

THE BOEUNG KAK DEVELOPMENT PROJECT: FOR WHOM AND FOR WHAT?

Poor Land Development Practices As A Challenge For Building Sustainable Peace In Cambodia

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Using the Boeung Kak Lake development project (BKDP) as a case study, this paper explores how poor land development practices in Cambodia impede positive peace building. Viewed within the context of the country's unfinished and prolonged land registration and legal reform efforts, the paper argues that there are three major problems acting as structural and proximate causes of land conflict in Cambodia: the disregard for the law and human rights, the lack of inclusiveness and transparency, and the misuse of the judicial system for coercive ends. These poor practices not only threaten the livelihood and psychological well being of affected communities, but also undermine the building of a more sustainable peace in Cambodia, by reinforcing a cycle of violence and diminishing a culture of trust and social cohesion between the state and the people. Nevertheless, viewed from a conflict transformation perspective,² the BKDP case demonstrates another dynamic in protracted land conflicts: the growing role of internal forces (grassroots and local civil society), interacting with external forces (the international community), in fostering positive change.

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2 Conflict transformation theory views conflict as inevitable and not inherently negative, because it is as "an integral part of society's on-going evolution and development[.]" TransConflict, Principles of Conflict Transformation, at www.transconflict.com/gcct/principles-of-conflict-transformation/. If faced non-violently and creatively, conflict offers an opportunity to build cooperation, foster trust, make change and improve understanding. See generally JOHN PAUL LEDERACH, THE LITTLE BOOK OF CONFLICT TRANSFORMATION (2003).

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I. INTRODUCTION³

For more than a decade, Cambodia has enjoyed a “negative peace”—the absence of the war and violent conflict that had plagued the nation since the 1970s. The incumbent government, which has ruled the country since the mid-1980s, deserves recognition for achieving a relatively peaceful state and rapid economic development, which has improved the lives of a majority of the population compared to the war years. Progress can be seen in the country’s improved infrastructure and growing economy.³ In particular, poverty has been

³ See, e.g., Cambodia Data, World Bank website, http://data.worldbank.org/country/cambodia#cp_wdi (reporting an eight-percent annual GDP growth from 2004 to 2012 and expected seven percent average growth from 2013 to 2016).

greatly reduced.⁴

Notwithstanding these achievements, there remain critical challenges, namely “rising inequality, uneven spatial development, weak institutions, and high levels of corruption.”⁵ Although Cambodia is making progress in meeting its UN Millennium Development Goals (CMDGs),⁶ there is no time for complacency. Hunger is still a serious problem.⁷ Despite Cambodia’s quickly expanding middle class, “those not in poverty but close to it” have also multiplied, and “3 in 4 Cambodians are still either poor or very nearly so.”⁸ Cambodia remains one of the world’s poorest countries, with nearly half of the population living under two dollars per day as of 2009.⁹ The World Bank’s senior country economist, Enrique Aldaz-Caroll, warned in 2013 that “[a] small shock of 1,000 Riel [0.25USD] per person per day would double poverty. We would go back to the high poverty of before; only 1,000 Riel.”¹⁰

In Cambodia, “power, leadership and governance continue to be based on family ties, connections and ‘client’ relationships, without challenge or questioning from the broader population.”¹¹ However, the recent fifth national election in 2013 has been heralded by many as a political turning point, as it was the first time that the country had witnessed massive public manifestations of support for the opposition and the airing of grievances against the status quo, posing great challenges to the ruling Cambodian People’s Party (CPP).¹² Support for the opposition Cambodia National Rescue Party (CNRP) did not merely come from its leaders’ (Sam Rainsy and Kim Sokha) popularity, but also grew out of wide-

4 See, e.g., Zsombor Peter, *World Bank Sees Challenges to Government Income Target*, CAMBODIA DAILY, Oct. 17, 2013 (reporting that “[t]he official poverty rate has dropped from 53 percent of the population in 2004 to 20 percent today”); Cambodia Data, World Bank website, <http://data.worldbank.org/indicator/SI.POV.NAHC/countries/KH?display=graph>.

5 Hal Hill & Jayant Menon, *Cambodia: Rapid Growth with Institutional Constraints*, Asia Development Bank Economics Working Series, No. 331, at v (Jan. 2013), at https://s3-ap-southeast-1.amazonaws.com/asia-first/researches/web_link/ee5ada6b24edd043a0918a7e5adbe0da.pdf.

6 Cambodia reported in 2012 that it ranks “among the fifth best performing countries” in overall MDG progress. See *The Cambodia Government’s Achievements and Future Direction in Sustainable Development*, National Report for Rio+20, United Nations Conference on Sustainable Development (2012), at XIII, at <http://sustainabledevelopment.un.org/content/documents/1022cambodia.pdf>.

7 See, e.g., International Food Policy Research Institute’s Global Hunger Index 2013, at www.ifpri.org/tools/2013-ghi-map (finding the situation in Cambodia “serious” with a ranking of 16.8).

8 Peter, *World Bank Sees Challenges*, *supra* note 4.

9 World Bank, Poverty Headcount Ratio at \$2 a day (PPP) (% of population), at <http://data.worldbank.org/indicator/SI.POV.2DAY> (reporting that 49.5% of Cambodians lived below 2 US dollars a day in 2009).

10 Peter, *World Bank Sees Challenges*, *supra* note 4.

11 Soth Plai Ngarm & Tania Miletic, *Cumulative Impact Case Study: Cambodia’s Post War Struggle for Peace*, Reflecting on Peace Practice Project, Collaborative Learning Project, CDA (Aug. 2009), at 45, at www.cdacollaborative.org/media/53201/Cumulative-Impact-Case-Study-Cambodias-Post-War-Struggle-for-Peace.pdf.

12 See, e.g., Daniel Pye & Meas Sokchea, “An Act of Coup D’Etat,” PHNOM PENH POST, Dec. 24, 2013.

spread social grievances over land grabbing and low wages (among others). This provided the CNRP with the opportunity to garner massive public support ahead of the election, as reflected in its popular election campaign message: “Change or No Change? Change!”¹³

Nevertheless, according to Kheang Un, Cambodia remains “a dominant party authoritarian regime” with rising legitimacy “due mainly to sustained economic growth and political stability, and increased patronage based development.”¹⁴ Moreover, the country’s human rights record is a major concern and may have negative effects on continued economic progress. Human Rights Watch’s World Report 2013 identified a deteriorating human rights situation in Cambodia due to the increase in violent incidents between the state security forces and protesters whose growing grievances center around the development-related issues of land grabbing, working conditions, and environmental depletion.

Although the development approach to peace building in Cambodia has improved many Cambodians’ socio-economic standing during the post-conflict period, the promise of increased quality of life and a sustainably peaceful society is threatened by, among other things, the growing gap between the rich and the poor and the depletion of natural resources at unsustainable rates.¹⁵ Since the 1980s, one percent of Cambodia’s population reportedly owned between 20-30 percent of the country’s land.¹⁶ As of 2009, landlessness affected between 20% and 40% of rural households.¹⁷ An integrative map created in 2012 by the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), a local human rights NGO, shows that over 2.1 million hectares of land have been granted to private companies/investors since 1993.¹⁸ Others report that 2.6 million hectares had been leased, “equivalent to 73% of the country’s arable land.”¹⁹

13 See, e.g., Khy Sovuthy, *Sar Kheng Says “Change” Needs to Go Beyond New Names*, CAMBODIA DAILY, Sept. 28, 2013.

14 Kheang Un, *Cambodia: Moving Away from Democracy?*, 32:5 INT’L POLI. SCI. REV. 546, 546 (2011).

15 For example, according to a study led by researchers from University of Maryland, Cambodia had the fifth fastest rate of deforestation from 2000-2012, losing more than seven percent of its forest cover during this period. See *Global Forest Change 2000-2012*, at www.earthenginepartners.appspot.com/science-2013-global-forest/download.html; Zsombor Peter, *Loss of Forest in Cambodia Among Worst in the World*, CAMBODIA DAILY, Nov. 19, 2013.

16 *Local Development Outlook Cambodia: Trends, Policies, Governance*, United Nations Capital Development Fund (2010), at 34, at http://localdevelopmentacademy.com/sites/default/files/Documents/khm_theme_ld-outlook_0410_en_I_0.pdf.

17 USAID Country Profile: *Cambodia: Property Rights and Resource Governance*, at 5 (May 2011), http://usaidlandtenure.net/sites/default/files/country-profiles/full-reports/USAID_Land_Tenure_Cambodia_Profile.pdf.

18 LICADHO, *The Great Cambodian Giveaway: Visualizing Land Concessions over Time*, www.licadho-cambodia.org/concession_timelapse/.

19 Global Witness, *Rubber Barons: How Vietnamese Companies and International Financiers Are Dividing a Land Grabbing Crisis in Cambodia and Laos*, at 7 (May 2013), at www.globalwitness.org/rubberbarons/pdf/Rubber_Barons_hires.pdf.

Worryingly, many of those who have been granted land have been involved in land conflicts and accused of violence.

Prime Minister Hun Sen has long acknowledged the detrimental effects of land issues in the country, even issuing a public warning in 2013:

Stop grabbing land and forestry[.] ... I declare and announce to all of you who have violated the law and have grabbed forestry areas and encroached on state land for your own property and have affected poor people—especially officials on duty—it is time for you to stop. ... I warn that if [you] continue to grab land there will be a farmers' revolution, and I hope you will understand my difficulty[.] ... It is time for you to stop before the people lose their patience.²⁰

Land revolts in Cambodia are not unprecedented. In 1967, a farmers' revolt occurred over land grievances. Known as the Samlaut uprising, it has been seen as “a prelude, in a microcosm, of the conflict that would sweep across the country three years later[.]”²¹ leading to the atrocities of Democratic Kampuchea and decades of civil conflict. Today, conflicts over land are so prevalent throughout Cambodia that the United Nations views it as “a major issue.”²²

The United Nations has recognized the “inextricable” link between land and conflict, noting that “land and natural resources are often among the root causes or as major contributing factors” to intrastate conflict,²³ making the task of addressing land issues a priority for post-conflict countries. In the Cambodian context, land conflict is not a new or isolated phenomenon; it has been a predominant and complicated issue throughout the country's tumultuous history. Even though Cambodia has adopted many land-related laws and policy goals since the 1989 economic reform, land issues in practice remain a growing critical social

20 Vong Sokheng, *Stop Land Theft, Warns Hun Sen*, PHNOM PENH POST, Dec. 16, 2005 (quoting from Prime Minister Hun Sen's speech at the National Conference on the Management of Natural Resources to Reduce Poverty). Cf. Vong Sokheng & Kevin Ponniah, *The Buck Stops Elsewhere*, PHNOM PENH POST, Aug. 19, 2014 (quoting the Prime Minister saying, “If I was in an opposition party, I too would oppose [the government on land issues]. The opposition was not just protesting [without reason]. Look at villagers who have been settled for many years on land where [they] are now not allowed to live but investment is allowed[.]”).

21 Ben Kiernan, *The Samlaut Rebellion and Its Aftermath, 1967-70: The Origins of Cambodia's Liberation Movement*, Working Paper 4, Centre of Southeast Asian Studies, Monash University, part I, preface (1974) (quoting Kirk).

22 *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, Surya P. Subedi, ¶ 6, U.N. Doc. A/HRC/24/36 (Aug. 5, 2013).

23 United Nations Interagency Framework Team for Preventive Action, *Toolkit and Guidance for Preventing and Managing Land and Natural Resources Conflict: Land and Conflict*, (2012) at I3, www.un.org/en/events/environmentconflictday/pdf/GN_Land_Consultation.pdf.

grievance, particularly when they are entangled with the many so-called “development projects” now being implemented.

In recent years, popular opposition to Cambodia’s development practices, especially land-related development projects involving the granting of Economic Land Concessions for agro-industry, has grown—as have strong government responses.²⁴ A notorious fatal incident took place on May 16, 2012, during a violent clash between a group of villagers and government forces, resulting in a death of an innocent 14-year-old girl in Kratie province. The authorities accused the villagers of creating a secessionist movement against the government while the villagers asserted that the clash was due to a long standing dispute over a 15,000-hectare Economic Land Concession granted to a private company in 2007. The villagers claimed they were protecting themselves from being forcibly evicted from land they had occupied for seven years.²⁵

Another notorious case is the Boeung Kak Development Project (BKDP). Boeung Kak Lake (BK or Lake) was one of the seven natural lakes located in the center of the capital Phnom Penh city. The Lake’s 133 hectares was leased for 99 years in 2007 as an Economic Land Concession (ELC) to Shukaku Inc., a company owned by a senator from the ruling Cambodian People Party (CPP), for just 79 million—way below the land’s market value at that time.²⁶ The BKDP project is one of the five mega projects or “satellite cities” planned to change the face of Phnom Penh by making space for new commercial and residential areas. The BKDP affected more than 4,200 families living around and on the Lake, some who had lived there since the 1980s. The affected families’ rights to the land were completely rejected, despite the fact that some of the families had claims for legal ownership under the 2001 Land Law. Since 2007, the authorities, developers, and affected communities have been involved in a contentious dispute that has highlighted problems of land ownership, corruption, the lack of government transparency, the right to adequate compensation, the right to protection from human rights violations including forced eviction and violence, and a weak judicial system.

Peace and development are thus interconnected in Cambodia. Viewing peace as the opposite of war and development as merely economic growth is both too

24 See generally Cambodia Center for Human Rights (CCHR), *Cambodia: Land in Conflict, An Overview of the Land Situation* (Dec. 2013), at www.cchrcambodia.org/admin/media/report/report/english/CCHR%20Report%20%20Cambodia%20Land%20in%20Conflict%20An%20Overview%20of%20the%20Land%20Situation%20ENG.pdf.

25 See, e.g., Irwin Loy, *Teen Killed During Cambodia Land Eviction Protest*, VOA, May 16, 2012; May Titthara & David Boyle, *Teenage Girl Gunned Down by Security Forces in Eviction*, PHNOM PENH POST, May 17, 2012.

26 See, e.g., Chan Muyhong, *Questions Raised over Land Sale at Lakeside*, PHNOM PENH POST, June 24, 2014.

narrow and not conducive to sustainable peace, as it indicates the need to accept social injustice and inequality as well as devastating human and environmental costs. Negative peace is a pre-requisite for development to take place; however, without thoughtful implementation, development projects, particularly those which are land-related, can easily undermine important achievements thus far towards building a resilient and sustainable positive peace.²⁷ The grassroots struggle of the Boeung Kak community provides a useful case study for examining the systemic and proximate causes and effects of land conflicts, and the dynamic of community involvement that can possibly contribute to ending the cycle of violence and building trust and cohesion.

2. BRIEF HISTORY OF LAND OWNERSHIP AND ECONOMIC LAND CONCESSIONS (ELC) IN CAMBODIA

2.1. Overview of Land Ownership in Cambodia

Cambodia's modern private property system was influenced greatly by the French legal system during the French colonization era (1863-1953). Prior to that period, all of the land throughout the country theoretically belonged to the King, even though people had long believed that their land was owned and protected by the spiritual "land protector" or "Machas Toek Machas Dei."²⁸ Yet, in practice, private ownership already existed informally through purchase agreements or royal grants for wealthy people, and a use-based land-holding system called "acquisition by the plough" for ordinary people. This type of traditional ownership was practiced without engendering "economic grievances and animosity among people

27 See generally Johan Galtung, *An Editorial*, I:1 J. PEACE RES. I (1964), at <http://jpr.sagepub.com/content/1/1/1.full.pdf+html> (coining the terms "negative" and "positive" peace). "Negative peace" is the absence of visible and direct violence and is "thus a more conservative goal, as it seeks to keep things the way they are (if a war is not actually taking place)." DAVID P. BARASH & CHARLES P. WEBEL, *PEACE AND CONFLICT STUDIES* 9 (2nd ed. 2009). "Positive peace" places crucial significance on social justice and equality as well as structural integration and peace by peaceful means. In other words, positive peace refers to "the elimination of root causes of war, violence and injustice and the conscious effort to build a society which reflects these commitments." SOTH PLAI NGARM & TANIA MILETIC, *INTRODUCTION TO PEACE STUDIES AND RESEARCH METHODS* 33 (Cambodia: Center for Peace and Conflict Studies Mar. 2006). Although the definition of positive peace is contentious, the Institute for Economics and Peace's Positive Peace Index—the first attempt to quantify positive peace by formulating eight pillars of positive peace building—defines it as "the set of attitudes, institutions and structures which, when strengthened, lead to a more peaceful society." *Global Peace Index* (2012), Institute for Economics and Peace (IEP) (June 2012), at 69, at www.visionofhumanity.org/wp-content/uploads/2012/06/2012-Global-Peace-Index-Report.pdf.

28 Hel Charmroeun, *Introduction to the Land Law of Cambodia*, in *INTRODUCTION TO CAMBODIAN LAW* 313-36 (Hor Peng, Kong Phallack & Jörg Menzel eds., 2012), at www.kas.de/wf/doc/kas_31083-1522-I-30.pdf?120720080906.

from different ethnic backgrounds[,]”²⁹ perhaps due to Cambodia’s small population at that time and the abundance of land available for use. Without cadastral (i.e. survey and title) records, “local acceptance was a proof of possession.”³⁰

Formal privatization was first introduced during French colonization under the 1884 Land Act, which was said to serve “as a guarantee for the investment of French settlers” as well as tax collection.³¹ The Department of Cadastral was established in 1896. However, this drastic change of land ownership and the associated taxes were heavily resisted by both the elites and ordinary Cambodians farmers,³² and the system was not able to be fully implemented before 1912.³³ Under the 1920 Cambodian Civil Code, the categories of “landholders” (persons with possession rights based on fixed asset registration through the commune office) and “landowners” (persons with ownership rights based on formal land titles from the district land governance office) ³⁴ were distinguished and recognized; however, “acquisition by the plough” was also maintained if there was “peaceful possession of unregistered land, in public and in good faith, continuously and unequivocally, for five consecutive years.”³⁵

The commune office was created in the early 1900s and tasked with responsibility for registering landholders’ claimed property in the “fixed asset registration,” which was formulated in 1925. Such possession rights could only be converted into ownership rights (definitive title of ownership) if the claims were listed in the District Land Governance Office after a completing series of required procedures. The distinction between “possession” and “ownership,” however, was not well understood by the local people who always assumed that “they have ownership to the land regardless of what document they hold.”³⁶ Such traditional beliefs continue in the present age, often causing conflict with modern legal land claims.

When the Kingdom of Cambodia gained independence in 1953, private property was protected by the Constitution and there was an increase in land transactions; nevertheless, “the success of land codification, privatization, and

29 Sokbunthoeun So, Political Economy of Land Registration in Cambodia (2009), at 77. (unpublished Ph.D. dissertation, Northern Illinois University) (on file with NIU, UMI number: 3359039.77, abstract at <http://search.proquest.com/docview/304968261>).

30 *Id.* at 78. (quoting Serge Thion [1993], at 26).

31 Ray Russell, *Land Law in the Kingdom of Cambodia*, 15:2 PROP. MGMT. 101–10 (1997).

32 So, Political Economy of Land Registration in Cambodia, *supra* note 29, at 80–81.

33 See Sik Boreak, *Land Ownership, Sales, and Concentration in Cambodia: A Preliminary Review of Secondary Data and Primary Data from Four Recent Surveys*, Cambodia Development Resource Institute (CDRI) Working paper No. 16, at 3 (Sept. 2000), at www.cdri.org.kh/webdata/download/wp/wp16e.pdf.

34 So, Political Economy of Land Registration in Cambodia, *supra* note 29, at 85.

35 See Russell, *supra* note 31 (quoting the Cambodian Civil Code of 1920, art. 723).

36 So, Political Economy of Land Registration in Cambodia, *supra* note 29, at 89.

commercialization was rather limited.³⁷ Only 10% of the land was registered as private property with officially issued land titles between 1925 and 1975,³⁸ while the rest was held as possession rights under commune office's fixed asset registration, the most prominent mode of land transfer during that period.³⁹ Still, the customary ownership practice of assuming ownership by clearing land remained active during the period, which resulted in land conflict, for instance in the case of the Samlaut Uprising.⁴⁰ The corrupt and abusive land administration led to rising grievances of injustice from the people, which became even worse as the country descended into civil war in the 1970s.⁴¹

Under the Khmer Rouge regime (1975-1978), which sought to destroy capitalism, private property was not allowed; all property became collectivized and owed by "Angkar" or the State. The country's cadastral records were completely destroyed. After the regime was overthrown, the People's Republic of Kampuchea (1979-1989) struggled to fight against the Khmer Rouge guerrillas and build state institutions from the ground up. People began returning to their home villages or moving to new areas to build a new life. Individual families received a small plot of land provided by the State for residential purposes while land owned prior to 1975 was not recognized.⁴² However, land remained state collective property and was not allowed to be sold or rented, in spite of the fact that "occasionally during this period some residential land was unofficially transferred between people by mutual agreement."⁴³ Allocations of agricultural and cultivation land were "based on the population and ability of production of the various so-called solidarity groups

37 So Sovannarith et al., *Social Assessment of Land in Cambodia: A Field Study*, CDRI Working Paper No. 20, at 10 (Nov. 2001), at www.cdri.org.kh/webdata/download/wp/wp20e.pdf.

38 See Kheang Un & Sokbunthoeun So, *Land Rights in Cambodia: How Neopatrimonial Politics Restricts Land Policy Reform*, 84:2 PACIFIC AFFAIRS 289, 291 (June 2011) (citing Voan Lim, director of the Department of Cadastral).

39 So, *Political Economy of Land Registration in Cambodia*, *supra* note 29, at 86.

40 *Id.* at 87.

41 *Id.* at 89-91.

42 See Kheang Un & Sokbunthoeun So, *Land Rights in Cambodia: How Neopatrimonial Politics Restricts Land Policy Reform*, *supra* note 38, at 292.

43 Sik Boreak, *Land Ownership, Sales, and Concentration in Cambodia*, *supra* note 33, at 4 (citing Greve, 1993).

(‘Krom Samaki System’).⁴⁴ In Phnom Penh city, people returning from the countryside and refugee camps occupied houses and land on an “ad hoc basis.”⁴⁵

In 1989, after the withdrawal of Vietnamese troops and an end of aid from the Socialist bloc, which put strong pressure on the already fragile political situation inside the country, the Cambodian Government began to adopt a more self-sufficient free market economy. This also led to a rise in land values. A privatization system and a new Land Law were adopted in 1992, creating ownership rights for residential land no larger than 2,000 square meters, possession rights for agricultural land no larger than five hectares, and concession rights for farm land over five hectares.⁴⁶ Rights of ownership over land dating from prior to 1979 were “null and void,” and the State remained the legal owner of land throughout the country. Any land unused for more than three years reverted to state ownership.

The new land policy convinced people that there was “a fair degree of equity in the distribution of land and that almost all who were eligible, actually received land.”⁴⁷ However, this was not the case, as inequality and corruption became entrenched features of the already ineffective distribution process, which “significantly increased social stratification, enriching those in a position of power, particularly those with power over the privatization of land and resource.”⁴⁸ People in poor rural areas—especially the indigenous populations, who lacked legal understanding and access to information—continued to practice traditional ways of occupying land, including the “use-based” approach, by felling trees, shifting

44 Russell, *supra* note 31, at 105. The creation of “Krom Samaki” and maintenance of moderate collectivization were believed to be necessary to “generate rice production, rescue the economy and resolve the food crisis” because there were, quoting Hun Sen in March 1979, “shortages in seed, farm tools, and work animals.” See EVAN GOTTESMAN, *CAMBODIA AFTER THE KHMER ROUGE: INSIDE THE POLITICS OF NATION BUILDING 91* (2003). Comprising up to 25 families, *Krom Samaki* in practice were categorized into three collective management groups: first, “using group labor for farming some land communally, using pooled livestock and implements and distributing rice harvest from this land”; second, using “mutual labor aid and sharing of implements and plow animals within the group”; third, “individual families farming communally owned land.” *Rice Production in Cambodia* (H.J. Nesbitt ed., 1997), at 7, Cambodia-IRRI-Australia Project, at http://books.irri.org/9712201007_content.pdf. Yet, efforts to expand such collectivization in the mid-1980s failed for three main reasons: first, a lack of incentive for hardworking people; second, a shortage of technical support and human resources; and third, fear of political backlash if a harsh enforcement of collectivization was employed given its political context at that time. See So, *Political Economy of Land Registration in Cambodia*, *supra* note 29, at 97.

45 Natalie Bugalski & David Pred, *Land Titling in Cambodia: Formalizing Inequality: A Year in Review 2009*, Bridge Across Borders Cambodia (BABC) (2009), at 2, at <http://babcbombodia.org/articles/docs/BABC%20-%20Land%20Titling%20in%20Cambodia.pdf>.

46 So Sovannarith et al., *supra* note 37, at 11 (citing S. Williams, *Review of Secondary Sources Relating to Land Tenure and Access Issues*, Oxfam (1999). See also So, *Political Economy of Land Registration in Cambodia*, *supra* note 29, at 100.

47 So Sovannarith et al., *supra* note 37, at 11.

48 So, *Political Economy of Land Registration in Cambodia*, *supra* note 29, at 109 (quoting Hughs).

cultivation, and wood gathering in the forests.⁴⁹ In the 1990s, the lack of an effective land registration mechanism was compounded by the fact that local land use, transfer, and ownership were carried out by “informal” means or fixed asset registration recognized or witnessed by local authorities only.⁵⁰

The 1992 Land Law thus did not provide a strong basis for land tenure security and land management, resulting in concerns over “inequality in land holding, increased landlessness and land conflicts, insecure tenancy, and the growth of squatter settlements in the urban areas, particularly in Phnom Penh.”⁵¹ This was likely attributable to the “sporadic” titling process, which by 2001 was inadequate “because of limited institutional capacity and the costs (both legitimate and bribes) associated[,]”⁵² which could “potentially exceed 25% of the value of the land.”⁵³ These problems led to a call for a more modern nation-wide land reform, which led to the adoption of a foreign donor-supported Land Law in 2001.

The 2001 Land Law (the Land Law), which allows both residential and agricultural land ownership, provides a relatively better foundation for land reform programs. The Land Law aims to provide land and housing security to all, as well as to protect existing land from being expropriated, except when it is in the public interest and “after the payment of fair and just compensation in advance.”⁵⁴ The Law allows possessors of land the right to apply for definitive title of ownership, and while they are waiting for the transfer, protects their “right in rem over the immovable property [, which] may be the subject of exchange, transfers of rights and transactions.”⁵⁵

However, not all land possession is recognized by the Land Law. To be a legal landholder, one must have possessed the land before the adoption of the Land Law on August 30, 2001, and the possession must have been “unambiguous, non-violent, notorious to the public, continuous and in good faith.”⁵⁶ Importantly, even if these conditions are met, a possessor can not become a legal owner if he or she resides on state property, private property, or collective property.⁵⁷

49 See So Sovannarith et al., *supra* note 37, at 10.

50 Bugalski & Pred, *supra* note 45, at 2.

51 So Sovannarith et al., *supra* note 37, at 11.

52 World Bank, *Implementation Completion and Results Report for the Land Management and Administration Project* (Dec. 27, 2011) at 1, at www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/03/16/000333038_20120316004734/Rendered/PDF/ICRI4910P070870C0disclosed030140120.pdf.

53 CCHR, *Cambodia: Land in Conflict*, *supra* note 24, at 17.

54 Law NS/RM/0801/14 (2001), art. 5 (hereafter 2001 Land Law), at www.opendevdevelopmentcambodia.net/pdf-viewer/?pdf=download/law/Law%20on%20Land_%20August_30_2001_Eng.pdf.

55 *Id.* art. 39.

56 *Id.* art. 38.

57 *Id.* arts. 43, 248.

Significantly, as of 2013, even the mapping of state land property and entry into a publicly accessible database had not yet been conducted, resulting in “no adequate and functioning system of State Land Management in Cambodia.”⁵⁸

The 2001 Land Law classifies land into three main categories: private land, state land and collective land. Any individuals who have possessed unoccupied land peacefully for five year prior to the adoption of the Land Law can apply for private ownership rights. However, traditional ways of land acquisition are no longer to be recognized going forward.⁵⁹ State land is divided into “state public land” and “state private land.” The State can deliver social land concessions to landless families to live on and cultivate. The recipient families can request ownership after five consecutive years of peaceful occupation. Collective land is especially designated for collective uses, such as monasteries and the indigenous groups⁶⁰ that comprise up to 1.5% of the total population and embrace a different culture, way of life, and identity. However, the process of collective land title registration has been very complicated and as of the end of 2013, only five out of the 114 communities that have applied for collective title have been able to complete the process.⁶¹

Despite the establishment of a formal legal regime, land ownership in Cambodia remains tenuous. Because a large number of Cambodians who possess land have not been able to secure land titles, they remain vulnerable to land grabbing and forced eviction as land values continue to soar.⁶² No definitive land ownership title (“hard” title) means no secure right to occupy the land, especially, land that has “unclear status” or is not legally occupied by individual entities, since it is often assumed by local authorities to be “de facto” state land property. People thus are “left defenseless when authorities or companies come to claim their land.”⁶³

In response, in 2001 the Cambodian government initiated the Land Administration, Management and Distribution Program (LAMDP) “(a) to strengthen land tenure security and land markets, and to prevent and resolve land disputes; (b) to manage land and natural resources in an equitable, sustainable and efficient manner; and (c) to promote land distribution with equity.”⁶⁴ The following year, the Land Management and Administration Project (LMAP) was

58 Mark Grimsditch & Nick Henderson, *Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector* (2009), at 6, at www.babcambodia.org/untitled/untitled.pdf.

59 See 2001 Land Law, *supra* note 54, arts. 29, 34.

60 See *id.* arts. 21, 23, 26.

61 CCHR, *Cambodia: Land in Conflict*, *supra* note 24, at 20.

62 See Grimsditch & Henderson, *supra* note 58, at 66-70 (providing the example of the Dey Krahorm community, whose members were evicted for being illegal settlers in spite of the fact that some of them had possible legal claims for ownership rights under 2001 Land Law).

63 CCHR, *Cambodia: Land in Conflict*, *supra* note 24, at 17.

64 World Bank, *Implementation Completion and Results Report*, *supra* note 52, § F.

founded and funded by multiple foreign donors, and co-sponsored by the World Bank. Buttressing the sporadic land registration program, the LMAP initiated a more systematic program and developed land-related legal frameworks and capacities that resulted in 1.3 million titles issued in 2009. However, limitations on its work, such as the “exclusion of difficult areas [likely to be disputed or have unclear status] and lack of transparency in state land classification” continued to make vulnerable families even more vulnerable.⁶⁵

Cambodia pledged itself to Millennium Development Goals including an increase of land security from 15% in 2000 to 43% (revised down from 65%) in 2015.⁶⁶ Yet, by 2009, only 24% of about seven million land plots had been registered through systemic and sporadic land titling.⁶⁷ According to So, the difficulty in creating cadastral sustainability has been attributable to “endemic corruption in the Cambodian state bureaucracy...[and] the durability of the prevailing system, in which the ruling elites hold interests.”⁶⁸

On June 14, 2012, a student volunteer land-titling program called the “Heroic Samdech Techo Volunteer Youth” was initiated to supplement the LMAP systematic land registration program for measuring and demarcating the land of poor families. Personally financed by Prime Minister Hun Sen, this scheme was reportedly able to measure 660,000 plots and issue 380,000 titles during its first phase, with the second phase scheduled to resume after the 2013 election.⁶⁹ To date, the second phase has not begun and there is no indication if or when it will be undertaken.⁷⁰

Recently it was reported that “[t]he unfinished work left by student volunteers ... is now exacerbating land disputes across the country” due to the fact that some villagers have not received their promised land titles.⁷¹ The human rights NGO LICADHO, which has long criticized the program “for a lack of transparency and

65 Bugalski & Pred, *supra* note 45, at 3.

66 Ministry of Planning, *Achieving Cambodia's Millennium Development Goals* (2011), at 29.

67 UNDP, *Current Status of Cambodia Millennium Development Goals* (Sept. 19, 2010), at 38, at www.un.org.kh/undp/media/files/pages/CMDG_current_status_19092010.pdf.

68 So, Political Economy of Land Registration in Cambodia, *supra* note 29 (quoting abstract).

69 Press Release, Cambodian People's Party, Second Phase of Land Measuring Scheme to Resume (Khmer version) (Nov. 16, 2013), at www.cpp.org.kh/site/detail/901. See also Kuch Naren & Ben Woods, *Hun Sen's Student Volunteers to Resume Land-Titling Program*, CAMBODIA DAILY, Nov. 21, 2013.

70 See, e.g., Ben Sokhean & Holly Robertson, *Hun Sen's Student Volunteer Land-Titling Program Under Fire*, CAMBODIA DAILY, Aug. 1, 2014.

71 See also *id.*

for bypassing government bodies set up to perform land-titling[.]” says Phase I “seems to have avoided many, many, many of the well-known land conflicts[.]”⁷²

Some say the scheme was merely a tactic to garner political support ahead of the July 2013 national elections as the youth were reportedly chosen from “CPP supporters and conducted their work wearing military uniforms, were transported in government military vehicles and were hosted by local CPP authorities.”⁷³ Prime Minister Hun Sen reportedly said in advance of voting:

To those whose lands have not been measured and those who have not been given land titles, I would like to inform you that the youth can return to work only if the CPP wins the election[.] If you want the youths to come back, there is only one choice for you: to vote for the CPP.⁷⁴

Similarly, prior to the first post-Khmer Rouge national election in 1993:

[The CPP] ran on a platform that promised farmers titles to the lands they farmed. ...During 1992 and early 1993 cadastral offices around the country worked furiously to give farmers deeds to their lands to assure CPP votes in the elections. Yet many farmers still have only a piece of paper declaring that they have filed claim to a certain piece of land, not the final documentation verifying that such a claim has been approved.⁷⁵

72 *Id.* Cf. Human Rights Watch (HRW), *Land titling Campaign Open to Abuse* (June 2013), at www.hrw.org/de/node/116350 (arguing that scheme “lacks transparency and accountability and could leave thousands dispossessed from their land” and thus allow more corruption and land grabs). See also George Wright & Aun Pheap, *Kratie Case Exposes Flaws in Land-Titling Scheme*, CAMBODIA DAILY, Aug. 11, 2014 (reporting that villagers are protesting over an agribusiness firm’s claims to land to which the students promised they would receive titles, and the view of an Adhoc technical advisor that “[t]he entire process was opaque and tainted with irregularities, often biased toward the interests of the wealthy and powerful”).

73 CCHR, *Cambodia: Land in Conflict*, *supra* note 24, at 19. See also *Hun Sen’s Student Volunteer Land-Titling Program Under Fire*, *supra* note 70 (quoting Chan Soveth, the deputy head of Adhoc’s land program, saying that the program was used to “collect support for the 2013 election” for the CPP).

74 *Hun Sen Warns of ‘War’ If He Loses Election*, RADIO FREE ASIA, Apr. 19, 2013. See also Sen David, *Families in Kampong Speu Await Payments*, PHNOM PENH POST, May 30, 2014 (reporting that 250 families filed a complaint after losing their land to a company without compensation “even after land measurement volunteers allegedly promised a resolution if villagers voted for the ruling party in last year’s elections”).

75 Judy L. Ledgerwood, *Rural Development in Cambodia: The View from the Village*, in CAMBODIA AND THE INTERNATIONAL COMMUNITY: THE QUEST FOR PEACE, DEVELOPMENT AND DEMOCRACY 127, 130 (Fredrick Z. Brown & David G. Timberman eds., 1998), at www.niu.edu/anthro/faculty_staff/faculty/Rural%20Development%20in%20Cambodia%20The%20View%20from%20the%20Village.pdf.

Until today, land reform remains an unfinished task.⁷⁶

2.2. Overview of Economic Land Concessions

Since the 1989 reform toward a free-market economy, numerous land concessions to private companies to develop agro-industry have been granted as part of a non-transparent process. These economic concessions have frequently “created feuding conflicts between the local people and the companies[.] Poor people are vulnerable and are losing out in the conflict over land with the powerful individuals.”⁷⁷ In 2005, Sub-Decree I46 on the Economic Land Concession was promulgated, providing Economic Land Concessions (ELCs) a stronger footing in the legal framework.

The 2001 Land Law classifies state property as either “state public land” or “state private land.” Unlike state private land, which can be leased, transferred, or sold, state public land is comprised of natural areas including rivers, forests, and natural lakes.⁷⁸ Such areas are considered “inalienable...and not subjected to prescription.” They can be authorized for use or occupancy only for temporary periods unless they “lose their public interest use,” and are transferred to state private property.⁷⁹

ELCs can be granted for land classified as state private land for a maximum of 99 years, and can be no larger than 10,000 hectares.⁸⁰ ELCs can be granted only if certain enumerated criteria have been met, including environmental and social impact assessments, assurances that there will be no involuntary resettlement “by lawful land holders,” and prior public consultations with the local people and authorities.⁸¹ Concession title cannot be sold or otherwise transferred.⁸² The main purposes for granting ELCs are:

To develop industrial-agricultural activities requiring a high rate of capital investment; to reach agreements with investors for developing land in an appropriate and long-term manner; to in-

76 See, e.g., generally Sokbunthoeun So, *Land Rights in Cambodia: An Unfinished Reform*, Asia Pacific Issues, Analysis from the East-West Center No. 97 (Aug. 2010), at www.eastwestcenter.org/sites/default/files/private/api097.pdf.

77 So, *Political Economy of Land Registration in Cambodia*, *supra* note 29, at 119-20.

78 See 2001 Land Law, *supra* note 54, art. 15 (providing additional examples).

79 *Id.* art. 16. See also Sub-Decree #129 Rules and Procedures on Reclassification of State Public Properties and Public Entities (Nov. 2006), arts. 16, 18, at www.yumpu.com/en/document/view/24987971/english-open-development-cambodia/7 (allowing state public land to be leased for 15 years if certain conditions are met).

80 2001 Land Law, *supra* note 54, arts. 58, 59, 61.

81 Sub-Decree #146 on Economic Land Concessions (2005), art. 4, at www.cambodiainvestment.gov.kh/sub-decree-146-on-economic-land-concessions_051227.html.

82 *Id.* art. 57.

crease employment in rural areas and stimulate diversification of livelihood opportunities; and to generate state revenues through economic land use fees, taxation and related services charges.⁸³

Despite the stated goals, “no comprehensive evidence-based report has been officially published about the benefits of land concessions. . . . In contrast, the negative impacts have been well documented.”⁸⁴ The systematic classification of private and public land has been “slow” and ELCs have been

granted through dubious processes to the benefit of powerful politico-business individuals” with little contribution to the “public treasury” and “severe social impacts . . . [that] include economic land concessionaries’ encroachment on people’s agricultural land, displacement of local people, limiting people’s access to common property resources, and disturbance to significant cultural and spiritual areas of the local people.”⁸⁵

According to an integrative map recorded in 2012 by LICADHO, over 2.1 million hectares have been granted to private companies since 1993.⁸⁶ Furthermore, approximately 350,000 Ha of protected areas, such as forested or watered areas, known as state public land, have also been allocated to the ELCs,⁸⁷ in apparent violation of the Land Law. During the 1960s, forest coverage exceeded 70% of the total land. According to the World Bank, Cambodia’s forest areas in 2011 covered only 56.5% of the country’s total land.⁸⁸ Reportedly, 20% of the

83 Open Development Cambodia, at www.opendevdevelopmentcambodia.net/briefings/economic-land-concessions/ (last visited Sept. 2, 2014).

84 *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia, Surya P. Subedi, Addendum: A Human Rights Analysis of Economic and Other Land Concessions in Cambodia*, ¶ 128, U.N. Doc. A/HRC/21/63/Add.1 (Sept. 24, 2012).

85 So, Political Economy of Land Registration in Cambodia, *supra* note 29, at 129. The poorly implemented Social Land Concessions (SLCs) have also been a source of increasing land conflicts and vulnerability of poor families. Thirteen out of the total 38 SLCs granted in 2012 are subjected to conflict and ADHOC, a local Human Rights NGO, received 70 cases of land disputes in 2012 with the reported arrest of 232 people, a 144% increase compared to 2011. See ADHOC, *A Turning Point? Land, Housing and Natural Resources Rights in Cambodia in 2012* (Feb. 2013), at 32, at www.adhoc-cambodia.org/wp-content/uploads/2013/02/ADHOC-A-Turning-Point-Land-Housing-and-Natural-Resources-Rights-in-2012.pdf. See also May Titthara, *Scepticism over Social Land Grants*, PHNOM PENH POST, Mar. 13, 2014 (reporting that “through SLCs, the government has . . . caused new disputes, by giving away land that people already live on, and contributed to deforestation, by reclassifying state or protected forest in order for it to be given away”).

86 LICADHO, *The Great Cambodian Giveaway: Visualizing Land Concessions over Time*, www.licadho-cambodia.org/concession_timelapse/.

87 *Current Status of Cambodia Millennium Development Goals*, *supra* note 67, at 34.

88 World Bank, <http://data.worldbank.org/indicator/AG.LND.FRST.ZS/countries/IW-KH?display=graph> (last visited Sept. 2, 2014).

ELCs in Cambodia were granted to five tycoons who have close connections to the ruling CPP.⁸⁹

Neither the land titling program nor the “Heroic Samdech Techo Youth” strategies have been able to address land conflicts in Cambodia equitably. As a result, land-related conflicts persist and protests against land-grabbing not only continue, but are increasing.⁹⁰ In 2012, the Government responded by temporarily halting the granting of new ELCs,⁹¹ excluding an unknown number of ELCs already under consideration.⁹² Not long afterward, three more agro-industrial concessions were approved.⁹³ Since then, approximately 188,749.49 hectares were granted through reclassification “making up over half of the total land granted through land reclassification in 2012.”⁹⁴

Land dispute resolution organs are in place but have failed to resolve effectively the growing number of land dispute complaints. For example, the Government’s National Authority for Land Dispute Resolution (NALDR), established in 2006, managed to resolve only 30% of the total complaints filed throughout 2012.⁹⁵ According to Mr. Chhin, head of NALDR, one reason for this ineffectiveness is the failure of government ministries to communicate prior to the issuance of the ELCs:

[W]henever a dispute arises between a company’s economic concession and the villagers, I have returned them to both ministries, the Ministry of Agriculture and the Ministry of Environment. . . . Why have we not solved them? The [NALDR] doesn’t grant economic land concessions, we have no right to grant them. When an ELC is granted, they don’t ask us if it should be granted[.]⁹⁶

The absence of effective and independent land dispute resolution mechanisms has further fueled the increase in land grievances. The prolongation of land disputes,

89 Global Witness, *Rubber Barons*, *supra* note 19, at 2.

90 See, e.g., May Titthara & Daniel Pyle, *The Calm Before the Storm*, PHNOM PENH POST, Aug. 25, 2014.

91 Order OIBB on the Measures Strengthening and Increasing the Effectiveness of the Management of Economic Land Concessions (ELC) (May 7, 2012), available at www.mlmupc.gov.kh/mlm/imgs/20130213%20Manual%20for%20Implementing%20Govt%20Order%2001_ENG.pdf.

92 CCHR, *Cambodia: Land in Conflict*, *supra* note 24, at 24.

93 David Boyle & May Titthara, *Critics Dismiss Hun Sen’s Pledge As Empty Promises*, PHNOM PENH POST, June 15, 2012.

94 CCHR, *Cambodia: Land in Conflict*, *supra* note 24, at 24.

95 May Titthara, *Most Land Disputes in Cambodia Unsettled*, PHNOM PENH POST, Feb. 21, 2013.

96 Khuon Narim & Zsombor Peter, *Land Dispute Body Blames Concession Troubles on Ministries*, CAMBODIA DAILY, Mar. 1, 2013.

in turn, causes adverse effects on the building of a more peaceful society. This can be seen through the example of the long-running conflict over the Boeung Kak Development Project.

3. THE BOEUNG KAK DEVELOPMENT PROJECT

3.1. Background

Boeung Kak Lake (hereinafter the BK or the Lake) was one of seven natural lakes in Phnom Penh.⁹⁷ During French colonization in 1925, the Lake was closed off from the nearby river and its eastern region was converted into a park. The Lake continued to serve as a natural recreation area in the middle of Phnom Penh city until the 1960s when a number of fishermen worked its western shore. After the fall of the Khmer Rouge regime, the Lake became home to railway staff and refugees, while continuing to function as “a water park and public garden” as well as a natural reservoir during the monsoon season. In 1985, about 70 families were relocated to the BK area when their previous residence behind the Calmette Hospital was turned into an amusement park.⁹⁸

The refugee and tourist populations around the Lake soared after the 1993 national election. However a year later, a number of huts were bulldozed to build a road to the Lake. More “quarters” were scheduled to be destroyed “to make way for a zoo and public garden[,]”⁹⁹ but this plan was never implemented. In 2003, the “PEARL” plan (Preservation, Evolution, Ambition to Regenerate the Lake), aiming to create “a vast green space accessible for all” was chosen in a City Hall-organized-contest to renovate the Lake, but was likewise subsequently abandoned.¹⁰⁰

On February 6, 2007, the Lake and its surrounding area, comprising 133 hectares, was leased as an Economic Land Concession for 79 million US dollars to little known local developer Shukaku Inc., a company owned by CPP senator Lao Meng Khin.¹⁰¹ The 99-year lease was initiated to make way for commercial and residential areas called the “New City of East,” one of five planned satellite cities, and was said to be in line with the City Hall’s plan for the beautification and de-

97 See generally *Timeline Tracking the Development of Phnom Penh’s Boeung Kak’s Lake*, PHNOM PENH POST, Sept. 29, 2008, at www.phnompenhpost.com/national/timeline-tracking-development-phnom-penh-boeung-kak-lake.

98 See Sahnmakum Teang Tnaut (STT), *A Home No More: Stories from Boeung Kak Lake*, Facts and Figures No. 18 (Dec. 2010), at www.inclusivedevelopment.net/wp-content/uploads/2012/06/A-Home-No-More-Stories-from-BKL.pdf.

99 PHNOM PENH POST Timeline, *supra* note 97.

100 *Id.*

101 *Id.*

velopment of Phnom Penh city.¹⁰²

By that time, there were approximately 4,200 families living in the Lake area. Many of them had possible claims for legal ownership of their homes under the 2001 Land Law. In March 2006, City Hall had issued a public notification informing the BK community of the adjudication of their land rights under the systematic land registration program co-sponsored by the World Bank's Land Management and Administration Project (LMAP). However, when the families filed their land rights applications, their claims were rejected. Instead, they were threatened with eviction on the grounds that the BK area was categorized as "development zone." In spite of the fact that some of the affected families had possible legal claims to transfer their de facto possession rights into ownership rights, they were accused of being illegal occupants without definitive landownership titles who had settled on state owned property.¹⁰³

Meanwhile, the legitimacy of the 99-year lease agreement was itself questionable, since the Lake is legally regarded as "state public land" which, according to the 2001 Land Law can not be leased as a concession.¹⁰⁴ Over a year after the ELC was agreed to, a sub-decree was issued transferring the Lake's legal status to "state private land," which can be leased legally.

On August 26, 2008, the Shukaku company started pumping sand from the Mekong River into the Lake 18 hours a day, despite repeated calls for a halt from both national and international organizations who argued that the act and the project were "in breach of both Cambodian and international law."¹⁰⁵ On September 1, 2008, hundreds of BK residents thumb printed a petition and marched to the City Hall to demand solutions for their endangered houses, which would be lost to the development without the owners having been consulted or compensated. The deputy governor reportedly said, "We still continue our negotiations with the villagers, but the development can not stop."¹⁰⁶

Shortly after, approximately 500 families agreed to move to a relocation site due to increased flooding, mosquitoes, and "putrid mud." One said, "If we don't go now, we'll go later[.] . . . To go now is better. If we go last, we could be sent 20 or 30 kilometers from where we are to be moved to now." Another said, "It is right to say either: we volunteer or were forced, because the company dredged to flood

102 Soeun Say, *Cambodia Cities of the Future — They're Just Around the Corner*, PHNOM PENH POST, Oct. 14, 2010.

103 See Sebastian Strangio & Chhay Channyda, *Who Owns the Lake? Debate Rages*, PHNOM PENH POST, Oct. 3, 2008.

104 2001 Land Law, *supra* note 54, art. 58.

105 Press Release, Amnesty International, Cambodia: Lake Filling Must Not Lead to Forced Evictions (Aug. 27, 2008).

106 *Protesters Meet Official: City Says Lake Filling to Continue*, CAMBODIA DAILY, Sept. 18, 2008.

us[.] ...How can we stay? Speaking frankly they're driving us away."¹⁰⁷

Along the rising water levels, which poured into the residents' houses during the annual monsoon rains, the BK residents were harassed and threatened.¹⁰⁸ Journalists were intimidated when they tried to report the story.¹⁰⁹ Protests were held continuously to call for a halt to the pumping and a discussion of fair and just compensation. "I am not against the government's development plan, but any development in which the poor have to be evicted without proper compensation will only benefit powerful people[.]" said one BK protester outside the Appeal Court.¹¹⁰

On September 4, 2009, the BK community with assistance from the Center on Housing Rights and Evictions (COHRE) filed a "request for inspection" to the World Bank Inspection Panel regarding the violation of residents' land rights under World Bank-financed LMAP. The Panel found the request eligible in November 2009, conducted a full investigation, and concluded in part that:

[R]esidents in the BKL area were denied access to a due process of adjudication of their property claims. It is the Panel's view that residents of the BKL area were justified in expecting that their claims to land were eligible for consideration under systematic land titling, and furthermore that all land claims in the commune were to be adjudicated in accordance with the procedures and processes for adjudication of property claims, agreed between the Government, Bank and Development Partners supporting LMAP. ... [T]he Panel found that design flaws in the Project led to arbitrary exclusion of lands from the titling process and denied residents the opportunity to claim and formalize their pre-existing rights through adjudication under LMAP.¹¹¹

107 *Lake Flooding Forces "Volunteer" Exodus*, VOA KHMER, Oct. 28, 2008.

108 *See, e.g.*, Open Letter from International Federation for Human Rights (FIDH), the Centre on Housing Rights and Evictions (COHRE), Human Rights Watch and Amnesty International to Mr. Kep Chuktema, Governor of the Municipality of Phnom Penh, Regarding the Forced Eviction of Residents of Boeung Kak Lake in Phnom Penh Municipality (Dec. 4, 2008), at www.hrw.org/es/news/2008/12/04/cambodia-open-letter-regarding-forced-eviction-residents-boeung-kak-lake-phnom-penh-.

109 *Id.*

110 Ros Dina, *Lake Residents Protest Over Money*, PHNOM PENH POST, May 19, 2009.

111 World Bank Inspection Panel Investigation Report, *Cambodia: Land Management and Administration Project* (Nov. 23, 2010) at vi-vii, at www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/12/01/000334955_20101201025955/Rendered/PDF/580160INVR0INS1seOnlyI910BOX35379I.pdf.

Meanwhile, by 2010, an increasing number of houses around the Lake were inundated and uninhabitable due to continued sand pumping. Some residents had to rent a place to stay or move out, while authorities diverted responsibility to improve the drainage system on to the Shukaku company.¹¹² The community was left with “[r]ising waters, power cut-offs, and the looming threat of disease,” making eventual relocation of the remaining families “inevitable[.]”¹¹³

To make their voices heard, the BK community activists held frequent protests, often resulting in arrests and both minor and serious injuries. Protesters filed complaints at all levels and protested at locations including the Council for the Development of Cambodia, Prime Minister Hun Sen’s house, the Senate, the National Assembly, the courts, City Hall, concerned foreign embassies, and the pumping worksite. During UN Secretary-General Ban Ki-moon’s visit to Cambodia, BK residents gathered in front of the Khmer-Soviet Friendship Hospital, where Ban was scheduled to visit, to demand a meeting with him. Their gathering, however, was dispersed violently and at least one protester was arrested and beaten.¹¹⁴

The Shakaku company tried to convince the BK community to agree to its proposed compensation offer, which was “either an apartment in another area or cash reparations [US\$8500] or the building of a house at the development zone.”¹¹⁵ With the assistance of civil society organizations, some BK residents, most of whom were female vendors as well as housewives, organized a press conference in February 2011 to ask the authorities to adopt a land-sharing plan and to set aside 15 hectares within the 133 hectares for on-site development for the BK community to build homes.¹¹⁶

Despite continuing uncertainty about the fate of remaining BK residents, an official ceremony was held in July 2011 to mark the official start of the construction of the BKDP, in which a Chinese company had a 49% stake. As the situation worsened, in August 2011 the World Bank froze loans to the Cambodian Government until a resolution could be reached. A few days later, the Government signed

112 Khouth Sophak Chakrya, *Lakeside Families Flooded Out*, PHNOM PENH POST, July 8, 2010.

113 R. Schuyler House & Andrew Billo, *Cambodia’s Land Reform and Boeung Kak Lake: Institutions, Politics, and Development*, Lee Kuan Yew School of Public Policy at the National University of Singapore (2011), at http://lkyspp.nus.edu.sg/wp-content/uploads/2013/07/LKYSPPCaseStudy11-01-Cambodia_Land_Reform-Boeung_Kak_Lake.pdf.

114 Press Release, LICADHO, *Violent Crackdown of Peaceful Protesters During the Visit of UN Secretary-General* (Oct. 28, 2010). On another occasion, a forced eviction that took place in the BK community erupted into “a clash between local residents and riot police, [during which] eight homes were demolished without warning and a man was beaten unconscious by police.” CCHR, *Fact Sheet: Case Study Series Vol. 5: Boeung Kak* (Oct. 2011), at [www.cchrcambodia.org/admin/media/factsheet/factsheet/english/CCHR%20Case%20Study%20Fact%20Sheet%20-%20Boeung%20Kak%20\(ENG\).pdf](http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/CCHR%20Case%20Study%20Fact%20Sheet%20-%20Boeung%20Kak%20(ENG).pdf).

115 Chhay Channyda, *Boeung Kak Protest Erupts*, PHNOM PENH POST, Dec. 21 2010 (quoting the deputy chief of Prime Minister’s cabinet).

116 See, e.g., *Boeung Kak Villagers Claim Delaying Tactics*, PHNOM PENH POST, May 20, 2011.

a sub-decree to grant 12.44 hectares within the BK project to the remaining households (over 3,500 or 83.5% of the BK households had already moved out by then). In October 2011, CCHR reported:

There used to be 4,012 families living around the lake[.] ... Now just under 20% of those families are still living in the BK area. Those who have already left were subjected to a concerted campaign by Shukaku staff, armed police, and communal and district authorities, to intimidate them into accepting compensation widely deemed neither adequate nor equitable, or moving to a resettlement site 20km from their places of work and livelihoods. Those who refused to move suffered continuous intimidation, physical violence, unlawful arrests and detention, and the daily fear and reality of seeing their houses destroyed or flooded by dirty water as sand continued to be pumped into the lake until it disappeared for good.¹¹⁷

About 10% of the remaining households were said to be located outside the land-grant zone and thus excluded from the grant. However, the sub-decree did not mention where and how the granted land should be shared among the people. When a number of the excluded houses were bulldozed, another violent clash took place between the villagers and authorities. Later, a female protester whose house was among those excluded was reported to have committed suicide by jumping into the river.¹¹⁸

Despite the issuance of land titles to villagers with houses within the granted land area, the BK land activists continued to stage protests on an almost daily basis over issues such as drainage system improvement, issuance of the remaining land titles, the demarcation of the granted land, the violence used against BK protesters, the release of arrested BK protesters, and more compensation for those who were previously evicted. The Lake was completely filled with sand on April 19, 2012, while remaining BK residents continued to complain about poor drainage and flooding.

According to Tep Vanny, a well-known BK land right activist and BK representative, as of January 2014, 631 of the remaining households had received land titles, while 63 more households were still waiting, mainly because the claim

117 CCHR, *Fact Sheet*, *supra* note 114.

118 LICADHO, *Pushed to the Edge: the Death of a Beoung Kak Lake Activist* (Nov. 24, 2011), at <http://licadho-cambodia.org/video.php?perm=27>.

that their houses are located outside of the granted 12.44 hectares.¹¹⁹ Despite some progress in the issuance of land titles for the remaining families, as of September 2014, the seven-year-old BK land conflict has not yet been settled completely.¹²⁰ Meanwhile, “[o]ther than filling the lake with sand and clearing residential areas, there has been little development at BK since [Shukaku] took over the site[.]”¹²¹

3.2. Structural and Proximate Causes of the BKDP Land Conflict

3.2.1. Disregard of the Law and the Rights of Residents.

Boeung Kak resident You Ro, 24, said he and other residents had not even been allowed to collect their possessions as their homes were covered in sand and mud. A Shukaku representative wielding an assault rifle threatened him when he attempted to stop his family’s trees from being destroyed by an excavator, he added. “They said they would fire on anyone who tried to stop them[.] . . . [T]he government’s development project is robbing the people and making them cry.”¹²²

Between 1989 and 2006, approximately 20 percent of Cambodia’s total land was reallocated as private property, while the remaining 80 percent remained state property, either as state public land or state private land.¹²³ State land management was not implemented within the existing legal framework, allowing property to be “classified or reclassified according to the authorities’ wishes to sell, lease or grant

119 RFI, Interview with Tep Vanny, Feb. 17, 2014, 7p.m.

120 In March 2014, 17 more families received land titles. See Khouth Sophak Chakrya, *Group of B Kak Villagers Get Long-Awaited Land Titles*, PHNOM PENH POST, Mar. 4, 2014. The issuance of land titles for the remaining families has been gradually moving forward and as of June 2014, reportedly 40 remaining families had not yet received their land titles. See Chan Muyhong, *Questions Raised Over Land Sale at Lakeside*, *supra* note 26. However, the number of remaining families remains contentious. According to a radio interview with Phnom Penh Deputy Governor and Director of Housing Rights Task Force Sia Phearum and Yorm Bopha, after two more families accepted land titles in October, the authorities claimed that only 20 families remained without title, while the community asserted that 38 families had not yet received title. The discrepancy is due to differing interpretation of the Sub-Decree and the inclusion/exclusion of 18 families living along the railway. RFI, Oct. 12, 2014, at 7pm.

121 Chan Muyhong, *Questions Raised Over Land Sale at Lakeside*, *supra* note 26. In June 2014, a 1.3 hectare piece of BK land was reportedly sold to a Singapore-based company and the BK activists protested against the sale. See Mech Dara, *Boeung Kak Evictees Protest at Singapore Embassy*, CAMBODIA DAILY, Aug. 5, 2014.

122 Sun Narin & Chhay Channyda, *Boeung Kak Homes Lost Under Sand*, PHNOM PENH POST, Nov. 8, 2010.

123 See Supreme National Economic Council (SNEC), *The Report of Land and Human Development in Cambodia* (2007), Figure 7, at www.un.org/esa/agenda21/natlinfo/countr/cambodia/land.pdf (citing GTZ, *Overview of Major Legal Categories of Lands and Waters in Cambodia* (2006)).

concessions on the land.”¹²⁴ Without having access to state land maps, communities—especially the marginalized ones—are vulnerable to being exploited or to losing their property. For example, the Boeung Kak communities were denied land titles largely because they were told that they have been living in a “development zone” or on “state land” contrary to the 2006 public announcement in a local pagoda that the BK area would be adjudicated under LMAP’s systematic land registration program.

According to the 2001 Land Law, the BK Lake itself should have been classified as state public property which could not be leased or sold; it could only be leased or sold if the land lost its public interest and was reclassified as state private land,¹²⁵ which did not occur until six months after it was leased.¹²⁶ A 2006 Sub-Decree further provides that state public land can be leased only if the lease does not “change the direction of usage or damage ...those properties[.]” or “effect or change its function in giving public service[.]”¹²⁷ The lease may be for only 15 years, and may be “withdrawn any time in order to protect the state public property and to serve public interest.”¹²⁸ Instead, Shukaku Inc. was granted a 99-year lease and allowed to completely fill in the Lake, wiping it off the map. Compounding these irregularities, in June 2014, it was reported that Shukaku had sold nearly 1.3 hectares of the land to a Singapore company.¹²⁹ However, the rights to an ELC lease are not alienable, making the sale appear to be a breach of both the lease agreement and the law.¹³⁰

Disregard for 2001 Land Law requirements has also undermined the rights of residents. The Law grants legal land possessors the “right in rem over the immovable property [, which] may be the subject of exchange, transfers of rights and transactions” while he or she is waiting for the transfer into definitive right of ownership.¹³¹ According to Bridges Across Borders Cambodia (BABC):

Had the process of land adjudication and registration been conducted according to the law, many households around the lake

124 Grimsditch & Henderson, *supra* note 58, at 58.

125 2001 Land Law, *supra* note 54, art. 16.

126 Grimsditch & Henderson, *supra* note 58, at 60.

127 Sub-Decree #129, *supra* note 79, art. 16. This Sub-Decree has raised concern for having “made the procedure for reclassifying State property much less rigorous and transparent” and for having “potential to undercut the LMAP aim of establishing a regulatory framework for State land management consistent with the 2001 Land Law.” Grimsditch & Henderson, *supra* note 58, at 58–59.

128 Sub-Decree #129, *supra* note 79, art. 18.

129 Mech Dara, *Hun Sen’s Sister Tied to Company in Boeung Kak Land Sale*, CAMBODIA DAILY, June 25, 2015.

130 See Chan Muihong, *Questions Raised Over Land Sale at Lakeside*, *supra* note 26; 2001 Land Law, *supra* note 54, art. 57.

131 2001 Land Law, *supra* note 54, art. 39.

would have had an opportunity to stake their claim to legal possession rights, and thus to formal title pursuant to the Land Law.¹³²

LMAP's framework on Environmental and Social Guidelines for "proper compensation and resettlement" require that development projects ensure at a minimum that affected communities living standards are maintained, and are "carried out in consultation with the affected people, to ensure minimal disturbance."¹³³ There is little evidence that these guidelines were applied in the BK case. Sixty-year-old Mr. Pich Samol, a former BK resident, describes his experience as follows:

The day that my house was demolished I was in the hospital. I was unconscious when someone came in and dipped my thumb in ink and took my thumbprint which signified agreement with the demolition. The company claimed I had been happy to sign. ...But after they demolished my house, I didn't get anything. When I left the hospital ...I no longer had a home. ...I tried to complain to the Municipality of Phnom Penh, but ...[t]hey said that because I didn't have any documents, I would not get any compensation. They are like robbers. When they dismantled my house they took everything.¹³⁴

3.2.2. *Lack of Transparency and Inclusiveness.*

*I have lived here for 16 years, but. . .[was] not informed about the sand or told about the development until the work started last week.*¹³⁵

Since the early stages of the BK project, it has been carried out without transparency and inclusiveness. Though rumors were spreading for years that the Lake would be targeted for development, there were no public discussions held with the affected community in advance, and no public bidding for the project itself. Only during the public notification of LMAP's systematic land registration for the BK area, did City Hall announce the lease to the unknown Shukaku Inc. company for 65 USD per square meter, when the land's market value at that time was roughly

132 Bugalski & Pred, *supra* note 45, at 1.

133 Grimsditch & Henderson, *supra* note 58, at 63.

134 Sahmakum Teang Tnaut (STT), *A Home No More*, *supra* note 98.

135 Chhay Channyda, *Boeing Kak Lake Protest Held*, PHNOM PENH POST, Sept. 2, 2008 (quoting a BK resident).

3,000 USD per square meter.¹³⁶ The company itself was secretive,¹³⁷ and only later was it revealed to be chaired by Lao Meng Khin, a senator and major donor to the ruling CPP. He is also a director of the Pheapimex company, which is infamous for its alleged complicity “in extensive land grabbing and deforestation in other parts of Cambodia.”¹³⁸ More than a year later, the BK residents did not even know the nationality of Shukaku company’s foreign partner. They gathered to protest in front of the Korean Embassy since “Shukaku” sounded Korean, and were informed that the company was in fact Chinese.¹³⁹

A research project that used the BK project as one of its case studies asserts that “rampant corruption” took place “at every stage of the development process” and that:

These human right violations are not isolated instances. Rather, they are part of a widespread and coordinated effort between the government and private companies [“who have ties to the ruling Cambodia People’s Party”] to capitalize on quickly rising land prices in Phnom Penh by taking advantage of the most marginalized members of society.¹⁴⁰

They found that “not only are residents unaware of their rights, but most have not been told when they will be evicted or of their options for resettlement. Most people are forced to rely on rumors and word of mouth, which only contribute to the spread of misinformation.”¹⁴¹

Sia Phearum, secretariat director of the Housing Rights Task Force (HRTF), said: “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.”¹⁴² According to HRTF, even when the government belatedly allocated 12.44 hectares of the land for on-

136 Bugalski & Pred, *supra* note 45, at 2.

137 See, e.g., Khouth Sophak Chakrya, *Shukaku Spouts Off on Lake*, PHNOM PENH POST, Oct. 12, 2010 (reporting the first time a company representative had ever spoken to the press about the BKDP).

138 See Bugalski & Pred, *supra* note 45, at 1.

139 In early 2011, Shukaku was renamed to Shukaku Erdos Hungjun Property Development Co. Ltd., a joint venture with the Chinese-owned Erdos Hong Jun Investment Col. Ltd. See, e.g., Vanessa Ko, *China Firm in Lake Deal*, PHNOM PENH POST, Dec. 28, 2010. In July 2014, *The Cambodia Daily* reported that the Chinese embassy had confirmed that the Chinese company withdrew from the BKDP in 2012; however, it refused to provide any further information. See Zsombor Peter & Aun Pheap, *Firm’s Split From Boeung Kak Project Confirmed*, CAMBODIA DAILY, July 17, 2014.

140 Chi Mgbako et al., *Forced Eviction and Resettlement in Cambodia: Case Studies from Phnom Penh*, 9 WASH. U. GLOBAL STUD. L. REV. 39, 43-44 (2010), at <http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1040&context=globalstudies>.

141 *Id.* at 55-56 (citations omitted).

142 Ko, *China Firm in Lake Deal*, *supra* note 139.

site development to the remaining families, there was a “willful misinterpretation” made by the Phnom Penh authorities to “arbitrarily” exclude over 10% of the remaining BK families “while simultaneously granting nearly two dozen land titles to CPP senator Lao Meng Khin—owner of lake developer Shukaku—within the dedicated ‘resettlement zone.’”¹⁴³

The Environmental and Social Impact Assessment (ESIA) of the project, which by law should have been made public prior to the project’s commencement, was not released until after the company had started filling the Lake. The ESIA report recognized the “serious” impact on the residents’ livelihood but claimed that “the [development] will bring multi-positive benefits for the economy...and city environment. This project will attract investment estimated at...US\$2 billion...and help fill a shortfall in public spaces[.]”¹⁴⁴ Housing rights groups rejected these claims and stated that the report was “false” and neither “independent” nor “transparent.”¹⁴⁵ A Drainage and Flooding Assessment was conducted by a group of concerned professional drainage engineers, who found that “Shukaku Inc.’s approach to ‘dig a canal 20-21m2 in area’ is insufficient...[and] potentially negligent.”¹⁴⁶ The Assessment stated:

The filling of Boeung Kak for urban development is likely to disrupt the equilibrium of the hydrological system...[and] result in runoff from the BKA being routed further downstream, increasing the amount of runoff through neighboring catchment. This additional load has the potential to cause stress on the downstream system, and is likely to worsen flooding. In particular, increased flood frequency and peak flood levels are of concern.¹⁴⁷

These findings were rejected by the Phnom Penh deputy governor, who baldly asserted that “the Boeung Kak development plan will not have any impacts such as flooding[.]”¹⁴⁸

143 Press Statement, Housing Rights Task Force (HRTF), Phnom Penh Municipality Must Abide by the Government’s Order to Grand [sic] Land to the Remaining Boeung Kak Lake Families (Sept. 16, 2011), at <http://licadho-cambodia.org/pressrelease.php?perm=259>.

144 Sebastian Strangio & Vong Sokheng, *Displacement and Development*, PHNOM PENH POST, Sept. 29, 2008.

145 Sebastian Strangio & Khouth Sophak Chakrya, *Lake Development Based on Biased Impact Study*: NGOs, PHNOM PENH POST, Nov. 21, 2008.

146 Sally Benham & Ben Caddis, Boeung Kak Area Drainage and Flooding Assessment (Dec. 2008), at 10, at <http://babcbodia.org/stopevictions/docs/BK%20Drainage%20Assessment.pdf>.

147 *Id.* at 13.

148 Sam Rith & Sebastian Strangio, *New Report Warns of Boeung Kak Flooding*, PHNOM PENH POST, Mar. 12, 2009.

Prime Minister Hun Sen once said, “Inclusive growth is so important to the government, the private sector and Cambodian communities, especially the young, the poor and the vulnerable.”¹⁴⁹ However, this important aim seems to have a long way to go before it is implemented in practice.

3.2.3. *The Misuse of Judiciary and Coercion.*

*We only expressed ourselves, but the court has charged us. How about the company that has pumped sand into our houses and the police who violently abused us? Didn't they commit a crime?*¹⁵⁰

When the BK resident-turned-activists organized protests to demand justice for their land dispute or the protection of their housing rights, they were often violently dispersed and either beaten or arrested. CCHR describes one among the many incidents:

[O]n April 21, 2011, several local residents—including two children—were beaten, electrocuted and detained by Phnom Penh security forces in front of the Phnom Penh municipal cabinet as they attempted to meet local authorities to demand that they stop pumping land into the lake and come to a negotiated settlement with local residents. . . . Nine women were arrested, illegally detained and forced to sign confessions admitting provocation and responsibility for the violence. The women were released the following day.¹⁵¹

Two other incidents that attracted both national and international attention were the arrests of 13 BK women on May 22, 2012, and BK activist Yorm Bopha on September 4, 2012. The two cases were seen to demonstrate blatant misuse of the judiciary system and coercion against peaceful protesters.¹⁵² On May 22, 2012, a group of 13 BK female residents gathered at the BK worksite to sing and give

149 Cambodia Development Resource Institute (CDRI), *Cambodia Outlook Brief: Inclusive growth for Cambodia: Putting Theory into Practice* (2012), at www.cdri.org.kh/webdata/policybrief/ob12/ob2e.pdf.

150 RADIO FREE ASIA KHMER, *Four Charged Following Land Clash*, Nov. 29, 2011 (quoting arrested BK activist).

151 CCHR, *Fact Sheet*, *supra* note 114.

152 *See, e.g.*, Asian Forum for Human Rights and Development, Asia Pacific Forum on Women, Law and Development, Human Rights Watch, the Observatory for the Protection of Human Rights Defenders (a joint program of the International Federation for Human Rights and the World Organization against Torture), WITNESS, Amnesty International and Freedom House, Cambodia: Joint Statement Regarding Detention of Women Land Activists (Sept. 13, 2012), at www.hrw.org/news/2012/09/13/cambodia-joint-statement-regarding-detention-women-land-activists.

speeches, but were soon dispersed. The women were chased and arrested; two days later they were brought to the Phnom Penh Court. Within hours the thirteen were convicted of being “illegal occupants” under article 34 and 259 of the 2001 Land Law and for “obstruction of public officials” under article 504 of the Panel Code and sentenced to over two years in prison. Human rights groups noted that “[t]he main, most active representatives received the full sentence[,] and that [t]he sentences appear directly related to the level of activism engaged in by the women.”¹⁵³ A joint letter published from international human rights groups said that “[t]he trial failed to meet even the most rudimentary fair trial standards” in violation of “not only international fair trial standards, but also Cambodia’s Code of Criminal Procedure.”¹⁵⁴ After constant protests by the detainees’ fellow BK residents, most of whom were women, the elderly, and children, as well as lobbying by both national and international civil society groups (and an intervention by former US Secretary of State Hillary Clinton), the protesters were released; however, the charges against them were upheld.

BK activist Yorm Bopha was arrested on September 4, 2012. In December, she was convicted for “intentional violence with aggravating circumstances” against two motor taxi drivers and sentenced to two years imprisonment. According to Amnesty International, this occurred “despite no evidence against her and inconsistent witness testimonies.”¹⁵⁵ During Yorm Bopha’s incarceration, her fellow BK female residents-turned-land-activists staged repeated protests demanding her release, and many local and international organizations began global campaigns for her release. Amnesty named her a “Prisoner of Conscience,” asserting that she was jailed purely due to her human rights activism.¹⁵⁶ She served 14 months before being released on bail in November 2013. The charges against her were dropped two months later.

Other BK residents who opposed the authorities were also intimidated and threatened with arrest. Kolap, a former BK resident described her situation as

153 Housing Rights Task Force, Sahnakum Teang Tnaut, Equitable Cambodia, Cambodian LICADHO, Community Legal Education Center, Inclusive Development International, and Licadho Canada, Joint Statement Condemning Baseless Convictions and Violence Against Human Right Defenders (May 24, 2012), <http://licadho-cambodia.org/press/files/279JointPRConvictionI3BoeungKakPlusViolenceHRDI2-2.pdf>.

154 Joint Letter to H.E. Hun Sen, Regarding Boeung Kak Lake activists (May 29, 2012), at www.hrw.org/news/2012/05/29/cambodia-joint-letter-regarding-boeung-kak-lake-activists. This pattern was repeated in November 2014 when seven activists, including Tep Vanny, were arrested for protesting flooding at their Boeung Kak Lake homes and sentenced to a year in jail the following day. See, e.g., Mech Dara, *Court Sentences Seven Activists to One Year in Prison*, CAMBODIA DAILY, Nov. 11, 2014.

155 Amnesty International, Cambodia: Global Call to Release Yorm Bopha Ahead of Supreme Court Appeal (Nov. 19, 2013), at www.amnesty.org/en/news/cambodia-global-call-release-yorm-bopha-ahead-supreme-court-appeal-2013-11-19.

156 *Id.*

follows:

Because of my work as a community activist, I have been threatened by the local authority. They accuse me of working for the opposition party. That's not true. The situation was particularly bad in June 2008 before the election. That's when my house was surrounded by commune police armed with handguns. NGOs intervened that time. Without their intervention, I might have been arrested.¹⁵⁷

The mistreatment and arrests have motivated some residents to pursue their rights; however, they have also “intimidate[d] [other community members] into giving up their rights and demands[.]”¹⁵⁸

3.3. Poor Development Practices As Challenges to Positive Peace Building

The evicted population in Phnom Penh since 2000 has reached at least 145,000—equal to 10% of the city's population.¹⁵⁹ The BK case is just one among many cases contributing to that total. Since its inception in February 2007, the BKDP has been denounced by both national and international observers as well as the local community for its anticipated and resulting negative impacts on both residents and the local environment. The question thus arises, what does “development” mean and who does it benefit?

Development was a newly emerged term during the advent of European capitalism, with the ultimate aims of strengthening political legitimacy and military protection. Yet, it became a “worldwide strategy” only in the mid-twentieth century after colonized countries began to gain independence and considered development “an antidote to colonialism,”¹⁶⁰ formulating development projects to boost their economy. The online Longman Dictionary of Contemporary English defines development in economic activity as “the process of increasing business, trade, and industrial activity” while Cambodia's respected Chuon Nath Dictionary defines development simply as “progress” or “advancement.”

The Longman definition defines development with a yardstick, but does not

157 Sahmakum Teang Tnaut (STT), *A Home No More*, *supra* note 98.

158 Mgbako et al., *supra* note 140, at 56.

159 Joint Media Statement by CHRAC, ADHOC & HRTE, Situation of Land/Housing Rights and Activists in 2012 and the Way Forward (Jan. 23, 2013), at www.adhoc-cambodia.org/wp-content/uploads/2013/01/Media-Statement-Situation-of-Land-and-Housing-Rights-and-Activists-23-Jan-2013.pdf.

160 PHILIP McMICHAEL, *DEVELOPMENT AND SOCIAL CHANGE: A GLOBAL PERSPECTIVE* 22 (5th ed. 2012).

take into account variations in the distribution of the quality of life and other non-market values. However, the Chuon Nath Dictionary gives a very general and broad definition. To progress or advance carries the implication of making something better than it was before. In the case of the BK project, the disregard of law and human rights, lack of transparency and inclusiveness, and misuse of the judiciary system have caused both immediate negative impacts on the affected community and a detrimental long-term impact on positive peace building in Cambodia. A former BK resident said, “We ask the Prime Minister to order commune officers to stop using the word ‘develop’ to take villagers’ land.”¹⁶¹ His statement indicates that displaced villagers are associating the term “development” with exploitation instead of advancement or improvement.

3.3.1. *Understanding the Immediate Impact on the BK Community.*

“I can’t live like this any longer, just kill us.”¹⁶² This quote by Tep Vanny reveals the seriousness of losing one’s land, which not only deprives affected individuals of their homes and often their source of livelihood, but also causes trauma and psychological effects.

The government-designated BK relocation site is 20km away from the city center, causing great difficulty for the already poor and marginalized community to live a decent life. A research project showed that the relocated BK community has faced numerous post-eviction challenges, particularly decreased income, inadequate health care, and inadequate educational opportunities for their children, as well as the uncertainty of receiving title for their new land.¹⁶³ Although the BK relocation site has better physical infrastructure compared to other relocation sites, the relocated families have had serious problems including a “lack of a hygienic water system and lack of a systematic method for sanitation.”¹⁶⁴ A survey of threatened and relocated communities in Phnom Penh found that “[t]he unemployment rate...has increased after relocation (35.7%) compared to before relocation rate (18.4%). ...Repetition and dropout rate of children...are very high...compared to the national level[.]”¹⁶⁵

Apart from the immediate and visible impacts on the BK community, there are other possible less visible effects. A research study conducted by Strey Khmer Or-

161 May Titthara, *Disgruntled Villagers March to PM’s House*, PHNOM PENH POST, Apr. 27, 2012.

162 EVEN A BIRD NEEDS A NEST (Directed by Vincent Trintignant & Christine Chansou 2012) (quoting Tep Vanny).

163 Mgbako et al., *supra* note 140, at 57-63.

164 *Id.* at 62.

165 HRTF, Socio Economic Impact of Forced Eviction at the Household Level in Phnom Penh (2011), at 5, at www.adhoc-cambodia.org/wp-content/uploads/2013/01/HRTF-Socio-Economic-Impact-of-Force-Eviction-at-the-Household-Level-2011.pdf.

ganization (SKO) showed that some of the arrested BK women “still experience disturbing flashbacks and recurring dreams about the protests and violent arrests.”¹⁶⁶ Even though the research sample was small, and only five arrested BK women were included among the 40 persons interviewed, this study is significant as the first attempt to examine the psychological impacts of land evictions on women. Cambodia is rated “well above world averages” for levels of anxiety, post-traumatic stress disorder, and depression,¹⁶⁷ making women in “land loss communities” who are frequently exposed to “state violence, economic hardships, and traumatic events...especially vulnerable to mental health problems[.]”¹⁶⁸ A HRFT research study found:

Illegal forced evictions increase poverty and asset vulnerability[.] ...[T]he lack of adequate compensation regularly results in homelessness, social conflict and disproportionately affects the poor and marginalized, such as children, women, and minority groups[.] Many evictees develop distrust in the political system, and suffer from emotional, physical and psychological trauma that are at times so bad that attempted suicides are regular occurrences once eviction orders have been served.¹⁶⁹

In the BK case, there was at least one reported suicide and a few cases of self-injury. On November 22, 2011, Chea Dara, a female BK resident who had been protesting against her forced eviction, committed suicide by jumping off a bridge, “reportedly out of sense of hopelessness.”¹⁷⁰ When the Government granted 12.44 hectares to the hold-out families, her house was still excluded.

During a protest on November 29, 2011, demanding that the authorities issue land titles for their houses, two female BK protesters attempted to injure themselves in front of the authorities: one cut her hand with a razor while the other tried to swallow pills.¹⁷¹ Tep Vanny asserted that “[the villagers] do not fear death or detention in jail. What they are thinking is about their lost land and that their

166 Strey Khmer Organization (SKO), “They Took My Land They Took My Life”: A Report on Psychological Impacts of Land Evictions on Women in Cambodia (Feb. 2013), at 5, at www.hrtfcambodia.org/doc/SKO%20Full%20Report.pdf.

167 *Id.* at 6 (citing RUPP 2012).

168 *Id.*

169 HRFT, Socio Economic Impact of Forced Eviction, *supra* note 165, at 8.

170 Joint statement, Criminal Charges Against Activists Won't Solve Boeung Kak Lake Crisis (Nov. 29, 2011), at <http://licadho-cambodia.org/pressrelease.php?perm=263>. See also Khouth, Sophak Chakrya & David Boyle, *Dark New Chapter in Boeung Kak Story*, PHNOM PENH POST, Nov. 24, 2011.

171 Khouth Sophak Chakrya, *Injuries, Arrests at Boeung Kak Clash*, PHNOM PENH POST, Nov. 29, 2011.

children have no homes in which to live or freedom of living.”¹⁷² A male BK resident said, “I will commit suicide by cutting my neck in front of the Phnom Penh Municipal Hall if the authorities destroy my house.”¹⁷³ Losing their homes is a matter of life and death for the marginalized BK residents.

3.3.2. *Understanding the Long-Term Impact on Positive Peace Building*

A large part of the Cambodian population—including all urban dwellers—were displaced during the Khmer Rouge time. As recent as 1997, Cambodia was estimated to have approximately 445,000 refugees and 210,000 internally displaced persons (IDPs) who were in need of shelter, health care, and other basic services.¹⁷⁴ Given Cambodia’s history of turmoil and the resulting trauma, poor development practices can only compound past grievances of marginalized segments of the population. As a case in point, when her 32-year-old house was demolished, a former BK resident related her current troubles to her past sufferings: “I spent three and a half years living in hell under the Khmer Rouge, . . . [a]nd now I am in hell again.”¹⁷⁵ As Cortright points out in his book *Peace: A History of Movements and Ideas*:

Peace is more than the absence of war it is also “the maintenance of an orderly and just society[.]” . . . [O]rderly in being protected against the violence or extortion of aggressors and just in being defended against exploitation and abuse by the more powerful.¹⁷⁶

According to Lederach, for a post-conflict country to be more peaceful and resilient, it must allow the people to (1) have a sense of place in locating themselves in the world; (2) have a sense of safety to feel at home; and (3) have their voices heard.¹⁷⁷ These opportunities, however, were mostly denied to BK residents, many

172 Heng Reaksmey, *Lake Protesters Released Under Court Watch After Arrests*, VOA KHMER, Nov. 29, 2011.

173 Khouth Sophak Chakrya, *Villagers Defy Ban on Repairs*, PHNOM PENH POST, Dec. 29, 2011.

174 Kroc Institute for International Peace Studies, *Peace Accord Matrix: Cambodia*, Framework for a Comprehensive Political Settlement of the Cambodia Conflict, at <https://peaceaccords.nd.edu/matrix/accord/13>.

175 Jon Gorrivett, *Cambodians Evicted in “Land Grab”: Residents Lose Homes Around Phnom Penh Lake to Make Way for Real Estate Development*, GUARDIAN, Mar. 29, 2011. Cf. Saing Soenthrith, *Ex-Soldier Sprays Market with Bullets in Former KR Town*, CAMBODIA DAILY, Sept. 5, 2014 (reporting that a mentally ill ex-Khmer Rouge soldier shot an AK-47 from a market roof “in an apparent protest against a recent land grab[.]”).

176 DAVID CORTRIGHT, *PEACE: A HISTORY OF MOVEMENTS AND IDEAS* 6 (2008).

177 See John Paul Lederach, *Resilience and Healthy Communities: An Exploration of Image and Metaphor*, in *COMMUNITY RESILIENCE: A CROSS-CULTURAL STUDY ON REVITALIZING COMMUNITY WITHIN AND ACROSS BOUNDARIES* 17-26 (2009), at www.fetzer.org/sites/default/files/images/resources/attachment/2012-07-12/wc1_final_cusp_commrespdf012812_0.pdf.

of them who had settled at the Lake since the 1980s. After two decades of relative peace, a new threat, this time from “development,” upended the foundation on which they had built their fragile post-conflict lives.

Although the business sector is crucial for driving the economy of Cambodia and has “much stake in security and conflict” in the country, this sector has also had a significant impact on the country’s growing inequality. This is because to make a profit and win bidding competitions:

Businesses must develop close connections with political parties or powerful individuals in order to survive. ...Unfortunately there has been no engagement from the business sector in peace building or social issues. The business community has generally been part of the problem, as a driving force behind political interests influencing the allocation of resources available in the country, with little scrutiny from other sectors.¹⁷⁸

Given this context of structural challenges, poor land practices can only further reinforce Cambodia’s cycle of violence.

Attitudes, behaviors, and context together form what is called “ABC Triangle,” a holistic conceptualization of the how cyclical violence is perpetuated.¹⁷⁹ The premise is that violent behavior (“B”) derives from the people’s attitude (“A”) and the political and economical context (“C”), which in turn reinforce each other. From this perspective, the Cambodian context of corruption, patron-client relations, and above all, impunity, combined with people’s growing fear and anger toward being mistreated and exploited, manifested in violent behaviors in the BK land conflict. As the BK land conflict continued unabated, this behavior in turn influenced and reinforced the context and peoples’ attitude toward it. In this way a cycle of violence reinforces and impedes the process of sustainable peace building in the country.

Notably, in 2013 the Institute for Economics and Peace’s Positive Peace Index located Cambodia at 100 out of 126 countries examined. Even though “the strength of the various interactions will depend on the historical, political, economic, and cultural circumstances of particular societies,”¹⁸⁰ being placed

178 *Cumulative Impact Case Study*, *supra* note 11, at 36.

179 See SIMON FISHER ET AL, *WORKING WITH CONFLICT: SKILLS AND STRATEGIES FOR ACTION*, 9-10 (2000).

180 Institute for Economics and Peace, *Global Peace Index: Measuring the State of Global Peace* (June 2012), at 80, 82, at www.visionofhumanity.org/pdf/gpi/2013_Global_Peace_Index_Report.pdf.

among the bottom countries is an alarming reminder that serious action needs to be taken to address the root causes of structural violence¹⁸¹ and create a form of development with conditions conducive to sustainable peace. As shown by the BK land conflict, after more than ten years of civil war, the prerequisites for a well-functioning and peaceful society—social cohesion and trust between the state and the people—remain broken. Instead of reinforcing the cycle of violence, land related development projects should provide a means and process through which Cambodia can continue rebuilding these values within society.

3.4. A Dynamic for Positive Change

As peace is a process “involving the search for positive conditions”¹⁸² to end all types of violence, the following discussion is based on the premise that, if addressed creatively, non-violently, and in a transformative way, conflict can be a source of social change and progress. While the BKDP has had many negative effects, it also demonstrates a dynamic that can foster positive change. The 12,44 hectares eventually granted to residents, the hundreds of land titles eventually issued, and the eventual release of the arrested BK women, were all seen as successes. Though at the time of this writing the case has not yet been completely settled, the process itself has demonstrated the power of a forceful and committed struggle for justice in the face of state violence.

Not only have the BK women been at the forefront of the struggle against their own forced evictions and injustices; they have also challenged the culture and tradition of their gender roles as housewives in Cambodia’s male dominated society. They challenged the powerful authorities with their courage by speaking the truth in the face of power. They were armed with nothing but creativity, flexibility, commitment, compassion, and true courage in their non-violent struggle, and support from concerned NGOs/INGOs and the international community.

This section seeks to explore the dynamic for positive change in the BK case

181 In Peace Studies, violence does not merely mean visible killing, torture, beating, or other physical violence. According to Galtung, violence refers to “avoidable insults to basic human needs and more generally to life, lowering the real level of needs satisfaction below what is potentially possible” and includes:

Direct violence [which] is intended to insult the basic needs of others; structural violence having such insults built into the social fabric as exploitation and repression; and cultural violence occurring when aspects of culture (such as religion and language) legitimize direct and structural violence.

JOHAN GALTUNG, *PEACE BY PEACEFUL MEANS: PEACE AND CONFLICT, DEVELOPMENT AND CIVILIZATION* 40, 197 (1996).

182 ROBERTA LYNN WODENSHECK, *THE HUMAN RIGHTS TO PEACE: WHY SUCH A RIGHT SHOULD BE RECOGNIZED* 9 (2004) (citing Woolman 1985).

by looking at the roles of both internal (grassroots and local civil society engagement) and external (international community) forces in transforming the protracted BK land conflict.

3.4.1. *Understanding the Grassroots Motivation Behind the Struggle.*

The BK community is diverse in its composition. It is comprised of supporters of different political parties, the poor, the middle class, and the relatively affluent who were either owners, renters, or unlawful land possessors.¹⁸³ An unidentified former BK resident stated:

In my community, there are three kinds of people. Firstly, there are those who are afraid because they have been threatened— they have been told they can either accept compensation and move, or get absolutely nothing at all. Secondly, there are those who live in small houses on bad sites. They are poor and don't have a job. They tend to accept the US\$8000 compensation. It's a lot of money for them. But [thirdly] most people say it is their legal right to stay.¹⁸⁴

Residents' motivation to either exit, remain quiet, or air their grievances depended on what each person perceived to be “in their best interest given what they know at the time of choosing.”¹⁸⁵ Their responses to the forced eviction have varied according to each individual's perception of the “higher payoff.” More than 3,000 families of the BK community chose to remain “loyal” by moving away and accepting the compensation options offered by the Shukaku company. For example, a three-decade-old-mosque located in the BK land compound was allowed to be demolished in mid-2011 because the United Arab Emirates offered to donate a new one.¹⁸⁶ Thus, the BK Islamic community chose to “exit” silently. Many poor illegal occupants likewise found it more beneficial to accept payment and move on:

One Damnak Trayoeng resident who previously lived in a floating house on Boeung Kak Lake reported having been afraid that her wooden Boeung Kak house would catch on fire in the

183 See Bugalski & Pred, *supra* note 45.

184 Sahmakum Teang Tnaut (STT), *A Home No More*, *supra* note 98.

185 WILLIAM ROBERTS CLARK, MATT GOLDER & SONA N. GOLDER, *PRINCIPLES OF COMPARATIVE POLITICS* 59 (2009).

186 Khouth Sophak Chakrya, “*Unsafe*” Mosque at Boeung Kak Demolished, PHNOM PENH POST, July 19, 2011.

night. She stated that her living conditions in Damnak Trayoeng [relocation site] are much better, and that she is happy to see the green of the farm and to finally sleep well.¹⁸⁷

Less clear is the payoff for those who chose to continue voicing their concerns by organizing constant protests against the authorities despite ongoing intimidation. According to Goldstone and Tilly, the “usual story” about the relationship between political opportunities and protest movements is that if opportunities increase, the protests mount; if the opportunities decrease, the protests recede (rising opportunity; rising protest).¹⁸⁸ Yet, this fails to account for “the pattern of tactical moves and countermoves between regimes and challengers as both sides engage in a series of choices regarding actions, repression and concessions.”¹⁸⁹ Instead of increased repression reducing action, empirical findings show that “increased repression leads to increased protest mobilization and action.”¹⁹⁰ Why?

The answer may have to do with the role of human needs. In a documentary produced by LICADHO, there is a statement written on the wall of a bulldozed house that says, “No home no life; to die to protect our home.”¹⁹¹ This statement highlights the fact that housing, safety and long-term well-being are major motivations for the BK grassroots struggle. To those who protest, to “exit” or to remain “loyal” would not gain them anything; to voice, however, might give them at least a little chance since “[h]aving a little hope is better than being hopeless” and “[w]e can’t keep quiet until they come to pull down our houses.”¹⁹² In short, in some cases, “the citizen will . . . use her voice even when she knows that it will not be successful” since she will “get a higher payoff from using voice than from choosing either to exit or remain loyal regardless of what the state does.”¹⁹³

3.4.2. *The Significant Roles of Internal and External Forces.*

In the BK struggle, the roles of both supporting civil society organizations (CSOs), and the international community have been indispensable. One common

187 Mgbako et al., *supra* note 140, at 61.

188 Jack A. Goldstone & Charles Tilly, *Threat (and Opportunity): Popular Action and State Response in the Dynamics of Contentious Action*, in *SILENCE AND VOICE IN THE STUDY OF CONTENTIOUS POLITICS* 180 (Ronald Aminzade ed., 2001).

189 *Id.* at 181.

190 *Id.*

191 LICADHO, Video: The Impact of Development and Forced Evictions on Women in Cambodia (Oct. 20, 2011), at <http://licadho-cambodia.org/video.php?perm=26>.

192 Khouth Sophak Chakrya, *Boeing Kak Protesters Seek Chea Sim's Help*, PHNOM PENH POST, Apr. 28, 2010 (quoting a BK representative).

193 CLARK et al., *supra* note 185, at 78.

role played by both these internal and external forces has been to “intensify” the conflict, making a latent conflict become open and visible so that it can no longer be ignored by stakeholders, both national and international.

With regard to CSOs, they have played at least two essential roles. First, they have acted as a resource center to build capacity, knowledge, and skills to empower the grassroots movement. This has been evident in the BK case since the beginning. The BK protesters were initially unable to mobilize their own forces to join the struggle due mainly to their different economic and political groupings and interests, each of which impacted their status with regard to their housing (owners, renters, or illegal possessors),¹⁹⁴ as well as their willingness to fight.

In addition, fear and intimidation made it difficult to mobilize people to join the struggle. Bridges Across Borders Cambodia, partnering with other NGOs, pursued a “deliberate process” by training 15 BK residents to be community organizers. Within five months the community organizers from different villages of the BK community developed the skills and knowledge necessary to take the lead in the struggle. Despite receiving repeated threats and interruptions, the community organizers managed to inspire “collective action,” since those “who had previously been passive began mobilizing to advocate for their rights.” The activists later continued to receive various types of support from different CSOs.

Second, CSOs play a crucial role in keeping the government in check while creating safe spaces and trust between the state and the powerless people. In the BK case, the CSOs contributed to monitoring, lobbying, campaigning, and reporting as well as raising public awareness about the issues on both national and international levels in order to garner more support in pressuring the government to address the issue. This coordination can be seen in the prominent incidents of the BK case, namely campaigns to free the jailed activists such as “Free the 15” and “Free Yorm Bopha,”¹⁹⁵ via what is called the boomerang effect—the pattern when “domestic NGOs may directly seek international allies to try to bring pressure on their states from the outside.”¹⁹⁶

Although supported by civil society, the BK struggle could not have been successful without the BK women activists. With their own creativity, flexibility, commitment, and courage, the BK women activists were able to make their voices heard by wider audiences in both national and international communities, thereby

194 See Bugalski & Pred, *supra* note 45.

195 For more details of the campaigns, see <http://freethe15.wordpress.com/> or http://cchrcambodia.org/index_old.php?url=our_work/our_work.php&p=campaigns/yormbopha/index.php.

196 Margaret E. Keck & Kathryn Sikkink, *Transnational Advocacy Networks in International and Regional Politics*, 51:159 *INT'L Soc. Sci. J.* 89, 93 (1999), at <http://courses.washington.edu/pbaf531/KeckSikkink.pdf>.

managing to win popular support throughout the process of non-violent struggle. For instance, Secretariat Director of HRTE, Sia Phearum, commented during a singing protest by the BK protesters who demanded the release of Yorm Bopha that “the police when they hear the song, they really pity her and understand[.] . . . Their commander ordered them to beat the women, but they reject.”¹⁹⁷

The female grassroots activists have employed what they termed a “drizzling strategy” or constant protests along with a plethora of creative efforts for achieving concessions to draw the attention of the public. In addition to sending petitions, filing complaints, holding meetings, and holding conferences so as to communicate and persuade the authority, the BK women employed more confrontational techniques such as marching to different prominent places to protest. This was not only to demand a resolution to the protracted BK land conflict, but also to address issues beyond housing, such as the need for an end to violence against women, justice for the arbitrary arrests and violence, and above all, basic human rights. Their unique protest tactics for capturing public attention included:

- Women wearing straw nests with plastic eggs as hats during the protest to symbolize “birds need their nests just as people need their home”;
- Women wearing small model houses on their hats to represent their struggle for housing rights;
- Women setting scarecrows representing corrupted officials on fire;
- A woman removing her clothes to reveal her underwear and breasts to express her loss of dignity and hope caused by the loss of home to the development;
- Children of the arrested women kneeling down crying in front the Ministry of Justice and demanding the release of their mothers;
- Jailed women going on a hunger strike;
- Women composing and singing songs related to their case during their protests;
- Women egging photographs of a former city official they hold responsible and the embassy of a foreign company rumored to be buying an interest in the BKDP.¹⁹⁸

According to Tep Vanny and Yorm Bopha, well-known BK representatives-turned-land-activists, the tactics they employed in the protest were grassroots’ initiatives, while some of the logistic and legal support came from CSOs. They

197 Khuon Narim, *From Prison, Yorm Bopha Writes Songs for Freedom*, CAMBODIA DAILY, Jan. 2, 2013.

198 Aun Pheap, *Boeng Kak Protesters Egg Embassy, Ex-Governor’s Photo*, CAMBODIA DAILY, Aug. 28, 2014 (responding “to a Singapore-based company’s pending plan to purchase a 1.35-hectare plot of land from Shukaku Inc.”).

said that having women at the forefront of the protests gives it a higher chance of being effective by making the struggle less confrontational and threatening for the authorities, despite the fact that the women had faced all sorts of state violence ranging from intimidation to physical injury including a few miscarriages and arrests.¹⁹⁹ Working together with the CSOs, the BK land activists created a strong alliance to target the sensitivity and the weaknesses of the government.

International organizations lobbied and raised awareness abroad through campaigning, reporting, and joint statements with outside constituencies on what the activists and civil society believed to be the causes of conflict: injustice, human rights violations, and inequality. For example, during her imprisonment, Yorm Bopha was named an Amnesty International Prisoner of Conscience and an international campaign entitled “International Day to End Impunity 23 November 2013” was initiated and hosted by CCHR’s international partner, IFEX. IFEX shared case studies, interviews, graphics, information, and videos, and initiated a call to action and the signing of a petition to demand justice for Yorm Bopha’s case.²⁰⁰ In addition, BK land activist Tep Vanny received the Vital Voice Global Leadership Award at the Kennedy Center on April 2, 2013.²⁰¹ This further raised awareness among international audiences, while also empowering the ordinary grassroots women in their struggle for justice and human rights. It gave them a safer and larger space to work with the government to build positive conditions favorable for sustainable peace.

External forces also played an important role in applying influence and direct pressure on the government to address the conflict. For example, as Cambodia remains a largely aid dependent country with almost half of its national budget coming from international donors, the BK activists with the help of the CSOs were able to involve the World Bank in their struggle. The notoriety of the issue made the World Bank freeze its loans to the government. Faced with such a de-facto threat to its economy, the government then granted the 12.44 hectares of land to the remaining BK families. In another instance, during a meeting with the Cambodian Foreign Minister in Washington D.C., former US Secretary of State Hillary Clinton urged the Cambodian Government to release the 13 jailed women activists. Two weeks later, the jailed women were released on bail.

Both internal and external forces are indispensable in allowing for an opportunity to confront the challenges of building a more sustainable peace in the coun-

199 Comments during a public screening of the documentary *Even a Bird Needs a Nest* at CCHR (Dec. 5, 2013).

200 See http://daytoendimpunity.org/take_action/index.php?day=04.

201 See, e.g., Ruth Keber, “*This is My Life and Everything is True*”: *B Kak Film Wins Award*, PHNOM PENH POST, Apr. 10, 2013.

try, especially in transforming the conflict into something less destructive. As reported in Polity IV Country Report:

[A]lthough Cambodia functions much like a traditional one-party state, there are emerging institutions that may provide greater constraints on executive power if they are allowed to strengthen their organization and constituency base. International involvement has been crucial in fostering compromises and pressing for greater liberation in Cambodia's contentious political arena.²⁰²

Despite the fact that many of the remaining families have already received land titles, the internal and external actors in the BK struggle have been pulling together to address issues beyond the immediate problem of housing rights to address the systemic structural violence, including arbitrary arrests and charges and official impunity. A number of BK female land activists led by Tep Vanny and Yorm Bopha have moved beyond BK activism to become involved in efforts to fight against any social injustice and human rights violations that occur. The BK activist group has joined marches with NGOs to celebrate International Human Rights Day, International Women's Day, and World Habitat Day. They also joined protests to demand the establishment of an independent investigative committee over alleged July 2013 electoral fraud. They have also joined other land affected communities, and some labor unions, including to ask for the release of the 23 human right defenders and factory workers who were arrested during a violent crackdown on a wage protest on January 3, 2014.

Tep Vanny says that there are three reasons behind her continued activism and protest in spite of the fact that she has already received a land title. First, she and her community would like the authorities to demarcate the granted 12.44 hectares to prevent any future land grabs. Second, since the start of the struggle, she and other protesters have promised to struggle together for their houses and thus she will continue organizing protests to help the excluded families. Third, she would like the BK struggle to become a "model" for other affected communities, empowering them to stand up for their housing rights.²⁰³ By challenging the status quo in a creative and non-violent manner and making the authorities respond to the people's concerns and needs, the BK conflict has become a process for social change.

202 Monty G. Marshall & K. Jagers, Polity IV Country Reports 2010, sponsored by the Political Instability Task Force (PITF) (2010), at www.systemicpeace.org/polity/Cambodia2010.pdf.

203 RFI, Interview with Tep Vanny, *supra* note 119.

4. CONCLUSION

Seen in the context of Cambodia's unfinished and prolonged land registration and legal reform efforts, the BK land dispute is attributable to both structural and proximate causes, namely the general failure of authorities to uphold the law and individual rights and to make decisions transparently and inclusively, and the lack of independence and misuse of judiciary. These institutionalized behaviors not only threaten the livelihood and psychology of the BK community, among others, but also reinforce the cycle of violence and undermine opportunities for building trust and social cohesion—preconditions for a sustainable peace for Cambodia.

Nonetheless, from a conflict transformation perspective, the roles of both internal and external forces in transforming the land conflict in the BKDP case have demonstrated another effective dynamic. These forces have challenged the status quo by intensifying the BK land conflict in a non-violent manner so as to make it visible, prominent and incapable of being ignored by the involved stakeholders. These forces created new opportunities for positive change, empowering those concerned to be actively involved, and ultimately fostering interdependence between the state and its people. Instead of being submissive and passive, the BK grassroots activists chose to voice their concerns through non-violent means until their needs were met, even though it also meant that they had to face state violence. Those who did so were mostly women who became empowered and refused to be victims, instead choosing to be agents for change. While local CSOs took on the role of lobbying, campaigning, supporting, empowering, raising awareness, and being a resource center for the people to strategically and effectively communicate and push the reluctant authorities to deal with the issues, the international community and international non-governmental organizations (INGOs) also played an important role in lobbying and raising awareness internationally and applying influence and pressure on the local government. However, the most important role played by both CSOs and INGOs as well as the international community generally was to bridge the gap and build trust between the state and the people.

Indeed, the Cambodian Government deserves praise for sustaining negative peace and economic development. It should be remembered that Cambodia recently emerged from protracted conflict and has a long way to go to build resilient and positive conditions for lasting peace. As a spokesman for the Government said a few years ago:

We still improve day to day the basic way of the people's life and the government[.] ... Even in the US they do have abuse[.] ...

Human rights is a new culture for everyone on this earth, especially for Cambodia, [which is] in transformation. We need time to grow.²⁰⁴

Nevertheless, maintaining the status quo, with its deteriorating conditions for sustainable peace and development, is now moving the country's peaceful condition backward, reducing its resilience against future violent shocks. Therefore, both development and peace should be home-grown phenomena. Development must afford people the freedom to express their voices and concerns about development projects that affect their lives. Therefore, "development" must be understood to go beyond economic growth to include environmental and social consequences. Development projects must pay serious attention and address unmet human needs by placing people at the heart of the project throughout the entire process. The central point is that the process must be as inclusive, equitable, transparent, and well-structured as possible, and not carried out at the risk of social and environmental damage.

Similarly, peace should not be imported from elsewhere but come from within a system with formal and informal institutions that address the unmet human needs and minimize all types of violence. Building positive peace is thus the building of resilient, sustainable and positive conditions to address the political, social, economic and cultural root causes of violent conflict. In other words, peace is a process that requires continuous effort and commitment in the search for creative conflict transformation characterized inter alia by active non-violence, cooperation, dialogue, integrity, understanding and harmony for mutual and equal benefit. The alternative is that violence will never cease to find ways to express itself. The BKDP illustrates the dynamics of poor land development practices that function as both a challenge to and as a positive transformational opportunity for building a more sustainable peace in Cambodia.

204 Abby Seiff, *Cambodia's Rights Record Under Fire*, PHNOM PENH POST, Sept. 22, 2012 (quoting Spokesman for the Council of Ministers Phay Siphon).

