



# LAND IS LIFE



Land and Livelihoods Programme  
The NGO Forum on Cambodia



# LAND LIFE

land conflict interventions in Cambodia  
a review of case studies & NGO perceptions

by kathleen o'keefe | **september 2009** | phnom penh

## **Acknowledgement**

The author would like to acknowledge all individual and organizations, in particularly to DCA/CA Food Security Platform member including The NGO Forum on Cambodia, Lutheran World Federation Cambodia, Star Kampuchea, Development and Partnership in Action, and Helen Keller International for commissioning and funding this report. Thanks also to numerous colleagues that participated and provided substantive comments in the draft of this case study compilation.

The report contains preliminary investigation, case studies, analysis, findings, and recommendations to stimulate timely discussion and critical feedback. The opinions express here are those of the author and not necessarily of the institutions involved, nor the DCA/CA.

### **SEPTEMBER 2009**

#### **PUBLISHED BY THE NGO FORUM ON CAMBODIA**

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## FORWARD

This study undertook to identify the factors that influence success or failure in resolving land conflicts. As a tool for learning and debate, it endeavors to enable NGOs to build on best practices and more efficiently engage in the resolution of land conflicts. Lessons point to the need for more organizations to get involved, at all levels, in resolving land conflicts and their root causes. This report therefore seeks to provide ideas and spark debate among a broader group of NGOs about the role they can play in this crosscutting issue.

The report reviews the formal mechanisms for redress of land conflicts, which largely do not function to protect land security, due to lack of political will and other factors. It then moves on to the role of moral duty-bearers, in particular, communities themselves, community groups and NGOs. Finally it outlines the successes and weaknesses of the major strategies and mechanisms that are being used to intervene in land conflicts.

Interventions against land-grabbing were examined through a review of case studies and interviews with organizations currently working on land conflicts. While a review of case studies is illustrative, it's important to remember that land conflicts are not formulaic. A wide range of factors can contribute to conflicts, and to their resolution. However some important themes resound. Notably, the most effective interventions are those done by communities themselves, sometimes with the support of organizations.

The background for this study was the recognition by a partner group<sup>1</sup> that lack of security of land tenure is “a driver for poor food security”. As this report notes, land conflicts do not exist in a vacuum, but have a cause-and-effect relationship, not only with food, but also with most other major sectors. Consequently, loss of land due to land-grabbing, and often land conflict itself damages health, education, livelihood, economic, and other interests. Recognizing these relationships and working to eliminate land insecurity should be an objective in all of these sectors. Interventions should be preventative as well as reactive, and include assurances for land and livelihood security across all sectors.

Many perfectly sound interventions are being used by the relatively few organizations working on land conflicts. However, success is often limited to mitigating the bad effects of land-grabbing. A case-based approach in itself has limited success; what is also required is a coordinated strategy to address the underlying causes of land-grabbing. More organizations are needed to work in diverse, and strategic ways, supported by high-level donor interventions.

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<sup>1</sup> DanChurchAid/Christian Aid, NGO Forum, Development and Partnership in Action, Lutheran World Federation, Star Kampuchea and Helen Keller International.

Ultimately, this report argues that organizations and donors can best intervene to eliminate land-grabbing by building the role of the people as constituents with civic rights and economic leverage. Organizations can empower communities to demand their rights, play a role in demanding good governance. Land and livelihood security can be built through development for the people, with their participation and consultation.

We would like to thank the NGOs, community groups, donor organizations and individuals who contributed their insights to this report. We recognize the extraordinary work some organizations and individuals have done to raise the voices and issues of people who struggle to keep their land, which in many ways is their life. We welcome comments from all organizations on how their role can be expanded to support the efforts of these groups, and work towards the elimination of land-grabbing.

*Chhith Sam Ath, Executive Director, NGO Forum  
Phnom Penh, Cambodia*

## GLOSSARY

**land conflict interventions:** Formal and informal processes and actions by individuals or institutions—including rights-holders, legal/formal duty-bearers and moral duty-bearers—to avoid, mitigate, or resolve land, housing and natural resource use disputes, provide recompense to victims, prosecute perpetrators and advocate for land security.

**land-grabbing:** The seizure and possession of land in an unfair or illegal manner.

**legal/formal duty-bearers:** “The overall responsibility for meeting human rights obligations rests with the state. This responsibility includes all the organs of the state such as parliaments, ministries, local authorities, judges and justice authorities, police, teachers or extension workers. All these are legal duty-bearers.”<sup>2</sup>

**moral duty-bearers:** “Every rights-holder has the responsibility to respect the rights of others. In this sense you can say that every individual or institution that has the power to affect the lives of rights-holders is a moral duty-bearer—the greater the power the larger the obligation to fulfill and especially to respect and protect the human rights of others. In this sense private companies, local leaders, civil society organizations, international organizations, heads of households, and parents, and in principle every individual are moral duty-bearers.”<sup>3</sup>

**rights-holders:** “[E]very human being is a rights holder... is entitled to rights... is entitled to hold the duty bearer accountable... has the responsibility to respect the rights of others.”<sup>4</sup>

**rights-based approach:** “Rights-based development starts from the ethical position that all people are entitled to a certain standard in terms of material and spiritual well-being. It takes the side of people who suffer injustice by acknowledging their equal worth and dignity; it removes the charity dimension of development by emphasizing rights and responsibilities. It recognizes poor people not as beneficiaries, but as active rights-holders and establishes corresponding duties for states and other actors against whom claims can be held. The concept of rights-holders and duty-bearers introduces an important element of accountability into development work and moves the focus where it should be: development by people — not for people.”

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<sup>2</sup> Definitions for legal/formal duty-bearers, moral duty-bearers, rights-holders and rights-based approach are from *Applying a rights-based approach: An inspirational guide for civil society*, by Jakob Kirkemann Boesen & Tomas Martin, The Danish Institute for Human Rights, 2007.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

## ACRONYMS

ADB	Asian Development Bank
ADHOC	Cambodian Human Rights and Development Association
CC	Cadastral Commission
CF	Community Forest
CPP	Cambodian People's Party
ELC	Economic Land Concession
FA	Forestry Administration
FAO	Food and Agriculture Organization
LAC	Legal Aid of Cambodia
LIC	Land Information Center
LICADHO	Cambodian League for the Promotion and De-fense of Human Rights
LMAP	Land Management and Administration Project
NALDR	National Authority for Land Dispute Resolution
NGO	Non-Governmental Organization
NGOF	The NGO Forum on Cambodia
MLMUPC	Ministry of Land Management Urban Planning and Construction
MP	Military Police
OHCHR	Cambodia Office of the High Commissioner for Human Rights
SLC	Social Land Concession
UNCESCR	United Nations Committee on Economic, Social and Cultural Rights
WB	World Bank

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*“Land conflicts are getting worse because only a few NGOs are committed to help communities. Those organizations make life more comfortable. Others, they know land problems are important but they try to keep quiet. They have big budgets but only work in their own way. They forget the big factors [such as land-grabbing] that come and destroy their [development] achievements.”—the head of a local NGO working with communities, local officials and NGOs.*

## I. INTRODUCTION

This report examines the large and growing problem of land conflict in Cambodia, and in particular the interventions made by NGOs and others to try to prevent and respond to cases of land-grabbing. It is intended to provide guidance and stimulate discussions and ideas for a range of organizations which actively intervene on land issues—or which should do.

Land security cannot be considered in isolation from other pressing problems and development needs in Cambodia: land is directly connected to Cambodians’ health, education, welfare and other essential needs. Loss of land directly jeopardizes their welfare in numerous ways—to the extent that it may literally be a death sentence for them, sooner or later—and seriously compromises the effort and money which donors and NGOs have pumped into improving social services and reducing poverty since the early 1990s. Anyone who aims to improve the lives of Cambodians cannot afford to ignore the issue of land security.

This report will argue that, despite valiant efforts and some successes, the magnitude

of the land problems in Cambodia is beyond the scope of the relatively few organizations currently working on land issues. Finding long-term solutions requires action and support from a broader array of NGOs, and from bilateral and multilateral donors, many of whom acknowledge land is a big problem but do not actively work on it. It requires clear analysis, strategic planning and coordinated short- and long-term efforts at all levels. This might begin with the recognition that the system to protect land security is fundamentally flawed and current approaches are not enough.

## METHODOLOGY

This report examines the roles and interventions of rights-holders and duty-bearers, and their success and failure, in resolving land conflicts. In particular, it attempts to document lessons learned and make recommendations for how NGOs can more effectively intervene to resolve land conflicts. It also shows, to some extent, the consequences of land conflicts on people’s lives and livelihoods.

The rights-based framework used in this report assumes the concept of rights-holders, and legal and moral duty-bearers as de-

fined in the glossary. “The concept of rights-holders and duty-bearers introduces an important element of accountability into development work and moves the focus where it should be: development by people—not for people.”<sup>5</sup>

This report is intended to be relevant to a range of organiza-tions, not only NGOs and their donors but also others in the development field who fall well within the definition of moral duty-bearers. It is intended not only for those who actively work on or have an interest in land issues, but also those who may traditionally consider that land is not part of what they do.

Research included reviewing a range of land conflict case in-formation from NGOs, and interviewing individuals from NGOs and some of the networks<sup>6</sup> working on land conflicts as well as some community members. Due to the two-month time-frame, the project was conducted in Phnom Penh, and focused on well-documented cases. (As such, the cases tended to be ones of large-scale land-grabbing, in which rich or powerful individuals or institutions were endeavoring to take land from poor people, rather than of other types of land conflicts.)

The NGO Forum (NGOF) identified sources and cases to be reviewed<sup>7</sup>. In addition, statistical analysis from their database<sup>8</sup> was used to support findings.

Follow-up interviews were conducted with community repre-sentatives, international NGOs and donors. In addition, the author’s personal observations in the cases of three Phnom Penh conflicts, and others in

Poipet, Banteay Meanchey, were drawn upon. Finally, news articles and research materials provided additional information.

Although some community activists were interviewed, this was not the focus of the research due to time constraints. This limitation should be noted, as community members may have very different experiences and insights into land conflicts and NGOs’ interventions in them.

It is important to point out that this methodology excludes smaller cases with fewer people, as well as cases in which communities are left to themselves to intervene. A significant number of cases are likely to be unreported or uninvestigated by NGOs or journalists because they are too small, remote, or because of lack of time and resources. Different lessons may be derived by looking at those cases.

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<sup>5</sup> Applying a rights-based approach: An inspirational guide for civil society” by Jakob Kirkemann Boesen & Tomas Martin, The Danish Institute for Human Rights, 2007

<sup>6</sup> Land Action Network for Development (LAND), Resettlement Action Network (RAN), Community Peace-building Network (CPN) and Indigenous Rights Active Members (IRAM).

<sup>7</sup> See Annex 1 & II.

<sup>8</sup> “Statistical Analysis on Land Dispute Occurring in Cambodia 2008”, Land and Livelihoods Programme, Land Information Center, NGO Forum, 2009. The statistical analysis covers a total of 176 cases of major land conflicts reported in the news media in 2008. This is part of a larger NGOF database started by Oxfam GB in 2004, which contains about 1,700 cases of conflicts involving at least five families. Cases are identified through the monitoring of news reports, which are later verified through NGOF’s network and partner organizations. Media sources are: Rasmei Kampuchea and Koh Santeapheap (pro-government Khmer-language newspapers); Cambodia Daily (independent English/Khmer-language newspaper); and, Radio Free Asia (U.S.-funded independent radio).



The fact that the report focuses on widely reported and well-documented cases may mistakenly lead to the conclusion that there are only a few cases, and easily understood types of cases. Land conflicts are widespread, varied and often complex.

Case examples are used throughout this report to illustrate trends, challenges and successes. The examples are based on information provided by NGOs and others; it was not possible to personally verify the details in most cases.

The report is meant to provide constructive criticism rather than singling out organizations for their successes and failures. In most cases, the identities of NGOs or other sources are concealed. Some restraint was used to balance the sharing of information with the need to protect confidentiality, particularly in regard to revealing sources. Finally, this document aims to spark ideas and debate about how a wide variety of organizations can embrace and enhance effective methods of land conflict intervention.

## CONTEXT: LAND IS LIFE

Land is life for most Cambodians. In a country where much of the population lives primarily hand-to-mouth, surviving on the day's harvest from fishing, farming and foraging, the preservation of their access to land and natural resources is vital. It provides them with food and income, shelter, water, medicinal remedies, and community. Land is often people's only collateral for loans in case of illness or other emergencies. Especially in the case

of indigenous people, it is also the spiritual base of communities.

*"Owning a piece of land does not only have important food security dimension but contributes also to families' social (poverty) status in a community. Access to land is the most important social safety net in rural areas."*<sup>9</sup>

When people lose their land, or access to the land, forest and waters on which they rely, they lose everything. They lose their livelihoods, reducing their ability to feed themselves and their families. Their health will likely suffer and, as they are less able to afford medical care, will deteriorate further over time. Their children will likely have to stop going to school. They may be forced to migrate, or send their children to live with others, and lose their entire community support structure. The prospect of domestic violence and conflicts within the family will rise, due to stress. Desperate, the family may become more vulnerable to trafficking and other exploitation or dangers. (One community was forced to forage for unexploded ordnance to sell for scrap because they lost access to their rubber trees.) In myriad ways, the loss of land may well lead to loss of life.

Land security should be a cornerstone of poverty alleviation and development. Land-grabbing—whether through outright theft, or cheating or coercion of financially, socially or educationally vulnerable people—promotes poverty and undermines a variety of development and welfare efforts. It has deep and lasting impacts on

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<sup>9</sup> Potential Poverty and Social Impacts of Cambodia's proposed Social Land Concession Program, Workshop Documentation, GTZ, MLMUPC, General Secretariat of SLC, LMAP, Oxfam GB, World Bank, May 2004.

health, education and all other aspects of the country's development. Notably, land-insecurity:

- **increases poverty and landlessness** by destroying live-lihoods and access to land and natural resources;
- **jeopardizes development** including by physically, mentally and economically damaging rights-holders who should benefit from rural development, health, education, water and sanitation, livelihood, etc, projects;
- **damages stability, productivity and sustainability**, by sabotaging people's efforts to improve their own lives, and undermining resources aimed at them. This has a great impact on agricultural productivity, rural economy and environmental management;
- **usually fails to provide economic benefits** to the poor or enrichment of state coffers, despite claims to the contrary that displacement of people is for reasons of economic development;
- **forces migration**, increasing insecurity and vulnerability to trafficking, exploitation and other abuses, and often breaking up families;
- **increases physical and mental health and death risks**, particularly among children, due to poor nutrition and living conditions (notably the risk of diarrhea, malaria, dengue, cholera and TB), and increased risk of sexual and physical abuse, HIV, STDs and injuries;
- **increases rights abuses**—violence, rape, trafficking, labor exploitation, etc—resulting from increased vulnerability, including lack of family and com-

munity support;

- **lowers education levels** as families are forced to relocate and children are forced to work over studying; parents are distracted from their supervisory role;
- **degrades natural resources, impacts the environment and contributes to climate change**, including large scale projects which destroy forest, wildlife and water supplies, and create pollutants;
- **contravenes legal reform and good governance** by concentrating power and wealth in the hand of a few, and rewarding corruption and cronyism. It upsets the political balance and increases the likelihood of civil conflict.

## PREVALENCE

*"[...] 20-30 percent of landowners hold 70 percent of the land, while the poorest 40 percent occupy only 10 percent... Approximately 20 percent of rural households are landless, and 25 percent of rural households own land plots that are less than 0.5 [hectares]... insufficient to sustain livelihoods."*—World Bank report <sup>10</sup>.

Although difficult to quantify conclusively, there is every indication that land-grabbing and landlessness has grown at an alarming rate over the past decade or so. In the capital of Phnom Penh, 133,000 people, or 11% of the current population, are estimated to have been evicted since

<sup>10</sup> A Fair Share for Women: Cambodia Gender Assessment, by the World Bank, Apr 2004.

1990.<sup>11</sup> Nationwide, at least 150,000 are estimated to be living at risk of forced eviction.<sup>12</sup> In the year 2008 alone, NGOs documented land conflicts affecting at least 176,000 people, and possibly significantly more (see below).

The available statistics certainly do not show the full extent of the problem. Organizations don't have the capacity to document or deal with all land conflicts. It's impossible to say how many small cases simply never reach their attention.

Anecdotal evidence indicates that, without the knowledge of NGOs, many smaller disputes go to the Cadastral Commission, tasked with resolving disputes over untitled land. In September 2008, there were 2,008 unresolved land dispute cases pending there: 80 at the national level, 364 at the provincial level, and 1,564 district level.<sup>13</sup>

NGOs are increasingly focusing on large cases involving hundreds and sometimes thousands of families. One major rights organization recently reduced its overwhelming case load by eliminating smaller cases involving border disputes between only a few parties. The NGO database of land conflicts only tracks cases involving more than five families.

In 2008, Adhoc investigated 306 land cases affecting 12,262 families.<sup>14</sup> (They included 25 large-scale forced evictions affecting more than 10,000 families or an estimated 46,095 people.) Licadho, which has offices in only half of the country's provinces, handled 134 cases involving 15,310 families in 2008. Its database shows that since 2003 Licadho has dealt with land complaints affecting 54,913 families (estimated 274,565 individuals). In 2008, the NGO database tracked 176 land disputes reported in the media (a total of 35,200 families or an estimated 176,000 people).

## ONE KIND OF CASE, NO FORMULAS

Most cases share one thing in common: they involve the poor against the rich and powerful. Certain types of conflicts emerge, but they are by no means simple categories with formulaic profiles and solutions. However, cases generally involve powerful people including government officials, military and private businesspeople, and common types of conflict involve:

<sup>11</sup> Land and Housing Rights in Cambodia, Parallel Report 2009, Submitted to the UNCESCR Concerning Article 11 (1) Right to Adequate Housing of the Covenant on Economic, Social and Cultural Rights For consideration at its 42nd session, 4-22 May 2009, Land and Housing Working Group, Cambodia, Apr 2009

<sup>12</sup> "Some 150,000 Cambodians are known to be living at risk of forced eviction in the wake of land disputes, land-grabbing, agro-industrial and urban redevelopment projects. An estimated 70,000 of these live in Phnom Penh." Rights Razed: Forced evictions in Cambodia, Amnesty International, Feb 2008.

<sup>13</sup> Unpublished NGO legal brief, Mark Grimsditch & Nick Hendersen, Feb 2009.

<sup>14</sup> Human Rights Situation Report 2008, Ny Chakrya, ADHOC, Feb 2009.

### 2008 LAND CONFLICT CASES OF 3 NGOS

NGO	# cases	# families
Adhoc	306	12,262
Licadho	134	15,310
NGOF	176	35,200

- State land, including government projects such as roads, community forests and concessions listed below;
- Economic Land Concessions (and tourism, mining and rubber plantation concessions);
- Social Land Concessions supposedly intended to give land to the poor but sometimes doing the reverse;
- Indigenous minorities with special rights.

In the absence of effective implementation of the law, there is no “model” for land conflicts and no magic solutions for success. Some things work in one case but not others. Strategies must be developed for individual cases—at the appropriate levels (local, national, international), using a variety of available information, tools, tactics and contacts—and must adapt to the changing situation. They must be complemented by strategic coordinated action to solve the underlying root causes of land-grabbing. One donor said:

*“It’s not the resolution of cases that will work; it’s the resolution of the system.”*

## INTERVENTIONS

Land conflicts in Cambodia are symptomatic of a fundamentally flawed system of law and governance in which patronage and corruption rule. Land-grabbing is so common, and efforts to redress it so difficult, because people have little leverage and few options to fight that system.<sup>15</sup>

Formal mechanisms of redress—local government officials, the courts, and so on—are largely ineffective due to lack of will to serve the public interest and follow the law. Elections, rather than being a way for people to raise grievances and demand fair resolution of land disputes, can be a tool for public officials to threaten land security if people do not vote in the right way. Systematic state-sponsored expropriation of land is often defended as being necessary for “development”—development that is neither for nor by the people, who are rarely consulted about it—while more and more land ends up in the hands of a relatively few powerful individuals.

Those working against land-grabbing are overwhelmed by the volume of cases and failure of intervention efforts to secure land ownership. It is telling that most NGOs do not measure success by the numbers of rightful land owners who win undisputed title to their land. Interventions are often considered successful if people are clearly informed of their rights and avenues for seeking for redress, are able to make complaints through the formal mechanisms and otherwise advocate for their rights, and if their losses are mitigated to any extent. In this context, a case which ends, for example, with rightful land owners losing their land but being able to secure more compensation than they were originally offered—even if it is still far below market value—may be considered a success.

A variety of logical and creative land conflict interventions are used by NGOs, community groups and communities themselves. In many cases, these efforts have

<sup>15</sup> Multiple reports have explored the weaknesses of rule of law in Cambodia, including widespread impunity and endemic corruption, and land issues. For example: see the numerous reports of successive Special Representatives of the UN Secretary General for Human Rights in Cambodia, available at <http://www.cambodia.ohchr.org>, and various NGO reports including Human Rights in Cambodia: The Charade of Justice, Licadho, December 2007, at <http://www.licadho-cambodia.org/reports/files/113LICADHOREportCharadeJustice07.pdf>.

been successful—even remarkable—at obstructing or minimizing the threat from powerful forces. However a large number of cases remain unre-solved and/or involve rights-holders having to share their land with perpetrators. The threat of further attempts to evict them in the future remains. Unjustified criminal charges against rights-holders, filed by court officials acting on behalf of land-grabbers, are often also pending. These physical and psychological threats compromise resources, weaken communities and reduce people’s ability to defend themselves against future threats.

The most needed—and most difficult—interventions and changes are at the highest level. Strengthening rule of law and ensuring that it applies to all, implementing real judicial and administrative reforms, combating corruption, and promoting transparency and accountability of public officials to their constituency, all require a level of political will which—despite repeated platitudes to the contrary—has clearly been lacking for years.

The scale of Cambodia’s land crisis, and the lack of political will by the government to meaningfully act to address it, requires interventions that are beyond the scope of the relatively few NGOs—primarily human rights and legal organizations—who currently actively work on land disputes. It requires a wider range of moral duty-bearers to come together to advocate and to support communities: the multitude of NGOs that work on development issues which are impacted by land-grabbing and landlessness; NGO donors; bilateral and multilateral donors to the government. The solutions require a wide range of or-

ganizations and a coordinated strategy that recognize the links between land security and virtually all aspects of Cambodia’s development.

Broader support for communities, community groups and NGOs working to assist them is particularly vital in the current climate, in which community representatives are frequently targeted for bogus criminal charges, and attacks on free expression and free assembly are intense. Such support is particularly important given the looming threat of a new Law on NGOs and Local Associations, which it is feared will restrict legitimate civil society activities and threaten the existence of grassroots groups working to defend their land and natural resources.

However, some local and international NGOs, UN agencies, and bilateral and multilateral donors often send mixed—or the wrong—signals to the government over land-grabbing.

They cite the need to protect their relationship with government officials, fear of being accused of “incitement”, and the need for economic development as reasons not to speak or act against land-grabbing. Many organizations and donors have followed, for many years, a policy of “engaging” with the government, in the hope of obtaining change “from within”, and are therefore reluctant to be perceived as challenging its actions, even when directly against their own projects’ objectives. At best, many turn a blind eye to land-grabbing and at worst they may essentially support land perpetrators and become complicit in their abuses.

This report recognizes a critical and urgent need for strategic action at all levels to support, complement and expand upon the work of communities and relatively few NGOs working on land conflicts. It should be noted that many individuals and organizations under review for this study appear to be doing a remarkable job under extremely difficult conditions. Their efforts should be refined, amplified and supplemented by a much broader range of players. This document aims to spark ideas about how more organizations can join this important effort.

The structure of this report follows the general process by which rights-holders, NGOs and other moral duty-bearers attempt to obtain redress in land-grabbing cases:

- Rights-holders (affected individuals and communities) seek redress from legal/formal duty-bearers—lodging complaints with local authorities and courts, and occasionally with national institutions.
- Moral duty-bearers (others in the community, NGOs, community groups, etc) assist and observe rights-holders through legal processes.
- When these fail, other forms of advocacy are needed to raise the attention of higher levels of decision-makers.

Chapter II, Legal Duty-Bearers, reviews the role of state authorities and the effectiveness of state legal and administrative mechanisms to resolve land conflicts. Chapter III, Moral Duty-Bearers, examines the roles, strengths and weaknesses of communities, community groups, NGOs and

their donors. Chapter IV, Intervention Methods, outlines strategies and interventions and is designed as a stand-alone reference guide for interventions against land abuses. Chapter V is conclusions and recommendations.

## II. LEGAL DUTY-BEARERS

*“The overall responsibility for meeting human rights obligations rests with the state. This responsibility includes all the organs of the state such as parliaments, ministries, local authorities, judges and justice authorities, police, teachers or extension workers. All these are legal duty-bearers.”*<sup>16</sup>

Interventions against land-grabbing are severely hampered by the lack of practical options for formal redress. The courts are widely considered influenced by power and money. Public officials commonly shirk their duties and obligations to constituents and serve their own personal interests rather than the public.<sup>17</sup> At best, court and other state officials may be poorly motivated to help victims, or be afraid to if the land-grabbers are well-connected, and at worst they may themselves be perpetrators

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<sup>16</sup> Applying a rights-based approach: An inspirational guide for civil society, by Jakob Kirkemann Boesen & Tomas Martin, The Danish Institute for Human Rights, 2007.

<sup>17</sup> For information on corruption and political interference in the courts, and corruption by state officials, see: Human Rights in Cambodia: The Charade of Justice, Licadho, December 2007; Cambodian Corruption Assessment, USAID, August 2004; State, society and democratic consolidation: the case of Cambodia, Un Kheang, Pacific Affairs, June 22, 2006.



or accomplices. Patronage and corruption paralyze the poor who can not afford “justice”.

When faced with a land conflict, citizens usually proceed through their local options for redress in roughly the following order: group or village chief, commune authorities, provincial authorities, and possibly the courts. If their complaints are not resolved at lower levels, many people go to the national level, often appealing to the Prime Minister<sup>18</sup>. They may also file complaints with government ministries, the National Assembly and—if they know of their existence—other relevant bodies such as the National Authority for Land Dispute Resolution.

## FORMAL RESOLUTION OPTIONS



<sup>18</sup> In the past, many people also attempted to raise their issues with the King as well, but this seems to be becoming less common.

*The chart illustrates the state bodies that may be approached for redress in land cases. People usually proceed from the bottom of the pyramid upwards, although at any stage they may go straight to the Prime Minister.*

Interventions using the formal systems of redress prove ineffective at solving many land conflicts, especially those involving powerful people. To the contrary, authorities are often used against rights-holders who find themselves in dispute with powerful people. Local officials and the police may threaten people not to complain against perpetrators, and suppress their attempts to raise their grievances through petitions, complaints, public demonstrations<sup>19</sup> or other means. The police and courts are commonly used by land-grabbers to lay bogus charges against community members.

This section reviews the roles played by relevant authorities and the main systems set up to resolve land conflicts.

## LOCAL & PROVINCIAL LEADERS

*“Most [rights-holders] win if they have support from district and local authorities.”—an NGO investigator.*

<sup>19</sup> “[A]uthorities imposed restrictions on public demonstrations relating to land and natural resource conflicts, and workers rights. Of 155 peaceful strikes and demonstrations that took place 108 (70%) were suppressed forcibly by the armed forces. The government employed various tactics to restrict freedom of assembly. The authorities often refused to authorize demonstrations, or delayed in granting authorization for demonstrations shortly before they were due to take place, then unauthorized strikes and demonstrations were suppressed by force.” *Executive Summary of Human Rights Situation Report 2008*, Ny Chakrya, ADHOC.

Group, commune, district and provincial officials can be instrumental in resolving land-grabbing, depending on who and how well-connected the perpetrators are. However, they are often complicit in land-grabbing, rather than helping constituents to resolve conflicts. NGOs, communities and case studies indicate that when there is benefit to officials, they often work on behalf of the perpetrators.

## 88% of cases brought to local authority

*88% of land conflict cases were brought to village, commune and district authorities. 50% were brought to provincial hall.<sup>20</sup>*

Group and village chiefs are traditionally the first contacts for mediating land conflicts. If communities have support of their local leaders, they often can combat land-grabbers. Local leaders help facilitate good interventions by their communities when they fulfill their duties by:

- Informing constituents about the law and legal mechanisms;
- Helping citizens prepare documents and file complaints;
- Providing testimony and documentation to support the land claims of their constituents;
- Sharing information and strategizing with the community;
- Negotiating on behalf of their constituents;

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<sup>20</sup> Unless otherwise stated, all statistics are sourced from Statistical Analysis on Land Dispute Occurring in Cambodia 2008, NGO Forum 2009. They are based on analysis of 176 cases of major land conflicts reported in the news media in 2008.

- Forwarding information and requesting resolution by higher authorities.

When they don't, it often means they are in collusion with perpetrators. Local and provincial officials are often directly or indirectly involved in land-grabbing. They may profit from perpetrators in exchange for signing or falsifying documents, or for merely turning a blind eye to land-grabbing and denying documents or other support to the victims. In some cases, lower level officials such as village or commune chief may be directly complicit in land-grabbing without the knowledge of higher officials (such as at the provincial level). In other cases, the lower level officials may be innocent and may sympathize with their victims, but be afraid to intervene because they know that provincial or national officials back the perpetrators.

## 68% of cases involve local authorities

*Methods for acquiring land involved authorities in 68% of cases in 2008.*

Local leadership in Cambodia is not structured to serve the people. The system of patronage and inadequate civil servants' salaries maintain control based on power and money, issued in return for services and allegiance, from the top downwards. In such a system officials easily function as agents of land-grabbers and their patrons (other government officials or business people), and attack or disown their own constituents.

## COURTS

*"The courts...always take black to be white."—findings of a community group meeting.*



A functioning, independent and impartial court system is essential to ensure people have access to justice in land cases. However statistics and anecdotal evidence clearly indicate that Cambodia's corrupt and politically controlled courts are of little use in resolving land disputes in a fair and just manner. To the contrary, the courts are regularly misused to prosecute the victims, rather than the perpetrators, of land-grabbing.

The courts often fail to protect rights-holders' claims and refuse to investigate and prosecute complaints against state officials or influential businesspeople accused of land-grabbing. Often they pass cases to the Cadastral Commission (see below) which has jurisdiction when the parties in dispute do not hold title. However in doing so they often shirk their jurisdiction over complaints involving breach of contract, as may be the case with ELCs. Even if courts do accept complaints from rights-holders, they rarely rule impartially on them.

*"[One judge] put it simply: when the [municipal] hall calls him and tells him its time to make a decision, he'll make a decision."—an NGO lawyer describing a conversation with a judge over a land case.*

But when land-grabbers file criminal complaints against villagers or community representatives—often completely false complaints without any evidence—the courts are quick to file criminal charges. Such complaints are usually targeted at individuals who are instrumental in leading their communities to try to protect their land.

When the courts are used to attack rights-holders, they are tools of intimidation and extortion. Arrest and imprisonment, or the threat of it, is used to silence activists, instill fear in their community and coerce villagers to surrender their land without a fight.

Even without any evidence presented, the courts are frequently willing to file criminal charges against activists and villagers. Charges of violation or destruction of private property are often made even when the court has not yet determined ownership of the land in question. For example, charges may be laid against a villager who removes a boundary post placed on disputed land by a private company. Other spurious charges may include incitement, theft, physical assault, fraud, defamation and robbery.

*"People always complain to the court against the company, but there's no action. When the company complains? The court files [criminal charges] very fast... The court does not belong to the people. It belongs to the government. The government supports the company."— a human rights worker.*

Communities say their leaders are often called for questioning and arrested on weekends and holidays, when legal and rights NGOs are less likely to respond promptly. In some cases, quick intervention by rights workers or lawyers may prevent an arrest and detention, and in other cases community leaders avoid answering summonses or flee their homes to avoid arrest. They are sometimes forced to keep a low profile or go into hiding for a long time. Less fortunate others, however, are sent to prison for sometimes extended pe-

riods of pre-trial detention and may be convicted and receive lengthy prison sentences. Even if activists are released, charges often remain hanging over their heads.

Rights groups and activists say arrests of rights-holders are increasing. In ADHOC's 2008 cases, 150 people were arrested and detained in land disputes compared to 139 in 2007. In addition, more than 100 other people facing arrest evaded capture. At the end of the year ADHOC listed 59 (39%) people who continued to be detained in prison.<sup>21</sup> Moreover, in the first seven months of 2009, the number of arrests had already reached 107.

In 2008, LICADHO's monitoring unit listed a total of 19 land disputes (14% of their total 134 cases) in which 49 individuals were arrested and later criminally charged. As of 31 December 2008, 12 of the 49 (24%) individuals arrested during 2008 re-mained in custody.

## BOX: THE LAW

Cambodia's land laws have one major flaw: implementation. In general, the 2001 Land Law and related sub-decrees provide adequate protection against land-grabbing, despite gaps in legislation (notably on indigenous rights). If these laws were followed, most land conflicts could be resolved in the interest of rights-holders.

Frequently, however, the laws are ignored or misused. An example is the government's granting of Economic Land Con-

cessions (ELCs) and Social Land Concessions (SLCs) without adhering to its own laws and regulations for these concessions. If the laws were followed, NGO sources say most ELCs and some SLCs would have to be considered null and void.

*"The Sub-Decree on Economic Land Concessions, adopted in December 2005, is an important advance in establishing the legal and regulatory framework for the grant and management of concessions, including requirements to conduct public consultations and environmental and social impact assessments. However, these provisions have not been properly implemented and enforced; existing concessions have not been reviewed; and economic land concessions have continued to be granted over forested areas and indigenous land, in violation of the law."*<sup>22</sup>

National-level advocacy by NGOs on land issues often concentrates on laws and regulations. This does not appear to be balanced by a clear strategy to advocate for proper implementation of the law, and punishment of those who violate it. Some NGOs fear that without correct implementation, new laws and regulations can create more problems than solutions. Notably, many are currently concerned about the impact three proposed pieces of legislation will have on land-grabbing.

The first is the government's proposed Law on NGOs and Local Associations. Many NGOs fear that the law will restrict legitimate civil society activities, tighten

<sup>21</sup> *Human Rights Situation Report 2008*, Ny Chakrya, Feb 2009.

<sup>22</sup> Economic land concessions in Cambodia: A human rights perspective, Yash Ghai, Special Representative of the Secretary-General for Human Rights in Cambodia, UN Office of the High Commissioner for Human Rights, Jun 2007.

government control over them, and infringe upon constitutional freedoms (of association, speech, etc). Cambodian People's Party (CPP) officials have publicly stated that the law is intended for NGOs which are "too freely speaking" and those which "rock the boat" by advocating on issues such as deforestation and corruption. The latest version of the draft law has not been made public but previous drafts included restrictions on foreign funding of local NGOs; complex registration requirements that would provide legal means to delay or deny registration to NGOs and associations which fall out of government favor; and provisions for authorities to close down organizations deemed to have conducted (undefined) "political" activities.

*"No law is better than a bad law."—an international NGO country director.*

The law, if passed, will almost certainly have a great impact on NGOs and associations working against land-grabbing. In particular, small community-based associations and networks working at the grass-roots level—who are already the most vulnerable—will be at greatest threat. Already, many of their activists are under great pressure, facing threats and intimidation, questioned about their activities, and sometimes arrested on spurious criminal charges, and the NGO Law will provide another tool which can be used to silence and punish them for advocating on land rights.

Two pieces of land legislation currently criticized by land groups are the proposed Law on Expropriation and the Sub-Decree on Land and Property Acquisition and Addressing Socio-Economic Impacts Caused

by State Development Projects, drafted by the Ministry of Economy and Finance with technical assistance from the Asian Development Bank (ADB). The ADB has been publicly criticized for funding projects which fail to meet their own resettlement requirements<sup>23</sup>. NGOs say the draft sub-decree falls "far short of international human rights standards as well as the standards of the ADB's own Resettlement Policy" and could constitute a "roll-back of legal rights guaranteed under the constitution". Among the problems are: lack of impact assessments; public consultation; too much executive control; lack of safeguards against evictions; lack of transparency, accountability and judicial review.

The Law on Expropriation is said to have "broad guidelines on land-taking procedures for public interest purposes and define public interest activities such as construction of infrastructure projects, development of buildings for national protection and civil security, construction of facilities for research and exploitation of natural resources, and construction of oil pipeline and gas networks."<sup>24</sup> NGOs know little about the content of the draft law which has been prepared without transparency and public consultation, but have expressed concern about provisions for evictions.<sup>25</sup>

<sup>23</sup> "The ADB itself has acknowledged that six projects in addition to the [Highway 1 road expansion] have failed to comply with its resettlement policy." Challenges for implementing ADB's resettlement policy in Cambodia: The case of Highway One" by Rene Sugita, Watershed Vol. 11 No. 1, Jul-Oct 05.

<sup>24</sup> 2008 Investment Climate Statement – Cambodia, U.S. Department of State website, <http://www.state.gov/e/eeb/ifa/2008/103670.htm>

<sup>25</sup> Cambodia: Briefing for the UN Committee on Economic, Social and Cultural Rights: 42nd Session, May 2009, Amnesty International.

## LAND MANAGEMENT AND PLANNING

The Ministry of Land Management Urban Planning and Construction (MLMUPC) and the various government mechanisms which are supposed to assure land security and resolve disputes—including the issuing of land titles, the cadastral system and inter-ministerial bodies—do little to protect people against land-grabbing.

The ministry's Land Management & Administration Project (LMAP), was established in 2002 to "reduce poverty, promote social stability, and stimulate economic development" notably through land management, titling and dispute resolution<sup>26</sup>. However as its first phase nears end in December 2009, NGOs note that despite success in certain areas "LMAP is not providing tenure security to the most vulnerable"<sup>27</sup>.

NGOs are currently lobbying government bodies and donors that support LMAP, for changes that benefit the most vulnerable. Major concerns include resolution of land conflicts, access to titling for those most vulnerable to land-grabbing, legal framework for indigenous land registration and state land management.

One NGO briefing paper outlined the many criticisms of state land management under the LMAP project:

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<sup>26</sup> Document of The World Bank: Report No: 22869-KH : Project Appraisal Document on a Proposed Credit in the amount of SDR 19.3 Million (US\$24.3 Million Equivalent) to the Kingdom of Cambodia for a Land Management and Administration Project",<sup>29</sup> Jan 2002.

<sup>27</sup> Unpublished legal brief, Mark Grimsditch & Nick Hendersen, Feb 2009.

*"The lack of transparency, abuse of power, and an inadequate and unimplemented legal framework has caused the loss of public spaces in both urban and rural settings, as well as the large-scale depletion of the country's natural resources, especially forests. Rural communities living or farming on State private land (many with legal possessory rights) have been deprived of land that provided them with a means of subsistence to make way for economic land concessions. Indigenous communities (who, in the absence of a complete legal framework for granting title, are being told that they live on State land) have lost residential and farm land and had their spirit forests and burial grounds razed, contributing to the threatened extinction of their ancient cultures. In addition, urban communities with possessory rights under the Land Law have been denied the opportunity to secure their land tenure despite their legal entitlements, with officials wrongly labeling them as illegal squatters living on State land."*<sup>28</sup>

### CADASTRAL COMMISSION

While the court has jurisdiction over titled land the Cadastral Commission (CC) has jurisdiction to resolve land disputes where titles have not been issued. Established in 2002, it operates at district, provincial and national levels. Its regulations appear designed to refer decisions to the national level for all but minor boundary disputes between neighbors.

## 6% cases brought to cadastral

*District: 4%. Provincial: 6%. National: 2%*

According to a CC sub-decree,<sup>29</sup> the district cadastral may refer a case to the

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<sup>28</sup> Ibid

<sup>29</sup> Sub-decree on Organization and Functioning of the Cadastral Commission, May 2002.

provincial level if it is a claim for several parcels of land, or involves high-ranking officials, a conflict of interest, or state public land. In turn, the provincial cadastral “has no right to decide on any conflict” unless all disputants unanimously agree; if they do not, cases are sent to the national level cadastral. At the national level, the minister of MLMUPC and secretaries of state from the Ministry of Interior and the Council of Ministers have full jurisdiction to rule on undecided cases from the district and provincial CCs. If parties disagree, they can petition the Appeal Court to order the national CC to review its decision.

In reality, NGOs and land networks say the CC is of little use in resolving large disputes or those involving powerful people. “The CC just refuses to resolve disputes involving the powerful,” said one NGO staff, adding, “The CC is just a black hole in these types of cases.”

*A staff of one cadastral office told an NGO that he was instructed by his director not to get involved in anything related to a high-profile urban case because it is a “big case” which the municipal hall was involved in.*

The CC is primarily used in cases of individual boundary disputes, relying heavily on the village chief as the primary source of information. It is sometimes able to resolve these cases, but sources say it’s prone to corruption, lacks independence, and is unable to keep abreast of the large volume of cases it receives

## **NATIONAL AUTHORITY FOR LAND DISPUTE RESOLUTION (NALDR)**

The National Authority for Land Dispute Resolution was created in March 2006 to resolve complex land conflicts. However land groups question the need for the body, which none of the groups surveyed for this research found useful in resolving difficult disputes. Concerns about the jurisdiction and transparency of the body include its “undue executive control”, which threatens to undermine the ability of other judicial bodies to resolve land disputes”.<sup>30</sup>

*“The NALDR purportedly has jurisdiction over cases which are ‘beyond the jurisdiction’ of the Cadastral Commissions. However, according to Cambodian law, there are no cases beyond the jurisdiction of the Cadastral Commissions or courts. The practical result of the creation of the NALDR has been to strip the Cadastral Commissions of its proper jurisdiction, and to refer high profile or controversial cases to the NALDR, which is composed of and controlled by senior officials. The NALDR operates as a blatantly political entity, and has no established rules or procedures. Meanwhile, courts will often refuse to act in cases relating to illegal developments and land concessions, on the basis that they do not have jurisdiction.”<sup>31</sup>*

## **8% cases brought to NALDR**

### **LAND TITLING SYSTEM**

<sup>30</sup> NGO Statement on the Monitoring of CG Indicators, NGO Committee for the Monitoring of CG Indicators, Jun 7, 2006

<sup>31</sup> Land and Housing Rights in Cambodia, Parallel Report 2009, Submitted to the United Nations Committee on Economic, Social and Cultural Rights, Land and Housing Working Group, Apr 2009.

LMAP's land titling project aimed to implement a systematic land registration system (titling in predetermined locations) as well as improve the existing sporadic system (occurring anywhere in response to applications). The aim of the project was to increase tenure security, particularly for the poor.

However, land titling does not necessarily improve land security. To some extent, systematic land registration exacerbates conflict by avoiding disputed areas, and by driving land speculation and sales. The sporadic registration, meanwhile, is costly and inaccessible to the poor.

*"LMAP was designed so that areas 'likely to be disputed' would not be titled and 'informal settlements' would not be titled without the approval of the Royal Cambodian Government (RGC). When systematic titling is designed in this way, and the sporadic system is generally available only to the wealthy, those at the greatest risk of being evicted and becoming landless (regardless of whether they qualify for possession under the Land Law), have little or no opportunity to achieve tenure security."<sup>32</sup>*

### **INTER-MINISTERIAL RESETTLEMENT COMMITTEE (IRC)**

The Ministry of Economy-controlled Inter-ministerial Resettlement Committee (IRC) is tasked with dealing with resettlement issues due to projects that are assisted

by foreign development partner agencies, and it works on the basis of partners' resettlement policies. In reality, critics say its actions have highlighted a lack of commit-

ment to providing fair compensation to people displaced by development projects.

NGOs that worked on land confiscations arising from highway improvement projects say the IRC is difficult to work with, biased and corrupt and ineffective. As a result, people are not properly compensated but are forced deeper into debt as a result of the resettlement.

*The ADB-funded \$40m expansion project for a 105 km stretch of Highway 1 violated the ADB's own resettlement policy and resulted in the "relocation and impoverishment of approximately 1,200 households (estimated 6,000 people)" many of whom still have not received fair compensation. The ADB and IRC's process lacked consultation with the community, was unfair and did not offer viable options for complaints.<sup>33</sup>*

### **OTHER NATIONAL AUTHORITIES**

When local systems of redress fail, people sometimes seek help from other bodies at the national level—National Assembly, Senate and the Council of Ministers or specific Ministries. However these bodies are often not receptive to receiving complaints or taking action to resolve them. Few parliamentarians have strong ties to their constituencies or interest in resolving their problems. Getting results from these bodies can require more skills and strategizing than can be expected of the average citizen.

The National Assembly and Senate usually

<sup>32</sup> Unpublished legal brief, Mark Grimdsitch & Nick Hendersen, Feb 2009.

<sup>33</sup> The ADB Highway One Improvement Project, Rena Sugita, Watershed Vol. 11 No. 1 Jul–Oct 05.



accept complaints about land disputes. Most often, they merely forward the complaint to a relevant government agency. Sometimes they set up a committee to investigate. The result will depend on who's doing the investigation, how serious they are to find the truth, and who are the parties to the case. Regardless of the results, an investigation brings scrutiny to the conflict and can raise the profile of the case.

On occasion individual parliamentarians may visit the dispute site. However when opposition parliamentarians are outspoken about a land case, it can be turned into a political issue and provoke the wrong response from the ruling party. If communities are perceived as backing the opposition, the ruling party is usually less willing to help to find a solution to their case.

## ULTIMATE AUTHORITY

*"If only the prime minister knew..."—a common remark from desperate villagers.*

When most people think about national intervention, they likely consider appealing to one man: Prime Minister Hun Sen. Like pilgrims from all corners of the country, people flock to the Prime Minister's Takmao residence with dreams of meeting him. Some say interventions by the Prime Minister are the only ones guaranteed to work. However the leader's response is unpredictable, often unclear and usually not successful for victims of land-grabbing.

People are desperate when local authorities abandon them. Many believe, or hope, that if only the Prime Minister knew about their problem, it would be solved.

A steady flow of complaints is submitted through the Prime Minister's Cabinet, and a smaller number to the Council of Ministers.

## 28% cases: raised to PM's Cabinet

*8% cases: raised to Council  
of Ministers*

Many try to deliver complaints in person at the Prime Minister's residence. While some communities hope for an immediate resolution from the Prime Minister, others go to his house simply in order to send a message to their local authorities (that the people can go above their heads if they do not properly resolve the case) and to draw media attention.

Nearly everyone who goes to Hun Sen's house leaves without any firm solution; usually, they are told that the Prime Minister's Cabinet will forward the people's concerns to relevant other authorities for consideration.

*"Without resolution from Samdech Hun Sen, my people will not return back to the province because nobody in our province is working to find a solution in favor of poor people," said 47-year-old Vy Sarin. More than 50 villagers trekked from remote Konkriel commune in Oddar Meanchey province to the Prime Minister's Takmao home. However, Pal Chandara, deputy cabinet chief, said the case is "not within our powers" and forwarded it to the National Authority for the Resolution of Land Disputes.<sup>34</sup>*

<sup>34</sup> "Protesters Ask Hun Sen To Settle Land Dispute", Kuch Naren, Cambodia Daily, 17 Mar 2009

In most cases, it is never clear if the Prime Minister or his officials have taken action or even reviewed the complaints. In other cases, it becomes evident when the community returns home that their complaints were forwarded to the local authorities with a request that they look into and take care of the situation. The sub-dialogue may be for local authorities to tighten control over the situation, resolve it quickly, or not to make a public scandal (for instance, before elections). However such interventions do not usually mean the cases are justly resolved.

One community leader likes to relate his story about the Prime Minister resolving his land dispute after he acquired the leader's personal phone number and called him directly. Such stories, and results, are, however, rare.

In some cases, land victims are not able to make their way to Hun Sen's because of obstruction from authorities. Local authorities may threaten and harass them, to prevent them from leaving for Phnom Penh. In the capital, police or Prime Minister bodyguards may turn them away from getting near his house, or force them to leave after they have submitted complaints. At times, land victims have been subjected to violence by police or bodyguards outside the house.

## 0% cases raised to Royal Palace

As well as the PM, in previous years communities also regularly tried to appeal to the King over land cases, but this has waned in recent years.

## MAJOR PROBLEM THEMES

The source of many land disputes in Cambodia are some of the government's own systems for managing land – Economic Land Concessions (ELCs), Social Land Concessions (SLCs), other types of concessions such as for mining or logging, and Community Forests.

Most of these systems – such as ELCs and SLCs – are supposedly intended to ensure that available state land is utilized to economically benefit the country and improve the livelihood of its citizens. In reality, the opposite is often the case – such concessions are used to take land from citizens, making them poorer.

### ECONOMIC CONCESSIONS

*"We wanted to protect our resources. Now, they're disappearing gradually due to economic land concessions by the government."*—a community leader, explaining why networks of community groups to advocate on land became necessary.

Economic concessions have been at the heart of land conflicts for years. According to the Land Law, the government can give leases of up to 10,000 hectares of state land for up to 99 years to companies in exchange for investments and fees. Most are awarded for agricultural, and increasingly for mining, projects which the government and companies claim will benefit the economy and provide employment to local people.

In reality, most concessions don't appear to provide benefits to the country or people. Often, they encroach upon farmland used by rural villagers, whose livelihoods are se-



riously reduced by the loss of rice fields or other productive land. In addition, they sometimes appear to be aimed at exploiting natural resources, such as timber, for short-term commercial profit rather than at developing sustainable agricultural projects which benefit the local community and the country.

Concessions often lack transparency, violate the law and damage or take away resources on which people rely for survival. They are among the most difficult cases in which to intervene. Key problems are:

- **Lack of consultation with the community and impact studies** before concessions are awarded;
- **Legal violations and lack of transparency:** Concessions may violate the law: they may be oversized<sup>35</sup> or encroach on land lawfully used or owned by villagers. It's often impossible to identify companies and get copies of contracts. Communities sometimes first learn about concessions when company workers arrive to clear land;
- **Lack of options for negotiation:** Companies are often not willing to negotiate, or even engage in basic communication with communities. Responsibility is often diluted and authorities (usually local officials as well as provincial or national authorities who approved the contract) support the interests of companies, ignoring the claims of villagers;

<sup>35</sup> The 2001 Land Law allows concession of up to 10,000ha, but in reality they often span far greater areas. This is sometimes done by signing multiple contracts in different names. In other cases, contracts are in blatant violation of the law, such as 200,000ha ELC – 20 times the legal limit of 10,000ha – given in Monduliri to the Wuzhishan company.

- **Lack of options for redress:** Because concessions generally involve powerful companies and were awarded by powerful government officials, the courts and other mechanism for redress are rarely willing to get involved in such disputes;
- **Use of intimidation and violence:** There is a high danger of violence being used against communities who try to defend their property and access their resources. Companies usually employ military, police or private guards and when necessary force villagers off their land (see 'Intimidation, Violence & Security in Chapter IV, Intervention Method).

These factors make it difficult to get information, understand the extent of the problem, and strategize or negotiate a fair solution.

## **SOCIAL LAND CONCESSIONS**

The concept of social land concessions, introduced by the 2001 Land Law with procedures set out in a 2003 sub-decree, was supposedly to provide unused state land to families who lacked residential or farm land, and therefore improve their welfare. (Ironically, if land-grabbing were stopped and land restored to its rightful claimants, there would be less landlessness and less need for SLCs). To the contrary, so-called SLCs have been used to evict people from their land, making them poorer and more vulnerable.

Officially, this sub-decree provides a mechanism to convert state land to private land. In practice, it has been used—especially in Phnom Penh—to take land upon which

residents have valid ownership claims, and hand it over to private companies for lucrative commercial development.

None of the SLCs arbitrarily declared in Phnom Penh—usually under the guise of a “land-sharing” arrangement between residents and companies—were lawfully declared in accordance with the sub-decree requirements.

Several of them, such as Borei Keila and Dey Krahorm, have proven disastrous, leading to forced evictions and other multiple violations of residents’ land rights. Some residents were banished to relocation sites on the outskirts of the city, which in turn were labeled as being SLCs but in reality are remote ghettos, lacking basic services, farmland or alternative means of income generation. It remains to be seen how many people can remain at the site for the five years required before they are eligible for land titles. Most have little choice but to return to the city or anywhere else they can find jobs.

It’s not clear whether SLCs given by the Land Allocation for Social and Economic Development (LASED) project may suffer similar problems. LASED, a government project supported by GTZ and the World Bank, aimed to “provide land to landless and land-poor people, and to support them to begin making a living from that land”.<sup>36</sup> Its first concession in Kratie province, initiated in 2007, uses a lottery system to select under-privileged people who are relocated to new settlements. Accord-

ing to a news report, families were moved onto fields without the provision of basic needs, including shelter. More-over, they came into conflict with other people who were evicted from the site to make way for the new occupants.<sup>37</sup>

## COMMUNITY FORESTS

The principle of community forests is to secure communities’ tenure over forest areas on which they rely. It assists forestry officials to monitor and preserve the forest, and provides environmental benefits to surrounding areas. Communities, in theory, can be empowered through community forests and their joint activities to protect them.

As with ELCs and SLCs, the reality can be different. NGOs say the community forest registration process is lengthy and laborious—in a manner which can disempower communities and cause conflicts—and often does not provide secure tenure. One observer said, “community forestry is not successful in Cambodia”.

A key problem, critics say, is that community forests are often declared over only a small piece of the forest that a community uses. The surrounding forest is then deemed by authorities to be unused and able to be given over to concessionaires for commercial use. Community forests make it “easier to give concessions”, said one NGO worker. “When [communities] initiate a community forest request, they give up claim [to all the surrounding forest]. The rest is private, for sale.”

<sup>36</sup> “Land is Life” promotional video, GTZ, German government, LMAP and World Bank.

<sup>37</sup> ‘Miles of opportunity’, Neou Vannarin and Adam Becker Cambodia Daily, May 30-31, 2009.

### III. MORAL DUTY-BEARERS

*“Every rights-holder has the responsibility to respect the rights of others. In this sense you can say that every individual or institution that has the power to affect the lives of rights-holders is a moral duty-bearer—the greater the power the larger the obligation to fulfill and especially to respect and protect the human rights of others. In this sense private companies, local leaders, civil society organizations, international organizations, heads of households, and parents, and in principle every individual are moral duty-bearers.”<sup>38</sup>*

The failure of formal duty-bearers to act against land-grabbing creates a greater responsibility on moral duty-bearers to support rights-holders and help advocate for their land rights. Land security impacts virtually all sectors and therefore should be part of everyone’s agenda. Accordingly, the majority of local and international organizations—even those not mandated to work on human rights and land—bear responsibility for preventing and resolving land conflicts.

Communities, networks, NGOs all need strengthening to support effective interventions. Their weaknesses point to the need for a strong civil society that empowers the grassroots.

This section will examine the role, including strengths and weaknesses, of commu-

nities, grassroots groups, NGOs and donors in resolving land conflicts.

### COMMUNITIES

*“Communities are first and foremost.”—head of a human rights NGO.*

Advocacy by the people is more powerful than advocacy for the people. People around the country, with greater frequency, are challenging perpetrators, trying to protect their property, and drawing attention to land-grabbing. However, they face many obstacles, pay high costs and have limited successes. They have the potential to challenge the systems that nurture land-grabbing—only if they can build knowledge, solidarity and leverage, and transcend an extremely fractured society.

Communities hold great promise but have enormous needs. Power in Cambodia remains hierarchical. Fear is an effective control mechanism, fueled by poor education, bad health, and poverty. Society is extremely fractious at all levels, and easily paralyzed by fear.

*“People are scared and we are still losers,” said one community activist in a network meeting, stressing the need for people to take initiative.*

The grassroots’ potential to change the systems that nurture land-grabbing are largely untapped. Their diminished economic and social strength (even after 17 years of intensive development) leaves them little leverage—as a labor force, suppliers of essential goods, or as a constituency—other than sheer numbers. Society lacks institutions and forums that strengthen, protect and empower them. Such support is par-

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<sup>38</sup> Applying a rights-based approach: An inspirational guide for civil society, Jakob Kirkemann Boesen & Tomas Martin, The Danish Institute for Human Rights, 2007.

ticularly vital given that attacks on free expression and free assembly are intensifying. Community activists lay the blame on Cambodia's foreign do-nors as well as the government. They say donors don't consider the needs of the people and aid never reaches them. Activists say donors should monitor and account for their funds, and should be responsible when the government misuses it.

*"Donor support must think about what the community needs also."—a community activist.*

Communities need NGO and donor support to support their land conflict interventions, and to involve communities in development decisions, notably those that influence their land and livelihood security. They need help to put pressure on their government to provide land security and social services, and justly resolve disputes. They need development that strengthens their land and livelihood security and builds their leverage as constituents and as economic assets. They need a voice in civil society groups so they can hold their own government responsible.

When faced with land conflicts, communities are empowered with information and strengthened by numbers. They need confidence, understanding and good communication. Their efforts are enhanced when organizations monitor, support and respond to their initiatives.

There is no need to convince people to "take ownership" of land conflicts—the conflicts belong to them, not the NGOs—but they often need support or encouragement to "take ownership" of their rights. In most cases, they need basic information

in simple, clear language—about their rights and ways to advocate. When people understand their options, they can do their own analysis, evaluate the risks, decide and take the best action, and ask for support as appropriate.

People need to learn quickly how to write and submit complaints, collect information, demonstrate, and find creative solutions to stop the theft and destruction of their land. When faced with failure, they need to be relentless, adapt to the situation as it changes, and keep trying different techniques. They need to:

- understand their rights and responsibilities, relevant laws and procedures;
- build trust, solidarity, and leadership so they can stand together to demand their rights;
- quell community conflicts;
- gather and disseminate reliable information;
- build confidence to meet officials, file complaints and challenge perpetrators;
- understand how to use their contacts and broaden their network of support;
- understand their options for advocating;
- learn how to use the media.

NGOs and activists stress that communities themselves are the best teachers, particularly when, as one NGO report said, they have "active and trustworthy leadership who meets regularly with members... to exchange ideas, information and build trust, hope, and unity".

"When local authorities see many people join, they are careful. People are strong," said one community network activist. Community activists admit it's very difficult

to get good results, and requires the support of many people. “I need many people to join me. Alone I can not do,” said one leader.

An unusual case illustrates the power of people when faced with the country’s largest ever ELC, granted to the powerful and well-connected Pheapimex company.

## **CASE: CONFLICT BROUGHT US TOGETHER<sup>39</sup>**

*“This was our nightmare, our darkest moment. Because of our lack of knowledge people were hurt and others were afraid to join our protest,” a community member reflected. The grenade attack injured nine of the 600 protesters who were sleeping in a mosque in Krakor District, Pursat on 12 November 2004. But the following day, news of the attack brought a groundswell of support from farmers in nearby provinces. Their numbers grew to 1,000 (or 1,500 by some accounts).*

*The community had first came into conflict with powerful Pheapimex in 2000 when the company began building a road. Earlier that year it had been granted the country’s largest known ELC spanning Pursat and Kampong Chhnang*

*Provinces. At 315,028ha, it was more than 30 times the legal limit of 10,000ha.*

*More than 100,00 people who survive on farming and collecting forest products in the concession area were never consulted. An impact study was never conducted on the potential environmental impact of the concession, which bridges two protected areas, the Tonle Sap Lake and the Aural Wildlife Sanctuary.*

*“In the beginning we had no idea and experience on how to mobilize the community,” said Oum Huot, a Krakor District community leader. “The conflict brought us together.”*

*The community began its protests against the concession by blocking trucks from the area, and effectively stopped company activities. They followed up with complaints sent to Licadho, NGOF and Radio Free Asia. The company backed off, and the conflict abated for three years.*

*In 2004, the company resumed its efforts in the area and the conflict erupted again with local people who opposed it. In November 2004, the company was refusing to negotiate, instead using local officials, police, military and the courts to threaten and intimidate activists.*

*Through their efforts to protect their forest and seek CF status, the community had already built solidarity with a strong network of leaders and communities, some supported by local authorities, spanning the two provinces.*

*Word of the conflict spread regionally and nationally. The community contacted local and national institutions—including the King, the Prime Minister, the National Assembly, relevant Ministries, embassies, development and rights NGOs and the UN—asking for their intervention to demand the*

<sup>39</sup> Sources: Case Study on Mr. Oum Huot, Community Leader of Ksach La Eth village, Ansa Chambak commune, Krakor district, Pursat Province, Anne Ernst, STAR Kampuchea and the AIM-Mirant Center for Bridging Societal Divides, Jun 2007; Land concessions for economic purposes: A human rights perspective, Special Representative of the Secretary General for Human Rights, Nov 2004 (and updated version, Jun 2007); Community-Based Forestry Protection: A Case Study from Krang Skear Commune, Toek Phos District, Kampong Chhnang Province, Cambodia, Forest Livelihoods and Plantations Project, Land and Livelihoods Programme, Land Information Centre, The NGO Forum on Cambodia, 2007.

*cancellation of the ELC.*

*While the government backed Pheapimex, the community resisted, strengthened by numbers. For their efforts, a grenade was thrown at them one night after demonstrations.*

*Following the grenade attack, farmers from Battambang joined more Pursat and Kompong Chhnang demonstrators. Their strength expanded until they clashed with soldiers on national road 5 and the road was closed in a standoff.*

*The company did not back down and neither did protesters, even as threats and intimidation against the community and leaders who supported them mounted in the following months. The community continued to demonstrate, seek negotiation and lobby local and national groups.*

*Donors amplified the community actions. In a December Consultative Group meeting, they were vocal about land issues including ELCs, coinciding with a comprehensive report looking at the impact of ELCs nationwide by the UN Special Representative for Human Rights in November.*

*The same month Vaen Hul, a farmer, was arrested by gendarmes and spuriously charged with murder. The communities responded with efforts to have peaceful negotiations rather than aggressive confrontations, and in January 2005 conducted a traditional ceremony in the spirit forest.*

*The following month the King forwarded a community letter to the Prime Minister who responded with criticism of the community, saying the protesters were not genuine and staged the grenade attack to make their “prop-aganda voices louder”. Pursat and Kompong Chhnang villagers were not deterred. They continued to confront the company and government officials and defended their land.*

*The company finally ceased all activity in March 2005. It was three more months before Vaen Hul was released. Nobody was ever brought to justice for the grenade attack.*

People power is extremely effective, particularly when actions are amplified by NGOs and donors. In the Pheapimex case, the affected communities extended their strength with a strong network of solidarity and strong leadership with some support from local authorities. They used their own initiative and complemented it with support from key local and national organizations. When faced with major obstacles they adapted their strategy and kept focused on their goal.

However four years later, NGOs and activists fear that an increase in military presence in the concession area may signal a revival of Pheapimex's plans. While the community has been continued to work towards CF status, observers say they are not as united as they once were and have had the kind of leadership capable of building long-term solidarity.

## **TYPES OF LEADERSHIP**

Leadership of communities is key. Some NGOs say different kinds of leadership are needed at different times, as described below. The longer a conflict drags on, the less chance people have of success, unless they can build the third kind of leadership.

**Advocacy against an immediate threat:** requires somewhat independent leaders who are aggressive and aim for immediate results. Activities are more successful if they have support of their community, however such a leader may act unilaterally and provide a model for the



community to follow.

**Community organizing for advocacy:** requires leaders who function as an extension to the community and aim for immediate action with the participation of the people. This approach can build community solidarity based on an urgent threat; however when the crisis subsides, so does the solidarity.

**Community strengthening:** is important and takes time. It needs short-term advocacy results so people don't lose hope and focus. Moreover it requires leaders who are consultative with their community and can nurture debate, analysis, initiative and selflessness in the community. They build community action over the long term. Such action is not only defensive of land and livelihood, but also proactive for other community needs that can build common interests and solidarity.

Because leadership is essential, it's the first target for perpetrators who often threaten and bribe leaders, sometimes right in front of their communities. In the face of threats, leaders either switch their allegiance or stand strong with their communities. Those who continue to support their communities must be cautious and sometimes need to go into hiding or seek the protection of NGOs.

In a national meeting, community network advocates from around the country concluded that violence by police, military and gendarmes is increasing. NGOs and other witnesses are frequently absent or prevented from witnessing confrontations. Activists say soldiers and police shoot and on rare occasions kill, arrest without warrants, burn their houses, destroy their prop-

erty, and use tear gas and fire to break their attempts at non-violent resistance. Case studies document numerous instances of unwarranted violence against people trying to claim their land rights.

## 64% cases involve violence or threat

*64% of cases in 2008 led to violence or threats being used*

The beating of peaceful demonstrators in Siem Reap Province illustrates the dangers rights-holders face:

The community of 49 families living near Wat Bo in Siem Reap faced a long-running dispute with the pagoda's chief monk who tried to take their land. After unsuccessfully sending petitions and complaints asking authorities to protect their land, the community decided to gather in front of the pagoda and ask for authorities to come and negotiate. They gathered peacefully for two days, but no officials came. The third day, 40 armed police arrived with the deputy district governor.

*"[...] I went to meet him to negotiate about the land," community representative So Socheath later recounted. "But they didn't listen to us—instead, the police used violence against us... We were very sad when they beat and used electric batons to shock us—they beat and shocked even people fifty or sixty years old... I tried to help some unconscious people, but was beaten myself and injured on my legs.*

*"I told the police 'If you are brave, arrest me but don't beat my people.' Then they handcuffed me and carried me away." Socheath was unable to walk*

*from the beating. After a night in jail, the court charged Sotheath with property destruction.*<sup>40</sup>

Fear is an effective control mechanism, and communities say violence is on the rise. But for authorities it is a double-edged sword. It raises tensions and provokes communities. If people don't have options for non-violent interventions that bring real justice, they may feel they have little choice than to revert to violence themselves. People are beginning to defend themselves, speak out to take their rights, and challenge the social structure. They need support—at all levels—to do so in peaceful and lawful ways.

## COMMUNITY GROUPS

*"We must change. Nobody can stand it anymore. Compared to the Khmer Rouge period it's possible to change: through election, advocacy and demanding rights. People must become active as human beings with democratic rights."—a community activist.*

Communities around the country have cautiously rallied since the 1990s around issues affecting their land and livelihood, notably on fishing rights, logging concessions, and more recently, ELCs. They formed groups of like-minded people who often try to maintain low profiles to avoid pressure from authorities.

Those who work with community groups believe that with the right leadership and abilities, they work more effectively with communities than NGOs. Many say community groups and networks should be strengthened to provide broader support

to communities in conflict, and bring more grassroots voices into civil society. However the risk of transforming them into donor-driven organization runs high.

Community groups include formal groups (networks and associations, etc.) as well as informal ones that emerge spontaneously, such as the one that brought a halt to the Pheapimex concession (see previous section).

They work on local, regional or national levels to support communities, protect or promote their interests, and coordinate collective action. Over the years, fisheries groups have at times been successful at stopping exploitation by powerful companies and protecting communities' fishing rights. Forestry groups were instrumental in bringing a halt to logging concessions. Current community land groups have their roots in these and other groups that protect livelihood, natural resources and culture.

Collective action and networking between groups have been instrumental in providing support and protection on a local and regional basis where communities are most vulnerable. In addition, in recent years there has also been a focus on national advocacy, with a nationwide petition and joint complaints by multiple communities to highlight the widespread affects of ELCs.

*"Not only is our land being given away, but we are facing increasing intimidation and violence. The problem is getting worse. We have no choice but to gather together and have a combined voice," read a joint community statement in 2008, a year of coordinated action by community groups. They col-*

<sup>40</sup> Attacks & Threats to Human Rights Defenders in Cambodia 2006,



*lected 45,000 signatures for a petition, and prepared joint complaints from 16 provinces about land conflicts encompassing one million hectares of land. The complaints were submitted to national authorities in two groups, the first just before July 2008 national elections. The lack of meaningful responses prompted them to return in August 2009 with even more complaints.*

*Activists and NGOs say grassroots groups have an important role to play in strengthening communities, providing support for land conflict interventions and identifying trends. Their strength comes from passion and insights based on first-hand experience. Unlike NGOs, who are more removed from the situation on the ground, community groups have better access to information and greater understanding of community needs and problems. Activists play important roles supporting and teaching communities in conflict, helping to analyze their options, building leadership, and diffusing tensions that can destroy solidarity. "They are so much stronger than NGOs," said one NGO staff.*

Moreover, community groups have an important role to play in civil society: to strengthen communities and leadership, and help raise the voices and leverage of the grassroots so people can claim their rights from their own government.

However they have great needs for support and resources to strengthen their strategy, skills, confidence, security, contacts and credibility. Their leadership sometimes acts unilaterally and lacks consultation with their members and with other community groups. They need better documentation and analysis, and stronger networks with each other.

The challenge is how to support grass-

roots organizations to play a greater role in land conflicts in a way that keeps them rooted. In particular, they need to:

- be grassroots-driven versus donor- or NGO-driven; and
- set their own agenda based on the interests of the grassroots.

As they accept help from NGOs, community groups face the real danger of being transformed into donor-driven organizations.

Community groups should not be expected to operate in a log-frame mentality, with three-year plans, producing endless workshops reports and learning NGO jargon. Moreover, the NGO structure and leadership proliferates a hierarchical, client-patron relationship, which community groups need to avoid mimicking.

Grassroots groups need institutional support that enhances community initiative and allows them to evolve in their own, rather than prescribed, ways.

Some say the key is that donors and NGOs must listen to the grass roots, find ways to learn from them and "support from behind", as one NGO leader says. This may require new approaches.

## ORGANIZATIONS

*"Donations [to the government] should be followed up. If the government does something wrong, we should ask for intervention from the donors too."—a community activist at a national meeting.*

Many sound interventions break down because there is no political will filtering down and not enough public pressure pushing upwards. A relatively small number of NGOs struggle with limited success to intervene on land conflicts. The majority of national and international NGOs and donor agencies do not intervene, and to varying degrees may contribute to land problems through their lack of action. Strategic coordinated efforts are needed at all levels by a broad range of NGOs with support from donors to hold the government responsible to its obligations, and empower people to demand good governance and rule of law.

It is a “fragile state”, said one veteran director of an international development NGO, when organizations are “surrogate service providers in the absence of a strong, able, and willing government”. The results can be that NGOs, acting as quiet service providers, do not seek to hold the government accountable to fulfill its responsibility to the people. Neither do they support and empower people to demand good governance, rule of law, and adherence to basic rights.

Bilateral and multi-lateral organizations and local and international NGOs are instrumental in funding and providing social services, basic needs and development the government neglects. They are well positioned to influence a variety of sectors at all levels: to share information, witness events, and lobby officials. Their collective financial weight, varied political clout, and broad contacts should be points of leverage. Land problems affect most everything they do. Yet most organizations avoid get-

ting involved in land conflicts.

Varied reasons are given: it's not in their mandate; it will compromise their relationship with the government or donors; they will be accused of “incitement”; land-grabbing is a “inevitable” part of development; or, it's too dangerous. Sometimes, they just don't know how to intervene. One visiting European donor said:

*“Too many organizations are too dispersed, have no institutional memory, and follow [funding] trends.”*

Organizations can mishandle or stifle good interventions or send mixed or bad messages. On occasion, funds or projects are directly or indirectly responsible for land conflicts (e.g. road projects resulting in forced evictions without fair compensation), or continue to reward the government when it violates rights<sup>41</sup>.

*“Development for whom?”—graffiti in a poor urban community threatened by eviction.*

Organizations often nurture client-patron relationships that keep people dependent and without a voice. They fill government voids without monitoring and strengthening state mechanisms so people can legally redress their issues and benefit from public services. They often work through the government but not for the people. They often allow the government to take credit for

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<sup>41</sup> An NGO worker who has tried to mitigate the effect of ADB loans on evicted communities said, “The ADB and World Bank provide loans but they don't care about the communities affected by the projects. We tried many times to [put] pressure... but the government gets more loans instead.”

NGO activities. They say they support pro-poor policies but refuse to actively help poor people keep their land and livelihoods, or to respond to humanitarian crises such as appalling conditions in relocation sites for evictees. They protect their relationships with the government by refusing to help vulnerable and needy people whose land is being stolen. They seek anti-corruption and transparency legislation, but may lack accountability for their own funding; and they often fail to call the government to account for the impacts of its actions on their own projects..

These gaps nurture the environment for land-grabbing and keep people powerless. In addition, the reluctance of international organizations to speak out on land rights issues leaves a relatively few more vulnerable local NGOs and community groups to act and speak out. While the latter are better situated to work with people in conflict, they increasingly come under attack and need their messages to be reinforced by more influential organizations.

“The state needs to protect the rights of people,” says an inter-national development NGO director, who adds that international organizations must hold the government accountable and “speak the truth to those in power”.

A representative of one donor agency says international organizations are often unwilling to discuss land issues with their government contacts, and therefore, they become part of the problem:

*“The problem is not engagement – it is that groups claim they are engaging [with the government] when*

*actually they are tacitly co-opted.”*

The development director says pushing by international organizations is needed at national levels. The larger, more influential NGOs and the UN, in particular, should collect facts, do re-search, assure transparency and accountability, and be the “whistle-blowers”. This doesn’t necessarily mean scream publicly, but at least behind the scenes.

Concerning land issues, they must gather firsthand knowledge, support local organizations and community groups, and raise grass roots issues to higher levels. More importantly, they must help empower the grass roots to raise their own issues with their government.

NGOs and donors can link projects and objectives to land security. In most cases, aid is claimed to be targeted at the country’s poorest, the majority of whom are landless, near landless, or under threat of losing their land. Land security is fundamental to all development aid objectives and should be part of all organization’s work, regardless of whether or not they have a specific land-related budget or project.

Land insecurity is an obstacle and a major risk to aid objectives to improve health, education, economy, environment, security, etc. It jeopardizes and sometimes reverses achievements, for instance when children from evicted families are removed from school to earn a living or stay with relatives, become victims of labor or sex trafficking, and hunger and disease result. It causes more social and economic problems that require more aid and more dependence on

donors.

Alternatively, land security enhances sustainability by making people more physically and socially stable and financially self-sufficient. It's bound to produce greater outputs—such as more children educated, less disease and malnutrition, and more productivity and exports.

Many organizations, however, are apparently unable or unwilling to connect the dots.

*"We spend an inordinate amount of time trying to persuade other NGOs, UN agencies and donors who should be our allies why it is in their interest to get involved in land issues."—a human rights worker.*

Donors and NGOs need to leverage their resources, use their government contacts, and convince their government partners why land security is critical to the country. To do so they must understand how land impacts the sectors they work in and link land to their objectives from the planning stage through implementation.

This should be easy for those who follow a real rights-based approach. However while the term "rights-based" is used liberally in Cambodia, a cavern often exists between development aid and the defense or promotion of basic human rights.

One development NGO representative says that in a rights based approach, "development and advocacy are one in the same". However a foreigner who works with community groups points out, "Some community organizing around development disempowers communities by getting

them used to implementing projects with support of NGOs and encouraging them to follow the lead of NGOs."

A genuine human rights approach should embrace land and other rights issues seamlessly with other objectives. If done well, it eventually leads to empowering people to direct their own development.

Those working with community land groups think new approaches may be needed to empower communities to advocate for their rights and for sustainable development.

They point out that while NGOs are often considered "civil society", most lack input and "ownership" from the grassroots. NGOs, even those who do work closely with the grassroots and understand their issues, usually adopt a patron-client relationship, which may be supportive but lacks the critical element of empowering people. At best, NGOs often speak and work on behalf of people, rather than giving them the opportunity to act by themselves. At worst, NGO staff may look down on communities, not listen to them, and undermine their own advocacy efforts. They may be too close to perpetrators, and concentrate on helping authorities keep face, rather than supporting communities.

Some say the dearth of genuine community-driven organizations undermines the ability of "civil society" to truly speak for the people. Civil society needs to be genuinely influenced from the grass roots, rather than from donors.

The skills and approaches of NGOs ac-

tively working on land issues vary, and some need to refine their methods of working with communities, notably: to treat them as equals and empower them rather than act on their behalf.

Some say that NGOs can be obstacle to communities' attempts to stand up for their rights, for example by giving them bad advice, deterring them from holding public protests (because of safety fears), and encouraging them to accept bad settlements (such as below market-value compensation for their land). NGOs are, however, also sometimes accused of the opposite: of giving communities false hopes and spurring them to seek solutions which they have little practical chance of obtaining.

One rights worker says the role of the NGO should be clear: to help people consider the options and decide for themselves. Working with community groups whenever possible, NGOs working on conflict interventions should:

- Establish and uphold the legal principles;
- Inform rights-holders clearly of their rights and responsibilities;
- Clarify what their different options might be (using examples when possible), and the risks;
- Encourage communities to discuss options among themselves and come to their own decisions;
- Support rights-holders and respond to their requests;
- Maintain neutrality and encourage just solutions when communicating with authorities.

The organizations that are working effectively on land conflicts recognize that the community comes first, and respond to their requests. Many are working in ways described in the following chapter, and most need more skills, experience and support.

Other organizations can also work in a variety of ways to support people involved in land conflicts, counter perpetrators, and strengthen the underlying weaknesses of the state systems. They can monitor and report on violations and respond to complaints. They can assess the impact of land conflicts on their work and build assurances into projects to preempt land-grabbing. They can empower communities in conflict with information and skills. When such measures fail, they are in a good position to witness events, support communities, share contacts and speak the truth to those in power. Most important, they need to build solidarity for land security amongst themselves and with other groups.

## IV. INTERVENTION METHODS

This section will describe various intervention methods used in land conflicts, derived from a review of case studies and interviews with people and organizations working on land.

The current case-based approach is limited. Interventions are dominated by the relatively small number of NGOs which actively work on land issues. All interventions would be more effective if done by empowered communities with good leadership, buttressed by support from solid

community groups, NGOs, donors and others. Interventions must be widened with a coordinated strategic approach that aims to achieve the systemic changes that are so vitally needed.

A real rights-based approach—which is consultative, empowers people to make decisions and claim their rights, and holds accountable government institutions—is needed for such efforts to succeed. If used more widely, it could help tackle the root causes of land-grabbing by building better systems of governance and civil participation.

There is no “model” for success, and a case-based approach without strategic interventions targeted at the systemic problems can have only limited success. Both are needed.

## STRATEGY

Community groups and NGOs generally agree the basis for good intervention is non-violent strategies that seek to uphold legal rights by using all possible leverage and contacts. Strong and informed communities, with or without organizational support, drive the best strategies. A two-pronged strategic approach must engage both with the government and the grassroots to:

- Strengthen and support the citizenry and community groups so they can play an active role in civil society to demand good governance and help drive government and NGO efforts to develop the country;
- Pressure the government at all levels to fulfill their obligations to their con-

stituents, including providing transparent legal, administrative protections.

Strategy is needed for each individual case of land-grabbing, and also on a national level to try to address the root causes of Cambodia's dire land situation and get lasting change. NGOs and community groups have built some good strategies for individual cases. However they do not appear to have a cohesive strategy on how to tackle the wider systemic problems.

## OVERALL STRATEGY FOR ADDRESSING SYSTEMIC LAND PROBLEMS

The urgent and pressing need is for a comprehensive, coordinated strategy to try to secure meaningful change and deal with the root causes of Cambodia's land crisis. Without this, NGOs and community groups will continue to struggle with a revolving door of endless cases, perhaps able (in some cases) to mitigate suffering but unable to change the broader picture of land insecurity and injustices.

As noted earlier in this report (“Organizations” section of Chapter III), many NGOs and their donors avoid working on land issues or limit the way that they do so. As such, Cambodia's land problems are highlighted by a relatively few local and international organizations, primarily those working on strategies for individual land-grabbing cases—strategies which, however well thought out, often breakdown because of the root problems.

While these organizations have persistently and strategically lobbied and brought greater awareness to land issues, they have

not engendered the broad support and action needed to really tackle the problem.

Many other NGOs and IOs say they rely on the NGOF as their mechanism for lobbying on land issues, primarily through participation in bi-annual donor meetings with large agendas. They are reluctant to advocate on their own. The role and activities of the NGOF, meanwhile, may be curbed by the need to work in a unanimous way with its many members. This approach is far too limited: it lacks vision and does not engender enough focus, support or strategic action from other organizations on land issues.

### **ENGENDER BROADER DONOR SUPPORT**

The NGOF and individual NGOs working on land need the support of more national and international organizations to strengthen their efforts to lobby for real change. In particular, the larger, more influential IOs and donors need to recognize the links between all sectors and land insecurity and be willing to use their clout to intervene, both individually and as part of a coordinated strategy.

Some say it's unrealistic to expect such unity among multilateral and bilateral donors who have economic agendas that contribute to the problem. They cite the example of an embassy that refused to sign a joint statement to the government apparently because one of their country's biggest private companies was in negotiations for a government contract. NGOs must find ways to convince donors through sectoral and cross-sectoral analysis. In the case of the embassy, they may need to document

the economic benefits of land security, good governance and rule of law to investment, and the economic costs and risks of corruption, impunity and civil instability caused by the alternative.

National interventions to eliminate land-grabbing require reliable information, good analysis, powerful allies and leverage points. Individual cases can be used to advocate for bigger issues, such as a moratorium on evictions, or the implementation of comprehensive, cross-sectoral development planning which truly meets people's needs. Sector-specific issues, such as HIV, child nutrition, and trafficking, can be used to illustrate the wider impact of land insecurity. Cross-cutting issues such as the environment can show the impact of land degradation on the broader Cambodian population and the region, as well as to global warming. Statistics and trends can highlight different aspects of the problem. The clear links to good governance and rule of law should be exploited as entry points for a broad array of donors.

Strategies to try to amass broader support from organizations and donors could include:

- Identify key issues in how land insecurity impacts different sectors (health, food and water security, education, poverty reduction, rule of law, environmental sustainability, voting rights, etc); gather reliable data, including statistics, case studies and recommendations.
- Prepare and distribute background documents (briefing papers, reports, case studies) on the issues. This should include trends regarding economic de-



velopment, land conflicts, and rights violations.

- Identify mechanisms and venues (elections, ASEAN meetings, etc), which can be used to focus attention on land, livelihood, and natural resource issues.
- Identify public officials who are key to the problem and solution; strategize on ways to try to secure their will to help.
- Identify a range of organizations (including regionally and internationally) and donors whose support is needed to persuade others on land issues. Consider the leverage they bring (i.e., bilateral or multilateral donors to land management projects, or to large-scale poverty-reduction pro-grams).

A key need is for NGOs to persuade their own donors, and Cambodia's bilateral and multilateral donors in general: why they should care, how they can lobby for land issues, and how their practices may be fueling the problem. Donors need more information in a more strategic way more often. They need to be convinced that engaging on land issues in informed and relevant ways will further their own objectives, and failing to do so will see harm done to the projects they fund. They should be told when their actions are perceived to, or actually do, support perpetrators and harm rights-holders. They need to be told clearly what to do and how to do it.

Donors also need to be challenged over their approach to trying to obtain reform. Many donors have for many years considered their role to be "engage" with the government to change "from within", and focused on "capacity building" as a means to achieve such change. Most people inter-

viewed for this report saw no relevant progress being made, in terms of land insecurity. Many said that the problem is not the capacity and resources of the government, but greed and lack of political willpower. "Engaging" with the government, and maintaining good relations with it, is often prioritized over engaging with and meeting the needs of rights-holders. Engagement needs to be more than tacit agreement with the government.

### ***EMPOWERING PEOPLE & HOLDING THE GOVERNMENT RESPONSIBLE***

Once organizations are convinced to "engage" on land issues, a coordinated strategy is needed.

NGOs and donors could begin with some fundamental steps that can help empower people and alleviate the underlying causes of land and other rights abuses. They can develop proactive as well as reactive approaches to work in a variety of ways on different levels, publicly and privately, including:

- Empower communities to enhance their land and livelihood security and demand their rights and good governance. Encourage independence. Consult with communities and include them as decision-makers. While many NGOs currently claim to do so, they often neglect to nurture a learning and consultative culture, the critical missing elements for building strong independent communities that can advocate for themselves;
- Build capacity of citizens to engage their government through government



venues. (Decentralization and other “good governance” efforts need to pay more attention to accountability to constituents and promoting citizen participation);

- Conduct detailed analyses to understand the big picture impact of land on all sectors. Integrate findings into planning, implementation and monitoring;
- Adopt protection and consultation guidelines related to land security (including on eviction, environmental and health safeguards, child protection, etc), and promote them with the government;
- Link development and economic growth projects to land security. Anticipate land problems and seek preventative measures (e.g. request titles for rights-holders, help communities gather proof of ownership, and so on, before beginning development projects in an area). Monitor and assess projects with a view to avoiding, halting or mitigating land conflicts. Identify people whose rights you have an obligation to defend.
- Leverage aid and contacts with authorities to get information and gain cooperation from local authorities. Scrutinize requests for development assistance for impact on land and livelihood insecurity. Insist on impact assessments and community consultations. Get assurances from officials and resolve any land conflicts before assistance is provided. Penalize those who violate land rights by exposing them, withdrawing funding, etc;
- Hold authorities accountable to fulfill their obligations to the people, including lower level civil service, police, and

military whose support of the grass roots is key. Lobby on land conflicts when asked by rights-holders, community groups, or NGOs;

- Account to communities for how aid is used.

Such an approach could enhance land security by strengthening communities’ ability not only to respond to conflict, but also to build the right kind of leadership, economic independence, stability and vision. In doing so it could advance NGOs’ objectives and sustainability in all sectors.

### **SUPPORT — NOT CONTROL— COMMUNITY LAND GROUPS**

Strategically, community groups (networks, associations, etc) should be the first priority for building effective land conflict interventions. Community groups should be supported in their short- and long-term efforts to:

- strengthen community leadership and solidarity using consultative methods that spark community initiative and independence and result in organic solutions. A new mobilization-based (versus project-based) model should emerge;
- contribute to building a strong civil society which is driven by the grassroots rather than by NGOs.

Community groups need the support of NGOs that recognize the need for them to be:

- **Driven by communities**, not driven by NGOs and donors.
- **Supported—rather than lead—**by NGOs and donors in non-patronizing, non-hierarchical ways.

While the interventions described in this chapter are currently being used by NGOs, many of them could be more effectively implemented by community groups with the support of NGOs responding to community requests for information, encouragement, support for lobbying, etc. Strengthened community groups can more effectively collect and share information, identify problems and provide support to communities.

This appears to be a simple strategy, but it requires a fundamentally different approach from the patronizing and hierarchical model that is entrenched in the NGO/donor environment and Cambodian culture. NGOs need to extract themselves from implementing and take time to learn from communities and community groups. The solutions are by no means prescribed but the goal should be to empower, not implement.

### **INDIVIDUAL CASE STRATEGY**

As well as strategic overall approach to address core causes of the land crisis there is a need to address abuses on a case-by-case basis. Strong case-based strategies start with the collection of reliable firsthand information, are tailored to the unique circumstances of each case, and adapt as the situation changes. Important elements include some or all of the following: gathering and disseminating information, supporting communities to advocate for themselves, ensuring that legal and other necessary services are available, creating leverage for negotiations to find a just solution, and using the news media, and national and international resources to build

pressure.

The best strategies are initiated and managed by communities. There are many ways that NGOs and community groups can help communities to develop good case strategies, starting with collecting information and analyzing the community and the facts of the conflict. While many are not skilled at the technical and analytical aspects, most NGOs and community groups can contribute (either directly or by referral to other qualified groups) in some of the following ways:

Determine the **community strengths and needs**, both short-term and long-term, and ensure that outside assistance is provided as necessary. This may include medical or social services; legal advice; security advice or protection (for community members who may be in danger of intimidation or violence); literacy assistance (for communities who cannot read relevant documents or write letters of complaint); and information about options for raising their grievances to authorities, and others.

To the extent possible, **witness** events firsthand. This greatly helps to determine the **facts**, and also shows **support** for rights-holders and provides some **protection** to them. (Merely by being regularly present, NGO staff can help to deter intimidation of the community by perpetrators and officials.) This is an ongoing need that should be done throughout the conflict. It should be done appropriately as to support rather than weaken communities.

Gather **reliable information**, through **interviews** with **first-hand sources** (victims,

witnesses, officials, perpetrators) and **collecting documents**. Understand the conflict clearly (who, what, where, when, why and how) before taking any action, with the exception of emergency needs. Land conflicts are often complex with many layers of conflict, and misinformation is spread by accident and design. This process is essential and ongoing. Build the community's ability to gather and disseminate reliable information and keep you informed as appropriate.

Meet with **government officials** to ask for information, understand their **position** in the case and assess options for just **resolutions**. Throughout the conflict, NGOs can meet with officials to signal that they are monitoring events. They can sometimes help facilitate meetings with officials who otherwise refuse to meet communities. NGOs may also be able to gather information from officials or other government mechanisms that communities can not.

Assess the **legal basis** for the case—including civil (land ownership) and related criminal cases (against community activists)—based on documents, proof of ownership, witness testimony and other evidence. Understand the legal jurisdictions. (e.g., the court has jurisdiction over titled land but they also have jurisdiction over contracts that violate the law, which may be the case with an ELCs). Legal and rights NGOs can assess the legal issues.

Gather copies of **proof of ownership or occupancy** including documentation (land titles, family residence books, house and land purchase contracts; identity cards; voting cards, children's school records, house-

repair receipts, etc) and identify **witnesses** who can testify to occupancy. Some communities (and NGOs) think there is no legal claim to land without a land title, but often this is not the case. There may be other documents that support their claim or witnesses who can attest to how long they've lived there. NGOs can press local authorities (who usually know the facts very clearly but are often reluctant to support villagers against powerful perpetrators) to confirm villagers' length of residency. The records of other organizations may help to do this too (for instance, if UNICEF did a vaccination project, or WFP had a rice donation project five years ago in that commune, there should be records of who received assistance).

*NGOs and IOs are often in a good position to attest to communities' length of occupation of land. For example, when HIV-affected families faced eviction in Borei Keila, Phnom Penh, HIV organizations had medical records and outreach staff who could attest to how long their services had been provided to some of the families in the area.*

Gather **information and documentation** about the **perpetrator**, his/her claim to the land, contacts with local officials, and backers. If it is a company, try to find out who owns it. Try to identify perpetrators' supporters, enemies, and people and institutions that are connected to them, which may offer options for influencing perpetrators. (For companies concerned with protecting their reputation, for example, media coverage of the conflict may help to encourage them to provide a fair solution to communities.) Large NGOs, donors and diplomats can use their contacts and sources in the government or in

the private sector to get information which is not publicly available.

Understand other **characteristics** of the community and the conflict that could be points of **influence** or **leverage**, or might engender support from the public, NGOs, donors and government. For instance:

- *The eviction of a group of HIV-affected families, relocated to deplorable conditions in a de facto AIDS colony, led to local and international HIV organizations lobbying the government over the discriminatory segregation of the families and their health rights.*
- *The sacred ancestral forest of one of only nine remaining Suoy minority communities was threatened by an “eco-tourism” concession, which encroached on their forest, restricted access to the community and threatened to remove the statue of Suoy goddess Yeab Te. While village elders kept vigil at the statue, indigenous groups and NGOs nationwide highlighted their cause to preserve the spiritually and culturally historic site.*
- *A Kampot fishing community had learned to preserve the protected mangrove on which they relied, but the Council of Ministers authorized provincial and district officials to take the land. The community lobbied GTZ and the German Embassy, which had funded the mangrove project as well as land management programs, which intervened with the Council of Ministers.*

Identify relevant community and NGO **key contacts** who may have influence on the community, perpetrators and relevant government officials (for example, grassroots community groups, monks, NGOs, civil servants, private sector people, donors, diplomats, journalists). Determine who are

**allies** and through them, build a broad network of individuals and organizations who can share information and advocate at different levels.

One NGO identified embassies and donors with connections to Canada Bank, *a company responsible for the threatened eviction of an urban community in 2005. The NGO solicited the support of USAID, the German Embassy and German KfW Bank and the World Bank. USAID, with strong connections to Canada Bank as a donor to its micro-credit program, met with the bank’s general manager to send a “message of concern”.*

Identify the options for **methods** for **filing complaints** based on information gathered above. Communities may need information about the options and how to write and file complaints, but the initiative should come from them: they should decide what they want to say and request. Complaints can be sent to local and/or national levels. Copies can be sent to the contacts and allies identified.

Identify the need for **alternative methods** for raising the case. If complaints have been ignored, **petitions**, **demonstrations** and **other methods of advocacy** may be needed to build pressure for a just solution.

Consider carefully the benefits and risks of raising the issue publicly through the **media** (see media section below). The media can be a powerful tool to highlight injustices and advocate for solutions, and NGOs speaking out publicly can send a strong message to perpetrators and officials that their conduct is being watched. However, media coverage can potentially

have negative consequences, including sometimes endangering the security of communities and their representatives. A **media strategy** should be carefully prepared, in consultation with the communities themselves, by discussing the pros and cons of media coverage. Whenever possible and safe, communities should be encouraged to speak on their own behalf. NGOs should refrain from self-promotion.

A good case strategy will generally seek to explore all legal means of redress (local officials, courts, government authorities), as well as using alternative methods (some of which are described in the following sections) as appropriate. It is not necessary—indeed it is unwise—to wait until all legal avenues have been exhausted before pursuing other types of interventions; the latter should be used to try to increase the chances of the former being successful.

NGOs should use the information described above to help communities understand their options, namely: the legal basis for their case; contacts, allies and facts that they can target and use as leverage; how and where to file complaints, and how to raise awareness to support those complaints.

While strategies are best initiated by communities, sometimes they may be unable to effectively do so, for example if they are extremely fractured or vulnerable, or if their “representatives” are working on behalf of the perpetrators. In such circumstances, it may be difficult or dangerous for NGOs to encourage communities to advocate, but it is still important for NGOs to

lobby on their behalf.

Strategies can focus on local, provincial, national and/or inter-national levels as appropriate. They should first seek to gain the support of local authorities to confront the perpetrators if at all possible. Higher-level interventions may be used to confront local authorities who don’t support their communities.

There is no formula for success. Strategies should be based on the strengths of the case, points of leverage and key allies. They need to be sound and well planned, and they must adapt as the situation changes.

## INFORMATION & ITS DISEMINATION

As noted above, gathering reliable information is the basis of preparing a sound strategy, both for interventions in individual cases and for broader advocacy on the root causes of land problems.

In advocacy about individual cases, as we have seen, **collecting information** may include gathering **evidence of ownership or occupancy** by rights-holders; documenting **information about perpetrators** and their backers; identifying factors which can be used as **leverage** or to **raise awareness**; and searching for **contacts and allies** who can bring influence to bear. In broader advocacy on land issues, information collection can include **identifying trends**, researching the impact of land problems on multiple sectors, and **identifying forums** and **allies** for lobbying.

The dissemination of information should

be done strategically, to achieve maximum impact, and carefully. Before any information is shared about individual land cases, it is vital to consider the **consequences of releasing information**, particularly in terms of **protection of sources** and the possible **endangerment of communities**.

The sources of sensitive information, such as details about perpetrators, should be protected—particularly if they are communities, who are most vulnerable. Community members may reveal information to NGOs and others whom they trust, without understanding what may be done with the information. If done in a way that does not protect the source, the release of information can have dangerous consequences.

Similarly, drawing attention publicly to a land case—or a particular incident which has occurred within it, such as the threatening of a community representative—may have positive or negative consequences. Before speaking publicly, NGOs should consult with the affected people about the pros and cons, and the possible consequences. Communities themselves usually have the best idea of the risks involved. (See section on media below.)

The fact that information should not be released publicly does not mean that it cannot be used, selectively, in other ways, such as through private lobbying or confidential reports.

There is a multitude of ways that information can be disseminated. Most importantly, it should be done accurately and

reliably. Facts should be distinguished from rumors (though the latter can be illustrative in some ways, for example to show the misinformation being circulated by authorities or perpetrators).

The most important target for information dissemination is the community themselves. NGOs often have ways to find out information (for example obtaining copies of ELC contracts or information about ownership of companies) that communities do not. Sometimes NGOs forget to give such information to the communities or assume they already know. The lack of government transparency in general in Cambodia—and even more so if officials are complicit in the land-grabbing—starves communities of information which is necessary for them to effectively advocate for themselves.

In addition, information can be tailored for a variety of different targeted audiences: other organizations, diplomats, government officials, news media, and so on. It can be compiled for dissemination in various ways, such as:

- **Briefing papers or case studies** which provide concise descriptions of individual cases or thematic issues, and can help to humanize the issues and the impact on the affected persons. They can include recommendations or proposed solutions.
- **Chronologies** help track developments and the impact of interventions;
- **Reports** can provide deeper background and analysis on individual cases or overall land issues. This could include detailed legal analyses or inves-

tigative reports on particular perpetrators or widespread and systematic abuses and trends.

- **Press releases, urgent actions, press conferences** can help to gain media coverage of specific cases or broader issues, helping to create public pressure on officials to take action.
- **Impact studies, surveys and statistics** can be done by a variety of organizations on wide-ranging land-related topics (survey of health and education among children in re-location sites; landlessness among HIV-positive people, etc.). They can be used for individual cases of violations, or to show broader patterns of widespread abuse.

**Technology**, including multi-media tools and the Internet, is increasing being used by many organizations. Government control of radio and television limits the audience for audio-visual tools such as videos, but NGOs and community groups are challenging that by distributing such materials by themselves. Photographs, videos and sound can be powerful advocacy tools, and useful for targeting organizations, foreign donors and the media. The Internet is increasingly being used to link national advocates with international ones.

## **“EDUCATION”, MENTORING & DIGNITY**

The first thing communities in land conflicts usually need is **information**—about their entitlements, options for formal redress, and ways they can raise their complaints effectively. Most organizations cite **“education”** as an effective intervention

for people facing land-grabbing. However, some say that education needs to go beyond formal training, and that **mentoring** and providing **moral support** is perhaps more crucial for building skills, confidence and dignity, and reducing tensions that weaken communities.

One education specialist says training on its own is not enough to provide needed skills, or to solve internal problems that prevent communities from working harmoniously to resolve their conflict.

*It’s “important to look critically at the notion of ‘education’ and particularly training as being an adequate preparation for community conflict resolution. [...] Many organizations want to rely on trainings to answer all of the community needs for capacity development in a range of areas. However, the experience of many people would say that training alone is insufficient to provide real transformation in the way people approach conflict. One-off trainings without significant follow-up and coaching often do not yield any appreciable change in attitudes and practices. Communities (and NGO staff for that matter) need more sustained mentoring in order to actually integrate needed skills.*

*“In particular, I think the issue of interpersonal communication is of vital concern. Many of the people working on conflict resolution are focused so much on the key players (ie Village vs. Concession), that they ignore all of the small-scale tensions and conflicts that can erode a community’s solidarity, and ultimately facilitate the success of land-grabbers. Work is needed to help people within their own communities to work more harmoniously together so they can withstand the external pressures.”<sup>42</sup>*

<sup>42</sup> Email interview with Dennis McMahon.



**Formal training**, is best done by community groups with processes which generate debate, analysis and thinking and allow communities to come up with their own solutions in an organic, rather than prescribed, way. It needs to be visual, interactive, and practical. It should help people to work through real examples of conflict based on their own experiences and those of other communities, exploring various alternative approaches.

Language must be plain and clear. Many Cambodians, especially in rural areas, are not familiar with legal, bureaucratic or formal language.

For a variety of reasons, NGOs themselves are not necessarily the best formal educators for communities, and may be better utilized for training trainers, selected from communities and community groups. Training by experienced community leaders or activists is highly recommended. It can be conducted in the community, or outside if the situation is sensitive. It can be complemented by field trips that take villagers (and sometimes also authorities) to see examples of other communities.

Community-based training can simultaneously signal support for the community and remind authorities that people are watching. Some groups bring local authorities together with communities in training sessions and other forums. When done appropriately, they say this helps to relieve authorities' suspicions that the training is intended to "incite" villagers; narrows the gap that often exists between authorities and communities; remind authorities (who are often complicit in land-grabbing) of

their responsibilities, and encourages communities to hold them accountable.

The director of a local NGO, which has worked since 1999 to strengthen communities and local partner NGOs, believes in working with local officials and including them in community trainings.

*The NGO generally doesn't discern between good and bad officials. In its work with communities in conflict, it reaches out to a range of local officials, including commune chiefs who are "mean", as well as others such as commune councilors who, although less powerful, are sometimes more committed to representing their constituents' interests.*

*The NGO works with community groups to bring officials and communities together to discuss land and natural resource conflicts, the impact on the community, and relevant laws. The goal is for leaders to gain some recognition of the concerns and rights of their constituents, and of how the NGO aims to support the community in accordance with the law. It seeks to dispel the common misconception that NGOs are inciting communities, and that advocacy by communities is "against the idea of the government". The director said local leaders often discover how the community is really suffering. He admits these may be things they already know but have ignored.*

*The NGO leader admits it's "hard to change behavior". First he invites officials to meetings and trainings. Then he brings them on exposure trips to other provinces to see good examples. Building on successes, he invites some officials to other communities to meet with local officials and key community members. Hearing experiences from other communities, the leaders are often more open about discussing problems and listening to villagers.*

*The key, the NGO head says, is enable local leaders and communities to build trust, and show how NGO services can benefit communities, and build solidarity.*

*This approach takes time and planning. It's not suited to hot cases where local authorities are pressured from the top. In these, he says, the problem is "like a wall". He also points out that in indigenous communities, this process is new and it needs to be adapted.*

*Although the results have been mixed, the director says there are about 20 local leaders around the country who have become more active in representing community interests. Some were originally community activists who were later elected commune chiefs or councilors, while others were long-standing local officials who had become more responsive to their community's needs.*

*Such local leaders can themselves face threats. One, a Stung Treng commune chief, was removed from his position by his CPP party for supporting his community. Despite this, he still actively advocates for his community, and shares his experience and knowledge with other communities. As a former commune chief, he is skillful in advising communities and other officials.*

Winning lower level civil service, police, and military support is an important element of a strategy to address deeply rooted problems in the long-term. This also can vastly change the security climate. Working at the local level should be aimed at building relationships.

NGOs often do not analyze the best time to involve officials. If they bring their power into "partnership" with community before community power has been built,

the result is suppression of community voice. The community must first build a strong voice if there's any hope of forming a "partnership" with officials.

Training needs to complement this process by building confidence and ability, and encouraging new ways of thinking about their role as constituents and their vision for their community, as well as their conflict. It needs to be a consultative process that allows people to derive:

- **information** about relevant laws and rights and the re-sponsibility of the community and the government;
- **skills** on how to advocate, write petitions, complaints, speak in public, work with the media, produce their own media; and,
- **options**, based on their own situation and experience as well as practical examples from other communities and different scenarios that apply to the conflict.
- **new ways of thinking** about their problem, so they can analyzing their situation, calculate risks, decide on the best action, and know when and how to seek assistance.

While formal training is static, **mentoring** goes beyond training and plays a far more complex and supportive role. Mentoring is ongoing and provides practical instruction tailored to the changing situation. At the same time, it identifies other emerging needs and problems.

However training and **mentoring** are not in themselves the best approaches to build leadership and solidarity. NGOs and com-

munity groups must develop relationships and consultative ways of working that promote **independence, leadership and solidarity** in the community.

A key part of this is treating people with **dignity**, which has often been stripped from them by perpetrators. Rights-holders may be reduced to living in sub-human conditions, accused of being liars and cheats with no valid land claim, and made fearful and desperate. NGOs can create dependency and additional problems when they follow a “client-patron” model in which they play the role of superior patron.

NGOs must quickly learn to treat community members with respect and dignity, start with an attitude of equality and a desire to encourage independence by communities. Practical steps include:

- listen to communities when they give information, inform you of rumors and tell you their concerns;
- consult with them on how you can help them;
- explore options together; and
- let communities be the decision-makers.

Build independence by giving them the tools and letting them do the work (writing, calling, meeting, demonstrating, etc), rather than by telling them what to do or by doing everything on their behalf. Keep in contact and provide feedback and encouragement to them.

Rather than focusing solely on the land conflict, part of mentoring must also be to consider a range of secondary problems that communities may face, which may

contribute to weakening their ability to advocate for themselves. Land conflict drains financial and other resources because people remain home to protect their property, attend meetings rather than work, are less productive as a result of the added stress, take their kids out of school to supplement income, and suffer fear and stress which can cause illness.

However these are often among the most neglected needs of the community. This is in part because land groups are over-stretched and concentrate on the dispute, and in part because responsible government bodies and other NGOs neglect to provide services in disputed areas.

Trainers and mentors need to be sensitive to such problems and be willing to push to find services for community members as needed.

## **NEGOTIATIONS & ALTERNATIVE DISPUTE RESOLUTION**

*“And so it was that we believed that we had taken a step forward. At this point things degenerated rapidly.”—an NGO’s description of a first attempt to negotiate with local authorities and a company over a land case.*

The term “negotiations” implies a level of civility, professional-ism and equilibrium that is usually non-existent among the perpetrators of land-grabbing, particularly large-scale cases. Powerful individuals and companies rarely have any reason to negotiate sincerely with affected communities to find a fair settlement, preferring to intimidate them into giving up their land. Authorities may refuse to actually meet and

discuss real options with rights-holders, and often endorse the trickery and deceit of perpetrators.

Among the perpetrators' 'negotiating' tools are an assortment of intimidation and violence techniques, including harassment, the use of bulldozers and other equipment to flatten houses or land, and the threat of unjustified criminal lawsuits against community representatives. The threat of forced eviction (see "Forced Evictions" below) is often the main bargaining tool.

As such, communities who reach the point of "negotiation" must be prepared for a difficult, convoluted and dangerous process. At best, they may be offered compensation which comes nowhere near the value of their property—often with threats that otherwise they will receive nothing at all. Sometimes the "offers" are ludicrous.

*One company representative used criminal complaints against activists to try to force a settlement. His idea of negotiations was a vague proposal: he would drop the complaints if villagers agreed to give up some of their land but he wouldn't say how much would be returned to them. He was supported by a provincial official, who blamed NGOs for making it difficult to negotiate a settlement, citing the example of another village that was willing to settle for "one buffalo, one cow, seven chickens, seven pigs, seven jugs of wine and a ceremony with traditional music to commemorate the dead," in return for the ancestral lands.<sup>43</sup>*

In some cases, it's not even clear with whom communities should be trying to negotiate. The owners of companies awarded

ECLs, for example, may be hidden behind obscure front companies. Government officials, military, police and other minions often shield perpetrators to the point that their identity is not clear. Sometimes communicating through the media is the communities' only choice, as officials and companies refuse to directly meet them.

Communities must get used to accusations that they are "greedy" in their compensation requests or that they are anarchic, squatters, liars and cheaters who have no real claim to the land they occupy. Officials and private companies are quick to hurl accusations, in order to deflect negotiations and prepare a sup-posed justification for forced eviction.

Often, a look at the facts shows the lack of truthfulness and sincerity in such official claims. The Dey Krahorm eviction in early 2009 was justified by the municipality on the grounds that the home-owners there were being too greedy in their compensation demands—when in fact they were asking for well under market value of their land.

Blaming the victims and questioning their integrity has been a hallmark of numerous forced evictions by authorities.

*When asked to reflect, two years later, on the 2006 violent forced eviction of about 1,500 poor families from Sambok Chap, Phnom Penh, Deputy Governor Mann Chhoeun said that after it had been broadcast on television that renters would have the right to receive land at the relocation site of Andong, "greedy people moved to Sambok Chap so they could be allocated a land plot at Andong."<sup>44</sup>*

<sup>43</sup> Unpublished NGO Report, Jan 2009.

<sup>44</sup> "As prices rise, the slums move out" by Thomas Gam Nielsen and Chhann Chamroeun, Phnom Penh Post, 28 Nov 2008

*In reality, Sambok Chap residents had not been informed about the relocation site—they did not hear the name Andong until the day of the eviction. In addition, repeated requests from NGOs to the municipality for consultation and discussion about the renters and what would happen to them was denied, as was a proposed joint survey by NGOs and authorities to determine true number of people at Sambok Chap.*

Negotiations and alternative dispute resolution (ADR) mechanisms are often touted as alternatives to the courts and other legal processes in land disputes. In some cases they may be—if all parties are on relatively equal footing, willing to negotiate in good faith, based on the facts, and willing to support finding a mutually-acceptable and fair solution. Engaging local authorities in training (as mentioned in the previous section) has sometimes brought them to support such resolution processes. NGOs are increasingly exploring possibilities for ADR, and some believe that mediation or intervention by traditional leaders can help to deter or resolve land-grabbing.

But ADR has its limitations, in the Cambodian context of impunity by the rich and powerful, and is likely best suited for smaller land conflicts involving less powerful individuals or companies. In conflicts involving bigger players, the standard model of ADR—involving traditional resolution systems such as using a neutral and respected mediator, like a community elder or a monk—is far less likely to succeed.

*“Conflict resolution is not successful when [dealing with] power and money,” says one NGO staff, explaining that elders’ role is diminished by the power of one side in the dispute and that “elders*

*are not as influential as they used to be”. Traditional systems of dispute resolution are, he says, “increasingly eroding”.*

When communities are pitted against powerful individuals or institutions that have no interest in negotiating in good faith, their only real leverage is their physical occupation of the land. When they agree, or are forced to leave, they usually lose any bargaining power.

Rights-holders’ only hope is to physically defend their property, build leverage and contacts (as described in the ‘Strategy’ section above), and find ways to challenge the perpetrators’ power, impede their work or physically stop the encroachment (such as using active non-violent techniques, discussed below). If they are able to reach that stage, perpetrators may begin to talk.

Negotiations are often unscrupulous and NGOs can help communities to carefully prepare to maximize the chances of a just outcome. This could include:

- Preparing evidence and the legal basis for their claims. This includes being clear about the area in dispute which is often unclear and/or overstated by perpetrators;
- Identifying good negotiators (a group of negotiators, rather than just one or two who can be easily targeted for intimidation or threats, is often preferable);
- Preparing a negotiation strategy;
- Identifying and proposing mediators—neutral and trusted by the community, but also likely to be acceptable to the other side.
- Asking for observers (such as NGO

staff or media) to be present during the negotiation, to ensure an accurate record of what is said/promised and to minimize the potential for intimidation during the talks.

What happens outside of the negotiation room, however, may be just as important, if not more so, than inside. Building leverage on perpetrators, to maximize the pressure on them to provide a just solution, is key. NGOs can do this by themselves (with the help of their contacts among donors, embassys, government officials, private sector contacts, and so on) and in collaboration with communities, such as by:

- Meeting government officials and urging them to encourage companies to negotiate in good faith and provide fair solutions to the communities.
- Meeting companies directly to urge the same; asking to participate in negotiations as observers.
- Identify other key people who can influence perpetrators and convince them to lobby for a just resolution (diplo-mats, shareholders, foreign business contacts, etc); look for ways to signal to perpetrators that they will lose business opportunities or public support if they fail to provide a fair solution.
- Encourage media attention on forthcoming negotiations; speak publicly about them in a way that clearly signals the negotiations will be closely monitored.

Even when negotiations do not result in a fair settlement, they can be useful in helping to bring public scrutiny and publicity to a case, and highlighting injustices and illegalities.

And despite the many obstacles to success, some communities that have shown admirable patience and perseverance in negotiations have made major strides. They have managed to raise the levels of compensation offered to them, although it is usually still only a fraction of the market value. Some have regained control of their land in the process. In general, however, communities' ability to truly negotiate is very limited.

## **ARRESTS, LEGAL REPRESENTATION & PROTECTION**

*"When we complain to court we know we will lose." — a community leader.*

Communities say legal assistance is one of the most important roles of NGOs. Communities can easily become ensnared in a web of legal cases, both civil cases (over the ownership of the land) and criminal cases (when charges are brought against community members). Legal assistance and strategies must deal with both.

In Cambodia's politicized and corrupt judiciary, the deck is stacked against communities when they legally face off against an inevitably richer and more influential land-grabber. While the courts frequently fail to protect victims from land-grabbers, they are used as a blunt weapon against communities who try to defend their land.

The arrest and detention of community activists, or the threat of it, has a chilling effect on communities. Increasingly since 2006, spurious criminal charges against activists have become commonplace. Typically, a land-grabber trying to take land will



file criminal complaints against the community representatives or members who are most active in trying to organize the community to defend their land. All too often, the courts are accomplices to this, by acting on the complaints—even if there is not a shred of evidence presented—and filing criminal charges.

Arrests or the threat of them are often timed at strategic periods during the “negotiation” process. Even if arrested community activists are released, the criminal charges are not lifted but are left hanging over their heads—so they know they could be arrested again at any time in the future.

*“In some cases these charges are based on the premise that the communities are violating property rights, when the dispute in question—and the key issue of who actually owns the land—has yet to be resolved by the courts. Examination of criminal charges often reveals deliberate misapplication of laws such as the 2001 Land Law and 2002 Forestry Law. In other cases, the charges have little or no relation to the dispute at all. And even when activists are released on bail, charges against them are typically left pending at the courts indefinitely. The clear intent of such prosecutions is to frighten affected communities into giving up their land or resources, and punish individuals who try to defend them.”<sup>45</sup>*

In numerous cases around the country in recent years, the courts have ignored or dismissed complaints by communities against land-grabbers, while quickly taking action on cases filed against them.

*Laws and evidence should have protected Dey Kra-horm community’s legal claim, nullified the unlawful contract of a private company, 7NG, which claimed their land, and prevented eviction. While civil cases filed by the community against the company were ignored or dismissed by the court, unjustified criminal complaints filed by the 7NG or local officials led to charges against 21 community members (including 10 community representatives). Two community activists were imprisoned and others were convicted and sentenced to suspended prison sentences. The community was violently and unlawfully evicted in January 2009.<sup>46</sup>*

Legal and human rights organizations give legal advice to affected communities, provide lawyers to them, and help to prepare evidence. But even when the facts and the law are on the side of a community, that is often not enough for the courts.

*After arrest in August 2006, the court told Tann Heng he would be released if all his fellow villagers relinquished their claims to land in a dispute with the Boeung Ket rubber plantation in Stung Trang district of Kampong Cham. In the end, the court settled for him pledging to permanently give up his own land. Tann Heng tells his story<sup>47</sup>:*

*“[I was arrested] because I was involved as the representative of 133 families. I had never done anything against anyone... ‘The company filed a complaint to the court against the villagers... I had the court summons before I was arrested, and I went to Phnom Penh and met the former King in the Royal Palace... I appealed for help from Samdech Ta and Samdech Yeay; I held the court*

<sup>45</sup> “Attacks & Threats to Human Rights Defenders in Cambodia 2006, Licadho, Dec 2006

<sup>46</sup> Land and Housing Rights in Cambodia: Parallel Report 2009, Land and Housing Working Group Cambodia, Apr 2009.

<sup>47</sup> Attacks & Threats to Human Rights Defenders in Cambodia 2006, Licadho, Dec 2006.



*warrant in my hand, and said I would be arrested when I returned back...’’<sup>48</sup>*

*[Three days later, when Tann Heng answered the summons to appear at the Kampong Cham provincial court for questioning.] “The court clerk asked me ‘Do you agree to let the company plough your crop away?’ I answered ‘I will not allow them to clear my crop; I am in debt and borrowed money to spend on planting the soybeans. If they clear our crops from the land, it will be like killing all of us, about 100 families.’ Hence, I did not agree with them. I came from the courtroom... there were three or four police... they handcuffed me and detained me in police custody for one night. They told me to remove all my clothes except my underwear to stay in the cage. The following morning police asked me to make a report and sent me to Kampong Cham court one more time, where the court charged me with destruction of public property... but I did not destroy any public property, I only cleared land that all the villagers had claimed...*

*“The arrest was done in order to threaten other villagers, to stop them standing up to claim the land. The court said that if all the villagers gave their thumbprints on documents to agree not to claim, they would release me.*

*“I was in prison for about five or six days. About 60 villagers came to protest and asked for my release, and also national and international non-government organizations, media, human rights organizations supported me. They released me on Monday about 5pm. They told me... ‘You have*

*to stop claiming the land and you will be released — you have to return the land to the company.’ I had no choice because I was in prison. I said, ‘Yes, I will not claim the land any more if you release me.’ I forced myself to accept this... I need to take my children to study, I had no choice.”*

The best legal defense could not have saved Tann Heng’s land, faced with a court abusing its power to “negotiate” on behalf of the company. He was supported by the retired King, the community, international and local organizations and the me-dia—but not by the court. After his release, the criminal charges remained against him—as is typical in such cases—meaning that he could be re-arrested if he resumed his advocacy on behalf of the community.

Nevertheless, Tann Heng’s case is illustrative of the importance of interventions against the legal persecution of activists. Although he lost his land, he would have likely spent far longer in prison—quite possibly convicted and sentenced to several years’ imprisonment—had he not received such support from his community and outside organizations and publicity of his case.

Communities have adopted a number of tactics to try to minimize the dangers of legal action. For example, they may avoid having only one or two representatives—who can be easily targeted—in favor of negotiating en masse with companies or officials. Such joint action is also sometimes very useful when community representatives are singled out to face the courts.

“A representative of over 500 families engaged in a long-running land dispute in Koh Kong province was summonsed to the

<sup>48</sup> Tann Heng was one of several representatives from different rubber plantation areas who attended a July 31 meeting with retired king Norodom Sihanouk to raise concerns about problems they were facing; the retired king later said that meeting participants should not be punished. See Attacks & Threats to Human Rights Defenders in Cambodia 2006, Li-cadho.

*provincial court for questioning over a murder the previous month. With no evidence connecting him to the killing, the summons was widely interpreted as an attempt to intimidate him for his activism. In a show of solidarity, 50 of the villagers he represented chose to walk with him to the provincial town and alerted the media; fearing bad publicity, the court backed down and cancelled the questioning.”<sup>49</sup>*

There is much that NGOs and community groups can do try to help communities embroiled in legal cases, deter unjustified charges against them or minimize the suffering when such charges are laid. Such NGO interventions:

- Give information and advice on the law and rights.
- Help to document evidence of communities’ legal claims to land, or evidence to help their defense to criminal charges.
- Obtain lawyers for communities in civil and criminal cases as needed; follow up regularly with the lawyer to provide encouragement and feedback (some lawyers, due to overwork or lack of commitment, provide a low quality of service; such follow-up by NGOs may be useful to motivate them).
- Alert relevant other organizations (such as legal and human rights ones) to arrests; provide information to them about the case if known.
- Be present as observers at court trials<sup>50</sup>, to show support for communities or

individual members who are facing criminal charges and to signal to judges that their actions are being watched. (The presence of observers such as NGO staff and journalists at trials can sometimes make a real difference; judges are more likely to act unjustly if they think they are not being watched.)

- Alert the media to arrests or trials (unless there is a reason not to—see following section on ‘Media’), and be willing to speak publicly against obvious injustices or the court’s failure to follow the law.
- Show support for unjustly imprisoned people, for example by highlighting their plight publicly, meeting with their families or by visiting them in prison. (A visit from NGO staff will help to raise the morale of a prisoner, and remind him/her that they are not forgotten. Donations of food and water could also be given, to offset the dire conditions at most prisons.)

In addition to supporting communities’ legal needs in these ways, civil society and donor organizations should also support lawyers who come under threat because of their work to defend land victims.

Since the early 1990s, NGOs have provided free legal assistance, which has become the cornerstone for human rights cases. In a country where private lawyers are often expensive, uninterested in representing the poor and afraid to take legal cases against the rich or powerful, NGO lawyers are essential. For their work on land cases, NGO lawyers have increasingly come under threat in recent years.

*In 2007, one land case involving the relative of*

<sup>49</sup> Attacks & Threats to Human Rights Defenders in Cambodia 2006, Licadho.

<sup>50</sup> Some NGOs mistakenly consider that attending trials would constitute interference in the courts. Cambodian trials are open to the public, unless specifically closed by the judge for a lawful reason, for example to protect the identity of a sexual abuse victim.

*high-level officials, rattled the NGO legal profession. The case, which is ongoing, involves Keat Kolney, wife of Chan Sopha, Secretary of State for the Ministry of the Land Management, and sister of Finance Minister Keat Chhon. Keat Kolney is accused of cheating an indigenous community out of 450 hectares of communally owned ancestral land in Rattanakiri province. In mid-2007, lawyers from two local NGOs, Legal Aid of Cambodia (LAC) and Community Legal Education Center (CLEC), filed a lawsuit on behalf of the villagers. In June 2007, Kolney retaliated, filing a complaint with the Cambodian Bar Association (CBA) against 10 lawyers from the two NGO, alleging they had “incited” the villagers to file the lawsuit. Within days, the CBA, which is widely perceived as being closely aligned to the ruling party, initiated an attack on NGO lawyers. The CBA declared that NGOs could not employ lawyers unless they had a memorandum of understanding with the CBA—and singled out CLEC for being in violation of this. There is no such requirement in Cambodian law. The CBA’s position had a chilling effect on NGO lawyers. A number of lawyers resigned—including nearly all of those who had worked on the Rattanakiri case—to go into private practice. LAC and CLEC continue to valiantly represent the community against Keat Kolney.<sup>51</sup>*

#### **BOX: INTIMIDATION, VIOLENCE & SECURITY**

When “negotiations” and legal attacks fail to make communities subservient, perpetrators often use other types of intimidation or even violence. In fact, land-grabbers may resort to

such tactics at any stage—even when negotiations are ongoing with communities.

Violence or the threat of it can take many forms: subtle “friendly warnings” from supposed friends; blatant death threats; physical attacks; the firing of gunshots overhead; and sometimes, many observers believe, the staging of thefts, robberies, road “accidents” or house fires.

***In 2001, hundreds of families were forced from their Tonle Bassac riverside homes when several mysterious blazes ripped through their shanties. Authorities refused to allow them to rebuild, relocating them out of town. Then Phnom Penh municipal governor Chea Sophara denied the fires were deliberate, calling them “a series of accidents”. The day after one fire, authorities turned up with bulldozers to demolish the remaining houses that had escaped the blaze.<sup>52</sup>***

Intimidation and violence is usually perpetrated by, or with the complicity of, state officials. It may be carried out by police, soldiers, private security guards and hired thugs. Often, in the case of ELCs, police or soldiers are “employed” on the side to guard the land awarded to companies by the government.

The role of police and military in guarding ELCs is dangerous—though so too is the alternative of privately hired security guards who may be even less accountable for their actions—for unarmed villagers who try to defend their land from encroachment by the companies.

<sup>51</sup> Attacks & Threats Against Human Rights Defenders in Cambodia 2007, Licadho, Aug 2008. See also Restrictions on the Legal Profession by the Bar Association: A Threat to Free & independent Legal Aid in Cambodia, Licadho, Dec 2007

<sup>52</sup> “As prices rise, the slums move out” by Thomas Gam Nielsen and Chrann Chamroeun, Phnom Penh Post, 28 Nov 2008; “Phnom Penh: Beautification and Corruption”, Caroline Hughes, Jul 2003.

Of special concern is the role of soldiers, who tend to be more trigger-happy and less professional than the police when dealing with unarmed civilians, in land conflicts. The military is increasingly involved in land cases, as soldiers grab land for themselves and/or work as guards for companies.

## 20-40% cases involve military

In 2008 one rights organization reported “military officials were increasingly involved in land conflicts with a threefold increase in the numbers of cases that featured members of the armed forces as parties to disputes (125 cases in 2008 compared to 40 in 2007).<sup>53</sup>

Communities, especially those in remote area, are very vulnerable to violence and the threat of it. NGOs can play a valuable role in deterring and documenting such abuses:

- Discuss security issues with the community, build their skills to analyze the situation and get their guidance on what you can do to best help; calculating risks is usually best done by the community themselves.
- Regularly visit a community which is under threat, or a particular community member (with their consent, of course): Intimidation and violence thrives when perpetrators think they are not being watched; regular visits by outside organizations shows support for potential victims and lets potential perpetrators know that their actions will not go unnoticed. (However, NGO staff themselves should not be unnecessarily endangered; at times it may be safer for foreign staff to play such a role than local staff.)

- Keep in regular contact with communities and get updated information on the situation. (If for any reason meeting them inside the community is not wise, arrange to meet them outside.)
- Encourage activists who are threatened to take precautions (keep in contact, inform people where they are going, take alternative routes, don't travel alone, note unusual occurrences, etc). If necessary, help them to move temporarily to a safe location.
- Keep vigil with communities during particularly tense times, such as when a forced eviction is feared (see following section on 'Forced evictions'.)
- Make sure that threats, other intimidation or (possible) acts of violence are thoroughly documented; keep a record of what occurred, when and where, and of witnesses or other evidence.
- (With victims' agreement only) meet with officials to express concern for the security of particular community members or about specific acts of intimidation or violence which have occurred. (Rather than directly confront perpetrators, it is usually preferable to try to speak to their superiors.)

It is important to remember that visiting communities and intervening with authorities can have negative, as well as positive, consequences. Cambodian villages are very small places where there is often little privacy, rumors abound and authorities have a long reach. When outsiders visit, they are conspicuous. This can be advantageous as noted above, but it can sometimes place people in more danger of intimidation or violence. When in doubt about the best course of action, NGOs should consult with the affected people and follow their wishes; give them options of what the NGO could do, and let them choose what they think will be most helpful.

<sup>53</sup> Executive Summary of Human Rights Situation Report 2008, Ny Chakrya, ADHOC Mar 2009.

Even if a threatened community activist does not want to be visited by NGO staff, for fear of further repercussions, there can be other actions the NGO can take. For example, it could still visit the general area and meet with the authorities under another guise (such as to discuss a potential development project).

## increase in deaths: 8 people died in 2008

*“Instances and the severity of violence relating to land conflicts increased in 2008 with 3 people being killed in disputed areas, and 5 dying later in hospital as a result of injuries, compared with 2 persons killed in 2007.”<sup>54</sup>*

When the worst happens and outright violence occurs, such as during a forced eviction, there are limitations to what NGOs can safely do. But whenever possible, it is important to try to be present to witness events—which can help to minimize violence by authorities—and to try to ensure medical treatment for any injured people. (See section below on forced evictions.)

## MEDIA

News media have a responsibility to report on important issues such as land conflicts which impact many people. The media has been instrumental at raising the land problem to national and international audiences. When journalists work professionally, they are powerful tools for intervention. However, in Cambodia—where much of the Khmer-language media is un-ethical—they can be an ally or an enemy. One should carefully consider whether and how to work with them.

Publicizing information can sometimes put communities at risk. Most organizations are not skilled at using the media: knowing what to say, and what not to say, and in particular knowing how to protect sources and weigh up the consequences of publicity. In some cases, NGOs or activists appear to be more interested in getting their names in the media, and compromise the security or strategy of the community.

Most Khmer-language media are politicized (most are controlled by the ruling party, with a few partisan to other parties) and lack independence and professionalism. Corruption abounds, with many journalists and editors generally surviving on bribes rather than salaries. Stories are pursued, or not, on the basis of who pays for them.

The result is unbalanced and biased reporting, and often nothing but propaganda for certain officials and companies. On issues such as land conflicts, unprofessional journalists can easily be used to serve the interests of land-grabbers.

- **Perpetrators use the media to attack.** Both television and newspapers have been used to attack NGOs involved in helping indigenous villagers in Ratanakiri province who sued Keat Kolney, a well-connected businesswoman, over her alleged attempt to cheat them out of land. At critical times in the prolonged land dispute, there were one-sided news stories criticizing the NGO lawyers working on the case, accusing them of “inciting” the villagers to file a needless lawsuit, and defending Kolney’s actions as

<sup>54</sup> Human Rights Situation Report 2008, Ny Chakrya, ADHOC, Feb 2009.

being motivated to help the economic development of the country.

- **Perpetrators use media to unjustly take credit** When NGOs prepared to distribute emergency relief to evictees who had been dumped at a remote re-location camp, Phnom Penh Municipality officials arrived with reporters to take credit for the donations.
- **Perpetrators use media to manipulate and trick people.** In several large Phnom Penh land cases, the municipality and/or private companies paid a few key residents well above the amount of compensation being offered to other residents. In return, they had to go on record encouraging others to take the lower compensation offer, by praising it as fair.

NGOs working on a land conflict should monitor what the local media are saying about it, as this can be insightful into the attitude and strategy of the authorities or companies involved, and help the NGOs to consider how to counter misinformation that is being spread.

NGOs and communities should be wary of speaking to biased and unprofessional media outlets, as they are very unlikely to report accurately or fairly.

However, professional journalists from independent outlets can be valuable allies to highlight land injustices and advocate for equitable solutions. An effective media campaign—one that highlights or targets new aspects of the issue and reacts to the changing situation—can draw popular opinion to support rights-holders and make it more difficult for perpetrators to get away with their crimes.

Understanding the media's role and knowing how to use the media can greatly help community and NGO interventions. Some key guidelines for working with the media:

- First and foremost, consider issues of **protection** before revealing any information to the media. Public exposure can be dangerous to communities or it can provide protection to them. If there's a possibility that it will harm the case or individuals, don't give it to the media. Community contacts should only be given if they are willing and able to speak clearly on the issue and it will not place them in danger. Inform people clearly of the pros and cons of media coverage, and follow their guidance; communities should calculate their own risks. Always consider carefully whether to identify vulnerable children <sup>55</sup>, and when in doubt, don't.
- Use the media to **draw attention** to a **breaking news** event (such as a forced eviction, public demonstration, arrest of a community activist, and so on) and help journalists to identify what is **newsworthy** (linked to a current event or development, or impacting many people, strange and unusual, involving high-profile people or organizations, etc). Consider what kind of **different angles** might be appealing or advantageous to the issue; don't forget that different angles appeal to different media and can be used to extend the life of a story. Link the conflict to other news events.

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<sup>55</sup> Children can be subject to stigma, discrimination and can be vulnerable to trafficking and other exploitation.<sup>t</sup>



- **Build contacts** with good journalists; understand their skills and interests; encourage them to regularly follow land issues; get information from them as well as give it to them; work with those journalists who can be trusted to deal sensitively with security issues (for example, who agree not to name villagers who are under threat without their explicit permission).
- The media can be used to **send messages** to other parties (when direct negotiations are not possible or desirable), to **get them on public record**, or hold **powerful people accountable**. Journalists can ask questions which the community or NGOs may be unable to. NGOs can help give journalists ideas for what to ask officials, perpetrators, organizations and others.
- Encourage media to **investigate** and **expose** injustices and those who commit them. Journalists may be able to find out new information. Good leads about potential perpetrators can be passed to media to investigate, but be careful not to indiscriminately propagate rumors.
- Journalists can play a valuable role as **witnesses** to events, particularly those where there is a danger of violence. The presence of media—notably cameras—can sometimes deter violence by perpetrators (and also by communities sometimes) and encourage authorities, at least temporarily, to behave more professionally. Journalists' responsiveness should be used (but not abused) when there is a serious threat of violence and other witnesses and NGOs may not be readily available (early morning evictions, late night fires, etc).

Before working with the media, prepare well:

- Choose carefully which media to talk to. Avoid unpro-fessional, biased media outlets. Bear in mind that radio (and television, though it is extremely government-controlled and does not cover land conflicts in any serious way) reaches more people, but independent newspapers reach key Khmer and foreign policy-makers.
- Consider the **best timing** to talk to the media, and **know** why you're doing it, with clear objectives. There's a time for quiet diplomacy to try to find a solution to a land conflict which allows the possibility for saving face, and there's a time when that is clearly not working, and more direct and public advocacy is needed; know which is which.
- Understand how and when to speak **on-record, off-record, in an individual versus professional capacity, or anonymously**, and make sure the journalist is clear on what basis you are speaking. Speak on the record whenever possible (anonymous sources may be necessary in sensitive stories, but when organizations go on the record to express concern about a land case and voice support for a community, it sends a strong signal.)
- Prepare well for interviews, identify your main message (or 2-3 key points maximum) and focus on how to get it across clearly.
- **Provide contacts** who are qualified or responsible to speak on the issue. (As noted above), don't give community contacts to the media unless they have agreed and understand the risks. Give names, positions and phone numbers



of relevant officials or perpetrators.

- When possible, prepare written information beforehand, to give to journalists. Concise backgrounders (half a page or one page) on a case or a particular land issue can be very useful for journalists and help to ensure their stories are accurate. Press releases should have a clear angle and be newsworthy, providing facts, background, and authoritative quotes; briefing papers and reports can provide more detailed information and analysis of complex issues. While facts and figures are important, don't forget to show the human-interest side of an issue affecting many people.
- Press conferences are good ways to draw attention to a news event (such as the release of a report or the filing of a lawsuit by communities in defense of their land), and to give a voice to affected communities.
- Bear in mind that there are **different media forums** in which your information can be disseminated: newspaper articles, opinion pieces, radio call-in shows and round-table discussions, etc.
- **Never consider paying** journalists or media organizations for coverage of news issues.

## FORCED EVICTIONS

"It's like Pol Pot,"—a comment often heard from victims of forced evictions.

Forced eviction, or the threat of it, is a hallmark of Cambodia's land crisis over recent years. Tens of thousands of people have been evicted from their homes in cities and

towns or have had their farmland forcibly stripped from them<sup>56</sup>. Hundreds or even thousands of families may be evicted at a time, often violently and usually unlawfully.

Officials typically try to justify forced evictions in the name of economic development or urban beautification, while in reality they typically result in more dire poverty for the affected families, who are sometimes dumped in distant relocation sites with deplorable conditions.

Forced evictions raise particular problems and dilemmas for NGOs, including whether they should pick up the pieces by providing emergency humanitarian assistance to evictees abandoned by the state.

ELCs, SLCs, and public works projects are common justifications for evictions. Supposedly necessary for the public good, such as to promote economic or social development, such projects are frequently little more than a guise to take valuable land off poor people. Even in cases where the state may be justified to displace people, such as to build a necessary road or bridge, authorities frequently shirk their obligations to adhere to laws; communities are not properly consulted and provided adequate compensation in advance. NGOs say that in the vast majority of cases, if residents are offered fair compensation, they will willingly move to make way for public works projects.

When communities are under threat of eviction, NGOs can play an important role in monitoring the situation, helping com-

<sup>56</sup> Rights Razed: Forced evictions in Cambodia, Amnesty International, Feb 2008.

munity efforts to negotiate a fair agreement, and trying to deter violence:

- Keep strong lines of communication with the community and local authorities;
- Build the community's ability to assess their risk, and respond to them when they seek protection. The regular presence of NGOs (and media) can help to reduce intimidation and the risk of violence;
- Help the community understand non-violent options to try to prevent eviction, draw attention to their case and protect their property. This may include writing letters and petitions, filing legal action, issuing statements, keeping media informed, conducting peaceful demonstrations and non-violent resistance to eviction attempts (see 'Alternative Interventions' below).
- Support community efforts to negotiate a fair agreement, including by meeting with officials to lobby for this and urge cancellation of eviction plans, and by speaking to the media.

If evictions do occur, they may be violent and evictees may be injured and their property destroyed. There are limitations to what NGOs can do during an eviction, but the most useful action is to be **present to observe the eviction**. NGOs can try to speak with officials in charge, request a copy of the eviction order, and appeal for violence not to be used. Occasionally discussions with the officials can ease tensions, though often such efforts are futile. The presence of NGO staff and others such as journalists and photographers often helps to minimize violence and prop-

erty destruction during evictions. If violence does occur, observers can be critical to ensuring medical help for victims. (Even if authorities cordon off the eviction site, as they usually do, NGOs can request access and, if refused, remain in the vicinity observing as much as possible.)

NGO staff, media and others kept vigil with Phnom Penh's Dey Krahorm community throughout the eve of their violent eviction in January 2009. As dawn approached, local officials and a company representative asked "the foreigners" to leave; the offer was refused. The eviction commenced, carried out by hundreds of police, military police and hired laborers who violently pushed aside the community's attempts to peacefully resist and set about destroying their homes. In the fray, the media and other observers were both targeted and tolerated. Most were permitted to remain on the site during the eviction (though some were forcibly ejected) but were sometimes targeted by authorities, especially photographers who were hit with water cannons in an obvious attempt to damage their cameras. Undoubtedly, the observers helped, with their mere presence, the scrutiny of their cameras and their attempts to negotiate. In some cases villagers were allowed to retrieve their possessions, tensions were calmed before escalating into violence, and medical treatment was secured for injured persons.

During evictions, the affected families may be simply forced off their land and abandoned, left to their own devices to find somewhere to go, or they may be dumped in "relocation sites" which may be nothing more than an open field—lacking water, electricity, food and sanitation, and far

from education, health and work opportunities. It's no surprise that such treatment is often likened to the Pol Pot regime by evictees.

Without homes, people are desperate and easily vulnerable to manipulation or exploitation by others. Victims may become perpetrators, as they struggle to find a means to survive. In some cases, authorities (deliberately or inadvertently) pit entire communities against others.

*When some 40 families complained that their farmland had been encroached upon by Harmony Plantation, a company awarded an ELC, authorities gave them axes and machetes and directed them to clear new plots of land for themselves elsewhere. Officials neglected to mention that the land already belonged to 100 other villagers. "We just confronted them briefly, and then we all decided to turn back, as we did not want to spill the blood of other poor villagers," said villager Leung Leng. "The commune authority tricked ordinary citizens into confronting other poor villagers over land," said Yuong Sam An.<sup>57</sup>*

Evictees sent to sub-standard relocation sites or other locations without adequate services often look to NGOs—as does the government—to provide emergency relief and longer-term support to make their new homes. This creates a dilemma, as providing assistance in such circumstances effectively relieves the government and private company responsible for the eviction of their obligations to the people they chose to evict. At worst, further evictions may be unintentionally encouraged, as the government and companies expect NGOs to

clean up their mess and provide humanitarian assistance to evictees.

If the government and private companies fail to meet the emergency needs of evictees, there are compelling reasons for NGOs to do so, rather simply leave people to suffer. But when such relief is provided, it is often done quietly; without any pressure or condemnation placed on the government and company, or any attempt to get them to foot some of the bill for relief. "We need to break this cycle of NGOs picking up the pieces in isolation as quiet service providers... and complement our assistance to the evictees with joint advocacy efforts that include strong requests for genuine and concrete contributions by those responsible for the plight of the evictees," said one rights worker.

At worse, the perpetrators of forced evictions may take credit for assistance provided by organizations. Government and company officials may turn up at NGO distributions, sending a message to evictees that they are responsible for the aid being provided; they may bring film crews to record the event, which is later broadcast through state media. The propaganda is twisted to deceive other victims into accepting dubious government demands and abandoning their claims for fair compensation.

When organizations do provide emergency relief or longer-term development assistance to evictees, this should be done in a careful way which sends clear messages:

- Provide emergency assistance as needed, but ensure that perpetrators do not derive credit for donations (publicly

<sup>57</sup> "Violence Avoided—for Now—in Kratie Province Land Dispute", Kuch Naren, The Cambodia Daily, 28 Feb – 1 March, 2009.

or in the eyes of the recipients);

- Meet with relevant government and company officials to raise the humanitarian issues and urge action by them to meet the needs; ask for specific materials and funds to be provided by them;
- Speak out publicly, for example through joint or individual press statements, on the obligations of those who were responsible for the eviction; highlight requests made of them and their response (or lack thereof).

## ALTERNATIVE INTERVENTIONS

A variety of alternative interventions provide peaceful and creative means of protest, awareness raising and advocacy. They aim to unite communities, muster support and protection, and confront conflict. Some of them focus on public demonstrations and non-violent resistance, while others aim to expand the base of support for threatened communities, including linking local and international agendas.

### **PUBLIC ACTIONS & NON-VIOLENT RESISTANCE**

Various forms of public advocacy and peaceful resistance tactics are increasingly being used by communities and NGOs. Often the lack of effective legal redress leaves communities with little alternative but to try to stand up publicly for their rights. While public confrontation is not always appropriate, it can send a strong message by people who are otherwise powerless, and at times it has achieved remarkable results.

Many such activities can be used proac-

tively, to highlight looming problems and demand action, and reactively, to try to prevent specific acts such as land clearing, arrests and evictions. Most are best done by unified communities, but some are suited to weaker communities, and can build solidarity.

Activities can be targeted at local, provincial and national levels. People are increasingly targeting national levels, including with coordinated approaches, but the value of local interventions should not be overlooked. Sometimes activities at the local level—particularly those conducted by communities and aimed at companies—can help to get authorities on the side of communities.

One-off activities seldom work and things often get worse before they get better. It's easy for communities to mobilize the first time, but hard to maintain the struggle over time as people get worn out.

The methods are not prescribed—what works is changing over time. Needed are repeated actions, which use creativity suited to the circumstances of each case.

Security should always be considered before any intervention. The community should be clearly informed of the facts, options, risks, and of their rights and responsibilities to conduct public activities, and encouraged to make their own decision. Ultimately the community themselves are usually in the best position to assess their risk when they have all the necessary information.

It is sometimes a delicate balance between

safety concerns and discouraging communities to stand up for themselves. When it is not safe for the community to take action, NGOs sometimes take action on their behalf because they have a moral obligation to do so. However they must be careful to do so appropriately: provide options to the community and let them make their own informed decision, monitor and support. Their role is neither to discourage nor or encourage communities to take action. Safety, and the impact of such events, is enhanced when media and other observers are watching. NGOs and community groups can support communities who wish to demonstrate or submit complaints to government bodies by:

- Informing them of the options for submitting complaints and of their rights and responsibilities;
- Putting them in contact with media;
- Observing their protests;
- Monitoring intimidation;
- Intervening with authorities when peaceful and legal gatherings are challenged;
- Lobbying officials and responding to community requests.

All efforts benefit from planning, coordination and anticipation of various scenarios. Be clear who will do what when and how and why, and anticipate things that will go wrong.

Communities are increasingly using **active nonviolence** and **civil disobedience** techniques, to try to physically hold on to their property, prevent destruction of their crops, or protect individuals from arrest. **People power** in its most simple form, a

crowd or human chain, can be a strong deterrent. At times, it has been successfully used to prevent villagers from being arrested, or to secure their release from police stations, and to block roads to stop earth-moving machines from moving in to clear land. **Direct action** can help put pressure on a company to seek a resolution (particularly if they are losing money, for example by having expensive equipment sitting idle); grab public and media attention to the conflict; amass broader support for a conflict or an issue; stop illegal arrests; and highlight calls for public accountability when events target officials and public institutions.

Sheer numbers are the greatest strength in such non-violent activities which can mobilize, energize and empower people with confidence, according to NGOs.

**Protests, demonstrations and marches** often target authorities and institutions. They may take place at the site of the conflict, or outside symbolic institutions (company headquarters, courts, government offices, National Assembly, Prime Minister's residence, embassies, etc). They are best done with a clear message enhanced by banners, posters, music or speeches, and may be done as part of wider campaigns (e.g., Save Boeung Kok Lake). While such activities can raise awareness, call for action, and get authorities to agree to review the case, they often allow authorities to delay decisions.

Other **direct action** that targets perpetrators, such as blocking a road, can force an immediate solution when company officials and authorities are compelled to react.

Some groups have attempted violence or “armed” defense with weapons usually consisting of stones, sticks, knives, machetes and sometimes fires and Molotov cocktails. However such attempts often fail to accomplish their objectives, and increase the likelihood of physical injuries. They almost always lead to stronger violence against them, reduces them to the level of perpetrators, and provides justification for arrest.

Ceremonies or similar public gathering (prayers, swearing, offerings) draw on traditions and moral values, and may be an alternative when more overt forms of public demonstration are not possible.

*A community in Krakor district, Pursat, exhausted most options for publicly demonstrating against a gigantic ELC awarded to the Pheapimex company in 2000. They wanted to shift tactics to deter violence. The community was facing increasing intimidation and was even refused permission to hold a tree-blessing ceremony. Afraid that monks would participate, the district's chief monk sent a letter warning all local monks to refrain from any such event because it was “political”. Cautious but not dissuaded, the community decided to hold a traditional “thanksgiving to the spirit” ceremony in a sacred forest. Required to request permission from the authorities, they were closely monitored when they held the ceremony. Police, commune and district officials attended “to provide security”. NGOs and UN rights officials monitored the event, to try to deter any intimidation by authorities. Around 100 villagers joined the ceremony in which they clad trees with monks' robes and cloth. The event went without incident although police later collected the names of all participating monks from their pagodas.*

**Public forums** may be held to disseminate information and spark debate about land conflicts. When media is invited, it can also focus public attention on an issue or conflict. Sometimes forums are done in the community with parties involved in conflicts. Other times, they are done more broadly to bring different communities together to discuss land issues, an opportunity to share experiences and lessons learned, and build contacts. Some say that forums can be useful at encouraging officials to publicly recognize the legal claim, or at getting them to publicly state things that communities can't otherwise get them to say.

## OTHER INTERVENTIONS

**Complaints, petitions and letters** are typically sent to formal-legal duty-bearers, but they can also be sent to moral duty-bearers who have influence locally, nationally or internationally with a request they intervene on behalf of the community. Such actions often require relentless follow-up. When such interventions are not successful, the letters can be shared with the media.

*HIV/AIDS-affected families facing eviction at Borei Keila wrote to the Prime Minister's wife, Bun Rany in her capacity as an HIV advocate, the “National Champion for Cambodia, Asia Pacific Leadership Forum”. Uncertain whether she received or read the letter, they also sent it to UNAIDS requesting that they raise the issue with her. Because of the great power he wields, many communities try to exploit the Prime Minister's power whenever possible. Some communities and NGOs have distributed recordings or transcripts of Hun Sen speeches in which he criticized land-grabbing, giving them to officials or*



broadcasting them during demonstrations. Similarly, others clutch photos of the Prime Minister and his wife during demonstrations.

**International advocacy organizations** may be used to draw broader attention to Cambodia's land crisis and individual egregious cases, and to link national advocates to international campaigners.

While some such organizations have only limited resources in Cambodia, they rely on trusted local partners to provide reliable information and highlight important issues. Human Rights Watch, Amnesty International, Centre on Housing Rights and Evictions, and International Federation for Human Rights are some of the major organizations able to raise land issues internationally and publicly and privately advocate to the Cambodian authorities.

Another notable organization is environmental watchdog Global Witness, which has for years collected and disseminated evidence of systematic abuses of land and natural resource exploitation, and raised those issues to international attention. While some criticize their approach as too confrontational and critical, their probing investigations and aggressive advocacy have gathered and exposed valuable information that would otherwise be largely unreported.

Other international organizations, coalitions and networks have focused agendas that could be exploited for local needs. Some of these organizations may be able to complement and amplify the work of local organizations.

International organizations can directly lobby donors, government officials, and international organizations in Cambodia and other countries. They can intervene or help local organizations to access international mechanisms such as US congressional hearings, the European Parliament, and UN review processes.

## BOX: ELECTIONS

Elections are theoretically the obvious way for people to choose leaders who serve their interests, solve their conflicts, and protect their land and livelihood security. However Cambodia's elections do not necessarily equal democracy; allegations of vote-buying and intimidation to persuade people to vote for the ruling party have long been made.

For communities embroiled in land cases, elections can have positive or negative implications. The ruling party's heightened concern to avoid bad publicity around election times can provide opportunities for NGOs and communities to advocate for resolutions to land cases. A looming election can also buy time for communities, as authorities are likely to delay a forced eviction, for example, which would generate bad headlines for the government.

On the other hand, elections can be used to manipulate land issues to coerce voters to vote for the ruling party; communities facing the loss of their land may be threatened (implicitly or explicitly) that they will not win their case if they do not vote "the right way". Elections are a time for making subtle or blatant threats, and for making promises which may well turn out to be empty.

**Provincial officials told residents of one**



***Kratie village facing encroachment from an ELC that if they voted for the CPP in the national elections their problem would get solved. After the elections, officials dismissed the ethnic minority group's claim to the land, saying that it could not be their ancestral land because some of the fruit trees there were not native.***<sup>58</sup>

The run-up to elections does provide an opportunity for leverage on land issues, as officials may be more willing (at least publicly and superficially) to discuss problems and pledge solutions to them. The key for communities and NGOs, however, is to how to lock them into keeping their promises once election day has passed. The case of Borei Keila in Phnom Penh, scene of a controversial SLC in which some residents have been denied their lawful right to alternative housing on-site, is telling:

Authorities evicted and demolished the houses of 160 families in great haste because they wanted to do a ground-breaking ceremony (and electioneering event) for the start of construction of the new on-site apartment buildings for residents at Borei Keila, just before the April 2007 commune elections. Concerned about bad publicity and possible protests by residents just before the elections, the municipality was willing to engage with NGOs and respond to their concerns. The municipality provided humanitarian assistance to the evicted people, and it also agreed to do a special joint screening, with NGOs and UN Habitat, of the evictees to determine eligibility for apartments according to the criteria for the land-sharing agreement. Officials exhibited a great capacity to problem solve and provide essential services—such as

water and tarpaulins for the evicted people—with speed and relative transparency. The co-operation was good, and together authorities, NGOs and UN Habitat agreed on at least 28 families who were eligible to receive apartments, until everything changed immediately after the inauguration and commune election day—when the municipality reneged on its promises, refused to give apartments to those people and suspended any meaningful assistance to the evictees or cooperation with NGOs.

The Borei Keila example shows how political will, rather than capacity and resources, is often the real issue with authorities in dealing with land cases. When the will was present, authorities acted skillfully and efficiently to tackle the problems—until the will abruptly ended. The example also shows how organizations can be manipulated by authorities to lend legitimacy to their actions and their promises, pre-election, without any guarantees of a fair resolution in the end. Finally, it reveals the potential for land conflict interventions to be more strategic during events such as elections.

## V. CONCLUSIONS & RECOMMENDATIONS

While the elite enjoy the benefits, increasing numbers of people are plunging landless into poverty, and NGOs scurry to solve the myriad economic, social and environmental problems being created—all in the name of “development”, a term too often associated with land-grabbing. Current land conflict interventions are unable to stem the flow of land-grabbing without a broader coordinated strategy. Organizational support is needed for initiatives by

<sup>58</sup> Unpublished NGO “Report on Kratie Land Case”, 2009.

and for the people, complemented by high-level donor interventions.

This report set out to examine the successes and failures of land conflict interventions, which by all accounts are a vast and growing need. Through a review of case studies and interviews with NGOs and community activists working on land conflicts, it quickly emerged that success is relative. In many cases, NGOs consider success as mitigation of impacts, rather than people actually holding on to their land.

The objective of land conflict interventions is two-fold: to seek justice in individual cases of land-grabbing; and to end the systemic expropriation of land fueled by a patrimonial abuse of state power and resources.

The simple answer is that while many sound interventions are being used, they have limited success in the first case, and to a large degree fail at addressing the root problems. They fail not because they are ill conceived, but often because they lack support and leverage from a broader range of organizations—local and international NGOs and donors—who do not recognize that land conflict impacts virtually everything they do.

The success and failure of interventions is as much about the roles, strengths and weaknesses, of the people (rights holders), the state (formal duty bearers), grass roots groups, local and international NGOs and donors (moral duty bearers) as it is about methods of intervening.

The grass roots struggle to stand up for their own land rights, demand accountability from their government and find justice because they lack a voice in this nominally democratic system. If they are not paralyzed by fear, they may legitimately wonder if challenging land-grabbers might cause them more harm than good. When they take action to defend their land rights, they face violence, threats and arrest—from police, military, officials and companies—and are called greedy liars by authorities. Their strength is limited to sheer numbers—and even the strongest groups of hundreds or thousands often pale in the face of land-grabbers—they lack social, civic, legal and economic leverage. (Ch III, Community)

The state rules neither with civic accountability nor with rule of law, and is primarily responsible for widespread landlessness and near landlessness of a significant portion of the population. They rule with fear fueled by poverty and ignorance. The systems of land management and administration, law, governance and justice commonly do not protect people's land rights, but are often contorted into tools against rights holders. Through their direct involvement or complicity in land-grabbing, officials create myriad social and economic problems which they, in turn, neglect: poverty, lack of education, poor health, trafficking, rights abuses, etc. In doing so they compromise development and economic and social stability, and deplete valuable, and often irreplaceable natural resources on which most of the population depends. (Ch II)

Many moral duty bearers fail to empower people to demand their land rights and to

have a strong voice in civil society. While local and national NGOs and bilateral and multilateral donors have different mandates, collectively they fail to call the government to account for its impacts and assure that their development assistance is reaching the people, in particular, that it is not undercut by state-sponsored land grabbing. (Ch III, Organizations).

The result of these failures is a cycle of dependence and misdirected development resources, which fuel the root problems of land-grabbing, namely corruption, greed and impunity. It points to the need for a broader coordinated strategy by NGOs with support from donors, to address the underlying problems.

Against the odds Cambodians around the country are increasingly standing up to claim their land rights using a variety of usually legal and peaceful methods in the face of injustice and threats. They are potentially key to solving the root problems of land grabbing if they could build leverage and institutional support to claim their own rights. Institutional support is a key need, particularly as their freedoms of speech, expression, association, and movement are increasingly attacked.

The few NGOs and community groups currently working on land conflicts are using many sound practices and strategies, both to provide support in individual land-grabbing cases and to try to raise the root problems to higher levels. The most effective are those who understand that the community comes first and respond to their requests

The role of NGOs and community groups should be to provide communities with options by: establishing the legal basis for their case, informing people of their rights and responsibilities, clarifying their options, and encouraging them to discuss among themselves and make their own decisions. They should encourage just and legal solutions by authorities.

NGOs support communities by collecting and disseminating reliable information, ensuring that legal and other essential services are available, creating leverage for negotiations, working with the media. Often, the most important role NGOs can play is to be witness—in court cases, demonstrations, and forced evictions, for instance—and to raise important issues to higher authorities. (Ch IV describes a variety of intervention methods currently used.)

As important is how they do so. NGOs and community groups are most effective when they listen to the people, learn from them and support from behind. While many NGOs claim to use a rights-based approach, their structure and mentality often proliferate a client-patron relationship which keeps communities dependent on them, as superiors, to take action. NGOs must establish relationships which are equal and empower people, rather than act and speak on their behalf.

Empowering communities to respond to a conflict, however, is different from building enduring strength that the grassroots need in order to have a strong voice in civil society, protect their own rights, and demand good governance. This requires a different kind of leadership, consultative

approaches, and strong community-driven organizations that play a key role in raising community voices in civil society, and support communities in conflict. Communities and community groups must find their own community-driven—versus NGO-driven—ways to become socially and economically independent.

If development is for the people, they should be consulted and should be decision-makers. NGOs and donors might go far to empower people if they assured that their funding is getting to the people and improving their social and economic position (for instance, ensuring education versus school buildings, access to health care versus hospitals, etc.). Land activists say donors should be accountable to the people for how their development funds are used. They must also hold the government accountable for their impacts on communities: not only for how aid is used, but also for their role in individual land conflict cases, forced evictions, and landgrabbing. Challenges of doing so are described in Ch III, and methods in Ch IV.

The major lesson derived from the relatively few organizations working on land disputes is that a broader range of organizations must develop a coordinated strategy to:

- Empowering people to claim their own land rights by strengthening and supporting the citizenry and community groups so they can play an active role in civil society to demand good governance and help drive government and NGO efforts to develop the country; and,
- Holding the state accountable, at all levels, to fulfill their obligations to provide transparent legal, administrative and social protections to the people, and punish perpetrators of land-grabbing.

There are many excuses why NGOs and donors don't get in-volved in land disputes (see Ch III, Organizations). NGOs must recognize how land impacts their sectors to be able to convince donors how and why they need to support such interventions. This doesn't necessarily mean creating special budgets and projects. Donors need more and better information about land security on a more regular basis. NGOs and donors can leverage their aid to improve land security, strengthen the grass roots and hold the government accountable (see Ch IV, Strategy).

Land is security for people for whom land is life. When people lose part or all of their land or access to land on which they depend, they lose their security. They lose economic independence and their means to feed themselves and support their families; children are taken out of school and may have to work; families are forced to migrate and might be split; they risk falling prey to labor and sex exploitation which can lead to drug abuse and health risks; lack of food, medicinal remedies, stress and poor conditions create health problems, and the cycle of poverty spirals downward. Land conflict destroys development achievements, sustainability and stability. As such, land security should be an underlying objective in all NGO and donor efforts. The efforts of the few organizations, grassroots groups and communities them-

selves to intervene in land conflicts and raise land issues should be applauded, but need to be amplified by a broader base of support. This report is meant to stimulate ideas and debate among a broad array of NGOs about why and how they need to in-

tervene in land conflicts and improve land security. Individuals, communities and community groups themselves inevitably will have even more to teach NGOs and donors than is documented here.

## RECOMMENDATIONS:

*All NGOs working in Cambodia should swiftly assess their ability to improve land tenure security in ways described in this report, including:*

### **Clearly identify the needs and impacts related to land insecurity.**

- Examine and document how land insecurity affects your sector, and identify ways to address it individually and as part of a coordinated effort with others.
- Consult with communities and community groups formally and informally, on what they need from organizations such as yours. (A study similar to this one might focus on communities and community groups in a more consultative way and over a longer period.)
- Consult with groups currently working on land about how to develop a coordinated strategic approach to land insecurity, including how to build a broader coalition of organizations to advocate.

### **Convince donors how and why they need to intervene on land conflicts.**

- Present evidence, analysis and arguments to bilateral and multilateral donors supporting why land issues are important and what they need to do about it.
- Provide donors with better information about land conflicts on a regular basis.
- Elicit their information and support in strategic ways on individual cases and on addressing the systemic problems.

### **Integrate land security provisions into the work you are currently doing appropriately in ways described in this report, including:**

- Leverage development aid and services to empower people to demand good governance and justice as pillars of land security, and hold the government accountable for their impacts and their use of funds. Account for how your development aid is being used; be sure it's not being used directly or indirectly to reward land-grabbers and their accomplices.
- Develop policies within your own organization on how you will seek to protect communities you work with or provide services to those involved in land-grabbing; and how you will respond when the objectives of your projects are jeopardized by land-grabbing.
- Support development for the people. Support and strengthen communities and

community groups in a consultative way, which enables them to be grassroots-driven, rather than NGO- or donor-driven, and play a role in civil society.

- Support grassroots community groups and NGOs when they ask for assistance in land conflict cases, including sharing information, being witness and lobbying officials.
- Support other needs of individuals and communities facing land conflict or eviction, including health, education, food and livelihood.

**Help to develop national strategies, jointly in consultation with communities, community groups and donors, to address land insecurity.**

- Research and advocate against injustices related to land conflict.
- Advocate to the government for transparent, accountable and fair policies and practices on land and related issues, including:
  - o ELC, SLC and other contracts should be made public and reviewed transparently for their legal adherence. Those in violation should be nullified, and people's land restored and compensation provided as appropriate.
  - o Company records, including details of shareholders and senior company officials, should be available to the public.
  - o The government should pay civil servants a living wage in a timely way, and hold them accountable to serve their people's interest in land cases.
  - o Impact studies and community consultations must be conducted, and fair advance compensation paid, before any relocation.
  - o Relocation sites must ensure minimum standard living conditions—including access to equal or better income generating opportunities for people relocated by the government.
  - o Current inadequate relocation sites must be reviewed and upgraded (or people offered reasonable alternative land).
- Call for community representatives being held on unjustified criminal charges to be released and charges dropped, and for the arrest of land-grabbers against whom there is evidence of crimes.
- Call for a moratorium on forced evictions.
- Lobby against new laws which will likely negatively impact land security (such as the expropriation and NGO laws). Adherence to the current laws should be a priority before new legislation is considered.
- Assure that NGOs are not restricted from providing legal representation.

**NGOs and community groups currently working on land conflicts should:**

- Examine lessons learned from their own experiences in land conflict interventions.
- Assess how their interventions and methods of working with communities and community groups can be strengthened based on findings of this report (notably Chapter IV).
- Share information and provide advice to other NGOs and donors about how they can support a coordinated land security strategy.

## **ANNEX 1:**

### **LIST OF CASES ORIGINALLY REVIEWED**

Dey Kraham, Phnom Penh  
Borei Keila, Phnom Penh  
Group 78, Phnom Penh  
Koh Pich, Phnom Penh  
Kong Yu, Rattanakiri  
Kordontei Village, Cha'en Commune, Aoral Dist, Kg Speu  
National Road 1 & Highway 1  
Kenotech Concession, Preah Vihear  
Krang Skear, Kg Chhnang  
Snuol, Kratie  
Khnach Rormeas, Bavel, Borvil, Battambang  
Chamkar Chek, Kg Speu Military Brigade 31, ACO, other companies  
Bakeng, Prey Nop, Kompong Som  
Kbal Spean, Poipet, Banteay Meanchey  
Village 6, Mittapheap, Kompong Som  
Senator Ly Yong Phat concession, Sre Ambel, Koh Kong  
Siem Reap: Wat Bo



## ANNEX 2:

### LIST OF ORGANIZATIONS WORKING IN LAND SECTOR

Including international organizations, local organizations and one bilateral donor.

ActionAid	Action Aid International Cambodia
ADHOC	Cambodian Human Rights and Development Association
CDP	Cambodia Defenders Project
CEDAC	Center d'Etude et de Developement Agricole Cambodgien
CSD	Center for Social Development
DCA	DanChurchAid
DPA	Development and Partnership in Action
GAA	German Agro Action
HRCDO	Human Rights for Community Development Land is Life
LICADHO	Cambodian League for the Promotion & Defence of Human Rights
LWF	Lutheran World Federation Mlup Baitong
NPA	Norwegian People's Aid
Oxfam GB	Oxfam Great Britain
Star Kampuchea	Star Kampuchea
Vigilance	Human Rights Vigilance of Cambodia
WVI	World Vision International
HBF	Heinrich Boll Foundation
LAC	Legal Aid of Cambodia
Equal Access	Equal Access
Muslim Aid	Muslim Aid
EU	European Commission
CCHR	Cambodian Human Rights Centre
KIND	KIND
CLEC	Community Legal Education Centre
EWMI	East West Management Institute





វេទិកាផ្សព្វផ្សាយមិនមែនរដ្ឋាភិបាល ស្តីពីកម្ពុជា  
*The NGO Forum on Cambodia*

ធ្វើការរួមគ្នាដើម្បីការប្រសើរឡើង

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