

Land Titling in Cambodia: Formalizing Inequality

By Natalie Bugalski and David Pred

In February 2007, the Municipality of Phnom Penh granted a 99-year lease to a private company, Shukaku Inc., over 133 hectares of prime real estate, including Boeung Kak lake and the surrounding land where some 20,000 people reside. The lease was granted for a mere \$79 million US dollars, a fraction of the estimated value of the prime city-center property. The lease agreement blatantly violates the Cambodian Land Law, which stipulates that State public property – including lakes, which have inherent public value – cannot be sold or subjected to long-term leases. Furthermore, a lessee must not damage the property or effect or change its public function. In direct contravention of the law, the company began filling the lake in August 2008, with the stated intention of building a new ‘satellite city’ with private villas, shops and office buildings on the site. The lease agreement usurps the land rights of residents, many of whom have been living around the lake since the fall of the Khmer Rouge regime in 1979 and thus have strong legal claims to the land.

Illegal land grabbing by powerful actors is unexceptional in Cambodia, where forced evictions and confiscation of land rank among the country’s most pervasive human rights problems. Since 1990 approximately eleven percent of the population of Phnom Penh has been forcibly evicted and relocated to peri-urban resettlement sites that often lack housing, basic infrastructure, and access to public services and employment. In rural areas, more than a quarter of Cambodia’s arable lands have been carved up

and granted as “economic land concessions” to Cambodian and foreign investors without regard for the rights of affected rural and indigenous communities. As a result, these communities have suffered widespread displacement, dispossession of their farming and grazing lands, and reduced access to the forests that sustain their livelihoods.

What makes the Boeung Kak case stand out is that the concession was granted shortly after the local commune involved underwent a flawed systematic land registration process under the multi-donor funded Land Management and Administration Project (LMAP). Had the process of land adjudication and registration been conducted according to the law, many households around the lake would have had an opportunity to stake their claim to legal possession rights, and thus to formal title pursuant to the Land Law. Instead, the area covered by the lease was excised from the wider adjudication area. Authorities told residents that they could not issue titles in the area because it was “a development zone.” The households were thus arbitrarily cut-off from the land titling process and blocked from claiming their legitimate entitlements, precisely why they were most in need of the security afforded by title. More than one thousand affected families have since been coerced into accepting compensation for a fraction of market value for their homes and land, and the remaining roughly three thousand families are currently facing the threat of forced eviction.



A brief background on land tenure in Cambodia

While not dissimilar to patterns experienced by other rapidly developing countries, current land tenure conditions in Cambodia are a manifestation of unique historical factors coupled with the recent introduction of policies and programs typical of the dominant development paradigm. The significance of historical factors is particularly pronounced in a country in which the population was uprooted and the existing land tenure system was erased by one of the twentieth century's most sweeping revolutions. During the Democratic Kampuchea regime from 1975 to 1979, private property was abolished and land records were destroyed. The nation's population was forced to toil on large collectivized farms and irrigation projects, where more than one million people were worked or starved to death.

After the regime was toppled by Vietnamese armed forces, people began returning to their homelands or settling in new areas to rebuild their lives. In Phnom Penh, which was evacuated and left largely vacant during the Khmer Rouge reign, people began to return from the countryside and refugee camps - occupying housing and settling on land largely on an ad hoc basis.

The withdrawal of the Vietnamese administration in 1989 paved the way for the Paris Peace Agreement in 1991 and the establishment of the United Nations Transitional Authority in Cambodia (UNTAC). Under the tutelage of UNTAC, the International Monetary Fund, the World Bank and other financial and development institutions, a market economy was initiated, with policies aimed towards private sector development and foreign investment, including the formalization of land ownership.

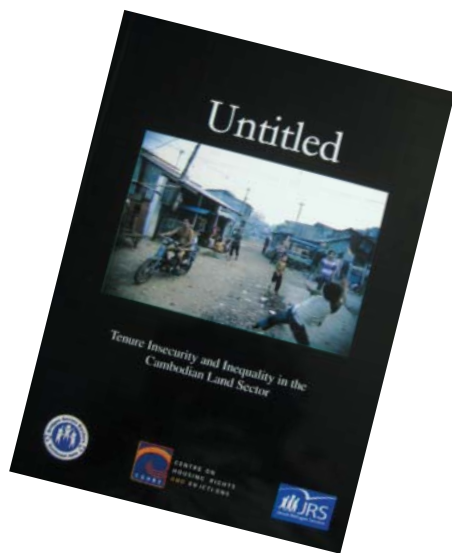
Private property rights were first reinstated in 1989 and an active land market soon emerged. While no effective formal land registration mechanism was established in the 1990s, land ownership, use and transfers were "informally" recognized by local authorities through the issuance of various forms of documentation.

In 2001 a new Land Law was approved by the National Assembly, which was widely hailed as progressive and transformative, providing a strong legislative basis for the equitable protection of land rights. Importantly, the law confirms that people who occupied property before 31 August 2001, and meet a number of other conditions, have exclusive rights to the property, which can be transferred to full ownership. Such rights are known as "possession rights" and form the legal basis of the adjudication process in the land titling and registration program that commenced the following year. Possession of property which is State public property, as defined by the law, or someone else's private property is not legal. Any occupation of land that commenced after the passage of the law is also illegal.

The Land Law protects legal possessors from interference with their rights until full ownership is conferred. The effect of this provision should be that until a peaceful occupant's land rights are determined through the adjudication process, no eviction is legal. Once land is registered as private property, both the Constitution and the Land Law stipulate that expropriation may only be carried out by the State in the public interest after fair and just compensation has been paid.

The Land Management and Administration Project

The multi-donor supported Land Management and Administration Project (LMAP) began in 2002 as the first phase of the government's land reform program, established to give effect to key provisions of the 2001 Land Law. The project was originally envisioned as the first phase of a program of land reform to be implemented over a 15-year period, with the objectives of strengthening land tenure security and land markets, preventing or resolving land disputes, managing land and natural resources in an equitable, sustainable and efficient manner, and promoting equitable land distribution. LMAP intended to focus on the development of the legal and regulatory framework; institutional development; land titling and registration; strengthening land dispute resolution mechanisms; and land management.



The full report [Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector](http://www.babcambodia.org/untitled) can be downloaded at www.babcambodia.org/untitled

The primary donors to the project were the World Bank (pledging \$28.83 million), GTZ (\$3.5 million in technical assistance), and the Government of Finland (\$3.5 million in technical assistance). The Canadian International Development Agency (CIDA) joined the project in 2004 committing more than CN\$10 million in both funding and technical assistance through to 2012.

Over the project's duration (2002 – 2009) a number of goals were achieved: key parts of the legal framework were developed, technical capacity of Land Ministry staff was strengthened, and an estimated 1.3 million titles were issued.

Yet despite these achievements, the failure of the project to tackle fundamental inequities in the control and management of land meant that it did not improve tenure security for the segments of Cambodian society that are vulnerable to displacement. Vulnerable households that have legal possession rights are routinely and arbitrarily denied access to land titling and dispute resolution mechanisms, which undermined the project's central aims of reducing poverty and promoting social stability.

Two main factors in the design and implementation of LMAP impaired the capacity of the systematic titling mechanism to achieve its aim of improving land tenure security: the exclusion of difficult areas and the lack of transparency in State land classification. These factors in practice allowed municipal and provincial authorities unchecked

discretion in the selection of adjudication areas, which has benefited powerful actors at the expense of vulnerable households.

Exclusion of difficult areas

The first key factor in the design of LMAP that blocked vulnerable households and communities from accessing title is that areas “likely to be disputed” and areas of “unclear status” were excluded from the system. These terms were not defined in the project design documents, allowing for the arbitrary exclusion of areas from the titling process. We refer to them here as difficult areas.

In practice, the exclusion of these difficult areas allowed provincial or municipal authorities, who are in charge of selecting adjudication zones, to excise areas that are sought after by powerful domestic actors and foreign investors. This exclusion occurred both through the selection of adjudication areas and through the excision of zones within adjudication areas on an arbitrary basis. It is important to note that the same authorities conferred with the power to select adjudication areas have also played a significant role in land-grabbing and forced evictions many cases. The selection of adjudication areas has largely occurred in an opaque manner, without information about the process being made available to the public, nor consultations with affected persons about decisions to excise specific areas. As a result, many thousands of households that lie within excised portions of land are being evicted without their tenure status ever being assessed - in direct contravention of the Land Law.

The decision to avoid difficult or complex areas in favor of targeting areas in which adjudication would be relatively straightforward may be reasonable during an initial period in order to build capacity of titling teams. However, without the terms being clearly defined, this design feature presents a significant loophole that allows land grabbing to continue unhindered by the land registration process.

Attempting to register only non-contentious plots of land throughout the country is counterintuitive

given the aim of LMAP to reduce the instances of land conflict and land grabbing. Given that the *raison d'être* of the land registration program is to clarify the status of land according to legally prescribed definitions, the exclusion of areas of “unclear status” is a peculiar design feature. At what point and by what process does an area’s status become clear and therefore a target of land registration?

Although titling under LMAP was to avoid disputed areas, LMAP did aim to build the capacity of the Cadastral Commission. The 2001 Land Law established the Cadastral Commission, which has jurisdiction of first instance for the resolution of disputes over unregistered land. However, poor and vulnerable communities involved in disputes with powerful and well-connected individuals who do file complaints to the Cadastral Commission or the courts find them unresolved, rejected or simply ignored.

This impotence of the Cadastral Commission and the courts to resolve disputes between weak and powerful parties in accordance with the law raises larger questions about the design and sequencing of the project. Should a formal titling process ever have been initiated in the Cambodian political context without first strengthening these institutions and the rule of law?

Lack of transparency in State land classification

The lack of transparency in State land classification and registration is another crucial factor in the exclusion of vulnerable households from the land titling system. Under LMAP, titling private land was to occur in conjunction with State land classification. A key component of the project was to clarify procedures for defining different types of land and to create land classification maps for all project provinces. Despite the passage of the 2001 Land Law and a number of regulations issued in relation to State land management, there is still no coordinated and transparent land management system in place. To date, there has been minimal or no public involvement in the development of such a system, and if any State land database exists, it is not

available for public viewing. Consecutive LMAP supervision reports assessed this component as performing poorly.

In the absence of a transparent State land classification process, and a publicly available database of State land, attempts to register private land through a fair and legal process are easily thwarted. Denial of title is routinely justified by the assertion that people are illegally settled on State land; yet these claims by the State are being made outside the legal framework.

The failure of this component of LMAP is unsurprising bearing in mind the opportunistic way in which authorities have arbitrarily classified land to serve the interests of powerful actors and the private sector. The result has been the improper classification of land as State property for the purpose of facilitating commercial development projects, including the granting of large-scale land concessions. In turn, these actions have led to forced displacement, land alienation, and the loss of residential land, farmlands and public spaces.

The Boeung Kak case exemplifies how, by excising certain areas from the registration process, authorities arbitrarily classify land as State property, without regard to its characteristics or the legitimate rights of those residing there. Many households in the Boeung Kak area had been recognized by local authorities since the 1990s through “informal” tenure systems, including the issuance of house numbers, family books, small infrastructure improvements and the official witnessing of land sale contracts. In 2006 the commune of Sras Chok, including the area surrounding Boeung Kak lake, was announced as an adjudication zone for the purposes of systematic land registration. Possession rights of each household should have been assessed and if found valid, full land titles conferred. Any competing claims to the land should have been resolved in the process, and if this was not possible, they should have been referred to the Cadastral Commission for resolution according to the law.

However, residents say that when they requested that their land claims be investigated, their requests were denied on the grounds that

they were living inside a “development zone.” The cadastral map was posted for public display in early January 2007 with ownership of all plots within the development zone listed as “unknown.”

Although no formal registration of the land to the State appears to have occurred, the adjudication process resulted in a de facto determination of the status of the land as State-owned. This was confirmed the following month when the Municipality signed an agreement to lease the lake and surrounding land to Shukaku Inc.

Meanwhile, the residents were pressured into leaving their homes without having their right to apply for title being realized by LMAP, and with no meaningful access to dispute resolution mechanisms. The Boeung Kak case serves as a pertinent example of the manipulation of the land classification and registration system to serve powerful interests and deny people their legal rights.

A ‘dual system’ of rights protection

The exclusion of vulnerable households from the donor-funded titling program amounts to systematic unequal treatment within Cambodia’s land rights protection regime.

Most households that perceive themselves as owners have traditionally relied on various documentation issued by local authorities (sometimes called “soft title”) to prove their claims to the property. The recognition of possession rights in the 2001 Land Law, including the right to convert legal possession into full ownership through title, was intended as a mechanism to incorporate this pre-existing tenure system into the formal centralized system. As noted above, the Land Law protects all peaceful occupants of immovable property from interference with their possession until rights over the land have been determined through the adjudication and registration process.



Houses collapse into Boeung Kak lake after sand is pumped to reclaim land for commercial development

However, once land becomes sought after, it is commonplace for the land rights of possessors to be denied, even if they have strong documentation to support a claim for lawful possession. Without 'hard' formal title possessors are accused of being 'illegal squatters,' and this in turn has become a common justification for eviction. This accusation disregards the fact that many of these households have not had their land claims fairly assessed through the formal land registration process. The evictions that often follow these accusations also disregard the legislated moratorium upon any interference with peaceful possession prior to land registration.

LMAP did not create this 'dual system'. Formal titles were being issued sporadically to the privileged few prior to the commencement of LMAP. These titles existed alongside the 'soft' recognition from local authorities. However, rather than effectively and uniformly incorporating the old tenure system into the new formal one, LMAP appears to have fortified the dual system's unequal protection of rights. By expanding the reach of the formal titling system, LMAP has increased the actual and perceived superiority of hard titles issued under the project vis-à-vis the documentation and recognition of occupancy that characterized the pre-existing tenure system. LMAP has thus unwittingly weakened the tenure status of those households who have been excluded from the formal system and thus must continue to rely on their local documentation and recognition as the basis of their rights to the land.

The Boeung Kak case provides an illustration of this dual system in practice. Many Boeung Kak residents hold documents that demonstrate their lawful possession and recognition by local authorities under the pre-existing tenure system. When Boeung Kak residents were blocked from the titling process, their previous tenure status was disregarded and they were homogeneously accused of illegally occupying State land. In effect the project not only failed to adjudicate and formalize their tenure but it also degraded their pre-existing tenure status, leaving them more vulnerable to forced eviction.

Household with legal possession rights that should have been converted to ownership under LMAP were denied their constitutional right to fair and just compensation in advance of property expropriation.

Complaint to the World Bank Inspection Panel

When the Boeung Kak area was de facto classified as State land during the flawed adjudication process, the estimated 4000 families residing there were effectively categorized en masse as illegal squatters.

According to the LMAP credit agreement between the World Bank and the Cambodian Government, a Resettlement Policy Framework, was to be applied "in the event of eviction from state land" resulting from the adjudication process. The policy required that evictions should be avoided whenever possible and in cases in which they are unavoidable, proper compensation and resettlement options must be offered to affected persons in order to ensure that, at a minimum, their living standards are maintained. The policy – an important human rights protection component of the titling program - was not applied to the eviction of households in the Boeung Kak area. A regular World Bank supervision mission that visited the adjudication area in 2008 failed to query the exclusion of the Boeung Kak residents from the titling process or raise concerns about the impending evictions and the application of the Resettlement Policy Framework.

In August 2009, prompted by lobbying from community and NGO advocates, as well as the report of a World Bank Safeguards Review Mission, the World Bank's Regional Vice President called for the application of the Resettlement Policy Framework in the case of Boeung Kak in a meeting with senior government officials. Shortly after, in early September, the Government announced its decision to cancel the remaining World Bank financing for LMAP, citing as its reason the complexity of the conditions attached to the funds.

On the same day as the Government announced that it was terminating its LMAP financing agreement with the World Bank, BABC and the Centre on Housing Rights and Evictions (COHRE) submitted a complaint to the World Bank Inspection Panel upon the request of Boeung Kak residents, who were denied both proper adjudication of their land rights and the application of the LMAP Resettlement Policy Framework. The complaint alleges that the Bank breached its operational policies by failing to adequately supervise LMAP, which denied Boeung Kak and other vulnerable households access to due process in contesting competing claims to the land. It further claims that the Bank failed to ensure government compliance with the Resettlement Policy Framework in the case of evictions from State land in areas that have undergone the systematic titling process, including evictions from the Boeung Kak area.

In April 2010, the World Bank Board of Executive Directors approved the Inspection Panel's recommendation to conduct a full investigation into LMAP. We are demanding that the Bank, which bears responsibility under its own safeguard policies, provide reparations directly to the affected families if the Cambodian government refuses to remedy the harm done.

Conclusions

Eight years after the commencement of LMAP, forced evictions, land-grabbing and land disputes continue to escalate in Cambodia. The flaws in the design and implementation of LMAP, set within the complex environment in which the project operated, impeded its ability to improve tenure security on an equitable basis. Households with possession rights that have been unable to register their land have been subjected to accusations of being 'illegal squatters' because they have no formal title, despite having documents demonstrating legal recognition of occupation by local authorities under the pre-existing tenure system. Meanwhile those instigating the evictions have no problem formally registering the expropriated land in their names, despite the absence of any legitimate basis for their claims under the Land Law.

By excluding households vulnerable to displacement and failing to implement a transparent, rule-based process for titling decisions, LMAP effectively formalized, and arguably deepened, structural inequality in land tenure and administration in Cambodia. By sponsoring LMAP and failing to challenge this unequal treatment before the law, the multilateral and bilateral donors have legitimized what amounts to a systematic violation of human rights. It is incumbent on the donors and the government to design and implement subsequent phases of Cambodia's land reform program to ensure equal treatment and due process in all land administration decisions. ■

