

The Inspection Panel

Report and Recommendation

On

Request for Inspection

Re: Request for Inspection
Cambodia: Land Management and Administration Project (Credit No. 3650 - KH)

A. Background

1. On September 4, 2009 the Inspection Panel received a Request for Inspection from the Center for Housing Rights and Evictions (COHRE), which submitted the Request on behalf of communities affected by the Cambodia: Land Management and Administration Project (the “Project”). These communities are situated in the Boeung Kak lake (BKL) area, within the Sras Chok commune, Daun Penh district in Phnom Penh. The Requesters state that members of the Project affected communities have suffered serious harm from the design and implementation of the Project and claim that these issues need to be urgently addressed because further, severe harm may be caused in the very near future. The Requesters have asked the Panel to keep the name of affected people and villages where they live confidential.
2. The Panel registered the Request for Inspection on September 24, 2009. Management submitted its Response to the Request on November 2, 2009.
3. This Report presents the Panel’s determination of whether the Request meets the eligibility criteria set forth in the Resolution establishing the Panel and in the 1999 Clarifications to the Resolution and includes the Panel’s recommendation in relation to this Request.

B. The Project

4. According to the Development Credit Agreement, the Project aims to assist the Borrower’s “*program of actions, objectives and policies designed to improve land tenure security and promote the development of efficient land markets*” (the

“Program.”)¹ The Project’s objectives are: “to assist the Borrower in its efforts to implement the Program, which includes (i) the development of adequate national policies, a regulatory framework and institutions for land administration; (ii) the issuance and registration of titles in rural and urban areas in the Project Provinces; and (iii) the establishment of an efficient and transparent land administration system.”² The Project was designed as the first phase of a long term program aimed at supporting good governance and greater access for the poor to basic social services and economic opportunities.³

5. These objectives were to be achieved through five components: development of land policy and regulatory framework (Part A of the Project); institutional development (Part B); land titling program and development of land registration system (Part C); strengthening mechanisms for dispute resolution (Part D) and land management (Part E). The land titling program under Part C of the Project covered both urban and rural areas in eleven provinces and in the Municipality of Phnom Penh. Particularly important in relation to the Request for Inspection are Parts C, D and E of the Project. Part C was aimed at supporting the issuance of land titles and the establishment of an efficient and transparent land registration system. Part D was designed to strengthen the dispute resolution mechanisms, by building the capacity of the National Cadastral Commission and providing support to the Cadastral Commissions at provincial levels. Under this component of the Project, NGOs were to be contracted to provide legal assistance to poorest people in land disputes. Part E of the Project provided for the preparation of land use and classification maps through, *inter alia*, the definition of procedures to classify the different types of land and the preparation of land classification maps for each provinces showing the boundaries of the different classes of lands.
6. The Project was partially financed by an IDA Credit in an amount of nineteen million three hundred thousand Special Drawing Rights (SDR 19,300,000), about US\$ 23.4 million equivalent. The Credit was approved by the Board of Executive Directors in February 2002 and became effective in June 2002. The Closing Date was scheduled for December 31, 2009. However, on September 7, 2009, the Government of Cambodia cancelled the undisbursed balance of the Credit.
7. The Ministry of Land Management, Urban Planning and Construction (MLMUPC) was responsible for Project implementation. A Project Management Office (PMO) was established within the MLMUPC. The Municipal Governors, within the Ministry of Interior, were responsible for declaring the adjudication areas, i.e. the declaration that would launch the titling process.

¹ Development Credit Agreement (DCA) (Land Management and Administration Project) between Kingdom of Cambodia and International Development Association, dated March 27, 2002.

² DCA, Schedule 2 (Description of the Project).

³ Management Response to the Request for an Inspection Panel Review of the Cambodia Land Management and Administration Project (Management Response), October 30, 2009, attached to this Report as Annex II.

8. Following a fiduciary review and an investigation of the Bank's Institutional Integrity Department into 49 contracts in seven Bank-financed projects in Cambodia disbursements under the LMAP Project were suspended in June 2006. The suspension was lifted in February 2007. In December 2007, the Closing Date of the Project was extended by two years based on implementation progress, especially in the area of policy formulation; issuance of titles (the target of one million titles had been reached) and the establishment of an Independent Procuring Agent was under negotiations. With the extension of the Closing Date, the Project was also expanded, with funds from the Canadian International Development Agency (CIDA), to three new Provinces.

C. The Request

9. What follows is a summary of the Request for Inspection. The Request is attached to this Report as Annex I⁴.
10. **Land Titles and Evictions** The Requesters represent communities in the BKL area within the Sras Chok 'commune' in Phnom Penh. According to the Request, following public notice that the commune area would become an adjudication zone for purposes of land registration under the LMAP, the residents of the BKL communities requested that their land claims be investigated, as provided for by the legal procedure developed under the LMAP and adopted by the Government.
11. The Request claims that people were however, denied their requests for land claim investigations on the ground that these lands were within a development zone. According to the Request, in 2007, on the same month when the adjudication record was posted in the commune, a lease agreement was signed between the municipality to which the commune belongs and a private developer, covering the area where the Requesters currently live. The Request adds that Bank staff stated that a number of titles in the adjudication area (the commune) were issued to residents and that "*it can be assumed that most if not all [the plots titled] fall outside the development zone.*" [Text in brackets in original] Local authorities later announced, however, that the land of the community that is subject of the Request had been demarcated as a development zone.
12. The Requesters state that in 2008, when the developer began its works, residents of the communities started facing pressure and intimidation to leave the area and, a year later, many families received formal eviction notices giving them a one-week deadline to accept one of three compensation options. These options were: cash compensation, relocation in a site many kilometers away, and, finally, onsite housing coupled with

⁴ Consistent with initial indications from the Requesters, the Panel redacted certain references in the Request for Inspection before issuing the Notice of Registration. Subsequently, the Panel received authorization from the Requesters to publish the more detailed information that is included in this Report and its Annexes. Annex 1 of Management Response, in the left column summarizing the Request for Inspection, refers to the initially redacted Request for Inspection.

temporary relocation while waiting for the construction of the houses to be completed in about four years.

13. According to the Requesters, the residents of the BKL communities “*regard themselves as owners of the land*” and have documents that recognize their ownership under customary tenure. The Requesters argue that the Project, which aims at creating a centralized and formal land registration process, has in fact weakened and degraded the land tenure of the customary land owners because the Project “*failed to formalize their tenure*” and did not “*transfer their customary rights under formalized land titles.*”
14. With respect to the above-noted lease agreement between the municipality and a private developer, the Requesters state that “*the adjudication process, at a minimum, resulted in a de facto determination of the status of the land to be State-owned.*” In any event, the Requesters argue, whether the land is now State land or not, residents started to be and continue to be evicted. The Requesters state that the possibility of evictions was envisaged in the IDA’s Development Credit Agreement, which, in this regard, required the application of the Bank’s environmental and social policies, including a Resettlement Policy Framework (RPF). The Requesters contend, however, that the RPF was not applied in the case of the communities they represent.
15. The Requesters also claim that they brought these issues related to the adjudication process to the attention of Bank staff during a supervision mission to the area in 2008, but no remedial actions were taken following this visit.
16. **Public Awareness** According to the Requesters, other sub-components of the Project have remained unimplemented. They refer to the Public Awareness Community Participation (PACP) sub-component, according to which Project affected people were to be informed and involved in the registration and adjudication process and NGOs were to be contracted for the implementation of the PACP. The Requesters claim that to date no NGO was ever contracted for this purpose and many Cambodian people lack any knowledge about their land rights and the registration system.
17. **Dispute Resolution Mechanism** The Request also mentions the lack of a functioning dispute resolution mechanism that was envisaged under the Project. The Cadastral Commission set up to resolve disputes in the area has not performed satisfactorily and, according to the Requesters, poor communities are in a highly disadvantaged position in the land dispute process. The Requesters note that this problem had been recognized in the LMAP Project Appraisal Document (PAD) and, as a result, legal aid was to be offered to poor communities. The Requesters claim that to date, seven years into the Project implementation, no legal assistance has been provided under the LMAP.
18. **Bank Compliance and Urgency of Request** According to the Requesters, the claims they describe in their Request demonstrate a lack of compliance by the World Bank with the policy on project supervision and other policies. They add, nonetheless, that since February 2009, after they again raised their complaints, the Bank undertook actions such as an Enhanced Supervision Mission followed by a Safeguards Review

Mission, during which the Requesters “*requested the urgent intervention of the World Bank Management in their case.*” With subsequent letters to the Bank, the Requesters asked about the applicability of Bank’s safeguards policies and requested again urgent actions due to further eviction notices received by communities’ residents.

19. The Requesters state that they welcome the Bank’s efforts since February 2009 but note that “*the harm caused by seven years of inadequate supervision of the project has in no way been mitigated by the Bank’s recent efforts.*” They reiterate that hundreds of families have already been evicted from their land and had to accept “*inadequate compensation under conditions of duress*” because they lacked legal assistance. The Requesters add that there is no indication that those families that were given eviction notices with a fast approaching deadline will be treated differently. They also state that the communities they represent are not an isolated case and other communities in Cambodia have suffered the same harm under the LMAP.
20. The Requesters ask that the Panel conduct an investigation of the matters described in the Request for Inspection.
21. The above claims may constitute, *inter alia*, non-compliance by the Bank with various provisions of the following operational Policies and Procedures:

OP/BP 4.12	Involuntary Resettlement
OP/BP 13.05	Project Supervision

D. Management Response

22. The Management Response starts by describing the Project, its context and background and the status of implementation activities at the time the Government requested the cancellation of the Bank’s credit. The Response then goes on to address the ‘*special issues*’ raised in the Request for Inspection, and concludes by presenting a set of proposed actions aimed at addressing the harm the Requesters describe in their submission to the Panel, particularly in relation to the resettlement of the BKL communities, as well as some broader development challenges of the land sector in Cambodia. The following paragraphs will briefly touch on these focal points of the Response, a complete copy of which is attached to this Report as Annex II.
23. **Context** The LMAP Project was approved in 2002 with the objective to address development challenges of the land sector in Cambodia, a country which was emerging from years of conflict, with land records destroyed, a copious number of land disputes and very little capacity to handle these complex issues. According to Management, in this context the Project thus aimed at developing a land policy and regulatory framework, building capacity of the relevant Government agencies, developing a land registration system and a titling program, strengthening mechanism for land disputes and developing State land management.

24. **Project Legal Framework** The Response notes that the legal framework underpinning Project activities is the Land Law, which was passed in 2001 and constitutes a “*fundamental reform of land law administration in Cambodia*”⁵.
25. The law clarifies the nature of property rights and how to acquire them, and establishes the right to just and prior compensation in case of taking of land by the State. It provides the legal basis for adjudication of rights and for the resolution of land disputes both at field level and by a Cadastral Commission with jurisdiction over disputes on unregistered lands. The law also defines the legal nature of land held by the State, which amounts to almost two thirds of the country, and divides it into State public land – e.g. forests, lakes, roadways etc, which cannot be sold and be subject to possession rights or land concessions – and State private land, which is all State land that is not public land and can be subject to possession rights. State Public land can be converted into State Private land when it loses its public interest use. One of the main features of the Land Law is the right to claim ownership of land that can be lawfully possessed and has been indeed possessed since before August 30, 2001 (date of enactment of the Land Law), in good faith and in an “*unambiguous, non violent, notorious to the public, continuous*”⁶ way (or has been acquired in good faith from a legitimate possessor according to the criteria just described). It follows that, while State private land can be subject to possessory rights, private ownership cannot be established on State public land.
26. The Response further notes that according to the PAD “*no eviction, involuntary resettlement or land acquisition was anticipated during the Project.*” It adds however that the DCA provided that the Project had to be carried out in accordance with Environmental and Social Guidelines. These included a Resettlement Policy Framework (RPF), the application of which would be triggered in case of evictions from State land under the components of the Project providing for systematic and sporadic titling.⁷ Management further indicates that the RPF would apply in three cases, namely in case of

“*a) the eviction from State land of individuals who had occupied it prior to August 30, 2001, the date of the enactment of the 2001 Land Law, following titling of such land in the name of the State; (b) the eviction from State land titled in the name of the State of individuals who had occupied it prior to August 30, 2001, because of the need to use such land for the carrying out of civil works under the Project; and (c) the extension by the State of Right of Way (ROW) claims that adversely affected possession rights.*”⁸

⁵ Management Response, ¶ 20.

⁶ Management Response, ¶ 23.

⁷ Management Response, ¶ 30. The Response indicates that the Land Law establishes a modern registration and land titling system. The latter includes systematic titling, which covers all holdings in a given area, and sporadic titling, which covers one parcel at a time.

⁸ Management Response, ¶ 31.

27. Management states that the Project was “*by necessity designed to be implemented sequentially, with titling teams focusing on selected adjudication areas first and then moving on to other areas*” and “*the application of the RPF was intended to follow the same sequencing...*” Therefore Management asserts,

“...due to the Project’s sequenced approach, and due further to the fact that full coverage of any given Project province would not be achieved during the life of the Project, Management has concluded that Project design clearly albeit implicitly contemplated that there would be areas in which the Project was not and would not be active and where it was not contemplated that the RPF would apply.”⁹

28. The Response further notes that, according to the PAD, “*the Project will not title land in areas where disputes are likely until agreements are reached on the status of the land.*”¹⁰ In addition, the titling programs supported by the Project would not cover informal settlers or “*squatters*” on State land as the project was not conceived as a way to regularize informal settlements.¹¹

29. **Project implementation and achievements** Management states that the Project has delivered “*significant development benefits in several areas*” as it helped the establishment of a modern land administration system, which led to registering and titling more than one million parcel of land in a cost effective manner at around \$11 per title. At the same time, Management acknowledges that improvements in the land tenure security cannot be measured because of a lack of relevant data and a methodology to collect those data.

30. The Response includes a specific description of implementation progress of each Project component. In this regard, Management states that achievements have been uneven across the various Project components. For example, according to Management, on the one hand the land titling and registration component has been the most successful component due to the number of parcels surveyed and titles issued. On the other hand, no NGO was recruited to lead the Public Awareness and Participation Activities program provided for under the same component.

31. The Response also notes that results were mixed under the component aimed at strengthening dispute resolution mechanisms. The Cadastral Commission and provincial and district level commissions for mediating land disputes were created but could not realistically offer an independent dispute resolution system. Moreover, no NGO was recruited to offer legal assistance to the poorest people and this limited the

⁹ Management Response, ¶ 32.

¹⁰ Management Response, ¶ 35.

¹¹ Management Response, ¶ 36. In the early 2000s a separate program to address informal settlements was underway with the support of various agencies and donors, including the United Nations Center for Human Settlements (UNCHS). However, the Management Response indicates that the program was discontinued in 2004 and no other program to regularize the tenure of informal settlements has since started.

effectiveness of the Cadastral Commission system as well. With respect to the State Land Management component, the Response indicates that while procedures were developed for land classification, the implementation of State land mapping and related process was only limited to a few pilot operations.

32. **Boeung Kak Lake Issue** In general, Management states that “*once it realized the potential issues around the resettlement of the BKL communities, it acted quickly*”. It further states that

“...Management also realized that there were specific shortcomings in past Project implementation and supervision, related to: (a) the implementation of one component (i.e., land management) and two sub-components (i.e., information dissemination and community participation, and legal assistance for the disadvantaged); and (b) safeguards.”^{12,}

33. The Management Response includes a “*Chronology of Key Events*” surrounding the involuntary resettlement of the BKL communities¹³. In May 2006 the Sras Chok commune in which the BKL area is located was declared an adjudication area. The commune was then demarcated and the results publicly displayed in January/February 2007. However, the BKL area within the commune was not considered for demarcation because the Municipality of Phnom Penh (MPP) (within which Sras Chok commune is situated) claimed that BKL was State Public land. This, therefore, excluded BKL from titling, given that, under the Land Law, possession rights cannot be claimed on State Public Land.
34. Management notes that in spite of the assertion that BKL was public land, plans for private development of the area were underway since 2005, and culminated in February 2007 with the MPP signing a 99-year lease covering the BKL area with a private developer. In August 2008, the Government issued a sub-decree to convert the area from State Public land to State Private land. Management goes on to state that residents of the area were then told that they would have to relocate and could accept one of three compensation options, which allegedly would be withdrawn after the deadlines for relocation expired. Management adds that from August 2008 “*further pressure to relocate was brought to bear*” on the residents when the developer started filling the BK lake causing structural damage and flooding to people’s housing.¹⁴
35. Management states that it has not received evidence that the BKL area is State Public land. According to records, ownership of the area is considered “*unknown*”, which seems to be the classification that is generally used for State Public Land in a titling process. However, Management also adds that based on information it gathered, only the villages around BKL area were demarcated and no demarcation of individual parcels took place. Moreover, only one title (for a public gas depot) was issued in the

¹² Management Response, ¶ 95.

¹³ Management Response, ¶ 48.

¹⁴ Management Response, ¶ 48.

name of the State as a result of the adjudication process in the commune, but no title was issued in the name of the State for the land of the BKL area.

36. In light of this, “*Management concluded that proper procedures were not followed in the adjudication of the Sras Chok commune*”¹⁵, that the residents of the BKL area were not given an opportunity to present their claims of their possession of the land and that there is no evidence that a transparent participatory process was carried out to determine the classification of the land in question as State Public Land.

37. **Application of the RPF** Based on the information gathered and described above, Management concluded that the RPF should have been applied to the displacements of the residents in the Sras Chok commune and the BKL area. In this regard, Management argues that the criteria for triggering the application of the RPF set forth in the DCA were met: the Sras Chok commune was an adjudication area where systematic titling was being carried out and, though no formal title to the State was issued, the lease signed with the private developer over the land can be viewed as a de facto determination of the land as State land. Management states that:

*“To exclude the application of the RPF to evictions in a Project adjudication area because the adjudication process was apparently not followed to its conclusion and no formal title was issued in the name of the State, would be contrary to the intentions underlying the development of the RPF, as set out in the DCA.”*¹⁶

38. The Response notes that the Government of Cambodia disagrees with this position regarding the application of the RPF to the BKL area, arguing that the land in question was not titled to the State and therefore it was not within the scope of the Project. While Management maintains its position that the RPF applies to the BKL area, it also acknowledges that “*a lack of specificity in the Project documents*” and “*the apparent absence of detailed discussions of the reach of the RPF*” may be at the root of the Government disagreement on this issue.¹⁷

39. Management states that it disagrees with the Requesters’ claim that the Project, as designed and implemented, weakened the pre-existing customary rights of people. Management states that if carried out correctly, the titling process should strengthen the situation of those with recognizable possession rights. The Response on the other hand also recognizes that, as in the case of the Sras Chok commune, the lack of a transparent and reviewable mechanism to determine whether the land is State public land compromised pre-existing rights over the land.

40. **Bank’s reactions to events in BKL** The Response states that a Bank mission first visited the BKL area in June 2008 but the visit was short and discussion took place only with Project staff. At that time, Management notes, though no titles had been issued to the residents, there was no discussion about a conversion from State Public to State

¹⁵ Management Response, ¶ 49.

¹⁶ Management Response, ¶ 51.

¹⁷ Management Response, ¶ 52.

Private land or about resettlement of the communities. Thus, no link was made at the time between the Project and possible involuntary resettlement.

41. A few months later, in November 2008, discussions started between the Bank and a concerned NGO about the situation of the BKL area and other communities in Phnom Penh. In January 2009 evictions took place in one community (Dey Krahorn) and another one (known as Group 78) was threatened with displacement. Management states that when it realized that evictions were being accelerated and harm to affected people was possible, it “*reacted promptly*” by engaging in a “*multi pronged approach*”¹⁸. This approach included the decision to carry out an Enhanced Review Mission (ERM) of the Project to make sure that there was a clear understanding of the obligations under the Project. There were also various meetings with Project staff and Government officials to request a temporary moratorium on evictions until a national legal and policy framework for involuntary resettlement was in place, and discussions with the Project co-financiers and other donors.
42. The ERM, carried out in April 2009, assessed the contribution of the Project to improve land tenure security and resolving land disputes. It concluded, among other things, that shortcomings in Project’s design and implementation had led to a disconnect between the Project’s success in the issuance of land titles and continuing insecurity of the poor in land tenure. It also noted that local authorities were excluding lands in adjudication areas from titling activities without following proper procedures and without allowing people access to information and dispute resolution mechanisms. Management states that the recommendations of the ERM provided the input for the proposed actions included in the Management Response (see paragraphs below).
43. As more evictions took place, Management maintains that it took further additional actions. These included offering support to the Government to improve the conditions of the sites where some evicted people had been resettled, and continued discussions with the Government to improve State land management practices. In addition, Management states that in early August it set up a safeguards mission to find ways to address the situation in BKL area, because it appeared that the BKL was the next community “*to be evicted*”¹⁹. Further, Management sent a letter to the Government reiterating the request for a moratorium on evictions, while emphasizing the possible linkages between the BKL evictions and the Project and the Government’s obligations under the DCA. According to the timeline of events provided in the Management Response Annex 4, evictions in the BKL community started in August 2009.
44. Management also states that the Bank’s Regional Vice President (RVP) traveled to Phnom Penh to meet with senior Government officials in August 2009. The RVP reiterated the request for the moratorium on evictions and offered to allocate Bank resources for the resettlement of the BKL communities. According to Management, the RVP proposed to the Government to suspend jointly the Project while the national

¹⁸ Management Response, ¶ 58.

¹⁹ Management Response, ¶ 59.

policy framework was improved, but the Government followed with a request to cancel the undisbursed balance of the Credit on September 7, 2009.

45. **Project Supervision** Management recognizes that “*supervision of safeguards and other social measures should have been more robust*²⁰” and that the implementation status of Environmental and Social Guidelines was not sufficiently reviewed in the adjudication areas. It also acknowledges that improvements could have been made to the supervision reporting on safeguards issues, up to the most recent safeguards mission in mid-2009. Management also indicates that neither safeguards nor resettlement specialists participated in crucial supervision missions. The Response further notes that before 2009 there was no in-depth examination of the issue of evictions from State land and that the Task team did not focus on the connection between evictions, land disputes and titling activities under the Project. The need to examine these connections emerged only after communications sent from NGOs to the Bank and the completion of the ERM.
46. Management further recognizes that opportunities were missed to restructure the Project during implementation, while acknowledging that the Project’s Closing Date was extended for two years in 2007 without addressing key issues, namely that the Project was not going to achieve its objectives and that implementation of the various components was very uneven. Management further recognizes the “*fault*²¹” with an overall assessment of the Project as moderately satisfactory. This judgment was based on action plans rather than results.
47. The Response also notes that in 2006 the focus of implementation had shifted towards fiduciary aspects of the Project (as noted above the Project was suspended in 2006) and on outputs such as the issuance of titles, rather than the implementation of the Project as whole. Management recognizes that, as highlighted in the ERM, implementation of components and activities of the Project were disconnected from each other. Implementation focused on the successful parts, e.g. issuance of titles, and did not address other activities necessary to achieve the Project objective of improving land security.
48. **Proposed Actions** Management indicates that its relations with the Government “*have been strained by the latest developments,*²²” the disagreement on the linkage between the Project and the BKL resettlement, and the need to halt evictions until a resettlement framework is in place. It adds that the Government has yet to respond to Management’s letter acknowledging the decision to cancel the Credit and reminding the Government of its legal obligations under the Credit.
49. Management also states that it “*will continue its efforts to address the issues raised in the Request.*” It argues that since April 2009 Management has raised the issue of evictions with the Government and has offered support to find solutions. Continuing in this effort will require close cooperation with the Government and with the Development Partners. According to Management, the Government has expressed

²⁰ Management Response, ¶ 72.

²¹ Management Response, ¶ 70.

²² Management Response, ¶ 77.

interest in continuing with the land reforms and in collaborating with the Bank so long as “*the Government retains ownership and leadership of the decision making process.*”²³

50. Management proposes actions to address the Requesters’ concerns focused on two fronts and emphasizes that these require cooperating with the Government and the Development Partners. Management states that,

“[i]t will work with the Government and Development Partners towards ensuring that the communities who are resettled from the BKL area will be supported in a way consistent with the agreed Resettlement Policy Framework ; and,

It will continue to engage the Government and Development Partners to ensure that communities that need to be resettled in the future would benefit from a resettlement policy that meets appropriate standards and from fair and independent dispute resolution mechanisms.”²⁴

51. Management recognizes that the resettlement packages offered to people resettled from the BKL area were not in accordance with the RPF, and is thus committed to undertake an assessment of social impacts of the resettlement on the affected communities. Management proposes to work with the Government and the Development Partners to ensure that people are supported on the same basis as if the RPF applied. If the Government does not respond on this, Management states that it will request the Government to allow the Bank to carry out the assessment on its own so as to develop a plan to mitigate negative impacts and improve social and economic opportunities.
52. Management is also concerned about living conditions and livelihood opportunities in and around the resettlement sites and has encouraged the Government to improve these sites. The Response adds that the Bank will pursue the opportunity to use Bank funds for this purpose. The Bank is also encouraging the Government to mitigate the environmental impacts of filling the BK Lake.
53. In addition, Management states that it will try to work with the Government to improve the capacity of existing dispute resolution mechanisms as well as the capacity of communities and NGOs to use them. In addition, it will continue to try to engage the Government in finalizing a national resettlement policy framework to mitigate impacts of resettlement on affected people and ensure a fair and systematic approach to resettlement activities. Management adds that the Government is already working in this direction: a draft Law on Expropriation has been prepared as well as a sub-decree on resettlement. Guidelines for urban informal settlements are also being discussed.
54. Management further states that engagement with the Government will also focus on improving conditions at various resettlement sites in the country, especially of people resettled from State Public land. Management also plans to use other projects to support land tenure and livelihood for poor communities. Finally, as the Country Assistance

²³ Management Response, ¶ 75.

²⁴ Management Response, ¶ 76.

Strategy (CAS) will be redefined in 2010, Management states that it will initiate a consultative process to redefine the Bank's role in Cambodia and to identify areas of support and cooperation with the Government.

55. **Lessons learned** According to the Response, a number of lessons have emerged from this Project, from the difficulties in implementation and supervision and challenges presented by the land sector and by working in a post conflict environment. Management states that these lessons include: improving design and implementation with clearer definitions of, *inter alia*, Project areas and criteria to apply an RPF; developing a more robust results monitoring framework to allow synchronizing progress in key outputs with progress in institutional and policy aspects of the project; re-appraising projects based on changing circumstances on the ground; strengthening the monitoring of key risks, particularly in reference to safeguards issues; enhancing supervision, and developing mechanisms to partner with civil society organizations, along with the Government.

E. Eligibility

56. The Panel must determine whether the Request satisfies 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.
57. The Panel has reviewed the Request and Management's Response. Panel Chairperson, Roberto Lenton, together with Panel Member Alf Jerve, Deputy Executive Secretary Dilek Barlas and Senior Operations Officer Tatiana Tassoni visited Cambodia from November 16 through November 19, 2009. During their visit, the Panel team met with the organization representing the Requesters, signatories of the Requests for Inspection and other affected people, as well as with other NGOs operating in Cambodia that are concerned, in particular, about issues of evictions of communities around Phnom Penh. The Panel also met with Government officials, Bank Management in Cambodia, other Bank staff, and representatives of the Bank's Development Partners and other donors. The Panel also visited the community where the Requesters live and the resettlement site where some affected people who chose the relocation option now live.
58. The Panel is satisfied that the Request meets all of the eligibility criteria provided in the 1993 Resolution and Paragraph 9 of the 1999 Clarifications.
59. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The Requesters are affected parties who have common interests and common concerns, and reside in the Borrower's territory. The Request satisfies item (a) of the said Paragraph 9.

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

60. 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).
61. The Requesters assert that hundreds of families have already been evicted from their land in the BKL area and had to accept “*inadequate compensation under conditions of duress*” due to Bank’s non-compliance with its involuntary resettlement, supervision and other policies. The Requesters note that numerous families living in the BKL area are at risk of being evicted and were given eviction notices with a fast approaching deadline, and that there is no indication that they will be treated differently from those already evicted.
62. The Panel confirmed that, as acknowledged in the Management Response, the World Bank was aware of the concerns of the people living in the BKL area long before the submission of the Request for Inspection. The Requesters corresponded with Bank Management and met with Bank staff on several occasions prior to the submission of the Request for Inspection. As noted above, while they welcome the Bank’s recent efforts, the Request states that “*the harm caused by seven years of inadequate supervision of the project has in no way been mitigated*” by such efforts. 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).
63. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
64. The Project Closing Date was December 31, 2009. As of the date the Request was filed, about 70% of the Loan had been disbursed. Thus the Request satisfies the requirement in Paragraph 9(e) that the related Loan has not been closed or substantially disbursed when the Request was filed. The Panel received the Request for Inspection on September 4, 2009. As stated in the Management Response, on September 7, 2009, the Government of Cambodia cancelled the undisbursed balance of the LMAP Credit.
65. Furthermore, the Panel has not previously made a recommendation on the subject matter of the Request. Therefore, the Request satisfies Paragraph 9(f).

F. Observations

66. At the outset, the Panel recognizes the importance of the objectives of the Project and of the World Bank’s engagement in land sector issues in Cambodia, which are essential to the country’s sustainable development. This point was emphasized to the Panel by many stakeholders, who also noted the large number of titles that were issued under the Project in a cost effective manner. That said, the Panel would like to underscore the

seriousness and gravity of the situation presented by this Request, and the urgency of the concerns.

67. The Panel has carefully reviewed the Management Response and other relevant Project documents, which describe the Project and the context in which it came about and was implemented, and discuss the current land tenure situation and debate in Cambodia. As noted above, the Panel also met with Bank Management in Cambodia to gain a better understanding of the current situation with respect to the Project and the prospect of possible solutions to the Requesters and other affected people's problems.
68. During its visit to Phnom Penh, the Panel met with a number of leaders and representatives of the BKL community. The Panel visited the BKL area and met with people who are at risk of being evicted. The Panel also visited the resettlement site where some of the people who were evicted and have chosen the relocation option now live. The Panel heard disturbing reports about the harm suffered by those people who were already evicted from their land and those who have received notices of eviction and are under the threat of eviction.
69. The Panel was informed that there were three compensation options offered to evicted people: cash compensation; a house in a relocation site; or onsite housing coupled with temporary relocation while waiting for the construction of new houses to be completed in about four years. The Panel was also informed that not all evicted people were offered these options. Some families accepted to relocate to the resettlement site, but the Panel received reports that many services are still lacking and very few income generation opportunities are available in and around the resettlement site. Furthermore, there is no public transportation to Phnom Penh and other sites where employment might be more available. The Panel was told that due to these conditions, many families left the resettlement site and returned to Phnom Penh. As a result many previous homeowners became tenants in the city.
70. The Panel was also told by people who are currently living in the site that many other people accepted the cash option as it gave them a chance to stay in Phnom Penh, which offers work opportunities. In the same resettlement area, the Panel also observed a number of evicted families who live in makeshift structures under squalid and unsanitary conditions, with few affordable basic services (water and sanitation, schooling, health centers etc.). The Panel notes that it was informed that these families used to live outside the Project area and their resettlement is not related to the Project.
71. The Panel also met with various community leaders and people in the BKL area who have received notices of eviction but are still living in their houses. They showed the Panel eviction notices with short deadlines and indicated that they feel intimidated and pressured to move out of their houses. The Panel visited various houses that were flooded by lake waters as a result of the private developer's filling the natural lake in the BKL area. The Panel was told that this flooding is a form of intimidation to force people out. The Panel also heard that not only did the flooding of the houses create great discomfort and unsanitary living conditions, but also has led to deaths due to

electrocution. The Panel was also informed that people were not allowed to repair their houses.

72. Affected people claim they have been living in the BKL for many years – some people more than twenty years – and showed the Panel proof of recognition of their possessory rights and certificates of registration by village chiefs, which they claim was the customary registry of lands before the Project. They also claimed that the compensation they received and/or were offered was inadequate and hardly sufficient to sustain the livelihood of the families.
73. Affected people who met with the Panel stressed that additional evictions are imminent and wished that a solution to address the harm people are suffering be found promptly. Many of them told the Panel that they understand the needs of development and are not against it but ask that adequate compensation and the opportunity to sustain their livelihood be given to them.
74. During its visit, the Panel received several reports that made evident that the issue of evictions is not limited to the BKL area but may potentially affect many other areas in and around Phnom Penh and beyond. The seriousness of the situation has also received national and international media attention.
75. In its Response, Management states that proper procedures were not followed in the adjudication of the Sras Chok commune, within which BKL area is located. Management indicates that the Resettlement Policy Framework should have been applied to displacements or threatened displacements from the Sras Chok adjudication area. Management also notes that the proposed packages to affected people were not equivalent to what the residents would have received had the Resettlement Policy Framework been applied. In its Response, Management acknowledges specific shortcomings in past Project implementation and supervision, related to: (a) the implementation of one component (i.e., land management) and two sub-components (i.e., information dissemination and community participation, and legal assistance for the disadvantaged); and (b) safeguards.
76. 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.²⁶ Accordingly, the Panel at this time cannot draw conclusions about the claims and events described above or their possible connection to the Project.
77. The Panel notes that Bank Management takes the situation of the people affected by evictions very seriously and is committed to find a solution to improve their living conditions. The Panel appreciates the proposed actions included in the Management Response and acknowledges the challenging and complex environment in which such

²⁶ 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.*”

actions are to be carried out. Management reiterated to the Panel that it is making efforts to engage the Government of Cambodia in a dialogue focused on action on two fronts to ensure that “*the communities who are resettled from the BKL area will be supported in a way consistent with the agreed Resettlement Policy Framework*” and that “*communities that need to be resettled in the future would benefit from a resettlement policy that meets appropriate standards and from fair and independent dispute resolution mechanisms*”, as indicated in the Management Response.

78. Following its field visit and meetings with the Requesters, Bank Management and Government officials, the Panel believes that there is a window of opportunity for the Bank to reach agreement with the Government to initiate a dialogue aimed at developing concrete actions to redress harm to communities that were evicted and the ones that face involuntary resettlement. Bank Management indicated to the Panel that it believes that there are reasonable chances that such an agreement with the Government could be reached. The Panel believes that this dialogue is particularly important to address the concerns and the imminent potential harm to those who are in danger of evictions.

G. Conclusion

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

80. In order to make an independent assessment of Management’s compliance or lack thereof with Bank policies and procedures and related issues of harm 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 Request and related alleged harm.

81. In this case Management has stated its commitment to initiate a dialogue with the Government of Cambodia and other Development Partners to develop concrete actions for communities that were evicted and the ones that face involuntary resettlement. The Requesters emphasized the need for urgent measures to address their serious concerns and potential imminent evictions.

82. In light of the foregoing, and in fairness to all the parties concerned, the Panel, as it has done in similar situations in the past with Board approval, will not take a position at this time on whether the issues of non-compliance and harm raised in the Request merit an investigation.

83. The Panel, therefore, recommends to the Board of Executive Directors that it approve the Panel’s proposal to refrain from issuing a recommendation at this time on whether an investigation is warranted in this case, but rather await further developments on the matters raised in the Request for Inspection, especially because Management is trying to establish a dialogue with the Government to address the concerns of the Requesters. Taking into account the urgency of the situation as it evolves, the Panel expects to

make a determination no later than March 31, 2010, as to whether to recommend an investigation.