

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF DECEMBER 18, 2013

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF THE GARIFUNA COMMUNITY AND ITS MEMBERS v. HONDURAS

HAVING SEEN:

1. The brief of February 21, 2013, and its annexes, in which the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") submitted the *case of the Triunfo de la Cruz Garífuna Community and its members* to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), with regard to the State of Honduras (hereinafter "the State" or "Honduras").

2. The brief of July 8, 2013, and its annexes, received on July 18 that year, in which the representatives of the presumed victims (hereinafter "the representatives") presented their pleadings, motions and evidence (hereinafter "the pleadings and motions brief"), offered five testimonial statements, and asked for access to the Victims' Legal Assistance Fund of the Court "to provide funds to litigate this case."

3. The note of the Secretariat of the Court of July 29, 2013, indicating that the representatives had not mentioned that they were providing evidence to prove the presumed victims' lack of financial resources. As established in articles 2 and 3 of the Court's Rules for the Operation of this Fund, the representatives were asked to provide, by August 5, 2013, at the latest, a sworn statement by the community authorities or other appropriate evidence to prove that the presumed victims "lack sufficient financial resources to cover the costs of the litigation before the Court."

4. The communication of August 6, 2013, and its annex, in which, in response to the Secretariat's note, the representatives forwarded a statement by the President and Secretary of the "*Patronato Pro-Mejoramiento Comunidad Garífuna de Triunfo de la Cruz.*"

5. The note of the Secretariat of August 13, 2013, indicating that, in accordance with the provisions of article 3 of the Rules for the Operation of the Fund, the request would be examined and submitted to the consideration of the President of the Court for the pertinent effects.

6. The brief of October 1, 2013, and its annexes, in which the State of Honduras (hereinafter "the State") forwarded its answer to the brief submitting the case and with observations on the pleadings and motions brief.

7. The note of the Secretariat of the Court of December 9, 2013, in which, in application of article 3 of the Court's Rules for the Operation of the Victims' Legal Assistance Fund, it required the representatives of the presumed victims to forward, by December 12, 2013, an estimate of the costs that would arise from the production of the evidence for which they had requested access to the Fund.

8. The communication of December 12, 2013, in which the representatives of the presumed victims forwarded an estimate of the expenses that "the mobilization of five witnesses" would entail.

CONSIDERING THAT:

1. Honduras has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since September 8, 1977, and accepted the contentious jurisdiction of the Court on September 9, 1981.

2. In 2008, the General Assembly of the Organization of American States (hereinafter “the OAS”) created the Legal Assistance Fund of the Inter-American Human Rights System (hereinafter “the Assistance Fund of the Inter-American System”) and commissioned the OAS Permanent Council to draw up the corresponding regulations.¹ The latter adopted the corresponding Rules of Procedure in November 2009.² This Assistance Fund was created in order to “facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system.”³ According to the provisions of the Rules of Procedure adopted by the OAS Permanent Council in November 2009, the Assistance Fund of the Inter-American System has two separate accounts: one corresponding to the Inter-American Commission and the other to the Inter-American Court. The financing of the Assistance Fund of the Inter-American System, depends on “[v]oluntary capital contributions from the Member States of the OAS, the permanent observer States, and other States and donors that may wish to collaborate with the Fund.”⁴ Also, according to article 4 of the Rules of Procedure approved by the Permanent Council, it was left to the Court to regulate the eligibility requirements in order to request assistance, as well as the procedure for the approval of this assistance.

3. In accordance with the above, on February 4, 2010, the Court adopted the Rules for the Operation of the Victims’ Legal Assistance Fund, which have been in force since June 1, 2010, in order to “regulate the operation of, and access to, the [...] Fund [...] for the litigation of cases before [the Court].”⁵ As these Rules establish, in order for presumed victims to have access to this Fund, they must meet three requirements: (i) request this in their pleadings, motions and evidence brief; (2) prove, by means of a sworn statement or other appropriate probative means that satisfy the Court, that they lack sufficient financial resources to cover the costs of the litigation before the Inter-American Court, and (3) indicate precisely which aspects of their defense in the proceedings require the use of resources from the Assistance Fund.

4. As stipulated in article 3 of the Rules of the Court’s Assistance Fund, following a request to use its resources, the Secretariat of the Court will conduct a preliminary review and, if appropriate, require the applicant to forward any information needed to complete the file in order to submit this to the President. The Secretariat will then submit the request to the consideration of the President of the Court, who will evaluate the application and take the pertinent decision within three months of receiving all the required information.

¹ AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth General Assembly of the OAS, during the fourth plenary session, held on June 3, 2008, “*Creation of the Legal Assistance Fund of the Inter-American Human Rights System*,” operative paragraph 2(b).

² CP/RES. 963 (1728/09), Resolution adopted by the OAS Permanent Council on November 11, 2009, “*Rules of Procedure for the Legal Assistance Fund of the Inter-American Human Rights System*.”

³ AG/RES. 2426 (XXXVIII-O/08), *supra*, note 2, operative paragraph 2(a), and CP/RES. 963 (1728/09), *supra* note 3, article 1(1).

⁴ Rules of Procedure for the Assistance Fund of the Inter-American System, *supra* note 3, article 2(1).

⁵ Rules of the Inter-American Court of Human Rights for the Operation of the Victims’ Legal Assistance Fund, approved by the Court on February 4, 2010, article 1.

5. The representatives requested the assistance of the Fund to “provide funds for the litigation of this case, in view of the absence of financial resources to cover the costs of litigation,” specifically, “those related to the expense of air travel, accommodation and meals for the victims’ representation and the witness that are received by the Court.” In response to the request for additional information, they sent a statement by the President and Secretary of the “*Patronato Pro-Mejoramiento Comunidad Garífuna Triunfo de la Cruz*,” indicating that the *Patronato* “is a non-profit organization that does not administer funds, because it does not receive financing from any institution, either governmental or private” and, also, that “the Triunfo de la Cruz community [...] does not receive financial support. It therefore declares itself to be without financial resources and requires support in order to prepare and follow up on the case before the Court.” The representatives also presented information on the approximate amount of the expenditure that would arise from the “mobilization of five witnesses.”

6. First, the President notes that the request to access the Court’s Assistance Fund was made opportunely in the pleadings and motions brief, on behalf of the members of the Triunfo de la Cruz Garífuna Community and was supported by a statement by the community’s “*Patronato Pro Mejoramiento*.” The President understands that the said request was made on behalf of the presumed victims, exclusively; he takes note of their lack of financial resources and, in this regard, considers that the statement presented in keeping with article 2 of the Rules of the Assistance Fund of the Court is sufficient evidence of this.

7. The President recalls that the Court’s Assistance Fund is constituted by voluntary contributions from sources of cooperation and, therefore, that these limited resources are insufficient to cover all the expenses relating to the appearance and eventual presentation of evidence before the Court by the presumed victims. Consequently, in each specific case, the President must evaluate the request for assistance that has been presented in relation to the funds available, taking into account the possible needs for assistance of other cases before the Court, in order to ensure the proper administration and fair distribution of the Fund’s limited resources.

8. The President notes that, at the actual stage of the proceedings, it is not possible to determine which of the statements offered by the representatives will be received by the Court, or how they will be received. Under Article 50(1) of the Court’s Rules of Procedure, this decision corresponds to the Court or to its President once the parties have forwarded the final lists of the deponents they propose, and the right of defense has been ensured, in the terms of Articles 45 to 49 of the Court’s Rules of Procedure.

9. Based on the foregoing, the President finds that the presumed victims’ request to have access to the Legal Assistance Fund is appropriate, in the understanding that this will be to cover the expenses arising from the appearance of representatives and deponents in an eventual public hearing, as well as the presentation to the Court of sworn statements. Thus, based on the resources currently available in the assistance Fund, the presumed victims will be granted the financial assistance necessary for the presence, paid for by the Fund, of a maximum of two representatives, and for the presentation of a maximum of three statements, either during the hearing or by affidavit. In addition, the President considers it desirable to postpone the determination of the specific amount, destination and purpose of the financial assistance to be provided to the presumed victims until such time as the President or the Court decides on the admissibility and relevance of the testimony of presumed victims or witnesses and of the testimonial and expert evidence offered and, as appropriate, the opening of the oral proceeding, pursuant to Article 50(1) of the Court’s Rules of Procedure, in order to be certain which statements will be received by the Court, as well as how they will be provided.

10. Lastly, the President recalls that, under article 5 of the Rules of the Fund, the respondent State will be advised opportunely of the disbursements made in application of the

Legal Assistance Fund, so that it may present its observations, if it so wishes, within the time frame established to this end.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of his attributes in relation to the Victims' Legal Assistance Fund and pursuant to Article 31 of the Court's Rules of Procedure and article 3 of the Rules of the Assistance Fund,

DECIDES:

1. To declare that the request filed by the presumed victims, through their representatives, to access the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights is acceptable, and therefore the necessary financial support will be granted for the Fund to finance the attendance of a maximum of two representatives and for the presentation of a maximum of three statements, either at the hearing or by affidavit, and that the specific amount, destination, and purpose of this assistance will be defined when deciding on the production of testimonial and expert evidence, and the opening of the oral proceedings, pursuant to Article 50 of the Court's Rules of Procedure, as established in considering paragraph 9 of this Order.
2. To require the Secretariat of the Court to notify this Order to the representatives of the presumed victims, the State of Honduras, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary