

El Canadiense: Chronology Of Randy Jorgensen's Usurpation Of Garifuna Land In Honduras, The Repression-, Impunity-, Corruption-capital of the Americas

"A closer examination of the legal proceedings leading up to the hearing helps illustrate how the usurpation of Garifuna lands often takes place through the collusion of local individuals, outsiders interested in the land, and government officials."

Below: Article by Sandra Cuffe

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El Canadiense: Chronology Of Jorgensen's Usurpation Of Garifuna Land In Honduras

[Sandra Cuffe](#), December 11, 2015

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[OVERVIEW: An outline of the background to a court case against Canadian developer Randy Jorgensen for the usurpation of collective Garifuna land, a chronology of proceedings included in the court's case file, and the basic details of the November 13, 2015 hearing and ruling.]

Conflict continues to surround the development of tourism projects and gated vacation home complexes by Canadian developers and investors in the Trujillo Bay, along the Caribbean coast of Honduras.

From the demolition of much of the Garifuna community of Río Negro to make way for the Banana Coast cruise ship port complex to the encroachment of the Alta Vista gated community into Garifuna community lands in Guadalupe, communities have been [denouncing illegal land sales and Canadians' usurpation of inalienable collective lands](#) for years.

Garifuna land defenders and community leaders speaking out against the usurpation of collective Garifuna lands often face threats and attacks. Vidal Leiva, the president of a Trujillo area Garifuna community Land Defense Committee, was [shot three times outside his home on November 27, 2015](#).



(Vidal Leiva, on right, before suffering assassination attempt, soon after Randy Jorgensen finally appeared in court. Photo: Ofraneh)

He survived and is currently recuperating from serious gunshot wounds to his torso, but other Garifuna land defenders in the area continue to receive threats.

Two weeks prior to the shooting, a case revolving around the usurpation of collective Garifuna lands in the Trujillo Bay by Canadian entrepreneur and developer Randy Jorgensen made it to court. The lands in question correspond to the Campa Vista gated vacation home complex.

Nearly five years after the community made a formal complaint and three and a half years after public prosecutors filed a request for Jorgensen's indictment, a preliminary hearing took place in the district court of first instance in Trujillo on November 13, 2015.



(Watch an 8-minute report from outside the court house, November 13, 2015: <https://www.youtube.com/watch?v=wWqoB5GTfm8>. Report and photo: Lazar Konforti.)

A closer examination of the legal proceedings leading up to the hearing helps illustrate how the usurpation of Garifuna lands often takes place through the collusion of local individuals, outsiders interested in the land, and government officials.

The case file reveals Jorgensen's failure to appear prior to the preliminary hearing despite subpoenas, which has been reported. Importantly, however, the case file also clearly delineates the negligence of the court, which repeatedly failed to inform the parties of notices of hearing.

Another detail to which little attention has been paid in this particular case is what the conclusion of the hearing – a temporary stay of proceedings (sobreseimiento provisional) – actually entails, according to Honduran law: that there is conclusive evidence of the commission of the crime, and that although the judge determines there to be insufficient evidence to implicate the defendant at the moment, there are grounds to suspect the defendant's involvement.

The prosecution has filed to appeal the ruling and seeks a full trial, but it is worth noting that the decision does in fact confirm that the crime of land usurpation took place and that in no way does it acquit Jorgensen.

What follows is an outline of the background to the court case against Jorgensen, a chronology of proceedings included in the court's case file, and some details of the November 13, 2015 hearing and ruling and the subsequent appeal.

The Background To The Court Case Against Jorgensen

The Garifuna community of Cristales and Río Negro, comprised of Cristales at the western edge of the town of Trujillo and Río Negro at its eastern edge, has several inalienable collective titles to land in the Trujillo Bay area. The first and largest of the titles was granted via a 1901 governmental decree. Together, they cover roughly 50 square kilometers in an area around the town of Trujillo, another 20 square kilometers in the area of the Guaimoreto lagoon, and lands in the areas of Silín and Puerto Castilla. Other Garifuna communities in the Trujillo Bay – Castilla, San Antonio, Santa Fe, and Guadalupe – also hold collective titles to lands along the bay.

As National Agrarian Institute employee Denis Velásquez Arriaga, a witness for the prosecution in the legal proceedings against Jorgensen, explained in his testimony, the community's title to the lands in dispute "cannot be transferred, cannot be sold, and it cannot be subject to any procedure or transaction." The prohibitions are clearly identified in the collective land titles themselves, and in national and international law.

No sale, purchase, or registration of land within a collective Garifuna land title is legal, regardless of the circumstances. Not even community council members can authorize a sale of community lands. Despite the clear prohibitions, deeds to lands within the collective titles have been illegally bought and sold.



(photos by Sandra Cuffe)

The proceedings against Jorgensen for usurpation are based on this type of illegal transaction, outlined below. It is one case of many in the Trujillo Bay and in Garifuna territory along the

Caribbean coast in general. The land in question was divided into lots by Jorgensen's company Life Vision Properties for the development of Campa Vista, "a Euro-Mediterranean style private gated community" marketed principally to Canadians.

July 30, 2007: Simeon Eusebio Laboriel González and Ricardo Omar Loredó David, auditor and president of the community council of Cristales and Río Negro at the time, sold community land south of Campamento to Orleis Isabel Reneaud Cubas – a sale registered as 76 manzanas (roughly 130 acres) of land for 100,000 lempiras (then approximately US\$5,300).

August 1, 2007: Reneaud sold the 76 manzanas to Randy Roy Jorgensen for 400,000 lempiras (roughly US\$21,200 at the time).

August 2, 2007: The transfer of ownership was registered in the Property Registry of the department of Colón.

December 4, 2010: The Garifuna community of Cristales and Río Negro filed a formal complaint (#2010-24899) against Jorgensen for the usurpation of inalienable Garifuna lands and against community members for their role in authorizing an illegal land sale.

March 2, 2012: The National Agrarian Institute (INA) released a report about the on-site work a team from INA carried out earlier that year, as per a request from the Office of the Public Prosecutor, which was following up on the complaint filed by the community. INA concluded that the area occupied by Jorgensen was a little more than 81 manzanas (140 acres), more than five manzanas (8.6 acres) more than were included in the sale. The report also concluded that within the section falling outside the lands included in the sale, Jorgensen was usurping 4 manzanas and 1,190 varados cuadrados (roughly 7 acres) of Cristales and Río Negro's land title.

A Chronology Of Proceedings, Based On The Court's Case File

As a result of the community's formal complaint against Jorgensen and the evidence subsequently gathered by public prosecutors, court proceedings began. Between the prosecution's request for Jorgensen's indictment and a preliminary hearing, however, three and a half years passed.

An examination of the first three years of court records (case file #115-12) reveals a chronology rife with lapses of inactivity. More importantly, it reveals the court's negligence by repeatedly failing to inform the parties of notices of hearings. The record also shows Jorgensen's failure to appear in court despite subpoenas.

May 23, 2012: Milson Salgado, a public prosecutor working for the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, filed documents with the district court of first instance in Trujillo, requesting the indictment of Randy Jorgensen for usurpation, to the detriment of the Garifuna community of Cristales and Río Negro. Along with the request for Jorgensen's indictment, Salgado filed documents, including historic land titles, title deeds, and the INA report.

September 18, 2012: Judge Fredy Cenen Caballero Nuñez found the request for indictment admissible and set a hearing for the morning of October 9, 2012 to hear the defendant's statement.

October 9, 2012: The court secretary made a record of the fact that the hearing did not take place because the prosecutor had not been informed of the notice of hearing and the parties had not been summoned.

August 7, 2013: Salgado, the prosecutor, filed a formal request, asking the court to set a date and time for the hearing.

August 9, 2013: The judge found the prosecutor's request admissible and set August 28, 2013 as the date for the hearing.

August 28, 2013: The court secretary made a record of the fact that the hearing did not take place because the parties were not informed of the notice of hearing.

March 3, 2015 (filed March 5): The Office of the Public Prosecutor, by way of Salgado, requested the court to issue an arrest warrant for Jorgensen.

March 11, 2015: The judge found the request admissible and ordered the requested arrest warrants be issued for Jorgensen.

March 17, 2015: Edson Roberto Laboriel Álvarez filed documents with the court on behalf of Jorgensen, his client. Laboriel Álvarez requested a date and time so that Jorgensen could appear voluntarily for the hearing.

March 19, 2015: The judge admitted the request and subpoenaed Jorgensen to appear for a hearing on April 8, 2015.

March 24, 2015: The court receptionist made a record stating that prosecutor Salgado had been informed of the notice of hearing.

April 8, 2015: The court secretary made a record of the fact that the hearing did not take place because neither Jorgensen nor his lawyer showed up.

June 2, 2015: Salgado filed a request for the court to issue an arrest warrant for Jorgensen, noting "his marked disinterest in submitting to justice."

June 12, 2015: The judge found the request admissible and with merit, and ordered the arrest warrants be issued for Jorgensen, noting that the arrest warrants would be directed to the National Directorate of Criminal Investigation (DNIC) and the National Preventative Police in Trujillo.

June 16, 2015: Laboriel Álvarez, then still Jorgensen's defense attorney, filed a document informing the court that Jorgensen was willing to appear of his own volition but that he would be out of the country until the end of September.

The November 2015 Hearing, Ruling, And Appeal

A preliminary hearing finally took place on November 13, 2015 to determine whether the case would proceed to trial. Salgado, another prosecutor from the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage, and a private attorney representing Cristales and Río Negro presented their case against Jorgensen, whose attorney was Carlos Barahona. Judge Victor Manuel Meléndez Castro presided over the hearing in the district court of first instance in Trujillo.

INA employee Denis Velásquez Arriaga testified for the prosecution, as did three former and current Cristales and Río Negro community council executives. They testified regarding the inalienable nature of the Garifuna community's land title, the illegality of any authorization or registration of the sale or purchase of land within the title, and Jorgensen's usurpation of Garifuna lands. The defense made scant use of its right to cross-examination.

The judge clarified that the criminal case does not take the illegal transactions relating to the 76 manzanas (130 acres) of land into account, stating that "it will be in a corresponding civil trial that the action to declare [Jorgensen's] deed [to the 130 acres of his Campa Vista project] null and void would be sought." The hearing addressed only the usurpation of the additional seven acres, detailed in the INA report following the surveying and measurement of the land.

The hearing ended in a temporary stay of proceedings (sobreseimiento provisional). According to Article 295 of the Honduran Code of Criminal Procedure, a judge presiding over a preliminary hearing will order a temporary stay if, "despite the existence of conclusive evidence of the commission of the crime," there are insufficient grounds to implicate the defendant; however, "the evidence submitted presents grounds to suspect their involvement in the crime, and furthermore, the possibility exists that further evidence could be added." If sufficient new evidence is submitted within five years of the temporary stay, the case could proceed to trial.

Both the Office of the Public Prosecutor and the attorney representing Cristales and Río Negro filed to appeal the ruling within a week of the preliminary hearing.

"The Office of the Public Prosecutor considers that Cristales and Río Negro community council executives acted in concert to carry out the transfer to the Canadian by way of a third party," public prosecutor Franklin García noted in his appeal.

Although the criminal case relates to the usurpation of the seven additional acres and not the 130 acres, the prosecution did address the illegal sale of the 130 acres in its appeal, writing that "we understand that the civil court will rule in favour of the community of Cristales and Río Negro and that at any time they will regain the lands of nontransferable nature."

The prosecution emphasized the total restrictions against transactions in the case of Indigenous Peoples' lands – restrictions established in article 100 of the Property Law and in the International Labor Organization's Covenant 169 on Indigenous and Tribal Peoples in Independent Countries, ratified by the Honduran Congress in the 1990s and therefore part of the national legal system. The appeal also refers to article 107 of the Constitution, which prohibits foreigners from owning land within 40 kilometers of either coast.

The prosecution highlighted the INA report that establishes the usurpation of seven acres, the fact that the lands were fenced off, the sign denoting private property, and the fact that security guards do not let Garifuna community members onto lands belonging to them. "The seven acres could not have fenced themselves," noted the prosecutor, asking, "If this isn't usurpation, WHAT IS, WE ASK?"

The defense did not present even a single piece of evidence in the initial hearing, and the judge's decision was biased and influenced by Jorgensen's economic interests, the prosecution concludes in its motion to appeal.

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