

POOR LAND RELATED DEVELOPMENT PRACTICE: A
CHALLENGE TO BUILDING SUSTAINABLE PEACE IN
CAMBODIA

A CASE STUDY IN A LAND CONFLICT OF BOEUNG KAK
DEVELOPMENT PROJECT: CHALLENGE AND OPPORTUNITY

BY

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Abstract

This thesis is interested in exploring and understanding the issue of poor land development practices in Cambodia and how they pose great challenges to positive peace building in Cambodia. To explore this topic, the thesis purposefully selects the Boeung Kak Lake (the BK) development project as a case study due to its uniqueness and potential to tell the story succinctly especially the story of another dynamic and opportunities – non-violent grassroots resistance, civil society and international community engagement. The thesis argues that there were three major problems in the BK case acting as structural and proximate causes of the land conflict, namely, the disregard of the law and human rights, the lack of inclusiveness and transparency, and the misuse of the judicial system for coercive ends. Such poor practices do not only cause threats to the livelihood and psychology of the affected community, but also undermine the building of a more sustainable peace in Cambodia. This is because these poor practices interact to reinforce the cycle of violence and continue to perpetuate structural violence further diminishing a culture of peace, trust, and social cohesion between the state and the people. However, this thesis also seeks to explore the opportunity for positive change in the BK case by looking at the growing roles of both internal (grassroots struggles and local civil society engagements) and external forces (the international community) in transforming the protracted BK land conflict.

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List of Acronyms

ADHOC	The Cambodia Human Rights and Development Association
BABC	Bridge Across Borders Cambodia Organization
BABSA	Bridges Across Borders Southeast Asia
BK	Boeung Kak (Lake)
CCHR	Cambodian Center for Human Rights
CCDA	Cambodia for Confederation Development Association
CDRI	Cambodia Development Research Institute
CMDGs	Cambodia Millennium Development Goals
CSO	Civil Society Organization
CPP	Cambodian People Party
CNRP	Cambodia National Rescue Party
COHRE	Center On Housing Rights and Evictions
ELC	Economic Land Concession
GDP	Gross Domestic Product
GPI	Global Peace Index
HDI	Human Development Index
IAP	International Accountability Project
ICESCR	International Covenant on Economic Social and Cultural Rights
INGOs	International Non-Governmental Organizations
LICAHDO	Cambodian League for the Promotion and Defense of Human Rights
LMAP	Land Management and Administration Project
MOP	Ministry of Planning (Cambodia)
NALDR	National Authority for Land Dispute Resolution
NGO	Non-governmental Organization
PPI	Positive Peace Index
RFA	Radio Free Asia
RFI	Radio France International
STT	<i>Sahmakum Teang Tnaut</i> (NGO)
SLC	Social Land Concession
SNEC	Supreme National Economic Council
VOA	Voice of America
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNDP	United Nations Development Program
UNTAC	United Nations for Transitional Authority in Cambodia

INTRODUCTION

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

Prime Minister Hun Sen's speech
at the National Conference on the Management of Natural Resources to Reduce Poverty
as quoted by *The Phnom Penh Post*, December 16, 2005

Prime Minister Hun Sen has long acknowledged the detrimental effects of land issues in the country, even with a public warning of “a farmers’ revolt”. From the country’s past violent conflict, however, one of the pre-conditions of conflict was the Samlaut uprising, a farmer revolt over land grievance in 1967. The Samlaut uprising was seen as “a prelude, in a microcosm, of the conflict that would sweep across the country three years later [when civil wars and genocide transpired]” (Kirk, as quoted in Kiernan, 1974, preface). However, conflicts over land continue to be so prevalent throughout the country that it is recognized as “a major issue” in contemporary Cambodia (Subedi, 2013. p. 5). Why? What is happening with its practice? Why do land issues and related poor practices pose a challenge to sustainable peace building in this post conflict Cambodia? Is there any opportunity for change at all?

The United Nations has also recognized the ‘inextricable link’ between land and conflict since land is often found either ‘among the root causes or as a major contributing factor’ to violent conflict (The UN Framework Team, 2012, p. 13) making the task of dealing with land issue a priority for post conflict countries. In Cambodia context, land conflict is not a single phenomenon; it has been a

predominant and complicated issue throughout Cambodia's tumultuous history. Even though Cambodia has been adopting many land related policy papers and laws since the 1989 economic reform, land issues in practice remain a growing critical social grievance, particularly when it is entangled with the so-called 'development project' being implemented in Cambodia.

Having experienced civil wars and genocide between the 1970s-80s and political struggle in the 1990s, Cambodia has finally been able to enjoy the absence of a violent conflict called "negative peace", since the 2000s. Being able to sustain the current period of negative peace, the recent incumbent government, which has been ruling the country since the mid-1980s, deserved recognition for being able to make impressive economic progress albeit with a heavy dependence on aid. The progresses can be seen in the improvement of the country's infrastructure and rapid economic growth of eight percent of annual GDP from 2004 to 2012 and an expected average of 7 percent from 2013 to 2016 (the World Bank's website). In particular, poverty (with current average national poverty line of 0.97USD/day) has been reduced from 47 percent in 1993 to 19.8 percent in 2011 (UNDP Website and MOP, April 2013). Cambodia was also ranked the world's fifth best performing country in overall Millennium Development Goals (CMDGs) progress (National Report for Rio+20, 2012, p. XIII).

Notwithstanding the aforementioned achievements, the growth remains fragile with critical challenges namely "rising inequality, uneven spatial development, weak institutions, and high level of corruption" (Hill & Menon, January 2013). Though Cambodia is making progress in its CMDGs, there is no time for complacency, as the number of the hungry has not been halted. The issue in the country is still categorized as "serious" by the Global Hunger Index 2013. The World Bank senior country

economist, Enrique Aldaz-Caroll, reportedly stated that: “a small shock of 1,000 Riel (0.25USD) per person per day would double poverty. We would go back to the high poverty of before; only 1,000 Riel” and even with the growing middle class from 35% in 2004 to 56% in 2011, “three in four Cambodians are still either poor or very nearly so” (*The Cambodia Daily*, October 17, 2013) and “the rates of poverty reduction have not been uniform across the population” as well (CDRI, 2012, No. 2, p. 2). UNDP estimates the geographical inequality in poverty from approximately “0.1% to 37% from one province to another” (UNDP website).

With respect to the destruction of natural resources such as forest, according to a new study (November 2013) led by researchers from University of Maryland to track changes in forest cover around the world from 2000 to 2012, Cambodia was found to be one among the five countries to have the highest and fastest rates of forest loss in the world, approximately 7.1 percent of the country’s forest cover (University of Maryland’s website with further report from *The Cambodia Daily*, November 19, 2013).

In spite of the fact that the development approach to peace building in Cambodia has been relatively able to improve many socio-economic difficulties during the post conflict period, the promises of a better quality of life, prosperity for its citizens and a peaceful society with sustainability are questionable when the gaps between the rich and the poor continue to rise while natural resources are being depleted at unsustainable rates. According to United Nations Capital Development Fund (2010), one percent of Cambodia’s population owns more than thirty percent of the country’s land (p. 34). Landlessness in 2009 was found approximately between 20% to 40% of rural households (USAID Country Profile, p. 5). Based on an integrative map recorded by LICADHO, a local human rights NGO, land of over 2.1

million hectares has been granted to private companies/investors since 1993 (2012). It is believed that the number could exceed 2.6 million hectares “equivalent to 73% of the country’s arable land” (Global Witness, May 2013, p.7). More importantly, those who have been granted land have been the ones involved in conflict and the use of violence.

In recent years in particular, the escalation of popular opposition to Cambodia’s development practice, especially in land related development projects, continues as the despairs over land from “the affected population has grown so deep” (CCHR, December 2013). A fatal incident took place on May 16, 2012 during a violent clash between a group of villagers and government forces resulting in a death of an innocent 14 year-old girl in Kratie province. The authorities, however, accused the villagers of creating a secessionist movement against the government while the villagers asserted that the clash was the result of a long standing land dispute over the 15,000 hectare Economic Land Concession which the government granted to a private company in 2007. The villagers claimed they were protecting themselves from being forcibly evicted from the land they had been occupying for seven years. This was just one case in point among the many land dispute cases in the provinces involving the granting of Economic Land Concession for agro-industry and economic development purposes.

Another case in point in Phnom Penh, the Boeung Kak Development Project (herein after the Lake or the BK), however, was even more blatant. Boeung Kak Lake was one of the seven natural lakes located in the center of the capital Phnom Penh city. The Lake’s 133 hectares was leased for 99 years in 2007 as an Economic Land Concession (ELC) to Shukaku Inc., a company owned by a senator from the ruling Cambodian People Party (CPP) for just 79 million which was way below the market

value at that time. The BK project was one of the five Mega projects or satellite cities planned to change the face of Phnom Penh by making space for commercial and residential areas. Meanwhile, the BK project would affect more than 4,200 families living around and on the Lake some of whom had been living there since the 1980s. Yet, the affected families' land rights were completely rejected due to a being resident on a "development zone" or for being "illegal occupants" residing on state land property despite the fact that some of those families had possible claims for legal ownership under the 2001 Land Law. The rights groups said that if the eviction of these families had been carried out successfully, it might have constituted the largest forced eviction since the collapse of the genocidal Khmer Rouge regime. The authorities, developers, and affected communities since then have been involved in contentious disputes since its inception over the issues of landownership, low compensation, forced eviction, human rights violations, corruption, non-transparent process, injustice, weak judicial system, and violent crackdowns on the growing protesters. The grassroots struggle continues till today at least by the time of this writing.

Thus, peace and development are extremely interconnected in Cambodia. Viewing peace as the opposite of war and development as economic growth is too narrow and not conducive to sustainable peace, as it indicates the acceptance of social injustice and inequality as well as human and environmental costs. Galtung, a pioneer in Peace Studies, understood peace in terms of two concepts: negative and positive peace. While the former means the absence of direct violence, the latter refers to the building of a more resilient and sustainable conditions to reduce all types of violence, thus meet human needs by non-violent means. It is true that negative peace is a pre-requisite for development to take place; however without thoughtful implementation,

development projects, particularly the land related ones, can easily undermine the process toward building positive peace in the country.

The thesis, therefore, is interested in exploring and understanding those poor practices of development project and why they pose great challenges to sustainable or positive peace building in Cambodia. To explore the topic, the thesis purposefully selects the Boeung Kak development (the BK) project as a case study due to its uniqueness and potentials to tell the story succinctly; especially the story of another dynamic and opportunity – non-violent grassroots resistance, civil society and international community engagement – to challenge the challenges. Three specific questions will be asked:

- 1). What makes the Boeung Kak (BK) project so problematic (2007-present)?
- 2). How do these identified systematic problems affect the family as well as the positive peace building context in the country?
- 3). What are the roles of grassroots resistance and civil society engagement as well as the international community in transforming the BK conflict?

To build up an exhaustive BK case, the thesis uses a secondary data drawn from respected research institutes and NGOs' reports, press released, research papers and journals. The data also collected from independent newspapers, publicly accessible interviews, video, documentary, and radio shows. In order to analyzes the case, the paper based upon theory of peace by Johan Galtung, a pioneer in peace studies, theory of development as freedom and capability expansion by Amartya Sen, an economist Nobel laureate, and theory of human needs as the causes of conflict.

By studying the BK case the thesis will contribute to the understanding of how poor development practices, should they continue impact the building of sustainable

peace in the country as well as the opportunity to minimize such impacts non-violently. The thesis is divided into four sections. Following the introduction, Chapter One will provide a theoretical framework by discussing, firstly, the theory of peace, conflict, and development; and secondly, the understanding of the causes of conflict through a human needs perspective and conflict transformation. Chapter Two will set the scene by briefly giving an overview of recent Cambodian historical contexts of peace, development and conflict, landownership, and the BK background. Chapter Three will attempt to identify the problems of the BK project and their effects on the affected families and the process of positive peace building context. The thesis will also explore another dynamic in the BK case, which is the roles of the grassroots struggle and civil society organizations' (CSOs') engagement as well as international community involvement in the effort to transform the BK land conflict. And lastly, Chapter Four will provide a brief conclusion of the foregoing discussions.

Chapter I: Theoretical framework

I. Understanding Peace, Conflict, and Development Theory

i. Understanding Peace

*“There is no way to peace. Peace is the way”
--- Mahatma Ganhdi*

According to A Reader on Peace and Conflict Studies edited by Webel and Johansen (2012), the word ‘peace’ as used during the late 13th and 14th centuries originated from the Anglo-Norman word *pas* – “freedom from civil disorder” – and is nearly identical in meaning to the Hebrew *shalom* or the Arabic *salaam* – “safety, prosperity and security” (p. 8). In *Sanskrit*, peace is ‘*Shanti*,’ meaning “spiritual tranquility, an integration of outward and inward modes of being” (Barash & Webel, 2009, p.9). This term implies harmony and bliss in religion and psychology. Like similar concepts such as happiness or freedom, peace is difficult to define and conceptualize. The term has been used and abused or become a cliché; lacking a consensus definition, it has become a utopian concept, since it represents the complete opposite of the chaotic real world. One definite thing about peace is that “it is something at the very core of our societies and the most commonly shared global objective. Peace is just as personal as it is political. It is both abstract and tangible” (Vision of Humanity website).

Because conflict is acknowledged to be inevitable, the field of peace studies therefore does not attempt to eliminate conflict; rather it tries, “where possible, to develop new avenues for cooperation as well as to reduce violence, especially organized, state-sanctioned violence and the terrorizing violence perpetrated by and against non-state actors” (Barash & Webel, 2009, p.11). Just as the definition of

violence expanded to include more than just visible or physical abuses, the concept of peace was also further developed to encompass more than merely the absence of war. Thus, Galtung (1964) coined the terms “negative and positive peace” to understand peace concept. In order to understand these concepts, we have to first understand the meaning of violence.

a. Defining Violence

In English dictionaries such as the Longman Dictionary of Contemporary English, violence refers only to “behavior that is intended to hurt other people physically.” Brunk (2012) stated that the term “violence” normally connotes four major elements: “a) an identifiable actor or groups of actors, b) an identifiable physical action or behavior, c) a clear physical or psychological harm which results from the action, and d) an identifiable victim who suffers the harm” (p. 17). Consequently, behaviors embedded indirectly in social, cultural, or political institutions have been unlikely to be defined as violence.

Galtung (1969) thus differentiated direct violence from structural violence by defining violence as “[being] present when human beings are being influenced so that their actual and mental realizations are below their potential realization” (p. 168). In 1990, Galtung redefined violence as “avoidable insults to basic human needs and more generally to life, lowering the real level of needs satisfaction below what is potentially possible. Threats of violence are also violence” (1996, p. 197). He especially emphasized inequality as the primary catalyst of structural violence. Barash (2010) states that structural violence includes inequality and social injustice and that structural violence:

has the effect of denying people important rights such as economic opportunity, social and political equality, a sense of fulfillment and self-worth, and access to a healthy natural

environment. When people are starved to death, or even go hungry ... suffer from preventable diseases ... [are] denied a decent education, housing, an opportunity to play, to grow, to work, to raise a family, to express themselves freely, to organize peacefully ... a kind of violence is occurring, even if bullets or clubs are not being used ... [it's] another way of identifying oppression. (p.147)

The chart below outlines Galtung's typology of violence:

Typology of Violence (Taken from Peace by Peaceful Means, Johan Galtung, 1996, p.197)

	<u>Survival</u> <u>needs</u>	<u>Well-being</u> <u>needs</u>	<u>Identity</u> <u>needs</u>	<u>Freedom</u> <u>needs</u>
<u>Direct</u> <u>Violence</u>	Killing	Maiming Siege, Misery Sanction	Desocialization Re-socialization Secondary citizen	Repression Detention Expulsion
<u>Structural</u> <u>Violence</u>	Exploitation (strong)	Exploitation (weak)	Penetration Segmentation	Marginalization Fragmentation

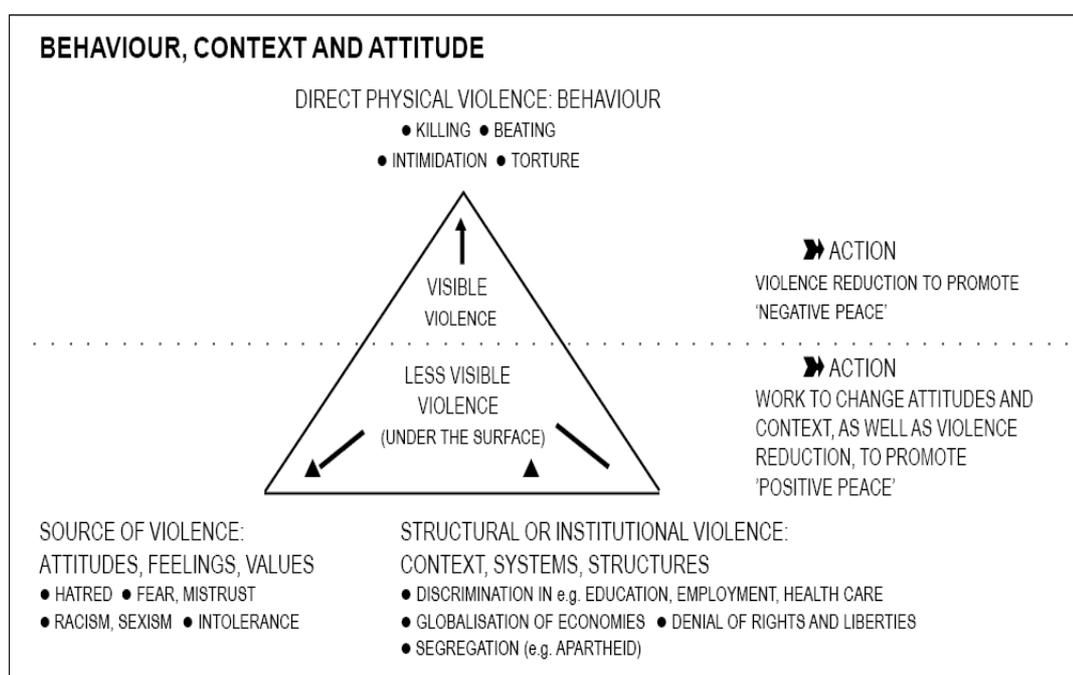
That says when there is systematic inequality in the distribution of freedom, justice, economic, social, and political resources in a society, structural violence is taking place. In 1990, Galtung coined another term for violence – cultural violence – defined as “aspects of culture, the symbolic sphere of our existence, which can be used to justify or legitimize direct or structural violence” (p. 291). Therefore, the three types of violence can be simply understood as follows:

Direct violence is intended to insult the basic needs of others (including nature); structural violence has such insults built into the social fabric as exploitation and repression; and cultural violence occurs when aspects of culture (such as religion and language) legitimize direct and structural violence (Galtung, 1996, p. 40).

In other words, the visible violence behaviors we see do not come from nowhere. Rather, they are rooted either deeply or shallowly in less visible ones

embedded in the attitude (culture) and context (structure). Attitude (culture) refers to “the feelings and values people hold [such as hate, fear, mistrust, racism, inferiority or superiority and so on, that] easily become the sources of violence or at least allow violent behavior or violent structures to operate” while context (structure) refers to “the systems [that] discriminate between groups, communities and nations to the point of threatening lives and livelihoods” (Fisher, et al, 2000, p. 9).

To get a clearer picture, below is an illustration of violence as attitude, behavior and context (or called ABC Triangle) taken from Fisher, et al. (2000, p.10) in “*Working with conflict: Skills and Strategies for Action*”.



Source: Developed from Galtung, “Cultural Violence”, *Journal of Peace Research*, 27 (3), 1990

Despite the term “violence” being criticized “for being so broad that violence becomes so ubiquitous as to be meaningless” (Bufacchi 2005, Lawler 1995, as quoted in Barnett, 2008), the concept continues to be deeply rooted in peace studies and research (Wiberg, 1981). Even though structural violence has equality and justice as its objective, it should not be manipulated by warriors to justify the use of violence to

achieve the stated ends of justice and equality. Galtung (1996) argued that peace should be achieved by peaceful means and its means is the ends in the making. Since violence breeds violence, the notion of a just war is simply a violence “committed by the self-styled leaders of the world” (Grewal, 2003). Still, this theory exists in description and lacks a prescribed means of minimizing or eradicating structural violence (Barnett, 2008, p. 82). However, as more research on the topic continues, we have a better picture of what constitutes positive peace. For instance, an empirical research tool of the 2012 Positive Peace Index of the Institute of Economics and Peace.

b. Defining peace

The proof of the pudding is in the eating; the test of a marriage is when the going gets rough; the test of peace is in the ability to handle conflict ... without recourse to violence.

Galtung, 1996, p. 265

Peace is not only an end state of the termination of war or violent conflicts, having a ceasefire or a peace agreement; peace is also a process and a means to an ends in the making. First introduced by Galtung in 1964 in an editorial to his founding edition of the *Journal of Peace Research*, the concept of positive peace included more than just the absence of war and has since triggered peace researchers to not only explore the conditions for the absence of violence but also the conditions for lasting peace.

The 1974 Resolution of the 18th Session of the General Conference of UNESCO also stated that peace is not comprehended as an end state, rather it's:

[p]rincipally a process of progress, justice and mutual respect among the peoples designed to secure the building of an international society in which everyone can find his true place and enjoy his share

of the world's intellectual and material resources"
(as cited in Hicks, 1987, p. 72).

Though not overtly employing the term positive and negative peace, Adam Curls understood peace in the concept of being peaceful and un-peaceful stating that:

peaceful relationship are those in which individuals or groups are able to achieve together goals which they could not have reached separately [while] un-peaceful relationship are which the units concerned damage each other so that, in fact, they achieve less than they could have done independently, and in one way or another harm each other's capacity for growth, maturation, or fulfillment.

As cited in Brunk, 2012, p. 16

Being peaceful, as he indicates, does not mean the mere absence of direct violence against each other; rather, it is the cooperation, integration, and harmony allowing individuals to achieve mutual and equal benefits. There are no winners or losers. In other words, being peaceful is what Galtung termed as "positive peace" and un-peaceful as "negative peace". Peace can thus be understood in two concepts. Negative peace means the absence of visible and direct violence and is "thus a more conservative goal, as it seeks to keep things the way they are (if a war is not actually taking place)" while "positive peace is more progressive and challenging, implying the creation of something that does not currently exist" (Barash & Webel, 2009, p.9) so as to be able to reduce all types of violence in the society and be resilient to prevent/respond to future violent shocks.

Despite the challenge of defining positive peace, the generally-accepted principle of positive peace is "the minimization of violence, not only the overt violence of war, but also what has been called 'structural violence'" (Barash, 2010, p.146). Below is a violence-oriented look into the understanding of peace.

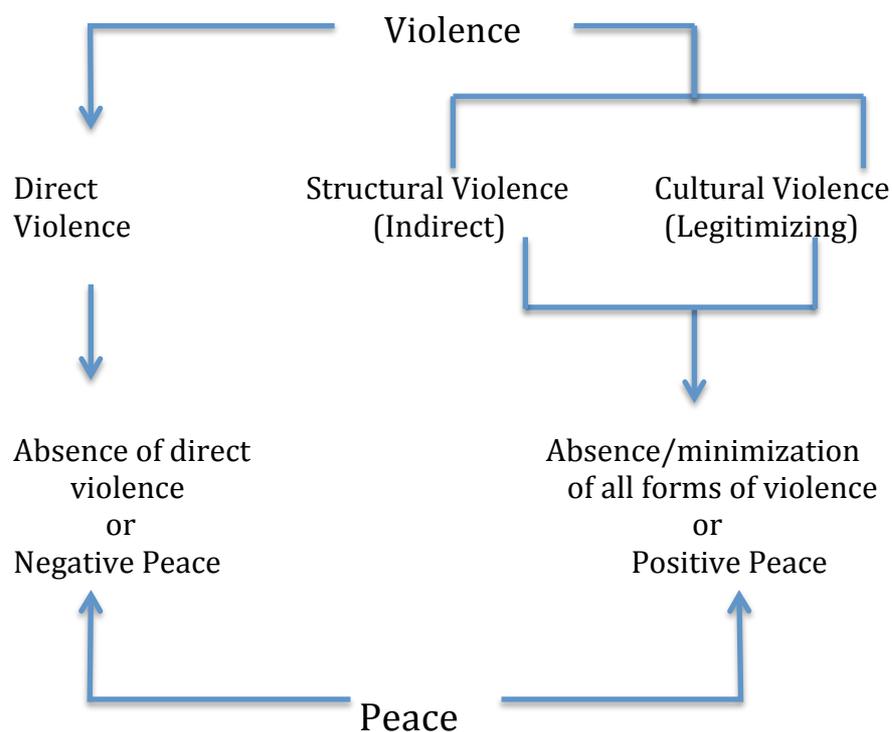


Figure 1: Negative and positive peace, according to Johan Galtung's static peace concept, 1996.

Given that conflict, in reality, can never be eliminated from human relationships, the definition of positive peace should be more dynamic. Thus, Galtung suggests: “Peace is what we have when creative conflict transformation takes place nonviolently” (1996, p.265). Positive peace is manifested by “cooperation and harmony for mutual and equal benefit” (Galtung, 2012). Furthermore, Galtung (1976, as quoted in Hicks, 1988) argued that in any definition of peace lies the values of non-violence, economic welfare, social justice, ecological balance, and participation or inclusion (as illustrated in the below table).

Studying Peace (Taken from Hicks, *Education for Peace*, 1988, p. 7)

Problems of peace	Values underlying peace
Violence and war	Non-violence
Inequality	Economic welfare
Injustice	Social justice
Environmental damage	Ecological balance
Alienation	Participation

Galtung's major concept of positive peace places crucial significance on social justice and equality especially "the elimination of root causes of war, violence and injustice and the conscious effort to build a society which reflects these commitments" (Soth & Miletic, March 2006, p. 33). Grewal (2003) summarized the important characteristics of negative and positive peace as noted below:

Negative peace: absence of violence, pessimistic, curative, peace not by peaceful means. Positive peace: structural integration, optimistic, preventive, peace by peaceful means (p.4).

Instead of trying to define what peace is, the positive peace index (PPI) attempts to formulate and measure what statistically constitutes a condition for a peaceful society. The Positive

Peace Index is the first known endeavor trying to quantify positive peace by using 300-cross countries dataset and formulates an eight-peace pillars framework to approach positive peace.

The Index defines positive

peace as "the set of attitudes, institutions and structures which, when strengthened, lead to a more peaceful society" (2012, p.69). It argues that to have a peaceful society is to build upon both formal and informal institutions, which focus on their capacity and resiliency to cope with any future external shocks including natural disaster. It further strengthens the interconnectedness between peace and development.

FIGURE 3.1 The Pillars of Peace



Eight Peace Pillars in PPI (Taken from GPI 2013)

The concept of resiliency has also been addressed by John P. Lederach as a fundamental condition for building peace in a post conflict community. Lederach (2009) argued that the prerequisite for a post conflict country to advance towards a more peaceful society is to build a healthy and resilient community by allowing or making conditions favorable for the people to access to three main things:

- A sense of place: locating oneself in the world;
- A sense of safety: feeling at home;
- And a voice: being close enough to be heard.

To conclude from the foregoing discussion, the ultimate purpose of peace is to reduce all types of violence, namely direct, structural, and cultural violence, through peaceful means. It is thus a process and a means to its ends in the making that needs continuous efforts and commitment. To build positive peace is to build resilient, sustainable, and positive conditions that address the political, social, economical, or cultural root causes of violent conflict and thus prevent/deal with future violent shocks. The process to build positive peace or address the root causes of violence in the chaotic world involves the search for creative non-violent conflict transformation, characterized by cooperation, dialogues, integrity, understanding and harmony for mutual and equal benefits without resorting to violence.

ii. Understanding Conflict and Conflict Transformation

Conflict is an opportunity, a gift ... [that] can be understood as the motor of change, which keeps relationships and social structures honest, alive, and dynamically responsive to human needs, aspirations, and growth.

J. P. Lederach, *Little Book to Conflict Transformation*, 2003, p.18.

There is a growing acknowledgment that peace can only be achieved by peaceful means and that conflict is normal and inevitable in human relationships.

Conflict does not always associate with the negative phenomenon of destructive or violent incidents like war or killing. Conflict and violence are two different terms. Conflict is simply “the relationship between two or more people who have or think they have incompatible goals” while violence encompasses direct, structural and culture violence and that conflict can become violence when there is not enough “channels for dialogue and disagreement, dissenting voices and deeply held grievances cannot be heard and addressed, and there is instability, injustice and fear in the wider community and society” (Fisher, et al, 2000, p. 4 & 6).

The term conflict transformation, however, was initially introduced in the 1990s and has gained increasing influence in the field of peace research and conflict resolution. The concept regards conflict as a “natural occurrence”, which should be recognized and addressed but not ignored, since it has personal, relational, structural, and cultural effects on the parties (Lederach, 2003). Though being similar in nature, one of the key distinctions between conflict resolution and conflict transformation is that the transformation emphasizes the changes in the parties’ relationship and characteristic of conflict through mutual understanding; while conflict resolution does not do so due to its assumption that the relationship will be altered once the conflict is resolved (Mitchell, 2002). Transformation works to not merely address the immediate issues but also to “change social structures and patterns” (Lederach, 2003, p.19) as defined by Lederach (2013) as follow:

Conflict transformation is to envision and respond to the ebb and flow of social conflict as life-giving opportunities for creating constructive change processes that reduce violence, increase justice in direct interaction and social structures, and respond to real-life problems in human relationships (p. 14).

From conflict transformation perspectives, peace is seen as a process “continuously evolving and developing the quality of relationship” (p.20). With respect to the causes of conflict, the theory of conflict transformation “assumes that conflict is caused by real problems of inequality and injustice expressed by competing social, cultural and economic frameworks” (Fisher, et al, 2000, p. 8). Therefore, conflict transformation works to reduce violence and increase justice by addressing and changing the patterns that sustain violence and injustice at “both relational and structural levels” (p.21) through dialogue. Using dialogue does not only allow us to “solve problems, one dissolves them. We do not merely try to reach agreement, we try to create a context from which many new agreements might come ... to uncover a base of shared meaning” (Isaacs, 1999, p.19).

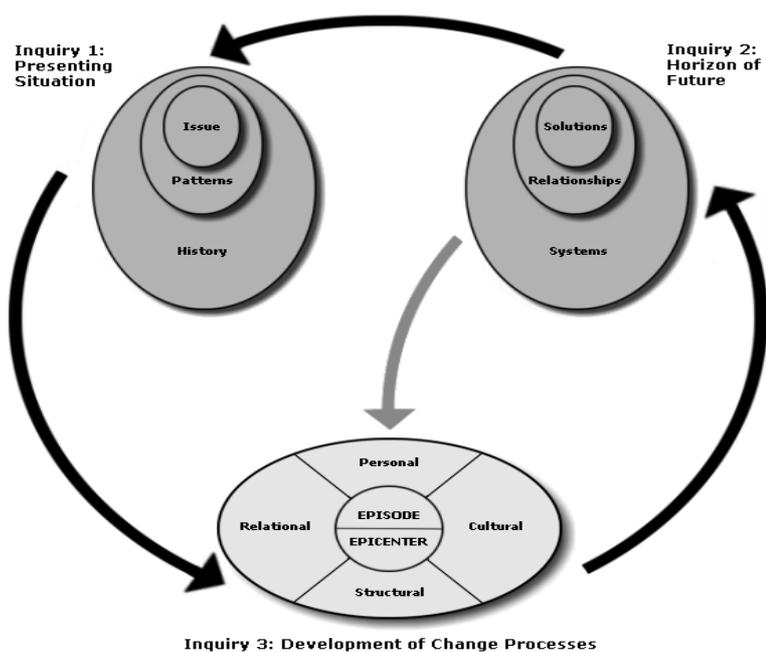
According to Lederach (2003), the framework of conflict transformation covers content, context, and structure of relationship, which means it works to deal with the immediate

issues of violent conflict and at the same time transform the underlying patterns that ‘feed’ violent conflict. “Change processes” must exist at the four levels of relational, personal, cultural, and structural in order to

“create platform for long term change of relational and structural patterns” (p.38).

Taken from Lederach, Conflict Transformation, 2003

The Big Picture of Conflict Transformation



However, to be successful in conflict transformation, one needs to build up their capacity and skills. Lederach (2003) identifies five capacities to: 1). See presenting issues as a window 2). Integrate multiple time frames 3). Pose the energies of conflict as dilemmas (both/and) 4). Make complexity a friend, not a foe 5). Hear and engage the voices of identity.

iii. Amartya Sen: Development as Freedom and Capability Expansion

According to McMichael (2012), the term development emerged during the advent of European capitalism whose ultimate aims were to strengthen its political legitimacy and military protection. Yet, it became a “worldwide strategy” only after the colonized countries continued to gain independence and considered development as “an antidote to colonialism” in mid-twenty century (p.22). Development projects were then formulated to boost the economy of the newly independent states. Those categorized as “underdeveloped” needed to be modernized towards western standards through industrialization. Yet, as development projects penetrated the world with an emphasis on economic growth, inequality has been omnipresence and has greatly increased. Concerns over the human and environmental costs have raised alarms. McMichael (2012) argued that development implementations have succeeded partially but failed ultimately.

Development, in its conventional meaning, concentrates on a prescribed yardstick such as GDP, which does not take into account the variation in distribution of the quality of life and others non-market values. Amarty Sen, an economist Nobel laureate, did not agree with such imposed-types of development and since have been publishing numerous books and articles dealing with both social and economic issues and theories. His work, particularly on development as freedom and capability

expansion, has significantly influenced the birth of the Human Development Index in 1990, which measures life expectancy, adult literacy, and school enrollment of a country.

His major argument is that development is not about imposing a certain standard; rather, it is about creating an enabling environment and allowing people the “substantive freedoms – the capabilities to choose a life one has reason to value”, Nussbaum added, “taken into account that people may need different quantities of resources if they are to come up to the same level of ability to choose and act, particularly, if they begin from different social position” (as quoted in McMichael, 2012, p. 286). Thus, if a certain development project provides people a better capability than another, it is said that the project is producing a positive outcome; it takes into account the diversity of human needs and thus not make comparisons. In his *Development as Freedom* (1999), Sen stated:

[t]he ends and means of development call for placing the perspective of freedom at the center of the stage. The people have to be seen, in this perspective, as being actively involved – given the opportunity – in shaping their own destiny, and not just as passive recipients of the fruits of cunning development plans. The state and the society have extensive roles in strengthening and safeguarding human capabilities. [But] this is a supporting role, rather than one of ready-made delivery (p. 53).

However, freedom is not really achieved in all societies; some have to fight for it; yet, in a peaceful and creative non-violent means if it is to be sustainable. Peace in dynamic concepts of creative non-violent conflict transformation could possibly be the answer. Therefore, both development and peace are strongly compatible; as two sides of the same coin, working to complete and reinforce each other toward the ultimate goal of their own sustainability. As identified in its first report entitled

Realizing the Future We Want for All (2012), the UN System Task Team, which is responsible for the preparation of the post-2015 UN Development Agenda, envisions a more resilient, equitable, and sustainable post-2015 development scenarios which include four key dimensions, namely, inclusive economic development, inclusive social development, environmental sustainability, and peace and security.

The term “sustainable development” first emerged in the Brundtland Commission to mean “the ability to make development sustainable to ensure that it meets the need of the present without compromising the ability of future generations to meet their own needs” (the Brundtland Commission’s report on *Our Common Future*, 1987). The key lies on “how well we balance social, economic, and environmental objectives/needs” (World Bank website). Though it is challenging to balance, the central point for development process is to be inclusive, equitable, transparent, and well-structured as much as possible and thus should not be done at the risk of social and environmental damage.

II. Human Needs Perspective: An Explanation of Violence and Social Struggle

If you negotiate away your own or others’ basic needs, you are sentencing yourself or others to a life unworthy of human beings. You are exercising violence. Negotiation is possible where goals and values are concerned, but not with basic needs [survival, well-being, freedom and identity needs]. Basic needs have to be respected; they are non-negotiable.

---- Galtung, *Transcend and Transform*, 2004, p. 2-3.

Human needs theory has been evolving for several decades and influencing a wide range of subjects, including conflict studies. Abraham Maslow (1943), who is well-known for his 1953 publication on *hierarchy of needs*, argued that the pursuit of certain kinds of human needs motivate people to perform certain kinds of actions.

Diagram of
Maslow's *Hierarchy
of Needs*



In addition, human needs are hierarchical in nature (see diagram), meaning that when a lesser need is fulfilled, an individual will pursue the next-higher need.

However, a number of needs theorists do not think the same way. For

instance, John Burton and other need theorists who adapted Maslow's needs theory into conflict theory perceived that needs are pursued "simultaneously in an intense and relentless", not always hierarchical, manner (Marker, August 2003). Marker continued to say that human needs, which are essential to sustainable peace, are non-negotiable; unlike interests that are subjective and can be compromised. Human needs also imply the notion of the unity of humanity, in which all humans possess the same inherited needs despite distinctions in religion, culture, and identity among all. Thus, it helps to promote a common understanding of our differences and not to label others as "the enemy" or "the others".

According to Marker (2003), needs theorists agree upon the following fundamental human needs:

- **Safety/security** is the need for structure, predictability, stability, and freedom from fear and anxiety.
- **Belongingness/love** is the need to be accepted by others and to have strong personal ties with one's family, friends, and identity groups.
- **Self-esteem** is the need to be recognized by oneself and others as strong, competent, and capable. It also includes the need to know that one has some effect on her/his environment.
- **Personal fulfillment** is the need to reach one's potential in all areas of life.
- **Identity** goes beyond a psychological "sense of self." Burton and other human needs theorists define identity

as a sense of self in relation to the outside world. Identity becomes a problem when one's identity is not recognized as legitimate or when it is considered inferior or is threatened by others with different identifications.

- **Cultural security** is related to identity, the need for recognition of one's language, traditions, religion, cultural values, ideas, and concepts.
- **Freedom** is the condition of having no physical, political, or civil restraints, having the capacity to exercise choice in all aspects of one's life.
- **Distributive justice** is the need for the fair allocation of resources among all members of a community.
- **Participation** is the need to be able to actively partake in and influence civil society.

Nevertheless, a major problem in this approach is with the specific numbers and universality of these needs. In his typology of violence (1996), Galtung divided human needs into four major categories, namely survival needs, identity needs, well-being needs, and freedom needs. Christie (1997) also utilized these common underlying needs to argue for the reduction of direct and structural violence through human needs theory. After all, human needs theory "assumes that deep rooted conflict is caused by unmet or frustrated basic human needs" (Fisher, et al, 2000, p. 8). The theory contributes significantly to the understanding of the root causes of violent conflict and provides new insight into the field of peace-building as well as development as, Coate and Rosati said in the Preface of *The Power of Human Needs in World Society* (1988):

[H]uman needs are a powerful source of explanation of human behavior and social interaction. All individuals have needs that they strive to satisfy, either by using the system [,] acting on the fringes [,] or acting as a reformist or revolutionary. Given this condition, social systems must be responsive to individual needs, or be subject to instability and forced change (possibly through violence or conflict).

As in Galtung's *The Basic Needs Approach* (1978), material and non-material human needs carry the same value and violence can arise from unmet non-material needs as indicated in his statement: "people are willing to suffer both violence and misery, including the sacrifice of their own lives, in a struggle for their identity and freedom" (p.16). The cost of maintaining unmet human needs will be too high as Burton (1998) suggested that social conflict is not really attributable to aggressive human instinct, rather it is caused by social conditions which are incompatible with inherent human needs. He added:

[T]he needs that are frustrated by the institutions and norms require satisfaction ... Denial by society of recognition and identity would lead, at all social levels, to alternative behaviors designed to satisfy such needs, be it ethnic wars, street gangs or domestic violence ... it has to be assumed that societies must adjust to the needs of people, and not the other way around (John Burton, January 1998, in *International Journal of Peace Studies*, 3(1)).

It is clear from the quote above that human needs represent a formidable underlying root cause of violence. In addition, due to the dynamics of violence (direct violence leads to direct violence, direct violence leads to structural violence, structural violence leads to direct violence, and structural violence leads to structural violence), the unmet human needs could be manifested in a form of social struggle and could either be done in a violent or non-violent manner according to the context. Hence, if the ultimate goal is to reduce violence, the central focus should be placed on meeting human needs; at least survival, well-being, freedom, and identity needs.

Chapter II: Setting the scene

I. An Overview: Conflict, Peace, and Development in Cambodia's Recent History

i. Cambodia from the 1970s to 1990s: A Period of Violent Conflict

After gaining independence from French colonization (1863 – 1953), in the late 1960s, the Kingdom of Cambodia became involved in the Cold War when North Vietnam stationed its troops on the country's soil. As a consequence, the United States carpet-bombed the Kingdom's territory from 1965 to 1973. The bombing figure was far higher than the total bombing figure during the World War II making Cambodia "the most heavily bombed country in history" (Owen & Kiernan, October 2006). The death toll is estimated to be 700,000 while "2 million peasants abandoned their homes and rice fields to become internal refugees in Phnom Penh and other urban areas" (Curtis, November 1993). In 1970, King Sihanouk was voted out of office by the National Assembly. General Lon Nol, whose core support came from the United States in the free world, became Prime Minister in a bloodless coup.

The newly established Khmer Republic under General Lon Nol was plagued with pervasive corruption and soon became unpopular. King Sihanouk then established a government-in-exile in Beijing and cooperated with the existing underground communist movement. Encouraged by support from China and North Vietnam, direct appeals to the population by King Sihanouk, and resentment over the U.S. bombardment, the Cambodian Communists known as the Khmer Rouge were able to gain popularity and strengthen its armed forces (Dy, 2007). By the end of 1973, the Khmer Rouge had taken control over most of the territory in the countryside. Both sides in the conflict were firm with their positions to win the

conflict and pledged to fight to their last breath. After five bloody years of war, on April 17, 1975, the Khmer Rouge ultimately took power and captured the capital city Phnom Penh and immediately initiated a massive evacuation of two million city dwellers into the countryside. The regime coined the phrase “Year Zero” to mark the start of a new era of Cambodian history as it “wiped the slate clean” of the “old regime”.

The Khmer Rouge was against the ideology of the free world and led the country with extreme secrecy. It converted the country into an agrarian “classless” state and self-dependent economy which, effectively, sealed the country off from the world. In 1977, war broke out between Cambodia and Vietnam now under the communists after their victory in 1975. In December 1978, Vietnam invaded Cambodia and removed the Khmer Rouge from power ostensibly on behalf of the United Front for the National Salvation of Kampuchea, an organization formed in Vietnam by defectors from the Khmer Rouge. Under the Khmer Rouge, more than two million Cambodian people died of starvation, overwork, disease and execution (Dy, 2007).

The new Vietnamese-backed communist regime was installed in Phnom Penh and the country was renamed the People’s Republic of Kampuchea (PRK). Meanwhile on the Thai-Cambodian border, with aid from China and Thailand, the Khmer Rouge guerrilla forces continued to fight against the PRK in league with nationalist forces and royalist forces. In 1985, Hun Sen, one of the Khmer Rouge defectors, was elected prime minister of the PRK (and he continues to rule the country today).

Between 1979 and 1990, the United Nations did not recognize the new Vietnamese-backed Phnom Penh government. Instead, the UN along with the

international community, continued to recognize Democratic Kampuchea (the Khmer Rouge) as the legitimate government of Cambodia. As a result, despite the tremendous need for the food and assistance, the starving Cambodian population inside the country was denied international aid and support in the immediate aftermath of the Khmer Rouge genocide. This period was marked by international isolation, insecurity and instability. Cambodia could not escape the impact of the Cold War until it ultimately ended in 1989, when Vietnamese troops finally withdrew from the country (Chandler, 2011).

Between 1989 and 1991, significant reforms took place to create a self-sufficient market economy. Yet the war against the Khmer Rouge guerrillas along the border still continued. On October 23, 1991, Cambodia signed the Paris Peace Accords, or the Agreements on a Comprehensive Political Settlement of the Cambodia Conflict, which were believed to “promote political compromise and national reconciliation”. However, in practice, this was “described as the politics of negativism” (Curtis, November 1993). Under the Agreements, a largest peace making operation in UN’s history was formulated called the United Nations Transitional Authority of Cambodia (UNTAC). The UNTAC, however, failed to ensure the effective achievement of the Agreements. Fears of insecurity were omnipresent during and after the 1993 elections and ceasefires were often violated. Although they initially signed the Paris Peace Agreements, the Khmer Rouge refused to demobilize its forces as required by “Phase Two” (cantonment and demobilization) of the Peace Accords. The first democratic transition (1993 -1998) was initiated without the Khmer Rouge’s participation. During this first legislature period, many initiatives and programs related to Disarmament, Demobilization, and Reintegration (DDR) process were undergone and the prominent ones were the establishment of Council of

Demobilization of Armed Forces as well as Hun Sen's "Win-Win Policy" in an attempt to reintegrate the remaining Khmer Rouge strongholds, Malai and Palin.

Although the Royalist candidate, Prince Norodom Ranariddh, son of the King Norodom Sihanouk, won the 1993 UN-sponsored elections, Hun Sen refused to give up power. As a result, a power sharing agreement was reached resulting in two co-prime ministers. The Khmer Rouge, however, continued their guerrilla war against the Phnom Penh government until the late 1990s when they became so divided from within while lacking international support, and all of its leaders either defected, were arrested or died. Perhaps one of the major flaws of UN-sponsored peace process in Cambodia was "the lack of policy options and the absence of a proposed legal and regulatory framework [which] will surely handicap the new government" (Curtis, November 1993). The country again returned to its initial constitutional monarchy, the Kingdom of Cambodia.

It is argued that post conflict countries were left with at least 44% of being vulnerable to a return of violent conflict/war in the first five years of negative peace (Collier et al, 2003, p.83) and Cambodia was one among those cases in point. Despite the existence of the Paris Peace Accords and the first national election, the intense political atmosphere in 1997 between co-Prime Minister Norodom Ranariddh and Hun Sen erupted into a bloody coup d'état as denounced in the report by Hammarberg, UN Special Representative on Human Rights in Cambodia, to the UN General Assembly (Adams, 2007). In 1998, amid allegations of harassment, the ruling Cambodian People Party (CPP) won the second election and Hun Sen became the sole prime minister.

The following period saw significant improvement with more political stability, rapid economic growth, and infrastructure development as the state began to make

reforms in all sectors; although the practice has received numerous critiques from both national and international observers for increasing corruption, weak judicial systems, creating a widening gap between rich and poor, and the mismanagement of Cambodia's natural resources.

ii. Cambodia Since the 2000s: A Period of Negative Peace

Between the 1960s and 1990s, Cambodia experienced six regime changes which were marked mostly by bloody transitions. It could be concluded that Cambodia went from overt violent conflicts to political struggles to its current relatively peaceful state (Soth & Miletic, 2009, p.44). The present “market-oriented” economy, driven by four major sectors in garment, agriculture, construction, and services, has gradually shifted the structure of labor force. For instance, in 2007, the agricultural employment rate declined from 81.4% to 55.9% while industrial employment surged from 2.9% to 15.4% and the service sector rose from 15.7% to 28.7% (CDRI, February 2012, p. 2). With the current urbanization trend, Phnom Penh's population is predicted to rise to 8 million by 2030, a 35% increase (Khemro, 2006, as cited in USAID Country Profile).

For more than a decade, Cambodia has enjoyed a ‘negative peace’ – the absence of war and violent conflict which had befallen the nation since the 1970s. Undeniably, the current government deserves credit for their efforts in maintaining a relatively peaceful state and allowing for economic development to take place, which has improved the lives of a majority of the population compared to the war years. However, inequality and injustice are on the rise. Despite the rapid economic growth, there remain critical challenges, namely “rising inequality, uneven spatial development, weak institutions, and high levels of corruption” (Hill & Menon, January, 2013).

Cambodia is still considered one of the world's poorest countries, with more than half of the total population living under two dollars per day (The World Bank, data in 2008). In terms of corruption, the country is ranked 157th out of 176 in 2012 and 160th out of 175 in 2013 in Corruption Perceptions Index of the Transparency International with respective scores of 22 and 20 out of 100. In the 2012 Bertelsmann Stiftung Transformation Index (BTI 2012), a global assessment of transition processes in 128 transformation and developing countries, Cambodia was placed 105th in its status index, in which "inequality and socio-economic gaps have not lessened and social stability may come to be threatened if a redistribution of wealth cannot be managed" (p. 32).

Additionally, there is little "fundamental structural change; power, leadership and governance continue to be based on family ties, connections and "patron-client" relationships, which until recently have been met without challenge or questioning from the broader population" (Soth& Miletic, 2009, p.45). Prime Minister Hun Sen has been in office since 1985, making him one of the ten longest serving leaders in the world. According to Kheang Un (2011), Cambodia remains "a dominant party authoritarian regime" with rising legitimacy because of its ability to sustain economic development and political stability. However, the country's record of human rights is still a major concern. The Human Rights Watch's World Report 2013 noted a deteriorating human rights situation in Cambodia due to the increase in violent incidents between the state security forces and protesters whose growing grievances center around land grabbing, the labor force's working condition, and environmental depletion.

However, the fifth national election in 2013 was seen as a turning point in Cambodia's politics. Ahead of the 2013 elections, Prime Minister Hun Sen once

warned the public of a return into civil war should his party lose the election (RFA, April 19, 2013). In mid-2012, the opposition Cambodia National Rescue Party (CNRP), a coalition comprised of the Sam Rainsy Party and Human Rights Party, seized the opportunity to tap into widespread social grievance in response to land grabbing and low wages as a tactic to garner more public supports as reflected in its very popular election campaign message “Change or No Change? Change!”. As a result of international pressure, the self-exiled Sam Rainsy, head of the CNRP, received a Royal Pardon for previous charges and returned to Cambodia just days before the 2013 national elections as tens of thousands of supporters waited to greet him along the streets from the airport to the Freedom Park (a place designated by law for public gathering or protest). Such public manifestations of support for the opposition and grievances against the status quo posed great challenges to the ruling Cambodian People’s Party (CPP).

Rumors of a CNRP victory and possible armed conflict were rampant on the night of the election day. It was reported that factory workers were asked by their families to return to their home village for fears of any post election violence. While some city dwellers remained inside their houses, a few made their way out of the country. Within a few days after the election, Phnom Penh residents rushed to the ATM Machine to withdraw their money, filled their cars with gasoline, and bought dried food such as packed-noodles, sardine cans, etc. The incumbent Prime Minister Hun Sen also acknowledged the chaotic environment in the aftermath of election in his public appearance interview three days later. He denied any rumors, for instance, of his resignation from the P.M post or that he might flee to a foreign country. Such public fear might be attributable to past experiences, in particular, the 1997 coup d’état. The fear was later fueled by the de facto movement of troops and the presence

of soldiers in armored personnel carriers in the outskirts of Phnom Penh several days after the election.

The preliminary results showed that the CPP received 68 seats while the CNRP got 55 seats out of the 123 seats in the National Assembly. Amid the political tension, tens of thousands of supporters joined the CNRP to hold massive non-violent demonstrations to demand an independent investigation into the alleged electoral fraud. Despite CNRP's refusal to recognize the result or participate in any negotiations, the CPP continued to form the fifth legislative government without the presence of the 55 elected CNRP lawmakers. It is noteworthy to note that this was the first time since the UN-led elections in 1993 that the opposition won substantial support in a national election. The incumbent government later recognized its shortcomings from its previous mandates as Mr. Sar Kheng, Minister of Interior and Deputy Prime Minister, stated during a ceremony that another crucial character contributing to CNRP's massive support was due to "Mr. Change" by saying:

They always say that the support vote for the CNRP is of three types: The first support comes from the votes of Sam Rainsy supporters, the second support votes are Kem Sokha's Human Rights Party. So there is Mr. Sam Rainsy, Mr. Kem Sokha and Mr. Change, the party of 'Mr. Change'. It is very big ... I don't know where to find Mr. Change. But, you sirs, might understand more than I do ... [changes should not] focus on changing people. We can change some [ministers], which is normal, but we need to change the form of management and leadership.

(The Cambodia Daily, September 28, 2013)

Agreeing with Sar Kheng, P.M. Hun Sen pledged to conduct "deep reforms" in his fifth mandate. Yet, it remains to be seen whether it is a real political commitment or just a hollow promise to quell the rising political opposition to his rule. To rights groups, they are doubtful about the promise as witnessed in the recent excessive use of

security forces against a peaceful labor protest in mid-November 2013 causing a death and many injuries.

Massive peaceful demonstrations and petitions signing activities led by the CNRP to demand for institutional reforms and the creation of an independent investigative committee are still on-going. Yet, since mid-December 2013, the opposition CNRP party has organized daily protests drawing thousands of supporters. As the protest continued, it shifted its original purpose to call for either a re-election or the resignation of Hun Sen from his incumbent position as prime minister, a post he has held since 1985. While there were different estimated figures ranging from 500,000 to 100,000 to 30,000 to 10,000 people attending the protest on December 22, 2013, the day saw the biggest demonstration in the history of the country and the first massive public expression ever held to call for the resignation of P.M. Hun Sen. The 54 CPP lawmakers later has signed a letter to denounce the demonstration as illegal and “an act of coup d’état”. The letter states:

We the lawmakers of the CPP in the fifth mandate would like to strongly speak against the illegal act, rude attitude and the immoral announcement of the leaders and members of the CNRP in the mass demonstrations ... [the future CNRP’s plan to block major roads in January 2014] would lead to the occupying some state institutions as they follow the methods from [other] countries [referring to the growing mass protests in Thailand to unseat P.M. Yingluck shinawatra]. (as quoted in *The Phnom Penh Post*, December 24, 2013)

Amid the on going daily mass demonstrations led by the opposition party, protests to demand more wages from the factory workers and more compensation from the land affected communities such as Boeung Kak, Borei Keila, and Thma Kol community, have also been taking place. On January 3, 2014, the confrontation between the factory workers’ protest and the authorities erupted into a deadly clash

causing at least four deaths. More than 20 people were injured and 23 people were arrested without disclosing their whereabouts or charges against them until a week later. A day after the incident, the daily protest of the opposition party at the Freedom Park was also cleared, and public gatherings of more than ten people were temporarily banned. P.M. Hun Sen has made repeated announcements that he will not step down from his post and call on his party's supporters to stand up and safeguard their elected government. Violence and temporary arrest have been spotted when the authority tries to disperse any public gatherings. As of January 2014, the political stalemate continues.

II. Brief History of Landownership and Economic Land Concession in Cambodia

a. Overview of Landownership

Cambodia's modern formalized private property system was influenced greatly by the French legal system during the French colonization era (1863-1953). Prior to that period all of the land throughout the country, theoretically, belonged to the King, even though since the early centuries people believed that their land was owned and protected by the spiritual "land protector" or "Machas Toek Machas Dei" (Hel, 2012). Yet, in practice, private ownership already existed in an informal means through the purchase agreements or royal grants for the wealthy people and a traditionally used based land holding system called "acquisition by the plough" for the ordinary ones. Such traditional ownership was practiced without creating any "economic grievances and animosity among people from different ethnic backgrounds" (So, 2009, Doctoral Dissertation, p.77). This was perhaps due to the small Cambodian population at that time, with land abundance available for use at

ones' disposal. Although without cadastral records, "local acceptance was a proof of possession" (Keyes, 1977, p. 26, as quoted in So, 2009, Doctoral Dissertation).

Formal privatization was first introduced during French colonization under the 1884 Land Act, which was said to serve "as a guarantee for the investment of French settlers" as well as tax collection (Russell, 1997). The Department of Cadastral was established in 1896. However, this drastic change of land ownership received critical resistance from both the elite and ordinary Cambodian people, whose 30% of annual crop incomes were spent on taxes. Such privatization systems were not able to be fully implement before 1912 (Sik, 2000, p.3). Under the 1920 Civil Code, "landholders" (with possession rights) and "landowners" (with ownership rights) were formulated and the "acquisition by the plough" was also maintained if only there was "peaceful possession of unregistered land, in public and in good faith, continuously and unequivocally, for five consecutive years" (Article 723, 1920 Civil Code, as quoted in Russell,1997).

The commune office was formulated in the early 1900s and tasked with the responsibility to register the landholders' claimed property in the "fixed asset registration" and such possession rights, which could be forfeited at any given time, could only be converted into ownership rights (definitive title of ownership) unless the claims were listed in the District Land Governance Office with a series of required procedures to be taken place. These two distinctions however were not well understood by the local people who always assumed that "they have ownership to the land regardless of what document they hold" (So, 2009, Doctoral Dissertation, p. 89). Such traditional beliefs continue even in the present age, which often time causes conflict with the modern legal land claim.

When the Kingdom of Cambodia gained independence (1953 – 1970), private property was protected by the constitution and there was an increase in land transactions. Still, “the success of land codification, privatization, and commercialization was rather limited” (CDRI, November 2001, p. 10) and only 10 percent of the land was registered as private property with issued land titles from 1925 to 1975 (Un & So, June 2011). The issue became worse as the country descended into civil war and genocide in the 1970s.

Under the Khmer Rouge regime (1975-1978), private property was not allowed and it became collectivized and owed by the State. The cadastral records were completely destroyed as well. The ‘Riel’ national currency was abolished and ‘rice’ exchange came into being. Thus, the people were forced out of the cities into rural areas to begin working on collectivized farming and irrigation projects, leaving Phnom Penh capital city behind as a “ghost city”. As the Khmer Rouge successor, the People’s Republic of Kampuchea, was still struggling to fight against the Khmer Rouge guerillas and grapple with its attempts at the state building, land remained the collective property of the state and was not allowed to be sold or rented. The allocation of land was implemented “based on the population and ability of production of the various so-called solidarity groups [*Krom Samaki System*]” (Rusell, 1997, p. 105), which was merely for agricultural and cultivation purposes.

In the meantime, people began returning to their home villages and other new areas to build a new life. However, in Phnom Penh city, people who returned from the refugee camps and countryside continued to occupy houses and land on “an ad hoc basis” (Bugalski & Pred, 2009, p. 2). To mark the end of the Cold War in 1989, the Country renamed the State of Cambodia and began to adopt a free market economy making the land value rise up. The privatization system and another Land Law was

adopted in 1992, which created ownership rights for residential land only of no larger than 2,000 meters and possession rights for agricultural land no larger than 5 hectares (Williams, 1999, as cited in CDRI, 2001, p.11). Land owned prior to 1979 was 'null and void' and the State remained the legal owner of the land throughout the country. Unused land of more than three years would return back to the State.

Such a clear message convinced people that there was "equitable distribution of land and that almost all who were eligible, actually received land" (CDRI, 2001, p.11). However the assumption was not the case as inequality and corruption took place in the already ineffective distribution process, which "significantly increased social stratification, enriching those in a position of power, particularly those with power over the privatization of land and resource" (Hughes as quoted in So, 2009, p. 109). People in poor rural areas, especially the indigenous populations, who lacked in legal understanding and access to information, continued to practice the traditional ways of occupying land, "used-based" approach, for instance, by felling trees, shifting cultivation, and wood gathering in the forests, in contrast to the private companies who had all it needed to legally own the land (CDRI, November 2001). In addition to the lack of effective land registration mechanisms, local land uses, transfers, and ownerships in the 1990s were carried out by "informal" means or fixed asset registration with recognition or witness from the local authority only (Bugalski & Pred, 2009).

According to the Cambodia Development Resource Institute (November 2001), there were concerns over "inequality in land holding, increased landlessness and land conflicts, insecure tenancy, and the growth of squatter settlements in the urban areas, particularly in Phnom Penh" (p.11). The 1992 land law thus did not ensure a strong basis for land tenure security and land management. This was likely

attributable to the titling process which by 2001 was inadequate “because of limited institutional capacity and the costs (both legitimate and in bribes) associated with the sporadic titling process” (World Bank document, 27 December 2011, p.1). It could “exceed 25% of the value of the land” (CCHR, 2013, p.17). These problems led to a call for a nation-wide land reform which gave birth to the adoption of a donor-supported Land Law in 2001.

The 2001 Land Law (the Land Law) provides a relatively better foundation for land reform programs allowing both residential and agricultural landownership. The new Land Law allows the possessors the right to apply for definitive title of ownership and even while they are waiting for the transfer, the Land Law also protects possessors’ “right *in rem* over the immovable property [which is the] subject of exchange, transfer of rights and transactions” (article 39). However, not all possessors are legal. To be a legal possessor, one has to possess the land before the adoption of the 2001 Land Law on August 30, 2001, in which the possession “shall be unambiguous, non-violent, known to the public, continuous and [occupied] in good faith” (article 38). Importantly, despite meeting these conditions, one can not become a legal owner should he or she resides on state property (article 43), private property (article 248), or collective property (article 21, 23 & 26) amid the fact that the state land map is not publicly accessible.

The Land Law classifies land into three main categories: private land, state land and collective land. For private land, any individuals who have possessed unoccupied land peacefully for five year prior to the adoption of the Land Law can apply for ownership rights. Traditional ways of land acquisition became illegal. The Land Law also aims to provide land and housing security to all as well as to protect

the existing land from being expropriated in the public interest until, as stated in article 5 of the 2001 Land Law, “a fair and just compensation” is paid.

State land is further divided into state public land and state private land. The Law also allows the state to deliver social land concessions to the landless families to cultivate and reside. The recipient families can request for ownership after five consecutive years of peaceful occupation. For collective land, it is especially designated for collective uses of monastery and other the indigenous groups who comprise up to 1.5% of the total population and embrace different culture, way of life, and identity. However, the process of collective land title registration has been very complicated and only five out of the 114 communities that have applied have been able to complete the process by far (CCHR, December 2013, p.20).

Despite such legal protections, the reality has often times been contradictory. For instance, since a large number of Cambodians have not been able to secure their land titles, they remain very vulnerable to land grabbing and forced eviction as land values continue to soar. No definitive land ownership title (‘hard’ land title) means no rights to occupy the land, land that has “unclear status” or is not legally occupied by individual entities is ‘de facto’ state land property. Thus, people are “left defenseless when authorities or companies come to claim their land” (CCHR, December 2013, p.17).

In response, in 2001 the Cambodian government initiated the Land Administration, Management and Distribution Program (LAMDP) “to strengthen land tenure security and land markets, and to prevent and resolve land disputes; (b) to manage land and natural resources in an equitable, sustainable and efficient manner; and (c) to promote land distribution with equity” (World Bank document, December 27, 2011). The following year, the Land Management and Administration Project

(LMAP) was founded and funded by multiple donors of which the World Bank was a major one. In addition to the sporadic land registration program, the LMAP initiated a more systematic program and developed land-related legal frameworks and capacities which issued 1.3 million titles in 2009. However, challenges such as “exclusion of difficult areas [likely to be disputed or have unclear status] and lack of transparency in state land classification” continued to make vulnerable families even more vulnerable (Bugalski & Pred, 2009, p. 3).

The country has pledged itself to Millennium Development Goals to achieve an increase of land security from 15% in 2000 to 43% in 2015 (Ministry of Planning, 2011). (This target was originally 65% before being revised). Yet according to the 2009 UNDP report, only 24% of about 7 million land plots had been registered through systemic and sporadic land titling. According to So (2009), the difficulty in creating a cadastral sustainability was attributable to “endemic corruption in the Cambodian state bureaucracy and the durability of the prevailing system in which the ruling elites hold interests” (So, 2011, abstract).

On June 14, 2012, a few days after former US Secretary of State, Hillary Clinton, urged the Phnom Penh government to release the 13 jailed BK women, student land-titling volunteers also named the “Heroic Samdech Techo Volunteer Youth” was initiated to replace the LMAP in the systematic land registration program in order to measure and demarcate land to poor families. As a new scheme financed by P.M. Hun Sen, the scheme was reported to be able to measure 660,000 plots and issue 380,000 titles during their first phase of the mission and the second phase will resume this coming rainy season [in 2013] (CPP website). Still, whether such practice was an effective measure or only a superficial one in response to the increasing land conflict remains a question.

A recent study by Human Rights Watch showed that the new scheme “lacks transparency and accountability and could leave thousands dispossessed from their land” and thus “allows more corruption and land grabs” (HRW, June 2013). The new scheme was possibly just another tactic to garner political support ahead of the July 2013 national elections as the Youth were chosen from “CPP supporters, conducted their work wearing military uniforms, [transported by] government military vehicles and hosted by local CPP authorities” (CCHR, 2013, p.19).

In addition, Prime Minister Hun Sen, as quoted in RFA on April 19, 2013, said that "To those whose lands have not been measured and those who have not been given land titles, I would like to inform you that the youth can return to work only if the CPP wins the election [...] If you want the youths to come back, there is only one choice for you: to vote for the CPP". Back in the first national election in 1993, the CPP employed the same tactic of giving “farmers titles to the land they farmed ... yet many farmers still have only a piece of paper [applying for land title] and not the final documentation [of approval]” (Ledgerwood, 1998, p. 130). Until today, land reform remains an unfinished task.

b. Overview of Economic Land Concession

Since the 1989 reform toward a free-market economy, concessions have been granted to private companies to develop agro-industry but as part of a non-transparent process. In addition, with a military presence in the land concession areas, land tenure insecurity, and a weak institutional structure, the economic concessions “created conflicts between the people and the companies ... poor people are vulnerable to losing out ... [to] the powerful individuals ... land inequality and landlessness ... [thus] emerged as critical issues” (So, 2009, p. 119-20). In 2001, a new Land Law was

adopted and Sub-Decree #146 on the Economic Land Concession was promulgated subsequently in 2005 providing the Economic Land Concession (ELC) a stronger footing in the legal framework.

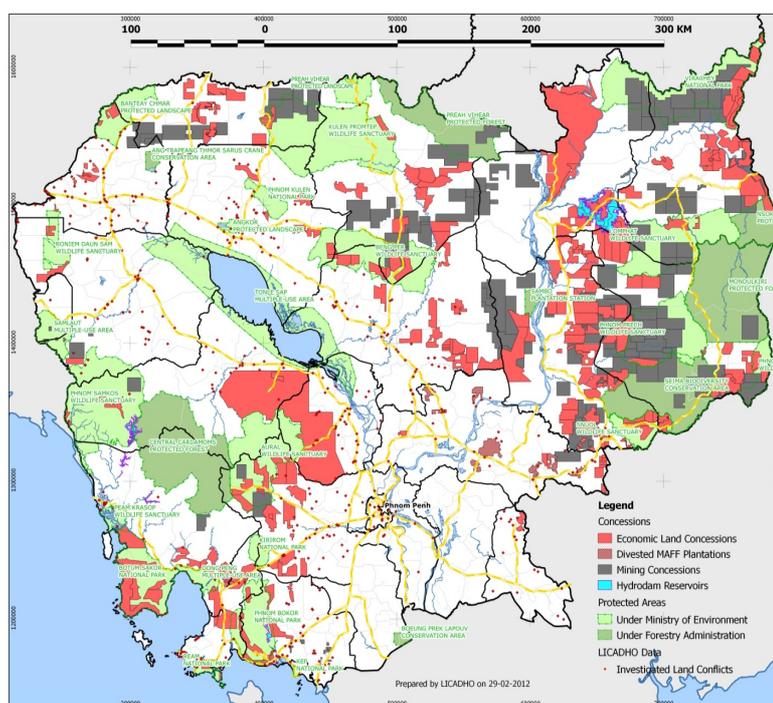
The Land Law classified state property into state public land and state private land. Different from state private land, which can be leased, transferred, or sold, state public land is comprised of areas of natural origin such as rivers, forests, or natural lakes (more are listed in Article 15 of the Land Law) which are considered “inalienable ... and not subjected to prescription”. However, these areas can only be authorized for uses or occupancy for temporary periods without changing their public interests usage (Land Law 2001, article 16). ELC could only be granted for land classified as state private land for a maximum of 99 years and can be no larger than 10,000 hectares (Land Law, Article 58 & 59). In addition, these concessions can be granted only if the procedures listed in Article 4 of the Sub-Decree #146 have been fulfilled, including public consultation with the local people and authorities. The main purposes for granting ELC are:

To develop industrial-agricultural activities requiring a high rate of initial capital investment; to reach agreements with investors for developing land in an appropriate and long-term manner; to increase employment in rural areas and stimulate diversification of livelihood opportunities; to encourage investment in economic land concession projects and to generate state revenues through economic land use fees, taxation and related services charges” (Open Development Cambodia’s website)

Despite the stated goals however, no “comprehensive evidence based report has been officially published about the benefits of land concessions ... in contrast, the negative impacts have been well documented” (Subedi, 24 September 2012. p. 47). The systematic classification of private and public land has been “slow” and ELC has

been “granted through dubious processes to the benefit of powerful politico-business individuals” with little contribution to the “public treasury” and “severe social impacts ... [that] include economic land concessionaries’ encroachment on people’s agricultural land, displacement of local people, limiting people’s access to common property resources, and disturbance to significant cultural and spiritual areas of the local people” (So, 2009, Doctoral Dissertation, p.129). ELCs have not been the only causes of increasing land conflicts and vulnerability of poor families. The poorly implemented Social Land Concession (SLC) has also been a source of land conflict as well. Thirteen out of the total 38 SLCs granted in 2012 are subjected to conflict and ADHOC, a local Human Rights NGO, received 70 cases of land disputes in 2012 with the reported arrest of 232 people, a 144% increase compared to 2011 (ADHOC, February 2012, p.32).

According to an integrative map recorded by LICADHO, a local human rights NGO, over 2.1 million hectares have been granted to private companies since 1993.



Source: LICADHO, 2012

Furthermore, approximately 350,000 Ha of the protected areas, such as forested or watered areas, known as state public land, has also been allocated to the ELCs (UNDP, 2009 Data). During 1960s, forest

coverage exceeded 70% of the total land. By contrast, according to the World Bank, Cambodia's forest areas in 2010 cover only 57.2% of the country's total land. 20% of the total land concessions in Cambodia were granted to approximately five tycoons who have close connections to the CPP (Global Witness, May 2013).

Neither the land titling program nor the "Heroic Samdech Techo Youth" strategies have been able to address land conflicts in Cambodia equitably. As a result, land related conflicts persist and protests/grievances against land-grabbing continue (HRW, June 2013). The government responded by issuing Directive 01BB: Measures Reinforcing and Increasing the Efficiency of the Management of Economic Land Concession to temporarily halt the issuance of new ELCs. Not long afterward, P.M. Hun Sen approved three more agro-industrial concessions (*The Phnom Penh Post*, June 15, 2012). Since then, approximately 188,749.49 hectares were granted to private companies "making up over half of the total land granted through land reclassification in 2012" (CCHR, December 2013, p.24).

Land dispute resolution organs have been in place but have failed to effectively resolve the growing number of land dispute complaints. For instance, the government's National Authority for Land Dispute Resolution (NALDR) established in 2006 managed to resolve only 30 percent of the total complaints filed throughout 2012 (NALDR annual report 2013 as cited in *The Phnom Penh Post*, 21 February 2013). The reason for the ineffectiveness of the resolution is due to the failure of effective communication of the involved institutions prior to the issuance of the ELCs, according to Mr. Chhin, head of NALDR. As quoted in *The Cambodia Daily* on March 1, 2013, he added:

In the past, I have never solved them [disputes] ...
whenever a dispute arises between a company's
economic concession and the villagers, I have

returned them to both ministries, the Ministry of Agriculture and the Ministry of Environment ... Why have we not solved them? The NALDR does not grant economic land concessions, we have no right to grant them. When an ELC is granted, they don't ask us if it should be granted.

The absence of effective and independent land dispute resolution mechanisms furthered fueled the increase in land grievances. The prolonged land issues, in turn, causes adverse and profoundly negative effects on the building of a more peaceful society.

III. Background of the Boeung Kak Development Project

According to *The Phnom Penh Post* published online on September 29, 2008 tracking the background of the Boeung Kak Lake (hereinafter the BK or the Lake), the Lake was listed as one of the seven natural lakes in Phnom Penh. During French colonization in 1925, it was planned to be closed off from the nearby river and its eastern region was to be converted into a park. The Lake continued to serve as a natural recreation area in the middle of Phnom Penh city until the 1960s when a number of fishermen worked its western shore. After the fall of the genocidal Khmer Rouge regime in early 1980s, the Lake then became home to railway staff and refugees while it continued to function as “a water park and public garden” as well as a natural reservoir during the monsoon season. In 1985, about 70 families were relocated to the BK area when their previous residence behind the Calmette Hospital was being turned into an amusement park (STT, December 2010).

The refugee and tourist population around the Lake continued to soar after the 1993 national election. But a year later, a number of huts were bulldozed to build road linking to the Lake, and more “quarters” were scheduled to be destroyed as well “to make way for a zoo and public garden” (*The Phnom Penh Post*, September 19, 2008)

as notified by the Ministry of Interior. However, the notice was not implemented. In 2003, a PEARL plan (Preservation, Evolution, Ambition to Regenerate the Lake) aiming to create “a vast green space accessible for all” was chosen in a City Hall-organized-contest to renovate the Lake but once again it was abandoned in 2006 (*The Phnom Penh Post*, September 29, 2008). On February 6, 2007, the Lake and its surrounding area comprised of 133 hectares was leased as an economic land concession for 79 million dollars to a little known local developer Shukaku Inc., a company owned by CPP senator Lao Meng Khin. The 99-year lease BK project was initiated to make way for commercial and residential areas called the *New City of East*, which was one of the five Mega projects (satellite cities) and was said to be in line with the City Hall’s plan for the beautification and development of Phnom Penh city (*The Phnom Penh Post*, October 14, 2010).

By that time, there were approximately 4,200 families or so living on and around the BK Lake area. Many of those residing around the Lake had possible claims for legal ownership of their house in accordance to the 2001 Land Law. In March 2006, the City Hall issued a public notification for the BK community informing them of the adjudication of their land under the systematic land registration program co-sponsored by the World Bank’s Land Management and Administration Project (LMAP). When they filed their land rights applications however, their claims were rejected. Instead, they were threatened with eviction on the grounds that the BK area was categorized as ‘development zone’. They were accused of being illegal occupants who did not have definitive landownership titles and that they had settled on state owned property, in spite of the fact that some of the affected families had possible legal claims to transfer their de facto possession rights into ownership rights. Meanwhile, the legitimacy of the 99 years lease agreement itself was questionable

since the Lake is legally regarded as state public land which, according to article 58 of the Land Law 2001, the land could not be leased as a concession. Despite this, on August 7, 2008, a sub-decree was issued to transfer the Lake's legal status from state public land to state private land which could be leased. The question then arose: who was right and who was wrong?

It was later reported that the morning glories grown by the residents there were poisonous which posed a tremendous threat to the livelihood of those who depended on selling them as their means of survival (STT, December 2010). On August 26, 2008, the Shukaku company started pumping sand drawn up from the Mekong river into the Lake for 18 hours a day, despite the repeated calls for a halt from both national and international organizations who claim that the act and the project itself was "in breach of both Cambodian and international law" (Amnesty International, Press Release, Aug 27, 2008). On September 1, 2008, hundreds of BK residents thumb printed a petition and marched to the City Hall to demand solutions for their houses, which were lost due to the development without having been well-informed, consulted, or compensated. The authorities claimed that "We still continue our negotiations with the villagers, but the development can not stop" (Deputy governor quoted in *The Cambodia Daily* September 18, 2008).

"If we don't go now, we'll go later. To go now is better [or] we could be sent 20 or 30 Km from where we are to be moved to now. They didn't force us but we must go [as the house is inundated and inhabitable]" said another BK villager as quoted in *Voice of America* (VOA, October 28, 2008). Approximately 500 families agreed to move to a relocation site. While a few had moved to the relocation site with satisfaction, the rest refused to dismantle their homes and continued the struggle. As of 2008, the BK residents did not even know where the Shukaku company's foreign

partner came from. They gathered to protest in front of the Korean Embassy since “Shukaku” sounded Korean; yet they were informed that the company was not coming from Korea. The Environmental and Social Impact Assessment (ESIA) was not made public either until after the company started filling the Lake. The ESIA report recognized the impacts on the residents’ livelihood but claimed that “the development will bring multi-positive benefits for the economy ... and city environment. The project will attract investment estimated at US\$ 2 billion” (as quoted in *The PPP*, September 29, 2008).

The housing rights groups rejected these claims and stated that the report was “false” and “not independent” and “transparent” (*The PPP*, November 21, 2008). A Drainage and Flooding Assessment was then conducted by a group of concerned professional drainage engineers and the findings showed that “the Shukaku Inc’s approach to ‘dig a canal 20-21 square meter in area’ is insufficient ... [and] potentially negligent” (BK-Drainage-Assessment, December 2008). However, the findings were rejected by the deputy governor, arguing that “the BK development plan will not have any impacts such as flooding” (as quoted in *The PPP*, March 12, 2009).

Amid the rising flood levels, which poured into the houses of residents, caused by the filling of the Lake, the BK residents were continuously harassed, threatened, and forcibly evicted in the presence of company workers and armed police. Journalists were also intimidated as well when they tried to report the story (Open Letter by four International Organizations, Amnesty International, December 4, 2008). Protests had been held continuously to call for a halt to the pumping activity so as to allow for a discussion over fair and just compensation. “I am not against the government’s development plan, but any development in which the poor have to be evicted without

proper compensation will only benefit powerful people” said a BK protester outside the Appeal Court (*The PPP*, May 19, 2009).

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

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

The Inspection Panel Investigation Report
November 23, 2010, p. vi-vii.

Meanwhile a number of houses around the Lake were inundated and uninhabitable due to the continued sand pumping. Some residents had to rent a place to stay or move out while authorities ignored and diverted their responsibility to improve the drainage system to the Shukaku company (*The PPP*, July 8, 2010). It seemed that, unlike those communities along the Tanle Basac who were forced at gun-point, the BK communities were chased away from their home by floodwater.

As a last resort to make their voice heard, the BK community constantly held protests, which often times resulted in arrests, law suits, and the use of violence causing both serious and minor injuries and at least two incidents of miscarriage. The

grassroots protesters had been filing complaint forms at all levels and protesting at places such as, the Council for the Development of Cambodia, P.M. Hun Sen's house, the Senate, the National Assembly, the Courts, City Hall, concerned foreign embassies, the pumping worksite, and many others. One case occurred during Ban Ki-moon's visit to Cambodia. The BK residents gathered in front of the Khmer-Soviet Friendship Hospital, where Ban was scheduled to visit, to demand a meeting with him. Their gathering, however, was dispersed violently and at least one protester was arrested and beaten (Licahdo, Press Release, October 28, 2010). In another incident on September 16, 2011, a forced eviction that took place in the BK community erupted into "a clash between local residents and riot police [while] eight homes were demolished without warning and a man was beaten unconsciously by police" (CCHR, October 2011).

While the protests were carrying on tirelessly, the company tried to make people agree to its proposed offers, which were "either an apartment in another area or cash [of \$8500] or the building of a house at the development zone" (said deputy chief of PM's cabinet as quoted in *The PPP*, December 21, 2010). With the assistance from civil societies, the BK residents-turned-land activists, who were mostly female vendors as well as housewives, organized a press conference to present a land sharing plan in February 2011 by asking the authorities to set aside 15 hectares within the 133 hectares for on-site development. Despite the on-going unresolved problems for the remaining BK residents, an official ceremony presided over by P.M. Hun Sen was held in July 2011 to open the construction of the Shukaku's BK development project. In early 2011, Shukaku was renamed to Shukaku Erdos Hung Jun Property Development Co, Ltd., of which a Chinese company had a 50% stake. The BK Lake

was completely filled with sand on April 19, 2012, while the BK residents complained about flooding and poor drainage.

As the situation worsened, the World Bank decided to freeze loans to the Cambodian government in August 2011 until a resolution could be reached. A few days later, the government signed a sub-decree to grant 12.44 hectares within the BK project to the remaining households (over 3,500 or 83.5 percent of the BK households had already moved out by then). Yet, about ten percent of those remaining households were said to be located outside the granted zone and thus were excluded. However, the sub-decree did not mention where and how the granted land should be shared among the people. When a number of the excluded houses were bulldozed, a violent clash between the villagers and authorities transpired again. Later, a female protester whose house was among those excluded was reported to have committed suicide by jumping into the river (Licahdo, *Pushed to the edge: the death of a BK activist*, November 24, 2011).

Despite the continuous issuance of land titles for the houses within the granted land, the BK land activists continued to stage protests almost on an almost daily basis over issues such as drainage system improvement, the remaining land titles issuance, the demarcation of the granted land, the violence used against BK protesters, the release of the arrested BK protesters, and *inter alia*, more compensation from those who were previously evicted. The two problematic incidents which made the international headlines were the arrest of 13 peaceful female protesters and the BK land activist, Yorm Bopha.

On May 22, 2012, the 13 BK women protesters were arbitrarily arrested and sentenced to 2 years imprisonment within 48 hours. They were released a month later after a call for their release from the national and international community including

former US Secretary of State Hillary Clinton. The BK community was actively and constantly campaigning and protesting on the grounds to demand their release. And secondly over the arrest of Yorm Bopha, another BK woman protester who was charged with “intentional violence” on two motor taxi drivers and sentenced into two years. She was later named “Prisoner of Conscience” by the Amnesty International and 14 months later she was released on bail and her charge was dropped more than a month later after her release.

According to Tep Vanny, a well-known BK land right activist/BK representative, as of January 2014, 631 of the remaining households have already received the land titles while 63 more households are still waiting, mainly because they claimed that their houses are located outside of the granted 12.44 hectares (*Radio French International*, February 17, 2014). Vanny added that even though the newly appointed governor has established a working committee to demarcate the land for the remaining BK residents, the work has been prolonged until now, and when the community staged protests, police forces were used to disperse them causing injuries and miscarriages. She added that there are three reasons behind her continued activism and protest in spite of the fact that she had already received a land title. First, she and her community would like the authorities to demarcate the granted 12.44 hectares to prevent any future land grab. Second, since the start of the struggle, she and other protesters have promised to struggle together for their houses, noting that “we would die for justice; we would die for our house; we are proud to do so”. And thus she will continue organizing protests to help the excluded families. Third, she would like the BK struggle to become a “model” for other affected communities, empowering them to stand up for their housing rights.

A number of BK female land activists led by Tep Vanny and Yorm Bopha have been involved in efforts to fight against any social injustice and human rights violations that occur. In recent instances, the BK group joined marches with other NGOs to celebrate International Human Rights Day, International Women's Day, or World Habitat Day. They also joined protests to demand the establishment of an independent investigative committee over the July 2013 electoral fraud. They have also joined other land affected communities as well as some labor unions to demand a response from the authorities on their specific issues, as well as the release of the 23 arrested human right defenders and factory workers who were arrested during a violent crackdown of a wage rise protest on January 3, 2014.

As of January 2014, the 7-year-old BK land conflict has not yet been settled completely.

Chapter III: The Boeung Kak Development Project: For Whom and For What? An Exploration into the Challenges and Opportunity

The evicted population in Phnom Penh has reached 145,000 since 2000 equal to ten percent of the city's population (Joint Media Statement, January 23, 2013). The BK case is just one among many cases contributing to that total. Since its inception in February 2007, the BK project has been denounced by both national and international observers as well as the local community with regards to its impacts on both the people, environment and violation of law and human rights. Despite these criticisms and protests, the BK project continues as workers fill the BK Lake with sand and officials as well as the company's security force forcibly evict the BK residents. The question arises with respect to what "development" literally means.

Development was a newly emerged term during the advent of European capitalism, whose ultimate aims were to strengthen its political legitimacy and military protection. Yet, it became a "worldwide strategy" only after its colonized countries continued to gain independence considering development as "an antidote to colonialism" in the mid-twentieth century (McMichael, 2012, p.22) with the formulation of development projects to boost their economy. The *online Longman Dictionary of Contemporary English* defines development (in economic activity) as "the process of increasing business, trade, and industrial activity" while Cambodia's respected *Chuon Nath Dictionary* defines development simply as "progress" or "advancement".

The Longman definition defined development with a conventional economic terminology with a prescribed yardstick, but does not take into account the variation

in the distribution of the quality of life and other non-market values. However, the *Chuon Nath* Dictionary gives a very general and broad definition. To progress or advance carries the implication of making something better than it was before. In the case of the BK project, the people have to be removed and left even more impoverished than before and the Lake itself has been filled with sand so as to make way for a Mega development project of commercial and residential areas. If this situation is to be called development or progress, such development, especially in post conflict Cambodia, is for whom and for what? The community or the company? The quality of life in the community or the business of the involved beneficiary? The strengthening of peaceful society or continuation of deeper causes of conflict such as grievances?

In this section, the thesis will further explore the price of the poorly implemented BK development project, which causes both immediate impacts on the community and long term impacts on the positive peace building context of the country. First, this section will discuss at least three poor problematic practices within the BK case. Second, it will explore how those problems affect the community and undermine positive peace building contexts in Cambodia. Finally, this section seeks to also explore the opportunity for positive change in the BK case by looking at the roles of both internal (grassroots struggle and local civil society engagement) and external forces (international community) in transforming the protracted BK land conflict.

I. Identifying Potential Problematic Practices in the BK Case

i. The Disregard of Law and Rights

Boeung Kak resident You Ro, 24, said he and other residents had not even been allowed to collect their possessions as their homes were covered in sand and mud. A Shukaku representative wielding an assault rifle threatened him when he attempted to stop his

family's trees from being destroyed by an excavator, he added.
"They said they would fire on anyone who tried to stop them ... the
government's development project is robbing the people and making them cry.
 --- *The Phnom Penh Post*, November 8, 2010.

Since the privatization took place in 1989, approximately 20 percent of the country's total land was reallocated as private property as of 2006 while the remaining 80 percent was regarded as state property, either as state public land or state private land (GTZ, 2006, as cited in SNEC's report, 2007) The state land management was apparently accomplished without transparency and failed to implement the existing legal framework which allowed the property to be "classified or reclassified according to the authorities' wishes to sell, lease or grant concessions on the land" (Grimsditch & Henderson, 2009, p.58). Without having access to state land maps, communities especially the marginalized ones are vulnerable to being exploited or to losing their property. A case in point, the Boeung kak communities were denied land titles largely because they were told that they have been living in a "development zone" or "state land" contrary to the earlier public announcement in a local pagoda in 2006 that the BK area would be adjudicated under LMAP's systematic land registration program.

What does the term "development zone" really mean? An area that is allocated for only business development and thus the existing communities need to be removed? "Without negative effects, I think you can not do the development" said Shukaku Inc.'s representative in *The Phnom Penh Post* (October 12, 2010). The BK development project is expected to earn a profit of 2 billion US dollars. "The company has the right to invest ... it is normal that development affects people" agreed the district deputy governor in *The Phnom Penh Post* (November 8, 2010). But what about the rights of the people? "We didn't know development meant eviction" said Sin Som, a former BK resident, as quoted in *A Home No More: Stories from Boeung*

Kak Lake.

The BK development project disregard both the law and the rights of the people. According to the 2001 Land Law, the BK lake by its nature was classified as state public property which could not be leased or sold; it could only be leased or sold if the land loses its public interest and is transferred into state private land (Article 16). Even though it was transferred into state private land 18 months later in a sub-decree signed by the Prime Minister, the state-public-turned-private-land could only be leased for no more than 15 years and “it can be withdrawn any time in order to protect the state public property and to serve public interest” (Sub-decree 129, Article 18). However, the Shukaku Inc. was granted a 99 years lease and was allowed to completely fill in the BK Lake, wiping the natural BK Lake off the world map. The community was left with “rising water, power cut-off, and the looming threat of diseases” forcing a majority of them to accept the compensation (House & Billo, 2011, p.8). Both Shukaku Inc. and the authorities continued its poor development practices with blatant disregard for the law and regulations. This was followed by continuous and grave violations of human rights, in particular the right to adequate housing.

As a member to many international human rights treaties, specifically International Covenant of Economic Social and Cultural Rights (ICESCR) signed in 1992, Cambodia has a legal duty to protect, respect and fulfill the human rights of the people. One of which is the right to adequate housing which comprises of “legal security of tenure, availability of services, materials, facilities and infrastructures, affordability, habitability, accessibility, location, and cultural adequacy”; and the rights is “of central importance for the enjoyment of all economic, social, and cultural rights” (General comment 4, OHCHR, 1991). This topic was also described in the

Constitution of Cambodia Article 31 saying that it “shall recognize and respect the human rights as stipulated in the UN charter, UDHR, conventions related to human rights, women’s and children’s rights”.

Whether the BK residents were legal or illegal possessors of the land, they are entitled to rights to adequate housing under ICESCR (article 11). This means that “the Cambodian government must give adequate notice, provide information and consult with people [while also] making sure that anyone evicted will have livelihood opportunities” to meet their basic needs (BABSA, COHRE, & IAP, *A Cambodian Guide to Defending Land and Housing Rights*, Part II, p.50). In addition, in the 2001 Land Law states that the legal possessor is protected by the law, especially from being expropriated in the public interest until, as stated in article 5 of the 2001 Land Law, “a fair and just compensation” is paid. The legal possessor also has the “right *in rem* over the immovable property [which is the] subject of exchange, transfer of rights and transactions” (article 39) while he or she is waiting for the transfer into definitive right of ownership. However, this right has not been respected, protected, and fulfilled to the fullest by the authorities.

Instead, in the BK case, it appears that the authorities have enabled the exploitation and violation of people’s rights as indicated in BABC’s 2009 review that states:

Had the process of land adjudication and registration been conducted according to the law, many households around the lake would have had an opportunity to stake their claim to legal possession rights, and thus to formal title pursuant to the Land Law. (Bugalski, & Pred, 2009, p. 1)

When the law was not enforced to protect the rights of the people, they were left even more vulnerable to being either forcibly evicted or exploited. This was the case in the BK project as revealed by CCHR (October 2011) that:

[...] less than 20% (of 4,012 families) are still living in the BK area. Those who have already left were subjected to a concerted campaign by Shukaku staff, armed police, and communal and district authorities to intimidate them into accepting compensation widely deemed neither adequate nor equitable, or moving to a resettlement site 20 Km from their place of work and livelihoods. Those who refused to move suffered continuous intimidation, physical violence, unlawful arrests and detention, and the daily fear and reality of seeing their houses destroyed or flooded by dirty water as sand continued to be pumped into the Lake (p. 1)

Even though the BK Lake was state property, residing there peacefully for “30 years is not temporary” said Pol Noy in *A Home No More: Stories from Boeung Kak Lake*. Perhaps, given Cambodia’s post conflict conditions, the authority at that time failed to take effective measures, making the issue even worse twenty years later. If eviction is used as a very last resort to remove the people residing on state land, it should never be done in a manner of forced eviction. Rather it should be done in a way that provides the affected communities with “appropriate procedural and legal safeguards” (Amnesty International, 2012, p.14).

LMAP’s framework on Environmental and Social Guidelines, which was not applied in the BK case, recommends that the development project should allow the affected communities the opportunity to access “proper compensation and resettlement options ... in order to ensure that, at a minimum, their living standard are maintained” and it has to be “carried out in consultation with the affected people, to ensure minimal disturbance” (Grimsditch & Henderson, 2009, p. 63). However there is little evidence to prove the existence of such actions in the BK case as 60 years old Mr. Pich Samol, a former BK resident, described in his story in *A Home No More: Stories from Boeung Kak Lake* (STT, 2010) that:

The day that my house was demolished I was in the hospital.
I was unconscious when someone came in and dipped my

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

ii. The Lack of Transparency and Inclusiveness

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

--- said a BK villager in *The Phnom Penh Post*,
September 2, 2008.

Since the early stages of the BK project there has apparently been a complete lack of transparency and inclusiveness. Though rumors were spreading for years that the Lake would be targeted for development, there were no public discussions held with the affected community in advance or even a public bidding of the project itself. During the public notification of LMAP's systematic land registration for the BK area, the City Hall announced a 99-year lease of the surrounding BK's 133 hectares to the little known Shukaku Inc. company for just 65 USD per square when its market value at that time was roughly 3,000 USD per square (Pred & Bugalski, March 2009). The company itself was secretive and only sometime later was it known to be chaired by Lao Meng Khin, a senator and major donor to the ruling CPP. He was also a director of the Pheapimex company which is allegedly infamous for its complicity "in extensive land grabbing and deforestation in other parts of Cambodia" (Pred & Bugalski, March 2009). More than a year later, the affected community did not know that a Chinese company was the foreign partner of the Shukaku, and they mistakenly ended up protesting in front of the Korean Embassy which was not its partner.

The BK project was intended to convert the area into a “pleasant, trade, and service location for domestic and international tourists” (Amnesty International, August 27, 2008). Indeed, it is for tourists and not the affected community that was left powerless and excluded from decision making that would change their life entirely. A research project which also used the BK project as one of its case studies, revealed that “rampant corruption” took place “at every stage of the development process” and that:

Human right violations are not isolated instances. Rather, they are part of a widespread and coordinated effort between the government and private companies (who have ties to the ruling CPP) to capitalize on quickly rising land prices in Phnom Penh by taking advantages of the most marginalized members of the society (Mgbako et al, 2010, p. 43)

The research continued to state that “not only are residents unaware of their rights, but most have not been told when they will be evicted or of their options for resettlement ... [but depending on] word of mouth [further] spreading misinformation” (p.55). Sia Phearum, secretariat director of HRTF, pointed out that “it has been difficult for the residents to figure out who they should appeal to. The government tells them to go to Shukaku, Shukaku tells them to go to the government. They just throw the people back and forth” (*The Phnom Penh*, December 28, 2010). Even when the government allocated 12.44 hectares of the land for on-site development to the remaining families, there was a “willful misinterpretation” made by the Phnom Penh authorities to exclude over 10 percent of the remaining BK families “while simultaneously granting nearly two dozen land titles to CPP senator Lao Meng Khin” (HRTF, September 16, 2011). Such an attempt to claim ownership also implied that the Shukaku company indeed acknowledged the legitimacy of the land owned by the BK community members, which they previously did not.

With respect to the Environmental and Social Impact Assessment (ESIA), by law it is required to be announced and made public prior to the commencement of the project; however, this was not the case in the BK project. Furthermore, the company's ESIA was also "potentially negligent" according to a Drainage and Flooding Assessment (2008). The Assessment stated that:

the filling of Boeung Kak for urban development is likely to disrupt the equilibrium of the hydrological system ... [and] resulted in runoff from the Lake being routed further downstream ... causing stress [such as impacts on property and hazard to life] on the downstream system and likely to worsen flooding. In particular, increased flood frequency and peak flood levels are of concern. (p.10 & 13)

The lack of inclusiveness and transparency is indeed not conducive for sustainable development. Prime Minister Hun Sen once said "inclusive growth is so important to the government, the private sector and Cambodian communities, especially the young, the poor and the vulnerable" (quoted in CDRI, 2012, No.2). However, it seems to have a long way to go in practice.

iii. The Misuse of Judiciary and Coercion

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

said a protester as quoted in *Radio Free Asia*, November 19, 2011.

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

On April 21, 2011, several local residents – including two children – were beaten, electrocuted and detained by Phnom Penh security forces [when they were protesting] to demand a halt to land pumping ... nine women were arrested, illegally detained and forced to sign confessions admitting provocation and responsibility for the violence. The women were released the following day.

Two other incidents that attracted both national and international attention were the arrests of 13 BK women on May 22, 2012, and BK activist Yorm Bopha on September 4, 2012. The two cases revealed blatant misuse of the judiciary system and coercion against peaceful protesters. On May 22, 2012, a group of BK female residents gathered at the BK worksite to sing and give speeches but they were soon dispersed. The thirteen women were chased and arrested; two days later they were brought to the Phnom Penh Court. Within hours on that day, the thirteen were charged with being “illegal occupants” under article 34 and 259 of the 2001 Land Law and for “obstruction of public officials” under article 504 of the Panel Code. LICADHO, a local human rights NGO, noted that “the most active representatives received the full sentence [which] directly related to the level of activism engaged in by the women” (Joint statement, May 24, 2012). Another joint letter published by Human Right Watch (May 29, 2012) pinpointed that “the trial failed to meet even the most rudimentary fair trial standards ... these are all clear violations of not only international fair trial standards, but also Cambodia’s Code of Criminal Procedure”. With the constant protests from the fellow BK residents who were mostly women, the elderly, and children as well as the lobbying of both national and international civil society groups (particularly the intervention by former US Secretary of States Hillary Clinton), the thirteen protesters were released even though their charges were still upheld.

The other case involved BK activist Yorm Bopha who was arrested on September 4, 2012. In December of that year, she was convicted with “intentional violence with aggravating circumstances” on two motor taxi drivers and sentenced into two years imprisonment “despite no evidence against her and inconsistent witness testimony” (Amnesty International, November 19, 2013). Yorm Bopha’s husband, who was also arrested, was released on bail. Being named a “prisoner of conscience” by the Amnesty International, she served 14 months in prison before being released on bail. While Amnesty International (November 19, 2013) believed that she was jailed purely due to her human rights activism, Prime Minister Hun Sen publicly spoke against the claim (*The Cambodia Herald*, March 19, 2013). During this period, her fellow BK female residents-turned-land activists staged repeated protests to demand her release and many local and international civil societies began global campaigns for her release as well. She was finally released in November 2013 and the charge against her was dropped two months later.

These are just examples of the more prominent cases. Other BK residents who opposed the authorities were also intimidated and received threats of arrest. Kolap who was a former BK resident described her situation as follows:

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

*“A Home No More: Stories from the Boeung Kak Lake”,
STT, December 2010.*

The arrests and charges against them motivate some people to “pursue their

rights” while at the same time such mistreatment “intimidates [other community members] into giving up their rights and demands as well” (Mgbako et al, 2010, p. 56).

II. The Poor Practices as Challenges to Positive Peace Building

The disregard of law and human rights, the lack of transparency and inclusiveness, and the misuse of the judiciary system do not only cause immediate impacts on the affected community but also pose great challenges to the long term impacts on positive peace building in Cambodia. This section attempts to explain such a claim.

i. Understanding Their Immediate Impacts on the Community

I can't live like this any longer, just kill us.

--- Tep Vanny in a documentary film: “*Even a bird needs a nest*”

The above opening expression quoted from Tep Vanny reveals the seriousness of losing one’s home because losing one’s home not only deprives the affected individuals of their homes and their sources of livelihood, but also causes trauma and psychological effects on the grassroots protesters as the BK land conflict persists and violence against their struggle continues unabated. Yet, it is worthy to note that the authorities’ initial neglect to deal with the BK community has in turn brought about negative impacts on the government itself as it has to face with grassroots resistance, criticism from both national and international communities, suspension of funding from the World Bank, and disruption to the development project, among man more. However, this part will serve to further pinpoint the livelihood and the psychological impacts on the affected community.

To begin with, the BK relocation site is 20 km away from the city center causing great difficulty for the already poor and marginalized community to live a decent life. A research project (Mgbako et al, 2010) showed that the relocated BK community is having post-eviction challenges, particularly decreased income and adequate educational opportunities for their children, as well as the uncertainty of receiving land titles. Although the BK relocation site came in the form of a relatively improved physical infrastructure compared to other relocation sites, the relocated families are still having problems such as a “lack of a hygienic water system and systematic method for sanitation” (Mgbako et al, p. 62).

The *Socio Economic Impacts of Forced Eviction at the Household Level in Phnom Penh* (HRTF, 2011) also reveals that “threats of forced eviction and relocation affect the household income, education, health, food security, and adequate housing” and states:

The unemployment rate among relocated community has increased after relocation (35.7%) compared to before relocation rate (18.4%) ... Repetition and dropout rate of children are very high compared to the national level ...
(p. 5)

These findings of the effects of relocation are supported further by the constant protests from the BK affected community as well as those already relocated who have staged a number of protests demanding additional compensation.

Apart from the immediate and visible impacts, there are other possible and invisible effects on the affected community as well. A research study conducted by Strey Khmer Organization (SKO) showed that some of the arrested BK women who they interviewed “still experience disturbing flashbacks and recurring dreams about the protests and violent arrests” (SKO, February 2013, p.3). Even though the research scope was small, in which only five arrested BK women were included in their 40

person sample, it was the first attempt of its kind to examine the psychological impacts of land evictions on women. Because Cambodia was rated above the world average with regard to the levels of anxiety, PTSD, and depression (RUPP, 2012 as cited by SKO, February 2013), it makes women land right activists who are frequently exposed to “state violence, economic hardships, and traumatic events [are likely to be] vulnerable to mental health problems” (SKO, 2013, p.14). Akin to this argument, the HRFT research study (2011) also stated that:

Illegal forced evictions increase poverty and asset vulnerability ... the lack of adequate compensation regularly results in homelessness, social conflict and disproportionately affects the poor and marginalized, such as children, women, and minority groups. Many evictees develop distrust in the political system, and suffer from emotional, physical and psychological trauma that are at times so bad that attempted suicides are regular occurrences once eviction orders have been served (p.8)

In the BK case, there was at least one reported suicide and a few cases of attempted suicide. On November 22, 2011, Chea Dara, a female BK resident who had been protesting against her forced eviction, committed suicide by jumping off a bridge reportedly “out of sense of hopelessness” (Joint statement, November 29, 2011). Even though the government had granted 12.44 hectares to the remaining families, her house was still excluded. Despite her family’s report about the reason behind her death, the authorities doubted such a claim and said they required a “full investigation” (*The Phnom Penh Post*, November 22, 2011). The case has since been silent and no “full investigation” report has been released to the public.

During a protest on November 29, 2011 demanding that the authorities issue land titles for their houses, two female BK protesters attempted to commit suicide in front of the authorities: one cut her hand with a razor while the other tried to swallow

pills (*The Phnom Penh Post*, November 29 2011). Another female protester claimed that “[the villagers] do not fear of death or detention in jail [but] their lost land and that their children have no homes to live” (VOA, November 29 2011). Even a male BK resident produced such a statement that “I will commit suicide by cutting my neck in front of the Phnom Penh Municipal Hall if the authorities destroy my house” (quoted in *The Phnom Penh Post*, December 29, 2011). Losing their homes become a matter of life and death for the marginalized BK residents.

ii. Understanding Their Long-Term Impacts on Positive Peace Building

It could be inferred from the foregoing discussion that the upshot of the poor development practices, the disregard of the law and human rights, the lack of transparency and inclusiveness, and the misuse of the judiciary system and coercion is the consolidation of both structural and proximate causes protracting the BK land conflict since the outset. These conflict causes, which contribute to the BK people’s grievances, do not only produce immediate impacts on the community’s livelihood and psychology as discussed previously but also undermine the concerted efforts to build a more sustainable peace in this post conflict Cambodia. The thesis argues that the poor problematic practices have done nothing to build or strengthen the existing institutions to become more resilient, sustainable, and positive enough to contribute to address the inequality, injustice and grievances that are driving these conflicts in society. Rather, these structural and proximate causes interact to reinforce the cycle of violence and continue to perpetuate structural violence, posing great challenges to positive peace building in the country.

Given Cambodia's history of violent conflict as well as the trauma people have been enduring, continuing such poor development practices will only maximize, rather than minimize, the grievances of the already marginalized segment of the population. A case in point, when her 32 years old house was demolished, a former BK resident told *The Guardian* (March 28, 2011) that by associating her current grievance with the country's past violent history "I spent three and a half years living in hell under the Khmer Rouge .. and now I am in hell again". During the 1997 peace process, Cambodia was estimated to have approximately 445,000 refugees and 210,000 internally displaced persons (IDPs) who were in need of shelter, health care, and other basic services (Kroc Institute's Peace Accord website).

Whether or not they were former refugees/IDPs, the BK residents who had been settled there since the 1980s (or more recently in the 1990s or early 2000s) are Cambodian citizens who are supposedly to be protected by the law (both national and international) and are entitled to basic rights under the law, including the right to adequate housing. Failure to fulfill such needs could be seen as a failure to build a more peaceful society in the wake of genocide and civil war. According to Lederach (2009), for a post conflict country to be more peaceful and resilient, it must allow the people to 1) Have a sense of place in locating oneself in the world 2) Have a sense of safety to feel at home and 3) Have their voices heard.

These very conditions, however, were not fully given to the BK residents who settled since the 1980s. Even after two decades, there was a renewed threat to reject or withdraw these conditions, in addition to the existence of the structural and proximate causes. These poor practices insulted the BK residents' basic needs; at least the survival, freedom, and well-being needs, which constitute what Galtung termed as "violence". It could be inferred from the discussion that was brought up elsewhere in

this thesis that such practices further deepened the trauma and grievances of the BK community, which has been illustrated clearly through the constant demonstrations and campaigns held by the BK grassroots people over the past seven years.

Cortright (2008) pointed out in his *Peace: A History of Movements and Ideas* that:

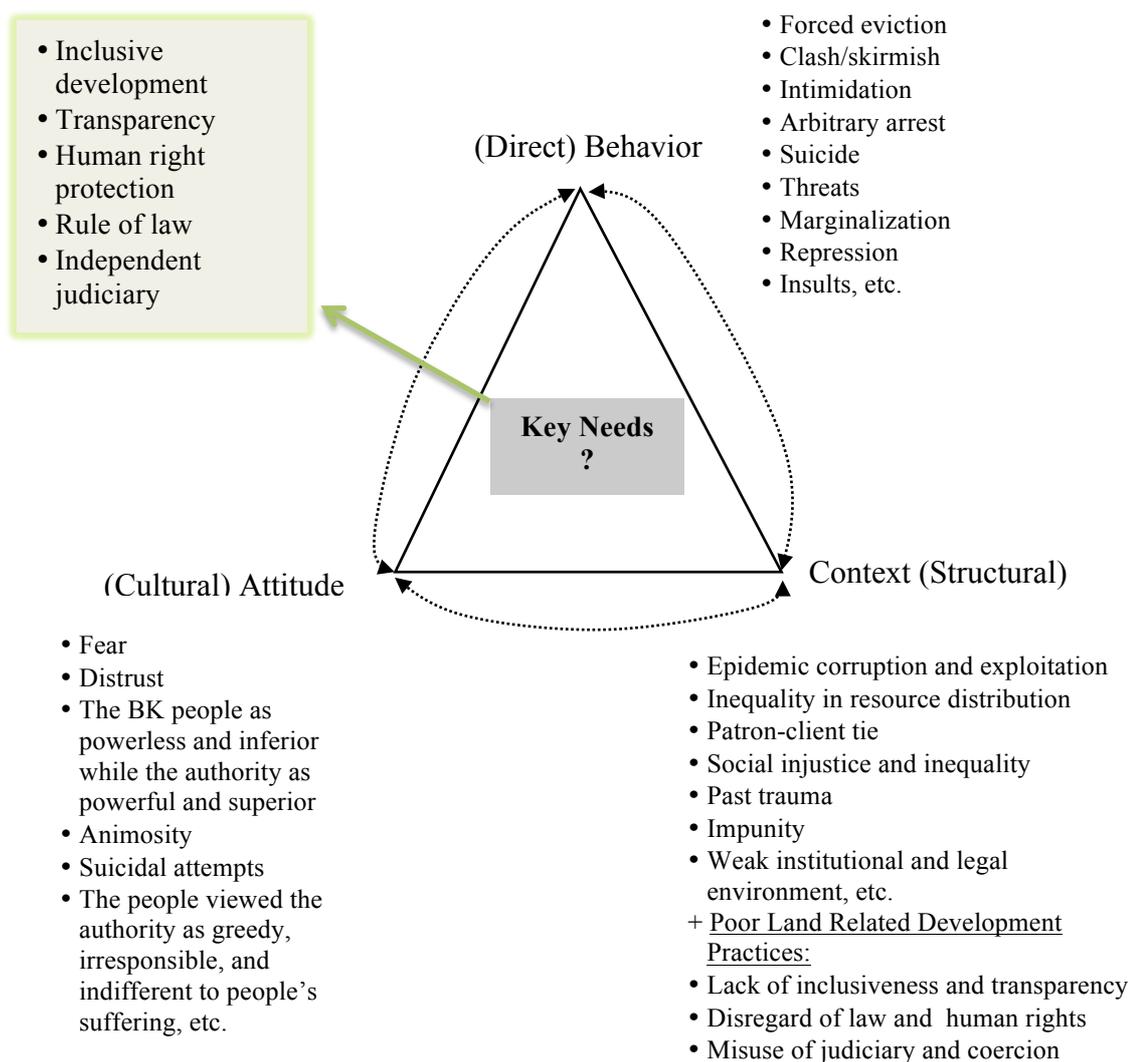
Peace is more than the absence of war it is also “the maintenance of an orderly and just society” ... orderly in being protected against the violence or extortion of aggressors and just in being defended against exploitation and abuse by the more powerful. (p.6)

Was there an existence of “an orderly and just society ... defended against exploitation and abuse by the more powerful” in the BK case? In response to their attempts to express their concerns and grievances, they have been threatened with arrest and intimidation. When confrontations took place, they often resulted in violent clashes between the authorities and the BK land activists, causing injuries, miscarriages, and arrests. A former BK resident expressed in *The Phnom Penh Post* (April 27, 2012) that “We ask the Prime Minister to order commune officers to stop using the word “develop” to take villagers’ land”. Such expression associates “development” with “exploitation” instead of “advancement or improvement”.

Despite the fact that the business sector is crucial for driving the economy of the country, this sector has also had a significant impact on the country's "security and conflict". This is because to make a profit and win the bidding competitions, they must develop “close connections with powerful individuals and political parties” and there is little to "no engagement from the business sector in peace building or social issues [in Cambodia]... It has generally been part of the problem, as a driving force

behind political interests influencing the allocation of resources available in the country with little scrutiny from other sectors" (Soth & Miletic, August 2009, p. 36).

In order to have a clearer picture on how the poor land related development practices further consolidate the reinforcement of the cycle of violence, ABC Triangle [described in Chapter I, section I] is employed to illustrate the case:



In spite of the fact that the stated Context and Attitude may have caused and manifested into violent Behaviors in the BK land conflict, such Behaviors, in turn, influence the Context and Attitude as the BK land conflict continued unabated. For

example, the arrest, physical intimidation, beating, and forced eviction instead made the community become even more fearful, distrustful, and powerless; forming other negative feelings such as hatred and suicidal attempts. These manifested behaviors instead reinforce the structural status quo, including the past trauma. As the structural violence is accumulated and consolidated, the people continue to embrace grievance and create a negative attitude towards the authority. Therefore, the arrows run back and forth to indicate the influence each triangle has on the other, consolidating what is called the cycle of violence, making violence perpetuate relentlessly.

Another significant point to highlight in the cycle is the worsening trust between the state and the BK people. Since decades of civil wars, especially during the Khmer Rouge regime, social cohesion and trust between the state and the people have been completely broken and Cambodia remains in the process of rebuilding the trust and social cohesion in the society. In addition to such poor land related development practices, however, the trust will further be impeded making the ‘path’ toward sustainable peace building become even ‘farther’ to be reached, as said, “both negative and positive peace can be seen as the producer and product of forms of trust and cohesion that are a pre-requisite for well-functioning and prosperous societies” (PPI, 2012, p.70). When trust has a hard time to grow, a culture of peace is proving even harder to obtain, given that the status quo is not reduced rather consolidated.

The findings of the Institute for Economics and Peace’s Positive Peace Index further supported this claim, as Cambodia was found to be one among the bottom ten positive peace countries out of 108 countries in 2012. Whether or not its measuring criteria was reliable or even though “the strength of the various interactions will depend on the historical, political, economic, and cultural circumstances of particular societies” (PPI, 2013, p. 82), being placed among the bottom ten positive peace

countries is an alarming reminder/warning that serious actions need to be taken to address the root causes of violence and create a system with conditions conducive to sustainable peace.

III. Opportunity Exploration for Future Change

The exploration of opportunity is based on the premise of conflict transformation believing that conflict does not always result in negative consequences. Rather, if address creatively, non-violently, and in a transformative way, conflict can be a source of social change and development. While the BK development project brought up many negative effects as discussed elsewhere above, it also highlighted an opportunity for change. The 12.44 hectares granted, the 631 land titles issued, and the release of the arrested BK women were all seen as successes. Though the case is still on going with regard to the demarcation of the granted land and the 63 excluded families, the process itself has demonstrated as a forceful and committed struggle for justice and housing need in the face of state violence.

The BK women were at the forefront of the struggle challenging not only the forced eviction and injustice against them. They also challenged the culture and tradition of their gender roles as housewives in Cambodia's male dominated society. They challenged the powerful authorities with their courage by speaking truth to power. They were armed with nothing but creativity, flexibility, commitment, compassion, and true courage in their non-violent struggle with the support from concerned NGOs/INGOs and the international community.

As peace is a process 'involving the search for positive conditions' (Woolman, 1987 as quoted in Wodenscheck, 2004, p.9) to address all types of violence peacefully, this section seeks to explore the opportunity for positive change in the BK

case by looking at the roles of both internal (grassroots struggle and local civil society engagement) and external forces (international community) in transforming the protracted BK land conflict. To gain a deeper insight into the BK context, it is necessary to understand the motives behind the struggle. Therefore, this section will firstly begin with the discussion of this motivation using the concept of human needs and Albert Hirschman's Exit Voice and Loyalty (EVL) game theory. Next, the section will explore the roles of internal and external forces in transforming the BK land conflict and addressing structural violence within the case.

i. Understanding the motivation behind the struggle

If we don't protest today; we will die tomorrow.
--- said Tep Vanny in *The Phnom Penh Post*, April 10 2013.

To get a deeper insight into the motivation behind the BK struggle, political science and human needs perspectives will be employed to explain the case. Albert Hirschman's Exit-Voice-Loyalty (EVL) Game as explained by Clark et al (2009) illustrates the balance of power between the state and the people. The EVL provides a basic understanding of what politics are and how they work in the contentious interactions between the state and the people. According to the theory, the choices/actions people make depend on how they think the government would respond to their certain choices. In the case of government, its choices would depend on how the people might react (exit, loyalty or voice), the people's creditable exit threats, for instance, or the level of dependency of the government on the citizens' popular support. What is crucial is that the motivation to choose a certain action is based on the highest payoffs they (either both the government or the people) think they will get.

This theory helps to explain the motivation behind the dynamic responses of the BK community. An unidentified former BK resident stated that:

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

A Home No More: Stories from Boeung Kak Lake, STT, 2010.

The BK residents' motivation to either exit, voice or remain loyal depends on what the people perceive is "in their best interest given what they know at the time of choosing" (Clark et al, 2009, p.59). The BK community was diverse in its composition. They are comprised of different political party supporters, the poor, the impoverished, the middle class, and the affluent who were either owners, renters, or unlawful possessors (Pred & Bugalski, March 2009). The responses to the forced eviction have therefore varied according to each individual's perceived 'higher payoff'. For instance, more than 3,000 families of the BK community chose to remain 'loyal' by moving away and accepting the compensation options offered by the Shukaku company even though the community was repeatedly intimidated or their houses were made uninhabitable. Also, those who were living on the Lake and were deemed poor illegal occupants would find the choice of remaining 'loyal' as their 'higher payoff'. Mgbako et al (2010) recounted a story of a BK relocated family that:

One Damnak Trayoeng resident who previously lived in a floating house on BK Lake reported having been afraid that her wooden BK house would catch on fire in the night. She stated that her living conditions in the relocated site are much better and that she is happy to see the green of the farm and to finally sleep well. (p.61)

How about those who chose to continue voicing their concerns by organizing constant protests? Amid the intimidation and all sorts of state violence, they remain committed to protesting against the authorities. How would such a response provide a higher payoff for them? According to Goldstone and Tilly (2001), the “usual story” about the relationship between political opportunities and protest movements is that if opportunities increase, the protests mount; if the opportunities decrease, the protests recede (rising opportunity; rising protest). Yet, this story fails to account for “the pattern of tactical moves and countermoves between regimes and challengers as both sides engage in a series of choices regarding actions, repression and concessions” (p. 181). Goldstone and Tilly (2001) further stated that instead of increased repression reducing action, the empirical findings show that “increased repression leads to increased protest mobilization and action” (p. 181). What can be a possible motivation behind such a claim?

The answer may have to do with the role of human needs as discussed elsewhere in this thesis. In a documentary video produced by LICADHO (October 20, 2011), there is a statement written on the wall of a bulldozed house saying that says “*No home no life; to die to protect our home*”. Such a statement reveals the fact that housing, safety and well being need are ones of the major motivations for the BK grassroots struggle. To them, to ‘exit’ or to remain ‘loyal’ would not gain them anything; to voice, however, might give them at least a little chance since “having a little hope is better than being hopeless” and “we can’t keep quiet until they come to pull down our houses” (said BK villagers as quoted in *The Phnom Penh Post*, April 27, 2010). In short, just as Clark et al. (2009) noted, in some cases, “the citizen will always use her voice even when she knows that it will not be successful” since she will more or less “get a higher payoff from using voice than from choosing either to

exit or remain loyal regardless of what the state does” (p. 78). From a human needs perspective, it is because human need is human life; depriving people’s needs is a threat to human life; and a threat to human life is a type of violence and a major motivation behind the BK struggle.

ii. The Significant Roles of Internal and External Forces

Nonviolent direct action seeks to create a crisis and foster such a tension that a community that has constantly refused to negotiate is forced to confront the issue. It seeks to so dramatize the issue that it can no longer be ignored.

Martin Luther King, Jr.

The previous section may have explained the motivation behind the BK grassroots struggle; however having strong motivation is not enough in practice to produce an effective process and product. In the BK struggle, the roles of both the grassroots themselves and the civil society organizations (CSOs), (considered as internal or inside force), and the roles of international community, (considered as external or outside force), are indispensable. One common role both the internal and external forces have has been to ‘intensify’ the conflict, making the latent BK conflict become an open one so visible that it is no longer possible to be ignored by the involved stakeholders both national and international.

With regard to CSOs, there are at least two essential roles that CSOs can play in the process toward sustainable peace in the country. First, they act as resource center to build capacity, knowledge, and skills as well as to empower the locals and provide other supports. This has been clearly evident in the BK case since the very beginning. According to Pred and Bugalski (March 2009), the BK grassroots movement was initially unable to mobilize their own forces to join the struggle due mainly to the BK’s different interest groups, including the affluent, the middle class,

and the poor. Each of which supported different political parties and held a different status with regard to their housing (owners, renters, or illegal possessors). There were also “community leaders” who played a role in persuading people to move as well.

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

Secondly, CSOs played a crucial role in keeping the government in check while creating safe spaces and trust between the state and the powerless people. The CSOs have been making efforts in monitoring, lobbying, campaigning, and reporting as well as raising awareness about the issues to the public on both national and international levels in order to garner more support in pressuring the government to address the issue. This can be seen in the prominent incidents of the BK case, namely campaigns to free the jailed activists such as “Free the 15” and “Free Yorm Bopha”¹, via what is called the boomerang effect – the pattern when “domestic NGOs may directly seek international allies to try to bring pressure on their states from the outside” (Keck & Sikkink, 1999).

¹ Please visit the link for more details of the campaigns: <http://freethe15.wordpress.com/> or http://cchrcambodia.org/index_old.php?url=our_work/our_work.php&p=campaigns/yormbopha/index.php

Although supported by the civil society, the BK struggle could not have been successful without the BK women activists' contribution. With their own creativity, flexibility, commitment, and courage, the BK women activists were able to make their voices heard to wider audiences in both national and international communities thereby managing to win popular support throughout the process of non-violence struggle. Despite the fact that the protests resulted in some scuffles with the security/riot police when the situations became tense, it should also be noted that everyone has the right to self-defense yet it should never be done with the intent of inflict harm toward others. Active non-violence aims to awaken the conscience of the other by focusing on moral principal and not by resorting to violence. The BK women employed unique and creative tactics to garner support for what is morally right. For in stance, Secretariat Director of HRTF, Sia Phearum, commented during a singing protest by the BK protesters who demanded the release of Yorm Bopha that “the police when they hear the song they really pity and understand her... their commander ordered them to beat the women but they refused” (*The Cambodia Daily, January 2, 2013*).

The female grassroots activists employed what they called a “drizzling strategy” or constant protests along with a plethora of creative tactics until reaching concessions to draw the attention of the public. Apart from using tactics such as sending petitions, filing complaints, having meetings, and holding conferences so as to communicate and persuade the authority, the BK women also employ a more confrontational techniques such as protests and marching to different prominent places. This was not only to demand a resolution to the protracted BK land conflict, but also to address the issues beyond housing, such as the need for an end to violence against women, justice for the arbitrary arrests, violence use, and among all, basic

human rights. Interestingly, it was also their protest tactics that captured the attention of the public. Below is just a few instances of those tactics.

- Wearing straw nests and plastic eggs as their hats during the protest to symbolize “birds need their nests just as people need their home” (*The Cambodia Daily*, 18 September 2012).
- Setting scarecrows on fire to represent the corrupted officials.
- A woman took off her clothes revealing her underwear and breasts to express her loss of dignity and hope when she lost her home to the development.
- Children of the arrested women kneeled down crying in front the Ministry of Justice to demand the release of their mothers.
- The jailed women went on hunger strike.
- Wearing small model houses on their hats to represent their struggle for housing rights.
- Composing and singing songs related to their case during their protests, and so on.

According to Tep Vanny and Yorm Bopha, well-known BK representatives-turned-land-activists, during a public screening of “Even a Bird Needs a Nest” at CCHR on December 5, 2013, the tactics they employed in the protest were grassroots’ initiatives, while some of the logistic and legal supports came from CSOs. They added that women at the forefront would make the struggle less confrontational and threatening towards the authority and thus would have a higher chance of being effective despite the fact that they themselves were faced with all sorts of state violence ranging from intimidation to physical injury, miscarriage, and arrest.

Working hand in hand with the CSOs, the BK land activists managed to create a strong internal force to target the sensitivity and the weakness of the government. A case in point, we all know that Cambodia remains a largely aid dependent country, with almost half of its national budget coming from international donors. The BK grassroots, with the help from the CSOs managed to involve the World Bank in their struggle. The importance of the issue made the World Bank freeze its loans to the government. With such a de-facto threat to its economy, the government decided to grant 12.44 hectares of land to the remaining BK families. Like Gene Sharp (1973) describes in his book entitled *The Politics of Non-violent: Power and Struggle* that “to be effective, nonviolent action needs to be concentrated at crucial points which are selected after consideration of one’s own strength, the objectives and position of the opponent (weaknesses), and the importance of the issue itself” (p.499).

With respect to external forces, however, one of its major roles is to lobby and raise awareness in the international arena (either through campaigning, reporting, joint statements with outside constituencies, and so forth) on what the internal force inside the country initiated and believed as the causes of conflict, injustice, human rights violations, inequality, and the like. For instance, during the 14-month imprisonment of Yorm Bopha, a BK woman who was named a prisoner of conscience by the Amnesty International, an international campaign entitled “International Day to End Impunity 23 November 2013” was initiated and hosted by CCHR’s international partner, IFEX. With the sharing of case studies, interviews, graphics, information, video, and a call to action from November 1 to November 23, 2013, the global network, IFEX, also called for the signing of a petition so as to demand justice for Yorm Bopha’s case.² In

² Bopha’s case in IFEX campaign can be found via this link:
http://daytoendimpunity.org/take_action/index.php?day=04

addition, the Vital Voice Global Leadership Award that a BK land activist, Tep Vanny, received at Kennedy Center on April 2, 2013 further raised the awareness of international audiences while at the same time empowering the ordinary grassroots women in their struggle for justice and human rights.

Second, external forces also play a foremost role in applying influence and pressure on the local government so as to address pressing issues. This could be spotted in the BK incidents when the World Bank decided to freeze the loan to the government should the BK case remained unresolved. This had led to the allocation of 12.44 hectares to the remaining families. What is more, during a meeting with the Cambodian Foreign Minister in Washington D.C. in June, the former US Secretary of State Hillary Clinton urged the Cambodian government to release the 13 jailed women activists who were trial without due process. Two weeks after the call, the jailed women were released on bail.

Both internal and external forces are indispensable in allowing for an opportunity to challenge the challenges in building a more sustainable peace in the country especially in transforming the conflict into something less destructive. As reported in *Polity IV Country Report* (2010) that:

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

The two forces have been working to address issues beyond the immediate problem of housing rights. Even though many of the remaining families have already received land titles, the forces have been pulling together to gradually address the

structural violence embedded in the system such as arbitrary arrests and charges, injustice, impunity, and so forth. Therefore, by making the authority respond to the people's concerns and needs, which is to challenge the status quo, conflicts may occur; however, if it is addressed creatively and non-violently, conflict could be a source or process for social change as well as the building of trust and social cohesion in the country.

Chapter IV: Conclusion

In the context of unfinished and prolonged land registration and reform, the BK land dispute was attributable to the structural and proximate causes, namely the general failure of authorities to uphold the law and individual rights and to make decisions transparently and inclusively, and the lack of independence and misuse of judiciary, in addition to the already complicated and unique historical context. These poor practices do not only cause threats to the livelihood and psychology of the affected community, but also undermine the building of a more sustainable peace in Cambodia.

This is because such poor practices interact to reinforce the cycle of violence and continue to perpetuate structural violence, further diminishing, rather consolidating, a culture of peace, trust and social cohesion between the state and the people in this post conflict country. They also contributed to generating more grievance which is a de facto motive of conflict and thus failed to build resilient and sustainable conditions for positive peace to nourish. Given the protracted BK land conflict, the key need to address the grievances and build trust is the transformation of the poor development practices into positive and sustainable conditions which may include inclusive and transparent development, human rights protection, strengthening the rule of law and independent judiciary.

The thesis saw both internal and external forces as an opportunity to challenge the status quo embedded in the structure. These forces have been playing a crucial role in intensifying the latent BK land conflict so as to make such suppressed conflict become so visible and prominent that the issue was no longer possible to be ignored by the involved stakeholders. And the process of the forces has been very active and

forceful but non-violence. With regard to the CSOs, they have been lobbying and campaigning the concerned stakeholders, as well as coordinating, supporting, facilitating, empowering, raising awareness, and being a resource center for the grassroots people to strategically and effectively communicate and push the reluctant authority to deal with their issues. As the situation became out of control, CSOs employed what is called a boomerang effect to ease such tension.

Apart from providing support and coordination to the local CSOs, the international community and international non-governmental organizations (INGOs) have been playing important roles in lobbying and raising awareness in the international arena as well as applying influence and pressure on the local government. However, both CSOs and INGOs as well as the international community are there to ultimately bridge the gap and build trust between the state and the people as well as to cooperate and facilitate the two. By so doing, the marginalized people could have a safer and bigger space to work with the government so as to pull together to build positive conditions favorable for sustainable peace. Therefore, another indispensable component is the grassroots force themselves. Instead of being submissive and passive, the BK grassroots chose to voice their concerns and their unmet needs through non-violent means though it meant that they had to challenge the state violence. They who mostly were women and children refused to be victims but resources for change.

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

We still improve day to day the basic way of the people's life and the government[.] ... Even in the US they do have abuse[.] ... Human rights is a new culture for everyone on this earth, especially for Cambodia, [which is] in transformation. We need time to grow.

(RFA, March 22, 2012)

Nevertheless, maintaining the status quo, with its deteriorating conditions for sustainable peace and development, is instead moving the country's peaceful condition backward, reducing its resilience against future violent shocks.

Therefore, both development and peace should be a home grown phenomenon. Development must afford people the freedom to express their voices and concerns about development projects that affect their lives. So then the people can contribute to defining their own term of "development", which they have "reasons to value" and can strengthen their capability. Therefore, development must be understood to go beyond economic growth to practically cover the environmental and social dimensions. And that the development projects must pay serious attention to address unmet human needs by placing people at the core of the development and throughout its process. The central point is that the process must be as inclusive, equitable, transparent, and well-structured as possible, and not carried out at the risk of social and environmental damage.

Similarly, peace could not be imported from elsewhere but come from within the system itself that functions as a resilient formal and informal institutions to address the unmet human needs and minimize all type of violence. Building positive peace is thus the building of resilient, sustainable, and positive conditions to address the political, social, economical, or cultural root causes of violent conflict. In other words, peace is a process and a means to its ends in the making. It needs continuous efforts and commitment in the search for creative conflict transformation

characterized by active non-violence, cooperation, dialogues, integrity, understanding, and harmony for mutual and equal benefits without resorting to violence. The alternative is that violence will never cease to find ways to express itself. The BKDP illustrates the dynamics of the BK poor land development practices that function as both a challenge to, and yet, its positive transformational process as an opportunity for building a more sustainable peace in Cambodia.

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Biographical Sketch of Author

Prior to her graduate study in Peace and Conflict Studies, Suyheang KRY has worked for more than four years as an outreach staff and translator for Victim Participation Project (VPA) of the Documentation Center of Cambodia (DC-Cam), an independent research institute dedicated to promoting memory and justice for the crimes transpired during the Khmer Rouge regime. There she developed her genuine interest in peace building context and gained first hand experience in meeting with hundreds of Khmer Rouge survivors, listening to their stories and recording their accounts, and particularly, in assisting and facilitating those survivors in their participation in the trial proceedings being underway at the United Nations backed Khmer Rouge Tribunal in Phnom Penh, Cambodia. During the course of her study, Ms. KRY had an opportunity to present two of her papers in conferences such as “Imagining Cambodia,” held at Northern Illinois University in 2012; the “2013 Notre Dame Student Peace Conference,” organized by the Kroc Institute for International Peace Studies; and “2013 Student Research Symposium,” at UMass Lowell. In addition, she was also named the 2013 Outstanding Graduate Student in the Peace and Conflict Studies Program.