Lesson Series 56

Forced evictions and the right to land in Cambodia

Summary

This lesson looks at the situation of land grabbing and forced evictions occurring in Cambodia today. Using specific cases, the lesson discusses how the right to land is linked to many other rights, underlining the indivisibility of all human rights.

The lesson also gives an overview of international legal principles regarding the right to land, and how these fit into the Cambodian legal framework.
THEME: Forced evictions and the right to land in Cambodia

The Issue

While the right to land and housing is a basic right under international human rights law, it is one that is violated frequently, particularly under the guise of development in various Asian countries. It is also a right that is interlinked with many other rights, including the rights to effective remedies, fair trial, free speech and the right to be free from cruel and inhuman punishment.

The Lessons

This lesson series will cover various aspects of the right to land situation in Cambodia.

Lesson 1 will look at specific cases of forced evictions and land grabbing, as well as the relevant legal provisions guaranteeing the right to land and housing.

Lesson 2 will discuss how institutional and systemic factors are hindering progress in the prevention of forced evictions.

Cover photograph of police and military officers standing guard over villagers in Sihanoukville, Cambodia while their homes are set on fire. Source: LICADHO, 2007.
Lesson 1

This lesson will look at the issues surrounding land grabbing in Cambodia, as well as the relevant international and domestic legal principles.

A. Cases of land grabbing and forced evictions

Land grabbing has been one of the most serious issues facing Cambodia in recent times, leading to the most widespread violations of economic and social rights since the country abandoned communist collectivization at the end of the 1980s. Land grabbing has affected both urban and rural dwellers, as well as indigenous and minority groups. It inflicts various forms of suffering, from the inconvenience of relocation and resettlement, to economic and social welfare loss. Moreover, such suffering is often preceded by threats, intimidation, violence, imprisonment or even death.

At the fourth session of the UN Human Rights Council in March 2007, the Asian Legal Resource Centre (ALRC), sister organization of the Asian Human Rights Commission (AHRC), submitted that

Between 2001 and 2003, a local human rights NGO registered around 150 cases. This number rose to around 350 in 2004 and 2005, and then to 450 in 2006. According to another NGO, the indigenous people in the northeastern province of Rattanakiri have already lost 30 per cent of their community land due to land-grabbing, while that remaining is under threat. The National Authority for Resolution of Land Disputes (NARLD), created in February 2006, has to date received closer to 2000 cases. An international human rights NGO has recorded that between 1000 and 1600 families in Phnom Penh and over 1200 families in ten provinces alone had experienced evictions in 2006 [ALRC, ‘Land-grabbing, corruption and the absence of the rule of law in Cambodia’, March 2007, A/HRC/4/NGO/62].

The most recent land grabbing cases reported by the AHRC include the case of 40-year-old Pring Pov, a police officer who was arrested on charges of “disobeying orders from his superiors” for refusing to vacate his land, which has been in his possession since 1991. He was arrested without a warrant on 19 February 2008, handcuffed, shackled and bundled into a car that took him straight to the Police Discipline Unit at Samaki village, Trapeang Krasaing, Russey Keo district, some 20km away from Phnom Penh.

According to persons permitted to see him in police custody, Pring was confined in a windowless cell all day and shackled at night. They observed blood and wounds around his wrists and ankles, bruises on his chest, and heard him coughing badly. However, the National Police Commissioner disallowed any doctor from visiting him.
Pring was arrested following a land dispute over a plot of land he had cleared in 1991 and has since owned. In 1994, he was forced to give it to Eng Marie, the wife of the president of the then ruling party, FUNCINPEC. Pring was forced to ‘guard’ the land, in return for a monthly allowance of USD 10 and 30kg of rice, which he received only once.

Although Eng has never visited Pring’s land, in 2008 she laid claim to the land and filed a complaint with the police to that effect. The senior officers of the Kep police, including police commissioner Ing Sam Ol and inspector Mom Sitha, pressured Pring to vacate his land. They forced him and his wife to sign an agreement to the effect that they would vacate their house if they received appropriate compensation, but refused to give them a copy of that agreement. Pring has not received any compensation and has refused to dismantle his house and move out, resulting in his arrest.

On February 24, several police officers took Pring’s statement about his land while he was in custody. This suggests that he has been punished for his refusal to cede his land and not for failing his duty as a police officer. There is no justification for such punishment however, as the police have no jurisdiction over land disputes.

While in custody, Pring’s health deteriorated to such a point that the Police Discipline Unit decided to send him to the Monivong Hospital in Phnom Penh on March 25 where he was under supervision of a round-the-clock guard, made up of eight police officers. He was discharged on April 3 and the Minister of Interior, Sar Kheng, ordered Pring’s release on the same day.

Pring’s wife, Yin Neang, has been summoned by the Kampot provincial court over the land dispute. The couple fears this is another measure to pressure Pring to cede his land; Yin Neang could be arrested when she appears in court. Moreover, the state prosecutor at the same court took no action to begin an investigation when Yin Neang filed a criminal lawsuit against the police for Pring’s torture and illegal confinement at the end of February.

Following the prosecutor’s inaction, a coalition of human rights NGOs, the Cambodian Human Rights Action Committee, filed a complaint of torture and illegal confinement on March 13 with Prosecutor-General Henro Raken, who has the authority to order an investigation into the matter. Needless to say, no news of any investigation has yet been reported [See AHRC-UAC-045-2008, 11 March 2008 for more information].

In fact, the use of force and intimidation is common to force victims to accept compensation well below the market price of their property.

In the eviction of 168 families living near Monivong Hospital in Phnom Penh, whose land the government conceded to the powerful Royal Group Company, they were offered the average compensation of less than USD 20 per square meter of land, while the estimated market price was USD 200. Low-ranking police officers who were members of the families were threatened with losing their jobs if they rejected the offer and the relocation. The families were forcibly evicted in July 2006 and were
relocated some 20 kilometers away on the outskirts of Phnom Penh. In the same month, for the “beautification and development” of the city, the Municipality of Phnom Penh threatened 146 families living in Group 78 in Chamcar Mon district with forced eviction and offered USD 600 and a five by twelve meter plot each on the outskirts of Phnom Penh if they vacated their property, the estimated market price of which was USD 700 per square meter [ALRC, ‘Land-grabbing, corruption and the absence of the rule of law in Cambodia’, March 2007, A/HRC/4/NGO/62].

When even law enforcement officers are subjected to such use of force and intimidation, the plight of ordinary Cambodians can only be worse. The Dey Kraham case encompasses many of the issues faced by ordinary victims of land grabbing in the country. Some 400 families in the Dey Kraham zone of Phnom Penh have resisted their eviction by a corporation named 7NG since 2003, demanding compensation commensurate with the market price of their lands. As a result, they have had to deal with threats, intimidation, arrest, beatings and blockades.

Most recently, the company sent around 20 workers and a bulldozer to clear the ground on 29 January 2008. The company workers threw stones at the residents who were standing around to protect their homes. Thirty-year-old Men Chenda rushed to help an old woman who stood near the bulldozer under the rain of stones. The stones hit Men Chenda on her neck, back and head, knocking her to the ground. She subsequently required several stitches for her wounds.

Earlier, the company had attempted to create a blockade to force the residents to leave. First, on January 3, district authorities notified stallholders of the “garden” market inside the Dey Kraham zone, on which the livelihood of the evictees depends, to dismantle their stalls and clear out of the garden. On January 6, workers were sent to place oil drums blocking all access to the zone and supplies to the market, and filling them with water. A mixed group of 30 to 40 armed police officers were posted at the edge of the zone to protect the workers. The evictees resisted the blockade by pushing the oil drums out of the way and preventing the workers from filling them with water.

A confrontation between the two sides over the blockade ensued on January 7, in which a truck belonging to the local authorities parked at the blockade was set on fire. Although eye witnesses said the company workers had deliberately set fire to the truck, police sought a court warrant to arrest six of the residents for allegedly setting fire to the truck. Over a dozen evictees already faced criminal lawsuits from previous run-ins with the authorities.

On 16 December 2007, the company sent around 30 workers to wall up the entire Dey Kraham zone by building a closure of corrugated iron sheets around their dwellings to isolate the entire community. They also blocked all access roads to the zone. The residents protested and prevented the construction, and a confrontation ensued. In this incident company workers assaulted a woman resident named A Si Yas, causing injuries to her
head, and a worker struck the foot of another woman resident named Muy Teng with a hammer, almost breaking her foot. There has been no police investigation into the injuries of the two women [For further details, see AHRC-UAU-006-2008, 5 February 2008; UAU-002-2008, 6 January 2008; UA-271-2007, 6 September 2007].

Not only is such use of force excessive and illegal, but the use of blockades—closure and economic strangulation—as an instrument to force people to leave their homes and lands can amount to a violation of the right to food. This is against Cambodia’s obligations under the International Covenant on Economic, Social and Cultural Rights, which require it to respect the right to access to food and not to take any measures that could prevent such access. Such actions also amount to cruel and inhuman punishment, prohibited by article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Moreover, if the action leads to any starvation, it will amount to torture, which is absolutely prohibited under article 1 of the same convention.

Filing criminal lawsuits is another common form of intimidating victims, as seen in the above case. The ALRC reported to the UN that,

In 2005, five villagers were killed by the civilian and military police forces during the eviction of some 200 families in the northwestern province of Banteay Meanchey, close to the Thai border. In 2006, an NGO reported 78 arrests in 29 land dispute cases. There are a variety of criminal charges filed by land grabbers, such as: infringement against private or public property; causing damage to markers, topographic points or cadastral signs; fraud; robbery; or incitement. In January 2007, two villagers among 222 families from Preah Net Preah district, Banteay Meanchey province, were prosecuted for robbing rice that they had harvested from land allocated to them but contested by rich businessmen who claimed to have bought it from the military posted in the area. In December 2006, a villager not only had his son seriously injured by the police when protesting against land-grabbing by a powerful company, PHANEMEX, but was also charged with fraud by the same company. In January 2006, while the indigenous villagers protested against a businessman’s clearance of their land and crops in Rattanakiri province, two of them were arrested and charged with causing damage to other people’s property [ALRC, ‘Land-grabbing, corruption and the absence of the rule of law in Cambodia’, March 2007, A/HRC/4/NGO/62].

In another case of arrest, four villagers representing 30 families fighting for their right to land in Kampot province were arrested and forced to confess to ‘illegal occupation’ in order to be released. The four men were arrested on 4 May 2007, on the orders of Investigating Judge Houn Many, after being questioned by the court regarding a case filed against them by businesswoman Ms Teng Ly, who alleged they were involved in using violence against her on 10 February 2004. In actual fact, it was Teng Ly who forcibly evicted the villagers and destroyed their houses and crops with the help of the military, claiming that she had been awarded their land by the former Khmer Rouge commander Chouk Rin.
On May 25, Judge Houn Many privately called the four detained villagers to the Kampot Provincial Court and offered three conditions for their release: 1) Each person should pay one million riel (USD 250) to the court; 2) They should put their thumb print on a letter stating they were illegally occupying the disputed land and would no longer demand ownership over it; and 3) They would be rearrested if they spoke of this deal to anyone.

The Kampot provincial court immediately freed two of the villagers after they signed the letter prepared by Judge Houn Many. The other two villagers remained in detention after refusing to accept the judge’s offer [See AHRC-UP-078-2007, 8 June 2007 for details].

It is clear from the above cases that there are many violations of basic rights involved in Cambodia’s land grabbing phenomenon. These include arbitrary arrest, torture, ill treatment, denial of food and shelter. When law enforcement authorities themselves are involved in such abuse, there are no mechanisms left for Cambodians to make use of in seeking remedies.

B. The right to land and housing under international and domestic law

Since Cambodia’s privatization of land in the mid-1980s, demand for it has been continuously rising, particularly when individuals and local and foreign companies began to acquire land for the construction of houses, hotels, commercial buildings or factories, or for plantation. Speculation to make quick profit by buying and selling land has also increased. The government also needed land for the construction of a variety of infrastructure, or simply for the beautification of cities. Furthermore, the government has made land concessions for development to private companies with little consultation with the affected people, nor adequate compensation. Land prices have steadily increased as a result and land has become a profitable investment for everybody.

The transition from a collective to a private ownership system without an effective rule of law system, has led to the current phenomenon of land grabbing. At the same time, cadastral surveys and land ownership registration have lagged behind private possession. Whether due to ignorance, costs or sheer apathy, many have not registered their land and obtained title deeds. As a result, not many land owners have title deeds on the land they occupy, although many do have some form of official recognition of ownership.

All this has created opportunities for the powerful and the rich to use illicit means to secure title deeds on land and get government officials to evict its owners. The government has also, through illicit transactions, made land concessions regardless of whether these concessions infringe upon people’s land or affect their livelihood. In particular, wealthy individuals and corporations have used their influence with local authorities, to get the poor—who are unfamiliar with market prices—to ‘sell’ personal or communal land at very cheap prices.
Cambodia’s Land Law, enacted in 2001, recognizes that any person enjoying peaceful, uncontested possession of a given property for more than five years acquires an *in rem* ownership interest, and can request a definite title of ownership over it. However, the law has not been effectively enforced due to political manipulation and corruption within Cambodia’s rule of law institutions. Cambodia’s courts are under executive control, and like all other government agencies, are corrupt. The national, provincial and district cadastral commissions created under the Land Law are unable to fulfil their mandates due to a lack of independence, resources and expertise. Government officials abuse power and ignore article 36 of that law, which allows for the suspension of any eviction that could cause instability or social repercussions. Similarly, the provisions prohibiting the infringement of indigenous communities’ land rights are also being overlooked.

For this reason, Cambodian citizens have little confidence in the ability of the court system to deliver justice. Its inability can be seen in the eviction case of 168 families near the Monivong Hospital cited above, where the Phnom Penh court refused to adjudicate a complaint filed by those families when the government ordered the eviction. Similarly, when the prosecutor decided to halt land grabbing in Bokeo district, Rattanakiri in November 2006, the Rattanakiri provincial governor rejected the decision.

**Legal framework**

(The following section is based on Amnesty International’s report, *Rights Razed: Forced evictions in Cambodia*, February 2008.)

According to the UN Committee on Economic, Social and Cultural Rights, a forced eviction is “the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (General Comment 7, May 1997). Forced evictions have been recognized by the UN Commission on Human Rights as a gross rights violation.

**Prohibition on and protection against forced evictions**

State parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR)—and other international treaties—have a duty not to subject their population to forced evictions under the right to adequate housing, with very limited exceptions. The right to adequate housing is set out in article 11 of the ICESCR:

*The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*
The realization of the right requires Cambodia to not allow forced evictions, and to protect individuals from forced evictions carried out by third parties. The adoption and implementation of necessary legislation is central to such protection.

The body charged with monitoring the implementation of the ICESCR, the Committee on Economic, Social and Cultural Rights, has stated that instances of forced eviction “are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law” (General Comment 4, December 1991). While many duties on states under the ICESCR require progressive fulfillment, the duty to halt forced evictions is immediate.

The Human Rights Committee has expressed concern that forced evictions constitute violations of the International Covenant on Civil and Political Rights (ICCPR), particularly of article 17, according to which “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence” and that “everyone has the right to the protection of the law against such interference or attacks”.

Cambodian law does not specifically prohibit forced evictions, but article 44 of Cambodia’s constitution, which protects the right of all Cambodian citizens to own land, contains a broad limitation to the effect that “the right to confiscate possessions from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance”.

The Committee on Economic, Social and Cultural Rights has clarified that evictions can only be carried out when certain procedural protections are applied, including:

• An opportunity for genuine consultation with those affected;
• Adequate and reasonable notice for affected persons prior to the eviction;
• Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
• Government officials or their representatives to be present during an eviction;
• All persons carrying out the eviction to be properly identified;
• Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
• Provision of legal remedies; and
• Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts (General Comment 7, May 1997).

Furthermore, evictions may be carried out only as a last resort, once all other feasible alternatives to eviction have been explored. They must be planned and implemented in consultation with affected persons or groups, in an effort to avoid or minimize use of force.
State parties to the ICESCR must also ensure that adequate alternative housing and compensation for all losses is made available to those affected prior to eviction, regardless of whether they rent, own, occupy or lease the land or housing in question. Moreover, evictions must not “render individuals homeless or vulnerable to the violation of other human rights” (General Comment 7, May 1997).

The UN Special Rapporteur on adequate housing has recently developed the Basic Principles and Guidelines on Development-Based Evictions and Displacement (Basic Principles), reflecting existing standards and jurisprudence on this issue. These provide valuable guidance to governments on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards and do not thus constitute forced evictions. They include detailed provisions on steps which states should take prior to, during and following evictions in order to ensure compliance with relevant principles of international human rights law.

Legal protection against forced evictions is generally weak in Cambodian law. The Land Law, drafted with a view to secure implementation of the property rights guaranteed under the constitution, consists of general principles that require sub-decrees and implementing regulations to be effectively applied. Since enactment in 2001 the legal framework has developed incrementally, but remains incomplete.

Article 35 of the Land Law sets out procedures for the eviction of occupants with no or insufficient title. Such evictions can only be made by a court order upon the request of the person who claims the property, and it falls on the courts to verify and validate such claims. The law also provides that although courts cannot refuse to order an eviction in favour of a person who presents a valid and complete cadastral title—legal ownership—a temporary suspension may be requested by the competent authorities if the eviction “is likely to give rise to instability or to have serious social repercussions” (article 36).

In terms of security of tenure, the Land Law transformed earlier possession rights into ownership rights and limited the principle from previous legislation that possession leads to ownership to land occupied prior to 2001. According to article 31, a person who can demonstrate lawful uncontested possession for a period of five years before the law was enacted (2001) can become the owner of the land. Previously, five years of uncontested possession without any cut-off date could lead to legal ownership.

“Social land concessions” is a systematic land distribution mechanism established under the law, whereby state private land may be distributed for residential or farming purposes to the poor and homeless families. Combined, these provisions protect security of tenure and are seen as a replacement of the old principle of ownership through possession.

Security of tenure is also extended to land belonging to indigenous people, providing for collective ownership of those communities. These provisions protect indigenous peoples against displacement. The Sub-Decree on
Economic Land Concessions, signed on 27 December 2005, sets out general conditions that must be met for a concession to be granted, which provide communities with protection against eviction. Article 4 provides that “the Contracting Authority shall ensure that there will not be involuntary resettlement by lawful land holders and that access to private land shall be respected”.

**Rights to participation and consultation**

The right of everyone to participate in decisions which affect the exercise of their human rights is strongly grounded in international human rights law and standards. Specifically, the Committee on Economic, Social and Cultural Rights states that governments

…shall ensure, prior to carrying out any evictions, and particularly those involving large groups, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force [General Comment 7, May 1997].

According to the Basic Principles developed by the Special Rapporteur on adequate housing,

All potentially affected groups and persons, including women, indigenous peoples and persons with disabilities, as well as others working on behalf of the affected, have the right to relevant information, full consultation and participation throughout the entire process, and to propose alternatives that authorities should duly consider. In the event that agreement cannot be reached on a proposed alternative among concerned parties, an independent body having constitutional authority, such as a court of law, tribunal or ombudsperson should mediate, arbitrate or adjudicate as appropriate.

During planning processes, opportunities for dialogue and consultation must be extended effectively to the full spectrum of affected persons, including women and vulnerable and marginalized groups, and, when necessary, through the adoption of special measures or procedures.

Article 35 of the Cambodian constitution protects the right of the population to participate actively in political, economic, social and cultural life, while article 41 provides in broad terms for freedom of expression, press, publication and assembly. With the exception of the Press Law, legislation to make these constitutional rights applicable in practice is not in place, including laws regulating access to information.

In the specific context of Economic Land Concessions, the Sub-Decree on Economic Land Concessions sets out requirements for public consultation and participation.
Forced evictions and the right to land in Cambodia

The right to an effective remedy

States parties to the ICCPR and the ICESCR have an obligation to ensure that effective remedies are provided to any person whose rights have been violated. The Human Rights Committee has stated, in General Comment 31, that the ICCPR,

... requires that States Parties make reparation to individuals whose Covenant rights have been violated. Without reparation to individuals whose Covenant rights have been violated, the obligation to provide an effective remedy... is not discharged... The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.

In the specific case of the duty to prohibit and prevent forced evictions, the Committee on Economic, Social and Cultural Rights has identified a number of areas, including

(a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination [General Comment 4, December 1991].

The Committee also clarifies that competent authorities must ensure that concerned individuals have a right to adequate compensation for any property that is affected, both personal possessions and immovable property. Governments must “see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected” [General Comment 7, May 1997].

The Basic Principles assert that the right to an effective remedy for forced eviction should include access to justice, compensation, restitution and return, resettlement and rehabilitation. The principles to be applied in each case are developed in some detail.

According to article 39 of the Cambodian constitution,

Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties. The settlement of complaints and claims shall be the competence of the courts.

Both the Cambodian constitution and the Land Law have provisions for fair and just compensation in the context of confiscation or deprivation of ownership. Such compensation must be awarded in advance of
expropriation. Article 5 of the Land Law provides that “An ownership deprivation shall be carried out in accordance with the forms and procedures provided by law and regulations and only after the payment of just and equitable compensation.” The ‘law and regulations’ providing for procedures have yet to be adopted.

Moreover, the Special Representative of the Secretary-General has pointed out failings in the system of judicial remedies in Cambodia:

The lack of independence and integrity of the judiciary, the prosecutorial authorities, and the legal profession pose a fundamental threat to human rights... innocent people become, at the instigation of the Government, the victims of the legal system. Thus, far from protecting human rights, the legal system becomes a principal agency of oppression [Report of the Special Representative of the Secretary-General for human rights in Cambodia to the Human Rights Council, 30 January 2007, A/HRC/4/36].

**Prohibition of unnecessary and excessive use of force**

The provisions for the right to life and security of person in the ICCPR (articles 6 &9), oblige the Cambodian authorities to use force only when unavoidable and absolutely necessary, and then only minimally and with utmost caution. Principle 4 of the UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials requires officials to

as far as possible, apply non-violent means before resorting to the use of force and firearms. Officials may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

Article 3 of the UN Code of Conduct for Law Enforcement Officials meanwhile, notes that firearms may be used only “when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender”.

If the use of force and firearms is unavoidable, Principle 5 of the UN Basic Principles on the use of Force and Firearms by Law Enforcement Officials states, among other things, that law enforcement officials must:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
(b) Minimize damage and injury, and respect and preserve human life;
(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment.
Questions For Discussion

1. Have you come across similar cases of land grabbing/forced evictions in your own countries? What are the remedies available for the victims of such cases?
2. What are the strengths and weaknesses of the various legal provisions mentioned above regarding the right to land? Are there any additional provisions that should be available?
3. In your opinion, what is the greatest obstacle to the realization of the right to land and housing?
3. What do the above cases tell you about the indivisibility of different human rights?

Lesson 2

This lesson will discuss the institutional and systemic factors affecting genuine realization of peoples’ right to land in Cambodia.

A. Faulty laws and institutions

The Cambodian government recognized that the country’s serious land grabbing situation could spark off a “peasant revolution”, and therefore enacted a land law in 2001. Under this law, national, provincial and district cadastral committees were created to adjudicate disputes over unregistered land, while disputes over registered land were consigned to courts of law. The ineffectiveness of these cadastral committees however, led to the establishment—by executive decree—of the National Authority for the Resolution of Land Disputes (NARLD) in 2006. Even the NARLD has not met with any success, and in March 2007, Prime Minister Hun Sen set out to wage a “war against land grabbers,” whom he has identified as being ‘party officials’ and ‘people in power’.

In May 2007, the ALRC noted in its written submission to the UN that,

This war against the powerful has yet to be won, as some 2000 complaints of land grabbing have yet to be dealt with. For the time being, this war has instead brought terror to the powerless, notably in the seaport town of Sihanoukville on the Gulf of Thailand, where, in April of this year, its governor led a well armed police force to forcibly evict 107 families from their homes and 17 hectares of land for the benefit to a tycoon senator. They demolished and destroyed their homes and other belongings with bulldozers and fire, making those families immediately destitute. A month later, on the outskirts of the same town, an army general led 200 armed men to forcibly evict persons from 120 hectares of land he claims he “legally” owns.
On May 30, 2007, Hun Sen called for a “seminar on land issues,” which he admitted to be “happening every day”. It is not clear whether this seminar is another battle in his war against land-grabbers or an admission of defeat in that war [ALRC, ‘The absence of the rule of law aggravating the human rights situation in the country’, May 2007, A/HRC/5/NGO/8].

The Cambodian government’s consistent rule by decree has enabled the powerful and the rich, backed by powerful officials, to use their high positions and influence to secure eviction orders and the enforcement of these orders from the state machinery, without going through due process of law and without paying fair and just compensation to evictees. This rule by decree, in the form of the National Authority for the Resolution of Land Disputes, the war against land grabbers and the seminar, can hardly replace the rule of law as a means to eradicate land grabbing, let alone protect other human rights of the Cambodian people.

More recently, on 24 March 2008, prime minister Hun Sen went to a disputed land in the seaport town of Sihanoukville on the Gulf of Thailand to meet with the 125 families whose 16 hectares of land had been taken by a company named Thai Bun Rong. While squatting among those victims, he offered them his apologies for the police action to evict them that caused injury to some and led to the arrest of three. He blamed the police for allowing the company to build a fence around the land, which led to a protest by the victims. He then announced that he took the land from Thai Bun Rong and returned it to those families. He also ordered the three arrested persons to be released and brought before him immediately. He offered them his apologies and also compensation for their arrest.

The next day, March 25, in his address to a meeting organized by the Ministry of Land Management, Hun Sen ordered the governor of Banteay Meanchey province and his colleagues to resolve a dispute over a 20 hectare plot of land within a week, or they would be sacked.

He also criticized the NARLD for its ‘sluggishness’ in resolving land disputes and threatened to wind it up. He then noted that land grabbing had the ‘character of a hot issue’ when disputes had not been speedily resolved. He also noted that some plots of land had up to four different title deeds on each of them, and he warned the authorities to avoid the issuing of such multiple titles. He threatened to send NARLD officials to jail if found to be dishonest.

While Hun Sen’s direct intervention and show of earnestness in addressing the land grabbing issue can serve as a safety valve to release the pressure of public resentment and protests that has been building up over the years, it is ineffective in tackling the deeper issues surrounding land grabbing. Moreover, when made in the advance of the general election of July 2008, his approach has a largely electioneering character.

In fact, ordinary Cambodians are also beginning to make use of the elections as leverage to secure their land. Villagers of the Phnong indigenous minority in Mondolkiri province, frustrated by broken promises from the provincial authorities, finally said that if the authorities could not keep their promises, they would take their
complaint against the grabbing of their communal land by two development companies to Phnom Penh and would not go and cast their votes at the forthcoming election. On May 23, their land was returned.

Officials of the ruling Cambodian People’s Party (CPP) have also expressed concern over the possible negative impact of land grabbing on their party during the election. On May 25, a CPP commune councilor publicically voiced his worries that villagers would not vote for his party when they lost their paddy fields to the Army Tank Unit in Kompong Speu province and faced hardships afterwards. A land grabbing case in Kampot province meanwhile, compelled the CPP provincial task force to intervene on May 26 and request Hun Sen to rescind an order giving 72 hectares of land belonging to a community of 680 families to four persons.

A durable solution for Cambodia’s land crisis rests with the country’s rule of law institutions—the courts of law and the cadastral commissions. These two institutions have respectively constitutional and legal jurisdiction over land disputes. Accusing the courts of law of being corrupt, as Hun Sen has reportedly done, taking disputes from them to be adjudicated elsewhere, as he has preferred, or being angry with court rulings, as he has been, does not address the problem of corruption in courts. It only undermines their role and further erodes public confidence in them. It also compels victims of land grabbing to resort—as they have been doing—to petitioning Hun Sen to obtain justice for them and get their land back, which will create an overwhelming problem for him to address.

In fact, one group of villagers set off on a march on May 22 from Battambang province to Phnom Penh, over a distance of 291km, to request Hun Sen to help them get their land back. They said they had no confidence in the courts or the provincial authorities, but only in their prime minister, in adjudicating land disputes in their favor. At least three other groups of villagers from three other provinces arrived in Phnom Penh in the same month to file complaints against corporations and colluding authorities at Hun Sen’s residence, and to request him to order the return of their land.

National Authority for the Resolution of Land Disputes (NARLD)

Despite its name, the NARLD is not a specialized court of justice or administrative tribunal for land disputes. It was created in early 2006 by an executive order and was composed of political appointees from different relevant government ministries. According to a former member, Eng Chhay Eang, an opposition parliamentarian, the NARLD has no power; it is more like a coordinating body entrusted with the tasks of receiving complaints and conducting investigations with the cooperation of relevant authorities. It generally entrusts the settling of disputes to these authorities.

The creation of the NARLD has undermined the jurisdictions of the cadastral commissions created under the 2001 land law for resolving disputes over unregistered land, and the courts of law for disputes over registered land. However, Hun Sen has preferred, as he put it when meeting with those 125 families in Sihanoukville on
March 24, resolution of land disputes ‘outside the justice system’. In his address to the meeting of the Ministry of Land Management the next day, Hun Sen was reported to be “accusing courts of law of being corrupt.”

**Court system**

Hun Sen’s anger with court rulings and his arbitrary overturning of these rulings in various land grabbing cases serves to reinforce that the Cambodian court system is under executive control. Most judges are affiliated to the ruling CPP party. In late May 2007, Heng Samrin, the honorary CPP president and president of the National Assembly, was reported as saying that “nobody, including judges, are without party affiliations”, thereby making it “hard to find independent [judges]”. Senior CCP members include powerful and rich individuals involved in land grabbing; this will inevitably affect the impartiality of judges. Corruption is also rife amongst the judiciary; for some judges corruption begins when they take their magistracy entrance exams. Furthermore, nearly all nine members of the Supreme Council of the Magistracy—responsible for the nomination and discipline of judges—belong to the ruling party and are known to be corrupt.

According to the Special Representative of the Secretary-General for human rights in Cambodia,

The subordination of the prosecutors and courts to the will of the Government has resulted in much injustice in land transactions and appropriations (for details, see the 2006 report of the Special Rapporteur on adequate housing, Miloon Kothari). Forcible and illegal evictions continue unabated. The Special Rapporteur noted that, prior to or during forced evictions, threats, intimidations, and physical violence are used by local authorities and private developers, sometimes in the presence of military and police forces.

Victims are rarely able to invoke remedies, including compensation, provided in the law. Mr. Kothari noted the courts’ reluctance to assist in enforcing the law. According to testimonies he received, the investigative procedures adopted by courts to ensure the legitimacy and legality of ownership titles are insufficient. Court decisions allegedly favour those who have acquired titles illicitly, to the detriment of families who should benefit from the 2001 Land Law provisions concerning ownership rights resulting from extended land possession and occupation. Indigenous peoples have suffered greatly, as shown above, even as Cambodia voted for the recent United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly on 13 September 2007 [Report of the Special Representative of the Secretary-General for human rights in Cambodia, 29 February 2008, A/HRC/7/42].

It is high time the Cambodian government brought all land grabbing cases back to the justice system and the cadastral commissions, depending on the status of land involved, to be resolved according to the due process of law. It should enact the long overdue anti-corruption law and urge the Supreme Council of the Magistracy, the supreme judicial body responsible for the nomination and discipline of judges, to stamp out corruption in courts
Forced evictions and the right to land in Cambodia

and win public confidence in them. It should also provide both the courts of law and the cadastral commissions with adequate resources to do their work, and respect their rulings. If the government or anybody else is not happy with any ruling, it should appeal it at a higher court.

Questions For Discussion

1. Discuss the role of the courts in safeguarding land and other human rights. What is the situation of the judiciary in your country?
2. Discuss the relationship between a country’s courts and its rule of law situation. How is this related to land grabbing in Cambodia?