

## Cambodia's Land Reform and Boeung Kak Lake: Institutions, Politics, and Development

On the evening of October 21<sup>st</sup>, 2010, a cadre of World Bank (WB) Cambodia staff huddled around a cluttered conference table debating their next steps following a highly publicized appeal by residents of the Boeung Kak Lake district to the international development community. In a widely circulated press release issued earlier that day, residents of the neighborhood surrounding the lake had called for immediate intervention in WB land reforms which were alleged to be indirectly burdening some of Cambodia's poorest urban citizens. More specifically, they had called for a halt to the real estate development in the Boeung Kak Lake area by a private company, Shukaku, Inc.

The press release had circulated quickly and had revived interest in the long-simmering issue with stakeholders across the region and amongst development practitioners worldwide. Tensions were high with accusations of misconduct aimed at both the Cambodian government and at the local Bank<sup>1</sup> office but the project team felt restricted regarding its ability to respond. For one, a centrally-administered WB Inspection Panel<sup>2</sup> was currently reviewing the WB Cambodia country-wide Land Management and Administration Project (LMAP), which was linked to the Boeung Kak conflict. Furthermore, the Bank's authority to act was limited, with the Cambodian government maintaining ultimate control over land administration.

A short walk away, in the offices of the Ministry of Land Management, Urban Planning, and Construction (MLMUPC), a group of government officials also debated their options. On the heels of a discomfiting withdrawal of multilateral support for LMAP and increasing scrutiny from international observers including the UN and the Centre on Housing Rights and Evictions (COHRE), the Ministry staff considered their obligations to the corporate land lessee and displaced residents as well as its relationships with international supporters and civil society.

Controversial media coverage of the allegedly intentional flooding of Boeung Kak villages, violent clashes between police and protesters, and public gatherings at the Prime Ministers' residence earlier had added to the pressure for a quick resolution. Only weeks before, on the afternoon of August 23<sup>rd</sup>, 2010, a large spontaneous protest involving 200 Boeung Kak Lake community members had transpired as angry residents marched upon Prime Minister Hun Sen's residence after police interrupted a community meeting. In that meeting, residents had been discussing what recourse could be taken in the Cambodian justice system in response to Shukaku's flooding of homes in order to evict residents and make way for a condominium development known as 'Near East City'.

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<sup>1</sup> Bank refers to World Bank throughout this document.

<sup>2</sup> The Inspection Panel is an independent accountability mechanism of the Bank administered independently of management, with the mandate of investigating allegations of misconduct related to World Bank projects.

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Were the government to renege on the lease to the private developer, however, this would undoubtedly create uncertainty in the private investment climate and lead to questions about the consistency of land reform. A reversal of the lease would also be politically problematic, considering the financial interests of some senior Cambodian government officials. On the other hand, the embarrassing spectacle playing out in the international media broadcasted a picture of corruption, police harassment, and corporate exploitation of ordinary Phnom Penh citizenry – indeed no small threat to the government's ongoing attempts at broad governance reform and improving its foreign investment climate.

Both the World Bank and Cambodian government officers, albeit with notably different leanings, pondered quite similar questions. Certainly, meaningful long-term land reform would involve transitional friction and conflict, and the government would have to be allowed to manage its own affairs in order to build local capacity for land administration. The question was, how much could the populace, particularly its poorest residents, bear? How could the Bank and the Ministry manage competing local interests of strategic land development, long-term capacity building, consistency in implementation, and the immediate needs of poverty alleviation? And how should they proceed with a reform program whose legitimacy was deteriorating in the face of intensifying conflict and media scrutiny?

## Background

In 2007, the Cambodian government had leased 133 hectares of land surrounding Boeung Kak Lake, an area subject to high uncertainty over land rights, to Shukaku, Inc., a Cambodian real estate and development company with known ties to senior government officials. Shukaku sought to fill the lake with sand to reclaim land for the construction of high-end condominiums. The Shukaku 'New East City' project would also forcibly relocate over 4200 families between 2007 and 2010, despite the fact that the broader national land reform program used by Cambodian government officials to legitimize the lease – LMAP – was intended to alleviate poverty and respect prevailing informal systems of land ownership.

How LMAP had shifted from enjoying widespread support to impasse was the familiar story of problematic attempts by multilateral agencies and governments to relieve poverty and create economic growth via institutional reform. The reform project, intended to improve land administration in ten provinces, had inadvertently created new avenues for corruption and profiteering at the highest levels of Cambodia's government – a government lacking the internal controls or sufficient rule of law to ensure effective, fair implementation.



The southern end of Boeung Kak Lake, filled with sand, in July 2010.<sup>3</sup>

<sup>3</sup> Authors' own source.

### ***History of Land Administration in Cambodia***

The protests in late 2010 were rooted in 150 years of land conflict and reform in Cambodia, starting with early tensions between traditional Khmer practices of roving agriculture and French colonial practices of formalized land registration and demarcation. By 1930, most agricultural land had been parceled out and registered as private property. Cambodia upheld the colonial system of land ownership after gaining independence from France in 1953.

In 1962, 84 percent of agricultural households owned land, demonstrating a relatively equitable property distribution. Increasing poverty in the early 1970s, however, had led to increasing land divestitures under duress, and ownership patterns had begun to skew towards lesser equity and more concentrated ownership amongst the privileged classes – a phenomenon that fed increasing political volatility.

The 1970s had ushered in a period of intense conflict and turmoil in Cambodia, first under the violent military dictatorship of Lon Nol, during which time land was commonly seized to serve the interests of political elites. In 1975, the oppressive Khmer Rouge regime had wrested control from Lon Nol and begun a bloody campaign to destroy the country's social fabric. Genocide at the hands of the Khmer Rouge had resulted in an estimated 1.6 to 1.9 million deaths<sup>4</sup> – nearly a quarter of the country's entire population - and had thus completely changed the country's demography as well as its settlement patterns. Families were separated and widely dispersed. As part of their strategy to break down traditional governance systems and social structures, the Khmer Rouge had forbidden private land ownership, forcibly relocated urban residents to the countryside, and rearranged communities across the country. The regime had also systematically destroyed all cadastral<sup>5</sup> and land titling records and institutions of land administration along with most other social, cultural, and governance institutions.

When Viet Nam had occupied Cambodia in 1979, ousting the Khmer Rouge, the Communist government had implemented a system of agricultural collectivization and established 'communes' with shared ownership. Some Cambodians had begun returning to urban areas, particularly Phnom Penh, or to the agricultural lands held previous to the Khmer Rouge rule, but no formal land titling systems or records management programs had been adopted. Nevertheless, residents had begun to create informal systems of land claim wherein 'ownership' was primarily recognized by continuous residence or use.

The 1980s saw continued struggle between three political powers for legitimacy – the Khmer Rouge, a royalist faction, and the Khmer People's National Liberation Front. By 1981, the three separate regimes had united loosely under the UN-dubbed 'Coalition Government of Democratic Kampuchea', with UN-led 'reconciliation' commencing in 1989. By the 1991 conclusion of the peace process, current Prime Minister Hun Sen's Cambodia People's Party (CPP) had emerged as the country's sole political party, maintaining a strong 'neopatrimonial' system of government with a strong and extensive network even until today. In this political system, powerful elites commonly secure the loyalty of constituents with favors and protection, while maintaining systems of control that undermine formal rule of law and preserve unbalanced power structures. Since the CPP's ascension, Cambodia's government

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<sup>4</sup> Kiernan, B. (2003). The demography of genocide in Southeast Asia: The deaths tolls in Cambodia, 1975-79, and East Timor, 1975-80. *Critical Asian Studies*, 35, 4, December 2003, 585-597(13).

<sup>5</sup> 'Cadastral' refers to land mapping documents that record ownership of land parcels.

had combined both a purportedly rational bureaucratic apparatus and an extensive personalized patronage network. Unsurprisingly, valuable land had often been granted to CPP elites.

But in 1992, in response to a widely perceived need for land reform, a land law had been enacted to facilitate formal titling via a new Land Ministry. The volume of claims filed had quickly overwhelmed the Land Ministry, with 4.5 million requests received in 1992 alone.<sup>6</sup> Thus, the registration system suffered a massive backlog of unresolved claims.

Upon filing, claimants were issued simple paper receipts. Legally, these only proved filing a claim as opposed to gaining legal recognition of land ownership. Nevertheless, because claims were slow to be dealt with, these receipts had become de facto evidence of ownership, often resulting in overlapping claims. Realizing new opportunities for profiting, an environment of official corruption had arisen, and disputes over land had become commonplace.

Thus, the 1992 reform had done little to alleviate problems of unclear property rights. Furthermore, less educated, poorer citizens were often unable to understand the new legal requirements or afford the expected bribes needed to obtain documentation. Responding to donor pressure, the government had cracked down on low-level corruption, but this had only pushed corruption to higher government levels where *all* land resources could be controlled.<sup>7</sup>

The political environment had also complicated matters. Observers noted that those outside of or opposed to the CPP suffered as a result of not benefitting from the party's extensive network of protection. The CPP had the power to infiltrate all aspects of Cambodian society and thus control the reforms. The regulations and programs proposed by the World Bank and its partners were also easily manipulated or circumvented to benefit members of the party.

### ***21<sup>st</sup> Century Land Administration: Renewed Efforts for Land Reform***

Recognizing the corruption challenges and ineffective implementation of the 1992 legislation, August 2001 saw the adoption of a new Land Law drafted with assistance from the Finnish and Canadian governments, the WB and the Asian Development Bank. The most significant reforms allowed for legal ownership to be extended to both residential and agricultural lands, established a more independent Cadastral Commission to manage conflicts, and legislated official recognition of ownership via the issuance of title certificates. It authorized the MLMUPC to manage cadastral mapping and land titling and registration. Article 30 of the law held that land continuously occupied without contestation for five years or more prior to the passage of the 2001 law could be claimed for documented private ownership.

Certainly, donors and WB staff recognized implementation challenges including technical shortfalls (e.g., lack of equipment), lack of authoritative demarcation, lack of education on the reform process, and a "general problem of respecting law and order".<sup>8</sup> Thus, in late October 2001, a working mission comprised of WB officials, representatives of the government of Finland, the German Technical Cooperation Agency (GTZ), and the ADB had visited Phnom Penh to discuss a proposed Land Management and Administration Project with the MLMUPC.

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<sup>6</sup> Torhonen, MP. 2001. Developing land administration in Cambodia. *Computers, Environment and Urban Systems* 25 (4-5):407-428.

<sup>7</sup> Cock, AR. 2007. The interaction between a ruling elite and an externally promoted policy reform agenda: The case of forestry under the second Kingdom of Cambodia 1993-2003; Hughes, C. 2006. The politics of gifts: Tradition and regimentation in contemporary Cambodia. *Journal of Southeast Asian Studies*, 37, 3: 469-489.

<sup>8</sup> Torhonen, MP. 2001. Developing land administration in Cambodia. *Computers, Environment and Urban Systems*, 25 (4-5): 407-428.

The October 2001 meeting had culminated in a US\$34.9 million funding agreement supported largely by the WB, with smaller contributions from the Finnish and Canadian governments, and GTZ. The project was to be implemented over a fifteen-year period, with the first five-year phase starting in March 2002. LMAP aimed to “reduce poverty, promote social stability, and stimulate economic development,” as well as “improve land tenure security and promote the development of efficient land markets.” This was to be accomplished through “(a) development of national policies, the regulatory framework, and institutions for land administration; (b) issuance and registration of titles in urban and rural areas; and (c) establishment of an efficient and transparent land administration system.”<sup>9</sup> Benefits were expected to be “fully realized over the long term extending to 30 years”.<sup>10</sup>

The project was to be directly managed by MLMUPC, along with the Secretariat of the Land Policy Council, which would be responsible for the land policy component.<sup>11</sup> The Cambodian government and its development partners upheld land titling as essential for industrialization and agricultural development, the logic being that the establishment of clear and enforceable property rights would decrease ownership conflict, limit the need for costly individual land protection, and allow for the establishment of land markets to allocate resources to the most productive users. Furthermore, it was observed widely that developed nations maintained formal land titling systems, supporting its importance for economic development.

Project funding was contingent upon meeting certain ‘Environmental and Social Safeguards’, including those related to upholding the Bank’s policies on involuntary resettlement, indigenous minorities, and the environment. Especially relevant to Boeung Kak was the involuntary resettlement component, which stated three circumstances under which persons could be resettled and duly compensated: construction of training facilities, evictions due to land titled to the State, and “Right of Way claim by the State on land inhabited by villagers before any right of way regulations were issued.”<sup>12</sup>

The 2001 Land Law was also intended to address the issue of rampant corruption. But the next few years would reveal that the LMAP project created a framework for further circumvention of regulations and persistent corruption at the highest levels of government. The CPP, in its continued role as the dominant and unopposed political party, could continue to control land allocation and manipulate both the 2001 Land Law and LMAP to serve elite interests, either by arbitrarily classifying land as ‘State Public’ land in order to make it legally unavailable for public claim, or by assigning and recording legal ownership via dubious means.

Much of the LMAP project was to be implemented in less densely populated rural provinces, where systematic land titling was, indeed, quite successful as measured by the amount of titles issued in a short time. Cambodian officials and donor agencies reported the registration of approximately 1 million land parcels between 2002 and 2007, and the program was lauded for its rapid improvement of tenure security for farmers – an important achievement critical to the agrarian economy. But in urban areas, including Phnom Penh, the government was less capable of limiting its complicity in large-scale corruption; the potential profits from land ownership in the capital proved all too tempting, as local residents would soon discover.

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<sup>9</sup> World Bank, Proposed Land Management and Administration Project (LMAP), 2002, [http://www.mlmutpc.gov.kh/mlm/documents/document\\_99.pdf](http://www.mlmutpc.gov.kh/mlm/documents/document_99.pdf), pp.1-2. Accessed on March 1, 2011.

<sup>10</sup> World Bank, January 2002, p. 14.

<sup>11</sup> Ibid. p. 2-3.

<sup>12</sup> Ibid, p. 4.

### ***New Problems: Implementing LMAP on High Value Land***

The WB had recognized the challenges of reform implementation from the project's inception. Remarked the first LMAP project lead, "There is no template for land policy that can be readily applied to any country. Every country has its own unique social, economic, political, environmental, historical, ethnic, cultural, religious and other idiosyncrasies... Past experience indicates that what works in one country may not be suitable or transportable to another country and that land reform is a long-term engagement."<sup>13</sup> Despite efforts to forestall problems, the project quickly ran into challenges, particularly as a result of attempts to title land in areas with the potential to derive considerable financial profit.

The first was a lack of technical and managerial capacity in the Cadastral Commission to transparently investigate, mediate, and arbitrate land disputes. The Commission was charged with maintaining a system that incorporated both traditional processes and new legal procedures to gain acceptance and maintain transparency. But these conflicted when it came to implementation: formal processes were abandoned in favor of the existing system of informal exchange, both because of staff familiarity at the local level and as rent-seeking commune officials recognized opportunities to arbitrate and officiate cheaper, extralegal<sup>14</sup> sales.

While the LMAP project team directly facilitated initial systematic land registration, Cambodia's poorly funded, and often corrupt government managed subsequent land transfers and dispute resolution. Individuals capable of paying a flat minimum facilitation fee would be assisted first, and fees often reached as much as 30 percent of the value of the land for smaller, less valuable parcels belonging to the poorest land claimants<sup>15</sup>. Furthermore, visiting registration offices was time consuming and costly; thus, community members reverted to traditional practices of paying small fees to community officials rather than legally recording transfers.

The dominance of Cambodia's political elites further facilitated circumvention of the 2001 Land Law. In many instances, manipulation of legal definitions and processes governed by the Cadastral Commission contributed to increased land grabbing within the network of elites. Indeed, this is exactly what happened surrounding Phnom Penh's Boeung Kak Lake.

### ***Capture in the Capital: The Problem of Boeung Kak Lake***

The Boeung Kak Lake Project epitomized the challenges of implementing the 2001 Land Law, as it utilized a coveted piece of land held informally by families with limited political sway. As such, it became the center of a contentious dispute testing the viability of the LMAP project and MLMUPC.

Covering ninety hectares before it was filled with sand, Boeung Kak Lake rested on a prime location in central Phnom Penh (Exhibit 1). In the 1980s, the lake had been a valuable source of aquatic life, including vegetables and fish. After the collapse of the Khmer Rouge regime, families had resettled the lakeside as early as 1979 to make a living harvesting plant life and fish. A tourism industry had developed around the lake, encouraging the establishment of guesthouses and cafes and attracting the support of both local and international customers.

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<sup>13</sup> Bell, Keith Clifford. 2005. *Land administration and management: The need for innovative approaches to land policy and tenure security*. Bangkok, Thailand: UNESCAP.

<sup>14</sup> Extralegal sales are those occurring beyond the province of the law, without being recognized via legal means.

<sup>15</sup> So, S. 2009. Political economy of land registration in Cambodia.

Some of the 4,000 households surrounding the lake had purchased plots from military and government officials in a major wave of land transactions in 1989 (officials whose 'ownership' had come largely by way of prior land seizures), and were thus legally entitled to inhabit the area. Other households and businesses had occupied the land since 1979 or shortly thereafter. The five-year occupancy rule, which was established under the 1992 Land Law and upheld in the 2001 reform, afforded them legal claim to the land as well. However, when it came to registering the land under LMAP, conflict arose.

Under the 2001 land law, the lake itself being of 'natural origin', legally became 'State public property', though this classification did not expressly extend to the land surrounding the lake where the majority of families resided. In 2006, when the commune of Sras Chak including Boeung Kak, entered the LMAP systematic titling process, it was announced that the lake *and* its surrounding neighborhoods would be declared 'State public land'— a classification that forbade ownership by private citizens. This came despite the fact that the area had been de facto privatized in 1989 and thereafter recognized by government officials in formal land transactions, issuance of house numbers, etc. Furthermore, the designation came without the consultations, public meetings, investigations, and legal procedures specified in the LMAP.<sup>16</sup>

As such, Boeung Kak residents would have to be resettled to locations many kilometers away. Facing the government's refusal to entertain appeals, residents appealed to the WB for intervention, which scrambled to initiate discussions with government counterparts.

In early 2007, while WB staff and residents attempted to resolve the ongoing dispute, the Phnom Penh municipality announced that they had entered into a \$79 million 99-year lease for 133 hectares with a private firm, Shukaku, Inc, which intended to build the 'New East City' high-end condominium project at the site. Shukaku was owned by Yeay Phu, the wife of Senator Lao Meng Khin, a senior member of the CPP, a close ally to Prime Minister Hun Sen, and a director of Pheapimex, a logging conglomerate repeatedly accused of corruption activity and environmental degradation. It was later discovered that a 2005 letter preceding the official 2006 adjudication had been sent from the Council of Ministers to the Governor of Phnom Penh announcing the government's approval to develop Boeung Kak area by the private company.<sup>17</sup>

Perhaps in response to complaints about the illegality of the transaction due to Sub-decree 129, which states that leases of over 15 years cannot be granted for State public property, another Sub-decree was passed in 2008, well after the lease signing, to transfer the lake and its surrounding area from State public to State private property.

Residents repeatedly attempted to appeal against the sale to a number of State and international authorities and NGO watchdog groups, citing the land's sudden reclassification, the lack of transparency in the sale process, and a disregard for the fate of the thousands of long-term residents of the lake area. However, little progress was made in negotiations, and residents' complaints seemed to go unheard.

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<sup>16</sup> Grimsditch, M, & N Henderson. 2009. *Untitled: Tenure insecurity and inequality in the Cambodian land sector*. Phnom Penh, Cambodia: Bridges Across Borders, Centre on Housing Rights and Evictions, Jesuit Refugee Services.

<sup>17</sup> Ibid.

In August 2008, Boeung Kak residents awoke to the noise of sand being blasted into the lake. Soon thereafter, their neighborhood began to fill with floodwater. Nevertheless, with no place to go, most stayed in residence and simply tolerated the deteriorating conditions. Those who moved either accepted Shukaku's compensation of US\$8500<sup>18</sup> – an amount inadequate to acquire housing – or accepted free housing in apartments that reportedly leaked water in the rain and were of questionable structural integrity. The resettlement communities were also located in areas of the city where economic opportunities were scarce and public services lacking, and many had owned businesses in the Boeung Kak area that were destroyed by the development. One lakeside resident, Ly, who had lived there since 1979, stated, "My restaurant supports my three children and four grandchildren, and without it we don't know what we'll do. We don't intend to give it up."<sup>19</sup>

Rising waters, power cut-offs, and the looming threat of disease, however, made relocation inevitable even for those who remained. The NGO Bridges Across Borders Southeast Asia (BABSEA) estimated in 2009 that 20,000 people would be displaced as a result of the Shukaku project and that 1,000 households never had their land claims reviewed.

On August 28, 2009, the LMAP project management team requested that the Government and Bank suspend implementation to allow time to reach consensus on how to address safeguard concerns. Instead, the Government requested the cancellation of the Credit on September 7<sup>20</sup> and announced their intention to terminate LMAP altogether.



Houses were frequently flooded as the lake was filled with sand. NGOs claimed that flooding was a deliberate tactic used by Shukaku to force residents off their land.<sup>21</sup>

On September 4, 2009, the Geneva-based Centre on Housing Rights and Evictions (COHRE) filed a formal Request for Inspection (Exhibit 2) with the World Bank Inspection Panel, citing violations of the Bank's Policy on Involuntary Resettlement<sup>22</sup> and alleging insufficient project oversight. Dan Nichol森, a COHRE lawyer commented, "The whole contract under which it's

<sup>18</sup> [http://www.channelnewsasia.com/stories/afp\\_asiapacific/view/1100049/1/.html](http://www.channelnewsasia.com/stories/afp_asiapacific/view/1100049/1/.html). Accessed on March 1, 2011

<sup>19</sup> Personal Interview, July 2010.

<sup>20</sup> Management report and recommendation in response to the Inspection Panel investigation report, Cambodia Land Management and Administration Project. The World Bank, January 21, 2011.

<sup>21</sup> Photo Credit: [http://saveboeungkak.files.wordpress.com/2010/12/20101218\\_v1\\_wading-to-her-home.jpg](http://saveboeungkak.files.wordpress.com/2010/12/20101218_v1_wading-to-her-home.jpg). Accessed March 1, 2011.

<sup>22</sup> OP 4.12- Involuntary Resettlement. <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064610~menuPK:4564185~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html>. Accessed March 1, 2011.

being done is blatantly illegal but even though we've gone to court, we can't stop it. There's a total lack of involvement of the community and for the benefit for the community. Instead, the urban poor are just being shunted out of town while the elite take over with another badly thought out development."<sup>23</sup>

The Bank's Board of Directors granted approval in March 2010 for the Inspection Panel to begin conducting an investigation (Exhibit 3). The local Bank staff was sidelined by the Inspection Panel, which halted LMAP activities during proceedings. Meanwhile, the Cambodian government proceeded to develop access roads to the project site, speeding up Shukaku's construction. July 2010 saw further flooding of households, with local residents reporting floodwaters mixing with wastewater from the toilets of neighbouring houses at hip level.<sup>24</sup>

A number of community meetings were interrupted by police in August, resulting in several protests including a march upon Prime Minister Hun Sen's home. Despite police initiatives to thwart protestors' efforts to impede the project's progress, rallies continued regularly through September and October.<sup>25</sup> Residents were organized by COHRE, BABSEA, and the Housing Rights Task Force (HRTF), a consortium of NGOs working on housing issues in Cambodia. David Pred of BABSEA commented that WB was "asleep at the wheel for seven years while poor and vulnerable segments of the population were denied any access to the formal system that has become the only means of protecting oneself from forced eviction in Cambodia today."<sup>26</sup> And Sia Phearum, Secretariat Director of HRTF pointed out, "It has been difficult for the residents to figure out who they should appeal to. The government tells them to go to Shukaku, Shukaku tells them to go to the government. They just throw them back and forth."<sup>27</sup>

To add further uncertainty to the situation, NGO representatives were sceptical that the New East City project would ever benefit Phnom Penh residents as initially proposed. Instead, they asserted their belief that the prime real estate parcels created by infilling the lake would likely be sold off to wealthy individuals: a project billed as an opportunity to create jobs and international-standard apartments, could result in nothing of the sort.

In October 2010, Shukaku had spoken publically for the first time since the project's beginning. In a *Phnom Penh Post* article, Shukaku's Lao Vann commented, "I cannot delay the development process at Boeung Kak lake...Our company is just a firm which received the rights from the government and from municipal authorities to invest in the Boeung Kak lake area, so if you have any questions please ask the government." He added, "If you were the Prime Minister or head of the government, would you decide to develop the Boeung Kak lake area? If you did, what would you do to avoid negative effects on the people? Without any negative effects, I think you cannot do the development."<sup>28</sup>

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<sup>23</sup> Quotation from an interview with David O'Shea, 2009. *Cambodia for Sale*, aired 1 March 2009. SBS Dateline.

<sup>24</sup> Families Flooded Out, July 11, 2010. <http://saveboeungkak.wordpress.com/2010/07/> Accessed March 1, 2011.

<sup>25</sup> Video link of protests turning violent: <http://blip.tv/file/4305597>. Accessed March 1, 2011.

<sup>26</sup> Personal interview with David Pred, September 2010.

<sup>27</sup> Quotation from, "China Firm in Lake Deal," December 28, 2010.

<http://www.phnompenhpost.com/index.php/2010122845711/National-news/china-firm-in-lake-deal.html>.

Accessed on March 1, 2011.

<sup>28</sup> Shukaku Spouts Off on Lake, October 12, 2010.

<http://www.phnompenhpost.com/index.php/2010101243926/National-news/shukaku-spouts-off-on-lake.html>.

Accessed March 1, 2011.

Because of the ongoing Inspection Panel investigation, WB staff members that had been involved with LMAP at the early stages were unable to provide assistance as they awaited the Panel's decision. While Bank staff hoped optimistically for delivery of a Panel report by the end of 2010, there was no telling how long the process might take, or if its resolution would beat Shukaku's timeline or provide an opportunity to relieve affected residents.

In the absence of World Bank intervention, protestors had taken their frustrations to the UN in conjunction with the visit of the UN Secretary-General Ban Ki Moon. Although Boeung Kak representatives were unable to meet with the Secretary-General directly, they were allowed to share their case with the UN Deputy High Commissioner for Human Rights who raised the issue of violent crackdowns in meetings with Cambodia's Ministry of the Interior.<sup>29</sup> Then, through a widely distributed letter to foreign embassies in Phnom Penh on October 21<sup>st</sup> (Exhibit 4), HRTF and Boeung Kak residents increased the pressure on Cambodia's government and development partners to resolve what had become a significant blemish on Cambodia's recent record of development.

### **No solution in sight**

As government officials, World Bank staffers, and community activists considered the events leading up to late 2010 and the public international appeal for intervention, they had to deal squarely with the extreme complexity of the situation and a long, layered history of institutional change and conflict. Moving forward would require making difficult decisions about policy tradeoffs and ordering the priorities of economic and social development.

The Boeung Kak Lake project had become symbolic of Cambodia's corruption problems and limited capacity to implement reforms and further added to growing skepticism about the WB's ability to implement effective institution-building projects. Further corroborating the case's complexity was the protracted World Bank Inspection Panel, which continued to deliberate late into 2010, over a year after the initial complaint had been filed. The political environment of neopatrimonialism, low local administrative skill, and limited resources left the possibility open for similar scandals in the near future.

On the other hand, it had become conventional wisdom that clear, enforceable property rights are important to developing functional economies. LMAP appeared to be technically sound, and it had enjoyed a high degree of success in many areas of the country. Furthermore, Cambodia's sovereignty was a central concern; the country's leaders steadfastly maintained the right to make their own decisions and asserted the need to preserve authority and assume implementation responsibility in order to develop internal capacity.

So then, questions remained about a number of competing goals. Should the Bank and MLMUPC give up on a partly successful program due to a few high profile, yet very serious breakdowns? Should the Bank intervene and provide added compensation to relocated families beyond that offered by the Cambodian government or remove itself entirely from the conflict since it had been made clear that the Bank's involvement was no longer welcome? How should the government and its international supporters proceed with implementing a property rights program in the face of limited local capacity? What goals should be prioritized – the immediate protection of the rights of the poor and their climb out of poverty, or the long-term

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<sup>29</sup> <http://www.un.org/News/press/docs/2010/20101021.unhcr.htm>. Accessed March 1, 2011.

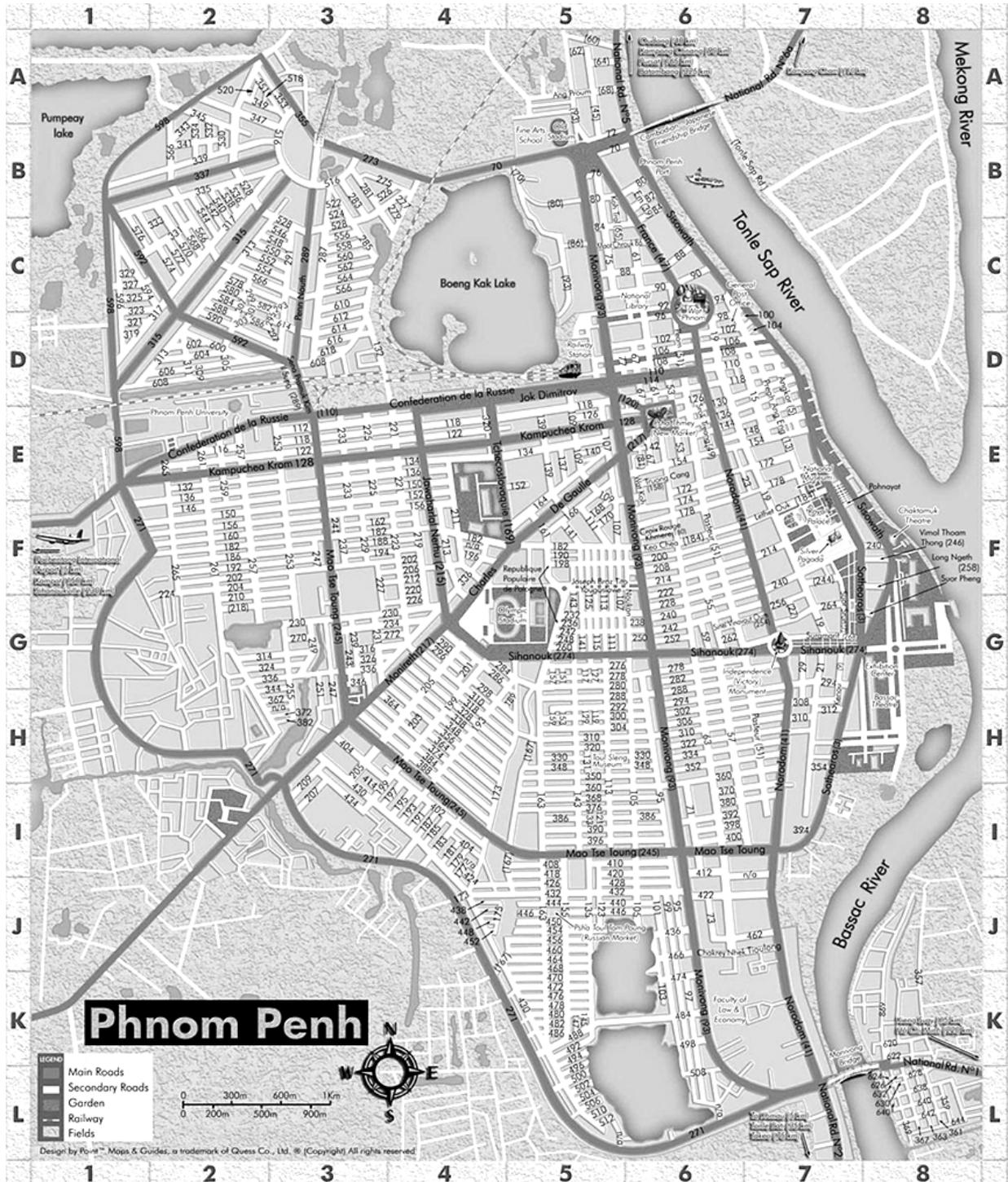
industrial goals of the developing economy and consistency in reform implementation? And who should decide on this prioritization?

Furthermore, while the UN acknowledged the mistreatment of residents, it was not evident what action should be taken by the organization to intervene on their behalf. While the LMAP project and its funding had been initially welcomed by the Cambodian government, the ex-post reality was that two of the world's most powerful global institutions, the WB and the UN, amongst other powerful NGOs, were unable to unilaterally rectify the problems at Boeung Kak. While Shukaku had made little attempt to resolve the lakeside communities' concerns, their representative did raise a valid and persisting question with regard to development: Is it simply a harsh necessity that communities, or at least some groups within them, will be adversely affected in any development process?

The entire land reform program's legitimacy was being called into question. With the Boeung Kak case at a head, the Cambodian government, WB, and now the UN found themselves embroiled in a complex conflict of competing interests and development goals whose resolution would require difficult decisions regarding policy tradeoffs and might also necessitate mending degraded relationships amongst residents, their government, civil society actors, and the WB in order to move forward.

**Exhibit 1**

**Map of Phnom Penh**



## **Exhibit 2**

### **Request for inspection by World Bank Inspection Panel, Center on Housing Rights and Evictions, September 2009**

Centre on Housing Rights and Evictions

8 N. 2nd Avenue East Suite 208

Duluth, MN 55802

e-mail: Litigation@cohre.com

4 September 2009

Re: Request for Inspection by World Bank Inspection Panel  
(Land Management and Administration Project -Project ID: P070875)

Executive Secretary  
The Inspection Panel  
1818 H Street, NW  
Washington, DC 20433

World Bank Inspection Panel,

1. The Centre on Housing Rights and Evictions (COHRE) is submitting this request for inspection on behalf of the representatives of the Boeung Kak community located in the area known as Sras Choc commune, Daun Penh district, Phnom Penh, Cambodia. These community representatives have requested confidentiality in submitting this complaint and wish to remain anonymous. COHRE's address is above.
2. The Boeung Kak community is and has been detrimentally affected by the Land Management and Administration Project (LMAP) as explained below. LMAP has five main components: developing policy and legal framework, institutional development, land titling, dispute resolution, and State land management. The project received IDA credit of \$28.83 million.
3. In 2006, the commune of Sras Chok, Daun Penh district, including the Boueng Kak lake area, was announced as an adjudication zone for the purposes of systematic land registration under LMAP. The announcement was made by public notice in the local pagoda. Residents state that when they requested that their land claims be investigated, their requests were denied on the grounds that they were living inside a "development zone". This process deviates from the legal procedure developed by the project and adopted by the Royal Government of Cambodia. That procedure states that following notice and a public meeting, full investigations should be conducted of the adjudication area. Any competing claims to the land must be resolved in the process, and if this is not possible, they should be referred to the Cadastral Commission for resolution.
4. In January 2007, the adjudication record was publicly posted in Sras Choc commune. The same month, a lease agreement was signed between the Municipality of Phnom Penh and a private developer, Shukaku Inc., over 133 hectares in Sras Choc commune (the "development zone"), affecting an estimated 4,250 families residing in the area. According to the LMAP Task Team Leader, the result of the adjudication process in Sras Choc commune was the

issuance of approximately 400 titles and it can be assumed that "most if not all (the plots titled] fall outside the development zone."

5. A letter sent from the Phnom Penh Department of Land Management to the Municipality of Phnom Penh in July 2008 informed the Governor of Phnom Penh that the lake and surrounding area had "been studied and demarcated" and the boundaries of the development area set at 133 hectares. This includes the approximately 90 hectares of lake plus the surrounding area.

6. Families living in the development zone began reporting facing pressure and intimidation to leave the area in August 2008, when the developer commenced filling in the lake as part of the development. On 10 August 2009, more than 150 households in Boeung Kak were issued their first formal eviction notice, which provided residents with a one-week deadline to accept one of three compensation options.<sup>6</sup> Compensation options include USD \$8500 or a flat at Damnak Troyeung relocation site (more than 20 kilometers outside of the city-centre). The third option of onsite housing requires residents to move to Trapeang Anchanh relocation site (also more than 20 kilometers outside the city) for four years while the permanent housing is constructed in Boeung Kak.

7. Many Boeung Kak residents regard themselves as owners of the land and are in possession of documents that indicate recognition of ownership under the customary tenure system. The introduction of a widespread and systematic centralized and formalized land registration process under LMAP has weakened recognition of the customary tenure system in Cambodia. As Boeung Kak residents were unable to transfer their customary rights into formalized land titles under LMAP, the project not only failed to formalize their tenure but in effect also degraded their pre-existing tenure status.

8. According to Article 248 of the Cambodian Land Law of 2001, until an area is covered by the cadastral index maps and ownership rights have been secured, no act that hinders the immovable property of legal possessors is allowed. Article 248 thus provides legal tenure protection to people residing in areas not yet covered by the index maps. The adjudication process that occurred in the Sras Choc commune, including the creation of a cadastral index map triggered the lifting of the protection granted by Article 248 against the interference with residents, including through eviction.

9. As stated above, the adjudication of Srah Choc commune resulted in 400 titles being issued outside of the development zone. In the same month, the Boeung Kak area was leased to a private company by the Municipality of Phnom Penh. It is unclear whether formal registration of the land to the State occurred, however, the adjudication process, at a minimum, resulted in a de facto determination of the status of the land to be State-owned. Upon entering into the lease agreement, the Municipality of Phnom Penh claimed in the media that the area was "State land". Whether the land was formally or de facto determined to be State property following the adjudication process, the result was that persons residing on State land were and continue to be subject to eviction. This scenario was envisaged in the Development Credit Agreement (DCA). In order to mitigate the potential harm of evictions from State property, the DCA requires the application of the Environmental and Social Guidelines, including the Resettlement Policy Framework. The framework has not been applied in the case of Boeung Kak. Therefore, in addition to the weakening of the customary land rights of Boueng Kak residents, the protections that the DCA required have not been implemented by the Government.

10. In July 2008, during a regular project supervision mission, World Bank staff visited Sras Choc commune and were made aware of the problems with the adjudication process and the

pending eviction of area residents. COHRE is not aware of any remedial action taken by the World Bank following this mission.

11. Furthermore, LMAP failed to implement several important sub-components of the project, which were designed to prevent harm resulting from the project. The Public Awareness and Community Participation (PACP) sub-component aimed to inform and involve the Cambodian public in the registration and adjudication process. It was envisioned that NGOs would deliver PACP and allow LMAP staff to focus on the technical aspect of the titling process. However, in the seven years that the project has run, no NGOs were ever contracted to conduct PACP, and it is clear that there is still a dire lack of knowledge amongst most Cambodians regarding their land rights, the registration system and dispute resolution mechanisms.

12. A further concern is the lack of access to a functioning dispute resolution mechanism. The Cadastral Commission was set up to resolve disputes over unregistered land, but its performance is widely seen to be unimpressive and of the more than 5,000 complaints it has received since its inception, 2,000 are still unresolved. It is widely accepted that the Commission cannot resolve disputes involving high profile or well connected individuals against poor communities. The LMAP Project Appraisal Document acknowledged this imbalance, and in an attempt to minimize it, committed to provide legal aid to disadvantaged parties involved in land disputes:

The parties who will bring their disputes before the Commission have vastly unequal resources to devote to pressing their claims. The poor will be at a critical disadvantage if they cannot access legal assistance. The project will provide this assistance, seeking to level the playing field by funding an expansion of the activities of national legal NGOs currently providing such legal assistance to the poor...The project will provide funds for the MLMUPC to contract with selected legal NGOs for investigation, counseling and representation services for the disadvantaged.

In recognition of the importance of this aspect of the project, the PAD also states in the Sustainability and Risks section that a critical risk is that the «Government lacks commitment to ensuring dispute resolution mechanisms function efficiently and fairly." The corresponding Risk Mitigation Measure was to "maintain an active dialogue with government and development partners to remain abreast of changes in commitment." The project would be "scaled back if commitment to a fair process of dispute resolution is inadequate".<sup>8</sup> This risk was rated as "substantial." To date, 7 years from the start of the project, no legal aid has ever been provided through LMAP.

13. The preceding paragraphs show a failure of the World Bank to comply with Operational Directive 13.05 on Project Supervision. Despite the serious problems with the implementation of LMAP in both the case of Boeung Kak and the project more widely (see attached Executive Summary of the BABSEA and COHRE report on LMAP; "Untitled"), consecutive supervision missions indicated satisfactory ratings on most of the LMAP components. The project was also extended for an additional two years in 2007, without any apparent attempt to rectify the flaws.

14. The Boeung Kak case was first raised by COHRE and Bridges Across Borders Southeast Asia (BABSEA) in a meeting with the World Bank Country Director in February 2009. This meeting led to an Enhanced Supervision Mission, led by World Bank Lead Counsel from Washington D.C. in April 2009, during which the Boeung Kak case was raised again, along with other cases and broader concerns with LMAP. The Enhanced Supervision Mission led to a Safeguards Review Mission, initiated on 3 August 2009, during which the complainants discussed the applicability of Bank safeguards to the Boeung Kak case specifically and requested the urgent intervention of the World Bank management in their case. On 14 August,

a letter was sent by the Cambodian Housing Rights Task Force to the World Bank Country Director and LMAP Task Team Leader requesting clarification about the applicability of the LMAP Environmental and Social Guidelines and the Resettlement Policy Framework to the Boeung Kak case. This letter again requested that the World Bank intervene urgently in the Boeung Kak case due to the eviction notice issued a day earlier. The World Bank met with community representatives and NGOs to discuss issues and concerns related to the case. A week later, Vice President for East Asia and Pacific James Adams visited Cambodia. COHRE was informed that he raised the Boeung Kak issue with senior government officials during his visit.

15. COHRE welcomes the efforts made by the World Bank management since February 2009 to address the serious problems with the implementation of LMAP, and specifically the harms suffered by Boeung Kak residents. However, the harm caused by seven years of inadequate supervision of the project has in no way been mitigated by the Bank's recent efforts. More than 900 families from Boeung Kak have already been cleared from the area without their land rights being properly adjudicated. In the absence of any legal protections, these families accepted inadequate compensation under conditions of duress. There is no indication that the recent efforts will lead to a more favorable outcome for the remaining families, some of whom have been given an eviction deadline of three weeks. It is evident that the actions taken by the Bank management were too late to prevent the harms now being done.

16. The above may not be an exhaustive list of all World Bank Operational Policies and Bank Procedures being violated by IMAP. Consequently, COHRE and the Boeung Kak Community reserve the right to amend this Request for Inspection.

17. Finally, it should be noted that that Boeung Kak is not an isolated case. Other urban, rural and indigenous communities throughout Cambodia have been unable to access the land titling and/or dispute resolution mechanisms under LMAP, and thus have not been able to secure their land rights under the formal system developed by LMAP. Some of these communities have experienced increased tenure insecurity and forced evictions.

18. We request the Inspection Panel recommend to the World Bank's Executive Directors that an investigation of these matters be carried out.

19. COHRE and the Boeung Kak community reserve the right to provide further information on this matter.

Sincerely,

COHRE

### **Exhibit 3**

#### **World Bank Inspection Panel Brief Report, December 2009**

The Inspection Panel  
Final Report and Recommendation on Request for Inspection

Re: Request for Inspection, Cambodia: Land Management and Administration Project (Credit No. 3650 -KH)

#### **A. Background**

1. On September 4, 2009 the Inspection Panel received a Request for Inspection from the Center for Rousing Rights and Evictions (CORRE), which submitted the Request on behalf of communities affected by the Cambodia: Land Management and Administration Project (hereinafter referred to as the "Project" or "LMAP"). These communities are situated in the Boeung Kak Lake (BKL) area, within the Sras Chok commune, Daun Penh district in Phnom Penh. The Requesters asked the Panel to keep the names of affected people and villages where they live confidential.
2. The Panel registered the Request for Inspection on September 24, 2009. Management submitted its Response to the Request on November 2, 2009.
3. A Panel team visited Cambodia from November 16 - 19, 2009, to determine the eligibility of the Request for Inspection. On December 2, 2009, the Panel submitted its Report and Recommendation to the Executive Directors<sup>2</sup>. The Panel found the Request and the Requesters eligible but at that time refrained from making a recommendation on whether an investigation is warranted, noting that it expected to be able to make such determination no later than March 31, 2010. In the Panel's view, this would give a further chance to Management to establish a dialogue with the Government of Cambodia and other Development Partners to address the concerns of the Requesters.
4. The Board approved the Panel recommendation on December 16, 2009, on a non-objection basis.
5. The present report contains the Panel's final recommendation on, whether an investigation of the allegations raised by the Requesters is warranted.

#### **B. The Project**

6. The Project aimed to assist the Borrower's "program of actions, objectives and policies designed to improve land tenure security and promote the development of efficient land markets. The Project's specific objectives were: "to assist the Borrower in its efforts to implement the Program, which includes (i) the development of adequate national policies, a regulatory framework and institutions for land administration; (ii) the issuance and registration of titles in rural and urban areas in the Project Provinces; and (iii) the establishment of an efficient and transparent land, administration system." <sup>4</sup> According to the Management Response, the Project was designed as the first phase of a long term program aimed at supporting good governance and greater access for the poor to basic social services and economic opportunities.
7. The Project was partially financed by an IDA Credit to the Royal Government of Cambodia (RGC) in an amount of nineteen million three hundred thousand Special Drawing Rights (SDR 19,300,000), about US\$ 23.4 million equivalent. The Credit was approved by the Board of

Executive Directors in February 2002 and became effective in June 2002. The Closing Date was scheduled for December 31, 2009. However, on September 7, 2009, the Government of Cambodia cancelled the undisbursed balance of the Credit.

8. The Ministry of Land Management, Urban Planning and Construction (MLMUPC) was responsible for Project implementation. A Project Management Office (PMO) was established within the MLMUPC. The Municipal Governors, within the Ministry of Interior, were responsible for declaring the adjudication areas, i.e. the declaration that would launch the titling process.

### C. The Request

9. The Requesters represented communities in the BKL area within the Sras Chok 'commune' in Phnom Penh. They stated that members of the Project affected communities suffered serious harm from the design and implementation of the Project and claimed that these issues needed to be urgently addressed because further, severe harm could be caused in the very near future. According to the Request, following public notice that the commune area would become an adjudication zone for purposes of land registration under the LMAP, the residents of the BKL communities requested that their land claims be investigated, as provided for by the legal procedure developed under the LMAP and adopted by the Government. The Request claimed that people were however, denied their requests for land claim investigations on the ground that these lands were within a development zone. According to the Request, in 2007, in the same month that the adjudication record was posted in the commune, a lease agreement was signed between the municipality to which the commune belongs and a private developer, covering the area where the Requesters currently live.

10. The Requesters stated that in 2008, when the developer began its works, residents of the communities started facing pressure and intimidation to leave the area and, a year later, many families received formal eviction notices giving them a one-week deadline to accept one of three compensation options. These options were: cash compensation, relocation in a site many kilometers away, and finally, onsite housing coupled with temporary relocation while waiting for the construction of the houses to be completed in about four years. The Requesters argued that the Project, which aimed at creating a centralized and formal land registration process, in fact weakened and degraded the land tenure of the customary land owners because the Project "failed to formalize their tenure" and did not "transfer their customary rights under formalized land titles."

11. According to the Requesters, other sub-components of the Project remained unimplemented. They referred in particular to the Public Awareness Community Participation (PACP) sub-component, according to which Project affected people were to be informed and involved in the registration and adjudication process and NGOs were to be contracted for the implementation of the PACP.

12. The Request also mentioned the lack of a functioning dispute resolution mechanism that was envisaged under the Project. The Requesters claimed that, although included in the Project, after seven years of Project implementation, no legal assistance was offered to affected people under the LMAP.

13. The Requesters stated that they welcomed the Bank's efforts since February 2009 but noted that "the harm caused by seven years of inadequate supervision of the project has in no way been mitigated by the Bank's recent efforts." They reiterated that hundreds of families were already evicted from their land and had to accept "inadequate compensation under conditions of duress" because they lacked legal assistance.

#### D. Management Response

14. The Management Response noted that according to the Project Appraisal Document (PAD) "no eviction, involuntary resettlement or land acquisition was anticipated during the Project." It added however that the DCA provided that the Project had to be carried out in accordance with Environmental and Social Guidelines. These included a Resettlement Policy Framework (RPF), the application of which would be triggered in case of evictions from State land under the components of the Project providing for systematic and sporadic titling. Management further indicated that the RPF would apply in three cases, namely in case of "a) the eviction from State land of individuals who had occupied it prior to August 30, 2001, the date of the enactment of the 2001 Land Law, following titling of such land in the name of the State ; (b) the eviction from State land titled in the name of the State of individuals who had occupied it prior to August 30, 2001, because of the need to use such land for the carrying out of civil works under the Project; and (c) the extension of the State of Right of Way (ROW) claims that adversely affected possession rights."

15. The Response further noted that, according to the PAD, "the Project will not title land in areas where disputes are likely until agreements are reached on the status of the land. In addition, the titling programs supported by the Project would not cover informal settlers or "squatters" on State land as the project was not conceived as a way to regularize informal settlements.

16. Management stated that the Project had delivered "significant development benefits in several areas" as it helped the establishment of a modern land administration system, which led to registering and titling more than one million parcels of land in a cost effective manner at around \$11 per title. At the same time, Management acknowledged that improvements in the land tenure security cannot be measured because of a lack of relevant data and a methodology to collect those data.

17. The Management Response stated that in May 2006 the Sras Chok commune in which the BKL area is located was declared an adjudication area. The commune was then demarcated and the results publicly displayed in January/February 2007. However, the BKL area within the commune was not considered for demarcation because the Municipality of Phnom Penh (MPP) (within which Sras Chok commune is situated) claimed that BKL was State Public land. This, therefore, excluded BKL from titling, given that, under the Land Law, possession rights cannot be claimed on State Public Land.

18. Management noted that in spite of the assertion that BKL was public land, plans for private development of the area were underway since 2005, and culminated in February 2007 with the MPP signing a 99-year lease covering the BKL area with a private developer. In August 2008, the Government issued a sub-decree to convert the area from State Public land to State Private land. Management went on to state that residents of the area were then told that they would have to relocate and could accept one of three compensation options, which allegedly would be withdrawn after the deadlines for relocation expired. Management added that from August 2008 "further pressure to relocate was brought to bear" on the residents when the developer started filling the BK lake causing structural damage and flooding to people's housing.

19. In light of this, "Management concluded that proper procedures were not followed in the adjudication of the Sras Chok commune, that the residents of the BKL area were not given an opportunity to present their claims of their possession of the land and that there is no evidence that a transparent participatory process was carried out to determine the classification of the land in question as State Public Land.

20. Based on the information gathered and described above, Management concluded that the RPF should have been applied to the displacements of the residents in the Sras Chok commune and the BKL area. In this regard, Management argued that the criteria for triggering the application of the RPF set forth in the DCA were met: the Sras Chok commune was an adjudication area where systematic titling was being carried out and, though no formal title to the State was issued, the lease signed with the private developer over the land can be viewed as a de facto determination of the land as State public land.

21. The Management Response noted that an Enhanced Review Mission (ERM) was carried out in April 2009, which concluded, among other things, that shortcomings in the Project's design and implementation had led to a disconnect between the Project's success in the issuance of land titles and continuing insecurity of the poor in land tenure. It also noted that local authorities were excluding lands in adjudication areas from titling activities without following proper procedures and without allowing people access to information and dispute resolution mechanisms.

22. Management also stated that the Bank's Regional Vice President (RVP) traveled to Phnom Penh to meet with senior Government officials in August 2009. The RVP reiterated the request for the moratorium on evictions and offered to allocate Bank resources for the resettlement of the BKL communities. According to Management, the RVP proposed to the Government to suspend jointly the Project while the national policy framework was improved, but the Government followed with a request to cancel the undisbursed balance of the Credit on September 7, 2009.

23. Management proposed actions to address the Requesters' concerns, which were focused on two fronts and emphasized that these require cooperating with the Government and the other Development Partners. Management stated that, "it will work with the Government and Development Partners towards ensuring that the communities who are resettled from the BKL area will be supported in a way consistent with the agreed Resettlement Policy Framework; and, It will continue to engage the Government and Development Partners to ensure that communities that need to be resettled in the future would benefit from a resettlement policy that meets appropriate standards and from fair and independent dispute resolution mechanisms.

24. Management recognized that the resettlement packages offered to people resettled from the BKL area were not in accordance with the RPF, and thus committed to undertake an assessment of social impacts of the resettlement on the affected communities. Management proposed to work with the Government and the Development Partners to ensure that people were supported on the same basis as if the RPF applied. If the Government did not respond on this, Management stated that it would request the Government to allow the Bank to carry out the assessment on its own so as to develop a plan to mitigate negative impacts and improve social and economic opportunities.

25. Management was also concerned about living conditions and livelihood opportunities in and around the resettlement sites and encouraged the Government to improve these sites. The Response added that the Bank would pursue the opportunity to use Bank funds for this purpose. The Bank was also encouraging the Government to mitigate the environmental impacts of filling the BK Lake.

26. In addition, Management stated that it would try to work with the Government to improve the capacity of existing dispute resolution mechanisms as well as the capacity of communities and NGOs to use them. Furthermore, it would continue to try to engage the Government in finalizing a national resettlement policy framework to mitigate impacts of resettlement on affected people and ensure a fair and systematic approach to resettlement activities.

Management added that the Government was already working in this direction: a draft Law on Expropriation had been prepared as well as a sub-decree on resettlement. Guidelines for urban informal settlements were also being discussed.

27. Management further stated that engagement with the Government would also focus on improving conditions at various resettlement sites in the country, especially of people resettled from State Public Land. Management planned to use other projects to support land tenure and livelihood for poor communities. Finally, as the Country Assistance Strategy (CAS) will be redefined in 2010, Management stated that it would initiate a consultative process to redefine the Bank's role in Cambodia and to identify areas of support and cooperation with the Government.

#### E. Eligibility of the Request for Inspection

28. The Panel reviewed the Request and Management's Response. A Panel team visited Cambodia from November 16 - 19, 2009. During their visit, the Panel team met with the organization representing the Requesters, signatories of the Requests for Inspection and other affected people, as well as with other NGOs operating in Cambodia that are concerned, in particular, about issues of evictions of communities around Phnom Penh. The Panel also met with Government officials, Bank Management in Cambodia, other Bank staff, and representatives of the Bank's Development Partners and other donors. The Panel also visited the community where the Requesters live and the resettlement site where some affected people who chose the relocation option now live.

29. The Panel determined in its' Report and Recommendation, dated December 2, 2009<sup>12</sup>, that the Request satisfied the eligibility criteria for an Inspection, as set forth in the 1993 Resolution establishing the Panel and its 1999 Clarifications. However, due to the special circumstances described below, the Panel recommended to defer a decision on whether to recommend an investigation.

30. In its Report and Recommendation, the Panel noted that Management in its Response indicated its commitment to initiate a dialogue with the Government of Cambodia and other Development Partners to develop concrete actions for communities that were evicted and the ones that face involuntary resettlement.

31. In light of the foregoing, the Panel refrained from making a recommendation on whether an investigation was warranted, but rather decided to await further developments, especially in view of the fact that Management was trying to establish a dialogue with the Government to address the concerns of the Requesters. The Panel stated in its Report and Recommendation that it expected to be able to make a determination no later than March 31, 2010, as to whether an investigation would be merited.

#### F. Observations

32. In considering whether to recommend an investigation, the Panel has followed up on the status of Management's progress in its dialogue with the Government and in the actions proposed in the Management Response.

33. Since submitting its first eligibility report, the Panel has remained in touch with Management and the representatives of the Requesters on developments in Cambodia regarding the situation of the Requesters and the broader efforts of the Bank to ensure that communities that need to be resettled in the future can benefit from a resettlement policy that meets appropriate standards.

34. Management informed the Panel that it initiated a dialogue with the Government of Cambodia. Management indicated that there seems to be commitment and momentum to strengthen the resettlement policy in the country. However, both Management and the representatives of the Requesters indicated that no progress has been made on the ground to implement specific actions that ensure "that the communities who are resettled from the BKL area will be supported in a way consistent with the agreed Resettlement Policy Framework.

35. As noted earlier, among the proposed actions included in Management Response, to which Management committed, is an assessment of social impacts of the affected communities in BKL area. The Panel was unable to confirm that any progress was made on this assessment, which, according to the Requesters, could constitute a step forward to addressing their concerns. The Panel was informed that the Requesters' situation remains much the same as at the time of the submission of their Request for Inspection in September 2009 and the visit of the Panel to Cambodia the following November.

36. The Panel welcomes the progress made by Bank Management to build an important dialogue with the Government of Cambodia and notes the critical importance of the World Bank engagement in land sector issues in Cambodia, essential to the country's sustainable development.

37. The Panel notes, however, that the actions proposed in the Management Response were not implemented in a way that could satisfactorily address the Requesters' concerns. The Panel further observes that issues and concerns of the communities affected by the Project, which were presented in the Request for Inspection and explained in further detail in the Panel's Eligibility Report and in the Management Response itself, are of a very serious nature. They raise important questions of compliance with Bank policies and harm to Project affected communities that could only be assessed as part of an investigation.

#### G. Conclusion

38. As stated in the first Eligibility Report dated December 2, 2009, the Request and the Requesters meet the eligibility criteria set forth in the Resolution that established the Inspection Panel and the 1999 Clarifications.

39. In order to make an independent assessment of Management's compliance with Bank policies and procedures and related issues of harm in the context of the Project, the Panel would need to conduct an appropriate review of all relevant facts and applicable policies and procedures. This can only be done in the context of an investigation of the issues of compliance and harm raised by the Request.

40. In view of the foregoing, the Panel recommends that the Board of Executive Directors approves an investigation of the claims and matters raised by the Request for Inspection. The Panel notes that the investigation would take into account progress in the implementation of the actions noted in the Management Response and other actions being carried out to address the concerns raised by the Requesters.

#### **Exhibit 4**

### **HRTF Letter of Appeal, October 21, 2010**

#### **URGENT ACTION APPEAL**

October 21, 2010

We, the undersigned community and civil society organization representatives, call upon the United Nations and all embassies and development agencies in Cambodia to urge the Cambodian Government to bring an end to the ongoing violation of human rights of residents in the Boeung Kak area of Phnom Penh.

Oct. 4 marked World Habitat Day under the slogan "Better City, Better Life", yet in Phnom Penh Shukaku Inc. continues pumping sand and water into Boeung Kak lake and its surrounding villages, forcing residents to abandon their homes, while police persist in using violence against those peacefully protesting against the illegal development.

In the face of inaction by the authorities in response to numerous requests and petitions, residents of Boeung Kak gathered near Prime Minister Hun Sen's house on Oct. 1 to demand a halt to the pumping of sand and water into their homes. In what has become a standard response, the demonstrators right to peaceful assembly was denied, with police using excessive and unwarranted violence to disperse the crowd, including striking women in the chest with electric batons.

Five weeks earlier, an estimated 500 Boeung Kak residents were prevented from holding a private meeting to discuss their troubles. After local authorities shut down the meeting on Aug. 23, residents carried out a spontaneous demonstration, which was dispersed by hundreds of riot police.

The situation at Boeung Kak is unacceptable. Thousands of residents are being forced to leave as their homes are swamped with mud and water, while those who attempt to claim their rights face intimidation and physical violence. Despite requests and petitions, the Royal Government of Cambodia has not taken any observable steps to stop the ongoing abuse of its citizens' land, housing and property rights. Indeed, on Oct. 18 several residents were served eviction orders demanding them to dismantle their homes within seven days or see them demolished by the authorities.

We call upon the international community to condemn this development aggression and implore the Royal Government of Cambodia to uphold its citizens' rights as enshrined in the Cambodian Constitution and the international human rights covenants.

We further call upon Secretary-General Ban Ki-moon to meet with representatives of the Boeung Kak community during his visit to Cambodia on Oct. 26-28 in order to demonstrate the commitment of the United Nations to its core founding purpose of "promoting and encouraging respect for human rights and fundamental freedoms" for all people everywhere.

We wish to convene an urgent meeting on Nov. 4 to discuss action that can be taken by the international development community on this case. Please contact Sia Phearum, Secretary General of the Housing Rights Task Force, at [sd@hrtfcambodia.org](mailto:sd@hrtfcambodia.org) by Oct. 25 to indicate whether you or your representative will attend this meeting.

Signed,

Khun Serei, Representative, Village 1, Boeung Kak  
Phorn Sophea, Representative Village 6, Boeung Kak

Sam Vanna, Representative, Village 20, Boeung Kak  
Nuon Mony, Representative, Village 21, Boeung Kak  
Be Pharom, Representative, Village 22, Boeung Kak  
Non Sok Na, Representative, Village 23, Boeung Kak  
Ly Mom, Representative, Village 24, Boeung Kak  
Sia Phearum, Secretary General, Housing Rights Task Force (HRTF)  
Chit Sam Ath, Executive Director, NGO Forum on Cambodia  
David Pred Executive Director Bridges Across Borders Cambodia (BABC)  
Rolando Modina, Regional Director, Centre on Housing Rights and Evictions (COHRE)  
Ee Sarom, Representative, Sahmakum Teang Tnaut (STT)  
Suon Sareth, Secretariat Chief, Cambodian Human Rights Action Committee (CHRAC)  
Yeng Virak, Executive Director, Community Legal Education Centre (CLEC)  
Seng Sokheng, Representative, Community Peace Building Network (CPN)  
Naly Pilorge, Director, Cambodian League for the Promotion and Defense of Human Rights (LICADHO)  
Lee Robinson, Director, LICADHO Canada  
Thun Saray, President, Cambodia Human Rights and Development Organization (ADHOC)