



## Land Rights in Cambodia: An Unfinished Reform

SOKBUNTHOEUN SO

# AsiaPacific

## I S S U E S

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**SUMMARY** In Cambodia, an increasing demand for land has accompanied rapid economic expansion over the past decade, leading to land tenure insecurity for many of the country's poor. Despite the adoption of a new land law in 2001 and the establishment of the Land Management and Administration Project (LMAP) in 2002, tenure problems have continued. The difficulties with land reform policy relate partly to LMAP's design problems and partly to poor execution. These difficulties are the result of both bureaucratic weakness and the implementation of land policy reform by a politicized and personalized bureaucracy characterized by patron-client relationships. While there is no quick fix to problems in the land sector, steps toward a solution should give top priority to resolving land claims in conflict-prone areas, encourage registration of all land transfers, incorporate the participation of residents in the development of solutions tailored to local settings, convince elites of the political utility of land reform, and include citizen empowerment on the reform agenda.

In February 2007, the Cambodian government leased 133 hectares of land in and around Boeng Kak Lake in Phnom Penh to a Cambodian construction company, Shukaku Inc.<sup>1</sup> The 99-year lease netted the government a minuscule US\$0.60 per square meter at a time when the market value of land around the lake was between US\$700 and US\$1,000 per square meter.<sup>2</sup> The lease affected 4,252 families settled around the lake, many of whom were long-term residents with possible claims to legal ownership under the Cambodian land law adopted in August 2001. That law recognizes the rights of any person to claim legal ownership of land if he or she has used or lived on it for at least five years prior to the date the law was adopted. But residents' claims were rejected by the government, which ruled that the land they were occupying was state public land. According to the law, state public land must be maintained for public benefit and cannot be transferred or sold into private hands. The ruling placed the lake residents under threat of eviction but at the same time brought into question the legitimacy of the government's leasing of the land to Shukaku, Inc. In an effort to legitimize the lease, the government issued an administrative law that redesignated the land in question as state private land—which can be sold, transferred, exchanged, or leased—thereby making the Shukaku lease legal.<sup>3</sup>

The Boeng Kak Lake incident is just one example of the many ways in which poor Cambodians are losing out in the legal battle over land rights. As in many other post-conflict countries whose economies are in transition, the increasing demand for land that has accompanied the rapid economic expansion of the past decade—unrestrained due to the absence of a functional land-governance institution—has led to land tenure insecurity affecting the lives of many of Cambodia's poor. Despite the adoption of the new land law in 2001 and the establishment of the Land Management and Administration Project (LMAP) in 2002, land problems have continued unabated. The difficulties with land reform policy relate partly to LMAP's design problems and partly to poor execution. These difficulties are the result of both bureaucratic weakness and the implementation of land policy

reform by a politicized and personalized bureaucracy characterized by patron-client relationships.

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### **The Spread of Disputed Ownership Claims**

Land tenure conflicts slowly began to emerge after the Cambodian government switched from collective to private ownership of land in 1989. Conflicts continue to arise, but without a central database it is impossible to accurately capture the scope of land-rights problems in the country. However, media reports and various studies provide some rough estimates. In 2001, conflicts over land ownership were the fourth most common law suits filed at the court, with an estimated 1,310 cases having been heard during that year.<sup>4</sup> In 2005, a USAID report indicated that 153,584 people, or slightly over 1 percent of the Cambodian population, were affected by land conflicts.<sup>5</sup> This figure was calculated from official records of complaints and is by no means exhaustive, since people who are affected by conflicts rarely take their cases to the court or lodge official complaints. In 2008, a Cambodian government spokesman estimated that 420,000 people, or 3 percent of the Cambodian population, had been affected by land conflicts.<sup>6</sup>

Most of the land-rights problems occur in the conflict-prone areas of poor urban settlements, in forest lands, and along seasonal lakes where there are pervasive differences in the ways people claim rights to land. In these areas, assertions of land ownership are usually based on three distinct types of claims. First, land may be claimed based on the long-established practice and social norm of clearing and using the land. This practice is widely accepted among rural Cambodians despite its being illegal under the current land law. Second, land may be claimed based on evidence of purchases authorized or witnessed by the different levels of government empowered to authorize such transactions by previous regulatory regimes and practices. Third, land may be claimed based on legal provisions in the current land law. This practice is supposed to be the most secure because it connotes the backing of the state.<sup>7</sup>

The presence of competing claims leaves many people vulnerable to expropriation, particularly those

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whose claims rest on principles other than the legal provisions of the land law. A 2008 report by Amnesty International estimated that about 150,000 people in Cambodia were living under the threat of eviction.<sup>8</sup> A Land and Housing Working Group comprising a number of NGOs that advocate for land and housing rights estimates that since 1990, approximately “133,000 Phnom Penh residents, or 11 percent of the city’s 1.2 million population, have been evicted.”<sup>9</sup> Most of these settlers were relocated to sites far away from the city and without access to basic services such as water, electricity, and sanitation.

**Sources of tenure insecurity.** Land holdings outside the poor urban settlements, forest land, and seasonal lakes are more secure, but given the nature of tenure insecurity in Cambodia, that does not preclude the possibility of running into conflicts. Tenure insecurity in Cambodia can emerge from four sources, all of which are linked to the personalized and politicized nature of the Cambodian state.

First, despite the existence of a formal land-governance institution regulated by the state, most land holdings remain outside state regulation. Most people hold land without appropriate documentation, and a large percentage of rural families—approximately 80 percent—lack secure title to their land.<sup>10</sup> Various provisions of the land law and contract decree no. 38 (formally known as the “Law Referring to Contract and Other Liabilities”) recognize as the legal owner the first person who registered the land in his or her name.<sup>11</sup>

Second, forced transactions are an invisible source of tenure insecurity. Some powerful people, including tycoons and government officials, may force land owners to sell their land at an offered price determined by the buyer.<sup>12</sup> This most often occurs before the development of new infrastructure, when speculators buy up large tracts of land in expectation of a high return when the infrastructure is in place.

Third, the courts have the power to decide who has legal ownership of land when conflicts occur, but they are far from professional and efficient. The Cambodian courts remain “highly politicized and corrupt.”<sup>13</sup> The lack of a neutral and efficient

judicial system leaves no place for the poor to seek legal remedy.

Finally, as in the case of Boeng Kak Lake, land holders are dispossessed through the power of the state. In urban areas, the state expropriates land for development projects, usually for private housing and, in rural areas, to further agro-industrial development. Both types of projects involve the government’s expropriation of large areas of land for the benefit of private companies, usually through dubious means.

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### A Troubled Land Policy Reform

A series of land reform policies was developed in the second half of the 1990s and culminated in the adoption of the 2001 land law and the establishment of the Land Management and Administration Project (LMAP) in 2002. International donors, including the World Bank, supported LMAP, which covered a wide range of policy areas, including land policy and regulatory frameworks, land management, dispute resolution, and the development of institutional capacity. It also established a transparent land-governance institution with a centralized database containing all land ownership information.<sup>14</sup> However, LMAP’s main activity was systematic land registration (SLR), a compulsory land registration program aimed at formalizing and legalizing all informally held land. After its inception in 2002, the project made substantial progress by registering more than one million land parcels, mainly in the rural areas.<sup>15</sup> Despite this, forced displacement of people in urban areas continues to be a problem. Some victims of eviction, with support from various NGOs advocating housing rights for the urban poor, have filed a complaint against the World Bank for its failure to adequately supervise the project.<sup>16</sup> The persistence of this high-profile land issue in Cambodia is due both to the poor design of the LMAP project and to its implementation by a personalized and politicized bureaucracy.

**Design Issues.** Land rights problems frequently occur in poor urban settlements, forest lands, and around seasonal lakes where there are competing forms of land claims. Yet, these areas were left out of the LMAP’s

*Most land holdings remain outside state regulation*

systematic land registration process—in part because the project was designed to avoid registering land where “disputes are likely until agreements are reached on the status of the land.”<sup>17</sup> The intent was to speed up land registration in general while leaving the conflict-prone areas to be titled after the status of the land was clarified through LMAP’s land management program, which aims, first, to identify and map state land and, second, to resolve conflicts. Yet, these activities have been inadequately executed, leaving the status of land holdings in these conflict-prone areas unclear and the land ineligible for registration.

This situation can be attributed partly to the competing claims among government ministries, which disagree on the boundaries of land under their jurisdictions. In addition, lands under the control of the different ministries are also subject to the supervision of the Ministry of Economy and Finance.<sup>18</sup> This leaves the Ministry of Land Management, Urban Planning, and Construction—which administered LMAP—in a weak position to carry out the demarcation, classification, and registration of state lands. The Ministry’s poor implementation of the program, which also derives in part from a lack of motivation among Cambodian elites (as will be discussed later), leaves room for different interpretations of land rights and makes the land under competing forms of claim vulnerable to conflicts and expropriation.

The registration of more than one million land parcels by LMAP has undoubtedly helped many rural poor, since it offers rural land holders ownership rights recognized and protected by the state. Yet, even where land has been registered by LMAP, there is another problem. While this problem has no *immediate* impact on tenure security, it has the potential to ruin the multimillion-dollar effort to develop an efficient land-governance institution. The problem is that the supporting institutions involved in the registration of ownership transfers remain highly politicized and corrupt, making transaction costs unacceptably high. Though the land law recognizes and protects only registered transfers, these high transaction costs push many land owners to transfer registered land to new owners informally, creating the possibility of future conflicts.<sup>19</sup>

*Cambodian elites have reinvented the century-old patron-client relationship in order to retain their power in a new political regime characterized by electoral politics*

**Land as a political resource.** The failure to properly manage land rights is similar to the failure of the government to manage other natural resources, including forests, which were once crucial to the elites’ personal enrichment and maintenance of their power. For years, and despite various reforms imposed as conditions for receiving aid from international donors, forests have been managed inefficiently. Forest resources have been extracted and used to sustain the power of the ruling elites in two ways. First, favorable licenses to extract resources have been limited to a small group of privileged individuals, including the tycoons, creating mutually beneficial patron-client relationships that turn these individuals into key supporters of the ruling party.<sup>20</sup> Second, revenue from forest resources has found its way to the ruling elites through their close ties with these privileged individuals. This revenue has been used to support the ruling party’s political strategy of mass patronage, or systematic vote buying. This vote-buying strategy, including the distribution of gifts and delivery of development aid for the construction of schools, temples, and roads is financed with private funds earned through dubious means, including official corruption.<sup>21</sup> The reinvention by the Cambodian elites of the century-old patron-client relationship—used to cultivate personal loyalty, not only from close political allies but also from people at the grassroots level—is intended to help them retain their power in a new political regime characterized by electoral politics.

Cambodia’s increasing integration into the global economy and the associated inflow of foreign capital are fueling a rapid economic expansion. Under these conditions, rising demand for land constantly pushes its value higher, and it becomes an important resource that replaces the already diminished forest.<sup>22</sup> Leaving state land poorly demarcated and poorly managed permits different interpretations of the status of the land and enables expropriation of such land through the use of legal instruments, as in the case of Boeng Kak Lake.

**The effects of globalization.** The lack of interest in effective reform is the product of interactions between two forms of globalization that have incompletely

reshaped the interests of Cambodian elites over the past two decades. The first is political globalization, which began with a United Nations–sponsored election in 1993 that allowed the now nominally democratic country to join the world club of democratic states. The second is economic globalization, which began with the opening up of the Cambodian economy in the early 1990s. This led to rapid economic expansion that began in the early 2000s and was tied to increasing inflows of foreign capital and growing trade relations with other countries.

*The interests of the elites have been only partially aligned with democratic values*

The interests of the elites have been only partially aligned with democratic values. Democratization in Cambodia has given the people a somewhat greater voice, but Cambodian democracy falls short of a full-fledged democratic ideal and does not extend beyond the merely procedural democratic practice of holding regular elections. Cambodia, along with other post-communist states, could be called a “follower democracy,” a country that democratized in response to the global trend at the end of the Cold War and in response to external pressure, not in response to the emergence of pro-democratic political cleavages that demanded democratic reform.<sup>23</sup> In fact, in much of the Cambodian countryside the patron-client relationship is widely accepted,<sup>24</sup> which allows the elites to win elections easily, through systematic vote buying. Consequently, change in the behavior of Cambodian leaders has been only cosmetic. Far from being exercises in democratic freedom by the Cambodian people, regular elections are rituals by which the Cambodian political elites seek to cloak themselves in legitimacy in the eyes of the international community, to ensure the steady flow of foreign aid.

The alignment of economic interests with the capitalist system has proceeded smoothly, the Cambodian elites having embraced the capitalist system because of the opportunities it provides for self-enrichment and for maintaining their grip on political power by providing the resources for vote buying. Indeed, the beneficiary of the Boeng Kak Lake project was a powerful tycoon senator who was reported to be the ruling party’s major donor.<sup>25</sup> The reliance of the Cambodian elites on their personal relationships with the tycoons to extract financial resources, and the fact

that land is an important business input, make reform in the land sector difficult.

This incomplete transformation means that the elites employ “a two-faced strategy” with regard to their policy toward international donors and toward their personal and political interests. While they may appear to adopt policies that benefit a wide range of Cambodian people, as prescribed by international donors, they may also passively resist reforms they perceive to be harmful to their interests.<sup>26</sup>

For more than a decade now, aid dependency in Cambodia has enabled donors to push for reforms. But reform in the land sector, as in other natural resource sectors, has been difficult, not only because of the state’s overall poor management of its land, but because reform is related to broader political and economic conditions. Patronage pressure has hampered reform efforts affecting key individuals within the patronage networks. Some of the success in land-sector reform, particularly achievements in land registration, may be due partly to donor pressure, but also relates to the fact that it can align with the interests of the elites. For example, land registration offers potential gains for the elites in areas such as taxes on land transactions and in possible future revenue from land taxes that may be embezzled—both of which would be facilitated by poor law enforcement within the highly personalized bureaucracy. Efficient management of all land would, after all, reduce the ability of the elites to award licenses and extract resources for personal and political ends. Consequently, reform in the land sector in Cambodia is partial at best.

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### **The Way Forward**

There is no quick fix to the problems in the land sector, but a tentative solution should include the following:

**Give top priority to resolving land claims in conflict-prone areas.** Tenure problems in Cambodia occur mostly on land that lacks clear status, and thus the solution to the problem should occur there rather than elsewhere. The Land Management and Administration Project’s objective was conceived too broadly;

its focus has been on land registration, which has taken place mostly in relatively secure areas. Considering LMAP's activities and its emphasis, its work provided a technical upgrade to the land governance and management system rather than directly addressing the land rights issues faced by those who settle on land that lacks clear status. Even with the technical upgrade, there are serious shortcomings, with many registered land owners failing to use the registration system in subsequent land transfers. LMAP's design paid too little attention to the conflict-prone areas, which left the project in disarray. Finally, in September 2009, following disagreement between the Cambodian government and LMAP's major funder, the World Bank, LMAP was terminated. The issue was what to do for people in poor urban settlements who are still vulnerable to eviction through government expropriation. Thus, if the tenure problem is to be resolved, the conflict-prone areas must be made a priority.

**Encourage registration of all land transfers.** The failure of those who initially register their land ownership to use the registration system for subsequent land transfers can undermine the effort to establish an efficient, centralized land administration. What is needed is a system of inducement, supported by efficient legal sanctions, to encourage the people who already hold registered ownership to continue using the registration system. More attention should be placed on creating a system of inducement (including simplifying procedures for transferring ownership) than on establishing legal sanctions. Under present conditions, such sanctions bring with them greater opportunities for "rent-seeking" (in which political and economic elites use the system to realize gains for themselves without generating any benefits to society) and other associated problems.

**Develop localized strategies.** The critical tenure problem in Cambodia encompasses areas where problems vary in complexity. Thus solutions to specific land rights problems must be tailored to local contexts by incorporating local knowledge through a participatory approach. Failing this, the solutions risk becoming problems themselves.<sup>27</sup> For example,

the solution for the poor urban settlements and for individually held, newly cleared forest land should probably begin with a clear demarcation of state public and state private land. This should be followed by conflict resolution and land registration for settlers who are eligible for ownership, so that they can have legal rights to the land they possess. People whose claims of ownership are ineligible because the land they claim is state public land may be allocated new plots, as provided in the land law's social land concession, an instrument designed to distribute land to needy, landless people. Problems surrounding seasonal lakes, where land is used differently by different groups of people during different seasons, require an approach that responds to specific local needs.

**Convince elites of the political utility of land reform.** The elites' interests in the land sector will likely lead them to resist further reform there. Resistance by the elites can be eased if proposed reforms are presented so as to align them with the elites' interests. This may be achieved by increasing dialogue between donors and the Cambodian leadership in a way that is structured informally and designed to be free of pressure. Under present political conditions, the leadership holds significant influence. If the top leaders become convinced that the reform is worthwhile and may help sustain their popularity and political power, they may take ownership of the reform agenda, increasing the chances of success.

**Include citizen empowerment on the reform agenda.**<sup>28</sup> Many of the problems surrounding land rights in Cambodia today stem from the leaders' discretionary use of state power in the allocation of land. The empowerment of citizens to hold government accountable for its actions is crucial to the protection of citizens' rights.<sup>29</sup> Citizen empowerment may include education concerning residents' land rights; nurturing local advocates of land rights (e.g., human rights defenders) and providing legal aid through NGOs dedicated to that purpose; and employment of third-party observers to oversee the implementation of reforms. All of these conditions are essential

*A system of inducements, rather than legal sanctions, would encourage registration*

to citizen empowerment, which is necessitated by poor law enforcement, a politicized state bureaucracy, and corrupt courts. For example, poor people victimized by unjust land expropriation have no access to legal services, which are expensive. NGOs and local advocates may, however, provide legal assistance and

other support to some of those seeking remedy for their grievances.

Serious pursuit of these approaches would significantly contribute to improving land tenure security in Cambodia, especially for the poor and those living in rural areas.

## Notes

<sup>1</sup> Allyster Hayman and Sam Rith, "Boeng Kak Lake Latest City Sell-off," *The Phnom Penh Post*, February 9, 2007.

<sup>2</sup> Allyster Hayman and Sam Rith, "Lake Dwellers Among Thousands to Be Evicted," *The Phnom Penh Post*, February 23, 2007.

<sup>3</sup> Sebastian Strangio and Chhay Channyda, "Who Owns the Lake? Debate Rages," *The Phnom Penh Post*, October 3, 2008.

<sup>4</sup> George Cooper, "Land Policy and Conflict in Cambodia" (unpublished paper, North South Institute and the World Bank, Phnom Penh, 2002).

<sup>5</sup> USAID-Cambodia, *Cambodian Village Directly Affected by Land Conflict and Located in Conflict Affected Area* (Phnom Penh: USAID-Cambodia, September 2005): 2.

<sup>6</sup> Sisovann Pin, *Land Crisis Echoes Pre-Revolution Period*, VOA Khmer, August 25, 2008, <http://www1.voanews.com/khmer-english/news/a-40-2008-08-25-voa10-90165552.html?moddate=2008-08-25>, accessed August 30, 2008.

<sup>7</sup> Daniel Adler et al., "Legal Pluralism and Equity: Some Reflections on Land Reform in Cambodia," *Justice for the Poor* 2, no. 2, (2008).

<sup>8</sup> Amnesty International, *Rights Razed: Forced Evictions in Cambodia* (London: Amnesty International, 2008): 7.

<sup>9</sup> Land and Housing Working Group (LHWG), *Land and Housing Rights in Cambodia: Parallel Report 2009* (Phnom Penh: LHWG, April 2009): 6.

<sup>10</sup> United Nations Development Program (UNDP), *Expanding Choices for Rural People: Cambodia Human Development Report 2007* (Phnom Penh: UNDP, 2007): 11.

<sup>11</sup> Frank Van Acker, "Hitting a Stone with an Egg? Cambodia's Rural Economy and Land Tenure in Transition" (discussion paper No. 23, Center for ASEAN Studies (CAS), Antwerp, 1999): 39.

<sup>12</sup> See Sokha Pel et al., "Land Transactions in Rural Cambodia: A Synthesis of Findings from Research on Appropriation and Derived Rights to Land" (Phnom Penh: Centre d'Etude et Développement Agricole Cambodgien (CEDAC), August 2007): 28.

<sup>13</sup> Caroline Hughes, "Cambodia in 2007: Development and Dispossession," *Asian Survey* 48 no. 1 (2007): 71.

<sup>14</sup> See World Bank, *LMAP Project Appraisal Documents* (Phnom Penh: World Bank, January 2002).

<sup>15</sup> FINNMAP News, "LMAP and FINNMAP Celebrate the Achievement of the 1 Million Parcel Target in Cambodia," (Helsinki: FINNMAP, February 2008), <http://www.finnmap.com/news.html>, accessed May 15, 2008.

<sup>16</sup> See Vong Sokheng and Sebastian Strangio, "Lakeside Residents File World Bank Complaint," *The Phnom Penh Post*, October 5, 2009; Sebastian Strangio, "Govt's Land Policy Failing Most Vulnerable," *The Phnom Penh Post*, September 28, 2009; Bridge Across Border Southeast Asia (BABSEA), Center for Housing Rights and Evictions (CHRE), and Jesuit Refugee Services (JRS), *Untitled: Tenure Insecurity and Inequality in the Cambodian Land Sector* (Phnom Penh: BABSEA, CHRE, and JRS, 2009).

<sup>17</sup> World Bank, *LMAP Project Appraisal Documents* (Phnom Penh: World Bank, January 2002): 24.

<sup>18</sup> See Royal Government of Cambodia (RGC), Sub-decree No. 129 on Rules and Procedures on Reclassification of State Public Properties and Public Entities (Phnom Penh: Royal Government of Cambodia, 2006).

<sup>19</sup> Findings from the author's dissertation fieldwork June–December 2007. For a detailed discussion of the problem pertaining to land registration in Cambodia, see Sokbunthoeun So, "Political Economy of Land Registration in Cambodia" (doctoral dissertation, Northern Illinois University, 2009).

<sup>20</sup> See Philippe Le Billon, "Logging in Muddy Waters: The Politics of Forest Exploitation in Cambodia," *Critical Asian Studies* 34, no. 4 (2002): 563–586.

<sup>21</sup> See, for example, Caroline Hughes, "The Politics of Gifts: Tradition and Regimentation in Contemporary Cambodia," *Journal of Southeast Asian Studies*, 37 no. 3 (2006): 477; Kheang Un, "Patronage Politics and Hybrid Democracy: Political Change in Cambodia 1993–2003," *Asian Perspective* 29, no. 2 (2005): 227; see also Kheang Un, "Cambodia's 2008 Parliamentary Elections: Prospect for Opposition Politics," *Asia Pacific Bulletin* no. 22 (2008).

<sup>22</sup> See Kheang Un and Sokbunthoeun So, "The Politics of Natural Resource Use in Cambodia," *Asian Affairs: An American Review* 36, no. 3 (2009): 123–138.

<sup>23</sup> Atul Kohli, "On Sources of Social and Political Conflicts in Follower Democracies," in *Democracy's Victory and Crisis*, ed. Axel Hadenius (Cambridge: Cambridge University Press, 1997): 71, 74.

<sup>24</sup> See Judy Ledgerwood and John Vijghen, "Decision-Making in Rural Khmer Village," in *Cambodia Emerges from the Past: Eight Essays*, ed. Judy Ledgerwood (DeKalb: Southeast Asia Publications, 2002).

<sup>25</sup> Hayman and Rith, "Boeng Kak Lake Latest City Sell-Off," *The Phnom Penh Post*, February 9, 2007.

<sup>26</sup> Philippe Le Billon, "Logging in Muddy Waters: The Politics of Forest Exploitation in Cambodia," *Critical Asian Studies* 34, no. 4 (2002): 564.

<sup>27</sup> See Lant Pritchett and Michael Woolcock, "Solutions when the Solution is the Problem: Arraying the Disarray in Development," *World Development* 32, no. 2 (2004): 198.

<sup>28</sup> See Amartya Sen, *Development As Freedom* (New York: Random House, 1999); Pritchett and Woolcock, "Solutions," (2004): 191–212.

<sup>29</sup> This is a long-term goal and may not be achieved in the foreseeable future given the current political conditions.

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### About the Author

**Sokbunthoeun So** is a project adviser for the Democratic Governance and Public Sector Reform Program, Cambodia Development Resource Institute. His recent research focuses on the issue of land rights (access to land, land tenure security, and land registration), governance, and decentralization reform in Cambodia. He was a Southeast Asia Visiting Fellow at the East-West Center in Washington and the Institute for Southeast Asian Studies in Singapore in 2009.

He can be reached at:

sokbunthoeun.so@gmail.com

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