

The Inspection Panel
Report and Recommendation
On
Request for Inspection

Honduras: Land Administration Project (IDA Credit No. 3858-HO)

1. On January 3, 2006, the Inspection Panel received a Request for Inspection (“the Request”) related to the Honduras: Land Administration Project (“the Project” – in Spanish *Programa de Administración de Tierras de Honduras, PATH*¹). The Request refers to alleged negative impacts of the Project on the Garífuna people and their land claims; it does not refer to other Project components. The Request received was in Spanish. It includes 13 attachments. The Panel registered the Request on January 10, 2006.
2. The Organización Fraternal Negra Honduras (OFRANEH) submitted the Request on behalf of the indigenous Garífuna population of Honduras. OFRANEH states that it is a federation whose members are elected every three years by the Garífuna communities as their representatives.

A. The Project

3. **Project Objective:** According to the Development Credit Agreement the objective of the Project is “*to establish and operate (as part of the broader Program) an integrated and decentralized land administration system, composed of public and private entities, which provides users in the Project area with accurate information on urban and rural land parcels and effective land administration services (e.g. purchases, mortgages, cadastral and registry certifications) in a timely and cost-effective manner.*”²
4. **Project Components:** The Project is composed of three parts (A, B and C) respectively aimed at developing policy framework and institutional strengthening for the creation and operation of a National Property Administration System (in Spanish *Sistema Nacional de Administración de la*

¹ In this report, the Spanish acronym “PATH” will also be used to indicate the Project.

² Development Credit Agreement (Land Administration Project) between Republic of Honduras and International Development Association, August 18, 2004, [hereinafter “Credit Agreement”], Schedule 2.

Propiedad - SINAP); systematizing the regularization, titling and registration of lands in the Project area; and carrying out monitoring and evaluation activities.

5. Particularly relevant to the claims presented in the Request for Inspection is the Project's Part B, which provides for systematic land regularization, titling and registration of lands in the Project Area. Under this component, the Project will carry out field surveying of macro boundaries (e.g. municipal lands), urban and rural areas, forests, protected areas and ethnic lands.³ Part B further provides for parcel-level surveying and validation in the form of systematic cadastral field surveys of urban and rural areas to demarcate property boundaries and property rights in each parcel. Legalization, titling and registration of these lands will then be carried out. The Project Appraisal Document (PAD) states that this Project component will be implemented in seven regional departments of Honduras: Cortes, Francisco Morazán, Comayagua, Atlántida, Colon, Gracias a Dios and Choluteca.⁴ According to the PAD, ethnic lands are to be surveyed, regularized, titled and registered in the departments of Atlántida, Colon and Gracias a Dios.
6. The Project is the first phase of a three-phase Land Administration Program, which provides for establishing a fully integrated and decentralized National Property Administration System (SINAP) to increase security and transparency in land issues, improve governance and "*stimulate the emergence of secondary financial markets such as insured bundled mortgages*".⁵ The PAD states that Phase I of the program – the Project subject to the Request for Inspection – provides for, inter alia, incorporating in the national property administration system/SINAP real estate property located in the seven above-mentioned departments. Phase II, to be started in 2008, aims at completing the parcel-based regularization and registration initiated under Phase I, expanding these activities to seven additional departments, and integrating into SINAP other property registries, such as movable assets, intellectual property etc. Phase III, set to start in 2012, provides for, among other things, the completion of the regularization and registration of all urban and rural land parcels and the integration and consolidation of all property registries under SINAP.⁶
7. Management Response to the Request for Inspection states that the development of this three-phase Land Administration Program builds on a previous Bank-financed project, the Rural Land Management Project (PAAR) implemented between 1997 and 2003, which supported activities and land

³ According to the Project Appraisal Document (PAD), the Project adopts the definition of ethnic lands included in the Convention concerning Indigenous and Tribal Peoples in Independent Countries (C169), 1989, as "*those lands that have ancestrally and historically been settled by Amerindian groups and/or Afro-Honduran communities for their use and that constitute their habitat on which they undertake their traditional productive and cultural practices.*" Project Appraisal Document (PAD) Land Administration Project in support of the first phase of a Land Administration Program, January 22, 2004, p. 5

⁴ PAD, p. 3.

⁵ PAD, p. 5.

⁶ PAD, p. 3.

procedures to create a parcel-based land registration method (in Spanish ‘*Folio Real*’). These activities were piloted in the Department of Comayagua where, according to Management, 27,500ha of land in thirteen indigenous Tólupán communities were demarcated and titled.⁷

8. **Financing:** The Project is financed by an IDA Credit of 16,900,000 Special Drawing Rights (SDR), about USD 25 million. When the Request was submitted to the Panel (January 3, 2006) about USD 17.5 million had been disbursed, approximately 69% of the Credit. The Credit was approved by the IDA Board of Executive Directors on February 24, 2004, and became effective on December 2, 2004. The closing date is April 30, 2008.
9. The Project is financed through an Adaptable Program Loan (APL), which provides phased support for long-term development programs by means of a series of loans, which build upon the lessons learned from the previous loans in the series. Moving to the next phase(s) of a program depends on satisfactory progress in meeting agreed milestones, benchmarks and triggers.⁸ According to Management, agreed triggers to move to Phase II of the Land Administration Program include the creation of the SINAP, the achievement of at least 80 percent of the Project Development objective indicators and the “*adoption of legal/regulatory framework for Indigenous People’s lands.*”⁹
10. **Implementation Arrangements:** According to the Credit Agreement, the overall implementer of the Project is the Minister of Interior and Justice (SGJ) with the assistance of Executing Agencies and applicable municipalities.¹⁰

B. The Request

11. The Requesters claim that the Bank did not take the rights and interests of the Garífuna people into consideration in the design, appraisal and implementation of the PATH Project and violated its own policies and procedures.
12. The Request presents an overview of the history of the Garífuna people, which the Requesters believe is useful to understand the magnitude of the damage that the PATH implementation may cause to them. The Garífuna people are descendants of African survivors of a shipwreck, who arrived to the island of Saint Vincent, in the Caribbean Sea, in the 17th Century, and joined the Kalinaku indigenous people. In 1797 they were forcibly displaced to the island of Roatan by the British. The Garífunas subsequently settled in the city of Trujillo, in the Honduras mainland coast, but left it in the 19th century and

⁷ Request for Inspection Panel Review of the Honduras Land Administration Project – Management Response, February 9, 2006, [hereinafter “Management Response”], ¶ 8.

⁸ Management Response, ¶ 9.

⁹ Management Response, ¶ 9.

¹⁰ Credit Agreement, Article III, Section 3.01 (a).

established their villages along the Central American Caribbean coast.¹¹ The Request asserts that in the first part of the 20th century the Garífuna territory was gradually recognized and their ancestral lands were collectively titled and registered as *ejidos* that could not be attached or sold. The first collective *ejido* title dates back to 1905 and was granted to the community of Iriona. According to the Requesters, during the 1960s and 1970s the Government recognized their legal status and legitimized their collective land tenure system. However, the Requesters also state that in the same period invasions of the Garífuna territory started and have become more intense in the current times. In addition, in the 1990s the Government implemented a titling program which left the 46 Garífuna communities of Honduras totally unsatisfied because the program did not take into account the demographic expansion of the Garífuna population – and thus the amount of land they were titled was less than they expected – and did not recognize their functional habitat.¹²

13. The Requesters note that, under the PATH Project, ancestral lands are to be regularized in favor of indigenous and Afro-Honduran populations by recognizing communal or individual land rights, based on the preference of each community, and by registering such rights in the land registry. They also observe that properties and possessions supported by ancestral title or certification can be registered as private property and enjoy full ownership rights. However, the Requesters fear that the land titling and procedures provided under the Project will ultimately cause the demise of collective property in favor of individual property, which is contrary to the land tenure system they prefer, and could give their land, which they consider as their functional habitat, to people outside the Garífuna communities. They fear that the new titling program under the Bank-financed project will cause a *‘severe damage to the Garífuna people and a serious violation of their rights’*¹³ because these arrangements do not reflect the special legal situation of the Garífuna people or their preferred land tenure options.
14. The Requesters claim that, in designing and implementing the Project, the Bank did not take into account the rights and interests of the Garífuna communities and, as a result, violated a number of its policies and procedures, such as OD 4.20 on Indigenous People, OP/BP 4.01 on Environmental Assessment and OP/BP 4.04 on Natural Habitats. The Request also refers to the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries Convention C169, and state that the Convention, ratified by Honduras in 1994, recognizes the rights of the peoples with respect to the ownership and tenure of the lands they traditionally occupy, as well as the special protection of the natural resources of these lands.¹⁴

¹¹ Garífuna populations can be found today in Belize, Guatemala and Honduras.

¹² Request, p. 9.

¹³ Request, p. 11.

¹⁴ Request, p.2.

15. According to the Request, Bank staff did not consult with affected people prior to preparing the Indigenous Peoples Development Plan (IPDP), and did not distribute Project background material. The Requesters assert that the Bank disseminated the text of the plan only a short time before the single consultative meeting that took place with the Garífuna people on December 17-19, 2003, in Sambo Creek. The Requesters state that, on that occasion, the representatives of all the Garífuna communities of Honduras signed a document that presented a firm rejection of the IPDP, and proposed several alternatives. The Requesters claim that the Bank did not take into account any of the people's proposals or their criticisms about inconsistencies in applying the titling arrangements provided under the Project.¹⁵
16. The Request also refers to a meeting held in April 2005 in Trujillo in which pilot communities for the PATH were selected. The Requesters claim that the interested communities did not receive information about the Project, and no explanatory material was ever given to the communities' representatives who participated to that meeting.¹⁶ According to the Requesters, the representative of the patronatos of the community of Triunfo de la Cruz refused to sign the document related to the pilot activities fearing that the Project would be dangerous for the survival of the community.¹⁷
17. The Requesters also mention a consultation workshop in San Juan de Tela, on October 18, 2003, but state that this meeting was related to the draft Property Law to which the Garífuna people are firmly opposed. The Requesters assert that they are aware that issues related to the property law are not within the Panel's jurisdiction. However, they complain that, although Bank staff were aware during Project preparation that the Government was to enact a Property Law, which was to be the centerpiece of the land titling program, they did not mention this law in the legal framework section of the Project documents. The failure to reference the Property Law and the lack of consultative meetings with the affected people have generated confusion within the Garífuna communities, because the Project documents, including the IPDP, on the one side, and the Property Law on the other, provide for two different sets of procedures for land titling and conflicts resolution.¹⁸
18. According to the Requesters, the conflict resolution method provided for in the IPDP, arbitration, not only is unconstitutional but is also different from the one called for in the Property Law. In any event, the Requesters claim that both sets of procedures are inadequate because they do not respond to their social and political reality. In addition, in the Requesters' view, conflicts that are decades old cannot be solved through mechanisms such as the Mesa Regional,¹⁹ or

¹⁵ Request, p. 4.

¹⁶ Request, p. 4.

¹⁷ Request, p. 5.

¹⁸ Request, p. 7.

¹⁹ In this context the Requesters refer to the Mesa Regional as Mesa Interetnica.

conciliation, settlement and mediation procedures “where the disparities of the interests represented, power elites on the one hand and indigenous peoples on the other, cannot but lead to completely unfavorable decisions for the indigenous peoples.”²⁰

19. The Requesters fear that under the Project their collective rights will not be recognized. They claim that, in preparing the IPDP, the Bank did not consider the legal status of the indigenous populations as well as the procedures to issue collective legal titles, as defined in the country’s Constitution and legislation. The Requesters also claim that the IPDP provides for the issuance of regulations to delimit and demarcate indigenous peoples’ lands, but these were never issued.²¹ As a result, when indigenous peoples wish to present a territorial claim they would have to follow existing procedures (*Reglamento de Afectación*) and file their claim with the National Agrarian Institute (*Instituto Nacional Agrario – INA*). However, according to the Request, the IPDP provides for the creation of an “Indigenous Affairs Unit” (*Unidad de Asuntos Indigenas*) which would be in charge of carrying out and monitoring the titling procedures for indigenous peoples’ lands. It is unclear to the Requesters how this latter institution will coordinate its work with INA and which titling procedures will be applied. In any event, the Requesters claim that, even if these regulations were issued, this would only generate more confusion among the people regarding the applicable procedures to file territorial claims.²²

20. As an example of this, the Requesters state that the PATH Project coordination unit had given OFRANEH a document including a set of rules called Methodology to Determine and Measure the Lands to be Titled to the Ethnic Communities. OFRANEH heavily criticized this document with Bank staff and Project officials, who in turn responded that the document was only a draft. In the Requesters’ view the lack of clarity as to which documents are official confuse the people and feed the impression that those responsible for the Project do not have a clear definition of how to implement it. In addition, according to the Requesters, this draft Methodology is the document providing for the creation of the Mesa Regional²³, which is an institution not recognized by OFRANEH because it “*has been created in spite of the disagreement of the communities, was not elected by the communities, [and] is not an organization that represents them.*” The Requesters believe that the Mesa is composed of people who cannot be considered “*other Garífuna representatives*” as claimed by the Bank, and that it is alien to their own institutions.²⁴

²⁰ Request, p. 7.

²¹ Request, p. 6.

²² Request, p. 6.

²³ The Mesa Regional is a “consultation board” created by the Government under the PATH. See *infra*, Section C, ¶ 36 for more information.

²⁴ Request, p. 12.

21. According to the Request, the Bank did not comply with OP 4.01 on Environmental Assessment because, although the environmental analysis addresses the problems affecting the Garífuna land, it does not provide that the Garífuna communities may manage or co-manage their land to restore their control over the “functional habitat” that they have preserved for centuries. Similarly, they claim that the demarcation of the water limits is not being carried out and they are not aware of any measures “designed to eliminate or at least mitigate the presence of government institutions in the management of the protected areas in favor of the permanent presence of the members of the communities.”²⁵ The Request claims that the Project did not take into account the importance of natural habitats for the livelihood of the Garífuna communities, as required by OP 4.04 on Natural Habitats.²⁶ According to the Request, the management of these areas is already given to institutions defined in the Project’s manual, and in particular to NGOs with no participation of indigenous communities provided or required. For example, the Request claims that the Project Environmental Manual provides that the Serra Río Tinto Forest Reserve, which is not yet established as protected area, will be managed by the NGO known as MOPAWI, a non Garífuna NGO that does not represent the interests of the Garífuna people.²⁷
22. The Requesters state that they brought their concerns to the attention of Bank Management in several occasions but did not find the solutions proposed by the Bank satisfactory. They wrote to the Bank on August 22, 2005, expressing their concerns about the Project and about Bank violations of its policy on Indigenous Peoples. Management thus invited OFRANEH to a meeting which was held on September 21, 2005. According to the Requesters, following this meeting, Management summarized their discussion in a letter sent to the Requesters on October 20, but misrepresented the Requesters’ concerns claiming that their complaint were only related to the new Property Law, rather than the PATH. After expressing the intention to resort to the Panel, OFRANEH states that it received an additional Bank letter inviting OFRANEH to a meeting on November 4, 2005, and expressing the willingness to understand their preoccupations. However, since representatives of the Mesa Regional were present at this meeting, OFRANEH did not take part in the discussion because, as noted above, it does not believe that the members of the Mesa can be considered representatives of the Garífuna communities.²⁸
23. The Requesters believe that implementing the Project will endanger the survival of the Garífuna people *“because they cannot agree to solutions unless they are based on a concrete will to resolve the conflicts and recognize the*

²⁵ Request, p. 8.

²⁶ Request, p. 8.

²⁷ Request, p. 10.

²⁸ Request, p. 12.

*rights over the lands that ancestrally belong to them.*²⁹ They therefore request that the Panel recommend an investigation to the Board of Executive Directors.

24. The Panel notes that the above claims may constitute violations by the Bank of various provisions of the following operational Policies and Procedures:

OP/BP 4.01	Environmental Assessment
OP/BP 4.04	Natural Habitats
OD 4.20	Indigenous Peoples
OP/BP 13.05	Project Supervision
World Bank policy on Disclosure of Information	

C. Management Response

25. On February 9, 2006, Management submitted its Response to the Request. The Response includes 7 annexes.
26. The Response's section headed "*Project Background*" includes information about the Project's objectives, components³⁰ and status, and offers a summary of Management Response to the claims raised in the Request for Inspection.
27. **Status:** Management states that, to date and as planned, the SINAP and its subcomponents have been created; 140 municipalities are operating SINAP's subsystems; five property registries (out of eight) operate under the folio real system and 23 percent of the target parcels for Phase I have been surveyed while 50 percent of municipal boundaries have been demarcated. Project implementation is however moving slower with respect to the regularization of indigenous lands because, according to Management, "*field activities are preceded by extensive consultation with communities.*"³¹
28. **Summary:** Management states that overall the Response focuses on four main points. First, Management claims, as of the date of the Response, that no implementation activities involving surveying, demarcation, conflict resolution and titling have taken place in any Garifuna lands. Management adds that, in any event, when these activities occur, appropriate safeguards are built into the Project to protect indigenous people's lands. Second, Management maintains that "*community participation in the Project is voluntary and broad participatory mechanisms are operational.*" Third, the Response states that the Project complies with national legislation, including the 2004 Property Law, as well as with Bank policies. Fourth, Management claims that it has responded to

²⁹ Request, p. 13.

³⁰ See Part A (The Project) of this Report for a description of the Project, its objectives and components.

³¹ Management Response, ¶ 16, 17.

the Requesters' concerns and "*remains committed to ongoing meaningful consultations that include all interested Garífuna stakeholders.*"³²

Special Issues of the Garífuna Communities

29. In a section headed "*Special Issues*" Management Response presents an overview of the history, socio-economic conditions, representative organizations and issues involving the Garífuna people.³³ In particular, Management states that the "*Garífuna communities currently face multiple and long-standing unresolved land conflicts*" among community members, with third parties, and with national and local authorities, because, according to Management, different types of ownership (e.g. individual, collective, titled for a smaller amount of land than expected, titled to non-Garífuna people etc.) coexist in the region and the titling programs that the National Agrarian Institute carried out in the past decades have not been satisfactory to the Garífuna people.
30. The Response also states that the Bank has supported research in land issues of indigenous and afro-Honduran people, among which a land tenure study that mapped the territorial claims of 25 communities and is used by "*many Garífuna organizations ...as one of the empirical sources for their land claims.*" In addition, the Response states that the Bank has supported institutional building of Afro-descendant people, including Garífuna, in Latina America and a specific study on indigenous and Afro-Honduran people in Honduras.³⁴

Response to the Requesters' Claims

31. The Response groups the Requesters' claims under four categories: consultations and participatory nature of the Project; legal framework; protected areas and territorial claims; and responsiveness to the Requesters' concerns.

Consultations and Participatory Nature of the Project

32. Management claims that OFRANEH "*has participated in ten consultation events to date, including during Project preparation and implementation*", which were related to the Property law, the preparation of the Project and the Indigenous People Development Plan (IPDP). Management also claims that since the beginning of Project implementation the Requesters participated only to three consultation meetings, although they were invited to seven of them. Management states that a "*wide range of Garífuna stakeholders*", including municipal authorities, community leaders, individuals and civil society organizations, was consulted for the preparation of the Social Assessment and the IPDP, through "*15 structured interviews*" and "*30 household*

³² Management Response, ¶ 18.

³³ Management Response, ¶ 23-26.

³⁴ Management Response, ¶ 27.

questionnaires”.³⁵ It also claims that proposals made by affected people during consultation meetings were taken into consideration in Project design. The Response refers in particular to a workshop ‘*organized by OFRANEH, and financed by the Bank-funded PAAR*’ which took place on October 25-26, 2003 in San Juan de Tela, to which 109 Garífuna representatives participated, and seven working groups were formed to discuss issues such as indigenous lands, protected areas, natural resource management, participation etc. Management claims that the Project “*incorporated many*” of the recommendations formulated in this workshop.³⁶

33. With respect to the IPDP in particular, Management states that OFRANEH participated in two consultation events held in November and December 2003. According to the Response, since in the November 26 meeting OFRANEH had requested more time to review the draft IPDP, a second meeting was held on December 2. In this meeting, Management claims, the participants agreed to consult their communities to appoint representatives to form a *Mesa Nacional Indígena*, a consultation board that would facilitate the participation to the Project of the affected indigenous communities. The Response also states that the Government decided, later on, to form two ethnic-based consultation boards – in Spanish, *Mesa Regional* – one for Garífuna and one for Miskito indigenous peoples. Management claims that at the two above-mentioned meetings no major objections to the Project were raised.
34. As to the December 2003 Sambo Creek document mentioned in the Request for Inspection, according to Management the Requesters have misrepresented its content because the document “*praises the diagnosis of the Garífuna land tenure issues presented in the IPDP.*” Moreover, Management claims that all the relevant issues addressed in the document were considered in Project preparation and design, while “*most of the 12 land tenure issues...are explicitly addressed by the Project*” and “*many of the proposals ...were incorporated in the Project design and are currently under implementation.*”³⁷ Among the noted 12 land tenure issues, the Response mentions lack of titling of Garífuna lands and lack of registration of existing titles; conflicts between land claims raised by Garífuna communities and those raised by others, such as municipalities and private landholders; and lack of participation in the management of protected areas. The Response also lists the Garífuna people’s proposals that were incorporated into the Project; among them are voluntary community participation, prior informed consultations before land regularization, and issuance of communal titles to Garífuna communities if they choose to do so.
35. Management also emphasizes that community participation in the Project is voluntary and thus land demarcation and titling will occur only in those communities willing to participate in the Project.

³⁵ Management Response, ¶ 31.

³⁶ Management Response, ¶ 32.

³⁷ Management Response, ¶ 36-39.

36. **Garífuna Mesa Regional:** According to Management, the Mesa Regional is a consultation board that *“includes a broad range of Garífuna stakeholders.”*³⁸ This Mesa was formed in 2005 following invitations sent by the Government to *“representatives of a wide range of Garífuna communities and organizations, including Ofraneh, to participate in a meeting to establish an inter-institutional commission to organize the Mesa Regional”*. Management states that at a meeting held in Trujillo, Colon, on March 15-17, 2005, 112 Garífuna people, which included representatives of 25 communities, members of *patronatos*³⁹, municipalities, the Garífuna church organization and organizations representing the Garífuna people, established the *Mesa Regional de Regularización y Resolución de Conflictos* (Regional Board of Regularization and Resolution of Conflicts), operating under the principle of non-exclusion so that all interested parties can participate and express their views about the Project.
37. Management claims that one representative of OFRANEH was present at the March meeting and is now part of the Mesa. This person, however, is not one of the Requesters. Management also claims that currently the leadership of OFRANEH is under dispute, and the OFRANEH-Requesters refused to participate in the meeting that created the Mesa Regional.⁴⁰ Management does not believe, as the Requesters do, that the members of the Mesa are *“outsiders”* to the communities or *“Garífuna clowns”*.⁴¹ In addition, at the mentioned March meeting, the Response notes that *“eight communities and twelve protected areas were selected by participants as candidates for participation and demarcation and titling activities under the Project.”*⁴² Moreover, aside from the Mesa Regional, Management states that *Mesas Locales* were created specifically for each community to work with communities’ assemblies so that all members can participate in the Project.⁴³
38. Management claims that there is *“broad support for the Project”*, although there is also *“diversity of opinions among various Garífuna stakeholders regarding the role of the Project in addressing their land claims.”*⁴⁴

³⁸ Management Response, ¶ 42.

³⁹ *“Grassroot organizations”* with legal personality located within the communities whose members are selected by community members directly. See Management Response, ¶ 40.

⁴⁰ Management Response, ¶ 42-45.

⁴¹ Management Response, ¶ 86.

⁴² Management Response, ¶ 43.

⁴³ Management Response, ¶ 44. Mesa locales have so far been created in the communities of Santa Fe, San Antonio, Sagrelaya, Guadalupe, and Cocalito.

⁴⁴ Management Response, ¶ 46, 47.

Legal Framework

39. **IPDP and the Property Law:** Management emphasizes that the Government passed the Property Law after the Bank Board of Directors had approved the Project. However, Management states that, although the Law is not discussed in the Project documents because at the time of Project appraisal and approval it was still uncertain whether the law would be passed, the Project design takes it into consideration and provides “*mechanisms for the continuous flexible adaptation of the Project to the new law.*”⁴⁵
40. The Response also notes that three gaps in the Honduran legal framework were identified during Project preparation, namely the lack of legislation specifically addressing land rights of indigenous and Afro-Honduran peoples, the lack of a parcel-based property registry and the lack of procedures to demarcate protected areas. “*After careful consideration*” and discussions about the legal situation, Management decided to proceed with the Project “*under the existing legal and institutional framework, while building into the design specific safeguards*” to address the mentioned gaps.⁴⁶ According to the Response, these safeguard measures were: a Regulatory Decree issued by the Supreme Court to authorize a parcel-based property registry, and specific safeguards incorporated in the Credit Agreement to protect the rights of the indigenous and Afro-Honduran people. Among the latter, Management notes the provision to carry out an IPDP acceptable to the Bank and the provision that procedures to protect the people and consult them must be in place before demarcation and titling of lands adjacent to ethnic lands take place. Management also states that a trigger for Phase II of the Land Administration Program is the “*adoption of legal/regulatory framework for Indigenous Peoples lands.*”⁴⁷
41. With respect to the new Property Law, Management found it acceptable and determined that as the Project safeguards provisions were not in conflict with the law, the law and the Project “*could be harmonized.*” Management also states that these Project safeguards provide that the Bank must issue its no-objection to any updating of the IPDP, for example with respect to the land regularization and conflict resolution procedures, which have to be based on meaningful consultations. As to the still un-issued regulations on land regularization mentioned by the Requesters, they have yet to be issued because a draft document is currently subject to consultations with indigenous communities. Management also claims that this was explained to the Requesters in a meeting held on September 21, 2005.⁴⁸
42. **Conflict Resolution Mechanisms:** To the claim that the Project’s conflict resolution method, arbitration, is against the new Property law and generates

⁴⁵ Management Response, ¶ 52.

⁴⁶ Management Response, ¶ 54.

⁴⁷ Management Response, ¶ 55.

⁴⁸ Management Response, ¶ 56, 59, 60.

confusion among the people, Management responds that the arbitration procedures included in the IPDP are consistent with national law in force at the time of Project preparation and are in compliance with OD 4.20. In addition, the Response notes that the Mesa Regional was established as a “*participatory consultation framework*” to “*discuss and provide inputs into the development of land regularization procedures and conflict resolution mechanisms under the Project.*” Furthermore, as noted, any change to these procedures is subject to the Bank’s no-objection.⁴⁹

43. Management states that the Project recognized that access to justice for Garífuna people is limited, and thus provided for budgetary allocations, within the IPDP, to create training programs for local community leaders on national law and regulations related to the Project and for conciliators and arbitrators. With respect to the territorial claims presented to the Inter-American Commission of Human Rights (IACHR), the Response notes that two of the communities subject of the claims (Cayos Cochinos and Triunfo de la Cruz) were not considered for the Project, and the third, Punta Piedra, was initially listed as potential community, but then withdrawn because of opposition from community members. In any event, Management states that it takes no position with respect to these claims before the IACHR.⁵⁰
44. **Collective and Individual Titling:** Management asserts that it has analyzed Honduras’ legal framework vis-à-vis the issue of collective versus individual titles. The new Property Law guarantees indigenous and Afro-Honduran communities “*full recognition of their communal property rights...through communal [emphasis added] fee-simple titling (titulación y dominio pleno).*”⁵¹ Management states that the Project does not favor or encourage individual titling in the Garífuna communities. Rather, recognizing the importance of this issue and the risk of outside influence on the people to ask for individual titles, the Project established procedures to “*protect the rights of Garífuna communities, including their right to choose a tenure regime.*” Management adds that it “*endorses the Government’s position to respect the decisions made by the Mesa Regional and individual communities regarding their preferred land tenure regime.*”⁵²

Protected Areas and Territorial Claims

45. The Response states that the Project was assigned environmental Category B and the Environmental Assessment identified among the potential impacts “*the possible overlap between existing communities (both indigenous and non-indigenous) and protected areas.*”⁵³ As a result, communities may be restricted

⁴⁹ Management Response, ¶ 67.

⁵⁰ Management Response, ¶ 68-71.

⁵¹ Management Response, ¶ 72.

⁵² Management Response, ¶ 73, 74.

⁵³ Management Response, ¶ 77.

access to resources in demarcated areas. For this reason a Process Framework and Environmental Management Plan was developed. Under the Project, the demarcation of protected areas will occur “*only if and when local communities agree*”. According to the Process Framework, co-management of protected areas by agencies, NGOs and communities will be possible, and “*strict provisions for the recognition and demarcation of land areas in favor of indigenous communities*” are envisaged for the cases of overlap between land claims and protected areas.⁵⁴ In addition, water limits of protected areas will be demarcated on a case by case basis, based on specific circumstances.

46. **Natural Habitats:** According to Management, to protect indigenous peoples and in compliance with OP 4.04 on Natural Habitats and OD 4.20, the Project establishes that: only legally established protected areas are eligible for demarcation; no Project field activities will take place in or near a proposed protected area; and procedures to protect the interests of the people must be in place before demarcation or titling occur on lands adjacent ethnic lands. For example, the Rio Tinto Forest Reserve mentioned in the Request is a proposed protected area and no project field activity will take place in or near this area. Management also states that no protected area was “*delivered*” to NGOs as claimed by the Requesters. Rather, the Project Environmental Assessment includes “*a comprehensive inventory of existing and proposed protected areas [...] and factual information regarding the organizations involved in the management of those areas.*” The Response claims that the list of organizations “*involved in the management of those areas in Project documents should not be interpreted as a Project proposal or endorsement of those organizations*”. Management adds that “*the list reflects a relationship between the Government and those organizations working in a given protected area.*”⁵⁵
47. Finally, Management asserts that, because it recognized that if natural habitats were titled erroneously this would affect indigenous communities, the Project provides for mitigation activities, i.e. exclusion of proposed protected areas from demarcation, and inclusion of “*chance find procedures in the Process Framework.*”⁵⁶

Responsiveness to the Requesters’ Concerns

48. Management states that the August 2005 Requesters’ letter to the Bank focused mainly on the Property Law which is the responsibility of the Government. It adds, however, that Management invited the Requesters to a meeting on September 21, 2005, in Tegucigalpa, to clarify their concerns, specifically those related to the PATH Project. According to the Response, the minutes of the

⁵⁴ Management Response, ¶ 77, 78.

⁵⁵ Management Response, ¶ 79.

⁵⁶ Management Response, ¶ 84.

meeting clearly show that it was agreed to hold a follow up meeting with the Requesters, Government representatives, as well as other representatives of the Garífuna people. Though the Requesters believe that the presence of other Garífuna representatives disrupt the dialogue, Management believes that this *“broad and open dialogue is appropriate”* especially in light of the fact that one of the Requesters’ concerns relate to the composition of the Mesa Regional. At the follow-up meeting set for November 4, 2005, to which members of the Mesa Regional were to participate, the Requesters did not attend.⁵⁷

49. Management believes that it *“took action to address the Project-specific concerns expressed by the Requesters and notified Ofraneh of these promptly”*, for example with respect to the agreement reached with the Government that the communities themselves must decide whether to be part of the Project.⁵⁸ Management also *“has consistently maintained its commitment to meaningful consultations, broad participation and open dialogue with all Garífuna stakeholders.”* Management claims that for this reason, on November 18, 2005, it wrote to the Requesters proposing again a meeting with them, the Government and other Garífuna representatives, but has yet to receive any reply.⁵⁹

E. Eligibility

50. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications, and recommend whether the matter alleged in the Request should be investigated.
51. The Panel has reviewed the Request and Management’s Response. The Panel Chairperson, Edith Brown Weiss, together with Deputy Executive Secretary Peter Lallas and Operations Officer Tatiana Tassoni visited Honduras from February 12 to February 17, 2006. During their visit, the Panel Team met with the signatories of the Request for Inspection and members of Garífuna communities, Bank staff, national and local authorities, and members of the Project’s Mesa Regional. The Panel visited the cities of Tegucigalpa, La Ceiba and Trujillo and also met with Requesters and other affected people in the communities of Sambo Creek and Guadalupe. The Panel wishes to emphasize its appreciation of the significance of the Project.
52. The Panel is satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.

⁵⁷ Management Response, ¶85, 86, 89.

⁵⁸ Management Response, ¶ 87.

⁵⁹ Management Response, ¶ 90.

53. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The persons who signed the Request live in Project-affected areas, have a common interest and common concerns, and reside in the Borrower's territory, as required by Paragraph 9(a).
54. The Panel notes that the Request "*assert[s] in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters*" as required by Paragraph 9(b).
55. During the Panel visits, the Requesters expressed serious concerns about the implementation of the Project because they fear that the PATH may ultimately lead to the demise of their collective titles, and thus to the loss of their ancestral lands, their culture and traditions. The Requesters do not oppose actions to recognize collective rights to their lands. However, they have significant concerns regarding the design and implementation of this Project in the way it affects their claims to their ancestral lands. The Requesters claim that the Garífuna communities were not properly consulted in the design and planning of the PATH, including in the development of the Indigenous Peoples Development Plan and in the selection of the pilot communities where the Project would be implemented first.
56. The Panel notes that there is disagreement as to whether the consultation process established under the Project is by-passing the structures developed over time by the Garífuna communities to represent the interests of their people. The Requesters state that the Project and the World Bank have not meaningfully consulted with the communities and their legitimate representatives and have opted to rely on people who were not chosen by the communities to represent their interests. They contend that the Project consultation process is fragmenting and dividing their communities and their representative structures, and thus may cause irrevocable harm to their people's traditions and culture. Government officials and others the Panel met during its visit to Honduras indicated that problems in consultation and representation in addressing the needs of indigenous and ethnic communities in Honduras have the potential to inflict significant harm on those communities.
57. The Panel observes that Bank Policy on Indigenous Peoples provides that the Bank must ensure "*that indigenous peoples do not suffer adverse effects during the development process, particularly from Bank-financed projects, and that they receive culturally compatible social and economic benefits.*"⁶⁰ The Panel observes that the Requesters believe that the views and preferences of the Garífuna communities have not been, and will not be, properly taken into consideration in decisions regarding land titling, demarcation of land rights and other matters of critical interest to the Garífuna people. They allege that this is

⁶⁰ OD 4.20 (September 1991) Indigenous Peoples, paragraph 6.

in violation of ILO Convention 169 and is not in compliance with the Policy on Indigenous Peoples. The Panel found significant differences of opinion as to whether the Bank has followed, or is following, its own policies and procedures on these matters and whether the Project will or may have negative effects on the interests of the Garífuna.

58. Of particular concern to the Inspection Panel is the Requesters' assertion that the Project has a high potential to undermine their claims to ancestral lands before national and international bodies. Ownership of these lands is crucial for the Garífunas' economic survival and the maintenance of existing patterns of social organization. They have forcefully represented to the Panel that, in their view, the Project, if implemented as designed, will not only affect their land claims but could make any decisions in other bodies in favor of the Garífuna people largely irrelevant and cause them irreparable harm.
59. The Panel also notes that the Requesters claim that the arbitration proposed as dispute settlement procedures for indigenous peoples' land disputes conflicts with the constitution and laws of Honduras, and therefore lacks legitimacy. According to the Requesters, the means for resolving disputes under the Project do not consider that there is an unequal power relationship between the Garífuna people and the country's power elites, which affects the ability of the people to have access to justice. The Requesters fear that the Project will ultimately lead to the recognition of individual claims on Garífuna lands while the Garífuna communities want to retain collective title.
60. Management, as indicated in its Response, believes that the consultation process has been open and conducted in accordance with Bank policies. It also contends that the dispute settlement mechanisms envisaged under the Project are consistent with local legislation and enable proper consideration of the views of the Garífuna people.
61. The Panel finds that the Requesters have alleged that the World Bank actions constitute a violation of Bank policies and procedures on indigenous peoples, natural habitats, environmental assessment and supervision and that these actions have had or could have a significant adverse effect on the Requesters' rights, as required by Paragraph 9(b). The Panel notes the need for factual inquiry into the Requesters' claims that the Bank violated its own operational policies and procedures.
62. The Panel confirmed that the World Bank has been aware of concerns from OFRANEH and the Garífuna communities they represent and their fear that their collective titles would not be recognized under the PATH.
63. The Panel is therefore satisfied that the Request *“does assert that the subject matter has been brought to Management's attention and that, in the Requesters' view, Management has failed to respond adequately demonstrating*

that it has followed or is taking steps to follow the Bank's policies and procedures." Hence, the Request meets the requirement of Paragraph 9(c).

64. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
65. The Credit financing the Project was approved by the Board of Executive Directors on February 26, 2004. The expected closing date of the PATH is April 30, 2008. When the Request was filed, January 3, 2006, about 69% of the Credit had been disbursed. The Request therefore satisfies the requirement in Paragraph 9(e) that the related Credit has not been closed or substantially disbursed.⁶¹
66. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).
67. The Requesters and other affected persons, Management's Response, the Panel's visit to Honduras, interviews with Government officials and Bank staff, confirmed that there are sharply differing views on the issues raised in the Request for Inspection. In order to ascertain compliance or lack thereof with Bank policies and procedures in the design and implementation of the Honduras: Land Administration Project, the Panel must conduct an appropriate review of all relevant facts and applicable policies and procedures. The Panel recognizes the importance of the Project, and notes that the investigation would be directed to the discrete issues raised by the Request.

F. Conclusions

68. The Requesters and the Request meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications. The Request and Management Response contain conflicting assertions and interpretations about the issues, the facts, and compliance with Bank policies and procedures.
69. In light of the foregoing, the Panel recommends that an investigation be conducted.

⁶¹ According to the Resolution that established the Panel, "*this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.*" Footnote to Paragraph 14 (c).

Some of the below listed Annexes to the Request and Management Response are herein attached respectively to the Request and Management Response. The remainder of the below listed Annexes are available upon request to the Executive Secretary of the Inspection Panel.

Annexes in the Request (as listed in the Request)

- Annex 1: Comunicado Publico, respecto al PATH (Public communication regarding the PATH) (attached)
- Annex 2: Denuncia Ofraneh violaciones DO 4.20 (con anexos) del 22 agosto del 2005 (Ofraneh's complaint regarding violations of OD 4.20 (with annexes) of August 22, 2005) (attached with second annex)
- Annex 3: Carta Banco Mundial 14 de septiembre del 2005 (World Bank letter of September 14, 2005) (attached as Annex 4.1 of Management Response)
- Annex 4: Minuta Reunion Ofraneh – Banco Mundial del 21 de septiembre del 2005 (Minutes of Ofraneh – World Bank meeting of September 21, 2005) (attached)
- Annex 5: Carta Banco Mundial del 20 de octubre del 2005 (World Bank letter of October 20, 2005) (attached as Annex 4.4 of Management Response)
- Annex 6: Carta Ofraneh del 25 de octubre del 2005 (Ofraneh letter of October 25, 2005)) (attached)
- Annex 7: Carta Banco Mundial del 27 de octubre del 2005 (World Bank letter of October 27, 2005) (attached as Annex 4.6 of Management Response)
- Annex 8: Carta Ofraneh del 31 de octubre del 2005 (Ofraneh letter of October 31, 2005) (attached)
- Annex 9: E mail Ofraneh del 3 de noviembre del 2005 (Ofraneh e-mail of November 3, 2005) (attached)
- Annex 10: Carta Ofraneh del 4 de noviembre del 2005 (Ofraneh letter of November 4, 2005) (attached)
- Annex 11: Carta Banco Mundial del 18 de noviembre del 2005 (World Bank letter of November 18, 2005) (attached as Annex 4.9 of Management Response)
- Annex 12: Certificaciones deposito peticiones a la Comisión Interamericana de Derechos Humanos (Certificates of submittal of petitions to the Inter-American Commission on Human Rights) (attached)
- Annex 13: Constancias y Puntos de Actas de las comunidades Garífunas, presentando su posición respecto al PATH (Certificates and points in minutes of the Garifuna communities, stating their position regarding the PATH)

Annexes in Management Response

Annex 1: Claims and Responses (attached)

Annex 2: Chronology of Key Project Preparation and Implementation Events

Annex 2.1: Chronology of events from January 2003 to November 2005 (attached)

- Annex 2.2: Consultation events on the design of a project to integrate the National Registry and Cadastral System (SINREC), January-February 2003
- Annex 2.3: Aide Memoire of consultation between representatives from civil society and PAAR Project, August 26, 2003
- Annex 2.4: Consultation event on draft Property Law, October 8, 2003
- Annex 2.5: Consultation workshop organized by Ofraneh, and financed by PAAR Project, San Juan, Tela, October 25-26, 2003
- Annex 2.6: Aide Memoire of meeting between representatives from Ofraneh and members of National Congress, November 12, 2003
- Annex 2.7: First round of consultations on the Indigenous Peoples Development Plan and Environmental Assessment, November 26, 2003 (attached)
- Annex 2.8: Second round of consultations on the Indigenous Peoples Development Plan and Environmental Assessment, December 2, 2003 (attached)
- Annex 2.9: Aide Memoire of meeting between the Vice-president of Ofraneh and PATH staff, January 13, 2005 (attached)
- Annex 2.10: Report of dissemination activities conducted by PATH staff in Garífuna areas, January 2005
- Annex 2.11: Invitation and minutes of working session to integrate the provisional Inter-Institutional Commission for the demarcation and titling of Garífuna communities, February 24, 2005 (attached)
- Annex 2.12: Minutes of the creation of the *Mesa Regional de Regularización y Resolución de Conflictos de Atlántida y Colón*, and preliminary selection of 8 communities and 12 protected areas to participate in the Project, March 15-17, 2005 (attached)
- Annex 2.13: Public statement against PATH issued by Ofraneh, April 28, 2005
- Annex 2.14: Minutes of the *Mesa Regional's* meeting in Sangreleya, April 29, 2005 (attached)
- Annex 2.15: Minutes of the meeting between members of *Mesa Regional* and representatives from Ofraneh, June 9, 2005 (attached)
- Annex 2.16: List of participants integrating the working commission of *Mesa Regional* and the three *Mesas Locales* of Guadalupe, Cocalito, and Sangreleya, June 9, 2005 (attached)
- Annex 2.17: PATH newsletter reporting Project activities in Miskito and Garífuna communities, April-July, 2005
- Annex 2.18: Letter sent to the World Bank by Ofraneh, August 2005
- Annex 2.19: Minutes of the meeting between *Mesa Regional* and World Bank staff, September 22, 2005 (attached)
- Annex 2.20: Minutes of the meeting between *Mesa Regional* and World Bank staff, November 4, 2005 (attached)
- Annex 2.21: Special minutes issued by *Mesa Regional*, November 4, 2005
- Annex 2.22: Letter from the World Bank to the *Mesa Regional* as a follow-up to the November 4 meeting, November 11, 2005

Annex 3: Ofraneh Statements Regarding Their Internal Dispute

- Annex 3.1: Notification from Ofraneh interdicting Mr. Ángel Amilcar Colón from acting as the Organization's General Coordinator, March 4, 2005 (attached)
- Annex 3.2: Press release from Ofraneh signed by Mr. Ángel Amilcar Colón declaring invalid the extra-ordinary assembly of March 23, 2005 (attached)

Annex 4: Correspondence Between Requesters and Bank Management (August to November 2005)

- Annex 4.1: Letter from the World Bank to Ofraneh, September 14, 2005 (attached)
- Annex 4.2: Minutes of meeting in Tegucigalpa between World Bank staff and Ofraneh representatives, September 21, 2005 (attached as Annex 4 of the Request)
- Annex 4.3: Minutes of meeting between *Mesa Regional* and World Bank staff in La Ceiba, September 22, 2005
- Annex 4.4: Letter from the World Bank to Ofraneh, October 20, 2005 (attached)
- Annex 4.5: Letter from Ofraneh to the World Bank, October 25, 2005 (attached as Annex 6 of the Request)
- Annex 4.6: Letter from the World Bank to Ofraneh, October 27, 2005 (attached)
- Annex 4.7: E-mail from Ofraneh to the World Bank, November 3, 2005 (attached as Annex 9 of the Request)
- Annex 4.8: Letter from Ofraneh to the World Bank, November 6, 2005 (attached as Annex 10 of the Request)
- Annex 4.9: Letter from the World Bank to Ofraneh, November 18, 2005 (attached)

Annex 5: Minutes of Internal Bank Management Meeting, November 18, 2005

Annex 6: Selected Project Supervision Documents

- Annex 6.1: Management Letter following Project supervision missions, September 19-23 and October 11-15, 2005
- Annex 6.2: Management Letter following a Project supervision mission, November 2-4, 2005

Annex 7: Unofficial English Translation of Title V, Chapter III, and Arts. 110 and 111 of Honduras Property Law (No. 82-2004)

Map 1 - IBRD No. 34485 "Honduras Land Administration Project, Garífuna Communities and Related Sites_(attached)