

**BANK MANAGEMENT RESPONSE TO
REQUEST FOR INSPECTION PANEL REVIEW OF THE
HONDURAS LAND ADMINISTRATION PROJECT
(CREDIT NO. 3858-HO)**

Management has reviewed the Request for Inspection of the Honduras Land Administration Project (Credit No. 3858-HO), received by the Inspection Panel on January 3, 2006, and registered on January 10, 2006 (RQ06/1). Management has prepared the following response.

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ABBREVIATIONS AND ACRONYMS

APL	Adaptable Program Loan
BP	Bank Procedures
EA	Environmental Assessment
EMP	Environmental Management Plan
Ha	Hectare
IACHR	Inter-American Commission on Human Rights
IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
ILO	International Labor Organization
INA	National Agrarian Institute (<i>Instituto Nacional Agrario</i>)
IPDP	Indigenous Peoples Development Plan
IPN	Inspection Panel
OD	Operational Directive
OMS	Operational Manual Statement
OP	Operational Policy
PAAR	Rural Land Management Project (Proyecto de Administración de Áreas Rurales)
PAD	Project Appraisal Document
PATH	Honduras Land Administration Program (<i>Programa de Administración de Tierras de Honduras</i>)
PCD	Project Concept Document
PCN	Project Concept Note
PDO	Project Development Objective
SINAP	National Property Administration System (<i>Sistema Nacional de Administración de la Propiedad</i>)
SINAPH	Honduran National System of Protected Areas (<i>Sistema nacional de Áreas Protegidas de Honduras</i>)
UCP	Project Coordination Unit (<i>Unidad Coordinadora de Proyectos</i>), under the Secretariat of Governance and Justice

TERMS

Ethnic Lands	For the purposes of the Project, the term Ethnic Lands is defined in the Credit Agreement to mean “those lands that have ancestrally and historically been settled by Amerindian groups and/or Afro-Honduran communities for their use and that constitute their habitat on which they undertake their traditional productive and cultural practices.”
<i>Folio Real</i>	The parcel-based registration technique of land rights, as opposed to the deed-based technique.
Process Framework	Per OP 4.12, paragraphs 7 and 31, a “Process Framework” is prepared by Government when Bank-supported projects may cause restrictions in access to natural resources in legally-designated parks and protected areas. The purpose of the Process Framework is to establish a process by which members of potentially affected communities participate in the design of project components, determination of measures necessary to achieve resettlement policy objectives, and implementation and monitoring of relevant project activities.

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 (known in Honduras as *Programa de Administración de Tierras de Honduras*, or PATH) (Credit No. 3858-HO) partially financed by the International Development Association (IDA). Throughout this document, the Honduras Land Administration Project is referred to as PATH or the Project.

2. This Management Response to the Request for Inspection contains the following sections: Section II briefly presents the Request and Section III provides the Project background. Section IV concerns issues of special relevance to the Request, including a brief description of the Garífuna people, the participatory nature of the Project, the Honduran legal framework on land issues, the issue of collective versus individual titling, and the overlap of protected areas with Garífuna territorial claims. Section V summarizes Management’s response. Annex 1 presents the Requesters’ claims, together with Management’s detailed responses, in table format. Annexes 2 to 7 contain supporting documentation referred to in the Response, including a chronology of key Project preparation and implementation events, and the correspondence between the Requesters and Bank Management. A map of the region follows the Annexes (Map 1, IBRD No. 34485).

II. THE REQUEST

3. The Request for Inspection was submitted by Organización Fraternal Negra Hondureña (Ofraneh) on behalf of the Garífuna population of Honduras (hereafter referred to as the ‘Requesters’).

4. The Request concerns three principal issues: (i) the risk of atomization of Garífuna collective titles and delivering Garífuna land claims to non-indigenous organizations in the form of protected areas; (ii) the consultations and participatory nature of the Project; and (iii) the interplay between the Project and Honduras Property Law as it relates to the recognition of the Requesters’ territorial claims. The Request also addresses the responses from the Bank to matters raised by the Requesters related to the Project.

5. Attached to the Request are 13 annexes:

- (i) Public communication regarding the PATH;
- (ii) Ofraneh’s complaint regarding violations of OD 4.20 (with attachments) of August 22, 2005;
- (iii) World Bank letter of September 14, 2005;

- (iv) Minutes of Ofraneh – World Bank meeting of September 21, 2005;
- (v) World Bank letter of October 20, 2005;
- (vi) Ofraneh letter of October 25, 2005;
- (vii) World Bank letter of October 27, 2005;
- (viii) Ofraneh letter of October 31, 2005;
- (ix) Ofraneh e-mail of November 3, 2005;
- (x) Ofraneh letter of November 4, 2005;
- (xi) World Bank letter of November 18, 2005;
- (xii) Certificates of submittal of petitions to the Inter-American Commission on Human Rights (IACHR); and
- (xiii) Certificates and points in minutes of the Garífuna communities, stating their position regarding the PATH.

No other materials were received by Management in support of the Request.

6. The Requesters claim that the Bank has failed to comply with provisions of the following Operational Policies and Procedures:

- OP/BP 4.01, Environmental Assessment, January 1999;
- OP/BP 4.04, Natural Habitats, June 2001;
- OMS 2.34, Tribal People in Bank Financed Projects, February, 1982;
OD 4.20, Indigenous Peoples, September 1991;
OP/BP 4.10, Indigenous Peoples, July 2005; and
- World Bank Policy on Disclosure of Information, September 2002.

7. In connection with Indigenous Peoples,¹ Management notes that the Requesters claim violation of OMS 2.34 (1982), OD 4.20 (1991) and OP/BP 4.10 (2005). Management's response, however, is framed under the applicable policy on Indigenous Peoples (OD 4.20 issued in 1991), rather than OMS 2.34 or OP/BP 4.10. The Project had its Pro-

¹ The Afro-descendant Garífuna people, of whom the Requesters are members, are covered by the IPDP prepared for PATH pursuant to OD 4.20, as are members of Amerindian peoples (Miskito, etc.) living in Honduras. This treatment of the Garífuna reflects Management's judgment, taking into consideration the defining characteristics set forth in paragraph 5 of OD 4.20, about the nature of the Garífuna. Given that other Afro-descendant groups in other countries and settings exhibit different case-specific characteristics, this Management judgment can quite appropriately vary from case to case.

ject Concept Document (PCD) Review Meeting on April 9, 2003 and the Project Appraisal Document (PAD) Decision Meeting on December 8, 2003. OMS 2.34 (February 1982) was replaced by OD 4.20 in September 17, 1991. OP/BP 4.10 applies to projects for which a Project Concept Note (PCN) Review takes place on or after July 2005, thus it does not apply to this project.

III. PROJECT BACKGROUND

THE HONDURAS LAND ADMINISTRATION PROGRAM

8. **The Honduras Land Administration Program² (PATH) builds on successful pilot experiences developed under a previous Bank-financed project.** The genesis of PATH dates back to the Bank-financed Rural Land Management Project (PAAR), implemented between 1997 and 2003 (IDA Credit 29400; Supplemental Credit 29401). A Land Administration Modernization component under PAAR supported the development of technological platforms (e.g., software design, databases, web-based applications, hardware, data migration, training) and land administration procedures and manuals in order to establish a parcel-based registration system (*Folio Real*). These were piloted successfully in the Department of Comayagua. Under PAAR, 27,500 hectares (ha) of indigenous lands in 13 Tolupán communities were demarcated and titled. This experience was commended as a best practice example in participatory demarcation in the Bank's review, "Indigenous Peoples Development Plans – Thematic Review" (2002).

9. **PATH is the first phase of a three-phase program.** Building on the successful experiences of PAAR, the Government of Honduras requested Bank support to expand its land administration reform efforts, to be channeled through an Adaptable Program Loan (APL). APLs provide phased support for long-term development programs. They involve a series of loans that build on the lessons learned from the previous loan(s) in the series. An APL involves agreement on: (i) the phased, long-term development program supported by the loan; (ii) sector policies relevant to the phase being supported; and (iii) priorities for sector investments and recurrent expenditures. Triggers define when to move to the next phase. Subsequent loans in the series are phased based on satisfactory progress in meeting the defined milestones, benchmarks or triggers.

10. **An APL is the appropriate instrument to support the long-term reform and investment program being carried out in Honduras.** The Government expressed its intention to embark on a long-term and far-reaching legal, institutional, and technological reform to formalize property rights for the vast majority of Hondurans, resolve land conflicts, facilitate access to land by the poor, reduce land transaction costs, increase the transparency of land administration services (cadastre, registry, certifications), and

² Note that the "Project" refers to the first phase of the three-phase Land Administration "Program," and this is how it is described in the PAD. Since each phase is considered a separate IDA Credit, the Credit Agreement refers to the Land Administration "Project." Other Project documents often use both terms interchangeably.

strengthen municipal capacities for their decentralized implementation. The ensuing PATH serves as one of the Government's instruments to accelerate growth and increase sustainability while reducing rural and urban poverty. Secure land rights feed into the broad goal of poverty reduction and sustainable development supported under the Government's Poverty Reduction Strategy Paper, and improved governance in the country. The agreed triggers for Phase II of the Land Administration Program are: (i) creation of a new institutional framework for the National Property Administration System (SINAP), (ii) achievement of 80 percent or better results of the Project Development Objective indicators, (iii) adoption of legal / regulatory framework for Indigenous Peoples' lands, and (iv) completion of baseline data gathering for Phase II.

PROJECT OBJECTIVES

11. **The Project Development Objective is to establish and operate an integrated and decentralized land administration system (comprising public and private entities) to provide users with accurate information on urban and rural parcels, and effective land administration services in a timely and cost-effective manner.** The system will help increase land tenure security for private and communal lands, reduce transaction costs, develop national and municipal territorial plans, and develop management plans for protected areas (including co-management plans in indigenous lands). The main beneficiaries of the Project are urban and rural poor who lack tenure security over their lands, including selected indigenous and Afro-Honduran communities.

PROJECT MILESTONES

12. The PCD and PAD Decision Meetings were held on April 17 and December 9, 2003 respectively. Negotiations followed on January 8-9, 2004, and the Board approved the Project on February 26, 2004. The Project became effective on December 2, 2004. The closing date is April 30, 2008. The amount of the credit is SDR 16.9 million (USD 25.0 million equivalent).

PROJECT COMPONENTS

Component 1: Policy Framework and Institutional Strengthening (USD 10.9 million; 28.1 percent of total cost)

13. This component supports increased transparency and improved governance of the country's main land administration institutions. The component's main outputs include the establishment of the National Property Administration System (SINAP), through strengthened legal, regulatory, and institutional frameworks. SINAP will include a National Territorial Information System (SINIT), a Registry of Norms (RENOT), and the Unified Registries System (SURE), to be operated by public and private entities.

Component 2: Area-based Systematic Land Regularization, Titling and Registration (USD 22.7 million; 58.2 percent of total cost)

14. This component is directly benefiting local populations through regularization and registration of their land assets. The Project aims to cover different types of rural and u-

ban land and a broad cross-section of Honduran society. The component's main output is the incorporation of land parcels within the project area into SINAP, with the Project financing pre-field work, including aerial photography, field surveying of macro boundaries such as inter-municipal boundaries, parcel-level surveying and validation, and support for conflict resolution, titling, and mass registration into SINAP.

Component 3: Project Management, Monitoring and Evaluation (USD 5.3 million; 13.7 percent of total cost)

15. This component covers the administrative costs of the Project Coordination Unit (UCP), specifically to implement monitoring and evaluation activities.

PROJECT STATUS

16. **Progress towards achieving the project development objectives is satisfactory.** Since the project became effective in December 2004, the Bank has conducted four supervision missions. The Project's implementation progress is considered highly satisfactory. To date, the Project has disbursed USD 17 million, 69 percent of the total credit amount. The SINAP and its subcomponents have been established. Five out of the eight property registries targeted in the project are operating the system under *folio real*, reducing considerably the time and cost of transactions. Twenty-one municipalities, 140 percent of the target, are already operating SINAP's subsystems, resulting in an improvement in the provision of services to the public. Surveyed parcels stand at 23 percent of target, as planned. More than 50 percent of municipal boundaries have been demarcated.

17. The regularization of Indigenous and Afro-Honduran lands is expected to account for approximately 5 percent of the Project's total cost. This component of the Project is proceeding at a slower pace than the rest of the Project, as field activities are preceded by extensive consultation with communities.

SUMMARY OF MANAGEMENT'S RESPONSE

18. **Management's response to the Request makes four main points:** First, no activities related to the physical demarcation, surveying, conflict resolution or titling of any lands in Garífuna regions of Honduras have yet taken place under the Project and therefore, no claims have been affected. Furthermore, safeguards included in the Project provide appropriate protection to Indigenous Peoples' land rights if and when these activities occur. Second, community participation in the Project is voluntary and broad participatory mechanisms are operational. Third, the Project is consistent with Honduran legislation, including the 2004 Property Law, and applicable Bank safeguard policies. Lastly, Management has been responsive to the Requesters' concerns and remains committed to ongoing meaningful consultations that include all interested Garífuna stakeholders.

19. **Management notes that the Project has caused no harm given that no activities related to physical demarcation, surveying, conflict resolution or titling of any lands in Garífuna regions of Honduras have yet taken place under the Project.**

The only activities carried out with Garífuna communities to date relate to dissemination of information and consultations and these activities have been in full compliance with Bank policies.³ In compliance with OD 4.20, OP 4.01, and OP 4.04, the Project incorporates appropriate safeguards to prevent harm during implementation.

20. **Management affirms that community participation in the Project is voluntary**, and individual communities are free to choose whether or not to participate in the Project. Appropriate consultations have taken place during Project preparation and implementation. Moreover, Project design and implementation take into account proposals made during the consultation process. Management does note that consultation has given opportunities to present diverging views about the Project among different Garífuna stakeholders.

21. **Management's view is that the Project incorporates appropriate safeguards** to fill potential gaps in Honduran legislation to safeguard the rights of Indigenous Peoples. Management has addressed all the Project-specific concerns raised by the Requesters. To the extent they disagree with the 2004 Property Law, and not with the Project per se, Management notes that the content of national laws and regulations is the responsibility of the Government of Honduras, and that the Government has put in place mechanisms, such as the Project's consultation framework, for civil society to raise their concerns on such matters.

22. **Finally, Management reaffirms its commitment to meaningful consultations, broad participation and open dialogue that allows all interested parties to express their views about the Project, and to ensure compliance with all Bank policies.**

IV. SPECIAL ISSUES

THE GARÍFUNA PEOPLE

23. The Garífuna in Honduras live along the northern coast of the country, in an area commonly known as "the Coast." The Coast covers a geographical area of about 600 kilometers along the Caribbean Sea and facing the Caribbean Antilles. The Garífuna are descendants from a mix of Indigenous Peoples, known as the Carib, and African former run-away slaves brought from San Vicente Island to Roatán Island by the British during the eighteenth century. The Spanish authorities almost immediately relocated the Garífuna population to the Honduran mainland. Different sources estimate the Garífuna population in Honduras to be between 49,000 and 98,000 persons; the 2001 national census reported 49,952 individuals who self-identify as Garífuna. The 2002-2003

³ As a related point, the Requesters also claim that the Bank's action under the Project have harmed their claims before the IACHR. This claim would appear to be outside the scope of Bank competence, and wholly within that of the Commission. However, even if this issue were considered in the context of Bank compliance with OD 4.20, OP 4.01, and OP 4.04, the Project incorporates appropriate safeguards to prevent harm during implementation.

household surveys reported that the Departments of Atlántida, Cortés and Colón hold 84 percent of the total Garífuna population of Honduras, while the remainder are in the Departments of Gracias a Dios (3 percent) and Francisco Morazán (5 percent), and scattered across other Departments (7 percent). The exact number of Garífuna communities is imprecise, but estimates indicate the existence of between 36 and 48 Garífuna communities located along the Coast (see Map 1).

24. In socioeconomic terms, 52 percent of the Garífuna live in urban areas, 68 percent have attended primary school, and infant mortality stands at 12 percent, considerably lower than the national average. Likewise, 55 percent of the Garífuna population have their basic needs met as reflected by the National Index of Unmet Needs (NBI). There is a marked difference between rural and urban areas, the former being poorer and with fewer opportunities than the latter. In recent years, remittances have played an increasing role in household incomes, a result of an intense process of migration of Garífuna community members – particularly men – to the United States. As a result, Garífuna households have higher than average living standards compared to national averages, and particularly in relation to other ethnic minority groups in Honduras.

25. **A variety of civil organizations represent the Garífuna.** The community association of Cristales and Rio Negro was the first Garífuna organization recognized by the Government of Honduras. Chronologically, other important organizations include Ofraneh (Organización Fraternal Negra Hondureña) created in 1977 and legally recognized in 1982. The Organización de Desarrollo Étnico Comunitario (Odeco) was formed in 1992 and legally recognized in 1994. The Centro Independiente para el Desarrollo de Honduras (CIDH), Centro para el Desarrollo Comunal (CEDEC), Enlace de Mujeres Negras, la Mancomunidad de Municipios Garífunas de Honduras (MAMUGAH), la Comisión Diocesana de Pastoral Católica Garífuna, Asociación Hondureña de Mujeres Negras (ASOHMUN), Asociación de Mujeres Lanigui Wanichigu, and Gemelos de Honduras are other organizations concerned with the Garífuna. Some of these organizations are considered traditional grassroots organizations (community or *Patronato* level); others are non-government organizations (NGOs) created around family, gender, professional alliances, development-specific purposes, or are affiliated with a church; while others are second-tier national federations or confederations. These organizations reflect the multiplicity of interests and concerns that affect the Garífuna people.

26. **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 National Agrarian Institute (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. The 2003 participatory Social Assessment carried out as part of Project preparation noted that the coexistence of different types of ownership and use of the land in the region have generated confusion and conflict among and between community members, between communities and third parties, and between communities and local and national authorities. More important, regarding one of the key issues of this Request, the Social Assessment observed; “Leaders and community members have

different viewpoints with regards to land tenure issues. Some Garífuna families ... would prefer an individual fee-simple title (*dominio pleno*). However, they argue, their leaders do not allow this. [...] Among the indigenous populations [*that is, Garífuna and Miskito*] this is so because some Confederations maintain that if land is titled individually, indigenous culture is at risk.[...] This has created an informal land market based on informal arrangements that increase tenure insecurity” (see page 32 of the Social Assessment).

27. **Over the past few years, the Bank has supported research on land issues of indigenous and Afro-Honduran peoples in Honduras.** The Biodiversity in Priority Areas Project (PROBAP, Grant No. 28367), implemented between 1998 and 2005 with support from the Global Environment Facility (GEF) and the Bank, supported one of the most comprehensive land tenure studies among Garífuna and Miskito populations in Honduras (Central American and Caribbean Research Council, 2002). This study used a participatory methodology to map the territorial claims of 25 Garífuna and Miskito communities along the Coast. Today, many Garífuna communities and organizations use the results of this study as one of the empirical sources for their land claims. The Bank and the Regional Unit for Technical Assistance (RUTA) sponsored a profile of indigenous and Afro-Honduran peoples in Honduras, “*Perfil de los Pueblos Indígenas y Negros de Honduras*” (2002). The Bank has also supported institutional building of Afro-descendant groups in Latin America that included Garífuna communities, with two workshops held in Honduras (February and June 2004). In addition, with the support of the Central American Commission of Environment and Development (CCAD), the Bank is financing an Institutional Development Fund (IDF) grant to strengthen the capacities of Central American black organizations, including Garífuna groups in Honduras.

CONSULTATIONS AND THE PARTICIPATORY NATURE OF THE PROJECT

28. The Requesters claim that
- (i) Bank experts did not carry out consultation programs in advance of the drafting of the Project’s Indigenous Peoples Development Plan (IPDP);
 - (ii) The Requesters received the draft IPDP (and the Environmental Assessment, or EA) shortly before the only consultation meeting;
 - (iii) In December 2003 representatives of all the Garífuna communities rejected everything that was established in the IPDP, while the Bank did not take into account alternative proposals made by the Garífuna; and
 - (iv) The Project does not consider the local social organization patterns and the preference of a communal land tenure system.

29. **Management wishes to clarify the respective roles of Government and the Bank under Bank-financed projects.** Governments are responsible for preparing projects, which includes preparation of background documents (e.g., Social Assessment, EA), policy and operational manuals (e.g., IPDP, Process Framework, Project Operational Manual), and consultations. The Bank’s role is to appraise these documents and

processes and, if they are in accordance with Bank policies, including safeguard policies, endorse them as the basis for Bank financing. After Project Effectiveness, the role of the Government is to implement the project whereas the Bank supervises project implementation.

30. **Ofraneh has participated in ten consultation events to date, including during Project preparation and implementation.** Between January 2003 and February 27, 2004 (the Project's Board Approval date), representatives of Ofraneh participated in seven events sponsored by Government⁴ related to the Property Law, preparation of the Project, and the IPDP (see Annexes 2.1 to 2.8). Since Project Effectiveness (December 2, 2004), as part of project implementation, the Requesters were invited to seven additional events, including consultations, workshops, and other decision-making sessions, but participated in only three of these events (see Annexes 2.9 to 2.12).

31. **A wide range of Garífuna stakeholders was consulted as part of the participatory Social Assessment and preparation of the IPDP in July-August 2003.** Three focal groups, approximately 15 structured interviews with key stakeholders, and 30 household questionnaires (as part of a survey of over 300 people throughout the country) were conducted in three Garífuna communities in the Departments of Atlántida (Sambo Creek and Tornabé) and Gracias a Dios (Batalla). The Social Assessment included the participation of municipal authorities, *Patronato* leaders (described in more detail in paragraph 40 below), community leaders, individuals, and civil society organizations, representing the broad spectrum of Garífuna stakeholders.

32. **The Bank-financed PAAR project supported Ofraneh in reviewing the draft Property Law.** In August 2003, Ofraneh and other Indigenous Peoples leaders requested Government to support (through the Bank-financed PAAR project, the precursor of the PATH) a consultation process to review the draft Property Law. On August 26, PAAR staff met with Indigenous Peoples leaders, including one Ofraneh representative, and established an *ad hoc* working group to review the draft Property Law (see Annex 2.3). The recommendations of this working group were discussed on October 8, 2003, with the participation of seven Ofraneh representatives, under the auspices of the PAAR project (see Annex 2.4).

33. **Project design took into account recommendations made at consultation events carried out during Project preparation.** A two-day workshop organized by Ofraneh, and financed by the Bank-funded PAAR project, took place in San Juan, Tela, Atlántida on October 25-26, 2003 with the participation of 109 Garífuna representatives (see Annex 2 to the Request). Seven working groups elaborated their proposals concerning Indigenous Peoples' lands, protected areas, natural resources management, water and

⁴ As a follow-on operation to PAAR, PATH preparation was carried out by staff working on PAAR at the time (2003 and 2004), and thus many documents annexed to this Response refer to PAAR as the Government's entity in charge of preparing PATH. Also note that in early 2003, Government had not decided yet on a name for the PATH, so some documents refer to the Project as, *inter alia*, second phase PAAR, the Project for the Integration of the National Cadastral and Registry System (SINREC), Land Administration, and the Land Regularization and Administration Project (PRATH).

soil management, cultural patrimony and participation. The recommendations made at that workshop largely related to the contents of the draft Law (which eventually became the Property Law, No. 82-2004) under discussion in Honduras at the time. Management was supportive of the Government's efforts to enable Garífuna representatives to make their concerns about the draft Property Law known to the appropriate authorities (see Annex 2.6). The event's seven working groups also made more specific recommendations. Project design considered all these proposals and incorporated many. For example, (i) the IPDP assigns resources for ongoing consultations on land tenure issues with Garífuna communities; (ii) the Project considers co-management of protected areas by Garífuna communities; (iii) the IPDP assigns resources for legal advice and training of Indigenous Peoples; and (iv) community participation in the Project is voluntary. Other proposals, such as those related to forestry issues, underground natural resources, or the appointment of Garífunas to high level public office, fell outside the scope of the Project (see Annex 2 to the Request, pages 2 to 4, Minutes of San Juan, Tela, Atlántida workshop, October 25-26, 2003).

34. **The Project's IPDP includes a broad and participatory consultation framework for indigenous communities.** The IPDP allocates government resources for consultations with Indigenous Peoples (including the Garífuna) related to land issues. Thus, the IPDP includes a budget with designated funds for consultations, dissemination of materials and legal advice to indigenous communities. Moreover, the IPDP includes the establishment of a consultation framework through which indigenous communities participate in the process of defining land regularization procedures. During Project preparation, Ofraneh participated in the two rounds of IPDP consultations (November 26 and December 2, 2003). At the November 26, 2003 event, participants (representing several Indigenous Peoples groups and organizations) requested additional time to review the draft IPDP submitted by Government for their consideration (see Annex 2.7). Government granted this request and it was agreed that a follow-up consultation event would take place on December 2, 2003. The minutes of this second IPDP consultation event state that "the participatory methodology, and the political willingness to discuss the project and its specialized documents (the IPDP and environmental assessment) were well received by the participants." Also, "the participants agreed to consult with their constituents to appoint representatives to a [national consultation board], the *Mesa Nacional Indígena*" (see Annex 2.8). Finally, in the course of Project implementation, 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 Garífuna *Mesa Regional* for the Departments of Atlántida and Colón and one Miskito *Mesa Regional* operating in the Department of Gracias a Dios.

35. **Participants at the two IPDP consultation events did not raise major objections to the Project or its design.** As the Project draft documents submitted by Government were well received by the major civil society stakeholders, and no major objections had been raised at the November 26 and December 2, 2003 events, Management decided that these project documents were acceptable for disclosure, Project Appraisal and Board Approval of the Project.

36. **Management notes that Project design and implementation considered all the relevant issues contained in the December 18-19, 2003 Sambo Creek document, and incorporated many of its proposals (see paragraph 39 below).** This contrasts with the Requesters' claim that "all the Garífuna communities in Honduras ... presented a firm rejection of everything that was established in the IPDP, while proposing several alternatives. However, the Bank did not take into account any of those proposals" (page 4, paragraph 1 of the Request). Management notes that although the Sambo Creek document expresses some concerns about the IPDP, it does not reject the Project or the IPDP. In fact, the objective of the Sambo Creek meeting was to "become familiar, appropriate the documents, and provide suggestions" to the Project's IPDP and EA.

37. **The Requesters misrepresent the contents of the December 2003 Sambo Creek document, which praises the diagnosis of Garífuna land tenure issues presented in the IPDP.** The document notes:

"The excellent analysis of the issues that affect ethnic communities in Honduras with regards to land tenure and the regularization of ancestral lands and the optimal operational directives that guided the drafting of the environmental assessment and the PATH in general give hope to the indigenous and Garífuna communities of Honduras that these will be translated into a concrete application of the design by Government and the World Bank, with regards to the territorial planning issue that represents an essential prerequisite for the survival of ethnic peoples" (Annex 2 of the Request, sixth attachment, "Aide Memoire, Consultation on the PATH, chapter on IPDP, and REPEPIN Program,"⁵ page 18).

38. **Likewise, most of the 12 land tenure issues raised in the Sambo Creek document (Annex 2 of the Request, sixth attachment, page 4) are explicitly addressed by the Project,** including: (i) lack of titling of Garífuna lands; (ii) lack of registration of existing Garífuna titles; (iii) overlapping claims between Garífuna territorial claims and others (e.g., municipalities, protected areas, private landholdings, national lands); (iv) lack of Government policy to resolve Garífuna land issues; and (v) lack of Garífuna participation in the management of protected areas. Other issues, such as the expansion of the agricultural frontier, the coffee crisis, or the impact of roads, fall outside the scope of the Project.

39. **Many of the proposals mentioned in the December 2003 Sambo Creek document were incorporated in Project design and are currently under implementation.** The document lists 14 conclusions, 10 of which are relevant to the Project⁶ (Annex 2 of the Request, sixth attachment, pages 11 and 12). The Project addresses all these issues and incorporates most of these proposals. For example, (i) the Project includes safeguard measures to protect the rights of Indigenous Peoples in the resolution of land tenure conflicts (see paragraphs 55 and 77 below); (ii) community participation in the Project is

⁵ The REPEPIN (and PAPIN) projects analyzed in that document refer to another non-Bank-funded project.

⁶ The other four conclusions refer to the PAPIN and REPEPIN projects.

strictly voluntary; (iii) prior informed consultation with Garífuna communities is a prerequisite before land regularization methodologies are issued and before field activities begin; (iv) the consultation framework does not mix different ethnic groups (see paragraph 34); (v) the Project calls for the issuance of communal titles to Garífuna communities (see paragraphs 73 and 74 below); and (vi) the Project considers co-management plans (between Garífuna communities, NGOs, and/or other entities) for protected areas (see paragraph 78 below).

40. **Broad participatory mechanisms are an integral element of Project design.** The findings of the above-mentioned land tenure studies, the participatory Social Assessment carried out during Project preparation, the consultation events, and other sources resulted in the Project's adoption of broad participatory mechanisms for Indigenous Peoples at the grassroots level. In particular, the Social Assessment concluded, "*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 de Regularización y Resolución de Conflictos "Wadabula"* (henceforth *Mesa Regional*) and *Mesas Locales* as explained below.⁷

41. **Management would like to emphasize the voluntary nature of community participation in the Project.** Only those communities willing to participate will have their lands demarcated and titled. Therefore, individual communities can avoid the potential harm alleged by the Requesters by choosing not to participate in the Project.

HISTORY OF THE GARÍFUNA MESA REGIONAL

42. **The Mesa Regional includes a broad range of Garífuna stakeholders.** Shortly after Project Effectiveness (December 2004), under the auspices of the Project, Government invited representatives of a wide range of Garífuna communities and organizations, including Ofraneh, to participate in a meeting to establish an inter-institutional commission to organize the *Mesa Regional*, as agreed at the December 2, 2003 consultation meeting (see Annex 2.11). On March 15-17, 2005, 112 Garífuna persons, including representatives from 25 Garífuna communities, and municipal and *Patronato* authorities, including representatives from the Association of Municipalities of Honduras (AMHON), the principal Garífuna Catholic Church Organization (*Pastoral Garífuna*), Ofraneh⁸ and Odeco, gathered in Trujillo, Colón to create the *Mesa Regional*

⁷ Bank staff have met three times with the Garífuna *Mesa Regional* (April, September, November 2005), once with the Santa Fé and San Antonio *Mesa Locales* (September 2005), and once with the Miskito *Mesa Regional* (April 2005).

⁸ The person representing Ofraneh at the March 2005 *Mesa Regional* meeting is not one of the Requesters. The leadership of Ofraneh is under dispute; see paragraph 45 below and Annex 3.

de Regularización y Resolución de Conflictos. The *Mesa Regional* established a guiding principle of non-exclusion to guarantee that all interested parties have the right to participate and express opinions and views about the Project (see Annex 2.12). Management endorses this principle.

43. **In contrast with other Garífuna groups, the Requesters declined the invitation to participate in the establishment of the Garífuna Mesa Regional.** Invitations to the March 2005 meeting of the *Mesa Regional* were circulated widely among Garífuna organizations and communities, and this same approach has been used for subsequent meetings. Ofraneh declined to participate. It was at this meeting that the eight communities and twelve protected areas were selected by participants as candidates for participation in demarcation and titling activities under the Project.

44. **To complement the Mesa Regional, Mesas Locales promote grassroots-level participation by Garífuna communities.** Since the creation of the *Mesa Regional*, its members have met on various occasions to disseminate Project information to selected communities and discuss the structure and functioning of the *Mesa Regional* (see Annexes 2.14, 2.15, 2.16, 2.17, 2.19, 2.20, and 2.21). To complement the *Mesa Regional*, *Mesas Locales* were created as community-based mechanisms to address operational aspects of the Project at the local level. The *Mesas Locales* are specific to each community and work within the framework of community assemblies to ensure the participation of all community members. *Mesas Locales* have the closest ties to the communities and the responsibility to report to the *Mesa Regional* if the community chooses to participate in Project activities. In May 2005, *Mesas Locales* were created in the Garífuna communities of Santa Fé and San Antonio, and in June in the communities of Sangrelaya, Guadalupe, and Cocalito.⁹ Also in June 2005, three *Mesa Regional* working commissions were created for dissemination, training, and monitoring (see Annex 2.16).

45. **Management takes no position regarding an institutional dispute within Ofraneh.** In May 2005, Management learned of an internal dispute within Ofraneh. In December 2003, there was an ordinary assembly in Sambo Creek where a new General Coordinator and Board of Ofraneh were elected. In March 2005, an extra-ordinary assembly was held in Punta Piedra to replace authorities elected in December 2003. This extra-ordinary session was not recognized by the Coordinador General of Ofraneh elected in December 2003. Since then, the legitimacy of the leadership of Ofraneh has been in dispute (see Annex 3). Currently, the Coordinador General of Ofraneh elected in December 2003 is a member of *Mesa Regional*, while the Requesters, who dispute his leadership, are not. **Management has kept open channels of communication to any Garífuna individual or organization with an interest or concern in connection with the PATH.**

46. **There is a diversity of opinions among the various Garífuna stakeholders regarding the role of the Project in addressing their land claims.** Government and the

⁹ Cocalito was not one of the eight communities selected in March 2005, but the President of this *Patronato* requested its inclusion in the Project on April 29, 2005.

Mesa Regional have extended open invitations to all Garífuna communities and organizations to participate in the consultation framework sponsored by the Project. Some Garífuna groups are actively participating in the Project, others have participated sporadically, while still others have chosen not to be involved.

47. **Management notes that there is broad support for the Project among various Garífuna stakeholders**, as shown by the numerous minutes of meetings and statements made by the *Mesa Regional* (see Annexes 2.14 to 2.17 and 2.19 to 2.21). Community representatives at the *Mesa Regional*, not Government, selected the eight communities as well as the alternates.

48. Management has been informed by Government that the next steps in this consultation process include: (i) disseminating Project information with the new Honduran authorities;¹⁰ (ii) finalizing the hiring of a lawyer to support the *Mesas*; and (iii) convening another plenary event for the entire *Mesa Regional* to review the work of the three working commissions mentioned in paragraph 44 above, including the review of the land regularization and conflict resolution procedures.

THE HONDURAN LEGAL FRAMEWORK

Legal Framework At the Time of IPDP Preparation

49. The Requesters claim that:

- (i) Indigenous community representatives expressed their opposition to the draft Law and manifested their dissatisfaction during a consultation workshop (October 2003) that took place before the Property Law was approved (June 2004);
- (ii) The Bank, despite knowing that the draft Law would soon be passed, made no mention of it in Project documents;
- (iii) Indigenous communities are confused because they find themselves faced with two different arrangements for conflict resolution and titling: on the one hand, the IPDP and the PATH Operational Manual; and on the other, the 2004 Property Law; and
- (iv) Garífuna people oppose both arrangements since they consider them more restrictive and less generous than the International Labor Organization's Convention No. 169.¹¹

¹⁰ Honduras held general elections on November 27, 2005, and the new Government, including municipal authorities, was inaugurated on January 27, 2006.

¹¹ Garífuna people claim that the Project is not consistent with the ILO Convention 169. While this issue may be appropriate to raise within the jurisdictional context of other fora, such as Inter-American Human Rights tribunals, the World Bank's obligation in this project is to ensure compliance with the World Bank's applicable policies, including the Operational Directive on Indigenous Peoples. As noted elsewhere, it is Management's view that the Project has fully complied with this policy.

50. Being aware of concerns by some Garífuna groups about the draft Law, the Bank welcomed Government's efforts – through activities financed under the PAAR project – to enable these groups to make their concerns known to the appropriate authorities (see Annex 2.6).

51. Management wishes to clarify the relationship between the IPDP – prepared under the legal framework in place in 2003 – and the Property Law approved in June 2004. A brief chronology of key events is as follows:

- (i) The Project's IPDP, EA, and Process Framework were disclosed on December 8, 2003;
- (ii) The Project was approved by the Bank's Board on February 26, 2004, and the PAD – dated January 22, 2004 – became publicly available at the Bank's InfoShop and the Government's UCP in Tegucigalpa;
- (iii) The Property Law (*Ley de Propiedad, Decreto No. 82/2004*) became effective on June 29, 2004; and
- (iv) The Project was declared effective on December 2, 2004.

52. Project design anticipated the possibility of a new law by providing mechanisms (see paragraphs 55 and 56 below) for the continuous flexible adaptation of the Project to the new law. The Property Law is not explicitly discussed in Project documents because its approval and contents were uncertain at the time of Project Appraisal and Board Approval; the draft Law had been under discussion for more than two years and it was not certain to be approved.

53. Project preparation identified potential gaps in the Honduran legal framework. Throughout 2003, Management reviewed the existing legal framework (see Annex 12 of PAD, which includes the legal analysis as part of the documents available in Project files, and introductory paragraphs in the IPDP). In particular, three gaps that needed to be filled were critical for the Project's success: (i) lack of a legally established parcel-based property registry (*Folio Real*); (ii) lack of legislation specifically addressing indigenous and Afro-Honduran land rights, including appropriate consultation frameworks; and (iii) lack of operational procedures to deal with demarcation of protected areas and their surroundings.

54. Throughout Project preparation, Management carefully considered and evaluated options for addressing identified potential gaps in the Honduran legal framework. At the PCD¹² Review Meeting of April 17, 2003, the existing legal framework was discussed; it was agreed after careful consideration that Project preparation should proceed. At the PAD Decision Meeting on December 9, 2003, the question of whether to wait for passage of a new law was discussed again. Following careful consideration of options, Management decided that it was most appropriate to continue Project preparation of the first phase of the three-phase APL under the existing

¹² PCD is the equivalent of the current PCN.

legal and institutional framework, while building into the design specific safeguards (see next paragraph) addressing the above-mentioned gaps. As the Project under preparation was the continuation of successful pilot activities under the Bank-financed PAAR (e.g., development of participatory demarcation methodologies for Indigenous Peoples' lands, development of technological platforms for parcel-based registration, land regularization field manuals), an interruption would have caused significant damage in terms of sustainability of investments already made.

55. The Project includes specific safeguards to address the identified potential gaps in the legal framework. Government and Management agreed on the following safeguard measures to address the identified potential gaps, anticipate the possibility of a new law, and comply with applicable Bank policies. First, before Project Effectiveness, the Supreme Court of Honduras would issue a Regulatory Decree (*Auto Acordado*) authorizing a parcel-based property registry in Project areas.¹³ Second, specific safeguards were incorporated into the Credit Agreement and other relevant Project documents to ensure that the rights of indigenous and Afro-Honduran peoples were protected. These include, among others:

- (i) Section 3.08(b) of the Credit Agreement obliges the Borrower to carry out an IPDP acceptable to the Bank, which would *inter alia* ensure: (a) that Indigenous Peoples have adequate access to legal advice and training before decisions are made regarding lands which are in conflict; and (b) that the decision-making mechanisms for conflict resolution on these lands are transparent and include genuine representation of indigenous and Afro-Honduran groups;
- (ii) Section 3.11 of the Credit Agreement established 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 manner satisfactory to the Association [Bank], and set forth in the Operational Manual, have been followed;” and
- (iii) A trigger for Phase II of the APL was established, requiring “adoption of a legal / regulatory framework for Indigenous Peoples lands.”

And third, specific safeguards related to protected areas and natural habitats were included (see paragraphs 76 to 84 below).

56. Considering the Project Development Objective, Management found the new Property Law acceptable, taking into account the above-mentioned safeguards. 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

¹³ Since the Property Law approved in 2004 (before Project Effectiveness) establishes a parcel-based property registry for the whole country, Management decided that issuance of the Regulatory Decree by the Supreme Court was no longer necessary and the Effectiveness Condition was deemed fulfilled.

and the two could be harmonized. The process of harmonization will take time, considering the need for broad and participatory consultations with Project stakeholders. The Project aims to accomplish this harmonization through participatory mechanisms, such as the *Mesa Regional* and the community-level *Mesas Locales*, established precisely for that purpose.

57. Management notes that the IPDP (and the Project Operational Manual) have not been updated because the Project's safeguards require comprehensive consultations before land regularization methodologies are adopted. That is, the Project's safeguards prevent Government from launching field activities until the Bank issues its no-objection to the land regularization and conflict resolution procedures, and the revised procedures will not be submitted to the Bank until broad and meaningful consultations have been carried out.

Regulations on Land Regularization

58. The Requesters raised concerns regarding the process of land regularization for Indigenous Peoples. They claim specifically that:

- (i) The IPDP does not take into account the existing legislation on Indigenous Peoples and the legal procedure for collective titling;
- (ii) No rules have been developed since the issuance of the IPDP in connection with the demarcation and delimitation of indigenous communities' lands and that therefore, Indigenous Peoples should follow the procedure contemplated in the existing *Afectación* Rules¹⁴ addressing their expansion requests and their claims to INA;
- (iii) There is confusion regarding coordination between INA and the Indigenous Affairs Unit contemplated in the IPDP; and
- (iv) In any case, issuance of regulations would only contribute to confusion regarding applicable rules.

59. Government has not issued regulations to the Property Law related to Indigenous Peoples' lands to date, as the regulations are currently under consultation with stakeholders. Thus, they have not been incorporated into the IPDP or the Project Operational Manual. The relationship between the IPDP and the existing legal framework is addressed in paragraphs 51 to 57 above.

60. A draft document on the procedures for regularization of indigenous communities' lands has been circulated to indigenous communities for consultation.¹⁵ Bank staff clarified the purpose of this draft document to the Requesters at the September 21, 2005 meeting in Tegucigalpa (see Annexes 4.3 and 4.4). One of the

¹⁴ These rules refer to the procedures used by the Agrarian Reform Institute to distribute and title lands for agrarian reform purposes.

¹⁵ The draft document "*Metodología para Determinar y Medir las Tierras a Ser Tituladas a las Comunidades Étnicas*" is likewise mentioned in the Request.

tasks for the *Mesa Regional* is precisely to discuss the document and make specific recommendations to Government. The Project is currently contracting a lawyer, agreeable to the *Mesa Regional*, to assist the *Mesa* in reviewing the Property Law and the draft regulations document, in response to specific recommendations made during Project preparation consultation events.

61. Regarding the relationship between the Indigenous Affairs Unit and INA, see Section 3.2 in Annex 1 below.

62. **Management notes a contradiction in the Request:** on the one hand, the Requesters complain about the lack of regulations to the Property Law and, on the other, they argue that issuance of such regulations would contribute to confusion. Management notes that the content of national laws and regulations is the responsibility of the Government of Honduras, and that the Government has put in place mechanisms, such as the Project's consultation framework, for civil society to raise concerns on such regulations.

63. **Management affirms that no activities related to the physical demarcation, surveying, conflict resolution or titling of any lands in Garífuna regions of Honduras have taken place under the Project to date.** The only activities carried out by the Project with Garífuna communities in these regions relate to dissemination of information and consultations as required by the Bank's OD 4.20. Management understands that the ongoing consultations will result in land regularization procedures that Government would subsequently approve as regulations to the Property Law. If the proposed procedures are also consistent with the relevant Credit Agreement provisions and Bank safeguard policies, then Management will endorse the incorporation of said procedures into the IPDP and Project Operational Manual. These measures can only occur before land regularization activities on the ground affecting Indigenous Peoples commence (see paragraph 57 above).

Arbitration versus Judicial Process

64. **The Requesters question the inclusion of arbitration in the IPDP as a conflict resolution mechanism and the constitutionality of arbitration itself.** In their view, the inclusion of arbitration in the IPDP conflicts with Articles 110 and 111 of the 2004 Property Law, which allow for a judicial process; in short, the Requesters claim that the inclusion of arbitration generates confusion among Project stakeholders.

65. **The arbitration procedures in the IPDP were consistent with national law at the time of Project preparation.**¹⁶ Arbitration is a non-judicial process by which two or more parties agree to allow an impartial third party to decide on the issue under dispute; the decision (award) becomes binding on the disputing parties and is final. On the other hand, under the 2004 Property Law, disputes may be resolved through a judicial process with the right to appeal to the Supreme Court (Article 111) (see Annex 7). Management

¹⁶ Regarding the constitutionality of arbitration in Honduras, Management notes that this would be an issue for Honduran courts to decide if and when a pertinent case were brought before them.

wishes to clarify that the IPDP was prepared at a time when only the Conciliation and Arbitration Law (No. 161-2000) was in effect, and not the Property Law.

66. **In Management’s assessment the conciliation and arbitration methods of conflict resolution included in the IPDP are consistent with OD 4.20.** These methods provide affected groups with “the effective use of the legal system to defend their rights,” following a global trend of incorporating new methods of conflict resolution that are considered “efficient, effective and reliable” (Section 1 of the Conciliation and Arbitration Law) into national legal systems. These methods of conflict resolution are widely used in Latin America, including under other Bank-financed land administration projects, some of which include components addressing Indigenous Peoples’ land rights.

67. **Government has established a participatory consultation framework (the above-mentioned *Mesa Regional*) to discuss and provide inputs into the development of land regularization procedures and conflict resolution mechanisms under the Project.** Since changes to the IPDP and the Project Operational Manual are subject to the Bank’s no-objection, Management expects that these participatory consultations would result in proposals to harmonize some of the Project’s features with the new Property Law. Management also expects that the land regularization activities on the ground affecting Indigenous Peoples would commence only after the Bank issues its no-objection, as required by Sections 3.04 (b) (ii), 3.08 (b), and 3.11 of the Credit Agreement.

Legal Status and Access to Legal System by Garífuna Communities

68. The Requesters contend that the preparation of the IPDP violated Bank policy, as it did not take into account the “real ability of the indigenous and black peoples to obtain access to the legal system and use it effectively to defend their rights”. They argue that no consideration was given to the circumstance that the impossibility for the Garífuna to obtain justice in connection with their territorial claims through the Honduran legal system has forced them to resort to international courts to address their concerns. As such, Ofraneh presented a petition to the IACHR in October 2003, denouncing the violation of their territorial rights by the Government of Honduras and asking for the recognition of their territorial claims.

69. **Finding Garífuna access to the Honduran legal system to be limited, Project design incorporated appropriate safeguard measures.** In compliance with OD 4.20, Management required that the Project’s IPDP include specific provisions – including budgetary allocations within the Project – for: (i) capacity building and training for local community leaders on national laws and regulations pertinent to the Project; and (ii) a program of training and certification of conciliators and arbitrators (see IPDP, pages 13 to 17).

70. Two of the three communities indicated in the Request as subject to claims before the IACHR¹⁷ (Cayos Cochinos and Triunfo de la Cruz) have never been considered for

¹⁷ See footnote 3 above.

physical demarcation and titling under the Project. The third, the Punta Piedra community, was initially on a list of potential communities – prepared by the *Mesa Regional* – to be included in the Project; but given that some of its members may be opposed to the Project, in September 2005, Management informed the previous Honduran Administration that its inclusion should be reconsidered after public discussion meetings at the *Mesa Regional* and community level (see Map 1). On February 6, 2006, Management made the same recommendation to the new Honduran Administration.

71. **Management takes no position with respect to the ongoing cases before the IACHR.** Management respects the rights of all Garífuna communities to pursue appropriate recourses at their disposal. Management would like to point out again that no activities related to the physical demarcation, surveying, conflict resolution or titling of any lands in Garífuna regions of Honduras have taken place under the Project to date. The only activities carried out with Garífuna communities in these regions relate to dissemination of information and consultations as required by the Bank’s OD 4.20.

COLLECTIVE VERSUS INDIVIDUAL TITLING

72. Management has considered carefully the issue of individual versus collective titling. The Social Assessment addressed this issue (see paragraph 26 above and pages 32 to 38 of the Social Assessment) and Management analyzed the legal framework concerning this issue in particular. The 2004 Property Law devotes an entire chapter to the regularization of property for indigenous and Afro-Honduran peoples (see Annex 7). In particular, Article 93 states, “the Property Institute shall follow the procedures established in the Law to guarantee indigenous and Afro-Honduran peoples the full recognition of their communal property rights...through communal [*emphasis added*] fee-simple titling (*titulación en dominio pleno*).”

73. **Neither the Property Law nor the Project favors or encourages individual titling in Garífuna communities.** On the contrary, as a result of the legal analyses carried out during Project preparation, Management concluded that – given the importance of this issue and the fact that Garífuna communities may be subject to influences from outsiders encouraging individual titling – a special safeguard provision was necessary for the Project. Specifically, Sections 3.08(b) and 3.11 of the Credit Agreement provide for the establishment of procedures that adequately protect the rights of Garífuna communities, including their right to choose a tenure regime. Provided communities make this choice in the context of a participatory and informed consultation framework, the Project’s safeguard provisions are adequate to comply with OD 4.20.

74. **Management endorses the Government’s position to respect the decisions made by the *Mesa Regional* and individual communities regarding their preferred land tenure regime.** The minutes of the March 2005 meeting establishing the *Mesa Regional* explicitly state as one of its objectives “to demarcate the areas titled to Garífuna communities and proceed with its communal [*emphasis added*] regularization respecting the title as a private communal whole without fragmentation in individual parcels, since Garífuna lands are its patrimony. There will not be any cadastral surveying of [*individual parcels, it is understood*] for at least 15 to 20 years in the Garífuna community” (see

Annex 2.12). Under the Project, community-level consultation boards (*Mesas Locales*) are also being established and Management understands that ultimately individual communities will decide whether to participate in Project activities and on their land tenure preferences.

PROTECTED AREAS AND GARÍFUNA TERRITORIAL CLAIMS

75. Regarding the potential overlap of protected areas with Garífuna land claims, the Requesters claim that the Project:

- (i) Does not contemplate the co-management by communities of protected areas;
- (ii) Has already given away protected areas to NGOs which do not share the Garífuna “*cosmovisión*;”
- (iii) Is not demarcating water limits;
- (iv) Lacks mitigating measures to offset the presence of Government institutions in protected areas management in favor of the permanent presence of community members. In addition, the Requesters mention two specific examples: the proposed Sierra Rio Tinto Forest Reserve, and the Punta Izopo National Park (see Map 1); and
- (v) Has not taken into account the importance of natural habitats to Garífuna communities.

76. The Project was designated as a category “B” Project for the purposes of OP 4.01 (Environmental Assessment). Therefore, Management required the Government to prepare an EA as part of project preparation. The EA identified the Project’s potential “risks and impacts regarding the natural environment ... and specific social impacts (involuntary resettlement, Indigenous Peoples, and cultural property).” Based on the EA, Management concluded that additional safeguard policies were triggered, namely, OP 4.12 (Involuntary Resettlement), OP 4.04 (Natural Habitats), and OPN 11.03 (Cultural Property) and additional compliance measures were needed to mitigate the identified potential impacts.

77. **The Project’s Process Framework ensures that protected area demarcation will proceed only if and when local communities agree** (see page 6, first paragraph of Process Framework). Among the potential impacts identified in the EA was the possible overlap between existing communities (both indigenous and non-indigenous) and protected areas. As Project demarcation of protected areas could lead to the restriction of access to resources within those areas for neighboring communities, Government prepared and disclosed a Process Framework in accordance with OP 4.12.

78. **The Process Framework and Environmental Management Plan (EMP) include provisions for co-management of protected areas by agencies, NGOs, and local communities** (see page 7, last paragraph of Process Framework). Likewise, the 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. Moreover, to ensure the implementation of the Process Framework, Management and Government incorporated legal covenants into the Credit Agreement to this effect (see Sections 3.04 (a) (iii) and 3.08 (d) of the Credit Agreement).

79. **Management notes that the Project has not “delivered” protected areas to NGOs.** To clarify, tables 6 through 11 of the EA include a comprehensive inventory of existing and proposed protected areas in six departments of Honduras, in compliance with OP 4.04, as well as factual information regarding the organizations involved in the management of those areas. This in no way constitutes an act of “establishing in advance the delivery of territory to outsiders,” as the Request claims. Existing protected areas are those created by Government prior to the Project. Proposed protected areas are those under consideration by Government and/or other organizations for inclusion in the Honduran National Protected Areas System (SINAPH). These latter areas are not being proposed nor created by the Project. The listing of organizations involved in the management of those areas in Project documents should not be interpreted as a Project proposal or endorsement of those organizations; rather, the list reflects a relationship between Government and those organizations working in a given protected area.

80. Management understands that the need and procedures for demarcation of water limits of protected areas will be assessed on a case-by-case basis, depending on the specific circumstances of the area in question.

81. **Management insisted on the inclusion of specific measures to address potential conflicts between the OD 4.20 and OP 4.04.** In order to ensure compliance with both OP 4.04, which protects natural habitats, and OD 4.20, which protects Indigenous Peoples, the Project includes the following measures: (i) the restriction that only legally established protected areas (with a Decree) would be eligible for demarcation under the Project; (ii) no project field activities would take place in or near proposed protected areas (Section 3.10 of the Credit Agreement); (iii) no titling or physical demarcation on lands adjacent to Ethnic Lands would take place unless procedures that adequately protect the interests of Indigenous Peoples...have been followed (Section 3.11 of the Credit Agreement).

82. **In Management’s view, co-management and participatory demarcation of protected areas enhance the involvement of indigenous communities vis-à-vis government agencies (or other entities) in the management of protected areas.** Management recognized the Project’s potential impact on communities living in or near protected areas stemming from the loss of access to resources. For this reason, the Project includes a Process Framework setting forth the mechanisms for mitigating this potential impact, in compliance with OP 4.12.

83. Regarding the specific areas mentioned by the Requesters, **Management wishes to clarify that under the Project, no activities will take place within or near Sierra Río Tinto Forest Reserve**, as it is a proposed protected area and therefore excluded from the Project per Section 3.10 of the Credit Agreement. Regarding the overlap between the Triunfo de la Cruz community land claims and the Punta Izopo National Park, Management understands that Punta Izopo National Park has been included in the

preliminary list of protected areas to be included in the Project (see Annex 2.12). Management notes that Section 3.11 of the Credit Agreement affords protection to affected communities, such as Triunfo de la Cruz, 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 manner satisfactory to the Association [Bank],... have been followed.”

84. Finally, regarding the importance of natural habitats to Garífuna communities, **Management recognized that potentially the Project could negatively affect important natural habitats, including areas recognized as protected by traditional local communities, if said areas were titled erroneously. Consequently, Management decided that OP 4.04 and OPN 11.03 were triggered and the Project EMP and Process Framework include specific activities to mitigate these impacts.** These include: (i) the exclusion of all proposed protected areas from demarcation activities as described in paragraph 81 above (per Section 3.10 of the Credit Agreement); and (ii) the inclusion of chance find procedures in the Process Framework (per Section 3.09 of the Credit Agreement).

MANAGEMENT RESPONSIVENESS TO REQUESTERS’ CONCERNS: AUGUST 2005 TO PRESENT

85. **The detailed complaint submitted to the Bank by the Requesters in August 2005 (see Requesters’ Annex 2) focused largely on specific provisions of the Property Law.** For instance, the Requesters claim that “the Property Law 82-2004 goes against international law standards and violates the Bank’s OP 4.10” (page 1, Annex 2 of Request). Given that the contents of national laws are the responsibility of the Government of Honduras, Management sought clarifications from the Requesters in order to ascertain which Project-specific concerns required Management attention. Management invited the Requesters to a meeting in Tegucigalpa on September 21, 2005, where the Requesters confirmed that their main concern was the implementation of the Property Law (see Annex 4.1). The Project-specific concerns which the Requesters raised for Management’s consideration were: (i) more respect and transparency in the Project’s consultation process; (ii) allowing communities themselves to decide whether to participate in the Project; and (iii) requesting a meeting with Government to review the procedures of the Project’s consultative framework (the *Mesa Regional*).

86. **In Management’s view, broad and open dialogue with all Garífuna stakeholders is entirely appropriate and indeed essential to address complex land issues effectively.** The signed minutes of the September 2005 meeting in Tegucigalpa indicate an agreement for the Bank to sponsor a follow-up meeting with Government as well as [emphasis added] other Garífuna representatives (see Annex 4.3). Management confirmed this agreement in a letter sent to Ofraneh on October 20, 2005 (see Annex 4.4). Management disagrees with the Requesters’ assertion that the presence of other Garífuna representatives constitutes an attempt to disrupt the dialogue aimed at addressing their concerns. On the contrary, given that one of the Project-specific concerns expressed by the Requesters in the September 2005 meeting with Bank staff was the need to “review

the participation mechanisms of the *Mesa Regional* and the procedures for selecting beneficiary communities,” broad and open dialogue is appropriate. Government has also expressed its preference for supporting the ongoing consultation framework (the *Mesa Regional*) that includes all interested Garífuna stakeholders; the *Mesa Regional* has also manifested its right to be included in all discussions related to its operational modalities (see Annex 2.21). Management disagrees with the Requesters’ characterization of other Garífuna stakeholders, including community leaders, *Patronato* leaders, church leaders, and representatives of other Garífuna grassroots organizations participating in the *Mesa Regional*, as “outsiders” (page 12, paragraph 3 of Request) or as “Garífuna clowns” (Annex 1 to Request, page 2, paragraph 2). In contrast, showing an attitude towards honest dialogue, the *Mesa Regional* continues to invite the Requesters to participate in meaningful dialogue about the Project; Management and Government support this approach.

87. **Management took action to address the Project-specific concerns expressed by the Requesters and notified Ofraneh of these promptly.** These include: (i) informing Government of their concerns, and Government (as implementer of the Project) expressed its willingness to meet with Ofraneh to discuss participation mechanisms at the *Mesa Regional*; (ii) Management and Government agreed with the proposal that communities themselves decide whether to participate in the Project; and (iii) Management clarified to the Requesters that no surveying activities financed under the PATH in Garífuna communities had occurred to date. In particular, Management clarified to Ofraneh that the incident mentioned to Bank staff on September 21, 2005 regarding the Punta Piedra community was not related to the Project (see Annex 4.4).

88. **Management once more emphasizes the voluntary nature of community participation in the Project.** Only those communities willing to participate will have their lands demarcated and titled under the Project. Therefore, individual communities can avoid the potential harm alleged by the Requesters by choosing not to participate in the Project.

89. Following the September 2005 meeting, Bank staff traveled to Honduras in November 2005 to meet with Government officials, the *Mesa Regional* and representatives of Ofraneh. On November 4, 2005, Ofraneh representatives refused to meet Bank staff and Government officials in the presence of the *Mesa Regional*; this contradicted the agreement made in the September 2005 meeting and reflected in the minutes of that meeting. In a statement issued by the *Mesa Regional* on November 4, 2005, its members reiterated their invitation to the Requesters to join the *Mesa Regional* and thus fulfill a commitment the Requesters had made with the *Mesa* on June 9, 2005 (see Annexes 2.20 and 2.21).

90. **Management has consistently maintained its commitment to meaningful consultations, broad participation and open dialogue with all Garífuna stakeholders.** After the November 2005 mission, Management met internally to consider the implications of multiple Garífuna stakeholders with diverging views of the Project, and the position of the Government of Honduras with respect to the role of the *Mesa Regional* as the appropriate consultation framework for the Project (see Annex 5). Consequently, on No-

vember 18, 2005, Management sent a letter to the Requesters offering once again to sponsor a meeting between the Requesters, Government, other Garífuna representatives, and the Bank. The letter reiterated that it is Bank policy to keep open channels of communication with civil society, both in our offices in Tegucigalpa and Washington, to which the Requesters have access to address their concerns about the consultation mechanisms established for the Project or other matters (see Annex 4.9). To date, the Requesters have not replied to this invitation.

V. MANAGEMENT'S RESPONSE

91. The Requesters' claims, accompanied by Management's detailed responses, are provided in Annex 1.

92. **Management maintains that the Project has caused no harm given that no activities related to the physical demarcation, surveying, conflict resolution or titling of any lands in Garífuna regions of Honduras have taken place under the Project.** The only activities carried out with Garífuna communities in these regions relate to dissemination of information and consultations as required by the Bank's OD 4.20. Further, Management affirms that the safeguards included in the Project (e.g., Sections 3.08(b) and 3.11 of the Credit Agreement, the consultation framework, land regularization and titling procedures that comply with OD 4.20) are currently working and provide more protection against potential atomization than the existing legal and institutional framework. Management supports the principle that individual communities should decide which type of tenure regime they prefer. If communities make this decision as a result of a participatory and informed consultation framework, as in the case of PATH, the Project's safeguard provisions are adequate to comply with OD 4.20.

93. **Management notes that community participation in the Project is voluntary, and individual communities are free to choose whether or not to participate in the Project.**

94. **Management notes that, beyond matters related to the Project, the Request raises issues about the Honduran Property Law,** and to a lesser extent, the Conciliation and Arbitration Law. In this regard, the Requesters conclude that the solution to their problem involves actions outside the scope of the Project ("measures to resolve our problem addressed at the national instances (lobbying and political advocacy work to achieve the amendment of the Property Law)," (page 13, first paragraph of Request).

95. Management notes that inclusion of a comprehensive inventory of existing and proposed protected areas included in the EA – as required under OD 4.04 – as well as factual information regarding the organizations involved in the management of those areas, in no way constitutes an act of "establishing in advance the delivery of territory to outsiders."

96. **In Management's view, appropriate consultations have taken place during Project preparation and implementation.** Given the diversity of opinions within the Garífuna community, Management agrees with Government that a non-exclusionary consultation framework is needed to address these views and give voice to all interested Garífuna stakeholders. In Management's view, the *Mesa Regional* provides an effective, ongoing instrument for meaningful consultations, in compliance with OP 4.01 and OD 4.20.

97. Management notes that, given the broad support by a significant portion of Garífuna stakeholders, suspension of Project activities in these areas could be detrimental to the interests of these stakeholders, who have invested their time and aspirations in the Government's efforts through the PATH to address some of their long-standing multiple land tenure conflicts. In Management's view, by addressing some of the participating Garífuna communities' land claims, the Project will place the communities in a stronger and more informed position to defend their land rights.

98. Regarding the participation in the Project of the communities cited in the Request (i.e., Sangrelaya, Guadalupe, San Antonio, Limón, Punta Piedra), Management notes that it has already: (i) informed the previous Administration in Honduras of the statements made by members of these communities; and (ii) recommended to the new Administration in Honduras that it organize public discussion meetings (at the *Mesa Regional* and community levels) to explain once again the Project's objectives and operational modalities, and that Ofraneh be invited to these meetings to present its views. This way, the communities themselves will be able to make an informed decision as to whether to participate in the Project or not. Management will monitor these consultations closely in the course of Project supervision.

99. Similarly, Management has again notified Government of the importance of properly labeling Project documents as either official and approved, or discussion drafts, and of the need to enhance the Project's public dissemination activities, making information more readily accessible to Project beneficiaries and other interested stakeholders.

100. In Management's view, the Bank has followed the policies and procedures applicable to the matters raised by the Request, and has taken appropriate actions to address all of the Project-specific concerns raised by the Requesters in their August 2005 letter to the Bank and at the September 21, 2005 meeting. **The Requesters have not shown that specific actions directly attributable to the Project, or the action or inaction of Bank staff, in violation of Bank policies, have, or threatened to have, caused them material harm.**¹⁸

101. **Management reaffirms its commitment to meaningful consultations, broad participation and open dialogue that allows all interested parties to express their views about the Project, and to ensure compliance with all Bank policies.** Manage-

¹⁸ See footnote 3 above.

ment remains committed to meet with the Government of Honduras, the *Mesa Regional* as well as other Garífuna groups, and other civil society groups to ensure that the concerns of all indigenous and Afro-Honduran peoples are respected under the PATH. Management reiterates that it is Bank policy to keep open channels of communication with civil society, both in our offices in Tegucigalpa and Washington, to which the Requesters have access to address their concerns about the consultation mechanisms established for the Project or other matters.

ANNEX 1 CLAIMS AND RESPONSES

In connection with Indigenous Peoples, Management notes that the Requesters claim violation of OMS 2.34 (1982), OD 4.20 (1991) and OP/BP 4.10 (2005). Management's response, however, is framed under the applicable policy on Indigenous Peoples (OD 4.20 issued in 1991), rather than OMS 2.34 or OP/BP 4.10. The Project had its PCD Review Meeting on April 9, 2003 and the PAD Decision Meeting on December 8, 2003. OMS 2.34 (February 1982) was replaced by OD 4.20 in September 17, 1991. OP/BP 4.10 applies to projects for which a PCN Review takes place on or after July 2005.

The Requesters' statements are addressed in the order presented in the Request for Inspection, and the appropriate pages and paragraphs are cited. Given the flow of the Request, those claims with a stronger emphasis on the Honduran legal framework, consultations during Project preparation and after Board approval, regulations relating to land regularization, and pending litigation before the IACHR are grouped under OD 4.20; those with a stronger emphasis on protected areas are presented under OP/BP 4.01 and OP/BP 4.04. Finally, a brief section is included on the World Bank Policy on Disclosure of Information.

Notes:

"Adjustable Program Lending (APL)" provides phased support for long-term development programs. It involves a series of loans that build on the lessons learned from the previous loan(s) in the series. An APL involves agreement on: (i) the phased, long-term development program supported by the loan; (ii) sector policies relevant to the phase being supported; and (iii) priorities for sector investments and recurrent expenditures. Triggers define when to move to the next phase. Subsequent loans in the series are phased on the basis of satisfactory progress in meeting the defined milestones, benchmarks or triggers.

Under OP 4.12, a "Process Framework" is prepared by Government when Bank-supported projects may cause restrictions in access to natural resources in legally-designated parks and protected areas. The purpose of the Process Framework is to establish a process by which members of potentially affected communities participate in the design of project components, determination of measures necessary to achieve resettlement policy objectives, and implementation and monitoring of relevant project activities.

Claim/Issue	OD/ OP/BP	Response
A. Indigenous Peoples – OD 4.20		
<p>1. Consultations before Board approval.</p> <p><u>1.1 Consultations relating to Indigenous Peoples Development Plan.</u></p> <p>The Bank has infringed the provisions contained in paragraph 8 and emphasized in paragraphs 14 a) and c) of OD 4.20 [...]</p> <p>We can assert without doubt that the Bank's experts have never carried out consultation programs <u>in advance</u> of the drafting of the Indigenous Development Plan. Such Plan, as well as the Environmental Plan were delivered to the organization little before the holding of the only consultation meeting regarding the PATH and the IPDP. At that time, at a meeting in the Garifuna community of Sambo Creek on December 17, 18 and 19, 2003, the representatives of all of the Garifuna communities of Honduras signed a document that presented a firm rejection of everything that was established in the IPDP, while proposing several alternatives. However, the Bank did not take into account any of those proposals.</p> <p>None of those suggestions or criticisms that addressed the inconsistencies in the application of the titling arrangements contemplated by the project to</p>	<p>[OD 4.20 Paras. 14a & 14c]</p>	<p>Management wishes to clarify the respective roles of Government and the Bank under Bank-financed projects. Governments are responsible for preparing projects, which includes preparation of background documents (e.g., EA, Social Assessment), policy and operational manuals (e.g., IPDP, Process Framework, Operational Manual), and organizing consultations. The Bank's role is to appraise these documents and processes and approve them in accordance with the Bank's policies, including safeguard policies. Thus, it is inaccurate to claim that "...the Bank's experts have never carried out consultation programs..." and thus violated OD 4.20. As detailed in paragraphs 30 to 40 above, Government carried out extensive consultations, both during Project preparation and implementation. Ofraneh has participated in ten of these events to date, including during Project preparation and implementation (see Annex 2.1).</p> <p>Management notes that Project design and implementation considered all the relevant issues contained in the December 18-19, 2003 Sambo Creek document, and incorporated many of its proposals (see paragraph 39). This</p>

Claim/Issue	OD/ OP/BP	Response
<p>the legal particularity that the Garífuna people represent were considered.</p> <p>Summarizing, none of the options preferred by the peoples involved were considered, nor the local social organization patterns with the election of the collective holding system and the repercussions in terms of exclusion from development in the case of opening up to the system of individual ownership of land.</p> <p>[Citation: Page 4, para. 1 - 2]</p>		<p>contrasts with the Requesters' claim that "all the Garífuna communities in Honduras ... presented a firm rejection of everything that was established in the IPDP, while proposing several alternatives. However, the Bank did not take into account any of those proposals." (page 4, paragraph 1 of the Request). Management notes that although the Sambo Creek document expresses some concerns about the IPDP, it does not reject the Project or the IPDP. In fact, the objective of the Sambo Creek meeting was to "become familiar, appropriate the documents, and provide suggestions" to the Project's IPDP and EA.</p> <p>The Requesters misrepresent the contents of the December 2003 Sambo Creek document, which praises the diagnosis of Garífuna land tenure issues presented in the IPDP. The document notes,</p> <p>"The excellent analysis of the issues that affect ethnic communities in Honduras with regards to land tenure and the regularization of ancestral lands and the optimal operational directives that guided the drafting of the environmental assessment and the PATH in general give hope to indigenous and Garífuna communities of Honduras that these will be translated into a concrete application of the design by Government and the World Bank, with regards to the territorial planning issue that represents an essential prerequisite for the survival of ethnic peoples" (Annex 2 of the Request, sixth attachment, "Aide Memoire, Consultation on the PATH, chapter on IPDP, and REPEPIN Program"; page 18).</p> <p>Likewise, most of the 12 land tenure issues raised in the Sambo Creek document (Annex 2 of the Request, sixth attachment, page 4) are explicitly addressed by the Project, including: (i) lack of titling of Garífuna lands; (ii) lack of registration of existing Garífuna titles; (iii) overlapping claims between Garífuna territorial claims and others (e.g., municipalities, protected areas, private landholdings, national lands); (iv) lack of Government policy to resolve Garífuna land issues; and (v) lack of Garífuna participation in the management of protected areas. Other issues, such as the expansion of the agricultural frontier, the coffee crisis, impact of roads, fall outside the scope of the Project.</p> <p>Many of the proposals mentioned in the December 2003 Sambo Creek document were incorporated in Project design and are currently under implementation. The document lists 14 conclusions, 10 of which are relevant to the Project (Annex 2 of the Request, sixth attachment, pages 11 and 12). The Project addresses all these issues and incorporates most of these proposals. For example, (i) the Project includes safeguard measures to protect the rights of Indigenous Peoples in the resolution of land tenure conflicts (see paragraphs 55 and 77); (ii) community participation in the Project is strictly voluntary; (iii) prior informed consultation with Garífuna communities is a pre-requisite before land regularization methodologies are issued and before field activities begin; (iv) the consultation framework does not mix different ethnic groups (see paragraph 34); (v) the Project calls for the issuance of communal titles to Garífuna communities (see paragraphs 73 and 74); and (vi) the Project considers co-management plans (between Garífuna com-</p>

Claim/Issue	OD/ OP/BP	Response
<p><u>1.2 Legal framework at the time of IPDP preparation.</u></p> <p>On October 18, 2003, two months before the above-mentioned meeting, a consultation workshop was held in San Juan, Tela on the draft of what would become Decree 84 – 2000 Property Law. At that time, the representatives of the communities came out vocally against the issuance of said Law for reasons that are made clear by a reading of the attached documents that were drafted in the consultation and lobbying phase by the undersigned and with the support of consultations with international experts and institutions.</p> <p>In this respect, [...] it should be noted that [...] Bank staff already knew that the Government was about to issue shortly a land law that would be a key to the future land titling programs, besides already knowing of the opposition of the Garífuna people to said Law. However, in spite of knowing that the Property Law would become the statutory framework for the PATH project, they made no mention of that part relating to the statutory framework that would guide the project. This omission and the lack of intervention through successive socialization meetings, seems absurd and has generated confusion across the Garífuna communities. They find themselves faced with two different arrangements to implement the titling procedures and conflict resolution: the PATH Manual with the Indigenous Development Plan and the Bank rules and what is mandated by the Property Law. Besides, both instruments are inadequate from the point of view of the Garífuna people and present voids.</p> <p>[Citation: Page 4, paras. 3 & 4]</p>	<p>[OD 4.20 Paras. 14a & 14c]</p>	<p>munities, NGOs, and/or other entities) for protected areas (see paragraph 78).</p> <p>Being aware of concerns by some Garífuna groups about the draft Law, the Bank welcomed Government’s efforts – through activities financed under the PAAR project – to enable these groups to make their concerns known to the appropriate authorities (see Annex 2.6).</p> <p>Management wishes to clarify the relationship between the IPDP – prepared under the then-existing legal framework IPDP – and the eventually approved Property Law. A brief chronology of key events includes:</p> <ul style="list-style-type: none"> • The IPDP, EA and Process Framework were disclosed to the public on December 8, 2003. • The PATH was approved by the Bank’s Board on February 27, 2004, and the PAD became publicly available. • The Property Law became effective on June 29, 2004. • The PATH was declared effective on December 2, 2004. <p>Project design anticipated the possibility of a new law by providing mechanisms (see paragraphs 52 to 57 above) for the continuous flexible adaptation of the Project to the new law. The Property Law is not explicitly discussed in Project documents because its approval and contents were uncertain at the time of Project Appraisal and Board Approval; the draft Law had been under discussion for more than two years and it was not certain to be approved.</p> <p>Project preparation identified potential gaps in the Honduran legal framework. Throughout 2003, Management reviewed the existing legal framework. In particular, three gaps that needed to be filled were critical for the Project’s success: (i) lack of a legally established parcel-based property registry (<i>Folio Real</i>); (ii) lack of legislation specifically addressing indigenous and Afro-Honduran land rights, including appropriate consultation frameworks; and (iii) lack of operational procedures to deal with demarcation of protected areas and their surroundings.</p> <p>The Project includes specific safeguards to address the identified potential gaps in the legal framework. Government and Management agreed on the following safeguard measures to address the identified potential gaps, anticipate the possibility of a new law, and comply with applicable Bank policies. First, before Project Effectiveness, the Supreme Court of Honduras would issue a Regulatory Decree (Auto Acordado) authorizing a parcel-based property registry in Project areas. Second, specific safeguards were incorporated into the Credit Agreement and other relevant Project documents to ensure that the rights of indigenous and Afro-Honduran peoples were protected. These include, among others:</p>

Claim/Issue	OD/ OP/BP	Response
		<p>(i) Section 3.08(b) of the Credit Agreement obliges the Borrower to carry out an IPDP acceptable to the Bank, which would <i>inter alia</i> ensure: (a) that Indigenous Peoples have adequate access to legal advice and training before decisions are made regarding lands which are in conflict; and (b) that the decision-making mechanisms for conflict resolution on these lands are transparent and include genuine representation of indigenous and Afro-Honduran groups;</p> <p>(ii) Section 3.11 of the Credit Agreement established 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 manner satisfactory to the Association [Bank], and set forth in the Operational Manual, have been followed;” and</p> <p>(iii) A trigger for Phase II of the APL was established, requiring “adoption of a legal / regulatory framework for Indigenous Peoples lands.”</p> <p>(iv) Finally, specific safeguards related to protected areas and natural habitats were included (see paragraphs 62 to 69).</p> <p>Considering the Project Development Objective, Management found the new Property Law acceptable, taking into account the above-mentioned safeguards. In the period between its passage 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 will take time, considering the need for broad and participatory consultations with Project stakeholders. The Project aims to accomplish this harmonization through participatory mechanisms, such as the <i>Mesa Regional</i> and the community-level <i>Mesas Locales</i>, established precisely for that purpose.</p> <p>The issue of updating the IPDP is addressed in Section 3.2 below.</p>
<p>2. Consultations after Board approval.</p> <p><u>2.1 Participation between Board approval and August 2005.</u></p> <p>[T]he consultation meetings with the pilot communities are carried out without even giving the interested parties a brochure explaining the Project (the Garífuna population is further based on an oral cultural tradition and it would have been appropriate to hold preventive meetings in the communities in accordance with such a cultural pattern.)</p> <p>[Citation: Page 4, para. 4]</p> <p>In the PATH consultation, carried out in Trujillo in April 2005, in which the project’s pilot communities and protected areas were selected, the community</p>	<p>[OD 4.20 Paras. 14a & 14c]</p>	<p>From January to March, 2005, the presentation of the Project’s content and operational modalities was made orally to interested communities and various Garífuna stakeholders, including individual community leaders and those who eventually became members of the <i>Mesa Regional</i> (see Annexes 2.9, 2.10 and 2.12). Nevertheless, Management has notified Government of the need to enhance the Project’s public dissemination activities, making information more readily accessible to Project beneficiaries and other interested stakeholders.</p> <p>With respect to the April 2005 <i>Mesa Regional</i> noted by the Requesters, the <i>Mesa Regional</i> includes a broad range of Garífuna stakeholders. In December 2004, Government invited representatives of a wide range of Garífuna communities and organizations, including Ofraneh, to establish the <i>Mesa Regional</i>, as agreed at the December 2, 2003 consul-</p>

Claim/Issue	OD/ OP/BP	Response
<p>representatives that had been invited to the meeting were not given explanatory materials. At that time, Mr. Ángel Castro, invited as President of the <i>Patronato</i> (foundation) of the Garífuna community of Triunfo de la Cruz refused to sign a document with which the government officials sought consensus on the application of said plans in the Garífuna communities.</p> <p>The President of the <i>Patronato</i> of Triunfo de la Cruz, realizing the dangers for the survival of his people and the damages that the application of the arrangements contemplated in the Bank's Project would entail, left the meeting and decided to refrain from attending further meetings on the same subject. He was supported in his decision by all the members of the community he represents and, later, by all the representatives of several communities.</p> <p>[Citation: Page 5, paras. 1 & 2]</p>		<p>tation meeting (see Annex 2.11). On March 15-17, 2005, 112 Garífuna persons, including representatives from 25 Garífuna communities, municipal and <i>Patronato</i> authorities, gathered in Trujillo, Colón to create the <i>Mesa Regional de Regularización y Resolución de Conflictos</i>. The <i>Mesa Regional</i> established a guiding principle of non-exclusion to guarantee that all interested parties have the right to participate and express opinions and views about the Project (see Annex 2.12).</p> <p>Management notes that there is broad support for the Project among various Garífuna stakeholders as shown by the various minutes of meetings and statements made by the <i>Mesa Regional</i> (see Annexes 2.14 to 2.17 and 2.19 to 2.21). Community representatives at the <i>Mesa Regional</i>, not Government, selected the eight communities as well as the alternates.</p> <p>On April 29, 2005, in the community of Sangrelaya, the <i>Mesa Regional</i> issued a statement manifesting Garífuna support for the Project and called on all Garífuna communities and organizations to participate in this process (see Annex 2.14).</p> <p>As detailed in paragraph 45 above, Management takes no position regarding the institutional dispute within Ofraneh.</p> <p>Management and Government respect the right of communities to opt out of project activities. Management indicates that no activities related to the physical demarcation, surveying, or titling of any lands in Garífuna regions of Honduras have taken place to date. The only activities carried out with Garífuna communities in these regions relate to dissemination of information and consultations as required by the Bank's OD 4.20.</p> <p>See Section 5. below.</p>
<p><u>2.2 Management responsiveness to Requesters from August 2005 to date.</u></p> <p>Before reaching the decision of presenting this Request, Ofraneh and the affected communities took a series of steps designed towards a constructive dialogue with the institutions involved in the project.</p> <p>[...] Following a series of meetings and correspondence between Ofraneh and the Bank in the period from August to November 2005, a date and time were set] for the three party meeting with Ofraneh, the World Bank and a Government delegation in La Ceiba on November 4, 2005... However, on November 4, 2005 at the place selected to carry out the meeting, there appeared representatives of the <i>Mesa Regional</i> (Regional Board), an institution that is not recognized by Ofraneh and the Garífuna people and is alien to the institutions, the Government and the World Bank, with which the organization was communicating. Hence, it [the organization] sent a fax to the Bank in which it underlined its perplexity and disagreement with the way the dialogue between the institutions had been organized, under-</p>	<p>[OD 4.20 Paras. 14a & 14c]</p>	<p>A chronology of communications between the Requesters and Management is attached (see Annex 4). Paragraphs 85 to 90 above detail the actions which Management has taken to respond to the concerns voiced by the Requesters in a series of meetings dating back to September 2005.</p> <p>The detailed complaint submitted to the Bank by the Requesters in August 2005 (see Requesters' Annex 2) focused largely on specific provisions of the Property Law. Given that the contents of national laws are the responsibility of the Government of Honduras, Management sought clarifications from the Requesters in order to ascertain which Project-specific concerns required Management attention. The Requesters confirmed that their main concern was the implementation of the Property Law (see Annex 4.1). The Project-specific concerns which the Requesters raised for Management's consideration were:</p> <ul style="list-style-type: none"> • More respect and transparency in the Project's consultation process; • Allowing communities themselves to decide whether to

Claim/Issue	OD/ OP/BP	Response
<p>lining that they lacked seriousness. Besides the presence of outsiders, it had to be construed as an attempt to alter the solution procedure on the part of the agents involved. However, Ofraneh expressed its willingness to have a further meeting before presenting the inspection request. The Bank, through Mr. Benjamin, in a letter dated November 18, 2005, answered that the dialogue on the development of the Project needed to include the representatives of the <i>Mesa Regional</i>. Mrs. Miriam Miranda, of Ofraneh's executive board, in a conversation held with Mr. Muñoz on November 4, underlined the illegality of the set up of said Board, which has been created in spite of the disagreement of the communities, was not elected by the communities, is not an organization that represents them and results from a draft (the above mentioned Methodology) and not an official document. It may be noted that the members of the <i>Mesa Regional</i> cannot be considered other <i>Garífuna representatives</i>, as they are described by Mr. Benjamin McDonald in his letter of November 18, 2005.</p> <p>Therefore the Ofraneh, rejecting the representativeness of an institution involved in the dialogue with the Government and with the Bank, considering that they had done what was possible to find a solution to the problems resulting from the Honduras Land Management Project, made the decision to send this request.</p> <p>Considering what has been indicated above we may assert that clearly the contents of this action has been made known by the requesters to the Bank.</p> <p>[...] The solutions provided by the World Bank are unsatisfactory because, considering the background, they offer no concrete short term measure or solution, to channel the titling process in accordance with the preferences selected by the members of the communities and pursuing the process of vindication of their territory that goes back one decade. The execution of the PATH endangers the very survival of the Garífuna people because it cannot agree to solutions unless they are based on a concrete will to resolve the conflicts and recognize the rights over the lands that ancestrally belong to them.</p> <p>[...] Therefore, we consider that the actions and failures of the World Bank mentioned above, which are contrary to the already mentioned policies or procedural standards, have affected (by violating the right of consultation and the inconsistencies and disagreements caused by the establishment of operating rules on the titling of Indigenous lands that have not taken into account the existing legal framework and the real situation of access to justice by the Garífuna people, thus contaminating and increasing the complexity of the process of vindication of their territory) and will affect, through the potential</p>		<p>participate in the Project; and</p> <ul style="list-style-type: none"> • Requesting a meeting with Government to review the procedures of the Project's consultative framework (the <i>Mesa Regional</i>). <p>In Management's view, broad and open dialogue with all Garífuna stakeholders is entirely appropriate and indeed essential to address complex land issues effectively. The signed minutes of the September 2005 meeting in Tegucigalpa indicate an agreement for the Bank to sponsor a follow-up meeting with Government <u>as well as</u> [emphasis added] other Garífuna representatives (see Annex 4.3). This agreement was confirmed by Management in a letter sent to Ofraneh on October 20, 2005 (see Annex 4.4). Management disagrees with the Requesters' assertion that the presence of other Garífuna representatives constitutes an attempt to disrupt the dialogue aimed at addressing their concerns. On the contrary, given that one of the Project-specific concerns expressed by the Requesters in the September 2005 meeting was the need to "review the participation mechanisms of the <i>Mesa Regional</i> and the procedures for selecting beneficiary communities," broad and open dialogue is appropriate. Government has also expressed its preference for supporting the ongoing consultation framework (the <i>Mesa Regional</i>) that includes all interested Garífuna stakeholders. Management disagrees with the Requesters' characterization of other Garífuna stakeholders, including community leaders, <i>Patronato</i> leaders, church leaders, and representatives of other Garífuna grassroots organizations participating in the <i>Mesa Regional</i>, as "outsiders" (page 12, paragraph 3 of Request) or as Garífuna "clowns" (Annex 1 to Request, page 2, paragraph 2). In contrast, showing an attitude towards honest dialogue, the <i>Mesa Regional</i> continues to invite the Requesters to participate in meaningful dialogue about the Project; Management and Government support this approach.</p> <p>Management took action to address the Project-specific concerns expressed by the Requesters in the September 2005 meeting and notified Ofraneh of these promptly. These include:</p> <ul style="list-style-type: none"> • Informing Government of their concerns, following which Government (as implementer of the Project) expressed its willingness to meet with Ofraneh to discuss participation mechanisms at the <i>Mesa Regional</i>; • Management and Government agreed with the proposal that communities themselves decide whether to participate in the Project; and • Management clarified to the Requesters that no surveying activities financed under the PATH in Garífuna communities had occurred to date. <p>Management emphasizes the voluntary nature of community participation in the Project. Only those communities willing to participate will have their lands demarcated and titled. Therefore, individual communities can avoid the potential harm alleged by the Requesters by choosing not to participate in the Project, as Limón and Punta Piedra have done and Government has accepted their right to opt out.</p>

Claim/Issue	OD/ OP/BP	Response
<p>damages discussed in paragraph 6, in a substantial and negative way the rights of the Garifuna people.</p> <p>[Citation: Page 11, para. 9 – Page 13, para 5]</p>		<p>On November 4, 2005, Ofraneh representatives refused to meet Bank staff and Government officials in the presence of the <i>Mesa Regional</i>; this contradicted the agreement made in the September 2005 meeting and reflected in the minutes of that meeting. In a statement issued by the <i>Mesa Regional</i> on November 4, 2005, its members reiterated their invitation to the Requesters to join the <i>Mesa Regional</i> and thus fulfill a commitment the Requesters had made with the <i>Mesa</i> on June 9, 2005 (see Annexes 2.20 and 2.21).</p> <p>Management has consistently maintained its commitment to meaningful consultations, broad participation and open dialogue with all Garifuna stakeholders. After the November 2005 mission, Management met internally to consider the implications of multiple Garifuna stakeholders with diverging views of the Project, and the position of the Government of Honduras with respect to the role of the <i>Mesa Regional</i> as the appropriate consultation framework for the Project (see Annex 5). Consequently, on November 18, 2005, Management sent a letter to the Requesters offering once again to sponsor a meeting between the Requesters, Government, other Garifuna representatives, and the Bank. The letter reiterated that it is Bank policy to keep open channels of communication with civil society, both in our offices in Tegucigalpa and Washington, to which the Requesters have access to address their concerns about the consultation mechanisms established for the Project or other matters (see Annex 4.9).</p>
<p>3. Project Design and Honduran legislation.</p> <p><u>3.1 IPDP Legal Framework and Honduras Property Law.</u></p> <p>[...]he IPDP's legal framework (page 6 of the IPDP) [...] does not contemplate the Property Law that, by establishing the mechanisms for the titling of the areas occupied by Indigenous Peoples and conflict resolution arrangements, stands out as the fundamental legal pillar.</p> <p>We take this opportunity to clarify that the Garifuna people of Honduras is well aware that such law is an act by the Government and as such falls outside the Panel's jurisdiction, but at the same time, logic indicates that it is a duty of the financial institution to establish the regulatory elements of such an important titling project in coordination with the legislation in force in the country.</p> <p>The lack of attention and coordination on the part of the Bank and the borrower has translated into the development of two parallel regulations that oppose one another (the Bank's operating manuals and rules and the Government's legislation.)</p> <p>[Citation: Page 7, paras. 1 - 3]</p> <p>[...] The PATH, instead of standing out as a project in the forefront of land titling for the protection granted to the Indigenous Peoples involved, rather affects the path of said peoples towards the recognition of their territorial rights to the extent that it</p>	<p>[OD 4.20 Paras. 15a & 15c]</p>	<p>Section 1.2 above discusses the legal framework at the time of IPDP preparation. It also describes the Project-specific safeguards to address potential gaps in the legal framework. Section 3.2 below discusses the land regularization procedures and the Property Law and Section 3.3 below discusses conflict resolution arrangements under the Conciliation and Arbitration Law and under the Property Law.</p> <p>Management clarifies that it is the role of Government to establish regulatory elements and incorporate these into the Project Operational Manual, in compliance with the Credit Agreement and applicable Bank safeguard policies. The Bank is following this process closely, and is committed to review any proposed change to the Operational Manual to ensure consistency with Bank safeguard policies.</p> <p>In the process of project supervision, the Project team identified the need to enhance project dissemination activities, including training on the Property Law and providing legal advice to Garifuna communities and communicated these recommendations to Government (see Annex 6)</p> <p>Clarifications on titling procedures and applicable legislation are provided in Section 1.2 above, and Sections 3.2 and 3.3 below.</p>

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<p>generates confusion regarding the titling procedures and the applicable legislation, the institutions responsible for granting titles and the instances and procedures designated to solve the conflicts.</p> <p>[Citation: Page 8, para. 5]</p>		
<p><u>3.2 Regulations on Land Regularization</u></p> <p>[...] Furthermore, the Bank has violated the provisions of OMS 2.34 paragraph 5 and OD 4.20 paragraph 15 a) and c) and paragraph 9 of OD 4.20...We underline that the Bank expressed that it would not provide assistance for any development activity that knowingly entails the invasion of safeguarded territories or lands (OMS 2.34; paragraph 5 OD 4.20 paragraph 15 a) and c).</p> <p>[...] The Indigenous Peoples Development Plan in no way takes into account the existing legislation on Indigenous Peoples and the legal procedures for collective titling.</p> <p>In effect, the Indigenous Development Plan provides that <i>the legal framework contemplates the issuance of rules to develop the legal framework for the protection of Indigenous Peoples; additionally to instructions for the delimitation and demarcation of ancestral land holdings</i> (page 3 of the IPDP).</p> <p>In this respect we clarify that never, since the release of the IPDP, have rules been developed in connection with the demarcation and delimitation of the areas claimed by the Indigenous Peoples which would, therefore, follow the procedure contemplated in the Affectation Rules addressing their expansion requests and their claims to the <i>Instituto Nacional Agrario</i> (National Land Institute.) The IPDP does, however, contemplate (see page 12 of the IPDP) the creation of an Indigenous Affairs Unit [...] as the institution that will be responsible for carrying out and monitoring the procedure of Indigenous Peoples land titling. We do not understand how this later institution will coordinate its work with the <i>Instituto Nacional Agrario</i> and which will be the titling procedure to be applied.</p> <p>In any case, the issuance of regulations would only contribute to creating a lack of clarity in the applicable rules to the detriment of the claim of the Indigenous Peoples. In this respect, we point out that the Coordination Unit of the PATH Project had provided Ofrañeh with a set of rules called Methodology to Determine and Measure the Lands to be Titled to the Ethnic Communities –a document drafted by the PATH’s Project Coordination Unit. After a claim was presented to the World Bank where that document was severely criticized, the representatives of the Bank and members of the PATH clarified that it was merely a draft. This type of behavior increases the confusion of the Indigenous Peoples and fosters the idea that those who are coordinating the Project’s execution lack a clear and defined vision of how they will execute a project of such a magnitude and that has an essential importance for the survival of</p>	<p>[OD 4.20 Paras. 15a & 15c]</p>	<p>Section 1.2 above discusses the legal framework at the time of IPDP preparation. It also describes the Project-specific safeguards to address potential gaps in the legal framework.</p> <p>Government has not issued regulations to the Property Law related to Indigenous Peoples lands to date, as these regulations are currently under consultation with stakeholders. Thus, they have not been incorporated into the IPDP or the Project Operational Manual. The relationship between the IPDP and the existing legal framework is addressed in paragraphs 51 to 67 above. A draft document on the procedures for regularization of indigenous communities’ lands has been circulated to indigenous communities for consultation. One of the tasks for the <i>Mesa Regional</i> is precisely to discuss the document and make specific recommendations to Government.</p> <p>At the time the IPDP was prepared, Government intended to operate an Indigenous Affairs Unit at the Governance and Justice Secretariat to oversee the implementation of Project activities related to Indigenous Peoples’ lands. However, since then, these oversight functions have been incorporated into the UCP. Thus, the Community Participation and Indigenous Affairs Area within the UCP is now in charge of coordinating and monitoring Project activities related to Indigenous Peoples issues. The UCP is attached to the Governance and Justice Secretariat, and is not functionally linked to INA. The Project is currently contracting a lawyer, agreeable to the <i>Mesa Regional</i>, to assist the <i>Mesa</i> in reviewing the Property Law and the draft regulations document, in response to specific recommendations made during Project preparation consultation events.</p> <p>Management notes a contradiction in the Request: on the one hand, the Requesters complain about the lack of regulations to the Property Law and, on the other, they argue that issuance of such regulations would contribute to confusion. Management notes that the content of national laws and regulations is the responsibility of the Government of Honduras, and that the Government has put in place mechanisms, such as the Project’s consultation framework, for civil society to raise concerns on such regulations.</p> <p>Management would like to point out that no activities related to the physical demarcation, surveying, conflict resolution or titling of any lands in Garífuna regions of Honduras have taken place under the Project to date. The only activities carried out by the Project with Garífuna communities in these regions relate to dissemination of information and consultations as required by the Bank’s OD 4.20. Management understands that the ongoing consultations will result in land regularization procedures that Government would subse-</p>

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<p>the Garífuna people. This circumstance raises concerns especially with regards to possible errors in the assessment of the negative long-term effects over the Garífuna peoples involved in the project.</p> <p>[Citation: Page 6, paras. 6 - 7]</p>		<p>quently approve as regulations to the Property Law. If the proposed procedures are also consistent with the relevant Credit Agreement provisions and Bank safeguard policies, then Management will endorse the incorporation of said procedures into the IPDP and Project Operational Manual. These measures need to be taken before land regularization activities on the ground affecting Indigenous Peoples commence.</p> <p>Bank staff clarified the purpose of the draft land regularization methodology document to the Requesters at the September 21, 2005 meeting in Tegucigalpa (see Annexes 4.3 and 4.4). In addition, Management has notified Government of the importance of properly labeling Project documents as either official and approved, or discussion drafts, and of the need to enhance the Project's public dissemination activities, making information more readily accessible to Project beneficiaries and other interested stakeholders.</p>
<p><u>3.3 Arbitration versus judicial process</u></p> <p>[...] As an example we indicate that the IPDP provides for arbitration as the arrangement for the resolution of the conflicts that pertain to the holding of land by Indigenous Peoples (page 17 of the IPDP); such solution, that we consider unconstitutional insofar as it contemplates a single legal instance, is different from the one included in the Property Law in its Title VI Articles 110 and 111. Which procedure will be applied? Furthermore, it should be noted that the Garífuna people already expressed during the consultation phase their firm rejection of the conflict resolution mechanisms proposed by the PATH. We are concerned because conflict resolution instances are being proposed (see page 12 of the IPDP) that do not correspond to the social and political reality of the members of the communities; you cannot propose to resolve conflicts that date back to several decades by means of Interethnic Boards or Conciliation, Settlement or Mediation Procedures, where the disparities of the interests represented, power elites on the one hand and Indigenous Peoples on the other, cannot but lead to completely unfavorable decisions for the Indigenous Peoples.</p> <p>[Citation: Page 7, para. 4]</p>	<p>[OD 4.20 Paras. 15a]</p>	<p>The arbitration procedures in the IPDP were consistent with national law at the time of Project preparation. Arbitration is a non-judicial process by which two or more parties agree to allow an impartial third party to decide on the issue under dispute; the decision (award) becomes binding on the disputing parties and is final. On the other hand, under the 2004 Property Law, disputes may be resolved through a judicial process with the right to appeal to the Supreme Court (Article 111). Management wishes to clarify that the IPDP was prepared at a time when only the Conciliation and Arbitration Law (No. 161-2000) was in effect, and not the Property Law.</p> <p>In Management's assessment, the conciliation and arbitration methods of conflict resolution included in the IPDP are consistent with OD 4.20. These methods provide affected groups with "the effective use of the legal system to defend their rights," following a global trend of incorporating new methods of conflict resolution that are considered "efficient, effective and reliable" (Section 1 of the Conciliation and Arbitration Law) into national legal systems. These methods of conflict resolution are widely used in Latin America, including under other Bank-financed land administration projects, some of which also have components addressing Indigenous Peoples' land rights.</p> <p>Government has established a participatory consultation framework (the above-mentioned <i>Mesa Regional</i>) to discuss and provide inputs into the development of land regularization procedures and conflict resolution mechanisms under the Project. Since changes to the IPDP and the Project Operational Manual are subject to the Bank's no-objection, Management expects that these participatory consultations would result in proposals to harmonize some of the Project's features with the new Property Law. Management also expects that the land regularization activities on the ground affecting Indigenous Peoples would commence only after the Bank issues its no-objection, as required by Sections 3.04 (b) (ii), 3.08 (b), and 3.11 of the Credit Agreement.</p>

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<p>4. Legal status and access to legal system by Garifuna communities</p> <p>[...] On the other hand, we underline that in drafting the Project's IPDP, no account has been taken of the <i>real ability</i> of the indigenous and black peoples to obtain access to the legal system and use it effectively to defend their rights. No mention is made of any study establishing the level of access of the Garifuna people to the domestic legal system. Besides, no consideration was given to the circumstance that the impossibility for the Garifuna of obtaining justice in connection with their territorial claims through the local court system, has forced them to resort to international instances as a last attempt to solve their problems. In October 2003, i.e. before the PATH was disseminated in Sambo Creek, the Ofraneh representing the Garifuna peoples of Honduras presented to the Inter-American Commission on Human Rights a petition, denouncing the violation of their territorial rights by the Government of Honduras and asking for the recognition of the territory they claim. The Commission divided the petition into three cases, registering them under numbers 1118/03 Garifuna Community of Punta Piedra vs. the Government of Honduras; 1119/03 Garifuna Community of Cayos Cochinos vs. the Government of Honduras; 906/03 Garifuna Community of Triunfo de la Cruz vs. the Government of Honduras. On October 18, 2005, a public hearing was held at the venue of the Inter-American Commission on Human Rights focusing on the admissibility of petition number 906.</p> <p>After the hearing a petition was filed for a precautionary measure with the purpose of freezing any transactions involving the lands being claimed, in connection with the Garifuna communities settled in the zone of <i>Bahía de Tela</i>. <u>In said document, as well as in the hearing, the Honorable Commission was made aware of the potential damages to the procedure of expansion, regularization and territorial vindication (use and exploitation of the natural resources existing in the territory) that the execution of the PATH entails. However, none of the people responsible for the Project has reacted to these circumstances.</u></p> <p>For the above reasons, the World Bank has also violated the provisions contained in paragraphs 5, 16 and 17 of Operational Policy 4.10.</p> <p>[Citation: Page 8, paras. 1 - 3]</p>	[OD 4.20]	<p>Finding Garifuna access to the Honduran legal system to be limited, Project design incorporated appropriate safeguard measures. In compliance with OD 4.20, Management required that the Project's IPDP include specific provisions – including budgetary allocations within the Project – for: (i) capacity building and training for local community leaders on national laws and regulations pertinent to the Project; and (ii) a program of training and certification of conciliators and arbitrators (see IPDP, pages 13 to 17).</p> <p>Two of the three communities indicated in the Request as subject to claims before the IACHR (Cayos Cochinos and Triunfo de la Cruz) have never been considered for physical demarcation and titling under the Project. The third, the Punta Piedra community, was initially on a list of potential communities – prepared by the <i>Mesa Regional</i> – to be included in the Project; but given that some of its members may be opposed to the Project, Management informed Government that its inclusion should be reconsidered after public discussion meetings at the <i>Mesa Regional</i> and community level (see Map 1).</p> <p>Management takes no position with respect to the ongoing cases before the IACHR. Management respects the rights of all Garifuna communities to pursue appropriate recourse at their disposal. Management would like to point out again that no activities related to the physical demarcation, surveying, conflict resolution or titling of any lands in Garifuna regions of Honduras have taken place under the Project to date. The only activities carried out with Garifuna communities in these regions relate to dissemination of information and consultations as required by the Bank's OD 4.20.</p>
<p>5. Garifuna Support for the Project.</p> <p>[...] For the above reasons the World Bank has also infringed the provisions contained in paragraphs 6; 10; 11; 12 and 15 of Operational Policy 4.10. It has been established without question that there is no support for the project from the Garifuna people.</p>		<p>A wide range of Garifuna stakeholders was consulted as part of the participatory Social Assessment and preparation of the IPDP in July-August 2003. Three focal groups, approximately 15 structured interviews with key stakeholders, and 30 household questionnaires (as part of a survey of over 300 people throughout the country) were conducted in three</p>

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<p>OP 4.10 states that “the World Bank pays special attention to the social assessment and to the minutes and the result of the previous, free and informed consultations with the affected indigenous communities, as a basis to determine if said support exists. The Bank does not pursue the processing of the project if it is unable to determine the existence of said support.”</p> <p>[Citation: Page 5, paras. 4 - 5]</p>		<p>Garífuna communities in the Departments of Atlántida (Sambo Creek and Tornabé) and Gracias a Dios (Batalla). The Social Assessment included the participation of municipal authorities, <i>Patronato</i> leaders (described in more detail in paragraph 31), community leaders, individuals, and civil society organizations, representing the broad spectrum of Garífuna stakeholders.</p> <p>There is a diversity of opinions among the various Garífuna stakeholders regarding the role of the Project in addressing their land claims. In particular, Government and the <i>Mesa Regional</i> have extended open invitations to all Garífuna communities and organizations to participate in the consultation framework sponsored by the Project. Some Garífuna groups are actively participating in the Project, others have participated sporadically, while still others have chosen not to be involved.</p> <p>Management notes that there is considerable Garífuna support for the Project, as shown by the various minutes of meetings and statements made by the <i>Mesa Regional</i> (see Annexes 2.14 to 2.17 and 2.19 to 2.21). Community representatives at the <i>Mesa Regional</i>, not Government, selected the eight communities as well as the alternates.</p>
<p>6.: Alleged damage by the Project to the Garífuna people</p> <p>The damage suffered by the Garífuna people is materialized in the current and potential damage entailed by the PATH to pursue the process of vindication and recognition of the territory of the Garífuna people, or in other terms the claims relating to their territorial rights. The further potential damage is materialized in the serious risk of atomization of the community’s collective title in favor of individual titles, contrary to the choice of a preferred system of land tenure made by the whole of the Garífuna people.</p> <p>We consider that the action and failure to act that result from all of the above is the Bank’s responsibility; the causality link is based on the circumstance that had the WB not implemented said plan the communities would not suffer and would not be exposed to the above-mentioned damages and would continue pursuing their claim process.</p> <p>[Citation: Page 9, paras. 1 & 2]</p> <p>[...] Almost all of the communities have claimed respect for their territorial rights. [...] A sample of the expansion requests filed by the 16 communities settled in the zone of Iriona shows that they requested 27,600 hectares and only 8,580 hectares were titled. The <i>Instituto Nacional Agrario</i> declared that not titled [to the communities] thus excluding <i>ab origine</i> any hypothesis of regularization were the lands occupied by foreigners and the lands comprised in the environmental reserve zone designated with the name of Reserva Río Tinto.</p>		<p>The Requesters claim that the Project harms them in three ways: (i) by already disrupting (and with potential for further disrupting) an ongoing process of vindication of their territorial claims; (ii) by risking atomization of collective titles in favor of individual titles; and (iii) by giving away to outsiders lands claimed by Garífuna communities.</p> <p>Regarding the communities indicated in the Request subject to claims before the IACHR, see Section 4 above.</p> <p>Management has considered carefully the issue of individual versus collective titling. The Social Assessment addressed this issue (see para. 20 above and pages 32 to 38 of the Social Assessment) and Management analyzed the legal framework concerning this issue in particular. The 2004 Property Law devotes an entire chapter to the regularization of property for indigenous and Afro-Honduran peoples (see Annex 7). In particular, Article 93 states, “the Property Institute shall follow the procedures established in the Law to guarantee indigenous and Afro-Honduran peoples the full recognition of their communal property rights...through communal [<i>emphasis added</i>] fee-simple titling (titulación en dominio pleno).”</p> <p>Neither the Property Law nor the Project favors or encourages individual titling in Garífuna communities. On the contrary, as a result of the legal analyses carried out during Project preparation, Management concluded that – given the importance of this issue and the fact that Garífuna communities may be subject to influences from outsiders encouraging individual titling – a special safeguard provision was necessary for the Project. Specifically, Sections 3.08(b) and 3.11 of the Credit Agreement provide for the establishment of procedures that adequately protect the rights of Garífuna communities, including their right to choose tenure regime.</p>

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<p>The protected Area is indicated in the Environmental Manual of the Honduras Land Management Project (page 25 table 7 number 4) as Forest Reserve Sierra Río Tinto; such zone would comprise an area of 69,487 hectares and would have the institutional support of the environmental NGO known as MOPAWI, totally foreign to the Garífuna people and alien to their interests and world view. Besides such area has not yet been legally recognized as a Protected Zone, no Decree has been issued in that sense.</p> <p>This circumstance underlines the violation of its operational policies by the Bank operatives; any titling project that contemplates the delivery of zones being claimed by the Garífuna people (since they constitute their functional habitat) to non indigenous NGOs or individuals, represents a severe damage to the Garífuna people and a serious violation of their rights. Therefore, the implementation of the project would generate a serious damage as compared to what would have prevailed if the project had not been developed.</p> <p>In this sense, we underline that part of the territory claimed by 28 of the 46 communities is within protected areas or their buffer zones. The Ofraneh has accompanied the communities throughout this process and supported their claims.[...]</p> <p>Also in this case the PATH activities prejudice and will have a negative incidence on the communities' claim process [already] submitted to the jurisdiction of an international tribunal. It is enough to underline that part of the Punta Izopo reserve, claimed by the above-mentioned Triunfo de la Cruz community, under the Bank's design has already been handed over to an NGO that is alien to the community.</p> <p>Summarizing, the World Bank damages the Garífuna people by establishing in advance the delivery of their territory to foreign people, besides determining measures that favor the atomization of community titles. Furthermore, there is a clear risk that the lack of clarity regarding the procedures applicable to the titling and the pertinent legislation, originating in the arrangements proposed by the PATH, will paralyze the progress of the territorial claims.</p> <p>[Citation: Page 10, para. 7 - Page 11, para. 7]</p>		<p>Provided communities make this choice in the context of a participatory and informed consultation framework, the Project's safeguard provisions are adequate to comply with OD 4.20.</p> <p>Management endorses the Government's position to respect the decisions made by the <i>Mesa Regional</i> and individual communities regarding their preferred land tenure regime. The minutes of the March 2005 meeting establishing the <i>Mesa Regional</i> explicitly state as one of its objectives "to demarcate the areas titled to Garífuna communities and proceed with its communal [emphasis added] regularization respecting the title as a private communal whole without fragmentation in individual parcels, since Garífuna lands are its patrimony. There will not be any cadastral surveying of [individual parcels, it is understood] for at least 15 to 20 years in the Garífuna community." (See Annex 2.12). Under the Project, community-level consultation boards (<i>Mesas Locales</i>) are also being established and Management understands that ultimately individual communities will decide whether to participate in Project activities and on their land tenure preferences.</p> <p>Management notes that the Project has not "delivered" protected areas to NGOs. To clarify, tables 6 through 11 of the EA include a comprehensive inventory of existing and proposed protected areas in six departments of Honduras, in compliance with OP 4.04, as well as to provide factual information regarding the organizations involved in the management of those areas. This in no way constitutes an act of "establishing in advance the delivery of territory to outsiders." Existing protected areas are those created by Government prior to the Project. Proposed protected areas are those under consideration by Government and/or other organizations for inclusion in the SINAPH. These latter areas are not being proposed nor created by the Project. The listing of organizations involved in the management of those areas in the Project documents should not be interpreted as a Project proposal or endorsement of those organizations; rather, the list reflects a relationship between Government and those organizations working in a given protected area.</p> <p>In Management's view, co-management and participatory demarcation of protected areas enhance the involvement of indigenous communities vis-à-vis government agencies (or other entities) in the management of protected areas. Management recognized the Project's potential impact on communities living in or near protected areas stemming from the loss of access to resources. For this reason, the Project includes a Process Framework setting forth the mechanisms for mitigating this potential impact, in compliance with OP 4.12.</p> <p>Regarding the specific areas mentioned by the Requesters, Management wishes to clarify that under the Project, no activities will take place within or near Sierra Rio Tinto Forest Reserve, as it is a proposed protected area and therefore excluded from the Project per Section 3.10 of the Credit Agreement. Regarding the overlap between the Triunfo de la Cruz community land claims and the Punta Izopo National Park, Management understands that Punta Izopo National</p>

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		<p>Park has been included in the preliminary list of protected areas to be included in the Project (see Annex 2.12). Management notes that Section 3.11 of the Credit Agreement affords protection to affected communities, such as Triunfo de la Cruz, 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 manner satisfactory to the Association [Bank],... have been followed.”</p> <p>Finally, regarding the importance of natural habitats to Garifuna communities, Management recognized that potentially the Project could affect negatively important natural habitats, including areas recognized as protected by traditional local communities, if said areas were titled erroneously. Consequently, Management decided that OP 4.04 and OPN 11.03 were triggered and the Project EMP and Process Framework include specific activities to mitigate these impacts. These include: (i) the exclusion of all proposed protected areas from demarcation activities as described in paragraph 66 above (per Section 3.10 of the Credit Agreement); and (ii) the inclusion of chance find procedures in the Process Framework (per Section 3.09 of the Credit Agreement).</p>
<p>B. Environmental Assessment – OP/BP 4.01 Natural Habitats – OP/BP 4.04</p>		
<p>1. Overlap between Protected Areas and Claims of Ethnic Lands</p> <p>Although in their Environmental Assessment Operating Manual the World Bank experts recognize the issues that affect the tenure of land by the Garifuna people, especially in connection with the circumstance of the overlapping between protected areas and territories claimed by the communities no hypotheses are set forth on the development of management arrangements or, at least, of co-management that would restore to the Garifuna the power on their functional habitat that they themselves have preserved for centuries....and we have no knowledge of measures designed to eliminate or at least mitigate the presence of government institutions in the management of the protected areas in favor of the permanent presence of the members of the communities. Instead, almost all of the NGOs and the institutions that in the PATH manual appear as responsible for the management of the protected areas do not contemplate the presence of indigenous elements and are not in line with the world view of said peoples. We refer to paragraph 7 [of the Request] for an analysis of the overlapping between claimed territories and supposedly protected areas, mentioning as an example the issues arising from the protected area Sierra Río Tinto.</p> <p><u>[Citation: Page 8, para. 4]</u></p>	<p>OP/ BP 4.01</p> <p>OP/ BP 4.04</p>	<p>During Project preparation, Management required the inclusion of specific measures to address potential conflicts between OD 4.20 and OP 4.04. In order to ensure compliance with both OP 4.04, which protects natural habitats, and OD 4.20, which protects Indigenous Peoples, the Project includes the following measures: (i) the restriction that only legally established protected areas (with a Decree) would be eligible for demarcation under the Project; (ii) no project field activities would take place in or near proposed protected areas (Section 3.10 of the Credit Agreement); (iii) no titling or physical demarcation on lands adjacent to Ethnic Lands would take place unless procedures that adequately protect the interests of Indigenous Peoples...have been followed (Section 3.11 of the Credit Agreement).</p> <p>Also see Section A.6 above.</p> <p>The Project’s Process Framework ensures that protected area demarcation will proceed only if and when local communities agree (see page 6, first paragraph of Process Framework).</p> <p>The Process Framework and Environmental Management Plan (EMP) include provisions for co-management of protected areas by agencies, NGOs, and local communities (see page 7, last paragraph of Process Framework). Likewise, the 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.</p>

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		<p>Finally, the Project's EA includes summary tables of data on all existing and proposed protected areas in the Departments of Atlántida and Colón, including the institution(s) involved in the management of those areas at the time the EA was prepared (Tables 6-11). Management wishes to clarify that the while all protected areas (existing and proposed) within the Project area are listed in the EA – as required by OP 4.04 – the Project will carry out activities only in protected areas which have been legally established and selected through a participatory process in the course of Project implementation.</p>
<p>[...] The demarcation of the water limits is not being carried out.</p> <p>[Citation: Page 8, para. 4]</p>		<p>As noted above, to date no activities – aside from consultations – related to the demarcation of protected areas or indigenous community lands have taken place. Where supported by the consultation process, participatory demarcation activities would take place in accordance with the methodology set forth in pages 6 to 8 of the Process Framework.</p> <p>Management understands that the need and procedures for demarcation of water limits of protected areas will be assessed on a case-by-case basis, depending on the specific circumstances of the area in question</p>
<p>[...] Finally, we underline that the PATH has not taken into account the importance of the natural habitats and their inter-relation with the Garífuna communities that occupy said habitats.</p> <p>[Citation: Page 9, para. 1]</p>		<p>The importance of critical natural habitats (both in terms of their biodiversity value as well as their cultural importance) was recognized by Management (see pages 14-15 and 80-81 of the PAD) and as such the Credit Agreement includes provisions (see Sections 3.09, 3.10 and 3.11) to prevent the erroneous demarcation or titling of those lands. These legal covenants, as they relate to natural habitats, are operationalized in pages 6 to 9 of the Process Framework and pages 59 to 62 of the EMP approved for the Project.</p> <p>Building upon the commitments indicated above, the <i>Mesa Regional</i> was established in March 2005; its mandate includes the issue of protected areas and land claims of neighboring Garífuna communities, as well as other issues to “prevent a negative impact on the Garífuna people.” (see Annex 2.12).</p> <p>Management maintains that no activities related to the physical demarcation, surveying, conflict resolution or titling of any lands in Garífuna regions of Honduras have taken place under the Project. The only activities carried out with Garífuna communities in these regions relate to dissemination of information and consultations as required by the Bank's OD 4.20.</p>
C. Disclosure of Information		
<p>We finally emphasize that the Bank's staff has never delivered to the members of the communities the documents, information and training required to be informed of the Project's execution arrangements. Likewise, the Requesting organization has never received copy of key documents such as the Loan Agreement between the World Bank and the Government of Honduras. In spite of this further violation to the right to consultation and informed participation in the Project the Requesters have</p>		<p>In accordance with paragraph 72 of the Bank's 2002 Disclosure Policy, which provides, <i>inter alia</i>, that: “after the Loan, Guarantee, and Development Credit Agreements entered into by the Bank under lending operations have been signed and declared effective....they are registered or filed with the United Nations and are public documents”, it is Bank practice to make these documents available upon request.</p> <p>Management complied with its disclosure policies by timely submission of the PAD, EA, Process Framework, and</p>

Claim/Issue	OD/ OP/BP	Response
<p>gathered sufficient information on which to base this Request as will be seen from the following paragraphs.</p> <p><u>[Citation: Page 5, para. 3]</u></p>		<p>IPDP to the InfoShop, as well as notifying Government of the need to make Project documents available at a public place accessible to all stakeholders. The PAD, EA, Process Framework, and IPDP are available through the Bank's website. These and other Project documents are also available through the UCP in Tegucigalpa.</p>