

GARÍFUNA TERRITORIAL REPARATION

EXIGIMOS EL CUMPLIMIENTO
DE LA SENTENCIA

A REPORT FROM THE FIELD

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This paper arises out of research by the Human Rights in Action Clinic at UCLA Law under the direction of Joseph Berra. The research was funded by the Promise Institute for Human Rights. We conducted our fieldwork in coordination with the Garífuna-led Black Fraternal Organization of Honduras (*Organización Fraternal Negra de Honduras-OFRANEH*). OFRANEH is a representative organization of the Garífuna people, which works on the promotion and defense of their territories and human rights and in the reproduction of Garífuna culture and life. Through OFRANEH, we worked closely with the Triunfo de la Cruz community's Committee for the Defense of Land and Territory (*Comité de Defensa de la Tierra y Territorio-CODETT*) and the Committee for Compliance with the Sentence (*Comité de Cumplimiento de la Sentencia*).¹

Clinic students Mollie Cueva-Dabkoski, Rita Kuckertz, Victoria Adouvi and Kelly Koehnen collaborated in field research January 3-15, 2024. All students contributed significantly and collectively to the research and analysis. Mollie Cueva-Dabkoski worked as a research assistant with Joseph Berra and together they co-authored this paper. Rita Kuckertz deserves separate recognition as a contributing author for her write-up and analysis of parts of the field research that found its way into our final product.

COVER IMAGE

Figure 1. A sign posted on reoccupied Garífuna land in Triunfo de la Cruz, which reads "*Exigimos El Cumplimiento de la Sentencia*," or "We Demand Compliance with the Sentence," referring to the unfulfilled 2015 Inter-American Court of Human Rights sentence.

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INTRODUCTION

In January 2024, the Human Rights in Action Clinic of the Promise Institute for Human Rights at UCLA School of Law conducted field research in the Garífuna community of Triunfo de la Cruz, Honduras. The subject of the trip was the status of implementation of the 2015 Inter-American Court of Human Rights (IACtHR or the “Court”) ruling in the case of the *Garífuna Community of Triunfo de la Cruz v. Honduras*.¹ The Court recognized that the Honduran state had violated the collective property rights of the community, who were, among other things, entitled to delimitation, demarcation, and a clear title to their traditional lands.

The first day of our fieldwork coincided with the recent reoccupation of 17 hectares of Garífuna land in Triunfo de la Cruz by community members. This land is part of the collective Garífuna land title recognized by the Court. The reoccupation, discussed further below, was a direct action on the part of the Garífuna community of Triunfo de la Cruz to enforce the Court’s decision in the face of the state’s failure to implement its rulings. In reflection of this reoccupation, this report seeks to examine the state’s failure to fully comply with the Court’s ruling, analyze the underlying causes of this inaction, including the Court’s limited ability to enforce its judgment, and propose a path forward in light of our field research.²

We conducted our fieldwork in coordination with the Garífuna-led Black Fraternal Organization of Honduras (*Organización Fraternal Negra de Honduras-OFRANEH*),³ as well as the Triunfo community’s Committee for the Defense of Land and Territory (*Comité de Defensa de la Tierra y Territorio-CODETT*) and the Committee for Compliance with the

¹ *Garífuna Community of Triunfo de la Cruz and its Members v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 305 (Oct. 8, 2015).

² For those interested in the Garífuna land struggle, we highly recommend Christopher Loperena’s book *The Ends of Paradise: race, extraction, and the struggle for Black life in Honduras* (2023). Loperena’s thoroughly researched work, also focused on Triunfo de la Cruz, offers a broader historical, theoretical and anthropological perspective on the Garífuna struggle for land sovereignty with corresponding analysis and discussion.

³ OFRANEH is a representative organization of the Garífuna people, which works on the promotion and defense of their territories and human rights and in the reproduction of Garífuna culture and life.

Sentence (*Comité de Cumplimiento de la Sentencia*).⁴ We visited independently with and interviewed officials from local offices of the cadastre and the national property institute. During our fieldwork, we also visited the nearby Garífuna community of San Juan to participate in a community assembly discussion regarding the Court's more recent 2023 decision in the case of the *Garífuna Community of San Juan v. Honduras*, which is discussed in more depth below.⁵

⁴ Clinic Director Joseph Berra led clinic students Mollie Cueva-Dabkoski, Rita Kuckertz, Victoria Adouvi and Kelly Koehnen in field research January 3-15, 2024. Joseph Berra returned August 1-8, 2024 and January 18, 2025 for follow up research. All students contributed significantly and collectively to the research and analysis. Mollie Cueva-Dabkoski worked as a research assistant with Joseph Berra and together they co-authored this report based on our research. Rita Kuckertz deserves separate recognition as a contributing author for her write-up and analysis of parts of the field research that made its way into the "Business as Usual" section of this report below. Our findings and observations from these trips are presented throughout this report, with specific cites to our fieldnotes taken in conversations and interviews with relevant actors and from our observations.

⁵ *Garífuna Community of San Juan and its Members v. Honduras. Merits, Reparations, and Costs*, Judgment. Inter-Am. Ct. H.R. (Ser. C) No. 496 (Aug. 29, 2023).

**THE 2015 TRIUNFO DE
LA CRUZ SENTENCE:**

**ADJUDICATION OF
GARÍFUNA TERRITORIAL
RIGHTS**

The Garífuna community of Triunfo de la Cruz, a distinct Afro-Indigenous people, is located on the Atlantic coast of Honduras, approximately two and a half hours from San Pedro Sula. It is one of 47 Garífuna communities on Honduras' northern (Atlantic) coast. The Garífuna community has long defended their ancestral lands from state and third-party intrusions, availing itself of the limited legal protections at their disposal in the settler state framework.

Beginning in the late nineteenth century and into the twentieth, Garífuna lands were threatened by the incursion of North American banana companies on Honduras' Atlantic coast. During the same period, and possibly in response to these threats, Garífuna communities sought and obtained recognition of their collective property in the form of *ejidos*.⁶ This limited title and recognition of their territory was constrained by the legal framework of the time, which did not contemplate the Garífuna's conception of their territory or current standards for recognition of Indigenous collective property. Nevertheless, the community of Triunfo de la Cruz obtained ejidal title to a little over 380 hectares in 1950. During the agrarian reform of the 1970s, the community sought protection of their ancestral lands through the legal figure of the *garantía de ocupación*.⁷ In 1979, the Garífuna community of Triunfo de la Cruz obtained title via a *garantía de ocupación* to an additional 126.40 hectares. It is worth noting that these protections for Garífuna communal property did not cover the full extent of the community's claim to their traditional and ancestral territory.⁸

Following the neoliberal reforms of the early 1990s, specifically the passage of the Law of Modernization and Development of the Agricultural Sector (*Ley de Modernización y Desarrollo del Sector Agrícola*), which sought to regularize and liberalize

⁶ *Ejidos* in the Spanish colonial legal system and subsequent Honduran legal system represent a form of communal property with usufruct rights for community members.

⁷ The *garantía de ocupación* protected property rights, in this case communal property rights, from affectation by the agrarian reform.

⁸ This has been used as a pretext by the state to blame the community for its failure to demarcate land adjudicated in the community's favor. The community has never ceded claims to its full ancestral territory and the Court did not require them to do so. The community's raising of its ancestral claim in the demarcation process does not relieve the state of its duty to demarcate and deliver clear title to those areas that were definitively adjudicated in their favor. See Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Monitoring Compliance with Judgment, Order of the Court, 2019 Rep. Inter-Am. Ct. H.R. 1, 15 (May 2019) ("2019 Monitoring Compliance with Judgment").

the Honduran land market, the Triunfo de la Cruz community pushed for titling of their communal lands. This effort was aided in part by Honduras' ratification of the International Labour Organisation's Indigenous and Tribal Peoples' Convention No. 169 (ILO Convention 169) in 1995. This became the legal framework for demanding the delimitation, demarcation and titling of lands traditionally used and occupied by Indigenous peoples, including the Garífuna. However, pressures from both the state and private interests severely limited the titling process.

In 1993 the community obtained title in *dominio pleno* to the roughly 380 hectares of its *ejido* title.⁹ In 1997 the community sought title to an additional 600 hectares and in 1998 it sought title to the 126 hectares it held in *garantía de ocupación*.¹⁰ Of this, the National Agrarian Institute (*Instituto Nacional Agrario* or INA) recognized approximately 642 hectares as traditional Garífuna territory, however it only titled an additional 234 of those 642 hectares in 2001. Excluded were 408 hectares identified as Lot A1 which formed part of the area which the Tela municipality had putatively annexed in 1989.¹¹ INA had resolved to study the legality of titles held within that area, seek to annul them in the courts, and ultimately provide clear title to the Triunfo de la Cruz community.¹² However, it never fulfilled this disposition and in fact failed to clear title in those areas which were titled in favor of the community.

The state's failure to adequately provide clear title and judicial security to their collective property led the Garífuna organization OFRANEH to file petitions in the Inter-American System of Human Rights, alleging violations of Garífuna collective property rights in the communities most impacted by the state's inaction. Among those

⁹ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, 110.

¹⁰ *Id.*

¹¹ *Id.*, 115

¹² *Id.*

communities were the Garífuna communities of Triunfo de la Cruz and San Juan, the focus of our January 2024 fieldwork.¹³

In October 2015, the Inter-American Court of Human Rights (IACtHR or the “Court”) recognized that the Honduran state had violated the collective property rights of the Garífuna community of Triunfo de la Cruz by failing to protect their collective title to their traditional territory, requiring reparatory action in the form of recognition, demarcation and legal protection of Garífuna lands.¹⁴ Specifically, the Court ruled, among other things, that the Honduran state was required by law to fully demarcate and *sanear*, or deliver clear title, to the land previously titled to the to the community (380 hectares in 1993 and 234 hectares in 2001).¹⁵ Additionally, the ruling required the Honduran state to delimit, demarcate and deliver clear title to the land recognized by the state as the community’s traditional territory in Lot A1. These processes were supposed to have been completed within two years of the Court ruling.¹⁶ In addition, the Court ordered the state to engage in consultation with the Garífuna community to

¹³ OFRANEH currently has seven cases at various stages in the Inter-American Human Rights System: *López Álvarez v. Honduras*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 141 (Feb. 1, 2006). This case was decided by the Court in 2006 in favor of Alfredo López Álvarez, unlawfully detained leader of the Triunfo de la Cruz community. *Garífuna Community of Triunfo de la Cruz and its Members v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 305 (Oct. 8, 2015); *Garífuna Community of San Juan and its Members v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 496 (Aug. 29, 2023); *Garífuna Community of Punta Piedra and its Members v. Honduras*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 304 (Oct. 8, 2015); *Garífuna Community of Cayos Cochinos and its Members v. Honduras*, Inter-Am. Ct. H.R., No. 12.614; Inter-Am., Comm’n H.R., Report No. 33/20. These cases were filed at the same time for the state’s failure to recognize and secure the communities’ territorial rights. The first three were decided by the Court in favor of the communities and are in monitoring and compliance stages. Cayos Cochinos is pending before the Court. *Garífuna Community of Travesía, Honduras*, Admissibility Petition 1458-11, Inter-Am. Comm’n H.R., Report No. 33/20 (Feb. 20, 2020). This case also deals with territorial rights and is pending before the Commission; *Garífuna Community of Honduras*, Admissibility Petition 1364-11, Inter-Am., Comm’n H.R., Report No. 197/21 (Sept. 7, 2021). This case challenges the 2004 Property Law as violative of Garífuna collective property rights and is pending before the Commission.

¹⁴ *Garífuna Community of Triunfo de la Cruz and its Members v. Honduras*, Merits, Reparations, and Costs, “Resolutive Paragraphs,” ¶¶ 1-17.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 6-7; *Garífuna Community of Triunfo de la Cruz and its Members v. Honduras*, Merits, Reparations, and Costs, “Reparations,” 259.

ensure access and use of their traditional lands within the boundaries of the Punto Izopo National Park, in the area known as Lot A4.¹⁷

Specifically with regard to lot A1, the Court ordered the state to initiate a process of expropriation to comply with the territorial reparation.¹⁸ This process would also require just compensation (or indemnification) for those prejudiced by the process.¹⁹ As justification, the Court recalled its jurisprudence recognizing restrictions on individual private property where “necessary to achieve the collective objective of preserving cultural identities in a democratic and pluralistic society within the meaning of the American Convention.”²⁰ The Court provided for an exceptional circumstance where, if for well-founded reasons, restitution of Garífuna land were not possible, the state, in consultation with the community, might confer title to the community of “alternative lands of the same size and quality than those not granted.”²¹

The Court found that the Honduran state must allow, within the same two-year time frame, “free access, use, and enjoyment” where the community’s ancestral collective land overlaps with the adjacent Punta Izopo National Park.²² The sentence noted that the Court maintains jurisdiction over the implementation of the ruling per the American Convention on Human Rights, and “will supervise full compliance with this judgment.”²³ In its words, “[the Court] will close this case once the State has

¹⁷ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, “Resolutive Paragraphs,” 11; see also Figure 12, depicting the INA map used by the Court to identify lands recognized as Garífuna traditional territory and identification of the area titled in 1993 and Lots A1, A2, A3 and A4 subject to the 2001 titling process and the Court’s decision.

¹⁸ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, “Resolutive Paragraphs,” 7; Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, “Reparations,” 261.

¹⁹ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, “Reparations,” 261.

²⁰ *Id.* (citing to Case of Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser C) No. 125, 148 (June 17, 2005)).

²¹ *Id.* at 262. The state would later argue this exception as an excuse for not complying with its obligation of territorial reparation, an argument the Court rejected because the state had not fully engaged in a process of expropriation and did not present well-founded reasons for the exception. See analysis below of the Court’s 2019 and 2021 Monitoring and Compliance reports.

²² Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, “Resolutive Paragraphs,” 11.

²³ *Id.* at 17.

complied with the provisions of the Judgment.”²⁴ Because the state has not fulfilled its obligations, the Court retains jurisdiction for the monitoring of compliance.

²⁴ *Id.*

STATUS OF COMPLIANCE

Honduras has not implemented the most important provisions of the IACtHR's ruling regarding territorial reparation since its release in 2015. The state's technical duties to recognize and protect Garífuna land include the delimitation, demarcation and titling of their collective land, and *saneamiento* of compromised, third-party, or *tercero*-held, land in the community's territory. The process of *saneamiento* includes an obligation to regularize and deliver clear title to the lands recognized by the 2015 ruling as part of the Garífuna collective title.²⁵ This is a multistage process that includes conducting a census of individuals on each parcel, assessing the possessory rights of *terceros*, compensating them if they have a right to indemnification, and titling and registering the property to the community as collective property.²⁶

Honduras' obligation to demarcate Garífuna collective title requires a complex remedy of inter-institutional coordination and decision-making. So far, the Honduran state has made two attempts to fulfill the sentence through inter-institutional commissions. The first, the Inter-Institutional Commission for Compliance with International Judgments (CICSI) failed, and the success of the second, the High Level Inter-Institutional Commission for Compliance with International Judgments (CIANCSI), remains to be seen, as is discussed below.

As part of its own mandate to ensure compliance with the ruling, the IACtHR held two hearings on Honduras' compliance, in November 2018 and March 2021, and released two monitoring reports following those hearings, tracking the Honduran state's actions to comply with the sentence. The monitoring reports were released in May 2019 and April 2021.²⁷ Each detailed the Honduran state's limited compliance and substantial failures to implement the Court's sentence, particularly with respect to Garífuna territorial reparation.

²⁵ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Duty to Adopt Provisions of National Law," 191 n.202.

²⁶ *Id.*

²⁷ 2019 Monitoring Compliance with Judgment; Garífuna Community of Punta Piedra and Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Monitoring Compliance with Judgment, Order of the Court, 2021 Rep. Inter-Am. Ct. H.R. 1 (Apr. 30, 2021) ("2021 Monitoring Compliance with Judgment"). The Court conducted a hearing and issued its report on both the Punta Piedra and Triunfo de la Cruz cases. Our fieldwork did not include the Punta Piedra case, and it is not addressed here.

The 2019 report made evident that the Honduran state's implementation process had so far been ineffective, finding there had been no evidence of "significant progress" in the key provisions of demarcation and titling.²⁸ Importantly, the report noted that the state had failed to meet the Court's two-year deadline for compliance with the ruling.²⁹ The Court did not indulge the state's justifications and attempts to lay blame on the community for its failure to comply with the ruling; in this regard, it reiterated the state's obligation.³⁰ The Court also rejected the state's allegation that indemnification of the developers of the expansive Playa Escondida resort³¹ and the owners of luxury homes in the Marbella Club development³² was impossible due to the high appraisals of the properties, and similarly rejected the state's assertion that the community should be required to accept the "exceptional" remedy of alternative lands instead of those ancestral lands they were entitled to by the Court's ruling.³³ It reminded the state that it had violated the community's territorial rights by failing to demarcate and title the land occupied by these developments in their favor.³⁴ The Court further noted that the state had failed to prove that it had realized appraisals in a manner following its own internal norms regarding expropriation.³⁵ Specifically, the Court observed that the state had not exhausted efforts to title and *sanear* the Garífuna lands in compliance with the Court's order of territorial reparation for the state's violation of the community's collective property rights over those same lands.³⁶ Therefore, the state had failed to show that the exceptional remedy of providing Garífuna members with alternative lands should apply.

²⁸ 2019 Monitoring Compliance with Judgment at ¶¶ 12.

²⁹ *Id.*

³⁰ *Id.* at 12-13.

³¹ Playa Escondida Beach Club is a third party-owned, luxury hotel development in the eastern side of Triunfo de la Cruz, built illegally on Garífuna land.

³² The partially developed Marbella Club project is composed of 44 acres, which the Tela municipality allotted to a private company, *Inversiones y Desarrollo de Triunfo, S.A.* (IDETRISA), between 1993 and 1995, against the Garífuna's previously-granted right of occupancy to the area. Various third party-owned homes are located within the Club's 44 acres, though the project remains incomplete. *Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Facts,"* ¶ 74.

³³ 2019 Monitoring Compliance with Judgment at ¶¶ 20-23.

³⁴ *Id.* at 21.

³⁵ *Id.* at 23.

³⁶ *Id.*

Finally, the 2019 report noted that the state's failure to comply with the Court's ruling represented a continuing violation of the community's territorial rights, giving rise to new affectations of those rights.³⁷ It contended that the state's failure also increased social conflict in the zone, including the homicides of four community members related to territorial issues.³⁸ The Court also noted that the state's failure had led to "new intrusions, additional expansions, interferences or affectation" by *terceros* limiting the community's use and enjoyment of its territory.³⁹ Couched in the measured language of the Court, the 2019 report was a scathing rebuke of the state's failure to comply with the 2015 ruling.

The 2021 hearing and monitoring report followed the shocking forced disappearance of four community members, including the president of the Triunfo de la Cruz communal board or *patronato*, Sneider Centeno, in July 2020, which resulted in Court-ordered provisional measures of protection for the Triunfo community in September 2020.⁴⁰ The Court again found little in the way of actual implementation of the Court's order, stating "there has been no substantial progress in the measures of reparation, land restitution and cessation of the violations."⁴¹ A key issue for the Court was the status of the state's efforts at *saneamiento*, which the state framed again as an issue of "indemnification," providing confusing information on what progress had been made and what funds had been allocated or spent in that process.⁴² The Court criticized the actions and mechanisms chosen by the state to comply with the restitution of Garífuna lands as insufficient and too slow.⁴³ In its report, the Court required the state to consider the solution proposed by the community's representatives to initiate legal processes of expropriation for the *saneamiento* rather than ad hoc "indemnification" based on the *terceros'* own self-appraisals.⁴⁴ The latter process appears to have only led

³⁷ *Id.* at 24.

³⁸ *Id.*, referring to the homicides of Oscar Brega, Jesús Álvarez Roche, Jorge Castillo Jiménez and Julio Alberto Morales.

³⁹ *Id.*

⁴⁰ 2021 Monitoring Compliance with Judgment at 5. The other disappeared are Milton Joel Martínez Álvarez, Suami Aparicio Mejía García, and Gerardo Misael Trochez Calix.

⁴¹ *Id.* at 52.

⁴² *Id.* at ¶¶ 36-38.

⁴³ *Id.* at 36.

⁴⁴ *Id.* at 37.

to incapacitation of the state's ability to implement the sentence and its foregone conclusion that the only solution was to offer the community alternative lands, which the Court had criticized and rejected in its 2019 report.

Once again, the Court reiterated that the territorial reparation of demarcation, titling and *saneamiento* was essential to prevent violations to the community's territorial rights and, as such, the state's failure to comply with the Court's ruling constituted a continuing violation of those rights.⁴⁵ The concern that this failure would generate "new intrusions, additional expansions, interferences or affectations on the part of third parties that may undermine the existence, value, use, or enjoyment of the [community's] territory" and endanger community members through "an increase in the area's social conflict" was patently realized in the deaths and disappearance of members of the community.⁴⁶ The Court made clear that these measures of territorial reparation—demarcation, titling and *saneamiento* of the Garífuna community's territory—were unfulfilled.⁴⁷ Given the Honduran state's noncompliance with the IACtHR ruling, the Court again recognized that the Garífuna community in Triunfo de la Cruz is experiencing an ongoing violation of their land and territorial rights.⁴⁸

Little progress in demarcation and titling occurred following the 2021 Court monitoring hearing and report, which was released during an electoral year in Honduras. In November 2021, national elections were held, and in January 2022, a new administration was installed under President Xiomara Castro. The community began yet another arduous journey of negotiations and engagements with the new Castro administration to demand and achieve full state compliance with the Court sentence.

During our January 2024 fieldwork, OFRANEH and the Garífuna communities of Triunfo de la Cruz and Punta Piedra actively advocated to reconstitute an inter-institutional commission tasked with fulfilling the IACtHR sentence. According to OFRANEH, the previous inter-institutional commission, CICSÍ, failed because the

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 38.

⁴⁸ *Id.* at 34.

institutional representatives did not have true decision-making authority or capacity.⁴⁹ As such, the representatives consistently deferred to their national offices or the ministers/directors of the respective ministries and agencies. The necessary directives to implement the demarcation and *sanieamiento* stalled and the implementation initiatives languished, as a result.⁵⁰ Therefore, OFRANEH and the relevant impacted communities demanded the creation of the High Level Commission for Compliance with International Judgments (*Comisión de Alto Nivel para el Cumplimiento de las Sentencias Internacionales*) or CIANCSI. They insisted on participation by governmental ministers and directors or similar institutional representatives with decision-making authority. Through direct action and advocacy, including a massive mobilization in 2023 to raise their demand, OFRANEH urged the government to create CIANCSI per their requirements. During our fieldwork in January 2024, we accompanied community representatives from Triunfo de la Cruz and Punta Piedra and OFRANEH to Tegucigalpa, where they met with the Honduran Foreign Minister, the Solicitor General, the Minister-Director of the National Agrarian Institute, and the Secretary of the Presidency to push for CIANSI's creation. Due to these intensive efforts, CIANCSI was finally constituted by presidential decree in March 2024 and installed on April 12, 2024. This report is being released one year from that installation. Analysis of CIANCSI's functioning over the past year is beyond the scope of our research, however we are disheartened to learn that little progress has been made towards effective implementation of the sentence.⁵¹ If CIANCSI fails to achieve the goal of territorial reparation, it will likely be due to some combination of factors linked to the structural causes of the state's failure to comply with the sentence as detailed below.

⁴⁹ Fieldnotes, January 8, 2024.

⁵⁰ Fieldnotes, January 12, 2024.

⁵¹ Discussions with OFRANEH leadership, March 2025.

**STRUCTURAL CAUSES
OF THE STATE'S
FAILURE TO COMPLY:**

**THE INERTIA AND
WEIGHT OF SETTLER
COLONIAL AND
NEOLIBERAL LOGICS**

Many obstacles currently confront the achievement of Garífuna territorial reparation in Triunfo de la Cruz and other Garífuna and Indigenous communities in Honduras. The most significant of these is the irregular and contested process of land acquisition and occupation by *terceros*, which is an ongoing expression of settler colonial and neoliberal logics. Settler colonial logics underpin and explain the larger settler colonial process. Settler colonialism defines the practice of dismantling Indigenous society, institutions, norms, and structures for the establishment of the dominant settler society on the dispossessed land base.⁵² Neoliberal logics, on the other hand, correspond to the dismantling of state regulation in favor of market-based approaches, and with respect to land and resources, privatization to promote capitalist extraction and exploitation.⁵³ Both structures, and the logics that support them, work in concert and define the relationship between the Garífuna and the Honduran state.

The Honduran state's settler colonial logics favor *tercero* appropriation while failing to protect and respect the Garífuna's collective property rights. It would seem that the Honduran state formally recognizes collective property rights. Honduras' Property Law, Decree No. 82-2004 of June 29, 2004 establishes that collective Garífuna land—and all other Indigenous and Afro-Descendant collectively owned land—is inalienable, non-seizeable, and imprescriptible.⁵⁴ These principles were present in the earlier titling of Garífuna lands prior to the 2004 law, and are in line with standards articulated in ILO Convention 169 and subsequent international instruments on the rights of Indigenous peoples. Under their customary law, Garífuna land can be passed among other community members, but it can never be sold, seized, and its title can

⁵² See Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. Genocide Rsch. 387 (2006) on the theoretical framework of settler colonialism; Shannon Speed, *Structures of Settler Capitalism in Abya Yala*, 69 Am. Q. 783 (2017) for an application of the framework to Abya Yala (Latin America); Loperena, *supra* note 2 at 1-16, for application of the framework to Honduras in relation to the Garífuna people.

⁵³ See David Harvey, *A Brief History of Neoliberalism* (2005); Loperena, *supra* note 2 at 25-78, for a description of these logics as they played out historically in Honduras and specifically in the Garífuna territories in the form of tourism extranctivism.

⁵⁴ Decree 82-2004 of June 29, 2004, Property Act, Art. 100. It should be noted that Title V, Chapter III of the law on the titling of Indigenous and Afro-descendent lands in Honduras has been criticized by OFRANEH and other Indigenous organizations. Their critiques are that Article 100 is too weak in its recognition and protection of Indigenous lands and incorporates neoliberal logics by providing for the potential parcelization and alienation of Indigenous and Afro-descendant lands if the community so decides, contrary to customary norms. In 2003, OFRANEH filed a petition with the IACtHR alleging that the law as written violated their rights to land and territory.

never expire. However, Garífuna title has never been fully delivered and enforced under those norms.

Despite this domestic tenet, which the Inter-American system recognized in the Triunfo decision,⁵⁵ Garífuna collective land title is not protected or respected by the Honduran state. Such state encroachment on Garífuna land includes the municipality of Tela's annexation of parts of Triunfo's territory in 1989 and the national government's annexation of the eastern portion of Triunfo's ancestral land for the creation of Punta Izopo National Park in 2000.⁵⁶ Even after the Court's ruling, state actors, like the *catastro* (cadaster or land registry office), and the National Institute of Property (IP), both institutions responsible for registering individual and collective property in the country, have not conformed their technologies, practices or policies to comply with the sentence, and have favored recognition of land held by *terceros*. The Court noted a "lack of clarity" in the property registration process in detriment of the Garífuna's territorial rights and ordered Honduras to establish mechanisms for the protection of Garífuna collective property.⁵⁷ The inclusion of this obligation is designed to prevent further harm, but although the Court noted the state's lack of clarity in the property registration process, it failed itself to understand that process as a settler colonial technology of dispossession and discrimination.⁵⁸

Because of the state's inaction, dispossession of Garífuna land by third parties has metastasized across their Triunfo territory, leaving existing conflicts with *terceros* unresolved, while new conflicts continue to arise. *Tercero* residents in Triunfo include wealthy elites who have built beachfront vacation homes across the community.⁵⁹ Additionally, speculators and developers have appropriated Garífuna land for real estate or touristic development, as in the case of Club Marbella and Playa Escondida.⁶⁰

⁵⁵ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Report on Merits No. 76/12, Inter-Am. Comm'n. H.R., Case No. 12,548, 198 (Nov. 7, 2012).

⁵⁶ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Facts," ¶¶ 73, 86.

⁵⁷ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Merits," 282; "Resolutive Paragraphs," 12.

⁵⁸ 2019 Monitoring Compliance with Judgment at ¶¶ 50-52; 2021 Monitoring Compliance with Judgment at 43-47.

⁵⁹ Fieldnotes, January 4-7, 2024.

⁶⁰ *Id.*

Other outsiders include traditional *terratenientes* or landholders seeking land for extensive agricultural or agro-industrial usage, such as cattle ranching and African palm cultivation, both of which have been introduced into the territory by *terceros*.⁶¹ Many of these land holdings have come about as the result of *tercero* bargaining, pressuring or intimidating Garífuna community members.⁶² In addition to these forms of land holding, long-time *tercero* residents, who have a history of harmonious co-existence with the Garífuna and whose holdings are not aimed at large-scale development, also reside in the community.⁶³ These various forms of *tercero* land possession underscore the state's complicity in facilitating land dispossession, in favor of a neoliberal market-based intrusions into Garífuna land.

The presence of third party-held land in Triunfo de la Cruz emphasizes various elements of settler-colonial and neoliberal dynamics at play: first, the Garífuna of Triunfo de la Cruz face continual pressure from larger Honduran society to relinquish collective Garífuna title for private gain, both individual and corporate, particularly in relation to tourism and the land's natural beauty. This consists of pressures from third parties to purchase land for private benefit and broader de jure recognition by the Honduran state of *tercero* purchased Garífuna land, in violation of the 2015 IACtHR ruling.⁶⁴ This also includes the Honduran state's expropriation of Garífuna land for the formation of Punta Izopo National Park and the promotion of tourism. Underpinning the state's de facto and de jure recognition of *tercero* purchased land are settler state logics and mechanisms that are analyzed in more detail in Section 5, which examines the state's infrastructure of noncompliance. The presence of third-party land holdings in the community illustrates unequal power relationships between the Garífuna and Honduran society, whereby the state and private actors have more social, political, and economic capital than the community. These unequal power relationships –and their

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Reparations," 264.

violent expressions described below—are an ongoing product of the settler colonial project and the inherent racism embedded in that project and Honduran society.⁶⁵

This dynamic results in intrusions by the dominant society into the Garífuna community, whether by taking advantage of community goodwill or exerting undue influence to negotiate and undermine Garífuna land title. In the extreme, the latter dynamic is expressed by efforts to infiltrate and intimidate communal governance structures, threaten acts of violence against community leaders and land defenders, and the ability to carry out those threats with impunity.⁶⁶

As a practical matter, in the face of this complicated dynamic and in opposition to these structural dynamics, Honduras is obliged to implement the Court's decision recognizing the Garífuna's right to territorial reparation and must resolve the problem of *terceros* occupying Garífuna land. As mandated by the Court, the state must strive to restore Garífuna title to their territory through legal processes of expropriation. Until that process is completed, the state must "refrain from acts that could lead agents of the State itself, or third parties acting with its acquiescence or tolerance, to affect the existence, value, use or enjoyment of the lands to be returned to them and of those lands to which they currently hold title."⁶⁷ Nevertheless, local authorities continue to recognize *tercero* possession under a practice determined by these structural causes that we call "business as usual."

⁶⁵ Christopher A. Loperena, *Settler violence?: Race and Emergent Frontiers of Progress in Honduras*. 69 Am. Q. 801 (2017). In our interviews with government officials, we observed the popular usage of the term "los morenos," a racially charged and derogatory way of referring to the Garífuna.

⁶⁶ Fieldnotes, January 4-7, 2024; 2021 Monitoring Compliance with Judgment at 5.

⁶⁷ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Reparations," 264.

‘BUSINESS AS USUAL’:

**THE STATE’S
INFRASTRUCTURE OF
NONCOMPLIANCE**

Our fieldwork uncovered how the continued dispossession of Garífuna collective property has been facilitated by “business as usual” land titling procedures at the local level, which illustrate and evidence the larger settler colonial logics at play in the Honduran state. In effect, *tercero* appropriation is ongoing because of a disconnect between the IACtHR ruling and practices at the local level. Appropriate administrative mechanisms to recognize and protect collective Garífuna land in Triunfo de la Cruz are absent. On the contrary, mechanisms at the local level operate to perpetuate Garífuna land dispossession. Various elements compromise this outdated and non-compliant infrastructure.

Failure to Prevent Further Dispossession and Erosion of Garífuna Rights

First, local state actors fail to recognize and protect Garífuna collective property, notwithstanding Honduras’ obligation to do so under the IACtHR decision. It was only recently, in May 2024, following the creation and insistence of the CIANCSI, that the national board of the *Instituto de la Propiedad* (the National Institute of Property or IP) issued a directive to the local IP office in Tela to abstain from inscribing or registering real property or acts affecting real property (e.g. purchase or transfer of title to third-party holders, mortgages, construction permits, etc.) in Court-recognized Garífuna territory of Triunfo de la Cruz.⁶⁸ However, as of this report’s fieldwork, the local office of the *catastro*, the office responsible for identifying and registering land use and occupancy, had not received a directive, other than the occasional note sent by the local office of the IP.⁶⁹ This was affirmed in our January 2024 fieldwork, where the local Tela offices of both the *catastro* and the IP reported not being familiar with the Court ruling or its impact on administrative acts.⁷⁰

⁶⁸ Instituto de la Propiedad, Oficio No. SE-IP-190-05-2024, May 15, 2024. Fieldnotes, August 2, 2024.

⁶⁹ Fieldnotes, August 2, 2024.

⁷⁰ Fieldnotes, January 11, 2024.

The directive to the local IP office in Tela to refuse registration in Garífuna territory within Triunfo de la Cruz is well overdue. In January 2024, officials at IP's Tela office reported their belief that the national IP was alone responsible for determining specific local operations regarding land titling and implementation of the IACtHR ruling.⁷¹ These officials claimed they were unable to change land titling procedures or withhold their ministerial duties unless the national IP office commanded them to cease registration of land transfers, as happened only recently.⁷² Until then, they feared being liable for “abuse of authority” if they prohibited or refused to register land transfers without an explicit directive from the national office.⁷³ In effect, local officials shifted responsibility for the sentence's implementation to national bodies. Only now, at the insistence of CIANSCI, has the national governing board of the IP provided guidance and directive for preventing further actions that would threaten or erode Garífuna territorial rights while the state implements the Court's sentence.⁷⁴

Even so, the local IP lacks adequate institutional capacity to enforce the Court's injunction protecting the status of Garífuna rights. Despite the office's mandate to oversee the transfer and registry of property titles, staff do not possess the ability to locate or map individual tracts of land. The office uses an electronic registry system called the Unified Registration System (*Sistema Unificado de Registro* or SURE) to register title and land transfers since 2011.⁷⁵ Any recording acts before that year were recorded by hand in serial *tomos* or books.⁷⁶ Users can use both systems to research the chain of title for any given plot.⁷⁷ However, information on the exact georeferenced location and description of the land in question in the municipality of Tela is often incomplete in both the SURE system and the physical record.⁷⁸ As a result, Tela's IP office cannot decipher whether a given land transfer is prohibited under the IACtHR opinion, as they

⁷¹ Fieldnotes, January 11, 2024.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Fieldnotes, August 2, 2024.

⁷⁵ Fieldnotes, January 11, 2024.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

cannot tell whether it falls within the sentence's geographic area.⁷⁹ While they are given the plot's general location (e.g., "Tela" or "San Juan"), and have a description of the plot's size and the bordering properties, their current systems do not definitively map or register whether a plot of land is within the Garífuna community's Court-recognized territory.⁸⁰ In effect, as IP officials noted, they are "working blind" when it comes to the location of a plot of land.⁸¹

Nonetheless, the municipal government's *catastro*, or physical land survey and registry office, has that capacity.⁸² For example, it has established a process to verify whether a particular plot falls within a "protected area" that cannot be sold.⁸³ They have previously employed this system to ensure that land recognized as ecological reserve territory, such as that which lies within the boundaries of Punta Izopo National Park, is not sold to third parties.⁸⁴ To prevent such land transfers, the local IP office requires that parties obtain a certificate or *constancia* from the office of the *catastro*, certifying that the land does not fall within a protected area.⁸⁵ Though the IP does not keep a record of a plot's precise location, the *catastro* can survey and map the GPS coordinates of individual tracts.⁸⁶ After obtaining the *constancia*, the parties present it to the local IP office, who then approves the transfer if it does not fall within a protected area.⁸⁷ At the time of our field research, however, a similar process had not been instituted with respect to the Garífuna territory.⁸⁸

As such, "business as usual" within this system of private land transfers repeatedly legitimizes illegitimate transfers of collective property, as discussed below. This is because the office of the *catastro* does not treat plots within the communal territory of Triunfo de la Cruz as protected, in spite of the Court's order to do so.⁸⁹

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* Furthermore, their systems have no special designation recognizing collective land tenure. *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

The State's Sleight of Hand in Dispossessing Garífuna Territory: Tela's Municipal Land Grab

Original title to private property is acquired from the state in one of two ways: either through a national agency—the National Agrarian Institute for national land or the Property Institute (IP) under certain provisions of the property law—or through the local municipality for land lying within its urban perimeter and its jurisdiction and property.⁹⁰ The latter authority exercised by the Tela municipality has been responsible for legitimizing much of the recent dispossession of Garífuna land by *terceros* following its land-grab annexation of Garífuna territory in 1989.⁹¹ This enabled *terceros* to acquire title through registration of property with the *catastro*, the paying of taxes, the delivery of title by the municipal corporation, and registration of title with the IP.⁹² Instead of correcting this dispossession, municipal authorities have enabled its continuation.

Like the IP, the *catastro* utilizes a recordkeeping system that preferences Western notions of land tenure and ownership. What dominates are private transfers of plots of land within the Garífuna territory without recognition of Garífuna title to collective property. When a third party seeks to regularize and obtain title over land thus obtained, they present a certified copy of the private purchase agreement (the *compra/venta*), a copy of their identification, witnesses that confirm they are in possession of the land, and a survey of the property showing boundaries or *colindancias* and the lot's area to the *catastro*.⁹³ The *catastro* may verify the lot and its boundaries in the field, but if the survey document matches the *catastro*'s existing

⁹⁰ These mechanisms are enshrined in various Honduran laws such as the Agrarian Reform Law, the Law for Modernization and Development of the Agricultural Sector, the Law of Municipalities, and the Property Law. See e.g., Decree 170 of January 8, 1975, *Ley de Reforma Agraria* (Agrarian Reform Act); Decree 31-92 of May 24, 1994, *Ley de Modernización y Desarrollo del Sector Agrícola* (Modernization and Development of the Agricultural Sector Act); Decree 134-90 of May 23, 1991, *Ley de Municipalidades* (Municipalities Act); Decree 82-2004 of June 29, 2004, *Ley de Propiedad* (Property Act).

⁹¹ Fieldnotes, January 11, 2024, interview with local authorities of the Property Institute.

⁹² *Id.*

⁹³ *Id.*

geographic coordinates for that plot of land, the *catastro* generally gives their stamp of approval by issuing a certificate, or *constancia*, of possession with an assessment of the property tax.⁹⁴ The party may then present the certificate to the Tela Municipal Corporation, which if it falls within the municipality's alleged urban perimeter or *casco urbano*, the Corporation can vote to extend full title to the third-party possessor on the condition that they pay the assessed property tax.⁹⁵ If the *catastro* does not affirmatively identify the land as within the Garífuna title, the Municipal Corporation will approve.⁹⁶ The third party can then take the title extended by the Municipal Corporation to Tela's IP office, which approves and registers the transaction in the SURE system, as previously described.⁹⁷

In theory, the *catastro* possesses the expertise and technological capacity to determine whether an individual plot is within the geographic area recognized by the Court's sentence. Surprisingly, however, in the nine years since the Court's sentence, the office of the *catastro* has not created a georeferencing system or map that would allow them to do so.⁹⁸ The *catastro* does not possess the coordinates of the areas recognized by the Court and the state of Honduras to be the traditional territory of the Garífuna community.⁹⁹ The office uses this as an accountability shield, claiming that they have no way to confirm whether a plot falls within the Garífuna community's legally recognized territory. But these claims have little merit, as the office frequently sends its staff into the field to geographically survey or verify the boundaries of other plots.¹⁰⁰ Indeed, the *catastro* estimates that half of the office's work is fieldwork related to land surveying.¹⁰¹ It is notable however that the office does not yet possess shape files that would allow mapping the survey data onto geographic data software such as Quantum Geographic Information System.¹⁰² We were told that they were waiting for

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

the National Agrarian Institute (INA) to conduct that technical fieldwork and produce the shape files that would allow such mapping of the territory.¹⁰³ In sum, the failure to track whether a transfer violates the IACtHR sentence is related more to the office's political will than its resources or technological capacity, as in the case of the IP.

The Court found the expansion of the urban perimeter violated the Garífuna's territorial rights as recognized by the state in the titling process of the late nineties. Since the ruling, however, the municipality and its office of *catastro* have minimized the possibility for protection of Garífuna lands by reducing the area it identifies as "Triunfo de la Cruz" to the population nucleus of the community.¹⁰⁴ In what appears to be a settler colonial move, local officials began to identify properties in the expansive area east of the Cerro Triunfo de la Cruz as located in the "*Aldea el Boquete*," highlighting the name for the *ladino* settlement near the turnoff from the CA-13 highway to Triunfo, rather than as part of the traditional and recognized territory of the Garífuna community of Triunfo de la Cruz—a type of linguistic and physical erasure.¹⁰⁵

Another structural issue at work in the dispossession of Garífuna land is the practice of private land sales and transfers of parcels within the collective title. A western, neoliberal logic has dominated these transactions without adequate control by traditional community norms and customs. The intrusion of *terceros* upset the traditional forms of land tenure and use within the Garífuna territory. The community has made clear that it retains collective ownership of the territory: that any transfers must be approved by the community's governing board, that only usufruct rights are conferred in any private land transfer, and that the parties must agree to abide by communal norms and practices with respect to the land and recognize the land as Garífuna collective property.¹⁰⁶ These norms have been difficult to enforce given the *terceros'* pressure to purchase land from members of the community and the failure of

¹⁰³ Fieldnotes, August 2, 2024.

¹⁰⁴ Fieldnotes, January 11, 2024.

¹⁰⁵ *Id.* Land title documentation on file with the authors.

¹⁰⁶ These cultural norms were described to us by the Committee for the Defense of the Land and Territory (CODETT) and evidenced by certifications issued by the communal governing board (*patronato*) for approved sale of usufruct rights on file with the Human Rights in Action Clinic. Fieldnotes, January 11, 2024.

the state to recognize and enforce the customary norms through its own institutions, which is an essential element to the protection of Garífuna title and implementation of the Court's sentence.

In fact, both the municipality and its catastro have adopted the erroneous view that they only need to protect the Garífuna community members' domiciles or residential plots within the territory. As noted, by referring to the territory by a different name ("*Aldea el Boquete*") the municipality is thus legitimating by fiat the dispossession of collective property. The underlying problem, of course, is the failure to demarcate the Garífuna territory, but on top of that no effort is made to protect the status of Garífuna rights or attempt to locate plots of land within the territory, even though they have the capacity to do so. On the contrary, the officials have resorted to mechanisms that protect third-party claims to land in prejudice to the community and their collective property.

The inner workings of Tela's local IP office and its *catastro* reveal that the municipal government operates within a "business as usual" framework that impedes progress toward the sentence's implementation. Though local bureaucrats view their authority as bestowed and circumscribed exclusively by national institutions, this understanding overlooks local bureaucrats' responsibility to honor international legal obligations and the unique character of Garífuna collective property. As a result, Tela's officials currently operate under the pretext of a quasi-legal framework. They claim formal compliance with domestic law and procedures, continue to recognize the Municipal annexation in spite of the IACtHR's ruling, and point to national authorities like the IP or INA as responsible for implementation of the ruling. In so doing they simultaneously and repeatedly violate their obligation as state agents to abide by the IACtHR's ruling.

To achieve any progress toward the sentence's implementation, municipal entities and their officials must recognize that the legal property regimes they are accustomed to are predicated on the settler society's logics, which have operated to prejudice and dispossess Garífuna collective property. They must engage with

definitions of collective property and the Court's decision to better understand the Garífuna community's Court-adjudicated rights. CIANSCI and other responsible state authorities need to coordinate and ensure this understanding and compliance. In the absence of this coordination and understanding, municipal authorities will continue to rely on settler colonial systems of bureaucracy that preference third-party landowners and private interests of the dominant society over the Garífuna community, which will only further degrade their collective land title in Triunfo de la Cruz.



Figure 2. A sign in Triunfo de la Cruz warning against illegal third-party purchase of collective Garífuna land, per the 2015 IACtHR ruling.

CONSEQUENCES OF FAILED COMPLIANCE

The Honduran state's failure to comply with the IACtHR Court order has resulted in serious and differentiated harm to the Triunfo de la Cruz Garífuna community. As such, the community experiences continued violation of their collective land rights. The ongoing presence of *tercero*-held land in Garífuna territory is a primary consequence of the state's failure to comply with the Court ruling. Additionally, the community faces complicated, and often reduced, access to Punta Izopo National Park and increasing violence by third parties in their community.

As noted, there are several types of *tercero*-held land in Triunfo de la Cruz, including beachfront vacation homes owned by individuals, larger scale real estate and touristic developments, traditional landholdings for agricultural or agro-industrial usage, and other popular, small business or working class settlement. Beachfront vacation homes, real estate and touristic development are particularly prevalent on the western end of the territory below the Cerro (Mount) Triunfo de la Cruz, and on the eastern end between the Río Gama and the Río Plátano.¹⁰⁷ The majority are within the A1 plot that, per the 2015 ruling, is part of Garífuna collective land title.¹⁰⁸ Community members detail that *terceros* often establish these private vacation communities and homes by way of threats to Garífuna community members.¹⁰⁹ In at least two instances, the construction of these vacation homes destroyed arable agricultural land used by members of the Garífuna community.¹¹⁰ As was observed in January 2024, these vacation homes are almost always gated and obstruct access to the beach.¹¹¹ *Tercero*-held properties exist throughout the community, not just on the far western or eastern portions of the territory, including on land where the January 2024 reoccupation occurred.¹¹² The expansion of these homes also threatens the Garífuna's cemetery near the ocean on the western side, which has all but run out of space for its

¹⁰⁷ See Figure 12 for a map of the Garífuna territory of Triunfo de la Cruz.

¹⁰⁸ *Id.*

¹⁰⁹ Fieldnotes, January 12, 2024.

¹¹⁰ *Id.* This includes the partially developed Marbella Club project. Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Facts," 74.

¹¹¹ Fieldnotes, January 12, 2024.

¹¹² Fieldnotes, January 5, 13, 2024.

graves in its current plot.¹¹³ Community members noted that private, third party-owned residential developments (often used as vacation rentals) have tried to dispossess the community of the plot of land next to the cemetery for private uses, but the community has occupied that plot for their cemetery as a matter of public utility.¹¹⁴ These threats to their cemetery are cultural threats as the cemetery is a spiritually significant site for the community.¹¹⁵



Figure 3. An example of a gated waterfront tercero-owned home in the partially constructed Marbella Club project on former Garífuna agricultural lands, which are legally due to them per the 2015 IACtHR ruling.

¹¹³ Fieldnotes, January 13, 2024.

¹¹⁴ Fieldnotes, January 12-13, 2024.

¹¹⁵ Fieldnotes, January 13, 2024.



Figure 4. A third party-owned rental home encroaching on the Triunfo cemetery.

Large touristic developments are plentiful on the western side of Garífuna territory in Triunfo de la Cruz. Some of the constructions precede the 2015 ruling and some succeed it. But all are in violation of the ruling because they have developed on land that is legally recognized as Garífuna collective property. Garífuna communal title extends to the Cerro Triunfo de la Cruz on the far western side of the territory.¹¹⁶ At least one business enterprise, which abuts the *Cerro*, Bar y Restaurante ISIENI, was constructed in the last three years.¹¹⁷ The bar sits at Triunfo's territorial waterfront, with extensive seating areas facing the water. It is under non-Garífuna ownership.¹¹⁸ It sits next to the Hotel Casa Piedras del Mar¹¹⁹ and the Rosa Negra Bar, both of which are on

¹¹⁶ See Figures 5, 12.

¹¹⁷ Fieldnotes, January 13, 2024.

¹¹⁸ *Id.*

¹¹⁹ *Id.*; see also *Bienvenidos a Casa Piedras del Mar*, Casa Piedra del Mar, Facebook (Sept. 6, 2020), <https://www.facebook.com/casapiedrasdelmar/videos/317694052864051/>; Figure 6.

Triunfo's lands.¹²⁰ Down the road is the luxury Playa Escondida development,¹²¹ which was constructed before the 2015 ruling but is still subject to it.¹²² According to its website, the development is composed of thirty condominiums.¹²³ Garífuna community members have made clear that this land is within the Garífuna territory.¹²⁴ As of February 2025, nightly reservations for their lowest tier accommodations start at \$349.00 USD.¹²⁵ Other tourist developments surround those.¹²⁶ Many of these developments and surrounding areas display posted signs declaring that they are private property.¹²⁷



Figure 5. A private company sign in front of the Cerro Triunfo de la Cruz, a hill on the western edge of the community. Private property signs on tercero-owned land are common in the western and eastern ends of the community.

An additional form of third-party land occupation includes rural type landholdings for agricultural or agro-industrial usage, which in Triunfo has taken on the

¹²⁰ Fieldnotes, January 13, 2024; see also Rosa Negra Bar, Tripadvisor, https://www.tripadvisor.es/Restaurant_Review-g297578-d17848161-Reviews-Rosa_Negra-Tela_Atlantida_Department.html.

¹²¹ Fieldnotes, January 13, 2024; see also Playa Escondida Beach Club, <https://www.playaescondidabeachclub.com/>.

¹²² *Id.*; see Figure 7.

¹²³ Playa Escondida Beach Club, <https://www.playaescondidabeachclub.com/>.

¹²⁴ Allan Bu, *For Defending Their Land and Culture, Violence Struck the Garífuna People*, *ContraCorriente* (Aug. 16, 2020), <https://contracorriente.red/en/2020/08/16/for-defending-their-land-and-culture-violence-struck-the-garifuna-people/>.

¹²⁵ Playa Escondida Beach Club Reservations Page, <https://www.playaescondidabeachclub.com/reservaciones>.

¹²⁶ As of February 2025, at least five other tourist developments existed on the eastern side of the community. See Google Maps, Triunfo de la Cruz, <https://www.google.com/maps/@15.8118157,-87.4261417,17.14z/data=!5m1!1e4?entry=ttu>.

¹²⁷ Fieldnotes, January 13, 2024.

form of African palm cultivation and cattle ranching.¹²⁸ The former has had serious impacts for water availability in the community. The African palm tree, used for palm oil harvest and sale—an economically lucrative venture that has captivated small and large landowners across the country—is extremely water intensive and threatens water supplies in the community,¹²⁹ just as it does across Honduras.¹³⁰



Figure 6. A picture of the Hotel Casa Piedras Del Mar bar on traditional lands in Triunfo de la Cruz.

As discussed previously, near the CA-13 highway at the entrance to the Garífuna territory is a significant concentration of *terceros*. While some are among the *terratenientes* and African palm cultivators, others appear to be agriculturalists, small businesspeople and working-class individuals. Some of the *ladino* settlers scattered throughout the territory have been there for longer periods of time, have accepted community norms and otherwise not engaged in serious conflict with the Garífuna community. Community members expressed a willingness to negotiate the

¹²⁸ Fieldnotes, January 5, 2024.

¹²⁹ *Id.*

¹³⁰ Leonardo Guevara and Lesly Frazier, *Palm Oil, Fire Pushing Protected Areas in Honduras to 'Point of No Return,'* Mongabay (Dec. 30, 2019), <https://news.mongabay.com/2019/12/palm-oil-fire-pushing-protected-areas-in-honduras-to-the-point-of-no-return/>.

permanence of some of these *terceros*, subject to recognition of Garífuna norms and customs and Garífuna title to the land.¹³¹

Since the ruling, the community's access to Punta Izopo National Park has also been jeopardized by third-party threats. Punta Izopo National Park was established by the Honduran state in 2000 as a 18,820 hectare national park,¹³² on land that the Garífuna claim is their ancestral territory.¹³³ Notably, the Honduran state established the park without prior consultation with the community.¹³⁴ While the Court did not recognize full Garífuna title to the land absorbed by Punta Izopo National Park, the Court determined that the Honduran state must allow “free access, use and enjoyment” for Garífuna members where their ancestral collective land overlapped with the adjacent Punta Izopo National Park within two years of the Court ruling.¹³⁵ Since the ruling, however, the state has failed to implement consultation over access to the park.¹³⁶ Garífuna community members have been threatened by *terceros* for tending to their crops next to the park, and have in some cases, been forced to abandon their plots of land.¹³⁷

During the 2015 visit *in situ*,¹³⁸ the Court traveled to Punta Izopo with community members and climbed to the top of the *Cerro Punto Izopo*.¹³⁹ There, within the park's nucleus, the Court witnessed firsthand the presence of a luxury home owned by a wealthy Honduran businessperson and a helipad, which the community believes may have been used to move goods, possibly drugs or other contraband, into the area.¹⁴⁰

¹³¹ Fieldnotes, January 5, 2024.

¹³² Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, “Facts,” 86.

¹³³ *Id.*

¹³⁴ U.N. Special Rapporteur on the Rights of Indigenous Peoples on Her Visit to Honduras, 57, U.N. Doc. A/HRC/33/42/Add.2 (July 21, 2016).

¹³⁵ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, “Resolutive Paragraphs,” 11.

¹³⁶ Fieldnotes, January 12, 2024.

¹³⁷ *Id.* See also, Loperena, Christopher Anthony. “Conservation by racialized dispossession: The making of an eco-destination on Honduras's North Coast.” *Geoforum* 69 (2016): 184-193 (recounting how naval officers and a park ranger were implicated in the 2008 killing of a Garífuna fisherman from Triunfo de la Cruz in the proximity of the Cuero and Salado Wildlife Refuge).

¹³⁸ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, “Proceedings Before the Court,” ¶¶ 15-16.

¹³⁹ Fieldnotes, January 12, 2024, and subsequent communications with community leaders.

¹⁴⁰ *Id.*



Figure 7. A picture of Playa Escondida, a luxury hotel on Triunfo de la Cruz's waterfront.

While the state recognizes that the Court's ruling requires restitution of Garífuna title to their territory through demarcation, *saneamiento* and delivery of clear title, its failure to do so has emboldened third-party resistance to any such process and produced a climate of fear amidst threats of violence and actual violence against community members for defending their territory and seeking to implement the Court's sentence. In January 2023, Ricardo Arnaúl Montero, a member of the CODETT, was killed.¹⁴¹ Montero was part of the security team for the Secundino Torres land plot, which is a previously dispossessed, since-reoccupied portion of the community's ancestral territory.¹⁴² His death is one of a series of attacks levied at those involved in the fight to secure the Garífuna's legal rights to their territory. In May 2023, Martín Morales Martínez, a leader in Triunfo de la Cruz, was found murdered in the river Gama after being reported missing by his family the day before.¹⁴³

¹⁴¹ Leonardo Aguilar, *Ofraneh Denuncia Asesinato en Medio de Exigencias Para que se Cumplan Sentencias de Corte-IDH*, Contra Corriente (Feb. 22, 2023), <https://contracorriente.red/2023/02/22/ofraneh-denuncia-asesinato-en-medio-de-exigencias-para-que-se-cumplan-sentencias-de-corte-idh/>.

¹⁴² Fieldnotes, January 12, 2024.

¹⁴³ *Honduras: Killing of Human Rights Defender and Leader of the Garífuna Community of Triunfo de la Cruz*, Frontline Defenders (May 31, 2023), <https://www.frontlinedefenders.org/en/case/honduras-killing-human-rights-defender-and-leader-garifuna-community-triunfo-de-la-cruz-mart%C3%ADn>.

Members of CODETT have also been threatened by *terceros* for their political involvement in the fight to save their land.¹⁴⁴ This includes Alfredo López Álvarez, a Garífuna land rights activist and community leader, who was threatened with death if he did not leave the community by an individual associated with the Playa Escondida hotel group in October 2022.¹⁴⁵ The threat was in response to his activism to preserve the cemetery's land from further dispossession by Playa Escondida.¹⁴⁶ The community has also faced forced disappearances. As noted, in 2020, armed teams of the Police National Directorate of Investigation¹⁴⁷ arrested Sneider Centeno, then president of the community's *patronato* or governing board, Milton Martínez, Suami Mejía and Gerardo Tróche, who never returned to the community.¹⁴⁸ Community members allege that their disappearances were related to the Garífuna's defense of their territory in the face of third-party interests backed by the municipality of Tela.¹⁴⁹ Centeno had received specific threats on his telephone prior to his disappearance.¹⁵⁰ Following the disappearances, the Court ordered provisional measures, which require the protection of the life and personal integrity of community leaders and activists defending the rights of the Garífuna people.¹⁵¹ Both the Court and the U.N. Working Group on Forced and Involuntary Disappearances denounced the disappearances as related to the

¹⁴⁴ *Honduras: Líder Garífuna Fiscal del Comité de Defensa de Tierras del Triunfo de la Cruz es Amenazado de Muerte*, Business & Human Rights Resource Center (Oct. 28, 2022), <https://www.business-humanrights.org/en/latest-news/honduras-l%C3%ADder-gar%C3%ADfuna-fiscal-del-comit%C3%A9-de-defensa-de-tierras-del-triunfo-de-la-cruz-es-amenazado-de-muerte/>.

¹⁴⁵ *Id.* Alfredo López was unlawfully detained for six years between 1997 and 2003 for defense of the same territory. López won his case in the IACtHR, where the court found that the Honduran's state's conduct had violated the American Convention on Human Rights. See Maya Rozov, et al., *López Álvarez v. Honduras*, 36 Loy. Int'l & Comp. L. Rev. 2053 (2014).

¹⁴⁶ Business & Human Rights Resource Center, *supra* note 144.

¹⁴⁷ *Dirección Nacional de Investigación*.

¹⁴⁸ Jorge Burgos, *Si No Cumplen el Fallo de la CIDH, Garífunas Demandarán al Estado*, Criterio Honduras (Aug. 7, 2020), <https://criterio.hn/si-no-cumplen-el-fallo-de-la-cidh-garifunas-demandaran-al-estado/>; Jorge Burgos, *Hay que Arrancar Esa Raíz la Podredumbre que Gobierna Honduras*: Miriam Miranda, Criterio Honduras (July 28, 2020), <https://criterio.hn/hay-que-arrancar-esa-raiz-la-podredumbre-que-gobierna-honduras-miriam-miranda/>.

¹⁴⁹ Jorge Burgos, *Si No Cumplen el Fallo de la CIDH, Garífunas Demandarán al Estado*, Criterio Honduras (Aug. 7, 2020), <https://criterio.hn/si-no-cumplen-el-fallo-de-la-cidh-garifunas-demandaran-al-estado/>.

¹⁵⁰ Fieldnotes, January 13, 2024.

¹⁵¹ Resolution, Preliminary Measures Regarding Honduras, Resolving No. 2, Inter-Am. Ct. H.R. (Sep. 2, 2020).

community's territorial disputes.¹⁵² The Honduran Supreme Court granted an *amparo*¹⁵³ to the Garífuna Committee for Investigation and Search for the Disappeared of Triunfo de la Cruz,¹⁵⁴ finding that the state had failed to conduct an effective investigation, violating the rights to due process and access to justice of the victims and the community.¹⁵⁵

¹⁵² *Id.*; U.N. Working Group on Forced and Involuntary Disappearances, *Observaciones Preliminares del Grupo de Trabajo de las Naciones Unidas sobre Desapariciones Forzadas o Involuntarias al Concluir la Visita Oficial a la República de Honduras* (Mar. 20-29, 2023), <https://www.ohchr.org/sites/default/files/documents/issues/disappearances/statements/2023-03-29-eom-honduras-wgeid-es.pdf>.

¹⁵³ An *amparo* is a legal proceeding to challenge the state's violation of fundamental rights.

¹⁵⁴ The committee is known as "SUNLA," the acronym derived from its Garífuna name.

¹⁵⁵ Resolution, Supreme Court of Honduras, Constitutional Chamber, *Recurso de Amparo* SCO 1293-2022.

RECUPERATION AND REOCCUPATION

The community's persistent assertion of their rights and demand for state implementation of the 2015 Court ruling has resulted in some limited territorial reparation and protection, though it remains at best a partial and piecemeal implementation of Garífuna territorial rights. The National Agrarian Institute, in consultation with the community, was able to effectively expropriate a portion of Lot A1 referred to in the decision as the "22 *manzanas*," which the Tela municipality had previously transferred to the Union of Municipal Workers for a housing development, and return it to Garífuna title.¹⁵⁶ It is interesting to note, however, that settler colonial logics of discrimination and power continue to operate at the local level with regard to this plot of land, which the community has since subdivided for its members. During our fieldwork, community leaders related how the municipality has refused to approve permits for electrification of the properties, even while it has approved them for neighboring properties of *terceros*, apparently in retaliation for their successful recuperation from the municipality.¹⁵⁷

The community's advocacy and public pressure for implementation of the Court's sentence has also effectively halted further development of the Marbella Club project on the eastern side of the territory. Club Marbella belongs to *Inversiones y Desarrollo de Triunfo, S.A.* (IDETRISA), a company formed by wealthy elites of San Pedro Sula.¹⁵⁸

The community has also halted the development of a 17.5 hectare parcel on the eastern side of the community, between the Rio Gama and the Rio Plátano¹⁵⁹ which was set to be fully dispossessed of community control. This portion of land was originally held by a Garífuna women's agricultural cooperative, but it was improperly mortgaged.¹⁶⁰ While land under Garífuna title cannot be seized, the Honduran Banco Atlántida repossessed and sold the land to another investment group, Izopo Resorts, which began construction of a luxury resort and development.¹⁶¹ After the Court 2015

¹⁵⁶ A *manzana* is equivalent to .7 hectares. 22 *manzanas* is approximately 15.4 hectares.

¹⁵⁷ Fieldnotes, January 5, 2024.

¹⁵⁸ *Por Defender Territorio y Cultura, la Violencia le Llegó al Pueblo Garífuna*, Contra Corriente (Aug. 2, 2020), <https://contracorriente.red/2020/08/02/por-defender-territorio-y-cultura-la-violencia-le-llego-al-pueblo-garifuna/>.

¹⁵⁹ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Facts," 84.

¹⁶⁰ Fieldnotes, January 12, 2024.

¹⁶¹ *Id.*

decision and strategic protests from the community, the project stalled and is currently abandoned.¹⁶² However, the lands have yet to be restored to Garífuna title.¹⁶³

Since 2015, the increased pressure on the community from third parties seeking illegal land possession in Triunfo de la Cruz, the disappearances and ongoing violence against community members, and the Court's incapacity to enforce its judgments has pushed Triunfo Garífuna community members to achieve sentence compliance through direct action. Most recently, on January 2, 2024, 124 community members, most of them between 16 and 30 years old, reoccupied approximately 16 hectares of their collective ancestral land¹⁶⁴ that had been previously unavailable to the community, and to which the community is entitled by virtue of the Court's order. Until effective progress is made by CIANSCI towards territorial reparation, the community's only option is to reoccupy land that is rightfully theirs as their only way to enforce the decision in light of the state's failure and the Court's inability to enforce its own ruling.



Figure 8. A demarcated plot for community members in the reoccupied plot in central Triunfo de la Cruz.

¹⁶² *Id.*

¹⁶³ *Id.*, and subsequent conversations with community leaders.

¹⁶⁴ *Id.* This is equal to roughly 22.86 manzanas.

**THE UNPRECEDENTED
COURT DECISION IN
SAN JUAN**

On the west side of the Tela municipality lies the sister Garífuna community of San Juan. The case of San Juan was filed in the Inter-American System at the same time as those of Triunfo de la Cruz and Punta Piedra, but was only decided by the Court in August 2023.¹⁶⁵ The Garífuna community of San Juan is composed of approximately 8,000 individuals, although the state alleges the population is somewhere between 3,285 and 4,224.¹⁶⁶ The *ladino* or non-Garífuna community has increasingly encroached on the Garífuna's traditional territory, primarily in the form of urban annexation and encroachment by the densely populated *barrio* of El Paraiso on the eastern side of the territory. According to the state, approximately 7,620 *ladinos* reside in El Paraiso and the other *colonias* in the territory.¹⁶⁷ On the western side of the territory, there are corporate land developments like the Indura Beach and Golf Resort, a large Hilton-held resort complex,¹⁶⁸ and the Shores Plantation development, an exclusive gated community.¹⁶⁹ Throughout the territory there also exists third-party appropriation of land that is ostensibly dedicated to extensive agricultural enterprises such as cattle grazing.¹⁷⁰

¹⁶⁵ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 496 (Aug. 29, 2023).

¹⁶⁶ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "Facts," 46.

¹⁶⁷ *Id.*

¹⁶⁸ Aimee Gabay, *Garífuna Land Rights Abuses Persist in Honduras, Despite Court Ruling*, MongaBay (July 17, 2024), <https://news.mongabay.com/2024/07/garifuna-land-rights-abuses-persist-in-honduras-despite-court-ruling/>.

¹⁶⁹ *Honduras: Garífuna Communities Threatened at Bay of Tela*, Orinoco Tribune (Oct. 27, 2022), <https://orinocotribune.com/honduras-garifuna-communities-threatened-at-bay-of-tela/>; Indura Beach & Gold Resort Curio Collection by Hilton, <https://www.hilton.com/en/hotels/teaibqq-indura-beach-and-golf-resort/>.

¹⁷⁰ Fieldnotes, January 6, 2024.



Figure 9. The San Juan Garífuna central meeting hall.

Similar to the case of Triunfo de la Cruz, the Court found that the state had violated the community's right to its traditional territory, specifically for failing to adequately delimit, demarcate and deliver clear title to approximately 675 hectares of land recognized by the state during the process before the Court.¹⁷¹ However, in August 2023, the Court adopted an extraordinary remedy that favored the non-Garífuna possessors of Garífuna lands. While the Court recognized that the Honduran state had failed, as in Triunfo de la Cruz, to properly delimit, demarcate and title the recognized collective title of the community for decades, it stopped short of ordering territorial reparation in the form of returning third party-held land to the community, as it had in

¹⁷¹ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "Resolutive Points," 3; Fieldnotes, January 6, 2024.

the Triunfo case.¹⁷² Instead, the Court drew its own conclusion of exceptional circumstances, finding that third party-held land in the San Juan Garífuna's territory should stay in the hands of *terceros*, and the state should provide the community "alternative lands" or, alternatively, compensation for their loss of title.¹⁷³

Importantly, the Court ruled against the community even where it acknowledged that incomplete access to their ancestral land compromised their use and enjoyment of it.¹⁷⁴ The Court also recognized that the San Juan community had endured violence perpetrated by third-parties—including verbal and physical threats and, in the most severe of cases, murder—as a result of the increasing presence of *terceros* in their territory.¹⁷⁵ In addition to the threats and actual acts of physical violence, the community also reported being coerced by *terceros* to sell their property. In at least one instance, a community member reported a stranger threatening to kill her where she refused to accept his monetary bribe in exchange for her signature on a document transferring her land to him.¹⁷⁶

Despite these factors in play, the Court found in favor of third-party land interests. The Court's decision to protect *tercero*-held land in San Juan appeared to rest on various factors, most prominently, the presence of as many as 7,620 *ladino* or non-Garífuna individuals, primarily living in the annexed and urbanized eastern portion of the town—an extension of Tela's urban area into the community's ancestral territory.¹⁷⁷ The Court held that *tercero* "displacement... could lead to difficulties and humanitarian consequences."¹⁷⁸ Additionally, the Court credited evidence of the "legitimate transfer" of Garífuna title to some third-party possessors and expressed

¹⁷² Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "The Right to Property, The Right of Access to Information, and Political Rights," 118; Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "Resolutive Points," 7.

¹⁷³ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "Resolutive Points," 7.

¹⁷⁴ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "The Right to Property, The Right of Access to Information, and Political Rights," 116.

¹⁷⁵ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "Test," 64.

¹⁷⁶ *Id.* at 64(6).

¹⁷⁷ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "Repairs," 195.

¹⁷⁸ *Id.* at 206.

concern that restoration of the community's land title would "endanger the social fabric and coexistence between the Garífuna and '*ladino*' communities."¹⁷⁹

The Court's sensitivity to potential future social conflict appears to derive from its allowance of third-party testimony and evidence, which the Court factored into its decision-making process regarding the proper form of restitution.¹⁸⁰

In this case, the Court received unsolicited communications from the Chamber of Commerce of San Pedro Sula and the Honduran Shores Plantation Neighborhood Association, and heard from third parties during its visit *in situ*.¹⁸¹ While this may fit under the Court's authority to receive evidence, there are no clear procedural safeguards for receiving, weighing and assessing such evidence from the perspective of the petitioners or presumed victims.¹⁸² The receipt of this evidence appears to be, at least in Indigenous rights cases, an unprecedented move by the Court and merits some analysis.

Article 58 of the Court's Rules of Procedure provides:

The Court may, at any stage of the proceedings:

- a. Obtain, on its own motion, any evidence it considers helpful and necessary. In particular, it may hear, as an alleged victim, witness, expert witness, or in any other capacity, any person whose statement, testimony, or opinion it deems to be relevant.¹⁸³

When assessing these third-party statements regarding social conflict in the territory, the Court made a false equivalence of expressions of and responsibilities for that conflict. For example, it relied on an informational "note" sent by the Honduran Shores Plantation Neighborhood Association accusing the community of "threatening"

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 195.

¹⁸¹ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, "Repairs," ¶¶ 196-97.

¹⁸² Art. 58, Inter-Am. Ct. H.R. Rules of Procedure, <https://www.corteidh.or.cr/reglamento.cfm?lang=en>.

¹⁸³ *Id.*

and “violent” actions to factor into its analysis of social conflict and justification for the exceptional remedy.¹⁸⁴ There is no evidence that the note was sent in the form of a sworn declaration. The Court does not address the community’s contestation or account of these actions, nor is there any evidence that the community was given the opportunity to confront the allegations or the individuals making them.

In this regard, the Court’s analysis of “evidence” or information from third parties is inadequate with respect to the causes and source of such conflict lying in the state’s failure to demarcate and title Garífuna lands and failure to investigate and prosecute egregious violent crimes against Garífuna leaders and land defenders. The Court is clearly not naïve to this reality, but it fails to adequately locate the social positioning of the third-party actors and that of the Garífuna community as the primary victim of these egregious human rights abuses, and to incorporate that analysis into its reasoning.



Figure 10. The gated Shores Plantation housing development in San Juan, Honduras, on Garífuna land.

¹⁸⁴ Garífuna Community of San Juan and its Members v. Honduras, Merits, Reparations, and Costs, “Repairs,” 196 n.191.

More to the point, the Court, in its finding of exceptional circumstances and its proposed remedy of compensation with other lands or indemnification to the Garífuna community, fails to distinguish between the third-party actors, their forms of tenure, and their role in the social conflict. The Court appears to have been moved principally by facts presented during their visit *in situ* concerning the densely populated, popular *colonias* on the eastern side of the Garífuna territory.¹⁸⁵ Our field visit revealed, as should have been apparent to the Court in its own visit *in situ*, that the other disputed areas of third-party possession are very distinct. This includes more extensive, idle or non-densely populated pastureland in the middle part of the territory held in many cases by politically and economically elite *terceros* from Tela.¹⁸⁶ It also includes the high-end corporate residential and tourist developments on the western end of the territory, primarily that of the Honduras Shores Plantation group.¹⁸⁷ These corporate and elite actors are not in the same social position as the popular actors on the eastern side of the territory with modest lots used as primary residences and small businesses. They are speculators representing for-profit interests and investments. Moreover, as alleged by the Garífuna community, these elite political and business actors are the source of threats and violence against the community.¹⁸⁸

There is no reason land held by these elite and powerful parties should not be restored to Garífuna title in a process of expropriation, in line with the Court's precedents in other Indigenous land rights cases and the case of Triunfo de la Cruz, specifically. In fact, there is a ruling from the state's Ministry of Natural Resources and the Environment finding the Shores Plantation construction in violation of the state's environmental laws, as it sits in the buffer zone of the Blanca Jeannette Kawas National Park where construction of cement infrastructure and permanent structures is

¹⁸⁵ *Id.* at 195.

¹⁸⁶ Fieldnotes, January 6, 2024.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

prohibited.¹⁸⁹ The state should enforce an order of demolition with respect to this development and restore the land to Garífuna title.

In principle, this process of expropriation could include indemnification of these third parties or compensation for improvements to the land, provided there was no bad faith in the actors' acquisition or exercise of possessory rights. However, the Court's ruling is inviting increased conflict in the community by failing to make this distinction between third-party possessors and frustrating the recognition of Garífuna territorial rights in the Inter-American system by requiring the community to forego restitution of their rights in a sizable portion of their territory usurped by these speculators and developers.

Finally, any third party allowed to remain in possession of their land should do so as a result of consultation and consensus with the San Juan community and adherence to communal norms and customs prior to implementation of the exceptional remedy of exchange of land or monetary compensation. In order to respect Garífuna title and territorial reparation, any retention of possessory rights by third parties should be done with the consent of the Garífuna community and limited to usufruct rights.



Figure 11. Extensive *Tercero*-occupied but unused Garífuna land in San Juan.

¹⁸⁹ Secretaría de Recursos Naturales y Ambiente, Dirección General de Evaluación y Control Ambiental, Informe Técnico No. 73/2014.

THE PATH FORWARD:

**TERRITORIAL
REPARATION IN
TRIUNFO DE LA CRUZ**

As this report has demonstrated, the Honduran state has failed to implement the 2015 IACtHR ruling recognizing the collective land title of the Garífuna community of Triunfo de la Cruz. As of October 2024, nine years have passed since the Court recognized Garífuna rights to their traditional territory as recognized by the state in their formal titles and *garantía de ocupación*, and ordered territorial reparation in the form of delimitation, demarcation and clear title to their land. In the face of noncompliance with the sentence, the community continues to endure the harm wrought by their land loss and dispossession.

In the past nine years, the Honduran government has taken initial but insubstantial steps to actualize the ruling. Aside from the restitution to Garífuna title of the 22 *manzanas* in dispute with the Tela municipal workers union, the state has failed to effectuate any land transfer from *tercero* possession or title to community possession and title. Instead, since 2015, the community has endured repeated and recurring harm or protracted injury, including land loss, the encroachment of *tercero*-owned tourist and private developments, and water shortages, and acute harm, like the threats towards and murders and disappearances of community members active in the land rights struggle. The Honduran state must endeavor upon several different steps to fulfill its obligations established by the IACtHR and respect and uphold the community's collective land title. The most important obligation on the state is to effect territorial reparation, the cornerstone of the Court's decision. This includes the delimitation, demarcation and delivery of clear title to the Garífuna community of their traditional territory through state-initiated processes of expropriation. Fulfillment of other Court ordered obligations will help create the conditions for territorial reparation and demonstrate the good faith and political will of the state to achieve compliance in the broader social landscape. These include the state's public act of acknowledgment and acceptance of responsibility for violation of the Garífuna community's rights; the creation and supervision of mechanisms to guarantee protection of Garífuna collective property at the local level; and the effective investigation of those disappeared and murdered, and general protection of the life

and integrity of community members.¹⁹⁰ We next discuss these latter steps that go hand in hand with the work of territorial reparation.

First, the state has yet to comply with the Court-ordered public act of acknowledgement of its responsibility for violation of the Garífuna community's rights.¹⁹¹ In the Court's 2019 supervision of compliance report, it encouraged the relevant parties to engage in dialogue to come to an agreement as to the modality of compliance with this obligation.¹⁹² We propose that compliance with this obligation should be conceived of as a multi-stage process whose goal is truly reparative and addresses both the structural inertia undermining implementation and the societal misunderstanding and resistance to it.

Meager attempts by the state to communicate the import of the decision to local officials and the community of Tela have taken place without the participation of or monitoring by the Garífuna community. This has resulted in a failure to ensure its proper *socialization*, or acceptance and integration of the decision into social and political behavior of state and non-state actors.¹⁹³ To properly acknowledge and take responsibility for its violation of Garífuna communal property, the state should initiate public education programs that actually reach the actors who are causing harm to the Garífuna community. The public education method should illustrate the state's commitment to respect and protect the rights of the Garífuna community vindicated in the IACtHR decision. The state can only bring peace to the conflictive situation by asserting the justice and legal relevance of the Court's decision and demonstrating the requisite political will to actualize Garífuna territorial reparation. In consultation and participation with OFRANEH and the Garífuna community, the state should organize

¹⁹⁰ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Reparations," ¶¶ 270-274, "Resolutive Points" ¶¶ 8, 10, and 12.

¹⁹¹ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Reparations," ¶¶ 270-274, "Resolutive Points" ¶ 10; 2019 Monitoring Compliance with Judgment at ¶¶ 39-42 (discussing the obligation of the state to conduct a "public act of recognition and international responsibility").

¹⁹² *Id.*

¹⁹³ Members of the community noted that they were informed the state was conducting a "workshop" on the decision but were not invited to participate in the planning or development of the workshop and do not know the outcome. When the community arrived to monitor one such event, they were told to leave under threat of calling the police. Fieldnotes, January 18, 2025.

and carry out public acts that are conducive to the implementation of Garífuna territorial reparation. From its end, the Court should promote and monitor this as a means of effective compliance with the obligation of public acknowledgment and responsibility.¹⁹⁴

A renewed effort to publicize and take responsibility for the Court sentence should affirm the ruling to the public by teaching local communities that the territory of Triunfo de la Cruz is inalienable Garífuna collective land, which the state has long disrespected by sanctioning illegal *tercero* purchase of Garífuna collective title. This is one step towards broader education of speculative landowners and other *terceros* who may seek to illegally purchase land in Triunfo and local government officials who may ignore the prohibitions the ruling places on third-party purchases of Garífuna land in Triunfo de la Cruz.

Second, the Court has reiterated the state's obligation "to create adequate mechanisms to regulate its system of property registration."¹⁹⁵ However it should monitor compliance in light of our fieldwork's findings that state actors responsible for legal recognition and protection of Garífuna territory in Triunfo de la Cruz do not possess the knowledge, procedures or technological systems capable of accomplishing this. The state must commit to fully eliminating any vestiges of its outdated and noncompliant technological or procedural infrastructure, as it has begun to do with its directive to the IP prohibiting any registration of land purchases and other acts affecting Garífuna land covered by the decision. It must support local officials with training to implement the sentence with respect to protection of Garífuna collective property and provide institutional backing and judicial protection. The state must go further to ensure the elimination of fraud and corruption in the transfer and titling of land to *terceros* in Garífuna territory, including the investigation of land acquired by

¹⁹⁴ Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Reparations," ¶¶ 270-274, "Resolutive Points" 10; 2019 Monitoring Compliance with Judgment at ¶¶ 39-42. This process of public education can also be seen as an extension of the reparative obligation to "publish" the sentence. Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Resolutive Points" 9.

¹⁹⁵ *Id.*, 47.

local and even national political actors.¹⁹⁶ Without examination and mitigation, the state's 'business as usual' settler colonial logics, which prioritize corporate and individual land possession and investment over the Garífuna's collective land title, will prevent the sentence's full implementation.

Third, the state should prioritize transitional justice in the cases of egregious human rights violations against members of the Garífuna community of Triunfo de la Cruz.¹⁹⁷ This means guaranteeing effective investigation to get at the truth of what happened, justice and reparation in the cases of those assassinated or disappeared. The Public Ministry should be held accountable for compliance with both the Court's order and the Honduran Supreme Court's order in the *amparo* filed by SUNLA and the Garífuna community. This process must also include adopting adequate mechanisms for the protection of the life and integrity of community members, as required by the Court.¹⁹⁸

Most importantly, the state must set in motion the territorial reparation demanded by the sentence with concrete action. This is also an integral part of the transitional justice process, which overlaps with a practical implementation that requires specific legal steps. The promise of CIANSCI was that it would coordinate the prompt and proper demarcation of the land recognized as Garífuna collective property and incorporate georeferenced data into the state's mapping systems to ensure there will be no further degradation of their title. Adequate mapping of third-party possessors in the demarcation process would also prepare for *saneamiento* and ensure no further degradation of title. Unfortunately, at the time of publication of this report, initial efforts to move this process forward in the community of Punta Piedra have

¹⁹⁶ According to Garífuna community representatives, current and former state officials, including former mayors, a former congressman, and one of the directors of the State Ministry of Tourism possess land in the Garífuna's territory. Fieldnotes, January 18, 2025.

¹⁹⁷ We invoke the concept of transitional justice here as applicable to large scale social conflict and ongoing, historical rights violations experienced not only by the community of Triunfo de la Cruz but by Garífuna and Indigenous communities generally in Honduras. The remedies that flow from principles of transitional justice include uncovering the truth of these violations and their causes, justice, and reparation, including structural change to ensure non-repetition of the harm.

¹⁹⁸ 2021 Monitoring Compliance with Judgment at ¶¶ 27, 51; Garífuna Community of Triunfo de la Cruz and its Members v. Honduras, Merits, Reparations, and Costs, "Resolutive Points" ¶¶ 1-7.

stalled and CIANSCI appears at risk of dissolving under its own paralysis and the inertia of the 2025 electoral cycle.

Regardless of the outcome of CIANSCI, the process of territorial reparation *must* include *saneamiento* or clearing the title of third-party pretensions and possessions to be fully recognized as Garífuna collective property. This includes initiating processes of expropriation, assessment of third-party claims, annulation of third-party title where applicable, and, where appropriate, appraisal of any improvements to the land, indemnification and return of the land to Garífuna title. An iron-clad protocol for this process should be developed by the state in consultation with the Garífuna community.

The process of expropriation requires an analysis of how each third-party has acquired land or putative title in Garífuna territory, including which parcels have been obtained in good faith, which have been obtained through coercion or bad faith, and what role the state (including the Tela municipality) played in this process of dispossession and violation of the community's property rights. This should inform any appraisal process and indemnification under the expropriation procedure. The state must determine whether and how to compensate *terceros* who have purchased the land without force or undue influence, but which violated the norms of collective property and Garífuna customary law. Similarly, the state has an obligation to determine which land parcels were acquired by *terceros* in bad faith, to which individuals have no legitimate or colorable title.

Importantly, appraisals for improvements made on third-party held properties must be made by independent appraisers as a reparative measure in the public interest. The appraisals must be regulated in the public interest and limited to improvements on the land, rather than dictated by the whims of self-appraisal by third-parties, subject as they are to arbitrary and self-interested inflation. The state must also determine, in consultation with the community and according to its norms and customs, under what conditions any *terceros* will remain in possession of collective property.

Finally, the state must fund the steps required for implementation of the sentence, including funding for technical teams to delimit and demarcate the Garífuna territory, and providing the necessary technological support. Given the conflictivity and security threats from *terceros* in occupied Garífuna territory, the state must ensure the security of the technical teams carrying out this process with the Garífuna community and provide adequate funding for that. It must also ensure adequate funding for indemnification of third parties in the state's budget. Without adequate funding, the demarcation and reparation process will be ever stymied. These conditions must be met for the state to fulfill the Court's mandate to delimit, demarcate, and deliver clear title to the Garífuna community.

A sign of the state's political will would have been for CIANCSI to make positive progress on these steps. However, the reality appears otherwise. Regardless of CIANCSI's fate, these steps are required for a full-fledged alignment of Honduran domestic policy with the Court and its own domestic law. After nine years, the Garífuna are more than rightfully due legal recognition and protection of their ancestral collective land.

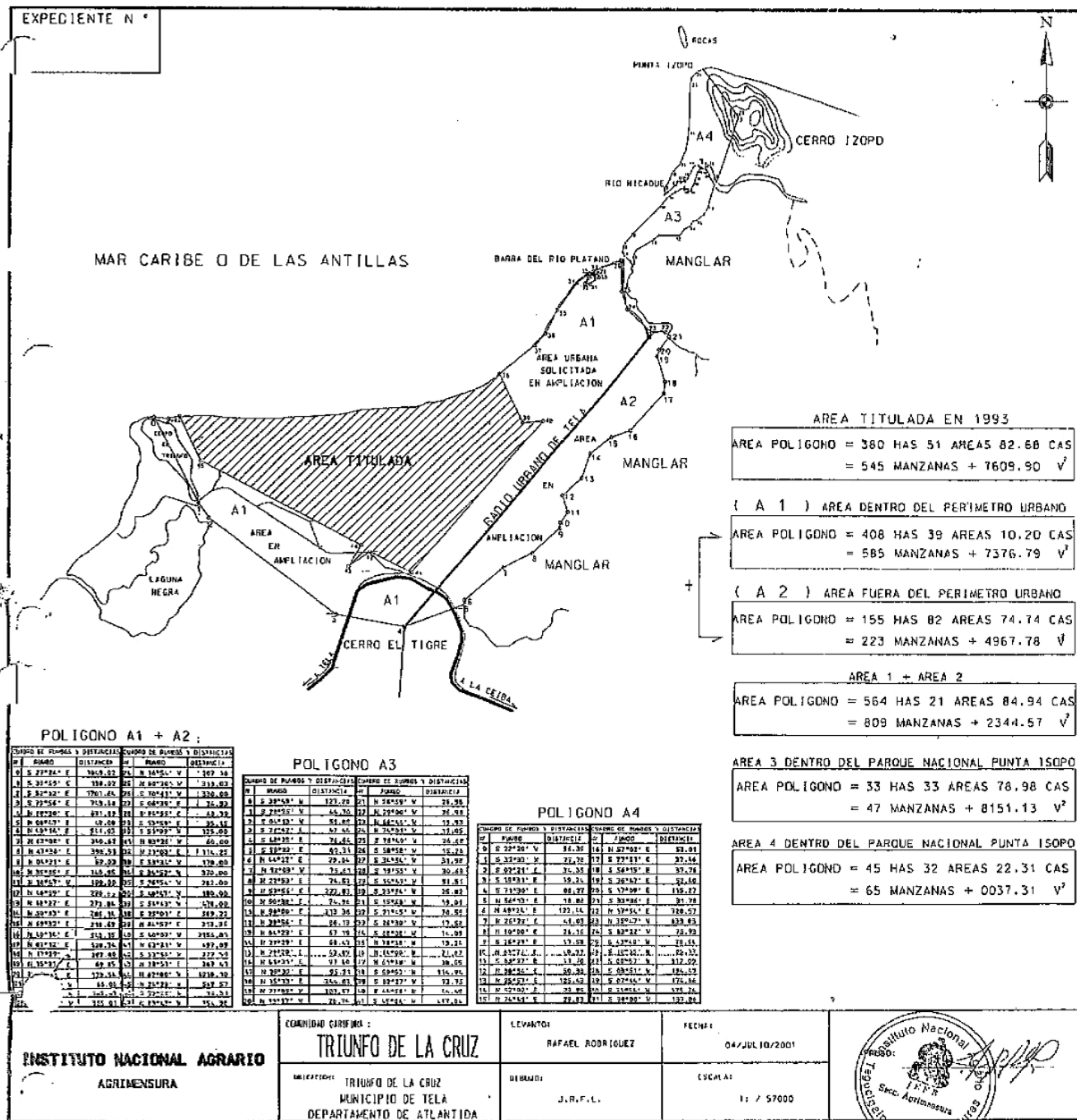


Figure 12. A map of Triunfo de la Cruz, included in the 2015 IACtHR ruling. The shaded area marks previously titled land due to the Garífuna community of Triunfo de la Cruz, per the 2015 ruling. The non-shaded A1, A2, A3 and A4 land parcels were also recognized by the Court as pertaining to the Garífuna title, with A4 residing in Punto Izopo National Park. A1 is the area improperly annexed by the municipality of Tela.

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