

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION****THE INSPECTION PANEL**

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**Werner Kiene
Chairperson**

IPN REQUEST RQ 09/04

March 20, 2009

**MEMORANDUM TO THE EXECUTIVE DIRECTORS AND ALTERNATES
OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT**

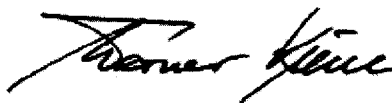
**Re: Request for Inspection
PANAMA: Land Administration Project (Loan No. 7045-PAN)**

Please be advised that on March 17, 2009, the Inspection Panel (the "Panel") received a Request for Inspection (the "Request") related to the above-mentioned Project. The Panel registered the Request for Inspection in the Panel's Register on March 20, 2009, as provided in paragraph 17 of the Panel's Operating Procedures. It also delivered a copy of the Request to the President of IBRD pursuant to paragraph 17 of the Resolution that established the Panel. Enclosed for your information are:

- (1) A copy of the Notice of Registration; and
- (2) A copy of the transmittal Memorandum to the President.

Because this Request raises similar issues and refers to the same project as the Request for Inspection of February 25, 2009, and for reasons of economy and efficiency, the Panel will consider processing both Requests jointly as it has done in previous similar situations.

Enclosures



**Werner Kiene
Chairperson**

IPN REQUEST RQ 09/04

March 20, 2009

**MEMORANDUM TO THE PRESIDENT OF THE
INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT**

**Request for Inspection
PANAMA: Land Administration Project (Loan No. 7045-PAN)**

In accordance with paragraph 17 of IBRD Resolution that established the Inspection Panel (the "Resolution") and paragraph 17 of the Inspection Panel's Operating Procedures (the "Operating Procedures"), I hereby notify you that on March 17, 2009, the Inspection Panel (the "Panel") received a Request for Inspection (the "Request") related to the above-referenced Projects.

I have on March 20, 2009, which is also the date of the dispatch of this notice, registered the Request in the Inspection Panel Register. Enclosed are:

1. copy of the Notice of Registration; and
2. copy of the Request for Inspection


In accordance with paragraph 18 of the Resolution, paragraphs 2 and 8 of the "*Conclusions of the Board's Second Review of the Inspection Panel*" (the "1999 Clarifications"), and paragraph 18 (d) of the Operating Procedures, Bank Management is hereby notified that it must provide the Panel, no later than April 20, 2009, with written evidence that it has complied, or intends to comply with the Bank's relevant policies and procedures in relation to the above-referenced Projects. The subject matter the Management must deal with in a response to the Request is set out in paragraphs 3 and 4 of the 1999 Clarifications.

After receiving the Management response, the Panel will, as outlined in the 1999 Clarifications and as provided by paragraph 19 of the Resolution, "*determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.*"

Because this Request raises similar issues and refers to the same project as the Request for Inspection of February 25, 2009, and for reasons of economy and efficiency, the Panel will consider processing both Requests jointly as it has done in previous similar situations.

The Request has been assigned IPN Request Number RQ 09/04.

Sincerely,

A handwritten signature in black ink, appearing to read "Werner Kiene". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

Werner Kiene
Chairperson

Enclosures:

Request for Inspection
Notice of Registration

**INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION**

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT
INTERNATIONAL DEVELOPMENT ASSOCIATION

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IPN REQUEST RQ 09/04

March 20, 2009

NOTICE OF REGISTRATION

**Re: Request for Inspection
PANAMA: Land Administration Project (Loan No. 7045-PAN)**

On March 17, 2009 the Inspection Panel (the “Panel”) received a Request for Inspection (the “Request”) related to the Panama: Land Administration Project (the “Project”—in Spanish, *Programa Nacional de Administración de Tierras*—PRONAT). The Request was submitted by leaders of the “*Congreso de Area Anexa de la Provincia De Bocas Del Toro*” on behalf of the communities that live in the so-called “*áreas anexas*”¹ to the Comarca Ngabe-Bulge² in the Bocas del Toro Province, Panama (the “Requesters”). The Requesters claim that they and the community that they represent have been harmed and are likely to suffer further harm from the above-referenced Project.

On February 25, 2009, the Panel received a first Request related to this Project raising similar issues on non-compliance and harm, and registered it in the Inspection Panel Register on March 11, 2009 as IPN Request RQ01/09. The first Request was submitted by representatives of the indigenous community of Pueblo Naso, several individual members of the community and representatives of some community organizations.

The Project

The Project is partially financed by a loan from the International Bank for Reconstruction and Development (the “Bank”) in an amount equal to forty-seven million nine hundred thousand dollars (US\$ 47,900,000). The Loan was approved on January 16, 2001. After experiencing some implementation problems, the Project was restructured on

¹ In English “neighboring areas”

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

June 23, 2006 to narrow the project scope and outputs and improve “*implementation and financing modalities.*”³

According to the original Loan Agreement, the objectives of the Project were to: (a) *promote equitable access to land and improve land tenure security by providing Land Administration Services in the Project Area; and (b) enhance natural resources conservation through the consolidation of the SINAP⁴ and Indigenous Peoples Territories.* The Loan Agreement, as amended to reflect the restructuring of the Project, provides, however, that “*the objective of the Project is to modernize the land administration system, including priority protected areas and Indigenous Peoples Territories.*”⁵

After being restructured in March 2006, the Project has four components:⁶ (1) Land Policy, Legal and Institutional Framework, which includes activities aimed at improving the existing policy and legal institutional framework and strengthening the institutions providing land administration services; (2) Land Regularization Services, supporting the modernization of the Borrower’s geodetic network, the gathering and analysis of land tenure related data, including the development and implementation of an Integrated Cadastral and Registry Information System (SIICAR) and “*the carrying out of legal cadastre surveys and area-based measurement and land demarcation activities;*” (3) Consolidation of Protected Areas and Indigenous Territories, which supports the consolidation of the National Protected Areas System (SINAP), the establishment and consolidation of protected areas within SINAP, and the establishment and consolidation of indigenous territories in the project area; and (4) Project Administration, Monitoring & Evaluation providing technical assistance services and support for land administration entities at national and local level.

The Project Appraisal Document (PAD) states that Project-supported land administration activities cover a range of land regularization actions, including legal rights recognition, titling, conflict resolution, legal cadastre, and registry, and that the consolidation of SINAP and indigenous territories, entails mapping, field demarcation, buffer zone limits, determination of their legal status; and land management plans in selected areas including local and participatory consultation processes.⁷

The Project component related to Consolidation of Protected Areas and Indigenous Territories entails the carrying out of physical demarcation activities in protected areas, and provides for participatory decision-making processes to define boundaries and status of the demarcated areas. In this regard, the PAD states that “*consolidation of indigenous peoples territories includes not only technical actions related to demarcation*” but also a number of complementary activities, such as conflict resolution and “*support to design or*

³ Memorandum and Recommendation of the President on a Proposal to Restructure the Land Administration Project – Loan No. 7045- PAN for the Republic of Panama., dated March 27, 2006. SEC. R2006-0047, dated March 30, 2006.

⁴ The Loan Agreement states that “SINAP” means “Sistema Nacional de Tierras Protegidas” the Borrower’s system of protected areas.

⁵ Amendment to the Loan Agreement, dated June 23, 2006.

⁶ Source: current Project Information Document (PID)

⁷ Project Appraisal Document (PAD) on a Proposed Loan in the Amount of US\$ 47.9 million to the Republic of Panama for a Land Administration Project, dated December 14, 2000, pg. 3

complete the *Cartas Orgánicas*⁸ [Organic Charters] and other regulations and norms dealing with the administration of indigenous territories”⁹(emphasis added).

The Request

The Requesters object to the way the Project is being implemented, particularly in relation to disclosure of information activities, and the consultation and measurement methods utilized in the demarcation of the Ngabe territories in the Bocas del Toro province, the Parque Internacional (World Heritage Site), the Bosque Protector [Protector Forest] Palo Seco (tropical upland forest), and the Bastimentos National Marine Park. According to the Requesters, not only do the Project’s actions violate their human and land occupation rights, but also contravene to the conventions and international treaties to which Panama is a party as well as “*the World Bank’s strategies and operational policies on indigenous peoples approved by the Bank’s Board on February 22, 2006.*”

The Requesters state that the Government rejected a proposal on how to deal with the “*áreas anexas*” (defined as such in Law No. 10 of 1997) and, as a result, it was not possible to demarcate these areas or territories that “were left out” of the Comarca Ngabe-Bugle.

The Requesters claim that, upon a request from the communities of the “*áreas anexas*” and of the islands of the Boca del Toro province, local Bank staff agreed to meet with them in the PRONAT offices in the town of Changuinola. In this meeting, to which Government officials also participated, the Requesters expressed their concerns about the implementation of the PRONAT and what they consider “*negligence and irregularities*” directly affecting the land rights of the Ngabe communities of the Bocas del Toro province and the “*áreas anexas*”, which remain outside the limits of the Comarca Ngabe-Bugle. According to the Requesters, as a result of this meeting, Bank staff agreed to make an evaluation of the Project and address their concerns.

The Requesters claim that during a follow-up visit that took place in January 2008, local Bank staff were informed that the communities were about to complain against irregularities in the implementation of PRONAT to the Bank’s “executive management” in Washington. In response, the Requesters state, they were then told to wait until a March 2, 2008 community meeting where local Bank staff would present an answer to their concerns. According to the Requesters nobody from the Bank attended the March meeting and until now they have yet to receive a response from the Bank.

According to the Requesters, in 2001 the Government of Panama obtained Bank financing so that PRONAT could measure and demarcate the territories of the native peoples of the Bocas del Toro province. They claim, however, that “*practically since that moment, this Program has violated the indigenous land rights, since PRONAT’s main objective is to title land and not to demarcate territories.*” They also claim that the Project is restricting the areas recognized as indigenous peoples lands to those used for housing,

⁸ A “Carta Orgánica” is a set of rules and regulations governing the internal affairs of a Comarca.

⁹ PAD pp. 6–7

excluding the areas that the communities use “for materials, medicines, craft items, workshops and other production activities”

The Requesters argue that “the lack of territorial protection has allowed tourism, mining and hydroelectric enterprises to speculate with our land which is shamelessly given away by the national authorities by way of Law number 2 of 2006 on concession and titling of islands and coasts ...”¹⁰

The Request also claim that the Bank-financed Project supported a new Bill of Law, approved by the National Assembly on December 3, 2008 as Law No. 72, which established collective land property in indigenous territories and specifically prohibited the creation of new “*áreas anexas*.” In the Requesters’ opinion, Law No. 72 “constitutes a flagrant and very serious violation of the sole and true aspiration of the communities of the ‘*áreas anexas*’, that is, the creation of a juridical framework that would respect the cultural and all forms of political life of the Ngabe-Bugle people.”

The Requesters state that they “hold directly responsible” the Government and Government institutions for their problems but, at the same time, that they “are also disappointed with the World Bank, who has not enforced its operational policies on indigenous peoples,” adding that for this reason they are “requesting the Inspection Panel to carry out an in-depth and detailed investigation of all that has happened since the arrival of PRONAT in our territory.”

The above claims may constitute non-compliance by the Bank with various provisions of the following operational Policies and Procedures:

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

In accordance with paragraph 17 of the Panel’s Operating Procedures (the “Operating Procedures”), I am notifying you that I have, on March 20, 2009, which is also the date of the dispatch of this notice, registered this Request in the Inspection Panel Register. Please note that the Panel’s registration is an administrative procedure and it implies no judgment whatsoever concerning the merits of the Request for Inspection.

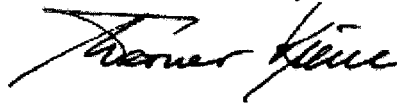
As provided in paragraph 18 of the IBRD Resolution that established the Panel (‘Resolution’), paragraphs 2 and 8 of the “*Conclusions of the Board’s Second Review of the Inspection Panel*” (the “1999 Clarifications”), and paragraph 18(d) of the Operating Procedures, Bank Management must provide the Panel, no later than April 20, 2009, with written evidence that it has complied, or intends to comply, with the Bank’s relevant policies and procedures in relation to the above-referenced Project. The subject matter that Management must deal with in a response to the Request is set out in paragraphs 3 and 4 of the 1999 Clarifications.

¹⁰ The Request refers specifically to “the concession of 6.215 hectares in the rural area of Valle Risco, a Ngabe indigenous territory, granted by ANAM [Autoridad Nacional del Ambiente] for the construction of the hydroelectric project Chan 75”, and points out that this case was denounced to the Supreme Court of Justice, the Inter American Commission on Human Rights, and to the United Nations Rapporteur on Indigenous Peoples.

After receiving the Management response, the Panel will, as outlined in the 1999 Clarifications and as provided by paragraph 19 of the Resolution, “*determine whether the Request meets the eligibility criteria set out in paragraphs 12 to 14 [of the Resolution] and shall make a recommendation to the Executive Directors as to whether the matter should be investigated.*”

The Request has been assigned IPN Request Number RQ 09/04.

Yours sincerely,



Werner Kiene
Chairperson

Messrs Pedro Abrego
Presidente de Área Anexa
Dionisio Elington
Presidente de Área Insular
Feliciano Santo
MODETEAP

Mr. Robert B. Zoellick
President
International Bank for Reconstruction and Development

The Executive Directors and Alternates
International Bank for Reconstruction and Development