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MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE
INSPECTION PANEL INVESTIGATION REPORT

HONDURAS

LAND ADMINISTRATION PROJECT
(CREDIT NO. 3858-HO)

AUGUST 3, 2007

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT
OF THE
HONDURAS LAND ADMINISTRATION PROJECT
(CREDIT NO. 3858-HO)**

Pursuant to paragraph 23 of the Resolution Establishing the Inspection Panel (IBRD Resolution 93-10 and IDA Resolution 93-6), attached for consideration by Executive Directors is Management's Report and Recommendation in response to the findings set out in the Investigation Report No. 39933-HN dated June 12, 2007, of the Inspection Panel on the captioned Project (Honduras Land Administration Project (Credit No. 3858-HO)).

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ABBREVIATIONS AND ACRONYMS

AFE-COHDEFOR	<i>Administración Forestal del Estado Corporación Hondureña de Desarrollo Forestal</i> (Honduran Agency for Forest Development)
APL	Adaptable Program Loan
BP	Bank Procedures
DCA	Development Credit Agreement
EA	Environmental Assessment
GEF	Global Environment Facility
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
IHT	<i>Instituto Hondureño de Turismo</i> (Honduran Tourism Institute)
ILO	International Labor Organization
INA	<i>Instituto Nacional Agrario</i> (National Agrarian Institute)
IP	<i>Instituto de Propiedad</i> (Property Institute)
IPDP	Indigenous Peoples Development Plan
IPN	Inspection Panel
MASTA	<i>Mosquitia Asla Takanka</i> (Unity of the Mosquitia)
NGO	Nongovernmental Organization
OD	Operational Directive
ODECO	<i>Organización de Desarrollo Étnico Comunitario</i> (Organization of Ethnic-Community Development)
OFRANEH	<i>Organización Fraternal Negra de Honduras</i> (Fraternal Black Honduran Organization)
OMS	Operational Manual Statement
OP	Operational Policy
PAAR	<i>Proyecto de Administración de Áreas Rurales</i> (World Bank-financed Rural Land Management Project)
PATH	<i>Programa de Administración de Tierras de Honduras</i> (Honduras Land Administration Program)
PCU	Project Coordination Unit
PDO	Project Development Objective
PROBAP	<i>Proyecto de Biodiversidad en Áreas Prioritarias</i> (Biodiversity in Priority Areas Project)
SDR	Special Drawing Rights
SERNA	<i>Secretaría de Recursos Naturales y Ambiente</i> (Ministry of Environment and Natural Resources)
SGJ	<i>Secretaría de Gobernación y Justicia</i> (Ministry of Interior)
SINAP	<i>Sistema Nacional de Administración de la Propiedad</i> (National Property Administration System)
SINAPH	<i>Sistema Nacional de Áreas Protegidas de Honduras</i> (Honduran National System of Protected Areas)
SINREC	<i>Sistema Integrado Nacional de Registros y Catastro</i> (National Registry and Cadastral System)

I. INTRODUCTION

1. On January 10, 2006 the Inspection Panel registered a Request for Inspection, IPN Request RQ06/1 (hereafter referred to as “the Request”), concerning the Honduras Land Administration Project (“the Project”) partially financed by the International Development Association (IDA)¹. The Request was submitted by the *Organización Fraternal Negra Hondureña* (Fraternal Black Honduran Organization, OFRANEH) on behalf of the Garifuna population of Honduras.
2. The Executive Directors and the President of the World Bank were notified by the Panel of receipt of the Request. The Management responded to the claims in the Request on February 9, 2006.
3. In its Report to the Board, the Panel found the Request eligible and recommended that the Executive Directors authorize an investigation. The investigation was authorized by the Executive Directors on March 30, 2006.
4. On June 12, 2007, the Panel issued its report outlining the findings of the investigation. Management appreciates the Panel’s clear and thorough presentation of its findings. This report, responding to the findings of the Panel, is organized in several sections. Section II briefly describes the Project and provides an update on Project status. Section III summarizes the findings and observations of the Panel, while Section IV provides additional background information on several key issues. Management presents its Action Plan in response to the Panel’s findings in Section V, and the conclusion to the report in Section VI. A detailed matrix containing the Panel’s findings, along with Managements responses, is provided in Annex 1.

II. PROJECT STATUS

5. ***The Project.*** The Honduras Land Administration Project was prepared during the period 2002-2004, and approved by the Bank’s Board of Executive Directors on February 26, 2004. The total Project cost is approximately US\$38.9 million, which includes an IDA Credit of SDR16.9 million (US\$25 million equivalent), a Nordic Development Fund Credit of EUR6 million (US\$7.9 million equivalent), and Borrower’s contribution (US\$6.0 million). The IDA Development Credit Agreement (DCA) was signed on August 18, 2004 and became effective on December 2, 2004.
6. The Project is the first phase of an Adaptable Program Loan (APL) to help modernize land administration in Honduras. The specific Project Development Objective (PDO) is to establish and operate 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 in a timely and cost-effective manner. Three components support

¹ Since IDA is part of the World Bank Group, the terms “Bank” and “IDA” are used interchangeably throughout this Management Report.

the achievement of the PDO: (i) at the national level, development of the policy framework and institutional strengthening to support the establishment and operation of the National Property Administration System; (ii) in specific areas of the country, systematic land regularization, titling, and registration; and (iii) Project management, monitoring and evaluation. Approximately five percent of Project resources are dedicated to titling of Ethnic Lands.

7. **Project Status.** The Project has been under implementation for approximately 2.5 years. As of July 16, 2007, 78.7 percent of the Credit had been disbursed. Project implementation proceeded quite rapidly and in a satisfactory manner in 2004 (using Project Preparation Facility resources and through retroactive financing) and 2005. By the end of 2005, the National Property Administration System had been consolidated, over 215,000 land parcels registered, over 44,000 hectares of forest lands surveyed and 21 municipal boundaries demarcated.

8. In December 2005, national elections were held in Honduras, and a subsequent change in government occurred in January 2006. Between January 2006 and April 2007, Project implementation slowed considerably. The Project suffered from continuous administrative changes and weak operational leadership due to the new Government's failure to appoint a permanent Project Coordinator until May 2007. During this period, the Project was in the hands of an interim Coordinator with limited autonomy and capacity. Simultaneously, the Project Coordination Unit (PCU) had weak internal control systems and limited fiduciary oversight by Government. Ineffective inter-institutional coordination was also a problem, which was compounded by the fact that the Government transition brought uncertainty to the Property Institute (*Instituto de la Propiedad*, or IP) and other agencies related to the Project.

9. On January 10, 2007, in response to non-compliance with several covenants of the DCA, largely as a result of the above problems, IDA sent to the Government a Notice of Threatened Suspension of Disbursements under the Credit. The issues supporting the decision included lack of due diligence and efficiency in carrying out the Project, as evidenced by a delay in meeting agreed performance targets, insufficient provision of counterpart funds, and inadequate staffing of the PCU, as required in the DCA. In addition, the Government signed a Memorandum of Understanding with OFRANEH in September 2006, which included, among other issues, an agreement purportedly dissolving the *Mesa Regional Garifuna*, the mechanism established under the Project for broad-based consultations at the local level.

10. The Government met all the conditions to avoid suspension of disbursements by April 2007. Specifically, as required in the Notice of Threatened Suspension of Disbursements, a Project Coordinator and all Project staff needed in the PCU for 2007 were contracted, after streamlining the PCU to ensure an efficient yet capable Project team. The Council of Governors, an inter-institutional body which will provide strategic guidance to the Project and facilitate coordination across participating agencies, was activated, along with its Technical Committee. Government confirmed that implementation of the Project would be transferred to the IP, and submitted the draft subsidiary and co-execution agreements needed to support this decision. Sufficient

counterpart funding was allocated in the national budget to implement the annual implementation plan of the Project. As discussed in more detail below, the Government also confirmed its decision to maintain the *Mesa Regional Garífuna* as a local broad-based consultative mechanism for Garífuna communities through a public meeting held in Trujillo on February 23, 2007. In addition to responding to the Notice satisfactorily, Government took additional actions such as completing a proposal for a minor restructuring of the Project (see below), strengthening the fiduciary aspects of the PCU and improving procedures, according to the Action Plan being proposed by the Government to complete the Project. Furthermore, the National Agrarian Institute (*Instituto Nacional Agrario*, or INA), as the Chair of the Inter-Sectoral Commission which was activated by the Government in May 2007 (see paragraph 16 below), re-launched the consultation process to finalize the Regularization Manual for Ethnic Lands and revitalize activities in these areas. All of these actions have effectively provided the conditions to improve Project implementation. A Bank mission undertaken in July 2007 corroborated that further progress has been made regarding Project management, fiduciary oversight, and preparatory activities for National Forests, including the Regularization Manuals for Protected Areas, for National Forests, and for Ethnic Lands.

11. **Project Restructuring.** On March 20, 2007, the Bank received the Government's request for Project restructuring, focusing on updating Project implementation arrangements to reflect the current national legal and institutional framework, and modifying selected outputs related to Component 2 of the Project (Area-based Systematic Land Regularization, Titling and Registration). These changes were needed to ensure improvement of Project performance and achievement of the PDO. The proposed restructuring, which is ready for approval by the Regional Vice President, does not change the PDO nor associated outcome targets. The restructuring is fully consistent with the Action Plan presented in Section V of this Report.

12. Specifically, Project restructuring includes: (i) changing implementation arrangements, including designation of the Property Institute as the Project's Implementing Agency; (ii) replacing references to the National Registry and Cadastral System (*Sistema Integrado Nacional de Registros y Catastro*, or SINREC) agreement in the DCA with references to the IP and its functions under the 2004 Property Law; (iii) eliminating the option, included in the DCA, of having an external procurement agent to manage selected international bids and contracts financed by the Credit, and introducing the use of updated Procurement/Consultant Selection Guidelines; (iv) adjusting selected output indicators for systematic land regularization, titling and registration; (v) clarifying that no activities requiring resettlement will be financed under the Project; and (vi) extending the Credit Closing Date for a year. It is expected that the restructuring will provide a more coherent structure to achieve the Project objectives and associated outcome targets, meet the triggers for Phase II of the APL, and better support the Government's long term goal of modernizing the country's land administration system.

13. **Ethnic Lands.** Land regularization activities in Ethnic Lands have not started in Garífuna (or Miskito) communities given that the Regularization Manual for Ethnic Lands has not been completed or approved by the Bank. Prior Bank approval of the Manual is required by Sections 3.01 (a), 3.04, 3.08 (b) and 3.11 of the DCA. However,

during 2006 and 2007, public awareness and social mobilization activities continued under the Project. This included support to the *Mesa Regional Garífuna*, the *Mesa Regional Miskito* and community-level *Mesas*. In addition, Project resources have supported a legal advisor selected by *Mesas* members to help the *Mesas* better understand the 2004 Property Law and propose amendments related to regularization in Ethnic Lands. Among other activities, the *Mesa Regional Garífuna* has been involved in consultation events related to the preparation of the Regularization Manual for Ethnic Lands as well as a Communication Strategy to educate Garífuna communities about the Project.

14. The *Mesa Regional Garífuna* (and the *Mesa Regional Miskito*) has consolidated its role as a consultative mechanism; Bank supervision missions have found members of the *Mesa Regional Garífuna* to be informed, motivated, legitimate and committed representatives of the interests of the Garífuna people. Given the critical role played by the *Mesa Regional Garífuna*, when the threat of its dissolution was raised (see paragraph 9), the Bank presented Government with two options: (i) rescind the dissolution of the *Mesa Regional Garífuna*; or (ii) propose an alternative for a broad-based consultation framework for the Project consistent with Bank policy. Government chose the first option, and confirmed its continued support for the *Mesa Regional Garífuna*.

15. To broaden consultations on the Regularization Manual for Ethnic Lands, an ad hoc Inter-Sectoral Committee was established under the Project in November 2006. This Committee included government agencies, (i.e., the Honduran Agency for Forest Development, INA, IP, Ministry of Environment and Natural Resources, and Ministry of Tourism), and representatives of ethnic and community organizations, i.e., Unity of the Mosquitia (*Mosquitia Asla Takanka*, or MASTA), the *Mesa Regional Garífuna* and *Mesa Regional Miskito*, Organization of Ethnic-Community Development (*Organización de Desarrollo Étnico Comunitario*, or ODECO) and OFRANEH. OFRANEH participated in the first meeting of the Committee on November 16, 2006, but did not sign the meeting's Aide Memoire. The Committee held eight working sessions between November 2006 and February 2007.

16. ***The Inter-Sectoral Commission for Protecting Land Rights of Garífuna and Miskito Communities.*** In December 2006, the existence of a 2001 Executive Decree (035-2001) establishing an Inter-Sectoral Commission for Protecting Land Rights of Garífuna and Miskito Communities was brought to the attention of the current Government. This Inter-Sectoral Commission was supposed to have almost the same composition as the Project-sponsored ad hoc Committee, and was to be led by INA. To avoid duplication, the Government therefore decided to activate the Inter-Sectoral Commission established under Executive Decree in 2001, and to abolish the ad hoc Committee. The Inter-Sectoral Commission was activated as an instrument at the national level to facilitate consultations and enhance the broad-based consultation framework established through the *Mesa Regional Garífuna*, the *Mesa Regional Miskito*, as well as community-level *Mesas*. The Government has also invited the IP and the Honduran Association of Municipalities (*Asociación de Municipios de Honduras*, or AMHON) to join the Inter-Sectoral Commission. The first official meeting of the Inter-Sectoral Commission with both Government and civil society members was held on May 31,

2007. OFRANEH declined to participate in this meeting since one of the discussion points was the Regularization Manual for Ethnic Lands; it also stated that it could not participate in any Project-related activities while the Inspection Panel Investigation was ongoing.

17. On July 12, 2007, the Inter-Sectoral Commission held another meeting, in which OFRANEH did participate. At the meeting, it was agreed that the complementary roles and responsibilities of the Inter-Sectoral Commission and the *Mesa Regional Garífuna* needed to be clarified. In particular, their respective roles regarding conflict resolution needed to be carefully evaluated. As explained below, Management has agreed with Government that the recently-activated Inter-Sectoral Commission will meet over the next three months to address specific concerns about Project implementation as well as more general concerns about the Property Law. Thus, through the Project-supported Inter-Sectoral Commission, OFRANEH is now formally participating in Project consultations.

III. SUMMARY OF FINDINGS

18. Management summarizes below its understanding of Bank compliance with its policies and procedures in relation to the findings of the Panel. For further detail, the full findings of the Panel can be found in Annex 1 of this document.

Table 1

OD 4.20 Indigenous Peoples	
In compliance	<ul style="list-style-type: none"> • Preparation of Indigenous Peoples Development Plan (IPDP). • Consultations with Garífuna during Project preparation. • Creation of a Project consultation framework to unite leaders and Garífuna communities. • Analysis of legal framework regarding Indigenous Peoples' land rights. • Inclusion of specific measures to protect Indigenous Peoples' land rights. • Preparation of Process Framework for demarcation of Ethnic Lands in case of overlap with protected areas (also OP 4.01). • Government commitment to not designate more protected areas in zones where there are autonomous communities until property rights are defined (also OP 4.01). • Communities maintain/acquire co-management responsibilities over designated protected areas that may include their lands (also OP 4.01). • Resources available in IPDP for capacity-building and training of community leaders on national laws, as well as training of arbitrators and conciliators.
Not in compliance	<ul style="list-style-type: none"> • Project safeguards inadequate to protect Indigenous Peoples' land rights. • Project consultation mechanisms not adjusted to concerns raised (also OP 13.05); endorsement of consultation mechanism (<i>Mesa Regional Garífuna</i>), in which leading representative organizations (OFRANEH and ODECO) do not participate or give their support or guidance. • Inadequate attention paid to Inter-Sectoral Commission in IPDP. • Risks posed to affected communities by conflict resolution mechanisms.
OP/BP 4.01 – Environmental Assessment	
In compliance	<ul style="list-style-type: none"> • Identification of issues in Environmental Assessment.
OP/BP 4.04 – Natural Habitats	
In compliance	<ul style="list-style-type: none"> • Identification of steps and safeguards addressing issues involving natural habitats.

OP/BP 13.05 – Project Supervision	
Not in compliance	<ul style="list-style-type: none"> • Insufficiently close supervision of Project consultation mechanisms. • Project not adjusted (or <i>ex-post</i> analysis) to changed legal circumstances (also OD 4.20).

19. In addition to the findings of compliance or non-compliance with various parts of the Operational Directive (OD) and Operational Policies (OPs) cited above, the Panel made a number of observations in order to assist in the implementation of the Project. These observations concerned consultation with Garífuna communities during Project implementation, the rights of Garífuna communities vis-à-vis protected areas, and the legal framework for protecting Garífuna people’s rights under the Project. Detailed information is provided in Annex 1.

IV. KEY ISSUES

20. This section provides information related to three key issues at the center of the Panel’s Investigation Report: (i) land pressures on Honduras’ North Coast; (ii) consultation, participation, and representation; and (iii) the nature of legal safeguards. Management’s Action Plan is discussed in Section V below.

Land Pressures on Honduras’ North Coast

21. Management concurs with the Panel on the urgent need to address increasing pressures on Ethnic Lands on Honduras’ North Coast. That said, Management disagrees with the suggestion that the Bank should have waited until the second phase of the APL to address this critical issue.² The Panel Investigation Report noted that “the Garífuna have been and are losing lands that were once occupied and used by their recent and remote ancestors, as well as by themselves today” (para. 105). The February 2006 Management Response to the Request already noted that Garífuna communities currently face multiple and long-standing unresolved land conflicts which Government entities have sought to resolve. The titling programs carried out by the INA over the past three decades have not met the expectations of Garífuna communities. Some communities were not titled at all; others were issued collective titles for smaller amounts than claimed. Some Garífuna families received individual titles. Some lands claimed by Garífuna communities were titled to non-Garífuna people.

22. Management has been aware of the severity of these problems for several years; likewise, Indigenous Peoples in Honduras have repeatedly expressed interest in having Bank support for land regularization activities.³ To guide its support for this process, the

² Paragraph 225 of the Inspection Panel Investigation Report states, “If in the Bank’s opinion there was not an appropriate legal/regulatory framework for indigenous peoples’ lands, **the Panel fails to understand why titling and regularization of indigenous peoples (sic) was included in the first phase of the APL rather than the second one when such framework was required to be in place** [emphasis added].”

³ See the Social Assessment and Participation Plan, and the Staff Appraisal Report of the Honduras Rural Land Management Project (PAAR, IDA Credit 29400 – 1997 and Supplemental Credit 29401 – 2003); the Project Appraisal Document of the GEF-financed Biodiversity in Priority Areas Project (PROBAP, Grant No. 28367, 1997); and the Social Assessment, Environmental Analysis, Legal Analysis, and Project

Bank sponsored a profile of indigenous and Afro-Honduran peoples in Honduras (“*Perfil de los Pueblos Indígenas y Negros de Honduras*”, 2002). In addition, a Bank-supported operation (GEF Grant 28367) financed the most comprehensive land tenure study to date among Garífuna and Miskito populations in Honduras (hereafter known as the Diagnostic Study); it bears noting that this groundbreaking study carried out by the Central American and Caribbean Research Council is cited frequently in the Inspection Panel Investigation Report and two members of the Council’s Board provided expert advice to the Panel.⁴ In addition, the Bank supported institution building of Afro-descendant groups in Latin America—including Garífuna organizations pressing for recognition of Garífuna land rights in Honduras—through an Institutional Development Fund grant (TF051283) carried out in coordination with ODECO.

23. **Communal lands in crisis.** As a result of these Bank-sponsored efforts, Management became convinced that addressing the land claims of Garífuna (and Miskito) communities in Honduras required immediate action. Indeed, the Panel Investigation Report noted that “tourism and industrialized export-crop production...attract land-buyers and ‘invaders’ of Garífuna ancestral land... Non-Garífuna people have also come to develop vacation homes, cattle ranches...” (para. 105). Therefore, resolution of these problems—which have only intensified in the last few years—could not wait indefinitely. Indeed, the Diagnostic Study notes (emphasis added):

“It is hard to exaggerate the importance of these issues: land, resources, and economic subsistence for the subjects [Garífuna and Miskito] of the study.” (Volume 6, page 2)

“The main finding here is that the communities are fed-up and saturated with studies and research and need actions to address the problems presented. They are mobilized, **there is a sense of crisis, and they demand concrete answers.**” (Volume 6, page 3)

“For a variety of reasons... there is a strong and generalized sense of urgency. The research for this Diagnostic showed, without any doubt, **that the problem of guarantees to communal lands is one of the issues that must be solved in this decade, or it may be lost forever.**” (Volume 6, page 29; also Volume 1, page 9)

24. During the early stages of Project preparation—2002 to mid-2003—the Government of Honduras was reluctant to include activities related to the regularization of Ethnic Lands along the North Coast, in part due to the complexity of the problem. However, the combination of: (i) growing demands by Garífuna and Miskito communities to immediately address their land issues; and (ii) successful pilot experiences developed under the Project’s precursor (the Honduras Rural Land Management Project, hereafter referred to as PAAR) resulted in the joint Government-

Appraisal Document of the Honduras Land Administration Project (Report No. 27604-HO, January 22, 2004), subject of this Inspection Panel Investigation.

⁴ *Diagnostic Study on Land Use and Tenancy in the Garífuna and Miskito Communities of Honduras, 2002-2003*. Central American and Caribbean Research Council, 2003.

Bank decision to include Ethnic Lands under Phase I of the APL. Under PAAR, constructive discussions among Government officials, Bank staff and local communities (including Garífuna and Miskito communities) showed that Ethnic Lands issues could be resolved under the Honduran legal framework in force at the time. The 2003 Diagnostic Study concluded that “the prevailing legal framework at the time did not represent a definitive obstacle to the titling of traditional lands...or the provision of legal security to their communal property.” (Volume 1, page 11). The Diagnostic Study adds (emphasis added):

“It is an urgent responsibility of the Government to give high priority to the regularization of the communities’ lands, creating institutional mechanisms to obtain concrete results.” (Volume 1, page 13).

“There have been significant advances already regarding the titling of Garífuna lands. The legal mechanisms and the titling process have already been developed. A number of communal titles have been expanded and there are more requests for expansion at different stages of the approval process. **This process must continue.**” (Volume 6, page 42).

25. At the Project’s Decision Meeting in December 2003, Management concluded that passage of comprehensive legislation related to Indigenous Peoples’ land claims might take some time. Given the urgency of addressing this issue, Management decided that the development of procedures to regularize Ethnic Lands, with appropriate safeguards, should proceed under Phase I of the APL, while adoption by Government of a legal/regulatory framework would be a trigger for Phase II of the APL. This approach was consistent with the recommendation from the Diagnostic Study that “the resolution (titling) of land claims should begin with ‘pilot communities’ in each region.” (Volume 6, page 41)

26. Management’s view is that the Project, under Phase I of the APL, is making a significant contribution to protecting Garífuna (and Miskito) ancestral land claims in Honduras by setting up safeguards and operational mechanisms which include:

- (i) Providing for a participatory consultation mechanism which allows Garífuna (and Miskito) stakeholders to recommend to Government specific procedures (including conflict resolution measures) to regularize their land claims;
- (ii) Demarcating, regularizing, and titling land claims of some Garífuna communities **which voluntarily choose to participate in the Project**, in accordance with the Project’s Operational Manual and the Project’s Indigenous People’s Development Plan; and
- (iii) Preventing titling or demarcation of any lands adjacent to Ethnic Lands unless these procedures which duly protect the interest of Garífuna peoples are reviewed and approved by the Bank.

27. The most serious conflicts regarding Garífuna lands—which include deep divisions among various Garífuna groups and which have led to physical threats to several Garífuna individuals—are currently taking place outside the Project area, in the Tela Bay (Bahía de Tela) region, where the Project’s safeguards and operational mechanisms are not applicable. The Project’s operational mechanisms provide the Indigenous Peoples of Honduras—and particularly the Garífuna and Miskito—whose land claims will be affected by implementation of the Property Law, more bargaining power vis-à-vis Government and third-party claimants than they would have had in the absence of the Project.

28. The Panel recognizes that inclusion of an Ethnic Lands sub-component under Phase I of the APL has allowed an “official channel through which to present the interests of the Garífuna as they see them,” particularly mentioning the role of the *Mesa Regional Garífuna* in this respect. In short, through the Project, Garífuna groups are having a direct influence, through consultative mechanisms including the *Mesa Regional* and the Inter-Sectoral Commission, in the ongoing dialogue regarding the Property Law and effective ways to resolve conflicts affecting Ethnic Lands. Moreover, by including the Ethnic Lands component under Phase I, the Project, inter alia: (i) provides Garífuna communities with access to legal advice; and (ii) prevents the titling of third-party claims which Garífuna communities contest.

Consultation, Participation and Representation

29. World Bank safeguard policies as well as the disclosure policy require the Borrower to undertake consultations with key affected groups, beneficiaries, and other relevant stakeholder groups before a project can be appraised, and for both the Bank and the Borrower to disclose information to the public. These requirements may give rise to contested views of consultation and participation, or confusion about the nature of representation. Nevertheless, the essence of the Bank’s policy in this regard rests on the need for transparent information disclosure to the public and a process of meaningful consultation. Key stakeholder groups should be involved systematically in project planning and implementation, through a process of informed participation.

30. While OD 4.20 required “...due concern for ensuring genuine representation of the indigenous population,” it would be a misinterpretation to assume that the policy’s reference to representation meant uniformity of views or that stakeholder views necessarily can only be presented through one channel. The policy makes that clear, noting that “...Many of the larger groups of indigenous people have their own representative organizations that provide effective channels for communicating local preferences. Traditional leaders occupy pivotal positions for mobilizing people and should be brought into the planning process.” In practice, this means that both traditional and modern, as well as formal and informal governance structures must be assessed and incorporated into the decision making process. This view was clarified in the subsequent OP 4.10, which requires a social assessment that also explicitly undertakes gender analysis, looks at age differences, and considers other dimensions of social identity. This is precisely so that the involvement of various groups can be incorporated into the

decision making process. The Bank's policies as well as international good practice standards seek diversity rather than uniformity of the participation process.

31. Social scientists inside and outside the Bank generally do not attempt to assign "representativeness" to any one stakeholder group. Each category and sub-category of stakeholders may have legitimate perceptions, needs, claims and concerns, and from a sociological perspective it is not meaningful to assign more or less legitimacy to the views of a particular group. Locally recognized groups and organizations can often legitimately claim to represent particular stakeholder interests, but other, non-organized groups or informal institutions and networks may also have legitimate claims. Representation is therefore a matter of degree, not of absolutes. From this perspective it is inappropriate to assign veto-power or unique authority over a project to any one sub-group among stakeholders. Defining one group or organization as the sole representative of project beneficiaries or affected persons would reduce or eliminate the views and perspectives of other relevant groups, for example along dimensions of gender, tribe, disability, religion, or other achieved or ascribed social identities.

32. In short, achieving consensus among all stakeholders is unrealistic. To the contrary, a good social assessment process with transparent and systematic stakeholder involvement probes beyond superficial claims of uniform opinion and is more likely to highlight different views and perspectives.

33. ***The case of Honduras.*** As required under OD 4.20, Management has promoted the systematic involvement of all the key Garífuna stakeholders throughout Project preparation and implementation. Management acknowledges that OFRANEH (and ODECO) have long experience in and commitment to advocating for the needs of the Garífuna population, and that they have a legitimate claim to represent the interests of local groups. Consultations and studies during Project preparation revealed that the Garífuna population is neither homogeneous nor unanimous in its views, and that there are different perspectives among stakeholders as well as conflicting claims of representation. Management's assessment during Project preparation (and Project implementation) was that OFRANEH has a legitimate stake in the process of land titling on Honduras' North Coast, but that there are other relevant stakeholders whose views should be considered. As noted in the Panel report, "the Requesters ... participated and had the opportunity to provide comment and express their concerns about the Project." OFRANEH participated in seven consultation events between January 2003 and February 2004, before Project approval by the Bank's Board. During this time, some Garífuna stakeholders, including OFRANEH, expressed concerns about the then-unenacted Property Law. Being aware of these concerns, Management supported the activities of the Bank-financed PAAR to enable these groups to make their concerns known to the appropriate authorities.

34. Project design took into account numerous recommendations made in consultation events with OFRANEH and other Garífuna stakeholders. In particular, as required under OD 4.20, the Project's IPDP includes a broad and participatory consultation framework for Indigenous Peoples. The Project initially contemplated the creation of a national consultation board, the *Mesa Nacional Indígena*. In response to

recommendations made by Indigenous Peoples (including OFRANEH and other Garífunas) at consultation events, Government decided that instead of having one national consultation board, two ethnic-based regional boards were more appropriate. Thus, under the Project there is one *Mesa Regional Garífuna* for the Departments of Atlántida and Colón and one *Mesa Regional Miskito* operating in the Department of Gracias a Dios.⁵ The *Mesa Regional Garífuna* encompasses a broad range of Garífuna stakeholders such as *Patronatos*,⁶ church groups and others. To complement their work, community-level *Mesas* were created to promote grassroots-level participation by individual communities. However, these arrangements were not agreed upon by all parties.⁷ To address an imperfect situation with differences in opinion regarding the role of the Project in addressing Garífuna land claims, Management: (i) took no position regarding institutional disputes between and within Garífuna organizations; (ii) insisted that the *Mesa Regional Garífuna* maintain a principle of non-exclusionary participation; and (iii) insisted that Project implementation related to Ethnic Lands take place only with the voluntary participation of affected communities.

35. Management acknowledges that lack of participation by OFRANEH and ODECO in the *Mesa Regional Garífuna* is sub-optimal and has the potential to reduce Garífuna representation in Project decision-making. To address the lack of participation by OFRANEH in established Project consultation mechanisms, Management has agreed with Government that the recently-activated Inter-Sectoral Commission will meet between July and October to specifically address the concerns of OFRANEH and ODECO about Project implementation. While OFRANEH declined to participate at the first Inter-Sectoral Commission meeting on May 31, 2007, it attended a subsequent meeting of the Inter-Sectoral Commission on July 12, 2007. At that latter meeting, it was agreed that the Inter-Sectoral Commission and Project staff would evaluate and clarify the respective roles of the Commission and the *Mesa Regional Garífuna* as complementary Project consultation forums.

36. In sum, Management's view is that the *Mesa Regional Garífuna* (together with the community-level *Mesas*) and the Inter-Sectoral Commission (which includes the participation of OFRANEH and ODECO) together allow for a fuller representation of a broad cross section of Garífuna stakeholders in Project activities, as required by OD 4.20, than a representation based on any single organization. The *Mesa Regional Garífuna* was created as a non-exclusionary Project-specific participation framework. It neither

⁵ For a comprehensive description of the establishment and constituency of the *Mesa Regional Garífuna*, see paragraphs 42-48 of the Management Response to Request for Inspection Panel Review of this Project (February 2006).

⁶ As indicated in the Social Assessment and the Management Response to the Request, "Patronatos are the organizational structure which has the most contact with the population and understands their interests best." *Patronatos* are important grassroots organizations, because they are located within communities and their governing boards are selected by community members directly. The close proximity of *Patronatos* to communities increases their social accountability, and brings communities closer to municipalities. Moreover, *Patronatos* have legal personality, allowing them to implement publicly financed projects. *Patronatos* are represented in the *Mesa Regional Garífuna* and community-level *Mesas*.

⁷ In March 2005 the Requesters declined the invitation to participate in the establishment of the *Mesa Regional Garífuna*. Management has consistently supported the repeated invitations by the Government and the *Mesa* to OFRANEH to participate in the *Mesa Regional Garífuna*.

substitutes for other Garífuna organizations nor replaces the Inter-Sectoral Commission. It allows individual Garífuna communities to participate directly in Project-specific activities, such as dissemination campaigns, capacity building, implementation of activities specified in the IPDP, and local-level conflict resolution. In contrast, the Inter-Sectoral Commission has a mandate to protect the land rights of Garífuna and Miskito communities at the national level through, inter alia, supporting policy design and facilitating policy dialogue as well as helping to coordinate implementation of land administration policies, projects, and initiatives affecting these communities. This is why its role is essential in the discussions and potential approval of the Regularization Manual for Ethnic Lands supported by the Project. However, the Commission does not deal with localized Project-specific activities beyond this mandate. Thus, both forums are needed. Management commits to ensuring that the complementary roles of the Inter-Sectoral Commission and the Mesa Regional Garífuna, which will be clarified over the next three months, are consistent with applicable Bank safeguard policies.

Nature of Legal Safeguards

37. Management was aware of the land pressures affecting indigenous and Afro-Honduran peoples on the North Coast. This awareness was complemented and enhanced by the results of the consultation process described above, which influenced Project design and led to negotiation of the safeguards included in the DCA. Consequently, and as is standard practice for all Bank projects, Management proposes to continue enforcing the legal framework for the Project as embodied in the DCA and other instruments (Operational Manual and IPDP) made binding on the Government of Honduras by cross-reference therein. That framework represents the “Project rules” to which the Borrower must adhere, and it must be distinguished from the “law of Honduras” which applies more generally, including in areas and to topics beyond those covered by the Project. Again, as is the standard case, where those two legal regimes may overlap within the context of Project activities, the “Project rules” retain their force, as evidenced by the fact that the DCA was approved by the Honduran legislature and that the Honduran Attorney General, in his November 15, 2004 legal opinion issued to the Bank for purposes of declaring the DCA effective, stated that the obligations set forth in said agreement were “valid, binding and legally enforceable in accordance with their own terms (*válidas, exigibles y demandables legalmente de acuerdo a sus propios términos*).”

38. In determining what the “Project rules” should be, Management complied with the OD 4.20 requirement that relevant local law be assessed to determine its potential impact on Project-affected indigenous or Afro-Honduran peoples. It was as a result of such assessment, and also in anticipation of what consequences the then-unenacted Property Law might have if and when it became law in the future, that Management negotiated the following provisions for inclusion in the DCA:

- Section 3.01 (a) and Section 3.04: the Borrower is obligated to carry out the Project in accordance with the Operational Manual satisfactory to the Association;

- Section 3.08 (b): the Borrower is obligated to carry out the Project in accordance with the IPDP satisfactory to the Association (containing consultation and titling procedures for Ethnic Lands); and
- Section 3.11: the Borrower is obligated not to title or demarcate lands adjacent to Ethnic Lands without following procedures and consultations satisfactory to the Association.

39. Consequently, regardless of the provisions of the “law of Honduras” (in the form of the Property Law or otherwise), it is important to note that indigenous or Afro-Honduran peoples affected by the Project are protected by the “Project rules” as far as titling of lands under the Project is concerned. This protection arises because the Bank retains the right, recognized by the Borrower, to exercise its legal remedies if any of the obligations detailed above are not respected. The comprehensive nature of this legal framework of protections is evidenced by the fact that to date no Ethnic Lands have been titled under the Project in violation of any of those obligations. Therefore, Management proposes to continue enforcing this framework.⁸

40. This proposal does not mean, however, that the “law of Honduras” might not be improved or that its compatibility with the “Project rules” might not be enhanced. Indeed, now that the Property Law has been enacted, Management proposes to work with the Government of Honduras to continue assessing the relevant local legal framework for consistency with OD 4.20. As a result of this effort, Government could update the Operational Manual and IPDP, issue regulations, or by other means (all in dialogue with the *Mesa Regional Garifuna* and *Mesa Regional Miskito*, Inter-Sectoral Commission, and other representative forums) reduce ambiguities, minimize any inconsistencies, and in general make the relevant local legal framework one which allows ethnic land titling to be accomplished through consultative and conflict resolution processes that fairly take the interests of indigenous and Afro-Honduran peoples into account. Such measures

⁸ The Inspection Panel is concerned that the DCA contains no remedy relating to possible negative effects of the Property Law on Ethnic Land titling under the Project, and further suggests that such a remedy is required by Bank policy (specifically OP 7.00, note 13, which states that “[i]f the amendment of a particular law would impede the achievement of the Project’s objectives, the contractual agreements may provide that such amendment would constitute an event of suspension”). Note, however, that the provision of such a remedy is not mandatory (“the contractual agreements *may* provide”). Consequently, given that the Ethnic Lands sub-component of the Project is so small compared to the rest of the Project (approximately five percent of total Project size), Management decided not to include the suggested remedy, which would have cited a then-unenacted law and disproportionately affected the entire operation. Furthermore, if the Property Law did somehow cause a violation of the protective covenants already included in the DCA, standard remedies available through the General Conditions could be applied as a result of those violations, without the need for further language in the legal documents. Note also that Section 5.01 (b) of the DCA does include a legal remedy protecting the legal framework necessary for the achievement of the Project’s objectives. This remedy is being updated as part of the ongoing Project restructuring to refer to the relevant functions of the IP under the Property Law governing cadastre administration and real estate registry.

could improve the chances that ethnic land titling would be allowed under the Project with the Bank's no-objection.⁹

41. In short, the business of development often takes place within complex and sub-optimal legal and institutional settings. There is therefore an acknowledgment that a country's legal system (which is another way of expressing the "law of Honduras" in this case) need not be ideal before the Bank can support an operation, provided that the Bank's applicable policies are met. For example, the Bank's procurement practice recognizes this reality as a matter of routine: the Procurement and Consultant Guidelines prevail over local procurement law when it comes to procuring goods and services under IDA credits. Bank safeguard policies are equally realistic: it is Bank policies that prevail for particular projects instead of local rules that may fall short of the standards represented by those policies. In the case at hand, Management intends to enforce policy-consistent "Project rules" embodied in the DCA while simultaneously engaging the local authorities to refine the "law of Honduras," but without in so doing jeopardizing the Project which already contains relevant protections for the interests of Project-affected indigenous or Afro-Honduran peoples. To act otherwise would be to allow OFRANEH to interject the Inspection Panel process into its arguments for obtaining legal reforms at a national level. This result could lead to a review beyond the scope of the Project and adversely affect Project implementation.

V. MANAGEMENT'S ACTION PLAN

42. Management appreciates the Panel's findings of broad concurrence with Bank policies in key areas such as creation of a Project consultation framework, analysis of legal frameworks regarding Indigenous Peoples' land rights and inclusion of specific measures to protect those rights, preparation of an IPDP and Process Framework, coverage of issues in the Environmental Assessment (EA) and appropriate measures to safeguard natural habitats. Management also welcomes the Panel's observations on specific areas for further strengthening the Project. The following table presents the action plan for following up on the Panel's findings.

⁹ Nevertheless, there is no general requirement in Bank policy that the "Project rules" force changes in local law so that such local law fits a Bank-mandated standard. Bank policies, including OD 4.20, require Project compliance with Bank standards, but they do not require national compliance beyond the Project sphere. Hence, it should not be suggested that the Project serve as a mechanism to settle all land titling disputes in Honduras to the satisfaction of indigenous or Afro-Honduran peoples or to bring local law in line with ILO 169.

Table 2

RELEVANT OD / OP Issue / Finding <i>(Item numbers refer to Annex 1)</i>	PROPOSED ACTION
1. OD 4.20 – INDIGENOUS PEOPLES	
Nature of Project Safeguards to Protect Indigenous Peoples' Land Rights <i>(Item 9)</i>	<ol style="list-style-type: none"> 1. Management is committed to continue enforcing the legal framework for the Project as embodied in the DCA and other instruments (Operational Manual and IPDP) made binding on the Borrower by cross-reference therein. 2. Management is committed to take prompt action under the DCA should events threaten compliance with Project safeguards or other legal covenants.
Project Consultation Mechanisms <i>(Item 6)</i>	<ol style="list-style-type: none"> 1. Management has agreed with Government that the Inter-Sectoral Commission will meet over the next three months to specifically address OFRANEH's and ODECO's concerns about Project implementation. The Inter-Sectoral Commission and Project staff will evaluate and clarify the respective roles of the Inter-Sectoral Commission and the <i>Mesa Regional Garifuna</i> as complementary Project consultation forums. 2. Management is committed to ensure that the roles and responsibilities of the Inter-Sectoral Commission and the <i>Mesa Regional Garifuna</i>, as complementary Project consultation mechanisms, which will be clarified over the next three months, are consistent with applicable Bank safeguard policies. 3. The Inter-Sectoral Commission is to discuss a Regularization Manual for Ethnic Lands, including conflict resolution mechanisms, which would subsequently be submitted to the Bank for its no-objection. Management commits to provide a no-objection to the submitted Regularization Manual and related conflict resolution mechanisms, only if the proposed procedures adequately protect the rights of indigenous and Afro-Honduran peoples, and affected parties have been duly consulted. 4. Management commits to ensuring, if the Regularization Manual for Ethnic Lands and related conflict resolution mechanisms are approved, that Government will: (i) revise the Project's Operational Manual and IPDP incorporating the approved procedures; and (ii) implement the Communications Strategy to inform potential Project beneficiaries about the approved procedures and the associated support mechanisms available to them through the Project. 5. Bi-annual supervision will include meetings with members of the Inter-Sectoral Commission.
Assessment of Inter-Sectoral Commission in IPDP <i>(Item 14)</i>	<ol style="list-style-type: none"> 1. Government has agreed with Management to update the IPDP and Operational Manual to reflect the existence of the Inter-Sectoral Commission, which was established by Executive Order in 2001 but only activated in May 2007.

RELEVANT OD / OP Issue / Finding <i>(Item numbers refer to Annex 1)</i>	PROPOSED ACTION
Conflict Resolution Mechanisms <i>(Item 16)</i>	<ol style="list-style-type: none"> 1. Government has agreed with Management to support meetings of the Inter-Sectoral Commission to discuss Project implementation, consistent with the DCA and applicable Bank policies. In particular, the Inter-Sectoral Commission is expected to discuss different conflict resolution mechanisms available under current Honduran legislation and propose specific actions in the context of the Project. 2. Management is committed to supervise closely the Inter-Sectoral Commission and the <i>Mesa Regional Garífuna</i> in their complementary roles related to conflict resolution. 3. The findings of the legal analysis mentioned under Project Supervision below and agreements reached within the Inter-Sectoral Commission will guide the development of an updated IPDP and Operational Manual with respect to Project-sponsored regularization of Ethnic Lands.
2. OP/BP 13.05 – PROJECT SUPERVISION	
Supervision of Project Consultation Mechanisms <i>(Item 20)</i>	<ol style="list-style-type: none"> 1. Specialized supervision will be conducted at least twice annually by a Senior Social Scientist working on the Project. 2. Management is committed to have a locally-based Social Scientist in the Country Office in Tegucigalpa devoted exclusively to Indigenous Peoples issues in the Bank’s portfolio in Honduras who will provide regular follow up on Project consultation mechanisms. 3. Bi-annual supervision will closely supervise activities carried out by the Inter-Sectoral Commission and the <i>Mesa Regional Garífuna</i>. 4. Supervision efforts will include reviewing Government efforts to promote community participation in Project-related activities.
Supervision not adjusted to changes in Legal Framework <i>(Item 21)</i>	<ol style="list-style-type: none"> 1. Management will work with Government to continue assessing the relevant local legal framework for consistency with OD 4.20. As part of this process, Management will: <ol style="list-style-type: none"> a. Hire a Honduran lawyer to review all relevant aspects of the changed legal framework in Honduras, as it relates to Indigenous Peoples’ land rights, including the Property Law and other pertinent laws; b. Review with Government the procedures for regularization of Ethnic Lands, to ensure they are compatible with relevant Bank safeguards; and c. Work with Government to update the Operational Manual and IPDP and, if necessary, encourage Government to issue regulations or by other means reduce ambiguities, minimize inconsistencies, and in general make the relevant local legal framework one which allows for regularization of Ethnic Lands to be accomplished through consultative and conflict resolution processes that fairly take the interests of indigenous and Afro-Honduran peoples into account, in a manner which is compatible with relevant Bank safeguards. 2. The findings of this review may guide further restructuring and alignment of the Project with the new legal framework, including reaching an agreement with Government on possible measures related to the indemnification of third parties who hold annullable titles in Ethnic Lands.

Table 3

Other Relevant Actions to Enhance Project Impact	
Issue	PROPOSED ACTION
Communications Strategy <i>(Item 3)</i>	1. Management is committed to supervise implementation of the Communications Strategy to increase public awareness of the Project in beneficiary communities.
Implementation of Process Framework; Designation of More Protected Areas <i>(Items 11 & 12)</i>	<ol style="list-style-type: none"> 1. Specialized supervision will be conducted at least twice annually by an Environmental Specialist to ensure compliance with the Process Framework. 2. Government to prepare a Regularization Manual for Protected Areas. Demarcation of these areas will not start until Management gives its no-objection to this manual. 3. Protected Areas to be supported through the Project have been selected by Government in consultation with local communities and agreed with the Bank. Bank supervision will ensure that selected protected areas benefit from the support of local communities.

VI. CONCLUSION

43. In Management’s view, the Bank has made every effort to apply its policies and procedures and to pursue its mission statement in the context of the Project. It is Management’s judgment that the proposed Action Plan appropriately addresses the issues identified in the Panel’s report.

**MANAGEMENT REPORT AND RECOMMENDATION
IN RESPONSE TO THE INSPECTION PANEL INVESTIGATION REPORT ON
HONDURAS LAND ADMINISTRATION PROJECT**

**ANNEX 1
FINDINGS, COMMENTS AND ACTIONS**

	Specific Findings / Issues	Para no.	Comment/Action
	OD 4.20 INDIGENOUS PEOPLES		
1.	Consultation During Project Preparation The Panel finds that preparing an IPDP [specifically in relation to issues faced by the Garifuna peoples] complied with OD 4.20.	141	Comment: Management acknowledges the finding of compliance by the Panel. Action: No action required.
2.	The Panel finds that several meetings were conducted during Project preparation and that the Requesters and other organizations representing Garifuna peoples participated and had the opportunity to provide comment and express their concerns about the Project. [OFRANEH members as well as members of ODECO were present at these meetings.] This is consistent with OD 4.20.	149 [143]	Comment: Management acknowledges the finding of compliance by the Panel. Action: No action required.
3.	The Panel saw no evidence of written materials such as brochures, announcements for posting having been sent directly to the communities so as to let the ordinary people know what to expect.	148	Comment: Management recognizes the need for greater dissemination of Project materials to increase knowledge of the Project in Garifuna and Miskito communities. In 2005-2006, the Project carried out public awareness activities in Garifuna communities through: (i) radio programs and public service announcements on local radio stations; (ii) meetings of Project-supported community-level <i>Mesas</i> ; (iii) community facilitators selected from within Garifuna communities (" <i>hijos de la comunidad</i> "); and (iv) public outreach with local community leaders through visits, telephone calls and e-mail communications. In early 2007, a Communications Strategy was prepared, overseen by a Communications Specialist contracted by the Project and in consultation with Government and local beneficiaries. In addition to the above-mentioned activities, the Communications Strategy includes: (i) distribution of posters and calendars informing potential beneficiaries about the Project; (ii) distribution of pamphlets and brochures with key messages on the Project; and (iii) billboards about the Project placed strategically in Project areas. Action: Management is committed to supervise implementation of the Communications Strategy to increase public awareness of the Project in beneficiary communities.
4.	Representation of the Garifuna people The Panel finds that OFRANEH (and ODECO) are "representative organizations" within the meaning of OD 4.20 and are in a position to provide an effective channel for communicating local preferences.	179	Comment: Management acknowledges that OFRANEH and ODECO have long experience and commitment to advocating for the needs of the Garifuna population, and that they have a legitimate claim to represent the interest of local groups. That said, consultations and studies during Project preparation revealed that the Garifuna population is neither homogeneous nor unanimous in its views, and that there are different perspectives among stakeholders as well as conflicting claims of representation. Management's assessment during Project preparation

	Specific Findings / Issues	Para no.	Comment/Action
			<p>(and Project implementation) was that OFRANEH has a legitimate stake in the process of land titling on Honduras' North Coast, but that there are other relevant stakeholders whose views should be considered. Project preparation was undertaken following OD 4.20, which notes that not only formal organizations (e.g., OFRANEH) but also other groups such as traditional leaders "occupy pivotal positions for mobilizing people and should be brought into the planning process."¹ Furthermore, OD 4.20 notes that "no foolproof methods exist, however, to guarantee full local-level participation. Sociological and technical advice provided through the Regional environment divisions (REDS) is often needed to develop mechanisms appropriate for the Project area."²</p> <p>During Project preparation, Management encountered a situation where Garifuna groups had distinct perspectives regarding land regularization on the North Coast. Management maintains that limiting Garifuna participation to OFRANEH alone, or conditioning Project compliance on OFRANEH participation, would have violated OD 4.20's requirement to promote broad, informed, and meaningful participation. Indeed, it would be inappropriate to assign veto-power or unique authority over a project to any one sub-group among stakeholders. The consultative bodies established under the Project sought to broaden the involvement of relevant Garifuna groups, adding <i>Patronatos</i>, grassroots organizations, and local authorities to the existing organizations and NGOs.</p> <p>At no point has OFRANEH been excluded from this process; to the contrary, from the outset it has been invited repeatedly to participate with other Garifuna groups. (See also Item 6 below.) Although OFRANEH refuses to participate in the <i>Mesa Regional Garifuna</i> with other Garifuna organizations and community leaders, its participation in the July 12, 2007 Inter-Sectoral Commission is a positive signal in terms of its reinsertion in Project consultation mechanisms.³</p> <p>Action: No action required.</p>
5.	<p>Mesa Regional Garifuna The Panel finds that the initial concept of creating an organization like the Mesa Regional to unite the leaders and representatives of each Garifuna community was not inconsistent with OD 4.20 on Indigenous Peoples, in the sense that it represented an effort to establish consultations and participation with affected communities. The Panel notes, in this regard, that the invitation to a workshop aimed at creating the Mesa Regional was sent to a wide variety of Garifuna organizations and actors,</p>	181	<p>Comment: Management acknowledges the finding of compliance by the Panel.</p> <p>Action: No action required.</p>

¹ OD 4.20: Indigenous Peoples, paragraph 15(d).

² Ibid.

³ Management disagrees with the Requesters' characterization of other Garifuna stakeholders—including community leaders, Patronato leaders, church leaders, and representatives of other Garifuna grassroots organizations participating in the *Mesa Regional Garifuna*—as "outsiders" (page 12, paragraph 3 of Request) or as "Garifuna clowns" (Annex 1 to Request, page 2, paragraph 2). Management maintains that it is in the spirit of OD 4.20 to seek a broad involvement of Garifuna peoples in Project discussions.

	Specific Findings / Issues	Para no.	Comment/Action
	including OFRANEH and ODECO, the two major Garifuna organizations.		
6.	<p>Consultations during Project Implementation</p> <p>It is easy to understand why individuals would want to participate in the Mesas. For participants, it offers an official channel through which to present the interests of the Garifuna as they see them. Moreover, participants receive payment for travel expenses and <i>per diem</i> for all meetings, which in the context of the poverty of the Garifuna communities may constitute a significant benefit.</p> <p>The Panel notes significant concerns about Project and its “consultation process” expressed in early meetings by organizations representing the Garifuna people, in particular OFRANEH and ODECO. The Panel considers that these provided an early indication of potential policy-based problems associated with consultation mechanism that was eventually to be established for Project implementation.</p> <p>The Panel team noted that they [members of the Mesa Regional and the Mesa Local in Cristales] were passionate about their work and sincerely believed that they could help in the development of their communities and not to depend on the big organizations in La Ceiba and Tegucigalpa to come and do things for them. They seemed upset that someone had accused them of being paid agents and expressed disappointment towards OFRANEH for refusing to participate in the process.</p>	Exec. Sum., 150, 175, 183, 188, 189, 195, 198	<p>Comment: The <i>Mesa Regional Garifuna</i> was established as a non-exclusionary Project participation framework in response to explicit recommendations made at consultation events.⁴ It neither substitutes for other Garifuna organizations nor replaces the Inter-Sectoral Commission for Protecting Land Rights of Garifuna and Miskito Communities. (For further information on the Inter-Sectoral Commission, see Item 14 below.) The <i>Mesa Regional Garifuna</i> is composed of representatives of beneficiary communities, church groups, <i>Patronatos</i>, and other Garifuna organizations. To complement its work, community-level <i>Mesas</i> were created to promote grassroots-level participation by individual Garifuna communities. However, these arrangements were not agreed upon by all parties⁵. To address an imperfect situation with differences in opinion regarding the role of the Project in addressing Garifuna land claims, Management: (i) took no position regarding institutional disputes between and within Garifuna organizations; (ii) insisted that the <i>Mesa Regional Garifuna</i> maintain a principle of non-exclusionary participation; and (iii) insisted that Project implementation related to Ethnic Lands take place only with the voluntary participation of affected communities.</p> <p>Management agrees with the Panel that members participate in the <i>Mesa Regional Garifuna</i> because they see it as an “official channel through which to present the interests of the Garifuna as they see them.” This is precisely the purpose of the <i>Mesa Regional</i>; to get different views and perspectives of local Garifuna stakeholders, in accordance with OD 4.20.</p> <p>Moreover, Management acknowledges the Panel’s finding that members of the <i>Mesa Regional</i> sincerely believe they can help their communities and do not want to depend on “big organizations in La Ceiba and Tegucigalpa” to do things for them. Bank supervision missions have found <i>Mesa Regional</i> members to be informed, motivated, and as committed to, and representative of, the interests of the Garifuna people as others who have chosen to advocate their views through different channels. Project financing of travel costs and <i>per diem</i> for <i>Mesa Regional</i> members to participate in meetings is not uncommon in these types of projects. The rural poor must not be expected to cover their own costs of participating in a consultative process.</p>

⁴ For a comprehensive description of the establishment and constituency of the *Mesa Regional Garifuna*, see paragraphs 42-48 of the Management Response to Request for Inspection Panel Review of this Project (February 2006). The Project initially contemplated the creation of a national consultation board, the *Mesa Nacional Indigena*. In response to recommendations made by Indigenous Peoples at consultation events (including one organized by OFRANEH in December 2003), Government decided that instead of having one national consultation board, two ethnic-based regional boards were more appropriate. Thus, under the Project there is one *Mesa Regional Garifuna* for the Departments of Atlántida and Colón and one *Mesa Regional Miskito* operating in the Department of Gracias a Dios.

⁵ In March 2005, the Requesters declined the invitation to participate in the establishment of the *Mesa Regional Garifuna*. Management has consistently supported the Government’s and the *Mesa*’s repeated invitations to OFRANEH to participate in the *Mesa Regional Garifuna*.

Specific Findings / Issues	Para no.	Comment/Action
<p>The Panel considers that a consultation framework for Garifuna people in which their leading representative body or bodies are not part and do not give their support and guidance cannot ensure genuine representation of the Garifuna people, as required by OD 4.20.</p> <p>The Panel finds that the Bank's endorsement of Mesa Regional as the basic consultation framework for the PATH Project, without the participation of OFRANEH and ODECO, is inconsistent with the core provisions of OD 4.20 on consultation, representation and participation. The Panel is concerned that the Mesa Regional has put in place a parallel system that is at odds with the way the Garifuna people have established, over the years, to represent themselves on the critical issue of securing their rights over land.</p> <p>The Panel appreciates the difficult situation faced by Bank Management in this regard, and acknowledges the extensive efforts made by Management to seek the engagement of OFRANEH and ODECO in the consultation process. These efforts do not, however, alter the risks created by the current situation. The Panel finds that the Mesa system has divided and marginalized the community and could potentially undercut the ability of its leading representatives to work on behalf of the community to achieve its objectives for collective title to ancestral land.</p> <p>It has to be noted that Management recently requested the Government to "Publicly rescind its repudiation of the Mesa Regional Garifuna Wadabula as the Project's participatory consultative framework for Garifuna peoples; or, if the Borrower no longer recognizes the Mesa, submit to IDA the rationale for this drastic change of strategy and agree with IDA on an alternative transparent and non-exclusionary participatory consultative framework for Garifuna peoples in the Project areas, which is consistent with the Project's objectives and meets IDA safeguard policies." The Bank made this request in January 2007 to the Government of Honduras as one of the conditions that the Government must comply with, to avoid suspension of further disbursements of the Credit financing the PATH Project.</p> <p>In light of the controversy and concerns already associated with the Mesa Regional, the Panel finds that failure to seek input and participation by the affected communities and their leaders is not consistent with Bank policy. The Panel finds that Bank Management has not adequately adjusted to the many concerns raised with respect to the existing consultation</p>		<p>Management acknowledges that lack of participation by OFRANEH and ODECO in the <i>Mesa Regional Garifuna</i> is sub-optimal and has the potential to reduce Garifuna representation in Project decision-making. As indicated in the Panel's report, Management made extensive efforts to seek the engagement of OFRANEH and ODECO. From the outset, Management supported the Government's efforts to include all interested Garifuna organizations and groups in the <i>Mesa Regional Garifuna</i>. To address the lack of participation by OFRANEH and ODECO in established Project consultation mechanisms, Management has agreed with Government that the recently activated Inter-Sectoral Commission will meet over the next three months to specifically address members' concerns about Project Implementation. While OFRANEH declined to participate at the first Inter-Sectoral Commission meeting on May 31, 2007—arguing that it could not participate in any Project-related activities while the Inspection Panel Investigation was ongoing and given that one of the discussion points was the Regularization Manual for Ethnic Lands—it attended a subsequent meeting of the Inter-Sectoral Commission on July 12, 2007. At that meeting, it was agreed that the Inter-Sectoral Commission and Project staff would evaluate and clarify the respective roles of the Commission and the Mesa Regional Garifuna as complementary Project consultation forums.</p> <p>With regard to the January 10, 2007 letter from the Bank to the Government of Honduras threatening suspension of disbursements for the Project, Management did not exclusively call upon the Government to publicly rescind its repudiation of the <i>Mesa Regional</i>. Rather, Management's letter requested Government to either: (i) publicly rescind its repudiation of the <i>Mesa Regional</i> (because this constituted a violation of the agreement to have a broad participatory mechanism for Project implementation); or (ii) propose an alternative transparent and non-exclusionary participatory consultative framework for Garifuna peoples consistent with the Project's objectives and Bank safeguard policies.</p> <p>In conclusion, Management's view is that the <i>Mesa Regional Garifuna</i> (together with the community-level <i>Mesas</i>) and the recently activated Inter-Sectoral Commission, with the participation of OFRANEH and ODECO, together allow for a fuller representation of a broad cross section of Garifuna stakeholders in Project activities, as required by OD 4.20. The <i>Mesa Regional Garifuna</i> was created as a non-exclusionary Project-specific participation framework. It neither substitutes for other Garifuna organizations nor replaces the Inter-Sectoral Commission. It allows individual Garifuna communities to participate directly in Project-specific activities, such as dissemination campaigns, capacity</p>

	Specific Findings / Issues	Para no.	Comment/Action
	mechanisms as required by OD 4.20 and OP/BP 13.05 on Project Supervision.		<p>building, implementation of activities specified in the IPDP, and local-level conflict resolution. In contrast, the Inter-Sectoral Commission has a mandate to protect the land rights of Garifuna and Miskito communities at the national level through, inter alia, supporting policy design and facilitating policy dialogue as well as helping to coordinate implementation of land administration policies, projects, and initiatives affecting these communities. That is why its role is essential in the discussions and eventual approval of the Regularization Manual for Ethnic Lands supported by the Project. The Commission does not deal with localized Project-specific activities beyond this mandate. In short, Management believes that both the Inter-Sectoral Commission and the <i>Mesa Regional Garifuna</i> have roles to play in ensuring that the concerns of indigenous and Afro-Honduran peoples are addressed in Project-related activities.</p> <p>Action: Management has agreed with Government that the Inter-Sectoral Commission will meet over the next three months to specifically address the concerns of OFRANEH and ODECO about Project implementation. The Inter-Sectoral Commission and Project staff will evaluate and clarify the respective roles of the Inter-Sectoral Commission and the <i>Mesa Regional Garifuna</i> as complementary Project consultation forums.</p> <p>Management commits to ensuring that the complementary roles of the Inter-Sectoral Commission and the <i>Mesa Regional Garifuna</i>, which will be clarified over the next three months, are consistent with applicable Bank safeguard policies.</p> <p>The Inter-Sectoral Commission is to discuss a Regularization Manual for Ethnic Lands, including conflict resolution mechanisms, which may subsequently be submitted to the Bank for its no objection. Management commits to provide a no-objection to the submitted Regularization Manual and related conflict resolution mechanisms only if the proposed procedures adequately protect the rights of indigenous and Afro-Honduran peoples, and affected parties have been duly consulted.</p> <p>Management commits to ensuring, if the Regularization Manual for Ethnic Lands and related conflict resolution mechanisms are approved, that Government will: (i) revise the Project's Operational Manual and IPDP incorporating the approved procedures; and (ii) implement the Communications Strategy to inform potential Project beneficiaries about the approved procedures and the associated support mechanisms available to them through the Project.</p> <p>Meetings with members of the Inter-Sectoral Commission will be held during bi-annual supervision missions.</p>
7.	<p>Legal Framework The Bank conducted an analysis of the legal framework regarding property rights of the indigenous peoples, including the Garifunas living in the Project area, in accordance with OD 4.20 during Project preparation.</p>	206	<p>Comment: Management acknowledges the finding of compliance by the Panel.</p> <p>Action: No action required.</p>

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8.	<p>Measures to Protect Indigenous Peoples' Land Rights The Panel finds that as required by OD 4.20, the Project provides for measures to protect indigenous peoples' land rights. These measures include certain mechanisms of conflict resolution including conciliation and arbitration, the provision of legal advice and training for indigenous peoples and a covenant in the DCA that requires that <i>"no titling and physical demarcation of lands adjacent to Ethnic Lands will take place unless procedures that adequately protect the rights of the indigenous and Afro-Honduran peoples, duly consulted with affected parties in a manner satisfactory to the Association and set forth in the Operational Manual, have been followed.</i> [Clause 3.11 of DCA]</p>	223	<p>Comment: Management acknowledges the finding of compliance by the Panel.</p> <p>Action: No action required.</p>
9.	<p>Nature of Project Safeguards to Protect Indigenous Peoples' Land Rights However, given the relative weakness of indigenous peoples acknowledged in the Project documents, and the fact that the new Property Law gives specific rights to non-indigenous occupants of Ethnic Lands that cannot be amended or limited by regulations to the Law or by the provisions of the Project Operational Manual, the Panel finds that these measures are not sufficient to protect indigenous people land rights that may be affected by Project implementation, as required by OD 4.20.</p> <p>The Panel notes that, in spite of the key importance of the Property Law in the design and execution of the Project and on the rights of the indigenous peoples, and the concerns of staff and affected people noted above, Management did not include any references or remedies relating to possible negative effects of the Property Law in the DCA for this Project.</p>	223, 224, 225	<p>Comment: The legal framework for the Project as embodied in the DCA and other instruments (Operational Manual and IPDP) made binding on the Borrower by cross-reference therein represents the "Project rules" to which the Borrower must adhere, and must be distinguished from the "law of Honduras" which applies more generally. Where those two legal regimes may overlap within the context of the Project activities, the "Project rules" retain their force, as evidenced by the fact that the DCA was approved by the Honduran legislature and that the Honduran Attorney General, in his November 15, 2004 legal opinion, stated that the obligations set forth in the DCA are valid, binding and legally enforceable in accordance with their own terms.</p> <p>As a result of the legal analysis conducted in compliance with OD 4.20 and in anticipation of consequences the Property Law might have when and if it became law in the future, Management negotiated the following provisions for inclusion in the DCA (to create the "Project rules" in protection of the interests of such peoples):</p> <ol style="list-style-type: none"> 1. Section 3.01 (a) and Section 3.04: the Borrower is obligated to carry out the Project in accordance with the Operational Manual satisfactory to the Association; 2. Section 3.08 (b): the Borrower is obligated to carry out the Project in accordance with an IPDP satisfactory to the Association; and 3. Section 3.11: the Borrower is obligated not to title or demarcate lands adjacent to Ethnic Lands without following procedures and consultations satisfactory to the Association. <p>Therefore, indigenous and Afro-Honduran peoples affected by the Project are protected by the "Project rules" as far as titling of lands under the Project is concerned because the Association retains the right, recognized by the Borrower, to exercise legal remedies if any of the obligations detailed above is not respected. The comprehensive nature of this legal framework is evidenced by the fact that, to date, no Ethnic Lands have been titled in violation of those obligations.</p>

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<p>This Project is the first phase of an Adaptable Program Loan (APL). According to Bank policy the APL provides for funding of a long term development program, starting with the first set of activities, based on agreed milestones and benchmarks for realizing the program's objectives. The Project will have an immediate effect on indigenous peoples' land rights during this first phase. The adoption of a legal and regulatory framework for indigenous peoples' lands, however, is only a trigger to process the <u>second phase</u> of the APL. The Panel finds that this is ineffective in protecting the rights of indigenous people during the first phase of the APL. If in the Bank's opinion there was not an appropriate legal/regulatory framework for indigenous peoples' lands, the Panel fails to understand why titling and regularization of indigenous peoples (<i>sic</i>) was included in the first phase of the APL rather than the second one when such framework was required to be in place. The Panel notes that to be consistent with the principles and objectives of the Bank's operational policy on Indigenous Peoples, the first phase of the APL could have excluded titling on Ethnic Lands and areas adjacent to Ethnic Lands until the enactment of a suitable regulatory framework.</p>		<p>With regard to the lack of a remedy in the DCA, Management notes that under OP 7.00, the inclusion of such remedy is optional. Consequently, given that the Ethnic Land titling sub-component of the Project is small relative to the rest of the Project, it was decided not to include the suggested remedy, which would have cited a then-unenacted law and disproportionately affected the entire operation. Furthermore, if the Property Law did somehow cause a violation of the protective covenants already included in the DCA, standard remedies available through the General Conditions could be applied as a result of those violations, without the need for further language in the legal documents. Note also that Section 5.01 (b) of the DCA does include a legal remedy protecting the legal framework necessary for the achievement of the Project's objectives (the SINREC Agreement). This remedy is being updated as part of the ongoing restructuring to refer to the relevant functions of the IP under the Property Law governing cadastre administration and real estate registry.</p> <p>Management concurs with the Panel on the urgent need to address the increasing pressure on Ethnic Lands on Honduras' North Coast. The Panel notes that "the Garífuna have been and are losing lands that were once occupied and used by their recent and remote ancestors, as well as by themselves today" (para.105). The February 2006 Management Response to the Request noted that Garífuna communities face multiple and long-standing unresolved land conflicts which Government entities have sought to resolve. The titling programs carried out by the INA over the past three decades have not met the expectations of Garífuna communities. Some communities were not titled at all; others were issued collective titles for smaller amounts than claimed. Some Garífuna families received individual titles. Some lands claimed by Garífuna communities were titled to non-Garífuna people.</p> <p>The Bank has been aware of the severity of these problems for several years; on repeated occasions Indigenous Peoples have expressed an interest in having Bank support for land regularization activities. To guide its support for this process, the Bank sponsored a profile of indigenous and Afro-Honduran peoples in Honduras (<i>"Perfil de los Pueblos Indígenas y Negros de Honduras"</i>, 2002). In addition, a Bank-supported operation (GEF Grant 28367) financed the most comprehensive land tenure study among Garífuna and Miskito populations in Honduras (Central American and Caribbean Research Council, 2003); this ground-breaking Diagnostic Study is cited in the Panel's report. Finally, the Bank supported institution building of Afro-descendant groups in Latin America—including Garífuna organizations pressing for recognition of Garífuna land rights in Honduras—through an Institutional Development Fund grant (TF051283) carried out in coordination with ODECO.</p> <p>As a result of these efforts, Management became convinced that addressing the land claims of Garífuna (and Miskito) communities in Honduras required immediate action. The Panel report notes that "tourism and</p>

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		<p>industrialized export-crop production...attract land-buyers and ‘invaders’ of Garífuna ancestral land... Non-Garífuna people have also come to develop vacation homes, cattle ranches...” Resolution of these problems—which have intensified in recent years—could not wait indefinitely. Indeed, the 2003 Diagnostic Study notes (emphasis added), “The main finding here is that the communities are fed-up and saturated with studies and research and need actions to address the problems presented. They are mobilized, there is a sense of crisis, and they demand concrete answers.” (Volume 6, page 3) The report adds, “For a variety of reasons...there is a strong and generalized sense of urgency. The research for this Diagnostic showed, without any doubt, that the problem of guarantees to communal lands is one of the issues that must be solved in this decade, or it may be lost forever.” (Volume 6, page 29; also Volume 1, page 9)</p> <p>During the early stages of Project preparation—2002 to mid-2003—the Government of Honduras was reluctant to include activities related to the regularization of Ethnic Lands along the North Coast, due in part to the complexity of the problem. However, the combination of: (i) growing demands by Garífuna and Miskito communities to immediately address their land issues; and (ii) successful pilot experiences developed under the precursor to the Project (PAAR) resulted in the joint Government-Bank decision to include Ethnic Lands under Phase I of the APL. Under PAAR, constructive discussions between Government officials, Bank staff and local communities (including Garífuna and Miskito communities) showed that Ethnic Lands issues could be resolved under the existing legal framework at the time. The 2003 Diagnostic Study concluded that “the prevailing legal framework at the time did not represent a definitive obstacle to the titling of traditional lands...or the provision of legal security to their communal property.” (Volume 1, page 11) The study adds, “It is an urgent responsibility of the Government to give high priority to the regularization of the communities’ lands, creating institutional mechanisms to obtain concrete results.” (Volume 1, page 13)</p> <p>At the Project’s Decision Meeting in December 2003, Management concluded that passage of comprehensive legislation related to Indigenous Peoples’ land claims might take some time. Given the urgency of addressing this issue, Management decided that the development of procedures to regularize Ethnic Lands, with appropriate safeguards, should proceed under Phase I of the APL, while adoption by Government of a legal/regulatory framework would be a trigger for Phase II of the APL. This approach was consistent with the recommendation from the Diagnostic Study that “the resolution (titling) of land claims should begin with ‘pilot communities’ in each region.” (Volume 6, page 41)</p> <p>Management’s view is that the Project, under Phase I of the APL, is making a significant contribution to restoring some of the Garífuna (and Miskito) ancestral land claims in Honduras by:</p> <p>(i) Providing for a participatory consultation mechanism which allows Garífuna (and Miskito) stakeholders to</p>

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			<p>recommend to Government specific procedures (including conflict resolution measures) to regularize their land claims;</p> <p>(ii) Demarcating, regularizing, and titling some land claims of some Garifuna communities which voluntarily choose to participate in the Project in accordance with the Project Operational Manual and IPDP; and</p> <p>(iii) Preventing titling or demarcation of any lands adjacent to Ethnic Lands unless these procedures which duly protect the interest of Garifuna peoples are reviewed and approved by the Bank.</p> <p>The Panel recognizes that inclusion of an Ethnic Lands sub-component under Phase I of the APL has allowed an “official channel through which to present the interest of the Garifuna as they see them,” particularly mentioning the role of the <i>Mesa Regional Garifuna</i> in this respect. In short, through the Project, Garifuna groups are having a direct influence, through consultative mechanisms including the <i>Mesa Regional Garifuna</i> and the Inter-Sectoral Commission, in the ongoing dialogue on the Property Law as well as on effective conflict resolution mechanisms affecting Ethnic Lands. Moreover, by including the Ethnic Lands component under Phase I, the Project, inter alia: (i) provides Garifuna communities with access to legal advice; and (ii) prevents the titling of third-party claims which Garifuna communities contest.</p> <p>Action: Management is committed to continue enforcing the legal framework for the Project as embodied in the DCA and other instruments (Operational Manual and IPDP) made binding on the Borrower by cross-reference therein. Management is committed to take prompt action under the DCA should events threaten compliance with Project safeguards or other legal covenants.</p>
10.	<p>Preparation of Process Framework for Demarcation of Ethnic Lands in case of Overlap with Protected Areas</p> <p>The Panel also finds that the provision of the Process Framework providing for the recognition and demarcation of land areas in favor of indigenous communities in case of the mentioned overlap is consistent with the objectives of the OD 4.20 on Indigenous Peoples.</p>	280	<p>Comment: Management acknowledges the finding of compliance by the Panel.</p> <p>Action: No action required.</p>
11.	<p>Implementation of Process Framework</p> <p>The Panel notes the implementation of Process Framework may face challenging circumstances.</p> <p>The Panel notes that the situation of Punta Izopo is an example of how, in reality, questions relating to the demarcation of protected areas have been and may be influenced by economically powerful vested interests. This could have a serious adverse effect on the ability of these local communities to protect their interests during this process, and diminish practical effectiveness of safeguards included in</p>	281, 282	<p>Comment: Management acknowledges the Panel’s finding of compliance that the Environmental Assessment (EA) correctly identifies the issue of overlap between protected areas and Ethnic Lands, and provides for the involvement of local communities in the co-management of protected areas included within the Project. This will be achieved through the implementation of the Project’s Process Framework.</p> <p>In accordance with OP 4.12, a Process Framework is prepared when a project may involve involuntary restriction of access to legally-designated parks and protected areas. The purpose of the Process Framework is to establish a process by which members of potentially affected</p>

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<p>the Process Framework.</p>		<p>communities participate in the design of project components, in the determination of measures to assist displaced persons in their efforts to improve their livelihoods, or at least to restore them, in real terms, while maintaining the sustainability of the park or protected area; and in the implementation of such measures. Process Frameworks are intended to pay particular attention “to the needs of vulnerable groups among those displaced, especially those below the poverty line, the landless, the elderly, women and children, Indigenous Peoples, ethnic minorities, or other displaced persons who may not be protected through national land compensation legislation.”</p> <p>The Project’s Process Framework calls for a number of specific mitigation measures. First, no resettlement will occur in Protected Areas. Instead, the Project will provide certificates of occupancy to residents in protected areas and other national lands, which include restrictions on the use and management of that land. The Project also calls for co-management of protected areas by NGOs and local communities (both indigenous and non-indigenous). Additionally, the Project will support sustainable activities for local communities through implementation of management plans, as well as participatory demarcation and social auditing by local communities. The Project includes procedures to address lands that include potentially significant cultural patrimony as well as proposed protected areas. Finally, the Process Framework sets forth procedures for conflict resolution and monitoring.</p> <p>Where protected areas overlap with indigenous communities, the Process Framework is supplemented by the implementation of the IPDP, which calls for dissemination, legal advice and capacity building for communities of Indigenous Peoples. These measures are further supplemented by the DCA, which prohibits titling or physical demarcation on lands adjacent to Ethnic Lands unless procedures that adequately protect the interest of Indigenous Peoples have been followed.</p> <p>In the case of Honduras, the Project’s Process Framework ensures that protected area demarcation will proceed only if and when local communities agree. The Project’s Process Framework has strict provisions for the recognition and demarcation of land areas in favor of indigenous communities where overlaps exist between territorial claims and protected areas. No protected areas will be eligible for demarcation activities until such time as the Regularization Manual for Protected Areas has been approved by the Bank. Moreover, to ensure the implementation of the Process Framework, Management and Government incorporated legal covenants into the DCA to this effect.</p> <p>Regarding Punta Izopo National Park and similar situations, the DCA affords protection to Garifuna communities, indicating that “no titling or physical demarcation of lands adjacent to Ethnic Lands will take place unless procedures that adequately protect the rights of indigenous and Afro-Honduran peoples, duly consulted with affected parties in a matter satisfactory to the Association [Bank]... have been followed.” Inclusion of Punta Izopo under the Project will improve the pre-existing</p>

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			<p>conditions affecting the local community by ensuring that the community's concerns are integrated into the management of the Protected Area's natural resources. In the absence of the Project, these protections would not exist and economically powerful vested interests would have significant more ability to influence decision-making processes.</p> <p>Action: Specialized supervision will be conducted at least twice annually by an Environmental Specialist to ensure compliance with the Process Framework. In this regard, a Regularization Manual for Protected Areas is being prepared, and demarcation of these areas will not start until Management gives its no-objection to this manual. Bank supervision will ensure that the selected protected areas benefit from the support of local communities.</p>
12.	<p>Designation of More Protected Areas With respect to other areas claimed by the Garífuna communities, such as the Rio Tinto Forest Reserve, which has not yet been legally declared as protected area, the Panel notes that the EA addressed the concern raised by Requesters stating that: "The Government of Honduras should regularize the property rights of the various ethnic groups in the country, principally through recognition of communal property in accordance with ILO Convention 169. Therefore, the government should not designate more protected areas in zones where there are autonomous communities until their property rights are clearly defined, thereby safeguarding the interests of these communities." The Panel finds that this statement provides a potentially important response to address the concerns of Requesters and is in compliance with OD 4.20. The key issue will rest in its effective implementation.</p>	283, 284	<p>Comment: Management acknowledges the finding of compliance by the Panel.</p> <p>Action: Management is committed to conduct specialized supervision at least twice annually by an Environmental Specialist to review compliance with the Project EA.</p>
13.	<p>Management or Co-Management of Protected Areas [...] The Panel finds that the commitments referred to in Project documents to have indigenous communities maintain or acquire management and co-management responsibilities over designated protected areas that may include their lands complies with OP/BP 4.01 on Environmental Assessment and OD 4.20 on Indigenous Peoples. The Panel is concerned, however, that local Garífuna communities having claims in listed areas are not mentioned as having a role or even a potential role in their management, even though other (NGO) organizations are.</p>	296, 295	<p>Comment: Management acknowledges the finding of compliance by the Panel.</p> <p>As the Panel notes, the Project includes support for co-management of protected areas by local communities; this will serve to enhance involvement of those communities in the management of natural resources vis-à-vis government agencies and NGOs. This specifically includes local Garífuna and Miskito communities, together with NGOs.</p> <p>The EA provides information regarding NGOs that are recognized by the Honduran Ministry of Environment and Natural Resources as currently having a role in the management of those lands within the national protected areas system. For those protected areas included within the Project, Project-financed activities would expand such co-management arrangements to include local Garífuna and/or Miskito communities.</p> <p>Management notes that the issue of overlap is addressed in the EA, and through specific Project-related support for co-management arrangements to mitigate</p>

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			<p>negative impacts, the Project ensures the rights of local indigenous communities vis-à-vis protected areas. Moreover, the DCA excludes Project-financed activities in areas adjacent to Ethnic Lands until procedures are in place to protect the rights of Indigenous Peoples. As such, Project design is sufficiently robust to safeguard the interests of Indigenous Peoples and the environment.</p> <p>Action: No action required.</p>
14.	<p>Inter-Sectoral Commission The failure of the IPDP to mention the Inter-Sectoral Commission is of particular concern given that the IPDP reviews the relevant legal framework and institutions and, on this foundation, proposes a “Model” approach for community involvement in the land titling process.</p> <p>The Panel observes that the Bank’s failure to consider the Inter-Sectoral Commission adequately in Project preparation may have had practical significance. The nature of consultations and decision-making in relation to Garifuna land rights has become a major controversy under the PATH. The Inter-Sectoral Commission was designed specifically to defend the interests of indigenous peoples, contained provisions for their representation, and engaged senior, decision-making levels of government. As a result, the Commission might have played a significant role in helping to address the concerns that have been raised, and protecting the rights and interests of Requesters and the people they represent. The Panel finds that the failure of the IPDP to identify the Commission and to assess its importance in the land titling process under the PATH is not consistent with the objectives and spirit of OD 4.20.</p>	320, 324	<p>Comment: The Inter-Sectoral Commission for Protecting Land Rights of Garifuna and Miskito Communities was created in 2001 by Executive Order No. 035-2001. According to the Executive Order, the Inter-Sectoral Commission was to be comprised of representatives from INA (as Chair), the Ministry of Government and Justice (SGJ), the Ministry of Environment and Natural Resources (SERNA), the Ministry of Tourism, the State Forest Administration (AFE-COHDEFOR), ODECO, OFRANEH, and MASTA. However, for six years, the Inter-Sectoral Commission was not activated.</p> <p>During Project preparation (late 2002 to early 2004), the Inter-Sectoral Commission was considered by Bank staff as a possible mechanism for engagement of Indigenous Peoples’ organizations. However, at the time Government had little interest in activating the Inter-Sectoral Commission. As such, the Government of Honduras did not mention the Inter-Sectoral Commission in the IPDP. Given the decision of two consecutive administrations (2001 to 2006) to not activate the Inter-Sectoral Commission, it is mentioned but not given significant attention in Project documentation.</p> <p>The Inter-Sectoral Commission was mentioned anew during Project-sponsored consultation activities. In November 2006, an ad hoc committee was established under the Project to broaden consultations on the Regularization Manual for Ethnic Lands, comprising government agencies (INA, SERNA, AFE-CODEFOR, SGJ, IP, and IHT) and representatives of ethnic and community organizations (MASTA, the <i>Mesa Regional Garifuna</i> and the <i>Mesa Regional Miskito</i>, ODECO and OFRANEH).⁶ The Committee held eight working sessions between November 2006 and February 2007. In December 2006, the existence of the Executive Decree establishing the Inter-Sectoral Commission was brought to the attention of the current Government. At that time, it became apparent that the proposed composition of the Inter-Sectoral Commission was nearly identical to that of the ad hoc committee established under the Project. Consequently, Government decided to formally replace the Project-created ad hoc committee with the Inter-Sectoral Commission. In addition, Government invited the Property IP and the Honduran Association of Municipalities (AHMON), both of which were not listed in the 2001 Executive Decree, to join the Inter-Sectoral Commission as full members.</p> <p>In short, the Project has been instrumental in</p>

⁶ OFRANEH participated in the first meeting of this committee on November 16, 2006, but did not to sign the meeting’s Aide Memoire.

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			<p>activating the Inter-Sectoral Commission, directly financing some of its operational costs. The Inter-Sectoral Commission, in turn, has served to bring the issue of regularization of Ethnic Lands to the attention of key Government officials.</p> <p>The first meeting of the Inter-Sectoral Commission was held on May 31, 2007. OFRANEH declined to participate in this first meeting, as one of the discussion points in the agenda was the Regularization Manual for Ethnic Lands. OFRANEH indicated that it could not participate in any Project-related activities while the Inspection Panel Investigation was ongoing. At the July 12, 2007 meeting of the Inter-Sectoral Commission, OFRANEH did participate. At that meeting, it was agreed that the Inter-Sectoral Commission and Project staff would evaluate and clarify the respective roles of the Inter-Sectoral Commission and the <i>Mesa Regional Garifuna</i> as complementary Project consultation forums.</p> <p>Action: Government has agreed with Management to update the IPDP and Operational Manual to reflect the existence of the Inter-Sectoral Commission, which was established by Executive Order in 2001 but not activated until 2007.</p>
15.	<p>Indigenous Peoples Development Plan (IPDP) The Panel notes important positive features in the IPDP, including budget allocations for capacity building and training of local community leaders on national laws, and for training of conciliators and arbitrators. This is consistent with the stated intent of the IPDP to protect indigenous peoples from the results of depredations and invasions of their territory.</p>	371	<p>Comment: Management acknowledges the finding of compliance by the Panel.</p> <p>Action: No action required.</p>
16.	<p>Conflict Resolution The Panel is concerned that the IPDP does not adequately reflect or address the risks posed to the Garifuna people by its proposed means of resolving conflicts. These include, in particular, risks posed by disparities of power in the process.</p> <p>The Panel notes that IPDP does not adequately assess the potential implications for indigenous peoples of the special expedited judicial procedure that is contained in the draft Property Law.</p> <p>The Panel notes the complexity of the conflict resolution procedures and the concerns of Requesters that the existence of multiple conflict resolution procedures including those in the IPDP, in the new Property Law and others, generates confusion in communities... Understandably, these many instances and options have created confusion and anxiety among the affected communities. The Panel finds that there is a need for clarification and consultation with the affected communities as to which procedures apply, and a need for better</p>	372, 374, 375	<p>Comment: The IPDP was prepared by Government, and could not realistically assess the potential impact of a law that had been under discussion for several years and was not yet approved by the Honduran Congress. Management agrees that the IPDP (as well as the Operational Manual) needs to be updated to incorporate the provisions of the Property Law ensuring that the identified risks to Indigenous Peoples (not just those related to conflict resolution mechanisms) are adequately addressed, taking into account the informed inputs of the all Garifuna and Miskito stakeholders. The IPDP has not been revised yet because the consultations with these stakeholders on many relevant issues need to be broad and substantive. Consultations are currently being carried out in the context of the <i>Mesa Regional Garifuna</i>, the <i>Mesa Regional Miskito</i>, and the Inter-Sectoral Commission.</p> <p>Action: Government has agreed with Management to support meetings of the Inter-Sectoral Commission to discuss Project implementation, consistent with the DCA and applicable Bank policies. In particular, the Inter-Sectoral Commission is expected to discuss different conflict resolution mechanisms for Ethnic Lands available under current Honduran legislation and propose specific</p>

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	dissemination of this information.		actions in the context of the Project. Management is committed to supervise closely the role of the Inter-Sectoral Commission and the <i>Mesa Regional Garifuna</i> . The findings of a legal analysis (see Item 21 below) and agreements to be reached within the Inter-Sectoral Commission will guide the development of an updated IPDP and Operational Manual with respect to Project-sponsored regularization of Ethnic Lands.
	OP 4.01 ENVIRONMENTAL ASSESSMENT		
17.	Environmental Assessment The Panel finds that the identification of the issue of overlap between protected areas and Ethnic Lands in the EA is consistent with OP 4.01.	280	Comment: Management acknowledges the finding of compliance by the Panel. Action: No action required.
	OP 4.04 NATURAL HABITATS		
18.	Ethnic Lands, Protected Areas, and Natural Habitats [...] The Panel observed that Management has identified specific steps and safeguards to address issues that local communities might face in relation to project activities involving protected areas and natural habitat.	299	Comment: Management acknowledges the Panel's observation that the Project identifies specific steps and safeguards (in compliance with OP 4.04.). Action: No action required.
19.	Ethnic Lands, Protected Areas, and Natural Habitats The Panel found little analysis, however, of the relationship between the local Garifuna communities and areas of natural habitat, and the importance of the natural habitat for the livelihood of the Garifuna communities. The Panel considers that the development of this type of information would assist in meeting the provisions of OP 4.04, by providing a more informed basis to take into account the role, rights and interests of the local Garifuna communities in relation to important areas of natural habitat.	301, 303	Comment: The Social Assessment and Legal Analysis carried out during Project preparation recognized the importance of natural habitats for Indigenous Peoples and potential conflicts (e.g., limits to access, usufruct rights, double titling) relating to Protected Areas and buffer zones. Equally important, the 2003 Diagnostic Study carried out by the Central American and Caribbean Research Council (see Item 9 above) provides extensive information on the importance of natural habitats for Garifuna livelihoods (e.g., forestry, fisheries, subsistence agriculture) as well as the cultural identity of the Garifuna peoples. The Process Framework lays out procedures so that the livelihoods of Garifuna and other indigenous communities are taken into consideration in the demarcation and management of critical natural habitats, including the direct co-management of said areas. Project design includes mechanisms to balance the protection of natural habitats with the interests of people whose livelihoods depend on natural resources. These mechanisms include <i>inter alia</i> : (i) activities to strengthen the management of and demarcate protected areas, in accordance with the Project EA; (ii) activities to ensure local communities, including Garifuna communities, are involved in the management of those areas (and related decision-making), as per the Project Process Framework; and (iii) special procedures to ensure Indigenous Peoples' rights are adequately protected, where Ethnic Lands overlap with protected areas (IPDP). Action: No action required.
	OP/BP 13.05 PROJECT SUPERVISION		
20.	Supervision of Project Consultation Mechanisms by Social Experts Because of the key role given to the Mesa Regional in the process of land regularization,	191	Comment: Management acknowledges the Panel's observation and has already begun to take specific steps to address this issue. Management sent a specialized supervision mission in February 2007 to review the status

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	<p>the Panel finds that closer supervision of the Mesa Regional and up-to-date knowledge by Bank staff is required under the Bank policy on Project supervision, OP/BP 13.05. The Panel finds that supervision of the activities related to the Mesa Regional does not comply with the applicable Bank policy.</p>		<p>of the Project's progress on safeguards-related aspects. The mission consisted of two international and one local social development specialist, and included the Regional Safeguards Advisor. The mission concluded that: (i) there is a strong involvement of local Garifuna communities and Garifuna leaders in the <i>Mesa Regional Garifuna</i>; (ii) the members of the <i>Mesa Regional Garifuna</i> have remained engaged with and committed to the process of regularization of Ethnic Lands despite the setbacks of the process and at the risk of losing credibility among their communities; (iii) Garifunas and Miskitos are losing ground against land speculators operating on the North Coast. Thus, the mission recommended providing swift support, and seeking further advances, for the regularization of Ethnic Lands in the Garifuna and Miskito territories. The mission recognized the need to improve the flow of information about the Project, its progress and challenges, particularly at the local level. The mission also facilitated training sessions for Project staff and management on safeguards-related issues and met with representatives of various government organizations to discuss progress and coordination aspects.</p> <p>Action: Specialized supervision will be conducted at least twice annually by a Senior Social Scientist working on the Project.</p> <p>Management is committed to have a locally-based Social Scientist in the Country Office in Tegucigalpa devoted exclusively to Indigenous Peoples issues in the Bank's portfolio in Honduras, who will provide regular follow up on Project consultation mechanisms.</p> <p>Bi-annual supervision will closely supervise activities carried out by the Inter-Sectoral Commission and the Mesa Regional Garifuna.</p> <p>Supervision efforts will include reviewing Government efforts to promote community participation in Project-related activities.</p>
21.	<p>Changes in Legal Framework</p> <p>[...] The Panel did not find any record that these changed [legal] circumstances, which are potentially directly relevant for the land rights of indigenous people, were acted upon by Management, aside from an inconclusive exchange of communications between the Region and the Legal Department.</p> <p>The Panel notes that the legal context in which a Project is designed and implemented is very important and Bank policies recognize this. In this particular Project, the legal context is important also because the Requesters claim that the Project will facilitate the implementation of a Law that they believe is highly detrimental to their rights and interests. The fact that the regulations to the Law have not been issued yet and the alleged harm feared by the Requesters is, at this stage, potential, does not exempt the Bank from analyzing to what extent the implementation of the Project will be affected by the Law. The Panel finds that Bank policy</p>	221, 242, 334	<p>Comment: There is no Bank policy requirement that the "Project rules" force changes in local law to make it fit a Bank-mandated standard. Bank policies, including OD 4.20, require Project compliance with Bank standards, but they do not require national compliance beyond the Project sphere. Hence, it is inconsistent to suggest that the Project serve as a mechanism to settle all land titling disputes in Honduras to the satisfaction of indigenous or Afro-Honduran peoples, or to bring local law in line with ILO 169.</p> <p>In the period between passage of the Property Law by the Honduran Congress (June 2004) and Project Effectiveness (December 2004), Management assessed the Property Law and concluded that the Project's safeguard provisions were not in conflict with the new law and the two could be harmonized. The process of harmonization is underway.</p> <p>Action: Management will work with Government to assess the relevant local legal framework for consistency with OD 4.20. As part of this process, Management will:</p> <p>(i) Hire a Honduran lawyer to review all relevant aspects</p>

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	<p>required Management to carry out this analysis after the Law was enacted.</p> <p>The Panel notes that the Government officials with whom the Panel met stated that no resources have been earmarked or pledged to indemnify third parties who hold annullable titles in Ethnic lands. The Bank needs to address this issue fully to be consistent with OP/BP 13.05.</p>		<p>of the changed legal framework in Honduras, as it relates to Indigenous Peoples' land rights, including the Property Law and other pertinent laws;</p> <p>(ii) Review with Government the procedures for regularization of Ethnic Lands, to ensure they are compatible with relevant Bank safeguards; and</p> <p>(iii) Work with Government to update the Operational Manual and IPDP and if necessary, issue regulations or by other means reduce ambiguities, minimize inconsistencies, and in general make the relevant local legal framework one which allows for regularization of Ethnic Lands to be accomplished through consultative and conflict resolution processes that fairly take the interests of indigenous and Afro-Honduran peoples into account, in a manner which is compatible with relevant Bank safeguards.</p> <p>The findings of this review may guide further restructuring and alignment of the Project to the new legal framework, including reaching an agreement with Government on possible measures related to the indemnification of third parties with annullable titles in Ethnic Lands.</p>
	CONCLUDING OBSERVATIONS		
22.	<p>[...] The Panel finds that the Project may have consequences far different than intended by the Indigenous Peoples Plan. The Panel finds merit in the concerns of Requesters that the Project may contribute to the demise of titles and claims to collective lands held by the Garífuna and indigenous peoples. In this sense, the Project may not protect the cultural integrity or economic base of some of the poorest communities along the Caribbean coast.</p> <p>[...] The Panel doubts whether there is a meaningful option for most communities not to participate in the demarcation and titling activities provided under the Project....</p> <p>Communities may face a choice of participating in a Project which, they believe, as currently structured, does not represent their interests, or attempt to opt out of the Project and face significant challenges from non-indigenous people occupying and claiming rights over their Ethnic Lands. Given the relative economic and political vulnerability of the indigenous peoples, the Panel finds that the safeguards provided under the Project are not adequate to protect the Garífuna rights over their Ethnic Lands in the context of Project implementation.</p>	378, 385	<p>Comment: Management concurs with the multiplicity of studies indicating the sense of crisis in the land tenure situation of Garífuna people and their requests for immediate action. As stated in the Diagnostic Study, prepared by the Central American and Caribbean Research Council, “the communities are fed-up and saturated with studies and research and need actions to address the problems presented. They are mobilized, there is a sense of crisis, and they demand concrete answers” (emphasis added).</p> <p>Management does not believe that the Project will lead to the demise of titles and claims to collective lands, or that the safeguards provided under the Project are inadequate to protect Garífuna land rights. The Project provides participatory consultation mechanisms to ensure that Garífuna views are taken into account; the Project only works in Garífuna communities which voluntarily choose to participate in Project activities; the Project contains legal safeguards to prevent titling or demarcation of any lands adjacent to Ethnic lands unless procedures which protect the interest of Garífuna peoples are reviewed and approved by the Bank. The Project has prevented land titling on or adjacent to Ethnic Lands against the will of Garífuna communities. It will continue to do so, while working with Garífuna communities and organizations to develop land regularization procedures for Ethnic Lands along Honduras’ North Coast.</p> <p>Management remains committed to: (i) maximize participation of Garífuna peoples in consultation mechanisms without expecting consensus across a diverse range of stakeholders; (ii) provide the support necessary for the Inter-Sectoral Commission to serve as a Project consultation forum; and (iii) continue to address the urgent concerns of the Garífuna people.</p>