I. Introduction

Despite a recently enacted property law addressing badly needed reforms and a 12-year multi-million dollar World Bank land titling project that is in its fifth year, progress in resolving land disputes in Honduras between the indigenous Garifuna peoples and a variety other parties remains where it has always been: at a virtual standstill. At the heart of the problem lies a reluctance of the Garifuna people to understand, accept, and participate in the land dispute resolution system. This paper examines the reasons why the Garifuna reject the current land dispute resolution system and provides practical solutions to the land dispute resolution process. These solutions are designed to incentivize Garifuna participation in the land dispute resolution system and get the system out of its current ineffectual state of gridlock.

This paper begins in Section II by providing context to the issues in land dispute resolution for the Garifuna people. This is done by examining the history of the Garifuna and how that history is inextricably tied to land use. Section III takes us to present day, describing the various types of Garifuna land disputes in Honduras. Section IV analyzes the current legal landscape and practical realities of the current land dispute resolution system for the Garifuna people. Section V provides necessary solutions to the currently gridlocked land dispute resolution system in Honduras. Section VI provides this paper’s conclusion.
II. History of Garifuna and Garifuna Land Use

a. Origins

The history of the Garifuna has long been tied to struggles over land. The Garifuna originate from the 17th century when, on the Caribbean island of St. Vincent, runaway and shipwrecked Africans intermixed with the native Arawak-Carib population.\(^1\) In 1772, a yearlong war over land erupted between the Garifuna and the British resulting from British attempts to exile the Garifuna from the island.\(^2\) Although fighting ceased when each side agreed to sign a peace treaty, the uneasy peace ended when the British violated the treaty and renewed the war with the Garifuna twenty-seven years later.\(^3\) In 1797, the Garifuna were defeated and exiled to the Honduran island of Roatan.\(^4\) From there, the Garifuna migrated onto the northern Central American coast, establishing settlements from as far east as Nicaragua to as far west as Belize.\(^5\) The Garifuna are “indigenous” to Honduras because they arrived before Honduras achieved independence from Spain in the 1800s.\(^6\) From their very beginning, Garifuna have often been on the losing side of disputes over land.

b. Garifuna Today


\(^2\) Id.

\(^3\) Id.


\(^5\) Id.

\(^6\) Thorne, supra note 1.
Today, Garifuna continue to live mostly on the Caribbean coast of Central America in Belize, Guatemala, Honduras, and Nicaragua. \(^7\) Honduras has the largest Garifuna population at an estimated 250,000 people located primarily within 48 coastal and island communities.\(^8\) Among the Honduran Garifuna population, 52% percent live in urban areas, 68% have attended primary school, and infant mortality is about 12%.\(^9\) Although poor by almost any standard, Garifuna households are considered to have higher than average living standards compared to the national averages of Honduras due mainly to remittances received from relatives working in the United States.\(^10\)

Garifuna have managed to preserve their ancestral language and many cultural practices, including their unique musical, culinary, and religious customs.\(^11\) They continue to celebrate their connections to the land through festivals centered around planting, harvesting, and fishing activities.\(^12\) The high degree of continuity of these customs and residency patterns has become central to their renewed struggles to secure land.\(^13\) Not only culturally important, these preserved customs and land use patterns are also important because they indicate the Garifuna are indeed an


\(^8\) Brondo and Woods, supra note 4.

\(^9\) World Bank, supra note 7, pp. 18-19.

\(^10\) Id.

\(^11\) Thorne, supra note 1.

\(^12\) World Bank, supra note 7, pp. 18-19.

\(^13\) Thorne, supra note 1.
indigenous ethnic minority, a status which enables them to make additional legal arguments that they are entitled to the lands they traditionally possess.\textsuperscript{14}

III. Current Land Use Rights and Types of Land Disputes

a. Current Land Use Rights

Garifuna land use rights range from no rights to rights of occupancy, squatter’s rights, rights provided under communal title, and rights provided under individual title. As one might imagine, these rights have arisen from a wide variety of land use contexts. To further complicate matters, Garifuna land rights may have been granted and thus recognized at a point in time by one government agency, but later ignored by the same or a different agency.\textsuperscript{15} As described more fully below, all levels of Garifuna land use rights may or may not be in dispute.

b. Third Party “Invaders”

Non-Garifuna third party “invaders” (as the Garifuna regard them) who have occupied traditionally Garifuna land have created the most problematic land conflict. In the minority of cases, these third parties are peaceful small farmers or coffee growers who have settled onto unoccupied or un-worked ancestral land.\textsuperscript{16} In the majority of cases, however, occupations of Garifuna land have occurred through violence, intimidation, or fraud.\textsuperscript{17} Some of these “invaders” have been successful in obtaining

\textsuperscript{14} For example, the Garifuna successfully pressured the Honduran state to recognize the applicability to their status of International Labor Organization Convention 169 on indigenous peoples. See Thorne, supra.

\textsuperscript{15} For example, both the National Agrarian Institute and individual municipalities have the authority to issue titles to land. Although technically there should be no overlap, these two agencies often issue overlapping titles to land.

\textsuperscript{16} World Bank, supra note 7, pp. 92-94.

\textsuperscript{17} Id.
title from the National Agrarian Institute (INA), the same regulatory body in Honduras that originally granted title to the land to the Garifunas.18

Consider the following example of one Garifuna woman’s recollection of a third party invasion:

My grandma said that all that is here … all of these haciendas and where the hotels are now … it was all cassava. My grandmother planted yucca there during her lifetime. But people came and threatened them, telling them that they had to leave or sell … they were scared and didn’t know how to defend themselves… (Garifuna woman age 32; original author’s translation from Spanish)19

Consider also the following example of Mr. Foráneos Caso Sampson, who tricked the Garifuna community into signing a petition that the community believed would bring in external aid for local development projects:

Sampson went around to the mothers of school-age children, claiming that he would bring potable water to the community. Later Sampson returned with documentation citing his ownership over a significant track of land[.] This land is now private. The case of Sampson having obtained land through irregular processes … has yet to be taken up in court.20

These stories and many more like them are commonplace among the Garifuna community.21 The stories represent just a small fraction of the various ways in which Garifuna have lost their land to third party invaders.

c. Municipalities

18 Id (note – the INA is one of two government entities, along with municipalities, that may grant title over land in Honduras).

19 Brondo and Woods, supra note 4, pg 110

20 Id.

21 Id.
In the 1990s, Garifuna community organization and protest as well as international institutional support resulted in the Honduran government granting 52 communal titles to Garifuna groups. The land titling was at best a limited success, however, because the land over which Garifuna were granted legal title encompassed only the “casco urbano” (urban perimeter) where the Garifuna lived, but excluded the areas of land where they worked (i.e. farming, lands to walk over to go fishing, etc.). Thus, despite the apparent progress in Garifuna land rights, the titling program was also successful in boxing the Garifuna into a small land area while at the same time giving legitimacy to municipalities who claimed the land as ejidal (municipal title) outside the small perimeter. Many of these municipalities in turn sold title over these lands to third parties.

d. Protected Areas

Ancestral land often overlaps with protected forest and tourist areas. Garifuna argue that they occupied these lands long before the lands were ever declared protected, and thus such declarations are invalid. To resolve this dispute, some Garifuna have signed agreements that allow them to occupy land without holding title to the land.

IV. Analysis of Issues in Garifuna Land Dispute Resolution

22 Brondo and Woods, supra note 4, pg. 102.
23 World Bank, supra note 7, pg. 94.
24 Id., pg. 90.
25 Id.
26 Id., pg. 95.
The history of Garifuna land use and land use conflicts emphasize the distrust Garifuna have with the government and other third parties. With this historical perspective in mind, issues in the current Honduran land dispute resolution system can now be examined. The current land dispute resolution system in Honduras consists of two main components. The first component, the 2004 Property Law, provides the legal basis from which the land dispute resolution system in Honduras gains legitimacy. The second component, the World Bank land titling project in Honduras, also outlines its own guidelines and procedures for land dispute resolution. These World Bank procedures are important because the World Bank is the institution with the resources, experience, and strength to implement at the grass-roots level the very land reform the Property Law requires.

a. 2004 Property Law

International experts have hailed Honduras’s 2004 Property Law (“Property Law”) as “the most innovative property law in Latin America.”\(^{27}\) The Property Law has two interlinked objectives. The first objective is to create an integrated and decentralized property registry system to be maintained by a newly-created agency called the Property Institute.\(^{28}\) The second is to regularize the dispute resolution process for the land claims of indigenous people.\(^{29}\) This following subsections examine

\(^{27}\) R. Coma and M. Dellon. “Slashing the time to register property from 18 months to 15 days.”

\(^{28}\) Id.

\(^{29}\) Id.
the relevant provisions of the Property Law, focusing upon the effectiveness the legislature has had in accomplishing the second objective of the Property Law.


The relevant land dispute provisions of the Property Law begin with Article 93 of the law, in which the Honduran legislature acknowledges the “special importance” of the connection between indigenous groups and the lands they “traditionally possess.” No legal rights, however, are granted or restricted by the substance of this article. Moreover, the Garifuna argue that the spirit and language of this article is undermined by the substance of the articles that follow.

For example, Article 97 stipulates that a third party in possession of and with title over lands of indigenous peoples has the right to continue possessing and exploiting such land. This article applies to any non-Garifuna landowner who holds title to lands despite the fact that the land rightfully belongs to the Garifuna people. The controversy behind this article applies to situations in which the landowner and government agency knowingly (and thus corruptly) arranged to title or re-title over Garifuna land. The Garifuna object to such parties having the right to continue possessing and exploiting such land.


31 World Bank, supra note 7, pg. 56.

32 Ley de Propiedad, supra note 30, Art. 97.

33 Referring to the situation in which Garifuna have superior claims to land under Honduran law.

34 World Bank, supra note 7, pp. 56.
Despite the objections of the Garifuna, this article provides a practical way to induce Garifuna and other parties to a land conflict to participate in the dispute resolution process in order to determine which party has “valid title.” Although disagreeable to the Garifuna, the provisions of this article are not a roadblock to Garifuna participation in the dispute resolution process, but instead encourage participation in the system.

The Garifuna also object to Article 100, which first states that indigenous communal land is inalienable, not attachable, and imprescriptible, but then later provides that indigenous communities have a right to terminate this communal tenure system.\(^{35}\) The article also authorizes Garifuna communities to grant third-party land use rights over communal land (i.e. to rent or sell the land to third-parties).\(^{36}\) Thus, on one hand, this article provides the Garifuna with the freedom to participate in investments that may contribute to their development.\(^{37}\) On the other hand, this article provides an avenue for the alienation of communal title that may not be in the best interests of the Garifuna community.

Many Garifuna object to having the ability to diminish their own land use rights over communal property.\(^{38}\) This concern arises from the behavior of past communal group leaders, called Patronatos, who have abused their power in the past by making selling, renting, or otherwise limiting Garifuna communal land use rights in a way that is

\(^{35}\) Ley de Propidad, supra note 30, Art. 100.

\(^{36}\) Id.

\(^{37}\) Id.

\(^{38}\) World Bank, supra note 7, pg. 57.
not in the best interest of the Garifuna community.\textsuperscript{39} The following verbal account of a 25-year-old Garifuna woman provides an example of this type of behavior:

I remember very well going to the mountain with my grandmother. We’d go early, while it was still dark. We would cross the road and go through the woods to get to our plot. One day we got there and a man was there saying that in was his. He said that Valentin [a member of the Patronato] sold it to him for 70 lempiras\textsuperscript{40}! I was so mad, but I couldn’t do anything because I was little. And my mom didn’t do anything and neither did my aunt. I was so angry! For 70 lempiras!\textsuperscript{41} (Original author’s translation)

Many Garifuna wish to be protected from similar actions of their own “representatives.” Many other Garifuna, however, approve of the land use freedom this article grants. Thus, despite some Garifuna objections to the provisions of this article, the article is not a roadblock to Garifuna participation in the dispute resolution process.

Lastly and most significantly, the Garifuna object to Article 98 of the Property Law, which states that a third party who has title over the communal property of indigenous peoples and who later has that title anulled shall be indemnified for any improvements made to the land prior to the return of the land to the affected communities.\textsuperscript{42} The Garifuna object to this provision of the Property Law more than any other.\textsuperscript{43} Essentially, the article suggests that regardless of whether a third-party corruptly obtained title over indigenous communal land, indigenous groups must

\textsuperscript{39} Id.

\textsuperscript{40} A pseudonym for lempira, the Honduran currency. The exchange rate as of this writing is 19 lempira to 1 dollar.

\textsuperscript{41} Brondo, supra note 4, pg. 110.

\textsuperscript{42} Ley de Propiedad, supra note 30, Art. 98.

\textsuperscript{43} World Bank, supra note 7, pp. 56-57.
compensate the third party for improvements made upon the land before the land is returned to the indigenous community.

Not only are the Garifuna principally opposed to this article, they also note the article’s impracticality. This article is impractical for two reasons. One, the article does not provide any guidance for calculating the amount of compensation required to indemnify the losing party for improvements that losing party made to the land. Two, regardless of how compensation is calculated, the Garifuna do not have the financial resources to provide such compensation. Unlike the other substantive provisions of the Property Law, the provisions of this article threaten to push Garifuna to a point that they feel that it is no longer in their best interest to recognize the law and participate in the land dispute resolution process.


In addition to substantive law reform, the 2004 Property Law also regularizes the land dispute process. Before the Property Law was enacted, the Honduran court system was the only recourse for parties to a land dispute. The Honduran court system suffered from many disadvantages. First and foremost, many Garifuna lacked adequate access to the court system; hiring of counsel and paying for transportation to the courts was prohibitively expensive. The long distances to court often made

44 Id.

45 World Bank, supra note 7.

46 Id.

47 Id.
walking impractical. 48 Second, the court proceedings were often delayed for months or even years. 49 Third, the more financially capable party to the dispute often influenced the proceedings through corruption, further estranging the poorer (almost always Garifuna) party from the legal system. 50

In order to address the above inadequacies of land dispute resolution under the Honduran court system, the Honduran legislature passed Article 66 of the Property Law. 51 Article 66 establishes three methods of land dispute resolution: conciliation, arbitration, and special, abbreviated court procedures. 52 These methods are provided within a two stage system. In stage one, the parties to a dispute must first attempt to resolve their dispute through conciliation. 53 If the parties fail to resolve their dispute, they will progress to stage two. In stage two, parties can either mutually agree on binding arbitration or instead proceed to court, where the parties will present their arguments in a special abbreviated court hearing. 54

In order to start conciliation proceedings and begin the dispute resolution process, one party to a dispute must first present a written description of facts and

\[\text{footnotes}\]

48 Id.
49 Id.
50 Id.
51 Ley de Propiedad, supra note 30.
52 Id.
53 Id.
54 Id.
circumstances surrounding the dispute to the newly-created Property Institute.\textsuperscript{55} The Property Institute will act as a conciliator to the dispute for a period of no longer than 15 days.\textsuperscript{56} If the parties do not resolve their dispute within these 15 days, then they proceed to a special abbreviated judicial proceeding (provided both parties do not agree to settle the dispute in arbitration).\textsuperscript{57}

The special abbreviated judicial decisions are authorized under Article 110 of the Property Law.\textsuperscript{58} These proceedings are unique because they must be completed within 30 days after the plaintiff files his or her complaint.\textsuperscript{59} They are also unique because once the court makes its ruling, the final decision may only be appealed to the Supreme Court of Honduras.\textsuperscript{60}

Modern international dispute resolution theory encourages the type of procedural reform enacted in Honduras’s Property Law. Approximately 20 years ago, the scholars Ury, Brett, and Goldberg pioneered a Dispute Systems Design (DSD) method of resolving intractable or frequent conflicts which is still followed today.\textsuperscript{61} DSD recognizes that conflicts are resolved through three types of behaviors: negotiating

\begin{itemize}
\item \textsuperscript{55} Id.
\item \textsuperscript{56} Id.
\item \textsuperscript{57} Id.
\item \textsuperscript{58} Ley de Propiedad, supra note 30, Art. 110.
\item \textsuperscript{59} Id.
\item \textsuperscript{60} Ley de Propiedad, supra note 30, Art. 111.
\item \textsuperscript{61} “Three approaches to resolving disputes: Interests rights and power”. In Ury., W. L., Brett, J. M. and Goldberg, S. B. (1988)
interests, adjudicating rights, and pursuing power options.\textsuperscript{62} An analysis of these behaviors for in a given conflict is necessary to design a new, effective conflict resolution system.\textsuperscript{63}

Ideally, conflicts should be resolved through negotiating interests.\textsuperscript{64} Negotiating interests focuses on the desires of the parties in a dispute rather than each party’s rights and power.\textsuperscript{65} Interest-based claims are more negotiable, thus less likely to be intractable.\textsuperscript{66} Only after interest-based negotiations have failed should the parties try a rights-based approach (i.e. court proceedings).\textsuperscript{67} Similarly, only after a rights-based approach has failed should the parties engage in a power-based approach (i.e. protests, violence, etc.).\textsuperscript{68}

The following provides a brief summary of a healthy dispute management system:

[A] healthy dispute management system [is one] that resolves most disputes at the interest level, fewer at the rights level, and fewest through power options. This is healthy for several reasons. [One, n]egotiating interests is less expensive than adjudicating rights or pursuing power options. [Two, n]egotiating interests results in mutually satisfactory solutions, while the other two approaches are win-lose, meaning one side wins and the other side loses. [Three,


\textsuperscript{63} Id.

\textsuperscript{64} Id.

\textsuperscript{65} Id.

\textsuperscript{66} Id.

\textsuperscript{67} Id.

\textsuperscript{68} Id.
when power-based approaches are tried, the losing side often is angry, and may try to "get back" at the other side whenever they get the chance. Interest-based negotiation is usually less time consuming than the other approaches.69

The Honduran dispute resolution procedures outlined in the Property Law seem to follow this general framework. For example, the first level of dispute resolution is conciliation. Conciliation provides a low-cost and less time consuming forum in which interest-based negotiation is permitted. In conciliation, parties to a dispute can come to a resolution that is not strictly win-lose. The second and last step of the Property Law's dispute resolution process is designed to be either arbitration, which is a relatively low-cost form of dispute resolution, or adjudication, which is also designed to be less time consuming and costly.

Despite the much applauded reform of land dispute resolution in Honduras, however, the Garifuna continue to heavily resist participation in the system.70 The Garifuna have the same preoccupations with the abbreviated hearing court system that they did under with the pre-Property Law court system.71 Namely, that they do not understand how the system works, they fear they will not be fairly represented in the court system, and they fear that the courts remain as corrupt as always.72 Furthermore, they believe that the creation of abbreviated procedures only serves to rob from them the one powerful tool they possessed in achieving favorable land dispute outcomes: the

69 Id.

70 Word Band, supra note 7.

71 Id.

72 Id.
time to organize and protest in order to generate publicity and exposure to the potential injustices a negative ruling would have on the Garifuna people. 73 This problem is only exacerbated by the Property Law’s severely restricted right of appeal (appeals allowed to the Supreme Court only). Thus, Honduran regularization of land dispute resolution has thus-far not been enough to induce Garifuna participation in the land dispute resolution process.

b. World Bank Procedures

In order to understand the gridlock of Garifuna land dispute resolution in Honduras, the World Bank procedures for land dispute resolution must also be examined in addition to the Property Law provisions examined above. To provide some necessary background, in 2002, the World Bank began a nation-wide expansion of a successful land titling pilot project it had initiated four years earlier. 74 As a result of the success of the pilot project and the World Bank’s lobbying efforts, the Honduran legislature enacted significant property reform in the 2004 Property Law. 75

A significant part of the World Bank’s land titling project involves the strengthening of the institutions that provide land dispute resolution. 76 The World Bank sought to accomplish this task at the local level by forming Inter-Ethnic Committees (mesas locales interétnicas) that would facilitate the conciliation procedures. 77 The

73 Id.
74 World Bank, PAAR project.
75 Ley de Propiedad, supra note 30.
76 World Bank, supra note 30.
77 Id., pg. 98
World Bank’s project document states that “[t]hese committees [are to] handle conflicts between ethnic communities or communities that may be adjacent to ethnic communities; between ethnic communities of different origins; between an ethnic community and peasant settlements; or between ethnic communities and the municipality and/or state.” When land conflicts occur, the World Bank was to bring the parties together, establish the Interethnic Board, and provide a list of certified conciliators from which the parties may choose.

The World Bank attempts to facilitate land dispute resolution conciliation and arbitration procedures at the departmental and national level in much the same way as it does at the local level. Not only does the World Bank form the various local, departmental, and national committees, but the World Bank also provides the funding for the training of conciliators and arbiters. Thus, because of the large role the World Bank plays in turning dispute resolution procedures into a reality, any land dispute resolution system that is to be functional needs to have the World Bank stamp of approval.

Serious conflicts between the World Bank’s procedures and the Property Law appear to exist. For example, as previously discussed, the Property Law only refers to the newly-formed Property Institute as having the authority to act as conciliator at the local level, whereas the World Bank has formed its own inter-ethnic committees for

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78 Id.
79 Id.
80 Id., pp. 98-99.
81 Id., pg. 99.
conciliation of local disputes. Furthermore, the Property Law makes no mention whatsoever of conciliation at the departmental level, whereas the World Bank has begun formation of departmental-level boards. These conflicts exist mainly because the World Bank drafted its land dispute resolution procedures in 2003, one year before the Honduras enacted its 2004 Property Law.

Inexplicably, despite the effect the Property Law has had on the viability and legality of the World Bank land dispute resolution plan, the World Bank has yet to approve a new plan that co-exists in harmony with the law. Confusion at the grassroots level has resulted from the differences between World Bank land dispute resolution procedures and the land dispute resolution procedures provided for in the Property Law. This confusion has added to the anxiety and unease the Garifuna community has in participating in any land dispute resolution system.

c. Why the Current Land Dispute Resolution System is Failing

The land dispute resolution system in Honduras is in gridlock primarily because of the reluctance of the Garifuna community to participate in the system. This reluctance is born from many sources. Historically, governments and non-Garifuna groups and individuals have manipulated, tricked, and outright robbed the Garifuna

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82 Ley de Propiedad, supra note 30.

83 Id.

84 Id.

85 Id., pg. 99 (note that a new Manual for Regularization of Ethnic Lands has yet to receive World Bank approval as of the date of this writing).

86 Id. pg 97.

87 Id. pg 99.
people of land they possessed. Garifuna knowledge of this history, both recent and less-recent, breeds a deep skepticism to any change in the status quo of their land use rights.

In addition to a skepticism born from their history of land conflict, the Garifuna raise specific, equitable arguments in objection to the substantive provisions of the 2004 Property Law. They contend that the Property Law should not grant rights of occupancy and possession to any party who illegally occupies Garifuna Lands. Additionally, they argue that some Garifuna community representatives cannot be trusted to truly represent the interests of the Garifuna community. Thus, allowing the Garifuna community to alienate communal land rights to non-Garifuna is problematic. Finally and most importantly, the Garifuna protest the provision in the Property Law that forces the Garifuna to indemnify non-Garifuna parties for improvements the non-Garifuna made to the land while holding overlapping but invalid title to such land.

The Garifuna also protest the new land dispute resolution system under the Property Law. They do not understand how the system works or where they can get access to the system. Furthermore, they fear that the new abbreviated court procedures do nothing to increase the chances the court will reach an equitable result. Instead, the Garifuna fear that the abbreviated court procedures provide a mechanism for non-Garifuna to unfairly gain title to Garifuna land without giving the Garifuna time to generate media attention through protest.

Finally, the Garifuna are reluctant to participate in the land dispute resolution system because the implementing organization, the World Bank, has created confusion,
anxiety, and unease about which sets of land dispute procedures the Garifuna should follow.

V. Necessary Changes to the Dispute Resolution System

There are a number of practical and realistic changes that can be made to the current system that will make the system faster, more accurate, and more equitable. Most importantly, however, these changes are designed to address one question: how can the status quo in land dispute resolution change enough to induce Garifuna acceptance, understanding, and participation in the land dispute resolution system? Once the Garifuna people choose to participate in the system, disputes over land Garifuna have traditionally possessed can finally be resolved.

a. Regulations of Property Law

To this date, regulations to the Property Law have not been promulgated.\textsuperscript{88} As such, the Honduran legislature has an opportunity to clarify ambiguities in the Property Law in a manner that will induce Garifuna participation in the land dispute resolution system.

i. Substantive Provision Regulations

Among the three substantive Property Law provisions that the Garifuna object to most, two need clarification through regulation. The Property Law article that allows for landholders to continue possessing and exploiting land regardless of how they came into possession of the land is sufficient as written.\textsuperscript{89} The provision encourages a wronged party to engage the land dispute resolution system. The following two articles

\textsuperscript{88} World Bank, supra note 7, pg. 90.

\textsuperscript{89} Ley de Propiedad, supra note 30.
need clarification by issuing regulations: the article that allows Garifuna to diminish their own land use rights arising from communal title, and the article that requires the indemnification of non-Garifuna for the improvements made to the land while holding “valid” but annulable title.

Article 100, which allows the Garifuna themselves to diminish their own land use rights, should have regulations that specifically state the conditions under which such diminution may occur. Furthermore, to alleviate Garifuna concerns that such land use rights be too easily diminished by their own representatives, the conditions should be difficult to obtain. For example, a regulation that requires a supermajority vote of two thirds of all Garifuna age 18 and over with a valid claim to the communal title to approve any alienation of rights of communal title land would be appropriate. This regulation would help cut off unilateral abuses by Garifuna “representatives” who might attempt to sell off or rent communal property for personal gain, but still allow the Garifuna to alienate their land to their benefit.

This voting requirement is not fool proof, but does offer the best solution to unique problem the Garifuna face in alienating land. Although there may be risk that the Garifuna are tricked by their representatives into voting for the alienation of their lands in a harmful way, the risk of such manipulation can be mitigated by educating Garifuna regarding their land use rights. World Bank efforts to educate Garifuna on their land use rights should be expanded to explain this dynamic.

This approach to alienation of communal land is only one of many. There are many other approaches to alienation of communal land worldwide that would not easily transfer to the Garifuna situation. This approach to alienation of communal land by vote
is a unique approach between extreme solutions which would either prohibit alienation of communal lands or allow community representatives alone to alienate communal land. As previously mentioned, there is ample evidence that Garifuna representatives cannot always be trusted to represent Garifuna community interests. This voting requirement serves as a check on the power of these “representatives.” Thus, allowing these representatives to unilaterally alienate land is disadvantageous to the Garifuna community.

On the other extreme, the full prohibition of alienation of communal lands is not the optimal solution either. Although the prohibition of alienation of communal lands serves as a clear rule that protects Garifuna loss of land, such prohibition is paternalistic and prevents the Garifuna from making alienating land to the group’s benefit. Furthermore, such prohibition may in some cases violate international law.  

More moderate solutions to alienation of communal land exist that are unlikely to be the best solution here. For example, the United States Bureau of Indian Affairs (BIA) must approve any alienation of Indian reservation land; thus, the BIA is a federal agency that acts as trustee. In Honduras, however, there is no comparable agency that can be trusted to objectively evaluate alienation of Garifuna land. Thus, a voting requirement serves the Garifuna people best.

The second article in need of regulation is Article 98. This article requires compensation for improvements made upon the land to title holders who later have their


title annulled. This article needs regulations that clarify the “who pays” this compensation and “how much” will is cost. Despite the common assumption that the Garifuna would indemnify non-Garifuna for non-Garifuna land improvements, the article’s language employs the passive tense in stating that party with annulled title “will be indemnified.”

The Honduran legislature therefore has an opportunity to clarify who will indemnify the non-prevailing party. In order to make the system work, the regulations should state that the Garifuna will not be responsible, but rather the federal and municipal governments will be. In a certain sense, such an outcome is fair; the government is the institution that issued annulable titles to non-Garifuna over Garifuna land in the first place.

Whether fair or not, the presumption that the Garifuna are responsible for indemnifying non-Garifuna is impractical; Garifuna simply do not have the financial resources to pay for these improvements.\(^\text{92}\) Thus, the Government must be responsible for these improvements if there is any hope that the Garifuna will accept and participate in the system. The World Bank should oversee the disbursement of funds for such improvements.

Furthermore, the Honduran legislature should specify how improvements on the land shall be calculated. The formula for compensation must be clear, concise, and practical. The formula must also reflect a realistic estimation of the government’s own ability to pay for the improvements.

\textbf{ii. Procedural Provision Regulations}

\(^{92}\) World Bank, supra note 7.
In addition to substantive Property Law regulations, there is also a need for some procedural Property Law regulations. These regulations are needed in two main areas. The first area is conciliation, the first level of dispute resolution in the Honduran system. Regulations must be promulgated to provide greater incentive for parties to resolve their disputes during conciliation. The second area is court proceedings, the second level of dispute resolution (unless the parties instead agree to arbitration). Regulations here must provide for greater checks upon the judicial system and its special abbreviated judicial procedure for land dispute claims.

For conciliation to work, parties must have an incentive to agree to a resolution during conciliation. Certain incentives already exist. For example, parties can agree to settle the matter during conciliation in a manner acceptable to both parties instead of subjecting their dispute to the uncertainty that often surrounds adjudication. Furthermore, parties would naturally prefer to avoid the expensive costs of representation a court proceeding may require. The time commitment prolonged proceedings require is also an incentive to settle the dispute during conciliation.

Despite these incentives to reach a relatively low-cost agreement during conciliation, more incentives are still needed. Specifically, regulations should provide for one-way fee shifting to indigenous prevailing parties when the non-prevailing party is not an indigent party. One advantage of such a regulation would be that parties with greater resources are prevented from financially bullying the less financially powerful Garifuna into unfavorable settlement. Attorneys are thus much more likely to represent Garifuna when Garifuna land claims are strong. Another advantage would be a deterrent effect on third parties contemplating the corrupt acquisition of Garifuna land.
One concern with a one-way fee shifting provision may be that it would encourage frivolous litigation. Conditioning fee shifting upon prevailing in a law suit largely eliminates this concern.\(^93\) Attorneys will be unlikely to accept non-meritorious cases knowing that Garifuna parties to a dispute are unlikely to be able to pay the attorney’s fees in the event the Garifuna party does not prevail. On the contrary, one-way fee shifting provisions encourage attorneys to seek meritorious claims within the Garifuna community.

b. The Role of the World Bank

The World Bank has been slow in modifying its own dispute resolution procedures in the face of the new Property Law.\(^94\) Because of the delay, confusion has resulted with various ethnic groups at a grass-roots level.\(^95\) This confusion has served to undermine World Bank efforts to issue title to ethnic lands, as well as stifle the land dispute resolution process for the Garifuna.

The World Bank played a role in creating this confusion, and it must now play an even bigger role in eliminating it. First, the World Bank must approve of land dispute procedures and corresponding institutional strengthening that are in harmony with the Property Law. Second, as the only institution with the strength and credibility to accomplish this goal, the World Bank must begin a massive, grass-roots education


\(^{94}\) World Bank, supra note 7 (note - the delay is primarily a result of internal checks and balances within the World Bank organization, where an independent inspection panel conducted an inspection and issued a 144 page report concluding that the World Bank violated its own policies and procedures in not ensuring sufficient access to justice for Honduran Garifuna groups.)

\(^{95}\) World Bank, supra note 7.
program to Garifuna and non-Garifuna alike. This education program must feature the relevant provisions of the Property Law, as well as the process through which parties to a land dispute can settle that dispute.

Such a suggestion is not impractical; funds are already available for the training of certified conciliators and arbiters as well as training of indigenous community leaders on how to understand and access equitable procedures.\textsuperscript{96} More than just Garifuna community leaders, however, must be educated. History has shown that discovering who is a true representative of the Garifuna people is not always an easy task. Furthermore, in order to achieve wide-ranging acceptance and participation in the land dispute resolution system, the World Bank must go further in eliminating the uncertainty and anxiety that surrounds the system amongst the Garifuna people.

\textbf{VI. Conclusion}

Despite the current, ineffective state of the land dispute resolution system for Garifuna land claims is in, there is a way out of the gridlock. Recent property law reform and a massive World Bank land titling project provide a healthy foundation for the effective regularization and peaceful resolution of land disputes between Garifuna and non-Garifuna. More government and World Bank attention is needed, however, in order that admirable efforts towards this goal will not be wasted.

The recommendations provided above address the failures of an otherwise promising land dispute resolution system. Specifically, they encourage the reluctant and suspicious Garifuna people to engage the land dispute resolution process to obtain clear title to the lands that they traditionally possess. Once the Garifuna understand

\textsuperscript{96} Id., pg 97.
that land dispute resolution is in their best interest, they will begin to engage a system which has failed them throughout their history.