

**Report and Recommendation
on
Request for Inspection**

**COLOMBIA: Bogotá Urban Services Project
(IBRD Loan No. 7162-CO)**

1. On October 30, 2007, the Inspection Panel (“the Panel”) received a Request for Inspection (“the Request”) dated October 23, 2007, related to the Colombia: Bogotá Urban Services Project (the “Project”) financed by a loan from the International Bank of Reconstruction and Development (the “IBRD” or “Bank”) (Loan No. 7162-CO). The Request was submitted by Ms. Mariana Luna Crudo, and signed by her and seven other affected people.
2. The Panel registered the Request on October 31, 2007¹ and notified the Executive Directors, the President of Bank and the Requesters that it had registered the Request. The Panel received Bank Management’s Response to the Request on December 3, 2007 (the “Management Response”).
3. As provided in Paragraph 19 of the 1993 Resolution establishing the Inspection Panel (“the 1993 Resolution”),² the purpose of this report is to determine the eligibility of the Request and make a recommendation to the Executive Directors as to whether the matters alleged in the Request should be investigated.

A. The Project

4. The objective of the Project is to “*improve the Borrower’s urban living conditions by increasing access, coverage, quality, reliability and inter-agency coordination in the provision of public transport, sanitation services and potable water.*”³
5. The objective is to be achieved through “*investments in transport, water and sewerage infrastructure works, environmental improvements and community development activities. These, along with other city-wide transport investments and institutional and policy-reform measures, are aimed at improving operation of the transport, water and some shelter-related entities in about fourteen of the city’s poorest Unidades de Planificación Zonal (planning units or UPZs), inhabited by just*

¹ The Inspection Panel, Operating Procedures (August 1994) (“the Operating Procedures”), at p. 17.

² International Bank of Reconstruction and Development (IBRD) Resolution 93-10, dated September 22, 1993.

³ Loan Agreement in the amount of \$100 million between the International Bank for Reconstruction and Development and Bogotá Distrito Capital, dated June 04, 2003 (hereinafter the “Loan Agreement”), Sch. 2 to Annex B, at p. 24.

over 1.2 million residents, who currently account for almost a fifth of the total population of Bogota.”⁴

6. The Project has the following three components: (a) improved mobility; (b) urban upgrading; and (c) institutional strengthening. The Request is specifically related to the construction of Suba Avenue for the operation of the TransMilenio Mass Transit System. The objective of this component is to improve mobility through the expansion of the second phase of the TransMilenio System and by improving access to public transport. This is to be achieved by: (a) constructing 11km of bus-ways; (b) upgrading of about 265km of feeder routes (that is, routes connecting outlying neighborhoods to the TransMilenio System); (c) constructing/improving and maintaining bicycle paths and walkways for use of non-motorized transportation; (d) providing technical assistance to the Borrower to improve its public transport system; (e) designing and implementing a road safety policy; and (f) strengthening the Borrower’s traffic administration system.⁵
7. Several different entities are involved in the implementation of the various components of the Project. The *Instituto de Desarrollo Urbano* (the Institute of Urban Development or “IDU”), the transport, construction and maintenance entity of the *Secretaría de Tránsito y Transporte* (the Transit and Transport Secretariat or “STT”), is the implementation agency responsible for the road construction, upgrading and maintenance sub-components, including the relevant policy-reform components.

B. Financing

8. The Project is financed by an IBRD loan of US\$100 million, and guaranteed by the Republic of Colombia. At the time the Request was received, US\$93.93 million had been disbursed (approximately 94% of the loan).
9. The Loan was approved by the IBRD Board of Executive Directors on March 13, 2003. The expected Closing Date of the Project has been extended from October 31, 2007 to July 31, 2008.

C. The Request

10. The Requesters claim that they have been adversely affected by construction of Suba Avenue. They claim that the Project implementing agency, the IDU, has ignored their situation and has failed to implement the measures agreed upon with the Bank by which the Requesters could restore their livelihoods and incomes, at least to the same circumstances as before the construction commenced.

⁴ Project Appraisal Document for a Proposed Loan in the amount of US\$100 million to the Capital District of Bogotá with the Guarantee of the Republic of Colombia for the Bogotá Urban Services Project, dated February 14, 2003 (hereinafter the “PAD”), at pg. 3.

⁵ Loan Agreement, Sch. 2, Part A.

11. The Requesters claim that the Loan Agreement establishes that people who will be adversely affected by the Project should have their socio-economic conditions restored to the same conditions that existed prior to the implementation of the Project. They further claim that pursuant to the Bank's Policy on Involuntary Resettlement (OP 4.12), they should have been: (a) consulted, offered alternatives, and provided with feasible economic and technical resettlement alternatives; (b) provided with prompt and effective compensation for losses directly suffered due to the Project; (c) offered support after displacement for a reasonable period of time, necessary to restore the lives of those adversely affected by the Project; and (d) provided with development assistance, in addition to the compensation, for housing replacement, credit facilities, and training or employment opportunities.
12. The Requesters allege that under the Resettlement Plan, the IDU was obligated to identify and mitigate the negative socio-economic impacts of the displacement of people from their properties, and to design a social management plan to assist those who would be negatively affected by the Project activities. They claim that serious concerns arose regarding the implementation of the Resettlement Plan. Among the issues, *inter alia*, they raise the following: (a) that the IDU failed to assess the Project's impact on older people living in the properties affected and their vulnerability, which may have resulted in several deaths; (b) that the Plan did not take into consideration their businesses, which were not bought out and that remained near the construction and were consequently affected by the lack of economic activities; (c) no minimum time frames or terms were established by IDU for the payment of compensation and that the amount of compensation and the methods of calculation were not transparent; and (d) no additional measures were put in place in the event that the affected people could not have their lives restored to the same conditions that existed prior to the works commencing.
13. Each of the signatories to the Request briefly describes how the implementation of the Project has adversely affected them. They claim, *inter alia*, that the IDU offered to buy their houses without any kind of advice and at rates below the cadastre valuation, which would not enable them to buy similar housing. One Requester claims that when they refused to sell at the rates offered, they were intimidated with claims of expropriation of their property by the lawyers for IDU. The shopkeepers claim that their sales dropped on average about 70 to 80 percent due to the lack of access to and visibility of their stores. One Requester claims that the demolitions and the excavations caused his house to sink on one side. Another Requester claims that the dust has caused damage to the furniture she sells and it has costed her significantly in terms of design and constant maintenance. The Requesters claim that by allowing this situation, the Bank has violated several provisions of its Operational Policy 4.12 on Involuntary Resettlement.
14. The Requesters contend that as a result of the Project, many of them have suffered permanent losses, which the IDU is neither recognizing nor willing to compensate them for. They further claim that this is not only a violation of the Loan Agreement but also a violation of the social management plan. Additionally, they also claim that

the Project has resulted in certain adverse environmental impacts, such as stagnant pools of water and sewage on the sidewalk that attracts insects and rodents, all of which are affecting their lives.

15. The Requesters claim that they are the most vulnerable ones who have suffered the most due to the Project. They claim that they are resorting to submitting their request to the Inspection Panel because they have exhausted all options available to them, in order to obtain redress for their losses and their rights, which they claim, have been disrespected and ignored by the IDU.
16. The Requesters indicate that they have made efforts to notify Bank staff of the situation that they have been faced with. They contend that they contacted the IDU on several occasions seeking solutions to their problems. The Requesters further notified the Panel, in a separate communication, that they had contacted the Bank directly, but feel that their concerns have not been adequately addressed.
17. In the Notice of Registration the Panel noted that the above claims may, *inter alia*, constitute non-compliance by the Bank with various provisions of the following Operational Policies and Procedures:

OP/BP 4.01	Environmental Assessment
OP/BP 4.12	Involuntary Resettlement
OP/BP 13.05	Project Supervision

D. Management Response

18. On December 3, 2007, Management submitted its Response to the Request for Inspection.⁶ The Response includes 4 annexes and 1 map.
19. The Response provides background information on the Project, addresses the key issues, and provides a response to the Request. It also addresses the specific issues raised by the eight Requesters.
20. Management states that the Project has been effective for approximately four years, with all Project components having advanced, either to completion or close to completion. Management acknowledges that there have been some delays, but they believe that with the closing date of the Project being extended to July 2008, these delayed components will be completed. With regards to the TransMilenio component, the physical works have been completed, including all resettlement activities.
21. Management, in its response, requests the Panel to consider the Request as being ineligible for investigation as Management did not have the opportunity to address the Requesters' claims before the Request was submitted to the Panel.

⁶ Bank Management Response to Request for Inspection Panel review of the Colombia: Bogotá Urban Services Project (IBRD Loan No. 7162-CO), December 3, 2007 (hereinafter "the Response" or "Management Response").

22. Management maintains that this is the first time they have been made aware of the concerns of the Requesters. Management claims that there have been no communications to the Bank or its staff from any of the Requesters except one of the Requesters. Management further claims that an exhaustive review of documents and communication between IDU and the Requesters produced no evidence of contact or efforts to make contact with the Bank.
23. In the case of this Requester, Management states that during routine supervision, Bank staff met, “*at the Bank’s initiative,*”⁷ with her and helped IDU staff to intervene to resolve her case, so that her property would not be subject to acquisition and she would not need to be resettled. Management asserts that the case of this Requester “*clearly demonstrates that Bank staff and management intervention can be effective to resolve disputes when given the opportunity.*”⁸ Management states that, although the need for partial acquisition of her property was identified in 2004, the plot has not been partially acquired by IDU out of specific and extraordinary considerations for the vulnerability of the Requester. Management states that the resolution of this case is still pending formal notification from the District Government.
24. Management states that during the preparation of the Project, IDU carried out a census and social-economic assessment of the affected population. The Resettlement Action Plan (RAP) was prepared based on this data for the mobility component of the Project, and all those who would be directly affected by the Project were specifically identified in the RAP. Management further states that pursuant to the obligations of OP 4.12, those who were directly affected by the land acquisition were provided with compensation—for loss of assets such as land and structures, and for the loss of income and other administrative costs—and resettlement assistance. Management also states that the valuation of land and the definition of compensation are provided for in the laws of Colombia and the RAP made reference to this information. They also state that in January 2006, approximately 97 percent of those resettled or partially affected by the Project had re-established their former standards of living and income levels.
25. Management states that most of the claims of the Requesters relate to indirect impacts of the Project. Management states that OP 4.12 does not apply to situations where the impact is indirect. Management further claims that the policy cannot cover “*long-term impacts on customer loyalty, differences in local tastes or other forms of intangible costs.*”⁹ Management states that indirect impacts are covered under OP 4.01 through the mitigation of impacts due to changes in the physical environment, and only individuals who are directly affected by the land acquisition or physical relocation are covered under OP 4.12.

⁷ Management Response, p. (i).

⁸ Management Response, p. (i).

⁹ Management Response, ¶33.

26. On the issue of environmental management, Management states that environmental screening was undertaken to classify the Project and to determine the extent of any potential environmental impacts. Based on the nature of the proposed activities—the improvement of roads—and the fact that the potential adverse impacts were determined to be site specific, the Project was placed under environmental Category “B”.
27. Management states that an Environmental Impact Assessment (EIA) was carried out prior to the bidding process for the works. The EIA, which was publicly disclosed, acknowledged the existence of negative environmental impacts during the construction phase and long-term positive impacts, such as better air quality, better mobility and less exposure to contaminants. They claim that the improvements in safety and urban space would result in a better quality of life.
28. In dealing with the temporary negative impacts of the Project, Management states that the EIA “*defined EMPs [Environmental Management Plans] to properly handle wastes, noise, movement of materials, water management, campgrounds, pedestrian safety, visual disturbance, equipment and machinery risks, access to housing and commerce and industrial and occupational health.*”¹⁰ The EMPs followed the same guidelines used by IDU, which were developed under consultation with the Bank and in accordance with the Bank’s environmental and social safeguards. To ensure compliance with the mitigation measures, all bidding documents and contracts contained the approved EMPs. According to Management, Project monitoring shows that the contractors continue to maintain a high level of compliance with the EMP.
29. Management states that several steps were taken to consult with and inform those who may have been affected by the Project. Management indicates that approximately “*333 information sessions were held in the Avenida Suba Project area prior to and during the construction of the works.*”¹¹ Furthermore, Management states, *inter alia*, that informational materials on the Project were also handed out, kiosks were set up throughout the area where people could access a wide range of information, and those affected by the Project were given access to IDU Customer Service Agents who received and registered communications and complaints, directing them to the appropriate offices of the IDU dealing with their concerns.
30. Management points out instances where some of the Requesters used the resources available to them to access information and support services. Management makes reference to one Requester and her legal counsel seeking advice and legal guidance at least five times from one of the kiosks specifically set up to deal with legal issues, and another who received facilitation and advice from IDU, as well as social and psychological outreach support.¹²

¹⁰ Management Response, ¶37.

¹¹ Management Response, ¶41.

¹² Management Response, ¶43, Table 1, #2

31. In regards to the claim by the Requesters that parking restrictions resulted in a loss of business, Management states that the “*enforcement of public space and parking regulations are not directly related to the Project. In fact these efforts constitute a city-wide strategy implemented by Bogotá since 1998.*”¹³ Management claims that the strategy was put in place to deter people from using up public and pedestrian spaces to park their vehicles or for other non-public uses. Management states that the end result of the strategy would, *inter alia*, lead to an increase in public and road safety, a reduction in the number of accidents, and improving overall traffic and congestion conditions.
32. Management states that the Bank’s approach to supervision was “*comprehensive, timely and in full compliance with OP/BP 13.05...*”¹⁴ The Response indicates that between Project effectiveness and the receipt of the Request for Inspection, seventeen supervision missions were undertaken, with the participation of environmental and social safeguard specialists. Management acknowledges that during these supervision missions, issues concerning IDU’s implementation of the component came to light. Management states that the issues were brought to the attention of the Government during discussions in 2005 and necessary measures were agreed upon for the management of the resettlement aspects of the Project. Management states that the Bank’s timely and effective intervention led to improvements in IDU’s management of the resettlement aspects of the Project and in IDU’s capacity to implement the Project.

E. Eligibility

33. The Panel must determine whether the Request satisfies the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and the 1999 Clarifications,¹⁵ and whether to recommend if the matters alleged in the Request should be investigated.
34. The Panel has reviewed the Request and Management Response. Panel Member, Roberto Lenton, together with Deputy Executive Secretary Dilek Barlas, visited Colombia from December 11–13, 2007. During their visit, the Panel Team met with all of the signatories of the Request for Inspection except one. The Panel also met with national and municipal officials in Bogotá, with representatives of the Project implementation agency, and with the Country Director in the Bank’s Bogotá office.
35. The Panel wishes to express its appreciation to the Requesters for showing areas of concern to the Panel. The Panel also wishes to thank the officials and staff of Municipality of Bogotá, (*Secretaria de Hacienda Oficina de Banca Multilateral y Cooperacion*), the Bogotá Urban Development Institute (*Instituto de Desarrollo Urbano*) and National Planning Department (*Departamento Nacional de Planeacion*),

¹³ Management Response, ¶44.

¹⁴ Management Response, ¶45.

¹⁵ Conclusions of the Board’s Second Review of the Inspection Panel (“the 1999 Clarifications”), April 1999.

as well as the World Bank Country Office in Bogotá for providing relevant information and assisting with logistical arrangements.

36. During the visit, the Panel confirmed that the Requesters are legitimate parties under the Resolution to submit a Request for Inspection to the Inspection Panel. The Requesters live in the Project area and have common interests and concerns as required by Paragraph 9(a).
37. The Panel notes that facts stated in the Request “*assert in substance that a serious violation by the Bank of its operational policies and procedures has or is likely to have a material adverse effect upon the requesters*” as required by Paragraph 9(b).
38. During the visit the Panel observed the importance of the TransMilenio, the rapid bus transit system, supported under the Project, to the Municipality of Bogotá and the positive feedback the Project receives from its users. The Panel also noted that the Requesters acknowledge the importance of the Project and improving the public transportation system in the city. However, the Requesters claim that they have been adversely affected by the Avenida Suba investments as a result of the Bank’s violation of several provisions of its OP 4.12 on Involuntary Resettlement.
39. The Panel noted the special circumstances of each of the Requesters. Some of the Requesters who own or operate stores near Suba Avenue claim that the demolitions and excavations for the Project caused structural damages in the buildings. They claim that the Project limited access and visibility of their stores which adversely affected the sales. They claim that as a result of construction of sidewalks and barriers they have no space left for trucks to park and unload goods to their stores. They also claim that their sales are adversely affected as a result of the elimination of parking spaces for customers.
40. The Panel notes Management’s statement that the Bank’s policy on Involuntary Resettlement “*does not apply to impacts indirectly related to land acquisition...*”¹⁶ Management states that indirect impacts are covered under OP 4.01 through the mitigation of impacts due to changes in the physical environment, and only individuals who are directly impacted by the land acquisition or physical relocation are covered under OP 4.12. Management notes that there are no registered complaints either with IDU or at any of the Puntos CREA (dispute resolution mechanism established under the Project) specific to the issue of structural damage. Management further indicates that indirect impacts which resulted from city-wide effort to enforce existing traffic laws and reduce parking on sidewalks are not subject to monetary compensation under the Project.
41. Another Requester, who represents her family, claims that the offer made by IDU to purchase the family land was below the market value and that they were penalized by the terms of the sale. In addition, she claims that they experienced considerable delays in return of the surplus land and in obtaining construction permit for the

¹⁶ Management Response, ¶33.

replacement building to restore rental income that the family was deprived of for several months as a result of the Project. Another elderly Requester claims that since 2003 she has been traumatized by threat of acquisition of her property for the Project and the last thing she heard was that her property will be subject to partial acquisition.

42. The Panel further notes that it was informed that in the above stated two cases the IDU has been making efforts to resolve the situations. The Panel notes that the IDU and the Requester representing her family entered into discussions about the possibility of developing the surplus land on their property that was partially acquired by IDU. Through their discussions, the Panel learned that when the family received a higher than normal tax invoice, they questioned it with the local authorities who in turn referred them to the IDU. The IDU, in the interest of reaching a satisfactory end to negotiations, agreed to assist the family in taking steps to develop the surplus land. The Panel observes that the discussions to reach a satisfactory solution between the Requester and IDU are ongoing.
43. The Panel met with a close relative of an elderly Requester. The Panel was informed that IDU had agreed not to resettle this Requester. The Panel also notes Management's statement that based on the facilitation of IDU, district authorities have formally communicated that they are initiating a study to assess the feasibility of changing the designs to eliminate the need for partial acquisition in question.
44. The 1999 Clarifications further provide that the Panel shall satisfy itself that the Request *"does assert that the subject matter has been brought to Management's attention and that, in the requester's view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank's policies and procedures"* as set forth in Paragraph 9(c).
45. The Panel has carefully reviewed the claims and the Management Response in relation to this criterion. The Panel also gathered relevant information during its eligibility visit to Colombia, particularly through its meetings with Requesters. In this context, during its visit the Panel noted that only one of the Requesters directly contacted the Bank staff during February 2007 supervision mission. However, the Panel notes that when they brought their complaint to IDU, almost all of the Requesters believed that IDU would communicate their concerns to the Bank. In this regard, the Panel observes that it has been difficult for the Requesters to know about the possibility of bringing their problems directly to the attention of the Bank and how to do it.
46. While the Requesters are otherwise eligible to submit a Request for Inspection, the Panel finds that the Requesters do not meet the criterion set forth in paragraph 9(c) of the 1999 Clarification that *"the subject matter has been brought to Management's attention."* The Panel is therefore not in a position to recommend whether an investigation of the matters alleged in the Request should be carried out.
47. The Panel notes the following statement at the cover page of Management Response:

*“By going directly to the Panel without first trying to access Management, as required in the Inspection Panel Resolution, Management was **precluded** from intervening and resolving issues, on a timely basis, prior to the Registration of the Request for Inspection by the Inspection Panel.”* [Emphasis added]

48. As the Panel previously noted¹⁷, submission of a Request for Inspection does not prevent Management from engaging in a constructive dialogue with the Requesters to try to address their concerns. This was the case, for example, in respect to Request for Inspection submitted on Romania: Mine Closure and Social Mitigation Project. On September 29, 2006, the Panel recommended to the Board of Executive Directors that the processing of the Romania Request for Inspection be closed since all the Requesters concerns had been adequately addressed by Bank Management and Project authorities.¹⁸
49. The Panel notes that the subject matter of the Request is not related to procurement, as required by Paragraph 9(d).
50. The loan financing the Project was approved by the IBRD Board of Executive Directors in March 2003. The expected Closing Date of the Project is July 31, 2008. As of October 30, 2007, \$93.93 million, or about 94 percent, of the loan has been disbursed. The Request satisfies the requirement in paragraph 9(e) that the related loans has not been closed or substantially disbursed.¹⁹
51. Furthermore, that Panel has not previously made a recommendation on the subject matter of the Request, thereby satisfying paragraph 9(f).

G. Conclusions

52. The Request and Management’s Response contain conflicting assertions and interpretations about the issues, the facts, compliance with Bank policies and procedures and harm. The Panel can only address these issues during an investigation.
53. However, while the Requesters are otherwise eligible to submit a Request for Inspection, the procedural criterion of paragraph 9(c) requiring that the Requesters have brought the *“subject matter ... to Management’s attention and that, in the requester’s view, Management has failed to respond adequately demonstrating that it has followed or is taking steps to follow the Bank’s policies and procedures”* has not been fully met. Therefore the Panel cannot make a recommendation on whether to

¹⁷ See Report and Recommendation on Request for Inspection related to Argentina: Santa Fe Road Infrastructure Project (Proposed), dated November 16, 2006.

¹⁸ INSP/R2006-0006. See also Requests for Inspection related to Nigeria: West Africa Gas Pipeline Project, Bangladesh: Jamuna Multipurpose Bridge Project, Philippines Manila Second Sewerage Project, Mexico: Indigenous Community Biodiversity Project and Argentina: Special Structural Adjustment Loan.

¹⁹ According to the 1993 Resolution, “[t]his will be deemed to be the case when at least ninety-five percent of the loan proceeds have been disbursed.” Footnote to §14(c).

investigate the subject matter of the Request for Inspection unless this requirement has been met.

54. If the Board of Executive Directors concurs with the foregoing, the Inspection Panel will advise the Requesters and Management accordingly.