

Report No. 49004-PA

The Inspection Panel 

Report and Recommendation

**Panama: Land Administration
Project (Loan No. 7045-PAN)**

June 19, 2009

The Inspection Panel

Report and Recommendation

On

Request for Inspection

Re: Requests for Inspection

Panama: Land Administration Project (Loan No. 7045-PAN)

A. Background

1. The Inspection Panel received two Requests for Inspection related to the Panama: Land Administration Project (the “Project”—in Spanish, *Programa Nacional de Administración de Tierras*—PRONAT), on February 25, 2009 and March 17, 2009 respectively. The first Request (the “First Request”) was submitted by representatives of the indigenous community of the Pueblo Naso, several individual members of the community and representatives of some community organizations (the “First Requesters”). The second Request (the “Second Request”) was submitted by leaders of the “*Congreso de Area Anexa de la Provincia de Bocas del Toro*” on behalf of the communities that live in the so-called “*áreas anexas*”¹ to the Comarca Ngöbe-Buglé² in the Bocas del Toro Province, Panama (the “Second Requesters”). The First and Second Requesters generally claim that they and the community that they represent have been harmed and are likely to suffer further harm because the Bank has violated its own operational policies and procedures in the design and implementation of the Project.
2. The Panel registered the Requests for Inspection respectively on March 11 and March 20, 2009, and thereby notified the Executive Directors and Bank Management of the receipt of the Requests. Management submitted its Response to both Requests on April 20, 2009.³

¹ In English “annex areas”.

² According to Section 1.02 (f) of the Loan Agreement “‘*Comarca*’ means the indigenous territory established as a special political and administrative subdivision of the Borrower’s territory, pursuant to the procedure set forth in the Borrower’s political constitution.” Loan Agreement (Land Administration Project) between Republic of Panama and the International Bank for Reconstruction and Development, dated April 2, 2001 (the Loan Agreement). The Loan Agreement was amended in June 2006.

³ Management requested the Board of Directors approval to prepare a single Management Response addressing both Requests “[i]n view of the fact that the two Requests concern the same project and address closely related issues, in the interest of efficiency.” April 20, 2009 was originally the deadline for the preparation of the Management Response to the Second Request. The Board approved Management’s request on a non objection basis.

3. The original deadline for the submission of this Panel’s Report and Recommendation was May 19, 2009. However, in light of the general elections held in Panama on May 3, 2009, the Panel deemed that the interests of all parties concerned were better served by postponing the customary eligibility visit for a few weeks, and thus postponing the deadline for its Report. The postponement of the deadline for the Report to June 19, 2009, was approved by the Board of Directors on a non objection basis.

B. The Project

4. The Project is partially financed by a loan from the International Bank for Reconstruction and Development (the “Bank”) in an amount equal to forty-seven million nine hundred thousand dollars (US\$ 47,900,000). The Loan was approved on January 16, 2001. After experiencing some implementation difficulties, the Project was restructured on June 23, 2006 to narrow the project scope and outputs, and improve “*implementation and financing modalities.*”⁴ The Closing Date is December 31, 2009.
5. According to the original Loan Agreement, the objectives of the Project were: “(a) to promote equitable access to land and improve land tenure security by providing Land Administration Services in the Project Area; and (b) to enhance natural resources conservation through the consolidation of the SINAP⁵ and Indigenous Peoples Territories.” The amended Loan Agreement provides that “the objective of the Project is to modernize the land administration system, including priority protected areas and Indigenous Peoples Territories.”⁶
6. After being restructured in March 2006, the Project has four components:⁷ (1) Land Policy, Legal and Institutional Framework, which includes activities aimed at improving the existing policy and legal institutional framework and strengthening the institutions providing land administration services; (2) Land Regularization Services, supporting the modernization of the Borrower’s geodetic network, the gathering and analysis of land tenure related data, including the development and implementation of an Integrated Cadastral and Registry Information System (SIICAR) and “the carrying out of legal cadastre surveys and area-based measurement and land demarcation activities;” (3) Consolidation of Protected Areas and Indigenous Territories, which supports the consolidation of the National Protected Areas System (SINAP), the establishment and consolidation of protected areas within SINAP, and the establishment and consolidation of indigenous territories in the project area; and (4) Project Administration, Monitoring & Evaluation providing technical assistance services and support for land administration entities at national and local level.

⁴ Memorandum and Recommendation of the President on a Proposal to Restructure the Land Administration Project – Loan No. 7045- PAN for the Republic of Panama., dated March 27, 2006. SEC. R2006-0047, dated March 30, 2006.

⁵ The Loan Agreement states that “SINAP” means “Sistema Nacional de Tierras Protegidas” the Borrower’s system of protected areas.

⁶ Amendment to the Loan Agreement, dated June 23, 2006.

⁷ 2006 Project Information Document (PID)

7. The Project Appraisal Document (PAD) states that Project-supported land administration activities cover a range of land regularization actions, including legal rights recognition, titling, conflict resolution, legal cadastre, and registry, and that the consolidation of SINAP and indigenous territories includes mapping, field demarcation, buffer zone limits, determination of their legal status, and land management plans in selected areas through local and participatory consultation processes.⁸
8. The Project component related to Consolidation of Protected Areas and Indigenous Territories includes participatory decision-making processes to define boundaries and status of the demarcated areas. In this regard, the PAD states that “*consolidation of indigenous peoples territories includes not only technical actions related to demarcation*” but also a number of complementary activities, including conflict resolution and “*support to design or complete the Cartas Orgánicas [Organic Charters] and other regulations and norms dealing with the administration of indigenous territories.*”⁹
9. According to the PAD, Project targets are, among others, completing the establishment of the Comarca Ngöbe-Buglé and creating an additional Comarca, “*the proposed Comarca Teribe-Naso.*”¹⁰ To achieve this, the Project is to provide direct support for drafting the Comarca law and charter of the Naso Teribe territories and update the founding charters that contain respective norms and regulations for the Ngöbe-Buglé Comarca.¹¹
10. Implementation of the Project is the responsibility of the Ministry of Finance (MEF) in collaboration with the Ministry of Agriculture, the Ministry of Governance and Justice, the Ministry of Public Works, the Ministry of Housing – all of which act through various agencies under their competence – and the Project Coordination Unit (PCU). Two new entities were created specifically for this Project, the Superior Council for Land Administration and the Technical Operational Committee, which are responsible for the policy and technical regulatory frameworks necessary for Project implementation. Temporary decentralization units (UTOs) in each province represent the national agencies.

C. The Requests

11. The First and the Second Request are summarized below. Complete copies in original Spanish and English translations are attached to this Report as Annex I.

The First Request

12. The First Requesters claim that, during implementation of the Project, the Bank did not take into account the rights and interests of the Pueblo Naso communities, because Project officials tried to impose a “*Carta Orgánica*” in their territory that is detrimental to their

⁸ Project Appraisal Document (PAD) on a Proposed Loan in the Amount of US\$ 47.9 million to the Republic of Panama for a Land Administration Project, dated December 14, 2000, p. 3.

⁹ PAD pp. 6–7

¹⁰ PAD, p. 29.

¹¹ PAD, p. 50.

rights, has not been consulted with the indigenous people and lacks legal basis. What follows is a summary description of the situation as depicted in the First Request.

13. The First Requesters state that the PRONAT is expected to demarcate the territory of the “*original people*” of the Bocas del Toro Province and that, since its initial implementation, “*the Project has been carrying out activities in their Naso Tjër Di territory with the support of the Dobbo Yala Foundation and the then King [of the Naso people] Tito Santana and his team.*” They claim, however, that the situation has now changed because the Naso people decided to destitute King Tito and designated a new King, Valentin. Therefore, the Requesters add, PRONAT officials who still consult with King Tito on matters related to the Project are in fact no longer consulting with the legitimate representatives of the Naso Peoples. This has also created tensions between the Naso and the Foundation carrying out the consultations.
14. The First Requesters state that, initially, Bank financing enabled agreement on a Bill of Law that was supported by the Naso People and would create the Comarca of Naso Tjër Di. This Bill of Law was submitted to the National Assembly of Panama, which however rejected it. The Requesters believe that this happened because the Bank-financed Project indeed supported a new Bill of Law establishing collective land property in indigenous territories, which was approved by the National Assembly on December 3, 2008 as Law No. 72. According to the Requesters, Law no. 72 created “*an uncertain regime of regional rezoning*” and “*constitutes a flagrant and very serious violation of the sole and true aspiration of the Naso People—the creation of a juridical framework that would respect the cultural and all forms of politico-traditional life of our Naso people, as well as the natural, archeological and genetic resources in general that we now have and that we have inherited from our ancestors and that we are entitled to: that is the region of Naso Tjër Di.*”
15. The First Requesters state that they asked PRONAT officials to comply with the World Bank’s Operational Policy on Indigenous Peoples and that, since no reply was received from them, the “*Naso people, jointly with Ngobe leaders affected by the delimitation of the adjacent lands,*” sent a note to World Bank staff, in December 2007, “*requesting an urgent visit to the area.*”
16. They add that World Bank staff carried out a field visit in January 2008 where they were informed about the concerns of the Naso Peoples in relation to PRONAT. The Request claims that on a follow-up visit to evaluate PRONAT in March 2008, Bank staff did not meet with the Naso people, who were left waiting for them at the community of Bonyik. The Naso people’s concerns were again expressed, at a meeting held later on in Panama City, but so far, the First Requesters claim, World Bank staff have not addressed their concerns.
17. In view of the foregoing, the Requesters state that “*we are also disappointed with the World Bank, who has not enforced its operational policies on indigenous peoples,*” adding that for this reason they are “*requesting the Inspection Panel to carry out an in-depth and detailed investigation of all that has happened since the arrival of PRONAT in our territory.*”

The Second Request

18. The Second Requesters are against the way the Project is being implemented, particularly in relation to the demarcation methodology in the Ngöbe territories in the Bocas del Toro province and in the Parque Internacional (World Heritage Site), in the Forest Reserve Palo Seco (tropical upland forest), and in the Bastimentos National Marine Park. According to the Second Requesters, not only do the Project's actions violate their human and land occupations rights, but also contravene the conventions and international treaties to which Panama is a party as well as "*the World Bank's strategies and operational policies on indigenous peoples approved by the Bank's Board on February 22, 2006.*"
19. According to the Request, in 2001 the Government of Panama obtained Bank financing so that PRONAT could measure and demarcate the territories of the indigenous peoples living in the province of Bocas del Toro. The main concern of the Second Requesters is that "*practically since that moment, this Program has violated the indigenous land rights, since PRONAT's main objective is to title land and not to demarcate territories.*" They also claim that the Project is restricting the areas recognized as indigenous peoples lands to those used for housing, excluding the areas that the communities use "*for materials, medicines, craft items, workshops and other production activities*" The Requesters argue that "*the lack of territorial protection has allowed tourism, mining and hydroelectric enterprises to speculate with our land which is shamelessly given away by the national authorities by way of Law number 2 of 2006 on concession and titling of islands and coasts ...*"¹²
20. The Second Requesters further describe other events and circumstances supporting their allegations. These facts are summarized below.
21. The Second Requesters state that the Government rejected a proposal on how to deal with the "*áreas anexas*" (defined as such in Law No. 10 of 1997) and, as a result, it was not possible to demarcate these areas or territories that "*were left out*" of the Comarca Ngöbe-Buglé.
22. The Second Requesters claim that, upon a request from the communities of the "*áreas anexas*" and of the islands of the Boca del Toro province, local Bank staff agreed to meet with them in the PRONAT offices in the town of Changuinola. In this meeting, to which Government officials also participated, the Requesters expressed their concerns about the implementation of the PRONAT and what they consider "*negligence and irregularities*" directly affecting the land rights of the Ngöbe communities of the Bocas del Toro province in the "*áreas anexas*", which remain outside the limits of the Comarca Ngöbe-Buglé. According to the Second Requesters, as a result of this meeting, Bank staff agreed to make an evaluation of the Project and address their concerns.

¹² The Request refers specifically to "the concession of 6.215 hectares in the rural area of Valle Risco, a Ngöbe-Bugle indigenous territory, granted by ANAM [Autoridad Nacional del Ambiente] for the construction of the hydroelectric project Chan 75", and points out that a complaint was filed with the Supreme Court of Justice, the Inter American Commission on Human Rights, and to the United Nations Rapporteur on Indigenous Peoples.

23. According to the Second Requesters, during a follow-up visit that took place in January 2008, local Bank staff were informed that the communities were about to complain against irregularities in the implementation of PRONAT to the Bank’s “executive management” in Washington. In response, the Requesters state, they were then told to wait until a March 2, 2008 community meeting where local Bank staff would present an answer to their concerns. According to the Requesters nobody from the Bank attended the March meeting and until now they have yet to receive a response from the Bank.
24. The Second Request also claims that the Bank-financed Project supported a new Bill of Law, approved by the National Assembly on December 3, 2008 as Law No. 72, which established collective land property in indigenous territories and specifically prohibited the creation of new “*áreas anexas*.” In the Requesters’ opinion, Law No. 72 “*constitutes a flagrant and very serious violation of the sole and true aspiration of the communities of the ‘áreas anexas’, that is, the creation of a juridical framework that would respect the cultural and all forms of political life of the Ngabe-Bugle people.*”
25. The Second Requesters state that they hold the Government and Government institutions “*directly responsible*” for their problems but, at the same time, that they “*are also disappointed with the World Bank, who has not enforced its operational policies on indigenous peoples,*” adding that for this reason they are “*requesting the Inspection Panel to carry out an in-depth and detailed investigation of all that has happened since the arrival of PRONAT in our territory.*”
26. The above claims included in the First and Second Request may constitute non-compliance by the Bank with various provisions of, inter alia, the following operational Policies and Procedures:

OD 4. 20	Indigenous Peoples
OP/BP 13.05	Project Supervision

D. Management Response

27. What follows is a brief summary of Management Response¹³, a complete copy of which is attached to this Report as Annex II.
28. **General Observations** Management Response first offers “*key observations*¹⁴” about the context in which the Project came about. Management maintains that the political and institutional aspects of land tenure issues, especially when Indigenous Peoples are involved, are complex. In Projects like the one under consideration, “*technical inputs are necessary but not sufficient to meet the stated objectives, given the complex political and socio-economic conditions surrounding this issue in the country.*¹⁵” External pressures but also internal conflicts among indigenous groups exacerbate the magnitude of issues related to

¹³ Management Response to Request for Inspection Panel Review of the Panama Land Administration Project (Loan No. 7045-PAN), submitted on April 20, 2009.

¹⁴ Management Response, ¶ vi.

¹⁵ Management Response, ¶ 16

land use, land tenure and decision-making processes. Within this context, the Response notes that between 2000 and 2004 economic growth and policy reform in Panama slowed with a change in Government and the “*Government turned increasingly to capital markets for financing, leaving much of the Country Assistance Strategy unimplemented. Bank engagement in Panama dropped off dramatically and portfolio performance fell significantly.*”¹⁶ The Bank’s lending portfolio, policy dialogue and country partnership in Panama were subsequently “*rejuvenated*” after 2004, with a new Country Partnership Strategy and other activities, including this Project that had been originally launched in 2001.

29. The Response indicates that since the mid 1990s land tenure security and efficient land administration services were identified as important aspects of the Government Poverty Reduction Strategy, with a holistic approach that would cover all types of lands and all tenure regimes, including Indigenous Peoples’ land rights. On the other hand, the Response further notes, long standing conflicts and wars in Latin America have been rooted primarily in land tenure issues, and poor peasants as well as Indigenous Peoples have increasingly lost land in this process. Management states that it has always been aware that this context would pose challenges for Project implementation but considered “*that supporting Indigenous Peoples in the consolidation of their territories is a worthwhile development endeavor.*”¹⁷
30. Management states that land issues in the Naso and Ngöbe-Buglé territories find their origins in the considerable tourism, economic, scientific and hydroelectric potential of these lands, which have attracted national and international interests. In this context, the Government has recognized some indigenous peoples’ claims to their territories, but has also transferred part of these regions to the protected area system and gave out concessions for the use of natural resources, including for mining and hydroelectric power generation purposes. In the Ngöbe-Buglé territory, a Government concession allows for the construction of the Chan 75 dam for which people are being relocated and there are allegations of forced evictions and violence perpetrated against affected communities. As noted above, Management also argues that indigenous peoples’ internal divisions exacerbate land conflicts, as the particular case of the Naso community bears witness. A “*schism*” within the Naso community happened because in 2004 then King Tito “*agreed to allow*” the Government and a Colombian firm to build the Bonyik Dam in the Bonyik River in the Naso territory. Some community members disagreed with this decision and, as a result, ousted Tito and installed a new King, Valentin.
31. **Response to the First Request.** In response to the First Requesters, Management states that it supports the creation of a Comarca for the Naso territory. One of the Project objectives provided precisely for the preparation, in consultations with the Naso, of a bill and charter establishing the Naso Tjer Comarca, the highest aspiration of the Naso people for their territory. The Project-supported bill for the Naso Comarca was, however, submitted twice to the National Assembly and twice rejected. As a result, Management considered a bill about to be discussed by Parliament, the bill of Collective Lands, a “*viable*

¹⁶ Management Response, ¶ 11.

¹⁷ Management Response, ¶ 7.

if less ideal measure to continue the momentum for improved security of tenure” for the Naso and the Indigenous Peoples of Panama in general. It was also “Management’s understanding that adoption of the Law of Collective Lands would not preclude a renewed attempt in the future to create a Comarca for the Naso People.¹⁸” The First Requesters have been objecting to this position and the bill of Collective Lands since early 2008 because they believe only a full Comarca is an acceptable solution for the Naso people. Other members of the community headed by King Tito believe instead that, though a Comarca would be the best solution, this bill is a step forward for indigenous peoples of Panama.

32. The Law of Collective Lands was approved on December 3, 2008 as Law 72 of 2008. It included Article 17, which created a special regime for the Naso that was not provided for in the bill of law submitted to the Assembly. Management claims that it “became aware” of this Article 17 only five days after the approval of the Law and that it did not have any information about it before it was included in the law. However, Management also states that as soon as it learned about Article 17 it promptly took up the issue with the Government to express concerns about the implications of the law for the Naso people, in particular about the Charter (*Carta Orgánica*) to be issued and applied, under Law 72, in the Naso territory. The Response adds that “*it is now the Government’s intention to place Naso territory under the political-administrative jurisdiction of the Province of Bocas del Toro.*¹⁹”
33. With respect to the internal conflict within the Naso people, the Response notes that both sides claim to be the legitimate representatives of the Naso people, while the Government of Panama recognizes only Tito as legitimate King. Management points out that “*in spite of*” the Government’s official recognition of Tito, “*Management’s view is that informed participation, consistent with OD 4.20, means that the Project should consult with both groups rather than assigning unique legitimacy or representativeness to either one.*²⁰” Management has therefore stressed to Project staff the importance of taking steps for a resolution of the conflict and has encouraged mediation between the two factions, in recognition that the division within the community is detrimental to the Naso people’s aspiration of consolidating their territory.
34. Management states its belief that it has been responsive to the First Requesters’ concerns. It has met with them, as well as with the other faction, encouraged a solution of the conflict and conveyed the importance of this to the Government. In June 2008, the Bank mission agreed on an action plan with the Government to call for mediation between the opposing groups of Naso. The Project also offered to finance mediation. Tito’s group accepted, while Valentin’s group refused the proposed mediator and suggested a new one. These efforts faded for a time but Bank staff keep insisting with the Government about renewing mediation efforts.

¹⁸ Management Response, ¶ 54.

¹⁹ Management Response, ¶ 57.

²⁰ Management Response, ¶ 59.

35. Management concludes by stating that actions are being taken to address the First Requesters' concerns. The Bank requested clarifications to the Government on the consultation efforts during the preparation of the Charter opposed by the Requesters; *"it asked Government not to use Loan proceeds to finance any activities related to the Naso, except those related to the mediation process between the two competing factions; and (iii) it recommended to Government not to approve the draft Charter until Management had an opportunity to review the requested documentation and exchange views with Government on the matter"*²¹
36. **Response to the Second Request** Management states that it agrees with the Second Requesters that the Annex areas, which are territories of the Comarca Ngöbe-Buglé (created in 1997) outside the Comarca's core area, were not delimited and shares their concerns about this problem. Management also agrees that the Project *"has not fully demonstrated the principle"* of informed participation and consultation with respect to the delimitation of these Annex areas. Management Response goes on to state that after the Second Requesters raised their concerns about consultation and land delimitation, in March 2008 a Bank mission visited nine of the 15 Annex areas to evaluate the work being carried out under the Project and was accompanied by the Ngöbe-Buglé General Chief (*Cacique*, in Spanish) and two Caciques for the Annex areas. The mission recognized the weaknesses in the consultation process and lack of knowledge among the people of the Indigenous Peoples Strategy. The mission made some recommendations to Project staff to correct these problems and, in this regard, asked them to prepare a Consultation Plan. Subsequent missions requested an action plan for other activities, including land tenure studies.
37. In July 2008, Project staff presented the requested action plans, with budget and timetables. They also informed the Bank mission that 14 out of 15 annex areas had been delimited. Management states that *"[b]ased on the information provided by Project staff at the time, there was no reason to believe that the delimitations of the Annex Areas did not meet beneficiaries' expectations"*²² and no further discussions followed on this. Management recognized in hindsight that this was a missed opportunity to inquire about consultations, and as a result requested the Government a report on consultations and delimitation work carried out in the Annex areas.
38. Management clarifies in its Response that the Project's objective is to delimit and demarcate territories of Indigenous Peoples, rather than lands, as the Project's land administration activities are based on the concept of *'territory'*. A total of 1000 linear km of territorial boundaries of the main area of the Comarca Ngöbe-Buglé have been already demarcated, as well as six Annex areas in the provinces of Chiriqui and Veraguas. For the Annex areas in Bocas del Toro, Management Response maintains that in February 2007 an agreement was reached with Ngöbe-Buglé leaders to start the delimitation of 15 Annex areas and to include in this delimitation the so-called *'trabajaderos'*, which are areas used for productive and working activities, in addition to housing areas. Management also indicates that Ngöbe-Buglé communities can express a choice on whether they want to be delimited as Annex areas. As a result, following consultations in this regard conducted in

²¹ Management Response, ¶ 70.

²² Management Response, ¶ 76.

2007/2008, Management understands that seven of the 15 Ngöbe-Buglé communities participating in the process have chosen to be Annex areas. Management has also requested the Government a report on consultations before the process of legalization of Annex areas is finalized.

39. Management further states that it acknowledges the Second Requesters' concerns about the pressure on their territory by development activities such as tourism and hydroelectric projects. It adds that the Project was not involved in granting the concession for the Chan 75 dam, nor in the process leading to approval of the laws regulating tourism and other concessions. With respect to the above-mentioned Law 72, according to the Response, Management understands that the law does not supersede the 1997 law creating the Ngöbe-Buglé Comarca and does not apply to Annex areas, but it will ask the Government clarifications on this issue, as well as on the potential impacts of another law, Law 18 of 2009, on the status of certain Annex areas.
40. Management states that it believes it has been responsive to the Second Requesters as well, and especially argues that "*none of the four Bank staff present at a meeting with the Second Requesters on January 31, 2008 recall asking them to refrain from sending a complaint to the Bank's Executive Board, or anyone else in Washington.*" Management acknowledges that information about Project activities was conveyed to the Caciques with the expectation that they would inform their constituents but commits to "*engage more regularly with the Second Requesters to inform them and consult with them about follow-up actions.*"²³
41. **Special Issues and Action Plan** Management states that a Social Assessment, which was consulted on and dealt with indigenous peoples' issues, was carried out during Project preparation but it was not disclosed. Excerpts of the Assessment were summarized and annexed to the PAD as an Indigenous Peoples Strategy. This strategy, Management argues, contains "*key elements*" of an Indigenous Peoples Development Plan (IPDP) but "*no free-standing IPDP in accordance with OD 4.20 was prepared.*"²⁴ During the preparation for Additional Financing for the Project, a social assessment and an IPDP were prepared and disclosed in December 2008. However, this 2008 assessment and IPDP, in Management's view, "do not meet the full requirements of OD 4.20" because they do not "address all the Indigenous Peoples in the Project, including the Requesters." A new IPDP that meets Bank policy requirements is expected to be completed by August 2009. Management states that it also decided to "pause" the preparation of the Additional Financing operation requested by the Government to support a geographical extension of Project activities.
42. Management Response presents an action plan with related timeline to follow up on issues raised by the Requesters. The Action Plan includes the finalization of the IPDP as noted above, and its dissemination through consultations; requesting clarifications to the Government about the implications for the Naso territory of Law 72 of 2008 and following up on the possibility of reintroducing the Naso Comarca bill to the National Assembly; verifying that the delimitation of the Ngöbe-Buglé Annex areas include the *trabajaderos* not only housing areas; verifying the consultation work carried out thus far and continuing

²³ Management Response, ¶ 89.

²⁴ Management Response, p. vii.

supporting mediation efforts to solve internal conflicts among the Naso people; and meeting and discussing with the Requesters about the issues raised and actions proposed by Management.

E. Eligibility

43. The Panel must determine whether both Requests satisfy the eligibility criteria set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,²⁵ and recommend whether the matters alleged in the Requests should be investigated.
44. The Panel has reviewed the Requests and Management's Response. Panel Member, Roberto Lenton, together with Executive Secretary Peter Lallas and Panel expert consultant Eduardo Abbott, visited Panama from June 8 through June 12, 2009. During their visit, the Panel team met with Government officials and representatives of the Project Coordinating Unit (PCU), representatives of the newly elected Government set to take office shortly, and staff of the World Bank country office in Panama City. The Panel also visited the Bocas del Toro province where both groups of Requesters live, and met with the signatories of the two Requests for Inspection and affected people and communities of both the Naso and Ngöbe-Buglé communities. The Panel also met groups of indigenous peoples who are not signatories of the Requests but belong to the same communities.
45. The Panel is satisfied that the two Requests meet all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.
46. During the visit, the Panel confirmed that both the First and the Second Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The persons who signed the Requests live in Project-affected areas, have common interests and common concerns, and reside in the Borrower's territory, as required by item (a) of the said Paragraph 9.
47. The Panel confirms that the Request "*assert[s] in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have material adverse effect upon the requesters,*" as per the requirement of Paragraph 9(b).
48. In particular, the First Requesters assert that they feel harmed by the Project as it was implemented because their aspirations of creating a juridical framework in their territory – the Comarca – that would respect the life and culture of the Naso people were disavowed when the bill of law for a Naso Comarca was rejected in Parliament. The Naso also claim that, under the Project, the Bank instead now supports a law that created a different framework detrimental to the rights of the Naso people.
49. The Second Requesters assert that they feel harmed by PRONAT's work to restrict significantly the areas recognized as indigenous peoples' lands, by limiting such areas to those the communities live in and excluding areas that the communities use to support their lives and livelihoods. This in turn has allowed land to be given away by the national

²⁵ Conclusions of the Board's Second Review of the Inspection Panel (the "1999 Clarifications"), April 1999.

authorities to tourism, mining and hydroelectric investors via concessions and titling of islands and coasts

50. The Panel confirmed that the World Bank was aware of concerns of both the Naso and the Ngöbe-Buglé people since long before the submission of the Requests for Inspection.²⁶ The Panel is therefore satisfied that the Request “*does assert that the subject matter has been brought to Management’s attention and that, in the Requesters’ view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures.*” Hence, the Request meets the requirement of Paragraph 9(c).
51. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
52. The Project closing date is December 31, 2009.²⁷ As of the date the Requests were filed, about 77% of the Loan had been disbursed. The Requests therefore satisfy the requirement in Paragraph 9(e) that the related Loan has not been closed or substantially disbursed.²⁸
53. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Requests. Therefore, the Requests satisfy Paragraph 9(f).

F. Observations

54. At the outset, the Panel would like to emphasize its support for the objectives of the Panama Land Administration Project as a whole and the component on consolidation of Protected Areas and Indigenous Territories in particular. It is critically important for the World Bank to remain centrally engaged in these issues in Panama, which are essential to the country’s sustainable development. On the other hand, the Panel would like to underscore the seriousness of the situation presented by this Request, and the imminent nature of the concerns.
55. The affected indigenous communities are claiming that their land rights are not being properly recognized or protected by the Project, as intended and as required by Bank policies. Instead, they claim, the Project is in some cases promoting land delimitation activities that restrict the land area for which their rights should be properly recognized.
56. In the case of the Naso indigenous peoples, the affected people acknowledge the Project’s assistance in its initial stages in supporting the drafting of a law to create a Comarca that would properly recognize and protect their land rights. They claim, however, that PRONAT is now supporting the implementation of a national law (Law No. 72 on

²⁶ The Panel notes that although the Requesters did not specifically voice with Management their opposition to Art.17 of the Law of Collective Lands and the Organic Charter the Article provides for, they had been raising serious concerns about the bill of Collective Lands since early 2008, as specified in Management Response at paragraph 55.

²⁷ Management Response, ¶ 28.

²⁸ According to the Resolution that established the Panel, “*this will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.*” Footnote to Paragraph 14 (c).

Collective Property) which, in their view, impedes the establishment of this Comarca. They further contend that in the absence of having their land rights properly recognized, the Project's support for private titling is enabling investment activities on land that they believe belongs to them, and is creating adverse consequences for their communities and the environment.

57. During its eligibility visit, a Naso community described to the Panel team, in graphic terms, events that, although not directly related to the Project, allowed the Panel team to understand better the fears and concerns of the Requesters. The community showed the team evidence that, at the request of a landowner claiming title over the lands, security forces recently entered their village with tear gas and bulldozers, destroying several houses, a cultural center, a school, a church, other structures, and an area of surrounding trees used and valued by the community. The community contends that the land belongs to them, and should be protected through proper land delimitation and demarcation under the Project.
58. In the case of the Ngöbe indigenous peoples, affected communities claim that the boundaries proposed for “*áreas anexas*” by representatives responsible for Project implementation are much smaller than the lands that by right belong to them. Specifically, they claim that the PRONAT representatives have mainly sought to delimit the homestead areas but have taken a narrow view of “productive” or “worked” areas, generally excluding much of the land cultivated by the communities and the forest and other lands that support their lives and livelihoods on the grounds that these lands are “*terrenos baldíos*” (vacant lands). During its eligibility visit, the Panel heard testimony that these representatives did not engage in proper consultation with the communities to determine the appropriate boundaries, but instead “imposed” a set of narrowly defined physical boundaries that do not correspond to the land rights and uses of the Ngöbe communities. The Panel also heard claims that the affected people in some cases felt intimidated or threatened into accepting these boundaries, and that granting of title to outsiders over what the communities consider to be Ngöbe lands is occurring at an alarming pace.
59. Many of the affected Ngöbe people with whom the Panel met strongly reject the notion that some communities have explicitly rejected their designations as “*areas anexas*”. They state that these Ngöbe communities want appropriately designated “*areas anexas*” but cannot and will not accept the areas proposed by Project representatives because they are too small and do not recognize the legitimate land and territorial rights of the communities.
60. During its eligibility visit, the Panel received information from Ngöbe communities which, it is claimed, demonstrate illegal occupations into their lands by outside investors (hydro-electric plants, tourism, ranching, mining, agriculture). The Panel also heard testimony that these activities generally have not brought benefits to the indigenous Ngöbe peoples, but instead are leading to social and economic loss and environmental harm.
61. The Panel is not in an investigation stage and according to its procedures “*will not report on the Bank's failure to comply with its policies and procedures or its resulting material*

adverse effect” during its eligibility phase.²⁹ Accordingly, the Panel at this time cannot draw conclusions about the claims and events described above or their possible connection to the Project.

62. The situations described above illustrate the serious nature of the claims and concerns of the affected people, and the level of conflict that is present and may yet occur. Project activities can have very significant implications for this unfolding process - in terms of the extent to which indigenous land rights are recognized and protected, and the extent to which land titling activities to non-indigenous peoples and investors may affect these rights.
63. Bank Management has further indicated that in the case of the Naso, the bill of law of Collective Lands was altered virtually at the last minute, during legislative session, without the knowledge of the Bank at the time. Management also reports that on March 18, 2009, after the submission of the Request for Inspection, they asked the government not to use loan proceeds to finance any activities related to the Naso, except those relating to mediation between the “two competing factions.”
64. Bank Management has proposed certain actions in its Management Response to address issues raised in the Request, including completion of an IPDP, actions to address apparent shortcomings in consultations, and support for mediation to address the apparent division in leadership among the Naso people. In informal meetings with the Panel, Bank Management has expressed its commitment to these actions and others as might be appropriate to address the concerns of the affected people. Management has also been particularly forthcoming in providing the Panel with information that might be helpful to its process. The Panel notes and very much appreciates these statements and efforts.
65. The Panel further observes that a new Government is just now about to take office in Panama. This indicates the need for some time during this transition to further develop and carry forward potentially important responsive actions.
66. In light of the above, the Panel consulted with Requesters who indicated their willingness to allow additional time before the start of a possible investigation to see if proposed steps by Bank Management could address and resolve their concerns.
67. The Panel considers that the Requests meet the eligibility requirement for an investigation. The Panel also notes that there are important questions of compliance and harm raised by the Request, which could only be evaluated as part of an investigation.

G. Conclusion

68. The Requesters and the Requests meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.

²⁹ 1999 Clarifications to Panel Resolution, Paragraph 7. This paragraph further provides that “*any definitive assessment of a serious failure of the Bank that has caused material adverse effect will be done after the Panel has completed its investigation.*”

69. In order to ascertain Management's compliance or lack thereof with Bank policies and procedures in the context of this Project, the Panel would need to conduct an appropriate review of all relevant facts and applicable policies and procedures. This can only be done in the context of an investigation of the issues raised in the Requests and related alleged harm.
70. In light of the observations noted above, the Panel recommends that an investigation be carried out on the issues raised in the Request, but that the start of this investigation be delayed for approximately four months in deference to the fact that a new Government is taking office in the Republic of Panama and to allow time for progress on the actions referred to in Management Response. The Panel takes this approach in the spirit of promoting additional opportunities for the issues to be addressed, in light of the interest of the Requesters in pursuing this approach and the indications by Management that they will act on these opportunities. The Panel wishes to highlight that its investigation report would focus mainly on any unresolved concerns raised by the Requests. The Panel's investigation will also report on steps and actions taken by Management before and during the course of the investigation to address the issues of compliance and the concerns raised by the Requesters.