



Cambodia Land Management and Administration Project

Enhanced Review Report

July 13, 2009

This report presents the findings and recommendations of the Enhanced Review of the Land Management and Administration Project. The report was sent to the Royal Government of Cambodia on July 15, 2009.

Main Messages

(i) *The Land Management and Administration Project (LMAP) is a comprehensive land administration and management project including investments to develop land-related policy, legal and regulatory instruments, capacity building, land conflict resolution mechanisms and land titling and registration. LMAP activities are to be implemented in eleven "Project Provinces"¹. The Development Objective of the project is to assist the Royal Government of Cambodia to implement its Land Policy Program as spelled out in May 2001, and more specifically to improve land tenure security and promote the development of efficient land markets.*

(ii) *LMAP has delivered undisputed benefits, including the registering and titling of nearly one million parcels of land. Other successes include institutional strengthening, enhancing the land policy and legal framework, and strengthening cadastral commissions.*

(iii) *There is, however, a disconnect between institutional, legal and policy achievements and insecurity of land tenure for the poor, especially in urban areas, and for indigenous people. This disconnect can be attributed in part to the design of some of the project's components, in part to the way the project was implemented, as well as delays or non implementation of some activities, and in part to rapid evolutions in the land market some of which are beyond the direct control of the Ministry of Land which is in charge of the implementation of the LMAP. As a result, LMAP's noteworthy successes in land titling in rural areas have not been matched in urban areas of project provinces where land disputes are known to be more common.*

(iv) *During design, there was a decision in line with Cambodian Law that "the project will not title lands in areas where disputes are likely until agreements are reached on the status of the Land" Clarifying the status of the Land would have required the development and implementation of clear procedures for State land classification, which was planned under Component 5 but was only partially implemented resulting in the absence of official state mapping. As a result some land areas have been excluded from titling without clear criteria or explanation provided to the local communities². This creates a disconnect with LMAP's objective of improving land security and should therefore be reviewed and corrected.*

(v) *Recent episodes of evictions highlight the need for the Government to accelerate the adoption of those elements of the land sector reform that protect the land rights of all land users, possessors and owners. Because of weaknesses highlighted above in both project's design and implementation, as well as the non implementation of the anticipated informal settlements program to be implemented in parallel to LMAP, LMAP has not proved to be an effective instrument so far in helping the Government to deal with informal settlements. Given the objective of LMAP of improving land security it would be important that the Bank and the Government agree on ways to address this shortcoming going forward.*

¹ Three additional project provinces have been added under a CIDA Grant. The total number of provinces covered currently is fourteen.

² Because eviction occurred in disputed land areas which are excluded from the scope of the LMAP, the resettlement and safeguards policy framework has not been tested

(vi) *Going forward, the Bank will need to agree with Government and support their efforts to take remedial actions, in consultation with stakeholders, including affected peoples, in order to address deficiencies in LMAP design and implementation. In addition, the Bank and the other LMAP donors should engage the Government in a broader land sector policy dialogue to encourage them to apply the LMAP Environment and Social Guidelines to align the procedures used in LMAP financed activities with provincial/municipal land-related titling and registration activities.*

Report of the LMAP Enhanced Review Mission

I. Enhanced Review Mission Background

1. The ERM was comprised of Mohammed A. Bekhechi (Lead Counsel, World Bank) and Lars Lund (Social Safeguard Consultant). The ERM met with stakeholders³ and conducted their review between March 30 and April 12, 2009 with the following two objectives:

- i. To assess the extent to which the LMAP is being implemented in compliance with the project's Development Credit Agreement (DCA) and Cambodian Land Law; and
- ii. in connection to the recent eviction cases, to provide World Bank management with a thorough assessment of the situation on the ground, including the potential linkages between LMAP and the evictions.

2. More specifically, the ERM was asked to provide management with answers to the following questions:

- i. Is there any disconnect between the LMAP as designed and implemented particularly with regard to the delayed/non-implementation of any specific activities and/or components of the project?
- ii. Was the design decision to exclude areas of contested tenure appropriate in light of increasing land prices, a quickening pace of resettlement, and adoption of forced evictions by Government?
- iii. Are resettlements in communities associated with LMAP being handled in a manner consistent with the resettlement policy framework prepared for the project and the World Bank established safeguard policies as applicable to the project?
- iv. Has the World Bank failed to detect the alleged abuses in implementation of the land law, and raise them with the government?

3. The remainder of this report provides the ERM's response to those questions, along with recommendations to Bank management.

II. The Land Management and Administration Project

A. Background

³ These include: LMAP staff within the Ministry in charge of land; Cadastral Commission Staff in Phnom Penh; Municipality of Phnom Penh officials; Ministry of Finance staff involved in the management of resettlement; Civil Society's Organizations and community leaders including those threatened by imminent evictions, such as Group of 78; donors' representatives including ADB, GTZ, SIDA, CIDA, USAID, FINMAP; international NGOs and institutions represented in Cambodia and involved in human rights issues, and persons and groups evicted from their lands, notably from the Dey Krahorm and "resettled" outside Phnom Penh

4. The LMAP (Credit 3605 KH) was approved on March 27, 2002, with a closing date December 31, 2007. It was extended in December 2007 and a new closing date set for December 31, 2009. It was also suspended from June 2006 to February 2007 due to procurement issues which are not discussed in this report.

5. LMAP's objectives as defined in the Project Appraisal Document (PAD) and DCA are to assist the Royal Government of Cambodia to implement its "program of actions, objectives and policies designed to improve land tenure security and promote the development of efficient land markets"⁴ (Government's Program). This government program 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"⁵. LMAP was designed to be implemented in 11 "Project Provinces"⁶ defined in the DCA as "any province or municipality in the territory of the Borrower where the Project will be implemented"⁷.

6. To achieve these objectives, LMAP finances five inter-related components.

Component 1: Development of land policies and regulatory framework

Component 2: Institutional development,

Component 3: Land titling program and development and land registration system,

Component 4: Strengthening of mechanisms for dispute resolution, and

Component 5: Land management.

7. Environmental and Social Guidelines (ESG) were prepared for the project and adopted consistent with the Bank's OP 4.01 (Environmental Assessment), OD 4.30 (Involuntary Resettlement) and OD 4.20 (Indigenous Peoples). The ESG document states that:

- a. "Under the land management component [Component (5)], the Project will support the classification of land and the delimitation of boundaries of land of different classifications. As making these decisions will not be always smooth, it is expected that the process will involve full participation of all stakeholders, including relevant government agencies, central, provincial and local government bodies, and families settled in the area" ... Also the Project was designed to support the development of other policies, including [...], those supporting registering community and indigenous peoples' land rights, and allocating and developing land for the landless poor"⁸ [emphasis added]
- b. "While no eviction, involuntary resettlement or land acquisition is anticipated under the project, this [Resettlement Policy Framework (RPF)] has been designed to protect people who may be negatively impacted from three possible sources. These are: (i) eviction from

⁴ See DCA, Whereas Section (A)

⁵ Schedule 2 to the DCA

⁶ Schedule 6 to the DCA

⁷ It must be noted that three additional provinces were added to LMAP in 2007 under a CIDA financing. No amendment to the DCA was made to reflect the change.

⁸ While the LMAP did not anticipate to undertake individual titling in areas inhabited by indigenous peoples, an Indigenous Minority Policy Framework was prepared.

state land of individuals who occupied it prior to August 30, 2001....following titling of such land in the name of the state; (ii) eviction from state land titled in the name of the state of individuals who occupied it prior to August 30, 2001, because of the need to use such land for public works under the Project, and (iii) extension by the state of Right of Way (RoW) claims which adversely affects possession rights”.

B. LMAP Implementation and Achievements

8. Although land management and cadastral projects often show results only after long and sustained effort, LMAP has produced indisputable benefits in a short period. As of April 2009, LMAP has implemented many of its activities and achieved important objectives including:

- a. Institutional strengthening under its components (1) and (2), which has provided the Secretariat of the Council of Land Policy, the MLMUPC and its Project Unit, cadastral commissions at national and provincial levels, and the University of Agronomy with well-trained and competent staff, modern technology, equipment and office space;
- b. Enhancement and further development of the land policy and legal framework including policies and regulations (Sub-decrees and orders) covering a wide range of issues from the establishment of a land plan and land registry to sporadic land registration, social land concessions, economic land concessions to state land management and in May 2009 indigenous peoples’ land⁹;
- c. Strengthening the cadastral commissions in charge of resolving land disputes; and
- d. Land titling and registration, and establishment of a central database with a computerized land registration system. Titling and registration in undisputed rural areas, outside indigenous people’s lands, is a real success with nearly one million titles issued, which exceeds appraisal estimates.

9. These achievements were recognized and praised by all stakeholders during the ERM including government agencies, donors, civil society’s organizations (CSOs) and community leaders. These stakeholders have all expressed their willingness and wish to support follow up investments to continue the work done so far under LMAP. However, CSOs and community leaders expressed concerns about some disconnect between the institutional, legal and policy achievements of the LMAP and the continuous and growing insecurity of land tenure for the poor in urban areas, especially in Phnom Penh and in some rural areas where indigenous peoples’ are established and enjoy traditional land use rights. These are issues which LMAP has identified during its preparation and design phase but has yet to tackle effectively.

III. Conclusions of the Enhanced Review Mission

⁹ The Sub decree on Indigenous Peoples community’s Land titling and registration was adopted by the Government, although the adopted version did not include all recommendations and feedbacks received from stakeholders during its preparation phase.

Question 1: Is there any disconnect between the LMAP as designed and implemented particularly with regard to the delayed/non-implementation of any specific activities and/or components of the project?

10. The PAD (Page 12) states that: “.....The proposed project takes a comprehensive approach in, supporting policy and regulatory reforms, consensus building and institutional development along with land titling. It carefully sequences activities so that systematic titling does not take place on lands with unclear status until after the status is agreed with all stakeholders and boundaries between private and state domains demarcated. “[...]” During the process of classifying land and demarcating boundaries, all stakeholders will participate in a process of public consultation to ensure general agreement with decisions. During systematic adjudication, NGOs with specialized training in participation will work closely with villagers, explaining the process, producing village land files, and ensuring that all members of the community who are eligible for a land title will benefit from the Project.” The PAD also mentions that “the project will also support the development of procedures and undertaking the preparation of land classification maps in project provinces which define the boundaries between various categories of land use, such as urban, agriculture forest, and protected areas. The preparation of these maps will be done through a participatory process among local government officials, NGOs, and various national government agencies to ensure proper protection of the environment and natural habitats.” [emphasis added]

11. These statements imply that the project components would be implemented in a coordinated manner. However, in practice, the components have been implemented each at their own pace. In particular the following activities have been delayed or have not been implemented¹⁰:

- a. Under Component (3), information and dissemination campaigns¹¹ through NGOs to assist communities and land rights holders to prepare for titling and registration of their rights was not implemented because of the reluctance of NGOs to be contracted by the Government and later procurement delays.
- b. Under Component (4), the systematic public information campaign at the local level on the Dispute Resolution Mechanisms (DRM) has not been yet contracted to a national NGO; similarly the specialized NGO expected to provide legal assistance to “disadvantaged individuals and communities involved in land disputes” has not been yet contracted¹².

¹⁰The various activities that follow in this list were initiated but not fully and effectively implemented, not implemented at all or not implemented and proposed to be dropped.

¹¹ The ERM has learned that dissemination activities, through Ministry of Land’s teams, have been implemented under the LMAP. However, these efforts were not meant and did not fulfill the same objectives as those originally envisioned to be implemented by NGOs. The reasons for lack of implementation of these activities were fully understood by the ERM, however, the link between this lack of implementation and the consequence on communities seeking land titling and security of tenure is noteworthy.

¹²It should be mentioned that as per the last supervision mission, more than 1976 land dispute cases remain to be resolved and unless land right claimants are duly informed and assisted by competent lawyers, they may not be in position to stand and defend adequately their cases before the Cadastral Commissions including the Mobile ones established to rush disputes resolution in “land conflict hotspots”.

- c. Beyond the preparation of the Prakas on Identification and Mapping of State Land and State Land Classification financed under component 5, almost all of the remaining activities under Component (5) were proposed to be cancelled and their budget reallocated, recognizing that “some state land identification, mapping and registration activities are being carried out through systematic and sporadic land registration processes (under component 3)...”¹³ It was also mentioned that the remaining activities of this component will be carried out after the Land Management Sub-Sector Policy is in place and a related program adopted.

12. Due to the non-implementation of the components and activities listed above, the project has somehow deviated from its initial design described in the PAD and DCA as a multi-pronged approach to address land issues comprehensively in Cambodia¹⁴. The ERM found that the well defined and intertwined components and activities of LMAP have been disconnected from each other, with implementation focusing on the most successful parts (training, works and titling and registering non disputed lands, as well as progress in enhancing and further developing the land policy and legal framework including policies and regulations) while not addressing the other activities that would have helped to fully achieve the LMAP development objective to improve land security. With the closing date looming, it is urgent to undertake as many activities as possible consistent with the project as originally designed. However, if the Bank is to continue to be engaged in the land sector in Cambodia beyond 2010, a thorough review is warranted to inform management on the overall land sector status and related policy dialogue with the RGC¹⁵.

Question 2: Was the design decision to exclude areas of contested tenure appropriate in light of increasing land prices, a quickening pace of resettlement, and adoption of forced evictions by Government?

13. The rationale for this decision to exclude disputed lands is articulated in the PAD: “classifying land and demarcating the boundaries between the public and private domains [...] will often be difficult and may increase disputes in the short-run”. This was recognized as a potential “Controversial Aspect” in the PAD (Page 24) which explicitly mentions that “the project will not title lands in areas where disputes are likely until agreements are reached on the status of the land. The project will support a systematic public consultation process to help build consensus for decisions and will ensure continuous discussions and consultations with NGOs and civil society. It is anticipated that some land now nominally under state control (about 80% of the total) will be released to the private domain. This will free government resources to better manage the lands that remain under its control.”

14. The municipal authorities’ actions targeting the land rights of the most valuable land, as evidenced by reports by news media and/or NGOs of land evictions and/or lack of implementing titling activities upon specific requests from communities are posing a challenge to LMAP approach to land titling, registration and management and are viewed by NGOs and community leaders as failure of the

¹³Aide memoire (11th Supervision Mission, January 2009) Pages 11-12.

¹⁴See Table in Annex 1

¹⁵Probably such review could also help develop ToRs for a learning ICR

LMAP which was not able to address and tackle them effectively, while the Government is considering them as separate issues outside the scope of LMAP¹⁶.

15. The ERM has concluded that although it was a sound decision to exclude areas of contested tenure from the titling and registration process until a due process was implemented to classify and demarcate the various categories of land, the demarcation criteria and procedures, although defined under the Prakas on Identification and Mapping of State Land and State Land Classification supported by component 5, were not implemented resulting in the absence of an official mapping of state land. This is a real source of concern for those under threat of eviction because absent these maps, the relevant municipal authority can exclude from titling any portion of land surveyed and proposed for adjudication by the cadastre team and therefore titling it, implicitly, in the name of state. In fact, the absence of State land mapping is identified as important shortcoming that needs to be addressed for LMAP to succeed and help solve land conflicts and security of tenure¹⁷. Therefore it may have been a sound decision at the time of design to target undisputed and uncontested areas for systematic titling; this strategy should now be revisited and reviewed in light of LMAP development objective of improving land security¹⁸.

16. It should be noted that, the DCA does not refer to supporting land titling and registration operations in undisputed areas and/or uncontested areas. Instead, it refers to Project Provinces as the area for the implementation of the land titling and registration activities. For this reason, it is important that the Government commits to aligning land registration, titling, and adjudication policies and procedures between LMAP-financed activities and provincial/municipal activities in Project Provinces because the LMAP Project covers all lands in the Project Provinces as defined in the Development Credit Agreement.

Question 3: Are resettlements in communities associated with LMAP being handled in a manner consistent with the resettlement policy framework prepared for the project and the World Bank established safeguard policies as applicable to the project?

¹⁶ See footnote 17

¹⁷ The Constitution of 1993 stipulates that: "The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance" (Article 44). However, it is a fact that, reality on the ground poses two serious challenges to the implementation of the law and causes severe impacts to people involved. First, the majority of people have only possession rights to their land and the demarcation of the various categories of land is not done on the ground. Therefore people may be unaware of what kind of land they are occupying. Determining if they are in "legal possession" of the land for compensation purpose could be a major challenge. Secondly, the Right of Way is defined as state public land. Many people occupy the Right of Way in good faith and may never have been informed about their "illegal" status. The Land Law (Article 18), however, prohibits any "illegal" possession of land from being legalized. This may pose significant problems for people occupying the Right of Way if implemented according to the letter of the law.

¹⁸ Although the PAD does include some language about excluding from titling and registering "disputed lands", it does not provide criteria or definition of how to identify such lands in view of excluding them from the titling process (see Annex II). Both the PAD, in some critical sections (Annex on Project Detailed Description) and the DCA (Schedule 6) refer to implementing the Project, including the systematic land titling in the Project Provinces without any reference to excluding disputed lands.

17. The PAD explicitly states that: “Agreement has been reached with the Ministry (MLMUPC) regarding the approach to be used in the case of informal settlers including squatters. The Project: (a) will issue land titles where there is agreement by the government to provide the land to be registered to informal settlers, (b) will facilitate the provision of services and titling where the municipality is working with development groups to provide land to informal settlers through land sharing and/or relocation programs based on the UNCHS principles¹⁹, and (c) will not issue titles where there is no agreement to allocate the land to informal settlers or through land sharing and/or relocation programs. The Project has developed procedures for screening and consultation to ensure that the above conditions are agreed before provision of land registration and titling services.” [...]. The safeguard framework for the LMAP was developed accordingly.

18. The LMAP safeguard framework has not been tested because of the decision discussed above not to implement titling activities in “disputed areas” or for “disputed land”²⁰. The “procedures for screening and consultation” were never developed and the ERM learned that in cases where the relevant municipal authority decided to use the option not to title and register lands occupied by informal settlers, no safeguards were applied, including the UNCHS principles²¹.

19. The instruction for systematic land registration procedures developed under LMAP²² mention the obligation to undertake surveys, organize meetings with land occupiers, possessors or users, and allow them at the public display phase to file complaints and object to survey outcomes before the administrative commission established for the purpose of the registration issues a final report. The lack of implementation of component (3), “carrying out of information and dissemination campaigns through NGOs to assist communities and land rights holders to prepare for titling and registration of their rights” and Component (4) provision of legal assistance to disadvantaged individuals and communities involved in land disputes through specialized NGOs, has made the made the process less participatory and transparent for the most vulnerable communities seeking land titling in an area to be adjudicated in urban areas, notably in the Phnom Penh province.

20. The ERM visited the area which is located close to a wastewater canal and discussed with LMAP team and the municipality authorities the specific case of this area which was surveyed for the purpose of adjudication by the cadastre team. However, after the administrative commission has been established, only part of the area was adjudicated and no explanation or reasons were provided to land possessors for the excision of their plots. The ERM has not obtained other information about the excision. The ERM also discussed with the representatives of the Municipality whether a resettlement

¹⁹The UNCHS program is based on international principles for shelter--i.e., (a) Provide security of tenure; (b) Promote the right to adequate housing; (c) Provide equal access to land; (d) Promote equal access to credit; and (e) Promote access to basic services and guidelines. This description of the UNCHS program was made public by the Bank in the LMAP-related PID.

²⁰It would be helpful to undertake a full due diligence on the cases submitted to the Cadastral Commissions under the Dispute Resolution Mechanisms to assess cases where land claimant have been denied their request for titling and what were the consequences in terms of applying safeguard. Although statistics about land dispute cases have been mentioned, there is no easily accessible documentation on the substance of such disputes, or on enforcement of the related Cadastral Commissions’ decisions.

²¹ See footnote 17

²²Instruction of the MLMUPC, dated December 20, 2006

action plan will be implemented for those land possessors who were not found eligible for titling. No answer was provided beside that the case was handled outside the purview of LMAP and defined as related to disputed lands (i.e., State Land). It is the ERM's view that this is clearly an example where, implementation of the dissemination and legal assistance activities could have helped affected persons to claim their rights, dispute the outcome of the titling and registration process and benefit from the ESG as appropriate.

Question 4: Has the World Bank failed to detect the alleged abuses in implementation of the land law, and raise them with the government?

21. The ERM has learned that the Cadastral Administration, through LMAP, undertakes a basic survey and recommends to the relevant municipality or district to implement a systematic titling process. Because of the assumption that parcels of lands under dispute will not be surveyed and titled, the relevant municipal authority has granted itself the unilateral right to excise portions of lands surveyed by the Cadastral Administration. In doing so, it has decided not to apply the systematic titling to those excised areas. In addition, for those people affected by the decision to excise land, on which they were established, from the area to be adjudicated, there were no social safeguard that were triggered. Affected persons interviewed by the ERM mentioned that no consultation was conducted, or information provided to them, prior to the decision to excise an area from systematic titling and no legal assistance provided to them to file claims on the basis of their possession rights and their rights to any potential compensation or resettlement assistance.

22. The overall design of the titling process, consistent with the 2001 Land law assumes that the initial geographical area to be adjudicated and subject to systematic titling, should be mapped in its entirety, indicating all existing plots and their current use in a participatory manner. This would give a documentation of existing land use at the surveying date. Users-possessors-renters rights must be assessed and documented properly. If done accordingly, no de facto state land identification would be done by excising areas from any adjudication area whether directed by the province/municipality or otherwise determined. Ensuring that any process undertaken by any authority to excise or exclude a portion of land from the systematic titling area is transparent, public, and widely disseminated is an important assumption strongly grounded in the applicable law supported by the LMAP²³. The state land identification (public and private) should be determined before or rather simultaneously to the individually plot titling. This has not happened to date in urban areas, which is why provincial/municipal authorities are trying to determine what would be state land, and asking it to be excised from the systematic titling process. State land (public and private) identification and mapping, must not be done

²³ It is the ERM understanding that any occupation or possession of land which commenced after the enactment of the Land Law (August 30, 2001) is illegal and can provide ground for the competent authority to issue an eviction order to the occupier or possessor to vacate the land. However, the situation is different for those occupiers or possessors claiming possession and use commencing before August 30, 2001 who can apply for either systematic or sporadic land titling.

through unilateral excision, it must be done in a separate, transparent and participatory process as mandated by relevant legal and regulatory provisions²⁴.

IV. Recommendations

23. In the view of the ERM, World Bank further involvement in land management and administration beyond 2009 would require that LMAP take both remedial and forward-looking actions to implement essential components of the project and to engage with all stakeholders involved or impacted by the current land administration and management practices in Cambodia²⁵. For that to be corrected, the ERM considers the following remedial actions necessary:

- a. Ensure that interim measures are put in place to protect Indigenous Peoples lands until the sub-decree, adopted in May 2009, is implemented.
- b. Assist in facilitating access to sporadic titling, including prior information campaign and provision of legal assistance, for citizens and communities, especially those excluded from the systematic titling process in urban areas
- c. Implement the needed land management-related investments including mapping of state land in urban areas where evictions are occurring under the assumption that evicted peoples were using state public land. If as mentioned to the ERM this is to be part of a follow up/separate project, it should be clarified officially to the Bank and principles agreed upon pending such clarification.
- d. Review the Technical Manual for land titling to include environmental and social safeguard provisions consistent with the ESG and provide appropriate implementation guidance to

²⁴ A Safeguard Review (non dated) of the Bank portfolio in Cambodia has provided what could provide an explanation to the Phnom Penh Municipality actions to excise parcels of lands from areas retained for adjudication. That report mentions that: “number of Articles in the Land Law deal with the issue of illegal occupation of land. Although Article 38 describes circumstances in which occupation of land for over five years can give rise to ownership, Articles 29 and 34 makes it clear that no occupation starting after the date of the Land Law (August 2001) can give rise to ownership. Article 18 of the Land Law further defines illegal occupations of state land and nullifies any attempt to legalize or regularize illegal occupation. However, In Cambodia, it is very common for people to live on and doing business within the right of way (ROW). The government has never announced that the Right Of Way (ROW) land is government land and often Cambodians, unaware of this, move into the ROW zone for cultivation, business or even to build their houses. The government does not challenge their use of the ROW until they need it for road improvements, borrow pits etc. The Land Law prohibits compensation payment to be made to persons “entering into possession of public properties of the State” or “entering into possession of private properties of the State after August 2001 (date of the Land Law).” This policy, coupled with the policy provision of recognizing only right of ownership for land compensation, is exposing a large number of people using the ROW, particularly rural households, to the risk of deprivation and impoverishment, if and when the land is recovered for road works. They could be rendered homeless and without apparent means for production and survival. While recognizing the need to establish a ROW, the ERM also believes that the affected people within the ROW need to be assisted in the restoration of their livelihoods even if they do not have ownership and legal right to the land. The current government policies and practice would need to improve to achieve this purpose.

²⁵ MAP must not shielded itself from the area that it was designed to influence (land administration and management practices in Project Provinces/municipality) in order to achieve its overall objective to secure land rights including for those disadvantaged and poor communities in urban areas and indigenous peoples.

LMAP staff on the ESG. This is a critical action to ensure that the ESG will be used as per their terms.

- e. Complete the recruitment of CSOs/NGOs in public awareness and community participation activities including in the initial survey of land area to be adjudicated. Further systematic land titling should be scaled down until this has been done.
- f. Recruit a specialized CBOs/NGO to provide legal assistance to land users, tenants, possessors and assist them with analysis and investigation into the legal ground for any ownership/tenure claims according to the land law of 2001, and and/or grievance process before the Cadastral Commissions and courts in cases where eviction is deemed necessary in the name of public interest. Until such legal assistance is in place and working effectively, the Bank must advise the Government to suspend any further eviction.

24. In addition the Bank, in coordination with all LMAP donors, may want to engage the Government in a broad policy dialogue to prepare for a next phase of assistance to the land sector. The Government will be advised to:

- a. Follow the LMAP ESG to mitigate and address any negative impact on persons and communities for any titling process to be undertaken in Project Provinces, including the new provinces added to LMAP and which are financed through a CIDA Grant. The ESG should be applied throughout the mapping, determination by province/municipality of excising areas, and eligibility criteria for assistance in titling. The ESG must be applied in the process of defining the boundaries of the adjudication area in consultation with all stakeholders including affected persons and communities. This is important in the absence of a national resettlement/compensation policy and legal framework. In doing so, the Government will also fulfill the recommendation not to engage the LMAP in *de facto* state land identification by excising areas not to be titled, whether this is directed by the province/municipality or otherwise determined. In agreeing to do so, the Government will align land registration, titling, and adjudication policies and procedures, between LMAP-financed activities and provincial/municipal activities.
- b. Implement, with donors assistance and with affected persons and communities' participation, on an urgent basis a social assessment of resettlement sites in and around Phnom Penh, where residents from inner city sites have been relocated after they have been evicted within the LMAP implementation period. In addition, plans should be prepared for these sites to meet international standards in resettlement. One of the objectives of such assistance will be to title and register lands in these resettlement areas in order to secure the rights of resettled persons and communities and to provide for sound environmental management of resettlement sites.
- c. Beyond the LMAP, the RGC, the World Bank, other donors and stakeholders would be well advised to discuss potential assistance to the Government in finalizing the national resettlement policy and sub-decree prepared with ADB's assistance, which were reviewed

- by the ERM and found in broad compliance with good international practices including UNHCS standards and World Bank policy on involuntary resettlement.
- d. Beyond the current LMAP cycle, the ERM has learned that the Municipality of Phnom Penh is preparing a land use plan and a housing policy. The Municipality will be well advised to use this opportunity to further secure land rights for all communities, including those established in urban areas, and include them in a process which titles lands plots that are not located in clearly and transparently defined and delimited state public land. Under such a clear and transparent approach, those who will not be eligible to receive title will be resettled in compliance with the resettlement policy and sub-decree mentioned above, or the LMAP agreed ESG if such sub-decree and policy are not yet effective.
 - e. The World Bank must assist the Government and the Municipality of Phnom Penh in learning from experiences of other countries which demonstrated how securing land rights and upgrading slums and shanty towns can be used as effective tools to fight poverty and enhance urban development processes and outcomes while improving the overall urban environment.

Annex 1

Status of LMAP Implementation, as of April 2009

	Component	Progress	Still outstanding/issues
1	Part A: Development of Land Policy and Regulatory Framework	1. Strengthen capacity of the secretariat of Land Policy Council.	1. Adoption of IP policy and Sub-Decree on registration of IP communal lands (done in May 2009) 2. Implementation of interim measures to protect IP lands. 3. Clear definitions on roles and responsibilities of various RGC agencies are yet to be defined.
2	Part B: Institutional Development	1. Built up capacity to do titling in 'undisputed' areas, especially in rural settings. 2. Land Administration courses taught in University	
3	Part C: Land titling Program and Development of Land Registration System	1. 34 Land Registration Teams (LRT), each with 26 members, established and trained. 2. More than a million titles issued, mostly in rural areas. 3. Progress on data management and retrieval regarding titles issued.	1. No involvement of NGO/CSOs in information dissemination and community participation (often referred to as Public Awareness and Community Participation – PACT) in systematic titling. 2. Unclear reasons for excising areas from systematic titling, thus excluding some people from titling. 3. No sporadic titling is done under the project. 4. The strategic design choice ²⁶ of only titling undisputed land, and leaving the rest untitled, should be reconsidered.
4	Part D: Strengthening Mechanisms' for Dispute Resolution	1. Support to CC system.	1. No specialized legal NGO/CBOs have been engaged to provide assistance to disadvantaged communities involved in land disputes. 2. The system of Cadastral Commissions may be in jeopardy with the creation of National Authority on Land Disputes, and division of responsibility is unclear.
5	Part E: Land Management		Not implemented beside minor activities.

²⁶ That is, not very clearly expressed in the PAD and not at all reflected in the DCA. See Annex II below.

Annex II
Excerpts from the PAD and Other LMAP Documents
on the Issue of Titling or not Disputed Lands

PID (Page 12)

Safeguard Section: Resettlement:

“Agreement has been reached with MLMUPC regarding the approaches to be used in the case of informal settlers including squatters. The project:

(a) will issue titles where there is agreement by the government to provide the land to be registered to informal settlers,

(b) will facilitate the provision of services and titling where the municipality is working with United Nations Center for Human Settlements (UNCHS) and its partners to provide land to informal settlers through land sharing and/or relocation programs, and

(c) will not issue titles where there is no agreement to allocate the land to informal settlers or through municipality/UNCHS land sharing and/or relocation programs.

The UNCHS program is based on international principles for shelter--i.e.,

- (a) Provide security of tenure;
- (b) Promote the right to adequate housing;
- (c) Provide equal access to land;
- (d) Promote equal access to credit; and
- (e) Promote access to basic services and guidelines.

The project will develop procedures for screening and consultation to ensure that the above conditions are agreed before provision of land registration and titling services. As the project will finance a construction of a new office building for the Ministry and the rehabilitation/new construction of provincial and district land offices, it was agreed with the government that these offices will be built on vacant”

PAD (Page 12)

3.” The proposed project takes a comprehensive approach in, supporting policy and regulatory reforms, consensus building and institutional development along with land titling. It carefully sequences activities so that systematic titling does not take place on lands with unclear status until after the status is agreed with all stakeholders and boundaries between private and state domains demarcated.”

...” During the process of classifying land and demarcating boundaries, all stakeholders will participate in a process of public consultation to ensure general agreement with decisions. During systematic adjudication, NGOs with specialized training in participation will work closely with villagers, explaining the process, producing village land files, and ensuring that all members of the community who are eligible for a land title will benefit from the Project.”

PAD (Page 18)

5.1....” The project will also support the development of procedures and undertaking the preparation of land classification maps in **project provinces** which define the boundaries between various categories of land use, such as urban, agriculture forest, and protected areas. The preparation of these maps will be done through a participatory process among local government officials, NGOs, and various national government agencies to ensure proper protection of the environment and natural habitats.”

PAD (Page 19)

6.1. **“Measures to help the disadvantaged:** During project implementation local NGOs will be contracted to facilitate community participation during systematic adjudication. They will be responsible for field work prior to the commencement of systematic adjudication. Their scope of work will include the following tasks: information dissemination, targeting women for education campaign on land laws and titling procedures, conducting village baseline profiles, entering field data into the registration database, analyzing registration records, producing consolidated village land files, explaining the benefits of and procedures for registering subsequent transfers and provide support for local land use planning and evaluation and monitoring. The project will provide the contracted NGOs with orientation and training, including on gender-specific methods and tools for participation”

PAD (Page 20)

6.1. **“Informal Settlers.** Agreement has been reached with the Ministry (MLMUPC) regarding the approach to be used in the case of informal settlers including squatters. The Project:

(a) **will issue land titles** where there is agreement by the government to provide the land to be registered to informal settlers,

(b) will facilitate the provision of services and titling where the municipality is working with development groups to provide land to informal settlers through land sharing and/or relocation programs based on the UNCHS principles, and

(c) **will not issue titles** where there is no agreement to allocate the land to informal settlers or through land sharing and/or relocation programs. **The Project has developed procedures for screening and consultation to ensure that the above conditions are agreed before provision of land registration and titling services.**”

PAD (Page 24)

3. **Possible Controversial Aspects:** “Classifying land and demarcating the boundaries between the public and private domains, and, for land in the public domain, tracts under the control of various government entities will often be difficult and may increase disputes in the short-run. **The project will not title lands in areas where disputes are likely until agreements are reached on the status of the land. The project will support a systematic public consultation process to help build consensus for decisions and will ensure continuous discussions and consultations with NGOs and civil society. It is anticipated that some land now nominally under state control (about 80% of the total) will be released to the private domain. This will free government resources to better manage the lands that remain under its control.**”

Project Description

Project Component 3 - Land **Titling Program and Development of Land Registration Systems**
(US\$ 20.40 million)

“The component will support the issuance of first time land titles and the establishment of land registration system to register land transactions, and will include: (a) information dissemination and community organization; (b) systematic land titling program; (c) sporadic land titling program; and (d) development of an efficient, transparent and effective land registration system.

A. **Information Dissemination and Community Participation:**

This sub-component will support information dissemination through mass media (television, radio and newspapers) and posters about systematic, sporadic land titling program, and land transaction registration. The information dissemination also includes support information dissemination to villagers undergoing systematic adjudication. Prior to the commencement of the land titling activities in the village, the project will organize an information campaign, through focus groups discussions and workshops to explain the project objectives, rationale and benefits, and also explain the forms, the procedures and legal rights to each household. The information campaign will commence about one month before the surveying and adjudication starts.

The project will hire and train local NGOs in the project provinces to undertake the village level information dissemination and community organization campaign including training and participation of mass organizations such as farmers associations. **This sub-component will also include support for the collection of village land profiles to define village boundaries, describe land distribution, land market activity and identify any pre-existing land disputes.** This information will be used in the planning of the titling program and later for monitoring the socioeconomic impacts of the project. A standard form for gathering the data will be developed during the pre-implementation period. These data will be inputted in a computerized database for easy reference and use.

B. **Systematic Land Titling Program:**

This sub-component will support the current initiatives of the MLMUPC in land titling (first-time land title registration) with further development and acceleration of the ongoing two pilot projects financed by the Finnish and German governments. **The land titling program will cover ten provinces and Phnom Penh municipality** (Attachment 11) **and will cover both urban and rural areas.**

The sub-component will include the following activities: [.....] “ Training in support of accelerated land titling” (i); (ii) **for systematic adjudication teams in systematic**

registration processes, land law, participation facilitation and dispute mediation; and (iii) training of provincial and district staff in legal, technical, and management subjects. [.....]

C. ***Sporadic Land Titling Program:***

The sub-component will support the issuance of titles (first-time issuance and registration of land titles) on demand in the project provinces. This support will include

- (i) review of the current procedures for issuance of land titles and provide modification if necessary,
- (ii) preparation of sporadic adjudication manual,
- (iii) training for staff of provincial and district land offices in the new procedures, and
- (iv) [.....]