

Request for Inspection

To: The Executive Secretary
The Inspection Panel
1818 H St. NW Washington, D.C. 20433, U.S.A.

We, the Fraternal Black Organization of Honduras (*Organización Fraternal Negra Honduras - Ofraneh*) with headquarters in La Ceiba (Honduras), 2nd floor Librería el Trébol, Barrio El Centro, telefax +(504)443-2492 and e-mail ofraneh@laceiba.com, with attorneys Gianluca Gaia and Maurizio De Martino, of the Naples Bar Association with offices in Naples (Italy) in via Posillipo, 176/3, Telefax 39.081.5754535, e-mail addresses gaiakan@yahoo.it and maodema@hotmail.com with the attached power of attorney, who represent the Garifuna communities of Honduras (we underline that Ofraneh is not a Non Governmental Organization but rather a Federation the members of which are elected every three years by an assembly of the Garifuna people who grant them the representation of the people in accordance with the provisions of the organization's bylaws) declare the following:

1) World Bank Financed Project that is the Subject of the Request

The Honduras Land Management Program (*Programa de Administración de Tierra en Honduras – PATH*), funded by the World Bank, is a project designed to guarantee the necessary legal security and stability of the land assets to resolve the endemic problem connected to the same (only 30% of the country's lands are registered and barely one third has a cadastral reference.) The PATH contemplates a decentralized system of real estate property management (regularization, titling, cadastre, registration in folios) comprising public and private entities to generate, register and link public and private information, on transactions with urban and rural plots, in an accessible, efficient and updated manner in the Project areas.

In the aspect more closely related to the parties hereby represented the Project establishes that: with reference to properties and/or holdings backed up by ancestral certifications or titles these are grouped in the category of private property. Once the rights of the communities have been recognized and recorded in the property registry these enjoy all the rights applicable to full ownership.

In connection with indigenous property, it contemplates the regularization of the ancestral lands in favor of the various indigenous and Afro-Honduran peoples guaranteeing fully the rights of ownership over the same, recognizing communal and/or individual property (according to the will of each of the peoples) by recording the ownership in the corresponding registers, with the direct participation of the communities in the legalization process, so that they may enjoy the rights of full ownership.

The World Bank in its report number 27604 HO published on January 20, 2004, underlines that the project fosters OD 4.20 since it supports the demarcation and titling of ancestral indigenous and Afro-Honduran lands to these peoples. The same report indicates that, to comply with OD 4.20, an Indigenous People Development Plan (IPDP) has been prepared by the Government. The document goes on to clarify that, based on the informed participation of the peoples involved, it will attempt to ensure that the

Indigenous Peoples are not adversely affected by the Project and that they receive culturally compatible social and economic benefits.

2) Applicable Operational Policies

On September 17, 1991, based on its experience with the document OMS 2.34 and the evolution of the international standards related to the treatment of indigenous peoples, the World Bank issued Operational Directive 4.20 as a guideline for its operating staff. The directive offers policy guidelines to ensure that the indigenous peoples benefit from development projects. OD 4.20 includes broad criteria definitions, as well as a recognition of the international standards on indigenous peoples rights, with emphasis on cultural and participatory strategies for an appropriate development. Its objective is to ensure that the development process promotes the respect to their dignity, human rights and cultural uniqueness. Specifically, the core objective of this directive is to ensure that the indigenous peoples suffer no adverse effects during the development process and receive social and economic benefits that are culturally compatible (paragraph 6).

In the case of interest to us, the Bank uses other policies related to the territory or functional habitat of the Garifuna people of Honduras: OP 4.01 (Environmental Assessment) that focuses on the important environmental issues of a project and OP 4.04 (Natural Habitats) with which the Bank supports the protection, maintenance and rehabilitation of the natural habitats and their functions.

As from July 1, 2005 Operational Policy 4.10 and Bank Procedural Standard BP 4.10 have become effective. In this respect, we point out that we have considered it convenient to also make a brief reference to said policies and procedures.

3) These policies have been designed and are frequently reviewed so that the Bank, in executing its projects, respects the international rules and standards designed to safeguard the rights of indigenous peoples, as stipulated in international agreements (Convention 169 of the International Labor Organization; Convention on Biological Diversity, Draft United Nations Declaration on the Rights of Indigenous Peoples, Draft American Declaration on the Rights of Indigenous Peoples.)

On July 30, 1994 with Decree 26-94, Honduras ratified the International Labor Organization's Convention 169 on Indigenous and Tribal Peoples. In connection with lands, the Convention contains (articles 13 to 19) a series of provisions recognizing the rights of the peoples of reference to the ownership and tenure of the lands they traditionally occupy, as well as the special protection of the natural resources existing in said land. On July 31, 1995 of the same year [sic] Honduras also ratified the Convention on Biological Diversity.

These Conventions define, recognize and safeguard legal rules related to the interests of the Garifuna people that are designed to obtaining the conservation of the ir ancestral territory and the natural resources found in the same in order to sustain the ir livelihood and sustainable development needs, within a framework of respect for the culture and Cosmo vision pertaining to this people. Furthermore, the Garifunas aspire to the recognition of all their special rights, both collective and individual. In the paragraph relating to the actual and potential damages caused by the Project there is extensive clarification of the dimension of the issues and the territorial claims of the communities

through an account of the background of the titling programs of the Garifuna community.

We may anticipate here that the Garifuna communities have not been satisfied by the titling programs that have taken place successively at various times. Said programs have produced: a reduction of their functional habitat, the legitimation of land invasions, the consequent problem of the presence of non indigenous persons in the lands assigned to the indigenous peoples. Therefore, the peoples, accompanied by the requesting organization, have initiated a process seeking to obtain title to the areas claimed and untitled by the state. To that end, the Ofraneh and the affected communities have submitted three petitions to the Inter-American Commission on Human Rights (IACHR) all of them related to the violation of their territorial rights, besides currently conducting lobbying to advocate for a reform of the Property Law Decree 84 of 2000. The communities demand that the titling process be carried out within a general legal framework in accordance with the international standards that safeguard their special rights. They also demand an active participation for the members of the communities not only through consultation over predefined materials but rather by presenting legislative and regulatory proposals including administrative matters and proposals for conflict resolution arrangements.

All of the above means that the communities want to be active subjects in the decision making over their future as a people. Faced with the dangers represented by the free market for land, the Garifuna people have maintained the system of community ownership of the territories.

4) Infringement of Operational Policies

Unfortunately, the World Bank has not taken into account the rights and interests of the Garifuna people and, in spite of what is provided in its operational manuals, has violated its own policies in the following way:

4.1) INFRINGEMENT OF THE RIGHT TO CONSULTATION

The Bank has infringed the provisions contained in paragraph 8 and emphasized in paragraphs 14 a) and c) of OD 4.20 that provide:

8. The Bank's policy is that the strategy for addressing the issues pertaining to indigenous peoples must be based on the informed participation of the indigenous people themselves. Thus, identifying local preferences through direct consultation, incorporation of indigenous knowledge into project approaches, and appropriate early use of experienced specialists are core activities for any project that affects indigenous peoples and their rights to natural and economic resources.

14. Prerequisites of a successful development plan for indigenous peoples are as follows:

(a) The key step in project design is the preparation of a culturally appropriate development plan based on full consideration of the options preferred by the indigenous people affected by the project.

(d) Local patterns of social organization, religious beliefs, and resource use should be taken into account in the plan's design.

We can assert without doubt that the Bank's experts have never carried out consultation programs in advance 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. None of those suggestions or criticisms that addressed the inconsistencies in the application of the titling arrangements contemplated by the project to the legal particularity that the Garifuna people represent were considered

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.

On October 18, 2003, two months after the above mentioned meeting, a consultation workshop was held in San Juan, Tella 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.

In this respect, we indicate that the Requesters are well aware that said Law is an act of the Government, outside the *jurisdiction* of the Panel's staff, but it should be noted that the same 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 Garifuna 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 Garifuna 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 Garifuna people and present voids. Merely as an example, we indicate that one of the PATH regulations that are being disseminated are considered to be simply drafts in the words of the Bank's staff themselves; the consultation meetings with the pilot communities are carried out without even giving the interested parties a brochure explaining the Project (the Garifuna population is furthered 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.)

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 representatives that had been invited to the meeting were not given explanatory materials. At that time, Mr.

Ángel Castro, invited as President of the *Patronato* (foundation) of the Garifuna 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 Garifuna communities.

The President of the *Patronato* 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.

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 gathered sufficient information on which to base this Request as will be seen from the following paragraphs.

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.

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."

4.2 INFRINGEMENT OF PARAGRAPH 15 OF OD 4.20

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 that are reported below.

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).

Paragraph 15

(a) Legal Framework. *The plan should contain an assessment of (i) the legal status of the groups covered by this OD, as reflected in the country's constitution, legislation, and subsidiary legislation (regulations, administrative orders, etc.); and (ii) the ability of such groups to obtain access to and effectively use the legal system to defend their rights. Particular attention should be given to the rights of indigenous peoples to use and develop the lands that they occupy, to be protected against illegal intruders, and to have access to natural resources (such as forests, wildlife, and water) vital to their subsistence and reproduction.*

(c) Land Tenure. *When local legislation needs strengthening, the Bank should offer to advise and assist the borrower in establishing legal recognition of the customary or traditional land tenure systems of indigenous peoples. Where the traditional lands of indigenous peoples have been brought by law into the domain of the state and where it is inappropriate to convert traditional rights into those of legal ownership, alternative arrangements should be implemented to grant long-term, renewable rights of custodianship and use to indigenous peoples. These steps should be taken before the initiation of other planning steps that may be contingent on recognized land titles.*

9. The borrower, through a full range of positive actions must ensure that indigenous people benefit from development investments.

Appraisal teams should be satisfied that indigenous people have participated meaningfully in the development of the plan as described in para. 14. It is particularly important to appraise proposals for regularizing land access and use.

The concrete violation becomes effective in the circumstance that, as we have already pointed out in the previous paragraph, [in] the design of the IPDP no consideration has been given to the legal status of the groups comprised by this Operational Directive, as reflected in the country's constitution, main legislation and subsidiary legislation (regulations, administrative orders, etc.). The Indigenous People Development Plan in no way takes into account the existing legislation on indigenous people and the legal procedures for collective titling.

In effect, the Indigenous Development Plan provides that *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* (page 3 of the IPDP).

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 *Instituto Nacional Agrario* (National Land Institute.) The IPDP does, however, contemplate (see page 12 of the IPDP) the creation of an Indigenous Affairs Unit with as the institution that will be responsible for carrying out and monitoring the procedure of indigenous people land titling. We do not understand how this later institution will coordinate its work with the *Instituto Nacional Agrario* and which will be the titling procedure to be applied.

In any case, the issuance of regulations would only contribute to originating 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 OFRANEH 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 W.B. 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 the Garifuna people. This circumstance raises concerns especially with regards to possible errors in the assessment of the negative long term effects over the Garifuna peoples involved in the project.

The above mentioned lack of regulatory clarity escalates to chaos when a review is made of the analysis of the IPDP's legal framework (page 6 of the IPDP). Surprisingly, this manual 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.

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.

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.)

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 Garifuna 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.

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 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.

On the other hand, we underline that in drafting the Project's IPDP, no account has been taken of the *real ability* 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 Commission 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.

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 *Bahia de Tela*. 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.

For the above reasons, the World Bank has also violated the provisions contained in paragraphs 5, 16 and 17 of Operational Policy 4.10.

4.3) *INFRINGEMENT OF OP 4.01*

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 hypothesis 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. The demarcation of the water limits is not being carried out 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 Cosmo vision of said peoples. We refer to paragraph 7 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 Rió Tinto.

4.4) *INFRINGEMENT OF OP 4.04*

Finally, we underline that the PATH has not taken into account the importance of the natural habitats and their inter-relation with the Garifuna communities that occupy said habitats.

5) Damage suffered by the Garifuna people

The damage suffered by the Garifuna 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 Garifuna 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 Garifuna people.

We consider that the action and failure to act that results 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.

To be able to understand the magnitude and the foundation of the damage implied in the execution of the PATH, it is necessary to resort, even briefly, to the history of the Garifuna people and their fight for the defense and recognition of their rights and their territory.

The historical background has demonstrated the inability of the Government of Honduras to implement a legal system designed to effectively safeguard the Garifuna people.

The socio-genesis of the Garifuna people dates back to the mid 17th Century when the survivors of a shipwreck loaded with Africans arrived to the island of Saint Vincent where they joined the Kalinaku indigenous people.

Due to the frequent struggles against the successive invaders, the Garifuna, considered a threat to the colonial system, were displaced to the island of Roatan.

Having arrived in Roatan in 1797, the Spanish Mayor Ramon de Anguiano envisaged the opportunity of repopulating the city of Trujillo, which had remained uninhabited from 1643 to 1780, after having been repeatedly looted by English pirates and finally destroyed by Puritan William Jackson. Consequently the Garifuna settled in the city of Trujillo. Successively, due to the political turbulences that resulted from the war of independence that took place in the Americas at the beginning of the 19th century, the Garifuna abandoned Trujillo and gradually established villages along the coast of the Central American Caribbean.

At that time the coast was uninhabited, since the original dwellers, the Pech, had mostly chosen to settle further inland, due to the pressures exerted on them by the Miskitos, which enslaved the peoples settled along the whole of the Central American Caribbean coast.

It was around 1860 that the exodus of the Olanchanos to the North coast began, and they settled in the zones of La Ceiba, El Porvenir and Armenia. The Garifuna shared with them their trade secrets, introducing them to the business that years later ended up being dominated by Sicilian immigrants, who soon took over the purchase and sale of bananas for the markets in the South of the United States.

The first decades of the 20th century saw a gradual recognition of the Garifuna territory by the Manuel Bonilla administration, which extended recognition title on the communities of Cristales and Rio Negro, which included from Punta Caxinas to Silin, granting full land concessions to the Trujillo Railroad Company. Likewise the communities of the Irióna municipality were granted occupation title, where ownership was recognized to the Garifuna communities up to Río Sico.

At that time lands were titled and registered on behalf of the Garifuna communities as *ejidos*. Already then the territory was collectively titled. The first example of collective *ejido* title, with the proviso that it could not be attached or sold, dates back to 1905 and was granted to the Irióna community. It should be noted that according to oral testimonies priest Jose de Subirana, in the 18th Century, obtained a community title for the Garifuna peoples that comprised the coastal lands from the San Juan de Tela community up to Trujillo.

During the 1960s and 1970s, in the full boom of agrarian reform in Latin America, the land laws passed by the government recognized the legal particularity represented by the indigenous and Garifuna peoples and legitimized the system of collective land tenure, characteristic of the ethnias, under a protectionist approach.

It was at that time, however, that the first invasions of the Garifuna territory took place, creating conflicts, insecurity and problems that have become more acute in the current times. In the 1990s a titling program was implemented which, once completed, left the 46 Garifuna communities of Honduras completely unsatisfied.

In effect, a simple analysis shows that the titles issued under the program covered the same amount of land titled at the beginning of the century, without taking into account the considerable demographic expansion of the people. The Garifuna people were not granted recognition over their functional habitat.

Since then, the Garifuna communities as a whole began a process designed to obtain:

- a) legal recognition of their own functional habitat
- b) the regularization of their territory; meaning that the Government pay to the foreign intruders for any improvements in order to evict them and restore the land.

These demands of the Garifuna people have materialized in the presentation of uncountable requests for the expansion of the community title. Almost all of the communities have claimed respect for their territorial rights. The measure was shown to be insufficient.

A sample of the expansion requests filed by the 16 communities settled in the zone of Irióna shows that they requested 27,600 hectares and only 8,580 hectares were titled.

The *Instituto Nacional Agrario* declared that not titled [to the communities] thus excluding *ab origine* 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.**

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 Garifuna

people and alien to their interests and Cosmo vision. Besides such area has not yet been legally recognized as a Protected Zone, no Decree has been issued in that sense.

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 Garifuna people (since they constitute their functional habitat) to non indigenous NGOs or individuals, represents a **severe damage to the Garifuna 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.

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.

In view of the impossibility of resolving the conflicts domestically, because of the well-known difficulty of accessing the court system and the systematic harassment by the judiciary, Ofraneh, as already mentioned, had to resort to international instances.

In 2003 the organization filed with the Inter-American Commission on Human Rights regarding three emblematic cases linked to the recognition of territorial rights.

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.

Summarizing, the World Bank damages the Garifuna 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.

These damages result from the violations of the Operational Directive and other operating policies, which have been discussed in paragraph 4 of this Request. The current and potential damages mentioned above stand out as a result of the lack of compliance on the part of the Bank of the operating procedures and policies related to the project's design, assessment and implementation.

6) Requesters claims prior to submitting the Request

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.

After the consultation meeting dated August 22, 2005, Ofraneh presented a complaint to the World Bank Management detailing its claim and pointing to the violations of OD 4.20. The Bank received the complaint on August 26, 2005 and promptly invited the representatives of Ofraneh to a meeting that took place in Tegucigalpa on September 21,

2001 [sic]. The meeting was held with members of the Bank and Ofraneh. Ofraneh presented its issues and concerns and made its complaint; the Bank clarified that there existed specific provisions to comply with the safeguard policy regarding Indigenous Peoples such as clause 3.11 in the Loan Agreement. The clause specifies that in the areas of influence of the project there will be no physical demarcation or titling of lands adjacent to the lands of indigenous peoples unless procedures are followed to safeguard their rights, duly consulted with the affected parties in a manner satisfactory to the World Bank and included in the Project's Operating Manual.

In a fax dated October 20, 2005 Mr. Walter Benjamin summarized what had transpired in the meeting and identified the specific suggestions of Ofraneh: (i) enhancing the respect and transparency in the process of its socialization (ii) letting the communities themselves decide if they participate in the PATH or not through the internal decision making process (iii) requesting a three-party meeting with the Government, to be set for November 4. In a letter dated October 25, 2005 Ofraneh answered that the PATH project had been causing concern and promoting the division of the Garifuna people and opposed the tone of the correspondence of Mr. Benjamin McDonald, clarifying that the dissatisfaction of the Garifuna people was not limited to the Property Law as the letter intimated, but with the PATH which violated Operational Directive 4.20.

To end, it expressed the determination to present a request to the Inspection Panel. The World Bank, through Mr. Jorge Muñoz, responded with a fax on October 27, underlining that they had the greatest willingness to understand in more detail the concerns of the communities and asked for a time and a place to be named for the three party meeting with Ofraneh, the World Bank and a Government delegation in La Ceiba on November 4, 2005.

Ofraneh, by fax dated October 31 confirmed by an e-mail dated November 3, 2005, communicated it would take part in the meeting.

However, on November 4, 2005 at the place selected to carry out the meeting, there appeared representatives of the *Mesa Regional* (Regional Board), an institution that is not recognized by Ofraneh and the Garifuna 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, underlining 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 *Mesa Regional*. 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 *Mesa Regional* cannot be considered *other Garifuna representatives*, as they are described by Mr. Benjamin McDonald in his letter of November 18, 2005.

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.

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.

7) Unsatisfactory responses from the World Bank

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 Garifuna 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.

8) Measures taken by the Requesters

Finally, we have already mentioned the measures to resolve our problem addressed at the national instances (lobbying and political advocacy work to achieve the amendment of the Property Law; filing cases related with tenure in the domestic courts) and international (presentation of three petitions to the Inter-American Human Rights Commission to achieve recognition of their territorial rights.)

Conclusions

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 Garifuna people, thus contaminating and increasing the complexity of the process of vindication of their territory) and will affect, through the potential damages discussed in paragraph 6, in a substantial and negative way the rights of the Garifuna people. We therefore request that the Panel recommend to the Bank's Board of Executive Directors that an investigation be conducted.

The following documents are attached:

- 1) Public communication regarding the PATH
- 2) Ofraneh's complaint regarding violations of OD 4.20 (with annexes) of August 22, 2005
- 3) World Bank letter of September 14, 2005
- 4) Minutes of Ofraneh – World Bank meeting of September 21, 2005
- 5) World Bank letter of October 20, 2005
- 6) Ofraneh letter of October 25, 2005
- 7) World Bank letter of October 27, 2005
- 8) Ofraneh letter of October 31, 2005
- 9) Ofraneh e-mail of November 3, 2005
- 10) Ofraneh letter of November 4, 2005
- 11) World Bank letter of November 18, 2005

- 12) Certificates of submittal of petitions to the Inter-American Commission on Human Rights
- 13) Certificates and points in minutes of the Garifuna communities, stating their position regarding the PATH.

We authorize the public dissemination of this Request

Signatures.....

Luis Fernandez

OFRANEH Executive Committee

There is a seal: Organización Fraternal Negra Hondureña La Ceiba, OFRANEH,
Presidente (Fraternal Black Honduran Organization La Ceiba, OFRANEH, President)

Gianluca Gaia

Ofraneh and Triunfo de la Cruz Attorney

Maurizio De Martino

Triunfo de la Cruz Attorney

There are 3 other signatures indicating “Comite Ejecutivo” (Executive Committee)