

# Untitled



## Tenure Insecurity and Inequality in the Cambodian Land Sector



CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



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Land Sector



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## List of abbreviations

ADB	Asian Development Bank
CC	Cadastral Commission
CDCFC	Cambodia Development Cooperation Forum
CIDA	Canadian International Development Agency
CLEC	Community Legal Education Centre
CLP	Council of Land Policy
CSO	Civil Society Organisation
COHRE	Centre on Housing Rights and Evictions
DANIDA	Danish International Development Agency
DFID	Department for International Development
ELC	Economic Land Concession
ERM	Enhanced Review Mission
EU	European Union
GSCLP	General Secretariat for the Council for Land Policy
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (German Technical Cooperation)
JBIC	Japan Bank for International Cooperation
JMI	Joint Monitoring Indicator
JRS	Jesuit Refugee Service Cambodia
LAC	Legal Aid of Cambodia
LAMDP	Land Administration, Management and Distribution Program
LASED	Land Allocation for Social and Economic Development Project
LASSP	Land Administration Sub-Sector Program
LDSSP	Land Distribution Sub-Sector Program
LICADHO	Cambodian League for the Promotion and Defence of Human Rights
LMAP	Land Management and Administration Project
LMSSP	Land Management Sub-Sector Program
MAFF	Ministry of Agriculture, Forestry and Fisheries
MEF	Ministry of Economy and Finance
MIME	Ministry of Industry, Mines and Energy
MLMUPC	Ministry of Land Management, Urban Planning and Construction
MOE	Ministry of Environment
MOI	Ministry of Interior

MPP	Municipality of Phnom Penh
MRD	Ministry of Rural Development
NARLD	National Authority for Resolution of Land Disputes
NGO	Non-governmental Organization
NGOF	NGO Forum on Cambodia
PACP	Public Awareness and Community Participation
PAD	Project Appraisal Document
RCAF	Royal Cambodian Armed Forces
RGC	Royal Government of Cambodia
SIDA	Swedish International Development Cooperation Agency
SLC	Social Land Concession
STT	Sahmakum Teang Tnaut
WB	World Bank

## 1. Executive summary

Eight years have passed since the enactment of the 2001 Land Law, which established a framework for the recognition of land and property rights throughout Cambodia. In 2002 the multi-donor supported Land Management and Administration Project (LMAP) was initiated in order to implement key parts of the law and further develop the legal framework.<sup>1</sup> LMAP has since been the key focus for the development of the Cambodian land sector. The project is due to end in December 2009 and continued donor engagement is currently under review.<sup>2</sup>

In light of the current land situation in Cambodia, this report aims to examine the original LMAP documentation and reflect on the performance of the project and the challenges it has faced within the wider land sector context. It gives recommendations to all concerned actors as to how future projects in Cambodia could work more effectively to improve the tenure security of vulnerable and socially marginalized communities.

LMAP's overall goals are to *reduce poverty, promote social stability, and stimulate economic development* through improving land tenure security and promoting the development of efficient land markets.<sup>3</sup> In order to achieve these objectives, the project has five main components: developing policy and legal framework, institutional development, land titling, dispute resolution, and State land management.<sup>4</sup>

In working towards its objectives of improving tenure security and developing land markets, LMAP has had a number of successes. These include: developing key parts of the legal framework for land administration, training Ministry and technical staff, and adjudicating over a million titles.

Despite these achievements, an increasing number of Cambodian citizens are facing land tenure insecurity and are experiencing gross violations of their land rights. Various human rights organisations (both local and international) and United Nations bodies<sup>5</sup> report that forced evictions, land-grabbing and other violations of the Land Law continue to exacerbate the hardships faced by vulnerable families.<sup>6</sup> Many observers suggest that these problems are actually worsening.<sup>7</sup>

The principal finding of this report is that, despite significant successes in some areas, LMAP is not improving tenure security for segments of Cambodian society that are most vulnerable to displacement. Vulnerable groups that have legitimate claims to land are routinely and arbitrarily denied access to land titling and dispute resolution mechanisms, undermining the project's aim of reducing poverty and promoting social stability.

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<sup>1</sup> Donors to LMAP are the World Bank, GTZ, the Government of Finland, and the Canadian International Development Agency (CIDA).

<sup>2</sup> A key development partner to the project was the World Bank. On September 4, 2009, the Royal Government of Cambodia terminated World Bank financing of LMAP. This is discussed in more detail in the next section.

<sup>3</sup> LMAP Project Appraisal Document, January 2002, page 2 (hereafter, LMAP PAD).

<sup>4</sup> LMAP PAD, page 8.

<sup>5</sup> United Nations High Commissioner for Human Rights, statement by UN Special Rapporteur on adequate housing, Raquel Rolnik: *'UN Expert urges Cambodia to refrain from more forced evictions'*, May 2009.

<sup>6</sup> See, for example, Amnesty International, *'Rights Razed – Forced evictions in Cambodia'*, February 2008.

<sup>7</sup> See for example, United Nations Development Program (UNDP) Cambodia, *'Land and Human Development in Cambodia'*, May 2007, page 11: "Land conflict is common, and there are signs that the number of land disputes is actually increasing: both the formal court system and the non-governmental organizations (NGOs) monitoring the land sector report an increase in land disputes since the late 1990s."

The concerns raised in this report have been divided into four broad areas: development of the legal framework, access to titling, dispute resolution and State land management. This report was written with the pending completion of LMAP in mind, and it is hoped that the recommendations contained within will contribute to the necessary reform of the project in its future phases.

It is clear that in some of the areas discussed below, LMAP may not have the capacity, or the power, to affect change alone. However, the analysis is based on the original LMAP design, as detailed in the Project Appraisal Document (PAD). The concerns and recommendations raised here are not aimed specifically at individual development partners,<sup>8</sup> the LMAP project or even the Ministry of Land Management, Urban Planning and Construction (MLMUPC). In recognition of the complex nature of land issues in Cambodia, the recommendations are aimed at all influential actors in the land sector. Some of these concerns can and should be addressed by individual stakeholders, while others depend on cooperation between different bodies.

### ***Development of legal framework***

Component 1 of LMAP aimed to formulate land policies and develop key components of the regulatory framework. This includes building capacity of the Council of Land Policy (CLP), formulating tax and fee structures, and drafting and disseminating policies and legal instruments. As part of this component, several sub-decrees and prakas relating to the titling process have been drafted, many of which are available on the MLMUPC website.<sup>9</sup> LMAP development partners are also providing ongoing support to the CLP to draft new policy, for example, the National Housing Policy.

A key concern in this area is the lack of protection for indigenous community land. It was not envisioned that the first phase of LMAP would issue any titles to indigenous communities as the main areas where indigenous peoples live, Ratanikiri, Mondulkiri and Kratie, were not selected as LMAP target provinces. However, the project did commit to establishing a legal framework to make registration of collective land possible.<sup>10</sup>

The *Sub-decree on Procedures for Registration of Land of Indigenous Communities* was finally passed in May 2009. Those working on indigenous issues in Cambodia, and indigenous communities themselves, have serious concerns about the adequacy of this sub-decree. However, as the sub-decree has now been passed, it is important to focus on how it can be implemented to assist in improving the land tenure security of Cambodia's indigenous peoples.

Under the sub-decree, no land can be registered until the community itself is registered as a legal entity. Registering communities is the responsibility of the Ministry of Interior (MOI), but no legal framework for this currently exists. Four communities have successfully been registered in Mondulkiri and Ratanikiri using an *ad hoc* administrative procedure, and there are currently plans to use the procedure developed in these cases to register more villages in the absence of a legal framework.

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<sup>8</sup> "Development partners" here refers to both those providing financial support and those providing technical assistance.

<sup>9</sup> <http://www.mlmupc.gov.kh/>

<sup>10</sup> LMAP PAD, page 9.



As most indigenous lands in Cambodia are situated in mountainous or forested areas, and often areas with fertile soils, there is considerable potential for development and exploitation in these areas, be it for logging, mining, or agro-industrial plantations. Because of the potential windfall profits associated with these ventures, there is a lack of political will on the part of some actors to make progress on registering and providing land tenure security to indigenous communities.<sup>11</sup> Therefore, it is vital that alongside a complete and adequate legal framework for registering collective land, interim protective measures be enforced in order to prevent further alienation of indigenous land.

Although providing interim protection for indigenous land was not an explicit aim of the project, there are measures within the scope of LMAP that could help indigenous communities to better protect their land from alienation prior to registration. These include raising public awareness of indigenous communities, neighbouring communities, and local officials of their specific rights and responsibilities under the Land Law. Legal aid could also be provided to indigenous communities involved in land disputes (discussed in more detail below). The ability of LMAP to make progress in this area is subject to cooperation with other stakeholders, including the Ministry of Interior (MOI), Ministry of Agriculture, Forestry and Fisheries (MAFF), Ministry of Rural Development (MRD) and the Ministry of Industry, Mines and Energy (MIME).

### ***Access to land titling***

Component 3 of the project covers the establishment of a land titling program in Cambodia. Under LMAP, land titling can occur through either the systematic or sporadic registration system. Systematic titling is conducted by LMAP teams in pre-selected areas, whereas sporadic titling is conducted after an application made by the individual household to the local authorities.<sup>12</sup>

A key factor in the design of LMAP, and one that has effectively excluded tens of thousands of households from being eligible for titling, is that areas “likely to be disputed” and areas of “unclear status” would not be targeted by the titling system. These terms are not defined in the LMAP design, and in practice this has resulted in a lack of access to the titling system for households and communities that lie in the path of planned developments or concessions, or whose lands have been targeted by well connected individuals or companies. There are many examples of communities that, despite having well documented possession rights, are not targeted for systematic titling and have had requests for sporadic title ignored. This means that many households at risk of being evicted and becoming landless, even if they qualify for title under the Land Law, are not being served by this project. This predicament is particularly acute for urban poor communities and rural communities that reside in areas that have been targeted for private developments.

The design of the project also specified that “informal settlements” would not be titled without the approval of the Royal Cambodian Government (RGC). Again, this term is not defined. At the time the project was designed it was envisioned that a UN-Habitat project would work in parallel to improve tenure security through means other than title

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<sup>11</sup> United Nations Economic and Social Council, Miloon Kothari, *Report of the Special Rapporteur on Adequate Housing*, March 2006, pages 19-20. See also, United Nations Human Rights Council, *Report of the Special Representative of the Secretary-General for human rights in Cambodia, Yash Ghai*, February 2008, page 15.

<sup>12</sup> Land Law 2001, Article 229.

to informal settlements in urban areas. Unfortunately this project was never fully implemented, leaving tens of thousands of urban households in an extremely precarious position in the midst of rapid urban development. Moreover, rural households without legal possession rights, such as those who live on lakes or riverbanks, were not targeted by the UN-Habitat project. Although such households are not eligible for land titles, the RGC does have international law obligations to ensure that they have access to adequate housing including a degree of tenure security. At present, households without legal possession rights remain totally unprotected by the national legal and policy framework.

In many cases, beneficiaries of systematic titling have been those living in rural areas where land has not been sought after by developers or speculators. We readily accept that many systematic title recipients are poor households, and that their title may in the future provide some protection should they become subject to a land dispute or property expropriation. However, this report contends that recipients have not necessarily been those in most *immediate* need of the security that a land title aims to provide. It could also be argued that the majority of those who have received title through LMAP already had relatively strong security of tenure through the local tenure system that existed prior to the project. It is apparent that LMAP has evaluated the success of the titling program largely based on its outputs, particularly the number of titles issued, rather than its impacts, such as clear improvements in tenure security and a reduction of land-grabbing and disputes.

In addition, there is a considerable gap between the number of land plots adjudicated and the number of titles actually issued. Although there has been good progress towards reducing this gap, there are several examples of areas being announced as adjudication areas and targeted for systematic titling, but for unclear reasons households in those areas never received title. In some cases the full adjudication process was conducted but the final handover of title never occurred. In other cases the adjudication stopped earlier on in the process. For example, in the area around Boeung Kak lake in Phnom Penh, after the initial public notice period many applications for title were rejected, as the area was deemed to be a “development zone.”

With few real incentives for the titling of at-risk households, the titling process will not stop illegal land-grabbing and the displacement of communities throughout the country. This problem could be remedied through a revision of the project’s guidelines to target areas *likely* to be disputed, alongside a commitment to increase the number of titles issued to vulnerable urban and other at-risk households with legal possessory rights.<sup>13</sup> In order for these changes to have significant effect, there must be greater consultation and cooperation between the relevant stakeholders, including the MLMUPC, the Municipality of Phnom Penh (MPP), affected communities and civil society organisations working with them.

In areas where titling has been conducted successfully, studies suggest that many people are still relying on the sale contract alone when transferring land, rather than formally re-registering the sale with Cadastral authorities.<sup>14</sup> Among other reasons, this is due to the common belief that holding the title certificate itself assigns ownership, rather than the entry of the name on the Land Register. Another factor is the time and resources required to formally re-register the title and the high cost of unofficial fees. The result is

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<sup>13</sup> See text box in Section 5.1 ‘*What is legal possession?*’

<sup>14</sup> NGO Forum Cambodia – ADI/LIC, ‘*Land Titling and Poverty Reduction: A study of two Sangkat in Prey Nup District, Sihanoukville Municipality*’, November 2007.

that appropriate taxes are not paid, jeopardizing the long-term sustainability of the titling program. Moreover, if subsequent transactions are not being registered the information on the Land Register will become outdated, which could lead to a new wave of land disputes in the future.

### ***Dispute resolution***

Increasing the capacity of government institutions to resolve land disputes is covered by Component 4 of LMAP. In order to achieve this, a three stage dispute resolution mechanism called the Cadastral Commission (CC) was established. The three stages of the CC are district/khan, provincial/municipal and national. The two lower levels have the power to conciliate disputes, whereas at present only the national level can adjudicate. The growing number of land disputes continues to stretch the Commissions' capacity, and there are currently almost 2,000 cases still awaiting resolution.<sup>15</sup>

According to Cambodian law, any dispute over unregistered land must be heard by the CC. Vulnerable communities involved in disputes with powerful and well connected individuals often find their complaints to the CC unresolved, rejected or simply ignored. On complaining to the courts, they are merely referred back to the CC. This leaves many threatened communities who have no access to the titling system also unable to obtain a just resolution to their dispute through the CC.

The need for access to a functioning legal mechanism for parties involved in land disputes was recognised in the original LMAP PAD, which states that: "The poor will be at a critical disadvantage if they cannot access legal assistance."<sup>16</sup> In response to this, a key sub-component was to contract legal NGOs to provide legal assistance to disadvantaged parties.<sup>17</sup> In the seven years that this project has operated this never happened. This failure has left many threatened communities that have no access to the titling system also unable to obtain a just resolution to their dispute through the CC, and thus exposed to displacement and loss of valuable land.

There is also a wealth of evidence of deviations from, and violations of, procedures and legal frameworks developed for the functioning of the dispute resolution mechanisms. Cases involving high-ranking or powerful individuals are often not resolved, and the unclear jurisdiction and powers of the National Authority for Resolution of Land Disputes (NARLD) threaten to dilute further the authority of the CC to deal with high profile cases.

In the absence of meaningful access to a dispute resolution mechanism, communities involved in land disputes are increasingly turning to advocacy and direct action to challenge displacement and land-grabbing. In reaction to this trend, community leaders and activists are increasingly being charged with criminal offences, such as defamation, incitement, disinformation, criminal damage and assault, often with little or no evidence being produced against them.

It is essential for the success of any land administration program that there is an accessible, efficient, and impartial mechanism for dispute resolution. Without this,

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<sup>15</sup> According to a draft January 2009 supervision mission document obtained by the authors.

<sup>16</sup> LMAP PAD, 2002, page 38.

<sup>17</sup> LMAP PAD, 2002, page 20.

communities will continue to be displaced and will continue to take risks in protesting against the violation of their land rights.

### ***State land management***

Component 5 of LMAP is concerned with the establishment of a State land management system. Of the five LMAP components, this has been the weakest, and has seen the least progress. At present there is no adequate and functioning system of State land management in Cambodia, which is of serious concern. Important provisions of the 2005 Sub-decree on State Land Management have still not been implemented, including the coordinated and transparent mapping of State lands and their entry in to a publicly accessible database. Furthermore, the procedure for reclassification of State land lacks transparency and is being implemented selectively, leading to large tracts of land being leased or transferred to private interests on a regular basis.

If not remedied, the lack of implementation of the legal framework for State land management will continue to have serious repercussions for the project as a whole. A large percentage of Cambodia's land is still State land in one form or another. As long as the lack of implementation and transparency in State land management continues, this land is effectively unprotected, as are its natural resources. A lack of adequate progress towards identifying State land has a crucial impact on the tenure security of Cambodia's poor and those vulnerable to displacement. Many legal possessors continue to be denied requests for title, as they are told they live on State land. Without any coordinated mapping and registration according to proper procedures, and no access to a database of results, this can be neither verified nor disproved, and in the vast majority of cases the weaker party loses out. The lack of progress on this component also threatens the success of the Social Land Concession (SLC) policy, which aims to provide secure tenure to landless or land poor families. SLCs can only be granted on State private land, and until comprehensive identification of State land is conducted, the progress of land distribution projects will continue to be slow.

State land management is an extremely complex issue, and requires the involvement and cooperation of multiple Ministries and institutions, including the MLMUPC, MAFF, the Ministry of Economy and Finance (MEF) and others. Increased transparency and accountability is essential for the protection and effective management of State land, and in turn the success of LMAP and its successor. Plans are currently being made for a Land Management Sub-Sector Program (LMSSP), which will focus on State land management. It is essential that a key component of LMSSP is to improve inter-ministerial cooperation. The design of the program should be developed in consultation with the various stakeholders, including civil society.

Whilst we believe that better progress needs to be made in this area, it is also clear that there is considerable potential for comprehensive State land registration to lead to displacement of people and privatization of ecologically sensitive areas. It must be stressed that all State land mapping and State land reclassification should be done in accordance with law. This includes acknowledging the rights of possessors and indigenous peoples as set out in the Land Law and preventing the privatisation of properties that serve a public interest. A resettlement policy in line with international standards must be adopted and implemented for households that are occupying State land. The policy should stipulate that evictions should be avoided whenever possible and

if any households must be relocated from State land, resettlement should be carried out in a manner consistent with the original LMAP Environmental and Social Guidelines.

## ***Conclusion***

This report concludes that particular aspects of the design and a lack of effective implementation of key parts of LMAP have resulted in a system that excludes those vulnerable to eviction and other land rights abuses, impeding the project from improving tenure security in an equitable manner. A recent World Bank Enhanced Review Mission (ERM) concluded that although the project has resulted in undisputed benefits:

There is [...] a disconnect between institutional, legal and policy achievements and insecurity of land tenure for the poor, especially in urban areas, and for indigenous people. This disconnect can be attributed in part to the design of some of the project's components, in part to the way the project was implemented, as well as delays or non implementation of some activities, and in part to rapid evolutions in the land market some of which are beyond the direct control of the Ministry of Land which is in charge of the implementation of the LMAP. As a result, LMAP's noteworthy successes in land titling in rural areas have not been matched in urban areas of project provinces where land disputes are known to be more common.<sup>18</sup>

We concur with the findings of the World Bank ERM, and would go further, contending that focusing on the issuance of titles in areas where households are relatively safe from eviction, while excluding those communities at risk of displacement *in both urban and rural areas*, entrenches the inequitable system that existed before LMAP. In areas where households have been able to access the new titling system, tenure security has likely been improved; however, by expanding access to titling through LMAP, the pre-existing tenure system has simultaneously been weakened. This has arguably left urban and rural households that have been unable to access the new system, despite having possession rights, with weaker tenure and further exposed to accusations of being illegal 'anarchic squatters.' In turn, these households may have become *more vulnerable* to land rights violations, including land confiscation with inadequate compensation. The fact that these households do not have title is often used against them as a justification for eviction, despite the fact that many have documented rights under the law. Meanwhile, the wealthy and well-connected have little difficulty in acquiring land title in high value areas in which poor communities reside due to their connections or their ability to pay the high 'unofficial fees' for sporadic title.

The recommendations presented in this report are generally consistent with the original aims and commitments of LMAP. However, some of the problems highlighted go beyond the capacity of LMAP to resolve. In some cases, such as dealing with 'informal settlements', complimentary policies and projects are necessary. In other cases, the cooperation and commitment of actors other than the MLMUPC will be crucial for the success of LMAP and the development and reform of the land sector in general. Some of the issues raised cannot be solved through technical means, but require political solutions.

The report strongly urges the RGC and development partners to seek solid, renewed commitments from all relevant stakeholders that the issues highlighted herein will be

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<sup>18</sup> World Bank Enhanced Review Mission, 'Cambodia Land Management and Administration Project – Enhanced Review Report', July 2009, page i.

acted upon and progress will be made towards remedying them. If these commitments are not honoured, and there continues to be a lack of progress towards ensuring relevant laws are implemented consistently, land management and administration institutions will continue failing to serve all Cambodians on an equitable basis.

Below is a summarized table of key recommendations highlighted in this report:

<b>Area of Concern</b>	<b>Recommendations</b>
<p><b>Development of land policy and regulatory framework concerning indigenous land (see pages 22-24)</b></p>	<p>In order to pre-empt any possible negative impacts that may arise from the implementation of the <i>Sub-Decree on Procedures of Registration of Land of Indigenous Communities</i>, key provisions should be clarified through an official policy statement, especially concerning leaving members and the registration of lands of communities that are involved in disputes over part of their land.</p> <p>In order to streamline the process of registration, the MLMUPC should maintain close contact with MOI on the progress of the legal framework for registering communities as legal entities, and preparing communities for the process of registering land when possible.</p> <p>Progress should also be made on improving interim protection of indigenous land. This should include awareness raising campaigns in indigenous areas, through, for example, signboards and workshops for communities and officials. As a matter of high priority, the RGC should enforce existing provisions of the Land Law that prohibit interference with land in areas populated by indigenous people until the process of land registration is complete.</p>
<p><b>Access to titling (see pages 44-48)</b></p>	<p>There should be a renewed emphasis on systematic titling in urban areas, which will require increased transparency in the selection of adjudication areas.</p> <p>The exclusion of areas “where disputes are likely” and “areas of unclear status” should be removed from future phases of the land titling program, and all legal possessors should have access to the titling system. Public awareness programs should be conducted on the legal criteria for lawful possession and the rights of possessors.</p> <p>Titling should be prioritized in relocation areas, beginning with all households who were resettled prior to the passage of the 2001 Land Law.</p> <p>A renewed effort should be made to increase access to the sporadic titling system, including implementing the improved procedure for sporadic registration across all LMAP provinces.</p> <p>In order to ensure the sustainability of the project there must be a</p>

	<p>concerted effort to increase the numbers of people who formally register land transfers, through for example public awareness campaigns, review of the formal fee structure and elimination of ‘informal’ fees.</p> <p>Donors should independently support NGOs in the preparation and delivery of public awareness and community participation (PACP) programs. PACP should include information and practical guidelines on possession rights, accessing both systematic and sporadic titling systems, and available dispute resolution mechanisms.</p> <p>Future evaluation of the performance of the titling system should not be based solely on the numbers of titles issued. Independent research should be conducted to assess whether the project’s stated objective of improving both urban and rural tenure security, indicated by a reduction in land-grabbing and disputes, has been achieved.</p> <p>The RGC should enforce the moratorium on evictions in any area not yet covered by a Cadastral Index Map, in accordance with Article 248 of the Land Law.</p> <p>The rights of households in informal settlements (those without legal possessory rights under the Land Law) should be protected through the National Housing Policy and subsequent amendments to the legal framework. The policy should include appropriate alternative tenure options for those households ineligible for ownership rights, such as onsite Social Land Concessions or medium-term leases from the State.</p>
<p><b>Strengthening mechanisms for dispute resolution (see pages 54-55)</b></p>	<p>The performance of the Cadastral Commission needs to be improved in order to clear the back-log of unresolved disputes. This could be helped by decentralizing power to adjudicate disputes to Provincial/Municipal Cadastral Commission in cases where conciliation is not possible.</p> <p>All parties involved in a dispute must have equal access to dispute resolution mechanisms, and should not be turned away when attempting to file complaints against powerful or well connected individuals. Any credible reports of deviations from the legal procedure by the Cadastral Commission should be investigated.</p> <p>The fee structure for accessing dispute resolution mechanism must be clear and widely publicised, and public awareness of the roles and responsibilities of all levels of the Cadastral Commission, and Commission staff should be improved.</p> <p>As a matter of high priority, appropriate legal aid organizations and law firms should be identified to provide legal aid to disadvantaged parties in order to ensure communities are adequately represented in proceedings in the Cadastral</p>

	Commission.
<p><b>State land management</b> (See pages 64-65)</p>	<p>The practice of <i>de facto</i> State land classification by local authorities during the adjudication process must end. State land should be identified, demarcated, and registered through a transparent process, in accordance with procedures laid down in the Sub-decree on State Land Management. This should occur prior to or simultaneously with private individual titling.</p> <p>Once mapping and registration of State land commences, Sub-decree N°118 must be respected and implemented in its entirety. This includes the provisions for community consultation.</p> <p>As a matter of high priority, the State Land Map and Database should be made public.</p> <p>An independent review of the legal framework on State land management should be conducted. After this review, steps should be taken to harmonize the processes and ensure that the roles and responsibilities of different bodies are clarified and that inter-ministerial cooperation is improved.</p> <p>Full and transparent investigations should be conducted of cases where areas have been adjudicated and households have been denied title on the grounds that they are residing on State property.</p> <p>A resettlement policy in line with international standards must be adopted and implemented for households that are occupying State land. The policy should stipulate that evictions should be avoided whenever possible. Where relocation is unavoidable, resettlement should be carried out in a manner consistent with the original LMAP Environmental and Social Guidelines.</p> <p>All stakeholders must have an opportunity to be involved in the design and implementation of the proposed Land Management Sub-Sector Program (LMSSP), including members of civil society.</p>



## 2. Introduction

This report was written against a backdrop of escalating forced evictions and landlessness in Cambodia. According to local NGO Sahmakum Teang Tnaut (STT), in Phnom Penh alone, at least 120,000 people have been displaced since 1990.<sup>19</sup> STT recently released figures showing that the rate and scale of these evictions has increased over time: between 1990 and 1996, 3,100 families were displaced in Phnom Penh; between 1997 and 2003, 9,200 families were displaced; and between 2004 and 2008, the figure climbed to 11,480.<sup>20</sup> Nation-wide figures are hard to ascertain, but conservative estimates suggest that at least 150,000 Cambodians currently live under the imminent threat of forced eviction, including approximately 70,000 in Phnom Penh.<sup>21</sup> A recent LICADHO report estimated that in the 13 provinces in which the NGO has offices, over 250,000 Cambodians have been affected by land disputes.<sup>22</sup>

Forced evictions are occurring in the context of rapid foreign investment, spiralling land prices, endemic corruption and an absence of secure land tenure for urban and rural low-income households. The causes of forced evictions include the granting of Economic Land Concessions (ELCs), extractive industry concessions, infrastructure development, beautification, private development projects, and land speculation. Land-grabbing and forced evictions are contributing to growing landlessness, inequality in landholdings, and poor households being displaced to areas without adequate living conditions.<sup>23</sup>

Land that the State has the responsibility to manage and utilize for the public interest is being sold and leased to private interests at an alarming rate. According to the Ministry of Agriculture, Forestry and Fisheries, over 943,069 hectares of land in rural Cambodia have been granted to private companies as ELCs alone.<sup>24</sup> There are also a number of other types of concession being granted, for example mining licenses sometimes measuring in excess of 100,000ha.<sup>25</sup> All of these factors contribute to an increased risk of displacement for vulnerable communities.

The perpetrators of forced evictions throughout the country include well-connected private individuals, domestic and foreign companies, and government authorities, including the military. Authorities are not only failing in their obligations to protect against forced evictions but are sometimes actively involved in illegal land-grabbing

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<sup>19</sup> This figure amounts to almost ten percent of the current population of Phnom Penh of 1,325,681 (2008 Census, Cambodian National Institute of Statistics <http://www.nis.gov.kh/index.php/statistics/surveys/census2008/provisional-population-totals?dc536d60b52b950803b9c8b3b236d526=d60db47cca64da0adb4e49d1915f465b>), (accessed September 2009).

<sup>20</sup> Sahmakum Teang Tnaut, *Facts and Figures, Displaced families: Phnom Penh*, April 2009. STT note that these figures are not exhaustive, and are based only on material available to them at the time of publication.

<sup>21</sup> Amnesty International, *Rights Razed: Forced evictions in Cambodia*, February 2008, page 7.

<sup>22</sup> LICADHO, *Land Grabbing and Poverty in Cambodia: The Myth of Development*, May 2009, page 5.

<sup>23</sup> Land and Housing Working Group, *Land and Housing Rights in Cambodia – Parallel Report 2009*, April 2009.

<sup>24</sup> Ministry of Agriculture, Forestry and Fisheries, *Economic Land Concession Information Centre*, <http://www.elc.maff.gov.kh/>, (accessed September 2009).

<sup>25</sup> One South Korean company states on its website that it has a concession in Kampong Thom Province which measures 1,520km<sup>2</sup>, and is “twice the size of Seoul”, [http://www.kenertec.co.kr/english/relation/whatsnew\\_read.asp?page=1&num=10](http://www.kenertec.co.kr/english/relation/whatsnew_read.asp?page=1&num=10), (accessed September 2009).

themselves.<sup>26</sup> Laws are applied selectively or at times by-passed altogether. Such collusion between authorities and powerful individuals who are laying claim to land opens the door for the issuing of dubious land titles and eviction orders, and the misuse of the court system to prevent victims from acting to defend their rights.<sup>27</sup> Communities involved in land disputes are frequently harassed and intimidated if they try to protect their land.<sup>28</sup> The case of Mittapheap 4 village, below, is one of the best-documented examples of this multi-faceted human rights problem in Cambodia.

### **Case Study: Mittapheap 4 village, Sihanoukville Municipality<sup>29</sup>**

In 2007, more than 100 families were forcibly evicted from Mittapheap 4 village, also known as “Spean Ches”, in Sihanoukville Municipality. Many of the families had been living in the village since the 1980s and 1990s. The basis of the eviction was an unsubstantiated claim of ownership of the land by the wife of an advisor to a senior government official who claimed to have title to the land. This individual never presented her alleged title to the villagers. At her request, eviction notices were issued by district authorities and by the Governor of Sihanoukville Municipality. On 19 January 2007, the villagers were ordered to vacate the area within one week.

The villagers sent complaints to various bodies, including a complaint to the Senate Commission on Human Rights, which conducted an investigation into the case and concluded that the land dispute was a civil matter and therefore to be settled by the courts. Without access to legal aid, the villagers were unable to challenge the eviction order and the individual’s ownership claim in court. In spite of the Commission’s findings, the Governor appointed a joint task force to carry out the eviction.

The eviction was carried out on 20 April 2007 and was particularly violent. It involved 150 members of the Royal Cambodian Armed Forces (RCAF), military police and police armed with AK-47s, electric batons, wooden sticks and shields. The government forces arrived with three police trucks, an excavator and two water trucks, which villagers reported were filled with a mixture of water and gasoline. Soldiers and police reportedly fired their guns at the ground and above the heads of the villagers. People trying to salvage their property were beaten with sticks and electric batons. Five women were injured and 13 men were badly hurt, many of them knocked unconscious. A 77-year old man was hospitalised after receiving an electric baton shock to his head.

The police and military personnel confiscated valuables from the villagers, including 16 motorbikes. They then proceeded to burn down their homes, along with their clothes and those belongings not taken by the authorities. The 13 wounded men were arrested and taken into custody (one was only 16 years old at the time). Nine of these men were subsequently tried and convicted for battery with injury and damaging property. All 13 detainees were imprisoned for more than one year.

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<sup>26</sup> United Nations Committee on Economic, Social and Cultural Rights, ‘*Concluding Observations on Cambodia, 42<sup>nd</sup> Session*’, 22 May 2009, Para 30.

<sup>27</sup> See *ibid*, and Amnesty International, ‘*Cambodia: A Risky Business – Defending the Right to Housing*’, September 2008.

<sup>28</sup> United Nations Committee on Economic, Social and Cultural Rights, ‘*Concluding Observations on Cambodia, 42<sup>nd</sup> Session*’, 22 May 2009, Para 31.

<sup>29</sup> See also Amnesty International, ‘*Rights Razed: Forced evictions in Cambodia*’, February 2008, page 34.

More than two years on, many members of the Mittapheap 4 community continue to live under tarpaulins supplied by NGOs, on the side of the road in front of the area where their homes once stood. At the time of writing, the Mittapheap 4 land remains empty, but fenced off to its former inhabitants.

The rise in forced evictions and displacement is subsequently contributing to increased landlessness, which several recent studies have shown is escalating at an alarming rate. The World Bank reported the number of landless rural households grew from 12.6 percent in 1997 to nearly one in five in 2004.<sup>30</sup> A more recent draft report by Oxfam GB found that of 103,000 rural households surveyed, 25% were landless. When combined with those who were “land poor” (owning less than 0.5 hectares of land) the figure rose to 63%.<sup>31</sup> It is clear that Cambodia is in the midst of a land crisis and that there is an urgent need for improved tenure security to be provided to those who are most vulnerable to displacement and loss of land.

It should be noted that this report does not claim to speak on behalf of communities lacking tenure security. However, the organizations that authored this report work closely with communities vulnerable to, or victims of, forced displacement. The motivation for researching and writing this report came from the accounts of members of these communities. These include experiences of threatened and actual displacement, disputes that authorities cannot or will not resolve, and the inability to access the land titling system. This report aims to highlight some of the reasons why, despite the commendable objectives of LMAP, and its achievement of issuing over one million titles, many vulnerable communities continue to face these problems and have not yet benefited from the project.

The conclusions and recommendations in this report have been reached after a detailed review of LMAP documents and meetings with development partners providing technical and financial support to the project. We have also undertaken an extensive literature review, conducted interviews with members of communities involved in land disputes and threatened with eviction, and held numerous discussions with NGOs and other civil society actors working in the land sector. In January 2009, the preliminary findings of this report were presented to the Director of LMAP, Mr. Sar Sovann, and LMAP development partners.

In response to civil society concerns regarding the performance of the project, the World Bank organized an Enhanced Review Mission (ERM). The mission met with project staff and other government officials, members of civil society and affected communities. The Mission’s report was shared with the government for comment in July. Another mission was conducted in August 2009 and was led by World Bank safeguards specialists. This mission focussed on investigating the situation at Boeung Kak in Phnom Penh, and specifically whether or not the project’s Environmental and Social Guidelines (ESG), including the LMAP Resettlement Policy Framework, should be applied to this case. The results of this investigation were discussed with government in August during a trip to the country by regional Vice President of the World Bank, James Adams.

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<sup>30</sup> World Bank, *Cambodia: Halving Poverty by 2015? – Poverty Assessment 2006*, February 2006, page 47.

<sup>31</sup> Oxfam GB, *Land and Fishery Program, Land Holding in Cambodia* (unreleased draft report), March 2007, page 2.

On September 4, 2009, the Cabinet of the Council of Ministers announced that the RGC had decided to terminate World Bank financing of LMAP. The Prime Minister stated that the reason for the cancellation was that there were “too many conditions,” apparently in reference to the recommendations of the recent ERM and disagreement over the application of the LMAP’s social and environmental safeguards to some disputed urban areas.<sup>32</sup> Despite the cancellation of World Bank funding to LMAP, the Prime Minister implied that titling will continue without World Bank funding.

The recommendations set out in this report reflect the far reaching aims of LMAP and therefore involve, and should be of interest to, government agencies other than the MLMUPC, including the Ministry of Agriculture, Forestry and Fisheries (MAFF), the Ministry of Environment (MOE), the Ministry of Economy and Finance (MEF), the Ministry of Interior (MoI) and the Municipality of Phnom Penh (MPP).

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<sup>32</sup> Sam Rith & James O’Toole, *PM cites “conditions” for ending titling project*, Phnom Penh Post, September 8 2009.

### 3. Background of LMAP

The Land Management and Administration Program started in 2002, and was the first phase of the government's Land Administration, Management and Distribution Program (LAMDP). LAMDP was originally expected to be implemented over a 15 year period and has 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 land distribution with equity.

The design of LMAP is set out in the Project Appraisal Document (PAD), which is referred to throughout this report. All development partners and LMAP meet twice a year to conduct a Supervision Mission, which evaluates the progress of the project, and if necessary agrees on actions that need to be taken in order to improve its performance. The results of the Supervision Missions are recorded as an Aide Memoire, but this is not a public document. The authors were able to unofficially obtain Aide Memoires from missions conducted in 2005, 2007 and 2009.

LMAP has five main components:

1. *Development of land policy and regulatory framework* – developing capacity of the Council of Land Policy, formulating policy, developing and drafting legal documents, and dissemination of policy, law and procedures.
2. *Institutional development* – long term development of the MLMUPC, developing land management and administration education programs, and developing a private surveying industry.
3. *Land titling and development of a land registration system* – information dissemination and community participation, systematic and sporadic titling, and developing a modern land registration system.
4. *Strengthening mechanisms for land dispute resolution* – strengthening the Cadastral Commissions and providing legal assistance for the disadvantaged.
5. *Land management* – Clarifying the procedures for identifying and demarcating different types of land.

The total funding pledged to the project as stated on the World Bank website is US\$38.43 million. Primary development partners include the World Bank (\$28.83 million), GTZ<sup>33</sup> (\$3.5 million in Technical Assistance), and the Government of Finland (\$3.5 million in Technical Assistance).<sup>34</sup> In addition to this, the Canadian International Development Agency (CIDA), joined the project in 2004 and has so far pledged more than CN\$10 million in both funding and technical assistance through to 2012.<sup>35</sup>

LMAP was originally intended to last for five years but in 2007 was extended for a further two years, and is now set to finish at the end of 2009. In 2006 World Bank funding to LMAP was suspended following an investigation that revealed that 17 contracts had been

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<sup>33</sup> GTZ (German Technical Cooperation) is a private enterprise owned by the German Federal Government and specializing in technical cooperation and assistance.

<sup>34</sup> World Bank Website, *LMAP summary*, [http://siteresources.worldbank.org/INTCAMBODIA/Resources/Cambodia\\_Project\\_Updates.pdf](http://siteresources.worldbank.org/INTCAMBODIA/Resources/Cambodia_Project_Updates.pdf), (accessed September 2009).

<sup>35</sup> CIDA Website, *Cambodia: CIDA funded projects*, <http://www.acdi-cida.gc.ca/CIDAWEB/cpo.nsf/fWebCSAZEn?ReadForm&idx=01&CC=KH>, (accessed September 2009)

mis-procured due to corruption, with a combined value of US\$0.7 million.<sup>36</sup> After remedial steps were taken, the project restarted in February 2007.

As discussed above, LMAP is part of the government's LAMDP. Over the last few years, the Ministry has been moving from a project based approach to a programmatic one. LAMDP will eventually be comprised of three sub-sector programs. These are the Land Administration Sub-Sector Program (LASSP), Land Management Sub-Sector Program (LMSSP) and Land Distribution Sub-Sector Program (LDSSP).

LASSP is also comprised of five components, the first four matching Components 1-4 of LMAP. However, *land management* will be replaced with a *land valuation* component. Land management will become the subject of the separate LMSSP, however this sub-sector program is largely undeveloped, and although there is interest from development partners to provide support for this program, there is still little information available. The authors were unable to find documentation on the LDSSP, but it is presumed that the current World Bank and GTZ supported Land Allocation for Social and Economic Development Project (LASED) would become part of this sub-sector program.<sup>37</sup>

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<sup>36</sup> World Bank Website, *Cambodia: World Bank releases new statement and update*, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:20947353~menuPK:50003484~pagePK:141137~piPK:141127~theSitePK:293856,00.html>, (accessed September 2009).

<sup>37</sup> For more information on LASED see: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:20973016~pagePK:141137~piPK:141127~theSitePK:293856,00.html>

## 4. Development of land policy and regulatory framework

Component 1 of LMAP aims to formulate land policies and to put in place a regulatory framework for land administration and management. This includes developing the capacity of the Council of Land Policy (CLP), creating tax and fee structures and the drafting and dissemination of policies and legal instruments.<sup>38</sup>

Progress has been made in this area and a number of sub-decrees and prakas have been developed and passed, though implemented with varying degrees of success. Two crucial areas of law that will be focussed on in this report are the legal framework for registering indigenous land and the framework for managing State land. In regard to this first area, a sub-decree setting out the procedure for indigenous community land registration has now been completed, although this took much longer than originally envisioned. Minimal progress has been made towards creating a workable framework for State land management, and much of what has been developed remains unimplemented. State land management is discussed further in Section 7.

### 4.1 Protection for indigenous community land

Although LMAP did not aim to register the collective land of indigenous communities, Component 1 provides for the establishment of a legal framework for registering indigenous community lands.<sup>39</sup> The development of this framework was very slow, but the *Sub-decree on Procedures of Registration of Land of Indigenous Communities* was finally passed in May 2009. As will be explained below, the final sub-decree is not ideal, and neither were the consultations conducted with civil society during the drafting stages. Until indigenous land registration occurs, interim protection measures for indigenous community land must be enforced.

#### *Concerns regarding the sub-decree*

While there has been progress towards the aim of establishing a legal framework for registering indigenous community land, developments have been extremely slow. NGOs working on indigenous issues, and indigenous communities themselves, have a number of concerns about the consultation process and the final draft sub-decree.

A draft of the sub-decree was distributed in 2008 and NGOs, civil society and indigenous community representatives were invited to comment. Most participants commented that the time period given was inadequate to properly disseminate the draft widely and gather meaningful comprehensive feedback from affected peoples.<sup>40</sup> In addition, some indigenous people in Cambodia cannot speak Khmer, and many more cannot read or write the language in which the draft sub-decree was released.

Despite this, a national consultation with key indigenous peoples and NGOs working with indigenous peoples was undertaken. Extensive comments, from NGOs and development partners working on land issues, were provided to the CLP.

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<sup>38</sup> LMAP PAD, page 8.

<sup>39</sup> A Key Performance Indicator of Component 1 was “Registration of communal and indigenous peoples’ land rights policy approved by CLP and regulatory framework in place”, LMAP PAD, page 28.

<sup>40</sup> NGO Forum Cambodia, ‘*NGO Position Papers on Cambodia’s Development in 2007-08*’, November 2008, page 64.

Most comments received by the CLP were not incorporated into the final sub-decree. From the time of the consultation until the passing of the sub-decree in April 2009, there was little information on whether a second draft would be shared, and the final passing of the sub-decree took many by surprise. The *Sub-decree on Procedures of Registration of Land of Indigenous Communities* was approved by the Council of Ministers on 24 April 2009. At present there is no official English version available.<sup>41</sup>

Some important concerns raised by observers and indigenous peoples regarding the final sub-decree are listed below.

*Leaving members:* The 2001 Land Law states that members of the community who want to leave, “may” be able to obtain private ownership of a piece of the community’s land, based on the traditional authorities and decision making mechanisms of the community (Article 27 of Land Law). Contradicting the primacy given to community rights in the Law, the sub-decree apparently gives greater rights to leaving members. The sub-decree states:

When any member decides to leave the community, s/he personally may receive the appropriate piece of land which will be cut from the land ownership of indigenous community or may receive adequate compensation based on the collective decision of the community if the member agrees.<sup>42</sup>

There are a several problems with this article, not least being its lack of clarity. Although it leaves the choice to a collective decision, it also adds that this requires the agreement of the leaving member. It is not clear what should happen in the case that the leaving member is not satisfied with the collective decision. It is also unclear what would happen if the community collectively decides that that a person leaving the community cannot receive land *or* compensation. The inclusion of the words “if the member agrees” seems to imply that leaving members have a choice between land and compensation. If such power is indeed vested in leaving community members, the sub-decree has the potential to not only destabilise existing community decision-making structures, but may have the effect of legitimizing sales of indigenous lands to people outside the community. Members would merely have to “leave” the community, choose to “receive the appropriate piece of land” and could then sell the land on. Indigenous leaders have indicated that this has the potential to lead to land buyers intimidating and pressuring people in communities into leaving their community and then to transfer the land. Furthermore, it is unlikely that most indigenous communities will have the means at their disposal to compensate a leaving member adequately, making that option, which is in any case dependent on the leaving members consent, unrealistic in practice.

*Failure to recognize traditional ownership:* Articles 6 and 7 of the sub-decree effectively state that *all* indigenous land is currently State land. Rather than acknowledging the traditional ownership of indigenous communities over their land, the sub-decree refers to it as “State land which has traditionally been used by indigenous communities” (Article 7). Given the RGC’s record so far on managing State land, and its failures to implement interim protection of indigenous land, these articles have the potential to negatively impact on the already precarious position of indigenous peoples in Cambodia.

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<sup>41</sup> The analysis in this report is based on an unofficial version translated by the United Nations Office of the High Commissioner for Human Rights.

<sup>42</sup> Sub-decree on Procedures for Registration of Land of Indigenous Communities 2009, Article 14.



*Communities involved in disputes:* The combined effect of Articles 9 and 10 of the sub-decree implies that any indigenous communities involved in land disputes over *part* of their land may in fact not be able to register *any* of their land. Given that there are a very large number of indigenous communities with land conflicts over part of their lands, this is impractical, especially when considering the shortcomings of the dispute resolution mechanism (discussed further in Section 6). The effect is likely to be that communities are left exposed to further land alienation.

*Spiritual forest and burial forests:* Under the sub-decree, burial and spirit forests are restricted. Each can only measure up to seven hectares in total (Article 6). This is not in line with traditional practice, which does not measure land in this arbitrary way, nor recognize such restrictions.

*Requirement that indigenous communities first be registered as legal entities:* Articles 3, 5 and 6 all state that the sub-decree is only applicable to those communities that are already registered as legal entities. To do this communities must register with the Ministry of Interior (MOI), however, there is currently no legal procedure for doing this. Four communities have successfully been registered in Mondulkiri and Ratanikiri using an *ad hoc* administrative procedure, and there are currently plans to use the procedure developed in these cases to register more villages, in the absence of a legal framework.

The draft LASSP framework suggests that a further prakas on the registration and right to use of communal lands may need to be drafted.<sup>43</sup> Although it is not clear at present if this is the case or not, if the length of time taken to pass the recently passed sub-decree (on registering indigenous land) is any indication, it may be a long time before indigenous communities are able to register their land.

Despite flaws in the legal framework, the emphasis must now be on ensuring that speedy progress is made towards securing the collective tenure of indigenous communities. Meaningful steps towards this aim have the potential to improve protection of the rights of Cambodia's indigenous peoples under both national legislation<sup>44</sup> and international human rights law.<sup>45</sup>

### *Continued alienation of indigenous land*

It is hoped (though not guaranteed) that once a community is able to register its land, its tenure will be more secure. In the meantime, there must be strong commitment to enforce interim measures to protect indigenous land.<sup>46</sup> The 2001 Land Law contains such protections. Article 23 states that indigenous communities shall continue to manage their traditional lands until they can be registered. Despite this, indigenous communities continue to be alienated from their lands at an alarming rate. As stated in a Ministry of Planning and UNDP report:

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<sup>43</sup> A stated output of LASSP as listed in the draft documents is: "Draft sub-decree & prakas on registration and right to use of indigenous communal land", Draft LASSP Framework, page 10.

<sup>44</sup> Land Law 2001, Chapter 3.

<sup>45</sup> International Covenant on Economic, Social and Cultural Rights, Article 1, the right to self-determination. See also United Nations Declaration on the Rights of Indigenous People.

<sup>46</sup> The World Bank ERM report highlighted the need to "ensure that interim measures are put in place to protect Indigenous People's land until the sub-decree, adopted in May 2009, is implemented." (See World Bank ERM report, July 2009, page 9).

Lack of enforcement of the law has left Cambodia's indigenous minorities vulnerable to external interests, who are increasingly attracted to exploiting the economic potential of the forests and fertile upland areas. Large scale ELCs also have been allocated in areas traditionally occupied by these minorities. Indigenous minorities often have been severely affected by forest logging concessions, which, despite the moratorium on logging, continue uncontrolled. This often gives rise to land alienation in violation of the Land Law, a result that is destroying both the social fabric and livelihoods of indigenous minorities. The problem has reached a stage where some communities have begun to disintegrate.<sup>47</sup>

As the case studies of Kong Yuk and Kong Thom in Ratanikiri illustrate, grabbing of indigenous land, often by individuals with connections to government officials, continues to occur. Indigenous communities justifiably have serious concerns that by the time they are in a position to register their lands, there will be little indigenous land left to register.<sup>48</sup>

### **Case Study: Kong Yuk and Kong Thom<sup>49</sup>**

A business woman with close family ties to high-ranking officials has been involved since 2004 in a dispute over purported land sale contracts for 450 hectares of land with Jarai villagers in Kong Yuk and Kong Thom villages, Ratanikiri province. Lawyers for Community Legal Education Centre (CLEC) and Legal Aid of Cambodia (LAC) argue that the disputed land is indigenous community land and as such under the 2001 Land Law it cannot be transferred to individuals outside the community. This interpretation is supported by legal experts, government policy and traditional indigenous customs.<sup>50</sup> They also argue that the land sale contracts relied upon by the businesswoman are invalid. The villagers' civil complaint was lodged in the Ratanikiri Provincial Court on January 23, 2007. However, since the dispute began, no government or judicial authority has recognized that Kong Yuk villagers are an "indigenous community," despite ample evidence being presented.<sup>51</sup>

According to a Provincial Order, the disputed land contains shifting agricultural land, multi-usage forest, guardian forest and protected forest, which shows that this is in fact indigenous community land.<sup>52</sup> The Provincial Order says the internal rules of the

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<sup>47</sup> Ministry of Planning & United Nations Development Program, *'Cambodia Human Development Report 2007 - Expanding Choice for Rural People'*, 2007, page 54.

<sup>48</sup> The lack of progress towards implementing interim protection measures has been widely acknowledged by civil society and development partners. The disbursement of the multi-lateral Poverty Reduction and Growth Operation (PRGO) funds have been delayed in part as a result of the failure to achieve agreed benchmarks in this area. See NGO Forum on Cambodia, *'Briefing Paper: Progress Report for Key Trigger Indicators of the Poverty Reduction and Growth Programme, Round 2'*, November 2008, page 4.

<sup>49</sup> This is an updated version of the case study included in the NGO Position Paper on Land Reform, November 2008.

<sup>50</sup> Brown, S., Seidel, K., and Sigaty, T., *'Legal Issues Related to Registration of Indigenous Communities in Cambodia'*, May 2005, page 49.

<sup>51</sup> The Kong Yu and Kong Thom villagers are an indigenous community according to the independent report of Dr. Meas Nee titled *'Cultural Expert Opinion Report On Kong Yu and Kong Thom Villages, Pate Commune, O Ya Dav District, Ratanikiri Province'* filed in the Court by CLEC and LAC lawyers on 15 January 2008.

<sup>52</sup> The Pate Commune Natural Resources Management map was produced by the Provincial Department of Environment and is contained in the Provincial Order on Community Based Natural Resources Management, Pate Commune, O'Yadau District, Ratanikiri dated 13 December 2004.

commune include: “No sale of garden or plant land/rice field land/residential land/forest land by any villager to outsiders and traders from outside community”. It goes on to state: “Outsiders shall not practice farming and long term plantation” and “No land grabbing, and clearing forest for cultivation into the protected forest”.<sup>53</sup> However, no governmental or judicial authority has since recognized or tried to enforce this Provincial Order. Under Article 23 of the Land Law indigenous communities are entitled to manage their community land in accordance with traditional custom until such time as it is registered.

In October 2008, the businesswoman’s employees began clearing the villagers’ farms and a burial forest located on the disputed land, in breach of her promise to the Court not to clear further land until the dispute had been resolved by the Court. On 28<sup>th</sup> October the Provincial Judge issued an injunction halting the clearing; however it was not implemented properly by the Court and the business woman’s employees continued to clear further land.

It should also be noted that some reports suggest that the current climate of land alienation has also involved pressure and the dissemination of incorrect information from local authorities. As one NGO report states:

During 2007 and 2008 NGOs and community groups have noted an ongoing and increasing level of disempowering and incorrect information provided to communities by government officers. Indigenous community representatives have reported in land forums and conferences that they are repeatedly told by government officials that: *‘Communities have no rights to the land. It is state land. Communities can sell it now – or communities cannot sell it now and the land will be taken anyway.’*<sup>54</sup> (emphasis added)

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<sup>53</sup> Ibid, page 4.

<sup>54</sup> NGO Forum on Cambodia, *Briefing Paper: Progress Report for Key Trigger Indicators of the Poverty Reduction and Growth Programme, Round 2*, November 2008, page 7.

## Recommendations regarding development of land policy and regulatory framework on protection of indigenous land

### *Concerns regarding the sub-decree*

The LMAP PAD aimed to develop and put in place the legal framework for registering indigenous land. At the Cambodian Development Cooperation Forum (CDCF) meeting in late 2008, the RGC committed to a Joint Monitoring Indicator (JMI),<sup>55</sup> to adopt this framework and scale up efforts to title indigenous land.

The passing of the new sub-decree on registering indigenous land alone does not satisfy this commitment. As stated above, there are a number of problems with this sub-decree.

1. In order to pre-empt any possible problems which may arise, it is recommended that the following be clarified:
  - a. Should members wish to leave an indigenous community, the final decision on whether or not that individual receives land or compensation (or neither) must always be that of the community through its traditional decision-making processes. This interpretation is in line with Chapter 3 of the 2001 Land Law.
  - b. Communities involved in disputes over certain areas of their traditional lands should be able to register non-contentious areas of their land. A procedure should be prepared for registering all community land that is not disputed, and for the subsequent registration of the remainder of the land when the dispute is resolved. This may be done by officially amending the original title, by issuing a replacement title or by issuing a separate title for the newly registered areas.
2. As discussed above, even with a fully adequate sub-decree on registering indigenous land, communities must first register with the MOI as legal entities before they can take steps to register their land. It is therefore important that:
  - a. The MLMUPC maintain close communication with the MOI on the progress of the sub-decree for registering indigenous communities, and on preparing communities for registering land when they become registered with the MOI.
  - b. There should be clarification of what legislation, regulations and policy concerning indigenous land is still outstanding, irrespective of which government body is responsible for drafting. A full schedule should be presented indicating when consultations on drafts will be held, and when these instruments are expected to be passed.
  - c. Once communities are able to start the process of registering with the MOI, registration of a community as a legal entity and registration of community land should be done *concurrently*, rather than *consecutively*.
3. In future, all consultations on draft laws must be conducted within a framework that

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<sup>55</sup> See JMI 8.1(a). The JMIs set out the key development priorities of the Government, and are intended to be benchmarks for continued donor funding. Joint Monitoring Indicators are agreed between the Government and its development partners (for example, the World Bank and Asian Development Bank, and bilateral donors).

gives adequate time for communities and civil society organizations to fully analyse and comprehend the document in question. This need is especially acute when consultations involve indigenous communities, who may need extra assistance in understanding documents written in their second language.

#### *Continued alienation of indigenous land*

4. As communities are not yet being registered on a systematic basis, and no land is yet registered, there remains a pressing need for interim protection measures to be enforced. The following measures should be taken to protect indigenous lands prior to registration:
  - a. Support should be given to a comprehensive national awareness raising campaign, focussed in areas where indigenous people live, explaining that the sale and purchase of customary indigenous land to people outside the community is illegal. This campaign could include sign boards on road sides and other prominent areas, and workshops (delivered in indigenous languages if appropriate), consistent with the aim of Component 1 of LASSP to provide “[r]egular dissemination through mass media, education systems, campaigns, workshops and forums, about policies and regulatory framework.”<sup>56</sup> Awareness raising would also contribute to the RGC’s efforts to meet its obligations (as acknowledged in the JMIs), to implement interim protective measures to safeguard indigenous communal land. In order to be effective, it is essential that an awareness raising campaign of this kind has high level government support.
  - b. Concurrent to any community awareness raising, it is also essential to raise awareness with government officials. This should make clear that the sale and purchase of indigenous land outside the community is illegal, and that it is also illegal for officials to witness such transfers. It should also be made clear that granting of concessions on indigenous land (and State public land, such as forests) is illegal.
  - c. Support should be given to community mapping efforts. A number of communities are presently being supported by several organizations to use GPS to map the boundaries of their lands. On completion, these maps should be posted at local and provincial government offices, and should also be referred to in awareness raising events. Only the MLMUPC can formally register land in Cambodia, however, these maps provide strong advocacy tools for communities, and may also assist efforts when the community is finally able to formally register its land. LMAP/LASSP funding could be used to support these initiatives in more communities. It must be noted that in order for this to be an empowering process, and for the final maps to accurately reflect the boundaries of the land, these initiatives must be community driven.
  - d. The Cadastral Commission should commit to resolving several high profile disputes over indigenous land. These disputes must be resolved in accordance with the Land Law and procedures set out in the sub-decrees on the Cadastral Commission.

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<sup>56</sup> Draft LASSP Framework, page 10.

- e. As a matter of high priority, the RGC should enforce existing provisions of the Land Law that prohibit interference with land in areas populated by indigenous people until the process of land registration is complete.

## 5. Access to land titling

The PAD recognises that land tenure security is key to reducing poverty and promoting social stability and economic growth. It advocates land titling as a means to secure land tenure, stating:

The beneficiaries of land titles [will] enjoy the benefits associated with land titles, in the way of increased tenure security, access to credit and opportunities to increase investments and productivity. Many of the expected beneficiaries are poor and vulnerable to being dislodged from the land where they live and farm.<sup>57</sup>

Component 3 of LMAP aimed to establish a land titling program, develop a land registration system and finance information campaigns to inform the public about the need for land titles and registering their land ownership.<sup>58</sup>

Despite significant successes in issuing high numbers of titles in rural areas, various observers have identified problems in the current titling system. On the eve of the July 2009 eviction of the Group 78 community in Phnom Penh, a joint statement by development partners called for a halt to evictions and urged the RGC “to adopt fair and transparent systems for land titling, including in urban areas, which recognize and protect the equal rights of all citizens.”<sup>59</sup>

### 5.1 Systematic titling

LMAP is responsible for conducting coordinated and systematic titling of land within the LMAP project provinces.<sup>60</sup> To date, LMAP has had considerable success in systematic titling of geographical areas that are non-contentious and that are relatively easy to adjudicate. These areas have been overwhelmingly rural. We commend the achievement of LMAP in adjudicating over 1,000,000 titles since 2002 and do not dispute that a large number of recipients were poor farming families (see section *Evaluating the Performance of the Titling System* for further discussion of the 1,000,000 titles figure). Despite this, serious concerns remain that many of those most vulnerable to displacement from the land they live on or farm are not able to access the titling system in its current operation.

It should be noted here that in many cases those vulnerable to displacement may not be legally eligible to receive title. Some vulnerable households are living on State land or may have commenced possession after the Land Law was passed and thus do not qualify for the legal protections provided to lawful possessors. There is an urgent need to provide alternative forms of secure tenure to these households, however a project such as LMAP

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<sup>57</sup> LMAP PAD, page 10.

<sup>58</sup> LMAP PAD, page 8.

<sup>59</sup> The statement was signed by the embassies of Australia, Bulgaria, Denmark, Germany, United Kingdom, and the United States, the Delegation of the European Union, DANIDA, SIDA, United Nations, Asian Development Bank and the World Bank. It can be viewed on the World Bank website: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:22247170~menuPK:293861~pagePK:2865066~piPK:2865079~theSitePK:293856,00.html> (accessed September 2009).

<sup>60</sup> The first phase of LMAP covered 10 provinces and 1 municipality (Phnom Penh, Kandal, Takeo, Kampong Speu, Kampong Cham, Kampong Thom, Prey Veng, Kampong Speu, Siem Reap and Battambang). With assistance from CIDA, the project is currently being expanded to a further 3 provinces (Banteay Meanchey, Kampong Chhnang and Pursat).

may not be the most suitable vehicle for doing so. This issue will be discussed in more detail later.

### *Insufficient titling of urban areas*

In 2008, Amnesty International estimated that around 150,000 people currently live under threat of eviction in Cambodia.<sup>61</sup> Of these almost half (70,000) live in the capital Phnom Penh. Logic would suggest that a project aimed at improving tenure security would be very active in the capital and other urban areas. Indeed, titling urban areas is specifically identified in the PAD as an objective of LMAP under Component 3. Figures for titles issued up to December 2008 show that out of the initial 11 LMAP provinces, Phnom Penh is ranked eighth in terms of numbers of titles issued.<sup>62</sup> The PAD projected that 198,000 titles would be surveyed and adjudicated in Phnom Penh between 2002 and 2007, with 80% of these titles actually distributed.<sup>63</sup> However, recent titling figures show that from October 2003 to December 2008, data had been collected for 83,665 parcels, and of these parcels only 38,502 titles were actually distributed.

For some time LMAP development partners have been aware of the inadequate performance of titling in urban areas, and one LMAP supervision document from 2007 (obtained unofficially) notes that this has been “an ongoing feature of the systematic titling program.” The same supervision document showed that at that time the Phnom Penh titling teams used 23% of LMAP titling resources but produced only 4% of titles issued. It is apparent that LMAP is still far from titling a sizable majority of the city’s households. This is in stark contrast to the LMAP PAD which calculated the financial rate of return (FRR) of the project on the assumption that there would be: “Distribution of 1.1 million titles: rural 50 percent, urban 50 percent.”<sup>64</sup>

As illustrated in the table below, while rural titling has exceeded targets in most areas, the results in Phnom Penh, Siem Reap and Sihanoukville have fallen well short of targets.

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<sup>61</sup> Amnesty International, ‘Rights Razed – Forced evictions in Cambodia’, February 2008, page 44.

<sup>62</sup> Cumulative titling results, October 2003-December 2008.

<sup>63</sup> LMAP PAD, page 43.

<sup>64</sup> LMAP PAD, page 50.



Province (in order of titles issued up to December 2008)	PAD projections for plots surveyed and adjudicated up to end of 2007 (number in brackets is projection of 80% of titles issued)	Actual plots surveyed and adjudicated up to end of 2008 (number actually issued in brackets)
1. Kampong Cham	108,000 (86,400)	211,131 (179,414)
2. Prey Veng	84,000 (67,200)	223,391 (172,427)
3. Takeo	120,000 (96,000)	222,037 (168,104)
4. Kampot	96,000 (76,800)	217,903 (149, 810)
5. Kandal	156,000 (124,800)	108,160 (80,251)
6. Kampong Thom	48,000 (38,400)	91,273 (62,702)
7. Kampong Speu	48,000 (38,400)	57,277 (43,173)
8. Phnom Penh	198,000 (158,400)	83,665 (38,502)
9. Battambang	48,000 (38,000)	43, 497 (38,097)
10. Sihanoukville	48,000 (38,000)	31,808 (20,653)
11. Siem Reap	48,000 (38,000)	16,133 (10,094)

In a statement issued following the RGC's termination of World Bank financing of LMAP, the World Bank Country Director for Cambodia concluded that:

LMAP's successes in land titling in rural areas have not been matched in urban areas where land disputes are on the rise. This was due in part to delays or lack of implementation of some project activities. While originally designed as a multi-pronged approach to addressing a range of land issues, [in its implementation] LMAP focused on areas where it could be most successful: titling rural land and building the capacity of the land administration to register and title land and implement policy.<sup>65</sup>

LASSP, which is expected to continue the land titling process after LMAP ends at the end of 2009, should address the problem of low urban land titling outputs. Although the draft outline for LASSP states that one outcome of the program is "[ ]and tenure security improved in urban and rural areas,"<sup>66</sup> no indicators are included which could be used to assess this, nor is there an indicator for the number of urban titles issued.

<sup>65</sup> World Bank Media Statement, *Statement from the World Bank on Termination by Royal Government of Cambodia of the Land Management and Administration Project*, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:22303344~menuPK:293861~pagePK:1497618~piPK:217854~theSitePK:293856,00.html> (accessed September 2009).

<sup>66</sup> Draft LASSP Framework, page 18.

*LMAP's decision to avoid titling areas "where disputes are likely" and "areas of unclear status"*

The LMAP project was designed against a backdrop of pervasive tenure insecurity and land conflicts,<sup>67</sup> and has the stated aim of remedying this insecurity and in turn reducing land grabbing and instances of land conflict.<sup>68</sup> Seven years on, forced evictions, land-grabbing and other violations of the Land Law continue to exacerbate the hardships of already vulnerable families. As stated earlier, many observers suggest the problem is actually worsening. In this environment, it is therefore unsurprising that LMAP has experienced difficulties in achieving many of its aims.

Those vulnerable to displacement often live in urban areas of high value to property developers, or rural areas with high agricultural potential or rich natural resources, making them more likely to be subject to dispute in the near future. However, the LMAP PAD states that the project will not title "areas where disputes are likely" or "areas of unclear status."<sup>69</sup> The PAD does not define either of these terms and it is unclear whether the PAD is referring to:

- Areas of general dispute, for example where there is a simple boundary dispute, or where two or more parties both claim the land, or;
- Areas where occupants are told that they are living on 'State land', or;
- Areas that have been targeted for 'development'.

Each of these scenarios is distinct, though the presence of a 'dispute' in any of the three cases is not adequate justification for excluding affected households from the titling process. In each scenario it is plausible that one or more of the parties involved will have legal possessory rights under the Land Law.

In the first instance, if titling teams reach an area where there are disputes over the land that cannot be resolved during the process of adjudication,<sup>70</sup> the dispute should be referred to the Cadastral Commission for resolution. Such cases should be dealt with in a timely and transparent manner (see Section 6 on dispute resolution). In cases where the land is claimed as State land, adjudication should still take place and the nature of the land should be investigated and any identification and registration as State land must be done transparently and according to law, which includes adequate consultation with the affected communities (see Section 7 on State land management).

In cases where people live in areas targeted for development, whether for private or public interest reasons, affected people who have legal possessory rights should not be excluded from the titling process. In fact, Article 248 of the Land Law classes the following as an infringement against ownership: any act that "hinders the peaceful holder or possessor of immovable property in an area not yet covered by the cadastral index maps, the ownership rights of which have not yet been fully strengthened under this law." The implication of this provision is that until an area has been fully adjudicated, no eviction – a clear hindrance to possession – is legal.<sup>71</sup> Following adjudication and

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<sup>67</sup> LMAP PAD, page 4-5.

<sup>68</sup> LMAP PAD, page 27.

<sup>69</sup> LMAP PAD, page 24.

<sup>70</sup> In disputes which arise during adjudication, the first instance for dispute resolution is the Administrative Committee. If the Administrative Committee is unable to conciliate the dispute, it should then be referred to the Cadastral Commission (see Sub-decree N°46 on the Procedures to Establish Cadastral Index Map and Land Register, 2002).

<sup>71</sup> Land Law, Articles 43 and 259.

determination of tenure status, households with ownership rights that must be relocated for a legitimate public interest reason, such as road widening, bridge building, or improving drainage canals, should be adequately compensated in accordance with the Constitution and the Land Law. In addition to the legal requirement that areas must first be adjudicated, in practical terms, titling would very likely improve the chances of these households receiving higher compensation. For those households not found to be eligible for title, the State has a responsibility under international law to ensure access to alternative adequate housing should eviction be absolutely necessary.<sup>72</sup>

Lack of transparency in the way areas are selected (or not selected) for adjudication seriously threatens the credibility of the project's aim of reducing land-grabbing and land conflicts. By law, adjudication areas are declared by the provincial or municipal governor of a given area.<sup>73</sup> This raises conflict of interest issues, especially considering that in many recent evictions, for example Spean Ches in Sihanoukville and Dey Krahorn and Group 78 in Phnom Penh, it was the Municipality that issued the final eviction order. The World Bank ERM shared these concerns, and its report is worth quoting at length here:

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

The overall design of the titling process, consistent with the 2001 Land law assumes that the initial geographical area to be adjudicated and subject to systematic titling, should be mapped in its entirety, indicating all existing plots and their current use in a participatory manner. This would give a documentation of existing land use at the surveying date. Users-possessors-renters rights must be assessed and documented properly. If done accordingly, no de facto state land identification would be done by excising areas from any adjudication area whether directed by the province/municipality or otherwise determined. *Ensuring that any process undertaken by any authority to excise or exclude a portion of land from the systematic titling area is transparent, public, and widely disseminated is an important assumption strongly grounded in the applicable law supported by the LMAP [emphasis added].*<sup>74</sup>

The decision to avoid areas likely to be disputed or areas of unclear status in favour of targeting areas where adjudication would be relatively easy may have been necessary whilst the capacity of the titling teams and relevant institutions were initially being

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<sup>72</sup> United Nations Committee on Economic, Social, and Cultural Rights, General Comment 4, 1991 and General Comment 7, 1997.

<sup>73</sup> Sub-decree on the Procedures to Establish Cadastral Index Map and Land Register 2002, Article 2.

<sup>74</sup> World Bank Enhanced Review Mission, *Cambodia Land Management and Administration Project – Enhanced Review Report*, July 2009, page 8.

developed. However, as LMAP comes to an end, this restriction must be removed from the titling component of LASSP. If not, communities vulnerable to displacement and most in need of tenure security will continue to be excluded from the system. This is of particular concern in Phnom Penh, a city experiencing rapid population growth and development.

At present, many households that fall within one of the above categories (areas likely to be disputed, or areas of unclear status) are being evicted without their tenure status being assessed and without the payment of adequate compensation. These households are frequently relocated to sites far from their previous residence that lack basic services and employment or other livelihood opportunities.<sup>75</sup> As a consequence, the ability of the titling program to meet its overall aims of improving tenure security and reducing poverty is seriously impeded.

Although in the current climate of weak rule of law, titling in these areas is unlikely to prevent an eviction if it stands in the way of large-scale development, it may increase the chances of evicted communities obtaining better compensation. The Land Law expressly states that only “owners” are entitled to fair and just compensation in advance of a public interest land taking. Because “owners” are often considered to be only those individuals who possess a definitive land title, those who are unfairly denied access to the titling system are also denied the legal right to fair and just compensation if their property is expropriated. Communities in areas that have not been adjudicated should be protected by Article 248 of the Land Law which, as explained above, stipulates that until an area has been covered by the Cadastral Index Map no action should be taken which impedes a person's ability to enjoy peaceful possession of their land. However, this article is rarely, if ever, invoked in the favour of a community threatened with eviction.

*Dealing with “informal settlements”*

The PAD also states that “informal settlements” will not be titled without the agreement of the government.<sup>76</sup> This is again problematic as no definition of *informal settlement* is given. In practice, authorities often label urban poor communities as informal settlements, regardless of whether they have legal possessory rights under the Land Law. According to the Land Law, all *legal* possessors have the right to apply for title.

**What is legal possession?**

During the Khmer Rouge period from 1975 to 1979 all land ownership was dissolved and land titles destroyed. Since 1979 there has been a gradual reinstatement of rights to land and ownership.

The 2001 Land Law confirmed that *legal* possession can be transferred to full legal ownership. The law explicitly states that the reason for recognizing legal possession is “reconstituting ownership over immovable property in Cambodia after the period of crisis from 1975 to 1979,”<sup>77</sup> which implies that possession is a step towards ownership. However, the law also capped possession, and states that it is not possible to commence

<sup>75</sup> For example Damnak Trayeung for the families evicted from Dey Krahorm, Toul Sambo for those from Borei Keila, and Andoung for the Sambok Chap community.

<sup>76</sup> LMAP PAD, page 20.

<sup>77</sup> Land Law 2001, Article 30.

legal possession after the law was passed. Any lands upon which occupants commenced possession after 31 August 2001 should be considered State land (unless privately owned by someone else).

Anyone claiming legal possession must be able to prove that their possession began before the Land Law was passed,<sup>78</sup> and that they meet five further conditions. All possession must be:

- unambiguous,
- non-violent,
- notorious to the public,
- continuous, and
- in good faith.

Possession of State public property or someone else's private land is not legal.

Under the 2001 Land Law, possession does not just mean physical possession (i.e. residency), it also covers land *used*, for example for farming. All possession, however, must have started before the passage of the Land Law and meet the five conditions listed above.

If these conditions are met, the legal possession constitutes a right *in rem*,<sup>79</sup> and as such the possessor has similar rights to a legal owner, which means they are free to transfer the property, make improvements to it, use it as collateral for bank loans and exclude others from entering or using it. Article 30 of the Land Law says that any possessor meeting these five requirements has the right to apply for a definitive title of ownership.

Unfortunately, the 2001 Land Law says legal possessors have the right to *apply* for title, not the right to *receive* title.<sup>80</sup> In response to this, authorities often state they have no obligation to issue titles to possessors, and indeed, legal possessors on valuable real estate or other areas ripe for development or exploitation are routinely denied legal recognition. If a possessor, meeting the requirements listed above, applies for title or is in an area where systematic titling is being conducted, the only grounds for denying title are when there is a conflicting claim to the land. In cases of dispute the Cadastral Commission should make a determination as to who holds the superior claim.

Possessors should not be denied title on grounds that they live in run-down, unplanned or badly serviced communities. Indeed, the Cambodian Constitution states "Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status."<sup>81</sup>

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<sup>78</sup> Land Law 2001, Article 29.

<sup>79</sup> Land Law 2001, Article 39.

<sup>80</sup> Land Law 2001, Article 30.

<sup>81</sup> The Constitution of the Kingdom of Cambodia 1993 (as amended 1999), Article 31.

The reason that so called “informal settlements” were excluded from the project was that at the time of the LMAP design, it was thought that a DfID, UNDP/UN-Habitat financed program would deal with these areas. Unfortunately this project was never implemented. A draft National Housing Policy from 2004 which included provisions for dealing with informal settlements was also shelved. There are now some potential signs of progress in this area with the drafting of a new National Housing Policy.

The current lack of protection for informal settlements conflicts with the RGC’s international law obligations to work towards providing adequate housing and tenure security to all citizens.<sup>82</sup> Legally, informal settlements are not eligible for land titles. Therefore, alternative mechanisms need to be developed to provide a degree of tenure security, and where necessary adequate resettlement, for these communities. The adoption of an adequate National Housing Policy would be a positive step, but to fill the void that currently exists, a project similar to that envisioned by UN-Habitat needs to be revisited. It must be stressed that there are informal settlers in both urban and rural areas, and both must be addressed by the Housing Policy and any future programs that aim to provide enhanced tenure security for informal settlers. The development and implementation of these measures is a high priority given that households without legal possession rights currently remain totally unprotected by the national legal and policy framework.

#### *Tenure security for relocated communities*

A further concern in this area is the precarious tenure of residents in resettlement sites on the outskirts of Phnom Penh and in nearby provinces. Since the early 1990s, numerous communities have been evicted from central Phnom Penh and relocated to the outskirts of the city as well as Kandal and Kampong Speu provinces. Many of these communities were resettled without the provision of compensation or building materials, in areas with little or no access to basic infrastructure.

As a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) the RGC has an obligation to prohibit forced evictions.<sup>83</sup> Evictions should only occur in ‘exceptional circumstances’ and certain requirements have to be adhered to by the government before, during and after the eviction.<sup>84</sup> Notably, the RGC must ensure that evicted people have access to adequate alternative housing. The RGC also has a responsibility under the ICESCR to work towards ensuring tenure security for all households, including those already displaced. We are aware of only a few relocated communities that have received land titles. Many have since become established settlements and, largely with help from NGOs and faith-based groups, now have access to minimal services such as primary education, electricity, water and adequate roads. As the city continues to expand, there are concerns that these communities will again be threatened with eviction.

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<sup>82</sup> United Nations Committee on Economic Social and Cultural Rights, General Comment 4, 1991, Para 8a.

<sup>83</sup> International Covenant on Economic, Social and Cultural Rights, Article 11(1).

<sup>84</sup> United Nations Committee on Economic, Social, and Cultural Rights, General Comment 4, 1991 and General Comment 7, 1997.

### **Case Study: Anlong Khong village, Prey Sor**

Anlong Khong village is located in Prey Sor commune (close to the Choueng Ek ‘Killing Fields’). The community was previously located in the Tonle Bassac area of Phnom Penh, close to what is now Naga Casino. The residents were relocated to Anlong Khong in 2000, after a fire destroyed their homes.

When the people were moved to Anlong Khong, the site had no houses, water, electricity, roads or school. For the most part, basic services such as clean water and sanitation were provided by relief agencies. The people were not given any compensation for the relocation, and were not given title or papers for their land.

Those relocated to the land in 2000 now have a strong claim for possessory rights under the Land Law. At present there are around 300 families living in Anlong Khong. Although around half of the families initially relocated have since sold their plot of land, as long as the new occupier can show evidence of a “document chain” to the original possessor, they also have the possessory right to claim legal title.

There is currently ongoing development on the land surrounding the community. Although it is not clear what form this development will take, there are rumours that it could be construction of apartment buildings and/or factories. Development began around two years ago, and although still in its early stages, large amounts of sand used to fill in and raise the surrounding lands have caused serious flooding problems in the village of Anlong Khong.

The community is still extremely poor and there is a lack of access to health services, employment opportunities, education, and sanitation. As the surrounding developments continue to gather pace, many are concerned that this community will be evicted again at some point in the future.

#### *Discrepancy between the number of plots adjudicated and the number of titles issued*

A 2007 LMAP supervision document and recent figures obtained from the World Bank show that for some time there has been concern about the gap between the cumulative number of land plots that have been adjudicated and the cumulative number of titles actually issued. Since 2008, attempts have been made to rectify this issue, and the gap has been narrowed considerably. Unfortunately, however, a significant number of titles have still not been delivered.

At present, the number of plots that have been adjudicated but have not yet received title is 330,000. It is expected that in any titling project there will be a number of titles classified as works in progress. These include those which are still in the public display period, or plots found to have boundary disputes that first need to be resolved. It is estimated that there should be around 200,000 titles in progress at any one time.<sup>85</sup> According to these figures, LMAP is set to meet its aim of distributing 80% of adjudicated titles by the end of its first phase.<sup>86</sup> LMAP teams should be commended for achieving this target. At the same time it is crucial that progress be made on closing the gap between plots adjudicated and titles issued in Phnom Penh. As of December 2008, of over 83,000 plots which were adjudicated only 38,097 titles were issued, less than 50%.

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<sup>85</sup> Figures provided by World Bank LMAP Task Team Leader, September 2009.

<sup>86</sup> LMAP PAD, page 43.

Over recent years a number of areas in Phnom Penh were announced as adjudication zones, but subsequently the legal adjudication procedure appears not to have been followed. Some households in these areas have gone through the whole process, from the announcement of the adjudication area, to the survey and investigation, public display and issuance of receipt, only to be denied title when they finally try to exchange this receipt. In other cases, parts of the adjudication zone have been excised by the municipal or provincial authorities, preventing systematic titling from taking place. For example, Sras Chok commune, which encompasses the Boeung Kak lake area in central Phnom Penh, was publicly announced as an adjudication area in 2006, but when residents followed instructions and submitted requests for title, they were denied on the basis that they lived in a “development zone.”<sup>87</sup> Over 4,000 families in this area are now either facing eviction, or have already been evicted from the area. This case will be discussed in more detail in Section 7.

The justification often given to deny a household title is that it is located in an area slated for development or infrastructure improvements. Titles cannot be issued on State public land; however, many of the people interviewed for this report did not live in areas that fit the definition of “State public property” provided in the Land Law. For example, Phneat community in Stung Meanchey went through the entire process of adjudication, including receiving receipts from the titling teams to be exchanged for titles at a later date. On attempting to exchange these receipts, residents were told they were not eligible. Different reasons were given: some were simply shown maps and told that they live in a “red zone” where titles cannot be issued. Others were told that they cannot be given title as the nearby bridge and drainage canal needed to be developed and expanded. Aside from the fact that these are not necessarily legitimate grounds for denying title, these infrastructure works have since finished and the village was unaffected. To date households have still been unable to collect their titles.<sup>88</sup>

Title should not automatically be denied to those households that are in an area slated for public works. In fact, these households are amongst those most urgently in need of title, as this should make them eligible for the fair and just compensation in advance of land-taking that owners are guaranteed under the Land Law.<sup>89</sup> Many of those interviewed had not been informed of any good reason why they had been denied the right to exchange their receipt for title. In these cases the authorities were often non-responsive to requests from the affected people for information.

It is likely that problems such as these are not limited to Phnom Penh. Further research is required to determine whether this problem exists in other LMAP provinces.

### *Evaluating the performance of the titling system*

To date, numerical targets have been a strong feature of the evaluation of LMAP, principally the achievement of exceeding the adjudication of 1 million titles, a key performance indicator set out in the LMAP PAD.<sup>90</sup> However, the PAD also stated that to measure the social development outcomes of the project:

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<sup>87</sup> Based on interviews with Boeung Kak residents, April – September 2009.

<sup>88</sup> Based on interviews with Phneat residents, April 2009.

<sup>89</sup> The need to first adjudicate such areas is recognised and required by Article 248 of the Land Law 2001 (see above).

<sup>90</sup> LMAP PAD Annex 1, page 28.



Monitoring indicators will include the number of titles issued under the project and the percentage of titles collected by households. *They also include qualitative measures that conflicts over land are falling and that land grabbing is diminishing*” [emphasis added].<sup>91</sup>

We have seen no evidence that the second half of this indicator has ever been measured, and believe that if it were, the results would in fact show an increase in land-grabbing and conflicts. More research in this area is needed, otherwise the project rests on an untested assumption that the issuing of large volumes of titles leads to improved security of tenure in practice.<sup>92</sup>

While not diminishing the achievement of adjudicating over 1,000,000 titles, the number of titles produced alone is too crude an indicator and gives a one-dimensional evaluation of the project. Quantitative indicators based on a single *output*, such as the number of titles adjudicated, ignore other important factors required to form a deeper and more comprehensive picture of the *impact* of the titling project and the extent to which it is reaching those at risk of displacement. It also fails to measure if the tenure security of the beneficiaries has actually increased after receiving title. For these reasons, it is of concern that the LASSP documents show that the indicator used to measure improved tenure security in urban and rural areas is again based on a simple title count, this time the issuance of 2,000,000 titles by the end of 2012. A blend of more sophisticated qualitative and quantitative indicators are required to properly ascertain whether the project is fulfilling its stated aims.

LMAP contracted an independent research organization to conduct rural and urban baseline surveys which were published in 2007.<sup>93</sup> It has been suggested that a follow up study will be conducted before the end of the project which looks more closely at the evolution of land conflict in Cambodia, and the impact of LMAP on this.<sup>94</sup>

## 5.2 Sporadic titling

Sporadic titling has the potential to provide tenure security for households that are not targeted by, or have otherwise been unable to receive title under the systematic registration procedure. As stated in the RGC’s 2002 Interim Strategy of Land Policy Framework (prepared by LMAP and GTZ), “[b]ecause systematic registration is limited to predetermined locations, sporadic registration is a necessary parallel process so that registration can be carried out anywhere in the country at any time.”<sup>95</sup> The sporadic registration procedure differs from the systematic in that it is initiated by application of the individual seeking title.<sup>96</sup> Before LMAP began, all titling was sporadic. Alongside the systematic registration of pre-determined plots of land, LMAP aimed to draft a new procedure for sporadic titling, create a work manual for the process, and provide equipment and training for sporadic titling teams.<sup>97</sup> Both the *Sub-decree on Sporadic Land*

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<sup>91</sup> LMAP PAD Annex 1, page 22.

<sup>92</sup> In addition, the LMAP PAD states that: “Providing a title by itself does not necessarily lead to immediate improvement in social welfare and economic livelihood for households”, page 21.

<sup>93</sup> Cambodia Development Resource Institute, *Cambodia Land Titling Urban Baseline Survey Report*, December 2007.

<sup>94</sup> Correspondence with World Bank Country Director for Cambodia.

<sup>95</sup> Council for Land Policy, *Interim Strategy of Land Policy Framework* 2002, page 17.

<sup>96</sup> LMAP PAD, page 8.

<sup>97</sup> LMAP PAD, page 36.

*Registration* and the sporadic registration manual have been completed. However, the new procedures and manual are only being implemented in areas already covered by Cadastral Index Maps. This includes registration of households that for some reason may have been left out of the systematic process, or in cases of subsequent registration, where land that is already registered is transferred to a new owner. In non-LMAP provinces, and in areas of LMAP provinces that have not yet been systematically adjudicated, the old sporadic system is still in use.

As stated above, prior to the start of LMAP in 2002, all titling was sporadic. A 2007 World Bank report stated that the new systematic titling mechanism is “clearly superior” as the previous on-demand system was inefficient, subject to high fees, and subsequently only accessible to the wealthy.<sup>98</sup> In areas where the new procedure and manual are not in use, these historical problems continue to exist. High fees still apply, and the sporadic registration system is well known to be subject to high informal fees. Unofficial fees ensure that the system is beyond the reach of all but the wealthy. Sporadic titling is more costly than systematic titling on a per unit basis. LMAP did not allocate funds for supporting sporadic titling, as it is a “user-pays” service in which the applicant’s fees are intended to cover the costs of the procedure. However, anecdotal evidence suggests that cases of sporadic titles costing over a thousand dollars are not uncommon. The vast majority of this fee constitutes informal charges.

Households threatened with eviction who have attempted to access the sporadic system are routinely denied application forms, or officials refuse to receive completed forms and documents. Before their violent eviction on 24 January 2009, several households in the community of Dey Krahom<sup>99</sup> attempted to apply for sporadic title. Initially, requests for application forms were refused. When these were eventually obtained by a community member with a contact in the Khan, officials refused to receive the completed applications.

In addition to the lack of transparency in the approval of applications and the informal fees required by the issuing body, in areas where the new sporadic registration process is not yet in use, the old system does not appear to issue a *definitive* title. Titles issued under this system are not registered on the Land Register or Cadastral Index Maps, and therefore probably do not provide the protection of a systematic land title; rather, they merely serve as evidence to support the existence of possession rights of the holder. This procedure is also deficient as it does not involve extensive interviews with owners or possessors of neighbouring properties, and does not have a public display period or public comment and dispute resolution period (as provided for by the new sporadic process developed by LMAP). For this reason, there is considerable risk that when systematic titling reaches that area, there could be conflict with neighbours who contest the boundaries.

Sporadic titling is included in the draft LASSP framework document, which includes the progress indicator of: “[n]umber of titles handed-over in sporadic land registration

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<sup>98</sup> World Bank, *Sharing growth: Equity and development in Cambodia. Equity Report 2007*, June 2007, page 73: “Such an approach, which sets out to title all land in a Commune at one time (hence “systematic”), seems to be clearly superior to earlier attempts to title land through “sporadic”, on-demand titling, which suffered from capacity constraints and high fees, such that only a little land (predominantly that held by the rich) was titled. In that the landed poor tend to be the losers in conflicts over land ownership, providing them with strong titles is likely to improve their ability to retain their key productive asset in the face of increasing competition over land resources.”

<sup>99</sup> The Dey Krahom case is discussed in detail in Section 8.

increased each year while service delivery standards are met” using the improved sporadic registration process.<sup>100</sup> Another stated activity of LASSP is to integrate old sporadic titles into the Land Register,<sup>101</sup> which is a welcome development, provided that appropriate procedures are followed, and any competing claims to ownership or possession are fully and transparently investigated.

Systematic titling is certainly a more efficient use of resources, resulting in more titles being issued more cheaply and often more quickly than through the sporadic system. There is also less opportunity for corrupt practices to emerge during the systematic process. However, the sporadic titling remains the only means of obtaining title for those not living in LMAP adjudication areas. It is therefore imperative that it is brought into line with the relevant legislation. The improved procedures should be implemented as widely as possible, and that any subsequent allegations of corruption are investigated and dealt with according to the law.

The development of a sporadic titling process that is affordable, transparent, accessible, and swift in its delivery of title could be a crucial remedy for households seeking to confirm their rights under the Land Law.

### **Case study: The community of Group 78 and their efforts to avoid eviction<sup>102</sup>**

#### *Background of community*

Group 78 was a community located in the Tonle Bassac commune of Phnom Penh, which consisted of 146 families. The families of Group 78 lived in the area peacefully and lawfully for many years, in some cases from as early as 1983. They grew vegetables and built permanent structures on the land, and used their property as collateral to access credit. The community’s occupancy was officially recognized by local authorities and the Phnom Penh Municipal Cadastral Office through the issuance of house statistic receipts on October 24, 1992. In addition, each Group 78 family had documentary evidence of continuous residence on the land starting before 2001, including legally-recognized certificates of purchase/sale, possession transference contracts, family records, identity cards, and house-repair requests.

#### *Application for title*

In 2004, Group 78 residents applied for land title for their homes, because their lawful possession of the land in excess of five years entitled them to do so. Tonle Bassac Commune officials rejected this lawful application. The Group 78 community then filed a complaint with MLMUPC, which directed the Municipal Department of Land Management to investigate the situation. However, the community is not aware of any investigation ever having taken place.

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<sup>100</sup> Draft LASSP Framework, page 20.

<sup>101</sup> Draft LASSP Framework, page 21.

<sup>102</sup> This case study is based on discussions with the community’s lawyers and an April 2009 legal memorandum prepared by Community Legal Education Centre (CLEC).

### *Notice of eviction*

Starting after the eviction of the nearby Sambok Chap community in mid-2006, the Chamkarmorn District Office issued four eviction notices to Group 78 citing different and inconsistent reasons for the eviction, including for the “beauty and development of the City,” to “develop good drainage systems, wider roads, lights, parks, environment and beauty fitting for tourism,” and to build a road and two bridges.

The Phnom Penh Municipality also issued two eviction notices, the first stating that two bridges would be built and that all people residing there should “remove improper squats,” and the second stating that the community was living on “[a private Company’s] land and on public road.” The community however was never presented with any evidence of the company’s alleged ownership of the land, despite asking for it many times. The company stated publicly that it sold its interest back to the Municipality in 2007.

### *Complaints to the Cadastral Commission*

The Cadastral Commission is the body established to resolve disputes over unregistered land. In June 2006, Group 78 filed a complaint with the district level of the Cadastral Commission, but received no reply. The community later complained to the national Cadastral Commission, which referred the case back to the municipal level. The municipal Cadastral Commission never investigated, reported or arranged a meeting with the parties as required by the procedure set out in the *Sub-decree on the Organization and Function of the Cadastral Commission*. A decision by the Cadastral Commission was still pending when the community was forcibly evicted. A decision was finally issued on July 28 (11 days after the eviction) and stated that taking note of the fact that the RGC had approved compensation and relocation options, the MLMUPC and the National Cadastral Commission “has no competence to resolve the issue.”

### *Negotiations with the Phnom Penh Municipality*

Some families gave in to the pressure to leave and accepted small amounts of compensation. The remaining community members were never able to engage any government or judicial authority in a substantive discussion of their land rights. The community offered proposals to municipal authorities for land sharing in an attempt to settle the dispute. However, the Municipality never recognised the community members’ possession rights and suggested that compensation offered was based on “pity” for the urban poor.

### *Forced eviction*

When the final eviction notice was issued on 20 April 2009, 66 households made up of approximately 80 families remained. The community tried unsuccessfully to challenge the legality of this eviction notice in the Phnom Penh Municipal Court and Courts of Appeal. Neither Court followed relevant rules or procedures, and complaints were still pending in the Municipal Court and Cadastral Commission when the Municipality sent over 200 police, military police armed with guns and batons, and hired breakers equipped with hand tools, to remove the community’s homes on 17 July 2009. The majority of these

families had, under the threat of forced eviction, already agreed to leave and accepted the Municipality's compensation policy of US\$8,000 per family. This amount is not enough to buy a house in Phnom Penh. Seven families stayed and negotiated with municipal authorities while the other houses were being dismantled around them. These families received up to US\$20,000, however one family received no compensation. An independent land appraisal in March 2009 valued the whole site at US\$15.2 million on a market value of US\$1,300 per square meter.

Group 78's attempts to utilize the titling system and dispute resolution mechanism supported by LMAP (under Components 3 and 4, respectively) were ignored by relevant authorities. State land mapping was not carried out in accordance with Component 5, although municipal authorities insisted the site was State land.

### 5.3 A 'dual system' of ownership

A further concern regarding the performance of the titling and dispute resolution mechanisms is the perpetuation of the *dual system* of ownership recognition. Most households that perceive themselves as owners rely 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 possession rights into full ownership rights through title, was intended as a mechanism to incorporate this pre-existing tenure system into the formal centralized system. However, it has been observed that when people's property becomes sought after, their possession rights (and soft titles) are denied and they are labelled "illegal" because they do not have 'hard' formal title. This accusation ignores the fact that many of these households have been wrongly excluded from the titling process, and therefore are unable to obtain hard title.

It is clear that the dual system existed before LMAP began, as 'hard' titles were already being issued sporadically by the State to those who could afford them. These titles existed alongside the 'soft' recognition from local authorities. However, LMAP may have in fact entrenched rather than remedied the dual system by strengthening and expanding the formal centralized system, while simultaneously excluding large segments of the population from accessing this system to turn their "soft titles" into formal ownership rights. This process has very likely weakened the pre-existing tenure system, relied upon by these excluded households, relative to the perceived superiority and credibility of formal centralized tenure.

The Boeung Kak case, which will be discussed in more detail later, provides an illustration of this dual system in practice. Many Boeung Kak residents are in possession of documents that indicating recognition by local authorities, which would have granted recognition under the pre-existing tenure system. These documents become evidence of possession rights under the 2001 Land Law, giving legal possessors rights that can be transferred to formal title through the process of adjudication and registration.

The Sras Chok commune, which surrounds part of the Boeung Kak lake area, was announced as an adjudication area in 2006. However, the municipal authorities subsequently and unilaterally excised large parts of the commune from the systematic

registration process based on the premise that it was a “development zone.” In January 2007 – the same month in which the Cadastral Index Map for Sras Chok was created – the Boeung Kak area was leased by the Municipality to a private developer. More than 4,000 households, including many with documented legal possession rights, were thus denied titles on the grounds that they were living in a development zone. These households are currently facing eviction, or have already been evicted.

This case shows how the introduction of a widespread and systematic centralized and formalized land registration process under LMAP, whilst likely improving the tenure security of those who have received title, has weakened recognition of soft title in Cambodia. As Boeung Kak residents were unable to transfer their soft titles into formalized land titles under LMAP, their pre-existing tenure status was ignored, or at the very least was weakened relative to their titled neighbours in other parts of Sras Chok. In effect the project not only failed to formalize their tenure but in effect also degraded their pre-existing tenure status.

If the titling system continues to be implemented as selectively as it has been to date, its very existence could be working against lawful possessors who are denied access to titling because they have already been marked for eviction. In this system an absence of title is easily, albeit erroneously, equated with illegal occupation and becomes the justification for evictions.<sup>103</sup> This does not follow the Land Law, or the spirit in which the titling program was designed, potentially excluding tens of thousands of vulnerable households from obtaining improved tenure security. In theory, households that are unable to obtain title should have access to the dispute resolution mechanism of the Cadastral Commission. However, as will be discussed in more detail later, in cases where households are targeted for eviction, the Cadastral Commission has so far proven to be largely ineffective.

#### **6.4 Subsequent registration of title**

Once land is titled, according to the 2001 Land Law, any subsequent transaction must be registered<sup>104</sup> by changing the owner’s name on the Land Register to complete the transaction. Until the subsequent registration process is complete the land is not officially transferred and both the title and Land Register will list the name of the previous owner. In addition, Article 65 of the Land Law states “The contract of sale itself is not a sufficient legal requirement for the transfer of the ownership of the subject matter.”<sup>105</sup> While LMAP has had considerable success in adjudicating systematic titles in rural areas, several studies have found that subsequent registration of title after transfer is still not the norm. A study from late 2007 on land titling and poverty reduction found that the majority of transfers of registered land plots were not being registered and updated at the Land Registry, nor were purchasers paying the appropriate land taxes. The same study stated that this practice is likely to “continue and ultimately threaten the viability of the

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<sup>103</sup> See, for example, Bethany Lindsay et al, ‘*Experts Dispute Boeung Kak Impact Report*,’ The Cambodia Daily, 26 March, 2009, page 1. Also, NGO Forum Cambodia, ‘*NGO Position Papers on Cambodia’s Development in 2007-08*’, November 2008.

<sup>104</sup> Land Law 2001, Article 65 & 69

<sup>105</sup> Land Law 2001, Article 65.

systematic land titling program”<sup>106</sup> and “could also result in a wave of future legal disputes brought before the courts.”<sup>107</sup>

A 2008 report echoed these concerns, stating:

[T]ransfers recognized only by local authorities following tradition may not be legally recognized by the government or upheld by the courts. If this is the case, over time the transfers of LMAP titles outside the official registry could weaken land tenure security rather than strengthening it as intended. Such transfers could result in complex conflicts as well as denying the government revenue from sales tax.<sup>108</sup>

In addition to the implications that a lack of subsequent registration may have for future land disputes, the sustainability of the project is also called into question if the appropriate taxes are not being collected. The LMAP PAD discusses the issue of sustainability in relation to subsequent registration. The *actual* cost of a title was estimated at US\$38, of which landholders pay a fraction (the current average price of title is under \$10 but in some rural areas the price can be as low as 10,000riel – approximately \$2.50). This low charge is to encourage low income households to participate in the titling process, and followed a system implemented successfully in Thailand.<sup>109</sup> The failure of many households to register subsequent transactions not only results in a loss of revenue, but also significantly weakens the sustainability of the project.

It is common for people buying and selling land to still rely on the sale contract alone, usually witnessed by local authorities. This is in part due to the common belief that holding the title certificate itself assigns ownership rather than the entry of the name on the Land Register. Other factors such as the time and resources required to formally re-register the title, and the high cost of unofficial fees also act as deterrents from subsequent registration, as indicated in the case study below.

#### **Case study: Sok Sophat’s attempts to formally register his land purchase**<sup>110</sup>

In 2006 Sok Sophat purchased a plot of land in Phnom Penh Thmey district of Phnom Penh, and in early 2007 purchased a neighbouring plot. Soon after, the area was adjudicated by LMAP through systematic registration, and Sophat received land titles for the two plots.

Later in 2007, Sophat purchased two more neighbouring plots of land, but the titling process was already finished and the land was registered to the neighbour. Sophat called the local authorities to enquire about the process of transferring the title to his own name. He was referred to the local Cadastral office, which informed him that the cost for re-registering the plot that he purchased for \$14,000 would be \$2,000 (approximately 14% of the value of the land), and for the plot purchased at \$12,500, the cost would be \$1,500

<sup>106</sup> NGO Forum Cambodia – ADI/LIC, ‘*Land Titling and Poverty Reduction: A study of two Sangkat in Prey Nup District, Sihanoukville Municipality*’, November 2007, page 46.

<sup>107</sup> Ibid, page 39.

<sup>108</sup> Cambodian Development and Research Institute (CDRI), ‘*Annual Development Review 2007-08*’, February 2008

<sup>109</sup> LMAP PAD, pg 15.

<sup>110</sup> Based on interview conducted on 26<sup>th</sup> February 2009. In the interests of confidentiality, the subject’s real name has not been used.

(approximately 12% of the value of the land).

The officer with whom Sophat spoke gave no explanation or breakdown of these costs, and made no reference to relevant tax codes or regulations. Because of the high costs of formally transferring the title, Sophat chose not to. He now holds a land title with the previous owner's name, and a selling agreement signed by himself, the seller and the Sangkat authority, which cost him around \$100 for both plots.

At present (September 2009), official procedures require anyone registering a transfer of title to pay transfer tax equivalent to 4% of the land value. If the land is unused, the buyer must pay an extra 2%. The office that Sok Sophat called requested over 3 times more in 'taxes' than he was legally obliged to pay. These practices threaten to jeopardize targets to increase the number of subsequent registrations.

It is apparent that without improvements in the number of formally registered transfers, LMAP may be unable to improve tenure security in the long-term because over time the Land Registry will consist of increasingly out-dated information. If subsequent transactions are not registered, new occupiers may not be recognized as legal owners if they become involved in a land dispute or if the area they live in is targeted for development. A Key Performance Indicator of the titling component of LMAP is that 75% of all subsequent land transactions are registered. One supervision document from June 2007 put the figure of subsequently registered transfers at around 2,000, a small fraction of the more than 605,000 titles that had been issued up to that point.

More recent data on this has proved hard to obtain, but anecdotal evidence indicates that the figure falls well short of 75%.

## **6.5 Public Awareness and Community Participation (PACP)**

Public Awareness and Community Participation (PACP) is a specific sub-component of the titling component of LMAP and is included in both the LMAP PAD and LASSP documentation. PACP aims to inform and involve the Cambodian public in the registration and adjudication process. It was envisioned that NGOs would deliver this PACP component and allow LMAP staff to focus on the technical aspect of the titling process. The LMAP PAD states that: “[t]o build confidence among villagers in the process of adjudication, it is important that people who offer an independent perspective and can work directly on behalf of the villagers be involved.” The document explains that NGOs may be best placed to deliver PACP due to the trust they have built by working with communities, and the fact that they are likely to have tailored resources to implement awareness raising programmes, giving them a greater capacity to deliver effective training than titling teams.<sup>111</sup> NGOs were also supposed to be contracted to provide legal aid to individuals and communities in disputes (see Section 6 for more discussion and recommendations on this issue).

We have found no evidence that any LMAP PACP projects have been conducted in partnership with NGOs or other representatives of civil society. In discussions with LMAP development partners and with the Director of LMAP, it was stated that following the first call for applications for PACP, NGOs withdrew applications after learning that

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<sup>111</sup> LMAP PAD, page 8.



they would be contracted directly with the Ministry, rather than a donor. Correspondence with the World Bank revealed that procurement of NGO support for PACP was again cancelled in March of 2009 due to problems in the procurement process.<sup>112</sup>

Lack of legal awareness in Cambodian communities is widespread, contributing to current land problems and making this sub-component of LMAP absolutely crucial. A draft LMAP supervision document from January 2009 states that PACP, specifically Land Law dissemination, is being done by LMAP teams *as part of the titling process*. However, the communities often most in need of access to this information are those *not* being targeted by the titling program, as discussed above. This problem was identified early on, and a December 2005 supervision document states that “PACP focuses mainly on disseminating information relating to legal and administrative aspects of the titling process, which it does not do well, rather than being creative in sharing knowledge and making households aware of their rights and of the benefits.” The same document goes on to state that “the delivery of PACP needs to be separated from the land titling work and the methodology improved so that it is more intelligible to beneficiaries.”

Unfortunately, it is apparent from the 2009 supervision document that these same problems still exist with this sub-component of the project. In July, the World Bank ERM report added that the dissemination activities carried out by LMAP teams “were not meant and did not fulfil the same objectives of those originally envisioned to be implemented by NGOs [...] the link between this lack of implementation and the consequences on communities seeking land titling and security of tenure is noteworthy.”<sup>113</sup> The report also states that the failure to involve NGOs in PACP and provision of legal aid has “made the process less participatory and transparent for the most vulnerable communities seeking land titling” notably in Phnom Penh.<sup>114</sup> In one specific case of a potentially flawed adjudication process investigated by the mission, the report notes “this [case] is clearly an example where implementation of the dissemination and legal assistance activities could have helped affected persons to claim their rights, and dispute the outcome of the titling process.”<sup>115</sup>

PACP is included in the draft LASSP framework, the indicator for determining the success of this output being: “[b]y December 2008 improved PACP in place.”<sup>116</sup> It is hoped that this PACP remedies the problems discussed above and includes the involvement of local NGOs and other civil society representatives.

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<sup>112</sup> April 2009 correspondence with World Bank.

<sup>113</sup> World Bank Enhanced Review Mission, *Cambodia Land Management and Administration Project – Enhanced Review Report*, July 2009, page 4.

<sup>114</sup> Ibid, page 7.

<sup>115</sup> Ibid, page 8.

<sup>116</sup> Draft LASSP Framework, page 19.

## Recommendations regarding access to titling

### Systematic titling

#### *Inadequate titling of urban areas*

1. There must be a renewed emphasis on systematic titling in urban areas and commitments already made to provide tenure security to the urban poor must be implemented. Specifically, the following are recommended:
  - a. Transparent selection of adjudication areas should be ensured, and an effective grievance mechanism should be established for those denied access to systematic titling without a clear and legitimate reason.
  - b. Several civil society organizations<sup>117</sup> are currently working on resource development and tenure security with urban poor communities that are not at imminent risk of eviction. LMAP/LASSP should meet with these groups and discuss how they can cooperate to improve access to the titling system for these communities. While not a complete solution to the current urban land crisis, activities such as this may at least increase the numbers of titles issued in urban poor areas. It is likely that as the city expands, many more urban poor communities will be threatened with displacement and this process may provide some protection.
  - c. In connection with the above, it may be necessary for the titling teams to specifically target individual communities for adjudication, in particular urban poor communities, rather than whole communes.
  - d. LASSP should establish clear quantitative and qualitative indicators for measuring the success of adjudicating urban areas and monitoring the effects of issuing titles. This is necessary in order to measure whether or not the LASSP program fulfils its commitment to improve tenure security in urban areas.

#### *LMAP's decision to avoid titling areas "where disputes are likely" and "areas of unclear status"*

2. It is vital that the exclusion of areas "where dispute are likely" and "areas of unclear status" be removed from any future LASSP documents. Communities on land where disputes are likely and communities of unclear status are precisely those who are most in need of access to a transparent and fair titling and dispute resolution system. Therefore these areas should now be prioritised by the project.
  - a. All legal possessors must have access to the titling system. That an area is likely to be disputed in the future (or marked for development and eviction) cannot by law be used to exclude the households living there from receiving title. In order to help legal possessors obtain secure tenure through the titling system, public and government awareness programs should be conducted on the rights of possessors under the Land Law. In addition the MLMUPC must clarify that *all* legal possessors (as defined in the Land Law) are eligible to apply for title

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<sup>117</sup> See for example the Tenure Security Working Group, which hopes to prepare poor urban communities, who are not living in areas of planned development, for systematic titling.

and convert their possession into ownership. This should be reflected in PACP activities.

- b. Titling in areas likely to be disputed may require increasing the capacity of the Administrative Commissions (who handle disputes at first instance during the titling process)<sup>118</sup> and an increased level of cooperation and communication with the Cadastral Commission. If necessary, funds and technical support should be diverted to the Commission so that it can fulfil its responsibility to resolve disputes in a just, transparent and timely manner.<sup>119</sup>
- c. A specific commitment to prioritizing registration in disputed areas should be made, as this would provide recognition of these communities' land rights, increasing their chances of obtaining reasonable compensation if evicted. Adjudication of areas slated for development must by law occur before any interference with possessory rights.<sup>120</sup>

#### *Dealing with "informal settlements"*

3. The rights of households in informal settlements (those without legal possessory rights under the Land Law) should be protected through the National Housing Policy, amendments to the legal framework, and donor-funded projects to support implementation of the new policy. This should be done in consultation with civil society and affected communities and should be active in both rural and urban areas. The policy should include appropriate alternative tenure options for those households ineligible for ownership rights, such as onsite Social Land Concessions or medium-term leases from the State.

#### *Tenure security for relocated communities*

4. Titling of resettlement sites would be a powerful indication of the RGC's commitment to uphold international law obligations, as well as LMAP's ability to efficiently target poor urban communities lacking adequate tenure security. At a minimum, all households that were resettled prior to the passage of the Land Law in 2001 should be prioritized for systematic titling.

#### *Discrepancy between the number of plots adjudicated and the number of titles issued*

5. The selection, adjudication, and issuance of titles through the systematic titling process should be made completely transparent.
  - a. People should be informed in adequate time as to when their area will be adjudicated, as provided for by law.
  - b. If a decision not to issue titles is taken during or post-adjudication, residents should be informed as to the reason for this decision, and must have access an effective grievance mechanism under which to challenge this decision.
  - c. As long as households do not live on State public property or someone else's private property and can prove they meet the conditions of legal possession,

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<sup>118</sup> Sub-decree on the Procedures to Establish Cadastral Index Map and Land Register 2002, Article 3.

<sup>119</sup> See also later section on dispute resolution.

<sup>120</sup> Land Law, Article 248.

they should not be denied title. Plans for private or public development in the area should not affect this process. The complete process of adjudication and registration should occur prior to any land expropriation in the public interest. Should such expropriation occur, owners should receive fair and just compensation in advance, in accordance with the Constitution and Land Law.

### *Evaluating performance of the titling system*

6. Future evaluation of the titling system must go beyond the current focus on the number of titles issued. More sophisticated indicators are required to assess the true impact of the project, specifically whether the titling system is achieving its aims of increasing tenure security. Other socio-economic data should be collected and analysed. For example:

- Whether the area titled is rural, urban or peri-urban;
- The average per-capita household income for the area titled;
- The predominant type and quality of housing of the particular commune being titled;
- Whether or not the area is likely to be subject of future development;
- Whether or not the area and surrounding areas had been subject to a high number of disputes; and
- Whether or not the land-holder previously had “soft title” under the pre-existing tenure system.

Collating details such as those above, and any other pertinent information, would give a clearer indication of the impact of the project and provide a better assessment of the background of those who the project is actually serving. This data should be revisited at a later date to assess whether or not there has in fact been a reduction in land conflicts.

7. Independent research should be conducted in order to assess whether the project’s stated objective of improving both urban and rural tenure security has been achieved. Key to this study should be a thorough assessment of whether or not land grabbing and land conflicts have been reduced nationally, not just within LMAP adjudication areas.

8. Research should also be conducted into the impact of titling on land prices. Increase in land values, although positive in some circumstances, in the context of spiralling land speculation and weak rule of law, can be harmful to poor communities. Beneficiary assessments should take this into account, and should investigate the effects of any recorded increase in land value.

### **Sporadic titling**

LMAP/LASSP could better serve those not living in areas subject to systematic titling by implementing a fair and transparent sporadic titling system in accordance with the law. It is recommended that:

1. Progress should be made towards implementing the improved procedure for sporadic registration developed by LMAP and set out in the *Sub-Decree on Sporadic Registration*,

across all LMAP provinces, not just in areas already adjudicated.

2. A renewed commitment should be made to issue title to all possessors who apply for sporadic title and satisfy the legal requirements of the Land Law. All applications must be processed in a transparent manner and judged on their legal merit under the Land Law. Factors such as social background of the applicant, or whether or not the property for which title is being requested is in an area of high value or scheduled for development should not affect the application.
3. In order to promote understanding of sporadic titling, public awareness campaigns should be expanded to include advice on how an individual can initiate a claim for sporadic title. This should include explanation of the procedure and fee structure.
4. Any credible reports of corruption or deviation from guidelines within the sporadic titling system should be investigated.<sup>121</sup> If accusations are sustained, the individual(s) involved should face the appropriate penalty.
5. Efforts must be made to reduce the cost of sporadic title. All titles should be affordable and issued in a timely fashion. Strong indicators should be inserted into the draft LASSP design in order to assess the success of this initiative.

### **Providing immediate tenure security**

1. The RGC should enforce the moratorium on evictions in any area not yet covered by a Cadastral Index Map, in accordance with Article 248 of the Land Law.

### **Subsequent registration**

At present, evidence suggests many subsequent transactions are not being properly registered. This is potentially harmful to the objective of eventually titling the entire country,<sup>122</sup> as many plots registered with the Land Registry will contain outdated information. This situation could be improved by:

1. PACP including specific and clear instructions on the obligation to re-register title upon subsequent transfers of the land.
2. Conducting a review of tax requirements (including the 4% transaction tax, and the 2% unused land tax) to ascertain whether they are dissuading individuals from fulfilling their legal requirement to register transactions.
3. Conducting good practice and transparency training directed at Cadastral employees. There should also be a complaint procedure for members of the public who feel they are being improperly charged for subsequent registration.
4. Conducting an assessment of whether the procedure for subsequent registration can be simplified further. By ensuring contact with government offices is minimal, opportunities for unofficial fees being collected will be greatly reduced.

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<sup>121</sup> As stated in the Decision N°40 on Code of Conduct for Staff of Land Management and Administration Project 2006, Article 1: “All the staff must discharge their duties in accordance with the relevant laws, sub-decrees, legal norms and regulations with prime regard to the public interest.”

<sup>122</sup> LMAP PAD, page 7.

## **Public Awareness and Community Participation (PACP)**

LMAP should cooperate with NGOs and other civil society groups currently working with communities on issues of tenure security. As the PAD notes, the knowledge possessed by NGOs of the communities they work with and the difficulties they face make them valuable implementing partners for PACP.

There will be a need for PACP to be conducted under LASSP. In order for this to happen, the following is recommended:

1. An increased effort should be made to recruit local NGOs in the preparation and delivery of PACP programs.
2. As many NGOs are uncomfortable being contracted directly to the government, the option should be explored for development partners to contract directly with groups providing PACP.
3. Anecdotal reports suggest contracts between NGOs and donors are sometimes difficult to obtain due to the rigorous application and reporting conditions required. While recognising the need for accountability, it is recommended that there be a review of these conditions to ensure that local, grassroots NGOs can realistically succeed in obtaining a PACP contract from development partners.
4. PACP should include information and practical guidelines on accessing both systematic and sporadic titling systems, as well as requirements for completing the necessary procedures of subsequent registration.

## 6. Strengthening mechanisms for dispute resolution

### 6.1 Options available to persons involved in land disputes

Persons involved in land disputes or conflicts have, in theory, a number of dispute resolution options available to them depending on whether the land in question is registered or unregistered. Complaints regarding disputes over unregistered land must be submitted to the Cadastral Commission (CC), while disputes over registered land should be referred to the courts.<sup>123</sup> The National Authority for Resolution of Land Disputes (NARLD) also works to resolve land conflicts, but its powers, jurisdiction and track record of resolving disputes is much less clear. The variety of dispute resolution bodies and lack of clarity over jurisdiction of each is a common source of confusion for potential complainants.

Component 4 of LMAP focuses on dispute resolution. LMAP aimed to build capacity of the Cadastral Commission to resolve disputes over unregistered land. The Commission was established by the 2001 Land Law<sup>124</sup> and its organization and functions specified by a sub-decree developed by the RGC with Asian Development Bank (ADB) support in 2002.<sup>125</sup>

The Sub-decree on the Organization and Functioning of the Cadastral Commission sets out three levels of the CC: district/khan (DKCC), provincial/municipal (PMCC) and national (NCC).<sup>126</sup> Complaints should first be submitted to the DKCC, which only has the power to conciliate.<sup>127</sup> If there is no resolution to the dispute, it should be referred to the PMCC, for further attempts at conciliation.<sup>128</sup> In the case of an unsuccessful conciliation, the case should be referred to the NCC, which will adjudicate the dispute.<sup>129</sup> On receiving the NCC's decision, the cadastral authorities should register the land accordingly. If a party is not satisfied with the NCC decision, they may seek judicial review through the courts.<sup>130</sup>

### 6.2 The performance of the Cadastral Commission

Figures quoted in a January 2009 draft supervision report state that 5,059 cases have been received by the CC, of which:

- 1,653 have been resolved;
- 1,211 have been rejected (for example, because they were civil disputes concerning contracts or succession disputes);
- 220 have been withdrawn by one or more parties; and
- 1,975 are still pending.

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<sup>123</sup> *As clarified by:* Joint prakas of Ministry of Justice and MLMUPC on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes 2003, Article 1.

<sup>124</sup> Land Law 2001, Article 47.

<sup>125</sup> Sub-decree No 47 on Organization and Functioning of the Cadastral Commission 2002.

<sup>126</sup> *Ibid*, Article 4.

<sup>127</sup> *Ibid*, Article 6.

<sup>128</sup> *Ibid*, Article 15.

<sup>129</sup> *Ibid*, Article 16.

<sup>130</sup> *Ibid*, Article 23.

The fact that almost 2,000 cases remain unresolved suggests that the Cadastral Commissions are struggling to deal with the large volume of cases before them. Furthermore, many land disputes are not being referred to the Cadastral Commission at all. Figures are difficult to obtain, but in 2005, it was estimated that as many as one in every fifteen households in Cambodia was involved in a land dispute.<sup>131</sup> One recent study which reported on data gathered by civil society groups across Cambodia shows that, of 173 land disputes reported during the first six months of 2008:

- 68% involved local authorities;
- 76% involved defendants who used a combination of corruption, power or deceit to acquire the land under dispute; and
- 64% involved reports of threats, violence and intimidation by defendants towards complainants during the case's duration.<sup>132</sup>

One World Bank study found that people involved in disputes often avoid filing complaints as “[f]ormal institutions of justice such as the Cadastral Commissions or the courts were perceived as costly, time consuming and biased toward the rich.”<sup>133</sup> A 2006 GTZ/World Bank review of the Cadastral Commissions found that “27 percent of all parties surveyed reported that informal fees or gifts changed hands in relation to their case before the CC.”<sup>134</sup> The same report also states that informal fees paid to the Cadastral Commission were usually lower than for other government services.

Regular media reports indicate many individuals and communities unable to access dispute resolution mechanisms have to resort to public demonstrations in order to highlight land disputes.<sup>135</sup> In the absence of meaningful access to a dispute resolution mechanism, communities involved in land disputes are increasingly turning to advocacy and direct action to challenge displacement and land-grabbing. In reaction to this trend, community leaders and activists are increasingly being charged with criminal offences, such as defamation, incitement, disinformation, criminal damage and assault, often with little or no evidence being produced against them.<sup>136</sup>

### 6.3 Support to disadvantaged parties

The LMAP PAD acknowledges that dispute resolution mechanisms in Cambodia invariably favour the rich. To address this imbalance the project committed to provide legal aid to disadvantaged parties involved in land disputes:

The parties who will bring their disputes before the Commission have vastly unequal resources to devote to pressing their claims. The poor will be at a critical

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<sup>131</sup> Oxfam GB, ‘*Land and Fishery Program: Land Holding in Cambodia*’ (Unreleased Draft Report), March 2007, page 1.

<sup>132</sup> NGO Forum Cambodia – Land Information Centre, ‘*Statistical Analysis on Land Disputes Occurring in Cambodia 2008*’, 2009, page 6.

<sup>133</sup> World Bank and Centre for Advanced Study, ‘*Justice for the Poor? An Exploratory Study of Collective Grievances over Land Local Governance in Cambodia*’, October 2006, page 37.

<sup>134</sup> World Bank, Centre for Advanced Study, and GTZ, ‘*Towards Institutional Justice? – A Review of the Work of Cambodia’s Cadastral Commission in Relation to Land Dispute Resolution*’, October 2006, page xii.

<sup>135</sup> See for example: LICADHO press release, ‘*Villagers flock to Phnom Penh as land crisis continues*’, May 2008.

<sup>136</sup> Amnesty International, ‘*Cambodia: A risky business – Defending the right to housing*’ September 2008, page 2.



disadvantage if they cannot access legal assistance. The project will provide this assistance, seeking to level the playing field by funding an expansion of the activities of national legal NGOs currently providing such legal assistance to the poor...The project will provide funds for the MLMUPC to contract with selected legal NGOs for investigation, counselling and representation services for the disadvantaged.<sup>137</sup>

In recognition of the importance of this aspect of the project, the PAD also states in the *Sustainability and Risks* section that a critical risk is that the “Government lacks commitment to ensuring dispute resolution mechanisms function efficiently and fairly.” The corresponding *Risk Mitigation Measure* was to “maintain an active dialogue with government and development partners to remain abreast of changes in commitment.” The project would be “scaled back if commitment to a fair process of dispute resolution is inadequate.” This risk was rated as “substantial,” and as can be seen, this rating was well founded.<sup>138</sup>

To date, almost seven years since the project commenced, legal aid has never been provided through LMAP. Several organisations expressed interest in filling this role, including the legal NGO Community Legal Education Centre (CLEC). CLEC submitted an expression of interest in March 2008. In early March 2009, the procurement agent responsible for this consultancy sent an email stating the request for expressions of interest issued over a year earlier had been cancelled. The authors understand that this is due to an error made by the procurement agency during the procurement process. However, even in light of this, the fact that procurement did not commence until so late in the project is of serious concern. As stated in the World Bank ERM report, “unless land right claimants are duly informed and assisted by competent lawyers, they may not be in a position to stand and defend adequately their cases before the Cadastral Commission.”<sup>139</sup>

## 6.4 Deviation from legal procedure

The need for representation and support for the disadvantaged is made more pertinent by the dispute resolution mechanism’s frequent deviations from correct legal procedure. NGOs have stated at consecutive Cambodia Development Cooperation Forum (CDCF) meetings that many applications to the Cadastral Commission are not resolved in accordance with the procedures stated in the relevant sub-decrees.<sup>140</sup>

For example, when the Group 78 community initially applied for sporadic title based on their documented legal possession rights, the area was found to involve disputed land and requests for title were denied. A complaint filed by the community to the municipal Cadastral Commission in 2006 was ignored. The community subsequently complained to the national level, which referred the case back to the municipal Cadastral Commission. Over two and a half years later, the municipal Commission had still not investigated or reported on the case, and had yet to arrange a meeting between the parties in dispute.

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<sup>137</sup> LMAP PAD, page 38.

<sup>138</sup> LMAP PAD, page 24.

<sup>139</sup> World Bank Enhanced Review Mission, ‘*Cambodia Land Management and Administration Project – Enhanced Review Report*’, July 2009, page 4.

<sup>140</sup> NGO Forum Cambodia, ‘*NGO Position Papers on Cambodia's Development in 2007-08*’, November 2008, page 69.

When the final eviction notice was issued by the MPP, the community filed another complaint with the Cadastral Commission and complained to the Court of Appeal to grant an injunction to postpone the eviction until a decision was made on its legality. The Court of Appeal upheld the Municipal Court's decision not to issue an injunction and ruled that this was beyond the jurisdiction of the Court of Appeal and must be resolved by the Cadastral Commission. On July 17 2009, almost 3 years after filing the first complaint to the Commission, the remaining community members were evicted. The Commission finally issued a response on July 28, stating that in light of the four compensation deals approved by the RGC, the Commission had “no competence to resolve the issue.”<sup>141</sup> This episode is indicative of a serious departure from legal procedures set out in the sub-decree regarding the functioning of the Cadastral Commissions.

Such departures from legal procedure and lack of independence of the Cadastral Commission can be observed in multiple cases involving powerful or well-connected individuals and companies. Cases in Phnom Penh Thmey, Reak Reay and G78 (Phnom Penh), Sre Ambel (Koh Kong) and Sambo (Kratie), each involving many hundreds of families who have claims to be recognized as legal possessors, all exemplify the dispute resolution mechanism's inability to resolve high profile land disputes. The 2006 GTZ/WB report cited above also states that “[t]he CC has resolved few cases involving powerful people or numerous parties,” and noted that many such cases are not actually being filed with the CCs even though they may technically fall within its jurisdiction.<sup>142</sup> In an interview with a PMCC official cited in this report, the official states (speaking in 2006) that since 2004 people have lost confidence in the CC: “Generally, people who want conciliation are those who have no money; the rich are happy to wait or go to court, particularly if they are in possession of the land. Mainly, we have disputes between the poor here [at the CC].”<sup>143</sup>

## 6.5 A fair and transparent dispute resolution mechanism?

LMAP development partners are aware of these problems, and, as can be seen in supervision documents obtained by the authors, have called for an improvement in dispute resolution of multi-party cases as early as October 2004. The July 2009 statement, *Development Partners Call for Halt to Evictions of Cambodia's Urban Poor*, referenced earlier, calls on the RGC to stop evictions “until a fair and transparent mechanism for resolving land disputes is put in place.” This statement, which was signed by seven embassies and bilateral development agencies, the Delegation of the European Commission, the United Nations, the World Bank and the Asian Development Bank suggests a growing consensus that the CC is still failing to meet acceptable standards.<sup>144</sup>

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<sup>141</sup> Letter N°763 from MLMUPC and National Cadastral Commission to residents of Group 78, ‘Re: Request for Intervention with the Phnom Penh Municipal Cadastral Commission’, July 28 2009.

<sup>142</sup> World Bank, Centre for Advanced Study, and GTZ, ‘Towards Institutional Justice? – A Review of the Work of Cambodia's Cadastral Commission in Relation to Land Dispute Resolution’, October 2006, page 9.

<sup>143</sup> Ibid, page 16.

<sup>144</sup> The statement can be viewed on the World Bank website:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:22247170~menuPK:293861~pagePK:2865066~piPK:2865079~theSitePK:293856,00.html> (accessed September 2009).

Beyond this, the jurisdiction and effectiveness of the National Authority for Resolution of Land Disputes (NARLD) is unclear. The NARLD is not part of LMAP and according to the royal decree which established it, has jurisdiction over cases which are “beyond the jurisdiction” of the Cadastral Commissions.<sup>145</sup> However, according to Cambodian law, any cases beyond the scope of the Commission should be heard by the courts.<sup>146</sup> The NARLD has no established rules or procedures and is made up of senior government officials, including senior police and military figures,<sup>147</sup> whose background and positions, it could be argued, make them ill suited for this important and sensitive role. LICADHO estimates that more than 3,500 families were involved in land disputes involving the military or police in 2008.<sup>148</sup>

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<sup>145</sup> Royal Decree Establishing the National Authority for Resolution of Land Disputes 2006, Article 3.

<sup>146</sup> Joint prakas of Ministry of Justice and MLMUPC on Determination of Competence of the Court and Cadastral Commission Regarding Land Disputes 2003.

<sup>147</sup> See The Cambodia Daily, ‘*Controversial Land Dispute Resolution Team Has New Leadership*’, 5<sup>th</sup> November 2008; The Asian Human Rights Commission ‘*Cambodia 2008: A turn for the worse?*’ December 2008, page 6.

<sup>148</sup> Phnom Penh Post, ‘*3,500 families affected this year by land grabs involving army*’, 29 December 2008.

## **Recommendations regarding strengthening mechanisms for dispute resolution**

A key component of improving tenure security and a key factor in the success or failure of any land administration program is the existence of a functioning dispute resolution system. Such mechanisms must be fair, transparent and resolve disputes in a timely fashion, in accordance with rules and procedure and without regard for socio-economic or political status of complainants. The following recommendations could assist in working towards achieving this aim:

1. The power to adjudicate disputes should be decentralized and granted to Provincial/Municipal Cadastral Commissions if conciliation is not possible. There should be a prioritisation of resources to support the Provincial/Municipality Cadastral Commission Offices to fully implement their new decision-making roles. This would require an amendment to the sub-decree on the functioning of the Cadastral Commission.
2. Since 2008, the National Cadastral Commission Secretariat (with support from GTZ) has been supporting Mobile Teams to resolve disputes around the country. These mobile teams have been more efficient at resolving disputes and have resolved a higher percentage of disputes than the CC as a whole. Providing that these improved results are the result of better training and salary incentives, rather than deviations from legal procedure, these results are to be welcomed and support should be continued and increased.
3. All parties involved in a dispute must have equal access to dispute resolution mechanisms, and should not be prevented from filing complaints against powerful or well connected individuals. All cases must be judged according to their merit, not the status of the parties involved. There should be a meaningful grievance mechanism for those who believe that a rejection of their complaint is unjust.
4. Any credible reports of deviations from the legal procedure by the Cadastral Commission should be investigated. If it is found that procedure was not followed, the officer(s) responsible should face appropriate penalties.
5. Dispute resolution bodies must have transparent recruitment procedures including appropriate requirements relating to qualifications of potential decision makers. Conflict of interest policies must be drafted and followed before appointing new members of any dispute resolution body.
6. The fee structure for accessing dispute resolution mechanisms must be clear and widely publicised.
7. Public awareness of the roles and responsibilities of all levels of the Cadastral Commission, and Commission staff needs to be improved. The draft LASSP framework includes plans for public awareness to be conducted throughout the whole country. This plan should include raising awareness about land rights as a means of pre-empting and preventing conflicts. This should incorporate discussions regarding the achievements and challenges encountered in land dispute resolution to date, and what rights people have when involved in a dispute over their land.
8. As with other PACP activities, LMAP/LASSP should prioritize identifying appropriate civil society groups to deliver awareness raising programs, and to

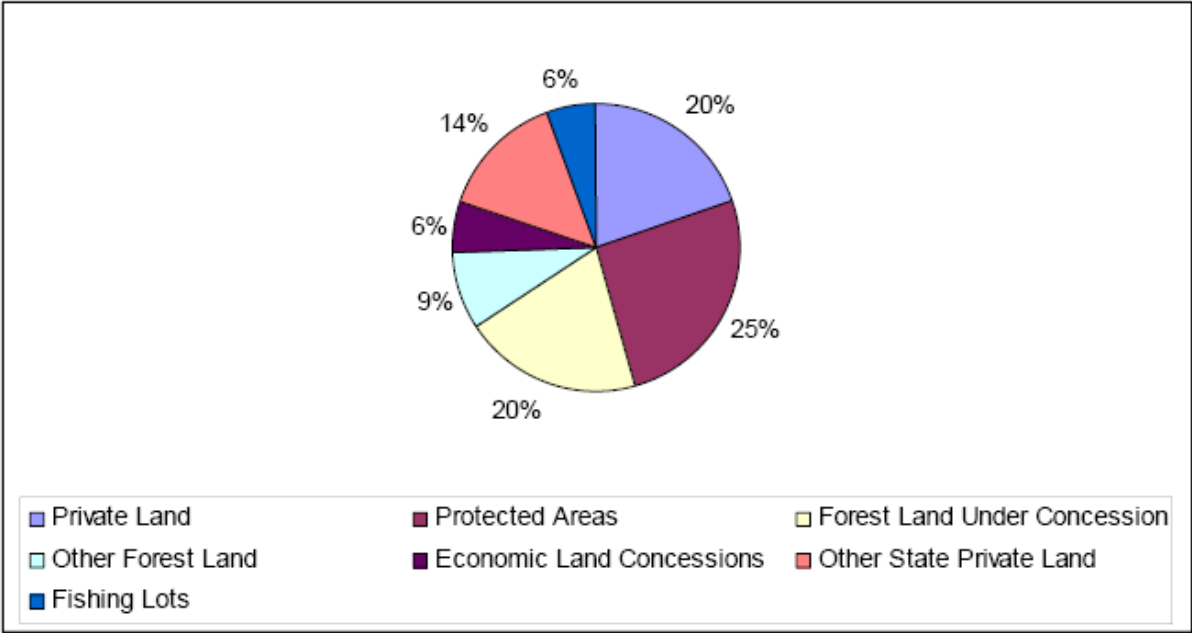
support the delivery of PACP as soon as possible.

9. Legal aid should be provided to ensure communities are adequately represented in proceedings in the Cadastral Commission and the courts. One outcome listed in the draft LASSP framework provides that appropriate organizations will be identified and supported to provide legal aid in all provinces. The effective implementation of this recommendation is dependent upon access to legal representation for disadvantaged parties. A commitment to contract legal NGOs to provide such support should therefore be given renewed emphasis as a matter of the highest priority.

## 7. State land management

LMAP also aimed to support the MLMUPC in carrying out State land management. Specifically, Component 1 of the LMAP project concerns the development of land policy and regulatory framework, including the policy and legal framework for land management.<sup>149</sup> Component 5 focuses on land management, aiming to clarify procedures for defining different types of land and to create land classification maps for all project provinces.<sup>150</sup>

As State land currently accounts for such a large proportion of Cambodia’s total land it is crucial that there is an efficient and transparent system of land management in place. A legal framework and policy which is clear, transparent and enforced is vital for any land administration project to succeed. A 2006 report by GTZ concluded that only 20% of Cambodia’s land is private property (including titled land and possessed land which has not yet been formally titled), which means the vast majority of remaining land is State property in one form or another:<sup>151</sup>



Despite the passage of the 2001 Land Law and a number of sub-decrees related to State land management, there is still little evidence of a coordinated and transparent land management system in place. Consecutive LMAP supervision reports have assessed this component as performing poorly. The January 2009 draft supervision mission report states that during the review period here were no activities under this component took place. The World Bank ERM found that after drafting of a prakas on State land identification and mapping,<sup>152</sup> all remaining activities under this component were cancelled.<sup>153</sup>

State land management is an extremely complex issue (and one apparently much more complex than the designers of LMAP originally envisioned). Land management requires

<sup>149</sup> LMAP PAD, page 34.  
<sup>150</sup> LMAP PAD, page 38.  
<sup>151</sup> GTZ, ‘Overview of Major Legal Categories of Lands and Waters in Cambodia. GTZ: Phnom Penh’, 2006.  
<sup>152</sup> Prakas N°42 on Identification, Mapping and Classification of State Land, 2006.  
<sup>153</sup> World Bank Enhanced Review Mission, ‘Cambodia Land Management and Administration Project – Enhanced Review Report’, July 2009, page 5.

the involvement and cooperation of multiple Ministries and institutions, including the MLMUPC, MAFF (including the Forestry Administration and Fisheries Department), the MEF, municipal/provincial authorities and others. The following concerns and recommendations are not necessarily aimed exclusively at LMAP, or even the MLMUPC, as both may play a smaller role compared to other ministries in the intricate system of governance in Cambodia of which State land management is a part. However, regardless of whether some of the concerns raised below fall within the remit of LMAP, and whether or not the MLMUPC has the power to remedy them, they cannot be ignored. Increased transparency and accountability is essential for the protection and effective management of State land, and in turn the success of LMAP and any subsequent land administration and management programs. Plans are currently being made for a Land Management Sub-Sector Program (LMSSP), which will focus on State land management. It is essential that a key component of LMSSP is to improve inter-ministerial cooperation. It is also imperative that the design of this program be developed in consultation with all relevant stakeholders, including civil society.

## 7.1 Lack of implementation of existing law

*Sub-decree N°118 on State Land Management* was passed in 2005. The sub-decree creates a system for mapping, classifying and registering State land, and also includes provisions for establishing a publicly accessible State Land Map and Database. This was followed and supplemented by *Prakas N°42 on Identification, Mapping and Classification of State Land* in 2006.

Although there has been progress towards the Component 1 aim of drafting and issuing a legal framework and policy for land management, in practice the provisions of the framework and procedures it creates are largely unimplemented. For example, Sub-decree N°118 requires that all State lands be identified, mapped and entered into the State Land Map and Database before being added to the Land Register. It provides that during the process of State land classification there should be opportunity for public consultation and comment, and members of the public should have the right to view the Map and Database.<sup>154</sup> The sub-decree explicitly states that State land identification, mapping and registration should be a “co-ordinated and transparent process.”<sup>155</sup> To date, there is little or no public involvement in the system, and if any State land database exists, it is not available for public viewing. As a recent World Bank investigation found:

This is a real source of concern for those under threat of eviction because absent these maps, the relevant municipal [or provincial] authority can exclude from titling any portion of land surveyed and proposed for adjudication by the cadastre team and therefore titling it, implicitly, in the name of State. In fact, the absence of State land mapping is identified as important shortcoming that needs to be addressed for LMAP to succeed and help solve land conflicts and security of tenure.<sup>156</sup>

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<sup>154</sup> Sub-decree N° 118 on State Land Management 2005, Article 12b.

<sup>155</sup> Sub-decree N° 118 on State Land Management 2005, Article 6.

<sup>156</sup> World Bank Enhanced Review Mission, *Cambodia Land Management and Administration Project – Enhanced Review Report*, July 2009, page 6.

Despite commitments from the RGC to fully implement Sub-decree N°118, little progress is evident. This has resulted in the improper classification of land as State private property for the purpose of facilitating commercial development projects, including the large scale granting of economic land concessions, many of which do not comply with provisions of the Land Law or with the *Sub-decree on Economic Land Concessions*. In turn, these actions have led to forced evictions, land alienation, and the loss of residential land, farmlands and public spaces. As observed in the RGC's *Interim Strategy of Land Policy Framework Paper* of 2002:

Land use planning is not clearly identified and is not properly managed...which leads to accelerated land grabbing and destruction of forests. Many agricultural concessions are unused or inappropriately used. Illegal clearing of forest is widespread. Encroachment onto environmentally sensitive and protected areas is occurring.<sup>157</sup>

It is apparent that this statement remains accurate seven years on, potentially even further exacerbated by inconsistencies and contradictions between Sub-decree N°118 and other subsequent enactments in the legal framework. For example, Sub-decree N°118 gives authority for mapping *all* State lands to the MLMUPC, but Sub-decree N°53<sup>158</sup> apparently gives the authority for demarcating and mapping forest land (which is by definition State public land) to the Ministry of Agriculture, Farming and Fisheries.

It is of serious concern that although the LMAP PAD allocated \$2.8 million toward Component 5 (on State land management), the RGC has largely failed to implement this essential component of the project. As of the end of 2009, this Component will no longer be part of LMAP/LASSP, and will become its own sub-sector program, LMSSP. This program is still undeveloped and it is not clear if development partners will support both the design and implementation of this crucial program.

## 7.2 Lack of transparency

As already stated, Sub-decree N°118 specifically states that all State land mapping activities should be transparent and co-ordinated. However, there is presently little or no public consultation and transparency in the mapping and classification process, and no public access to State land maps. Instead, property is apparently classified or reclassified according to the authorities' wishes to sell, lease or grant concession on the land.

In 2006, Royal Decree N°339<sup>159</sup> and Sub-decree N°129<sup>160</sup> were passed to redefine the procedure for *reclassifying* State public property into State private property. These two instruments were not part of LMAP, and to the best of the authors' knowledge Ministry of Land staff did not have input into their drafting. It is of considerable concern that these instruments, issued after the *Sub-decree on State Land Management*, and therefore superseded it,<sup>161</sup> appear to have made the procedure for reclassifying State property much

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<sup>157</sup> Council for Land Policy, *Interim Strategy of Land Policy Framework*, 2002, page 8.

<sup>158</sup> Sub-decree N°53 on Procedure for Classification and Registration of Permanent Forest Estate 2005.

<sup>159</sup> Royal Decree N°339 on Principles and Transitional Provisions on Transferring Public Properties of the State and Legal Entities 2006.

<sup>160</sup> Sub-decree N°129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities 2006

<sup>161</sup> Sub-decree N°129, Article 42, "All provisions that do not comply with this sub-decree, must be abrogated."



less rigorous and transparent (see for example the Boeung Kak case study below). One 2007 LMAP supervision mission report expressed the mission's concern that Sub-decree N°129 is "in effect a de facto economic concession mechanism." Cambodian lawyers and Cambodian constitutional and administrative law experts have raised doubts regarding the legitimacy of this sub-decree, as it seems to take its authority from the royal decree that was passed simultaneously. This manipulation of the regulatory process is a serious concern, and has the potential to undercut the LMAP aim of establishing a regulatory framework for State land management consistent with the 2001 Land Law. It also has implications for the future success of the Land Management Sub-Sector Program (LMSSP).

Lack of transparency and a failure to implement an adequate legal framework has contributed to the loss of public spaces in both urban and rural settings, as well as the large-scale depletion of the country's natural resources, especially forests. It has also dramatically and disproportionately affected the poorest Cambodians throughout the country. Rural farming communities have been deprived of land that had provided them with a means of subsistence, in order to make way for economic land concessions and other private developments. Indigenous communities (who, in the absence of a complete legal framework for granting title, are currently living on State land)<sup>162</sup> have lost residential and farm land and had their spirit forests and burial grounds razed, contributing to the potential extinction of their ancient cultures. In addition, threatened urban communities with possessory rights under the 2001 Land Law have been denied the opportunity to secure their land tenure despite their legal entitlements, with authorities wrongly labelling them as illegal squatters living on "State land."

The lack of an accessible register of State land is also a barrier to communities applying for Social Land Concessions (SLCs). SLCs represent a progressive policy with the potential to ensure access to land and security of tenure for those most in need, if implemented in accordance with the law. Critically, SLCs may only be granted on State private property.<sup>163</sup> Without comprehensive State land mapping and accessible State land maps, the allocation of SLCs will not progress at an adequate pace.

### **Case Study: Boeung Kak, Phnom Penh**

Boeung Kak is a large lake in the north of Phnom Penh. The lake and surrounding land is home to over 4000 families.<sup>164</sup> The Land Law states that lakes are State public property because they have a "natural origin" and they also serve a public purpose.<sup>165</sup> Boeung Kak plays an integral role in the city's drainage system, and until recently, sustained the livelihoods of hundreds of families who harvested snails, fish and water vegetables on the lake itself.<sup>166</sup>

Rumours of impending development of the land circulated for several years, with residents on or around the lake being told they had no rights to the land on which they

<sup>162</sup> Sub-decree on Procedures of Registration of Land of Indigenous Communities 2009, Article 6.

<sup>163</sup> Land Law 2001, Article 58.

<sup>164</sup> According to the census conducted by the Government and referred to in the lease agreement, 4250 households are affected. A working group of NGOs, conducted a survey of the Boeung Kak residents and identified a total of 3832 families, although the survey was incomplete because it was unable to access certain affected areas.

<sup>165</sup> Land Law 2001, Article 15.

<sup>166</sup> Benham, S. and Caddis, B., *Boeung Kak Area Drainage and Flooding Assessment*, March 2009, page 1-1.

have lived in some cases for up to 20 years, because it is State property. This is despite the fact that a majority of residents have been implicitly recognized by local authorities since the 1990s through the issuance of house numbers, family books, small infrastructure improvements and the witnessing of land sale contracts. The majority of residents live *around* the lake, which in many cases does not come under the definition of State public land as specified in the 2001 Land Law.<sup>167</sup>

In a 2005 letter from the Council of Ministers to the Governor of Phnom Penh, the RGC agreed in principal to the development of the Boeung Kak area by private company Shukaku, Inc. The same letter said that action must be taken to “resolve the squatter problems.”<sup>168</sup>

In 2006, the commune of Sras Chok, Daun Penh district, including the area surrounding Boeung Kak lake, was announced as an adjudication zone for the purposes of systematic land registration under LMAP. The announcement was made by public notice in the local pagoda. Residents state that when they requested that their land claims be investigated, their requests were denied on the grounds that they were living inside a “development zone.”<sup>169</sup> This process deviates from the legal procedure developed by LMAP and adopted by the Royal Government of Cambodia. The procedure states that following notice and a public meeting, full investigations should be conducted of the adjudication area. Any competing claims to the land must be resolved in the process, and if this is not possible, they should be referred to the Cadastral Commission for resolution.<sup>170</sup>

No complaints were heard, and according to documents obtained from the World Bank, the cadastral map was posted for public display in early January 2007. Later that month, the Municipality signed an agreement to lease the lake and surrounding land for 99 years to a private company for \$79 million dollars. According to Sub-decree N°129, leases of over 15 years cannot be granted over State public property.<sup>171</sup>

A letter was sent from the Phnom Penh Department of Land Management to the MPP in July 2008 informing the Governor of Phnom Penh that the lake and surrounding area had “been studied and demarcated” and the boundaries of the development area set at 133 hectares.<sup>172</sup> This includes the approximately 90 hectares of lake plus the surrounding area.

On August 7, 2008, (6 months after signing the lease) a sub-decree was passed that transferred 133 hectares, including the lake and surrounding area, from State public to State private property.<sup>173</sup>

The legality of the transfer of Boeung Kak from State public to State private property is questionable for several reasons. First, the lake is by definition State public property as it

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<sup>167</sup> According to the 2006 MLMUPC *Decision to Add the Text on Criteria for State Land Classification as an Annex of Prakas N°42*, the body of a lake is State public property, which extends to the dry season water line (Article II), the banks of a lake “shall be classified as State private, except those parts with a clear public use or public interest.”

<sup>168</sup> Letter N°1274 Office of the Council of Ministers, ‘*Subject: Your request for permission in principle to develop Boeung Kak by Shukaku Inc.*’, August 2005.

<sup>169</sup> Interviews with residents of Village 6, Sangkat Sras Chok, Khan Daun Penh, August 2009.

<sup>170</sup> Sub-decree N°46 on the Procedures to Establish Cadastral Index Map and Land Register, 2002.

<sup>171</sup> Sub-decree N°129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities 2006, Article 18.

<sup>172</sup> Letter N°965 Phnom Penh Department of Land Management, ‘*Boundary demarcation of Boeung Kak development area*’, July 2008.

<sup>173</sup> Centre on Housing Rights and Evictions, ‘*Legal Analysis of the Boeung Kak Lake Case*’, December 2009, page 1.

is of natural origin, and therefore should not be subject to transfer to State private property. Second, if the land were of a type that could be transferred (for example, a disused hospital or old administrative building), the land can only be reclassified if it has outlived its public use, which Boeung Kak has not – it is one of Phnom Penh’s biggest natural rainwater retention systems. Many observers see the sub-decree as little more than an attempt to retroactively legitimize the original, long-term lease agreement.

On 10 August 2009, more than 150 households in Boeung Kak villages 2 and 4 were issued their first formal eviction notice, providing residents with a one-week deadline to accept one of three compensation options.<sup>174</sup> Compensation options include USD \$8,500 or a flat at Damnak Troyeung relocation site (more than 20 kilometers outside of the city-centre). The third option of onsite housing required that residents move to Trapeang Anchanh relocation site (also more than 20 kilometers outside the city) for four years while permanent replacement housing is constructed in Boeung Kak. None of these compensation options fulfil international law obligations regarding evictions<sup>175</sup> and have been deemed inadequate by affected persons.<sup>176</sup> Many of these households, and many of the estimated three thousand households in the other Boeung Kak villages, have well-documented legal possession rights.<sup>177</sup> They are now facing the demolition of their homes without having their right to apply for title being realized by LMAP, and with no meaningful access to dispute resolution mechanisms.

As stated above, the Sras Chok adjudication records were publicly displayed in early January 2007, the same month that the Boeung Kak area was leased to a private company by the Municipality of Phnom Penh. It is unclear whether formal registration of the land to the State occurred. However, it is apparent that the adjudication process at least resulted in a *de facto* determination of the status of the land to be State-owned. Upon entering into the lease agreement, the MPP claimed in the media that the area was “State land”.

The Boeung Kak case serves as a pertinent example of the dangers of uneven implementation of the existing regulatory framework, and apparent manipulation of the land classification system in order to serve powerful interests. If the legal framework drafted by LMAP for State land management and systematic titling were followed in this case, legal possessors in the Boeung Kak area should have been issued titles, giving them a stronger claim to fair and just compensation under the law.

In the absence of transparent implementation of an adequate framework and policy for State land management, land will continue to be sold and leased wholesale to private interests, natural resources will continue to be depleted, and communities most in need of tenure security will become even more vulnerable.

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<sup>174</sup> Notification N°180, District Governor of Daun Penh District, August 2009.

<sup>175</sup> United Nations Committee on Economic, Social and Cultural Rights, General Comments 4 and 7.

<sup>176</sup> Interviews with residents of Boeung Kak villages 2, 4, 6, and 22, August 2009.

<sup>177</sup> According to the earlier referenced NGO survey at Boeung Kak, of those interviewed, 2233 families identified themselves as having possessed the land prior to 2001 or purchased the land from somebody else who did (although some of these households may be disqualified from receiving title because they live directly on the lake, which is State public property). Another 986 families identified themselves as renters. It can be assumed that many of the homes occupied by renters at the time of the survey were also owned by landlords who were legal possessors.

The draft LASSP framework states the program will result in, *inter alia*, “[a]nd law, policies and related regulations [being] *properly applied* by relevant ministries and institutions” [emphasis added].<sup>178</sup> Safeguards and monitoring systems must be put in place to ensure these laws and procedures are in fact “properly applied.” Without a genuine commitment to implementing State land management reforms, efforts to improve tenure security for Cambodians will continue to be hampered, and those most in need of tenure security will continue to be subjected to land-grabbing, disputes and forced evictions.

### 7.3 Evictions of people living on State property

There are sometimes legitimate cases in which people living on State public property need to be resettled. Such cases include areas that must be cleared of residential housing for a genuine public interest reason, for example, from unsafe river banks, sides of public roads which need to be expanded, parks that require preservation for public use, or for construction of public service buildings, such as schools and hospitals. We acknowledge that illegal occupation of State land is an issue in Cambodia, however, forced evictions are not an acceptable solution to this problem. In recognition of this, the design of LMAP included safeguards for protecting the rights of those who may legitimately need to be relocated because they are living unlawfully on State land.

The LMAP design recognized the potential for negative impacts on people stemming from three possible sources during LMAP’s implementation.<sup>179</sup> These sources included the “potential eviction of people from State land.”<sup>180</sup> As such the credit agreement on LMAP between the RGC and the World Bank stipulated that the RGC is required to carry out the project in accordance with the measures described in the project’s Environmental and Social Guidelines.<sup>181</sup>

The Guidelines contain a Resettlement Policy Framework that applies to situations in which people are to be evicted from land as a result of it being classified and registered as State land under the project.<sup>182</sup> The policy framework is based on the World Bank Operational Directive *OD4.30* on Involuntary Resettlement and states that the general principles and objectives on involuntary resettlement are as follows:

1. Land acquisition, involuntary resettlement and other negative impacts are to be minimized as much as possible by exploring alternative sub-project designs.
2. The resettlement and rehabilitation program should improve, or at least maintain, the affected person’s pre-project living standards and should warrant their participation in project benefits.
3. The compensations to be provided are:

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<sup>178</sup> Draft LASSP Framework, page 3.

<sup>179</sup> LMAP PAD, page 20.

<sup>180</sup> World Bank & Royal Government of Cambodia, *Credit Agreement (Land Management and Administration Project) between Kingdom of Cambodia and International Development Association*, March 2002, Schedule 4, III.

<sup>181</sup> *Ibid.*

<sup>182</sup> Land Management and Administration Project, *Environmental and Social Safeguards (Draft)*, October 2001, page 4-8.

- a. Compensation at replacement cost for houses and other affected structures without deduction for depreciation or salvage materials for houses and other structures
  - b. Compensation in terms of land for land of equal productive capacity acceptable to affected person for agricultural land (where land is not available, compensation is to be provided in cash at replacement cost)
  - c. Replacement of premise/residential land of equal size acceptable to the affected person
  - d. Transfer and subsistence allowance when appropriate.
4. Plans for acquisition of land and other assets and provision of rehabilitation measures will be carried out in consultation with the affected people, to ensure minimal disturbance.<sup>183</sup>

While the RGC has now terminated its agreement with the World Bank, a Resettlement Policy Framework such as this should apply whenever evictions from areas classified as State land are necessary. In effect this means that, as required by international law, 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 implementation of the policy, in conjunction with the proper implementation of State land management, would avoid or reduce many of the land rights problems faced in Cambodia today.

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<sup>183</sup> Land Management and Administration Project, *Environmental and Social Safeguards (Draft)*, October 2001, page 4.

## Recommendations regarding State land management

There is a lack of meaningful implementation, and some apparent contradictions, in the existing legal framework for State land management. In order to resolve this problem, it is necessary that:

1. The practice of *de facto* State land classification by local authorities during the adjudication process must end. State land should be identified, demarcated, and registered through a transparent process, in accordance with procedures laid down in the Sub-decree on State Land Management, prior to or simultaneously with private individual titling.
2. When systematic State land registration takes place and leads to the resettlement of people living on State public land, a national resettlement policy consistent with international standards must be adopted and implemented to protect the housing rights of affected households. The policy should stipulate that evictions shall be avoided whenever possible and if any households must be relocated from State land, and that resettlement be carried out in a manner consistent with the original LMAP Environmental and Social Guidelines. Grievance mechanisms must be strengthened to ensure they are effective in providing remedies for affected persons. Supervision and monitoring should be carried out transparently by donors with the engagement of civil society groups.
3. Once mapping and registration of State land commences, the Sub-decree on State Land Management must be respected and implemented in all State land mapping activities. This includes, but is not limited to, provisions relating to community consultation and requirements that all activities be conducted in a transparent and participatory manner.
4. As a matter of priority, the State Land Map and Database should be made public.
5. An independent review of Sub-decree N°129 should be conducted to determine if it was passed according to the necessary legal procedure, whether it is compatible with the Land Law and whether it has the ability to overrule the more comprehensive reclassification process detailed in Sub-decree N°118. At present, several ministries and departments have a role in the State land management process making it essential that this review is followed by the requisite harmonization of processes, ensuring that the roles and responsibilities of the different bodies are clarified and that inter-ministerial cooperation is improved.
6. After this review, there should be a commitment to review cases of reclassification of State public land that have occurred since the passing of this legal framework. If any such cases are found not to comply with the Land Law and associated sub-decrees, any contracts or concession already granted on the land should be reviewed. All investigations should be conducted in a transparent manner and seek to involve affected communities and civil society.
7. As a matter of high priority, full and transparent investigations should be conducted of cases where adjudicated communities have been denied title on the grounds that they are residing on State property, for example in sangkat Sras Chok in Phnom Penh. Households denied title on such grounds should have access to an effective grievance mechanism, and if they are found to have been negatively and unjustly

affected by the titling program, they should be compensated in accordance with the LMAP Environmental and Social Guidelines.

8. All relevant stakeholders should be involved in the design and implementation of the proposed Land Management Sub-Sector Program (LMSSP). This includes relevant ministries and departments, as well as civil society, and representatives of communities who will potentially be affected. LMSSP must be designed and implemented in cooperation with *all* stakeholders.

## 8. A case study on Dey Krahorm, Phnom Penh

The case of Dey Krahorm illustrates well how many of the problems identified in this report are negatively impacting on some of Cambodia's most vulnerable communities. This case is not an anomaly and should not be viewed in isolation. Many more communities throughout Cambodia continue to be excluded from the land registration process and live without secure tenure.

On January 24<sup>th</sup> 2009, the residents of Dey Krahorm in the Tonle Bassac commune of Phnom Penh were forcibly evicted, losing their struggle to keep their homes and land, in the absence of fair compensation. From around 2am, approximately 300 uniformed police and military police and at least 300 plain clothes "breakers" began to arrive at Dey Krahorm to block off the area. The eviction and demolition of all houses and property on the site began at 6am and was completed by noon. More than 400 families were evicted, including approximately 150 households with documented possessory rights as defined by the 2001 Land Law. The other families who were evicted were renters and on-site market vendors who slept at their stalls.

The empty land is now fenced off and surrounded by signs declaring that it is owned by a private company. After the eviction, residents were transported by truck to a relocation site on the outskirts of Phnom Penh called Damnak Trayeung. The company gave single room flats with no water or electricity to those it recognized as possessors (initially approximately 91 families). Over 300 other families have been camped on the side of the road at the relocation site. These families were left homeless and in need of urgent humanitarian assistance. The local primary school is overcrowded and there is no nearby secondary school. The main employment opportunity in the immediate vicinity is a garment factory affiliated with the company that acquired the land at Dey Krahorm, and that also owns the relocation site.

Many of the Dey Krahorm community members began living on the site over 15 years ago. As such Dey Krahorm is a good example of a community whose members should have benefited from a project aimed at improving tenure security for vulnerable households, but instead found themselves forcibly evicted from their land without access to any legal remedy. For a number of reasons, elaborated below, this community never had access to the titling or dispute resolution mechanisms under LMAP or otherwise.

### 8.1 A social land concession?

In 2003, Dey Krahorm was declared a Social Land Concession (SLC) by Prime Minister Hun Sen as part of the Prime Minister's stated commitment to provide tenure security and upgrading to 100 urban poor communities each year. This SLC was approved by the Council of Ministers, which called for a land-sharing arrangement with a private developer alongside on-site upgrading for the community.<sup>184</sup> The plan provided for commercial development on 1 hectare of the site, but also improvement in the living conditions and quality of housing for Dey Krahorm residents on the remaining 3.7 hectares. It should be noted that this original development plan was flawed as Dey Krahorm only covered a total of 3.6 hectares.

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<sup>184</sup> Letter N°875 by Council of Ministers, 'Request for policies for managing the social concession land for residential development for the poor communities of Phnom Penh', July 2003.



In early 2005 unelected community representatives agreed to a total land swap for homes outside Phnom Penh. The Dey Krahom residents were not consulted about the land swap deal, and fired the representatives after learning the details. The next month, the community sent a petition to the MPP thumb-printed by 804 families asking that the contract be annulled. Further complaints and appeals were made to the Prime Minister and other senior officials, the MPP, the MLMUPC and the Phnom Penh Municipal Court, all to no avail.

Legally, SLCs cannot be transferred in this way, but this may be irrelevant as the method used to initially grant the SLC also does not appear to follow the legal procedure set out in the Land Law or the *Sub-decree on Social Land Concessions*. Many residents of Dey Krahom already had lawful possession rights under the Land Law and the appropriate legal mechanism for granting them tenure security would thus be individual titles. Moreover, SLCs cannot be granted on land that is already privately possessed. In this respect, it appears that the SLC mechanism was used as a tool to relocate urban poor families with possession rights so that a private company could acquire their valuable city-centre real estate for commercial gain. The land swap deal was not legally binding because the representatives had no legal capacity to transfer the land on behalf of other households.<sup>185</sup>

## 8.2 Possession rights under the Land Law

As the SLC for Dey Krahom has questionable legality, the residents' main claim for retaining or being adequately compensated for their land was based on their legal possessory rights. At the time of the eviction in January 2009, there were still 150 households claiming legal possession. Many of these households had ample documentation to prove they had resided on the land since well before the Land Law was passed (the cut-off date for legal possession), or documentation showing they bought the land from someone who had lived on the land prior to that date (thus transferring possession rights to the new owner).

Any residents able to prove that they meet the conditions of legal possession as set out in the Land Law have the right to request title, and have such a request processed based on its merit. This legal process did not occur in the case of Dey Krahom, despite residents' attempts to access the titling system (see below). The families were not given the opportunity to negotiate for fair compensation. The best offer put forward by the company was \$20,000, an amount was far below the market value and insufficient to purchase a new comparable property in the city.<sup>186</sup>

The inclusion of provisions for legal possession in the Land Law could, if implemented consistently, create a stable and secure system of transitional tenure security until comprehensive land titling is completed. Instead, Dey Krahom is another example of the selective application of Cambodia's Land Law framework. If primary legislation such as the Land Law is implemented selectively, there is little hope that the instruments further down the legal hierarchy, such as sub-decree and prakas, will be implemented appropriately either.

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<sup>185</sup> Land Law 2001, Article 66. See Centre on Housing Rights and Evictions, *Legal Analysis of the Forced Eviction of the Dey Krahom Community*, 29 January 2009, page 2.

<sup>186</sup> Since late 2008, the price of land in Cambodia has crashed, but the area in which Dey Krahom is situated is still prime real estate. In December 2007 a leading real estate group estimated the total value of the area at around \$44 million.

### 8.3 State private property, State public property or private property?

In the five years preceding eviction, the Dey Krahorn residents were told on several occasions that they were illegally living on State land. Such claims often deny legitimate possessors the right to obtain title or adequate compensation for their land. Dey Krahorn does not fit any definition of State public land as listed in Article 15 of the Land Law. Notably, the suggestion that Dey Krahorn was State public land was dropped around the time that a private company was granted title to the land (see next section), as it would clearly question the legitimacy of any granting of rights to private developers also. The lack of a functioning and transparent mechanism for identifying, demarcating, registering and publicising the location of State public lands continues to negatively impact on communities throughout Cambodia who may have legal rights to the land they reside on.

### 8.4 The community's attempts to obtain title

#### *Systematic titling*

The Dey Krahorn area was never selected for systematic titling, and no titling has been conducted in the Tonle Bassac commune, a prime area for real estate development in central Phnom Penh. There is a clear trend of a lack of systematic titling in inner-city areas, especially those made up of low income households. It is also possible that even if the Bassac area was declared an adjudication zone, Dey Krahorn would have been determined to be an area “likely to be disputed” and therefore not eligible for systematic titling by LMAP.

Had systematic titling been conducted in the Tonle Bassac area, and titles issued to all those with legal possessory rights, it is likely that if an eviction had nevertheless occurred, those in possession of a land title would at least have had a better chance of obtaining fair and just compensation for their land.

#### *Sporadic registration*

Several members of the community attempted to apply for title through the sporadic system in 2008, however these claims were never processed. Despite the community's proactive attempts to gain recognition of their possession rights, they were confronted by numerous obstacles. Initial requests for application forms were refused, and the residents were only able to finally obtain forms because a community member had a contact working for the khan. A number of residents submitted their applications to the sangkat office in December 2008 together with evidence of their possession rights, but their requests for application were not accepted.

#### *Title issued to private company*

In 2006 the private company claiming the land was allegedly issued a title over 2 hectares of the Dey Krahorn land. The body that adjudicated and issued this title did not discuss or investigate any competing claims to the land with residents, who in some cases had lived there for close to 20 years. The title was in fact issued over land that was in large

part legally possessed, which should, under the Land Law, grant a legal possessor a right *in rem* over their land.<sup>187</sup>

The sub-decree for sporadic registration drafted by LMAP establishes thorough procedures for ascertaining who has rights to land being adjudicated. Unfortunately this procedure is only implemented in those areas already covered by the Cadastral Index Maps. Had the updated sporadic titling process been used, this title could not have been legally granted. Any disputes arising during the sporadic registration process should be referred to the District/Kahn Cadastral Commission for conciliation.<sup>188</sup> The dispute should then be dealt with according to the provisions of the *Sub-decree on Organization and Functioning of the Cadastral Commission*.<sup>189</sup> The land cannot be formally registered until the resolution of all disputes is complete.<sup>190</sup>

In inability of long term residents of Dey Krahorn to access the current system, coupled with the apparent ease of access granted to a private company with no clear legal claim to the land, highlights the importance of implementing the new improved sporadic titling procedure across all areas, not just LMAP adjudication areas.

## 8.5 Access to dispute resolution mechanisms

The community attempted to utilize various means to resolve the dispute and keep their land, or at least receive adequate compensation. This included complaints to the court for the cancellation of the land swap contract between the old community representatives and the company, and also a breach of trust claim against the same representatives. The community also complained to the MLMUPC, Cadastral Commission, MPP, and National Assembly, without resolution of the dispute. None of the complaints the community filed were ever resolved by the courts or Cadastral Commission, as should have been done before any title was issued.

Furthermore, in the absence of the provision of any legal aid as should have occurred under LMAP, Dey Krahorn residents had to seek out private legal counsel themselves at great expense.

## 8.6 Community awareness

The residents of Dey Krahorn had very little access to accurate information about both the titling process and dispute resolution mechanisms available to them. In response to this, several NGOs based in Phnom Penh conducted a number of community training workshops on possession rights and applying for title. Trainers found that the participants' existing knowledge of the Land Law and their rights to request title were very low, indicative of the failing of PACP to reach vulnerable communities.

## 8.7 Dey Krahorn and the “dual system”

As the case continued, several officials made statements in local media that the community was ‘anarchic’ and that the land was inhabited by illegal settlers. These claims

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<sup>187</sup> Land Law 2001, Article 29.

<sup>188</sup> Sub-decree N°48 on Sporadic Land Registration 2002, Article 8.

<sup>189</sup> Ibid, Article 10.

<sup>190</sup> Ibid, Article 15.

were not based on any legal definition, and as already discussed, many of the residents had soft title under the pre-existing tenure system and were legal possessors as defined by the Land Law. The fact that the community members did not have hard title was used to support the claim that it was an illegal settlement. The reason possessors at Dey Krahorm did not have titles was because they had no access to the titling system, not because they did not have legal rights. The fact that a powerful company was able to acquire title despite having very dubious claims to the land illustrates the duality of the titling system, and how in practice it can work against the poor and vulnerable.

According to the law, the company was free at any time to make an offer, in the absence of duress or fraud, to the residents to purchase their rights to the land and the residents were free to accept or reject any offer made. Even if the development of Dey Krahorm area was legitimately determined to be a public interest project, neither the company, nor the MPP, were legally allowed to interfere with the residents' possession rights. Pursuant to Article 248 of the Land Law, the area should first have been adjudicated and land plots entered into the Cadastral Index Maps *before* any attempts to expropriate the land.

As the area was not registered at the time the dispute began, it should have been referred to the Cadastral Commission, which should have resolved the dispute in accordance with the law.

Once ownership rights were determined and registered, Article 44 of the Constitution and Article 5 of the Land Law should have protected the owners from being evicted without fair and just compensation being provided to them in advance. If the project was not determined to be in the public interest, the company would again be free to make an offer to purchase ownership rights to the land, in the absence of duress or fraud. The owners would, of course, be free to accept or refuse that offer.

It is clear from this scenario that the legal framework, if implemented properly, would indeed protect the tenure security of vulnerable households without necessarily impeding development of the area.

Instead, Dey Krahorm households could not get hard title and their soft titles and possessory rights were ignored. The community was forcibly evicted without its legitimate rights being recognised. The case of Dey Krahorm highlights the real implications of a number of the land administration system's shortcomings. The system as it is currently stands allows well-connected companies to claim title to land, undermining the legitimate legal rights of poor and vulnerable households, under both the pre-existing tenure system and the Land Law.

## 9. Conclusion

LMAP has had considerable success in several areas, including the number of titles adjudicated in rural areas, development of legal framework for land management and administration, and the increased institutional capacity of the Ministry of Land. Unfortunately these successes are overshadowed by an increase in landlessness, forced evictions, land-grabbing and widespread tenure insecurity in Cambodia. In large part this is the result of a persistent lack of political will to consistently implement the legal framework that LMAP has developed.

This report has outlined the authoring organizations' main concerns regarding the development of Cambodia's land sector. It has done so through an examination of LMAP, which has been the primary focus of land sector development by the RGC and development partners. The report has aimed to offer constructive recommendations for increasing the ability of LMAP, and any successor to LMAP, to improve tenure security for those vulnerable to displacement or other land rights abuses.

The report examines four of the five components of LMAP, calling attention to the need for coherent design and adequate implementation of each component. If one component is inadequate or failing, other components are potentially compromised. Failures in areas such as urban titling or the establishing of a coordinated State land management system undermine tenure security as a whole in Cambodia, and cannot be considered in isolation. This same concern was recognized by the World Bank Enhanced Review Mission. When referring to the failure to implement PACP, legal aid and State land management activities, the ERM report noted that the project has:

[...] deviated from its initial design described in the PAD and DCA [Development Credit Agreement] as a multi-pronged approach to address land issues comprehensively in Cambodia. [...] Well defined and intertwined components and activities of LMAP have been disconnected from each other, with implementation focussing on the most successful parts [...] *while not addressing the other activities that would have helped to fully achieve the LMAP development objective to improve land security* [emphasis added].<sup>191</sup>

It is essential that development partners and the MLMUPC consider this in future evaluations of the project, and that simplistic quantitative outputs are not relied upon to evaluate whether the project is meeting its original goals. Undue focus on the figure of 1,000,000 titles issued overlooks a range of serious problems in the implementation of this project. It does not indicate whether those vulnerable to eviction or loss of land are being served by LMAP, and consequently, whether tenure security is being improved. The LMAP PAD states that indicators of the project's success in achieving an improvement in tenure security would include a reduction in the number and volume of land disputes, land grabbing and landlessness.<sup>192</sup> There is no available evidence that these indicators have ever been used to assess the project. It is likely that if they were, the project would not be rated as 'satisfactory,' as previous supervision missions have done since the project commenced.

As LMAP draws to a close, and the sub-sector programs (LASSP, LMSSP and LDSSP) become the focus of donor support to the Cambodian land sector, there is opportunity

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<sup>191</sup> World Bank Enhanced Review Mission, 'Cambodia Land Management and Administration Project – Enhanced Review Report', July 2009, page 5.

<sup>192</sup> LMAP PAD, page 27.

for the RGC and development partners to renew their commitment to resolving these issues. By working together, with input from civil society, there is hope that many of the problems highlighted in this report may begin to be resolved. There is certainly potential for future projects to make gains where LMAP has struggled to, though serious consideration must be given to setting thorough and meaningful frameworks and performance indicators, and these must be used to evaluate the effectiveness of the projects. For example, the draft LASSP framework states that one impact of the project will be “[r]educed land grabbing and encroachment in titled land,”<sup>193</sup> but gives little indication as to how LASSP will be able to reduce land-grabbing when LMAP could not. The LASSP framework also identifies a number of the areas of concern listed in this report, including urban titling, the proper application of law, policies and regulations, implementation of sporadic registration, improved PACP, and a dispute resolution mechanism that resolves disputes fairly and according to official procedure. As the LASSP design is finalized, stronger and more useful indicators should be included that will assess whether the project aims of reducing poverty, promoting social stability, and reducing land-grabbing<sup>194</sup> are successfully achieved.

At present, much of the LASSP document reflects quite closely the original LMAP PAD. Considering the noted design flaws and multiple instances of non-implementation of LMAP sub-components described in this report, it is not clear how LASSP will be any more successful than LMAP in reaching and serving those vulnerable to land rights abuses and tenure insecurity. It must also be stressed that although LASSP is the most developed of the three future sub-sector programs, without a functioning system of land management, many of the problems highlighted in this report will remain unresolved. It is essential that the LMSSP continue to be developed, and that this process is undertaken with adequate consultation with civil society.

The RGC and development partners working with the MLMUPC have a responsibility to ensure future projects benefit those vulnerable to displacement and thus most in need of improved tenure security. As stated in the LMAP PAD:

The beneficiaries of land titles [will] enjoy the benefits associated with land titles, in the way of increased tenure security, access to credit and opportunities to increase investments and productivity. Many of the expected beneficiaries are poor and *vulnerable to being dislodged from the land where they live and farm*<sup>195</sup> [emphasis added].

It can be seen that the beneficiaries of land titling through the land administration system developed so far have largely been those households not currently vulnerable to eviction. This is not to say that these households are not entitled to receive the security that a land title can provide. Although they may not be at risk of losing their land in the immediate future, as land prices fluctuate and different areas become the target of investment, they may indeed find themselves in the path of future development. It is likely that in such cases, the issuance of land titles will provide a higher level of security against eviction, or a stronger legal claim to fair and just compensation in the case of expropriation. We acknowledge this long-term achievement of the systematic titling program and we strongly urge the RGC to continue the program. However, the challenge remains to enable equal access to this system for all Cambodians entitled to recognition of ownership.

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<sup>193</sup> Draft LASSP Framework, page 3

<sup>194</sup> Draft LASSP Framework, page 3.

<sup>195</sup> LMAP PAD, page 10.

As LMAP comes to a close and the sub-sector programs take over, it is time for all stakeholders to take stock. This report is concerned with the ability of the programs of the MLMUPC to serve those vulnerable to eviction, and the inevitable impact that exclusionary titling and dispute resolution mechanisms can have upon them. After seven years of institutional capacity building and policy development, now is the time for titling, and other tenure security options for informal settlements to be directed at those vulnerable to eviction. This targeted approach should be directed at the urban poor, indigenous communities, and those whose land and homes lie in the path of potential future development and disputes. Likewise, dispute resolution mechanisms must be open and transparent, resolving disputes according to the law and proper procedures and not discriminating against the poor and vulnerable in favour of the rich and powerful. Without improving access to the titling system and functioning dispute resolution mechanisms, vulnerable groups will continue to be unlawfully displaced from their land with no legal recourse. If these problems remain unaddressed, the dual system will remain intact, further entrenching inequality and contributing to instability in Cambodian society.

Several of the concerns raised in this report go beyond the scope of any one project, and in some cases beyond the scope of the MLMUPC. However, the bulk of the concerns identified arise mainly from a lack of transparency and lack of commitment of various government bodies to facilitate the implementation of the project in the spirit it was designed.

Bilateral and multilateral donors providing support to the land and natural resources sector should ensure that the projects they support are implemented and supervised in compliance with project agreements, development partner safeguard policies, and international human rights obligations. Both the government and donors must ensure that accountability for these projects is significantly improved, particularly implementation of rigorous monitoring systems and meaningful evaluations. It is also imperative that during design, monitoring and evaluation stages of future projects there is adequate and meaningful participation of civil society organizations, and representatives of both project beneficiaries and those who have yet to benefit.

Considerable progress must be made towards ensuring that relevant laws and policies are implemented consistently, that titling is available to all, disputes are heard fairly and resolved in accordance with the law and that land belonging to the State is demarcated and managed in a responsible and transparent way. Without these essential reforms, the land management and administration institutions will continue failing to serve all Cambodians on an equitable basis, and inequality within the Cambodian land sector will prevail.

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**Bridges Across Borders Southeast Asia (BABSEA)** is an international grassroots organisation working to bring people together to overcome poverty, injustice and inequity in the Southeast Asia region. BABSEA has offices in Phnom Penh, Cambodia and Chiang Mai, Thailand, and works in Cambodia, Thailand, Laos, Singapore, Vietnam, Malaysia and the Philippines.

The **Centre on Housing Rights and Evictions (COHRE)** is an international human rights non-governmental organisation that works to promote and protect the right to adequate housing. COHRE is based in Geneva, Switzerland, with offices throughout the world, and has consultative status with the United Nations.

The **Jesuit Refugee Service (JRS)** is an international Catholic organization with a mission to accompany, serve and defend the rights of refugees and forcibly displaced people. JRS undertakes services at national and regional levels with the support of an international office in Rome.



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