Land at the Center of Inclusive and Sustainable Development

Volume 1: Land Administration and Management

INSPECTION PANEL EMERGING LESSONS SERIES NO. 8

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Waterfront housing in Panama

ABOUT THE INSPECTION PANEL AND ITS MANDATE ON ADVISORY SERVICES

The World Bank's Board of Executive Directors ("the Board") established the Inspection Panel ("the Panel") in 1993 as an independent complaint mechanism for people and communities who believe they have been—or likely will be—adversely affected by a World Bank-funded project.

Under its mandate, the Panel provides advisory services in the form of lessons from its cases. These lessons endeavor to increase institutional learning at the World Bank and throughout the larger development community to enhance the application of social and environmental policies and standards for the overall sustainability and effectiveness of operations. The case studies and insights presented herein may also interest civil society organizations, non-governmental organizations, and academia.

This report on Land Administration and Management is Volume 1 of the Panel's eighth advisory publication, titled "Land at the Center of Inclusive and Sustainable Development," which follows reports on Involuntary Resettlement, Indigenous Peoples, Environmental Assessment, Consultation, Participation, and Information Disclosure, Biodiversity Offsets, Gender-based Violence, and Intimidation and Reprisals.

INTRODUCTION

Over the past three decades, the World Bank Inspection Panel has received 163 Requests for Inspection from complainants, of which it conducted 40 investigations to date. Some land-related topics have been covered in the Panel's earlier advisory reports, notably those on involuntary resettlement, indigenous peoples, and intimidation and reprisals.[1] However, the Panel's cases have raised issues relating to land that were not examined in these earlier Panel advisories. The cases presented below provide useful insights, illustrate the interdisciplinary nature and the complexity of land-related development projects, and highlight the extra care that must be paid to the broader environmental and social risks.

This report focuses on Panel investigations of land administration and management projects in Honduras, Panama, and Cambodia. It explores some of the challenges of land tenure security, regularization, and titling and discusses the importance of assessing the context in which such activities are undertaken, and the challenges of stakeholder engagement associated with them. The Honduras and Panama cases offer significant lessons on the alienization of indigenous lands and territories, their regularization, and titling, as well as on the challenges relating to overlapping claims. The Cambodia example illustrates the complexity of regularization in an urban setting with high population density and vested economic interests. This report also presents supplementary information from Panel cases on projects that—while not designated land administration and management projects—nonetheless included relevant aspects of interest to the topic. These include two projects the Panel investigated in Kenya, which illustrate the importance of a comprehensive analysis to define project scope and timeline for land regularization activities and show challenges of securing communal land title for indigenous people in a timely manner. The report also references a project in Brazil, which touches on the complexity of land regularization and capacity requirements, but which the Panel did not investigate.

CASE STUDY 1: HONDURAS LAND ADMINISTRATION PROJECT (2006/07)

The Project was prepared at a time when land tenure insecurity was deemed one of Honduras' greatest constraints to development. Most land was not formally registered; historical claims of indigenous and Afro-Honduran communities required resolution. The project supported implementation of a government reform strategy to address land tenure insecurity throughout the country. The Project focused specifically on establishing and operating a decentralized land administration system, and it provided for systematic land regularization, titling, and registration—including for municipal lands, urban and rural areas, forests, protected areas, and ethnic lands.

The Complaint alleged that the Project would significantly harm the indigenous Garífuna people and their claims to ancestral lands.[2] The complainants said the Project would endanger their culture and survival. They feared that the land titling and other Project activities would cause the loss of Garífuna land rights and demise of collective property in favor of individual property. According to the complainants, the Project did not reflect the special legal situation of the Garífuna in Honduras.

The Panel Investigation found merit in the complainants' concerns that the Project might contribute to demise of titles and claims to collective lands held by the Garífuna and other indigenous peoples. While acknowledging that the Project included measures to protect such land rights—given the vulnerability of affected indigenous peoples and the fact that a new property law would give specific rights to non-indigenous occupants of ethnic lands—the Panel found these measures to be insufficient.

This Project was implemented in a context of land pressure and conflict. The Garífuna had been affected by different external forces over time and had lost land once occupied and used by their ancestors. Tourism and industrialized, export-crop production attracted outsiders to their ancestral lands. Non-Garífuna people had also developed vacation homes and cattle ranches, often excluding Garífuna from these lands. The Garífuna had pursued land rights and claims to collective title for many years.[3] However, in many communities, parts of the land over which the Garífuna had legal title had been illegally occupied, at times using fraud or through violence.[4] Factors increasing pressure on their lands included the evolving legal and institutional framework; actions by municipal to issue private titles within Garífuna communal land; overlapping land claims and unregistered transfers; actions by outside entities to obtain land rights and title and subdivide the land, as well as the designation of protected areas in lands claimed and traditionally used by the Garífuna.[5]

During the 1990s, the majority of Garífuna communities in Honduras had received communal title to part of the land they occupied and claimed that it traditionally belonged to them. However, the titled areas did not include their entire ancestral claim, and most titles excluded important areas of community use and resource management. In some cases, the titles received were extremely limited, and only covered the so-called "casco urbano" (urban perimeter) where

The Garífuna community of Guadalupe

their housing was located. In addition, although many titles given to the Garífuna communities created enforceable rights, land conflicts and occupation of Garífuna land by outsiders continued. Moreover, some communities were not titled at all or Garífuna families received individual titles over communal land. The titling programs carried out over the past two decades had not solved the situation of the Garífuna communities.[6]

A new property law—discussed by the Honduran Congress when the Project was prepared—was enacted a few months after the Board approved the Project. The complainants were greatly concerned that the Project would facilitate the application of certain provisions of this law that might be detrimental to established Garífuna rights and interests. The complainants claimed the law would legalize non-Garífuna occupation of land for which Garífuna communities either hold full communal property titles or have occupied for decades. They argued that the law would support a dynamic land market favoring powerful elites at the expense of customary indigenous rights and in violation of laws that protect them.[7] The complainants believed that—since this law was the essential normative component of the legal framework supporting the Project—the Project would be the instrument through which Garífuna territorial claims would be denied and non-Garífuna would secure rights over their land.[8] According to the complainants, the Project had inadequately assessed the national legal framework since it had not considered this law.[9]

The Panel found that the Bank had conducted an analysis of the legal framework regarding indigenous peoples' property rights, including the Garífuna in the Project area, during project preparation.[10] This legal analysis raised concerns about several amendments to the existing legal and institutional framework provided by the new law and stated that these amendments must be considered in designing training and outreach programs. It also underlined

Crops and fields in Honduras

that the law may provide legitimate title in favor of people whose only claims to land were either uninterrupted possession or whose request for title had not been opposed by a legitimate owner.[11] The Panel observed that the new law contained amendments to the legal and institutional framework which were consistent with the Project's objective and that constituted an essential part of the legal framework within which the Project was implemented. However, the law also contained controversial provisions relating to the recognition of indigenous land rights,[12] such as granting specific rights to non-indigenous occupants of ethnic lands.[13] While the complainants and Bank staff raised many concerns about the new law—both before and after its enactment—there was no record showing that Management had adequately acted upon them.[14]

The Panel's investigation found that, as recognized by Bank policies, the legal context in which a project is designed and implemented is very important. In this Project, the legal context was particularly important because the complainants worried the Project would facilitate the implementation of a law that they believed was highly detrimental to their rights and interests. The Panel noted the Bank was not exempted from analyzing the potential implications of the law as part of the legal framework analysis required by Bank policies, just because regulations had not yet been issued and the alleged harm feared by the complainants was, at that stage, only a potential one. The Panel found Management was required to carry out this analysis after the law was enacted.[15]

As part of its Action Plan in response to the Panel's investigation, Management committed to working with the Government to continue assessing the local legal framework, and to hiring a Honduran lawyer to review all relevant aspects of the changed legal framework as it relates to the land rights of indigenous peoples in Honduras, including the new property law and other pertinent laws. Management also committed to review with the Government the procedures for regularizing ethnic lands. It further committed to work with the Government to update project documents and, if necessary, it would encourage the Government to issue regulations or otherwise reduce ambiguities and inconsistencies and make the relevant local legal framework one which allows for the regularization of ethic lands through consultative and conflict resolution processes that would fairly take the interests of indigenous and Afro-Honduran peoples into account.[16]

This investigation also focused on challenges relating to stakeholder engagement and local governance in this context. In the 1950s, to organize themselves politically, the Garífuna founded several entities which were the precursors to the main Garífuna organizations at the time of the complaint—OFRANEH (Organización Fraternal Negra Honduras) and ODECO (Organización de Desarrollo Étnico Comunitario).[17] A central aspect of the complaint was that the Project failed to consult with their legitimate representatives to identify the needs and interests of the affected communities.[18] The complainants were particularly concerned about the establishment of the Mesa Regional (or "Mesa"), a board for consultations created under the Project. They explained that OFRANEH did not recognize the Mesa as an institution because it was not elected by the Garífuna communities and did not represent them. The complainants viewed the Mesa as an organization that

was alien to the Garífuna's own institutions and which, therefore, could not be entrusted with fundamental decisions about regularizing Garífuna land.[19]

The Panel found that several meetings attended by the organizations representing the Garífuna took place during project preparation.[20] The Panel carefully reviewed the formation and functioning of the Mesa, and considered the creation of such an entity to unite the leaders and representatives of each Garífuna community represented an effort to establish consultations with and engage the participation of affected people.[21] However, a consultation framework for the Garífuna that excluded their leading representative bodies—such as OFRANEH and ODECO—and which lacked their support and guidance could not ensure genuine representation of the Garífuna people.[22] The Panel expressed concern that the Mesa had put in place a parallel system at odds with the way the Garífuna people had established, over the years, to represent themselves regarding the critical issue of securing their rights over land.[23] The Panel further noted that the Mesa system had divided the community, marginalized existing representatives, and that it may have undercut efforts to achieve collective title to ancestral land.[24] It also may have rendered the process of land demarcation and titling vulnerable to manipulation.[25] In addition, the establishment of the Mesa also led to a situation where the existing Inter-Sectoral Commission for Protecting the Land Rights of the Garífuna and Misquito People was ignored.[26]

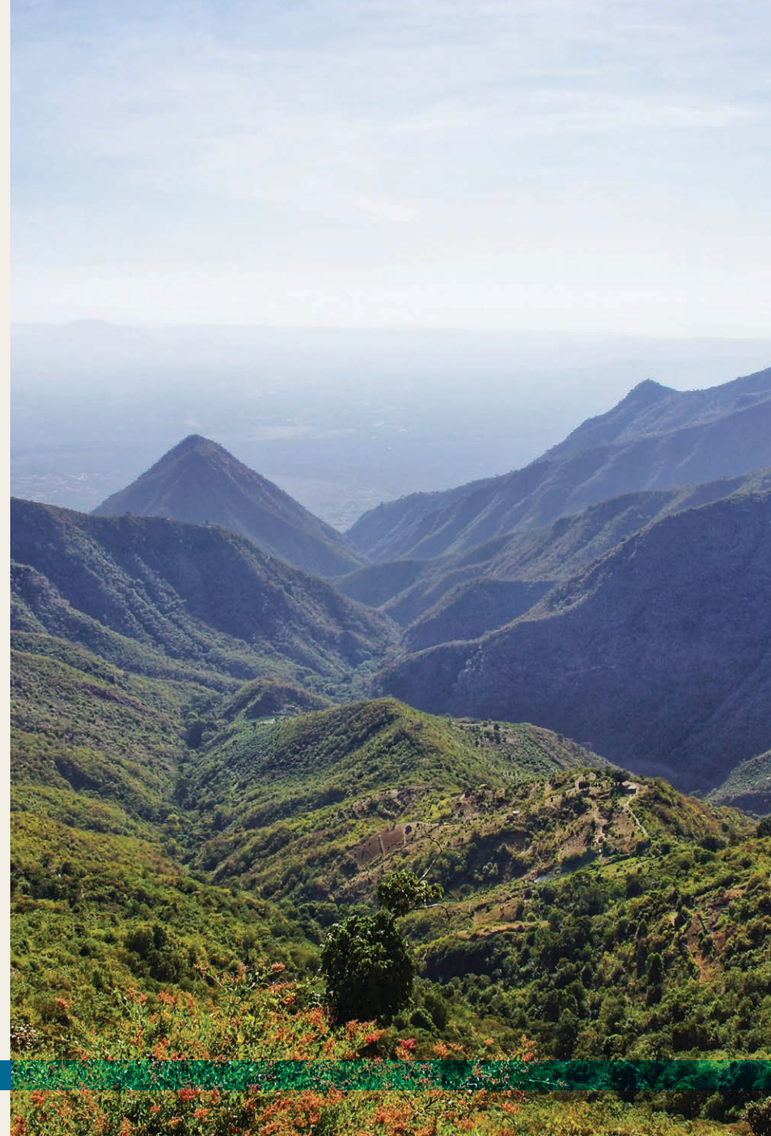
In its Action Plan responding to the Panel's investigation, Management said it had agreed with the Government that the Inter-Sectoral Commission would meet specifically to address OFRANEH's and ODECO's concerns about project implementation. Together, the Commission and Project staff would evaluate and clarify the roles of the Commission and the Mesa as complementary, consultation fora under the Project.[27].

In summary, this case study illustrates the project's challenging context of land pressure, competing uses of land, and conflict, which caused the Garífuna to lose their ancestors' land over time. It examines factors that exacerbated this situation and describes the Garífuna's relentless pursuit of land rights and claims to collective title. It describes the challenges of land titling efforts, and how the granting of individual titles can affect communal land rights. This case highlights the paramount importance of the legal context in which a project is designed and implemented. An in-depth analysis of the national legal framework serves to inform project design but must also assess legislative changes that take place during implementation and their impact on the project. Finally, it demonstrates how a consultation framework designed for a project challenged the established structure that had organized and represented the Garífuna in their struggle for land rights over the years, thereby dividing the community and marginalizing their representatives, potentially weakening efforts to achieve collective title to their ancestral lands.

SIDE BAR 1: **Kenya Natural Resource Management Project**

In 2013, Cherangany-Sengwer communities submitted a complaint to the Panel that this Project was supporting forced evictions from their indigenous lands in forest areas. Although the Panel concluded that the Project did not support such evictions, it noted that the Project should have paid more attention to this risk from the outset and identified and established measures to mitigate it.

On the issue of land regularization and titling, the Panel's investigation noted that the project was restructured in 2011 as Management had recognized that some elements of the Project's Indigenous Peoples Planning Framework were infeasible within the Project's scope and timeframe. This included the provision of titles for land occupied and used by communities in Project areas and assistance with land restitution processes, such as indigenous peoples' ability to claim lands lost between 1895 and 2002. Since it was determined that the Project could not implement these land-related commitments, they were dropped during the restructuring. The Panel recognized that the aspirations to resolve long-standing historical land claims of indigenous people were ambitious and commendable. The Panel held, however, that there was insufficient analysis of the potential risks during appraisal, and a commensurate allocation of resources—financial and human—would have been required to plan, appraise, and implement such a complex undertaking.



Cherangany hills in Kenya.

CASE STUDY 2: PANAMA LAND ADMINISTRATION PROJECT (2009/10)

The Project aimed to support the Government address the inequality and extreme poverty of rural and indigenous populations lacking secure land tenure in an environment where land administration services were highly underfunded, bureaucratic, and fragmented. The Project sought to modernize land administration by simplifying land titling procedures, improving the capacity of local institutions to map nearly half the country, establishing an integrated registry and cadaster system to certify ownership and correct titling, and consolidating protected areas and indigenous peoples' territories.

The Complaints were submitted by two indigenous communities—the Naso and Ngäbe—who alleged that project activities had contributed to a weakening of their rights to lands they traditionally occupied. The Naso claimed the Project failed to support their aspirations to establish a Comarca—an area in which indigenous peoples have collective land rights and administrative authority—and had taken actions contrary to this aim. To the Naso, ancestral lands were tantamount to their survival as a group, and they have struggled to obtain a Comarca since 1973. They also claimed the Project failed to consult with their legitimate representatives. The Ngäbe alleged that the Project did not adequately address the urgent need to demarcate so-called Annex Areas—Ngäbe territories outside the core area of their Comarca. Instead, they alleged, the Project proposed restrictive land delimitations that were improper and based on a flawed consultation process.

The Panel Investigation found that Management had, in many respects and during the initial stages of the Project, complied with key policy requirements, especially as they related to the Naso. The Panel noted that, later, when the Project's context underwent fundamental changes, Management should have been more engaged to analyze and addresses them. Regarding the claims by the Ngäbe, the Panel found that no field studies of sufficient depth seem to have been undertaken to detect possible problems in the Annex Areas.

This Project commenced amid historical struggles to secure indigenous land rights, and at a time during which private investment interests in Panama took off and land disputes grew rapidly.[28] Management acknowledged that longstanding conflicts and wars in Latin America were primarily rooted in land tenure issues, and that poor peasants and indigenous groups had lost increasing amounts of land. Management claimed it had always known of this context and the challenges it posed for project implementation, but that it considered supporting indigenous peoples consolidate their territories a worthwhile development endeavor.[29]

According to the Naso, certain actions and omissions by the Project supported or enabled private development activities contrary to their territorial rights.[30] During a crucial phase of project implementation, several events of great concern to them converged. These included the failure of legislation in the National Assembly to create their Comarca, a major schism in Naso leadership—which divided the community and left it vulnerable to land tenure threats, and the the passing of a new law on collective lands, the impacts of which were unclear and worrisome to the Naso. The Panel noted an important failure to analyze these changing circumstances.[31]

A key aspect of this case was Project support of bills to create a Naso Comarca. These bills went to Panama's National Assembly in 2004 and 2005, but were rejected.[32] The complainants believed these rejections occurred, at least in part, because the Project had begun supporting a different bill—Law No. 72 on Collective Lands—which the National Assembly approved on December 3, 2008.[33] The complainants argued that the Bank's support of this law was detrimental to their rights and undermined their long-standing desire for a Naso Comarca.[34] The Ngäbe, for their part, alleged that Law No. 72 specifically prohibited the creation of new Annex Areas and was contrary to the creation of a juridical framework for them.[35]

Management argued that it supported the creation of a Comarca for the Naso people. However, after the two Project-supported bills were rejected, Management decided to lend its support to a subsequent bill, which eventually became Law No. 72, which regulated acquisition of collective property rights for indigenous lands outside established Comarcas.[36] The Project supported the law because Management regarded it as a viable, if less than ideal, measure to improve the momentum for improved security of tenure.[37] Law No. 72 included a new provision that referred to a special territorial regime for the Naso, which the complainants believed would grant them a much lower level of administrative and political authority than they would have under a Comarca law, and they feared that this law would inhibit them from obtaining a Comarca in the future.[38] Management learned of this provision five days after approval of the law, and promptly expressed concern to the Government about the law's implications for the Naso.[39]

A legal opinion commissioned by Management and the opinions of several experts contacted by the Panel concurred that Law No. 72 was not a legal obstacle per se for the Naso to obtain approval of a Comarca, provided they could gather enough support in the National Assembly.[40] It was noted, however, that parts of this law created a confusing legal situation which caused great anxiety among the Naso.[41]

The Panel found that, in the early years of Project implementation, the Project's support for the preparation of a comarca bill was directly supportive of the territorial and administrative aspirations of the Naso.[42] The Panel viewed Management's decision to support establishing Law No. 72 as a good faith measure that seemed reasonable under the prevailing political situation. Thus, it cannot be viewed as deliberately backing off from the commitment to support the aspirations of the Naso, particularly given the signals at the time that the climate may have become less favorable to the adoption of a Comarca. The Panel found, however, that this decision should have been followed by stronger efforts to seek clarity on the legal ambiguities of Law No. 72 with respect to the territorial aspirations of the Naso.[43] The Panel also observed that Management failed to assess the potential need for concrete mitigation measures to protect Naso territory in the legislative vacuum that existed after rejection of the Comarca bills.[44]

Regarding Ngäbe concerns about the impacts of Law No. 72, the Panel believed Management should have followed up on several inconclusive and, at times, contradictory legal opinions and reports.[45] The Panel also noted that the Project's early stages inadequately identified and addressed issues of land verification and delimitation of the Annex Areas, which were home to many Ngäbe communities. This exposed their lands to development pressures over many years, hampering their efforts to gain recognition of their lands.[46] The Panel acknowledged the Ngäbe had lost lands due to tourism and other development activities. Examples of encroachment included Government concessions for hydroelectric projects on indigenous lands, including the Chan 75 dam that affected two Annex Areas. While the Bank did not finance Chan 75, the Panel noted that, had issues of co-management been properly addressed and the Annex Areas been delimited in a timely way, the Ngäbe would have been in a better position to negotiate the terms and conditions of any concession within their land.[47]

In its Action Plan in response to the investigation, Management committed to recommend to the Government to further enhance awareness among indigenous peoples of the contents and implications of Law No. 72 and its regulations, and that the outstanding land claims of the Naso and the Ngäbe be addressed by the National Authority of Land Administration as one of its immediate priorities.[48].

One of the main allegations in this case was also that the Project failed to properly recognize and consult with the legitimate leader of the Naso indigenous people.[49] Between 2003 and 2004, a major schism in Naso leadership occurred when the Naso king, Tito Santana, supported a hydroelectric project. Those opposed to this project then recognized Tito Santana's uncle, Valentín Santana, as the new king.[50] This left the Naso community divided and vulnerable to land tenure threats. The complainants alleged that the Project continued consulting Tito Santana on Project matters and thereby no longer consulting with the "legitimate" representatives of the Naso. They also claimed this undermined their efforts to gain recognition of the Naso Comarca.[51].

Management explained that, upon learning the complainants' concerns, it stressed to the Government that the Project should consult with both groups to meet the policy requirements on meaningful consultations, and it encouraged mediation between the two "factions."[52] The Panel's investigation determined that Management's efforts to deal with both—even though the Government officially recognized Tito Santana as the Naso king—denoted a good faith attempt to ensure meaningful consultation and that the genuine representatives of the Naso indigenous peoples participated in the process.[53] However, the Panel noted that a significant amount of time had lapsed before Management recommended action in response to the risks posed for the Project by the Naso schism.[54].

In its Action Plan, Management explained that it would make use of available opportunities to continue its engagement on indigenous peoples' issues in Panama. It would support a multi-stakeholder workshop to discuss good practices and strategies to support inclusive development of indigenous peoples, drawing upon the lessons from this and other projects in Panama. Management committed to incorporate the Panel's findings and lessons on consultations and other aspects of this Project into the design and implementation of similar projects in the region.[55]

The Panel investigation concluded that, by seeking to regularize individual tenure rights and consolidate indigenous territories, the Project design appears to have led to the potential for conflict between the Project's "left-hand" (titling activities) and its "right-hand" (protection of indigenous land areas), which was exacerbated by the scale and pace of titling activities under the Project. In this case, co-financing arrangements supported components relating to titling, but not the component relating to the protection of indigenous territories. While co-financing arrangements undoubtedly increased the overall impact of the Project, they may have heightened the possibility that titling activities could take place within indigenous land areas intended for protection under the Project.

To summarize, this case study involves fundamental questions of the land rights and tenure security of the Naso and Ngäbe indigenous peoples. It illustrates the challenges of pursuing both the regularization of individual tenure rights and the consolidation of indigenous territories in a complex environment confronted by land pressure and conflict. This case shows the importance of understanding the impact of new legislation and the need to seek timely clarification of legal ambiguities that may adversely affect a project's intended beneficiaries. It also demonstrates the requirement to stay abreast of changing circumstances and to adapt project design and implementation as needed.

Cacao tree

SIDE BAR 2: **Kenya Electricity Expansion Project**

In 2014, Maasai communities in Kenya's Rift Valley submitted a complaint to the Panel concerning their resettlement due to the construction of a geothermal plant. At first the Project Affected Persons (PAPs) agreed in 2013 to resettle if they got communal land title to the resettlement site; they ultimately received it in 2019. The transfer of another land title for a smaller plot, the so-called Cultural Center area, required even longer. While the Panel investigation concluded before the land titles were transferred, Management's Progress Reports on the implementation of its Action Plan in response to the investigation provided further details on the land titling process.

In July 2013, the PAPs and the Project Implementation Unit (PIU) agreed that resettlement would occur only after land tenure was secured through communal land title. A year later, in August 2014, when the title was still pending, the PAPs and the PIU amended the agreement to allow resettlement prior to obtaining this title, and the PIU committed to process the title deeds within six months from the date of relocation. At that time, the delays in securing title were due to a court case affecting a part of the land. After the court ruled, the Panel learned the title transfer had started and that this process was expected to take one to three months. When the Panel completed its investigation in July 2015, title still had not yet been transferred and the Panel noted in its report that, considering the long history of land tenure insecurity of the Maasai, particular attention must be paid to securing the communal land title for them.

Following the Panel's investigation and Board approval of an Action Plan with remedial actions, Management began submitting yearly Progress Reports to the Board. The April 2018 Report stated that the PAPs' trustees had signed the title transfer forms for most of the land in February 2018, and that these forms were lodged with the Ministry of Lands for registration and issuance of the title. This title transfer was expected to finish by May 2018. The need to agree on the land's boundaries delayed transfer of the Cultural Center title, which was now expected by June 2018. The April 2019 Progress Report explained that a 999-year leasehold title for the resettlement site was transferred to the trustees in February 2019 and formally handed over to the PAPs in March 2019.

According to Management, the delays could be attributed to the following. First, the Government's anti-corruption fight increased the due diligence needed for land transactions. Second, there was a typographical error in a reference number in the subdivision scheme, which was noticed during the titling process and required correction. Third, the Ministry of Lands issued the title—based on the approved subdivision deed plans—to the PIU which was tasked to prepare a second transfer to the PAPs' trustees. The transfer of the Cultural Center land title was still being processed at that time. The June 2020 Progress Report confirmed that all relevant, legal stages for the land transfer were completed, and only minor administrative steps remained to be finalized once the Lands Office services resumed after Covid-19 restrictions were lifted.

Landscape of the Rift Valley in Kenya

Mandacaru cactus in the State of Piaui, Brazil

SIDE BAR 3: **Brazil Piaui Pillars of Growth and Social Inclusion Project (2019/20)**

In 2019, the Panel received a complaint about this Project, which included activities supporting implementation of the Land Tenure Regulation Program and the strengthening of real property rights. The complaint alleged that local traditional communities had been excluded from the land tenure regularization process under the Project, which complainants said mainly supported agribusiness and large landowners. During its eligibility assessment, the Panel noted that the Project only supported access to land titling, registration, and legal ownership of the lands of small-scale farmers and traditional communities. The Panel noted that the Bank may have underestimated the complexity of the land regularization process and the capacity requirements of the implementing agency at the start of the Project. Nevertheless, the Panel observed that the alleged harm had not occurred as a result of the Project and that the slow pace of land titling in traditional communities was due to factors outside the Project's control, and therefore did not recommend an investigation.

CASE STUDY 3: CAMBODIA LAND MANAGEMENT AND ADMINISTRATION PROJECT (2009/10)

The Project took place in the context where the Khmer Rouge regime had collectivized all land and destroyed all land records. The subsequent Government had initiated a program to issue land tenure certificates for private ownership, which was progressing slowly due to limited Government capacity. The Project sought to assist the borrower's efforts to implement actions, objectives, and policies designed to improve land tenure security and promote development of efficient land markets. This included the development of national policies, a regulatory framework and institutions for land administration, the issuance and registration of titles in rural and urban areas in Project provinces, and the establishment of an efficient and transparent land administration system.

The Complaint alleged that after the municipality agreed with a private company to develop an area that included the Boeung Kak Lake (BKL) area of Phnom Penh, the residents there were unfairly pressured to leave. According to the complaint, they were denied adjudication of their property claims, evicted from their homes, and given inadequate compensation. The complainants alleged that the Project failed to formalize their tenure and did not transfer their customary rights under formalized land titles, thereby weakening their pre-existing tenure rights.

The Panel Investigation found that the BKL residents were indeed denied access to due process to adjudicate their property claims under the Project and that Management was slow to respond to the evictions. More than 1,500 families were estimated to have been evicted and a larger number were under threat of eviction in this area.[56] The Government of Cambodia did not recognize that the Project and these evictions were connected, but Bank Management agreed with the complaint that a link existed.[57] The Panel found that design flaws in the Project led to the arbitrary exclusion of land from the process.[58] This had the effect of denying residents, especially the poor, the ability to claim their preexisting land rights under the Project's process. The Panel noted that the project design also lacked a clear strategy to deal with land disputes between state entities and private individuals.

Another contextual dimension of the Project was that, as prime urban land in central Phnom Penh, the Boeung Kak Lake (BKL) area had long been considered ripe for redevelopment. While an international design competition for its redevelopment was ongoing, the Government had already decided to redevelop the area on a commercial basis drawing on a private developer with whom it had signed a 99-year lease for the land. This was followed by the approval of a decree converting the BKL area including the lake, from state public land to state private land.[59] The private developer's plans included filling in a major part of the lake, which was a valuable natural environment and source of livelihood for many people. Despite protests from residents and NGOs, the company started pumping sand into the lake. Shortly after, the local press began reporting cases of flooded homes, pollution, sick children, and the death of a 61-year-old man electrocuted during the area's flooding. Many houses collapsed into the water or became uninhabitable.[60]

By 2009, the Project had registered and titled more than 1.1 million parcels of land, which the Panel recognized as an important achievement.[61] At the same time, the Panel noted that the degree of recognition of customary and related possessory tenure systems varied greatly between areas, and such systems seem to have been weakened over time.[62] The degree of security provided by traditional, customary, or other non-formal land tenure systems, especially in urban areas, had declined substantially since the early 1990s. Although this was well known before the Project was designed, and the project appraisal document clearly acknowledged this problem and its challenges, the Panel found critical weaknesses in both the design and implementation of Project measures to protect poor and vulnerable groups relying on such customary or other non-formalized tenure rights.[63]

The Panel examined the history of the tenure regimes, and historical policies and laws related to state land management. Its investigation focused on the 2001 Land Law, which recognized three domains of land ownership in Cambodia: State public property (e.g., forests and protected areas) for resource conservation, State private property for economic and social development, and private property (e.g., residential or agricultural land).[64] Under the definition of Article 15 of the 2001 Land Law, BKL—a natural lake—is State public land, although the surrounding area remained undefined. Land Law stated that State public property can be transferred to State private property when State public property lose their public interest use. Land can only be reclassified from State public to State private land after being registered as State land in the land registry "[u]nless otherwise provided by law"[65] and in accordance with the Land Law. The Panel noted that a key objective of the Project was to undertake such registration. The Panel noted that by leasing the BKL area for private development and reclassifying it from State public property to State private property, the Government effectively determined that land around the lake, and even the lake itself, lost its public interest use and could be subject to private property rights. By designating it as State private, the residents or possessors of land in the area could reasonably consider themselves as entitled to having their claims adjudicated.[66] The Panel agreed.

In May 2011 Management submitted to the Board its Response and Recommendation following the Panel's investigation. In August 2011, the Bank decided to freeze new lending to Cambodia pending the resolution of issues related to the BKL case, which continued for five years. Management issued an implementation completion and results report in December 2011, which indicated that the Government issued Sub-decree # 183 in August 2011, giving over 700 families still living near the lake approximately 12 hectares of land on the planned development site, and the Government issued titles to 259 of the families on December 10, 2011.[67] World Bank lending to Cambodia resumed in 2016.

This case study illustrates a complex situation of land pressure and conflict, where large-scale evictions took place in an area that fell under the Project's land management and administration activities. While the Government in this instance did not recognize the connection between the Project and the evictions, the investigation found that, due to design flaws, the Project had denied affected residents access to due process to adjudicate their property claims under the Project. The case demonstrates the importance of assessing the national legal framework to inform project design, the need to stay abreast of changing classifications of affected land, and how this impacts project activities.

Sand filling at the Boeung Kak Lake

INSIGHTS

Land administration and management activities are intrinsically difficult to implement effectively and their success hinges on the enabling environment. Comprehensive risk assessments need to focus on the historical and social context of the project area and strive to understand different types of pressures on land and underlying conflicts. It is critically important to conduct a wide-ranging analysis of the national legal framework at the outset to inform project design. It is equally important to keep abreast of any changes or potential changes in legislation and other relevant factors, and the project beneficiaries' views about these, and to adjust project design or implementation in an appropriate and timely manner. Providing communal/collective titles to indigenous groups is a complex undertaking and may compete with individual titling efforts in a given area. Such efforts require an in-depth understanding of the targeted beneficiary communities, their history, livelihoods, land management practices, and governance. Meaningful stakeholder engagement should derive from an understanding that land tenure security shapes the lives of project-affected people for generations, and in the case of indigenous peoples, is often a matter of survival of their community and identity. A thorough understanding of local governance structures and power relations—especially those concerned with community representation in Project-related, stakeholder engagement processes—is also critical.

Housing structure in Panama

ENDNOTES

1 This report found that 50 Panel cases had allegations of reprisals, of which 86 percent (43 cases) related to land concerns. See p. 24.

2 The Garífuna are descendants of the Carib and Arawak native populations of the Amazon and Eastern Caribbean who intermarried with enslaved Africans. Succeeding generations retained their own language, culture, and religion, and established a new identity that aided in their survival. Garífuna today live primarily on the Caribbean coast of Central America in Belize, Guatemala, Honduras, and Nicaragua. In Honduras, there are 38 Garífuna communities. The Garífuna maintained specific religious beliefs and festivals which denote their connection with their land. They also maintained traditional communal uses of land. The Inspection Panel, The Inspection Panel Investigation Report Honduras: Land Administration Project (IDA Credit 3858-HO) (Honduras Investigation Report), June 12, 2007, pp. 16-19.

3 Ibid, p. 32.

4 Ibid, pp. 20-31.

5 Ibid, p. xv and 29.

6 Ibid, pp. 30 and 31.

7 Ibid, p. 56.

8 Ibid.

9 Ibid., p. xxi.

10 Ibid., p. 58.

11 Ibid., pp. 58-60.

12 Ibid. p. 61.

13 Ibid., p. 63.

14 Ibid., p. 62.

15 Ibid., pp. 68 and 69.

16 The World Bank, Management Report and Recommendation in Response to the Inspection Panel Investigation Report Honduras Land Administration Project (Credit No. 3858-HO) (Honduras Management Report and Recommendation), August 3, 2007, p. 16.

17 Honduras Investigation Report, pp. 33 and 34.

18 Ibid., pp. x and 37.

19 Ibid., p. 44.

20 Ibid., pp. 42 and 43.

21 Ibid., pp. 46-51.

22 Ibid., p. 52.

23 Ibid., p. 53.

24 Ibid.

25 Ibid., p. xx.

26 Ibid., p. 104.

27 Honduras Management Report and Recommendation, p. 15.

28 The Inspection Panel, The Inspection Panel Investigation Report Panama: Land Administration Project (Loan No. 7045-PAN) (Panama Investigation Report), September 16, 2010, pp. v and vi.

29 Ibid., pp. xi, xii, and 5.

30 Ibid., p. 30.

31 Ibid., pp. 86 and 87.

32 Ibid., p. 31.

33 Ibid., p. 33.

34 Ibid., p. x.

35 Ibid., p. vi.

36 Ibid., pp. xvii, xviii, and 6.

37 Ibid., p. 33.

38 Ibid..

39 Ibid., p. 6.

40 Ibid., p. 49.

41 Ibid., pp. xviii and xix.

42 Ibid., p. 38.

43 Ibid., p. 52.

44 Ibid., p. 86.

45 Ibid., p. 77.

46 Ibid., p. v.

47 Ibid., pp. xxiv, xxv, and 83.

48 The World Bank, Management Report and Recommendation in Response to the Inspection Panel Investigation Report Panama Land Administration Project (Loan No. 7045-PAN) (Panama Management Report and Recommendation), October 28, 2010, p. vii. , p. vii.

49 Panama Investigation Report, p. 39.

50 Ibid., p. 40.

51 Ibid., pp. 39 and 40.

52 Ibid..

53 Ibid., p. 41.

54 Ibid., p. 42.

55 Panama Management Report and Recommendation, p. vii.

56 The Inspection Panel, The Inspection Panel Investigation Report Cambodia: Land Management and Administration Project (Credit No. 3650 - KH) (Cambodia Investigation Report), November 23, 2010, p. xi.

57 Ibid., p. 33.

58 Ibid., p. 67.

59 Ibid., pp. xv and 27.

60 Ibid., p. xvi.

61 Ibid., p. 64.

62 Ibid.

63 Ibid., p. 66.

64 Ibid., p. 17.

65 Royal Decree on 'Principles and Transitional Provisions on Transferring Public Properties of the State and Public Legal Entities,' August 3, 2006, Article 14.

66 Cambodia Investigation Report, p. 41.

67 The Inspection Panel, Annual Report July 1, 2011-June 30, 2012.

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