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4 September 2009

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

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

World Bank Inspection Panel,

1. The Centre on Housing Rights and Evictions (COHRE) is submitting this request for inspection on behalf of the representatives of the Boeung Kak community located in the area known as Sras Choc commune, Daun Penh district, Phnom Penh, Cambodia. These community representatives have requested confidentiality in submitting this complaint and wish to remain anonymous. COHRE's address is above.
2. The Boeung Kak community is and has been detrimentally affected by the Land Management and Administration Project (LMAP) as explained below. LMAP has five main components: developing policy and legal framework, institutional development, land titling, dispute resolution, and State land management.¹ The project received IDA credit of \$28.83 million.²
3. In 2006, the commune of Sras Chok, Daun Penh district, including the Boueng Kak lake area, was announced as an adjudication zone for the purposes of systematic land registration under LMAP. The announcement was made by public notice in the local pagoda. Residents state that when they requested that their land claims be investigated, their requests were denied on the grounds that they were living inside a "development zone". This process deviates from the legal procedure developed by the project and adopted by the Royal

¹ LMAP PAD, page 8.

² World Bank Website, *LMAP summary*, http://siteresources.worldbank.org/INTCAMBODIA/Resources/Cambodia_Project_Updates.pdf, (accessed August 2009).



Government of Cambodia. That procedure states that following notice and a public meeting, full investigations should be conducted of the adjudication area. Any competing claims to the land must be resolved in the process, and if this is not possible, they should be referred to the Cadastral Commission for resolution.³

4. In January 2007, the adjudication record was publicly posted in Sras Choc commune. The same month, a lease agreement was signed between the Municipality of Phnom Penh and a private developer, Shukaku Inc., over 133 hectares in Sras Choc commune (the “development zone”), affecting an estimated 4,250 families residing in the area. According to the LMAP Task Team Leader, the result of the adjudication process in Sras Choc commune was the issuance of approximately 400 titles and it can be assumed that “most if not all [the plots titled] fall outside the development zone.”⁴

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

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

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

8. According to Article 248 of the Cambodian Land Law of 2001, until an area is covered by the cadastral index maps and ownership rights have been secured, no act that hinders the immovable property of legal possessors is allowed. Article 248 thus provides legal tenure protection to people residing in areas not yet covered by the index maps. The

³ Sub-decree on the Procedures to Establish Cadastral Index Map and Land Register, 2002.

⁴ Email correspondence with Peter Jipp, 3 September 2009.

⁵ Letter N°965 Phnom Penh Department of Land Management, ‘Boundary demarcation of Boeung Kak development area’, July 2008.

⁶ Notification N°180, District Governor of Daun Penh District, August 2009.



adjudication process that occurred in the Sras Choc commune, including the creation of a cadastral index map triggered the lifting of the protection granted by Article 248 against the interference with residents, including through eviction.

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

10. In July 2008, during a regular project supervision mission, World Bank staff visited Sras Choc commune and were made aware of the problems with the adjudication process and the pending eviction of area residents. COHRE is not aware of any remedial action taken by the World Bank following this mission.

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

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

The parties who will bring their disputes before the Commission have vastly unequal resources to devote to pressing their claims. The poor will be at a critical disadvantage if they cannot access legal assistance. The project will provide this assistance, seeking to level the playing field by funding an



expansion of the activities of national legal NGOs currently providing such legal assistance to the poor...The project will provide funds for the MLMUPC to contract with selected legal NGOs for investigation, counseling and representation services for the disadvantaged.⁷

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”.⁸ This risk was rated as “substantial.” To date, 7 years from the start of the project, no legal aid has ever been provided through LMAP.

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

14. The Boeung Kak case was first raised by COHRE and Bridges Across Borders Southeast Asia (BABSEA) in a meeting with the World Bank Country Director in February 2009. This meeting led to an Enhanced Supervision Mission, led by World Bank Lead Counsel from Washington D.C. in April 2009, during which the Boeung Kak case was raised again, along with other cases and broader concerns with LMAP. The Enhanced Supervision Mission led to a Safeguards Review Mission, initiated on 3 August 2009, during which the complainants discussed the applicability of Bank safeguards to the Boeung Kak case specifically and requested the urgent intervention of the World Bank management in their case. On 14 August, a letter was sent by the Cambodian Housing Rights Task Force to the World Bank Country Director and LMAP Task Team Leader requesting clarification about the applicability of the LMAP Environmental and Social Guidelines and the Resettlement Policy Framework to the Boeung Kak case. This letter again requested that the World Bank intervene urgently in the Boeung Kak case due to the eviction notice issued a day earlier. The World Bank met with community representatives and NGOs to discuss issues and concerns related to the case. A week later, Vice President for East Asia and Pacific James Adams visited Cambodia. COHRE was informed that he raised the Boeung Kak issue with senior government officials during his visit.

15. COHRE welcomes the efforts made by the World Bank management since February 2009 to address the serious problems with the implementation of LMAP, and specifically the harms suffered by Boeung Kak residents. However, the harm caused by seven years of inadequate supervision of the project has in no way been mitigated by the Bank’s recent

⁷ LMAP PAD, page 38.

⁸ LMAP PAD, page 24.



efforts. More than 900 families from Boeung Kak have already been cleared from the area without their land rights being properly adjudicated. In the absence of any legal protections, these families accepted inadequate compensation under conditions of duress. There is no indication that the recent efforts will lead to a more favorable outcome for the remaining families, some of whom have been given an eviction deadline of three weeks. It is evident that the actions taken by the Bank management were too late to prevent the harms now being done.

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

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

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

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

Sincerely,

COHRE

