

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

***CASE OF THE MISKITO DIVERS (LEMOTH MORRIS ET AL.) V. HONDURAS***

**JUDGMENT OF AUGUST 31, 2021**

In the *Case of the Miskito divers (Lemoth Morris et al.) v. Honduras*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:

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

also present,

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

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, “the American Convention” or “the Convention”) and with Articles 31, 32, 63, 65 and 67 of the Court’s Rules of Procedure (hereinafter “the Rules”), delivers this judgment.

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**I**  
**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. *The case submitted to the Court.* On May 24, 2019, pursuant to Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court case No. 12.738 "Opario Lemoth Morris et al. (Miskito divers)" against the Republic of Honduras (hereinafter "the State" or "Honduras"). According to the Commission, the case relates to the State's alleged international responsibility for the violation of several rights to the detriment of 42 Miskito divers and their next of kin. The Commission concluded that the State is responsible for the violation of the right to personal integrity of 34 Miskito divers (*infra* para. 28) who suffered accidents as a result of deep dives that caused them decompression sickness. It also considered that the State violated the right to life of 12 divers who died shortly after those accidents. The Commission further concluded that these violations "were the result of the State's omissions and indifference to the problem of labor exploitation by fishing companies and the performance of diving activities in dangerous conditions." In addition, the Commission considered that the right to life of seven Miskito divers was violated after the boat in which they were traveling exploded, as well as that of a 16 year-old boy who disappeared while working on a fishing boat. The Commission likewise concluded that the State is responsible for the violation of the principle of equality and non-discrimination, given the multiple factors of vulnerability of the divers. Finally, the Commission found that the State did not have administrative, judicial and other mechanisms in place to respond adequately and effectively to the violations indicated in the Merits Report. The Commission also established a violation of the right to personal integrity of the next of kin of the alleged victims. The names of the alleged victims in the instant case can be found in Annex 1 of this judgment.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a. *Petition.* On November 5, 2004, the Commission received a petition lodged by the *Asociación de Miskitos Hondureños de Buzos Lisiados* (AMHBLI: Association of Disabled Honduran Miskito Divers); *Asociación de Mujeres Miskitas - Miskito Indian Mairin Asla Takanka* (MIMAT: Association of Miskito Women); and the *Almuk Nani Asla Takanka* Council of Elders. On December 18, 2007, the Center for Justice and International Law (CEJIL) was accredited as a co-petitioner.

b. *Admissibility Report.* On November 12, 2009, the Commission adopted Admissibility Report No. 121/09.

c. *Merits Report.* – On May 8, 2018, the Commission issued Merits Report No. 64/18, in accordance with Article 50 of the Convention (hereinafter "Merits Report" or "Report No. 64/18").

d. *Notification to the State.* On June 25, 2018, the Merits Report was notified to the State, which was granted two months to report on its compliance with the recommendations. Subsequently, the Commission granted the State three extensions to report on its compliance with the recommendations. The State did not request a further extension and did not provide information on specific advances in compliance with the recommendations.

3. *Submission to the Court.* On May 24, 2019, the Commission submitted all the facts and human rights violations described in Merits Report No. 64/18 to the jurisdiction of the

Inter-American Court and requested that it declare the international responsibility of the State for the violations indicated therein and order measures of reparation.<sup>1</sup>

4. *Requests of the Inter-American Commission.* The Commission asked the Court to declare the State responsible for the violation of the rights to life, to life with dignity, to personal integrity, to the rights of the child, to judicial guarantees, to judicial protection, to work and to just, equitable and satisfactory conditions, as well as to health, social security, and to the principle of equality and non-discrimination, contained in Articles 4(1), 5(1), 8(1), 19, 24, 25(1) and 26 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of the same instrument. The Court notes with concern that more than fourteen years have elapsed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

## II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the alleged victims.* The submission of the case was notified to Honduras and to the alleged victims on October 23, 2019.

6. *Brief with pleadings, motions and evidence.* On January 7, 2020, the Association of Disabled Honduran Miskito Divers (AMHBLI), *Miskito Indiang Mairin Asla Takanka (MIMAT)*, *Almuk Nani Asla Takanka* (Council of Elders), the *Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús en Honduras* (Jesuit Reflection, Investigation and Communication Team in Honduras ERIC-SJ), and the Center for Justice and International Law (CEJIL) (hereinafter “the representatives”) submitted their brief with pleadings, motions and evidence (hereinafter “the pleadings and motions brief”), pursuant to Articles 25 and 40 of the Court’s Rules of Procedure. The representatives asked the Court to declare the State responsible for the violation of the rights to equality and non-discrimination, life, personal integrity, health, work and to work in just, equitable and satisfactory conditions, social security, a pension, the obligation to provide special protection to a child, judicial guarantees and judicial protection to the detriment of the alleged victims, and the right to personal integrity of the victims’ next of kin. Finally, the alleged victims, through their representatives, requested access to the Victims’ Legal Assistance Fund of the Inter-American Court (hereinafter “the Legal Assistance Fund”).

7. *Answering brief.* On June 15, 2020,<sup>2</sup> the State presented its brief in response to the submission of the case and to the pleadings and motions brief (hereinafter “answer” or “answering brief”), in which it rejected the alleged violations and the requests for measures of reparation presented by the Commission and by the representatives. In accordance with Court Orders 1/20 of March 17, 2020<sup>3</sup> and 2/20 of April 16, 2020,<sup>4</sup> the Court suspended the calculation of all the deadlines owing to the emergency caused by the COVID-19 pandemic. Accordingly, the deadline for the submission of the State’s response was extended.

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<sup>1</sup> The Commission appointed Commissioner Joel Hernández, Executive Secretary Paulo Abrão, and the Special Rapporteur on Economic, Social, Cultural and Environmental Rights, Soledad García Muñoz, as its delegates. It also appointed Silvia Serrano Guzmán, Erick Acuña Pereda and Luis Boub Cancho, lawyers of the Commission’s Executive Secretariat, as legal advisers.

<sup>2</sup> The State of Honduras appointed Lidia Estela Cardona Padilla, Nelson Gerardo Molina and Jacobo Cálix as its agents in this case.

<sup>3</sup> Available at: [http://www.corteidh.or.cr/docs/comunicados/cp\\_18\\_2020.pdf](http://www.corteidh.or.cr/docs/comunicados/cp_18_2020.pdf)

<sup>4</sup> Available at: [http://www.corteidh.or.cr/docs/comunicados/cp\\_28\\_2020.pdf](http://www.corteidh.or.cr/docs/comunicados/cp_28_2020.pdf)

8. *Public hearing.* In the order of December 17, 2020, the President of the Court called the parties and the Commission to a public hearing<sup>5</sup> to consider the merits and possible reparations and costs, and to hear the final oral arguments and observations of the parties and of the Commission, respectively.

9. *Friendly settlement agreement.* On March 25, 2021, prior to the public hearing, the Court received from the State and the representatives a document dated March 24, 2021, entitled "Friendly Settlement Agreement: Case CDH-10-2019 Lemoth Morris et al. (Miskito divers) v. Honduras" (hereinafter the "friendly settlement agreement" or "the Agreement"), signed by the representatives and the State, in which they requested its endorsement by the Court. In addition, the parties asked the Court to suspend the current deadlines and the virtual public hearing convened for April 28, 29 and 30, 2021. This request was admitted by the President of the Court on March 30, 2021. The text of the Agreement can be found in Annex 4 to this judgment.

10. *Observations of the Commission and the representatives.* With regard to the State's request for the endorsement of the friendly settlement agreement, the representatives and the Commission presented their respective observations on April 15, 2021.

11. *Deliberation of the case.* The Court began deliberating this judgment on August 30, 2021.

### **III JURISDICTION**

12. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3) of the American Convention on Human Rights because Honduras has been a State Party to the Convention since September 8, 1977, and accepted the contentious jurisdiction of the Court on September 9, 1981.

### **IV FRIENDLY SETTLEMENT AGREEMENT**

#### **A. Friendly settlement agreement**

13. The State accepted that the facts which form the factual basis of the friendly settlement agreement, and therefore of its acknowledgment of responsibility, are those established by the Commission in its Merits Report, which Honduras agreed to abide by. Based on this, the State expressly acknowledged its responsibility for the violation of the rights to life, to life with dignity, to personal integrity, to judicial guarantees, to the rights of the child, to equal protection of the law, to judicial protection, health, work, social security, and to non-discrimination (Articles 4(1), 5(1), 8(1), 19, 24, 25(1) and 26, in relation to Articles 1(1) and 2 of the same instrument) to the detriment of the alleged victims and their next of kin.<sup>6</sup> In the agreement, the Honduran State also made certain representations and undertook to comply with a series of reparations. Finally, the parties submitted a joint request for the Court to analyze the content and scope of the rights of the American Convention that were affected

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<sup>5</sup> Cf. *Case of Lemoth Morris et al. v. Honduras. Summons to a hearing.* Order of the President of the Inter-American Court of Human Rights, December 17, 2020. Available at: [http://www.corteidh.or.cr/docs/asuntos/lemoth\\_morris\\_y\\_otros\\_17\\_12\\_2020.pdf](http://www.corteidh.or.cr/docs/asuntos/lemoth_morris_y_otros_17_12_2020.pdf)

<sup>6</sup> In the Friendly Settlement Agreement, the parties recognize as victims the persons identified in the Single Annex of Merits Report No. 64/18, who have been listed in Annex 1 of this Judgment.

by the activities of the extractive fishing industry in the Miskito territory and, in particular, those derived from Article 26 of the Convention, in relation to Articles 1(1) and 2 thereof.

### **B. Observations of the representatives**

14. In its observations on the agreement, submitted on April 15, 2021, the representatives of the alleged victims reiterated the arguments set forth in their brief of March 24, 2021, to which they attached a copy of the friendly settlement agreement. They confirmed their signing of the Agreement and requested that the Court, in application of Article 63 of its Rules of Procedure, declare that the Agreement is admissible in all its aspects and has full legal effects. Therefore, they requested that the Court, in its judgment in this case, analyze the facts acknowledged by the State, as well as the violations committed against the victims and their next of kin and “endorse the reparations agreed upon by the parties as set forth in the Agreement.” They also asked to Court to “follow up on the implementation (of the reparations) in the context of the process of monitoring compliance with the judgment.”

15. In particular, the representatives urged the Court to accede to the joint request of the parties and to develop jurisprudence on the content and scope of the rights protected by the Convention that were violated by virtue of the activities of the fishing industry in the Miskito territory, and the lack of regulation, supervision and oversight of these by the State and, in particular, of the rights derived from Article 26 of the Convention. They argued that the development of such standards would provide Honduras and other States in the region with information on their obligations to respect and guarantee human rights in cases involving private companies and indigenous peoples. The aim is to ensure that events such as those that occurred in the instant case are not repeated.

16. Finally, the representatives requested that the amount to be awarded as compensation for costs and expenses, as well as the amount corresponding to the Miskito organizations for costs and expenses, be kept confidential in the judgment on the endorsement of the agreement.

### **C. Observations of the Commission**

17. In its observations, the Inter-American Commission expressed satisfaction with the friendly settlement agreement signed by the parties. Likewise, it welcomed the State’s acknowledgment of responsibility based on the factual and legal determinations of the Merits Report, and noted that the reparation measures agreed upon by the parties include the different components of a comprehensive compensation, in the terms of the inter-American human rights system. Finally, the Commission expressed satisfaction with the parties’ joint petition for the Court to rule on the points of law specified, and reaffirmed that request. In particular, it stressed the importance of developing the Court’s jurisprudence in relation to Article 26 of the American Convention, as indicated in the agreement itself.

### **D. Considerations of the Court**

18. On previous occasions, this Court has had the opportunity to examine and evaluate friendly settlement agreements.<sup>7</sup> On this point, it is useful to recall that Article 63 of the Court’s Rules of Procedure establishes that “[w]hen the Commission, the victims or alleged victims or their representatives, the respondent State or, if applicable, the petitioning State,

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<sup>7</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, and *Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, para. 15.

in a case before the Court, inform it of the existence of a friendly settlement, compromise, or any other occurrence likely to lead of a settlement of the dispute, the Court shall rule upon its admissibility and juridical effects at the appropriate procedural time.” Therefore, in accordance with the aforementioned rule, this Court will determine the validity and legal effects of the friendly settlement agreement reached by the parties.<sup>8</sup>

19. The Court also recalls that, according to Article 63, it is possible that in proceedings before this Court the parties may reach friendly settlements, the appropriateness of which must be assessed by the Court. Reaching this type of settlement may lead to a more prompt and effective reparation for the victims in the case. In addition, it may contribute to the objectives of the inter-American system for the protection of human rights, and especially to the purpose of finding just solutions to the specific and structural problems of a case.<sup>9</sup>

20. Furthermore, the Court observes that, according to the abovementioned article as well as Article 64 of the Rules of Procedure,<sup>10</sup> and in exercise of its powers of international judicial protection of human rights, a matter of international public order that transcends the will of the parties, it is incumbent upon this Court to ensure that friendly settlement agreements are acceptable for the purposes sought by the inter-American system. In this task the Court does not limit itself to merely confirming, recording or taking note of the acknowledgement made by the State, or verifying the formal conditions of such actions, but must weigh them against the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties, in order to determine, insofar as possible and in the exercise of its competence, the truth of what occurred in the case.<sup>11</sup> In this sense, the agreement cannot have the consequence of violating, directly or indirectly, the object and purpose of the American Convention.

21. To this end, the Court must analyze the situation presented in each specific case, verifying that the agreement - which may be submitted to the Court at any stage of the contentious proceeding - is signed by the parties. Having given notice to the parties and to the Commission and, where appropriate, having sought their respective observations, the Court will verify that the formal and material requirements are met to proceed to endorse the agreement by means of a judgment.

22. The Court finds that the agreement submitted contemplates a settlement between the parties to the dispute in relation to the facts and the determination of human rights violations, along the lines of those established in the Merits Report, as well as the measures of reparation. The Court understands that, given the manner in which the State formulated its acknowledgment of responsibility, it also includes the legal considerations that led said body to conclude that these violations were committed to the detriment of the victims in this case.

23. Furthermore, the Court highlights the willingness of the parties to reach a solution to the dispute in the instant case, and particularly emphasizes the procedural moment in which

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<sup>8</sup> Cf. *Case of García Cruz and Sánchez Silvestre v. Mexico. Merits, reparations and costs.* Judgment of November 26, 2013, Series C No. 273, para. 17, and *Case of Escaleras Mejía et al. v. Honduras, supra*, para. 15.

<sup>9</sup> Cf. *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs.* Judgment of April 27, 2012. Series C No. 241, para. 19, and *Case of Escaleras Mejía et al. v. Honduras, supra*, para. 16.

<sup>10</sup> Article 64 of the Court’s Rules of Procedure. “Continuation of a case. Bearing in mind its responsibility to protect human rights, the Court may decide to continue the consideration of a case notwithstanding the existence of the conditions indicated in the preceding articles.”

<sup>11</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Escaleras Mejía et al. v. Honduras, supra*, para. 17.

they did so. This allows the Court to arrive at a judgment more expeditiously than if the international proceeding had been completed. Thus, the dispute in this proceeding concluded without the need for a public hearing and without the final written procedure being carried out.<sup>12</sup>

24. In accordance with the terms in which the agreement was signed, the Court considers that the factual dispute has ceased. Although this means it is unnecessary for the Court to make its own determination of the facts and legal consequences, in order to ensure a better understanding of the case and, in particular, in light of the agreement reached, the Court deems it appropriate to summarize the relevant facts and background based on the contents of the Merits Report which, as previously indicated, have been acknowledged by the State. In this regard, the Court recalls that the parties agreed to the following:

Through this Friendly Settlement Agreement, the parties have agreed to the cessation of the dispute and the corresponding reparations. The parties agree that there is still a need for jurisprudence on the content and scope of the rights of the American Convention that were affected in this case by virtue of the activities of the extractive fishing industry in the Miskito territory and, in particular, those derived from Article 26 and its relationship with Articles 1(1) and 2 of the [American Convention]. The purpose of the foregoing is for the Inter-American Court to provide elements to the States of the region regarding their obligations to respect and guarantee human rights when companies and indigenous peoples are involved, so that events such as those that occurred in the instant case are not repeated.

25. At the same time, although the Court considers that the dispute has also ceased on the arguments related to the violations of the rights to life, life with dignity, personal integrity, the rights of the child, judicial guarantees, judicial protection, the rights to work, health and social security, and the right to equality and non-discrimination, contained in Articles 4(1), 5(1), 8(1), 19, 24, 25(1) and 26 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 thereof, to the detriment of the persons indicated in Annex 1 of this judgment, and of the rights to personal integrity to the detriment of the victims' next of kin, the Court will, where relevant, refer to the violations of the rights indicated, as it deems necessary (*infra* Chapter VI). Subsequently, the Court will analyze the agreement in order to determine whether its endorsement is appropriate (*infra* Chapter VII).

26. Finally, the Court appreciates the willingness of Honduras to make full reparation for the harm caused to the victims by the violations that occurred in the instant case and to prevent the recurrence of such violations. With respect to the reparation measures described in the agreement reached by the State, the victims and their representatives, the Court will analyze them in order to determine whether they should be endorsed and, if so, their scope and means of implementation (*infra* Chapter VIII).

## **V FACTS**

27. According to the friendly settlement agreement, "the State accepts that the facts that form the factual basis of this Friendly Settlement Agreement and, therefore, of the acknowledgment of its international responsibility, are those facts considered proven by the [Commission] in its Merits Report N° 64/18, adopted on May 8, 2018, which forms an integral part of the agreement, and which the State agrees to abide by within the framework of its

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<sup>12</sup> *Mutatis mutandis*, *Case of García Cruz and Sánchez Silvestre v. Mexico*, para. 19, and *Case of Escaleras Mejía et al. v. Honduras*, *supra*, para. 20.

compliance with this agreement based on its international obligations.”<sup>13</sup> Therefore, taking into account the foregoing, the Court will refer briefly to the context and facts that resulted in the violations in this case, which that were analyzed in Chapter IV “Factual Determinations” of the Merits Report, and in Chapter V “Legal Analysis, as well as to the different facts related to each of the victims in this case.<sup>14</sup>

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

28. The Miskitos are a binational indigenous people who share the border territories of Honduras and Nicaragua. In 2003, the Miskito population numbered approximately 40,000, and was mostly concentrated in rural areas of the department of Gracias a Dios (hereinafter “the department” or “Gracias a Dios”), in Honduras.

29. According to reports of the World Bank and the United Nations Development Program (hereinafter “UNDP”), in 2003, the department of Gracias a Dios had high rates of poverty, illiteracy, unemployment, chronic malnutrition, lack of sanitation and electricity services, and a lack of water sources, among other problems. In terms of health services, although the department of Gracias a Dios has health centers, these are difficult to access for the region’s population, due to the distances involved and the poor condition of the roads.<sup>15</sup>

30. For its part, the Pan American Health Organization (hereinafter “PAHO”) has pointed out that people living in the department have few formal employment opportunities, and that there is a limited government presence in the area due to its remote geographical location and the high costs of access.<sup>16</sup> In this regard, the Inter-American Commission has noted that, in 2014, this region continued to be one of the poorest and most isolated areas of Honduras, with no road connecting it to the rest of the country and only accessible by air or sea.<sup>17</sup>

#### **B. Underwater fishing by Miskito divers: working conditions, their effects and domestic proceedings**

31. According to PAHO, the subsistence activities of the Miskito people mainly involve agricultural work, artisanal fishing and paid work for young men as divers for lobster and shrimp fishing. Traditionally, the Miskito men practiced “free diving” (without equipment) to catch lobster for family consumption, not going deeper than 40 to 60 feet in their dives. However, due to the increased commercialization of this activity, which represents an important source of income for the Honduran economy,<sup>18</sup> lobster fishing on the Atlantic Coast

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<sup>13</sup> Friendly Settlement Agreement Case CDH-10-2019, Lemoth Morris et al. (Miskito Divers) v. Honduras (merits file, folio 710).

<sup>14</sup> Unless stated to the contrary, the description of the facts contained in this chapter appears in paragraphs 31 to 307 of the Merits Report, in the terms acknowledged by the State.

<sup>15</sup> Cf. World Bank. Honduras. Conceptual Framework for Interventions with Indigenous and Afro Communities in the project “Trade Facilitation and Enhancing Competitiveness” (evidence file, folio 6301), and United Nations Development Program. Human Development Report Honduras, 2003, page 104.

<sup>16</sup> Cf. Pan American Health Organization, Human Rights and Disability among Indigenous Peoples, 2004 (evidence file, folios 6356-6357).

<sup>17</sup> Cf. Inter-American Commission on Human Rights. 2015 Report on the Human Rights Situation in Honduras, para. 427.

<sup>18</sup> According to a report, in 2011, Honduras produced 10,000 metric tons of lobster, earning revenues of US\$ 70 million and generating 30,000 direct temporary jobs. Cf. United Nations Development Program (UNDP), Honduran Private Enterprise Council (COHEP), Netherlands Development Cooperation Service (SNV) and Secretariat of Planning and External Cooperation (SEPLAN), Report on productive sectors, strategic chains and enterprises for a supplier development program, Tegucigalpa, 2012, pp. 46 to 47.

of Honduras and Nicaragua is carried out by diving, and not by artisanal fishing. PAHO has noted that Miskito boys begin this work when they are 14 years old, that it takes place outside of current labor legislation and that it causes occupational accidents, intoxications and disabilities in people of working age. Of the 9,000 divers involved in lobster fishing – 98 per cent of whom are Miskitos – 97 per cent have suffered some type of decompression-related syndrome and 4,200 are totally or partially disabled.<sup>19</sup>

32. Deep-sea dive fishing can produce, *inter alia*, the following consequences: i) drowning; ii) air embolism; iii) excessive lung inflammation; iv) decompression sickness; v) hypothermia; vi) barotrauma; and vii) carbon monoxide poisoning.<sup>20</sup> Decompression sickness, in particular, is caused by a rapid reduction in pressure (e.g., during ascent from a dive), and the appropriate treatment is to place the diver in a hyperbaric chamber. However, according to PAHO, most diving accidents are preventable when the diver is in good physical condition, has adequate training, abstains from drinking, smoking or consuming illegal drugs, dives in the company of others, does not ascend above sea level until 12 hours after a dive, does not dive more than three times on the same day, uses insulating suits in cold water, regularly checks the equipment and has a previous medical examination. In addition, fishing boats should maintain communication with the land and carry oxygen on board.<sup>21</sup>

33. In relation to the above, the Inter-American Development Bank (hereinafter “IDB”) has reported that one of the main problems faced by Miskito divers is the fact that fishing companies do not meet the minimum standards required to work in dive fishing, since they do not offer formal employment contracts or provide appropriate equipment to perform this activity, and therefore divers lack adequate safety conditions. The IDB has also noted that some divers have been offered drugs in order to help them remain fishing underwater for as long as possible, and in some cases they receive part of their wages in cash and part in drugs.<sup>22</sup>

34. Similarly, the National Commissioner for Human Rights (hereinafter “CONADEH”) and AMHBLI have reported that, since 2001, Miskitos who are recruited to be divers do not receive training on diving techniques or on safety measures. They have also reported that those affected by accidents have not received compensation for the harm caused or for the illnesses or disabilities resulting from such accidents. Consequently, due to their injuries and lack of treatment and compensation, most Miskito divers with disabilities turn to begging.<sup>23</sup>

35. With regard to working conditions, according to the Special Prosecutor's Office for Ethnic Affairs and Cultural Heritage, Miskito divers receive 45 lempiras per pound of lobster (approximately one United States dollar and eight-seven cents). With that money, the divers

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<sup>19</sup> Cf. Pan American Health Organization, Human Rights and Disabilities among Indigenous Peoples, 2004 (evidence file, folios 6357 to 6361).

<sup>20</sup> Cf. Pan American Health Organization, Human Rights and Disabilities among Indigenous Peoples, 2004 (evidence file, folio 6363).

<sup>21</sup> Cf. Pan American Health Organization, Human Rights and Disabilities among Indigenous Peoples, 2004 (evidence file, folio 6382).

<sup>22</sup> Cf. Inter-American Development Bank. Human Development Report. Honduras 2003 (evidence file, folio 6641).

<sup>23</sup> Cf. National Human Rights Commission of Honduras (CONADEH). Final Report. Organizational Strengthening of Ethnic Groups and Divers in the department of Gracias a Dios. Honduras, 2001 (merits file, folio 29), and AMHBLI Project to Clarify the Legal Situation of Multiple Labor Complaint Cases Filed by Divers with the Ministry of Labor, September 24, 2003. (merits file, folio 29).

must also pay the *cayuquero*.<sup>24</sup> Moreover, divers may work for 12 or even 17 consecutive days without rest, and their work is dictated by the captain of the fishing boat. According to the Special Prosecutor's Office, divers receive their payment when the product of the catch is paid for by the packing plant and, while this happens, the boat owners give "credit" to the divers in the form of food, alcoholic beverages and clothing, after which those amounts are deducted from their wages. It also pointed out that the number of divers aboard the fishing vessels normally exceeds the capacity for which they were designed, and that there is no proper or thorough inspection of the quantity, quality and maintenance of the diving equipment, which leads to accidents involving the explosion of cylinders. Even in these conditions, the "captains" of the boats have forced divers to dive to depths of up to 140 feet (more than 40 meters deep).<sup>25</sup>

36. In 2007, the International Labor Organization (hereinafter "ILO") reported that diving for lobster fishing is a very important activity for the region of La Mosquitia and is "very dangerous." It emphasized that this activity is carried out by young men aged between 14 and 25 years, for 10 or 12 days during fishing trips, and that many of these divers die or become disabled for life. It also noted that the trade and agricultural or fishery production sector hires cheap temporary labor and that in coastal Miskito communities, 75% of children and adolescents over the age of 13 work in the fishing sector as *cayuqueros* (canoe oarsmen) or divers. The ILO pointed out that some children who work in traditional fishing and diving activities suffer from health problems such as sunstroke, back pain, vomiting, dizziness, burns, respiratory diseases, harpoon accidents, and physical or mental disabilities.<sup>26</sup>

37. On May 30, 2001, the Secretary of State in the Department of Labor and Social Security of Honduras issued Executive Decree No. STSS 116-01, which approved the Occupational Safety and Health Regulations for Underwater Fishing (hereinafter "the Fishing Regulations"). These regulations establish the minimum safety and health requirements for work on fishing vessels. The Fishing Regulations state that employers who fail to comply with their obligations will be sanctioned by the Ministry of Labor and Social Security, which will evaluate and classify the violations and impose sanctions by applying the provisions of the Labor Code. One of the considering paragraphs states the following:

That given the high rate and seriousness of the occupational risks recorded in underwater fishing activities, there is an urgent need to establish regulatory standards to facilitate the application of Title V and other provisions contained in the Labor Code, concerning the protection of the health of workers against the risks arising from the working conditions of underwater fishing.

38. The Inter-American Commission noted in its Merits Report that, as of 2015, the only source of employment for Miskito men was dive fishing, which continues to be carried out in the absence of basic safety conditions. From the testimonies gathered during an on-site visit, the following points stood out:

[...] 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

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<sup>24</sup> A *cayuquero* is the oarsman of a *cayuco*, defined as a "one-piece Indian boat, smaller than a canoe, with a flat bottom and no keel, which is steered and moved with the paddle." Cf. *Diccionario de la Lengua Española de la Real Academia Española*.

<sup>25</sup> Cf. Special Prosecutor's Office for Ethnic Affairs and Cultural Heritage. Study on the Problems of the Divers of the Honduran Mosquitia. Honduras, 2001 (evidence file, folios 6966 to 6968).

<sup>26</sup> Cf. International Labour Organization. Child Labour and Indigenous Peoples. International Program for the Eradication of Child Labour, September 2007, (evidence file, folios 6846 and 6894).

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 long periods of time diving, extending from 12 to 17 days, and in order to fish larger quantities of seafood, they are forced to stay in the sea at great depths for prolonged periods and return to the surface very quickly, in contravention of diving safety standards. All of this takes place without proper 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 employs them, 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 with the world's highest number of persons suffering from decompression sickness. Furthermore, the State does not keep a record with information about the accidents sustained or the number of divers injured or killed.

The IACHR also learned that, once the Miskito divers are physically disabled for life, they find no empowerment, rehabilitation, medical care, or any other employment [...]. Even when 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, this leads to the 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.

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>

39. Regarding the remedies available to Miskito divers, the procedure for requesting compensation for work-related accidents is as follows: i) presentation of the labor claim at the office of the Ministry of Labor in La Ceiba or Tegucigalpa; ii) summons to the employer to accept or not the facts; iii) medical report of temporary disability to claim compensation; iv) calculation of labor rights by the Ministry of Labor based on data presented by the worker; v) notification to the employer; and vi) filing of the labor lawsuit. Most of the indemnities paid to Miskito divers have been agreed without the corresponding calculation for each case, since the claimants must be evaluated by specialized doctors from the Ministry of Labor.<sup>28</sup>

### **C. The situation of the victims**

40. The Court recalls that the instant case concerns 42 victims of the Miskito indigenous community living in the department of Gracias a Dios and their next of kin, who are divided into four groups:<sup>29</sup> a) 34 divers who suffered accidents due to deep dives which caused them

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<sup>27</sup> Inter-American Commission on Human Rights. Report on the Situation of Human Rights in Honduras, December 31, 2015, paras. 427 to 435.

<sup>28</sup> Cf. Report of AMHBLI. Analysis of the Situation of Injured Divers of the Miskito Zone (merits file, folio 31).

<sup>29</sup> For a description of the facts related to each of the victims, see Annex 2 of this Judgment.

decompression sickness or other diving-related ailments,<sup>30</sup> 12 of whom died as a result of such accidents;<sup>31</sup> b) seven Miskito divers who died as a result of the fire aboard the “Lancaster” boat in which they were traveling, due to the explosion of a butane tank;<sup>32</sup> c) the child Licar Méndez Gutiérrez, who was abandoned in a *cayuco* by the boat owner and whose whereabouts are unknown, and d) their next of kin. In relation to the administrative or judicial claims filed by the alleged victims, the Court notes the following: a) 11 divers obtained an administrative response from the Ministry of Labor and Social Security, the General Directorate of Social Security or the Office of Occupational Health and Safety<sup>33</sup> and, b) three divers obtained a judicial response from the Labor Court.<sup>34</sup> The Court also notes that as a result of those administrative proceedings 18 divers, or their families, received monetary compensation.<sup>35</sup>

## **VI CONSIDERATIONS OF THE COURT REGARDING THE HUMAN RIGHTS VIOLATIONS COMMITTED AGAINST THE VICTIMS**

41. Without prejudice to the State’s acknowledgment of responsibility for the violations described in the Merits Report and the cessation of the dispute in these proceedings, the Court, within the framework of its jurisdiction, and in consideration of the relevance and magnitude of the facts, and the joint petition submitted by the State and the representatives (*supra* para. 13), considers it necessary to refer to the rights violated in the instant case. Thus, the Court deems it appropriate to analyze the content of the rights that were impaired by virtue of the fishing activities in the Miskito territory - with special emphasis on the rights to life, personal integrity, health and social security, work and fair and satisfactory conditions that ensure the health and safety of the worker, given the close relationship existing between these rights and the violations that occurred in this case - in order to establish the scope of

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<sup>30</sup> Opario Lemoth Morris, Saipón Richard Toledo, Eran Herrera Palisto, Bernardo Blackaus Emos, Alí 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 Miller, Amistero Bans Valeriano, Rolando Mónico Thomas, Ralph Valderramos Álvarez, Ex Dereck Claro, Leonel Saty Méndez, David Esteban Bradley, Evecleto Londres Yumida, Arpin Robles Tayaton, Daniel Flores Reyes, Freddy Federico Salazar, Cooper Cresencio Jems, Félix Osario Presby, Efraín Rosales Kirington, Melesio Pamistan Maick, Willy Gómez Pastor, Roberto Flores Esteban, Daniel Dereck Thomas and Carlos Castellón Cárdenas.

<sup>31</sup> Opario Lemoth Morris, Saipon Richard Toledo, Eran Herrera Paulisto, Bernardo Blackaus Emos, Alí Herrera Ayanco, Mármol Williams García, José Martínez López, Ramón Allen Felman, Alfredo Francisco Brown, Próspero Bendles Marcelino, Roger Gómez Alfred and Timoteo Salazar Zelaya.

<sup>32</sup> Hildo Ambrosio Trino, Andrés Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez Nacril, Rómulo Flores Henríquez and Amilton Bonaparte Clemente.

<sup>33</sup> Flaviano Martínez López, Carcoth Padmoe Miller, Amistero Bans Valeriano, Rolando Mónico Thomas, Ex Dereck Claro, Onasis Cooper Brown, Saipón Richard Toledo, Melesio Pamistan Maick, Willy Gómez Pastor, Próspero Bendles Marcelino and Carlos Castellón Cárdenas.

<sup>34</sup> Flaviano Martínez López, Timoteo Lemus Pisatty and Carlos Castellón Cárdenas.

<sup>35</sup> In this regard, it is important to note that: a) two divers or their families received full compensation (Mármol Williams García and José Martínez López); b) 16 divers or their families received partial compensation (Opario Lemoth Morris, Cacorth Padmoe Miller, Rolando Mónico Thomas, Timoteo Lemus Pisatty, Daniel Flores Reyes, Onasis Cooper Brown, Anastacio Saipón Richard Toledo, Melesio Pamistan Mack, Daniel Dereck, Bernardo Blackaus, Alí Herrera, Alfredo Francisco Brown, Próspero Bendles Marcelino, Ramón Allen Ferman, Roger Gómez Alfred and Carlos Castellón Cárdenas); c) 15 divers or their families received no compensation (Flaviano Martínez López, Amistero Bans Valeriano, Ralph Valderramos Álvarez, Ex Dereck Claro, Leonel Saty Méndez, Evecleto Londres Yumidal, Arpin Robles Tayaton, Freddy Federico Salazar, Cooper Cresencio, Efraín Rosales Kirington, Willy Gómez Pastor, Licar Méndez, Roberto Flores Esteban, Eran Herrera Palisto and Timoteo Salazar Zelaya); and, regarding nine of the divers or their families there is no certainty as to whether or not they received compensation (Hildo Ambrosio Trino, Andrés Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez Nacril, Rómulo Flores Henríquez and Amilton Bonaparte Clemente (burned persons), David Esteban Bradley and Félix Osorio Presby.

the State's obligations in ensuring such rights when private companies and indigenous peoples are involved, and to prevent the repetition of events such as those that occurred in this case.

**A. Preliminary consideration: corporate responsibility with respect to human rights**

42. Prior to the analysis of the merits, and as a preliminary consideration, this Court considers it pertinent to recall that since its first judgments, it has emphasized that the first obligation assumed by the States Parties under Article 1(1) of the Convention is to "respect the rights and freedoms" recognized therein. Thus, the exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State. Therefore, the protection of human rights, particularly the civil and political rights set forth in the Convention, is based on the affirmation of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted by the exercise of governmental power. There are individual domains that are beyond the reach of the State or to which the State has but limited access. Thus, the protection of human rights must necessarily include the concept of the restriction of the exercise of state power.<sup>36</sup>

43. The second obligation of the State is to "ensure" the free and full exercise of the rights recognized by the Convention to every person subject to its jurisdiction. This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of legally 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 and, moreover, must attempt to restore, if possible, the right violated and provide compensation as warranted for damages resulting from the violation. The obligation to ensure the free and full exercise of human rights is not fulfilled by the mere existence of a legal system designed to make it possible to comply with this obligation --it also requires the government to conduct itself so as to effectively ensure the free and full exercise of human rights.<sup>37</sup>

44. In relation to the foregoing, this Court has established that the obligation of guarantee extends beyond the relations between State agents and the persons subject to their jurisdiction, and encompasses the duty to prevent third parties, in the private sphere, from violating the protected rights.<sup>38</sup> Nevertheless, the Court has considered that a State cannot be held responsible for all human rights violations committed by private individuals subject to its jurisdiction. The *erga omnes* nature of the State's conventional obligations to guarantee human rights does not entail its unlimited responsibility for any act by third parties. Thus, although an act or omission by a private individual has the legal consequence of violating the rights of another person, this cannot be automatically attributed to the State; rather the

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<sup>36</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 165, and *Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective* (interpretation and scope of articles 13, 15, 16, 24, 25 and 26, in relation to articles 1(1) and 2 of the American Convention on Human Rights; articles 3, 6, 7 and 8 of the Protocol of San Salvador; Articles 2, 3, 4, 5 and 6 of the Convention of Belem do Pará; articles 34, 44 and 45 of the Charter of the Organization of American States; and articles II, IV, XIV, XXI and XXII of the American Declaration of the Rights and Duties of Man). Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27. para. 107.

<sup>37</sup> Cf. *Case of Velásquez Rodríguez v. Honduras, supra*, para. 166 and 167, and Advisory Opinion OC-27/21, *supra*, para. 108.

<sup>38</sup> Cf. *Case of the "Mapiripán Massacre" v. Colombia*. Judgment of September 15, 2005. Series C No. 134, para. 111, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their families v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 15, 2020. Series C No. 407, para. 117.

particular circumstances of the case must be examined and whether the obligation to guarantee rights has been met.<sup>39</sup>

45. At the same time, the Court has pointed out that Article 2 of the Convention establishes the general duty of the States Parties to adapt their domestic laws to the provisions of the Convention in order to guarantee the rights enshrined therein. This duty implies the adoption of two kinds of measures: on the one hand, the elimination of rules and practices that in any way violate the guarantees provided for under the Convention; on the other hand, the promulgation of norms and the development of practices conducive to the effective observance of those guarantees.<sup>40</sup> Indeed, with regard to the adoption of such measures, this Court has recognized that all the authorities of States Parties to the Convention have an obligation to exercise a control of conventionality, so that the interpretation and application of national law is consistent with their international human rights obligations.<sup>41</sup>

46. The Court recalls that, within the framework of its competencies, it is not for the Court to determine the specific responsibility of individuals, but rather to establish whether States are responsible for the violation of the human rights recognized in the Convention.<sup>42</sup> In this regard, the Court has ruled on the State's duty to regulate, supervise and oversee the practice of dangerous activities by private companies that involve significant risks to the life and integrity of persons under their jurisdiction.<sup>43</sup> Similarly, the Committee on Economic, Social and Cultural Rights has indicated that States Parties must effectively prevent any impairment of the economic, social and cultural rights in the context of business activities, and must therefore adopt legislative, administrative and educational measures to ensure their effective protection.<sup>44</sup>

47. Regarding the obligations of States with respect to business activities, the Court considers it pertinent to emphasize that the Human Rights Council has adopted the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework" (hereinafter "Guiding Principles").<sup>45</sup> In particular, the Court highlights the three pillars of the Guiding Principles, together with the foundational principles derived from these pillars, which are fundamental in determining the scope of the human rights obligations of States and business enterprises:<sup>46</sup>

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<sup>39</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 123, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 117.

<sup>40</sup> Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs*. Judgment of May 30, 1999. Series C No. 52, para. 207, and Advisory Opinion OC-27/21, *supra*, para. 109.

<sup>41</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs*. Judgment of November 23, 2009. Series C No. 209, para. 340, and Advisory Opinion OC-27/21, *supra*, para. 109.

<sup>42</sup> *Mutatis mutandis*, *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of Mota Abarullo et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 18, 2020. Series C No. 417, para. 111.

<sup>43</sup> Cf. *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 118.

<sup>44</sup> Cf. Committee on Economic, Social and Cultural Rights. *General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights, in the context of business activities*, E/C.12/GC/24, August 10, 2017, para. 14.

<sup>45</sup> Cf. Human Rights Council. *Human Rights and Transnational Corporations and Other Business Enterprises*. A/HRC/17/31, July 6, 2011, Resolution 1.

<sup>46</sup> Cf. Office of the United Nations High Commissioner for Human Rights (OHCHR). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, HR/PUB/11/04, 2011.

## **I. The State's duty to protect human rights**

- 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.
- States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

## **II. The corporate responsibility to respect human rights**

- Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization's Declaration on Fundamental Principles and Rights at Work.
- The responsibility to respect human rights requires that business enterprises:
  - a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
  - b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
- The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and the severity of the enterprise's adverse human rights impacts.
- In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:
  - a) A policy commitment to meet their responsibility to respect human rights;
  - b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
  - c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

## **III. Access to remedy**

- As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

48. Accordingly, and in the context of the obligation to guarantee rights and the duty to adopt provisions of domestic law derived from Articles 1(1) and 2 of the American Convention, the Court emphasizes that States have a duty to prevent human rights violations by private companies, and therefore must adopt legislative and other measures to prevent such violations, and to investigate, punish and provide reparation when they occur. Thus, States must establish regulations requiring companies to implement actions aimed at ensuring respect for the human rights recognized in the various instruments of the Inter-American System for the Protection of Human Rights –including the American Convention and the Protocol of San Salvador- especially in relation to hazardous activities. Under these regulations, businesses must ensure that their activities do not cause or contribute to human rights violations, and must adopt measures to redress such violations. The Court considers that corporate responsibility is applicable regardless of the size or sector of the company; however, their responsibilities may vary in the legislation based on the activity and the risk they pose to human rights.<sup>47</sup>

49. In addition, this Court considers that, in pursuit of the aforementioned purposes, States should adopt measures to ensure that business enterprises have: a) appropriate policies for the protection of human rights; b) due diligence processes for the identification, prevention and correction of human rights violations, as well as to ensure decent and dignified work; and c) processes that allow businesses to remedy human rights violations that result from their activities, especially when these affect people living in poverty or belonging to vulnerable groups.<sup>48</sup> The Court considers that, in this context, States should actively encourage businesses to adopt good corporate governance practices that focus on stakeholders and actions aimed at orienting business activity towards compliance with human rights and standards, including and promoting the participation and commitment of all the stakeholders involved, and the redress of affected persons.

50. The Court also recalls that Article 25 (1) of the American Convention establishes that “[e]veryone 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 [...]”<sup>49</sup> Thus, States must ensure the existence of judicial or extrajudicial mechanisms that provide an effective remedy for human rights violations. In this sense, States have the obligation to eliminate existing legal and administrative barriers that limit access to justice, and adopt those aimed at achieving its effectiveness. The Court emphasizes the need for States to address cultural, social, physical or financial barriers that prevent access to judicial or extrajudicial mechanisms for persons belonging to groups in situations of vulnerability.<sup>50</sup>

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<sup>47</sup> Cf. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, Remedy” Framework*, *supra*, principles 1-14; Inter-American Commission on Human Rights. *Report on Business and Human Rights: Inter-American Standards*, REDESCA, November 1, 2019, paras. 89 and 121, and Inter-American Juridical Committee. Resolution “Corporate social responsibility in the area of human rights and the environment in the Americas” CJI/RES. 205 (LXXXIV-O/14); and Inter-American Juridical Committee. *Guidelines concerning Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas*, February 24, 2014, CJI/doc.449/14 rev.1., corr. 1, points a and b.

<sup>48</sup> Cf. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, Remedy” Framework*, *supra*, principles 15-24.

<sup>49</sup> Cf. *Case of Velásquez Rodríguez v. Honduras*, *supra*, para. 91, and Advisory Opinion OC-27/21, *supra*, para. 115.

<sup>50</sup> Cf. *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, Remedy” Framework*, *supra*, principles 25-31.

51. In addition, this Court considers it pertinent to point out that it is the companies that are primarily responsible for behaving responsibly in the activities they carry out, since their active participation is fundamental for the respect and enforcement of human rights. Businesses should adopt, at their own expense, preventive measures to protect the human rights of their workers, as well as measures aimed at preventing their activities from having a negative impact on the communities in which they operate or on the environment.<sup>51</sup> In this sense, the Court considers that the regulation of business activities does not require companies to guarantee results, but rather should aim to ensure that they carry out continuous assessments of the risks to human rights, and respond through effective and proportional measures to mitigate the risks caused by their activities, in consideration of their resources and possibilities, and with accountability mechanisms to remedy any damage caused. This obligation must be assumed by companies and regulated by the State.

52. Finally, with regard to these preliminary considerations, the Court emphasizes, as the Inter-American Commission has done through its Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights (ESCER), that "States must ensure that business activities are not carried out at the expense of the fundamental rights and freedoms of individuals or groups of individuals, including indigenous and tribal peoples, peasant communities or Afro-descendant populations as cohesive collectives [...]."<sup>52</sup> The latter is essential in relation to all companies whose activities may affect persons or groups of persons in vulnerable situations and, in particular, in relation to the acts of transnational corporations. With regard to the latter, the Court considers that States must adopt measures aimed at ensuring that transnational companies are held accountable for human rights violations committed in their territory, or when they benefit from the activity of national companies that participate in their production chains.

53. Taking into account the foregoing, the Court will analyze the substantive issues in this case in the following order: a) rights to life, personal integrity and the rights of the child; b) right to work and to just, equitable and satisfactory conditions that ensure the safety, health and hygiene of the worker; c) rights to health and social security; and d) right to equality and non-discrimination.

***B. Rights to life, to personal integrity and rights of the child in relation to the obligation of guarantee and the duty to adopt provisions of domestic law (Articles 4(1), 5(1) and 19 of the American Convention in relation to Articles 1(1) and 2 of the same instrument)***

54. This Court has established that the right to life plays a fundamental role in the American Convention, since it is the essential prerequisite for the exercise of all other rights.<sup>53</sup> The observance of Article 4, in relation to Article 1(1) of the Convention, not only presupposes that no one may be deprived of his life arbitrarily (negative obligation), but also requires the States to adopt all appropriate measures to protect and preserve this right (positive obligation), in accordance with the duty to ensure the free and full exercise of the rights of all

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<sup>51</sup> Cf. Inter-American Juridical Committee. *Guidelines concerning Corporate Social Responsibility in the Area of Human Rights and the Environment in the Americas*, *supra*, point a.

<sup>52</sup> Inter-American Commission on Human Rights. *Report on Business and Human Rights: Inter-American Standards*, *supra*, para. 3.

<sup>53</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 116.

persons under its jurisdiction.<sup>54</sup> The Court has also recognized that the violation of this right has different connotations of degree, and that the physical and mental effects of its presumed violation vary in intensity based on endogenous and exogenous factors that must be proved in each specific case.<sup>55</sup>

55. In fulfilment of its obligation to ensure the rights to life and personal integrity, this Court has considered that States have a duty to regulate, supervise and monitor the implementation of dangerous activities that entail significant risks for the life and integrity of persons under their jurisdiction<sup>56</sup> (*supra* paras. 43 to 46).

56. In the instant case, the Court first notes that, since 2001, Honduras has had specific health and safety regulations for divers. These “establish the rules governing the application of Title V and other provisions contained in the Labor Code on the protection of workers’ health from the risks arising from the working conditions of underwater fishing.”<sup>57</sup> The Occupational Safety and Health Regulations for Underwater Fishing recognize “the seriousness of the occupational risks encountered in underwater fishing activities.”<sup>58</sup> These regulations aim to “protect the health of workers from the risks arising from the working conditions of underwater fishing,” and establish that the Ministry of Labor and Social Security is responsible for inspecting the occupational safety of fishing vessels and evaluating occupational risks in this industry.<sup>59</sup> They also establish a series of obligations for employers with regard to ensuring the health and safety of workers.<sup>60</sup>

57. In this sense, the Court considers that the Fishing Regulations provide an adequate regulatory framework that establishes basic requirements for employers to ensure that this activity complies with minimum safety standards for divers, and that the vessels used have proper safety and hygiene conditions. The Court also notes that several of the diving accidents that affected the victims in the case occurred during the period when there were no such regulations, and therefore workers were covered by the provisions of Title V of the Honduran Labor Code regarding the protection of workers during the performance of their work.<sup>61</sup> Therefore, the Court considers that there was no regulatory problem in the present case. Nevertheless, as acknowledged by the State, there is no information to demonstrate that such regulations have been effectively implemented by the competent authorities to ensure the safety of dive fishing in La Mosquitia.<sup>62</sup>

58. Second, and in relation to the foregoing, the Court notes that the State failed to implement inspection or oversight measures to ensure that the boats carrying the divers who suffered diving accidents, as well as the “Lancaster” boat which transported the divers who

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<sup>54</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs.* Judgment of June 7, 2003. Series C No. 99, para. 110, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil, supra*, para. 116.

<sup>55</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 57, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil, supra*, para. 116.

<sup>56</sup> Cf. *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil, supra*, para. 118.

<sup>57</sup> Secretariat of Labor and Social Security. *Occupational Health and Safety Regulations for Underwater Fishing*, May 30, 2001, Article 1.

<sup>58</sup> Occupational Health and Safety Regulations for Underwater Fishing, *supra*, considering paragraphs.

<sup>59</sup> Cf. Occupational Health and Safety Regulations for Underwater Fishing, *supra*, Article 2.

<sup>60</sup> Cf. Occupational Health and Safety Regulations for Underwater Fishing, *supra*, Articles 5 and 6.

<sup>61</sup> Cf. Labor Code and Reforms, 1959, Title V.

<sup>62</sup> Cf. Merits Report (evidence file, folio 61).

died as a result of the explosion (infra Annex 2, paragraph 12), complied with the safety measures required to prevent underwater fishing from endangering the personal integrity or lives of those involved. The State's negligent conduct, in terms of verifying compliance with the provisions of the Labor Code and the Fishing Regulations that protected workers, allowed fishing activities to be carried out outside of domestic legislation. This resulted in the State's international responsibility for the serious physical and psychological consequences suffered by the victims in this case in the various accidents that occurred, as well as for the deaths of those who died as a result of those accidents, as evidenced by the State's acknowledgment (*supra* para. 13).

59. Third, the Court emphasizes that Licar Méndez was 16 years old when was abandoned by the captain of the boat on which he was working, which led to his disappearance. In this regard, the Court considers that the State's aforementioned omissions constituted, in addition to a violation of his right to life, a violation of its duty to guarantee the rights of a child. This Court emphasizes that the ILO considers underwater lobster fishing in the Honduran Mosquitia region to be an extremely dangerous activity for children, noting that it results in physical harm due to prolonged exposure to the sun, humidity, the discomfort of sleeping on boats, and the possibility of suffering injuries derived from diving without protection. In addition, children who carry out this work often use drugs and alcohol to alleviate the effects of their workloads.<sup>63</sup> On this point, the Court notes that the Committee on the Rights of the Child has established that States have a duty to protect minors against violations of children's human rights, which is of fundamental importance when considering the States' obligations with respect to the business sector.<sup>64</sup>

60. In view of the foregoing, and as the State has acknowledged, Honduras is responsible for the following: a) the violation of the right to personal integrity to the detriment of the 34 divers who suffered accidents due to the deep dives they performed which caused them decompression sickness and/or other diving-related illnesses;<sup>65</sup> b) the violation of the right to life to the detriment of the 12 divers who died as a consequence of said accidents;<sup>66</sup> c) the violation of the right to life to the detriment of the seven Miskito divers who died as a result of the fire aboard the "Lancaster" boat in which they were traveling, caused by the explosion of a butane tank;<sup>67</sup> and d) the violation of the right to life and the rights of the child, to the detriment of the minor Licar Méndez Gutiérrez, who was 16 years old at the time of the events, and who was abandoned on a *cayuco* on December 12, 2003 as a punishment by the owner of the boat. Therefore, the State violated Articles 4(1), 5(1) and 19 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument.

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<sup>63</sup> International Labour Organization. *Child Labour and Indigenous Peoples. The case of Honduras*. Tegucigalpa, September 2007. Page 48.

<sup>64</sup> Cf. Committee on the Rights of the Child. *General Comment No. 16 (2013). On State obligations regarding the impact of the business sector on children's rights*, CRC/C/GC/16, April 17, 2013, para. 28.

<sup>65</sup> Opario Lemoth Morris, Saipon Richard Toledo, Eran Herrera Paulisto, Bernardo Blackaus Emos, Alí 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 Miller, Amistero Bans Valeriano, Rolando Mónico Thomas, Ralph Valderramos Álvarez, Ex Dereck Claro, Leonel Saty Méndez, David Esteban Bradley, Evecleto Londres Yumida, Arpin Robles Tayaton, Daniel Flores Reyes, Freddy Federico Salazar, Cooper Crescencio Jems, Félix Osario Presby, Efraín Rosales Kirington, Melecio Pamistan Maick, Willy Gómez Pastor, Roberto Flores Esteban, Daniel Dereck Thomas and Carlos Castellón Cárdenas.

<sup>66</sup> Opario Lemoth Morris, Saipon Richard Toledo, Eran Herrera Paulisto, Bernardo Blackaus 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.

<sup>67</sup> Hildo Ambrosio Trino, Andres Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez Nacril, Rómulo Flores Henriquez and Amilton Bonaparte Clemente.

**C. Right to work and to just, equitable and satisfactory conditions that ensure the safety, health and hygiene of the worker, right to health and social security and to equality and non-discrimination, in relation to the obligations of respect and guarantee, and the duty to adopt provisions of domestic law (Article 26 of the American Convention in relation to Articles 1(1) and 2 of the same instrument)**

**C.1. General considerations with respect to the content and scope of Article 26 of the American Convention**

61. The Court recalls that in the friendly settlement agreement, the parties asked the Court to rule on the content and scope of the rights that were affected in this case, especially those derived from Article 26 of the American Convention. In this regard, the Court emphasizes that the State acknowledged its international responsibility for the violation of the rights derived from Article 26, in terms of their immediate enforceability. Consequently, the State accepted this Court's jurisdiction to examine direct violations of Article 26 of the Convention.

62. Regarding the scope of Article 26 of the American Convention in relation to Articles 1(1) and 2 of the same instrument, this Court has interpreted that the Convention incorporated in its catalog of protected rights the so-called economic, social, cultural and environmental rights (ESCER), through a derivation of the norms contained in the Charter of the Organization of American States (OAS), as well as the rules of interpretation established in Article 29 of the Convention itself, which states that "no provision [shall be interpreted as] limiting or excluding" the enjoyment of the rights established in the American Declaration, including those recognized in different domestic laws of the States. Furthermore, in accordance with a systematic, teleological and evolutive interpretation, the Court has referred to the international and national *corpus iuris* on this matter to give specific content to the scope of the rights protected under the Convention, in order to determine the scope of the specific obligations of each right.<sup>68</sup>

63. Thus, the Court uses the sources, principles and criteria of the international *corpus iuris* as special applicable norms to determine the content of the ESCER protected under Article 26 of the Convention. This Court has indicated that the aforementioned norms are used to determine the rights in question as a supplement to the provisions of the Convention. In this regard, the Court reiterates that it is not assuming competence over treaties for which it has none; nor is it granting conventional rank to norms contained in other national or international instruments relating to the ESCER.<sup>69</sup> On the contrary, the Court will make an interpretation in keeping with the provisions of Article 29 and its case law practice, allowing it to update the meaning of the rights derived from the OAS Charter that are recognized by Article 26 of the Convention.

64. Moreover, in determining the content and scope of the ESCER involved, the Court places special emphasis on the American Declaration given that, as was established this Court:

[...] [T]he member states of the Organization have signaled their agreement that the 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

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<sup>68</sup> Cf. *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340, paras. 141 to 149, and Advisory Opinion OC-27/21, *supra*, para. 46.

<sup>69</sup> Cf. *Case of the Pacheco Tineo Family v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 272, para. 143, and Advisory Opinion OC-27/21, *supra*, para. 49.

far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS.<sup>70</sup>

65. The Court also reiterates that human rights treaties are living instruments, the interpretation of which must evolve with the passage of time and contemporary conditions. This evolutive interpretation is consistent with the general rules of treaty interpretation established in Article 29 of the American Convention, and in the Vienna Convention. Furthermore, the third paragraph of Article 31 of the Vienna Convention authorizes the use of interpretative means such as agreements or the relevant rules or practice of international law that States have expressed on the subject matter of the treaty, which are some of the methods that relate to an evolving view of the Treaty. Thus, in order to determine the scope of the rights derived from the economic, social and educational, scientific and cultural norms contained in the OAS Charter, the Court makes reference to the relevant instruments of the international *corpus iuris*.<sup>71</sup>

66. The Court also considers it pertinent to recall that there are two types of obligations derived from the recognition of ESCER, which are protected by Article 26 of the Convention: those that are immediately enforceable, and those of a progressive nature. Regarding the former, (immediate obligations), the Court recalls that States must take effective measures to ensure access, without discrimination, to the benefits recognized by ESCER and, in general, move forward toward their full realization. With respect to the latter (progressive obligations), this means that States Parties have the specific and continuous obligation to move as expeditiously and effectively as possible towards the full realization of those rights, subject to available resources, by legislation or other appropriate means. There is also an obligation of non-retrogression regarding the realization of the rights attained. Accordingly, the conventional obligations to respect and guarantee rights, as well as adoption of domestic legal effects (Articles 1(1) and 2 of the American Convention), are essential to achieve their effectiveness.<sup>72</sup>

67. Taking into account the foregoing, the instant case does not require an analysis of the State's conduct in relation to the "progressive" advancement of ESCER. Rather, the Court must consider whether the State ensured the protection of the rights of the 42 victims in the case, that is to say, whether it fulfilled its immediately enforceable obligations with respect to the right to work and to just, equitable and satisfactory conditions that ensure the safety, health and hygiene of the worker, and the right to health and social security, enshrined in international law and in the applicable national legislation, which does not prevent the Court from developing standards on the matter, as requested by the State and the representatives. Therefore, it is incumbent upon this Court to rule on the conduct of the State with respect to compliance with its obligations to guarantee the following: a) the right to work and to just, equitable and satisfactory conditions that ensure the safety, health and hygiene of the worker; b) the rights to health and social security; and c) the right to equality and non-discrimination.

### ***C.2. Right to work and to just, equitable and satisfactory conditions that ensure the safety, health and hygiene of the worker***

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<sup>70</sup> *Interpretation of the American Declaration of the Rights and Duties of Man, in the context of Article 64 of the American Convention on Human Rights*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 43.

<sup>71</sup> *Cf. The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 114, and Advisory Opinion OC-27/21, *supra*, para. 51.

<sup>72</sup> *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 190, and Advisory Opinion OC-27/21, *supra*, para. 147.

C.2.1. The content of the right to equitable and satisfactory conditions of work that ensure the health of the worker

68. This Court has indicated that Articles 45(b) and (c),<sup>73</sup> 46<sup>74</sup> and 34(g)<sup>75</sup> of the OAS Charter establish a series of norms that recognize the right to work. In particular, the Court has noted that Article 45(b) of the OAS Charter establishes that "b) [w]ork 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." Thus, the Court has considered that there is a reference with a sufficient degree of specificity to the right to just and favorable conditions of work to infer its existence and implicit recognition in the OAS Charter. Consequently, the Court considers that the right to just and favorable conditions that ensure safety, health and hygiene of the worker is a right protected by Article 26 of the Convention.<sup>76</sup>

69. With regard to the content and scope of this right, the Court recalls that the American Declaration recognizes that everyone has the right "to work in decent conditions."<sup>77</sup> Similarly, Article 7 of the Protocol of San Salvador establishes that "[t]he States Parties to this Protocol recognize that the right to work to which the foregoing article presupposes that everyone shall enjoy that right under just, equitable and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to: [...] safety and hygiene in the workplace." In the universal sphere, the Universal Declaration on Human Rights establishes that "[e]veryone has the right to [...] equitable and satisfactory conditions of work." Meanwhile, the International Covenant on Economic, Social and Cultural Rights provides that "[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of equitable and satisfactory conditions of work which ensure, in particular: [...] b) safe and healthy working conditions."<sup>78</sup>

70. In the context of the International Labor Organization, the Court notes that the Labour

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<sup>73</sup> Cf. Article 45 of the OAS Charter: "The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, 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 ensures 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; c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws [...]."

<sup>74</sup> Cf. Article 46 of the OAS Charter: "The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal."

<sup>75</sup> Cf. Article 34(g) of the OAS Charter: "The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: [...] g) Fair wages, employment opportunities, and acceptable working conditions for all."

<sup>76</sup> Cf. *Case of Spoltore v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of June 9, 2020. Series C No. 404, para. 99, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 155.

<sup>77</sup> American Declaration, Article XIV.

<sup>78</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 7(b).

Inspection Convention (No. 81) of 1947<sup>79</sup> to which Honduras is a party, requires States to “maintain a system of labor inspection in industrial workplaces”<sup>80</sup> which “shall apply to all workplaces in respect of which legal provisions relating to working conditions and the protection of workers while engaged in their work are enforceable by labor inspectors.”<sup>81</sup> In addition, States shall “secure the enforcement of the legal provisions relating to working conditions and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labor inspectors.”<sup>82</sup>

71. For its part, the ILO Convention on the Worst Forms of Child Labour (No. 182) of 1999,<sup>83</sup> to which Honduras is a party, establishes that States “shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency”<sup>84</sup> and shall “establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect”<sup>85</sup> to this Convention. In addition, States “shall design and implement programs of action to eliminate as a priority the worst forms of child labor”<sup>86</sup> and shall also “take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.”<sup>87</sup> In its recommendation on the worst forms of child labor, the ILO also stated that in determining and identifying where these types of child labor exist, consideration should be given to work carried out under water, and work under particularly difficult conditions such as work for long hours or during the night.<sup>88</sup>

72. In addition to being widely recognized in the international *corpus iuris*,<sup>89</sup> the right to equitable and satisfactory working conditions has also been recognized in the constitutions and legislation of those countries that have accepted the Inter-American Court’s contentious

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<sup>79</sup> Ratified by Honduras on May 6, 1983.

<sup>80</sup> International Labour Organization. Labour Inspection Convention, 1947 (No. 81), Article 1.

<sup>81</sup> ILO Convention No. 81, *supra*, Article 2(1).

<sup>82</sup> ILO Convention No. 81, *supra*, Article 3(1)(a).

<sup>83</sup> Ratified by Honduras on October 25, 2001.

<sup>84</sup> International Labour Organization. Worst Forms of Child Labour Convention, 1999 (No. 182) Article 1.

<sup>85</sup> ILO Convention No. 182, *supra*, Article 5.

<sup>86</sup> ILO Convention No. 182, *supra*, Article 6.

<sup>87</sup> ILO Convention No. 182, *supra*, Article 7.

<sup>88</sup> International Labour Organization. Recommendation on the worst forms of child labour, 1999 (No. 190), points 2 and 3.

<sup>89</sup> See, also: European Social Charter, Article 2; Charter of Fundamental Rights of the European Union, Article 31, and African Charter on Human and Peoples’ Rights, Article 15.

jurisdiction<sup>90</sup> and, in particular, by the Honduran State.<sup>91</sup>

73. That said, from Article 45 of the OAS Charter, interpreted in light of the American Declaration and of the other instruments mentioned, it is possible to derive constituent elements of the right to equitable and satisfactory working conditions that ensure the safety, health and hygiene of the worker, such as, for example, that it aims to prevent work-related injuries, illnesses and deaths.<sup>92</sup>

74. In particular, the Court notes that an integral part of the right to work in equitable and satisfactory conditions is “the prevention of occupational accidents and diseases” as a means of guaranteeing the health of the worker. With respect to occupational safety and health, the Committee on Economic, Social and Cultural Rights in General Comment No. 23 indicated the following:

Preventing occupational accidents and disease is a fundamental aspect of the right to just and favourable working conditions, and is closely related to other Covenant rights, in particular the right to the highest attainable level of physical and mental health. States parties should adopt a national policy for the prevention of accidents and work-related health injury by minimizing hazards in the working environment and ensuring broad participation in the formulation, implementation and review of such a policy, in particular of workers, employers and their representative organizations. While full prevention of occupational accidents and diseases might not be possible, the human and other costs of not taking action far outweigh the financial burden on States parties for taking immediate preventative steps that should be increased over time.<sup>93</sup>

75. Thus, the Court reiterates that this right means that workers should be able to perform their work in adequate conditions of safety, hygiene and health that prevent occupational accidents and diseases. This is especially relevant in activities that involve significant risks to the life and integrity of persons,<sup>94</sup> and particularly of children. In compliance with the State’s obligation to guarantee this right, and especially in light of Honduran legislation, this right implies adherence to the provisions of the Fishing Regulations and Title V of the Honduran

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<sup>90</sup> Cf. *Constitution of Argentina*, Article 14 bis, and *Employment Contract Act*, No. 20,744, Article 75; *Constitution of the Plurinational State of Bolivia*, Article 46 and *General Labor Law*, Article 67; *Constitution of the Republic of Chile*, Article 5 and 19.16, *Labor Code*, Article 153 and Law 16.744 on risks of occupational accidents and diseases; *Constitution of Colombia*, Articles 25 and 53 and Decree 1072 of 2015 or *Decree regulating the employment sector*, Volume 2, Part 2, Title 4 (Occupational Risks), Chapter 6; *Constitution of the Republic of Costa Rica*, Article 56 and *Labor Code*, Articles 283 and 284; *Constitution of the Republic of Ecuador*, Article 33 and *Labor Code*, Articles 38 and 42; *Constitution of El Salvador*, Article 2 and *Labor Code* Articles 106 and 314; *Constitution of Guatemala*, Article 101 and *Labor Code*, Articles 61, 122, 148, 197 and 278; *Constitution of the Republic of Haiti*, Article 35 and *Labor Code* Articles 438-441 and 451-487; *Constitution of Mexico*, Article 123 and *Federal Labor Law*, Articles 23, 166, 175, 541 and 542; *Constitution of the Republic of Nicaragua*, Article 83 and *Labor Code*, Articles 100 to 105; *Constitution of Panama*, Article 64 and *Labor Code*, Articles 282 and 284; *Constitution of the Republic of Paraguay*, Articles 86, 89, 90, 92 and 99 and *Labor Code*, Articles 36, 49, 194, 273, 274 and 398; *Constitution of Peru*, Articles 22 and 24 and *General Labor Law*, Article 322; *Constitution of the Dominican Republic*, Article 62 and Decree 522-06 of 2006 (*Regulations on occupational health and safety*); *Constitution of the Republic of Suriname*, Article 28; *Constitution of the Oriental Republic of Uruguay*, Articles 7, 53 and 54, and Law 5.032 of 1914 and Law 5.350 of November 19, 1915.

<sup>91</sup> *Constitution of the Republic of Honduras*, Article 128 and *Labor Code*, Articles 391 and 395.

<sup>92</sup> Cf. *Case of Spoltore v. Argentina*, *supra*, para. 98, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 174.

<sup>93</sup> Committee on Economic, Social and Cultural Rights. *General Comment No. 23 (2016) on the right to just and favorable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/23, April 27, 2016, paras. 25 and 29.

<sup>94</sup> *Case of Spoltore v. Argentina*, *supra*, para. 99, and *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 174.

Labor Code. These establish specific obligations for employers to ensure the hygiene, safety and health of workers, the proper maintenance of diving equipment and boats, the provision of first aid medical equipment, actions aimed at preventing occupational hazards and promoting the good health of workers, and the obligation to monitor these conditions, which is also the responsibility of the labor authorities.

*C.2.2. Impairment of the right to just and satisfactory working conditions that ensure the safety, health and hygiene of the worker in the specific case*

76. In the instant case, the State had the obligation to guarantee fair and satisfactory working conditions in the terms described in the preceding paragraphs, and specifically in the Labor Code and the Fishing Regulations, upon their entry into force. However, it is clear from the facts acknowledged by the State that all the victims worked in precarious, unhealthy, unsafe and overcrowded conditions, on board vessels that did not meet the safety standards required for a hazardous activity, or the conditions that would help avoid or prevent occupational accidents. The Court also notes that the divers did not receive training from their employers on safety measures for underwater fishing, that the equipment they used was substandard, that they did not receive adequate food on board the fishing boats, and that they were threatened by the boat captains.

77. All this occurred without the State complying with the regulations contained in Title V of the Labor Code, or the international instruments ratified by Honduras with respect to the protection of workers and, after 2001, the provisions specifically regulating underwater fishing contained in the Fishing Regulations. The Court notes that the authorities failed in their duty to monitor and oversee the working conditions of the victims in this case, and to take effective steps to prevent accidents, despite the fact that dive fishing in La Mosquitia was an activity that implied risks to workers. In this regard, the Court also observes that the Fishing Regulations established a series of "General Provisions for health and safety on fishing vessels," including a requirement for owners to maintain their vessels "in good seaworthy condition and suitably equipped for their destination and use" as well as the obligation of captains to "adopt the necessary precautionary measures to maintain the stability of the vessel."<sup>95</sup>

78. In view of the foregoing, the State failed to fulfill its obligation to guarantee the right to just, equitable and satisfactory working conditions that ensure the safety, health and hygiene of the worker, since it failed to prevent occupational accidents and guarantee the acceptability and quality of the work of the victims in this case. This failure is even more significant if one considers the impact of the events in this case, which seriously affected the lives and personal integrity of the divers who suffered diseases and disabilities as a result. In the case of the child Licar Méndez Gutiérrez, he was allowed to carry out work which posed a serious risk to his health and life. In this case, although Honduras fulfilled its duty to regulate the work carried out by the victims through the Fishing Regulations and the Labor Code (*supra* para. 57), it failed to effectively implement those regulations, and therefore to exercise control and oversight over the working conditions, as a necessary measure to prevent accidents and ensure the enjoyment of just and favorable working conditions. This, despite the fact that the State is required to supervise such conditions, particularly when dangerous activities are involved. Therefore, the State violated Article 26 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument.

***C.3. Right to health and social security***

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<sup>95</sup> Occupational Health and Safety Regulations for Underwater Fishing, Article 13.

### C.3.1. The content of the right to health

79. The Court has pointed out that, in order to identify those rights that can be interpretatively derived from Article 26 of the American Convention, one must consider that this provision refers directly to the economic, social, educational, scientific and cultural norms contained in the OAS Charter. From a reading of the latter instrument, the Court has noted that Article 34(i)<sup>96</sup> and 34(l)<sup>97</sup> of the Charter establishes, among the basic objectives of integral development, the “[p]rotection of man's potential through the extension and application of modern medical science” as well as the “[c]onditions that allow for a healthy, productive and dignified life.” For its part, Article 45(h)<sup>98</sup> emphasizes that “man can only achieve the full realization of his aspirations within a just social order,” for which reason the States agree to undertake efforts to apply these principles, including the: “h) development of an efficient social security policy.”

80. Thus, as it has indicated in several cases, the Court reiterates that there is a reference with a sufficient degree of specificity to infer the existence to the right to health in the OAS Charter. Consequently, the Court reaffirms that the right to health is a right protected under Article 26 of the Convention.<sup>99</sup>

81. With regard to the content and scope of this right, the Court recalls that Article XI of the American Declaration establishes the right to health by stating that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to [...] medical care, to the extent permitted by public and community resources.”<sup>100</sup> Similarly, Article 10 of the Protocol of San Salvador states that “everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being” and establishes that health is a public good.<sup>101</sup> The Protocol adds that, among the measures to ensure the right to health, States should promote “universal immunization against the principal infectious diseases,” the “prevention and treatment of endemic, occupational and other diseases” and “the satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.”

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<sup>96</sup> Article 34(i) of the OAS Charter establishes: “The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: [...] i) Protection of man's potential through the extension and application of modern medical science;”

<sup>97</sup> Article 34(l) of the OAS Charter establishes: “The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: [...] l) Urban conditions that offer the opportunity for a healthful, productive, and full life;”

<sup>98</sup> Article 45(h) of the OAS Charter establishes: “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: h) Development of an efficient social security policy.”

<sup>99</sup> Cf. *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs. Judgment of March 8, 2018*. Series C No. 349, para. 106, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs. Judgment of March 26, 2021*. Series C No. 423, para. 97.

<sup>100</sup> Approved at the Ninth International Conference of American States held in Bogotá, Colombia, 1948.

<sup>101</sup> Article 10(1) of the Protocol of San Salvador states: “Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being. 2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right: a. Primary health care, that is, essential health care made available to all individuals and families in the community; [and] b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction.”

82. The right to health is also recognized in Article 145 of the Honduran Constitution.<sup>102</sup> The Court likewise observes a broad regional consensus in the consolidation of the right to health, which is explicitly recognized in the constitutions and domestic laws of numerous States of the region, including Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela.<sup>103</sup>

83. In relation to the foregoing, the Court recalls that the general obligation to protect health translates into the State's duty to ensure access to essential health services by guaranteeing effective and quality medical care and promoting the improvement of the population's health.<sup>104</sup> This right encompasses timely and appropriate health care in accordance with the principles of availability, accessibility, acceptability and quality, the application of which will depend on the prevailing conditions in each State.<sup>105</sup> The fulfilment of the State's obligation to respect and guarantee this right requires it to pay special attention to vulnerable and marginalized groups. Such efforts must be implemented progressively, in accordance with available resources and the applicable domestic legislation.<sup>106</sup>

84. Regarding the health care of persons who work in underwater fishing activities,<sup>107</sup> the Court notes that PAHO's considerations provide an authoritative reference to clarify some international obligations of the State with respect to health care for persons who suffer diving accidents while engaged in underwater fishing activities, and particularly the victims in this case. These considerations establish that Miskito divers who suffer accidents should receive health care consisting of primary prevention (which includes the protection of persons); secondary prevention (which allows for the care of people at risk, including early diagnosis and timely treatment), and tertiary prevention (which involves care for sick people, including rehabilitation and reinsertion into the labor market). Thus, divers suffering from decompression sickness or other diving-related illnesses must be immediately provided with

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<sup>102</sup> Article 145 states: "The right to the protection of one's health is hereby recognized. It is everyone's duty to participate in the promotion and preservation of individual and community health. The State shall maintain a satisfactory environment for the protection of everyone's health."

<sup>103</sup> Among the constitutional norms of the States Parties to the American Convention are: Argentina (art. 10); Barbados (art. 17.2.A); Bolivia (art. 35); Brazil (art. 196); Chile (art. 19); Colombia (art. 49); Costa Rica (art. 46); Ecuador (art. 32); El Salvador (art. 65); Guatemala (arts. 93 and 94); Haiti (art. 19); Mexico (art. 4); Nicaragua (art. 59); Panama (art. 109); Paraguay (art. 68); Peru (art. 70); Dominican Republic (art. 61); Suriname (art. 36); Uruguay (art. 44), and Venezuela (art. 83). Cf. Constitutional Chamber, Supreme Court of Justice of Costa Rica, Resolution No. 13505 – 2006, of September 12, 2006, Considering paragraph III; Constitutional Court of Colombia, Judgment C-177 of 1998; Supreme Court of Mexico, Jurisprudence Thesis 8/2019 (10<sup>a</sup>). Right to the Protection of Health. Individual and social dimension; Constitutional Court of Ecuador, Judgment No. 0012-09-SIS-CC, October 8, 2009.

<sup>104</sup> Cf. *Case of Poblete Vilches et al. v. Chile, supra*, para. 118, and *Case Guachalá Chimbo et al. v. Ecuador, supra*, para. 101.

<sup>105</sup> Cf. *Case of Poblete Vilches et al. v. Chile, supra*, paras. 120 and 121, and *Case Guachalá Chimbo et al. v. Ecuador, supra*, para. 101.

<sup>106</sup> Cf. *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 107, and *Case Guachalá Chimbo et al. v. Ecuador, supra*, para. 101.

<sup>107</sup> The Court has indicated that in each case it is necessary to consider the specific aspects to be taken into account in determining the State's obligations related to the medical treatment that persons should receive, noting that medical science is continually advancing and, consequently, the references cited here as an illustration do not exclude or call into question more recent discoveries. In addition, the Court takes no position on technical discussions or matters relating to the medical and biological sciences. Cf. *Case of Cuscul Pivaral et al. v. Guatemala, supra*, para. 39, and *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2019. Series C No. 395, para. 78.

specific care in a hyperbaric chamber, and with rehabilitation treatments that allow for adequate recovery and social reintegration.<sup>108</sup>

### C.3.2. The content of the right to social security

85. This Court has pointed out that Articles 3(j),<sup>109</sup> 45(b),<sup>110</sup> 45(h)<sup>111</sup> and 46 of the OAS Charter contain a series of norms that establish the right to social security.<sup>112</sup> In particular, the Court has noted that Article 3(j) of the OAS Charter states that “social justice and social security are bases of lasting peace.” Also, Article 45(b)<sup>113</sup> of the OAS Charter indicates that “b) [w]ork 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.” Furthermore, Article 45(h)<sup>114</sup> of the Charter establishes that “man can only achieve the full realization of his aspirations within a just social order” and therefore States agree to devote efforts to the application of certain principles and mechanisms, among them the “(h) [d]evelopment of an efficient social security policy.” Furthermore, in Article 46 of the Charter, the Member States recognize that “in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labor and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.”

86. Thus, the Court has considered that there is a reference to the right to social security with a sufficient level of specificity to infer its existence and implicit recognition in the OAS

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<sup>108</sup> Cf. Pan American Health Organization, Human Rights and Disability among Indigenous Peoples, 2004 (evidence file, folios 6364-6367).

<sup>109</sup> Article 3(j) of the OAS Charter establishes: “The American States reaffirm the following principles: j) Justice and social security are bases of a lasting peace.”

<sup>110</sup> Article 45(b) of the OAS Charter establishes: “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, 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>111</sup> Article 45(h) of the OAS Charter establishes: “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: h) [d]evelopment of an efficient social security policy.”

<sup>112</sup> Cf. *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 173, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2019. Series C No. 394, para. 156.

<sup>113</sup> Article 45(b) of the OAS Charter establishes: “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, 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>114</sup> Article 45(h) of the OAS Charter establishes: “The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanism: h) [d]evelopment of an efficient social security policy.”

Charter. Consequently, the right to social security is a right protected by Article 26 of the Convention.<sup>115</sup>

87. Regarding the content and scope of this right, the Court has indicated that Article XVI of the American Declaration recognizes the right to social security by stating that everyone has the right to "social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living."<sup>116</sup> Likewise, Article 9 of the Protocol of San Salvador establishes that "1. Everyone shall have the right to social security protecting him from the consequences of old age and of disability which prevents him, physically or mentally, from securing the means for a dignified and decent existence. In the event of the death of a beneficiary, social security benefits shall be applied to his dependents;" and 2. "In the case of persons who are employed, the right to social security shall cover at least medical care and an allowance or retirement benefit in the case of work accidents or occupational disease and, in the case of women, paid maternity leave before and after childbirth."

88. In the universal sphere, Article 22 of the Universal Declaration of Human Rights establishes that "[e]veryone, as a member of society, has the right to social security and is entitled to the realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." Similarly, Article 25 emphasizes that "[e]veryone has the right to an adequate standard of living [...] and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control." For its part, Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes "the right of everyone to social security, including social insurance."<sup>117</sup>

89. The right to social security is also recognized at the constitutional level in Honduras, in Articles 142 to 144 of the 1982 Constitution.<sup>118</sup>

90. In relation to the foregoing, the Court reiterates that the right to social security is a right that seeks to protect the individual from future contingencies which, should they occur, could have harmful consequences for that person; therefore, measures should be adopted to protect him or her.<sup>119</sup> In particular, this Court has adopted the ILO criterion that the right to social security is the "protection that a society provides to individuals and households to

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<sup>115</sup> *Case of Muelle Flores v. Peru*, *supra*, para. 173, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, *supra*, para. 157.

<sup>116</sup> Adopted at the Ninth International Conference of the Americas held in Bogotá, Colombia, 1948.

<sup>117</sup> Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI), of December 16, 1966. Entry into force: January 3, 1976.

<sup>118</sup> "ARTICLE 142: Every person is entitled to the security of his economic means of subsistence in the event of work disability or inability to obtain remunerated employment. Social Security services shall be furnished and administered by the Honduran Social Security Institute and shall cover cases of sickness, maternity, family allowance, old-age, orphanhood, forced lockouts, work injury, involuntary unemployment; occupational disease, and all other contingencies affecting the capacity to produce. The State shall establish social welfare institutions that shall function unified in a single state system with the contribution of all interested parties and the State. ARTICLE 143: The State, employers and workers are required to contribute to the financing, improvement and expansion of social security. The social security system shall be established in a gradual and progressive way, both as to the type of risks covered as well as the geographic zones and the categories of protected workers. ARTICLE 144: It shall be considered in the public interest to expand the social security system to urban and rural workers."

<sup>119</sup> *Cf. Case of Muelle Flores v. Peru*, *supra*, para. 183, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, *supra*, para. 167.

ensure access to health care and guarantee income security, particularly in the event of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner.<sup>120</sup> Similarly, taking the position of the Committee on Economic, Social and Cultural Rights,<sup>121</sup> the Court has considered that, although the elements of the right to social security may vary according to different conditions, this right must be ensured in accordance with the principles of availability and accessibility, covering the relevant social risks and contingencies, and that the benefits must be adequate and must be considered in relation to other rights.<sup>122</sup>

91. The Court highlights the fact that the Committee on Economic, Social and Cultural Rights, in General Comment No. 19, stated that the right to social security requires the establishment and operation of a system to ensure that benefits are provided for the relevant social risks and contingencies. The social security system must encompass health care, so that all persons have adequate access to health services; this should also include access to preventive and curative measures. Similarly, States should ensure the protection of workers who are injured in the course of their employment or other productive work and, in this regard, they must provide adequate support to persons with disabilities. Benefits, whether in cash or in kind, must be adequate in amount and duration so that everyone may exercise his or her rights.<sup>123</sup>

### C.3.3. Impairment of the right to health and social security in the specific case

92. In the instant case, as was acknowledged by the State, the Court notes that none of the 34 victims who suffered diving accidents were taken immediately to receive medical treatment by the captains of the boats on which they worked.<sup>124</sup> This, despite the fact that they presented symptoms such as dizziness or loss of mobility in their extremities after deep dives. Such situations occurred without the State conducting inspections to verify that the boats had the necessary means to provide immediate medical attention on board, despite the fact that the Fishing Regulations established this obligation.<sup>125</sup> The Court further notes that the State failed to take action to ensure that divers would receive such treatment when they had diving accidents, such as the installation of an ambulance boat or a health center to attend to the consequences of these accidents, even though it was aware of the problems faced by divers and the need to take steps to provide medical treatment for those who suffered accidents.<sup>126</sup>

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<sup>120</sup> Cf. *Case of Muelle Flores v. Peru*, *supra*, para. 185, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, *supra*, para. 169, and ILO, "Facts on Social Security", publication of the International Labor Office, Geneva, Switzerland, June 6, 2003.

<sup>121</sup> Committee on Economic, Social and Cultural Rights. *General Comment No. 19. The Right to Social Security (Article 9)*, February 4, 2008, paras. 9 to 28.

<sup>122</sup> Cf. *Case of Muelle Flores v. Peru*, *supra*, para. 187, and *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*, *supra*, para. 170.

<sup>123</sup> Cf. UN, Committee on Economic, Social and Cultural Rights, *General Comment No. 19, The Right to Social Security (Article 9)*, February 4, 2008, para. 11, 13, 17, 21 and 22.

<sup>124</sup> Occupational Health and Safety Regulations for Underwater Fishing. The regulations state the following: Article 6.- All employers are required to: "[t]ransfer workers immediately and appropriately from the fishing vessel to the nearest hospital or medical center in the event of occupational risk or any other situation affecting the health of workers."

<sup>125</sup> Occupational Health and Safety Regulations for Underwater Fishing, Article 6. The regulations state the following: Article 6- All employers are required to: [i]ninstall on fishing vessels basic first aid equipment and to carry essential medicines and treatment materials at all times.

<sup>126</sup> In its Merits Report, the Inter-American Commission stated that in 2002, the Ministries of Labor and Social Security and of the Interior and Justice, held a meeting with the AMHBLI in which they discussed the need for the State to deploy an ambulance boat, which did not occur. Likewise, the Commission observed that in the claims filed

93. The Court also recalls that States must provide the necessary health services to prevent potential disabilities, as well as to prevent and minimize the appearance of further disabilities.<sup>127</sup> On this point, with regard to persons with disabilities the Committee on Economic, Social and Cultural Rights has established that: "insofar as special treatment is necessary, States parties are required to take appropriate measures, to the maximum extent of their available resources, to enable such persons to overcome any disadvantages, in terms of the enjoyment of the rights specified in the Covenant, flowing from their disability."<sup>128</sup> Furthermore, Article 18 of the Protocol of San Salvador establishes that:

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 the 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.

94. Similarly, among the obligations included in the right to health, the Convention on the Rights of Persons with Disabilities establishes that "States Parties shall 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."<sup>129</sup> This is related to the right of persons with disabilities to live independently and to be included in the community,<sup>130</sup> for which States must take steps "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."<sup>131</sup>

95. In this regard, the Court considers that the State had the obligation to ensure appropriate services for the rehabilitation and reintegration of the surviving divers who acquired a disability as a result of the accidents they suffered. On this point, PAHO stated in

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before the domestic courts for the accidents that occurred, reference was made to the health of the victims and to the lack of adequate care. However, the State did not adopt any health care measures (merits file, folio 65).

<sup>127</sup> Cf. *Case of Guachalá Chimbo et al. v. Ecuador*, *supra*, para. 143, citing Cf. Committee on Economic, Social and Cultural Rights, General Comment N°. 5: Persons with Disabilities, E/1995/22, December 9, 1994, para. 34; Standard Rules on the Equalization of Opportunities for Persons with Disabilities, adopted by the UN General Assembly, 48<sup>th</sup> session, Annex to Resolution 48/96, Article 3; Declaration on the Rights of Disabled Persons, Proclaimed by UN General Assembly Resolution 3447 (XXX) of December 9, 1975, para. 6; World Program of Action Concerning Disabled Persons, approved by General Assembly Resolution 37/52, para. 98, of December 3, 1982 and CRDP, Article 25.b.

<sup>128</sup> Cf. Committee on Economic, Social and Cultural Rights. *General Comment N°. 5: Persons with Disabilities*, E/1995/22, December 9, 1994, para. 5.

<sup>129</sup> CRPD, Article 25.

<sup>130</sup> Cf. *Case of Guachalá Chimbo et al. v. Ecuador*, *supra*, para. 143, and CRPD, Article 19.

<sup>131</sup> Cf. *Case of Guachalá Chimbo et al. v. Ecuador*, *supra*, para. 143, and CRPD, Article 26.

its report that “[...] although access to treatment in hyperbaric chambers is essential, the care of the patient does not end with the management of the emergency situation, since [...] despite specific treatment, the after-effects of decompression sickness are serious and the role of rehabilitation services and productive alternatives is fundamental for the adequate recovery of the affected divers.”<sup>132</sup> However, the State did not ensure rehabilitation treatment or the reintegration of the victims who acquired disabilities.<sup>133</sup> Therefore, the State’s failure to provide special medical care for the rehabilitation of the victims who survived diving accidents and acquired a disability constituted a failure to ensure the right to health in accordance with the principles of accessibility and quality of the health services.

96. The Court also notes that the lack of access to a health system that offered preventive or curative services for the accidents suffered, and for the disabilities that ensued as a result of those accidents, constituted a violation of the victims’ right to social security. The State’s total failure to guarantee access to said system constituted a breach of its obligations under the principle of availability, inasmuch as there was a total absence of social security in La Mosquitia region that would allow them to enjoy the benefits corresponding to the risks related to dive fishing, and of accessibility, since the victims were not covered by the social security system, because they were informal workers who did not have employment contracts with the fishing companies. As mentioned previously, this occurred without the State exercising any supervision or oversight to verify the victims’ working conditions, such as whether they had work contracts and whether the employers complied with their social security obligations. As a result, none of the victims had real access to the Honduran social security system.

97. Therefore, this Court concludes that the State failed to comply with its obligation to provide acceptable, available and quality medical care to the victims of diving accidents, as well as its obligation to ensure access to the social security system for the survivors of such accidents, particularly those who suffered a disability, in violation of the right to health and social security contained in Article 26 of the Convention, in relation to Articles 1(1) and 2 of the same instrument.

#### **C.4. Equality and non-discrimination**

98. The Court has indicated that the notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights which are accorded to others not so classified.<sup>134</sup> Thus, the States must refrain from carrying out any action that, in any way, directly or indirectly, is aimed at creating

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<sup>132</sup> Cf. Pan American Health Organization, Human Rights and Disability among Indigenous Peoples, 2004 (evidence file, folios 6365).

<sup>133</sup> The Commission indicated that it has not been able to determine the exact number of victims who currently have disabilities; therefore, the State must make a determination regarding those surviving victims who are in a situation of disability (Merits Report, folio 78). However, based on the facts proven it appears that the following persons may have acquired some type of disability: Flaviano Martínez López; Carcoth Padmoe Miller; Cooper Cresencio Jems, Roberto Flores Esteban, Daniel Dereck Thomas, Amistero Bans Valeriano, Ralph Valderramos, Félix Osorio Presby, Rolando Mónico Thomas.

<sup>134</sup> Cf. *Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 55, and Advisory Opinion OC-27/21, *supra*, para. 152.

situations of *de jure* or *de facto* discrimination.<sup>135</sup> The Court has also indicated in its case law that, in the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the realm of *ius cogens* because the entire legal structure of national and international public order rests on it, and it is a fundamental principle that permeates all laws.<sup>136</sup>

99. The right to equality and non-discrimination encompasses two concepts: one related to the prohibition of arbitrary differences in treatment, and one related to the obligation of States to create conditions of real equality for groups that have been historically excluded or who are at greater risk of suffering discrimination.<sup>137</sup>

100. With respect to the first concept, the Court has stated that not every difference in treatment will be considered discriminatory: it is only considered discriminatory when it has no objective and reasonable justification,<sup>138</sup> that is, when it does not seek a legitimate purpose and when the means used are disproportionate to the purpose sought.<sup>139</sup> Regarding the second concept, States are obliged to take affirmative action in order to reverse or change any discriminatory situations that exist in their societies that prejudice a specific group of persons. This involves the special obligation of protection that the State must exercise with regard to the actions and practices of third parties who, with its tolerance or acquiescence, create, maintain or encourage discriminatory situations.<sup>140</sup>

101. In relation to the foregoing, this Court has established that a person's ethnic origin is a category protected under Article 1(1) of the Convention. Consequently, no norm, decision or practice of domestic law, applied either by State authorities or by private individuals, may reduce or restrict in any way the rights of an individual based on his ethnic origin.<sup>141</sup> The Court has determined that ethnic groups are communities of individuals who share, *inter alia*, characteristics of a socio-cultural nature, such as cultural, linguistic and spiritual affinities as well as historical and traditional origins. Indigenous peoples fall within this category, and the Court has recognized that they have specific characteristics that comprise their cultural identity,<sup>142</sup> such as their customary law, their economic and social characteristics and their values, practices and customs.<sup>143</sup>

102. The Court has also established that, although poverty and disability are not considered special categories of protection in the literal sense of Article 1(1) of the American Convention,

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<sup>135</sup> Cf. *Juridical condition and rights of undocumented migrants. Advisory Opinion OC-18/03 of September 17, 2003*. Series A No. 18, para. 103, and *Advisory Opinion OC-27/21, supra*, para. 152.

<sup>136</sup> Cf. *Advisory Opinion OC-18/03, supra*, para. 101, and *Advisory Opinion OC-27/21, supra*, para. 152.

<sup>137</sup> Cf. *Advisory Opinion OC-18/03, supra*, para. 92, and *Advisory Opinion OC-27/21, supra*, para. 158.

<sup>138</sup> Cf. *Case of I.V. v. Bolivia. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 329, para. 240, and *Advisory Opinion OC-27/21, supra*, para. 159.

<sup>139</sup> Cf. *Case of Norín Catrimán (Leaders, Members and Activist of the Mapuche Indigenous People) et al. v. Chile. Merits, reparations and costs*. Judgment of May 19, 2014. Series C No. 279, para. 200, and *Advisory Opinion OC-27/21, supra*, para. 159.

<sup>140</sup> Cf. *Advisory Opinion OC-18/03, supra*, para. 104, and *Advisory Opinion OC-27/21, supra*, para. 160.

<sup>141</sup> Cf. *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, supra*, paras. 204-206.

<sup>142</sup> Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of June 17, 2005. Series C No. 125, para. 51, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, supra*, para. 204.

<sup>143</sup> Cf. *Case of the Yakye Axa Indigenous Community v. Paraguay, supra*, para. 63, and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile, supra*, para. 204.

this is not an obstacle to consider that discrimination on these grounds is prohibited by the norms of the Convention. This is so for two reasons: first, because the list contained in Article 1(1) of the Convention is not exhaustive but merely illustrative; and second, because poverty may well be understood to fall within the category of "economic status" to which the aforementioned article expressly refers; or in relation to other categories of protection, such as "social origin" or "any other social condition,"<sup>144</sup> based on its multidimensional nature, while disability is included in the category of "any other social condition."<sup>145</sup>

103. In this regard, the Court recalls that States are obliged to adopt positive measures to reverse or change any discriminatory situations existing in their societies that affect a specific group of persons. This entails the special duty of protection that the State must exercise with respect to the actions and practices of third parties who, with its tolerance or acquiescence, create, maintain or favor discriminatory situations. Furthermore, States are obliged to adopt positive measures, to be determined according to the particular protection needs of the subjects of law, whether due to their personal condition or to the specific situation in which they find themselves, such as extreme poverty or exclusion.<sup>146</sup>

104. Thus, the Court notes that the victims in this case are members of an indigenous community who did not have access to another source of income and were forced to work as divers in underwater fishing activities in conditions of vulnerability, which exposed them to the abusive situation described in this judgment. For people living in the department of Gracias a Dios, and particularly in the region of La Mosquitia, the diving work offered to them was the main, if not the only employment option, since the area is known for its lack of job opportunities. The State acknowledged that the victims lived in a general situation of neglect, indifference and lack of a governmental presence, and that it was aware of the situation faced by Miskito indigenous people and the abuses committed by the companies involved in fishing activities in the area. In this context, the State's failure to adopt measures aimed at changing the situations that violated the human rights of the victims who, as members of an indigenous people belong to a vulnerable group, constituted an act of discrimination.

105. In its 2019 Report on the Situation of Human Rights in Honduras, the Office of the United Nations High Commissioner for Human Rights pointed out that "development and investment projects in [Miskito] indigenous lands and territories take place in contexts of profound marginalization and poverty." It stated that "in the department of Gracias a Dios, 78 per cent of households are indigenous, and some 90 per cent experience multidimensional poverty. Serious gaps in the enjoyment of core human rights tend to produce undue pressure on indigenous communities, which may agree to projects in exchange for the promises made by private business companies to provide services such as health and education." In that regard, it recommended that the government "[a]dopt a policy or plan to guide business enterprises regarding their human rights responsibilities to ensure that the private sector exercises due diligence and assesses the impact of business activities on human rights, and that remedies are in place for any human rights impact generated by such activities."<sup>147</sup>

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<sup>144</sup> Cf. *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 185; and Committee on Economic, Social and Cultural Rights, *General Comment No. 20: Non-discrimination and Economic, Social and Cultural Rights (Article 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)*, a Doc. E/C.12/GC/20, July 2, 2009, paras. 15 and 27.

<sup>145</sup> Cf. *Case of Guachalá Chimbo et al. v. Ecuador*, *supra*, para. 79.

<sup>146</sup> Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 154, and Advisory Opinion OC-27/21, *supra*, para. 162.

<sup>147</sup> Cf. United Nations High Commissioner for Human Rights. *Report on the situation of human rights in Honduras*, January 28, 2019, paras. 65, 66, and 94.

106. Similarly, a World Bank study conducted in 2001 noted the lack of infrastructure and governmental negligence with respect to the region of La Mosquitia. It identified the urgent need to achieve rural development and relieve poverty by strengthening the local economy, creating new sources of employment, and reducing the population's dependence on lobster and turtle fisheries. The Bank considered that the development of alternative sources of employment would contribute to a reduction in diving accidents, since the Miskitos would not be forced to dive continuously to obtain income for their subsistence.<sup>148</sup>

107. In this regard, the Court notes that the victims were immersed in patterns of structural and intersectional discrimination, given that they belonged to an indigenous community and lived in poverty. One victim was a child; the other victims acquired disabilities and did not receive medical treatment, and had no other economic alternative but to accept a dangerous job that put their health, their personal integrity and their lives at risk. The confluence of these factors enabled the hazardous activity of underwater fishing, which involves enormous risks (*supra* para. 31 to 38), to be carried out in the Mosquitia region without effective implementation of the regulations, and forced the victims to work in unhealthy conditions, without the protection of social security. It is also important to emphasize that the fact that the victims belonged to a particularly vulnerable group accentuated the State's duty to respect and guarantee their rights. However, the State did not adopt measures to ensure that the victims could exercise their rights without discrimination, and the intersection of comparative disadvantages aggravated their experience of victimization.

108. At the same time, the Court recalls that an obligation to ensure material equality is derived from Article 24 of the Convention, which did not happen in the instant case. The right to equality guaranteed under Article 24 of the Convention has two dimensions. The first is a formal dimension that establishes equality before the law; the second is a material or substantive dimension that requires the adoption and promotion of positive measures in favor of groups that have historically suffered discrimination or marginalization due to the factors mentioned in Article 1(1) of the American Convention. This means that the right to equality entails the obligation to adopt measures to ensure that this equality is real and effective; in other words, to correct existing inequalities, promote the inclusion and participation of historically marginalized groups, and to guarantee to disadvantaged individuals or groups the effective enjoyment of their rights. In short, to provide individuals with the real possibility of achieving material equality. To this end, States must actively combat situations of exclusion and marginalization.<sup>149</sup>

109. In this specific case, the Court finds that the State did not adopt any measure that could be assessed by the Court as an effective way of addressing or seeking to reverse the situation of structural poverty and marginalization of the victims, taking into account the factors of discrimination that converged in this case. Furthermore, the State was aware of the victims' special situation of vulnerability since, as the State itself acknowledged, in August 2002 the Ministry of Labor, Interior and Justice met with the organization *Handicap International* and AMHBLI to agree on commitments regarding a solution "to the problem of the disabled divers in La Mosquitia."<sup>150</sup> Also, according to reports from the World Bank and the United Nations Development Program, in 2003, the department of Gracias a Dios had high

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<sup>148</sup> World Bank. *The Lobster Fishery of the Honduran and Nicaraguan Moskitia. A study of the resource, its sustainable exploitation and the problems of the Miskito divers working in the fishery.* September 1999.

<sup>149</sup> Cf. *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus v. Brazil*, *supra*, para. 199, and Advisory Opinion OC-27/21, *supra*, para. 157.

<sup>150</sup> Cf. Minutes of meeting 13-08-02 (evidence file, folio 3735).

rates of poverty, illiteracy, unemployment and chronic malnutrition, among other aspects.<sup>151</sup> Thus, by allowing private companies to operate without adequate control and supervision in an area where a substantial part of the population is vulnerable, the State failed in its obligation to ensure that effective measures were implemented to protect the life and health of divers and to guarantee their right to material equality.

110. In short, the Court finds that the ethnic origin of the victims in this case and the aforementioned intersectional factors of discrimination aggravated the victims' vulnerability, which: a) facilitated underwater fishing operations without State oversight of the dangerous activity, of the occupational hygiene and safety conditions or of social security; b) led the victims to accept a job that put their lives and personal integrity at risk; c) did not provide them with access to health services for immediate medical care or for rehabilitation treatment. Furthermore, the State did not adopt measures to guarantee material equality in the right to work with respect to a group of people in a situation of exclusion and discrimination. Consequently, the State did not ensure the rights analyzed in this case without discrimination, or the right to equality provided for in Article 24 of the Convention.

#### **D. Other arguments**

111. In accordance with the friendly settlement agreement reached by the parties, as well as the observations submitted by the representatives (*supra* para. 8) which expressly refer to the facts and violations alleged by the Commission in the Merits Report, this Court will not rule on the facts related to the remaining alleged violations- such as the right to a decent life, judicial guarantees and judicial protection contained in Articles 4(1), 8(1) and 25(1) of the Convention, and the right to personal integrity of the victims' next of kin, contained in Article 5(1) of the Convention – in consideration of the content of the parties' request for the purposes of the friendly settlement of this case.

### **VII ENDORSEMENT OF THE FRIENDLY SETTLEMENT AGREEMENT**

112. As mentioned previously, the terms of the friendly settlement agreement include an acknowledgment by the State of the human rights violations specified by the Inter-American Commission in its Merits Report (*supra* para. 13). In view of this, the Court considers that the dispute over the facts has ceased. This Court also understands that the dispute has ceased over the arguments related to the violations of the rights to life, to life with dignity, to personal integrity, to the rights of the child, to judicial guarantees, judicial protection, to the right to work in just, equitable and satisfactory conditions, to health, social security, and to the principle of equality and non-discrimination, established in Articles 4(1), 5(1), 8(1), 19, 24, 25(1) and 26 of the American Convention, in relation to the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of the 42 Miskito divers listed as victims in Annex 1 of this judgment; and on Articles 5(1) (right to personal integrity), of the victims' next of kin.

113. The Court considers that the State's acknowledgment of responsibility is a positive contribution to the advancement of these proceedings and to the exercise of the principles underlying the American Convention. The Inter-American Commission has also assessed the agreement reached by the parties, and has considered that the endorsement requested is appropriate (*supra* para. 17). In this regard, the Court considers that the friendly settlement agreement meets the formal and substantive requirements mentioned above, given that it

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<sup>151</sup> Cf. World Bank. *The Lobster Fishery of the Honduran and Nicaraguan Moskitia. A study of the resource, its sustainable exploitation and the problems of the Miskito divers working in the fishery.* September of 1999.

has been signed by the parties to the dispute, who have had an opportunity to present their observations, that it puts an end to the dispute on the facts, rights and reparations, and that its content is compatible with the object and purpose of the Convention. Consequently, by means of this judgment the Court endorses the agreement reached by the parties.

114. The agreed measures of reparation are included in the endorsement of the friendly settlement agreement. Nevertheless, the Court will analyze them in order to determine their scope and means of execution, in light of the criteria established in its case law and in relation to the nature, object and purpose of the obligation to make full reparation for the harm caused to the victims.<sup>152</sup> Therefore, the agreed measures of reparation must be implemented in accordance with the terms of this judgment, as follows.

### **VIII REPARATIONS (Application of Article 63(1) of the American Convention)**

115. In the friendly settlement agreement, the State and the representatives agreed to provide comprehensive reparation for the victims through a series of measures for which they requested the Court's endorsement and its supervision of compliance. The various measures of reparation established by the parties in the friendly settlement agreement are described below.<sup>153</sup> The Court notes that some of the agreed measures have already begun to be implemented, which does not prevent the State from ensuring that these comply fully with the terms established in the agreement.

#### **A. Measures of restitution and satisfaction**

##### ***A.1. Comprehensive and specialized medical and psychological care for victims and their families, including rehabilitation treatment***

116. In the friendly settlement agreement, the State agreed to the following:

The State undertakes to provide all victims with comprehensive and specialized medical and psychological treatment of high quality, free of charge, so that they can enjoy the highest possible level of health in the national public health system.

The State recognizes its obligation to provide medical treatment free of charge including, as a minimum, medical consultations, as well as the provision of the required medicines, prostheses or other devices necessary for the victims to lead a decent life. This also includes access to other specialized medical instruments or equipment that the victims may need.

Treatment shall begin immediately and shall be provided for as long as necessary to restore the health and integrity of the victims. It shall also include the adoption of relevant measures to achieve the full integration into society of all victims living with disabilities, including the necessary rehabilitation treatment to ensure their inclusive social development.

The required treatments shall be implemented with the prior informed consent of each patient, based on an individualized and specialized medical assessment and taking into account their particularities.

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<sup>152</sup> Cf. *Case of Velásquez Rodríguez. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 25 to 27; *Case of Escaleras Mejía et al. v. Honduras, supra*, para. 82.

<sup>153</sup> As agreed by the parties, the Court will not mention the monetary sums that the State agreed to pay the victims and their families as reparation, nor those that correspond to the Miskito organizations for costs and expenses.

Treatments shall be provided, insofar as possible, at the public health centers closest to the victims' places of residence. Once the necessary requirements have been identified and budgeted, the Secretariat of Health shall incorporate them into its Annual Operating Plans (POA), in order to recruit the necessary personnel and provide the required medical equipment and supplies to the hospitals closest to the victims' homes, after identifying the centers described in conjunction with the Miskito organizations that sign this [Agreement].

In the event that the State is unable to provide the required medical treatment through its public institutions in the Mosquitia region, it shall ensure that these are provided in other public medical centers of the country.

The State shall provide the means to facilitate support to the divers to cover the costs of transportation, food and, when appropriate, lodging, incurred by the victims in order to attend their medical appointments.

In addition, the State shall ensure that the treatment provided is culturally relevant, understanding this to mean the adaptation of criteria and information to the particularities of the customs, traditions, way of life and linguistic identity of the Miskito people and integrating traditional practices of Miskito medicine.

### ***A.2. Educational scholarships for the victims, their children and/or their grandchildren***

117. In the friendly settlement agreement, the State agreed to the following:

The State shall award specific and differentiated educational scholarships for the children and/or grandchildren of the disabled or deceased divers who have been recognized as victims in the instant case. These scholarships, which shall cover all expenses derived from the studies, shall be granted for the duration of the study period until its completion, or until the beneficiaries are satisfied. As for the academic performance of the beneficiaries, follow-up actions will be carried out in order to take joint decisions regarding their continuity. In the event that the parties do not reach a consensus on the continuity of the scholarships, the Court will be asked to express an opinion on the matter.

The scholarships shall be awarded and administered through mechanisms that contemplate the genuine participation of the beneficiaries and their representatives, and facilitate agreements with the relevant public education institutions. The mechanism to be created to implement this measure shall be agreed with the representative organizations and shall be in operation one year after the signing of this agreement, so that the State may coordinate and provide for the scholarships in the respective AOPs and be able to effectively execute them, including the corresponding disbursement of the resources assigned for such purpose.

The State of Honduras also undertakes to continue with the educational scholarship programs in the area; the mechanism for their execution and disbursement would be the same as that agreed upon in this section.

### ***A.3. Program of productive projects***

118. In the friendly settlement agreement, the State agreed to the following:

The State, through the competent institutions in coordination with the Alliance for the Development of the Honduran Mosquitia (ADMH), will establish a program of specific production projects so that the victims and their families can develop productive activities to enable them to subsist with in a dignified manner. In all phases of the design and implementation of the programs, the victims shall be consulted and included through their representative organizations, so that they may decide on the projects they want and be

part of the planning process. Permanent training will be included for the necessary productive and managerial tasks.

The ownership and management of these projects shall be in the hands of the victims themselves; nevertheless, the State, with the prior agreement of the parties, may designate authorities to assist with technical aspects of such management and oversight actions.

The programs that are socialized and approved in writing, both in the Miskito language and in Spanish, must be fully operational one year after the signing of this agreement. State financing will be extended as long as necessary to ensure the true sustainability of the productive projects promoted, which will be evaluated in consultation with the victims through their representative organizations. In order to contribute to the success of the projects, the State will ensure that those who participate in them benefit from the best incentives, tax exemptions and other means of support provided for in the Constitution of the Republic of Honduras and in accordance with domestic legislation.

#### ***A.4. Housing for the divers and their families***

119. In the friendly settlement agreement, the State agreed to the following:

The State announces that, as part of the program to provide housing for the target population in this case, it has allocated 39 homes to date; therefore it undertakes to provide, free of charge, within a maximum period of one year from the signing of this agreement, the three houses that are still pending to the 42 Miskito divers accredited as direct victims, or to their families. Said houses will be delivered prior to the petitioners or their representatives accrediting the corresponding documents, following the legal procedures in force, either for them to be declared as missing or deceased and consequently as heirs.

The State also undertakes to carry out essential remodeling work required in the homes of those victims to whom it has already allocated housing within a maximum period of one year from the signing of this agreement. These homes will be adapted to ensure the greatest possible accessibility for persons living with disabilities, through the construction of access ramps to the homes that require them and any other adaptation that may be needed in accordance with the principles of universal design.

Likewise, the State undertakes to ensure that the houses have, at a minimum, sanitary, washing and waste disposal facilities, access to drinking water, electricity and adequate drainage in places where such services are available. In addition, the expression of the cultural identity of the Miskito people must be taken into account in the construction or remodeling of the homes.

Finally, the State undertakes to grant full ownership titles to the properties located within the *ejido* (communal lands) of the department of Gracias a Dios and, with the coordination of the Alliance for the Development of the Honduran Mosquitia, to support the necessary procedures before the municipal corporations of the department of Gracias a Dios, and the Territorial Councils of the Miskito People.

#### ***A.5. Production and broadcasting of a television documentary***

120. In the friendly settlement agreement, the State agreed to the following:

The State recognizes the importance for Honduran society to be made aware of the struggle of the Miskito divers and their families to obtain access to decent employment conditions and adequate health care, in order to strengthen the information of the population and promote the enforceability of their rights. In this regard, it undertakes to produce a documentary that dignifies the struggle of the divers and recognizes its

legitimacy. The documentary should contribute to reduce the stigma affecting the divers who are living with disabilities by providing information about their situation as well as the State's international obligations of oversight and comprehensive care for this vulnerable group. The documentary will refer to the processing of this case before the Inter-American Human Rights System, in accordance with facts stated as proven by the IACHR and in the terms of the following paragraph.

The script and content of the documentary must be agreed upon with the representative organizations prior to its production. The documentary shall have a duration of 20 minutes and be available in Miskito and Spanish. It shall not be made public without the prior consent of the direct victims in the case, or of their next of kin and their representatives, who must approve its content. This consent must be provided in writing through CEJIL in both languages, and be broadcast by the State television channel, *Televisión Nacional de Honduras*, and by *Radio Nacional de Honduras* so that it may be disseminated nationally and locally. The corresponding actions shall be initiated within six months of signing this agreement and the final product shall be completed one year after its signing.

The documentary shall be broadcast at least twice a week for a period of three months on radio and television. The dates and times of the broadcasts shall be agreed with the victims and their representatives with due notice. However, the documentary must be produced for public use and, in that regard, a copy shall be given to each family group, making a total of 42 copies, as well as to each of the organizations representing the victims, for their free use and dissemination.

#### ***A.6. Public act of acknowledgment of international responsibility, apology and commitment to non-repetition***

121. In the friendly settlement agreement, the State agreed to the following:

With the prior agreement of the victims and their representatives, the State undertakes to ensure that, once this agreement has been endorsed by the Inter-American Court, a public act shall be held with the participation of the highest authorities or senior institutional representatives of the Executive Branch, the Supreme Court of Justice, the National Congress, the Office of the Prosecutor General of the Republic, the Office of the Attorney General of the Republic, Ministry of Health, Ministry of Labor and Social Security, Ministry of Human Rights, and Ministry of Agriculture and Livestock, in a public act of acknowledgment of international responsibility and apology to the victims of the instant case and their next of kin, in the terms of the Merits Report.

In this public ceremony, the State must also express its commitment to protect and ensure the rights of all the affected Miskito divers. This act shall be held in Puerto Lempira, department of Gracias a Dios, no later than the end of 2021. The date of the event shall be agreed with the victims and their representatives, in order to guarantee the widest possible attendance. In addition, the specific details of the event and the content of the message to be delivered during the act shall be agreed with the victims and their representatives. Simultaneous translation into the Miskito language shall be provided for the entire event.

Likewise, the State shall ensure that the ceremony takes place in a location accessible to people with disabilities, and that it is broadcast on the State television channel, *Televisión Nacional de Honduras*, as well as by a radio station with coverage in the Mosquitia region. The State shall guarantee free transportation for the victims and their families to attend the event and to return to their communities. Depending on the time of the event, the State shall also ensure the provision of food and beverages for the attendees. With regard to transportation arrangements and their coordination, this shall be agreed between the representatives and the State, taking into account the conditions of the area and the availability of transport.

**A.7. Publication and dissemination of the judgment of the Inter-American Court**

122. In the friendly settlement agreement, the State agreed to the following:

The State undertakes to publish the official summary of the judgment in the Official Gazette and in at least two newspapers with national circulation, in Spanish and Miskito.

The State also undertakes to publish the full judgment on the web sites of the main State institutions concerned with the problem of dive fishing, including: the Ministry of Human Rights, the Ministry of Agriculture and Livestock (SAG), the Merchant Navy, the Ministry of Labor and Social Security (STSS), Ministry of Health (SESAL) and the Ministry of Development and Social Inclusion (SEDIS); and shall maintain the publication in these web sites for a period of two years.

123. In this regard, the Court orders the State to issue said publications, under the agreed terms, within six months of notification of this judgment, in a legible and adequate font size, including: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette; and b) the official summary of this judgment prepared by the Court, once, in two daily newspapers with wide national circulation. The publications shall be issued in the Spanish and Miskito languages. The State shall immediately inform this Court once it proceeds to carry out each of the publications ordered, regardless of the one-year term granted to submit its first report, as set forth in the seventh operative paragraph of this judgment.

**B. Pecuniary measures**

124. In the friendly settlement agreement, the State indicated the following:

The State of Honduras recognizes the human rights violations suffered by the victims in this case in the terms set forth in the Merits Report of the IACHR, which caused them physical, psychological and moral harm, to the point that many of them became temporarily or permanently disabled. It further recognizes that the next of kin of the direct victims in this case also suffered consequences that disrupted their life projects. By virtue of this, it recognizes their right to receive financial compensation as reparation for all the damages caused.

**B.1. Non-pecuniary damage**

125. In view of the foregoing, in the friendly settlement agreement, the State agreed to the following:

With regard to non-pecuniary or moral damage, the State of Honduras recognizes and accepts as the amount to be paid as compensation to each of the forty-two direct victims declared in the IACHR's Merits Report the sum of [amount agreed by the parties and established in the Agreement].

In addition, the State recognizes and accepts as the amount to be paid as compensation to each of the families declared as victims in the IACHR's Merits Report on this case, the sum of [amount of money agreed by the parties and established in the Agreement].

The parties state that the amount agreed upon has been established taking into account the inter-American jurisprudence in cases involving violations similar to those that occurred in the instant case.

**B.2. Pecuniary damage**

126. In the friendly settlement agreement, the State acknowledged the following:

With regard to pecuniary damage, the State recognizes that, when the acts that violated the rights of the victims in this case occurred, all of them were men of full working age. As a result of the harm suffered, they were not only deprived of their main source of income, but were also unable to continue carrying out any form of work in a normal manner. Therefore, the State recognizes that the income that the victims and their families lost as a result of the violations, as well as the medical and other expenses incurred as a consequence thereof, are elements that must be taken into consideration for the calculation of the amount that would correspond to each of them.

127. Accordingly, in the friendly settlement agreement, the State agreed to the following:

Thus, the State recognizes and accepts the need to compensate each of the forty-two direct victims in this case with the sum of [the amount of money agreed by the parties and established in the Agreement], and each of the two hundred and thirty-three family members indicated in the Merits Report with the sum of [the amount of money agreed by the parties and established in the Agreement].

The parties agree that the amounts corresponding to the deceased victims shall be distributed equally among the family members listed in the annex to the Merits Report of the IACHR.

With respect to those victims identified in the IACHR Merits Report who have not yet been contacted,<sup>154</sup> the State, with the support of the representative organizations, undertakes to take steps to locate them and/or their next of kin, and to provide them with the corresponding amount as financial compensation in accordance with the above considerations. In this regard, when attempting to locate said persons, the State will not mention that it is for the purpose of granting them due compensation, nor will it refer to the amount thereof.

If, after a period of 5 years, it has not been possible to locate these persons and they have not appeared before the Attorney General of the Republic, the State shall transfer said funds in equal parts to the Miskito associations that are signatories to this agreement, to be used for the development of the Miskito people. Said funds must be liquidated within a period one year.

128. Annex 3 of this judgment specifies the amounts corresponding to each of the victims in this case, based on the foregoing considerations and as established in the agreement. The Court confirms that the total amount to be paid by the State to the victims and their next of kin is [the amount of money agreed by the parties and established in the agreement]. In this regard, the agreement established the following:

The State and the representatives undertake to maintain strict confidentiality with respect to the amounts specified above corresponding to each victim and his next of kin. The aforementioned amounts shall be paid through the State Secretariat at the Office of Finance (SEFIN), in two disbursements: 35% in the fiscal year 2021 and 65% in 2022, respectively. All payments shall be made in accordance with the General Budget of the Republic of Honduras for the fiscal year 2021 and 2022 and must be fully paid before the end of 2022, for which purpose the PGR shall make the necessary arrangements so that such payments are preferably made during the first semester of each fiscal year.

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<sup>154</sup> These victims are: Alfredo Francisco Brown; Efraín Rosales Kirington; Félix Osorio Presby; David Esteban Bradley; Ramón Allen Felman; Ali Herrera Ayanco; Timoteo Salazar Zelaya and Mármol Williams García.

The amounts allocated in this agreement as compensation shall be paid in full to the persons indicated, in accordance with the provisions of this agreement, without deductions. In the event that the State should default or fail to make the agreed payments, the parties shall request the Court to rule thereon.

129. With respect to the foregoing, and considering the circumstances of this case, the Court deems it particularly important to ensure the timely payment of compensatory damages to mitigate the pecuniary consequences and the profound suffering that the violations caused the victims in various aspects of their lives, particularly to their integrity, family life and work. The Court also considers it appropriate to endorse the provisions of the agreement regarding the obligation of the parties to “keep the amounts specified strictly confidential” and has therefore omitted to transcribe these in the publication of this judgment.

### **B.3. Payment of costs and expenses**

130. In the friendly settlement agreement, the parties requested that the Court determine, in equity, the amounts for costs and expenses to be paid by the State to AMHBLI, in full and without deductions. CEJIL waived the amounts that would correspond to it in order to “contribute to the present process.”

131. In this regard, the Court recalls that costs and expenses form part the concept of reparation, because the efforts made by the victims to obtain justice, both at the national and international levels, entail disbursements that must be compensated when the international responsibility of the State is declared in a condemnatory judgment. With regard to the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes the expenses incurred before the authorities of the domestic courts and those generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the principle of equity, taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.<sup>155</sup>

132. In view of the agreement reached between the State and the representatives, the Court deems it reasonable to set a total sum of [the amount of money agreed by the parties and established in the agreement] as payment for costs and expenses. Said amount shall be delivered, within six months from notification of this judgment, to the Association of Disabled Honduran Miskito Divers (AMHBLI). In the process of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for any reasonable expenses, duly proven, incurred during that procedural stage.<sup>156</sup>

### **C. Guarantees of non-repetition**

#### **C.1. Inclusion of Miskito divers and their families in existing social programs**

133. In the friendly settlement agreement, the State agreed to the following:

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<sup>155</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Vicky Hernández et al. v. Honduras. Merits, reparations and costs*. Judgment of March 26, 2021. Series C No. 422, para. 195.

<sup>156</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of June 3, 2021. Series C No. 426, para. 195.

The State recognizes the difficulties faced by Miskito divers who, as a consequence of diving accidents, suffered effects that caused them total or partial, temporary or permanent disabilities, thereby limiting their ability to obtain a source of income that would allow them to live with dignity and with access to the basic services they require.

Therefore, within six (6) months of signing this agreement, the State undertakes to include the 42 Miskito divers who suffered an accident as a result of dive fishing or, if they have died, a family member, in accordance with the provisions of domestic law, in programs aimed at persons living in a situation of social exclusion or vulnerability, particularly the "Bono Viva Mejor" (social benefits voucher) established in Article 13 of Agreement 063-SEDIS-2018, or any other voucher scheme with similar purposes created by the State for persons with disabilities, as well as other relevant governmental social protection system or social program, considering the specificities of the target population in this case.

In this regard, the State undertakes to agree with the representative organizations on any adjustments to be made to the various programs, to ensure that they are relevant and appropriate with respect to the Miskito divers who suffered the effects of decompression sickness, such as the drafting of regulations for the distribution of the vouchers.

Likewise, the State undertakes to recognize the obligation to include divers who suffered the effects of decompression sickness in these programs through an agreement between the competent institutions and the organizations representing Miskito divers with disabilities, as well as to guarantee their adaptation, continuation and the provision of the necessary resources for their proper operation.

All the beneficiaries of the voucher scheme must be duly identified by the institution responsible for administering the social benefit vouchers, by AMHBLI and/or by CONADEH.

## ***C.2. Measures to ensure the adequate regulation, control and supervision of the activities of industrial fishing companies in Miskito territory***

### ***C.2.1. Analysis of the legal, administrative and other barriers that generate problems related to underwater dive fishing and adoption of measures based on this***

134. In the friendly settlement agreement, the State agreed to the following:

The State undertakes to conduct a comprehensive analysis to identify the structural causes of the problems of underwater fishing in the Mosquitia region, as well as of all the legal and administrative barriers that prevent the activity from being carried out in a dignified and safe manner, respecting the rights of divers and of the Miskito people, taking into account that diving is the main means of subsistence available in the area.

This analysis will be carried out by the competent institutions within the framework of the Alliance for the Development of the Honduran Mosquitia (ADMH), within a maximum period of six months from the signing of this agreement, guaranteeing the participation of the representative organizations, as well as two experts in the matter, designated by the representatives.

The results of this assessment shall be made public so that the victims, their representatives and other international and civil society organizations with expertise in the matter may present their observations and recommendations within a maximum period of three months after the results are known. The State undertakes to collect and evaluate these recommendations related to the analysis.

The State recognizes its obligation to identify the structural causes of the problems of underwater fishing in the Mosquitia, as well as to remove all legal and administrative barriers that prevent the activity from being carried out in a safe and dignified manner. Therefore, based on the results of the analysis and the recommendations made by specialized civil society organizations and representatives, within one year it will present a proposal for a comprehensive public policy aimed at implementing measures to address the structural causes identified, and to eradicate the problems of dive fishing definitively.

C.2.2. Preparation of a census on the situation of active divers and those who have suffered accidents

135. In the friendly settlement agreement, the State agreed to the following:

Within one year from the signing of this agreement, and in coordination with the National Directorate of Indigenous and Afro-Honduran Peoples (DINAFROH) attached to the Secretariat of State in the Office of Development and Social Inclusion (SEDIS), as chair of the Inter-institutional Commission for Dive Fishing (CIAPEB), the National Institute of Statistics (INE) and with the support of the Alliance for the Development of the Honduran Mosquitia, the State undertakes to continue the consolidation of the census with detailed information on the situation of Miskito divers and dive fishing.

The census should provide the State with accurate information for monitoring compliance with regulations, including labor regulations, and for the design of public policies related to the fisheries sector.

The census will collect and systematize, as a minimum, data on the following: divers living with disabilities and active divers; the families of deceased divers, their employers and companies involved in the entire production and distribution chain that use divers for fishing; the status of the authorizations granted to such companies, the vessels used for this purpose and their conditions, the boarding points on the vessels and the intermediaries involved in the hiring of divers.

The State undertakes to periodically update the information contained in the census, within a period to be agreed upon by the parties after the review of the first census.

C.2.3. Permanent program for the supervision and oversight of fishing companies on land and on the high seas

136. In the friendly settlement agreement, the State agreed to the following:

The State undertakes to implement a Permanent Program for the Supervision and Oversight of Dive Fishing, coordinated through DINAFROH, as chair of the CIAPEB, which will ensure the adequate and effective application of the regulations on underwater fishing on land and on the high seas.

Within 18 months of signing this agreement, the State undertakes to train and appoint public servants in the department of Gracias a Dios in those agencies that do not yet have a representative. Such personnel shall be assigned to the following institutions: DIGE-PESCA, General Directorate of the Merchant Navy (DGMM), Ministry of Social Security (STSS), Ministry of Health (SESAL) and the Honduran Navy, specifically for the supervision and oversight of dive fishing in accordance with current laws.

Likewise, the State undertakes to continue with inspections on land and at sea, in order to ensure compliance with labor and occupational health, sanitation and legal requirements, as well as mandatory permits for vessels, in accordance with the protocol for inspection and supervision activities, which must comply with international

standards on this issue, with full respect for human rights, and specifically the rights of the Miskito people.

Inspections on land and at sea will be aimed at ensuring compliance with the full range of labor obligations, with special consideration for the safety and health of workers engaged in particularly hazardous activities. Inspections shall include, at a minimum, aspects related to the prevention of accidents and illnesses, supervision of working hours and remuneration of overtime, vacations and rest periods, measures to avoid forced labor and other forms of contemporary slavery, anti-discrimination measures, and measures to prevent work accidents, as well as to provide appropriate compensation in case they occur.

#### C.2.4. Safe Fishing Certification Program

137. In the friendly settlement agreement, the State agreed to the following:

Within two years from the signing of this agreement, the State, through its competent institutions, will establish a Safe Fishing Certification Program, incorporating the fair trade standards issued by the Latin American and Caribbean Network of Fair Trade Small Producers and Workers (CLAC) and the Fairtrade International System, which will be developed with the support of the Alliance for the Development of the Honduran Mosquitia (ADMH).

The Program, operated by the State, will verify the conditions of fishing and industrialization of marine products extracted through the practice of diving, and when it is demonstrated that such exploitation was carried out in compliance with current regulations and without risk to divers, it will issue a Safe Fishing Certification to the vessel. The accreditation will be issued by DIGE-PESCA which, prior to granting said certification, will confirm that it meets the current legal requirements, which shall be accredited by the following institutions in order: Ministry of Health, Honduran Institute of Vocational Training (INFOP), General Directorate of the Merchant Navy (DGMM), Ministry of Labor and Social Security (STSS) and the DIGE-PESCA. The requirements to be met will include: physical and mental health of the divers, divers' assistants (oarsmen in dug-out canoes) and personnel in general; safe diving course, maritime safety and work skills. Their purpose is to ensure the right to integrity and the right to life of all personnel engaged in dive fishing and to prevent future accidents at work. Regarding the employers, the conditions of their vessels will be certified and supervised to guarantee respect for the rights of their employees.

The associations of Miskito divers may challenge any certification that they consider has been granted in contravention of the applicable norms, and for this action they will not be required to demonstrate special legal status. The operation of this program shall be subject to the strictest standards of transparency.

138. On this matter, the Court notes that the "Permanent Program for the Control and Supervision of Dive Fishing" and the "Safe Fishing Certification Program" are aimed at verifying a) the application of the regulations on underwater fishing, b) the employers' compliance with their labor obligations, and c) the fishing and industrialization processes of the products extracted. In this regard, the Court requires that, in addition to implementing those plans, the State must adapt the fishing regulations, establishing the obligation of fishing companies to adopt human rights policies, due diligence processes and processes to remedy human rights violations, in consideration of the standards previously indicated in this judgment (*supra* paras. 42 to 52). The Court further stipulates that the State must establish that it is the responsibility of the companies to certify their vessels and to finance the official oversight mechanisms.

### ***C.3. Strengthening the health system in La Mosquitia from the perspective of inclusive social development***

139. In the friendly settlement agreement, the State indicated the following:

In view of the fact that many of the violations of the victims' human rights occurred as a result of the lack of specialized comprehensive medical care, and that the obstacles to obtaining this care are a reflection of structural factors that affect all Miskito divers who suffer from decompression sickness as a result of diving accidents, the State undertakes to adopt the following measures [...]

#### ***C.3.1. Establish a national strategy for strengthening health care in the region***

140. Accordingly, the State agreed to the following:

Within one year of signing this agreement, the State shall implement a strategy to strengthen the public health system in La Mosquitia, including both the Puerto Lempira Hospital and the rural health centers located in the different communities of the region, in order to ensure that they have the necessary infrastructure for their proper functioning and, in particular, the necessary electricity and water supply.

Likewise, the State undertakes to provide these health centers with specialized, trained and sufficient medical personnel to provide adequate and culturally relevant health care to members of the communities in which they are located.

Within the same period, the State undertakes to design and implement a permanent comprehensive medical care program for persons who, as a result of diving accidents, remain bedridden and cannot travel to health centers. Said program shall have the necessary personnel and budget for its operation, and shall guarantee that the required health care is provided in their place of residence.

#### ***C.3.2. Strengthening hyperbaric medical services in La Mosquitia***

141. In the friendly settlement agreement, the State agreed to the following:

The State recognizes that it would be ideal to have a hyperbaric medicine "corridor" in La Mosquitia. However, given the economic conditions, it not possible to implement such a corridor.

Therefore, the Ministry of Health undertakes to carry out a study on the most frequent diseases in the area derived from diving accidents, in order to give these priority, equipping the Puerto Lempira Hospital and the region's rural health centers with the necessary medical supplies to provide appropriate care.

Likewise, the State undertakes to strengthen the operation of the Puerto Lempira hyperbaric chamber and the treatment offered there. To this end, the State will ensure that divers who suffer a decompression accident receive all the necessary hyperbaric treatment sessions free of charge in the chamber. The State shall also ensure the constant and permanent maintenance of the chamber. To this end, it shall guarantee the necessary budget allocation for the operation of the chamber, together with the required electrical supply, the necessary equipment and duly trained personnel to provide this medical service to the Miskito divers who require it.

This includes the provision of trained medical personnel and/or the establishment of a training program for the medical personnel who will be operating the hyperbaric chamber, to ensure that they have the appropriate training for this purpose.

#### ***C.3.3. Protocol for the prevention and care of diving accident victims***

142. In the friendly settlement agreement, the State agreed to the following:

The State notes that on December 20, 2016, it approved the Protocol for the Prevention and Care of Persons with Decompression Sickness.

Thus, in compliance with the aforementioned recommendation, within six months from the signing of this agreement, the State undertakes to receive and consider the opinion of experts in the field, including specialized international organizations and agencies, in order to adapt said Protocol. If necessary, based on the recommendations received, it shall make the pertinent modifications to the Protocol to ensure that the highest standards of current medical science are taken into account.

Once the corresponding modifications have been made, it undertakes to disseminate the Protocol widely among the medical community, fishing companies and other actors involved in its application, with a view to ensuring its effective implementation.

143. In this regard, the Court emphasizes that, given that in this case there were different factors of discrimination that increased the devastating effect on the human dignity of the victims (*supra* para. 107), particularly those who suffered diving accidents and acquired disabilities, it is necessary that the State, when developing policies aimed at strengthening health care, take into account the social model of disability. This model refers to the fact that the causes of disability are social and not individual, and respond to the limitations of society to provide adequate services for the inclusion of persons with disabilities. The Court recalls that the social model for addressing disability is not defined exclusively by the presence of a physical, mental, intellectual or sensory impairment, but is interrelated with the barriers and limitations that exist socially, and that prevent persons from exercising their rights effectively.<sup>157</sup>

#### **C.4. Awareness and sensitization campaign**

144. In the friendly settlement agreement, the State agreed to the following:

Within six months of signing this agreement, the State shall design and implement, in conjunction with the victims and their representatives, an information campaign with the aim of sensitizing and raising awareness in Honduran society about the situation of the Miskito divers and their rights that have been historically violated. The campaign will highlight the importance of protecting the rights of indigenous people and persons with disabilities, and will discuss the specific obligations of the State in this regard.

The campaign will have nationwide coverage, but special emphasis will be placed on the Mosquitia region and surrounding areas. It will be conducted both in Spanish and Miskito, and will utilize the most effective means, through broadcasts on *Televisión Nacional de Honduras* and *Radio Nacional de Honduras*. It will be based on the Convention on the Rights of Persons with Disabilities, the Convention on Indigenous and Tribal Peoples (Convention 169 of the International Labor Organization) and the United Nations Declaration on the Rights of Indigenous Peoples. It will also include, at least, the dissemination of these international instruments as well as the Law on Equity and Integral Development for Persons with Disabilities, in the official version and in the popular versions, both in Miskito and Spanish, on an official web page of the Honduran State.

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<sup>157</sup> Cf. *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs*. Judgment of March 26, 2021. Series C No. 423, para. 85.

**C.5. Exhaustive investigation of the facts, identification, prosecution and punishment of all those responsible**

145. In the friendly settlement agreement, the State agreed to the following:

The State undertakes to initiate and diligently pursue all actions necessary to identify all persons responsible for the accidents resulting from underwater fishing activities in which the victims were affected and to punish them appropriately, in criminal, civil, labor or administrative proceedings, as appropriate, imposing sanctions proportional to the seriousness of the facts.

To this end, the State shall carry out the appropriate investigations through the competent institutions to determine the corresponding responsibilities in accordance with applicable legal rules. To that end, specialized personnel in the subject matter must be incorporated and given the necessary support and resources.

When appropriate, both the Public Prosecutor's Office and the Office of the Secretary of State for Labor and Social Security (STSS) shall maintain constant contact and coordination with the victims and their representatives.

**C.6. Undertake an exhaustive search for the victims who are still missing**

146. In the friendly settlement agreement, the State indicated the following:

In the instant case the whereabouts of seven victims are still unknown,<sup>158</sup> one of whom was a child abandoned at sea.<sup>159</sup> Likewise, there was no investigation to locate these persons in a timely manner. This omission seriously hinders the current possibilities of identifying the whereabouts of the victims and/or their mortal remains. Nevertheless, the State recognizes that the families of the disappeared victims have a reasonable expectation that their whereabouts be established, or that their remains be found so that they can be identified with certainty. This would contribute to alleviate the anguish and suffering caused by the uncertainty in which the families remain.

147. In that regard, the State agreed to the following:

[W]ithin six months of signing this agreement, the State of Honduras, with the advice of FAO-Honduras or of another international organization with knowledge of accidents at sea, undertakes to initiate a systematic, rigorous and diligent search for the whereabouts of the victims who are still missing. To this end, it will use all the technical and scientific means at its disposal, and will provide this process with the required economic and human resources. In order to carry out the aforementioned proceedings, the State shall remain in constant communication with the next of kin of the missing victims, with whom it shall agree, together with the representatives, on a framework for coordinated action that guarantees their participation, information and representation during the process.

Once the framework of action has been agreed upon, it will be signed by the representatives and the State, with the advice of FAO-Honduras or of another international organization, so that once the deadlines and lines of action have been executed, regardless of the results, the present point will be considered fulfilled.

**C.7. Adoption of structural measures to ensure access to justice**

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<sup>158</sup> Andrés Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez Nacril, Rómulo Flores Henriquez, Hamilton Bonaparte Clemente and Licar Méndez.

<sup>159</sup> Licar Méndez was 16 years of age when the events took place.

148. In the friendly settlement agreement, the State agreed to the following:

The State undertakes to carry out all relevant actions to ensure access to justice in the Mosquitia region. To this end, at a minimum, it will establish and maintain permanent and free legal counseling and representation programs through the Ministry of Labor and Social Security; it will ensure that in the processes in which Miskito persons are parties, there will be competent interpreters who not only speak the Spanish and Miskito languages, but who are also familiar with the legal procedures and the culture of the Miskito people; and it will maintain brigades and itinerant campaigns to bring the institutions of justice to all the Miskito communities. Within six months after signing this agreement, the State shall present a study on how to achieve the implementation of this measure and the timetable for its effective fulfilment.

All the measures under this point of the agreement shall be implemented in accordance with Convention No. 169 of the International Labour Organization and the Convention on the Rights of Persons with Disabilities, especially Article 13, as well as the current standards derived from the application and interpretation of these instruments by the competent bodies.

149. Therefore, the Court considers that the State, in compliance with its commitment to guarantee access to justice in the Mosquitia region, must adopt measures so that its justice administration system meets the following criteria: 1) ensures the inalienable right of workers to have recourse to the competent judicial authorities to submit labor disputes of all kinds, except in cases where other means of conflict resolution are legally provided for; 2) a specialized jurisdiction with exclusive jurisdiction over labor matters, in accordance with the number of labor cases and claims; 3) the application of a gender perspective in the resolution of labor disputes; 4) the provision of a specialized procedure that takes into account the specificities of labor issues; 5) the distribution of the burden of proof, the evidentiary analysis and the grounds for judicial decisions in accordance with principles that compensate for the inequalities inherent in the world of work, such as the principle of *in dubio pro operario* and the principle of favorability; 6) free labor justice and 7) the guarantee of the right to a specialized defense.<sup>160</sup> The State must also guarantee the presence of competent interpreters and translators, who are familiar with the legal procedures and speak the Spanish and Miskito languages, in the processes in which Miskito persons are parties.

### **C.8. Strengthening the education system in La Mosquitia**

150. In the friendly settlement agreement, the State agreed to the following:

The State recognizes that the educational lag in La Mosquitia is one of the sources of inequality and poverty in that region, which forces the population to work in activities that violate their dignity and put their integrity and life at risk.

Consequently, the State is committed to providing free education in La Mosquitia, in accordance with the provisions of the Constitution. It will also continue to reinforce the region's education system by strengthening the recently created the Mistruk National University of Agriculture, and will provide electrical materials to support the sustainability of a photovoltaic project at the university.

Through the Ministry of Education, and with the support of the Alliance for the Development of the Honduran Mosquitia (ADMH), it undertakes to manage the allocation of funds so as to increase the budget of the education system throughout the department, and ensure that schools have adequate facilities with sufficient qualified teaching staff who speak the Miskito language.

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<sup>160</sup> Cf. Advisory Opinion OC-27/21, *supra*, para. 116.

It shall also ensure that the study programs and teaching methods used are culturally relevant, of good quality and adapted to the needs of the students in their cultural and social contexts. In this regard, within twelve months after the signing of this agreement, the State shall present a plan of action and a schedule of the steps to be taken in compliance with this commitment.

***C.9. Adoption of measures to ensure the accessibility of all public institutions in La Mosquitia***

151. In the friendly settlement agreement, the State agreed to the following:

The State undertakes to ensure that all facilities of public institutions located in the Mosquitia region are accessible to persons with disabilities, as stated above. To this end, it shall carry out all necessary modifications, including improvements to achieve a universal design of the facilities, as well as reasonable adjustments to ensure access to Miskito divers with disabilities, in accordance with the Convention on the Rights of Persons with Disabilities and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities.

The modifications shall be carried out within three years after the signing of this agreement. To this end, within six months of signing the agreement, the State shall present an analysis of the necessary modifications and a detailed schedule for carrying them out, together with the required budget allocation.

In addition, the State shall ensure that the new facilities of public institutions in La Mosquitia, as well as any extensions, remodeling or modifications, shall be made under a universal design, in the terms established in the Convention on the Rights of Persons with Disabilities and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, as well as the current standards derived from the application of those instruments, as interpreted by the competent organs.

***D. Method of compliance with the payments ordered***

152. The State shall pay compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses, as established in this judgment, directly to the persons and organizations indicated herein, within one year of notification of this judgment.

153. If the beneficiaries are deceased or die before they receive the respective compensation, this shall be delivered directly to their heirs in accordance with the applicable domestic law.

154. The State shall comply with its monetary obligations by payment in United States dollars or the equivalent in national currency, using for the respective calculation the market exchange rate published or calculated by the relevant banking or financial authority on the date closest to the day of payment.

155. If, for reasons that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit these amounts in their favor in an account or certificate of deposit, in a solvent Honduran financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed after ten years, the amounts shall be returned to the State with the accrued interest.

156. The amounts established as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses shall be delivered in full to the persons and organizations indicated in this judgment, without any deductions arising from possible charges or taxes.

157. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Honduras.

***E. Monitoring compliance with the Agreement***

158. This Court positively assesses the willingness shown by the State to repair the damage caused by the human rights violations that occurred in the instant case. It notes that the measures agreed upon are aimed at comprehensively redressing the harm caused since they provide for pecuniary compensation, measures of restitution and satisfaction and guarantees of non-repetition. Therefore, the Court endorses the measures of reparation in the terms approved by the parties in the friendly settlement agreement.

159. As part of the process of monitoring compliance with this judgment, the Court will oversee compliance with all the measures agreed upon by the parties, and will settle any disputes that may arise between the State and the representatives regarding their scope and content. Furthermore, in order to ensure full compliance with the agreed reparation measures, it orders the State to designate a specific authority in charge of ensuring compliance at the domestic level. Said authority shall inform and involve the victims in this case, and the companies that carry out fishing activities in the Mosquitia region, as appropriate, with respect to compliance with the agreed measures of reparation. The State shall designate the aforementioned authority within 120 days from notification of this judgment, and shall notify the Court of said designation.

160. With regard to monitoring the measures of restitution and satisfaction and the guarantees of non-repetition agreed by the parties, this Court will assess the progress made in their compliance over a period of five years, and will determine whether it is necessary to maintain them.

161. The friendly settlement agreement signed between the representatives on behalf of the victims and the State is hereby endorsed by this judgment, for which reason any dispute or difference arising therefrom shall be resolved by this Court.

**IX  
OPERATIVE PARAGRAPHS**

162. Therefore,

**THE COURT**

**DECIDES,**

Unanimously:

1. To endorse the friendly settlement agreement signed by the State of Honduras and the representatives of the victims, in the terms of Chapter VIII of this judgment.
2. To accept the acknowledgment of international responsibility made by the State in said agreement.

**DECLARES,**

Unanimously, that:

3. The State violated the rights to life, to life with dignity, to personal integrity, to judicial guarantees, to the rights of the child, to equal protection of the law, to judicial protection, to health, to work in just, equitable and satisfactory conditions, to social security, and to equality and non-discrimination, established in Articles 4(1), 5(1), 8(1), 19, 24, 25(1) and 26, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of the 42 victims named in Annex 1 of this judgment.
4. The State violated the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of the same instrument, to the detriment of the next of kin of the victims named in Annex 1 of this judgment.

**AND ESTABLISHES**

Unanimously, that:

5. This judgment of endorsement constitutes, *per se*, a form of reparation.
6. The State shall:
  - a) Provide comprehensive and specialized medical and psychological care to the victims in this case and their next of kin, pursuant to paragraph 116 of this judgment;
  - b) Award educational scholarships for the victims, their children and/or their grandchildren, in the terms of paragraph 117 of this judgment;
  - c) Establish a program of productive projects for the victims and their next of kin, pursuant to paragraph 118 of this judgment;
  - d) Provide housing for the victims and their families, pursuant to paragraph 119 of this judgment;

- e) Produce and broadcast a television documentary on the Miskito divers, pursuant to paragraph 120 of this judgment;
  - f) Carry out a public act of acknowledgment of international responsibility, apology and commitment to non-repetition, pursuant to paragraph 121 of this judgment;
  - g) Publish and disseminate this judgment, pursuant to paragraphs 122 and 123 of this judgment;
  - h) Pay the amounts established for pecuniary and non-pecuniary damage, pursuant to paragraphs 124 to 128 of this judgment, and
  - i) Pay the amounts established for costs and expenses, pursuant to paragraph 132 of this judgment.
  - j) Incorporate Miskito divers and their families into the social programs aimed at persons living in situations of extreme social exclusion, pursuant to paragraph 133 of this judgment;
  - k) Adopt measures to ensure adequate regulation, monitoring and supervision of the activities of industrial fishing companies in Miskito territory, pursuant to paragraphs 134 to 138 of this judgment;
  - l) Implement measures to strengthen the health system in La Mosquitia from the perspective of inclusive social development, pursuant to paragraphs 139 to 143 of this judgment.
  - m) Design and implement a campaign to raise awareness and sensitize Honduran society about the situation faced by the Miskito people, pursuant to paragraph 144 of this judgment.
  - n) Conduct an exhaustive investigation of the facts, and identify, prosecute and punish those responsible for the accidents suffered by the victims, pursuant to paragraph 145 of this judgment.
  - o) Undertake an exhaustive search to determine the whereabouts of the victims who remain missing, pursuant to paragraph 147 of this judgment.
  - p) Adopt the necessary structural measures to guarantee access to justice in the Mosquitia region, pursuant to paragraphs 148 and 149 of this judgment.
  - q) Strengthen the education system in the Mosquitia region, pursuant to paragraph 150 of this judgment.
  - r) Take the necessary measures to ensure the accessibility of all public institutions in La Mosquitia for persons with disabilities, pursuant to paragraph 151 of this judgment.
7. The State shall submit to the Court, within one year of notification of this judgment, a report on the measures adopted to comply with it.

8. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

Judges L. Patricio Pazmiño Freire, Eduardo Vio Grossi, and Humberto Antonio Sierra Porto advised the Court of their individual concurring opinions.

DONE, at San José, Costa Rica, on August 31, 2021, in the Spanish language

I/A Court HR *Case of the Miskito divers (Lemoth Morris et al.) v. Honduras*. Judgment of August 31, 2021. Judgment adopted at San José, Costa Rica in a virtual session.

Elizabeth Odio Benito  
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

So ordered,

Elizabeth Odio Benito  
President

Pablo Saavedra Alessandri  
Secretary

**Annex 1**  
**List of victims and their next of kin**

|   | <b>Victim</b>              | <b>Family member</b>              | <b>Relationship</b> |
|---|----------------------------|-----------------------------------|---------------------|
| 1 | Opario Lemoth Morris       | Elisa Morris Johnson Lucas        | Mother              |
|   |                            | Agustina Saldaña Morris           | Sister              |
|   |                            | Israelita Wildan Morris           | Sister              |
|   |                            | Isabel Saliwet Morris             | Sister              |
|   |                            | Rosa Beatriz Lemoth Morris        | Sister              |
|   |                            | Reinica Morris Lucas              | Sister              |
|   |                            | Adalberto Maxwell Morris          | Brother             |
| 2 | Hildo Ambrosio Trino       | Aurora Clemente Cley              | Wife                |
|   |                            | Jafet Ambrosio Clemente           | Son                 |
|   |                            | Brens Ambrosio Clemente           | Son                 |
|   |                            | Glenis Ambrosio Clemente          | Daughter            |
|   |                            | Maura Celina Ambrosio Clemente    | Daughter            |
|   |                            | Anacleto Ambrosio Tino            | Brother             |
| 3 | Andrés Miranda Clemente    | Mirna Manuel Trino                | Wife                |
|   |                            | Cherly Miranda Manuel             | Daughter            |
|   |                            | Randy Miranda Manuel              | Son                 |
|   |                            | Andro Miranda Manuel              | Son                 |
|   |                            | Barry Miranda Manuel              | Son                 |
| 4 | Lorenzo Leman Bonaparte    | Esmeralda Macdonald Vicente       | Wife                |
|   |                            | Bermelinda Leman Macdonald        | Daughter            |
|   |                            | Charlin Esmeralda Leman Macdonald | Son                 |
|   |                            | Loxi Leman Macdonald              | Daughter            |
|   |                            | Clinton Leman Macdonald           | Son                 |
| 5 | Bernardo Julián Trino      | Emma Misin Trino                  | Mother              |
|   |                            | Cristina Clemente Washington      | Wife                |
|   |                            | Corna Julián Clemente             | Daughter            |
|   |                            | Kenneth Julián Clemente           | Son                 |
|   |                            | Michael Julián Clemente           | Son                 |
|   |                            | Julissa Julián                    | Daughter            |
|   |                            | Dexter Julián Trino               | Son                 |
| 6 | José Trino Pérez Nacril    | Yusef Trino Lisar                 | Father              |
|   |                            | Juana Pérez Nacril                | Mother              |
|   |                            | Ladricia Leman Bonaparte          | Wife                |
|   |                            | Kira Crisbel Trino Leman          | Daughter            |
|   |                            | Kidiana Trino Leman               | Daughter            |
|   |                            | Yoselin Trino Leman               | Daughter            |
| 7 | Rómulo Flores Henríquez    | Kateri Thomas Mendoza             | Wife                |
|   |                            | Robojuan Flores Thomas            | Son                 |
|   |                            | Gabriela Flores Thomas            | Daughter            |
|   |                            | Kateri Flores Thomas              | Daughter            |
| 8 | Amilton Clemente Bonaparte | Ruela Bonaparte Clemente          | Mother              |
|   |                            | Skerlin Bonaparte Clemente Jesús  | Daughter            |
|   |                            | Aura Selena Bonaparte             | Daughter            |
|   |                            | Jamstan Bonaparte Clemente        | Son                 |
|   |                            | Romelia Bonaparte Clemente        | Daughter            |
|   |                            | Jimena Bonaparte                  | Daughter            |

|                         |                            |                                 |                |
|-------------------------|----------------------------|---------------------------------|----------------|
| 9                       | Timoteo Lemus Pisatty      | Richard Lemus Pisatty           | Father         |
|                         |                            | Ana Lourdes Lemus Pisatty       | Sister         |
|                         |                            | Ana Rosa Lemus Melado           | Daughter       |
|                         |                            | Israel Lemus Melado             | Son            |
|                         |                            | Leonzo Lemus Melado             | Son            |
|                         |                            | Soledad Lemus Melado            | Daughter       |
| 10                      | Saipon Richard Toledo      | Anastacio Richard               | Father         |
|                         |                            | Rita Toledo                     | Mother         |
|                         |                            | Anacio Richard Toledo           | Brother        |
|                         |                            | Cera Richard Toledo             | Sister         |
|                         |                            | Rosemary Richard Toledo         | Sister         |
|                         |                            | Benigna Richard Toledo          | Sister         |
|                         |                            | Edmunda Richard Toledo          | Sister         |
|                         |                            | Elsa Richard Toledo             | Sister         |
|                         |                            | Elsias Richard Toledo           | Sister         |
| Orlenes Richard Toledo  | Sister                     |                                 |                |
| 11                      | Licar Méndez Gutiérrez     | Mamerto Mensy Greham            | Father         |
|                         |                            | Lethy Gutiérrez Roman           | Mother         |
| 12                      | Eran Herrera Paulisto      | Sofía Flores Paulisto           | Mother         |
| 13                      | José Martínez López        | Misterio Martínez               | Father         |
|                         |                            | Ana Rosa López                  | Mother         |
|                         |                            | Edatina Martínez López          | Sister         |
|                         |                            | Deonicia Martínez López         | Sister         |
|                         |                            | Clemente Martínez López         | Sister         |
|                         |                            | Vicente Martínez López          | Brother        |
|                         |                            | Gabriel Martínez López          | Brother        |
|                         |                            | George Bush Martínez López      | Brother        |
| Flaviano Martínez López | Brother                    |                                 |                |
| 14                      | Próspero Bendles Marcelino | Melvia Cristina Guerrero        | Wife           |
|                         |                            | Mailor Roberto Bendles Guerrero | Son            |
|                         |                            | Jairo Bendles Guerrero          | Son            |
|                         |                            | Maira Floripa Bendles Guerrero  | Daughter       |
|                         |                            | Yeimelina Bendles Guerrero      | Daughter       |
|                         |                            | Rubén Steven Bendles Guerrero   | Son            |
|                         |                            | Melvin Kerry Bendles Guerrero   | Son            |
| 15                      | Roger Gómez Alfred         | Vilma Greham Velázquez          | Daughter       |
|                         |                            | Cinthyá Gómez Greham            | Daughter       |
|                         |                            | Aldo Gómez Greham               | Son            |
|                         |                            | Marlene Gómez Greham            | Daughter       |
|                         |                            | Riqueña Gómez Greham            | Daughter       |
|                         |                            | Rogelio Gómez Greham            | Son            |
|                         |                            | Especel Bradle Valeriano        | Brother-in-law |
| 16                      | Bernardo Blackaus Emos     | Renelda Carlos Herrera          | Wife           |
|                         |                            | Rosel Blackaus                  | Daughter       |
|                         |                            | Marcela Blackaus                | Daughter       |
|                         |                            | Fernando Blackaus               | Son            |
|                         |                            | María Berline Blackaus          | Daughter       |
|                         |                            | Lexia Sael Blackaus             | Daughter       |
| 17                      | Flaviano Martínez López    | Misterio Martínez               | Father         |
|                         |                            | Ana Rosa López                  | Mother         |

|    |                         |                                  |          |
|----|-------------------------|----------------------------------|----------|
|    |                         | Edatina Martínez López           | Sister   |
|    |                         | Deonicia Martínez López          | Sister   |
|    |                         | Clemente Martínez López          | Brother  |
|    |                         | Vicente Martínez López           | Brother  |
|    |                         | Gabriel Martínez López           | Brother  |
|    |                         | George Bush Martínez López       | Brother  |
|    |                         | Flaviano Martínez López          | Brother  |
|    |                         | José Martínez López              | Brother  |
|    |                         | Sonia Flores Grea                | Wife     |
|    |                         | Miguel Martínez Marín            | Son      |
|    |                         | Nieves Martínez                  | Daughter |
|    |                         | Corazón Martínez                 | Daughter |
|    |                         | Darling Mendoza                  | Daughter |
|    |                         | Obet Flores                      | Daughter |
|    |                         | 4 additional children            | Children |
| 18 | Carcoth Padmoe Miller   | Maurina Padmoe Martínez          | Daughter |
|    |                         | Daniela Yelani Padmoe Martínez   | Daughter |
|    |                         | Carlene Zahara Padmoe Martínez   | Daughter |
|    |                         | Yastan Sebastián Padmoe Martínez | Son      |
|    |                         | Michael Noel Padmoe Martínez     | Son      |
|    |                         | Yaser Sebastián Padmoe Martínez  | Son      |
| 19 | Cooper Cresencio Jems   | Orancia Wit                      | Wife     |
|    |                         | Suertelina Cresencio Wit         | Daughter |
|    |                         | Joseph Cresencio Wit             | Son      |
|    |                         | Tierna Cresencio Wit             | Daughter |
|    |                         | Mel Cresencio Wit                | Daughter |
|    |                         | Misael Cresencio Wit             | Son      |
|    |                         | Juan Carlos Cresencio Wit        | Son      |
|    |                         | Sameria Cresencio Wit            | Daughter |
| 20 | Willy Gómez Pastor      | Brenda Gómez Benles              | Sister   |
| 21 | Roberto Flores Esteban  | Rutilia Belli Ordóñez            | Wife     |
|    |                         | Dorla Flores Esteban             | Daughter |
|    |                         | Smider Flores Belli              | Son      |
|    |                         | Steven Flores Belli              | Son      |
|    |                         | Sulema Flores Belli              | Daughter |
|    |                         | Bronson Flores Belli             | Son      |
|    |                         | Daiana Flores Belli              | Daughter |
| 22 | Daniel Dereck Thomas    | Ladinia Boden Hapinton           | Wife     |
|    |                         | Emy Daniela Dereck               | Daughter |
|    |                         | Belkys Daniela Dereck            | Daughter |
|    |                         | Lady Daniela Dereck              | Daughter |
| 23 | Evecleto Londres Yumida | Terna Gutiérrez Beckham          | Wife     |
|    |                         | Yelso Londres                    | Son      |
|    |                         | Ceferino Londres                 | Son      |
|    |                         | Donato Londres                   | Son      |
|    |                         | Betsi Londres                    | Daughter |
|    |                         | Besy Londres                     | Daughter |
|    |                         | Gemela Londres                   | Daughter |
|    |                         | Tyson Londres                    | Son      |
|    |                         | Kattia Londres                   | Daughter |

|    |                         |                          |          |
|----|-------------------------|--------------------------|----------|
| 24 | Amistero Bans Valeriano | Lilian Thomas            | Wife     |
|    |                         | Santana Valdivia Bans    | Daughter |
|    |                         | Martina Bans             | Daughter |
|    |                         | Dalicia Bans             | Daughter |
|    |                         | Rolvi Bans               | Son      |
|    |                         | Natividad Bans           | Son      |
|    |                         | Napoleon Bans            | Son      |
|    |                         | Norvel Bans              | Son      |
|    |                         | Nolvia Bans              | Daughter |
| 25 | Ex Dereck Claro         | Ruben Dereck             | Son      |
|    |                         | Dempsey Dereck           | Daughter |
|    |                         | Rosella Dereck           | Daughter |
|    |                         | Andrés Dereck            | Son      |
|    |                         | Rigoberto Dereck         | Son      |
|    |                         | Leonel Dereck            | Son      |
|    |                         | Silvana Dereck           | Daughter |
|    |                         | Tecla Dereck             | Daughter |
|    |                         | Ani Dereck               | Daughter |
|    |                         | Lela Dereck              | Daughter |
| 26 | Leonel Saty Méndez      | Fanny Adalid Saty Mendéz | Daughter |
|    |                         | Ivette Saty Mendéz       | Daughter |
|    |                         | Migdia Saty Mendéz       | Daughter |
|    |                         | Sayana Saty Mendéz       | Daughter |
|    |                         | Celine Saty Mendéz       | Daughter |
| 27 | Arpin Robles Tayaton    | Hiples Seision Beckam    | Wife     |
|    |                         | Desy Robles              | Daughter |
|    |                         | César Robles Clarence    | Son      |
|    |                         | Ingelberto Robles        | Son      |
|    |                         | Usiel Robles             | Son      |
|    |                         | Clinton Robles           | Son      |
|    |                         | Lisa Mery Robles         | Daughter |
|    |                         | Manly Robles             | Son      |
| 28 | Freddy Federico Salazar | Roberto Federico Macari  | Father   |
|    |                         | Lidia Willy              | Wife     |
|    |                         | Dickerson Federico       | Son      |
|    |                         | Melisendi Federico       | Daughter |
|    |                         | Samni Federico           | Son      |
| 29 | Onasis Cooper Brown     | Tránsito Brown Sabino    | Mother   |
|    |                         | Sosa Cooper              | Father   |
|    |                         | Masoni Cooper            | Son      |
|    |                         | Rosental Cooper          | Daughter |
|    |                         | Yaneli Cooper            | Daughter |
|    |                         | Rambel Cooper            | Son      |
| 30 | Rolando Mónico Thomas   | Saldina Dicares Batz     | Wife     |
|    |                         | Erodina Mónico           | Daughter |
|    |                         | Yolina Mónico Dicares    | Daughter |
|    |                         | Kerly Mónico             | Daughter |
|    |                         | Dicner Mónico            | Son      |
|    |                         | Roineri Mónico           | Son      |
|    |                         | Albert Rolando Mónico    | Son      |
|    |                         | Sorlelyn Mónico Dicares  | Son      |

|    |                           |  |          |
|----|---------------------------|--|----------|
|    |                           | Efraín Mónico  | Son      |
|    |                           | Alma Yanira Mónico   | Daughter |
| 31 | Daniel Flores Reyes       | Francis Blackaus Emos  | Wife     |
|    |                           | Alex Flores  | Son      |
|    |                           | Sami Flores  | Son      |
|    |                           | Chester Flores   | Son      |
|    |                           | Ismael Flores  | Son      |
|    |                           | Henry Flores   | Son      |
|    |                           | Frechel Flores   | Son      |
| 32 | Carlos Castellón Cárdenas | Imiclena Masiel Allen  | Wife     |
|    |                           | Tonerman Castellón Masiel                                      | Son      |
|    |                           | Dani Castellón Masiel  | Son      |
|    |                           | Dania Castellón Masiel   | Daughter |
|    |                           | Eli Castellón Masiel   | Son      |
|    |                           | Damny Brigida Castellón Masiel                                 | Daughter |
| 33 | Melecio Pamistan Maick    | Pablo Padilla Morti Maick                                      | Brother  |
|    |                           | Raymunda Ex Sambola  | Wife     |
|    |                           | Melecia Pamistan   | Daughter |
|    |                           | Mel Pamistan   | Daughter |
|    |                           | Carmelo Pamistan   | Son      |
|    |                           | Menases Pamistan   | Son      |
| 34 | Ralph Valderramos Álvarez | Junior Valderramos Wepsta                                      | Son      |
|    |                           | Max Valderramos Zelaya   | Son      |
|    |                           | Cherly Danelee Valderramos Gadfry                              | Daughter |
|    |                           | Odesa Valderramos Zuazsin                                      | Daughter |
|    |                           | Dixon David Valderramos Zuazsin                                | Son      |
|    |                           | Angelo Valderramos Zuazsin                                     | Son      |
|    |                           | Rex Valderramos Matute   | Son      |
|    |                           | Morna Valderramos Suanzin                                      | Daughter |
|    |                           | Three additional children                                      | Children |
| 35 | Alfredo Francisco Brown   | There is no information on the family members of these victims |          |
| 36 | Efraín Rosales Kirington  |  |          |
| 37 | Félix Osorio Presby       |  |          |
| 38 | David Esteban Bradley     |  |          |
| 39 | Ramón Allen Felman        |  |          |
| 40 | Ali Herrera Ayanco        |  |          |
| 41 | Timoteo Salazar Zelaya    |  |          |
| 42 | Mármol Williams García    |  |          |

## **Annex 2**

### **Facts related to the victims**

1. The Court will now refer to specific facts related to the victims in the case, which were acknowledged by the State. In this regard, the Court notes that the Commission, in its Merits Report, indicated that the information presented may contain inaccuracies with respect to the dates on which the facts occurred, without this affecting the consistency of the information presented.

#### **Opario Lemoth Morris**

2. Mr. Opario Lemoth Morris worked as a diver on a fishing boat owned by Geovany Py Gop.<sup>161</sup> On May 2, 2001, he died after diving to a great depth.<sup>162</sup> According to the records of the Main Guard of the Departmental Headquarters No. 9 of the National Police based in Puerto Lempira, department of Gracias a Dios, the death of Mr. Opario Lemoth Morris "was due to submersion."<sup>163</sup> That same day, the Departmental Court of First Instance of Puerto Lempira received 2,000.00 lempiras from Mr. Py Gop on behalf of Mr. Lemoth Morris. However, Agustina Saldaña Morris, a family member of Mr. Lemoth Morris, stated that this amount barely covered his funeral expenses.<sup>164</sup> She stated that despite having filed legal actions with the Justice of the Peace and with a Magistrate, no proceedings took place and no compensation payment was ordered. Mrs. Saldaña added that the Judge told her that the case file had been lost.<sup>165</sup>

#### **Flaviano Martínez López**

3. Mr. Flaviano Martínez López had an accident on August 22, 1992, while working on a fishing boat owned by Arcadio Waldemar Molina. Upon surfacing, after diving to a depth of 21 strokes, and after finishing two tanks of oxygen, he began to feel severe dizziness, vomiting and a sharp pain in his chest, as well as numbness in his extremities.<sup>166</sup> A week after the accident he was taken to the Vicente D'Antoni Hospital in the city of La Ceiba, but was not taken to a hyperbaric chamber.<sup>167</sup> Mr. Martínez was diagnosed with decompression syndrome, tension headache exacerbated by sunlight exposure and musculoskeletal sequelae, as well as post-traumatic lumbosacral pain, multicarencial syndrome and a history of underwater spinal cord trauma.<sup>168</sup> Between 1992 and 2011, he had three more diving-related accidents.<sup>169</sup> On one occasion, in 1995, more than two weeks passed before he was taken to a hyperbaric

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<sup>161</sup> Cf. Death certificate issued by Departmental Headquarters No. 9 of the National Police of the Ministry of Security of February 19, 2002 (merits file, folio 32).

<sup>162</sup> Cf. Death certificate of September 24, 2002 issued by the National Registry of Persons (merits file, folio 32).

<sup>163</sup> Cf. Death certificate issued by the Departmental Headquarters No.9 of the National Police of the Ministry of Security of February 19, 2002 (merits file, folio 32).

<sup>164</sup> Cf. Receipt for 2,000 lempiras dated May 2, 2001, with seal of the Secretariat of the Supreme Court of Justice (merits file, folio 32).

<sup>165</sup> Cf. Interview with Agustina Saldaña Morris dated October 15, 2014. Audio No. 1 (merits file, folio 32).

<sup>166</sup> Cf. Ordinary labor lawsuit of first instance for seizure of assets as compensation for work-related accident and temporary disability, signed with fingerprint allegedly of Flaviano Martínez López dated March 20, 2001 (merits file, folio 32).

<sup>167</sup> Cf. Interview with Flaviano Martínez López dated October 15, 2014 (merits file, folio 32).

<sup>168</sup> Cf. Medical certificate issued by Dr. Miguel A. Sierra of the Medical College of Honduras, dated April 2, 1993. Report of the Vicente D'Antoni Hospital dated January 30, 1996 (merits file, folio 33).

<sup>169</sup> Cf. Interview with Flaviano Martínez López dated October 15, 2014 (merits file, folio 34).

chamber. He did not receive compensation for these accidents, even though the boat owner, Mr. Molina, was ordered to pay compensation. Mr. Martínez has various health problems related to these accidents, he walks with extreme difficulty and has to pay for all his medications. The victim stated that sometimes he goes several days without eating because he has no money and does not receive any type of support.<sup>170</sup>

### **Carcoth Padmoe Miller**

4. Mr. Carcoth Padmoe Miller had an accident on June 20, 1993, while working for the fishing company owned by Krellyn Macnab. After diving he suffered severe back pain and because they were in Jamaica at the time, he was taken to a hospital in that country, where he remained for 18 days, but was not taken to a hyperbaric chamber.<sup>171</sup> Mr. Padmoe suffered "divers' decompression sickness" which left him with neurological sequelae in his lower limbs and proximal weakness of the pelvic girdle.<sup>172</sup> In 1994, he filed a claim with the Occupational Health and Hygiene Office in the city of Comayagua, which decided that he was entitled to a compensation of 43,232.50 lempiras.<sup>173</sup> However, in 2012, Mr. Padmoe stated that he had not received such compensation.<sup>174</sup>

5. In addition to that incident, in 1999 Mr. Padmoe had another accident while diving. He stated that when he came out of the water, he felt severe pain in his chest and was unable to speak. He spent three days on the boat paralyzed and after a week he arrived in the city of Roatán to be treated in the hyperbaric chamber.<sup>175</sup> The doctor who treated him told him that too much time had passed since his accident without being taken to a health center<sup>176</sup> and due to the delay in treatment he would not recover. The boat owner deducted the cost of treatment from his wages and his brother, Adam Miller, claimed that Mr. Padmoe was pressured by the boat owner and a representative of the Labor Ministry to sign an agreement for compensation of 70,000.00 lempiras. However, Mr. Padmoe only received 50,000.00 lempiras.<sup>177</sup>

6. In 2012, Mr. Padmoe stated that he walks with crutches and with great difficulty, that he has to take pills for knee pain which he buys himself, that he is unemployed and that his family supports him.<sup>178</sup>

### **Amistero Bans Valeriano**

7. Mr. Amistero Bans Valeriano suffered an accident on September 4, 2000, while working as a diver. After several dives to a great depth, he began to suffer chest pains and was unable

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<sup>170</sup> Cf. Interview with Flaviano Martínez López dated October 15, 2014 (merits file, folio 34).

<sup>171</sup> Cf. Certification of the Secretariat of the Regional Labor Office of documents concerning Carcoth Padmoe Miller of September 8, 1995 (merits file, folio 35).

<sup>172</sup> Cf. Interview with Carcoth Padmoe Miller dated October 15, 2014 (merits file, folio 35).

<sup>173</sup> Cf. Certification of the Secretariat of the Regional Labor Office of documents concerning Carcoth Padmoe Miller of September 8, 1995 (merits file, folio 35).

<sup>174</sup> Cf. Interview with Carcoth Padmoe Miller dated October 15, 2014 (merits file, folio 35).

<sup>175</sup> Cf. Interview with Carcoth Padmoe, Puerto Lempira. January 16, Bros Laguna of 2008 (merits file, folio 35).

<sup>176</sup> Cf. Interview with Carcoth Padmoe Miller dated August 6, 2012 (merits file, folio 35).

<sup>177</sup> Cf. Interview with Carcoth Padmoe, Puerto Lempira, January 16, Bros Laguna 2008 (merits file, folio 35).

<sup>178</sup> Cf. Interview with Carcoth Padmoe Miller dated October 15, 2014 (merits file, folio 36).

to move his limbs.<sup>179</sup> The captain of the fishing boat did not help him and after three days, at the insistence of the other divers, he was taken to Roatán and placed in the hyperbaric chamber for two days. He was then transferred to the hospital of La Ceiba. Mr. Valeriano suffered decompression syndrome,<sup>180</sup> which left him with the following sequelae: osteotendinous hyperreflexia, paresthesia of the right lower leg and slight difficulty walking.<sup>181</sup> He had to take medication due to the after-effects of the accident, but due to lack of money he could not afford to buy it. In 2001, Mr. Valeriano filed a labor lawsuit before the Sectional Labor Court against the owner of the boat, who indicated in his response that he has no employer-worker relationship with the plaintiff and that he is not the owner of the vessel. In 2012, Mr. Valeriano stated that he suffers from kidney ailments, urination problems and headaches, and has difficulty walking and needs to use a cane.<sup>182</sup>

### **Rolando Mónico Thomas**

8. Mr. Rolando Mónico Thomas suffered an accident on September 5, 1999, while working as diver. After diving to a great depth, he felt numbness in half of his body and unsuccessfully asked the owner of the fishing boat to take him to the city where the decompression chamber<sup>183</sup> was located. Three days after the accident he was taken to the hyperbaric chamber where he remained for ten days.<sup>184</sup> In 2000, he appeared before the Labor Inspector to describe the work accident he suffered. He stated that the company only paid him 3,500.00 lempiras and that he accepted it because he was in "enormous need of medicines and treatment" due to the accident, but that this amount was not enough to cover his treatment or the damage suffered. That same year a payment agreement was signed between Mr. Thomas and the representative of the boat for 114,222.60 lempiras.<sup>185</sup> Mr. Thomas stated in 2012 that the process did not move forward and that he never received the compensation. He added that he walks with difficulty, that he frequently feels dizzy and that he has to pay for his own medical consultations and medication.<sup>186</sup>

### **Ralph Valderramos Álvarez**

9. Mr. Ralph Valderramos Álvarez had an accident on February 1, 1996, while working as a diver on the boat owned by Sharon Delan Elwin. After diving to a depth of 140 feet, he began to feel very ill, with lumbago, severe pain in his lower limbs and immediately lost consciousness. He was subsequently taken to the Bay Islands where he was treated in a hyperbaric chamber.<sup>187</sup> That same year he filed a labor lawsuit before the Sectional Labor Court of La Ceiba for the payment of compensation against the boat owner. The court ordered

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<sup>179</sup> Cf. Certification of Record of appearance of December 13, 2000, of the Office of Occupational Health and Safety (merits file, folio 36).

<sup>180</sup> Cf. Interview with Amistero Bans, January 17, 2008 (merits file, folio 36).

<sup>181</sup> Cf. Medical report for Amistero Bans, dated March 6, 2002, of the Occupational Health Service (merits file, folio 36).

<sup>182</sup> Cf. Interview with Amistero Bans Valeriano of August 6, 2012 (merits file, folio 36).

<sup>183</sup> Cf. Record of appearance of Rolando Mónico Thomas of April 12, 2001, before the Labor Inspector II (merits file, folio 37).

<sup>184</sup> Cf. Interview with Rolando Mónico Thomas of August 6, 2012 (merits file, folio 37).

<sup>185</sup> Cf. Calculation of temporary disability and compensation for Rolando Mónico Thomas of June 22, 2000, issued by the Labor Inspector II (merits file, folio 37).

<sup>186</sup> Cf. Interview with Rolando Mónico Thomas of August 6, 2012 (merits file, 38).

<sup>187</sup> Cf. Ordinary labor lawsuit filed by Ralph Valderramos Álvarez against Sharon Delan Elwin on July 18, 2003, before the Departmental Labor Court (merits file, folio 38).

the seizure of the boat<sup>188</sup> and a conciliation hearing was held. However, the defendant filed a motion claiming the court's lack of jurisdiction, which was declared admissible. Mr. Valderramos then appealed this ruling, but his appeal was dismissed. That same year, the embargo on the fishing vessel was lifted and the process had no result.<sup>189</sup>

### **Timoteo Lemus Pisatty**

10. On November 2, 2002, Mr. Timoteo Lemus Pisatty had an accident while working on the boat owned by Horacio Gilbert Wood. Mr. Lemus had been diving at a depth of 115 feet and had used five tanks of compressed air, and when he surfaced he suffered paralysis of his lower limbs.<sup>190</sup> The following day, he was transferred to Roatán Hospital and placed in the hyperbaric chamber; he received 16 treatments in the chamber, but showed no visible improvement. He was diagnosed with secondary paralysis, chronic debilitating disease and urosepsis.<sup>191</sup> On November 26, 2002, Mr. Gilbert agreed to pay Mr. Lemus 10,000.00 lempiras and to provide him with a monthly payment until his recovery.<sup>192</sup> On December 24, 2002, the hospital of Puerto Lempira confirmed that Mr. Lemus suffered from decompression syndrome and paralysis.<sup>193</sup> His father stated that after the accident his son remained paralyzed and bedridden, that he did not receive medical care, that he had to purchase any medication he needed and that his health continued to deteriorate until his death in 2003. He added that the funeral expenses totaled 40,631.61 lempiras of which the boat owner paid 2,764.00.<sup>194</sup> Subsequently, the Sectional Labor Judge of La Ceiba ordered Mr. Wood to pay a monthly pension to the relatives of Mr. Lemus, which was not paid.<sup>195</sup>

### **Ex Dereck Claro**

11. Mr. Ex Dereck Claro suffered an accident on October 20, 1995, while working as diver on the boat owned by Mrs. Martha Chávez. After diving to a great depth, he began to feel severe headaches, dizziness, vomiting, weakness and a lack of sensibility in his upper and lower extremities.<sup>196</sup> A few days later he was taken to the hyperbaric chamber in the city of Roatán where he was hospitalized for a week.<sup>197</sup> Mr. Claro presented decompression symptoms characterized by hypoesthesia in the lower limbs with mild loss of strength and neurogenic bladder which was treated with a Foley catheter.<sup>198</sup> Mrs. Chávez covered the transportation and medical expenses and promised to pay him compensation, which did not

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<sup>188</sup> Cf. Special Report. Complaint 475-IGJT-PJ-08. "Case of Miskito Divers" General Inspectorate of Courts and Tribunals, January 6, 2009 (merits file 38).

<sup>189</sup> Cf. Special Report. Complaint No. 475-IGJT-PJ-08. "Case of Miskito Divers" General Inspectorate of Courts and Tribunals, January 6, 2009 (merits file, folio 38).

<sup>190</sup> Cf. Labor proceeding brought by Timoteo Lemus Pisatty against Horacio Gilbert Wood (merits file, folio 39).

<sup>191</sup> Cf. Labor proceeding brought by Timoteo Lemus Pisatty against Horacio Gilbert Wood (merits file, folio 39).

<sup>192</sup> Cf. Private agreement between Horacio G. Wood and Timoteo Lemus Pisatty dated November 26, 2002 (merits file, folio 39).

<sup>193</sup> Cf. Certificate of the Hospital of Puerto Lempira of December 24, 2002 (merits file, folio 39).

<sup>194</sup> Cf. Labor proceedings brought by Timoteo Lemus Pisatty against Horacio Gilbert Wood (merits file, folio 39).

<sup>195</sup> Cf. Interview with Richard Lemus Pisatty dated October 14, 2014 (merits file, folio 39).

<sup>196</sup> Cf. Record of appearance of Ex Dereck Claro before the Labor Inspector III of August 2, 1996 (merits file, folio 40).

<sup>197</sup> Cf. Ordinary labor lawsuit filed on October 22, 1997, by Ex Dereck Claro before the Court of First Instance (merits file, folio 40).

<sup>198</sup> Cf. Medical certificate of October 30, 1995, from Cornerstone Medical Services and Hyperbaric Chamber, Roatán (merits file, folio 40).

happen.<sup>199</sup> Mr. Claro filed a claim for compensation before the Labor Inspector, who awarded him compensation of 125,356.00 lempiras. However, this was not paid.<sup>200</sup> The labor claim he submitted was archived for lack of procedural activity in the lawsuit. Mr. Claro stated in 2012 that he suffered from back pain, that he had great difficulty walking and that he had to buy his own medicines.<sup>201</sup> The petitioner reported that Mr. Claro died in July 2017 due to urethral stricture.

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

12. On March 15, 2000, Hildo Ambrosio Trino, Andrés Miranda Clemente, Lorenzo Leman Bonaparte, Bernardo Julián Trino, José Trino Pérez Nacril, Rómulo Flores Henríquez and Amilton Bonaparte Clemente, were working as divers on the fishing boat owned by Lewis Delano Gough. The butane tank on the vessel exploded, causing a fire.<sup>202</sup> Mirna Manuel Tinto, wife of Andrés Miranda, stated that according to the testimonies of divers who were on other boats, the alleged victims had to jump into the water.<sup>203</sup> Six of the divers disappeared and their whereabouts are unknown.<sup>204</sup> Some relatives of the alleged victims stated that their bodies were never found.<sup>205</sup> Regarding Hildo Ambrosio, his daughter stated that they received her father's burned remains and buried him.<sup>206</sup> Amilton Bonaparte's mother stated that a crew member who worked on the boat only rescued the captain and not the other people.<sup>207</sup> In 2002, the relatives of the seven deceased persons filed a labor lawsuit against Mr. Delano before the Departmental Court of First Instance, but in 2008 the process was only at the initial stage.<sup>208</sup>

**Leonel Saty Méndez**

13. Mr. Leonel Saty Méndez suffered an accident on March 12, 2001, while working as a diver on the boat owned by Carlos Arturo Fiallos. After diving to a great depth, his body became numb<sup>209</sup> but the captain of the boat was unwilling to take him to a medical center.<sup>210</sup> Three days after the incident, he was taken to the hyperbaric chamber in the city of Roatán

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<sup>199</sup> Cf. Formal claim for compensation certified by the General Directorate of Social Security on June 27, 1997 (merits file, folio 40).

<sup>200</sup> Cf. Formal claim for compensation certified by the General Directorate of Social Security on June 27, 1997 (merits file, folio 40).

<sup>201</sup> Cf. Formal claim for compensation certified by the General Directorate of Social Security on June 27, 1997 (merits file, folio 40).

<sup>202</sup> Cf. Ordinary labor lawsuit filed on February 25, 2002, in the Departmental Court of First Instance against Lewis Delano Gough Valladarez. (merits file, folio 41).

<sup>203</sup> Cf. Interview with Maura Celina Ambrosio Clemente dated October 14, 2014 (merits file, folio 41).

<sup>204</sup> Cf. Ordinary labor lawsuit filed on February 25, 2002, in the Departmental Court of First Instance against Lewis Delano Gough Valladarez (merits file, folio 41).

<sup>205</sup> Cf. Interview with Cristina Clemente Washington dated August 6, 2012, interview with Juan Pérez Nacril dated August 6, 2012, and interview with Mirna Manuel Trino dated October 15, 2014 (merits file, folio 41).

<sup>206</sup> Cf. Interview with Maura Celina Ambrosio Clemente dated October 14, 2014 (merits file, folio 41).

<sup>207</sup> Cf. Interview with Ruela Bonaparte Clemente dated October 14, 2014 (merits file, folio 41).

<sup>208</sup> Cf. Special Report. Complaint No. 475-IGJT-PJ-08. "Case of Miskito Divers" General Inspectorate of Courts and Tribunals, January 6, 2009 (merits file, folio 41).

<sup>209</sup> Cf. CONADEH survey of Leonel Saty Méndez, undated (merits file, folio 42).

<sup>210</sup> Cf. Interview with Leonel Saty Méndez dated October 15, 2014 (merits file, folio 42).

and was hospitalized for nearly a month in the medical center.<sup>211</sup> According to the medical certificate, upon admission to the hospital Mr. Méndez presented "severe paralysis of the lower limbs," suffered from decompression sickness and was recommended to receive physiotherapy.<sup>212</sup> The owner of the boat gave him a check for 50,000.00 lempiras, but it had no funds, and later he only received 10,000.00 lempiras, which was not enough to cover his medical expenses. In 2001, Mr. Méndez filed a claim for compensation before the Department of Occupational Health and Safety due to the accident.<sup>213</sup> Two days later, a hearing was held at which only Mr. Méndez and the Labor Inspector appeared.<sup>214</sup> Mr. Méndez's process was not completed and he did not receive compensation. In 2014 he stated that he has difficulty walking and urinating.<sup>215</sup>

### **David Esteban Bradley**

14. Mr. David Esteban Bradley suffered an accident on May 28, 2003, on the lobster fishing boat owned by Edwin Sanchez and Tano Bodden. After diving to a great depth, he felt dizzy and was taken to the hyperbaric chamber in the city of Roatán, where he was hospitalized for 25 days.<sup>216</sup> According to a medical report, Mr. Bradley suffered from decompression sickness and required physical therapy.<sup>217</sup> Mr. Bradley filed a claim for compensation before the Labor Inspector,<sup>218</sup> but from the available information it appears that this proceeding did not produce any result.

### **Evecleto Londres Yumidal**

15. Mr. Evecleto Londres Yumidal suffered an accident on November 22, 2002, while working as a diver on the lobster fishing boat owned by Carlos Casimiro. After diving to a great depth, he began to feel dizzy, but the captain was unwilling to do anything about it. At the request of the other divers, he was transferred to the hospital at Puerto Lempira; the captain of the boat told him that he would not take him to the hyperbaric chamber because his pain was "nothing."<sup>219</sup> According to the medical report, Mr. Yumidal suffered barotrauma with sequelae of paraparesis secondary to spinal cord compression due to diving-related accident and a prognosis of 30% "walking limitation."<sup>220</sup> On November 28, 2002, Mr. Yumidal went to the Labor Inspector seeking compensation for the accident suffered.<sup>221</sup> His wife, Terna Gutiérrez Beckham, stated in 2012 that the boat owner never paid them, that her husband is bedridden, deaf and that his eyesight has progressively deteriorated. She added that he does not receive any type of medical assistance or medication.<sup>222</sup>

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<sup>211</sup> Cf. Interview with Leonel Saty Méndez dated October 15, 2014 (merits file, folio 42).

<sup>212</sup> Cf. Certificate of Cornerstone Hyperbaric Chamber and Medical Services, Roatán, Bay Islands, March 26, 2001 and medical note from the Mauner Lacayo Fonseca Clinic of April 9, 2001 (merits file, folio 42).

<sup>213</sup> Cf. Interview with Leonel Saty Méndez dated October 15, 2014 (merits file, folio 42).

<sup>214</sup> Cf. Record of appearance of Leonel Saty Méndez of May 22, 2001 (merits file, folio 42).

<sup>215</sup> Cf. Summons issued to Carlos Arturo Fiallos of May 22, 2001 (merits file, folio 42).

<sup>216</sup> Cf. Record of appearance of David Esteban Bradley, undated (merits file, folio 42).

<sup>217</sup> Cf. Medical certificate of July 30, 2003, from the Director of Puerto Lempira Hospital (merits file, folio 42).

<sup>218</sup> Record of appearance of David Esteban Bradley, undated (merits file, folio 42).

<sup>219</sup> Cf. Record of appearance of Evecleto Londres Yumidal of November 28, 2002 (merits file, folio 43).

<sup>220</sup> Cf. Medical certificate of June 4, 2003, of the Director of Puerto Lempira Hospital (merits file, folio 43).

<sup>221</sup> Cf. Record of appearance of Evecleto Londres Yumidal of November 28, 2002 (merits file, folio 43).

<sup>222</sup> Cf. Interview with Terna Gutiérrez Beckam of August 6, 2012 (merits file, folio 43).

## **Arpin Robles Tayaton**

16. Mr. Arpin Robles Tayaton suffered an accident on November 11, 2002, while working as a diver on the boat owned by Mr. Jeovany. After diving to a great depth, he felt numbness on the right side of his body and could not move his legs.<sup>223</sup> Four days after the accident, he was taken to the hospital in Puerto Lempira, where he had to pay all his medical expenses totaling 8,324.00 lempiras.<sup>224</sup> The medical report dated November 29, 2002, stated that Mr. Robles “suffered an immersion accident at a depth of 82 feet, with decompression stops; after 10 immersions he presented monoparesis and pain in the right pelvic region; he was not placed in a decompression chamber.” The report also stated that he required treatment with neurotropic drugs, analgesics and therapy.<sup>225</sup> Subsequently, in 2014, Mr. Robles reported that he had suffered another accident in 2003, when he dived to great depth and his eardrum ruptured. He stated that he did not receive any compensation for the accidents he suffered, that he feels pain in his kidneys, dizziness, has hearing problems in one ear and that he cannot work as a result of the accidents, and therefore his children have to support him.<sup>226</sup>

## **Daniel Flores Reyes**

17. Mr. Daniel Flores Reyes suffered an accident in 2002 while working as diver on the fishing boat owned by Jaime Javier Thompson Sevellón.<sup>227</sup> He had been diving at a great depth and when he surfaced he felt dizzy and fainted. Five days later he was taken to the hyperbaric chamber in Roatán.<sup>228</sup> Mr. Flores suffered from barotrauma, lumbar pain and impaired urination. It was recommended that he receive neurotropic drugs, analgesics and therapy.<sup>229</sup> Mr. Flores went to the Labor Inspector and on May 29, 2003, Mr. Thompson agreed to pay him 28,063.00 lempiras as compensation for the accident.<sup>230</sup> However, in 2014 the victim stated that had not received that amount and that he went to the Ministry of Labor in La Ceiba to report the matter. He said he received only 15,000.00 lempiras, which was insufficient to cover all the medical expenses incurred.<sup>231</sup> In 2014, Mr. Flores stated that he continues to suffer from dizziness and headaches.<sup>232</sup>

## **Freddy Federico Salazar**

18. Mr. Freddy Federico Salazar suffered an accident on May 26, 2003, while working as diver on the boat owned by Eduardo Saúl Ariaz. After diving to a great depth, he felt dizzy, but the captain simply told him to “lie down and rest” and then continue diving. A few days

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<sup>223</sup> Cf. Formal claim for compensation by Arpin Robles Tayaton against Jeovany of March 27, 2003 (merits file, folio 43).

<sup>224</sup> Cf. Formal claim for compensation by Arpin Robles Tayaton against Jeovany of March 27, 2003 (merits file, folio 43).

<sup>225</sup> Cf. Medical certificate of November 29, 2002, from the Puerto Lempira Hospital (merits file, folio 43).

<sup>226</sup> Cf. Interview with Arpin Robles Tatayon dated October 14, 2014 (merits file, folio 44).

<sup>227</sup> Cf. Formal claim for compensation by Daniel Flores Reyes against Jaime Javier Thompson Servellón dated August 6, 2003 (merits file, folio 44).

<sup>228</sup> Cf. Interview with Daniel Flores Reyes dated October 15, 2014 (merits file, folio 44).

<sup>229</sup> Cf. Medical certificate of September 10, 2003, from Puerto Lempira Hospital (merits file, folio 44).

<sup>230</sup> Cf. Act of Conciliation dated April 29, 2003 whereby Jaime Javier Thompson Servellón and Daniel Flores Reyes appeared before the Labor Inspector (merits file, folio 44).

<sup>231</sup> Cf. Interview with Daniel Flores Reyes dated October 15, 2014 (merits file, folio 44).

<sup>232</sup> Cf. Interview with Daniel Flores Reyes dated October 15, 2014 (merits file, folio 44).

after the accident he was taken to the city of Roatán; however the boat owner did not take him to the hyperbaric chamber, only to a pharmacy.<sup>233</sup> According to a medical report, Mr. Salazar suffered from barotrauma and was told that if he were to receive medical care, his recovery could take six to eight months.<sup>234</sup> On August 6, 2003, Mr. Salazar filed a claim for compensation with the Labor Inspector for the work-related accident.<sup>235</sup> In 2012, he stated that the process had not progressed and that he had not received any compensation. He said that he suffers from constant headaches, that he has to pay for his own medical consultations and medications and that due to his health condition he can no longer work so his wife or his in-laws have to support him.<sup>236</sup>

### **Cooper Cresencio**

19. Mr. Cooper Cresencio suffered an accident on March 19, 1999, while working as a diver on the fishing boat owned by Brusito Borden. After diving to a great depth, he felt severe chest pains,<sup>237</sup> but the owner of the boat told him to continue working and not to be "lazy."<sup>238</sup> He went back underwater and when he came to the surface he collapsed.<sup>239</sup> A week later, he was transferred to the city of Roatán where he was placed in the hyperbaric chamber. The boat owner did not give him any money or support him by paying for his medicines.<sup>240</sup> According to a medical report, Mr. Cresencio suffered decompression sickness, decreased strength and sensitivity, loss of sphincter control and intestinal obstruction. He was also told that he should not return to diving because "his case is severe."<sup>241</sup> Mr. Cresencio filed a claim for compensation for the work accident before the Labor Inspector, who made a partial calculation of the compensation that he never received. Mr. Cresencio stated that he suffers from pain in the back of his neck, that he often feels like vomiting, that his blood pressure is very high and that noise causes him headaches. He added that he suffers from poor eyesight and that he has to cover the cost of his own medicines.<sup>242</sup>

### **Félix Osorio Presby**

20. Mr. Félix Osorio Presby had an accident on September 1, 1995, while working as diver on the fishing boat owned by Haylock Merren. After diving to a great depth, he began to experience dizziness, difficulty hearing, vomiting, headaches and eye pain.<sup>243</sup> Four days after the accident, he was taken to the Evangélica Morava Clinic in Ahuas.<sup>244</sup> The captain of the

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<sup>233</sup> Cf. Record of appearance of Freddy Federico Salazar of August 6, 2003 (merits file, folio 44).

<sup>234</sup> Cf. Medical certificate of August 1, 2003, from the Puerto Lempira Hospital (merits file, folio 44).

<sup>235</sup> Cf. Record of appearance of Freddy Federico Salazar of August 6, 2003 (merits file, folio 45).

<sup>236</sup> Cf. Interview with Freddy Federico Salazar dated August 6, 2012 (merits file, folio 45).

<sup>237</sup> Cf. Formal claim for compensation by Cooper Cresencio against Brusito Borden of September 8, 2003 (merits file, folio 45).

<sup>238</sup> Cf. Interview with Cooper Cresencio dated October 15, 2014 (merits file, folio 45).

<sup>239</sup> Cf. Formal claim for compensation by Cooper Cresencio against Brusito Borden of September 8, 2003 (merits file, folio 45).

<sup>240</sup> Cf. Record of appearance of Cooper Cresencio, of September 8, 2003 (merits file, folio 45).

<sup>241</sup> Cf. Certificate from Cornerstone Hyperbaric Chamber and Medical Services of March 29, 1999, regarding Cooper Cresencio (merits file, folio 45).

<sup>242</sup> Cf. Interview with Cooper Cresencio dated October 15, 2014 (merits file, folio 45).

<sup>243</sup> Cf. Formal claim for compensation by Felix Osorio Presby against Heysmer Wasshal Haylock Merren dated October 9, 1995 (merits file, folio 46).

<sup>244</sup> Cf. Medical certificate of September 6, 1995, from the Evangélica Morava Clinic (merits file, folio 46).

boat did not pay for his medical expenses and he only received 700 lempiras. Mr. Osorio suffered from decompression syndrome.<sup>245</sup> On November 20, 1995, he filed a labor lawsuit seeking compensation for a work-related accident and temporary disability.<sup>246</sup> In 1996, the Labor Court accepted his petition and ordered the seizure of the defendant's bank accounts. On June 26, 1997, the Banco Atlántida S.A. of La Ceiba reported that Mr. Merren had an account for the amount of 19,228.04 lempiras, but on August 28, 2003, the file was ordered to be archived due to lack of activity for more than three years.<sup>247</sup>

### **Onasis Cooper Brown**

21. Mr. Onasis Cooper Brown suffered an accident on December 7, 2001, while working as diver on the fishing boat owned by Marlon Talun Haylock. After diving to a great depth, he felt dizziness and body pains, and was taken to the hospital in Puerto Lempira.<sup>248</sup> The medical certificate indicated that Mr. Cooper suffered from decompression syndrome due to "a diving accident" and, according to a subsequent medical evaluation, he had "decompression sickness (...) and 100% walking disability."<sup>249</sup> Mr. Cooper filed a claim for compensation for the work-related accident, in which he argued that the boat owner only paid him 1,500 lempiras, which did not even cover his medical expenses.<sup>250</sup> The Ministry of Labor and Social Security calculated that Mr. Cooper was entitled to compensation of 153,708.32 lempiras;<sup>251</sup> however, his application was unsuccessful.<sup>252</sup> According to Mr. Cooper's mother, Mr. Cooper died in 2004 after being paralyzed for years as a result of decompression syndrome.<sup>253</sup>

### **Saipón Richard Toledo**

22. According to the statement of Anastacio Richard Bais, his father, Mr. Saipón Richard Toledo died on January 15, 2004, while working on the boat owned by Marco Antonio Bonilla. Mr. Toledo was in the sea along with another diver and after diving to a great depth, came to the surface, fainted and did not regain consciousness.<sup>254</sup> The same day his sister was informed that Mr. Toledo had died while working on the boat. The family received his remains three days later, because the area where the incident occurred was far from their home.<sup>255</sup> Mr. Bais

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<sup>245</sup> Cf. Formal claim for compensation by Felix Osorio Presby against Heysmer Wasshal Haylock Merren of October 9, 1995 (merits file, folio 46).

<sup>246</sup> Cf. Ordinary labor lawsuit filed by Osario Presvy against Heysmer Wesshal Haylock Merren of November 20, 1995 (merits file, folio 46).

<sup>247</sup> Cf. Order for seizure of assets issued by the Departmental Court of First Instance, of August 23, 1996 (merits file, folio 46).

<sup>248</sup> Cf. Formal claim for compensation by Onasis Cooper Brown against Marlon Talun Haylock (merits file, folio 46).

<sup>249</sup> Cf. Medical certificates from the Puerto Lempira Hospital dated November 29, 2002, October 22, 2003 and March 11, 2004 (merits file, folio 46).

<sup>250</sup> Cf. Formal claim for compensation filed by Onasis Cooper Brown against Marlon Talun Haylock (merits file, folio 47).

<sup>251</sup> Cf. Calculation of compensation for occupational accident by the Labor Inspector II, March 11, 2004 (merits file, folio 47).

<sup>252</sup> Cf. Record of non-appearance of the legal representative of the lobster fishing boat Flamingo 1, dated December 30, 2004 (merits file, folio 47).

<sup>253</sup> Cf. Interview with Tránsito Brown Sabino dated August 6, 2012 (merits file, folio 47).

<sup>254</sup> Cf. Formal claim for compensation of March 29, 2004, of Anastacio Richard Bais against Marco Antonio Bonilla (merits file, folio 47).

<sup>255</sup> Cf. Interview with Orlenés Richard Toledo dated October 16, 2014 (merits file, folio 47).

filed a claim with the Labor Inspector for the fatal work-related accident against Mr. Bonilla.<sup>256</sup> On the same day the Ministry of Labor and Social Security calculated the compensation due and determined that the claimant was entitled to compensation of 51,356.00 lempiras.<sup>257</sup> On May 2, 2004, Mr. Toledo's mother and Mr. Bonilla agreed on compensation of 53,495.00 lempiras. The record states that Mr. Bonilla had already paid 30,000 lempiras.<sup>258</sup> Mr. Toledo's sister argued that this amount was insufficient in view of the harm caused to her family.<sup>259</sup>

### **Efraín Rosales Kirington**

23. Mr. Efraín Rosales Kirington suffered an accident on December 9, 2003, while working as a diver on the fishing boat owned by Antonio Bonilla. After diving to a great depth, he fainted and was unconscious for four hours. The boat owner did not want to take him to a hyperbaric chamber so the following day he had to travel fifteen hours to begin treatment in the chamber, without the boat owner paying for his medical expenses.<sup>260</sup> According to the medical certificate issued, Mr. Rosales suffered from decompression sickness and as a result of the accident his eyesight was greatly impaired. On February 12, 2004, Mr. Rosales filed a claim for compensation with the Labor Inspector for the work accident he suffered.<sup>261</sup> On March 17, 2004, Mr. Bonilla failed to appear at the proceeding, which was duly recorded,<sup>262</sup> and the process did not produce any results.

### **Melesio Pamistan Maick**

24. Mr. Melesio Pamistan Maick suffered an accident on March 7, 2003, while working as diver on the fishing vessel owned by Pedro García and Loly Torres. After diving to a great depth, he began to feel dizzy and his body went numb. Five days after the accident, he was taken to the city of Roatán where he was hospitalized for one month. The boat owners paid him around 5,980 lempiras.<sup>263</sup> According to the medical certificate dated March 25, 2003, Mr. Pamistan suffered from decompression syndrome and was unable to walk, so he was treated in the hyperbaric chamber.<sup>264</sup> On October 14, 2003, the hospital in Puerto Lempira certified that he suffers from a 40% walking disability.<sup>265</sup> Mr. Pamistan filed a claim for compensation with the Labor Inspector, who determined that he was entitled to a compensation of

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<sup>256</sup> Cf. Formal claim for compensation of March 29, 2004, filed by Anastacio Richard Bais against Marco Antonio Bonilla (merits file, folio 47).

<sup>257</sup> Cf. Calculation of compensation for fatal occupational accident dated March 29, 2004, by the Labor Inspector II (merits file, folio 47).

<sup>258</sup> Cf. Record of appearance of April 2, 2004, before the Labor Inspector II (merits file, folio 47).

<sup>259</sup> Cf. Interview with Orlenes Richard Toledo dated October 16, 2014 (merits file, folio 47).

<sup>260</sup> Cf. Formal claim for compensation filed by Efraín Rosales Kirington against Tonio Bonilla dated February 12, 2004 (merits file, folio 48).

<sup>261</sup> Cf. Formal claim for compensation filed by Efraín Rosales Kirington against Tonio Bonilla dated February 12, 2004 (merits file, folio 48).

<sup>262</sup> Cf. Record of non-appearance by Marco Tonio Bonilla of March 17, 2004 (merits file, folio 48).

<sup>263</sup> Cf. Formal claim for compensation filed by Melesio Pamistan Maick against Pedro García and Loly Torres dated February 26, 2004 (merits file, folio 48).

<sup>264</sup> Cf. Certificate from the Cornerstone Hyperbaric Chamber and Medical Services Hospital, dated March 25, 2003 (merits file, folio 48).

<sup>265</sup> Cf. Certificate from the Puerto Lempira Hospital dated October 14, 2003 (merits file, folio 48).

19,859.00 lempiras.<sup>266</sup> However, the boat owner never appeared at the proceeding.<sup>267</sup> In 2012, Mr. Pamistan stated that he had a serious urinary infection, severe pain in his spine and walked with a cane. He also buys his own medicines and the only medical attention he receives is private.<sup>268</sup>

### **Willy Gómez Pastor**

25. Mr. Willy Gómez Pastor suffered an accident on February 11, 2003, while working as a diver on the fishing boat owned by Marylu Fedrick. After diving to a great depth, he fainted and the following day he was taken to Roatán where he was hospitalized for one month. The owner of the fishing boat promised to cover the cost of medical services and pay compensation, but this did not occur.<sup>269</sup> According to the medical certificate from the hospital in Roatán, Mr. Gómez suffered from decompression syndrome and was treated in the hyperbaric chamber.<sup>270</sup> Also, according to a subsequent report from the hospital in Puerto Lempira, Mr. Gómez suffered the following sequelae: walking with crutches, poor balance and neurogenic bowel and bladder.<sup>271</sup> Mr. Gómez filed a claim for compensation for the work accident with the Labor Inspector,<sup>272</sup> who determined that was entitled to a compensation of 197,690.35 lempiras because he has a permanent disability of 80%.<sup>273</sup> However, this indemnity was never paid. Mr. Gómez stated that he suffers continuous pain in his chest, neck and legs, that he cannot walk much as he often stumbles. He added that he does not receive medical treatment for his ailments and has to buy his own medicines.<sup>274</sup>

### **Licar Méndez**

26. Mr. Mamerto Mensy Gream, the father of the boy Licar Méndez, stated that on December 12, 2003, his son disappeared while working on a boat owned by Mr. Darwin. His son was sixteen years old and had spent six days aboard the vessel. According to Mr. Mensy's statement, the boat captain left the boy Licar Méndez in the *cayuco* (canoe) as punishment for having lost a diver. The captain only picked up the diver and when he returned hours later he did not find the boy. On January 21, 2004, Mr. Mensy filed a complaint with the Labor Inspector because of what happened to his son, but no information is available regarding the outcome of this process.<sup>275</sup>

### **Roberto Flores Esteban**

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<sup>266</sup> Cf. Calculation of Compensation for occupational accident of the Labor Inspector II, dated March 1, 2004, (merits file, folio 48).

<sup>267</sup> Cf. Interview with Pablo Padilla Morti Maick on August 6, 2012 (merits file, folio 48).

<sup>268</sup> Cf. Interview with Pablo Padilla Morti Maick on August 6, 2012 (merits file, folio 48).

<sup>269</sup> Cf. Formal claim for compensation filed by Willy Gómez Pastor against Marylu Pedrik, dated October 1, 2003 (merits file, folio 49).

<sup>270</sup> Cf. Record of the Cornerstone Hyperbaric Chamber and Medical Services dated March 12, 2003 (merits file, folio 49).

<sup>271</sup> Cf. Record of the Puerto Lempira Hospital dated July 9, 2004 (merits file, folio 49).

<sup>272</sup> Cf. Formal claim for compensation filed by Willy Gómez Pastor against Marylu Pedrik, dated October 1, 2003 (merits file, folio 49).

<sup>273</sup> Cf. Calculation of occupational accident by the Labor Inspector, dated July 9, 2004 (merits file, folio 49).

<sup>274</sup> Cf. Interview with Willy Gómez Pastor on August 6, 2012 (merits file, folio 49).

<sup>275</sup> Cf. Formal claim for compensation filed by Mamerto Mensy Gream against Mr. Darwin of January 21, 2004 (merits file, folio 49).

27. Mr. Roberto Flores Esteban suffered an accident on February 23, 2000, while working as a diver on the fishing boat owned by Rafael Zapata. After diving to a great depth, he felt one of his legs go numb. The next day he was taken to the community of Cauquira where he was hospitalized for two weeks in FUDEMA's hyperbaric chamber.<sup>276</sup> According to the medical certificate from the Puerto Lempira hospital, dated November 2003, Mr. Flores suffered from decompression syndrome "with a 30% walking impairment."<sup>277</sup> Mr. Flores filed a claim for compensation with the Labor Inspector for the work accident he suffered, arguing that Mr. Zapata had only paid him 4,000.00 lempiras.<sup>278</sup> However, this process did not achieve any result. According to a statement made his wife in 2012, Mr. Flores is bedridden, has no physical movement in his arms or legs and has not received medical care.<sup>279</sup>

### **Daniel Dereck**

28. Mr. Daniel Dereck suffered an accident on November 5, 2000, while working as a diver on a fishing boat owned by Jaime Thomson. After diving to a great depth and returning to the surface, he felt that his body was paralyzed. The next day he was taken to the city of Roatán where he was hospitalized for more than a week in the hyperbaric chamber.<sup>280</sup> According to the medical certificate dated November 2000 from the hospital in Roatán, Mr. Dereck suffered from decompression sickness with severe loss of strength in his lower limbs, which made him incapable of standing.<sup>281</sup> Jaime Thompson did not pay him compensation for the accident and only offered to employ him again, which he accepted due to his situation of need.<sup>282</sup> As a result, he had another accident in 2004 and suffered problems with his hernia and an infection that prevented him from urinating.<sup>283</sup> He also had to go to the hospital in Puerto Lempira for treatment without Mr. Thompson covering the medical expenses.<sup>284</sup> Mr. Dereck filed a formal claim for compensation with the Ministry of Labor and Social Security of La Ceiba for the work accident suffered in November of 2000, but only received 3,000.00 lempiras from the boat owner outside of the proceedings. Mr. Dereck has great difficulty walking.<sup>285</sup>

### **Eran Herrera Palisto**

29. Mrs. Sofía Flores Palisto, mother of Mr. Eran Herrera Palisto, stated that on August 8, 2002, the victim died in an accident while working on a boat owned by Brux Borden. Mrs. Flores filed a labor claim with the Labor Inspector against Mr. Borden<sup>286</sup> and on November 5,

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<sup>276</sup> Cf. Formal claim for compensation filed by Roberto Flores Esteban against Rafael Zapata on November 17, 2003 (merits file, folio 50).

<sup>277</sup> Cf. Medical certificate of the Puerto Lempira Hospital of November 17, 2003 (merits file, folio 50).

<sup>278</sup> Cf. Formal claim for compensation filed by Roberto Flores Esteban against Rafael Zapata dated November 17, 2003 (merits file, folio 50).

<sup>279</sup> Cf. Interview with Rutilia Belli Ordoñez dated August 6, 2012 (merits file, folio 50).

<sup>280</sup> Cf. Formal claim for compensation filed by Daniel Dereck against Jaime Thompson, on April 28, 2004 (merits file, folio 50).

<sup>281</sup> Cf. Certificate of the Cornerstone Chamber Hospital and Medical Service, dated 14 November 2000 (merits file, folio 50).

<sup>282</sup> Cf. Formal claim for compensation filed by Daniel Dereck against Jaime Thompson, on April 28, 2004 (merits file, folio 50).

<sup>283</sup> Cf. Formal claim for compensation of Daniel Dereck against Jaime Thompson dated April 28, 2004 (merits file, folio 50).

<sup>284</sup> Cf. Interview with Daniel Dereck dated August 6, 2012 (merits file, folio 51).

<sup>285</sup> Cf. Interview with Daniel Dereck dated August 6, 2012 (merits file, folio 51).

<sup>286</sup> Cf. Order dated January 9, 2003, from the Labor Inspector notifying the Judge (merits file, folio 51).

2002, the defendant was summoned to appear, but did not do so.<sup>287</sup> There was no result from this process.

### **Bernardo Blackaus Emos**

30. Mrs. Renelda Carlos Herrera, wife of Mr. Bernardo Blackaus, stated that her husband died on November 5, 2002, while working as a diver on the fishing boat owned by Paulino Adalid Hernández Reyes.<sup>288</sup> Mr. Blackaus was diving at great depth, when there was a storm and a bolt of lightning struck close to where he was. Mr. Blackaus went back underwater and when he surfaced he was bleeding and died the same day.<sup>289</sup> Mrs. Herrera went to the Labor Inspector and on December 8, 2003 a payment agreement was signed with Mr. Hernández. A payment of 120,000 lempiras was agreed in favor of Mrs. Herrera,<sup>290</sup> and in 2014 she received 65,000.00 lempiras, which included funeral expenses. However, this amount was minimal and she filed a complaint with the Labor Ministry, but no action was taken.<sup>291</sup>

### **Alí Herrera Ayanco**

31. Mrs. Marlene Alemán Laines, wife of Mr. Alí Herrera, stated that her husband died while working on a boat owned by Gary Douglas Hynds. Mrs. Alemán went to the Labor Inspector and in 2003, she and Mr. Hynds signed an agreement to pay 46,560.00 lempiras in favor of Mrs. Alemán. It was also recorded that she had previously received the sum of 23,000.00 lempiras.<sup>292</sup>

### **Mármol Williams García**

32. Mrs. Clara Inés Wilson Dario, wife of Mr. Mármol Williams García, stated that her husband died while working on the boat owned by Marco Antonio Bonilla Castillo. Mrs. Wilson went to the Labor Inspector and on January 26, 2004, she and Mr. Bonilla signed an agreement to pay 131,174.40 lempiras in favor of Mrs. Williams. It was recorded that the payment was made on that date.<sup>293</sup>

### **José Martínez López**

33. Mrs. Emiliana Urbina Mena, partner of Mr. José Martínez, stated that he died on November 8, 2003, while working on a boat owned by Paulino Adalid Hernández Reyes.<sup>294</sup> Mr. Martínez dived to a great depth and fainted, but did not receive any type of treatment

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<sup>287</sup> Cf. Report dated November 13, 2002, of the Labor Inspector (merits file, folio 51).

<sup>288</sup> Cf. Letter of agreement to pay from Paulina Hernández to Reynalda Carlos Herrera, dated December 8, 2013 (merits file, folio 51).

<sup>289</sup> Cf. Interview with Reynalda Carlos Herrera dated October 15, 2014 (merits file, folio 51).

<sup>290</sup> Cf. Letter of agreement to pay from Paulina Hernández to Reynalda Carlos Herrera, dated December 8, 2013 (merits file, folio 51).

<sup>291</sup> Cf. Interview with Reynalda Carlos Herrera dated October 15, 2014 (merits file, folio 51).

<sup>292</sup> Cf. Letter of agreement to pay from Gary Douglas Hynds to Marlene Alemán Lainez, dated April 1, 2003 (merits file, folio 52).

<sup>293</sup> Letter of agreement to pay from Marco Antonio Bonilla to Clara Inés Wilson, dated January 26, 2004 (merits file, folio 52).

<sup>294</sup> Cf. Letter of agreement to pay from Paulina Adalid Hernández to Emiliana Urbina Mena, dated February 17, 2004 (merits file, folio 52).

afterwards. Hours later, when they tried to take him to a medical center, he died.<sup>295</sup> Mrs. Urbina went to the Labor Inspector and in 2004 she and Mr. Hernández signed letter of commitment in which he agreed to pay 100,000 lempiras in favor of Mrs. Urbina, and it was recorded that the payment was completed on that date.<sup>296</sup> However, this sum of money was insufficient to cover all the expenses and damages caused by the death of her partner. Mr. Martínez's family subsequently filed a complaint with the Ministry of Labor of La Ceiba, but there was no result.<sup>297</sup>

### **Alfredo Francisco Brown**

34. Mrs. Linda Paulista Manister, sister of Mr. Alfredo Francisco Brown, stated that he died while working on the boat owned by Abraham Yovany Campigotte. Mrs. Paulista went to the Labor Inspector and in 2004, she and Mr. Campigotte signed an agreement in which the latter agreed to pay Mrs. Paulista 40,000.00 lempiras.<sup>298</sup> It was recorded that on that day half of the agreed amount was paid and that the rest would be paid the following day.<sup>299</sup> There is no information as to whether that payment was made.

### **Próspero Bendles Marcelino**

35. Mrs. Melvia Cristina Guerrero, wife of Mr. Próspero Bendles Marcelino, stated that her husband died on March 23, 2003, while working as diver on the fishing vessel owned by Victor Boden.<sup>300</sup> After diving to a great depth, Mr. Bendles felt dizzy and fainted. He was given oxygen but did not regain consciousness and died that same day.<sup>301</sup> Four days later Mrs. Guerrero received her husband's remains.<sup>302</sup> In 2003, she filed a claim for compensation with the Labor Inspector, stating that the boat owner had only paid her 6,000.00 lempiras for the funeral expenses of Mr. Bendles.<sup>303</sup> The Ministry of Labor and Social Security determined that Mrs. Guerrero would be entitled to compensation of 834,154.50 lempiras.<sup>304</sup> Accordingly, a letter of agreement was signed between Mrs. Guerrero and Mr. Boden for 120,000.00 lempiras, and in that same act Mr. Boden paid Mrs. Guerrero 50,000.00 lempiras and promised to pay the rest at the end of August that year.<sup>305</sup> There is no information as to whether this payment was made.

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<sup>295</sup> Cf. Interview with Edatina Martínez López on August 6, 2012 (merits file, folio 52).

<sup>296</sup> Cf. Letter of agreement to pay from Paulina Adalid Hernández to Emiliana Urbina Mena, dated 17 February 2004 (merits file, folio 52).

<sup>297</sup> Cf. Interview with Edatina Martínez López on August 6, 2012 (merits file, folio 52).

<sup>298</sup> Cf. Power of Attorney, letter from Hilda Manister Alfred to Leolinda Paulisto Manister of May 4, 2004 (merits file, folio 52).

<sup>299</sup> Cf. Letter of agreement to pay from Abraham Yeovany Campigotte to Leolinda Paulista Manister, dated May 5, 2004 (merits file, folio 52).

<sup>300</sup> Cf. Interview with Melvia Cristina Guerrero Beneth on August 6, 2012 (merits file, folio 53).

<sup>301</sup> Cf. Formal claim of Melvia Cristina Guerrero Beneth against Victor Boden dated April 28, 2003 (merits file, folio 53).

<sup>302</sup> Cf. Interview with Melvia Cristina Guerrero Beneth on August 6, 2012 (merits file, folio 53).

<sup>303</sup> Cf. Formal labor claim filed by Melvia Cristina Guerrero Beneth against Victor Boden, dated April 28, 2003 (merits file, folio 53).

<sup>304</sup> Cf. Calculation of compensation by the Labor Inspector II for fatal work-related accident, dated April 30, 2003, (merits file, folio 53).

<sup>305</sup> Cf. Letter of agreement to pay from Victor Kurt Borden M. to Melvia Cristina Guerrero dated May 2, 2003 (merits file, folio 53).

## **Ramón Allen Ferman**

36. Mrs. Elena Ferman Paisano, wife of Mr. Ramón Allen Ferman, stated that her husband died on December 11, 2002, while working as a diver on the fishing boat owned by Manuel Pereira Jaylock.<sup>306</sup> The Justice of the Peace for criminal matters stated that Mr. Allen lost his life after diving to a depth of 35 feet and suffering from decompression syndrome.<sup>307</sup> Mrs. Ferman went to the Labor Inspector and in 2004 she and Mr. Pereira signed an agreement in which he promised to pay Mrs. Ferman 144,000.00 lempiras. The record shows that 24,000.00 lempiras was paid on that day, and that the rest would be paid as funeral expenses.<sup>308</sup> There is no information as to whether this payment was made.

## **Roger Gómez Alfred**

37. Mr. Especel Bradle Valeriano, brother-in-law of Mr. Roger Gómez Alfred, stated that the alleged victim died on December 10, 2002, as a consequence of his work as a diver on the fishing boat owned by Abraham Geovanny Compegoth. After diving to a great depth, Mr. Gómez felt very sick.<sup>309</sup> His body was paralyzed after the incident.<sup>310</sup> The following day, Mr. Gómez was taken to the hospital in Puerto Lempira, but that hospital did not have a hyperbaric chamber, so after almost two weeks of being hospitalized there, he died on December 27, 2002.<sup>311</sup> In 2003, Mr. Bradle, on behalf of Mrs. Velásquez, filed a claim for compensation before the Labor Inspector. Mr. Compegoth paid only 20,000.00 lempiras to cover half of the funeral expenses for the burial of Mr. Gómez,<sup>312</sup> and in 2003 Mrs. Velásquez and Mr. Compegoth signed a payment agreement for 120,500.00 lempiras.<sup>313</sup> Mrs. Velásquez argued that the amount was insufficient and that the boat owner had also deducted the amount paid for funeral expenses.<sup>314</sup> At the time of signing the agreement, Mr. Compegoth agreed to pay 20,000.00 lempiras, and promised that the rest would be paid over the following five months.<sup>315</sup> However, in 2014, Mrs. Velásquez stated that she never received said payment.<sup>316</sup>

## **Carlos Castellón Cárdenas**

38. Mr. Carlos Castellón Cárdenas suffered an accident in 2000 while working as a diver

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<sup>306</sup> Cf. Letter of agreement to pay from Victor Manuel Pereira H. to Elena Felman Paisano dated January 27, 2003 (merits file, folio 53).

<sup>307</sup> Cf. Certificate dated December 16, 2002, Justice of the Peace for criminal matters (merits file, folio 53).

<sup>308</sup> Cf. Letter of agreement to pay from Victor Manuel Pereira H. to Elena Felman Paisano dated January 27, 2003 (merits file, folio 53).

<sup>309</sup> Cf. Record of appearance of Especel Bradle Valeriano at hearing related to fatal accident, dated March 18, 2003 (merits file, folio 54).

<sup>310</sup> Cf. Interview with Vilma Greham Velázquez dated October 15, 2014 (merits file, folio 54).

<sup>311</sup> Cf. Record of appearance of Especel Bradle Valeriano at hearing related to fatal accident, of March 18, 2003 (merits file, folio 54).

<sup>312</sup> Cf. Record of appearance of Especel Bradle Valeriano at hearing related to fatal accident, of March 18, 2003 (merits file, folio 54).

<sup>313</sup> Cf. Letter of agreement to pay from Abraham Geovanny Compegoth to Vilma Greham Velásquez, dated April 23, 2003 (merits file, folio 54).

<sup>314</sup> Cf. Interview with Vilma Greham Velázquez dated October 15, 2014 (merits file, folio 54).

<sup>315</sup> Cf. Letter of agreement to pay from Abraham Geovanny Compegoth to Vilma Greham Velásquez, dated April 23, 2003 (merits file, folio 54).

<sup>316</sup> Cf. Interview with Vilma Greham Velázquez dated October 15, 2014 (merits file, folio 54).

on the fishing boat owned by Basima Hilsaca.<sup>317</sup> Mr. Castellón dived to a great depth, was taken to the hyperbaric chamber<sup>318</sup> and was diagnosed with decompression sickness in September of the same year.<sup>319</sup> He filed a claim for compensation before the Occupational Health and Hygiene Office. In 2001, the Ministry of Labor and Social Security determined that, based on the medical opinion,<sup>320</sup> Mr. Castellón was entitled to a compensation of 227,850.00 lempiras.<sup>321</sup> On February 15, 2001, a payment agreement was signed between Mr. Castellón and Mrs. Hilsaca, in which she agreed to pay him 40,000.00 lempiras; it is recorded that she gave Mr. Castellón the sum of 3,000.00 lempiras, indicating that the rest would be paid in March and August of the same year.<sup>322</sup> In view of the lack of payment, Mr. Castellón filed a labor lawsuit for the payment of compensation for occupational illness.<sup>323</sup> Mrs. Hilsaca was ordered to pay 37,000.00 lempiras, but she did not comply with this ruling.<sup>324</sup> Mr. Castellón died in 2002. His son stated that after the accident Mr. Castellón could not walk properly and consequently could not work, and that he did not receive medical care.<sup>325</sup>

### **Timoteo Salazar Zelaya**

39. According to a report from the Office of Labor and Social Security, Mr. Timoteo Salazar Zelaya had a fatal accident in 2002 while working as a diver on the fishing boat owned by Omar Phillips. According to the report, a settlement was reached between the owner of the vessel and Mr. Salazar's family for 100,000 lempiras, but his relatives stated in 2003 that they did not receive any money.<sup>326</sup>

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<sup>317</sup> Cf. Ordinary labor lawsuit filed by Carlos Castellón Cárdenas against Basima Hilsaca on November 20, 2001 (merits file, folio 54).

<sup>318</sup> Cf. Interview with Masiel Allen dated October 15, 2014 (merits file, folio 54).

<sup>319</sup> Cf. Ordinary labor lawsuit filed by Carlos Castellón Cárdenas against Basima Hilsaca on November 20, 2001 (merits file, folio 54).

<sup>320</sup> Cf. Medical report on Carlos Castellón Cárdenas from Occupational Health Services, dated October 5, 2001 (merits file, folio 54).

<sup>321</sup> Cf. Calculation of compensation for occupational illness by the Labor Inspector, dated October 15, 2001, (merits file, folio 55).

<sup>322</sup> Cf. Letter of agreement to pay from Basima Hilsaca to Carlos Castellón Cárdenas, dated February 15, 2001 (merits file, folio 55).

<sup>323</sup> Cf. Ordinary labor lawsuit of Carlos Castellón Cárdenas against Basima Hilsaca of November 20, 2001 (merits file, folio 55).

<sup>324</sup> Cf. Hearing of May 24, 2002 (merits file, folio 55).

<sup>325</sup> Cf. Interview with Dany Castellón Masier on August 6, 2012 (merits file, folio 55).

<sup>326</sup> Cf. Report on injured divers, from January 2002 to May 26, 2004. Addressed to Attorney Carlos Remberto Zalavarría Reconco, legal representative of the *Asociación de Miskitos Hondureños Buzos Lisiados del Río Plátano* signed by C. Santos Elpidio Cadenas, of the Regional Office of La Ceiba, with partially illegible seal, apparently from the Health and Safety Inspectorate of the General Directorate of Welfare of the Ministry of Labor and Social Security Office (merits file, folio 55).



**CONCURRING OPINION OF  
JUDGE L. PATRICIO PAZMIÑO FREIRE**

**CASE OF THE MISKITO DIVERS (LEMOTH MORRIS ET AL.) V. HONDURAS**

**JUDGMENT OF AUGUST 31, 2021**

1. In this opinion I wish to express my agreement with the decision of the majority regarding the endorsement of the friendly settlement agreement signed between the victims and the State of Honduras. As an Inter-American judge, I am very pleased that an agreement has been reached that recognizes the reparation interests of the victims in this case. The task now facing the Court is to monitor compliance with this judgment in accordance with the terms under which the reparations were adopted. Without wishing to delve further into this point - since the challenges and opportunities for the implementation of the judgment can be addressed later when the Court examines the matter - I am particularly interested in reinforcing the decision based on an analysis of the subject matter of this case. Accordingly, I will review the evolution of the issue of business and human rights and the need to reformulate the rules of attribution of international responsibility; I will then address public policies and the role of reparation mechanisms for cases involving private companies and human rights.

**a) Evolution of the issue of business and human rights and the rules of attribution of responsibility**

2. I should begin my analysis by pointing out that this is not the first case before the Court involving private companies that have engaged in actions or omissions which resulted in human rights violations. In several cases, which now comprise a substantial part of the Court's constant case law on the rights of indigenous and tribal peoples, in relation to extractive industries and communal property rights, the State's tolerance, collaboration or omissions have resulted in human rights violations committed by companies. For example, in the case of *Sarayaku v. Ecuador*, oil exploration contracts, together with prospecting and exploration activities, led to internationally wrongful acts. Some of these actions were carried out by the State at the time of granting concessions or contracts; but others predominantly, and even exclusively, involved the participation of private companies, such as the implementation of prospecting and exploration activities.<sup>1</sup> This case highlights a problem that has been repeated in different cases before the Court, such as *Kaliña Lokono v. Suriname*<sup>2</sup> or even the recent case of *Lhaka Honat v. Argentina*,<sup>3</sup> where the boundaries between the responsibility of the State and that of private corporations converge and reinforce each other in the form of feedback that generates human rights violations. It is appropriate to ask whether the rules of attribution of international responsibility, as traditionally established, whereby responsibility is primarily attributed to the State, should remain unchanged. These cases - and those yet to come - have an essential peculiarity, which is the fact that private companies operating with interests in various countries, have activities in different States and are generally incorporated in multiple and diverse jurisdictions. These companies have become true global players. The question arises as to whether international law as it is currently configured, heir to the

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<sup>1</sup> Case of the Kichwa Indigenous people of Sarayaku v. Ecuador. Merits and reparations. Judgment of June 27, 2012. Series C No. 245

<sup>2</sup> Case of the Kaliña and Lokono Peoples v. Suriname. Merits, reparations and costs. Judgment of November 25, 2015. Series C No. 309

<sup>3</sup> Case of Indigenous communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020. Series C No. 400

Westphalian conception of States as the main, if not the only actors, is sufficient to meet these challenges. Challenges that are plentiful, if we consider that they affect not only sensitive aspects for our communities such as property- along with all the other implications that the Court has considered, ranging from the right to water, food and the very survival of their culture- but also their impact on health and social rights.

3. In cases such as *González Lluy v. Ecuador or Ximenes López*, the obligations of private companies to provide public services were specifically addressed. A paradox: the private sphere is instrumentalized to perform an eminently governmental task, without the possibility of state support. In other words, the State leaves its public functions to the private sector, but limits its own responsibility under the corporate shield, that is to say, the veil is not lifted. At this point it is worth asking about the current validity of the corporate system existing in all our countries, and how some of its rules are repeated as if they were really general principles of law. The legacy of many of these rules comes from mercantilism and is the product of the colonial era,<sup>4</sup> a legacy that Latin America is still struggling to leave behind. When we examined the *Case of the Hacienda Brasil Verde Workers v. Brazil*, which concerned 85 workers whose exclusion and marginalization, as well as business interests, turned them into slaves on a farm located in the State of Pará in Brazil, we identified a problem which, if not generalized, is at least recurrent. A system whose stakeholders - public institutions and, above all, private organizations - dehumanize and turn men and women, and often children, into part of this machinery of capitalism, with no alternative opportunities for a decent life project. As noted in the judgment, this situation placed them “in the last links of the supply chains of a globalized economy,”<sup>5</sup> in which people no longer have consent or will. This case brought about an important development: it considered the possibility of including modern slavery under the traditional concept of slavery, as one of the *jus cogens* norms, which some consider immovable, even though it no longer fulfills its objectives. This example shows us that international law is and must be in constant development in order to address the most current issues, especially from the perspective of international human rights law.

4. Of course, the facts of the *Hacienda Brasil Verde* case, as well as those in the case of the *Workers of the Fireworks Factory*,<sup>6</sup> also against Brazil, show us that such aberrant practices of exploitation still persist in the twenty-first century. For a reading that reinforces these affirmations, albeit still in the order of national justice, I invite you to review the case and judgment in the case of the Furukawua Corporation in Ecuador. However, as Frantz Fanon explains, in the end all forms of exploitation are identical because they are all applied to the same objective: the individual. I agree with this point: the most significant part of exploitation, as in other human rights violations, is the victim. The legal construct that is created to protect his or her rights is, if not accessory, at least relevant for the real purpose, which is reparation. That said, the case of the Miskito divers involves interactions between different actors: the State, private companies and indigenous communities whose work was a traditional practice that was later imposed as a market rationale. I will return to the point of the stakeholders later, but I would like to reiterate that the forms of exploitation, as Fanon points out, materialize in different ways, especially in the period in which we find ourselves today, where labor is undergoing a substantive change. The international political economy is mutating into digital processes where the new technologies are not only the tools but also the object and result of labor. It is in this particular context, where capital and technology seem to merge, and where the digital space has totalizing effects, that I have raised this issue in

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<sup>4</sup> Ratner, Steven R. “Corporations and Human Rights: A Theory of Legal Responsibility.” *The Yale Law Journal* 111, no. 3 (2001): 443–545. <https://doi.org/10.2307/797542>.

<sup>5</sup> *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. 318

<sup>6</sup> *Case of the Workers of the Fireworks Factory in Santo Antônio de Jesus and their Families v. Brazil*. Preliminary objections, merits, reparations and costs. Judgment of July 15, 2020. Series C No. 407

my observations regarding Advisory Opinion 27/21 on “Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective:”

The emergence of the new technologies and services reveals unprecedented obligations and challenges for States and for their legislative and judicial functions to adapt their constitutional and legal systems, as well as to reformulate their practices in the face of the new conditions of the labor market, particularly with respect to the changes brought about by the irruption of new technologies. Undoubtedly, work through the new technologies – such as the digital platforms that underpin communications and transportation services, the online purchase and sale of food and goods in general- may represent advantages in terms of access to diversified and innovative sources of employment, but at the same time, it implies a series of modifications to traditional labor relations in terms of time, schedules, modalities of remuneration and union association and, in some cases, the use of new knowledge and technological skills not known a short time ago. However, this unprecedented and diverse employment model also entails major risks for the enjoyment of labor rights, especially if we consider that Latin America and the Caribbean have high unemployment rates. This leads people to adopt and submit - not voluntarily - to precarious forms of employment, and relationships between workers and employers with unfamiliar forms or as yet undefined contours in terms of their legal and jurisdictional guarantees. These issues must be addressed immediately and with concern, if we truly hope to address the claims of thousands of new workers in these very new circumstances, especially if we seriously consider that in 2020 the region had an unemployment rate of 10.6% according to data from the International Labor Organization. This means that more than 30 million people were jobless,<sup>7</sup> without taking into account the updated figures on the loss of employment sources, the tremendous deregulation of labor, structural adjustment policies, and the uncertain, if not poorly managed and unresolved, health crisis of COVID -19 and its devastating effects on the economies, families and individuals of our continent.<sup>8</sup>

5. Having reflected on what the future holds and whether our legal institutions as they are traditionally conceived can really address this type of problem, I would now like to consider whether the principle of attribution of responsibility in Public International Law can remain untouched, set in stone. The Western world attributes the “awakening” of humanity and the ensuing creation of an international system of protection of human rights to the consequences of the world wars. I believe that this vision is somewhat limited, since humanity and especially the native peoples and social movements of Latin America have long been advocating not only for the internationalization, but also for the guarantee of social and economic rights. Nevertheless, the traditional Western image of the Second World War as a turning point is helpful to show it is possible to transform the international system. With this transformation, the idea that only states were the international actors fell away, and the individual came to be seen as the consignee or beneficiary of international norms and the subject of rights. However, this vision still does not include other actors that today wield as much or more power than many States: transnational corporations. Thus, the classical theory of human rights does not accept any link other than that between the individual and the State. In other words, since the very emergence of the State as a major actor in international society, the protection of fundamental human rights has traditionally been applicable to its sphere of responsibility. Consequently, in modern society, States are involved in both the protection and the violation of human rights. We see from the examples cited above that this is not entirely consistent with reality.<sup>9</sup> The judgment in this case, the most recent development of

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<sup>7</sup> International Labour Organization. *2020 Labor Outlook. Latin America and the Caribbean*, 2019, page 6.

<sup>8</sup> Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective (interpretation and scope of Articles 13, 15, 16, 24, 25 and 26, in relation to Articles 1(1) and 2 of the American Convention on Human Rights, of Articles 3, 6, 7 and 8 of the Protocol of San Salvador, of Articles 2, 3, 4, 5 and 6 of the Convention of Belem do Pará, of Articles 34, 44 and 45 of the Charter of the Organization of American States, and of Articles II, IV, XIV, XXI and XXII of the American Declaration of the Rights and Duties of Man). Advisory Opinion OC-27/21 of May 5, 2021. Series A No. 27.

<sup>9</sup> There are those who consider that transnational corporations entail “a drastically different level of work” and therefore require a new body of law which they call “transnational law.” However, the discussion here is rather

the Guiding Principles on Business and Human Rights,<sup>10</sup> sets out the obligations that should guide States in guaranteeing human rights. It also emphasizes the fact that private companies must respect those rights. Undoubtedly, both are irrevocable truths. However, I leave for reflection the question of whether we are facing a process in which companies can also be recognized as responsible for human rights violations. That is to say, not only or exclusively the States in their relationship with corporations, but in addition the corporations *per se* as actors of international law.

### **b) Public policies and the role of reparation mechanisms for cases involving business and human rights**

6. The issue of the international responsibility of corporations is closely linked to the consequences of the violation, in the understanding that it is a principle of international law that, in the event of a violation, reparations must be made.<sup>11</sup> A simple and realistic interpretation would lead us to think that, if the company was the one that caused the damage, it should also be the one to make reparations. It seems that the Court has already taken an initial step in the case of the *Kaliña and Lokono Peoples v. Suriname*, in which it determined that the State should, in conjunction with the mining companies, implement sufficient and necessary actions to rehabilitate the affected area.<sup>12</sup> Clearly, in this case, the “ownership” of the reparation measure was shared with a company.

7. In the case *sub judice*, the Court adopted various measures of reparation that were endorsed in the agreement between the parties. Particularly important are the measures related to public policies aimed at social protection and the productive diversification of the local economy. However, it would have been interesting – though clearly beyond our role bearing in mind that this was a mutual agreement between the parties- to have a reparation measure that mandated the participation of corporations in the tasks of assistance, mitigation or even in the social development projects proposed as reparations.

8. The issue of business and human rights is one of the greatest challenges in the inter-American public order. Taking into account the context of Central America, the Caribbean and South America, where social inequality, high levels of migration, unemployment and informality converge, it is essential that the international system, especially the courts and tribunals, rise to this challenge. At the same time, the new technologies pose major challenges that must be addressed firmly and from a progressive and integrated human rights perspective; an endeavor and a challenge that we bequeath to the future new composition of the Court.

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whether international human rights law should apply to this reality to its full extent. Y. M. Kolosov & E. S. Krivchikova: *Mejdunarodno pravo [International Law]*, Uchebnik. Mejdunarodni otnosheniya, Moscow, 2000, p. 86

<sup>10</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR). *Guiding Principles on businesses and human rights: implementing the United Nations "Protect, respect, Remedy" Framework*, HR/PUB/11/04, 2011

<sup>11</sup> Article 63(1) of the American Convention on Human Rights grants the Inter-American Court the power to order that the victim be guaranteed the right violated, as well as to order measures of reparation that include both compensation and other additional measures. For the Court, every violation of an international obligation that implies harm entails reparation.

<sup>12</sup> Case of the *Kaliña and Lokono Peoples v. Suriname*. Merits, reparations and costs. Judgment of November 25, 2015. Series C No. 309

L. Patricio Pazmiño Freire  
Vice President

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI,  
INTER-AMERICAN COURT OF HUMAN RIGHTS,  
CASE OF THE MISKITO DIVERS (LEMOTH MORRIS ET AL.) V. HONDURAS,  
JUDGMENT OF AUGUST 31, 2021.**

I issue this concurring opinion for the purpose of recording that I have voted in favor of the abovementioned judgment in view of the fact that the respondent State in this case has, through the Friendly Settlement Agreement signed with the representatives of the victims, acknowledged the application, in their respect and in this case, of Article 26 of the American Convention on Human Rights.<sup>1</sup>

Thus, with the proviso stated above, I reiterate my position that the rights referred to in Article 26 are not justiciable before the Inter-American Court of Human Rights.<sup>2</sup> Likewise, I consider that the aforementioned acknowledgement of the respondent State in this case cannot constitute jurisprudence or precedent applicable to other States in other cases, unless they proceed in a similar manner.

Eduardo Vio Grossi  
Judge

Pablo Saavedra Alessandri  
Secretary

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<sup>1</sup> Para. Nº 13 of the Judgment.

<sup>2</sup> *Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Guachalá Chimbo et al. v. Ecuador, Judgment of March 26, 2021 (Merits, reparations and costs); Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Casa Nina v. Peru, Judgment of November 24, 2020, (Preliminary objections, merits, reparations and costs); Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of the Workers of the Fireworks Factory in Santo Antonio de Jesús and their Families v. Brazil, Judgment of July 15, 2020, (Preliminary objections, merits, reparations and costs); Dissenting Opinion of Judge Eduardo Vio Grossi, Case of Indigenous Communities Members of the Lhaka Honhat (Nuestra Tierra) Association v. Argentina. Merits, reparations and costs. Judgment of February 6, 2020; Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Judgment of November 22, 2019, Inter-American Court of Human Rights, Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs; Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Muelle Flores v. Peru, Judgment of March 6, 2019 (Preliminary objections, merits, reparations and costs); Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of San Miguel Sosa et al, v., Venezuela, Judgment of February 8, 2018 (Merits, reparations and costs); Partially Dissenting Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of Lagos del Campo v. Peru, Judgment of August 31, 2017, (Preliminary objections, merits, reparations and costs), and Individual Opinion of Judge Eduardo Vio Grossi, Inter-American Court of Human Rights, Case of the Dismissed Employees of Petroperú et al. v. Peru, Judgment of November 23, 2017 (Preliminary objections, merits, reparations and costs).*

**CONCURRING OPINION OF  
JUDGE HUMBERTO ANTONIO SIERRA PORTO**

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF THE MISKITO DIVERS (LEMOTH MORRIS ET AL.) V. HONDURAS**

**JUDGMENT OF AUGUST 31, 2021  
(Merits, reparations and costs)**

1. With my customary respect for the decisions of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), I submit this concurring opinion in order to explain some discrepancies with regard to the analysis of the merits made by the Court, together with the endorsement of the friendly settlement agreement reached between the victims in this case and the State of Honduras (hereinafter “the State” or Honduras), based on which the international responsibility of the State was declared for the violation of the rights to life, to life with dignity, to personal integrity, to judicial guarantees, to the rights of the child, to equal protection of the law, to judicial protection, to health, to work in just, equitable and satisfactory conditions, to social security, and to equality and non-discrimination to the detriment of the 42 victims in this case named in Annex 1 of the judgment. This opinion complements the position already expressed in my partially dissenting opinions in the cases of *Lagos del Campo v. Peru*,<sup>1</sup> *Dismissed Employees of Petroperú et al. v. Peru*,<sup>2</sup> *San Miguel Sosa et al. v. Venezuela*,<sup>3</sup> *Cuscul Pivaral et al. v. Guatemala*,<sup>4</sup> *Muelle Flores v. Peru*,<sup>5</sup> *National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*,<sup>6</sup> *Hernández v. Argentina*,<sup>7</sup> *Indigenous Communities Members of the Lhaka Honhat (Nuestra Tierra) Association v. Argentina*,<sup>8</sup> *Workers of the Fireworks Factory in Santo Antônio de Jesus and their*

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<sup>1</sup> Cf. *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 340. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

<sup>2</sup> Cf. *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of 23 November 2017. Series C No. 344. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

<sup>3</sup> Cf. *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs*. Judgment of February 8, 2018. Series C No. 348. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

<sup>4</sup> Cf. *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

<sup>5</sup> Cf. *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

<sup>6</sup> Cf. *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2019. Series C No. 394. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

<sup>7</sup> Cf. *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2019. Series C No. 395. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

<sup>8</sup> Cf. *Case of the Indigenous Communities Members of the Lhaka Honhat (Nuestra Tierra) Association v. Argentina. Merits, reparations and costs*. Judgment of February 6, 2020. Series C No. 400. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

*Families v. Brazil*<sup>9</sup> and *Guachalá Chimbo v. Ecuador*;<sup>10</sup> as well as in my concurring opinions in the cases of *Gonzales Lluy et al. v. Ecuador*,<sup>11</sup> *Poblete Vilches et al. v. Chile*<sup>12</sup> and *Casa Nina v. Peru*<sup>13</sup> in relation to the justiciability of Article 26 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”).

2. For this purpose, I will reiterate my position regarding the problems of interpretation and legal basis of the theory of justiciability of Article 26 of the American Convention, in particular, those arising from this judgment due to the lack of differentiation between the obligations of immediate enforceability and those of progressive development.

### **I. THE JUSTICIABILITY OF ARTICLE 26 OF THE AMERICAN CONVENTION: OBLIGATIONS OF IMMEDIATE ENFORCEABILITY AND PROGRESSIVE DEVELOPMENT**

3. In previous separate opinions I have set forth in detail multiple arguments that demonstrate the logical and legal contradictions and inconsistencies in the theory of the direct and autonomous justiciability of economic, social, cultural and environmental rights (hereinafter “ESCER”) through Article 26 of the American Convention. Indeed, the position assumed by the Court since the case of *Lagos del Campo v. Peru*, ignores the wording of the American Convention, a treaty that grants jurisdiction to the Court; it ignores the rules of interpretation of the Vienna Convention on the Law of Treaties;<sup>14</sup> it modifies the nature of the obligation of progressive development enshrined in Article 26;<sup>15</sup> it ignores the will of the States embodied in Article 19 of the Protocol of San Salvador;<sup>16</sup> and it undermines the legitimacy of the Court in the regional sphere,<sup>17</sup> just to mention some arguments.

4. On this occasion, I do not intend to delve into the aforementioned point, but rather to highlight the inaccuracies which, in my opinion, affect the decision in relation to the scope and content of the obligations of immediate enforceability and progressive development, derived from Article 26 of the Convention. As the Court has already established in its case law, the recognition of ESCER generates obligations of a different nature for the States: on the one hand, obligations that are immediately enforceable, by virtue of which effective measures must be implemented to guarantee access without discrimination to the benefits of ESCER and, on the other hand, those of

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<sup>9</sup> Cf. *Case of the Workers of the Fireworks Factory in Santo Antônio of Jesus and their Families v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 15, 2020. Series C No. 407. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

<sup>10</sup> Cf. *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs.* Judgment of March 26, 2021. Series C No. 423. Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto.

<sup>11</sup> Cf. *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 298. Concurring Opinion of Judge Humberto Antonio Sierra Porto.

<sup>12</sup> Cf. *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349. Concurring Opinion of Judge Humberto Antonio Sierra Porto.

<sup>13</sup> Cf. *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2020. Series C No. 419. Partially Dissenting Opinion of Judge Humberto Antonio Sierra Porto.

<sup>14</sup> Cf. *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375.

<sup>15</sup> Cf. *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359.

<sup>16</sup> Cf. *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349.

<sup>17</sup> Cf. *Case of the Dismissed Employees of Petroperú et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344.

progressive development, which require States to advance as efficiently and expeditiously as possible towards the full realization of those rights.<sup>18</sup> Aside from my deliberations on the regulatory content derived from Article 26, which I believe is limited to the obligation of progressivity, I find it highly problematic that many of the benefits derived from ESCER are consolidated through jurisprudence as immediately enforceable obligations.

5. In the judgment, prior to the analysis of the violations of Article 26 of the Convention, the Court points out that in this specific case it is exclusively appropriate to study the violation of the obligations of immediate enforceability with respect to the right to work in just, equitable and satisfactory conditions that ensure the safety, health and hygiene of the worker, with health and social security, which does not prevent the development of standards in this area. However, in elaborating on this aspect of the decision, the Court reiterates its case law on the aforementioned rights without making any distinction between the obligations of immediate enforceability and those of progressive development, and without specifying the criterion that differentiates one from the other from the point of view of their content.

6. That said, it could be argued that the immediately enforceable obligations referred to in the decision are those associated with the regulation, supervision and oversight of a dangerous activity carried out by individuals - which is how I believe it should be understood- either in terms of the right to work (occupational risks) or social security (labor contracting modalities). Otherwise, the central element of the notion of progressive development obligations, associated with the fact that the benefits derived from ESCER must be guaranteed to the extent of the resources available in each of the member States of the Convention, becomes blurred. In the judgment, the Court identifies as obligations derived from the right to health the provision of specific services for the treatment of certain conditions or the implementation of care centers with particular facilities in a specific region.<sup>19</sup> Although these elements are absolutely reasonable in light of the circumstances of this case, it would be wrong to conclude that the materialization of these benefits should be considered as an obligation of immediate enforceability derived from the ESCER.

7. All of the above without mentioning that the analysis carried out in relation to the right to life could have subsumed, by way of connection, precisely those contents that can be considered immediately enforceable, all reiterated with the same elements when analyzing the violation of the right to work in just, equitable and satisfactory conditions that ensure the safety, health and hygiene of the worker, as well as health and social security.<sup>20</sup>

Humberto Antonio Sierra Porto  
Judge

Pablo Saavedra Alessandri  
Secretary

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<sup>18</sup> Cf. *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para 190, and Advisory Opinion OC-27/21, supra, para. 147.

<sup>19</sup> Cf. *Case of the Miskito Divers (Lemonth Morris et al.) v. Honduras. Merits, reparations and costs*. Judgment of August 31, 2021. Paras. 95-96.

<sup>20</sup> Cf. *Case of the Miskito Divers (Lemonth Morris et al.) v. Honduras. Merits, reparations and costs*. Judgment of August 31, 2021. Paras. 78.