

Report No. 53744-KH

The Inspection Panel 

**Final Eligibility Report and
Recommendation**

**Cambodia: Land Management and
Administration Project
(Credit No. 3650 - KH)**

March 31, 2010

The Inspection Panel

Final 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 (hereinafter referred to as the “Project” or “LMAP”). These communities are situated in the Boeung Kak Lake (BKL) area, within the Sras Chok commune, Daun Penh district in Phnom Penh. The Requesters asked the Panel to keep the names 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, 2009¹.
3. A Panel team visited Cambodia from November 16 - 19, 2009, to determine the eligibility of the Request for Inspection. On December 2, 2009, the Panel submitted its Report and Recommendation to the Executive Directors². The Panel found the Request and the Requesters eligible but at that time refrained from making a recommendation on whether an investigation is warranted, noting that it expected to be able to make such determination no later than March 31, 2010. In the Panel’s view, this would give a further chance to Management to establish a dialogue with the Government of Cambodia and other Development Partners to address the concerns of the Requesters.
4. The Board approved the Panel recommendation on December 16, 2009, on a non-objection basis.

¹ Management Response to the Request for an Inspection Panel Review of the Cambodia Land Management and Administration Project (Management Response), October 30, 2009, attached as Annex II to the Inspection Panel Report and Recommendation, INSP/R2009-0006, dated December 7, 2009.

² Inspection Panel Report and Recommendation Cambodia: Land Management and Administration Report and Recommendation, December 7, 2009, INSP/R2009-0006. This eligibility report contains the Request for Inspection and Management Response.

5. The present report contains the Panel’s final recommendation on whether an investigation of the allegations raised by the Requesters is warranted.

B. The Project

6. The Project aimed 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.”)³ The Project’s specific objectives were: “*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.*”⁴ According to the Management Response, 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.
7. The Project was partially financed by an IDA Credit to the Royal Government of Cambodia (RGC) 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.
8. 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.

C. The Request

9. The Requesters represented communities in the BKL area within the Sras Chok ‘commune’ in Phnom Penh. They stated that members of the Project affected communities suffered serious harm from the design and implementation of the Project and claimed that these issues needed to be urgently addressed because further, severe harm could be caused in the very near future. 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. The Request claimed that people

³ Development Credit Agreement (DCA) (Land Management and Administration Project) between Kingdom of Cambodia and International Development Association, dated March 27, 2002.

⁴ DCA, Schedule 2 (Description of the Project).

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, in the same month that 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.

10. The Requesters stated 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 temporary relocation while waiting for the construction of the houses to be completed in about four years. The Requesters argued that the Project, which aimed at creating a centralized and formal land registration process, 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.*”
11. According to the Requesters, other sub-components of the Project remained unimplemented. They referred in particular 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.
12. The Request also mentioned the lack of a functioning dispute resolution mechanism that was envisaged under the Project. The Requesters claimed that, although included in the Project, after seven years of Project implementation, no legal assistance was offered to affected people under the LMAP.
13. The Requesters stated that they welcomed the Bank’s efforts since February 2009 but noted 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 reiterated that hundreds of families were already evicted from their land and had to accept “*inadequate compensation under conditions of duress*” because they lacked legal assistance.

D. Management Response

14. The Management Response noted that according to the Project Appraisal Document (PAD) “*no eviction, involuntary resettlement or land acquisition was anticipated during the Project.*” It added 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.⁵ Management further indicated that the RPF would

⁵ 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.

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.”⁶

15. The Response further noted 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.”⁷ 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.⁸
16. Management stated that the Project had 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 acknowledged that improvements in the land tenure security cannot be measured because of a lack of relevant data and a methodology to collect those data.
17. The Management Response stated that 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.
18. Management noted 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 went 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 added 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.⁹

⁶ Management Response, ¶31.

⁷ Management Response, ¶35.

⁸ 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.

⁹ Management Response, ¶48.

19. In light of this, “*Management concluded that proper procedures were not followed in the adjudication of the Sras Chok commune*”¹⁰, 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.
20. 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 argued 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 public land.
21. The Management Response noted that an Enhanced Review Mission (ERM) was carried out in April 2009, which concluded, among other things, that shortcomings in the 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.
22. Management also stated 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 policy framework was improved, but the Government followed with a request to cancel the undisbursed balance of the Credit on September 7, 2009.

Proposed Actions by Management

23. Management proposed actions to address the Requesters’ concerns, which were focused on two fronts and emphasized that these require cooperating with the Government and the other Development Partners. Management stated 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

¹⁰ Management Response, ¶49.

*resettlement policy that meets appropriate standards and from fair and independent dispute resolution mechanisms.*¹¹

24. Management recognized that the resettlement packages offered to people resettled from the BKL area were not in accordance with the RPF, and thus committed to undertake an assessment of social impacts of the resettlement on the affected communities. Management proposed to work with the Government and the Development Partners to ensure that people were supported on the same basis as if the RPF applied. If the Government did not respond on this, Management stated that it would 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.
25. Management was also concerned about living conditions and livelihood opportunities in and around the resettlement sites and encouraged the Government to improve these sites. The Response added that the Bank would pursue the opportunity to use Bank funds for this purpose. The Bank was also encouraging the Government to mitigate the environmental impacts of filling the BK Lake.
26. In addition, Management stated that it would 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. Furthermore, it would 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 added that the Government was already working in this direction: a draft Law on Expropriation had been prepared as well as a sub-decree on resettlement. Guidelines for urban informal settlements were also being discussed.
27. Management further stated that engagement with the Government would also focus on improving conditions at various resettlement sites in the country, especially of people resettled from State Public Land. Management planned to use other projects to support land tenure and livelihood for poor communities. Finally, as the Country Assistance Strategy (CAS) will be redefined in 2010, Management stated that it would initiate a consultative process to redefine the Bank's role in Cambodia and to identify areas of support and cooperation with the Government.

E. Eligibility of the Request for Inspection

28. The Panel reviewed the Request and Management's Response. A Panel team visited Cambodia from November 16 - 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.

¹¹ Management Response, ¶76.

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.

29. The Panel determined in its Report and Recommendation, dated December 2, 2009¹², that the Request satisfied the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel¹³ and its 1999 Clarifications¹⁴. However, due to the special circumstances described below, the Panel recommended to defer a decision on whether to recommend an investigation.
30. In its Report and Recommendation, the Panel noted that Management in its Response indicated 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.
31. In light of the foregoing, the Panel refrained from making a recommendation on whether an investigation was warranted, but rather decided to await further developments, especially in view of the fact that Management was trying to establish a dialogue with the Government to address the concerns of the Requesters. The Panel stated in its Report and Recommendation that it expected to be able to make a determination no later than March 31, 2010, as to whether an investigation would be merited.

F. Observations

32. In considering whether to recommend an investigation, the Panel has followed up on the status of Management's progress in its dialogue with the Government and in the actions proposed in the Management Response.
33. Since submitting its first eligibility report, the Panel has remained in touch with Management and the representatives of the Requesters on developments in Cambodia regarding the situation of the Requesters and the broader efforts of the Bank to ensure that communities that need to be resettled in the future can benefit from a resettlement policy that meets appropriate standards.
34. Management informed the Panel that it initiated a dialogue with the Government of Cambodia. Management indicated that there seems to be commitment and momentum to strengthen the resettlement policy in the country. However, both Management and the representatives of the Requesters indicated that no progress has been made on the ground to implement specific actions that ensure "*that the communities who are resettled from the BKL area will be supported in a way consistent with the agreed Resettlement Policy Framework.*"¹⁵

¹² INSP/R2009-0006.

¹³ Resolution No. IDA 93-6 of September 22, 1993 (hereinafter "the Resolution")

¹⁴ The 1999 Clarifications to the Resolution (hereinafter "the 1999 Clarifications") are contained in the "Conclusions of the Board's Second Review of the Inspection Panel", dated April 20, 1999.

¹⁵ Management Response, ¶76.

35. As noted earlier, among the proposed actions included in Management Response, to which Management committed, is an assessment of social impacts of the affected communities in BKL area. The Panel was unable to confirm that any progress was made on this assessment, which, according to the Requesters, could constitute a step forward to addressing their concerns. The Panel was informed that the Requesters' situation remains much the same as at the time of the submission of their Request for Inspection in September 2009 and the visit of the Panel to Cambodia the following November.
36. The Panel welcomes the progress made by Bank Management to build an important dialogue with the Government of Cambodia and notes the critical importance of the World Bank engagement in land sector issues in Cambodia, essential to the country's sustainable development.
37. The Panel notes, however, that the actions proposed in the Management Response were not implemented in a way that could satisfactorily address the Requesters' concerns. The Panel further observes that issues and concerns of the communities affected by the Project, which were presented in the Request for Inspection and explained in further detail in the Panel's Eligibility Report and in the Management Response itself, are of a very serious nature. They raise important questions of compliance with Bank policies and harm to Project affected communities that could only be assessed as part of an investigation.

G. Conclusion

38. As stated in the first Eligibility Report dated December 2, 2009, the Request and the Requesters meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.
39. In order to make an independent assessment of Management's compliance with Bank policies and procedures and related issues of harm in the context of the 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 of compliance and harm raised by the Request.
40. In view of the foregoing, the Panel recommends that the Board of Executive Directors approves an investigation of the claims and matters raised by the Request for Inspection. The Panel notes that the investigation would take into account progress in the implementation of the actions noted in the Management Response and other actions being carried out to address the concerns raised by the Requesters.