaric chamber of the city of Roatán, where he stayed for a week.<sup>115</sup> He contended that Ms. Chávez paid for transportation and medical care expenses.<sup>116</sup> According to the diagnosis, Mr. Claro showed symptoms of decompression sickness “characterized by hypoesthesia in his lower limbs with a slight diminishment of strength and a neurogenic bladder or Foley catheter.”<sup>117</sup> He contended that Ms. Chávez promised to pay him compensation, but this never happened.<sup>118</sup>

97. In view of this situation, on August 2, 1996, Mr. Claro filed a compensation claim with the Labor Inspector against Martha Chávez because of the occupational accident.<sup>119</sup> On January 7, 1997, the Occupational Medicine Department determined that Mr. Claro suffered from slight decline in muscle strength in his lower limbs, muscular hypotrophy of his lower left limb, slight decline of sensitivity of his lower limbs, and he was declared as having permanent partial disability.<sup>120</sup> On February 5, 1997, the General Social Security Department calculated that the temporary disability and compensation for the occupational accident amounted to a compensation of 125,356.00 lempiras.<sup>121</sup>

98. In view of the failure to comply with the payment that was ordered, on October 22, 1997, Mr. Claro filed a labor complaint with the Departmental Civil Court of Gracias a Dios for payment of compensation for the occupational accident against Martha Chávez. On June 25, 1998, the respondent’s attorney invoked the objection of “lack of legal standing or legal representation of the respondent,” because the complaint is aimed at Ms. Marta Chávez and her representative’s name is “Marta Elvia Zelaya Rivero.”<sup>122</sup>

99. On August 22, 2003, the Departmental Civil Court issued a report whereby the Secretary of the Court informed that “the present proceedings are five years, three months, twenty-eight days old since the last intervention.”<sup>123</sup> On August 28, 2003, the judge ruled ex officio that the proceedings on the merits had expired and he ordered the case file to be archived.<sup>124</sup>

---

<sup>113</sup> Interview with Richard Lemus Pisatty on October 14, 2014. Audio No. 8. Annex to the initial petition received on November 5, 2004.

<sup>114</sup> Record of appearance of Ex Dereck Claro before Labor Inspector III on August 2, 1996. Annex to the initial petition received on November 5, 2004.

<sup>115</sup> Regular labor complaint filed on October 22, 1997 by Ex Dereck Claro with the Civil Court. Annex to the initial petition received on November 5, 2004.

<sup>116</sup> Record of appearance of Ex Dereck Claro before Labor Inspector III on August 2, 1996. Annex to the initial petition received on November 5, 2004.

<sup>117</sup> Medical record of October 30, 1995 from the Cornerstone Hyperbaric Chamber and Medical Clinic, Roatan, Bay Islands. Annex to the initial petition received on November 5, 2004. Record of appearance of Ex Dereck Claro before Labor Inspector III on August 2, 1996. Annex to the initial petition received on November 5, 2004.

<sup>118</sup> Formal compensation claim certified by the General Social Security Department on June 27, 1997. Annex to the initial petition received on November 5, 2004.

<sup>119</sup> Formal compensation claim certified by the General Social Security Department on June 27, 1997. Annex to the initial petition received on November 5, 2004.

<sup>120</sup> Disability ruling from the Occupational Medicine Service, January 7, 1997. Annex to the initial petition received on November 5, 2004.

<sup>121</sup> Formal compensation claim certified by the General Social Security Department on June 27, 1997. Annex to the initial petition received on November 5, 2004.

<sup>122</sup> Special Report. Complaint 475-IGJT-PJ-08. “Case of Miskito Divers”. General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State’s Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>123</sup> Report from the Secretariat of the Departmental Civil Court of August 22, 2003. Annex to the initial petition received on November 5, 2004.

<sup>124</sup> Special Report. Complaint 475-IGJT-PJ-08. “Case of Miskito Divers”. General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State’s Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

100. Mr. Claro stated in 2012 that he had back pain, which made it hard for him to walk and that has to buy his medicines himself.<sup>125</sup>

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

101. According to their labor complaint, on March 15, 2000, Hildo Ambrosio Trino, Andrés Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez, Rómulo Flores Henríquez, and Amilton Bonaparte Clemente were working as divers on the fishing vessel *Langoster* or *Capital Lewis* owned by Lewis Delano Gough. The butane fuel tank of said vessel blew up, which led to a fire.<sup>126</sup> Mirna Manuel Tinto, wife of Andrés Miranda, stated that, according to the testimonies of the divers who were on other vessels, the alleged victims had to jump overboard.<sup>127</sup>

102. Six of the divers, Andrés Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez, Rómulo Flores Henríquez, and Amilton Bonaparte Clemente, disappeared and their whereabouts were unknown.<sup>128</sup> Some of the next of kin of the alleged victims indicated that they never found their bodies.<sup>129</sup> As for Hildo Ambrosio, his daughter declared that they received the burnt remains of her father and that they buried him.<sup>130</sup> The mother of Amilton Bonaparte indicated that one of the persons who worked on said vessel as a *sacabuzos* [an intermediary for hiring the divers] only rescued the captain but not the other persons. She indicated that, when she called him out on this, he threatened her with a gun and told her not to report the incidents. She added that, in 2014, the same *sacabuzos* had shot a diver on the high seas and that these incidents had not been investigated.<sup>131</sup>

103. On February 25, 2002, the next of kin of the seven deceased persons filed a labor complaint with the Departmental Civil Court against Lewis Delano Gough.<sup>132</sup> According to a 2008 report on the status of the proceedings, they were still in the initial stage.<sup>133</sup> According to the attorney of the complainants, the standstill in the proceedings stems from the inquiry about whether the respondent is acquiring more assets, apart from his fishing vessel, so that they could be seized.<sup>134</sup>

104. Some of the next of kin of the alleged victims stated in 2012 and 2014 that no progress had been made in the proceedings and that they had not received any compensation for what had happened.<sup>135</sup> The

---

<sup>125</sup> Interview with Ex Dereck Claro on August 6, 2012. Audio No. 13. Annex 1. Annex to the communication from the petitioners of February 12, 2015.

<sup>126</sup> Regular labor complaint filed on February 25, 2002 with the Departmental Civil Court against Lewis Delano Gough Valladarez. Annex to the initial petition received on November 5, 2004.

<sup>127</sup> Interview with Maura Celina Ambrosio Clemente on October 14, 2014. Audio No. 2. Annex to the communication from the petitioners of February 12, 2015.

<sup>128</sup> Regular labor complaint filed on February 25, 2002 with the Departmental Civil Court against Lewis Delano Gough Valladarez. Annex to the initial petition received on November 5, 2004.

<sup>129</sup> Interviews with Cristina Clemente Washington on August 6, 2012. Audio No. 2. Annex to the communication from the petitioners of February 12, 2015; Interviews with Juana Pérez Nacril on August 6, 2012. Audio No. 3. Annex 1; and interview with Mirna Manuel Trino on October 15, 2014. Audio No. 3. Annex to the communication from the petitioners of February 12, 2015.

<sup>130</sup> Interview with Maura Celina Ambrosio Clemente on October 14, 2014. Audio No. 2. Annex to the communication from the petitioners of February 12, 2015.

<sup>131</sup> Interview with Ruela Bonaparte Clemente on October 14, 2014. Audio No. 7. Annex to the communication from the petitioners of February 12, 2015.

<sup>132</sup> Special Report. Complaint 475-IGJT-PJ-08. "Case of Miskito Divers." General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>133</sup> Special Report. Complaint 475-IGJT-PJ-08. "Case of Miskito Divers." General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>134</sup> Special Report. Complaint 475-IGJT-PJ-08. "Case of Miskito Divers." General Inspectorate of Courts and Tribunals. January 6, 2009. Annex to the State's Arguments at the Hearing of the 143<sup>rd</sup> Period of Sessions.

<sup>135</sup> Interview with Charlin Esmeralda Leman on August 6, 2012. Audio 1. Annex to the communication from the petitioners of February 12, 2015; Interviews with Cristina Clemente Washington on October 14, 2014, Audio No. 5. Annex 2; Interview with Ruela Bonaparte Clemente on October 14, 2014. Audio No. 7. Annex to the communication from the petitioners of February 12, 2015.

wife of Mr. Trino stated that the ship captain pointed out that he could not pay them because his vessel had burned down.<sup>136</sup>

#### **10. Leonel Saty Méndez**

105. Leonel Saty Méndez declared that, on March 12, 2001, he had an accident while working as a diver on the fishing vessel *Yordano*, owned by Carlos Arturo Fiallos. He contended that, after a very deep dive, his body became numb<sup>137</sup> and that the ship captain did not want to take him to a medical center.<sup>138</sup> He indicated that it was only later, three days after the incident, that he was taken to a hyperbaric chamber in the city of Roatán and that he stayed in the medical center for close to one month.<sup>139</sup>

106. According to the medical certificate drawn up by the health center of Roatán, Mr. Méndez upon admission presented with “severe paralysis of the lower limbs.”<sup>140</sup> It was indicated that he suffered from decompression sickness and physical therapy was recommended.<sup>141</sup> Mr. Saty Méndez indicated that the owner of the vessel gave him a check in the amount of 50,000.00 lempiras but that it bounced. He added that, afterwards, he received only 10,000.00 lempiras, which was not enough to pay for his medical expenses.<sup>142</sup>

107. On May 22, 2001, Leonel Saty Méndez filed a compensation claim with the Occupational Hygiene and Safety Department for the accident. Two days later, a hearing was held at which only Mr. Leone Saty Méndez and the Labor Inspector appeared.<sup>143</sup> Mr. Saty Méndez indicated that he learned that the owner of the vessel had at least 15 proceedings filed against him for other accidents involving Miskito divers. He added that the proceedings did not continue and that he did not receive any compensation. Mr. Saty stated in 2014 that he had trouble walking and urinating.<sup>144</sup>

#### **11. David Esteban Bradley**

108. David Esteban Bradley stated that, on May 28, 2003, he had an occupational accident on the lobster fishing vessel *Ledy Glenda* owned by Edwin Sanches and Tano Bodden. He contended that, after a very deep dive, he felt dizzy and was taken to the hyperbaric chamber in the city of Roatán, where he was hospitalized for 25 days.<sup>145</sup>

109. According to a medical report, Mr. Bradley suffered from decompression sickness and required physical therapy.<sup>146</sup> Mr. Bradley submitted a compensation claim with the Labor Inspector.<sup>147</sup> From available information, the IACHR understands that these proceedings did not produce any results.

#### **12. Evecleto Londres Yumidal**

110. Evecleto Londres Yumidal stated that, on November 22, 2002, he had an accident while working as a diver on the lobster fishing vessel *Mis Luci*, owned by Carlos Casimiro. He contended that, after a very deep dive, he started feeling dizzy, in response to which the captain did not want to do anything. He added

---

<sup>136</sup> Interview with Ladrícia Leman Bonaparte on October 14, 2014. Audio No. 6. Annex to the communication from the petitioners of February 12, 2015.

<sup>137</sup> CONADEH Survey of Leonel Saty Méndez, undated. Annex to the initial petition received on November 5, 2004.

<sup>138</sup> Interview with Leonel Saty Méndez on October 15, 2014. Audio No. 22. Annex to the communication from the petitioners of February 12, 2015.

<sup>139</sup> Interview with Leonel Saty Méndez on October 15, 2014. Audio No. 22. Annex to the communication from the petitioners of February 12, 2015.

<sup>140</sup> Certificate from the Cornerstone Hyperbaric Chamber and Medical Clinic, Roatan, Bay Islands, March 26, 2001. Annex to the initial petition received on November 5, 2004.

<sup>141</sup> Note from the D. Mauner Lacayo Fonseca Medical Clinic, April 9, 2001. Annex to the initial petition received on November 5, 2004.

<sup>142</sup> Interview with Leonel Saty Méndez on October 15, 2014. Audio No. 22. Annex to the communication from the petitioners of February 12, 2015.

<sup>143</sup> Record of appearance of Leonel Saty Méndez on May 22, 2001. Annex to the initial petition received on November 5, 2004.

<sup>144</sup> Subpoena summoning Carlos Arturo Fiallos, May 22, 2001. Annex to the initial petition received on November 5, 2004.

<sup>145</sup> Record of appearance of David Esteban Bramly, undated. Annex to the initial petition received on November 5, 2004.

<sup>146</sup> Medical record of July 30, 2003 from the Director of the Hospital of Puerto Lempira. Annex to the initial petition received on November 5, 2004.

<sup>147</sup> Record of appearance of David Esteban Bramly, undated. Annex to the initial petition received on November 5, 2004.

that, at the request of the other divers, he was taken to the Hospital of Puerto Lempira. Mr. Yumidal indicated that the ship captain told them not to take him to the hyperbaric chamber because his pains “were nothing.”<sup>148</sup>

111. According to the medical checkup conducted after his accident, Mr. Yumidal “suffered from barotrauma with sequelae consisting of paraparesis secondary to spinal cord compression because of diving.”<sup>149</sup> The prognosis that was indicated consisted of “walking disability” amounting to 30%.<sup>150</sup>

112. On November 28, 2002, Evecleto Londres Yumidal went to the Labor Inspector to request compensation for the accident.<sup>151</sup> Terna Gutiérrez Beckam, wife of the alleged victim, stated in 2012 that the vessel’s owner never paid them, that her husband is bedridden and deaf, and that his eyesight has declined progressively.<sup>152</sup> He added that he does not receive any kind of medical assistance or medicines.<sup>153</sup>

### **13. Arpin Robles Tayaton**

113. Arpin Robles Tayaton stated that, on November 11, 2002, he had an accident while working as a diver on the fishing vessel *Capital Dan* owned by Mr. Jeovany. He pointed out that, after a very deep dive, he felt the right side of his body had grown numb and that he could not move his legs.<sup>154</sup> He indicated that it was only later, four days after the accident, that he was taken to the hospital of Puerto Lempira, where he had to pay for medical care expenses in the amount of 8,324.00 lempiras.<sup>155</sup>

114. The medical report of November 29, 2002 indicates that Mr. Robles “had an accident when diving down to 82 feet without any decompression stops, and after 10 dives he had pain from monoparesis of the right pelvic limb; without being placed in a decompression chamber.” It also points out that he requires treatment with neurotropic drugs, analgesics, and therapy.<sup>156</sup>

115. On March 20, 2003, Mr. Robles filed a compensation claim with the Labor Inspector against Mr. Jeovany because of the accident.<sup>157</sup>

116. In 2014, he stated that he had another accident in 2003, in which he dived very deep and burst his eardrum. He contended that he stayed on the vessel without any type of assistance until he was taken to a medical center, where he was forbidden to dive because of his severe situation. Mr. Robles indicated that he received no compensation for his accidents. He contended that he has kidney pains and dizziness, that in one ear he does not hear well, that he does not work as a result of which his children support him, and that he has to pay for his medicines although oftentimes he cannot pay for them for lack of money.<sup>158</sup>

### **14. Daniel Flores Reyes**

---

<sup>148</sup> Record of appearance of Evel Yeto Londres Yumidal on November 28, 2002. Annex to the initial petition received on November 5, 2004.

<sup>149</sup> Medical record of June 4, 2003 from the Director of the Hospital of Puerto Lempira. Annex to the initial petition received on November 5, 2004.

<sup>150</sup> Medical record of June 4, 2003 from the Director of the Hospital of Puerto Lempira. Annex to the initial petition received on November 5, 2004.

<sup>151</sup> Record of appearance of Evel Yeto Londres Yumidal on November 28, 2002. Annex to the initial petition received on November 5, 2004.

<sup>152</sup> Interview with Terna Gutiérrez Beckam on August 6, 2012. Audio No. 11. Annex to the communication from the petitioners of February 12, 2015.

<sup>153</sup> Interview with Terna Gutiérrez Beckam on August 6, 2012. Audio No. 11. Annex to the communication from the petitioners of February 12, 2015.

<sup>154</sup> Formal compensation claim filed by Arpin Robles Tayaton against Jeovany on March 27, 2003. Annex to the initial petition received on November 5, 2004.

<sup>155</sup> Formal compensation claim filed by Arpin Robles Tayaton against Jeovany on March 27, 2003. Annex to the initial petition received on November 5, 2004.

<sup>156</sup> Medical record of November 29, 2002 from the Hospital of Puerto Lempira. Annex to the initial petition received on November 5, 2004.

<sup>157</sup> Formal compensation claim filed by Arpin Robles Tayaton against Jeovany on March 27, 2003. Annex to the initial petition received on November 5, 2004.

<sup>158</sup> Interview with Arpin Robles Tatayon on October 14, 2014. Audio No. 23. Annex to the communication from the petitioners of February 12, 2015.

117. Daniel Flores Reyes stated that, in 2002, he had an accident while working as a fishing diver on the fishing vessel *M/N Southwest* owned by Jaime Javier Thompson Sevellón.<sup>159</sup> He indicated that, when surfacing after a very deep dive, he was dizzy and passed out, but it was only later, five days after the accident, that he was taken to the hyperbaric chamber of Roatán.<sup>160</sup>

118. According to a medical report in April 2003, Mr. Flores suffered from barotrauma, as well as lower back pain and alterations in urination. It was recommended that Mr. Flores should receive neurotropic drugs, analgesics, and therapy.<sup>161</sup>

119. Daniel Flores Reyes went to the Labor Inspector and, on May 29, 2003, Messrs. Flores and Thompson agreed to pay him 28,063.00 lempiras as occupational compensation.<sup>162</sup> Mr. Flores contended that, by the year 2014, he had not received any of said amount and that he went to the Ministry of Labor of La Ceiba to report what had happened, thereafter receiving only 15,000.00 lempiras, which was an amount that insufficient to cover all the medical expenses incurred.<sup>163</sup>

120. In 2014, Mr. Flores stated that he continues to suffer from dizziness and headaches.<sup>164</sup>

## **15. Fredy Federico Salazar**

121. Fredy Federico Salazar stated that, on May 26, 2003, he had an accident while working as a diver on the fishing vessel *Apolo # 1* owned by Eduardo Saúl Ariaz. He indicated that, after a very deep dive, he was dizzy and the captain told him only to “lie down and rest” and that afterwards he continued to dive. He pointed out that, days after the accident, he was taken to the city of Roatán but that the vessel’s owner did not take him to the hyperbaric chamber but only to a drugstore.<sup>165</sup>

122. According to the medical report of August 2003, Mr. Salazar suffered from barotrauma. It indicated that his recovery, if he received medical assistance and therapy, might require between six and eight months.<sup>166</sup>

123. On August 6, 2003, Mr. Salazar filed with the Labor Inspector a compensation claim for the occupational accident he had suffered.<sup>167</sup> In 2012, Mr. Salazar stated that the proceedings had not made any progress and that he had not received any compensation.<sup>168</sup>

124. He also stated that he has continuous headaches, that he has to pay for his medical appointments and medicines himself, and that, because of his poor health, he cannot work, as a result of which his wife or parents-in-law are supporting him.<sup>169</sup>

## **16. Cooper Cresencio**

---

<sup>159</sup> Formal compensation claim filed by Daniel Flores Reyes against Jaime Javier Thompson Sevellón on August 6, 2003. Annex to the initial petition received on November 5, 2004.

<sup>160</sup> Interview with Daniel Flores Reyes on October 15, 2014. Audio No. 28. Annex to the communication from the petitioners of February 12, 2015.

<sup>161</sup> Medical record of September 10, 2003 from the Hospital of Puerto Lempira. Annex to the initial petition received on November 5, 2004.

<sup>162</sup> Settlement proceedings of April 29, 2003 at which Jaime Javier Thompson Sevellón and Daniel Flores Reyes appeared before the Labor Inspector. Annex to the initial petition received on November 5, 2004.

<sup>163</sup> Interview with Daniel Flores Reyes on October 15, 2014. Audio No. 28. Annex to the communication from the petitioners of February 12, 2015.

<sup>164</sup> Interview with Daniel Flores Reyes on October 15, 2014. Audio No. 28. Annex to the communication from the petitioners of February 12, 2015.

<sup>165</sup> Record of appearance of Freddy Federico Salazar on August 6, 2003. Annex to the initial petition received on November 5, 2004.

<sup>166</sup> Medical record of August 1, 2003 from the Hospital of Puerto Lempira. Annex to the initial petition received on November 5, 2004.

<sup>167</sup> Record of appearance of Freddy Federico Salazar on August 6, 2003. Annex to the initial petition received on November 5, 2004.

<sup>168</sup> Interview with Freddy Federico Salazar on August 6, 2012. Audio No. 14. Annex to the communication from the petitioners of February 12, 2015.

<sup>169</sup> Interview with Freddy Federico Salazar on August 6, 2012. Audio No. 14. Annex to the communication from the petitioners of February 12, 2015.

125. Cooper Cresencio stated that, on March 19, 1999, he had an accident while working as a diver on the fishing vessel *Sars* owned by Brusito Borden. He claimed that, after a very deep dive, he had severe chest pain,<sup>170</sup> but that the vessel's owner told him to keep on working and "stop being lazy."<sup>171</sup> He pointed out that he dived again and when he surfaced he passed out.<sup>172</sup> He indicated that it was only later, one week afterwards, that he was transferred to the city of Roatán where he stayed in the hyperbaric chamber.<sup>173</sup> Mr. Cresencio stated that the ship's owner did not give him any money nor did he support him for payment of the medicines.<sup>174</sup>

126. According to a medical report from the hospital where he was admitted, Mr. Cresencio suffered from decompression sickness, showed declining strength and sensitivity, bowel incontinence, and intestinal obstruction. It indicated that he should not dive again because "his case is severe."<sup>175</sup>

127. On September 8, 2003, Cooper Cresencio filed with the Labor Inspector a compensation claim for the occupational accident he had had.<sup>176</sup> The following day, the Labor Inspector pointed out that the respondent had not appeared as summoned, and he calculated a partial compensation based on the medical certificate.<sup>177</sup> Mr. Cresencio stated in 2014 that he had not received any compensation.<sup>178</sup>

128. In his 2014 statement, Cooper Cresencio indicated that he suffered from pains in the back of the neck, which periodically make him want to vomit, that he has very high blood pressure, and that noise triggers headaches. He added that his eyesight suffers and that he has to pay for his medicines himself.<sup>179</sup>

## **17. Félix Osorio Presby**

129. Félix Osorio Presby stated that, on September 1, 1995, he had an accident while working as a diver on the fishing vessel *Pioneer* owned by Haylock Merren. He pointed out that, after a very deep dive, he started to feel dizzy, had trouble hearing, was vomiting, had headaches, and his eyes were hurting.<sup>180</sup> Four days after the accident, he was taken to the Moravian Evangelical Clinic (Clínica Evangélica Morava) in Ahuas.<sup>181</sup> He claimed that the vessel's owner did not pay for his medical expenses, and he received only 700 lempiras.<sup>182</sup> According to the medical certificate from this clinic, Mr. Osorio was suffering from decompression sickness.<sup>183</sup>

130. On November 20, 1995, Mr. Osorio filed a labor complaint with the Labor Inspector for payment of compensation for the occupational accident leading to temporary disability.<sup>184</sup> He also filed a labor

---

<sup>170</sup> Formal compensation claim filed by Cooper Cresencio against Brusito Borden on September 8, 2003. Annex to the initial petition received on November 5, 2004.

<sup>171</sup> Interview with Cooper Cresencio on October 15, 2014. Audio No. 16. Annex to the communication from the petitioners of February 12, 2015.

<sup>172</sup> Formal compensation claim filed by Cooper Cresencio against Brusito Borden on September 8, 2003. Annex to the initial petition received on November 5, 2004.

<sup>173</sup> Formal compensation claim filed by Cooper Cresencio against Brusito Borden on September 8, 2003. Annex to the initial petition received on November 5, 2004.

<sup>174</sup> Record of appearance of Cooper Cresencio on September 8, 2003. Annex to the initial petition received on November 5, 2004.

<sup>175</sup> Record on Cooper Cresencio from the Cornerstone Hyperbaric Chamber and Medical Clinic of March 19, 1999. Annex to the initial petition received on November 5, 2004.

<sup>176</sup> Record of appearance of Cooper Cresencio on September 8, 2003. Annex to the initial petition received on November 5, 2004.

<sup>177</sup> Calculation of compensation on September 9, 2003 for Cooper Cresencio by Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>178</sup> Interview with Cooper Cresencio on October 15, 2014. Audio No. 16. Annex to the communication from the petitioners of February 12, 2015.

<sup>179</sup> Interview with Cooper Cresencio on October 15, 2014. Audio No. 16. Annex to the communication from the petitioners of February 12, 2015.

<sup>180</sup> Formal compensation claim filed by Felix Osorio Presby against Heysmer Wasshal Haylock Merren on October 9, 1995. Annex to the initial petition received on November 5, 2004.

<sup>181</sup> Medical record of September 6, 1995 from the Clínica Evangélica Morava (Moravian Evangelical Clinic). Annex to the initial petition received on November 5, 2004.

<sup>182</sup> Formal compensation claim filed by Felix Osorio Presby against Heysmer Wasshal Haylock Merren. Annex to the initial petition received on November 5, 2004.

<sup>183</sup> Medical record of September 6, 1995 from the Clínica Evangélica Morava (Moravian Evangelical Clinic). Annex to the initial petition received on November 5, 2004.

<sup>184</sup> Regular labor complaint filed by Félix Osorio Presby against Heysmer Wasshal Haylock Merren on November 20, 1995. Annex to the initial petition received on November 5, 2004.

complaint with the Departmental Civil Court.<sup>185</sup> On June 7, 1996, Mr. Osorio's attorney requested impoundment of Mr. Merren's vessel and seizure of his bank accounts.<sup>186</sup> On August 23, 1996, the Court accepted his request and ordered placing a lien on any bank accounts the respondent might have.<sup>187</sup>

131. On June 23, 1997, various banking institutions were requested to report if the respondent had any bank accounts in their establishments.<sup>188</sup> On June 26, 1997, the bank Atlántida S.A. of La Ceiba reported that Mr. Merren had a bank account in the amount of 19,228.04 lempiras.<sup>189</sup> On August 28, 2003, archiving the case file was ordered because no steps had been taken in the case for more than three years.<sup>190</sup>

## **18. Onasis Cooper Brown**

132. Onasis Cooper Brown stated that, on December 7, 2001, he had an accident while working as a fishing diver on the fishing vessel *Flamingo 1* owned by Marlon Talun Haylock. He indicated that, after a very deep dive, he felt dizzy and bodily pains, as a result of which he was taken to the hospital of Puerto Lempira.<sup>191</sup> According to a medical certificate from his hospital, Mr. Cooper suffers from decompression sickness because of a "diving accident."<sup>192</sup> According to a medical checkup carried out subsequently, Mr. Cooper presented with "decompression sickness (...) and 100% walking disability."<sup>193</sup>

133. Mr. Cooper filed a compensation claim with the Labor Inspectorate for the occupational accident he had suffered, in the framework of which he claimed that the vessel's owner had paid him only 1,500 lempiras, which did not even pay for his medical expenses.<sup>194</sup> On March 11, 2004, the Secretariat for Labor Affairs and Social Security calculated that Mr. Cooper was entitled to compensation in the amount of 153,708.32 lempiras.<sup>195</sup> On December 30, 2004, a document recording the vessel owner's failure to appear at the hearing was issued.<sup>196</sup> From available information, it is apparent that these proceedings did not produce any results.

134. According to Mr. Cooper's mother, he died in 2004 after being paralyzed for years as a result of decompression sickness.<sup>197</sup>

## **19. Saipón Richard Toledo**

135. According to the statement made by Anastacio Richard Bais, father of the alleged victim, Saipón Richard Toledo died on January 15, 2004 when he was working on the fishing vessel *Digna América* owned by Marco Antonio Bonilla. He added that Saipón Richard was in the sea with another diver and that, after a very deep dive, he surfaced, passed out, and never regained consciousness.<sup>198</sup>

---

<sup>185</sup> Regular labor complaint filed by Félix Osorio Presby against Heysmer Wasshal Haylock Merren on November 20, 1995 with the Department Civil Court. Annex to the initial petition received on November 5, 2004.

<sup>186</sup> Request for impoundment on June 7, 1996 filed with the Departmental Civil Court Judge. Annex to the initial petition received on November 5, 2004.

<sup>187</sup> Order of seizure issued on August 23, 1996 by the Departmental Civil Court. Annex to the initial petition received on November 5, 2004.

<sup>188</sup> Order of seizure issued on August 23, 1996 by the Departmental Civil Court. Annex to the initial petition received on November 5, 2004.

<sup>189</sup> Order of seizure issued on August 23, 1996 by the Departmental Civil Court. Annex to the initial petition received on November 5, 2004.

<sup>190</sup> Statement of expiration of August 28, 2003. Annex to the initial petition received on November 5, 2004.

<sup>191</sup> Formal compensation claim filed by Onasis Cooper Brown against Marlon Talun Haylock. Annex to the initial petition received on November 5, 2004.

<sup>192</sup> Medical certificates from the Hospital of Puerto Lempira, November 29, 2002, October 22, 2003, and March 11, 2004. Annex to the initial petition received on November 5, 2004.

<sup>193</sup> Medical certificates from the Hospital of Puerto Lempira, November 29, 2002, October 22, 2003, and March 11, 2004. Annex to the initial petition received on November 5, 2004.

<sup>194</sup> Formal compensation claim filed by Onasis Cooper Brown against Marlon Talun Haylock. Annex to the initial petition received on November 5, 2004.

<sup>195</sup> Calculation of compensation for occupational accident by Labor Inspector II on March 11, 2004. Annex to the initial petition received on November 5, 2004.

<sup>196</sup> Record of the failure to appear of the legal representative of the lobster fishing vessel *Flamingo 1* on December 30, 2004. Annex to the initial petition received on November 5, 2004.

<sup>197</sup> Interview with Tránsito Brown Sabino on August 6, 2012. Audio No. 18. Annex to the communication from the petitioners of February 12, 2015.

<sup>198</sup> Formal compensation claim filed by Anastacio Richard Bais on March 29, 2004 against Marco Antonio Bonilla. Annex to the initial petition received on November 5, 2004.

136. Richard Toledo's sister stated that, on that same day, they were informed that the alleged victim had died while working on the vessel. She claimed that they received the remains of her brother three days later and that the delay was because the area where the incident occurred was located far from his home.<sup>199</sup>

137. On March 29, 2004, Anastacio Richard Bais filed a claim with the Labor Inspector against Mr. Bonilla for the fatal occupational accident.<sup>200</sup> On that same day, the Secretariat for Labor Affairs and Social Security calculated the compensation and ruled that the complainant was entitled to receive compensation in the amount of 51,356.00 lempiras.<sup>201</sup>

138. On May 2, 2004, the mother of the alleged victim and Mr. Bonilla agreed upon compensation in the amount of 53,495.00 lempiras. In this agreement, it was indicated that Mr. Bonilla had already paid 30,000.00 lempiras.<sup>202</sup> Orlenes Richard Toledo, sister of the alleged victim, stated that said amount was insufficient in view of the harm caused to his next of kin.<sup>203</sup> The Commission does not have any information about total payment of the compensation.

## **20. Efraín Rosales Kirington**

139. Efraín Rosales stated that, on December 9, 2003, he had an accident while working as a fishing diver for the fishing vessel *Ledy América* owned by Antonio Bonilla. He pointed out that, after a very deep dive, he passed out and was unconscious for four hours. He claimed that the owner of the vessel did not want to take him to a hyperbaric chamber and that the following day he had to travel himself for 15 hours to start treatment in this chamber although the owner of the vessel did not pay him for any of the medical expenses that were incurred.<sup>204</sup>

140. According to the medical certificate issued by the Hospital of Puerto Lempira, Mr. Rosales suffered from decompression sickness. It indicated that, because of the accident, his eyesight had declined drastically. On February 12, 2004, Mr. Rosales filed a compensation claim with the Labor Inspector for the occupational accident he had suffered.<sup>205</sup> On March 17, 2004, Mr. Bonilla's failure to appear was noted in the records of the hearing.<sup>206</sup> From available information, the IACHR understands that these proceedings did not produce any results.

## **21. Melesio Pamistan Maick**

141. Melesio Pamistan Maick stated that, on March 7, 2003, he had an accident while working as a fishing diver on the fishing vessel *Marisco 11* owned by Pedro García and Loly Torres. He pointed out that, after a very deep dive, he started feeling dizzy and his body became numb. He indicated that, five days after the accident, he was taken to the city of Roatán where he was hospitalized for a month. He indicated that the owners of the vessel paid him about 5,980 lempiras.<sup>207</sup>

---

<sup>199</sup> Interview with Orlenes Richard Toledo on October 16, 2014. Audio No. 9. Annex to the communication from the petitioners of February 12, 2015.

<sup>200</sup> Formal compensation claim filed by Anastacio Richard Bais on March 29, 2004 against Marco Antonio Bonilla. Annex to the initial petition received on November 5, 2004.

<sup>201</sup> Calculation of the compensation for fatal occupational accident on March 29, 2004 by Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>202</sup> Record of appearance in April 2004 before Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>203</sup> Interview with Orlenes Richard Toledo on October 16, 2014. Audio No. 9. Annex to the communication from the petitioners of February 12, 2015.

<sup>204</sup> Formal compensation claim filed by Efraín Rosales Kirington against Tonio Bonilla on February 12, 2004. Annex to the initial petition received on November 5, 2004.

<sup>205</sup> Formal compensation claim filed by Efraín Rosales Kirington against Tonio Bonilla on February 12, 2004. Annex to the initial petition received on November 5, 2004.

<sup>206</sup> Record of Marco Tonio Bonilla's failure to appear on March 17, 2004. Annex to the initial petition received on November 5, 2004.

<sup>207</sup> Formal compensation claim filed by Melesio Pamistan Maick against Pedro García and Loly Torres on February 26, 2004. Annex to the initial petition received on November 5, 2004.

142. According to the medical certificate of March 25, 2003, Mr. Pamistan suffered from decompression sickness and was unable to walk, as a result of which he was treated in the hyperbaric chamber.<sup>208</sup> On October 14, 2003, the Hospital of Puerto Lempira certified that Mr. Pamistan suffered from 40% walking disability.<sup>209</sup>

143. On February 26, 2004, Mr. Pamistan filed a compensation claim with the Labor Inspector.<sup>210</sup> On March 1, 2004, the Secretariat for Labor Affairs and Social Security ruled that Mr. Pamistan was entitled to compensation in the amount of 19,859.08 lempiras.<sup>211</sup> According to the brother of the alleged victim, Pablo Padilla Morti Maick, the owner of the vessel never appeared in the proceedings.<sup>212</sup>

144. Pablo Padilla Morti Maick stated that, in 2012, his brother had a severe urinary infection, suffered severe pain of the spinal column, and walked with a walking stick. He added that the only medical care he receives is private and that he has to buy his own medicines himself.<sup>213</sup>

## **22. Willy Gómez Pastor**

145. Willy Gómez Pastor stated that, on February 11, 2003, he had an accident while working as a fishing diver on the fishing vessel *Marylu 1* owned by Marylu Fedrick.<sup>214</sup> He indicated that, after a very deep dive, he passed out. He claimed that, the following day, he was taken to Roatán where he was hospitalized for one month. He added that the owner of the vessel had pledged to pay for the expenses of medical services and for compensation, but this never happened.<sup>215</sup>

146. According to the medical certificate from the hospital of Roatán, Mr. Gómez suffered from decompression sickness, as a result of which he was taken care of in the hyperbaric chamber.<sup>216</sup> According to a subsequent report from the Hospital of Puerto Lempira, Mr. Gómez suffered from the following sequelae: walking with crutches, poor balance, and neurogenic bowel and bladder.<sup>217</sup>

147. On October 1, 2003, Mr. Gómez filed a compensation claim with the Labor Inspector for the occupational accident he had had.<sup>218</sup> On January 27, 2004, it was recorded that Mr. Fedrick had failed to appear.<sup>219</sup> On July 13, 2004, the Secretariat for Labor Affairs and Social Security determined that Mr. Gomez was entitled to compensation in the amount of 197,690.35 lempiras because he has a permanent 80% disability.<sup>220</sup>

148. In 2012, Mr. Gómez stated that the owner of the vessel had gone to the United States and that he did not receive any compensation. He also indicated that he suffers from constant pain in the chest, back of

---

<sup>208</sup> Record of March 25, 2003 from the Cornerstone Hyperbaric Chamber and Medical Clinic. Annex to the initial petition received on November 5, 2004.

<sup>209</sup> Record of October 14, 2003 from the Hospital of Puerto Lempira. Annex to the initial petition received on November 5, 2004.

<sup>210</sup> Formal compensation claim filed by Melecio Pamistan Maick against Pedro García and Loly Torres on February 26, 2004. Annex to the initial petition received on November 5, 2004.

<sup>211</sup> Calculation of compensation for occupational accident on March 1, 2004 by Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>212</sup> Interview with Pablo Padilla Morti Maick on August 6, 2012. Audio No. 15. Annex to the communication from the petitioner of February 12, 2015.

<sup>213</sup> Interview with Pablo Padilla Morti Maick on August 6, 2012. Audio No. 15. Annex to the communication from the petitioners of February 12, 2015.

<sup>214</sup> Formal compensation claim filed by Willy Gómez Pastor against Marylu Fedrik on October 1, 2003. Annex to the initial petition received on November 5, 2004.

<sup>215</sup> Formal compensation claim filed by Willy Gómez Pastor against Marylu Fedrik on October 1, 2003. Annex to the initial petition received on November 5, 2004.

<sup>216</sup> Record from the Cornerstone Hyperbaric Chamber and Medical Clinic, March 12, 2003. Annex to the initial petition received on November 5, 2004.

<sup>217</sup> Record from the Hospital of Puerto Lempira, July 9, 2004. Annex to the initial petition received on November 5, 2004.

<sup>218</sup> Formal compensation claim filed by Willy Gómez Pastor against Marylu Fedrik on October 1, 2003. Annex to the initial petition received on November 5, 2004.

<sup>219</sup> Record of Marylu Fedrik's failure to appear on January 27, 2004. Annex to the initial petition received on November 5, 2004.

<sup>220</sup> Calculation on July 9, 2004 of the partial permanent occupational accident by the Labor Inspector. Annex to the initial petition received on November 5, 2004.

the neck, and legs. He pointed out that he cannot walk much because he often stumbles. He added that he does not receive any medical treatment for his pain and, when he does buy medicines, he has to buy them himself.<sup>221</sup>

### **23. Licar Méndez**

149. Mamerto Mensy Gream, the father of Licar Méndez, stated that, on December 12, 2003, his son disappeared while working on the fishing vessel *Mis Yolany* owned by Mr. Darwin. He claimed that his son was 16 years old and that he had been working on said vessel for six days. According to Mr. Mensy, the captain of the vessel had left his son in the *cayuco* [dugout canoe] to punish him for having let a diver go missing. He added that the captain went alone to pick up the diver himself and when he came back hours later he did not find Licar Méndez.<sup>222</sup>

150. On January 21, 2004, Mamerto Mensy Gream filed a claim with the Labor Inspector because of what had happened to his son.<sup>223</sup> From available information, it is apparent that these proceedings did not produce any results.

### **24. Roberto Flores Esteban**

151. Roberto Flores Esteban stated that, on February 23, 2000, he had an accident while working as a fishing diver on the fishing vessel *Capitán Zapata* owned by Rafael Zapata. He indicated that, after a very deep dive, one of his legs was numb. He indicated that the following day he was taken to the community of Cauquira where he was hospitalized for two weeks and placed in the hyperbaric chamber of FUDEMA.<sup>224</sup> According to the medical certificate of November 2003 from the Hospital of Puerto Lempira, Mr. Flores had decompression sickness “with 30% alteration in his walking.”<sup>225</sup>

152. On November 17, 2003, Mr. Flores filed a compensation claim with the Labor Inspector for the occupational accident he had had, stating that Rafael Zapata paid him only 4,000.00 lempiras.<sup>226</sup> On April 1, 2004, the Secretariat for Labor Affairs and Social Security recorded Mr. Zapata’s failure to appear.<sup>227</sup> From available information, it is apparent that these proceedings did not produce any results.

153. According to the statement made by his wife in 2012, Mr. Flores was bedridden, was unable to move his arms and legs, and was not receiving any medical care.<sup>228</sup>

### **25. Daniel Dereck**

154. Daniel Dereck stated that, on November 5, 2000, he had an accident while working as a fishing diver on the fishing vessel *South West* owned by Jaime Thomson. He pointed out that, after a very deep dive and surfacing, his body was paralyzed. He claimed that the following day he was taken to the city of Roatán where he was hospitalized for more than a week and placed in the hyperbaric chamber there.<sup>229</sup>

---

<sup>221</sup> Interview with Willy Gómez Pastor on August 6, 2012. Audio No. 8. Annex to the communication from the petitioners of February 12, 2015.

<sup>222</sup> Formal compensation claim filed by Mamerto Mensy Gream against Mr. Darwin on January 21, 2004. Annex to the initial petition received on November 5, 2004.

<sup>223</sup> Formal compensation claim filed by Mamerto Mensy Gream against Mr. Darwin on January 21, 2004. Annex to the initial petition received on November 5, 2004.

<sup>224</sup> Formal compensation claim filed by Roberto Flores Esteban against Rafael Zapata on November 17, 2003. Annex to the initial petition received on November 5, 2004.

<sup>225</sup> Medical record from the Hospital of Puerto Lempira, November 17, 2003. Annex to the initial petition received on November 5, 2004.

<sup>226</sup> Formal compensation claim filed by Roberto Flores Esteban against Rafael Zapata on November 17, 2003. Annex to the initial petition received on November 5, 2004.

<sup>227</sup> Record of Rafael Zapata’s failure to appear on April 1, 2004. Annex to the initial petition received on November 5, 2004.

<sup>228</sup> Interviews with Rutilia Belli Ordoñez on August 6, 2012. Audio No. 9. Annex to the communication from the petitioners of February 12, 2015.

<sup>229</sup> Formal compensation claim filed by Daniel Dereck against Jaime Thomson on April 28, 2004. Annex to the initial petition received on November 5, 2004.

155. According to the medical certificate of November 2000 from the hospital in Roatán, Mr. Dereck suffered from decompression sickness and showed severe decline in the strength of his lower limbs, which prevented him from standing up.<sup>230</sup>

156. Mr. Dereck stated that Jaime Thompson did not pay him any compensation for his accident and that he offered only to give him his job back, which he had to accept because he needed the work.<sup>231</sup> He stated that he had another accident in 2004 and that he suffered from a hernia and an infection that prevented him from urinating.<sup>232</sup> He pointed out that he had to cut a power cable and use it as a catheter so that he could urinate.<sup>233</sup> He contended that he had to go the Hospital of Puerto Lempira to be taken care of and that Mr. Thompson did not pay for his medical expenses.<sup>234</sup>

157. On April 28, 2004, Mr. Dereck filed a formal compensation claim with the Secretariat for Labor Affairs and Social Security of La Ceiba for the occupational accident he had had in November 2000.<sup>235</sup> Mr. Dereck stated that, in 2012, he received only 3,000.00 lempiras from the owner of the vessel, apart from the claim he had filed, which was a negligible amount in view of the many medical expenses incurred. He added that he has a great deal of trouble walking.<sup>236</sup>

## **26. Eran Herrera Palisto**

158. Sofía Flores Palisto, the mother of Eran Herrera Palisto, stated that, on August 8, 2002, the alleged victim died in an accident while working on the fishing vessel *Ms. Denese* owned by Brux Borden. Ms. Flores filed a labor complaint with the Labor Inspector against Mr. Borden for her son's fatal occupational accident.<sup>237</sup> On November 5, 2002, the respondent was subpoenaed so that he would appear but he failed to do so.<sup>238</sup> From available information, it is apparent that these proceedings did not produce any results.

## **27. Bernardo Blakaus Emos**

159. Renelda Carlos Herrera, the wife of Bernardo Blakaus, stated that the alleged victim died on November 5, 2002 while working as a fishing diver on the fishing vessel *Capitán Dago* owned by Paulino Adalid Hernández Reyes.<sup>239</sup> She indicated that Mr. Blakaus was deep diving, that there was a storm, that a lightning bolt hit the spot where he was, and that Mr. Blakaus went under water again. She added that, when he surfaced, he was bleeding and that he died that same day.<sup>240</sup>

160. Ms. Renelda Carlos Herrera went to the Labor Inspector and, on December 8, 2003, a pledge to pay compensation was signed with Mr. Hernández, who agreed to pay Ms. Herrera 120,000 lempiras.<sup>241</sup> In 2014, she stated that she had received part of said compensation, that is, 65,000.00 lempiras, which included

---

<sup>230</sup> Record from the Cornerstone Hyperbaric Chamber and Medical Clinic, November 14, 2000. Annex to the initial petition received on November 5, 2004.

<sup>231</sup> Formal compensation claim filed by Daniel Dereck against Jaime Thomson on April 28, 2004. Annex to the initial petition received on November 5, 2004.

<sup>232</sup> Formal compensation claim filed by Daniel Dereck against Jaime Thomson on April 28, 2004. Annex to the initial petition received on November 5, 2004.

<sup>233</sup> Interview with Daniel Dereck on August 6, 2012. Audio No. 10. Annex to the communication from the petitioners of February 12, 2015.

<sup>234</sup> Formal compensation claim filed by Daniel Dereck against Jaime Thomson on April 28, 2004. Annex to the initial petition received on November 5, 2004.

<sup>235</sup> Formal compensation claim filed by Daniel Dereck against Jaime Thomson on April 28, 2004. Annex to the initial petition received on November 5, 2004.

<sup>236</sup> Interview with Daniel Dereck on August 6, 2012. Audio No. 10. Annex to the communication from the petitioners of February 12, 2015.

<sup>237</sup> Writ dated January 9, 2003 from the Labor Inspector whereby the civil court judge is notified of the power attorney. Annex to the initial petition received on November 5, 2004.

<sup>238</sup> Report dated November 13, 2002 from the Labor Inspector to various Labor Inspectors. Annex to the initial petition received on November 5, 2004.

<sup>239</sup> Pledge by Paulino Hernández to pay compensation to Renelda Carlos Herrera of December 8, 2013. Annex to the initial petition received on November 5, 2004.

<sup>240</sup> Interview with Renelda Carlos Herrera on October 15, 2014. Audio No. 13. Annex to the communication from the petitioners of February 12, 2015.

<sup>241</sup> Pledge by Paulino Hernández to pay compensation to Renelda Carlos Herrera of December 8, 2013. Annex to the initial petition received on November 5, 2004.

the expenses for the funeral. She contended that said amount was minimal and that she filed a complaint with the Secretariat for Labor Affairs but no proceeding was undertaken.<sup>242</sup>

### **28. Alí Herrera Ayanco**

161. Marlene Alemán Laines, the wife of Alí Herrera, stated that the alleged victim died while working for the fishing vessel *Arlie Jr. Third* owned by Gary Douglas Hynds. Ms. Alemán went to the Labor Inspector and, on April 1, 2003, she and Mr. Hynds signed a document where the latter pledged pay her compensation. In this document, it was agreed that 46,560.00 lempiras would be paid to Ms. Alemán, and it was recorded that she had previously received the amount of 23,000.00 lempiras.<sup>243</sup> The Commission does not have any information about whether or not the entire payment was ultimately made.

### **29. Mármol Williams García**

162. Clara Inés Wilson Dario, the wife of Mármol Williams García, stated that the alleged victim died while working on the fishing vessel *Digna América* owned by Marco Antonio Bonilla Castillo. Ms. Wilson went to the Labor Inspector, and on January 26, 2004 she and Mr. Bonilla signed a pledge to pay compensation.<sup>244</sup> In that pledge, it was agreed that he would pay Ms. Williams 131,174.40 lempiras.<sup>245</sup> It was recorded that full payment was made on that day.<sup>246</sup>

### **30. José Martínez Lopez**

163. Emiliana Urbina Mena, the partner of José Martínez, stated that the alleged victim died on November 8, 2003 while working on the fishing vessel *Mister Marvine* owned by Paulino Adalid Hernández Reyes.<sup>247</sup> The sister of Mr. Martínez, Edatina Martínez, indicated that the alleged victim deep dived and passed out. She contended that Mr. Martínez did not receive any type of treatment after passing out and that, hours later, while they were trying to take him to a medical center, he died.<sup>248</sup>

164. Emilia Urbina went to the Labor Inspector and, on February 17, 2004, she and Mr. Hernández signed a pledge to pay compensation. In said pledge, it was agreed that Ms. Urbina would be paid 100,000 lempiras, and it was recorded that full payment had been made on that day.<sup>249</sup> Edatina Martínez López indicated that said amount of money was insufficient to cover all the expenses and damages caused by her brother's death. She added that the family of Mr. Martínez filed a complaint with the Ministry of Labor in La Ceiba but that it did not yield any results.<sup>250</sup>

### **31. Alfredo Francisco Brown**

165. Linda Paulista Manister, the sister of Alfredo Brown, stated that the alleged victim had died while working on the fishing vessel *Kathia Maria* owned by Abraham Yovany Campigotte. Linda Paulista went to the Labor Inspector and, on May 5, 2004, she and Mr. Campigotte signed a pledge to pay compensation. In

---

<sup>242</sup> Interview with Renelda Carlos Herrera on October 15, 2014. Audio No. 13. Annex to the communication from the petitioners of February 12, 2015.

<sup>243</sup> Pledge by Gary Douglas Hynds to pay compensation to Marlene Alemán Laines, April 1, 2003. Annex to the initial petition received on November 5, 2004.

<sup>244</sup> Pledge by Marco Antonio Bonilla to pay compensation to Clara Inés Wilson, January 26, 2004. Annex to the initial petition received on November 5, 2004.

<sup>245</sup> Pledge by Marco Antonio Bonilla to pay compensation to Clara Inés Wilson, January 26, 2004. Annex to the initial petition received on November 5, 2004.

<sup>246</sup> Pledge by Marco Antonio Bonilla to pay compensation to Clara Inés Wilson, January 26, 2004. Annex to the initial petition received on November 5, 2004.

<sup>247</sup> Pledge by Paulino Adalid Hernández to pay compensation to Emiliana Urbina Mena, February 17, 2004. Annex to the initial petition received on November 5, 2004.

<sup>248</sup> Interview with Edatina Martínez López on August 6, 2012. Audio No. 5. Annex to the communication from the petitioners of February 12, 2015.

<sup>249</sup> Pledge by Paulino Adalid Hernández pay compensation to Emiliana Urbina Mena, February 17, 2004. Annex to the initial petition received on November 5, 2004.

<sup>250</sup> Interview with Edatina Martínez López on August 6, 2012. Audio No. 5. Annex to the communication from the petitioners of February 12, 2015.

said pledge, it was agreed that Ms. Urbina would be paid 40,000.00 lempiras.<sup>251</sup> It was recorded that half of the amount agreed upon was paid on that day and that the rest would be paid the following day.<sup>252</sup> The Commission has no information about whether or not the latter payment was made.

### **32. Próspero Bendles Marcelino**

166. Melvia Cristina Guerrero, the wife of Próspero Bendles Marcelino, stated that the alleged victim died on March 23, 2003.<sup>253</sup> She indicated that this happened while working as a fishing diver on the fishing vessel *Sharay* owned by Víctor Boden. She claimed that Mr. Bendles, after a very deep dive, felt dizzy and passed out, because of which he was given oxygen on the vessel, but he never regained consciousness and died at 6:00 p.m. that day.<sup>254</sup> She pointed out that, four days after the incident, she received the remains of her husband.<sup>255</sup>

167. On April 28, 2003, Melvia Guerrero filed a compensation claim with the Labor Inspector for her husband's fatal accident, pointing out that the owner of the vessel paid her only 6,000.00 lempiras for the burial expenses of Mr. Bendles.<sup>256</sup>

168. On April 30, 2003, the Secretariat for Labor Affairs and Social Security ruled that Ms. Guerrero would be entitled to compensation in the amount of 834,154.50 lempiras.<sup>257</sup> On May 2, 2003, a pledge to pay compensation was signed by Ms. Guerrero and Mr. Boden in the amount of 120,000.00 lempiras. In that same pledge, it was recorded that Mr. Boden gave Melvia Guerrero 50,000.00 lempiras and that he pledged to pay the rest at the end of August of that year.<sup>258</sup> The Commission does not have any information about whether or not the latter payment was made.

---

<sup>251</sup> Power of attorney granted by Hilda Manister Alfred to Leolinda Paulista Manister, May 4, 2004. Annex to the initial petition received on November 5, 2004.

<sup>252</sup> Pledge by Abraham Yeovany Campigotte to pay compensation to Leolinda Paulista Manister, May 5, 2004. Annex to the initial petition received on November 5, 2004.

<sup>253</sup> Interview with Melvia Cristina Guerrero Benth on August 6, 2012. Audio No. 6. Annex to the communication from the petitioners of February 12, 2015.

<sup>254</sup> Formal labor complaint filed by Melvia Cristina Guerrero Benth against Víctor Boden on April 28, 2003. Annex to the initial petition received on November 5, 2004.

<sup>255</sup> Interview with Melvia Cristina Guerrero Benth on August 6, 2012. Audio No. 6. Annex to the communication from the petitioners of February 12, 2015.

<sup>256</sup> Formal labor complaint filed by Melvia Cristina Guerrero Benth against Victor Boden on April 28, 2003. Annex to the initial petition received on November 5, 2004.

<sup>257</sup> Calculation on April 30, 2003 of compensation for fatal occupational accident by Labor Inspector II. Annex to the initial petition received on November 5, 2004.

<sup>258</sup> Pledge by Victor Kirt Borden M. to pay compensation to Melvia Cristina Guerrero B., May 2, 2003. Annex to the initial petition received on November 5, 2004.

### 33. Ramón Allen Ferman

169. Elena Ferman Paisano, the wife of Ramón Allen, stated that the alleged victim died on December 11, 2002 while working as a fishing diver on the fishing vessel *Tiburón Walker* owned by Manuel Pereira Jaylock.<sup>259</sup> The Judge of the Peace of the Criminal Court also confirmed that Ramón Allen Ferman died while engaged in diving activities and after diving down to 35 feet and suffering from decompression sickness.<sup>260</sup>

170. Ms. Ferman went to the Labor Inspector and, on May 5, 2004, she and Mr. Pereira signed a pledge to pay compensation. In this pledge, it was agreed that Ms. Ferman would be paid 144,000.00 lempiras. It was recorded that, on that day, she was paid 24,000.00 lempiras and that the rest would be paid as funeral expenses.<sup>261</sup>

### 34. Roger Gómez Alfred

171. Especel Bradle Valeriano, the brother-in-law of Roger Gómez Alfred, stated that the alleged victim died on December 10, 2002 as a consequence of his work as a fishing diver on the fishing vessel *Capitán Dan* owned by Abraham Geovanny Compegoth. He pointed out that Mr. Gómez, after a very deep dive, became very ill.<sup>262</sup> The wife of Mr. Gómez stated that the alleged victim's body was paralyzed after this incident.<sup>263</sup>

172. Especel Bradle contended that, the following day, Mr. Gómez was taken to the Hospital of Puerto Lempira, but that said hospital did not have a hyperbaric chamber, because of which, almost two weeks after being admitted to said hospital, he died on December 27, 2002.<sup>264</sup>

173. On March 18, 2003, Especel Bradle Valeriano, on behalf of the wife of Mr. Gómez, Vilma Greham Velásquez, filed a compensation claim with the Labor Inspector for the alleged victim's fatal accident. He contended that Mr. Compegoth paid only 20,000.00 lempiras to cover half of the funeral expenses for the burial of Roger Gómez.<sup>265</sup>

174. On April 23, 2003, a pledge to pay compensation was signed by Ms. Velásquez and Mr. Compegoth in the amount of 120,500.00 lempiras.<sup>266</sup> Ms. Greham contended that the amount was insufficient and that the owner of the vessel discounted the amount paid for funeral expenses.<sup>267</sup> She indicated that, at the time of signing the pledge, she would be paid 20,000.00 lempiras and that, over the following five months, she would be paid the rest.<sup>268</sup> Ms. Greham stated in 2014 that she had not received said payment and that, to date, she still has outstanding debts with other persons for her husband's funeral expenses.<sup>269</sup>

---

<sup>259</sup> Pledge by Victor Manuel Pereyra H. to pay compensation to Elena Felman Paisano, January 27, 2003. Annex to the initial petition received on November 5, 2004.

<sup>260</sup> Record of December 16, 2002 of the Justice of the Peace of the Criminal Court. Annex to the initial petition received on November 5, 2004.

<sup>261</sup> Pledge by Victor Manuel Pereyra H. to pay compensation to Elena Felman Paisano, January 27, 2003. Annex to the initial petition received on November 5, 2004.

<sup>262</sup> Record of the appearance of Especel Bradle Valeriano on March 18, 2003 for the fatal accident. Annex to the initial petition received on November 5, 2004.

<sup>263</sup> Interview with Vilma Greham Velásquez on October 15, 2014. Audio No. 12. Annex to the communication from the petitioners of February 12, 2015.

<sup>264</sup> Record of the appearance of Especel Bradle Valeriano on March 18, 2003 for the fatal accident. Annex to the initial petition received on November 5, 2004.

<sup>265</sup> Record of the appearance of Especel Bradle Valeriano on March 18, 2003 for the fatal accident. Annex to the initial petition received on November 5, 2004.

<sup>266</sup> Pledge by Abraham Geovanny Compegoth to pay compensation to Vilma Greham Velásquez, April 23, 2003. Annex to the initial petition received on November 5, 2004.

<sup>267</sup> Interview with Vilma Greham Velásquez on October 15, 2014. Audio No. 12. Annex to the communication from the petitioners of February 12, 2015.

<sup>268</sup> Pledge by Abraham Geovanny Compegoth to pay compensation to Vilma Greham Velásquez, April 23, 2003. Annex to the initial petition received on November 5, 2004.

<sup>269</sup> Interview with Vilma Greham Velásquez on October 15, 2014. Audio No. 12. Annex to the communication from the petitioners of February 12, 2015.

### 35. Carlos Castellón Cárdenas

175. Carlos Castellón stated that, on August 11, 1996, he started to work as a fishing diver on the fishing vessel *Sea House* owned by Basima Hilsaca.<sup>270</sup> His wife contended that, in the year 2000, the alleged victim had an accident while deep diving and was taken to a hyperbaric chamber.<sup>271</sup> Mr. Castellón stated that he was diagnosed with decompression sickness in September 2000.<sup>272</sup>

176. Mr. Castellón filed a compensation claim with the Occupational Hygiene and Safety Offices.<sup>273</sup> On October 5, 2001, the Occupational Medicine Service ruled that Mr. Castellón was suffering from 70% disability.<sup>274</sup> On October 15, 2001, the Secretariat for Labor Affairs and Social Security ruled that, on the basis of the diagnosis, Mr. Castellón was entitled to compensation in the amount of 227,850.00 lempiras.<sup>275</sup>

177. On February 15, 2001, a pledge to pay compensation was signed by Mr. Castellón and Ms. Hilsaca. In said agreement, Ms. Hilsaca pledged to pay 40,000.00 lempiras, and it is recorded that said person gave Mr. Castellón the amount of 3,000.00 with indications that the rest would be paid in March and August of that same year.<sup>276</sup>

178. On November 20, 2001, Mr. Castellón filed a labor complaint for payment of compensation because of professional illness against Ms. Hilsaca, indicating her failure to pay the amounts that had been pledged.<sup>277</sup>

179. Ms. Hilsaca challenged the complaint and alleged that she was never the owner of the fishing vessel *Sea House*.<sup>278</sup> The respondent failed to appear at the settlement hearing, in the framework of which the court contended that “it is recorded [...] in the Pledge to Pay Compensation (...) that the owner of the lobster fishing vessel *Sea House* is the respondent Ms. Basima Hilsaca and that there is no other evidence disproving this statement.” As a result, the court ruled that the objection filed by Ms. Hilsaca was inadmissible.<sup>279</sup>

180. On April 17, 2002, Ms. Hilsaca stated that “as a natural person I have not been the owner of said vessel for the period of time mentioned.” She contended that, as the partner of a company Sociedad Hermanos Hilsaca, she signed the payment agreement.<sup>280</sup> On May 24, 2002, the judgment hearing was held, sentencing the respondent to pay 37,000.00 lempiras as compensation for professional illness consisting of diver’s decompression sickness.<sup>281</sup>

181. On August 29, 2002, Mr. Castellón’s representative requested the court to “place liens on any savings accounts, time deposit accounts, checking accounts that Ms. Basima Hilsaca might have.”<sup>282</sup> According to Dany Castellón Masier, son of the alleged victim, by the year 2012, he had not received any payment.<sup>283</sup>

---

<sup>270</sup> Regular labor complaint filed by Carlos Castellón Cárdenas against Basima Hilsaca on November 20, 2001. Annex to the initial petition received on November 5, 2004.

<sup>271</sup> Interview with Emiclina Masiel Alen on October 15, 2014. Audio No. 29. Annex to the communication from the petitioners of February 12, 2015.

<sup>272</sup> Regular labor complaint filed by Carlos Castellón Cárdenas against Basima Hilsaca on November 20, 2001. Annex to the initial petition received on November 5, 2004.

<sup>273</sup> Regular labor complaint filed by Carlos Castellón Cárdenas against Basima Hilsaca on November 20, 2001. Annex to the initial petition received on November 5, 2004.

<sup>274</sup> Diagnosis for Carlos Castellón Cárdenas by the Occupational Medicine Service, October 5, 2001. Annex to the initial petition received on November 5, 2004.

<sup>275</sup> Calculation of professional illness compensation by the Labor Inspector, October 15, 2001. Annex to the initial petition received on November 5, 2004.

<sup>276</sup> Pledge by Basima Hilsaca to pay compensation to Carlos Castellón Cárdenas, February 15, 2001. Annex to the initial petition received on November 5, 2004.

<sup>277</sup> Regular labor complaint filed by Carlos Castellón Cárdenas against Basima Hilsaca on November 20, 2001. Annex to the initial petition received on November 5, 2004.

<sup>278</sup> Response to the complaint on February 21, 2001. Annex to the initial petition received on November 5, 2004.

<sup>279</sup> Settlement hearing on February 28, 2002. Annex to the initial petition received on November 5, 2004.

<sup>280</sup> Questioning of Ms. Hilsaca on April 17, 2002. Annex to the initial petition received on November 5, 2004.

<sup>281</sup> Judgment hearing on May 24, 2002. Annex to the initial petition received on November 5, 2004.

<sup>282</sup> Seizure order and official letters to financial institutions. Annex to the initial petition received on November 5, 2004.

<sup>283</sup> Interview with Dany Castellón Masier on August 6, 2012. Audio No. 17. Annex to the communication from the petitioners of February 12, 2015.

182. Emiclina Masiel Alen and Dany Castellón Masier, the wife and son, respectively, of the alleged victim, contended that their husband/father died in the year 2002.<sup>284</sup> His son pointed out that, after the accident, Mr. Castellón could not walk well and, as a result, he could not work. He indicated that because of failure to provide him with medical care, his situation worsened and he died.<sup>285</sup>

### **36. Timoteo Salazar Zelaya**

183. In the year 2002, Timoteo Salazar Zelaya was working as a fishing diver on the vessel *Omar Phillips*. According to a report from the Office for Labor Affairs and Social Security, Mr. Salazar had a fatal accident on said vessel in the year 2002. This report also indicates that a settlement was reached between the owner of the vessel and Mr. Salazar's next of kin in the amount of 100,000.00 lempiras. Mr. Salazar's next of kin indicated that, in 2003, they had not received any of the money.<sup>286</sup>

### **37. Information available on the next of kin of the alleged victims**

184. On February 12, 2015, the petitioners submitted a list of the next of kin of the alleged victims. The Commission observes that said document is broken down by each alleged victim with a description of the kinship, among which can be found spouses, brothers, sisters, sons, daughters, or parents, that is, the nuclear family. The State did not present any objection to these lists, as a result of which the Commission shall take them into account for its review of the merits. The details of this information can be found in the only annex to the present report on the merits.

## **V. LEGAL ANALYSIS**

### **A. Preliminary issue regarding identification of the victims**

185. In the context of the system of individual petitions and cases, one should identify, to the greatest extent possible, all the alleged victims. Nonetheless, there are certain situations in which that determination poses challenges. That is why in such situations one must take account of various elements for the analysis when determining the alleged victims, under certain standards of reasonableness and flexibility.

186. In the instant matter the Commission takes note that the 42 alleged victims who suffered the accidents and who died, disappeared, or ended up with permanent sequelae, are fully identified. Nonetheless, in some cases the Commission does not have the names of their family members. In this respect, the IACHR considers various elements of complexity that stem from the particularities of the instant case. Thus, for example, the IACHR has found and the State has recognized that the zone is very remote and very difficult to access. In addition, due to the progressive deterioration of the health situation, owing to the sequelae of the accidents with respect to the alleged surviving victims, the IACHR finds it reasonable that they have not been able to state with precision the names of all family members impacted. In addition, some difficulties can be inferred related to language and the time that has elapsed since the facts; in some cases, it has been more than 20 years.

187. In view of the foregoing, the IACHR incorporates in its Single Annex to the instant report all the information available about the identity of the alleged victims and their family members, by their full name and/or family relationship, without prejudice to the petitioner, in the context of carrying out the

---

<sup>284</sup> Interview with Dany Castellón Masier on August 6, 2012. Audio No. 17. Annex to the communication from the petitioners of February 12, 2015. Interview with Emiclina Masiel Alen on October 15, 2014. Audio No. 29. Annex to the communication from the petitioners of February 12, 2015.

<sup>285</sup> Interview with Dany Castellón Masier on August 6, 2012. Audio No. 17. Annex to the communication from the petitioners of February 12, 2015.

<sup>286</sup> "Report of divers injured in accidents from January 2002 to May 26, 2004. Addressed to the Attorney Carlos Remberto Zalavarría Reconco, Legal Representative of the Association of Injured Honduran Miskito Divers of Río Plátano," signed by C. Santos Elpidio Cadenas, from the Region of La Ceiba, with a partially legible stamp, apparently from the Hygiene and Safety Inspection of the General Prevention Department of the State Secretariat in the Office for Labor Affairs and Social Security, page 1. Annex to the petition received on November 5, 2004.

recommendations of this report on the merits, and in a well-founded manner, contributing information about additional family members that it has not been able to produce previously.

**B. Right to life, right to humane treatment, and rights of the child (articles 4(1)<sup>287</sup>, 5(1)<sup>288</sup> and 19<sup>289</sup> of the American Convention, in relation to articles 1(1) and 2 of the same instrument)**

**1. The duty to respect and guarantee the rights to life and humane treatment and alleged attribution of international responsibility**

188. The Commission recalls that the right to life is a prerequisite for enjoyment all other human rights and without which respect for the other rights is meaningless.<sup>290</sup> Compliance with Article 4, in relation to Article 1(1) of the American Convention, requires not only that no person be deprived of their life arbitrarily, but also that States adopt all appropriate measures to protect and preserve the right to life, under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction.<sup>291</sup> These obligations are equally applicable to the right to humane treatment.

189. Since its first judgment in an adversarial case, the Inter-American Court has found that:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention.<sup>292</sup>

190. The State's international responsibility can be based on the acts or omissions of any of its branches or bodies that violate the American Convention. The responsibility is generated immediately with the illegal act. Based on this, to establish that a violation of the rights enshrined in the Convention has taken place, the guilt of the perpetrators or their intent do not need to be established, as with domestic criminal law; neither is it necessary to individually identify the officials to whom the acts in violation are attributed. It is sufficient to demonstrate "that acts or omissions have been verified that have allowed the perpetration of these violations or that a State obligation exists that the State has failed to meet."<sup>293</sup>

191. Throughout the work of the Commission and the Court, they have defined the content of the obligations to respect and guarantee pursuant to Article 1(1) of the Convention. Regarding the obligation to respect, the Court has indicated that "According to Article 1(1), any exercise of public power that violates the rights recognized by the Convention is illegal. Whenever a State organ, official or public entity violates one of those rights, this constitutes a failure of the duty to respect the rights and freedoms set forth in the Convention."<sup>294</sup>

---

<sup>287</sup> Article 4(1) of the American Convention: Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>288</sup> Article 5(1) of the American Convention: Every person has the right to have his physical, mental, and moral integrity respected.

<sup>289</sup> Article 19. Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

<sup>290</sup> IACHR, Case 12,270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, para. 185.

<sup>291</sup> IACHR, Case 12,270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, para. 186. Likewise: Inter-American Court. Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations, and Costs. Judgment dated July 4, 2007. Series C No. 166, para. 80.

<sup>292</sup> Inter-American Court. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 164.

<sup>293</sup> Inter-American Court. Case of González Medina and relatives v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240 para. 133; Inter-American Court, Case of the "Pueblo Bello Massacre" v. Colombia, Judgment of January 31, 2006. Series C No. 140, para. 112.

<sup>294</sup> IACHR Report No. 11/10, Case 12,488, Merits, Members of the Barrios Family, Venezuela, March 16, 2010, para. 91. Likewise: Inter-American Court. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 169.

192. For its part, the Commission has indicated that a violation of the human rights protected by the Convention can entail international responsibility of a State party, either because the violation is perpetrated by its own agents or—although not directly attributable to the State because they were committed by private party—when the State has not been able to determine who perpetrated the acts due to a lack of diligence to reasonably prevent the violation or address it in keeping with the provisions of the Convention. It is consequently crucial to determine if the illicit act has involved the participation, support or tolerance of State agents, or if it has resulted from the State’s failure to comply with its obligation to provide reasonable prevention of human rights violations and to investigate them seriously in order to punish those responsible and provide victims or their relatives with adequate reparations for the damage caused.<sup>295</sup>

193. Regarding the obligation to guarantee, the Court has found it to mean that States Party have the obligation to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention, as well as, where possible, reestablish the right violated and, where necessary, provide reparations for the damage caused by the human rights violation.<sup>296</sup>

194. Also, the Inter-American Court has indicated:

the State’s international responsibility may arise from attribution to the State of human rights violations committed by third parties or individuals, within the framework of the State’s obligations to guarantee respect for those rights between individuals. (...) The obligations *erga omnes* to respect and ensure respect for the norms of protection, which is the responsibility of the States Parties to the Convention, extend their effects beyond the relationship between its agents and the persons subject to its jurisdiction, because they are also manifest in the positive obligation of the State to adopt the necessary measures to ensure the effective protection of human rights in inter-individual relations. (...) These obligations devolve upon all subjects of international law and presumptions of non-compliance must be determined in function of the need for protection in each particular case.<sup>297</sup>

195. Specifically, regarding the duty to prevent, the Court has indicated that a State cannot be held responsible for all the human rights violations committed between individuals within its jurisdiction. The State’s obligations under the Convention do not entail limitless State responsibility for any act of private parties,<sup>298</sup> as its duties to adopt measures to prevent and protect regarding their relations with each other are conditioned on i) whether the State was or should have been aware of a situation of risk; ii) if that risk was real or immediate; and iii) if the State adopted measures reasonably expected to prevent that risk from becoming realized.<sup>299</sup>

196. In sum, for the purposes of determining the State’s international responsibility, what is decisive is whether a violation of the human rights recognized by the Convention has occurred with the support or the acquiescence of the government, or whether the State has allowed the act to take place without taking measures to prevent it or to punish those responsible. Thus, the Court’s task is to determine whether the violation is the result of a State’s failure to fulfill its duty to respect and guarantee those rights, as required by Article 1 (1) of the Convention.<sup>300</sup>

---

<sup>295</sup> IACHR, Report No. 65/01. Case 11,073. Merits. Juan Humberto Sánchez. Honduras. March 6, 2001, para. 88.

<sup>296</sup> Inter-American Court. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 166.

<sup>297</sup> Inter-American Court, Case of the “Pueblo Bello Massacre” v. Colombia. Judgment of January 31, 2006, Series C No. 140, paras. 111, 113, 117.

<sup>298</sup> Inter-American Court. Case of the “Pueblo Bello Massacre” v. Colombia. Judgment of January 31, 2006, Series C No. 140, para. 117.

<sup>299</sup> The case law of the European Court on the elements of the duty to prevent has been cited by the Inter-American Court in several of its judgments. In this sense, see: Inter-American Court. Case of the “Pueblo Bello Massacre” v. Colombia. Judgment of January 31, 2006. Series C No. 140, para. 124; Inter-American Court. Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 284; Inter-American Court. Case of Luna López v. Honduras. Merits, Reparations, and Costs. Judgment of October 10, 2013. Series C No. 269, para. 124.

<sup>300</sup> Inter-American Court. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4. Para. 173.

197. Both bodies of the Inter-American system have indicated that which measures of prevention can be required must be determined based on the characteristics and circumstances of each specific case. The Commission finds that in this case, regarding extreme working conditions exerted by private, the obligations to regulate, supervise, and oversee<sup>301</sup> are applicable insofar as the State's role in areas that affect the fundamental interests of society and the basic rights of individuals.

198. In this sense, although States cannot be held responsible for every time the right to life and humane treatment is violated in a labor context, the State can indeed be internationally responsible for such violations when they have taken place in the absence of proper regulatory, supervisory, and oversight mechanisms. These obligations are reinforced for private actors who conduct particularly hazardous activities.

199. In this case, the Commission has established as proven that the alleged victims suffered accidents while working as divers on different fishing vessels. In this way, the Commission will analyze whether the Honduran State adequately prevented the accidents that occurred against the alleged victims. This is for the purpose of determining the possible international responsibility of Honduras against its obligation to guarantee articles 4.1 and 5.1 of the American Convention.

## **2. Standards specific to hazardous activities in the labor context**

200. Having established the state obligations to respect and ensure the rights to life and humane treatment, in this section the Commission will recapitulate the international standards that are relevant in light of Article 29 of the American Convention, to characterize the scope and content of those treaty obligations related to work and more specifically with respect to hazardous activities that pose a risk to those rights.

201. Specifically, the Committee on Economic, Social and Cultural Rights, in its General Comment 14, referred to the state obligations related to reducing and preventing labor accidents, in the following terms:

Furthermore, States parties are required to formulate, implement and periodically review a coherent national policy to minimize the risk of occupational accidents and diseases, as well as to provide a coherent national policy on occupational safety and health services.

...

Elements of such a policy are the identification, determination, authorization and control of dangerous materials, equipment, substances, agents and work processes; the provision of health information to workers and the provision, if needed, of adequate protective clothing and equipment; the enforcement of laws and regulations through adequate inspection; ...<sup>302</sup>

202. As the European Court has held, states' positive obligations vis-à-vis the rights to life and integrity should be subject to greater scrutiny in cases involving labor situations– whether in public or private

---

<sup>301</sup> See: IACHR. Report No. 102/13. Case 12,723. Merits. TGGL. Ecuador, paras. 141, 142, and 143. Citing. Inter-American Court. Case of Ximenes Lopes. Brazil. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, para. 99; and ECHR. *Case of Storck v. Germany*, No. 61603/00. Third Section. Judgment of June 16, 2005, para. 103. In that case, the European Court established that: "the State is under an obligation to secure to its citizens their right to physical integrity under Article 8 of the [European Convention on Human Rights]. For this purpose, there are hospitals run by the State which coexist with private hospitals. The State cannot completely absolve itself of its responsibility by delegating its obligations in this sphere to private bodies or individuals [...] [T]he State remained under a duty to exercise supervision and control over private [...] institutions. Such institutions [...] need not only a licence, but also competent supervision on a regular basis of whether the confinement and medical treatment is justified." Also see Inter-American Court. Case of the Hacienda Brasil Verde Workers v. Brazil Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 319. <sup>301</sup>See: Guiding Principles on Business and Human Rights: Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Approved by the Human Rights Council by Resolution 17/4 on June 16, 2011. Principle 1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

<sup>302</sup> Committee on Economic, Social and Cultural Rights. General Comment 14. The right to the highest attainable standard of health. August 11, 2000, para. 36.

enterprises – that entail dangerous activities.<sup>303</sup> In such situations the same Court has held that states should implement a legislative and administrative framework that makes it possible to deter threats to the rights to life and humane treatment.<sup>304</sup>

203. In the case of *Öneryildiz v. Turkey*, the European Court determined that the obligation to respect rights, primarily the right to life, includes the positive duty of the state to safeguard the rights of persons under its jurisdiction, especially in the case of industrial activities which, by their very nature, are dangerous. The European Court added that in those cases, the concession of licenses should be governed by the creation, operation, safety, and supervision of the activity, and the interested parties should be required to take practical measures to guarantee the effective protection of those citizens whose lives may be threatened by the inherent risks.<sup>305</sup>

204. Of special interest is what the European Court held in the case of *Vilnes and others v. Norway*, in which it noted that underwater fishing is a high-risk labor activity.<sup>306</sup> Accordingly, the states should regulate the licenses, operations, safety measures, and supervision of that activity.<sup>307</sup> In addition, the states should adopt positive measures to ensure the safety and health of the divers.<sup>308</sup>

### **3. Analysis of the international responsibility of the State for the deaths, physical lesions, disappearances, and disabilities of the victims**

#### **3.1 On the victims who suffered accidents and/or died immediately related to deep-water diving**

205. As established in the facts proven, 34 victims<sup>309</sup> suffered accidents due to the deep water diving they did, and which caused them to suffer decompression syndrome. This has been corroborated by the documentation available on each victim, including, in many cases, medical certificates or the descriptions in administrative labor proceedings that were not controverted by the State. Of this group of persons, 12 divers<sup>310</sup> died in the moments immediately after the accident.

206. As was established in the section on context, the Miskito divers recruited to work on fishing vessels, as they received no training on diving or on the limits of submersion and the safety measures that should have been adopted when they were engaged in deep-sea diving. In addition, from the context it appears that the fishing vessels did not comply with the safety measures, either preventive or for immediate reaction in the face of possible accidents. Among the measures not complied with, according to information on the context, the following merit special mention: (i) the use of alcoholic beverages and drugs by the divers, encouraged by the captains of the vessels; (ii) the lack of appropriate diving equipment for deep-sea diving; and (iii) insistence and abuses committed by the captains of the vessels for the divers to submerge to depths that put their life and integrity at risk.

---

<sup>303</sup> ECHR, Case of Budayeva and others v. Russia. Judgment of September 29, 2008, para. 130.

<sup>304</sup> ECHR, Case of Kolyadenko and others v. Russia. Judgment of February 28, 2012, para. 157; and Case of *Öneryildiz v. Turkey*. Judgment of November 30, 2004, para. 89.

<sup>305</sup> European Court of Human Rights, Case of *Öneryildiz v. Turkey*. Judgment of November 30, 2004, para. 90.

<sup>306</sup> ECHR, Case of *Vilnes and others v. Norway*. Judgment of March 24, 2014, para. 222.

<sup>307</sup> ECHR, Case of *Vilnes and others v. Norway*. Judgment of March 24, 2014, para. 220. See also: Case of *Öneryildiz v. Turkey*. Judgment of November 30, 2004, paras. 71 and 90.

<sup>308</sup> ECHR, Case of *Vilnes and others v. Norway*. Judgment of March 24, 2014, para. 232.

<sup>309</sup> Opario Lemonth Morris, Saipon Richard Toledo, Eran Herrera Paulisto, Bernardo Blakaus Emos, Ali Herrera Ayanco, Mármol Williams García, José Martínez López, Ramón Allen Felman, Alfredo Francisco Brown, Próspero Bendles Marcelino, Roger Gómez Alfred, Timoteo Salazar Zelaya, Timoteo Lemus Pisatty, Onasis Cooper, Flaviano Martínez López, Carcoth Padmoe Millar, Amistero Bans Valeriano, Rolando Monico Thomas, Ralph Valderramos Álvarez, Ex Dereck Claro, Leonel Saty Méndez, David Esteban Bradley, Evecleto Londres Yumida, Arpin Robles Tayaton, Daniel Flores Reyes, Fredy Federico Salazar, Cooper Crescencio Jems, Félix Osorio Presby, Efraín Rosales Kirington, Melecio Pamistan Maick, Willy Gómez Pastor, Roberto Flores Esteban, Daniel Dereck Thomas, and Carlos Castellón Cárdenas.

<sup>310</sup> Opario Lemonth Morris, Saipon Richard Toledo, Eran Herrera Paulisto, Bernardo Blakaus Emos, Ali Herrera Ayanco, Mármol Williams García, José Martínez López, Ramón Allen Felman, Alfredo Francisco Brown, Próspero Bendles Marcelino, Roger Gómez Alfred, and Timoteo Salazar Zelaya.

207. First, the Commission observes that up until 2001 there was so regulation whatsoever by the State in relation to safety measures for the divers. The Commission takes note of the information of the State with respect to the adoption, in 2001, of the Regulation for Safety and Occupational Health in Underwater Fishing. Nonetheless, the IACHR does not have information that indicates that it has been effectively implemented. For example, the State did not show that it had incorporated an occupational safety inspector on each vessel registered with the Secretariat of Labor and Social Security.<sup>311</sup> The Commission notes that in any event the Regulation mentioned does not contain standards that established measures of inspection or oversight by the State.

208. Second, the Honduran State has not produced any information that shows that it had taken diligent measures to ensure that the vessels on which the 34 accidents occurred that are referred to in the facts proven had adopted the safety measures required before they were granted operating permits.

209. Third, the record does not include any exhibit that indicates that the state authorities performed any inspection or oversight in the zone at any moment of the extended timeframe in which the 34 accidents described in the facts proven took place, to verify that underwater fishing by the companies did not constitute a risk to the life and integrity of the divers who worked on them. This omission is especially serious considering the many contextual elements that show that this problem was widespread and known to the State.

210. Based on what has been said thus far, the Commission observes that at the time of the 34 accidents analyzed in this section, the omission or indifference on the part of the State with respect to the problem that gave rise to those accidents not only constituted an absolute lack of prevention; in view of its special seriousness and the level of abandonment by the State, it can also be understood as a form of tolerance. The Commission emphasizes that the State has recognized that the Mosquitia region is very difficult to access and is characterized by very little state presence.

211. In view of the foregoing, the Commission concludes that the State is responsible for violating the right to humane treatment established at Article 5(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the 34 Miskito divers who suffered the accidents analyzed in this point. In addition, in relation to the 12 persons who died moments after the accident, the Commission considers that the State is responsible for violating the right to life established at article 4(1) of the American Convention, in relation to articles 1(1) and 2 of the same instrument.

### **3.2 On the victims who died and disappeared as a result of a fire**

212. The Commission has considered it proven that on March 15, 2000 Miskito divers Hildo Ambrosio Trino, Andrés Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez Nacril, Rómulo Flores Henríquez, and Amilton Bonaparte Clemente were on a fishing vessel that caught fire as the result of the explosion of a butane tank. According to the documentation produced, the remains of Hildo Ambrosio were recovered. To date the whereabouts of the remains of the other six victims are still unknown.

213. The incident is consistent with the context, according to which the vessels used in the underwater fishing for which the Miskito divers were hired were old and the equipment was not subject to periodic checks. In addition, the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage (Fiscalía Especial de Etnias y Patrimonio Cultural) of Honduras recorded, in a report from 2001, accidents due to the explosion of cylinders or tanks. This was due to the poor condition of that equipment.

214. The Commission understands that the considerations set forth in the previous section on breach of the duty of the State to regulate, oversee, and inspect underwater fishing in the zone by Miskito divers also apply to the analysis of attribution of international responsibility on this point. The Commission further observes that the State failed to adopt any measure to attempt to locate the remains of the six Miskito divers who are disappeared, and that, as analyzed below, no investigation was opened to clarify the facts or determine the corresponding liabilities.

---

<sup>311</sup> Regulation on Occupational Safety and Health in Underwater Fishing. Article 9.

215. In view of all the considerations, the Commission considers that the State is responsible for violating the right to life of Hildo Ambrosio Trino, Andrés Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez Nacril, Rómulo Flores Henríquez, and Amilton Bonaparte Clemente, established at Article 4(1) of the American Convention, in relation to Article 1(1) of the same instrument.

### 3.3 On the child Licar Méndez Gutiérrez

216. The Commission established in the facts proven that on December 12, 2003, Licar Méndez Gutiérrez, 16 years of age at the time, was working as a boatman (*cayucero*) on a fishing vessel. According to the documentation produced and not controverted by the State, Licar Méndez was abandoned in a small canoe (*cayuco*) by the owner of the vessel as punishment. When the owner returned hours later he did not find him. To date, the whereabouts of Licar Méndez remain unknown.

217. Article 19 of the American Convention<sup>312</sup> established the right of children to “special measures of protection, which ... should be interpreted, in consideration of ... the specific circumstances of each case.”<sup>313</sup> Those measures correspond to both the State and to the family, the community, and the society to which the child belongs.

218. The Inter-American Court has indicated “the particular gravity” of cases in which “the victims were ... children.”<sup>314</sup> This is because, in view of their level of development and vulnerability, they require protection to ensure the exercise of their rights.<sup>315</sup> In this regard, “[a]ctions taken by the State and by society regarding protection of children and promotion and preservation of their rights should follow [the criterion of the best interests of the child].”<sup>316</sup>

219. Article 32(1) of the Convention on the Rights of the Child<sup>317</sup>, a treaty that is part of the *corpus juris* of the rights of the child, establishes:

States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

220. As regards state obligations vis-à-vis the worst forms of child labor, the Inter-American Court has indicated that priority measures should be adopted to do away with them including, among others, designing and implementing action programs to ensure the full exercise and enjoyment of children's rights. It also indicated:

... specifically, the State has the obligation to: (i) prevent the employment of children in the worst forms of child labor; (ii) provide the direct assistance that is necessary and adequate for freeing children from the worst forms of child labor and ensuring their rehabilitation and social insertion; (iii) ensure for all children who have been freed from the worst forms of child labor access to basic education at no cost, and, when possible and appropriate, professional

---

<sup>312</sup> Article 19 of the American Convention: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.

<sup>313</sup> I/A Court HR. Case of Gelman v. Uruguay. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 121.

<sup>314</sup> I/A Court HR. Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, para. 146.

<sup>315</sup> I/A Court HR. Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013 Series C No. 260, para. 144.

<sup>316</sup> I/A Court HR. Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 133.

<sup>317</sup> Convention on the Rights of the Child. Adopted: November 20, 1989. Came into force: September 2, 1990. Ratified by Honduras August 10, 1990. See: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)

education and training; (iv) identify those children who are particularly exposed to risks and to make direct contact with them; and (v) consider the particular situation of girls.<sup>318</sup>

221. The Committee on the Rights of the Child, in its General Comment 16, notes that the states have the obligation to regulate and supervise working conditions and to establish safeguards that protect children from economic exploitation and jobs that interfere in their education or impair their health or their physical, mental, spiritual, moral, or social development. In that context, the authorities entrusted with regulating and supervising the companies' activities and operations should bear in mind the principles of the best interest of the child, non-discrimination, the holistic concept of child development, and the right of children to be heard.<sup>319</sup> Moreover, mindful that it is in the unstructured sector of the economy and in family economies that one generally finds dangerous work for children, "States are required to design and implement programmes aimed at reaching businesses in these contexts, including by enforcing international standards regarding legal minimum age for work and appropriate conditions of work...."<sup>320</sup>

222. In a similar vein, the Committee on Economic, Social and Cultural Rights, in its General Comment 18, underscored the need to protect children "from all forms of work that are likely to interfere with their development or physical or mental health," including economic exploitation and in a way that enables them to "pursue their full development and acquire technical and vocational education...."<sup>321</sup> On child labor in particular, it indicated the states have the duty to "adopt effective measures to ensure that the prohibition of child labour will be fully respected."<sup>322</sup>

223. The Commission reiterates its considerations established previously related to the situation of the Miskito divers, including the boatmen. In this regard, the IACHR recapitulates that there was a practice among the fishing vessels of recruiting Miskito boys to work, first as boatmen and subsequently as divers, under the same climate of abuse and insecurity. The IACHR also takes note that part of the context is the existence of sanctions on workers for failure to comply with the orders of the captains of the fishing vessels.

224. Along the same line as the previous point, the Commission considers that the considerations put forth in the previous section on breach of the State's duty to regulate, oversee, and inspect underwater fishing in the zone by Miskito divers turn out to be equally applicable to the analysis of attribution of international responsibility on this point.

225. In addition, the report by the family members of the disappearance of the child Licar Méndez triggered the State's obligation to take all measures necessary to establish his whereabouts, clarify the facts, and punish the persons responsible. According to the documentation produced by the parties, the State did not take any measure aimed at situating the whereabouts of Licar Méndez. In addition, and as indicated below, nor does one observe that the State has initiated investigations about what happened.

226. In view of the foregoing considerations, the Commission considers that the State is responsible for violating the right to life and the right to special protection for children, established at Article 4(1) and Article 19 of the America Convention, in relation to Article 1(1) of the same instrument.

### **3.4 On health care and the right to humane treatment for the surviving victims of the accidents**

227. The Commission considers that the rights to life and humane treatment are directly and immediately tied to health care. In this regard, and as the Court has noted, the lack of adequate medical care

---

<sup>318</sup> I/A Court HR. *Case of Workers of the Hacienda Brasil Verde v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 20, 2016. Series C No. 318, para. 376.

<sup>319</sup> Committee on the Rights of the Child, General Comment 16. On State obligations regarding the impact of the business sector on children's rights (April 17, 2013) paras. 13-23.

<sup>320</sup> Committee on the Rights of the Child, General Comment 16. On State obligations regarding the impact of the business sector on children's rights (April 17, 2013) para. 36

<sup>321</sup> Committee on Economic, Social and Cultural Rights. General Comment 18. The Right to Work, November 24, 2005. Para. 15.

<sup>322</sup> Committee on Economic, Social and Cultural Rights. General Comment 18. The Right to Work, November 24, 2005. Para. 24.

may entail a violation of articles 4(1) and 5(1) of the American Convention.<sup>323</sup> In a subsequent section the Commission will refer to protection for the right to health under Article 26 of the Convention.

228. In the instant matter, the Commission notes that 22 victims<sup>324</sup> survived the accidents related to underwater diving. Of that group of persons, the IACHR notes that Timoteo Lemus died one year after the accident, Onasis Cooper died three years after the accident, Carlos Castellano died six years after the accident, and Ex Dereck Claro died in 2017. The petitioners alleged that to date the victims have not received health care from the State, and that the four victims mentioned died as a result of that omission by the State.

229. The Commission observes that according to the document prepared by PAHO already mentioned in this report, the treatment that should be followed in the case of Miskito divers who go to great depths is to be taken immediately to a hyperbaric chamber. This is to counter the decompression syndrome produced by the high levels of carbon dioxide in the body of the person affected. PAHO also noted that in addition to the use of the hyperbaric chamber, the person affected should receive rehabilitation services to recover.

230. Based on this information, from the description of the issue in many reports, it turns out that the Miskito divers did not receive timely or adequate medical assistance by their employers. The Commission has considered it proven that most of the fishing vessels in the zone did not have the means to provide medical care in emergencies.

231. Accordingly, as appears from the descriptions given of the accidents suffered by many of the surviving victims, after they surfaced after being submerged at great depths, and complaining of nausea or loss of mobility in the extremities, the captain of the boat did not adopt immediate measures to prioritize medical care. In many cases days went by before they were taken to the coast. In addition, in some cases they were taken to a medical center, where they had to cover the costs of their treatment and medicines and, with a few exceptions, did not have access to a hyperbaric chamber. Indeed, the IACHR notes that there was only one hyperbaric chamber in a private hospital in the city of Roatán.

232. The Commission takes note that in 2002 the Secretariat of Labor and Social Security and the Secretariat of Interior and justice held a meeting with the AMHBLI. At that meeting the members of the AMHBLI set forth the issues described above, related to the lack of prompt medical care in the case of deep submersions. Moreover, the minutes of the meeting referred to the need for the State to place an ambulance boat in the Mosquitia region with a hyperbaric chamber.

233. Nonetheless, the IACHR observes that according to the documentation provided by the parties, the State did not effectively implement the ambulance boat. The Commission considers that establishing that mechanism would have been an important measure for preventing the possible death of and negative health impacts on the divers who descended to great depths. The European Court, in the case of *Vilnes and others v. Norway*, attributed international responsibility to the State for failing to ensure that the vessels have the elements needed to provide care for divers who suffer decompression, and that such information had to be made known to the divers.<sup>325</sup>

234. The IACHR observes that in the claims for compensation presented by the surviving victims reference was made to the victims' health situation, in addition to the lack of adequate care. In addition to generally taking stock of the State's omissions referred to in the preceding paragraphs, the Commission observes that through these claims the State took cognizance of the victims' specific health situations. Nor did this trigger any action by the State to provide the health care that each surviving victim needed. The European

<sup>323</sup> I/A Court HR. Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 298, para. 171; and Case of Suárez Peralta v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 21, 2013. Series C No. 261, para. 130.

<sup>324</sup> Timoteo Lemus Pisatty, Onasis Cooper Brwon, Flaviano Martínez López, Carcoth Padmoe Millar, Amistero Bans Valeriano, Rolando Monico Thomas, Ralph Valderramos Álvarez, Ex Dereck Claro, Leonel Saty Méndez, David Esteban Bradley, Evecleto Londres Yumida, Arpin Robles Tayaton, Daniel Flores Reyes, Fredy Federico Salazar, Cooper Crescencio Jems, Félix Osorio Presby, Efraín Rosales Kirington, Melecio Pamistan Maick, Willy Gómez Pastor, Roberto Flores Esteban, Daniel Dereck Thomas, and Carlos Castellón Cárdenas.

<sup>325</sup> ECHR, Case of Vilnes and others v. Norway. Judgment of March 24, 2014, para. 238.

Court held in the case of *Vilnes and others v. Norway* that it is possible to identify a direct relationship between the lack of care for divers with decompression syndrome and the continued deterioration of their health.<sup>326</sup>

235. The IACHR takes note of the victims' recent statements regarding the State's failure to provide them with medical care. They added that due to their situation of poverty and the lack of health centers, in many cases they simply cannot afford or access such care or the medications they need.

236. In view of the foregoing considerations, the Commission concludes that the State has not provided adequate and timely medical care to the group of surviving victims, including Messrs. Lemus, Cooper, Castellano, and Dereck Claro resulting in the gradual deterioration of their health. In this regard, the IACHR concludes that Honduras violated the right to humane treatment protected by Article 5 of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the 22 Miskito workers. Notwithstanding the close interdependence and indivisibility of the right to humane treatment and the right to health, below the IACHR will analyze how these same facts relate to the obligations of the State with respect to the right to health under Article 26 of the Convention.

237. Without prejudice to the foregoing, the Commission considers that it does not have sufficient information to determine whether the deaths of Timoteo Lemus, Onasis Cooper, Carlos Castellano, and Ex Dereck Claro, that occurred years after their respective accidents, resulted from the lack of medical care provided by the State. Accordingly, the IACHR will not decide, in this section, the possible violation of the right to life to their detriment.

**C. Rights to work and to just and satisfactory conditions, social security, health, and the principle of equality and non-discrimination (Articles 24<sup>327</sup> and 26<sup>328</sup> of the American Convention, in relation to articles 1(1) and 2 of the same instrument)**

**1. General considerations**

238. Article 26 of the Convention establishes the obligation that any measures adopted in the area of the economic, social, and cultural rights covered in that provision tend toward their progressive development. Although both organs of the inter-American system<sup>329</sup> have asserted their competence to pronounce on possible violations of Article 26 of the American Convention within the context of the system of individual cases and petitions, that provision has been little developed in the case law of the inter-American system in relation to contentious cases. In its findings in such matters, the Court has emphasized the interdependence and indivisibility that exists between economic, social, and cultural rights and civil and political rights.<sup>330</sup>

239. The Commission recognizes that there may be certain complexities to interpreting Article 26 of the Convention and precisely determining its scope and content. Accordingly, the Commission considers it necessary to elaborate on some of its previous statements in that regard, specifically with respect to what it

---

<sup>326</sup> ECHR, Case of Vilnes and others v. Norway. Judgment of March 24, 2014, para. 233.

<sup>327</sup> Article 24 of the American Convention: All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

<sup>328</sup> Article 26 of the American Convention: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.

<sup>329</sup> See, for example, a number of admissibility reports in which the possible violation of Article 26 of the American Convention has been accepted: Report 29/01, Case 12.249, Jorge Odir Miranda Cortez et al., El Salvador, March 7, 2001; and Report 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas et al. (Pensioners of the Venezuelan Aviation Company - Viasa), Venezuela, October 13, 2004. See also the core finding on Article 26 Report 38/09, Case 12.670, National Association of Ex-Employees of the Peruvian Social Security Institute et al., Peru, March 27, 2009. Likewise, the Court reaffirmed that competence in the case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 1, 2009.

<sup>330</sup> See, for example, I/A Court H.R., Case of Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 31, 2017, Series C No. 340, par. 141; and Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 1, 2009. par. 101.

considers an adequate methodology of analysis that takes account of the text of the provision but interprets it in a manner consistent with developments seen in this area at the international level that are highly useful for unraveling its scope and content.

240. Thus, the Commission considers that any analysis of a specific case in the light of Article 26 of the American Convention should be done on two levels. First, it is necessary to establish if the right with which the case is concerned derives from “the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States” to which Article 26 refers. In other words, Article 26 of the American Convention recognizes the Charter of the OAS as a direct source of rights and ascribes the Charter’s provisions in that regard the character of human rights. Given that the purpose of the Charter of the OAS was not to identify individual rights, but to establish an international organization, auxiliary texts must be relied on to identify the rights that arise from the provisions contained in that instrument.

241. Having established that, it must then be determined whether the State breached the obligation in terms of “progressively achieving” the full realization of that right or the general obligations to respect and ensure it. On this second level of analysis, it is necessary to consider the nature and scope of the obligations enforceable upon the State under Articles 1(1), 2, and 26 of the Convention, as well as the content of the right concerned, as is done hereinbelow.

242. Insofar as it is the provision that sets out the parameters of the general rules of interpretation of the American Convention, Article 29 of the Convention is important for establishing the criteria by which to derive specific rights from the OAS Charter, as well as to determine their content and the obligations of States in relation thereto. Thus, according to that Article, no provision of the Convention shall be interpreted as restricting or suppressing rights recognized by the domestic laws of the States or by any other treaty to which one of said States is a party, or as excluding the effects that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have. The provision thus recognizes the *pro persona* principle in the inter-American system and offers a key tool for effective protection of all human rights recognized both in the constitutions of the states parties, and in the inter-American and universal human rights instruments that they have ratified.

243. Based on a holistic interpretation, which Article 26 requires in light of the provisions contained in article 29, the Commission considers it relevant to refer to the obligations that emerge from Article 26 of the American convention and may be the subject of pronouncements on the part of the organs of the inter-American system in the framework of contentious cases. In that regard, in the instant case, the Commission considers that the interpretation of Article 26 of the American convention should take into account the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol Of San Salvador”),<sup>331</sup> since it allows the scope of the State's obligation to be determined with respect to the progressive realization of the right under examination. Article 1 of the Protocol provides that the States Parties undertake to adopt the necessary measures, to the extent allowed by their available resources and taking into account their degree of development, for the purpose of achieving progressively the full observance of the rights recognized in the Protocol.<sup>332</sup>

244. For its part, the International Covenant on Economic, Social and Cultural Rights<sup>333</sup> contains at its Article 2(1)<sup>334</sup> similar provisions to Article 26 of the American Convention and Article 1 of the Protocol of San Salvador. The Commission has previously relied on the observations of the Committee on Economic, Social

---

<sup>331</sup> The Brazilian state acceded to the Protocol on August 21, 1996.

<sup>332</sup> IACHR, Report No. 38/09, Case 12.670, Admissibility and Merits, National Association of Ex-Employees of the Peruvian Social Security Institute et al., Peru, March 27, 2009. par. 134.

<sup>333</sup> The State acceded to the that treaty on February 17, 1981.

<sup>334</sup> According to that provision, “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

and Cultural Rights on the concept of progressive realization and the scope of obligations arising therefrom.<sup>335</sup> In that regard, the Committee has explained that the notion of progressive realization,

should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand, the phrase must be read in the light of the overall objective, indeed the *raison d'être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.<sup>336</sup>

245. In light of the foregoing, the Commission finds that Article 26 of the American Convention imposes various obligations on States that go beyond a prohibition on regressiveness, which is simply a correlate of the obligation of progressive realization and cannot be regarded as the only justiciable obligation in the inter-American system under that provision. Thus, bearing in mind the interpretative framework provided by Article 29 of the American Convention, viewed from the perspective of Articles 1(1) and 2 of that instrument, Article 26 gives rise, at a minimum, to the following immediate and enforceable obligations: (i) general obligations to respect and ensure rights; (ii) application of the principle of nondiscrimination to economic, social, and cultural rights; (iii) obligations to take steps or adopt measures to achieve the realization of the rights contained in that article; and (iv) to offer suitable and effective remedies for their protection. The appropriate methodologies or sources of analysis for each of those obligations will have to be determined according to the particular circumstances of each case.

246. As regards the enforceable and immediate nature of the obligation to take steps or adopt measures, the CESCR has indicated, for example, that the adoption of measures in itself, is not qualified or limited by other considerations; therefore, while the full realization of rights may be achieved progressively, steps towards that goal should be deliberate, concrete and targeted as clearly as possible towards meeting them. The State also has basic obligations to satisfy essential rights that are not subject to progressive realization but are of immediate effect.<sup>337</sup>

247. Finally, the organs of the inter-American system have emphasized the duty of the states to adopt measures to ensure real equality among persons and to fight historical and *de facto* discrimination directed against a variety of social groups. The Commission has noted that implementing positive measures is necessary to ensure the exercise of the rights of persons associated with groups that suffer structural inequalities or have been victims of historical processes of exclusion.<sup>338</sup> Along the same lines, the Court has established that the states are obligated to adopt positive measures to turn back or change discriminatory situations in their societies, to the detriment of a given group of persons. This implies the special duty of protection that the State should exercise with respect to actions and practices of third persons who, with the tolerance or acquiescence of the State, create, maintain, or favor discriminatory situations.<sup>339</sup>

## 2. Analysis of the instant case

---

<sup>335</sup> IACHR, Report No. 38/09, Case 12.670, Admissibility and Merits, National Association of Ex-Employees of the Peruvian Social Security Institute et al., Peru, March 27, 2009, par. 136.

<sup>336</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant)*, adopted at the Fifth Session, 1990, E/1991/23.

<sup>337</sup> United Nations Committee on Economic, Social and Cultural Rights, *General Comment 3: The nature of States parties' obligations (art. 2, para. 1, of the Covenant)*, 1990. In that connection, see: IACHR, Report on Poverty and Human Rights in the Americas, OEA/Ser.L/V/II.164 Doc. 147 (September 7, 2017), pars. 236 and 237.

<sup>338</sup> IACHR, Access to Justice for Women Victims of Violence in the Americas, January 20, 2007, paras. 100 and 101. IACHR. Considerations regarding the compatibility of affirmative action measures designed to promote the political participation of women with the principles of equality and non-discrimination, Annual Report, 1999, April 13, 2000, Chapter VI.

<sup>339</sup> I/A Court HR. Juridical Condition and Rights of Undocumented Migrants. Advisory Opinion OC-18/03, September 17, 2003. Series A No. 18, para. 104.

248. In applying the foregoing standards to the instant case, the Commission begins by noting that the Charter of the OAS, at Article 45, incorporates the right to work and to the conditions necessary for its realization in the following terms:

The Member States agree to dedicate every effort to the application of the following principles and mechanisms: ...

(b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working.<sup>340</sup>

249. In more generic terms, Article 34(g) of the Charter also includes, among the goals for attaining integral development, “[f]air wages, employment opportunities, and acceptable working conditions for all.”<sup>341</sup>

250. The Inter-American Court has said that “the [American] Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the OAS, to the corresponding provisions of the Declaration.” Accordingly, the American Declaration is one of the relevant instruments for identifying the economic, social, and cultural rights to which Article 26 of the American Convention makes reference. As already indicated, turning to other international instruments may be necessary to indicate the derivation of a right based on a public policy measure or objective included in an economic, social, cultural, educational, or scientific provision of the OAS Charter.<sup>342</sup> In particular, the American Declaration establishes, at Article XIV: “every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit.” In a similar vein, the Protocol of San Salvador, at its Articles 6 and 7 states that “everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence” and that this “presupposes that everyone shall enjoy the right under just, equitable, and satisfactory conditions.”

251. Article 45 of the OAS Charter, cited above, enshrines the right to health. Article 34(i) of the same instrument also underscores the role of the State in “protection of man’s potential through the extension and application of modern medical science,” emphasizing with that the importance of the guarantee of health for the integral development of the person. In addition, Article XI of the American Declaration establishes that “every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.” Article 10 of the Protocol of San Salvador states that every person has the right to health, understood as the enjoyment of the highest level of physical, mental, and social well-being, and indicates that health is a public good.

252. As regards the right to social security, in addition to the last part of Article 45(b) of the OAS Charter, noted above, the Charter establishes, at Article 45(h), the commitment of the member states to develop an efficient social security policy. At the same time, more generally Article 46 refers to the work of harmonizing social security provisions regionally. The American Declaration includes this same right at Article XVI, and the Protocol of San Salvador at Article 9; both recognize the right of every person to be protected so as to lead a dignified life in the face of unemployment, old-age, and disability. On a supplement basis, one of the matters most reiterated in the Charter refers to the eradication of poverty and better distribution of wealth (Articles 2(g), 3(f), and 34(b)), suggesting the need for a broad consideration of the right to social security to attain these objectives, looking at both contributing to the system, and receiving social assistance.

---

<sup>340</sup> Charter of the Organization of American States.

<sup>341</sup> Charter of the Organization of American States.

<sup>342</sup> Of particular importance are the International Covenant on Economic, Social and Cultural Rights, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), and even other treaties such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the conventions of the International Labor Organization.

253. In view of the foregoing, the Commission considers it clear that the rights to health, social security, work, and satisfactory working conditions constitute economic and social provisions mentioned in Article 26 of the Convention, and, in this sense, the states parties are obligated to strive to attain the progressive development thereof, as well as to respect, ensure, and adopt the measures necessary to effectively uphold that right.

## **2.1 Right to work and just, equitable, and satisfactory working conditions**

254. As regards the right to work and in relation to the instant case, the Commission observes that the Committee on Economic, Social and Cultural Rights, in its General Comment 18, indicated as follows:

Work as specified in article 6 of the Covenant must be *decent work*. This is work that respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration. It also provides an income allowing workers to support themselves and their families as highlighted in article 7 of the Covenant. These fundamental rights also include respect for the physical and mental integrity of the worker in the exercise of his/her employment.<sup>343</sup>

255. In the same observation the Committee development the elements of availability and accessibility in the following terms: *Availability*: States parties must have specialized services to assist and support individuals in order to enable them to identify and find available employment. *Accessibility*: Accessibility comprises three dimensions: non-discrimination, physical accessibility, and access to information. Discrimination in access to work and the continuity of work is prohibited. The states should ensure a reasonable adaptation to make workplaces accessible, in particular for persons with physical disabilities. All persons have the right to seek, obtain, and impart information about employment job opportunities.<sup>344</sup>

256. In addition, and of special importance for the instant case, the Committee referred to the right to choose and freely accept employment and to “safe working conditions” as part of the standards of *acceptability and quality* of the right to work in the following terms:

*Acceptability and quality*. Protection of the right to work has several components, notably the right of the worker to just and favourable conditions of work, in particular to safe working conditions, the right to form trade unions and the right freely to choose and accept work.<sup>345</sup>

257. As regards the duty to protect vis-à-vis actions of non-state actors, it indicated: “Violations of the obligation to protect follow from the failure of States parties to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to work by third parties.”<sup>346</sup> In addition, the Court has indicated: “The State is thus responsible for itself, when it acts as an employer, and for the acts of third parties who act with its tolerance, acquiescence or negligence, or with the support of some State policy or directive that encourages the creation or maintenance of situations of discrimination.”<sup>347</sup>

258. Finally, among the basic obligations of the states with respect to this right is the guarantee of access to employment, especially in relation to underprivileged and marginalized persons and groups<sup>348</sup>, such as persons living in poverty with disabilities.

259. At Articles 6 and 7 of the Protocol of San Salvador, the states parties undertake to adopt measures that ensure full effectiveness of the right to work and recognize that every person should enjoy the same just, equitable, and satisfactory conditions, which include the right to a dignified wage, safety and hygiene, the prohibition on persons under 18 years of age being assigned dangerous tasks or any task that might

<sup>343</sup> Committee on Economic, Social and Cultural Rights. General Comment 18. The Right to Work, November 24, 2005. Para. 7.

<sup>344</sup> Committee on Economic, Social and Cultural Rights. General Comment 18. The Right to Work, November 24, 2005.

<sup>345</sup> Committee on Economic, Social and Cultural Rights. General Comment 18. The Right to Work, November 24, 2005. Para. 12.

<sup>346</sup> Committee on Economic, Social and Cultural Rights. General Comment 18. The Right to Work, November 24, 2005. Para. 35.

<sup>347</sup> I/A Court HR, Advisory Opinion 18/03. September 17, 2003, Requested by the Mexico, para. 152.

<sup>348</sup> Committee on Economic, Social and Cultural Rights. General Comment 18. The Right to Work, November 24, 2005. para. 31.

endanger their health, safety, or morality, as well as a reasonable limitation on working hours, especially in the case of dangerous, unhealthy, or night work.<sup>349</sup>

260. In this respect, the Committee on Economic, Social and Cultural Rights affirms that equitable and satisfactory working conditions are a prerequisite for the enjoyment of other rights and a corollary of the right to work that is freely chosen and accepted.<sup>350</sup> The IACHR observes that the international instruments that make express reference to those conditions are not exhaustive in their treatment of them, but rather draw on basic elements for guaranteeing the enjoyment of equitable and satisfactory conditions. For example, the Protocol of San Salvador refers to the term “particularly with respect to” and the International Covenant on Economic, Social and Cultural Rights states “in particular” to spell out those conditions, thereby making it possible to include elements other than those expressly set forth in those instruments.

261. In addition, the IACHR understands that to comply with the minimal content of this right, one of the essential elements is for the states to regulate and take actions aimed at seeing to its effective implementation, in particular overseeing and imposing sanctions for its violation on employers in both the public and private sectors. This takes on greater importance in the face of the existence of forms of unequal and abusive labor treatment stemming from precarious labor relations. This means that when it is learned that a company or employer has produced effects prejudicial to the enjoyment of this right, the State must take action to investigate and, as the case may be, impose sanctions on them, as well as make full reparation to the victims through legitimate proceedings that comply with the recognized provisions for ensuring due process.

262. The IACHR considers that workplace inspections are among the essential measures that states should take to prevent violations of and oversee respect for this right; in particular, guarantees must be in place to ensure their independence, the existence of trained personnel, and a prior mapping of sensitive and at-risk zones and industries; the inspectors should have the authority to enter the workplaces without prior notice, as well as to facilitate victims’ access to justice. Sanctions on private actors must also be adequate and proportional to the seriousness of the harm; they may be criminal sanctions, administrative sanctions, or pecuniary measures.<sup>351</sup>

## **2.2 Right to health**

263. As regards the contents of the right to health, the Committee on Economic, Social and Cultural Rights has indicated that all health services, goods, and institutions must comply with the requirements of availability, accessibility, acceptability, and quality in the following terms:

(a) Availability. Functioning public health and health-care facilities, goods and services, as well as programmes, have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party’s developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action.

(b) Accessibility. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has four overlapping dimensions:

---

<sup>349</sup> Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights “Protocol of San Salvador,” Articles 6 and 7.

<sup>350</sup> Committee on Economic, Social and Cultural Rights. General Comment 23. The right to just and favorable conditions of work. April 27, 2016. Para. 1

<sup>351</sup> Committee on Economic, Social and Cultural Rights. General Comment 23. The right to just and favorable conditions of work. April 27, 2016. Paras. 54 and 59.

(i) Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

(ii) Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations.... Accessibility further includes adequate access to buildings for persons with disabilities.

(iii) Economic accessibility (affordability): health facilities, goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households.

(iv) Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality.

(c) Acceptability. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.

(d) Quality. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, *inter alia*, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.<sup>352</sup>

264. The African Commission on Human and Peoples' Rights has held that states must ensure that all persons, no matter their geographic location, have access to health services.<sup>353</sup> Similarly, the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has indicated: "In order to achieve equitable health outcomes and full realization of the right to health, States must allocate health funds and resources towards ensuring that good quality health facilities, goods and services are available and easily accessible for rural and remote populations"<sup>354</sup>, therefore in all decisions related to the distribution of such resources, special attention should be given to the needs of the groups traditionally excluded and living in poverty.

### 2.3 Right to social security

265. On the contents of the right to social security, the Committee on Economic, Social and Cultural Rights has indicated that the right includes obtaining and maintaining social benefits, in cash or in kind, without discrimination, with the aim of obtaining protection, in particular from: (a) the lack of income from work due to illness, disability, maternity, workplace accident, old age, or death of a family member; (b) excessive health care expenditures; (c) insufficient family support, in particular for the children and family members under their care.<sup>355</sup> In addition, it has indicated that the characteristic elements of this right include availability, the inclusion of the categories of the social risks and contingencies indicated above, accessibility, and the consideration of its close relationship with other rights.<sup>356</sup>

266. The same Committee has also indicated that states should suppress *de facto* discrimination when it is impossible for persons to have access to adequate social security. The states should see to it that the

<sup>352</sup> United Nations, Committee on Economic, Social and Cultural Rights. General Comment 14, E/C.12/2000/4, August 11, 2000, para. 12.

<sup>353</sup> African Commission on Human and Peoples' Rights, Case of Interights v. Egypt. Communication No. 323/06, December 2011, para. 264.

<sup>354</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN. Doc. A/67/302, August 13, 2012, para. 51.

<sup>355</sup> Committee on Economic, Social and Cultural Rights. General Comment 19. The right to social security, February 4, 2008. Para. 2

<sup>356</sup> Committee on Economic, Social and Cultural Rights. General Comment 19. The right to social security, February 4, 2008. Paras. 10-28.

legislation, policies, programs, and resources allocated facilitate access to social security for all members of society. In that framework, specific measures should be adopted for implementing social security plans, in particular those aimed at protecting underprivileged and marginalized persons and groups, and oversight measures should be adopted to learn to what point that right is exercised.<sup>357</sup>

267. Due to the redistributive nature of social security, this right plays a key role and is an essential instrument for fighting poverty and social inequalities, thus it should not be seen solely in an economic light, but also mindful of a rights-based approach. In particular, the IACHR notes that for social security to be accessible, existing coverage must include those persons in the most vulnerable and impoverished situations; thus, states must adopt plans that include them.

268. In addition, the IACHR recognizes that social security, from a health perspective, increases the use of health centers, goods and services, and promote equal access and may afford greater financial protection for the poor. In this way, for the State's social security programs to have a rights-based approach, their design and scope should not only take account of the financial capacity and employment situation of the populations that receive the services, but also their specific health needs.<sup>358</sup>

## 2.4 Attribution of state responsibility

269. The IACHR also understands that in light of the duty to ensure provided for at Article 1(1) of the American Convention on Human Rights and the interpretation thereof by the organs of the inter-American system, the states parties should prevent the violation of the rights set forth in Article 26 in the context of business activities. According to the Committee on Economic, Social and Cultural Rights, that duty includes adopting a legal framework that makes it possible to ensure the protection of those rights and that provides effective access to resources for the victims of such violations. Among the actions that ensure an adequate legal framework, the State should demand that companies exercise due diligence in respect of human rights so as to identify, prevent, and mitigate the risks of the violation of rights in the context of their activities.<sup>359</sup>

270. As was established in the section on context, in the instant case it is not disputed that the department of Gracias a Dios and in particular the Mosquitia region is generally impoverished. The contextual sources also describe an intrinsic relationship between that situation and the issues that are presented in the instant case. It is important to note that the Commission and the Court have referred on several occasions to the greater risk of human rights violations faced by persons living in poverty.<sup>360</sup> The Inter-American Court has noted that "it does not suffice for the states to refrain from violating rights; rather, there is an imperative to adopt positive measures that can be determined in light of the particular needs of protection of the person in question, whether due to his or her personal situation, or due to a situation he or she is facing<sup>361</sup>, such as extreme poverty or marginalization."<sup>362</sup>

<sup>357</sup> Committee on Economic, Social and Cultural Rights. General Comment 19. The right to social security, February 4, 2008. Paras. 29-31.

<sup>358</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Doc. A/67/302, August 13, 2012, paras. 42-45.

<sup>359</sup> Committee on Economic, Social and Cultural Rights. General Comment 24, August 10, 2017.

<sup>360</sup> I/A Court HR. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits. Judgment of November 19, 1999. Series C No. 63, Para. 139; Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006. Series C No. 140. Para. 120; Case of Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010 Series C No. 214, para. 187; Case of the Barrios Family v. Venezuela. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237. Para. 48.

<sup>361</sup> I/A Court HR. Case of the Workers of the Hacienda Brasil Verde v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 337; I/A Court HR. Case of Artavia Murillo et al. ("In vitro Fertilization") v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257, paras. 292 and 285; I/A Court HR. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 134; I/A Court HR, Case of Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 244; I/A Court HR, Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Series C No. 149, para. 103, and I/A Court HR. Case of the Mapiripán Massacre v. Colombia. Judgment of September 15, 2005. Series C No. 134, paras. 111 and 113.

<sup>362</sup> I/A Court HR. Case of the Workers of the Hacienda Brasil Verde v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 20, 2016. Series C No. 318, para. 337; I/A Court HR. Case of Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 154; I/A Court HR. Case of Ximenes Lopes v. Brazil. Judgment of July 4, 2006. Series C No. 149, para. 104; I/A Court HR. Case of Xákmok Kásek Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, para. 233.

271. As appears from the facts proven, nor is it controverted that the region, populated mainly by members of the Miskito indigenous community, was known for the absence of employment options, the main source of employment in underwater fishing. As a result, some of the victims even went back to work in deep-sea fishing in the same unsafe conditions, even after having had accidents stemming from decompression syndrome. The Commission already recapitulated that the right to freely choose work, which, as a corollary, calls for the existence of sources of employment, is part of the essential contents of the right to work.

272. In addition to the foregoing, the IACHR finds that the employment relations between them and the fishing companies were characterized by very low wages, informality in the labor relationship, and various sorts of abuses that were possible due to the extreme vulnerability of the victims and lack of protection by the State, a situation that affected the essential contents of the right to work and the right to fair, equitable, and satisfactory conditions.

273. The IACHR considers that as part of the general duty to ensure rights, the State should pay special attention to the groups that historically have suffered discrimination and exclusion and should take measures so that when those groups enter a labor relationship with companies that they comply with the respective domestic statutes and regulations on labor benefits and social security. In this respect the Commission has already indicated that the indigenous populations suffer a differential impairment of their rights, for example, due to the persistent obstacles to the realization of the right to a dignified job, through marked barriers that they face to a full professional education, to opportunities for dignified employment, and to sufficient social security, which finds its origins in the existence of a pattern of structural discrimination and historic exclusion, making it possible to reproduce the cycle of poverty and impair their ability to exercise their fundamental rights.<sup>363</sup> Similarly, in relation to persons with disabilities, the Commission has indicated that they have a greater likelihood of experiencing adverse socioeconomic situations, such as lower levels of education, worse health conditions, and high unemployment.<sup>364</sup>

274. The IACHR observes that the Honduran State, despite being aware of the situation of the divers and the perverse situation of the labor relations in which they found themselves, did not take any deliberate, concrete measure aimed at upholding that right; to the contrary, it allowed the employer companies to interfere, without justification, in access to social security for those workers due to the labor conditions to which they exposed them.

275. Based on the foregoing, it appears that the failure of the State to oversee and supervise those working conditions, in particular the situation of informality and the absence of contracts between the divers and the employer companies, as well as the abuses by them, obstructed at least the guarantee of a minimum of social security under a contributory regime. Nor has the State shown that it took any actions aimed at protecting core contents or minimal levels of this right through assistance or minimal non-contributory social protection mindful of the situation of poverty and disability of most of the Miskito divers identified in the petition, thereby limiting the possibility of those workers being able to work in other economic activities, and therefore deteriorating their incomes, on which their ability to secure a dignified life depends.

276. As was already analyzed in detail in the previous sections of this report, deep-sea fishing was performed in a manner highly risky to the life, integrity, and health of the Miskito divers, without the State complying with its duties to oversee and inspect, despite being knowledgeable of the situation. As a result, the Commission already determined that the State is responsible for the deaths and serious physical impacts of the victims who suffered the accidents at issue in this case. The Commission establishes, on this point, that this situation also impaired the right to health.

277. In addition, the Commission already determined, in this report, that in the face of the accidents suffered by the victims, they did not receive timely and adequate health care so as to prevent their deaths or the permanent physical sequelae that were described with respect to all of the surviving victims, including situations of disability in the terms already analyzed. The Commission notes that this lack of timely medical

---

<sup>363</sup> IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164, September 7, 2017. Paras. 367 and 375.

<sup>364</sup> IACHR. Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164, September 7, 2017. Para. 428.

care was related to several factors including the abusive and violent conditions of the labor relations, which the State failed to supervise or oversee, as already concluded in this report.

278. Even so, another fundamental component of this lack of timely medical care is associated with structural factors in the zone, in particular, as regards the component of availability of the right to health, already noted. The Commission notes that the State, at the time of the facts, had only one hospital in the entire department of Gracias a Dios, in the city of Puerto Lempira. In addition, despite having knowledge of the problem and it being a zone with a high incidence of underwater fishing the State did not provide the Miskito population in the zone the medical implements needed to be able to adequately handle possible accidents and the resulting decompression syndrome. These structural problems, as analyzed above, contributed to the deaths of some of the victims, and, in most cases, resulted in the surviving victims having permanent sequelae that have become disabilities, for which the State has not adopted measures of habilitation and rehabilitation, which has worsened their situation of vulnerability and exclusion in the context of the region.

279. For the IACHR the facts described above fit clearly within the scope of occupational health given the close relationship between the conduct of the companies in failing to provide safe working conditions, the ommissive attitude of the State when it comes to overseeing the companies, and the harmful effects on the right to health of the Miskito divers. One of the basic obligations of states in this area is supervising and evaluating the efficacy of their policies on the matter; and “an examination of occupational health must include consideration of harmful exposures during work, specific varieties of working conditions, working environment, working relationships, and the social, environmental and political contexts in which work is situated.”<sup>365</sup> The Commission also highlights the essential duty of the State to ensure that workers participate in and have access to adequate and timely information about occupational health in the process of drawing up regulations and policies in this area.<sup>366</sup> In summary, the Commission considers that the human rights violations that occurred in the instant case did not occur in isolation, but in the context of a situation of abandonment, discrimination, indifference, and lack of presence of the State, which has been fully aware of the problem affecting the Miskito population and the abuses committed by the companies in the region, all without adopting measures to offer the population conditions to satisfy the minimal contents of the right to work and to just, equitable, and satisfactory working conditions, the right to health, or the right to social security; or, as will be analyzed below, access to justice. Nor did it fulfill its obligations to oversee and supervise, on not requiring the companies involved in those activities to act with due diligence, to make it possible to protect those rights, nor did it sanction them once the deplorable situation of the workers was verified.

280. Accordingly, the Commission concludes that the State violated, to the detriment of the victims, the right to work and to fair, equitable, and satisfactory working conditions, the right to health, and the right to social security, established at Article 26 of the American Convention, in relation to the obligations established at articles 1(1) and 2 of the same instrument. In addition, mindful of the many factors of vulnerability of the victims related to their belonging to a historically excluded indigenous population, in a situation of extreme poverty, and many of the victims being persons with disabilities, the Commission considers that the State is also responsible for violating the principle of equality and non-discrimination, established at articles 24 and 1(1) of the Convention.

#### **D. Additional considerations on the surviving Miskito divers with disabilities**

281. The Commission takes note that some of the surviving victims reportedly acquired a physical or sensorial disability as a result of the decompression syndrome they suffered and the lack of adequate medical care.

---

<sup>365</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN. Doc. A/HRC/20/15, April 10, 2012. Para. 2

<sup>366</sup> Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN. Doc. A/HRC/20/15, April 10, 2012. Para. 25

282. In the face of this situation, in the inter-American system the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities<sup>367</sup>, ratified by Honduras on September 14, 2011<sup>368</sup>, establishes the obligation of the states to work on:

Early detection and intervention, treatment, rehabilitation, education, job training, and the provision of comprehensive services to ensure the optimal level of independence and quality of life for persons with disabilities.<sup>369</sup>

283. In addition, Article 18 of the Protocol of San Salvador<sup>370</sup>, ratified by Honduras on September 14, 2011<sup>371</sup>, provides as follows:

Everyone affected by a diminution of his physical or mental capacities is entitled to receive special attention designed to help him achieve the greatest possible development of his personality. The States Parties agree to adopt such measures as may be necessary for this purpose and, especially, to:

- a. Undertake programs specifically aimed at providing the handicapped with the resources and environment needed for attaining this goal, including work programs consistent with their possibilities and freely accepted by them or their legal representatives, as the case may be;
- b. Provide special training to the families of the handicapped in order to help them solve the problems of coexistence and convert them into active agents in the physical, mental and emotional development of the latter;
- c. Include the consideration of solutions to specific requirements arising from needs of this group as a priority component of their urban development plans;
- d. Encourage the establishment of social groups in which the handicapped can be helped to enjoy a fuller life.

284. In the universal system, the Convention on the Rights of Persons with Disabilities (hereinafter CRPD)<sup>372</sup>, ratified by Honduras on April 14, 2008<sup>373</sup>, states as follows:

#### **Article 25. Health**

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;

---

<sup>367</sup> Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities. Adopted: June 7, 1999. Entered into force: September 14, 2001.

<sup>368</sup> See: <http://www.oas.org/juridico/spanish/firmas/a-65.html>

<sup>369</sup> Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities. Article 2(b).

<sup>370</sup> Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights. "Protocol of San Salvador." Adopted: November 17, 1988. Entered into force: November 16, 1999.

<sup>371</sup> See: <http://www.oas.org/juridico/spanish/firmas/a-52.html>

<sup>372</sup> Convention on the Rights of Persons with Disabilities. Adopted: December 13, 2006. Entered into force: May 3, 2008 (Ratified by Honduras April 14, 2008).

<sup>373</sup> See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en)

(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, *inter alia*, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;

(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

#### **Article 26 Habilitation and rehabilitation**

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life....

285. The Commission highlighted the importance of the CRPD as an instrument for interpreting the provisions of the American Convention, on the right to humane treatment and the right to health. The IACHR considers that the social model, adopted by the CRPD, understands that a disability is not defined exclusively by the presence of a physical, mental, intellectual, or sensory deficits, but is interrelated with the socially-existing barriers or limitations that stand in the way of persons effectively exercising their rights.<sup>374</sup> In this regard, the Inter-American Court has indicated that every person who is in a situation of vulnerability, including persons with disabilities, is entitled to special protection in light of the special duties that must be complied with by the State to satisfy the general obligations to respect and ensure human rights.<sup>375</sup>

286. The IACHR emphasizes that according to the documentation presented by the parties, it has not been possible for it to determine precisely, to date, which victims have a disability. As regards this last aspect, and in the context of the State taking stock of the scale and seriousness of this problem, the IACHR considers that it was up to the State to perform an assessment, by specialized personnel, to determine which surviving victims are disabled. Based on that analysis, the State should adopt measures to guarantee health care as well as habilitation and rehabilitation, taking into account the deficits and disabilities affecting each of the victims.

287. Nonetheless, the IACHR notes that the State has not adopted any measure aimed at ensuring the rights of the victims with disabilities. The Commission observes that the State referred to providing wheelchairs or crutches to some of the victims. In addition, in its recent report presented to the United Nations Committee on the Rights of Persons with Disabilities, the State merely indicated that a translation was being done, to the Miskito language, of the “Guide for Community-based Rehabilitation” (Guía para la Rehabilitación basada en la Comunidad).<sup>376</sup> In the view of the IACHR, that measure is insufficient insofar as there are no signs of concrete efforts to address the grave situation affecting the victims with disabilities.

288. In addition, the United Nations Committee on the Rights of Persons with Disabilities has noted the importance of the States establishing health centers that are accessible for persons with disabilities.<sup>377</sup> The States should also provide trained personnel at those centers to provide inclusive care and who meet the specific needs of persons with disabilities.<sup>378</sup> In the instant matter, the IACHR observes that according to the

<sup>374</sup> Convention on the Rights of Persons with Disabilities. Article 1.

<sup>375</sup> I/A Court HR. Case of Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 134.

<sup>376</sup> Report by Honduras pursuant to Article 35 of the CRPD. July 8, 2015. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/151/53/PDF/G1515153.pdf?OpenElement>

<sup>377</sup> United Nations, Committee on the Rights of Persons with Disabilities. Concluding observations on the report of Brazil, September 4, 2015, paras. 46 and 47.

<sup>378</sup> United Nations, Committee on the Rights of Persons with Disabilities. Concluding observations on the report of Brazil, September 4, 2015, paras. 46 and 47.

statements by victims with physical disabilities, it is hard for them to get to the health centers, which are far from where they live.

289. Finally, as regards the components of habilitation and rehabilitation, the IACHR notes that the States should adopt the measures necessary for the inclusion of persons with disabilities in community life, work life, and social life. The United Nations Committee on the Rights of Persons with Disabilities has indicated that under the CRPD the states have the obligation to support persons with disabilities to seek, obtain, and maintain employment.<sup>379</sup> Along the same lines, Article 28(2)(c) of the CRPD establishes that the States shall take steps to “ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care.”

290. According to the statements by the victims who have a disability in the instant case, they are unemployed, and the State has not adopted any inclusive measure to create a favorable and propitious environment for them to get work. In addition, the State has not adopted measures to provide integral protection to these persons.

291. In view of the considerations noted, the Commission considers that the State had a reinforced duty to protect the rights to humane treatment and the economic and social rights indicated above, in relation to Article 1(1) of the same instrument, in relation to the surviving victims who have disabilities.

**D. Rights to a fair trial and to judicial protection (Article 8(1)<sup>380</sup> and Article 25(1)<sup>381</sup> of the American Convention, in relation to articles 1(1) and 2 of the same instrument)**

292. The Commission has underscored that the obligation of the states to act with due diligence includes facilitating access to suitable and effective judicial remedies in the face of a violation of human rights.<sup>382</sup> In addition, the Commission has established that Article 25 of the American Convention is directly related to Article 8(1), which enshrines the right of every person to be heard with the proper guarantees and within a reasonable time<sup>383</sup> and confers on the victims’ family members the right to reparation for the harm suffered due to the death of their loved ones.<sup>384</sup> The Court has indicated that the ability to access justice should ensure, in a reasonable time, the right of the alleged victims or their family members to have everything possible done to learn the truth of what happened and to punish those responsible.<sup>385</sup>

293. The organs of the inter-American system have highlighted the importance of carrying out an exhaustive, serious, and impartial investigation, at the initiative of the authorities, immediately, in response to human rights violations.<sup>386</sup> Along the same lines, the Committee on Economic, Social and Cultural Rights has indicated, regarding human rights violations in the context of business activities: “States parties must provide

---

<sup>379</sup> United Nations, Committee on the Rights of Persons with Disabilities. A.F. v. Italy. Communication No. 9/2012, May 19, 2015, para. 8.3.

<sup>380</sup> Article 8(1) of the American Convention: Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>381</sup> Article 25(1) of the American Convention: Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>382</sup> IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc. 68, January 20, 2007.

<sup>383</sup> IACHR. Report No. 26/09. Case 12,440. Wallace de Almeida. Brazil. March 20, 2009, para. 119.

<sup>384</sup> IACHR, Report No. 52/16. Merits. María Laura Órdenes Guerra et al. Chile. November 30, 2016, para. 105; IACHR. Report No. 62/01, Case 11,564, Riofrío Massacre, Colombia, April 6, 2001, para. 44.

<sup>385</sup> See I/A Court HR. Case of the Miguel Castro Castro Prison v. Peru. Judgment of November 25, 2006. Series C No. 160, para. 382, citing Case of Vargas Areco; I/A Court HR. Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006. Series C No. 148, para. 289; and I/A Court HR. Case of the Pueblo Bello Massacre v. Colombia. Judgment of January 31, 2006. Series C No. 140, para. 171.

<sup>386</sup> I/A Court HR. Case of Godínez Cruz v. Honduras. Judgment of January 20, 1989. Series C No. 5, para. 188; I/A Court HR, Case of Velásquez Rodríguez. Judgment of July 29, 1988. Series C No. 4, para. 177; I/A Court HR, Case of the “Street Children” (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 226.

appropriate means of redress to aggrieved individuals or groups and ensure corporate accountability,<sup>387</sup> to which end it is essential that effective and prompt remedies are available, as well as access to relevant information that makes it possible to resolve a complaint.<sup>388</sup>

294. The Court has defined impunity as “the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”<sup>389</sup>

295. As has been established throughout this report on the merits, the instant case involves multiple violations of rights established in the Convention as the result of the victims being subjected to disappearance, death, and permanent injuries. These violations occurred in the context of underwater fishing by companies in the region in abusive conditions taking advantage of the extreme vulnerability of the victims stemming from multiple factors, including their situation of poverty. This happened with the knowledge of the State and without it adopting the measures needed to supervise and oversee those activities, or measures to punish those responsible and facilitate access to reparation for the victims.

296. Accordingly, the analysis as to whether the State abided by the rights to a fair trial and to judicial protection in relation to the victims and their family members should be conducted considering the nature of the many violations found in this report on the merits, which give rise to various obligations in respect of access to justice.

297. First, the Commission already established that the facts of the instant case fit within a structural problem of human rights violations against divers by fishing companies in the region, such as forms of debt servitude and forced labor. It appears, from the section on context – and the State has not denied it – that the State was aware of this problem which, as indicated, goes back many years. These practices constitute serious human rights violations which, as such, should be investigated by the State on its own initiative. Even so, it does not appear that the Honduran State has initiated any investigation.

298. The Commission emphasizes that after the various claims were filed for compensation due to the accidents suffered by the victims, the State once again took cognizance of the situation described above. This was due to the fact that in many cases those claims contained a description of their working conditions. Nonetheless, despite the seriousness of the information contained in those claims, as well as their reiterative nature, the State has not activated any mechanism for a criminal, administrative, or other investigation to clarify the facts, identify and punish the persons responsible, make a serious assessment of their characteristics, or design an integral and effective response.

299. Second, the Commission observes that in relation to all the accidents described in paragraphs 54 to 183 of this report, the State did not initiate investigations to clarify the circumstance of those accidents as well as the possible criminal or other liabilities that could stem from them, even though the accidents took the lives of some victims and caused others permanent physical injury. The Commission notes in that in relation to (i) the fire that caused the death of Hildo Ambrosio and the disappearance of Andres Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez, Rómulo Flores Henríquez, and Amilton Bonaparte Clemente, and (ii) the disappearance of the child Licar Méndez, that despite having learned of these serious incidents, the State did not initiate an investigation to clarify the circumstances of the death and the disappearances, determine possible liabilities in relation to them, and locate the whereabouts of the persons disappeared.

---

<sup>387</sup> Committee on Economic, Social and Cultural Rights. General Comment 24. On State obligations in the context of business activities. August 10, 2017. para. 39. See also: United Nations Guiding Principles on Business and Human Rights. Access to remedy (principle 25) (2011). Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_SP.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_SP.pdf)

<sup>388</sup> Committee on Economic, Social and Cultural Rights. General Comment 24. On State obligations in the context of business activities. August 10, 2017. paras. 41 and 45.

<sup>389</sup> I/A Court HR., Case of Ivcher Bronstein. Judgment of February 6, 2001. Series C No. 74, para. 186; I/A Court HR., Case of the Constitutional Court. Judgment of January 31, 2001. Series C No. 71, para. 123; I/A Court HR., Case of Bámaca Velásquez. Judgment of November 25, 2000. Series C No. 70, para. 211.

300. Third, and in relation to the possibility of obtaining reparation for the deaths and injuries suffered by the victims, the Commission notes that almost all of them filed claims for compensation with the Secretariat of Labor and Social Security or the Office of the Labor Inspector. In this respect, in a case with characteristics similar to those of this case, the European Court highlighted the importance of establishing domestically the real possibility that persons negatively impacted by underwater fishing be able to receive compensation.<sup>390</sup>

301. In this respect, the IACHR takes note that in most cases the labor authorities limited themselves to calling the victims or their family members and their employers to conciliation hearings. In many cases the employers did not appear, and the authorities did not adopt additional measures; the processes became inactive without any final determination. In other cases, they appeared and amounts of compensation were established, but they were laughable in relation to the seriousness of the facts, and many payments were not made or were made only in part. The Commission observes that in these proceedings the labor authorities did not assume a role of guarantor of the rights of victims, notwithstanding their clear disadvantage in the context of these processes. To the contrary, many victims accepted settlements that clearly reflected their basic needs and vulnerable situation. Based on a complete reading of the documentation in these administrative proceedings, the Commission considers that the victims were totally defenseless under the passive eye of the labor authorities, whose job it is to protect them.

302. Fourth, and beyond these administrative proceedings, which turned out to be ineffective for the reasons given, the Commission notes what was argued by the petitioner regarding the difficulties of physical access for filing judicial actions to obtain reparation. In response to these arguments, which are corroborated by the determinations of context, the State has not succeeded in showing how the victims in the instant case had any real possibility of pursuing their claims judicially. Moreover, in the few instances in which cases were presented in the judiciary, it turned out to be ineffective for securing integral reparation. The IACHR must emphasize that these obstacles to accessibility to justice place a disproportional burden on persons in poverty and with disabilities; accordingly, it wishes to emphasize that accessibility is a condition precedent for persons with disabilities to be able to live independently and participate fully in society; without access to the physical environment, transportation, information, and other substantial services, it will be difficult for them to see their rights guaranteed. In that context, if the buildings in which the law enforcement agencies and administration of justice are situated are not physically accessible for this group in a situation of vulnerability, there cannot be real access to justice.

303. In view of all the foregoing considerations, the Commission considers that the Honduran State is responsible for violating the right to a fair trial and to judicial protection established at articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument, to the detriment of the surviving victims and of the family members individually identified in the Single Annex to this report on the merits. Moreover, the Commission considers that the foregoing conclusions reveal a structural problem of a lack of administrative, judicial, and other mechanisms to respond adequately and effectively to the violations found in this report. In that sense, the Commission also considers that the State is responsible for violating Article 2 of the American Convention.

**E. Right to humane treatment for the victims' family members (Article 5 of the American Convention, in relation to Article 1(1) of the same instrument)**

304. Article 5(1) of the American Convention establishes: "Every person has the right to have his physical, mental, and moral integrity respected." With respect to the family members of victims of certain human rights violations, the Court has indicated that they may be considered, in turn, as victims.<sup>391</sup> In this respect, the Court has ruled that that they may be affected in their psychological and moral integrity as a result

---

<sup>390</sup> ECHR, *Case of Vilnes and others v. Norway*. Judgment of March 24, 2014, para. 231.

<sup>391</sup> I/A Court HR. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and *Case of Bueno Alves v. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 164, para. 102.

of particular situations that the victims suffered, and from the subsequent actions or omissions by the domestic authorities in response to these facts.<sup>392</sup>

305. The Commission recapitulates that the victims were subjected to labor conditions incompatible with their human rights; and that they suffered accidents that cause death, disappearance, and permanent physical injury which, given the lack of a timely and adequate response, became disabilities. These facts, given their seriousness, necessarily cause their family members suffering and anguish. In addition is the absence of an adequate and effective state response, as well as integral reparation. Moreover, the Commission observes that given the nature of the facts of the case, and, in particular, the lasting effects of the physical injuries suffered by most of the victims, it is reasonable to infer that they have undergone a radical change in their family life.

306. By virtue of the foregoing, the Commission concludes that the State violated the right to psychological and moral integrity enshrined in Article 5(1) of the American Convention in relation to its Article 1(1) to the detriment of the family members of the victims in this case who are indicated in the Single Annex to this report. In addition, the IACHR considers that the alleged violation of the right to protection of the family, established at Article 17 of the American Convention, is subsumed in the analysis and conclusion set out in this section.

## **VI. CONCLUSIONS**

307. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that the State of Honduras is responsible for violating the rights established in articles 4(1), 5(1), 8(1), 19, 24, 26, and 25(1) of the American Convention, all in relation to the obligations established at articles 1(1) and 2 of the same international instrument, to the detriment of the persons indicated in each of the sections of this report and in its Single Annex.

## **VII. RECOMMENDATIONS**

308. Based on the foregoing conclusions,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS TO THE STATE OF HONDURAS THAT IT:**

1. Make full reparation for the human rights violations found in this report, in both the material and non-material aspects. The State should adopt measures entailing economic compensation and satisfaction for moral injury. These measures of compensation and satisfaction should take account of both the individual harm and the collective harm stemming from the human rights violations found in this report and from the structural context in which they unfolded.

2. Order the measures of physical and mental health care necessary for the surviving victims. For the surviving victims with disabilities, the measures of habilitation and rehabilitation that are ordered should comply with the relevant international standards. In addition, order the mental health measures necessary for the victims' family members. These measures should be implemented in the event that it is the will of the victims and coordinated with them and their representatives. In addition, in implementing this recommendation the State should ensure that it satisfaction of the requirements of acceptability, accessibility, quality, and availability, in the terms described in this report on the merits.

3. Undertake a search, drawing on all means available, to determine the fate or whereabouts of the disappeared victims or their mortal remains, which should be duly identified and returned to their families.

4. Investigate diligently, effectively, and within a reasonable time to clarify the facts completely, identify all possible responsibilities, and impose the corresponding sanctions with respect to the human rights

---

<sup>392</sup> I/A Court HR, Case of Vargas Areco v. Paraguay. Judgment of September 26, 2006. Series C No. 155, para. 96.

violations found in this report. This recommendation includes both the criminal and administrative investigations, with respect not only to those persons and companies associated with the victims through labor relationships, but also to the state authorities who failed in their duties of inspection, oversight, and response in the terms expressed in this report.

5. Adopt legislative, administrative, and other measures to avoid the recurrence of similar facts in the future. In particular, the State should:

- Perform a serious and complete assessment of the issues faced by the Miskito divers in the region, with the aim of identifying the structural causes that gave rise to the human rights violations found in this report on the merits.
- Implement measures for confronting such structural causes and eradicate the problematic situation definitively. This includes, among other measures, adequate regulation of underwater fishing activities in keeping with the standards described in this report on the merits, as well as the mechanisms for enforcing that regulation in situations of non-compliance; for these purposes the State should create a control and monitoring system that includes arrangements for transparency and participation that make it possible to identify and take timely action in the face of human rights violations in the context of commercial fishing operations.
- Strengthen its institutions to ensure that they carry out their obligation to oversee and inspect companies that carry out dangerous activities.
- Include necessary and sustainable measures aimed at expanding job opportunities for the population where the facts of the instant case occurred, in an inclusive and participatory framework.
- The State should establish, as a minimum, specific guarantees of social protection for diseases and accidents related to work in hazardous activities.

6. Undertake campaigns to provide relevant information on the rights of workers related to occupational safety and health in the region where the events took place.

7. Repay the outlays of the Legal Assistance Fund of the Inter-American Commission.