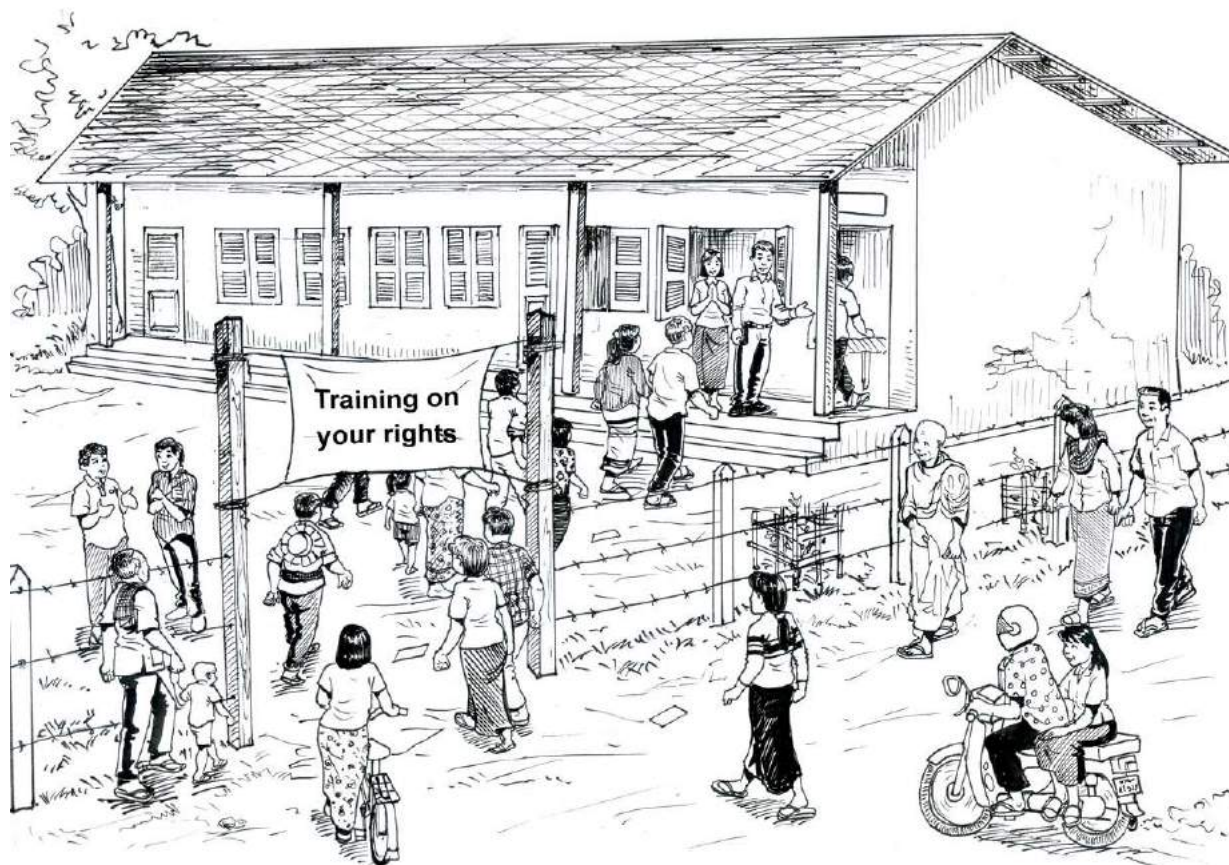


# A CAMBODIAN GUIDE TO DEFENDING LAND AND HOUSING RIGHTS

Volume I

*Rights, Laws and Strategies for Cambodian Communities  
Facing Forced Displacement*



## Part II Your Rights Under Cambodian Law

Facilitators' Edition



INTERNATIONAL  
ACCOUNTABILITYPROJECT

CENTRE ON  
HOUSING RIGHTS  
AND EVICTIONS



Copyright © 2009 by Bridges Across Borders Southeast Asia, Centre on Housing Rights and Evictions, International Accountability Project. All rights reserved.

*A Cambodian Guide to Defending Land and Housing Rights*  
*Part II: Your Rights Under Cambodian Law – Facilitators' Manual*

First edition: October 2009

ISBN: 978-92-95004-70-2

We encourage others to copy, reproduce or adapt to meet local needs any or all parts of this book, provided that the parts reproduced are attributed to the original publication and are distributed not-for-profit. Any organization or person who wishes to copy, reproduce, or adapt any or all parts of this book for commercial purposes must obtain permission from the publishers.

Before beginning any translation or adaptation of this book or its contents, please contact the publishers for suggestions, for updates on the information it contains, and to avoid duplication of efforts. Please send the publishers a copy of any materials in which text from this book has been used.

Bridges Across Borders Southeast Asia  
#144-H Street 143  
Boeung Keng Kang III, Khan Chamcarmon  
Phnom Penh, Cambodia  
Email: [office@babsea.org](mailto:office@babsea.org)  
Web: [www.babsea.org](http://www.babsea.org)

Centre on Housing Rights and Evictions  
83 rue de Montbrillant  
1202 Geneva, Switzerland  
Email: [cohre@cohre.org](mailto:cohre@cohre.org)  
Web: [www.cohre.org](http://www.cohre.org)

International Accountability Project  
221 Pine Street, 5<sup>th</sup> Floor  
San Francisco, CA 94104, USA  
Email: [iap@accountabilityproject.org](mailto:iap@accountabilityproject.org)  
Web: [www.accountabilityproject.org](http://www.accountabilityproject.org)

Financial support provided by:



THE MCKNIGHT FOUNDATION



## FOREWORD

Forced evictions and displacement of people and communities are on the rise around the world. Many contemporary cases of forced evictions constitute a gross violation of human rights and indicate a systematic disregard of recognized human rights standards on the part of States. Forced evictions and displacement occur in countries worldwide, including both democratic and authoritarian states. Many are so-called development-based evictions, which include evictions often planned or conducted with the justification or under the pretext of serving the “public good.” These evictions may be linked to slum-clearance, large-scale infrastructure or other development projects, and land-acquisition measures associated with urban renewal, city beautification, large-scale acquisition of forest and agricultural land for food and bio-fuels production or other land-use programmes. Evictions are also on the rise due to the reluctance of States to control speculation in housing and property.



Above all, the impact on those affected can often be characterized as a human tragedy. In the wake of forced evictions, people are often left homeless and destitute, without means to earn a livelihood and, in practice, with no effective access to legal or other remedies. As a general rule, forced evictions affect the poorest, the socially and economically most vulnerable and marginalized sectors of society. Wherever forced evictions take place, discrimination seems to play a critical role. Minorities, including indigenous people, are often more likely to be evicted. Forced evictions intensify inequality and social conflict, contributing to segregation and the creation of “apartheid cities and villages.”

Most of these “development-based” evictions have one or several common features that contravene recognized human rights standards. Lack of prior notice, inadequate or no consultation, absence of information-sharing, no possibility of participation in the decision-making process for those affected, lack of housing alternatives and the use of excessive force to carry out evictions are disturbing trends.

Women suffer particularly as a result of forced evictions and as a consequence not just from loss of home, but also livelihoods, relationships and support systems they were used to, breakdown of kinship ties, physical and psychological trauma and even increased morbidity and mortality. Of serious consequence is also the fact that evictions increase the vulnerability of women to further acts of violence.

Faced with such a disturbing scenario it is clear that interventions at all levels are necessary to create a world where displacement is minimized. These interventions need to adopt an uncompromising human rights approach that insists on the implementation of internationally recognized human rights such as the right to adequate housing, food, health and water. Alongside the protection of these human rights we also need to insist

on the protection of people's rights to security of the home and person, to participation, freedom of expression and freedom from inhuman and degrading treatment.

This guide forms one such invaluable tool to counter forced evictions. This resource is a first of its kind in that the curriculum has been designed especially for and with grassroots community organizers and activists – for them to share with communities at risk of eviction.

This resource is an important step in taking the human rights that we struggle for at the international level and bringing these rights and information to the communities who need it most. The Guide is a valuable tool of human rights education and learning. When communities confronted with evictions understand their human rights, they can devise ways themselves to challenge the violation of their rights. The Guide creates – in a step by step manner – the space that is necessary for the empowering process that can lead to communities claiming their rights.

In the global struggle underway against forced evictions, I welcome this Guide and hope that it will be used widely across Cambodia. I also welcome the Guide as a reaffirmation of the powerful role that human rights like the right to adequate housing can play in restoring dignity to those whose lives and homes are threatened by the insecurity generated by impending evictions. If the struggle against evictions is realized through the strategies created by people themselves, as the Guide so eloquently strives for, then that is the best affirmation of the potential of the dignity of the individual and the collective identity of a community. The progress made by the adoption of this Guide at local levels will be watched closely across the world. I hope that such efforts can be taken up by the thousands of communities facing the threat of evictions across the world.

Miloon Kothari

Special Rapportuer to the United Nations on the Right to Adequate Housing, 2000-2008

New Delhi, 31 September 2009

## ACKNOWLEDGEMENTS

The *Cambodian Guide to Defending Land and Housing Rights* is the result of collaboration between Bridges Across Borders Southeast Asia (BABSEA), Centre on Housing Rights and Evictions (COHRE), and the International Accountability Project (IAP).

The project has received financial support towards production costs from the partners listed above as well as generous support from American Jewish World Service (AJWS), Blue Moon Fund, British Embassy in Cambodia, McKnight Foundation, Norwegian People's Aid (NPA), Oxfam Australia, and the United Nations Office of the High Commissioner for Human Rights (UNOHCHR). To each of our funding partners, we are deeply thankful for their belief in the *Guide* initiative from the start, and for enabling it to become a reality.

### GENERAL EDITORS

Natalie Bugalski, Legal Officer, COHRE

Mark Grimsditch, Legal Adviser, BABSEA

Joanna Levitt, Co-Director, IAP

David Pred, Director, BABSEA

Sao Sotheary, CELA Program Manager, BABSEA

The publication was authored by staff and consultants of BABSEA, COHRE, and IAP.

### AUTHORS

Natalie Bugalski

Michael Burstein

Mark Grimsditch

Ji-Sook Lee

Joanna Levitt

David Pred

### FIELD-TESTING AND REVIEW TEAM

Bun Makara

Mark Grimsditch

Alice Normand

Sor Nyphana

Sao Sotheary

Sok Sotheara

Eang Vuthy

Illustrations for this publication were provided by Our Books

#### **ART COORDINATION TEAM**

John Weeks, Managing Editor  
Sim Sisavuthara, Senior Coordinator

#### **ART TEAM**

Moeu Diyadaravuth  
Tek Tevinn  
Srey Ratanak  
Chan Ny  
Sin Yang Pirom  
Phal Phourisith  
Sao Channa (graphic assistance)

#### **COVER DESIGN:**

Opus Cambodia, with contributions by Mathieu Pellerin.

We would also like to acknowledge the following individuals, who contributed, reviewed and provided important guidance and suggestions on the overall approach, content, activities and methodology of the guide: Jessica Bernhart, Katherine Bodde, Chan Vichet, Aviva Imhof, Daniel King, Miloon Kothari, Koun Linna, Bruce Lasky, Xinlin Li, Dan Nicholson, Alice Normand, Nov Piseth, Michael Otto, Tracy Perkins, Rod Sanjabi, Seng Vitou, Tim Shaw, Sek Sokha, Sek Sophorn and Som Sothanin. We would also like to thank participants from the initial Training of Trainers conducted in 2008 for their constructive feedback and support.

Finally, this guide could not have been written without the thoughtful feedback from dozens of Cambodian land rights activists and community network leaders who helped develop and improve the guide at every step of the way. Our special thanks go out to BABSEA's CELA team, which has organized field-testing and feedback sessions for the last two years to ensure that community experiences, recommendations and ideas were incorporated into the guide's pages.

# CONTENTS

<b>FOREWORD .....</b>	<b>I</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>III</b>
<b>INTRODUCTION .....</b>	<b>VII</b>
<b>CLASSIFICATION OF LAND .....</b>	<b>1</b>
1. THE DIFFERENT CLASSIFICATIONS OF LAND IN CAMBODIA .....	1
2. STATE PUBLIC PROPERTY .....	2
3. PRIVATE PROPERTY .....	8
4. COLLECTIVE PROPERTY .....	8
5. STATE PRIVATE PROPERTY .....	10
DIFFICULT TERMS .....	16
HANDOUT 1 – LESSON 2 .....	17
HANDOUT 2 – LESSON 2 .....	21
HANDOUT 3 – LESSON 2 .....	22
<b>LANDOWNER RIGHTS .....</b>	<b>25</b>
1. WHAT RIGHTS DO LANDOWNERS HAVE? .....	25
DIFFICULT TERMS .....	31
<b>POSSESSION RIGHTS .....</b>	<b>33</b>
1. WHAT IS POSSESSION? .....	33
2. POSSESSION MUST HAVE STARTED BEFORE THE LAND LAW WAS PASSED IN AUGUST 2001 .....	36
3. FIVE CONDITIONS OF LEGAL POSSESSION .....	42
4. SOME TYPES OF LAND CANNOT BE LEGALLY POSSESSED .....	49
5. POSSESSION AND THE RIGHT TO ADEQUATE HOUSING .....	50
DIFFICULT TERMS .....	60
HANDOUT 1 – LESSON 1 .....	62
HANDOUT 2 – LESSON 3 .....	64
HANDOUT 3 – LESSON 3 .....	65
<b>INDIGENOUS COMMUNITY LAND RIGHTS .....</b>	<b>67</b>
1. WHAT IS THE VALUE OF YOUR LAND? .....	67
2. INDIGENOUS COMMUNITY LAND RIGHTS ARE PROTECTED BY THE LAND LAW .....	72
3. INDIGENOUS COMMUNITY LAND RIGHTS .....	80
4. WHAT IS THE IMPACT OF SELLING COMMUNITY LAND? .....	85
5. INDIGENOUS SOLIDARITY AND THE INTERNATIONAL INDIGENOUS MOVEMENT .....	93
DIFFICULT TERMS .....	99
HANDOUT 1 – LESSON 1 .....	100
<b>EVICCTIONS AND COMPENSATION UNDER CAMBODIAN LAW .....</b>	<b>101</b>
1. WHAT IS COMPENSATION? .....	101
2. WHEN ARE YOU OWED COMPENSATION? .....	106
3. HOW MUCH COMPENSATION SHOULD YOU GET? .....	127
DIFFICULT TERMS .....	133
HANDOUT 1 – LESSON 2 .....	134
HANDOUT 2 – LESSON 3 .....	135
HANDOUT 3 – LESSON 3 .....	137

HANDOUT 4 - LESSON 3 .....	139
HANDOUT 5 – LESSON 4 .....	140
<b>CONTRACTS FOR LAND SALE.....</b>	<b>141</b>
1. WHAT IS A CONTRACT? .....	141
2. WHAT MAKES A CONTRACT INVALID? .....	143
3. WHAT HAPPENS IF A CONTRACT IS INVALID? .....	148
DIFFICULT TERMS.....	156
HANDOUT 1 – LESSON 1 .....	157
HANDOUT 2 – LESSON 1.....	158
HANDOUT 3 – LESSON 1 .....	159
<b>GLOSSARY .....</b>	<b>161</b>

## INTRODUCTION

Around the world, millions of people have been displaced from their homes, farms and forests to make way for development projects such as dams, plantations, mines and new buildings. Sometimes the projects are for the benefit of the country, but often the main benefits go to the powerful individuals and companies that take the land. Frequently, the people living on and using the land are not given an opportunity to participate in the decisions about whether the development takes place and how they will be affected.

Instead, intimidation and violence are often used to force people from their homes and land. People may be left homeless or landless and without access to livelihoods, education and healthcare. When forced displacement occurs, the rights of affected people are not respected.

People around the world are joining together to resist the injustices of forced displacement. We are a part of this growing movement of people and organizations that are working to defend the rights of those facing forced displacement. We are working to make governments and companies listen to the voices of the people. We believe that everyone should benefit from and make decisions about development, and that development should not make people worse off or destroy their way of life.

The *Cambodian Guide to Defending Land and Housing Rights* is designed to be a useful resource for people who are facing displacement as a result of development. It can help people learn about the risks and dangers of displacement, as well as their rights, and the strategies that they can use to protect those rights. It contains information on many different topics related to forced displacement. It also includes activities that help people understand the information, take part in discussions, and learn important skills, even if they cannot read or write. This way, everyone can participate in planning what actions they will take to defend their rights and those of their neighbors.

We hope that the information, strategies and stories in this Guide will help you and your community in your struggle. We have written this Guide with a spirit of solidarity and hope. We believe that communities and peoples' movements are a powerful force for making change in our world. We sincerely hope this Guide will help strengthen a truly global movement to stop the injustice of forced displacement, and to defend your communities, lands and ways of life.



## OUTCOMES

After completion of this module, Participants will:

1. Know and be able to identify the different classifications of land in Cambodia.
2. Understand why it is important to know the different classifications of land.

## 1. THE DIFFERENT CLASSIFICATIONS OF LAND IN CAMBODIA

During the Democratic Kampuchea regime, the Khmer Rouge abolished ownership of land and destroyed all existing official records. At this time, all the land belonged to the State and there were no private owners. After the Khmer Rouge fell, and for the next ten years, the right to own land was still not recognized and all land was owned by the State. This began to change towards the end of the 1980s, and in 1992, a Land Law was passed which recognized that all Cambodians have the right to own and transfer land.

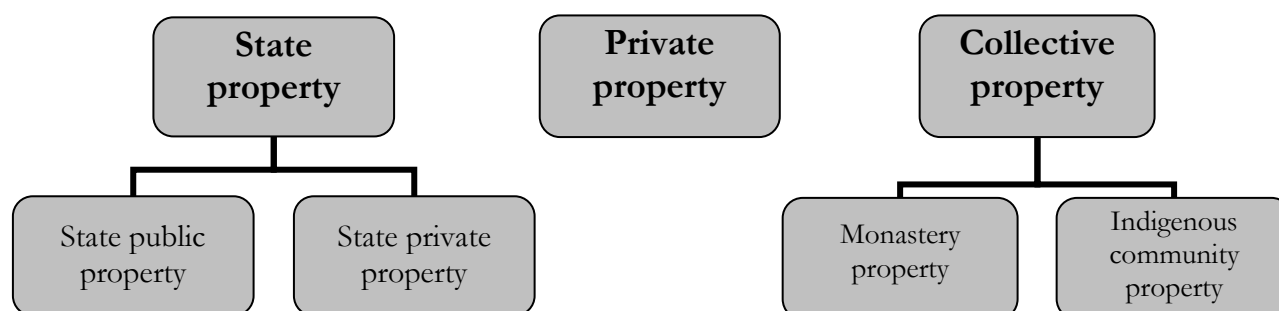
A new Land Law was passed in 2001. Under this law, land in Cambodia is divided into three main **classifications**:

- State property
- Private property
- Collective property



State property is divided into State public and State private property.

Collective property is divided into monastery and indigenous community property.



The Land Law uses the term **immovable property** when talking about land. Immovable property is any property that cannot be moved, including land. Anything that is so attached to the land that it cannot be removed without being destroyed is also considered immovable property. For example, a house or a large tree cannot be removed without being destroyed, so both are examples of immovable property. In this section, we will refer to “immovable property” simply as “property.”

### WHY IS IT IMPORTANT TO KNOW THE DIFFERENT LAND CLASSIFICATIONS?

It is very important to understand the different classifications of land because the classification of a piece of land will determine who can own the land and what purposes the land may be used for. For example, some types of land cannot be owned by private individuals and can only be owned by the State.

Unfortunately, it is often difficult to find out the classification of a piece of land. The government has the responsibility to draw up maps of the whole country and classify the different types of land,<sup>1</sup> this has still not been done in most places. It is also very difficult to access information about those areas that have been classified.

## 2. STATE PUBLIC PROPERTY

**State public property** is property that belongs to the State but is available for the public to use, or property that provides a service to the public.<sup>2</sup> The following table describes the types of property which are State public:

Type of property	Examples
Property of natural origin	Forests, riverbanks, seashores, lakes
Property created for general or public use, or to provide a public service	Roads, public gardens, public parks, railways, airports, public schools, public hospitals, administrative buildings
Archeological, cultural, historical estates	Angkor Wat, historical sites

<sup>1</sup> Sub-decree #118 on State Land Management 2005.

<sup>2</sup> Land Law 2001, Article 15.



*State public property – a riverbank*

State public property is for public use or benefit and the only possible owner is the State. This means that it cannot be bought or sold by people or companies.<sup>3</sup> State public property can be leased, but the lease cannot be longer than 15 years, and the person leasing the land cannot do anything that damages the land or changes the public function of that land.<sup>4</sup>



*State public property – A public high school*

<sup>3</sup> Land Law 2001, Article 16.

<sup>4</sup> Sub-decree on Rules and Procedures on Reclassifications of State Public Properties and Public Entities 2006, Article 16 & Article 18.

If a piece of State public property is no longer used for the public interest, it can become State *private* property (this type of land will be explained later). For example, if a public hospital is moved to a new building and the old building is left empty, it can become State private property. This is because the building is no longer providing a service to the public.<sup>5</sup>

### LAKES, RIVERS, ROADSIDES AND RAILWAYS

The definition and examples used in the Land Law to explain State public property are not totally clear. For example, roadsides are State public property, but the law does not define clearly what a “roadside” is or how wide a roadside should be. The same problem exists for river banks and the sides of railways.

It is clear however that, although the body of a lake is State public property, *the banks of a lake are not included in the list of State public property written in Article 15 of the Land Law.*



*State public property – A Forest*

---

<sup>5</sup> Land Law 2001, Article 16.

## LESSON 1: STATE PUBLIC PROPERTY

**AIM:** Participants will discuss the concept of classification of land and look in more detail at what kind of land can be State public property. They will understand that the classification of land has an impact on whether it can be owned, and what it can be used for.



**MATERIALS:** Whiteboard or flipchart, markers.

**METHOD(S) USED:** Small group discussions, drawing, group discussion.

Procedure	Time Frame (in minutes)
1. Introduce the information in Sections 1 & 2	25
2. Explain the exercise and divide Participants into groups of four	5
3. Small group discussions and drawings	15
4. Debrief	25
<b>Total:</b>	<b>70</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTIONS 1 AND 2:

**Sections 1 and 2** - It is important that Participants understand:

- That there are three main classifications of land in Cambodia.
- Why it is important to know the different classifications of land.
- What the definition of State public property is.
- That State public property cannot be privately owned and it cannot be sold.

- It may be useful to the Participants if you draw the classification diagram from Section 1 on the board or flipchart.
- Make clear at this stage that we will only be discussing State public property in this exercise. The other classifications will be discussed next.

### 2. EXPLAIN THE EXERCISE AND DIVIDE PARTICIPANTS INTO GROUPS OF FOUR:

- First explain that the Participants will work in groups of four and think about what kinds of land can be classified as State public property. For each example they should draw a picture on a piece of flipchart paper.
- Tell them to think back to the definition given during the lesson:

---

*“State public property is property that belongs to the State but is available for the public to use, or property that provides a service to the public.”*

---

### 3. SMALL GROUP DISCUSSIONS AND DRAWINGS:

- Give each group a large piece of paper and colored markers. Tell the groups that they have 15 minutes to think of and draw as many examples of State public property as possible.

#### **Suggested Answers:**

State public property is:

- Property of natural origin: for example forests, riverbanks, seashores, and lakes.

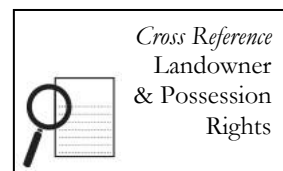
- Property created for general or public use, or to provide a public service: for example roads, public gardens, public parks, railways, airports, public schools, administrative buildings, and public hospitals.
- Archeological, cultural, historical estates: for example Angkor Wat and other historical sites.

#### 4. DEBRIEF:

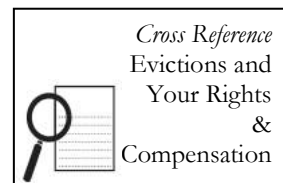
- Bring the groups back together and ask each group to present their examples. If any of the answers are incorrect, you should correct them.
- If you can think of any examples that the groups missed, you can add them at the end.

### 3. PRIVATE PROPERTY

**Private property** is property which is owned or possessed by a private individual or company.<sup>6</sup> Private owners and possessors can enter, stay, use, transfer or exclude people from their land as they wish, as long as they do not break any laws.<sup>7</sup>



It is sometimes possible for private property to become State property. For example, the State may take people's private property if it is in the public interest and there are no other possible alternatives to taking the private land. When the State does take land in the public interest, the State must follow the law, and the owners must be given fair compensation before the State takes the land.<sup>8</sup> The government must also ensure that anyone who is evicted has access to alternative adequate housing and land.<sup>9</sup>



#### POSSESSED LAND

Some private land is legally possessed but the owners do not have title. This land is still private property. Legal possession of land is not as strong as ownership, but it gives the possessor rights to live on the land, transfer the land to others and stop people from entering.

Legal possessors have the right to transfer their possession into legal ownership and receive title. There are several rules that must be followed for possession to be legal. These are discussed in the section on possession rights.

### 4. COLLECTIVE PROPERTY

**Collective property** is owned by a community, not just one person.<sup>10</sup> There are two types of collective property: monastery and indigenous community.

#### 4.1. MONASTERY PROPERTY

**Monastery property** is property within the lands of Buddhist monasteries. It cannot be sold or privately owned or possessed by anyone outside the pagoda. The management of monastery property is the responsibility of the pagoda committee.<sup>11</sup>

<sup>6</sup> Land Law 2001, Article 10.

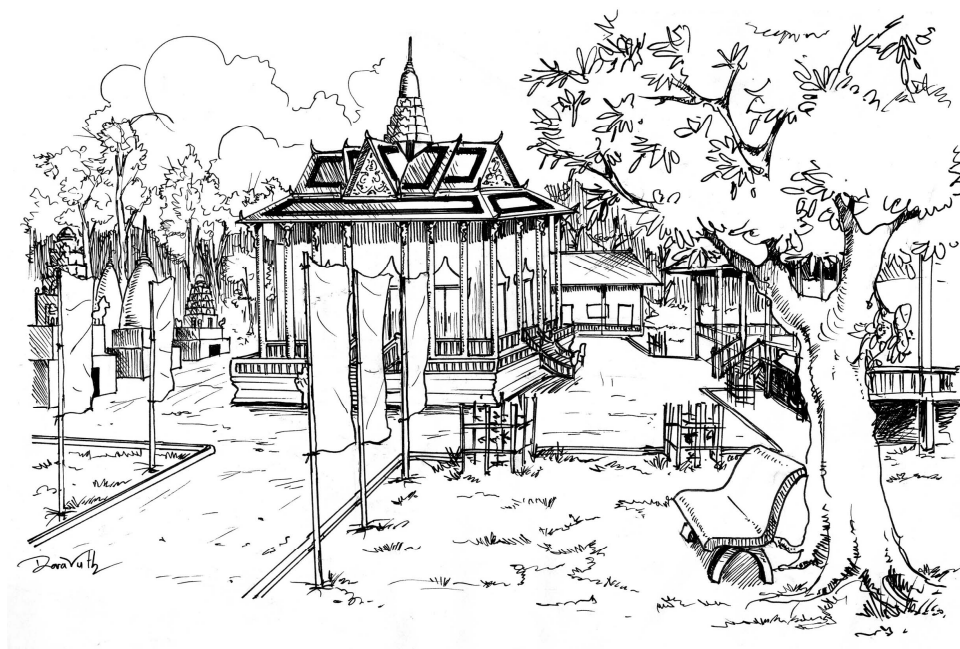
<sup>7</sup> Land Law 2001, Article 85.

<sup>8</sup> The Constitution of the Kingdom of Cambodia 1993, Article 44; and Land Law 2001, Article 5.

<sup>9</sup> Committee on Economic, Social and Cultural Rights, 1997, General Comment 7, paragraph 16.

<sup>10</sup> Land Law 2001, Article 10.

<sup>11</sup> Land Law 2001, Article 21.



*Monastery property*

#### 4.1. INDIGENOUS COMMUNITY PROPERTY

The Land Law 2001 says that an **indigenous community** is a group of people who live in Cambodia, whose members are “ethnically, socially, culturally and economically tied together, and who practice a traditional lifestyle.”<sup>12</sup> **Indigenous community property** is property where indigenous communities have made their homes and where they use traditional methods to farm.<sup>13</sup>



*Indigenous community property*

<sup>12</sup> Land Law 2001, Article 23.

<sup>13</sup> Land Law 2001, Article 25.

## INDIGENOUS PEOPLE AND CLASSIFICATION

In the future, indigenous communities will be able to collectively own their land through **collective title**.<sup>14</sup> A collective title is a public document given by the State that recognizes an indigenous community's rights over the land described in the title. Because there is no system for granting a collective title yet, currently no indigenous community officially "owns" their land.

Sometimes, the government says that the lands of indigenous people belong to the State because they are not registered. However, until collective titles are available, Article 23 of the Land Law protects indigenous communities' right to manage and use their land according to their traditional customs. Lands where indigenous communities have made their homes and where they use traditional methods to farm or raise their animals are eligible for collective title.

## 5. STATE PRIVATE PROPERTY

**State private property** is any property belonging to the State that *is not State public property*.<sup>15</sup> Although this land is the property of the State, it is not made available for the public to use and does not offer a public service. *Any property which is not State public, private or collective is State private property.*



State private property can be sold by the State, but this must follow the procedure set out in the law.

---

<sup>14</sup> Land Law 2001, Article 26.

<sup>15</sup> Land Law 2001, Article 14.

## LESSON 2: THE FIVE CLASSIFICATIONS OF LAND

**AIM:** Participants will be able to identify the different classifications of land and understand why they are important. After completing this chapter, they will be able to recognize what type of land they live on.



**MATERIALS:** Whiteboard or flipchart, markers, copies of Handouts 1, 2 & 3.

**METHOD(S) USED:** Quiz, group work, large group discussion

Procedure	Time Frame (in minutes)
1. Introduce the information in Sections 3, 4 & 5	20
2. Explain the exercise and divide the Participants into groups	5
3. Small group work	10
4. Large group discussion	15
5. Debrief	10
<b>Total:</b>	<b>60</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTIONS 3, 4 & 5:

**Sections 3, 4 & 5** - It is important that Participants understand:

- The definitions of the other classifications of land in Cambodia: private, monastery, indigenous community and State private.
- Why it is important to know the different classifications of land.
- The difference between State *public* and State *private* land.

- You may use the pictures of the different types of land as examples, see Handout 1.
- Make sure to explain the classifications clearly and use the chart from the previous exercise to explain each new classification.

### 2. DIVIDE THE PARTICIPANTS INTO GROUPS:

- Divide the Participants into groups of four or five.
- Give Participants Handout 2 and explain that the groups should decide how each example of property should be classified.
- Participant must decide how these places should be classified:
  1. The local public high school
  2. The monks' classroom located inside the grounds of the local pagoda
  3. The local main road
  4. The public hospital
  5. An empty field between two villages that nobody uses and nobody privately owns or possesses
  6. Forest
  7. A small village in the hills where an indigenous community has lived for many years
  8. A house and land in town bought by a newly married couple using a legal contract. The couple recently received a title to their land.

9. Angkor Wat

10. A house where a family lives, built ten meters from a lake. The land is not registered to anyone, but the family has lived there since 1985.

### 3. SMALL GROUP WORK:

- Participants should decide how each example of property should be classified and give reasons for their answer.
- If Participants cannot read, the Facilitator should read out the types of property from the handout.

### 4. LARGE GROUP DISCUSSION:

- Write the five classifications of land on the board/chart:

State public	State private	Private	Indigenous community	Monastery

- Instead of asking each group to present all their answers, ask one volunteer Participant to come to the front of the class and write the first example under the correct classification. Invite a new Participant to write the answer for each example.
- After each example, ask the Participant for their reasons and ask the others if they agree or not. You should confirm what the correct answer is.

### Suggested Answers:

1. State public property – the local public high school is used to provide a public service.

2. Monastery property – the school is inside the grounds of the pagoda and it is not open to the public, only monks.
3. State public property – the road is used to provide a public service.
4. State public property – the public hospital is used to provide a public service.
5. State private property – the empty field is a piece of property belonging to the State but it has no public use.
6. State public property – the forest is property of natural origin.
7. Indigenous community property – it has been occupied by an indigenous community for a long time. (Technically this may still be State land because it is still not possible for indigenous people to register their land. However, Article 23 of the Land Law gives indigenous communities the right to continue to live on and manage the land until they can register).
8. Private property – as long as the couple bought the land using a legal contract and followed the other necessary legal requirements, the house is their private property.
9. State public property – Angkor Wat is an archeological, cultural, and historical estate.
10. Private property – the land is not State public (lakes are, but the areas around them are not). The land is not registered, but the family has lived there since 1985, and may therefore be legal possessors. If they are legal possessor, the land is private property. This will be discussed in the possession rights module.

## 5. DEBRIEF:

- To debrief the lesson, play a short odd-one-out game. Show the Participants Handout 3. Ask them which of the pictures does not belong in the group.

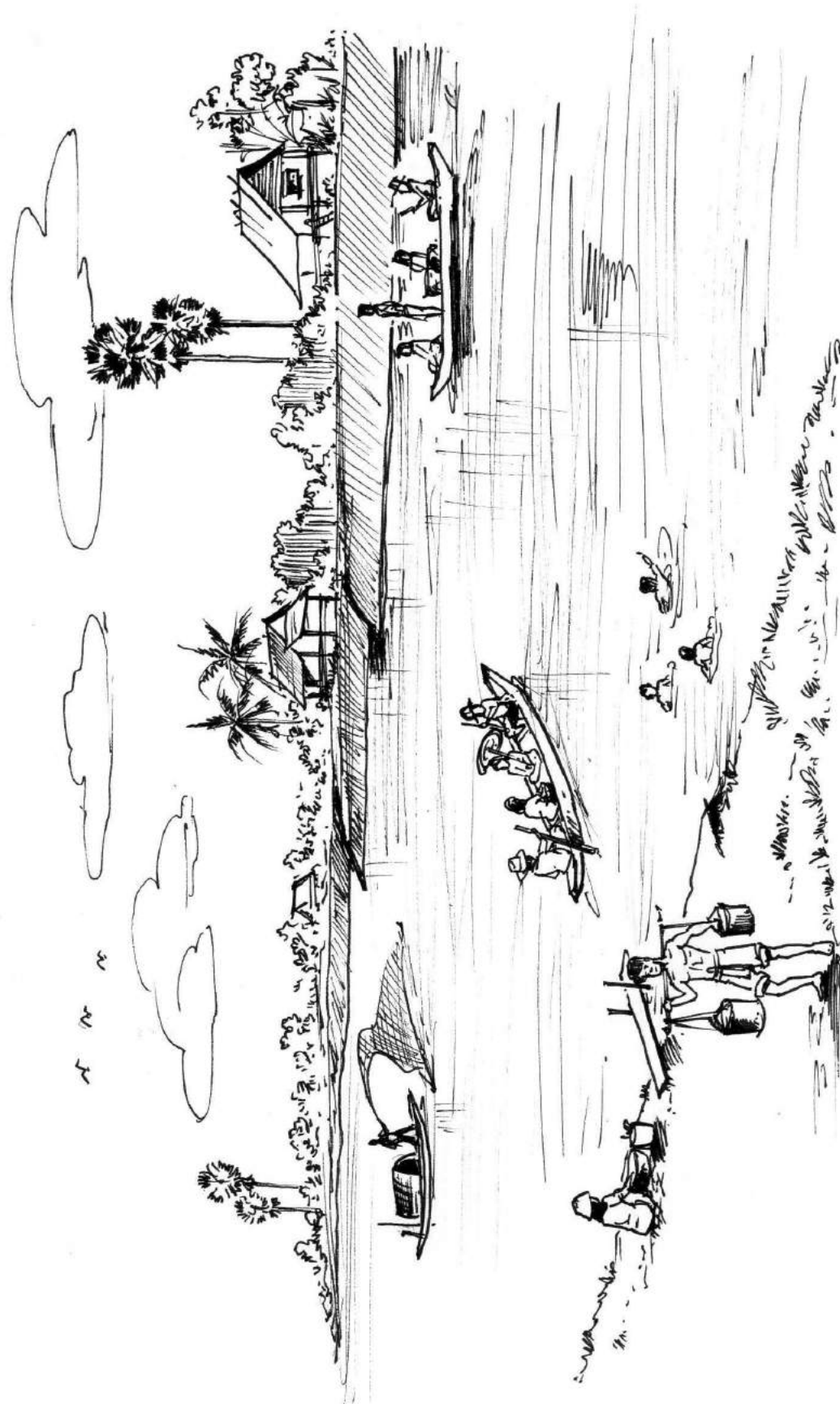
Suggested Answer: The answer is picture 3, the river. The river is State public property. The other three pictures are all private property if they legally owned or possessed, or if not they are all State private property.

- Make up some more examples if there is time and call them out to the class, for example:
  - A forest
  - A house on a riverbank
  - A road
  - A house 20 meters from a lake

Suggested Answer: The house near the lake does not belong in this group, as the other three are all State public property. The bank of a lake is either private property if it is owned or possessed, and if not, it is State private.

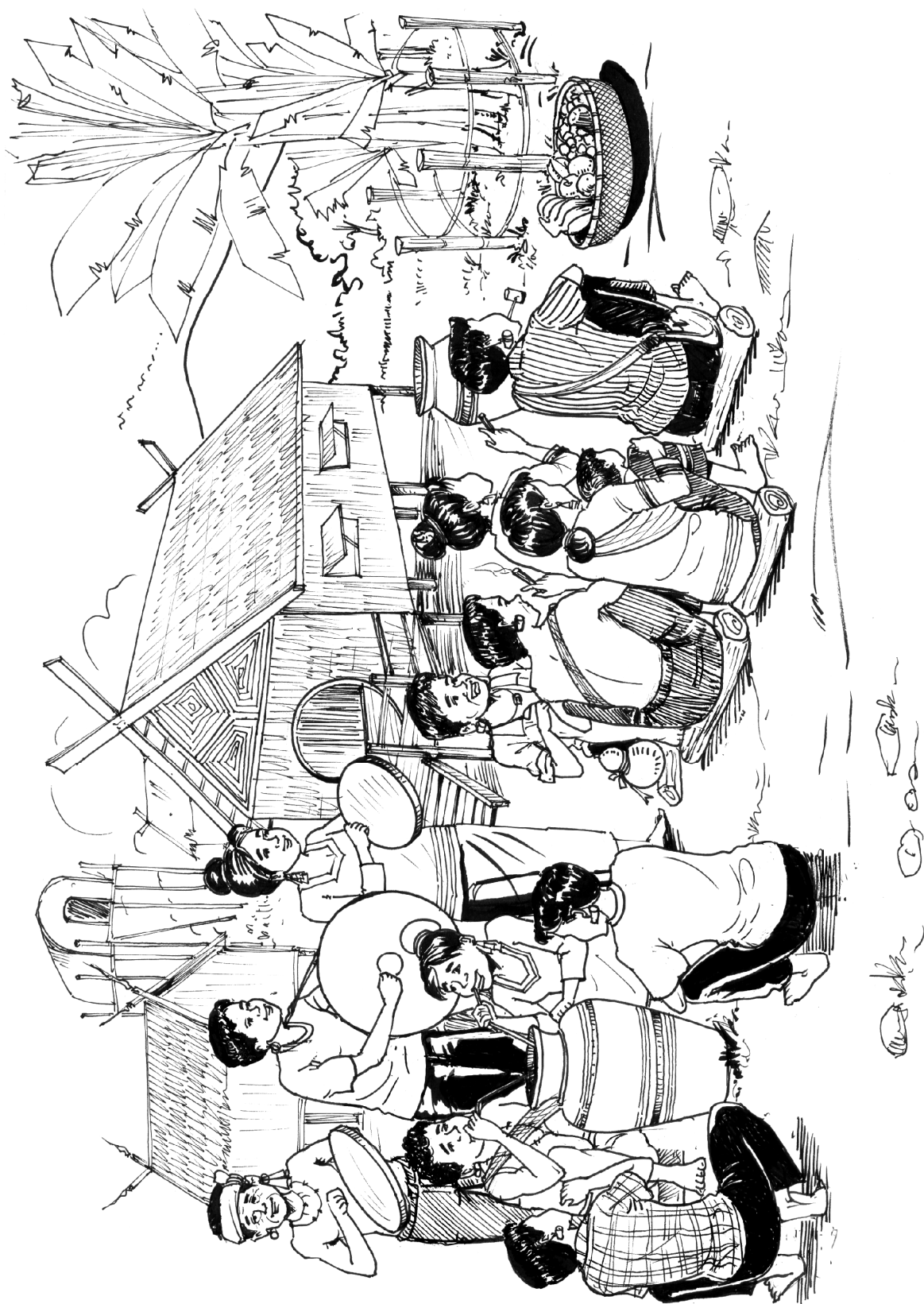
## DIFFICULT TERMS:

1. **Classification (of land):** In Cambodia all land belongs to one of these groups: private property, State public property, State private property, indigenous community property, and monastery property. Each one of these is a separate type or classification of land. The classification of a piece of land will determine who can own it and what purposes it may be used for.
2. **Collective property:** If land is collectively owned, it belongs to a group of people instead of one person. For example, indigenous community property belongs to all the members of the indigenous community living there.
3. **Collective title:** A public document given by the State that declares an indigenous community has legal ownership over the land described in that title.
4. **Immovable property:** Property which cannot be moved. For example, land and anything that is attached to the land and cannot be moved without destroying it, for example a house or large tree.
5. **Indigenous community:** A group of people in Cambodia who share ethnic, social, cultural and economic unity. They practice a traditional lifestyle and have distinct customs and practices.
6. **Indigenous community property:** Land on which an indigenous community lives or carries out traditional agriculture.
7. **Monastery property:** Land and buildings within the grounds of Buddhist pagodas.
8. **Private property:** Property that is owned or legally possessed by a private individual or company.
9. **State public property:** Property that belongs to the State but is available for the public to use or provides a service to the public. This may be property of natural origin (e.g. lakes and forests), property for public use or service (e.g. railways, roads and public parks), and archeological and historical sites.
10. **State private property:** Property that belongs to the State but is not State public property, because it is not available for the public to use or does not provide a service to the public. If State public property loses its public interest use, it can be changed to State private property.





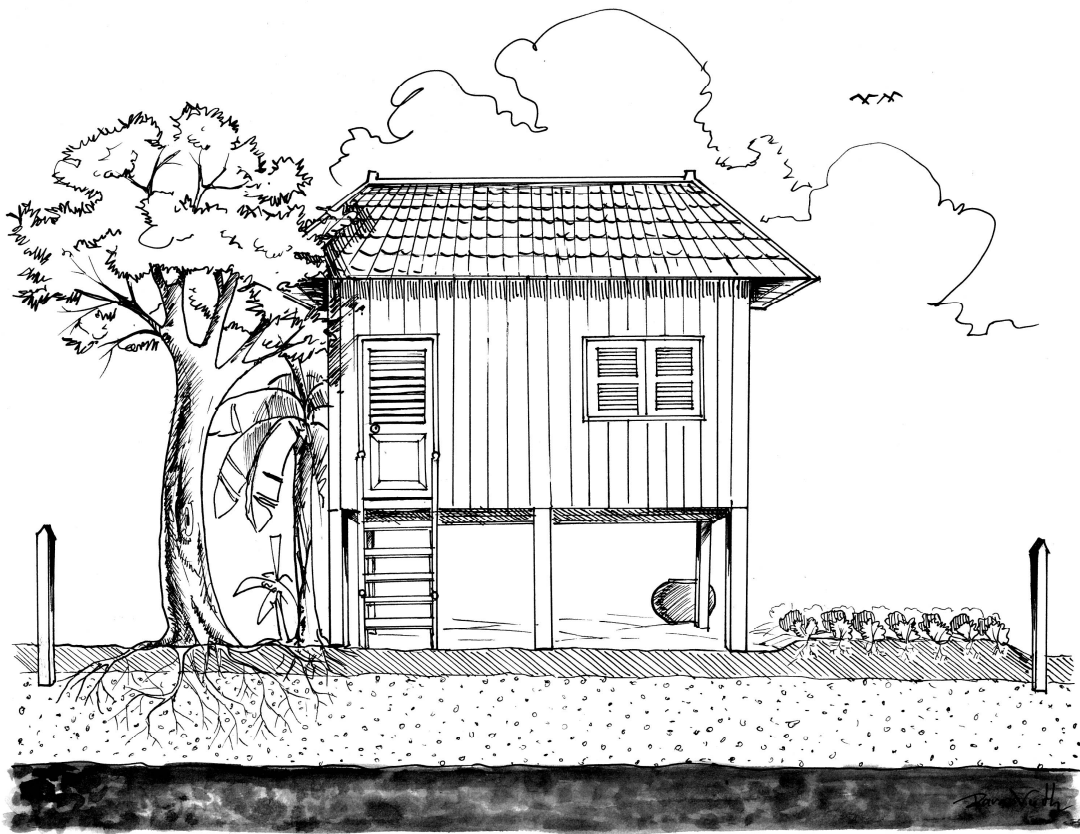


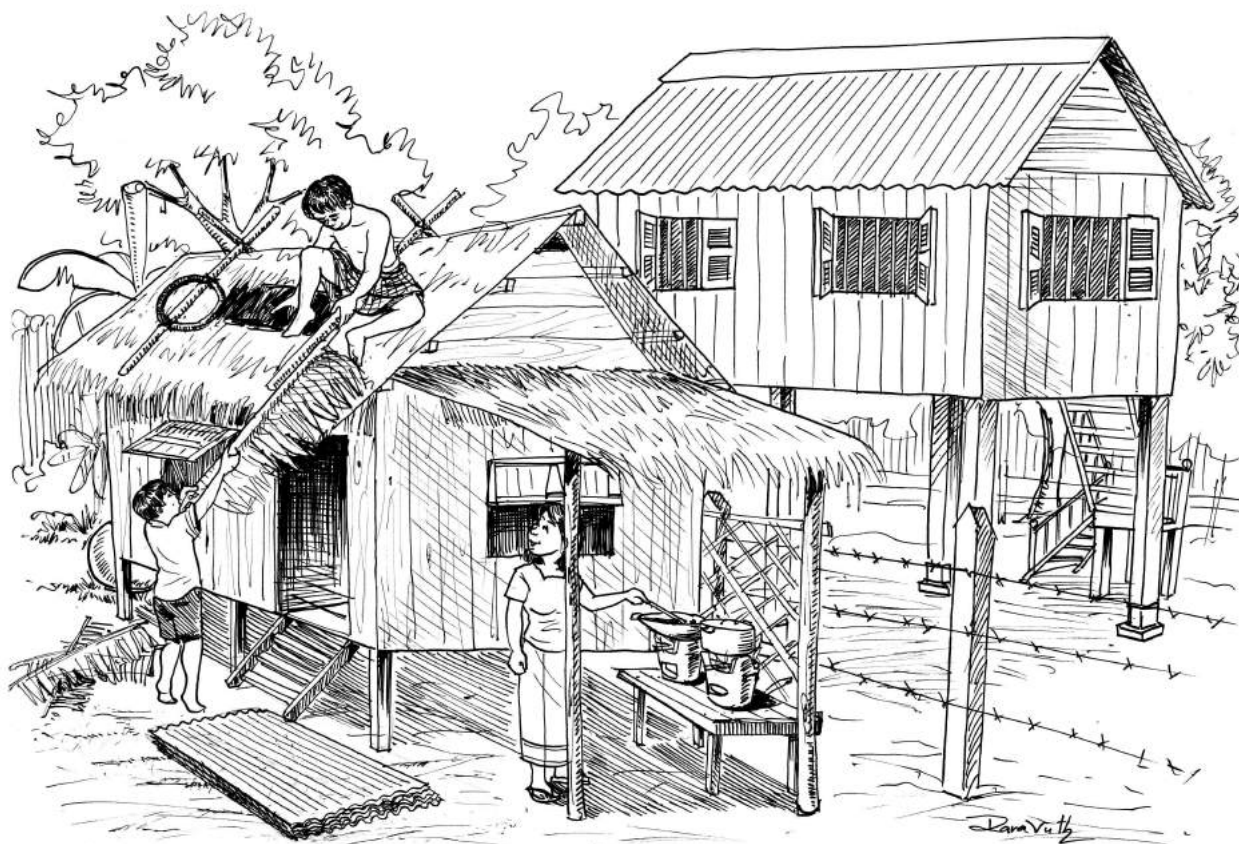


## HANDOUT 2 – LESSON 2

1. The local public high school
2. The monks' classroom located inside the grounds of the local pagoda
3. The local main road
4. The public hospital
5. An empty field between two villages that nobody uses and nobody privately owns or possesses
6. Forest
7. A small village in the hills where an indigenous community has lived for many years
8. A house and land in town bought by a newly married couple using a legal contract. The couple recently received a title to their land.
9. Angkor Wat
10. A house where a family lives, built ten meters from a lake. The land is not registered to anyone, but the family has lived there since 1985.

## HANDOUT 3 - LESSON 2 DEBRIEF





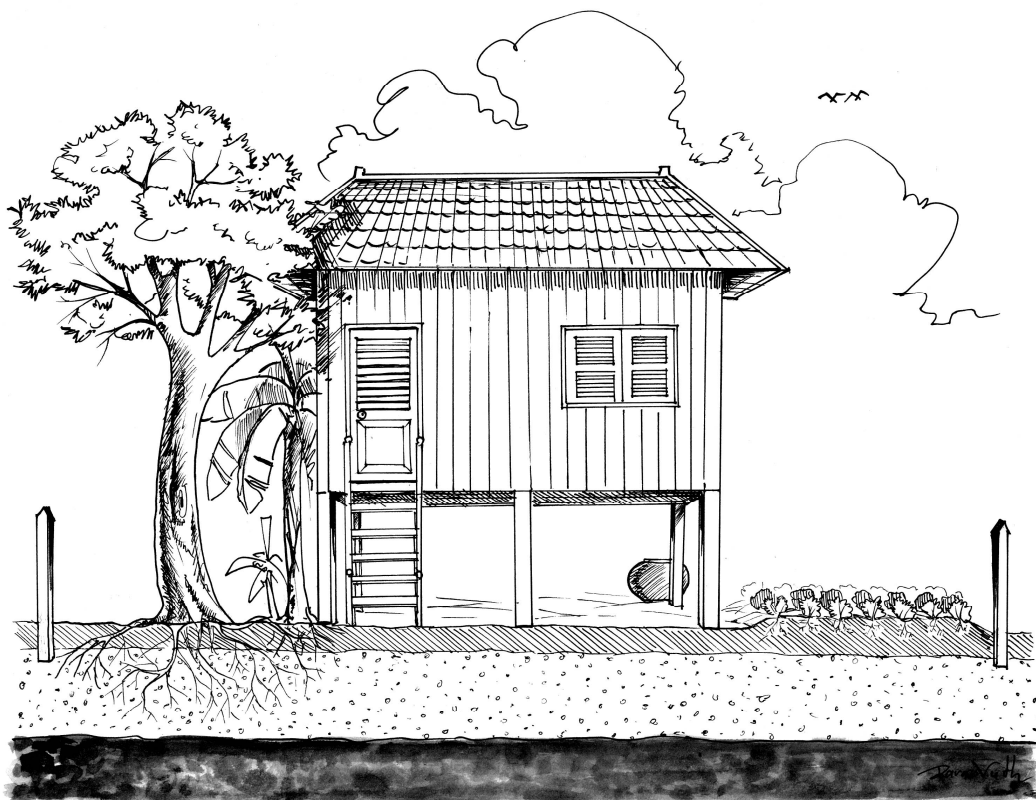


# LANDOWNER RIGHTS

## OUTCOMES

After completion of this module, Participants will:

1. Know and understand the basic rights of landowners.
2. Understand why these rights are important.



## 1. WHAT RIGHTS DO LANDOWNERS HAVE?

Under the Cambodian Constitution, all Cambodians have the right to own property. The Constitution is the highest law in Cambodia and it states that **ownership** of land must be protected by law.<sup>16</sup> The Land Law 2001 is the main law that protects this right.<sup>17</sup>

### The Constitution of the Kingdom of Cambodia

Article 44: All persons, individually or collectively, shall have the right to ownership.



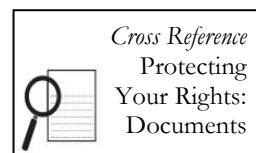
<sup>16</sup> The Constitution of the Kingdom of Cambodia 1993, Article 44.

<sup>17</sup> Land Law 2001, Articles 4 & 5.

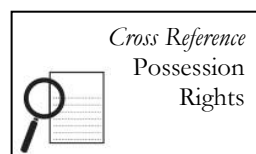
Ownership is the strongest right anyone can have over land. It allows the owner to use their land in any way they want, as long as the way the owner uses the land does not break any laws. This includes the rights to:

1. Use and enjoy the land, for example, plant or build on the land;
2. Stop other people from coming onto or using the land;
3. Transfer the land to others.<sup>18</sup>

It is important to know that until you **register** your land, you are not legally the “owner” of that land. When land is registered, it is added to an official list along with the owner’s details. The owner is then given a document called a **title**. This is proof that he or she is the legal owner of the land.



*If you do not have title, it does not mean that you have no rights to the land.* Many Cambodians do not have title to their land, but still have rights as possessors. Possession rights will be discussed in more detail later.



## 1.1. RESTRICTIONS ON LANDOWNER RIGHTS

Sometimes, the law can restrict owners’ rights. Landowners cannot use their land for an illegal purpose and they cannot use their land in a way that harms others.<sup>19</sup> For example, a landowner cannot grow illegal crops on their land.<sup>20</sup> Also, any transfer of land must be done by contract and follow the rules set out in the Land Law 2001 and the contract law.

### INDIGENOUS PEOPLE AND LANDOWNER RIGHTS

For hundreds of years, indigenous peoples have traditionally managed thousands of hectares of lands in Cambodia, and under the 2001 Land Law, indigenous communities also have the right to own their traditional lands. However, under the 2001 Land Law, indigenous communities have slightly different land rights to non-indigenous people. The Land Law gives indigenous communities the right to register their collective land.<sup>21</sup>

Once indigenous land is registered the community will be given **collective title**. This means that the land will be owned by the whole community, not by individuals.

<sup>18</sup> Land Law 2001, Article 85.

<sup>19</sup> Land Law 2001, Article 86.

<sup>20</sup> Land Law 2001, Article 256.

<sup>21</sup> Land Law 2001, Article 26

The land rights associated with the community's lands are jointly shared by all the community members. How the community decides to use and enjoy the land, to exclude others, and to transfer their land should be governed by their traditional customs and community laws.<sup>22</sup>

Collective land and registration of indigenous land is discussed in more detail in the module *Indigenous Land Rights*.

---

<sup>22</sup> Land Law 2001, Article 23

## LESSON 1: BASIC LANDOWNER RIGHTS

**AIM:** Participants will know the basic rights landowners have over their land and which laws protect them. They will then be able to think about how people use these rights every day.



**MATERIALS:** Whiteboard or flipchart, markers, pencils.

**METHOD(S) USED:** Group discussion, drawing and presentations.

Procedure	Time Frame (in minutes)
1. Introduce the information in Section 1	15
2. Explain the exercise and divide into groups	5
3. Small group discussion and drawing	15
4. Presentations and large group discussion	15
5. Debrief	10
<b>Total:</b>	<b>60</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTION 1:

**Section 1** - It is important that Participants understand:

- The Constitution guarantees the right to ownership.
- This includes the right to ownership of land.
- The Land Law 2001 gives Landowners the right to use their land, stop others coming on to it, and to transfer it.
- The Land Law 2001 also gives indigenous people the right to own their land.

- When you explain the basic rights, you should write them on the board. Make sure not to give too many examples so that the class will be able to come up with examples during the activity.

### 2. EXPLAIN THE EXERCISE AND DIVIDE INTO SMALL GROUPS:

- Explain that Participants will divide into three groups. Each group will have 15 minutes to discuss one landowner right and how it can be used and then draw a picture of this.
- If there are too many Participants, divide them into six groups and each right can be discussed by two different groups. Keep in mind that this will take more time for group presentations.
- Give each group a flipchart paper and markers.
- You can draw an example picture on the board/chart if the Participants do not understand the exercise.

### 3. SMALL GROUP DISCUSSIONS AND DRAWINGS:

- Walk around and listen to the discussions and help any Participants who are finding the exercise difficult.

### 4. PRESENTATIONS AND LARGE GROUP DISCUSSION:

- When the Participants have finished, call on each group to stand up and show the other Participants their pictures.

- When Participants present their examples, they should show the rest of the group their pictures and the class should try to guess what right the picture shows. The Participants must make sure to explain why it is important that landowners have these rights.
- If there are six groups, the groups that have worked on the same right should present their drawings one after the other. Participants do not need to repeat things that have already been said by another group.

### **Suggested Answers:**

1. To use and enjoy the land – Examples include: moving onto the land to live, building a house or a shelter for animals, and growing crops.

This right is important because landowners must be able to use their land the way they want or need, for example to make a living from their land or make their land more valuable. But owners cannot use their land in a way that breaks the law.

2. To stop other people from coming onto or using the land – Examples include: building a fence to keep others out, telling your neighbor that he/she cannot plant crops on land that you were leaving empty, and stopping people from building anything on your land.

This right is important because it gives owners security from other people taking their land or coming onto the land and causing damage. It is up to owners alone to choose who they want to come onto their land. It also gives landowners privacy.

3. To transfer land to others – Examples include: a landowner selling land to someone, giving land to someone as a gift, exchanging land with someone, and leaving land to someone when he/she dies.

For some people it is important to be allowed to transfer their land because it gives them an opportunity to make money and improve the quality of their life. It is also important for some people to be able to ensure that their sons and daughters or other family or community members can inherit their land.

### **5. DEBRIEF:**

- You should finish the exercise by asking for three volunteers to briefly summarize one right each.
- Then ask the whole group if anybody can think of more examples of each right being used. Ask the Participants to try to think of personal examples of how they use these rights.

## DIFFICULT TERMS:

1. **Collective title:** An official document given by the government that states that an indigenous community has ownership over a piece of land. Collective title gives ownership rights to the whole community, not an individual. This means that individuals cannot sell indigenous land.
2. **Ownership:** Ownership gives a person full rights to a piece of property. Ownership is the strongest right anyone can have over land. It allows the owner to use their land in any way they want, as long as the way they use the land does not break any laws.
3. **Register:** To add something to an official list. When land is registered the person it is registered to is given a document of ownership (or title) and this can only be questioned in court.
4. **Title:** An official document given by the government that states that a person legally owns a piece of land.



# POSSESSION RIGHTS

## OUTCOMES

After completion of this module, Participants will:

1. Know what the Land Law 2001 says about possession.
2. Know and understand what the rights of a possessor are.
3. Understand and identify the conditions of legal possession.
4. Understand which types of land can be legally possessed.

## 1. WHAT IS POSSESSION?

During the Khmer Rouge regime, private ownership of land was not allowed. All land became the property of the State and all records of ownership form before 1975 were destroyed.



This meant that when the regime ended, no one knew who owned the different plots of land in Cambodia. Many people found areas to live and build homes and have stayed there since the end of the war.

The 1992 Land Law aimed to start a new system so people could eventually own land privately. Because all the official records of who owned which plots of land were destroyed, the 1992 Land Law introduced legal **possession** and this was updated by the Land Law 2001. People who settled on land at any time before August 30, 2001 (when the Land Law 2001 was passed) and meet the five conditions of legal possession contained in the Land Law have a legal right to stay and live on the land they are occupying.<sup>23</sup> These people are *legal possessors* and they have *possession rights*.

It is important to know that *not all possession is legal*. To be legal, it must follow the rules set out in the Land Law (see next section).

#### WHAT IF YOU DO NOT MEET THE CONDITIONS OF LEGAL POSSESSION?

Some families do not meet the conditions of legal possession. *These families still have a right to adequate housing*. This means that if the government ever tries to remove them from their land, it must respect its duties before, during and after the eviction and make sure that the evicted families are able live in an adequate home that enables them to meet their basic needs.

These rights and government duties come from international human rights law, which Cambodia has signed and agreed to follow.

### 1.1. THE RIGHTS OF POSSESSORS

Legal possession is different than ownership. Owners are people who live on land that is registered and have legal **title** to that land. A possessor is someone who legally lives on, uses or occupies a piece of land but does not officially own the land by having title. Renters and people with other specific rights to use and live on the land are not possessors.

If possession is legal and follows the rules set out in the Land Law (discussed in the next section), the possessor has many of the same rights as a person who owns land.

#### Land Law 2001

Article 39: While waiting for the possession to be transformed into full ownership, possession in compliance with this law constitutes a right *in rem* over the immovable property. Such property may be the subject of exchange, transfers of rights and transactions.



<sup>23</sup> Land Law 2001, Article 39

This means that possessors have the right to use and enjoy the land, stop other people from entering or using the land, or to transfer the land to others. *The possessor also has the right to apply for title to turn their possession into ownership.*<sup>24</sup>

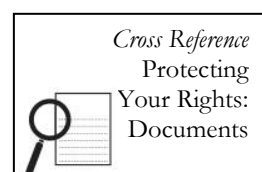
### Land Law 2001

Article 30: Any person who enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definitive title of ownership.



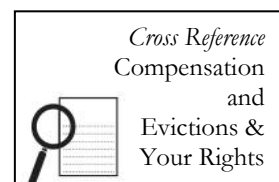
## 1.2. WHY IS IT IMPORTANT TO TRY TO REGISTER YOUR LAND AND GET TITLE?

The big difference between the rights of a possessor and the rights of an individual owner is that owners can better protect their land. This is because owners have registered their land and have received a land title, so there is an official record proving that they legally own the land. A title is an official document from the government saying that the person with the name on the title owns the piece of land described in the title.<sup>25</sup> When you register land, the government records you as the owner of the land in the **Land Register** and you receive a land title for your own records. The Land Register is the official list of owners of plots of land in Cambodia.<sup>26</sup>



Having title means two very important things:

- First, it means that the person with the title has an official document that proves he or she owns the land; and
- Second, it means the owner has a much stronger right to compensation if the government ever has to take his or her land for a public service (like to build a road).



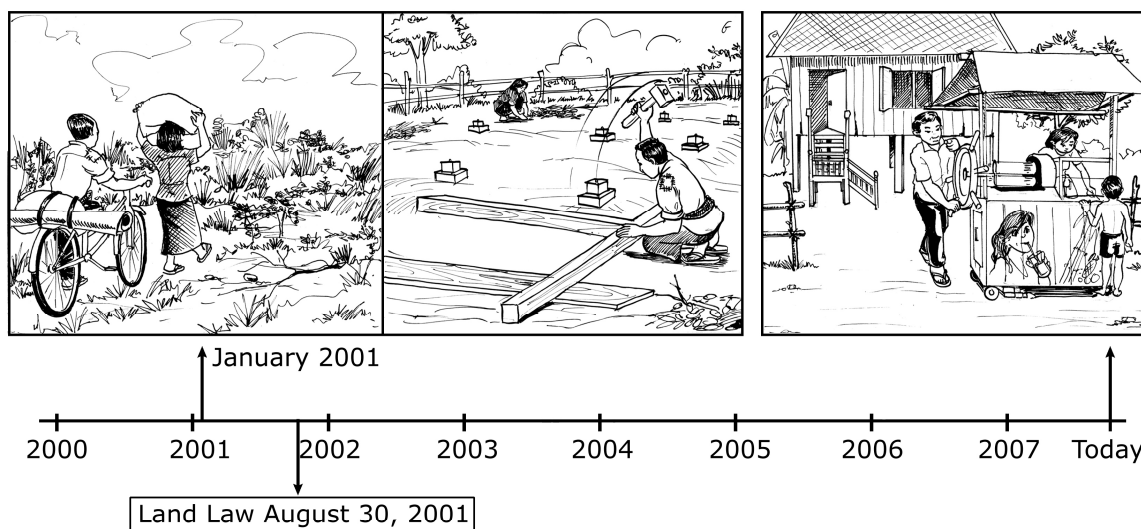
<sup>24</sup> Land Law 2001, Article 30.

<sup>25</sup> Land Law 2001, Article 242.

<sup>26</sup> Land Law 2001, Article 238.

## 2. POSSESSION MUST HAVE STARTED BEFORE THE LAND LAW WAS PASSED IN AUGUST 2001

For possession to be legal, there are several conditions that must be met. The first condition is that the possession of the land must have started before the Land Law was passed on August 30, 2001.<sup>27</sup>

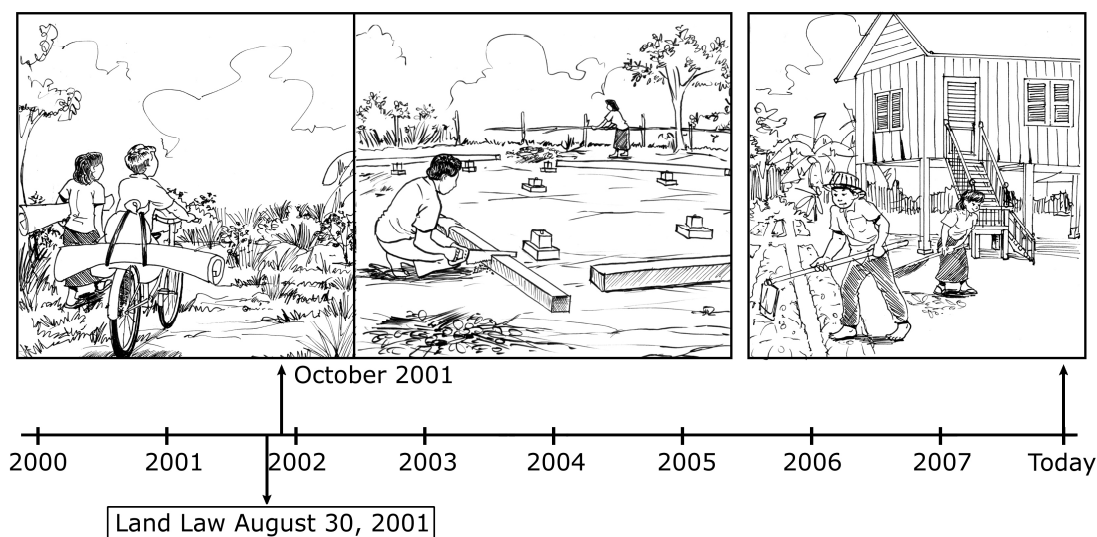


*In this example, a husband and wife moved onto a piece of land before the Land Law 2001 was passed. They built a home there and now have a small business. If they meet the other conditions discussed later, they are legal possessors.*

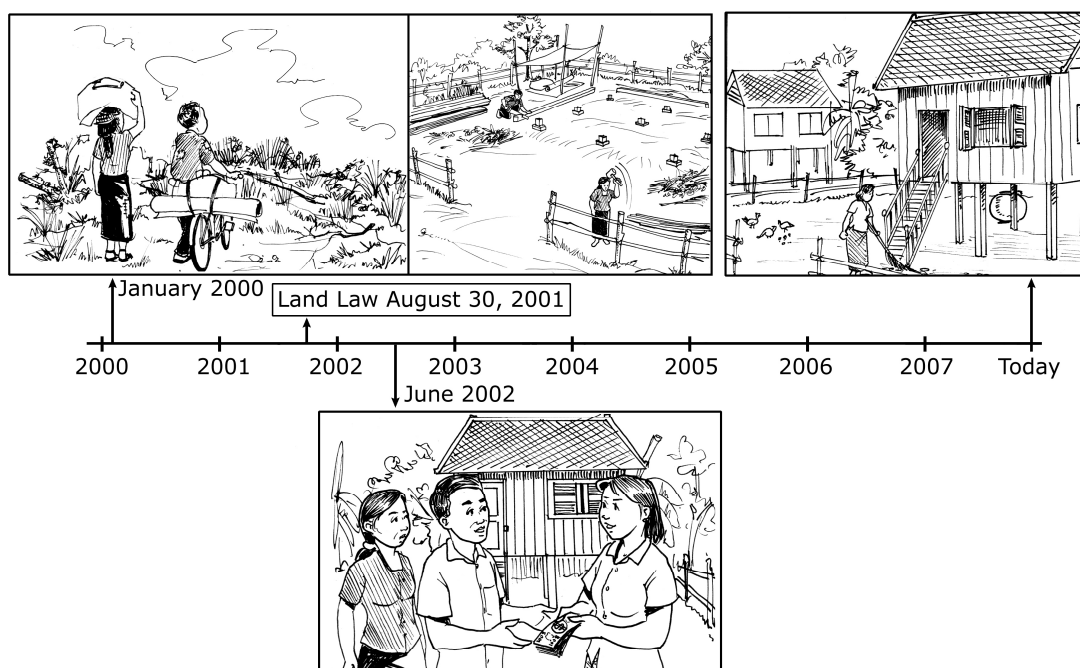
The person who is applying for ownership of the land *does not have to be the original possessor*.<sup>28</sup> For example, if a person bought a piece of land from someone else in 2003, he or she has possession rights as long as the person he or she bought the land from possessed the land before the Land Law was passed in August 2001. The person applying for ownership must be able to prove this and show **evidence** of the sale or transfer (for example, a sale contract). If they can do this, they are legal possessors, and can request that their possession be changed into ownership by applying for a land title.

<sup>27</sup> Land Law 2001, Articles 30.

<sup>28</sup> Land Law 2001, Article 30.



*In this example, a husband and wife moved on to a piece of land and built a home before the Land Law 2001 was passed. Later, they sold the land and house. If the buyer meets the conditions discussed below, even if they bought the land after the Land Law was passed, they are legal possessors.*



*In this example, the husband and wife moved onto the land after the Land Law 2001 was passed. Because of this, their possession is not legal.*

There are five more conditions for possession to be legal. They will be discussed in the next section.

## LESSON 1: WHAT IS POSSESSION?

**AIM:** Participants will know what legal possession is under the 2001 Land Law. They will understand that to be legal, possession must have started before the Land Law was passed, and they will be able to apply this to their own situation.



**MATERIALS:** Flipchart, markers, copies of Handout 1.

**METHOD(S) USED:** Group discussions, presentations, pictures.

Procedure	Time Frame (in minutes)
1. Introduce the information in Sections 1 & 2	30
2. Explain the exercise and divide Participants into groups	5
3. Small group discussions	10
4. Group presentations and discussion	20
5. Debrief	15
<b>Total:</b>	<b>80</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTIONS 1 & 2:

**Sections 1 & 2** - It is important that Participants understand:

- What the meaning of possession is.
- That possessors have similar rights to owners, but these rights to the land are not officially recorded so their position is not as strong.
- That not all possession is legal, and to be legal it must meet several conditions set out in the 2001 Land Law.
- That the first condition is that the possession must have started before the 2001 Land Law was passed.

- Ask the Participants to raise their hand if they consider themselves to be owners of their land. Then ask one or two of the Participants who raised their hand to explain why they consider themselves owners. You can also ask a few Participants who raised their hands which year they settled on their land.
- Explain that there are also five other conditions that must be followed for the possession to be legal and these will be discussed in the following lesson.

### 2. EXPLAIN THE EXERCISE AND DIVIDE PARTICIPANTS INTO GROUPS:

- Divide Participants into four or five groups. Pass out copies of the three pictures in Handout 1 to each group. Explain that these are timelines of people moving onto and settling on land.
- Give Participants 10 minutes to discuss in their groups and decide if the possession shown in each picture can be legal, and why.

### 3. GROUP DISCUSSIONS:

- Move from one group to another to make sure that all Participants understand the pictures and the condition for legal possession discussed in this lesson.

### 4. GROUP PRESENTATIONS AND DISCUSSION:

- Instead of calling every group to come and present answers for all of the pictures, ask a different group to come and explain their answer for each picture. The group should explain if they think the possession is legal or not and give their reasons. Ask the other Participants if they agree or not, and why.

## Suggested Answers:

### Picture 1:

- The people who are living on the land today moved there in January 2001, which is before the Land Law was passed. So if they follow the other conditions, their possession is legal.

### Picture 2:

- The woman who is living on the land today bought it from people who had been living there since January 2000, which is before the Land Law was passed.
- Because the original possessors started living there before August 2001, it does not matter when the new possessor bought the land from them. If the buyer follows the other conditions, her possession is legal.

### Picture 3:

- The people who are living on the land today moved there in October 2001, which is after the Land Law was passed. This means that even if they respect the other conditions, their possession cannot be legal.

## 5. DEBRIEF:

- To finish the exercise, show Picture 3 to Participants again and ask them the following questions:
  - Is the possession legal or illegal? Why?

Suggested Answer: The possession is illegal because people moved onto the land after the Land Law was passed.

- Can the government evict the people in the picture?

Suggested Answer: The government may evict these people because they do not have legal possession rights.

- Do these people still have rights even if their possession is not legal?

Suggested Answer: Even if their possession is not legal, they still have the right to adequate housing. This means that if the government tries to move these people from their land, it must respect its duties before, during and after an eviction. It must make sure that they are able to live somewhere else in adequate housing so they can meet their basic needs.

- Show Picture 1 to Participants and ask them the following questions:

- Is the possession legal or illegal? Why?

Suggested Answer: People moved onto the land before the Land Law was passed, so their possession is legal if they respect the other conditions.

- What rights does possession give the people in the picture?

Suggested Answer: Because they are legal possessors, they have many of the same rights as a landowner, for example, they can transfer their land to others, improve their land, and stop others from coming on to it. They also have the right to apply for a title of ownership over their land.

- Can the government evict these people?

Suggested Answer: If these people respect the other conditions of legal possession, they are legal possessors, so they have the right to stay on their land. The government must not evict them unless there is a public interest reason. The government must respect the law and its duties before, during and after eviction.

### 3. FIVE CONDITIONS OF LEGAL POSSESSION

To be lawful, possession must have begun before the 2001 Land Law was passed, but it must also meet five other conditions set out in the Land Law:<sup>29</sup>

- The possession must be **continuous**
- The possession must be peaceful
- The occupier must have taken possession in **good faith** (honestly)
- The possession must be **unambiguous** (clear)
- The possession must be known to the public

#### Land Law 2001

Article 38: In order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, notorious to the public, continuous and in good faith.



#### 3.1. POSSESSION IS CONTINUOUS

The possession must be continuous. This means the possessor cannot leave for a long period of time and then come back to the land, unless leaving the land is part of the natural use of the land. The natural use of the land is simply anything that a person owning the land would normally use it for.

For example, a possessor can:

1. Leave farmland empty (or fallow) for a period of time so that it becomes good for farming later;
2. Leave farmland that is flooded during the rainy season and come back in the dry season; and
3. Leave for short periods of time, for example to go to visit a sick relative in another province.

#### 3.2. POSSESSION IS PEACEFUL

The possessor must have moved onto the property without using violence and then live there peacefully.

---

<sup>29</sup> Land Law 2001, Article 38.

### 3.3. POSSESSION IS IN GOOD FAITH

When the possessor moved onto the land, he or she must have honestly believed that no one else owned or possessed the land. This means that renters cannot be good faith possessors and try to turn this into ownership because they know that their landlord already owns or possesses the land.

### 3.4. POSSESSION IS UNAMBIGUOUS

It must be clear at all times who the true possessor is. For example, if several families live close together and the boundaries of each family's plot are not clear, their possession is not unambiguous. The families must agree together about the borders of their land in order to meet this condition.

### 3.5. POSSESSION IS KNOWN TO THE PUBLIC

It must always be clear to other people that the property is being possessed by someone. This means that a possessor cannot hide the fact that he or she possesses the land. The community must know that the person or family was living on or using the land.

#### DIFFICULTIES IN TURNING POSSESSION INTO OWNERSHIP

Legal possessors have the right to request that their possession is turned into ownership.<sup>30</sup> But in practice, this request is often refused especially for communities who are facing the threat of forced eviction. Applying for titles can sometimes be very expensive because of unofficial fees.

However, it is still useful for possessors to apply for title, *and keep the documentation of their application*. When a possessor has proof that they are seeking title, he or she may be able to challenge a person who claims they have no rights to the land.

It is important to know that there are only certain types of land that can be legally possessed. This will be discussed in the next section.

<sup>30</sup> Land Law 2001, Article 30.

## LESSON 2: WHAT CONDITIONS MUST BE FOLLOWED FOR POSSESSION TO BE LEGAL?

**AIM:** Participants will know the five conditions that must be met for possession to be legal. They will understand that if these conditions are not met, or if the possession started after the Land Law, the possession is not legal.



**MATERIALS:** Whiteboard or flipchart, markers, ball.

**METHOD(S) USED:** Small group work, brainstorming, presentations, game, role-play.

Procedure	Time Frame (in minutes)
1. Introduce the information in Section 3	20
2. Explain the exercise and divide Participants into groups	5
3. Small group work and preparation of role-plays	10
4. Group presentations, role-plays and discussion	20
5. Debrief	15
<b>Total:</b>	<b>70</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTION 3:

**Section 3** - It is important that Participants understand:

- In addition to the rule that possession must have started from before the Land Law was passed, it must also meet five more conditions.
- Possession must be continuous, peaceful, in good faith, unambiguous and known to the public.

- Explain that only certain types of land may be legally possessed. This will be discussed in the next lesson.

### 2. EXPLAIN THE EXERCISE AND DIVIDE PARTICIPANTS INTO FIVE GROUPS:

- Explain that Participants will divide into five groups. Give each group one of the five conditions of legal possession:
  - The possession must be continuous
  - The possession must be peaceful
  - The person must have taken possession in good faith
  - The possession must be unambiguous
  - The possession must be known to the public
- Participants have 10 minutes to think of a definition, an explanation and a short role-play which represents that condition.

### 3. SMALL GROUP WORK:

- During the group discussions, move around the groups and make sure that the Participants understand the task and are thinking of a *definition*, an *explanation* and an *example*.

### 4. GROUP PRESENTATIONS AND DISCUSSION:

- After the group discussions, call each group one by one to come and present the condition they discussed, show their role-play, and explain their definition, explanation and example.

- Ask the other Participants if they agree with the answer and also if anything is missing. Make sure the information given by each group is correct, and if possible allow the Participants to correct each other. Only give the correct answer if the other Participants cannot.
- So there is enough time for everybody, make sure that each group does not present and speak for more than four minutes.

### **Suggested Answers:**

#### *Possession must be continuous:*

- The possessor must live on or use the land in the same way that an owner of the land normally would. The possession should not be broken for long periods of time, unless this is a natural use of the land.
- Possessors can leave the land for longer periods if that is a natural use of the land, for example, leaving land fallow to become more fertile.
- It is acceptable for a possessor to leave for short periods of time, for example to visit a sick relative in another province.

#### *The possession must be peaceful:*

- The possessor must have moved onto the property without using violence.

#### *Possession in good faith:*

- When the possessor moved onto the land, he or she must have believed that the land was not claimed by anyone else.
- If he or she knew that someone else owned or possessed the land, the possession would not be in good faith.

#### *Unambiguous possession:*

- It must be clear at all times who the true possessor is.
- The possessor must not be in a dispute with his or her neighbours about the borders of his or her land.

#### *Possession known to the public:*

- It must always be clear to other people in the community that the property is being possessed by someone.

- A possessor cannot hide the fact that he or she possesses the land.

## 5. DEBRIEF:

- Ask Participants to stand in a circle around you and explain that you will throw the ball to a Participant and ask a question about legal possession. After they answer, they should throw the ball to a different Participant to whom you should ask another question. (There are example questions below, but you can also ask other questions).

Example questions:

1. Name *one* condition of legal possession.

Suggested Answer: Possession starting before the Land Law was passed, continuous possession, peaceful possession, possession in good faith, clear possession, and possession known to the public. (The Facilitator can ask this question six times to cover all of these six conditions.)

2. If a possessor lives on a piece of land for four years, leaves for three years and then comes back, and this is not a natural use of the land, is their possession legal?

Suggested Answer: No. Possession must be continuous.

3. What date must the possession have started before?

Suggested Answer: The original possessor must have started possessing their land before August 30, 2001, when the Land Law was passed.

4. Is it acceptable for a possessor to leave the land to visit a sick relative in another province?

Suggested Answer: Yes. Possessors can leave the land for short periods of time without losing their rights as possessors.

5. What rights do possessors have?

Suggested Answer: They have many of the rights that landowners have (for example, to use and enjoy the land, to stop others from entering or using their land, to transfer the land to others.) Possessors also have the right to apply for title and turn their possession into ownership.

6. Can a possessor claim ownership if he or she got the land by taking it violently from someone who already possessed the land?

Suggested Answer: No. Possession must be peaceful.

7. Can possessors change their possession to ownership if they possessed the land but kept it a secret from the public?

Suggested Answer: No. It must be known by the public.

8. If Sokhon has possessed a piece of land from before the Land Law was passed and meets all the conditions, can his father apply to change the possession into ownership?

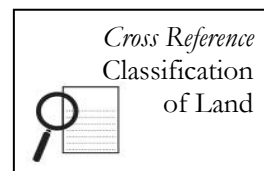
Suggested Answer: No. Only the actual possessor may claim ownership.

## 4. SOME TYPES OF LAND CANNOT BE LEGALLY POSSESSED

Any possession that started *after* August 30, 2001 is not legal.<sup>31</sup> This is the same for *all* classifications of land.

For possession that began *before* August 30, 2001 and meets the other five conditions, the possessor must also check which kind of land he or she is living on or using. In Cambodia, there are three main classifications of land. They are:

- State property (divided into State public and State private)
- Private property
- Collective property (divided into monastery and indigenous community)



People living on State public land, *somebody else's* private land, monastery land, or indigenous land, cannot be legal possessors and cannot apply for title of ownership.

### 4.1. POSSESSION OF STATE PUBLIC PROPERTY IS NOT LEGAL

State public property is:

- Property that is natural, for example forests and riverbanks;
- Property that has a public use or a public service, for example roads, railways, public schools and hospitals; and
- Property that has historical value.

State public property *cannot* be legally possessed no matter when the occupier first came to live on the land.<sup>32</sup> This means that the government can legally evict people living on State public property.

The Land Law says that anyone who moved onto State public property *after* the law was passed in August 2001 can also be ordered to pay a fine or even sent to prison.<sup>33</sup>

The Land Law also says that anything that people have built on State public property becomes property of the government and that the person will not be given any compensation for these buildings or any improvements they made to the land.<sup>34</sup>

<sup>31</sup> Land Law 2001, Article 30.

<sup>32</sup> Land Law 2001, Article 43. Although in some circumstances people may be given permission to temporarily occupy State public property.

<sup>33</sup> Land Law 2001, Article 259.

<sup>34</sup> Land Law 2001, Article 43.

## 4.2. POSSESSION OF SOMEBODY ELSE'S PRIVATE PROPERTY IS NOT LEGAL

Private property is property that is owned or possessed by people or a company. *It is not legal to possess someone else's privately owned or possessed land.*<sup>35</sup>

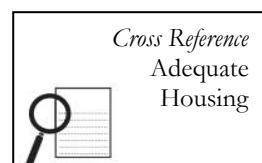
## 4.3. POSSESSION OF COLLECTIVE PROPERTY IS NOT LEGAL

There are two types of collective property: monastery and indigenous community. *These types of property cannot be legally possessed.*<sup>36</sup>

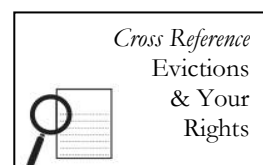
- Monastery property is the property of the Buddhist religion and its followers and cannot be legally possessed by individuals.
- Indigenous community property belongs to the indigenous community who live or farm there. It cannot be legally possessed by outsiders.

## 5. POSSESSION AND THE RIGHT TO ADEQUATE HOUSING

The Land Law says that any person living illegally on a piece of land must leave that land and will not be given any compensation.<sup>37</sup> *But people living on State public property, somebody else's private land or collective land still have a right to adequate housing.*<sup>38</sup> This means that the government may evict people living illegally, but must respect all its duties before, during and after the eviction and must make sure that no one is left homeless or without adequate housing after an eviction.



Before any eviction the government must give adequate notice, provide information to the people being evicted and consult with them about the eviction and about where they will go to live. The government must also make sure that anyone evicted will have livelihood opportunities, such as a job or access to farming land and markets.



### LEGAL POSSESSION CHECKLIST

If a possessor wants to claim ownership over the land he or she occupies, his or her possession must be legal. To be legal, the possession must meet all of these conditions:

<sup>35</sup> Land Law 2001, Article 248.

<sup>36</sup> Land Law 2001, Articles 21, 23 & 26.

<sup>37</sup> Land Law 2001, Article 259.

<sup>38</sup> International Covenant on Economic, Social and Cultural Rights, Article 11.

1. The land must *not* be indigenous property, monastery property, someone else's private property or State public property;
2. The possession must have started before the Land Law was passed in August 2001;
3. The possession must be continuous;
4. The possession must be peaceful;
5. The possession must be in good faith;
6. The possession must be unambiguous; and
7. The possession must be known to the public

### INDIGENOUS PEOPLE AND POSSESSION

Legal possession can be transferred into legal ownership if that possession follows the conditions discussed above. If possession is transferred to ownership, the title issued will be an *individual title*. Individual titles are not generally appropriate for indigenous communities, as they usually manage land collectively.

Article 23 of the Land Law says that indigenous communities should continue to manage their traditional land according to traditional customs. In Cambodia this does not include private ownership. Indigenous community land must be registered as *collective title*, which will be discussed in more detail later.

Indigenous community land cannot be legally possessed. If any individual tries to claim ownership of traditional indigenous lands through legal possession they are violating Article 23 of the Land Law. This says that indigenous communities have the right to continue to manage their traditional lands. If anyone stops them from doing this they are breaking the Land Law.

There are several cases of people coming to indigenous communities and saying that they own the land through legal possession. Very often the communities have never even seen this person before, but they have a document that was given to them sometime before 2001 that says that the land is theirs. These people have then tried to claim legal possession. This possession is not legal because these people do not meet the conditions that their possession must be continuous and known to the public.

## LESSON 3: WHAT TYPE OF LAND CAN BE LEGALLY POSSESSED?

**AIM:** Participants will understand the conditions of legal possession and that some types of land cannot be legally possessed. They will also be able to identify examples of legal and illegal possession and apply these to real situations.



**MATERIALS:** Whiteboard or flipchart, markers, copies of Handouts 2 and 3, a copy of Handout 3 on a piece of flipchart paper.

**METHOD(S) USED:** Small and large group discussion, case studies, presentation.

Procedure	Time Frame (in minutes)
1. Introduce the information in Sections 4 and 5	25
2. Explain the exercise and divide into groups	5
3. Small groups discuss case studies	15
4. Presentations and large group discussion	20
5. Debrief	15
<b>Total:</b>	<b>80</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTIONS 4 AND 5:

**Sections 4 and 5** - It is important that Participants understand:

- That only some types of property can be possessed.
- That possession of State public, indigenous, monastery or other people's private property is not legal.
- That illegal possessors can be evicted, but evictions must always follow the law, and evicted people still have the right to adequate housing.

### 2. EXPLAIN THE EXERCISE AND DIVIDE PARTICIPANTS INTO FOUR GROUPS:

- Explain that Participants will be divided into four groups. Give each group one case study from Handout 2 and give them a copy of the possession checklist from Handout 3. Ask them to discuss the following questions:
  - Is this an example of legal possession?
  - Have they respected all the conditions for legal possession and can they apply for title?

#### CASE STUDIES

1. In 1979, Boren and his family had no land. After the Khmer Rouge regime ended, they returned to their homeland and settled on an empty and unused piece of land. They asked around to see if the land already belonged to anybody, and they were told that it did not. After this they built a house and started to grow rice in the field next to it. The people who lived nearby welcomed them and were happy to have them as neighbours. They have lived there peacefully ever since. Can Boren apply for title?
2. Davy has lived and farmed on the same piece of land since 1992. The land is on the riverbank in Kampong Cham province. She moved there because she thought that the land was unoccupied, she has many friends in the nearby village and she is well-known in the area. She wants to apply for title, can she do this?
3. Leang is the private owner of a piece of land in Battambang province. The land is registered in his name. Recently he decided to develop the land but found out that Puthy had been living on part of it without his permission since 2000. Leang never found out about this because Puthy was hiding his occupation from Leang. Can Puthy apply for title?

4. Theory has lived peacefully on a piece of land 50 meters from a lake since 1992. She is well-known in the community and has never left the land for more than a few days at a time to visit relatives. The land was empty when she arrived but now an outsider says that he owns the land and that she must leave. Can Theory apply for title?

### 3. SMALL GROUPS DISCUSS CASE STUDIES:

- Move around the groups and check that everyone understands their cases. If any groups are finding the case studies difficult, they should be given extra help.
- Encourage groups to look at the legal possession checklist if they are finding the task difficult.

### 4. PRESENTATIONS AND LARGE GROUP DISCUSSION:

- When calling the groups to come and present their answers, ask each group to start by summarizing their case study. The group should then explain their answers and give their reasons.
- Ask the whole class if they agree with the groups' answers and if they have any extra comments
- After each presentation, go through the legal possession checklist and make sure that each point has been discussed
- Try to make sure each case study is discussed for no more than five minutes so there is enough time for all the groups to present their answers.

### Suggested Answers:

1. Yes, Boren has the right to apply for title. Boren and his family settled on the land before the 2001 Land Law was passed and have lived there peacefully since. They checked to see if the land belonged to anyone first, so the possession was in good faith and is not on somebody else's private land. Also, the land does not fit the definition of State public, monastery or indigenous land.
2. No, Davy does not have the right to apply for title. Davy has possessed the land since before the Land Law was passed, it is clear and known to the public, it is peaceful and it is in good faith. However, riverbanks are State public property and it is illegal to occupy them.

Under the Land Law she can be legally evicted, but under international human rights law, the government must make sure that she is able to find other adequate housing. If Davy would become homeless and landless after the eviction because she has no other adequate house to live in, the government has a duty to make sure Davy is able to live in another adequate house and has livelihood opportunities.

3. No, Puthy does not have the right to apply for title. His possession is not legal because:
  - a. The land is private property and registered to Leang; and
  - b. Puthy's possession of the land was kept secret so it was not unambiguous and known to the public and was not in good faith.

Leang must still respect Puthy's rights and cannot use violence to force Puthy from his land.

4. Yes. Theory has possession rights under the Land Law. She has been living there peacefully since before the Land Law was passed, she started living there in good faith, and it is clear and known to people she has been living there. Although the lake itself is State public property, the land around the lake is not State public property, and can be possessed.

## 5. DEBRIEF:

- To debrief the exercise, first ask for volunteer Participants to summarize all the conditions of legal possession. Make sure that the explanations are brief.
- Next, hold an open discussion with the class about possession. Discuss the following issue:
  - The Land Law states that it is illegal for people to live on State public property. However, many thousands of people in Cambodia are living on State public property, especially on riverbanks. Do you think the law is fair? What do you think should happen to these people?
- Hopefully, during this discussion, the Participants should understand that:
  - Many people living on State public property have lived there for many years and should only have to move if there is a very good reason.

For example, if there are houses along a riverbank and the soil under the houses becomes unstable in the rainy season, this might be a good reason for the families to be relocated. If the government needs to expand a railway line and some houses are too close to the railway for the expansion, this would be an acceptable reason for the families to have to move.

- Even if someone has to move, the State must respect their right to adequate housing as well as its duties before, during and after an eviction.

## LESSON 4: WHAT DOCUMENTS CAN BE USED TO PROVE LEGAL POSSESSION? (OPTIONAL)

**AIM:** Participants will discuss what documents they can collect or make to help prove that their possession is legal. After the training, Participants will know what documentation they need to prove their own possession, and how they can get or make new documentation.



**MATERIALS:** Whiteboard or flipchart, markers.

**METHOD(S) USED:** Small group work, brainstorming, class discussion.

Procedure	Time Frame (in minutes)
1. Explain the exercise and divide Participants into small groups	5
2. Small group work	15
3. Class discussion	20
4. Debrief	5
<b>Total:</b>	<b>45</b>

## INSTRUCTIONS TO FACILITATOR

### 1. EXPLAIN THE EXERCISE AND DIVIDE PARTICIPANTS INTO SMALL GROUPS:

- Explain to the Participants that in this exercise, they will be divided into small groups and think of documents they can use, gather or make to prove that their possession is legal.
- This exercise is optional and should not be done if the lesson on “Protecting Your Rights Through Documentation” will be taught later.

### 2. SMALL GROUP WORK:

- Move from one group to another to make sure that all Participants understand their task. Encourage them to keep thinking about new ideas for documents. For example, tell them to think about:
  - Documents they have received while they were living on the land
  - Documents they can make or collect themselves to show they live on the land
  - Official documents they can request from officials

### 3. CLASS DISCUSSION:

- After 15 minutes, bring the groups back together and ask the whole class for their ideas. You may ask a volunteer to write the ideas on the board or chart.
- Instead of asking each group to present their ideas, ask the whole class to share their ideas together. Try to get as many answers as possible from Participants from different groups.
- When Participants have no more new ideas, you may add more examples from the Suggested Answers below.

#### Suggested Answers:

These documents may help you prove that you meet the conditions of legal possession:

- Dated photographs of the land and any buildings or improvements you made
- Dated letters sent to your address
- Birth certificates, living book or family book
- Village chief's statistics book

- Records showing any taxes you paid on the land
- Copies of any electricity, water, telephone, or other utility bills you paid for the house
- Documents from the buying or transfer of the land, for example the contract of sale
- Voter registration forms

In addition, you can also make their own documents to show they have been living on the land, for example:

- Pictures of your family in front of your house or on your land
- Signed or thumb printed statements from neighbors, friends and officials saying how long you have lived in your house

Finally, people can also ask for more official documents from government offices, for example:

- From the Ministry of Commerce if you have registered a small business
- From the Ministry of Education if you have registered your children to the local school

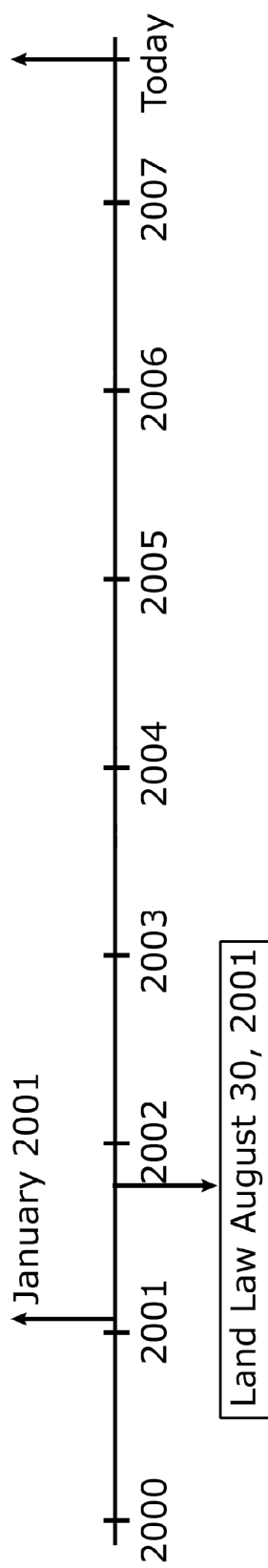
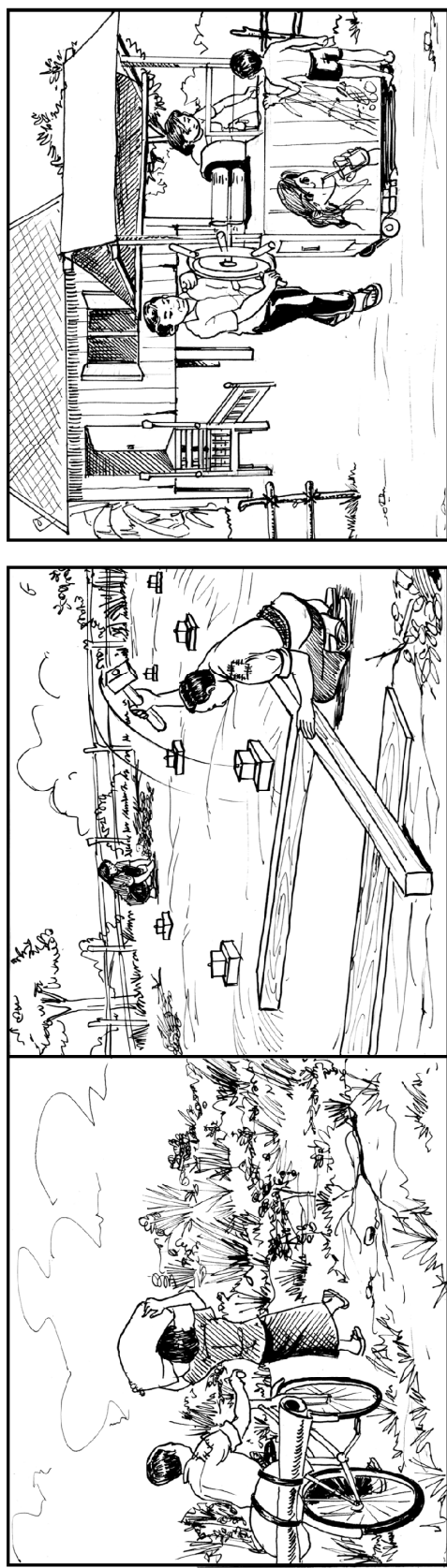
#### 4. DEBRIEF:

- Explain to the Participants that they should always try to keep copies of documents like those described above in a safe place.
- They should never let anyone they do not trust take these documents away from them – if a government official needs to see them, they should take copies, *not the original documents*.

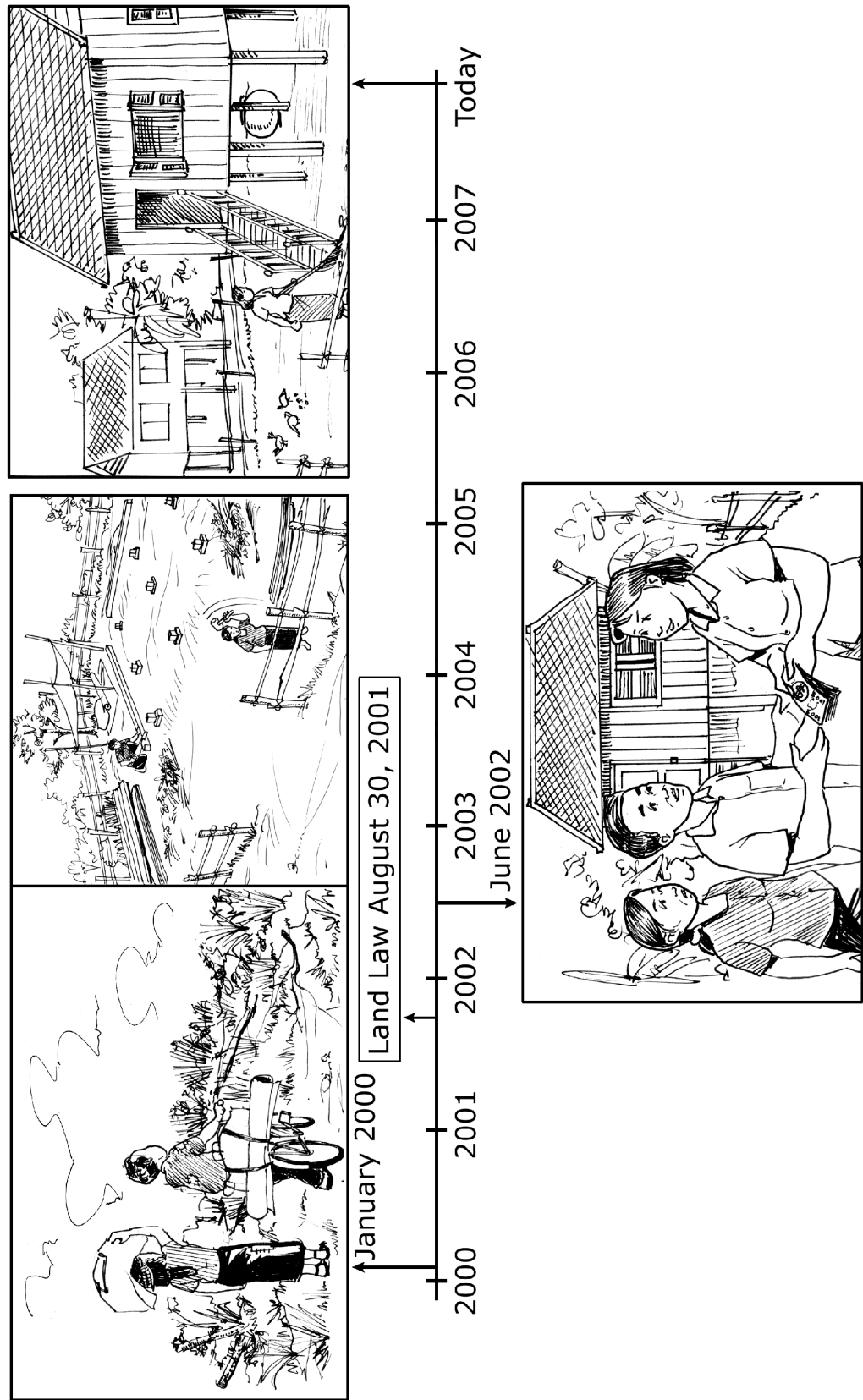
## DIFFICULT TERMS:

1. **Compensation:** An amount of money or something else of value paid to make up for damage or loss caused. In the case of an eviction, compensation can be money, replacement land, new housing or any combination of the three. Compensation can also be given for things such as earnings from jobs and businesses that were lost, or crops or trees that were destroyed or lost because of an eviction from housing or land.
2. **Continuous:** Possession must be continuous. This means a possessor cannot leave the land unoccupied or unused for a long period of time and then come back, unless this is part of the natural use of the land.
3. **Evidence:** Facts or information that show that something is true or valid.
4. **Good faith:** Honest and not trying to deceive others.
5. **Land Register:** The official list and description of land plots and owners in Cambodia.
6. **Possession:** When someone lives on, uses or occupies a piece of land but does not officially own the land by having title. When someone meets all the criteria in the 2001 Land Law they are legal possessors and have many of the same rights as owners. They also have the right to apply for title. Renters and people with other specific rights to use and live on the land are not possessors.
7. **Title:** An official record that states that a person legally owns a piece of land.
8. **Unambiguous:** Possession must be clear, including the boundaries of the land.

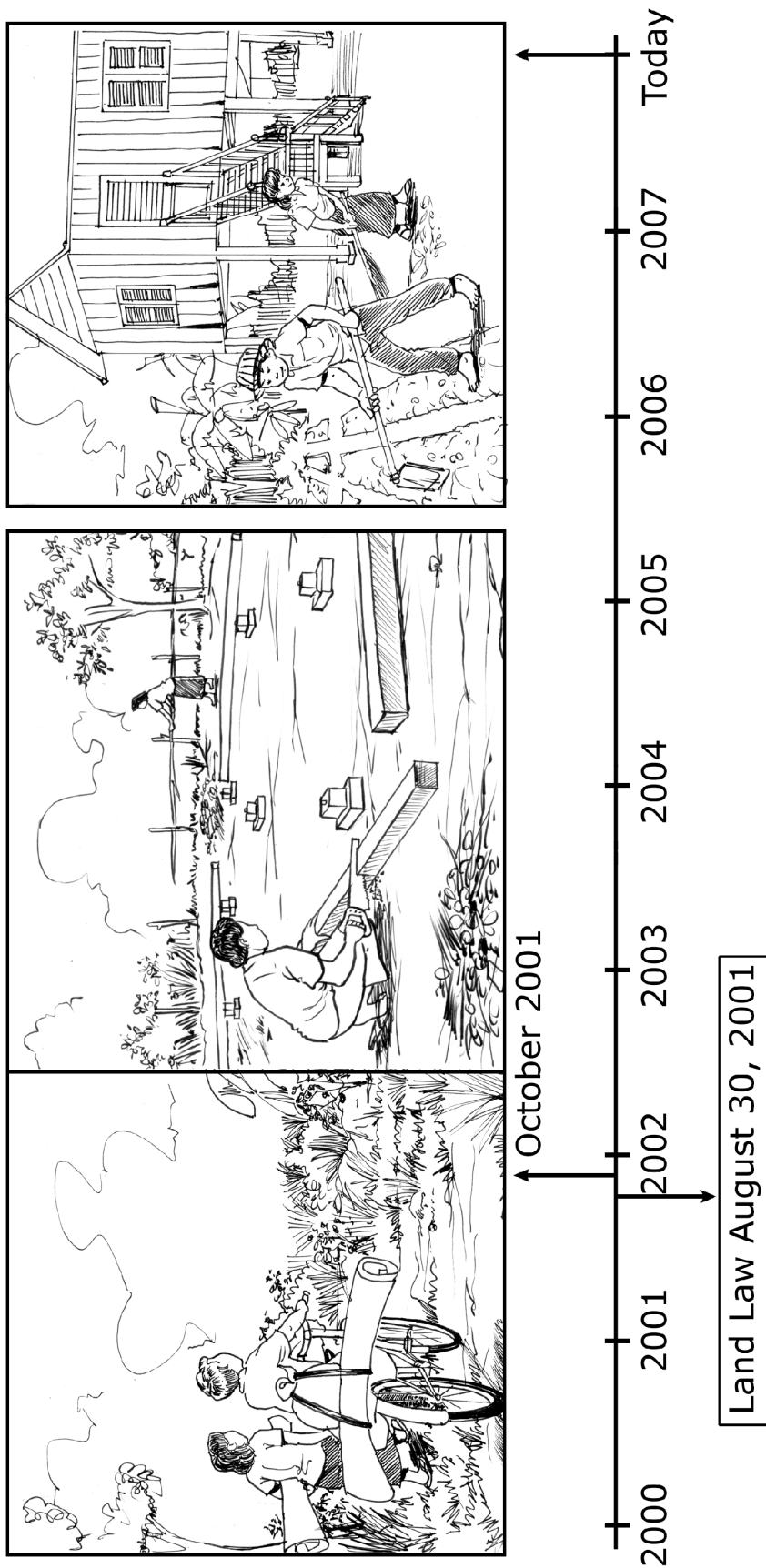
# HANDOUT 1 - LESSON 1 (PICTURE 1)



# HANDOUT 1 - LESSON 1 (PICTURE 2)



# HANDOUT 1 - LESSON 1 (PICTURE 3)



### CASE STUDIES

1. In 1979, Boren and his family had no land. After the Khmer Rouge regime ended, they returned to their homeland and settled on an empty and unused piece of land. They asked around to see if the land already belonged to anybody, and they were told that it did not. After this they built a house and started to grow rice in the field next to it. The people who lived nearby welcomed them and were happy to have them as neighbours. They have lived there peacefully ever since. Can Boren apply for title?
2. Davy has lived and farmed on the same piece of land since 1992. The land is on the riverbank in Kampong Cham province. She moved there because she thought that the land was unoccupied, she has many friends in the nearby village and she is well-known in the area. She wants to apply for title, can she do this?
3. Leang is the private owner of a piece of land in Battambang province. The land is registered in his name. Recently he decided to develop the land but found out that Puthy had been living on part of it without his permission since 2000. Leang never found out about this because Puthy was hiding his occupation from Leang. Can Puthy apply for title?
5. Theory has lived peacefully on a piece of land 50 meters from a lake since 1992. She is well-known in the community and has never left the land for more than a few days at a time to visit relatives. The land was empty when she arrived but now an outsider says that he owns the land and that she must leave. Can Theory apply for title?

## HANDOUT 3 – LESSON 3

### LEGAL POSSESSION CHECKLIST

If a possessor wants to claim ownership over the land he or she occupies, his or her possession must be legal. To be legal, the possession must meet all of these conditions:

1. The land must *not* be indigenous property, monastery property, someone else's private property or State public property
2. The possession must have started before the Land Law was passed in August 2001
3. The possession must be continuous
4. The possession must be peaceful
5. The possession must be in good faith
6. The possession must be unambiguous
7. The possession must be known to the public



# INDIGENOUS COMMUNITY LAND RIGHTS

## OUTCOMES

After completion of this module, Participants will:

1. Understand the different types of value that different people place on land.
2. Know that the land rights of indigenous communities are protected by the 2001 Land Law.
3. Know what type of land can be registered and used by indigenous communities.
4. Know what the land rights of indigenous people are.
5. Recognize the impact of selling community land to outsiders.
6. Recognize that indigenous people have special rights in international law, and that indigenous community solidarity is important to defend these rights.

## 1. WHAT IS THE VALUE OF YOUR LAND?

Indigenous communities may use their land for many things, including building their homes and farming. They may use forests for food, medicines, spiritual and community activities. *For many indigenous people, their land is their life.* Daily family life and the traditional ways of their communities are directly connected to the land. Indigenous communities use their land collectively for the benefit of the whole community.



People from outside indigenous communities sometimes want to take or use indigenous communities' land. Many indigenous communities in Cambodia live on land which could be worth a lot of money to people outside the community. Outsiders may want to sell the wood and plants from the forests, use the water from the rivers, explore the ground for precious stones or metals, and use the land for plantations. Outsiders may try to buy the land from indigenous communities, or sometimes just take the land. People from outside the community may want to own the land individually to make private profit.

When we talk about the “value” of land, this can have many different meanings. For many indigenous people their land is not only where they live and farm but it also has spiritual value, and may have been used collectively by that group for many generations. Often, outsiders do not place the same sort of spiritual or communal value on the land. Instead, they may only see its monetary value.

## LESSON 1: WHAT IS THE VALUE OF YOUR LAND?

**AIM:** Participants will think about why their land is important to them and what kind of value they place on their land. They will also think about what kind of value outsiders might place on their land.



**MATERIALS:** Whiteboard or flipchart, markers.

**METHOD(S) USED:** Group discussion, drawing and presentations.

Procedure	Time Frame (in minutes)
1. Introduce the information in Section 1	10
2. Explain the exercise and divide Participants into groups	5
3. Group discussion and drawing	15
4. Presentations and class discussion	20
5. Debrief	10
<b>Total:</b>	<b>60</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTION 1:

**Section 1** - It is important that Participants understand:

- That indigenous communities use their land according to traditional customs.
- Why the different traditional uses of land are important.
- Why outside groups sometimes want to use or take indigenous land.
- That “value” of land can mean different things to different people.

### 2. EXPLAIN THE EXERCISE AND DIVIDE PARTICIPANTS INTO GROUPS:

- Divide the Participants into groups of three or four and give each group a large piece of paper. They should draw a line down the centre and:
  - On one half of the paper the Participants should draw a picture of different ways that they use their land. (For example, to farm or for spiritual ceremonies).
  - On the other half of the paper the Participants should draw why this use of the land is important to them and what type of value the land has to them. (For example, to grow food to eat or to continue the community’s traditions).

### 3. GROUP DISCUSSIONS AND DRAWINGS:

- Walk around to the groups and make sure that the groups understand their task.
- Remind groups to think about:
  - All the different ways they use their land and the things they do on their land; and
  - Why they do these things and what value these things have to them and their community.

### 4. PRESENTATIONS AND CLASS DISCUSSION:

- Ask each group to present and explain their drawings to the rest of the Participants.

- After all the groups have presented, ask the Participants why outsiders may want to buy or take their land. What type of value do outsiders place on the land and how is this different to the value indigenous communities place on the land? (For example, a company may want to cut down and sell the trees on indigenous land for their *monetary* value. The indigenous community might have a burial ground on this land, which has *spiritual* value.)
- Explain that in the next lesson Participants will learn how the law protects indigenous groups by recognizing the spiritual and other values they place on the land and giving them the right to continue their traditional land uses. If someone prevents a community from using their land according to traditional custom they are breaking the Land Law.

## 5. DEBRIEF:

- Ask volunteers whether they think it is better for indigenous communities to control and manage the land collectively or individually for the activities they described in the exercise.
- Ask the Participants what they think happens to communities when they lose their traditional lands, or when they are prevented from living according to their custom.

## 2. INDIGENOUS COMMUNITY LAND RIGHTS ARE PROTECTED BY THE LAND LAW

When the 2001 Land Law was being written, indigenous community leaders were consulted and had the opportunity to tell the people writing the law about their customary ways of managing their land. Because of this, the Land Law includes a section that talks just about indigenous land. It sets out rules for ownership and use that are different to those on non-indigenous land and acknowledges the traditional customs of Cambodia's indigenous people.

Under the 2001 Land Law, indigenous communities have the right to continue to live on and use their traditional lands according to their traditional customs.<sup>39</sup> This land does not belong to any one individual - it is communal. This means that the whole community has rights on the land.

### Land Law 2001

Article 23 (paragraph 2): Prior to their legal status being determined under a law on communities, the groups actually existing at present shall continue to manage their community and immovable property according to their traditional customs and shall be subject to the provisions of this law.



This is very different from the collective land use that was forced on people in Khmer Rouge times, when everyone was made to work on collective farms. Indigenous community members have the right to live on and use the land, but they must do so according to community rules.

The Land Law says that indigenous communities have the right to register their land and get a **collective title**. To get this title, first the *community* itself must be officially registered, and then the community's *land* can be registered. After a collective title has been issued, the land will still belong to the whole community and not to one person.<sup>40</sup> The collective title will provide legal confirmation that the land belongs to the community named on the title, and it will outline the boundaries of the land. This is supposed to help the community to collectively protect their land and avoid land disputes.

However, at the time this Guide was published in September 2009, it was still not possible to register collective title.

It is important to remember that communities still have the right to live on and use their traditional lands. This right is protected by Article 23 of the Land Law.

---

<sup>39</sup> Land Law 2001, Article 23.

<sup>40</sup> Land Law 2001, Article 26.

If anyone stops an indigenous community from using their land according to traditional customs, they are breaking the Land Law. Also, anyone who tries to sell indigenous community land is breaking the law. No one has a right to sell community land to people outside the community.

### HOW CAN AN INDIGENOUS COMMUNITY REGISTER THEIR LAND?

Registering community land is a two stage process:

1. First, the *community* itself must be registered; and
2. Second, the community can register its *land*.

So far there is no law about the procedure for registering indigenous *communities*.

The Land Law gives indigenous communities *the right* to register their traditional land.<sup>41</sup> The procedure for doing this is explained in a sub-decree, which was passed in 2009.<sup>42</sup> However, this cannot be used until there is a procedure for registering communities.

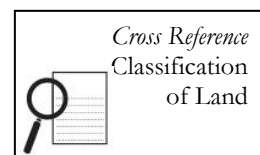
This means that at the moment it is not possible to get collective title. Article 23 of the Land Law says that until indigenous communities get collective title to protect their land, they have the right to manage and use their land according to their customs.

## 2.1. WHICH TYPES OF LAND CAN BE REGISTERED AS INDIGENOUS COMMUNITY LAND?

The Land Law gives indigenous communities *the right* to register their traditional lands, including land on which they live and farm.<sup>43</sup> The Sub-decree on the Procedure for Registering Indigenous Community Land says that the following land can be registered as indigenous community land:

- Land on which people live
- Farming land, including land left empty for **shifting cultivation**
- Spirit forest land up to a total size of seven hectares
- Cemetery forest land up to a total size of seven hectares<sup>44</sup>

Until they are registered as indigenous community land, these kinds of land are classified as State property. However, indigenous communities have the right to continue to manage and use the land according to their customs.<sup>45</sup>



<sup>41</sup> Land Law 2001, Article 26.

<sup>42</sup> Sub-decree on the Procedure for Registering Indigenous Community Land 2009.

<sup>43</sup> Land Law 2001, Article 26.

<sup>44</sup> Sub-decree on the Procedure for Registering Indigenous Community Land 2009, Article 6.

<sup>45</sup> Land Law 2001, Article 23.

Some forest land that has been traditionally used by indigenous communities cannot be registered as indigenous community property, *but indigenous communities have the right to continue their traditional uses*. These use rights are clearly set out in the Forestry Law, and according to that law, they do not require a permit from authorities. Traditional use rights include the right to:

- Collect dead wood, fruits, honey and resin
- Use timber to build house and stables
- Cut grass or use land for grazing animals<sup>46</sup>

The sub-decree on registering indigenous land adds to this that communities also have the right to continue using water sources, for example streams or rivers, in the forest. The sub-decree also states that to continue any of these traditional uses, communities must make an agreement with the relevant authorities.<sup>47</sup> This is different from the Forestry Law, which says no permit is required.

### Forestry Law 2002

Article 40: For local communities living within or near the Permanent Forest Reserves, the state shall recognize and ensure their traditional user rights for the purpose of traditional customs, beliefs, religions and living as defined in this article.

The traditional user rights of a local community for forest products & by-products shall not require the permit.



The Forestry Law is a higher law than the sub-decree, so it *should be* the rule that is followed.

---

<sup>46</sup> Forestry Law 2002, Article 40.

<sup>47</sup> Sub-decree on the Procedure for Registering Indigenous Community Land 2009, Article 7.

## LESSON 2: HOW ARE INDIGENOUS COMMUNITIES' LAND RIGHTS PROTECTED IN CAMBODIA?

**AIM:** Participants will know that the Land Law protects indigenous land rights. They will know and understand which types of land can be registered as collective ownership and which types of land cannot be registered, but on which communities still have rights to use.



**MATERIALS:** Whiteboard or flipchart, markers, copies of Handout 1.

**METHOD(S) USED:** Question and answer, group discussion using pictures.

Procedure	Time Frame (in minutes)
1. Introduce the information in Sections 2 and 2.1	25
2. Group discussions	30
3. Debrief	15
<b>Total:</b>	<b>70</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTIONS 2 AND 2.1:

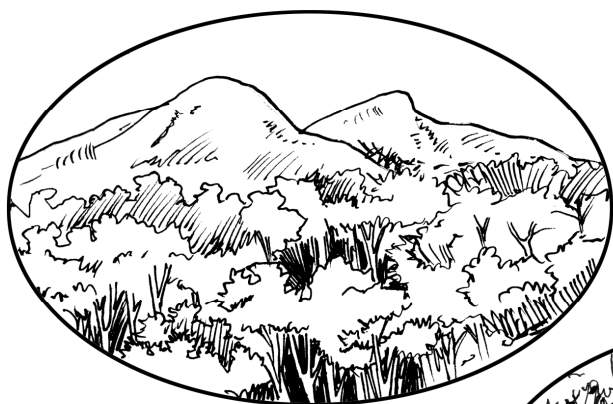
**Section 2 and 2.1** - It is important that Participants understand:

- That the Land Law gives indigenous communities the right to register their land as collective ownership.
- That communities will not be able to register their land until the legal procedure is finished and passed by the government, including the procedure for registering indigenous communities.
- That until then, under the Land Law, indigenous communities have the right to continue to manage their land according to traditional customs.
- That some kinds of land can be registered as collective ownership, and some kinds of land cannot. However, communities still have the right to use forests according to their customs.

### 2. GROUP DISCUSSION:

- Introduce the activity by telling Participants that in this lesson they will look at several pictures and decide what rights indigenous communities have to use or register the land in the picture.
- This exercise can be done in small groups or as one big group.
- Give out copies of the pictures of different types of land (Handout 1). Go through the different pictures and explain what they show:
  1. Old forest
  2. A forest area where indigenous people tap resin from trees
  3. Farmland of an indigenous community
  4. An indigenous cemetery in the forest
  5. An indigenous community village
- Next, divide the Participants into groups to discuss the pictures, or hold a whole class discussion.
- If this lesson is done in one big group, you should try to get all Participants to join in this exercise. Make sure that Participants give reasons for their answers.

- If the lesson is done in small groups, after the small group work you can ask each group to explain their answer about one of the pictures and see if the other groups agree. Do this until all the pictures have been discussed.



## Suggested Answers:

1. *Old forest:* If a community has spirit or burial forest in this area, they have the right to register for collective title over part of the land. A community can register up to seven hectares of forest as spirit forest, and up to seven hectares as burial forest. These can be in one place or in several areas, but cannot total more than seven hectares.

Until a community can register this land, it has the right to continue to manage the land according to traditional custom. This is protected by Article 23 of the Land Law.

If a local indigenous community has traditionally used this forest to collect forest products, such as fruits, resin, or small amounts of timber for housing, according to the Forestry Law they have the right to continue using the forest for these uses. (The sub-decree on registering indigenous land says that communities need permission to do this, but the Forestry Law says they do not and it is a higher law.) The forest cannot be registered as indigenous community land and will remain State land, but the indigenous community has the right to continue using it according to custom.

2. *Forest area where indigenous people tap resin:* Because an indigenous community has traditionally used this forest area to tap resin, according to the Forestry Law they have the right to continue using the forest for this use. (The sub-decree on registering indigenous land says that communities need permission to do this, but the Forestry Law says they do not and it is a higher law.) The forest cannot be registered as indigenous community land and will remain State land, but the indigenous community has the right to continue using it according to custom.
3. *Farmland of an indigenous community:* Indigenous communities have the right to register farmland as collective indigenous land. This includes land that is reserved for shifting agriculture. This means land which is not being farmed at the moment, but will be in the future, can also be registered. However, the procedure for registering communities has not been passed yet, so indigenous communities are not yet able to register the land.

Until a community is able to register collective land, it has the right to continue to manage these lands according to traditional custom as protected by Article 23 of the Land Law.

4. *An indigenous cemetery in the forest:* Indigenous communities have the right to register cemetery land in the forest as collective indigenous land. The amount of forest cemetery registered cannot be larger than seven hectares in total. However, the procedure for registering communities has not been passed yet, so indigenous communities are not yet able to register the land.

Until a community is able to register collective land, it has the right to use this land according to traditional custom as protected by Article 23 of the Land Law.

5. *An indigenous community village:* An indigenous community has a right to register residential land as collective indigenous land. However, the procedure for registering communities has not been passed yet, so indigenous communities are not yet able to register the land.

Until a community is able to register collective land, it has the right to use this land according to traditional custom as protected by Article 23 of the Land Law.

### 3. DEBRIEF:

- To end the exercise, facilitate a discussion on whether Participants think that the rights given to indigenous communities in the law are fair.
- You can ask the Participants the following questions, making sure they give reasons for their answers:
  - Do you think that indigenous communities should have full ownership and management of all of their traditional lands?
  - It is not possible at the moment to register community land, but when it is, do you think this will be the end of land problems for indigenous communities? Will a collective title protect indigenous lands?

### 3. INDIGENOUS COMMUNITY LAND RIGHTS

Just like individual private landowners, indigenous people have land rights. The Land Law says, “collective ownership includes all of the rights and protections of ownership as are enjoyed by private owners.”<sup>48</sup> Until indigenous communities can register their land they have the right to continue their traditional use of the land.<sup>49</sup> This means indigenous communities can continue to:

- Live on and use the land;
- Stop other people from outside the community coming onto the land;
- Build homes on the land and make improvements to the land; and
- Use forests for burial grounds and religious purposes according to traditional custom.

Even if collective titles have not yet been issued, indigenous communities still have all of the rights listed above which follow their traditional use of the land. Until collective title is available, Article 23 of the Land Law gives indigenous communities the right to manage and use their lands in the same way they have always done. Other people must respect this right, and government officials have a duty to respect and enforce this law. If anyone from outside the community attempts to take traditional indigenous land, they are violating Article 23. If somebody cuts down spirit forest or clears burial grounds, they are stopping indigenous people from continuing to manage their land according to tradition. In this case they are also violating Article 23 of the law. If an official knowingly lets this happen they are also violating the Land Law.

Many indigenous communities also have community rules that members follow. In addition to the rights mentioned above, community rules also give members rights and duties within their communities. These rules often differ from community to community.

#### CAN INDIGENOUS LAND BE SOLD?

Indigenous community land cannot be sold to people outside the community. The Land Law states that indigenous community land must be managed according to traditional custom. If it is not part of a community's custom to sell land to people outside the group, then:

- It is illegal for someone inside the community to sell the land to an outsider,
- It is illegal for outsiders to buy community land, and
- It is illegal for an official to witness or allow the sale.<sup>50</sup>

<sup>48</sup> Land Law 2001, Article 26.

<sup>49</sup> Land Law 2001, Article 23.

<sup>50</sup> Statement by Indigenous Peoples at the first Forum of Cambodia's Indigenous Peoples, Kampong Speu Province, September 2004.

Indigenous community elders asked for this to be included in the 2001 Land Law. It was done to respect indigenous culture and avoid land becoming property of people outside of the community.

## LESSON 3: INDIGENOUS COMMUNITY LAND RIGHTS

**AIM:** Participants will think about which indigenous land rights are protected by the Land Law.



**MATERIALS:** Whiteboard or flipchart, markers.

**METHOD(S) USED:** Group discussion, role-play and presentations.

Procedure	Time Frame (in minutes)
1. Introduce the information in Section 3	20
2. Explain the exercise and divide Participants into four groups	5
3. Groups discuss and plan role-play	10
4. Role-plays and class discussion	20
5. Debrief	5
<b>Total:</b>	<b>60</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTION 3:

**Section 3** - It is important that Participants understand:

- That indigenous communities have the same rights as individual landowners, but these rights must be exercised according to traditional custom.
- That indigenous land cannot be transferred to people outside the community if this is not in line with traditional customs.

### 2. EXPLAIN THE EXERCISE AND DIVIDE PARTICIPANTS INTO FOUR GROUPS:

- Explain that the class will create role-plays that show indigenous land rights being used.
- Divide the Participants into four groups and give each group one of the following four land rights:
  - To live on and use the land
  - To stop other people from the community coming onto the land
  - To build homes on the land and make improvements to the land
  - To use forests for burial grounds and religious purposes according to traditional custom
- Tell the Participants that they should not tell the other groups which right they have.

### 3. GROUPS DISCUSS AND PLAN ROLE-PLAY:

- The groups will then have ten minutes to discuss the right and create role-plays showing how an indigenous community would use these rights.

### 4. ROLE-PLAYS AND CLASS DISCUSSION:

- The groups will perform their role-plays. After each role-play, the Participants who are watching should try to guess which right the role-play shows.
- Ask the members of the group to talk about their role-play.

## Suggested Answers:

1. *To live on and use the land:* The community members can enter and leave the community's land when they want to. Communities can farm the land using traditional methods, for example, raising animals, growing crops, and using shifting agriculture.
2. *To stop other people from coming onto the land:* The community members can agree to keep outsiders from coming onto their land.
3. *To make improvements to the land:* The communities can build homes and other buildings on their land for community members.
4. *To use forests for burial grounds and religious purposes according to traditional custom:* Community members can use areas which are traditionally used for burial and also spirit forests. These forests cannot be cut down by anyone.

## 5. DEBRIEF:

- Ask volunteers for examples of how each of the rights of collective ownership can be violated by outsiders.
- Some examples include:
  - Some indigenous communities have been evicted from their land and have not been allowed to return.
  - Land developers have taken communities' traditional farming lands and used them for plantations.
  - Land speculators have taken indigenous community land and built fences around the land. A lot of this land is still empty and unused, because the person who took it is waiting for the price to go up so that they can sell it for a profit.
  - Authorities have given permission to companies and individuals to come onto indigenous land and develop or inspect them for development opportunities.
  - Developers have cut down the trees in areas that are indigenous communities' traditional spirit forests or burial grounds. These trees are often sold for timber and sometimes the land is turned into plantations.

## 4. WHAT IS THE IMPACT OF SELLING COMMUNITY LAND?

Many indigenous communities around the world traditionally do not sell their land, and many do not think that their land should be privately owned. Usually, according to the customs of indigenous communities, people can live on and use the land and should also respect and care for the land. In these communities, it is not customary to sell land to outsiders. This means that one of the rules of collective ownership of these communities would be “No one can sell community land to people outside the community.”

Traditionally, indigenous communities in Cambodia do not sell land to people that are outside the community.<sup>51</sup> Because of this, and for other reasons already discussed, agreements between a member of an indigenous community and an outsider to sell community land are illegal.

Outsiders often want to buy land from indigenous communities because it is often worth a lot of money. However, selling collective land to outsiders is illegal, and it impacts the community in many ways. For example, if land is sold to people or groups outside of the community, then indigenous communities may lose their traditions and their unity. This can sometimes cause the community to break up and their traditional way of life to end.

A whole culture can be lost if there are land problems. When a culture is lost, people lose their identity. When this happens, social problems can increase. In some communities that have lost their traditional lands, there are problems like too much drinking, fighting and domestic violence.

Very often, big companies and land developers buy many small pieces of community land over time. As the total size of the community’s land gets smaller and smaller, the community gets weaker and weaker. The length of time that communities leave land fallow gets shorter, and the land does not produce as much as it once did. An indigenous community can protect its collective land and traditional way of life by being organized and united and not selling community land.

---

<sup>51</sup> Statement by Indigenous Peoples at the first Forum of Cambodia’s Indigenous Peoples, Kampong Speu Province, September 2004.



## LESSON 4: THE IMPACT OF SELLING COMMUNITY LAND

**AIM:** Participants will discuss and share experiences and ideas about the impacts of indigenous communities selling their land.



**MATERIALS:** Whiteboard or flipchart, markers, map prepared before lesson.

**METHOD(S) USED:** Group discussion, class discussion

Procedure	Time Frame (in minutes)
1. Introduction activity	15
2. Introduce the information in Section 4	15
3. Small group discussions	10
4. Class discussion with map	25
5. Debrief	10
<b>Total:</b>	<b>75</b>

## INSTRUCTIONS TO FACILITATOR

Note: Before you start this lesson, draw Map 1 (see below) on a piece of flipchart paper for use later.

### 1. INTRODUCTION ACTIVITY:

- Ask all the Participants to stand up and come to an open space in or outside the room.
- Explain that you will ask the Participants a question. If the Participants' answer to the question is "yes" they should stand on your left, if their answer is "no," they should stand on your right. Explain that there is no right or wrong answer to the question and if Participants cannot decide they can stand in the middle.
- Then ask the following question:
  - Should individuals within indigenous communities be allowed to sell their plot of land to outsiders?
- Give Participants a few minutes to decide where to stand. Once all the Participants have moved to either the right, left or middle of the space, the Facilitator should ask someone from the left (who said "yes" to the question) why he or she decided to stand there. Ask the views of one or two more of the Participants standing on the left.
- Then do the same with Participants standing on the right (who answered "no" to the question) and ask Participants standing in the middle why they could not decide.
- This activity may start a lively discussion, but you should make sure that after ten minutes the Participants return to their seats.

### 2. INTRODUCE THE INFORMATION IN SECTION 4:

**Section 4** - It is important that Participants understand:

- That in Cambodia, indigenous communities do not traditionally sell their land to outsiders.
- That in some cases, selling parts of the community land to outsiders can break up a community.
- That when a community loses its culture, social problems often occur.

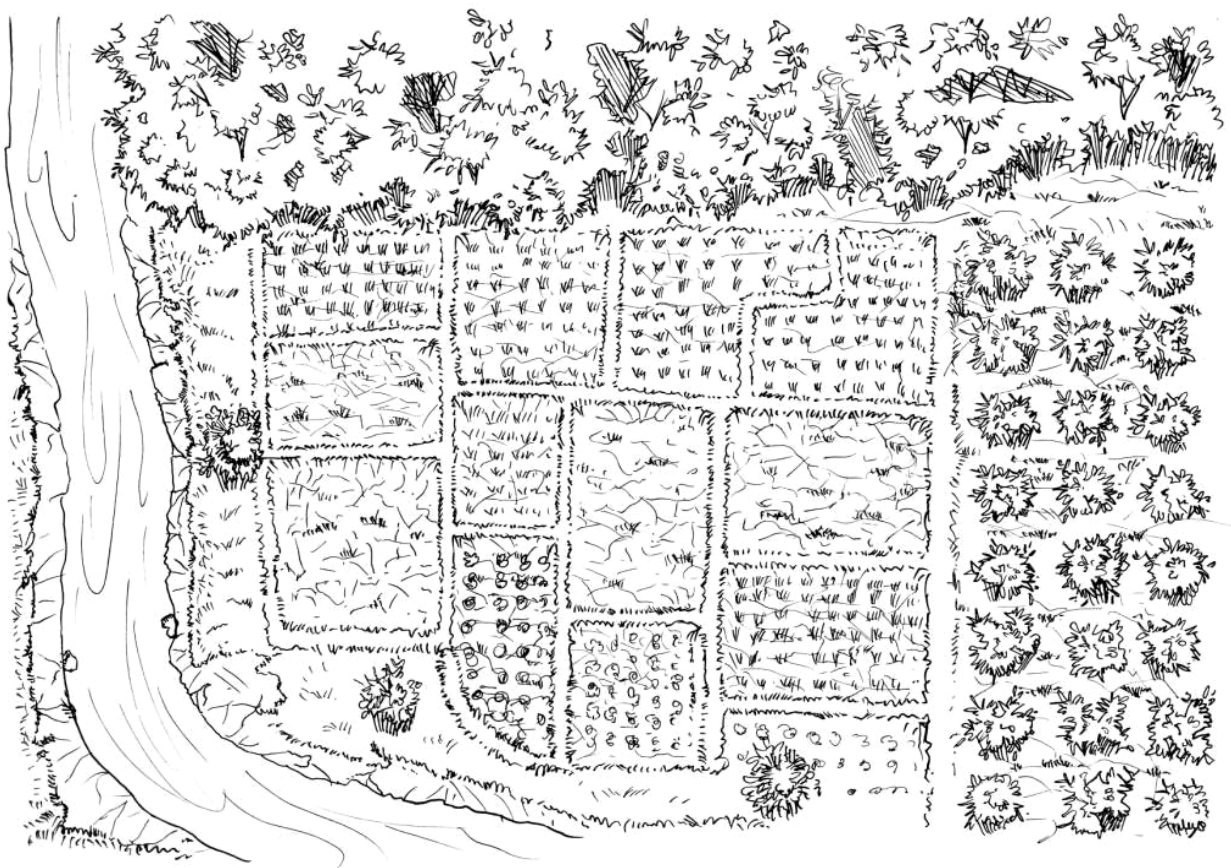
### 3. SMALL GROUP DISCUSSIONS:

- After teaching from the text, divide the Participants into groups of four. Ask them to think of and discuss reasons why they think some indigenous community members (or whole communities) might decide to sell parts of their traditional land, even if it is not customary for them to do so.

### 3. CLASS DISCUSSION WITH MAP:

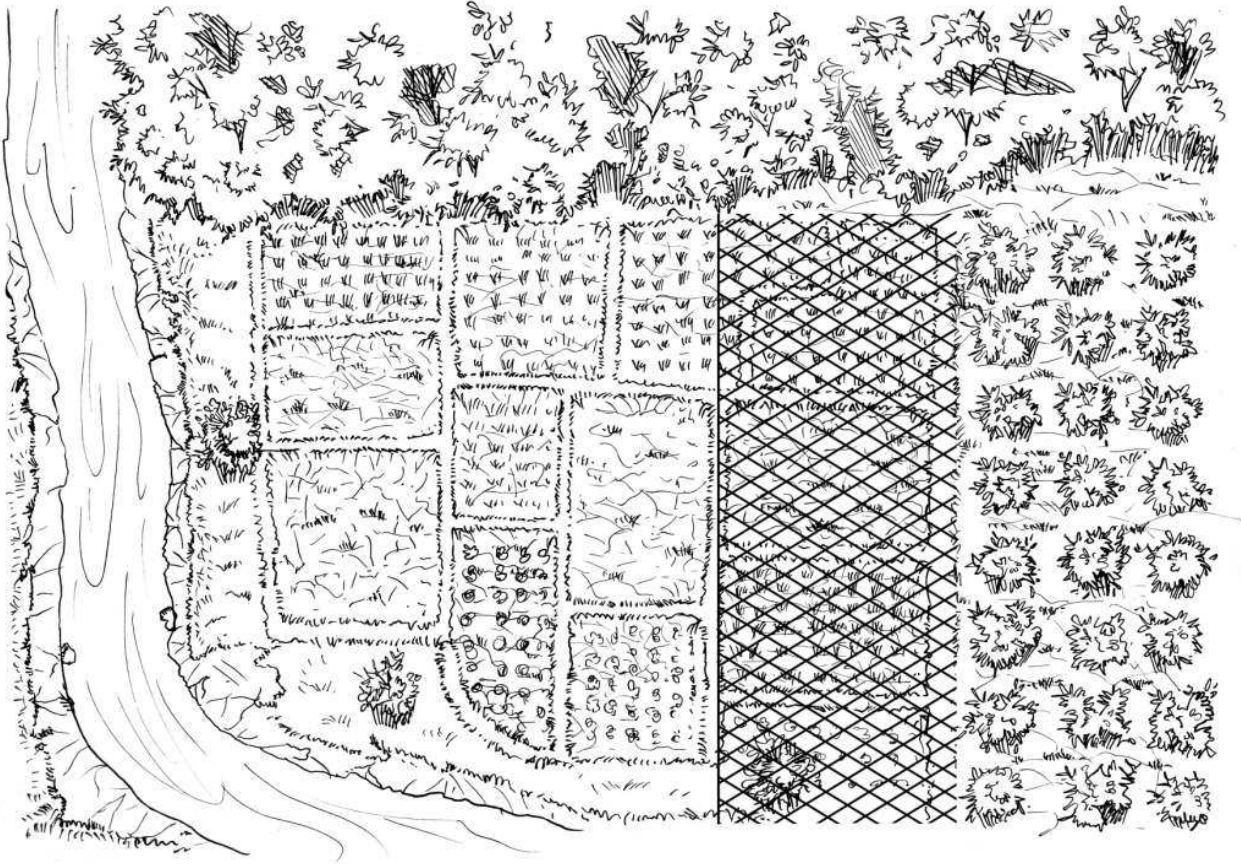
- After the group discussion, bring the whole class together and show the class Map 1 below. Draw this map onto a flipchart paper before the class starts.

Map 1

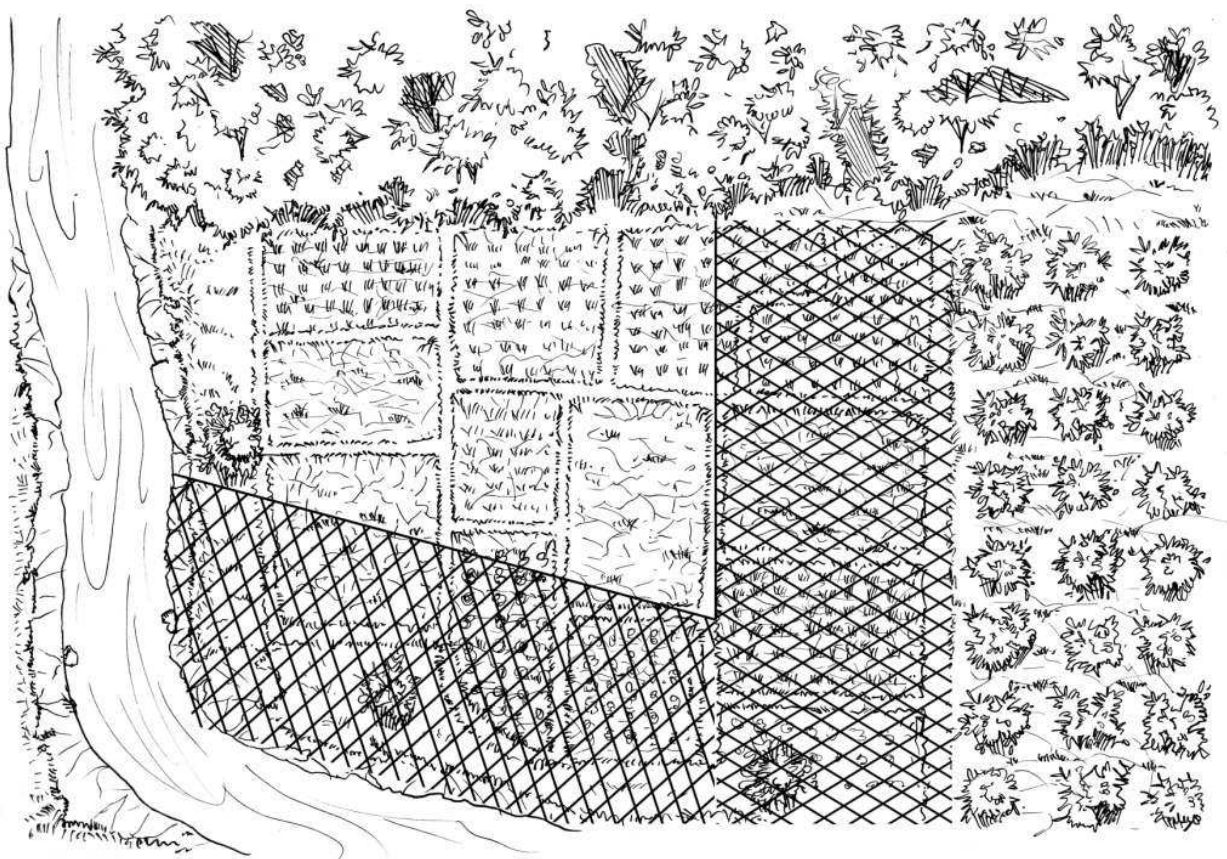


- Explain that the area at the top of the map is forest, on the left is a river and on the right a plantation. The large area in the middle is indigenous community land. The community has lived and farmed there for many generations.
- Ask someone to give an example of why an indigenous community member might sell some of the community's land.

- If someone says, for example, “They might be approached by a wealthy and powerful person, and feel scared that if they do not sell, the person will take the land anyway.” Show this on the map:



- The area crossed out has been sold by the community because they were scared that it would be taken anyway and they would get nothing.
- Another Participant may say, “The village chief or local official might sell some land without asking the community.” Again, cross out part of the land and explain that the land has been sold by the village chief.
- Show how the community gets cut off and divided by the land sales. After each example of a land sale, ask the Participants what effect they think this will have on the community.
- It is also possible to use this exercise to show how communities can become divided. For example, land in the middle of the village may be sold, dividing the community in half.



### Suggested Answers:

- Answers will be different for different groups of Participants. There are some examples below, but it is still important that you try to find out what the Participants think.
- Examples of reasons why people may try to sell include:
  - They are approached by a wealthy or powerful person and they are scared that their land will be taken away if they don't sell
  - A village leader or official may sell land without asking the community
  - Someone may try to sell part of the land because they are desperate for money, for example, because a family member is sick
  - People may be tricked into selling land
  - Someone might decide they want to move away and live in the town or in another village
- Possible effects this can have on the community:
  - The community may get cut off from traditional lands
  - The community may get cut off from each other
  - The community's traditional customs may be restricted

- The community may be weakened and break apart if its land is divided
- The people who buy the land may then encroach onto other community land and weaken the community even more

## 5. **DEBRIEF:**

- After the exercise, hold a short discussion to summarize the lesson. You can facilitate this discussion by asking:
  - Does anyone want to share any stories of this happening in their community or a community they know about?
  - How can communities stop this from happening?
  - What do you think will happen to the natural resources that are managed by indigenous people if they are taken by outsiders or powerful people?

## 5. INDIGENOUS SOLIDARITY AND THE INTERNATIONAL INDIGENOUS MOVEMENT

During the last 40 years, indigenous people around the world have come together to advocate for indigenous peoples' rights. They formed organizations of indigenous people from different countries. These indigenous organizations worked together to help create new laws and rules that protect indigenous people's rights. These organizations and the people that support them are called the **international indigenous movement**. This movement has won major victories in earning the right for indigenous communities across to the globe to control their own land and resources. However, the movement continues today because there is still much more that needs to be done.

During the past few decades, indigenous peoples have participated in discussions at the United Nations and helped influence several decisions about international law. Because of this advocacy, today there are several different international agreements, decisions and legal documents that recognize special rights for indigenous peoples. One of the most important is the **United Nations Declaration on the Rights of Indigenous Persons (UNDRIP)**. The Declaration and other legal documents recognize the right of all indigenous peoples to be free from discrimination, to practice their religious traditions, manage their land according to their customs, and to be involved in the decisions that affect their lives. While the Declaration is not law it is an important international document, agreed upon by most nations, that recognizes indigenous peoples' rights

Despite this progress, indigenous people in Cambodia and all around the world are still threatened with the loss of their lands, resources and culture. In order to try and challenge this, it is important that communities are united and organized. This needs to happen first at the local level, then at the national level. Solidarity through the international indigenous movement can help indigenous people to become organized, aware of the issues that affect them and work to ensure that their rights are respected and protected.

## LESSON 5: THE IMPORTANCE OF COMMUNITY SOLIDARITY

**AIM:** Participants will know that there is an international indigenous peoples' movement, and will discuss why indigenous communities must be united if they want to protect their traditional lands and customary ways of life.



**MATERIALS:** Whiteboard or flipchart, markers.

**METHOD(S) USED:** Group demonstration, group discussion.

Procedure	Time Frame (in minutes)
1. Introduce information in Section 5	20
2. Perform demonstration	15
3. Group discussion	15
4. Debrief	10
<b>Total:</b>	<b>60</b>

## INSTRUCTIONS TO FACILITATORS

### 1. INTRODUCE THE INFORMATION IN SECTION 5:

- Before teaching this section, ask Participants if they know of indigenous communities in countries other than Cambodia.
- Ask if they think indigenous communities in other countries face similar problems to them.
- After five minutes, introduce the information from Section 5:

**Section 5** - It is important that Participants understand:

- That in response to the problems indigenous people face, an international indigenous movement has developed.
- That this movement has made great progress towards ensuring the protection of indigenous rights.
- That there is still much work to be done and this will only happen if communities are united and aware of the issues they face.

### 2. PERFORM DEMONSTRATION:

- Divide the Participants into two groups. Group 1 should have just three people. Group 2 should be the rest of the class.
- Quietly explain to Group 1 that they are land-grabbers. Tell Group 2 that they are all indigenous community members. *Do not tell Group 2 that the other group is land-grabbers.*
- Explain to the Participants that the activity can be a little physical, so any old people or people with health problems may want to just observe.
- Ask the groups to stand in two lines facing each other (see picture 1 below). You should not tell Group 2 anything else. Then take Group 1 away and explain to them quietly that behind the community members there is land and valuable natural resources. They must try to break through the line of the other group and take the land. Do not tell this to Group 2.



- Because the community members (Group 2) are unaware and unorganized, the land-grabbers will get through to the other side and take the land (see picture 2 below).



- Explain to everyone what just happened. The community did not know what was happening and they were not united so the land-grabbers broke through easily.
- Now do the exercise again, but this time, tell the community group that they have a few minutes to think of how they will stop the land-grabbers breaking through. *Make sure to explain that neither group can use violence.* This time, if the community is united the land-grabbers should not be able to get through (see picture 3 below).



### 3. GROUP DISCUSSION

- After the demonstration, the whole class should discuss the exercise. You can ask these questions:
  - What was the message of this game?
  - Do you think it is better for community members to try to protect their own piece of land, or is it better for the whole community to work together to protect all of the community's land?
  - How can communities organize to prevent land from being taken?

### **Suggested Answers:**

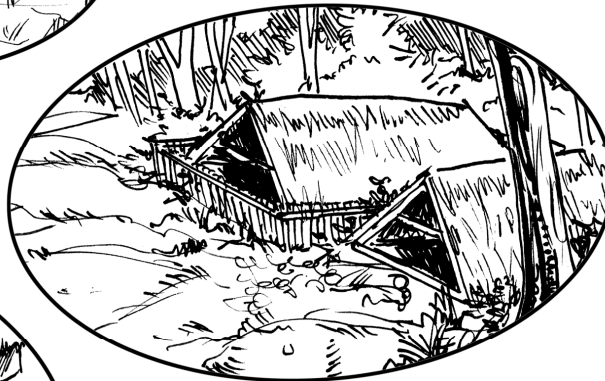
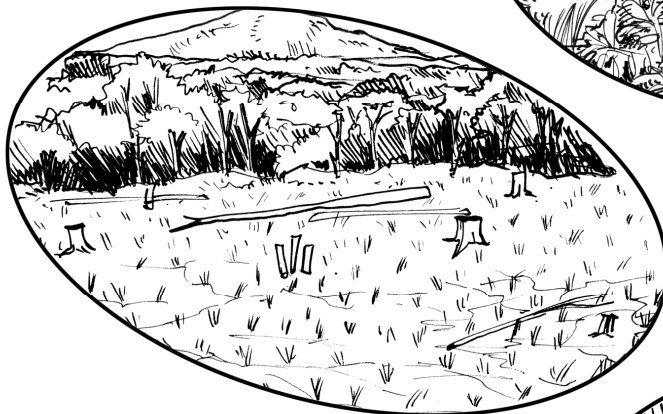
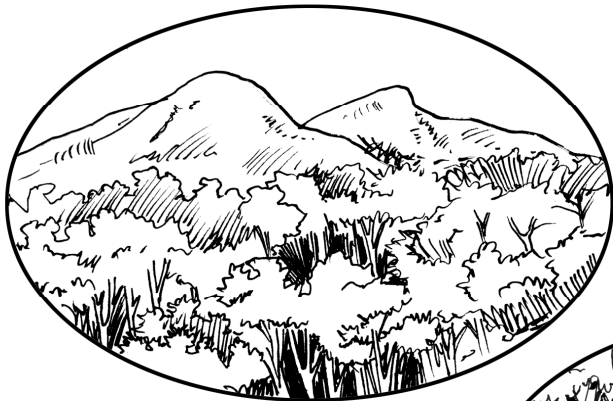
- Answers will be different depending on the group, but hopefully the demonstration will show that when indigenous communities are united, it is more difficult for people to take away their land.
- You should make sure to say that this demonstration was just a fun way to show that to protect your land, and protect your culture, it is necessary for communities to be aware and to be organized.

### **4. DEBRIEF:**

- Encourage the Participants to discuss the importance of community unity. Ask Participants for examples of what they think communities can do to stay united and strong.
- Explain that it is harder for others to take the land of indigenous communities if the community works together and is united. *Under the Land Law, indigenous communities have the right to continue to manage their traditional lands, but they will also have to be strong and united to prevent outsiders from taking their land away.*
- The same is true internationally: when indigenous community members from different countries work together, they can help to create international documents like the UN Declaration on the Rights of Indigenous Peoples. These documents can create commitments that all governments should try to follow to respect indigenous people's rights.
- When communities are united and strong, they can help ensure that the government upholds these commitments and respects the rights of indigenous communities and their relationship to their land.

## DIFFICULT TERMS:

1. **Collective ownership:** If land is collectively owned it belongs to a group of people instead of one person. For example, indigenous community land belongs to all the members of the indigenous community who live or farm there.
2. **Collective title:** An official document given by the government that states that an indigenous community has ownership over a piece of land. Collective title gives ownership rights to the whole community, not an individual. This means that individuals cannot sell indigenous land.
3. **Shifting cultivation:** Sometimes an indigenous community leaves part of the land unused but plans to farm the land in the future. This is called shifting cultivation. It is a traditional method of farming that renews the soil so that crops can grow better.
4. **International indigenous movement:** During the last 40 years, indigenous people around the world have come together to advocate for indigenous peoples' rights. They formed organizations of indigenous people from different countries. These indigenous organizations worked together to help create and influence new laws and rules that protect indigenous peoples' rights.
5. **UN Declaration on the Rights of Indigenous People (UNDRIP):** The Declaration recognizes the right of all indigenous peoples to be free from discrimination, to practice their religious traditions, manage their land according to their customs, and to be involved in the decisions that affect their lives. While the Declaration is not law it is an important international document, agreed upon by most nations, that recognizes indigenous peoples' rights.



# EVICCTIONS AND COMPENSATION UNDER CAMBODIAN LAW

## Outcomes

After completion of this module, Participants will:

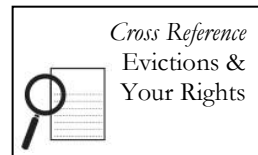
1. Know what compensation is.
2. Know when an eviction is legal or illegal under Cambodian law.
3. Be aware of their rights to compensation under Cambodian law in different types of eviction cases.
4. Understand the meaning of “fair and just” compensation.

## 1. WHAT IS COMPENSATION?

**Compensation** is money or something of value that is given to a person when someone else damages or takes their property. For example, if two people driving motos are involved in an accident, the person whose fault it is should pay for the damage that they cause to the other person’s moto, or any personal injury they cause.



In the case of an eviction, compensation can be money, replacement land, new housing or any combination of the three. Compensation can also be given for things such as earnings from jobs and businesses that were lost, or crops or trees that were destroyed or lost because of an eviction. The important thing is that you receive compensation that is at least equal in value to what you have lost.



## COMPENSATION AND ADEQUATE HOUSING

Compensation is very important in making sure that the government respects your human right to adequate housing. If you lose your house or land in an eviction, the government has a duty under international law and the Cambodian Constitution to make sure you have access to adequate housing somewhere else. *This duty is owed to all people in Cambodia who are evicted, including owners, legal possessors, occupiers and renters.*

One way for the government to meet this duty is to make sure that you get enough compensation. This could be money to buy an adequate house, or you could be given an actual house and plot of land to replace what was taken from you. Having an adequate house means that you have access to all basic facilities such as water, sanitation, schools and hospitals and that you have livelihood opportunities, such as access to jobs or farmland after you move.

Under Cambodian law, owners should receive compensation in the following three situations:

1. If you are illegally evicted by a person or company.
2. If you are illegally evicted by the government.
3. If you are an owner and you are legally evicted by the government for a public interest reason.



The only time you are *not entitled* to compensation is when you are occupying land that you have no right to occupy. For example, if you try to live on someone else's land, you can be legally evicted without compensation. However, remember that under international law the government must respect your right to adequate housing and make sure that you are not made homeless after an eviction, even if you were illegally occupying someone else's land.

## LESSON 1: WHAT IS COMPENSATION?

**AIM:** Participants will become familiar with the concept of compensation, how it can be different depending on the value of the item damaged or taken, and why it is important.



**MATERIALS:** Whiteboard or flipchart, markers, six items or pictures (for example, a krama, a watch, a motorbike, a pig, a basket of fruit and a house).

**METHOD(S) USED:** Group discussions, presentations.

Procedure	Time Frame (in minutes)
1. Introduce the information in Section 1	10
2. Groups discuss how much compensation they think they should get for their property	10
3. Debrief	20
<b>Total:</b>	<b>40</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTION 1:

**Section 1** - It is important that Participants understand:

- What the meaning of compensation is.
- That compensation can take different forms.
- That compensation after an eviction should be at least equal in value to the things you have lost.
- That by compensating evicted families the government can meet its duties to respect the right to adequate housing.
- That under Cambodian law there are three situations in which you should receive compensation if you are evicted.

### 2. GROUP DISCUSSION:

- Next, divide the Participants into six groups and give each group one of the six items or pictures:
  - A krama
  - A watch
  - A motorbike
  - A pig
  - A basket of fruit
  - A house
- Before the lesson, you should find these items, draw pictures of them, or find pictures in a magazine or newspaper. You can use different items or pictures than those listed above, but you should make sure all have different values – some should be worth a lot of money and some should be worth only a small amount.
- Tell each group that they own their item (or the item in the picture).
- Next, walk around the room and take the items or pictures away.
- Tell the Participants that their property has just been taken from them. Ask the groups to discuss what compensation they think they should get in return for their item. You should also point out that the compensation does not have to be money.

**Suggested Answers:**

- As the aim of this exercise is to find out the opinions of Participants, there are no right or wrong answers. However, you should encourage the Participants to put a fair price on the property that was taken away from them.

**3. DEBRIEF:**

- After the group discussion, Participants should stand up and give a brief presentation about their item and explain what compensation they think they should get in return and why.
- If there is time, you should have some more items or pictures ready to show the class. Ask the Participants how much compensation they think they should get if that item was destroyed or taken away from them.

## 2. WHEN ARE YOU OWED COMPENSATION?

### 2.1. SITUATION 1 – YOU ARE LEGALLY EVICTED BY THE LEGAL OWNER

There is only one way a private person can legally move someone off a piece of land. The person who claims the land must have a valid and legal title to that land. A title is an official document that says that a person is the true owner of the land. In this case, *the person evicted will not be owed compensation.*

Some people in Cambodia have fake or non-legal titles. These titles are sometimes used to trick legal possessors into thinking that they have no right to their land. Using fake or non-legal titles to trick someone out of their land is illegal and anyone who tries to do this can be sent to jail or be fined according to the law.<sup>52</sup>

If another person or private company wants to take the land you live on, they must do the following:

1. Show you that they have a valid and legal title
2. Show a court the title and prove that their title is valid and legal
3. Get a court order saying that they have a valid and legal title and that other people living on their land must move
4. Take the valid and legal title and the court order to the police
5. Then, and only then, can the police force you to leave your land



Even a private individual who has a legal and valid title and a court order cannot use violence to evict someone living on their land. They must still ask the police to remove them from the land.<sup>53</sup>

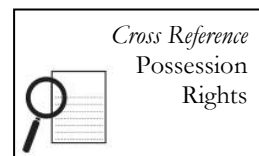
---

<sup>52</sup> Land Law 2001, Article 251.

<sup>53</sup> Land Law 2001, Articles 35 and 254.

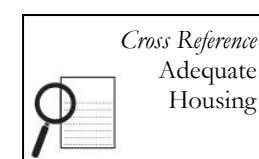


If you legally own or possess your land, no one else should be able to get a valid and legal title to your land.<sup>54</sup> This is why it is very important to insist that anyone who claims to have a title to your land *must show you the title*. (A legal possessor is someone who has lived on their land since before the 2001 Land Law was passed and meets the conditions set out there.)<sup>55</sup> If you do not think that anyone else could have a right to your land, then it is possible that their title is illegal and invalid. This means that you should bring any documents you have to court to prove that you are a legal possessor or owner.



Legal private evictions sometimes occur when people move onto someone else's land without knowing it is owned by someone else. *If a private person follows the five steps listed above and you are evicted, you are not entitled to compensation for the land.* This is the *only* time a private person can request that you are moved from your land and not give you compensation.

However, remember that the government has an international legal duty to make sure your right to adequate housing is respected and you are not made homeless after the eviction. The government must make sure you can find adequate housing somewhere else.



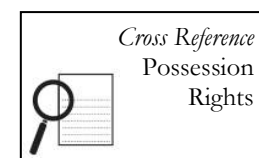
## 2.2. SITUATION 2 – YOU ARE EVICTED ILLEGALLY BY A PRIVATE PERSON

If a private person tries to evict you and does not follow any one of the above steps, *they are breaking the law*. Because they are breaking the law, you have these rights:

1. To get a court order that requires the person trying to take your land to stop immediately
2. To ask the police for help
3. To get compensation for any harm caused to you or your property<sup>56</sup>

Anyone who harms you, your land or your property while attempting an illegal eviction must compensate you.

Unfortunately, illegal evictions do sometimes happen. A person trying to take your land may not show you their title or court order because they do not actually have these documents. They may threaten you and say “you have no rights to this land.” But, without a valid title and a court order, *they have no right to take your land*.

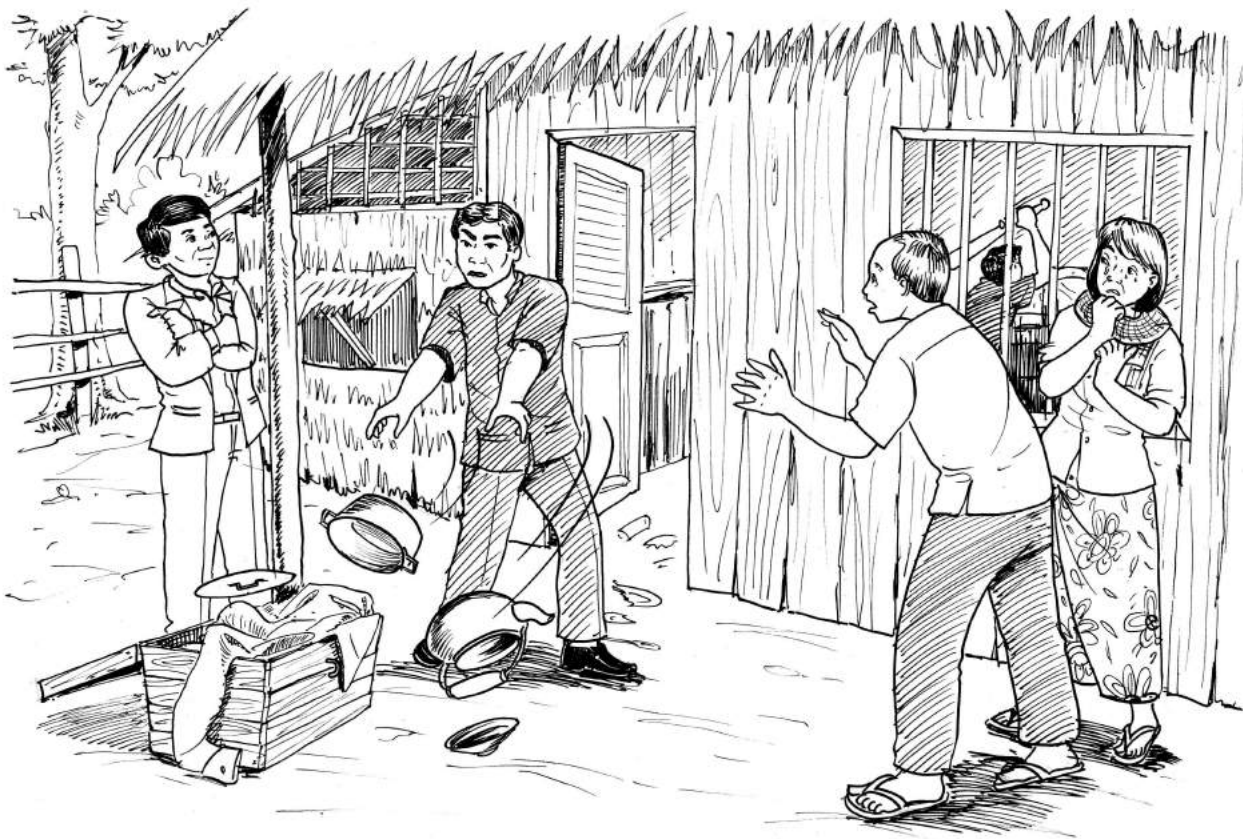


---

<sup>54</sup> Land Law 2001, Article 248.

<sup>55</sup> Land Law 2001, Chapter 4.

<sup>56</sup> Decree No. 38 Referring to Contract and Other Liabilities, Article 121; Land Law 2001, Article 247.



**ALWAYS DEMAND TO SEE THE TITLE AND THE COURT ORDER!**

- If a private person does not have a title to the land, they cannot legally evict you!
- If a private person with title does not have a court order, they cannot legally evict you!
- If a private person with title and a court order does not have the help of the police, they cannot legally evict you!

## LESSON 2: PRIVATE EVICTIONS AND COMPENSATION

**AIM:** Participants will know when a private person can legally evict them. They will also be aware of when the law protects their rights to stay on the land and when they are entitled to compensation.



**MATERIALS:** Whiteboard or flipchart, markers, copies of Handout 1.

**METHOD(S) USED:** Role-play, group discussions.

Procedure	Time Frame (in minutes)
1. Introduce the information in Sections 2.1 & 2.2	25
2. Groups discuss and prepare role-play	15
3. Small groups perform role-plays	60
4. Debrief	10
<b>Total:</b>	<b>110</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTIONS 2.1 & 2.2:

**Sections 2.1 and 2.2** - It is important that Participants understand:

- A private individual may only ask for someone living on their land to be evicted if they can show legal and valid title to the land.
- They must request a court order to carry out the eviction, and the eviction must be conducted by the police.
- In this case, you are not owed compensation under the law but the government has a duty to make sure you can find adequate housing somewhere else.
- If you are evicted by someone and they do not follow these steps, the eviction is illegal.

### 2. GROUPS DISCUSS AND PREPARE ROLE PLAY:

- Divide the Participants into six groups and explain that they are going to create role-plays. They will have fifteen minutes to prepare before they perform for the class.
- Give each group one of the following six role plays (see Handout 1):

#### ROLE PLAYS

1. Narin comes back to his land one day and sees that construction workers are building a new office next to his home and have dumped lots of soil onto his land. They say that part of the land belongs to the company that they are working for.
2. Someone posted a note on the door of every house in Virak's community. The note was from a big company. It said that the company has title to all of the land in the community, and that everyone in the community has to move off the land in one week. It also says that if they do not, the company will force them off the land.
3. A very rich businessman showed up at Chundy's house and said that he is the real and true owner of the land. Chundy has lived on his land since 1994 and thought he was the true owner of the land. The businessman shows Chundy a title and says that he has to leave in one week or he will be forced out and arrested.
4. Mathoura comes back to her land one day and sees that a local wealthy landowner has put up a fence around most of her farm land. Mathoura has no title to the land but has lived there and used the land for farming since 1998.

5. Sochea lives on a piece of land with her family. The land is also claimed by a wealthy individual. One morning Sochea is woken up by many police officers outside her house. They force her to leave her home and then they set it on fire.
6. Piseth has been living on and farming a piece of land for two years. He moved there thinking that the land did not belong to anyone. Last month someone came and said that they owned the land. This person had a legal title for the land. Soon after this the true owner of the land got a court order, and personally evicted Piseth.

- Participant groups should move to different parts of the room and prepare their role-plays.

### 3. **GROUP ROLE-PLAY:**

- The groups should present their role-play to the other Participants.
- After each role-play, ask the other Participants the following questions:
  - Is the eviction legal?
  - Should the person being evicted be able to go to court to stop the eviction? Why?
  - Should the person get compensation?
  - What should the person do next?
- After the Participants have given their ideas and answered the questions, give the correct answer from the Suggested Answers below.

#### **Suggested Answers:**

1. This is not legal because:
  - The company did not have title to that part of Narin's land
  - The company did not have a court order, and
  - The company did not get help from the police to take that part of Narin's land.

Narin should be able to go to court and get a court order stating that the construction company violated his land rights. He should also be compensated for the damage done. The company may have to return the land and repair or pay for any damage they caused to it. Alternatively, the company may have to give Narin enough money to pay for someone to clear and repair the land.

2. Virak's community has not yet been evicted, but if the company tries to force the people to leave, it will be an illegal eviction. The company has claimed to have a title, but they have not shown the title to the community. They also do not have a court order. This means that even if the company gets the police to evict Virak's community, it will still be illegal because there is no legal title or court order. If the company does try to force people off the land, they should compensate them for any damage.
3. This eviction is not legal because the businessman does not have a court order that says that he is the true owner of Chundy's land. This means that the title that the businessman has may not be a valid legal title. The businessman may be trying to trick Chundy into leaving his land. Chundy should demand to see a court order and consider going to court himself to challenge the businessman's title.
4. Mathoura appears to be a legal possessor. Because she is a legal possessor, no other private person can claim the land. Because half of her land was taken illegally, she can go to court. She should be able to get a court order saying that her land must be given back and she should be compensated for any damage to her land.
5. Because the wealthy individual never showed Sochea a valid legal title and a court never ordered the police to evict Sochea, the eviction is illegal. This means that Sochea must be compensated for the damage that the fire caused to her home and property.
6. This eviction is not legal. Even though the true landowner has title and a court order, he or she cannot personally force Piseth to leave the land. This must be done by the police.

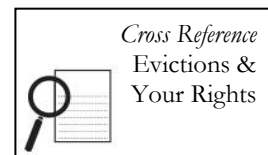
#### 4. DEBRIEF

- After Participants finish their presentations, ask them to summarize what must happen for an eviction to be legal.
- Ask Participants to give some examples of an illegal eviction.

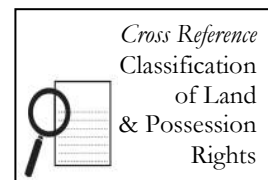
- Then ask the Participants if they think that communities facing eviction have more chance of getting fair compensation if they work individually or together.
- Ask the Participants for their answers and why they feel this way.
- Explain to the Participants that if communities are united and work together in a land dispute, their voice may be stronger and it can make it harder for the authorities to ignore the dispute. In cases where people have fought successfully against evictions, they have usually been active, organized and worked together as a community.

## 2.3. SITUATION 3 – YOU ARE LEGALLY EVICTED BY GOVERNMENT AUTHORITIES

Sometimes it is possible for the government to legally take a person's land. There are two situations in which the government can legally take someone's land.



1. If the person owns the land the government must have a **public interest** reason to take it.
2. If the person is living on State land, the government has the right to take it. Owners and legal possessors are not living on state land so they cannot be legally evicted for this reason.



According to the Land Law, it is illegal to stop people enjoying their peaceful and legal possession. This should protect possessors until the land is registered.<sup>57</sup> This means that there should be no evictions of legal possessors, even if there is a public interest reason, because first the land must be assessed and registered by the Cadastral authorities.

### 2.3.1. WHAT IS THE “PUBLIC INTEREST”?

The public interest is something that is for the benefit of the people because it will help them improve their standard of living or keep them safe. It is something that is for the benefit of many or all Cambodians.<sup>58</sup>



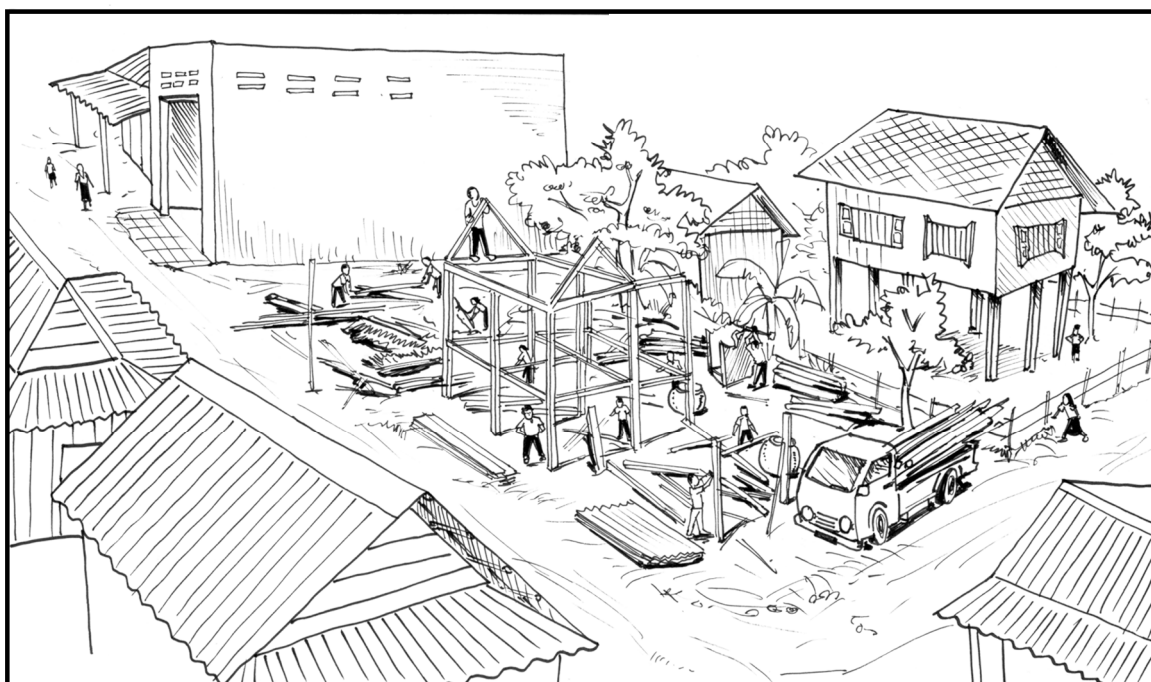
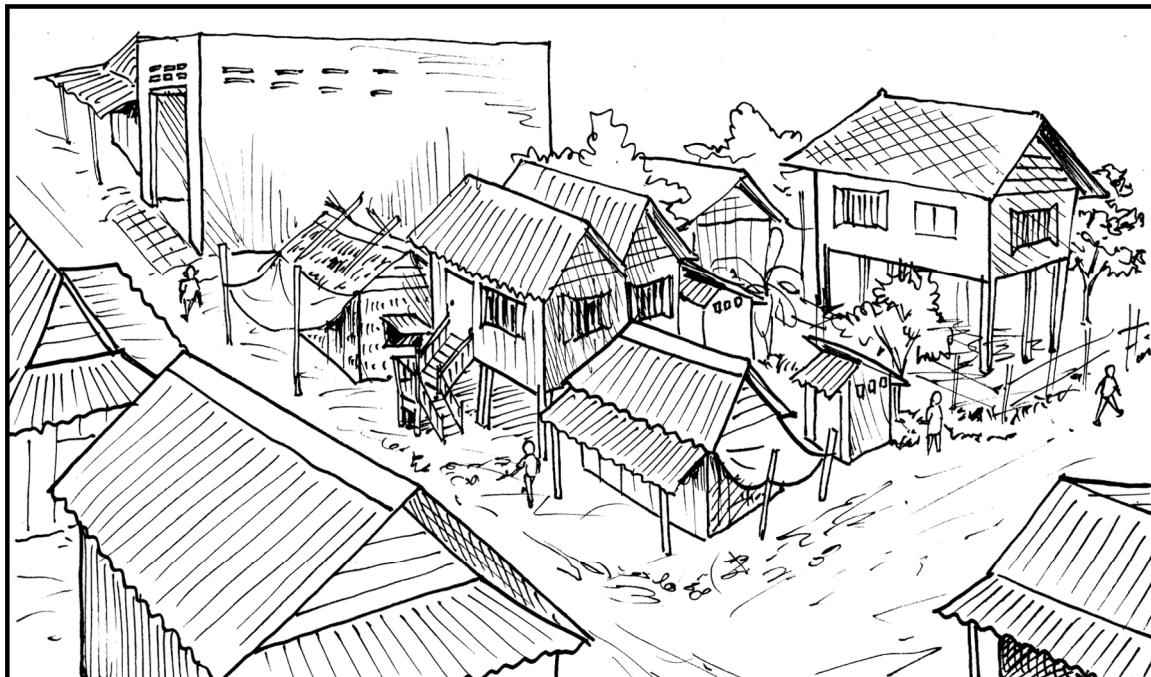
For example:

PROBABLY PUBLIC INTEREST	UNLIKELY TO BE PUBLIC INTEREST
<ul style="list-style-type: none"> <li>• Roads</li> <li>• Bridges</li> <li>• Ports</li> <li>• Hospitals</li> <li>• Schools</li> <li>• Parks</li> <li>• Protection against pollution</li> <li>• Protection of forests and rivers</li> <li>• Safety and health reasons</li> </ul>	<ul style="list-style-type: none"> <li>• Private homes</li> <li>• Shopping malls</li> <li>• Rubber plantations</li> <li>• Casinos</li> <li>• Making the city look modern</li> </ul>

<sup>57</sup> Land Law 2001, Article 248.

<sup>58</sup> The meaning of ‘public interest’ is not completely clear. The government is currently writing a new law that will explain the meaning of public interest.

The government is *only* allowed to take an owner's land if there is a genuine public interest reason.<sup>59</sup> For example, in the picture below several people are displaced to make way for a new public school. This may be in the public interest because the school should provide free education to the children in the area.



*Here, a community has been evicted and demolished.*

<sup>59</sup> The Constitution of the Kingdom of Cambodia 1993, Article 44; Land Law 2001, Article 5.



*After the land is cleared, a public school is built. This may be in the public interest.*

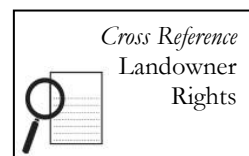
### 2.1.1. IF IT IS IN THE PUBLIC INTEREST, SHOULD I GET COMPENSATION?

The answer to this question depends on whether:

- You own your land,
- You are a lawful possessor of your land, or
- You are an unlawful possessor or renter of a piece of land.

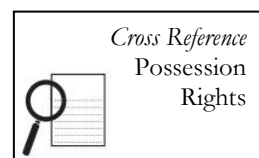
## Owners

If you have a valid legal title to your land, you are entitled to compensation. When the government plans to take your land for one of these public purposes, *you have a right to compensation before the government takes your land.*<sup>60</sup> This means that if the government needs to take your land to build a road or school, you must be given fair and just compensation before your land is taken.



## Lawful possessors

If, like many Cambodians, you have lived on your land for years, but do not have a valid legal title you may be a legal possessor. If you moved to your land before the 2001 Land Law was passed, or bought the land from someone who did, and if you meet the five requirements set out in the Land Law, you are a legal possessor.



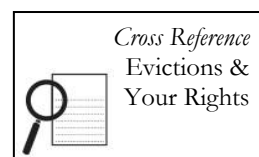
According to the Land Law, it is illegal to stop people enjoying their peaceful and legal possession. This should protect possessors until the land is registered.<sup>61</sup> This means that there should be no evictions of legal possessors, even if there is a public interest reason, because first the land must be assessed and registered by the Cadastral authorities.

Once your land is registered, and your possession is turned into ownership you have the same rights as all owners. This means that if the government needs your land for a public interest reason, as an owner, you must be given fair and just compensation before your land is taken.

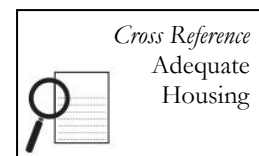
## Unlawful possessors

If you do not own your land and you are not a lawful possessor, then the law says you are not entitled to compensation for the land or any improvements you have made on the land.<sup>62</sup> Sometimes the government will offer compensation to unlawful possessors, but they are not required to do this by Cambodian law.

Remember that under international law, before any evictions take place, including evictions of unlawful possessors and renters, the government has a duty to ensure there is adequate notice, information about the eviction and consultations with the people being evicted. The government must make sure people have another adequate place to live after the eviction.



It is important to know that under international law you always have a right to adequate housing. This means that the government cannot simply evict you and leave you homeless even if you are illegally occupying land. The government has an obligation to make sure that you have access to adequate housing at all times. This includes access to basic facilities and jobs or other livelihood opportunities.



<sup>60</sup> The Constitution of the Kingdom of Cambodia 1993, Article 44; Land Law 2001, Article 5.

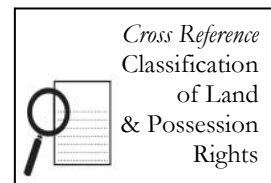
<sup>61</sup> Land Law 2001, Article 248.

<sup>62</sup> Land Law 2001, Articles 19 and 259.

## 2.4. SITUATION 4 - YOU ARE ILLEGALLY EVICTED BY GOVERNMENT AUTHORITIES

The government can only take someone's land if:

1. It is in the public interest, which means that the government will use the land to benefit the Cambodian public.
2. The person is living on State land. Owners and legal possessors are not living on state land so they cannot be legally evicted for this reason.



If you own your land, it is illegal for the government to take your land and use it for a purpose that is not in the public interest. This means that the government cannot take your land and turn it into a private business development or give it to a private individual unless you agree and the business or individual buys the land from you at a price you agree to.

Legal possessors cannot be evicted, even if it is in the public interest, because the Land Law provides protection until the land is registered.<sup>63</sup>

If the government illegally takes or damages your land, you have a right to go to court.<sup>64</sup> This means that you have the right to the same things as when a private person tries to take your land. You can:

1. Get a court order that requires the person trying to take your land to immediately stop
2. Ask the police for help
3. Get compensation for any harm caused to you or your property

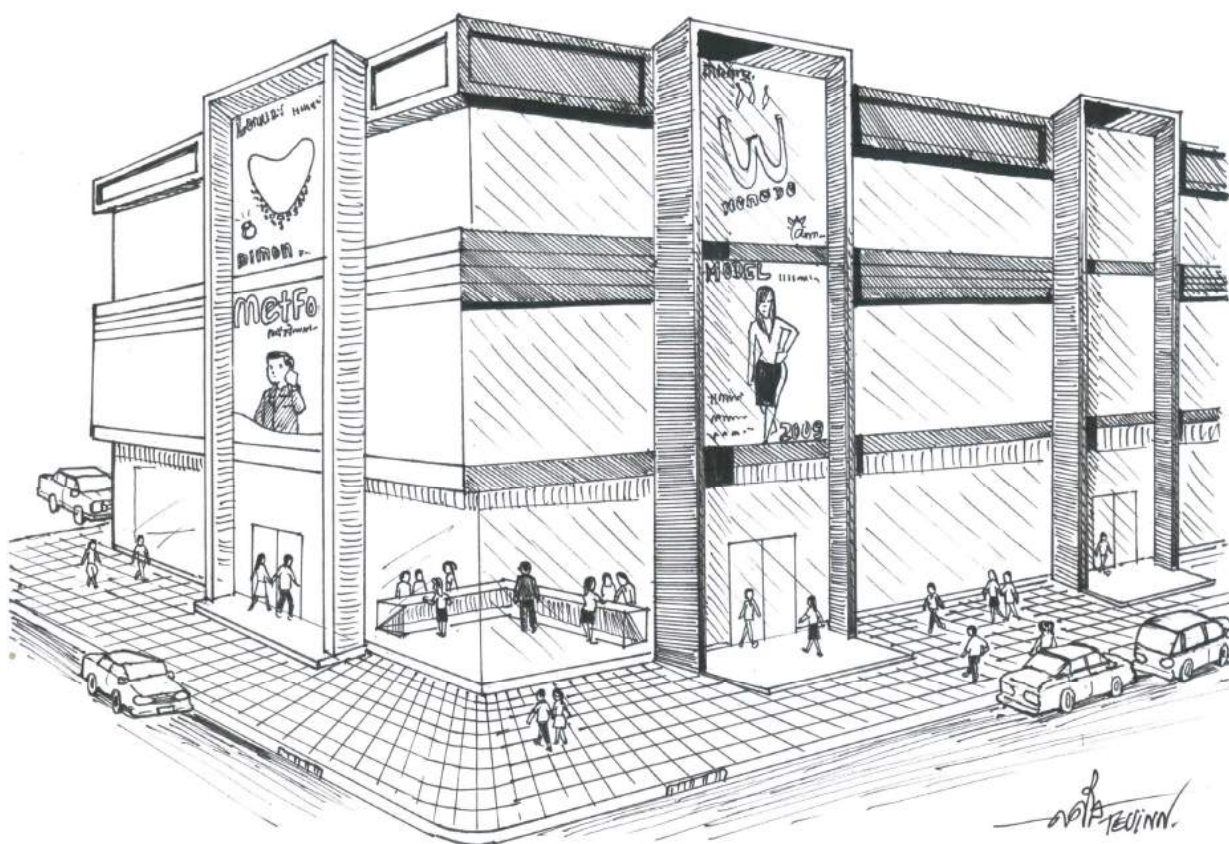
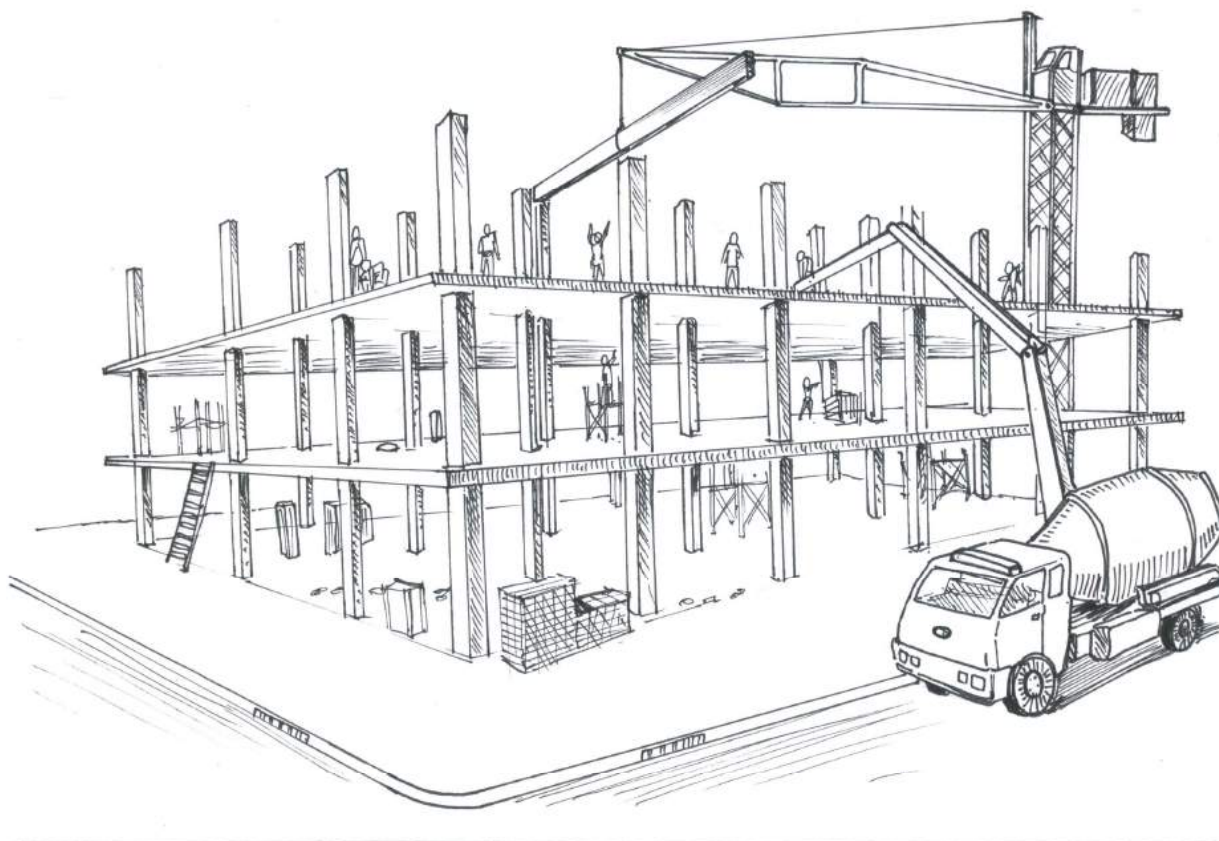
For example, if the authorities illegally take someone's land to give to an individual to build a private business, the owner can go to court to challenge the eviction. Because a private business is not a public interest reason for an eviction, the court should order the authorities and the individual to return the land to the owner and pay compensation for any harm to the property. The authorities or the person who wants the land can make an offer to the people who own or possess the land to purchase it from them.

<sup>63</sup> Land Law 2001, Article 248.

<sup>64</sup> Decree No. 38 Referring to Contract and Other Liabilities, Articles 121; Land Law 2001, Articles 247-50.



*Here, a community is being evicted and demolished.*



*A private business is built on the site – this is not in the public interest so the eviction was not legal.*

## LESSON 3: GOVERNMENT EVICTIONS & COMPENSATION

**AIM:** Participants will know that the government may only evict people from their land in two situations. Participants will know that owners, legal possessors, unlawful possessors and renters have different rights to compensation, and they will be able to understand how this impacts on their own situation.



**MATERIALS:** Whiteboard or flipchart, markers, copies of Handouts 2, 3 and 4.

**METHOD(S) USED:** Case study, group discussions, quiz.

Procedure	Time Frame (in minutes)
1. Introduce the information in Sections 2.3 & 2.4	30
2. Small groups discuss case studies	15
3. Presentation of case studies and discussions	30
4. Debrief	25
<b>Total:</b>	<b>100</b>

## INSTRUCTIONS TO FACILITATOR

### 1. INTRODUCE THE INFORMATION IN SECTIONS 2.3 & 2.4:

**Sections 2.3 & 2.4** - It is important that Participants understand:

- That there are two situations in which the government can legally evict people: for the public interest and to protect state land.
- What the meaning of "public interest" is.
- That the government may only legally evict an owner if the land will be used for the public interest.
- Legal possessors should not be evicted, even if there is a public interest reason because their land has not been registered yet.
- That the right to compensation is different depending on whether the evicted person is an owner, legal possessor or an unlawful possessor or renter.
- That if an eviction by the government is not legal, the evicted person should be compensated or have the land returned.

- When you discuss the public interest, it may be useful to show Participants copies of the pictures from the text. They are also in Handout 2 (public interest) and Handout 3 (not in the public interest).
- Make copies of these pictures and pass them around while you teach.

### 2. SMALL GROUPS DISCUSS CASE STUDIES:

- Next, divide the Participants into six groups and give each group one of the following case studies (see Handout 4):

#### CASE STUDIES

1. Phanna has lived in the town of Pailin since 1994. Her house and land are close to a sewage canal. She has used the land to grow crops for many years. A government official came to her village and told the village chief that the canal was going to be made wider by three meters. This means that Phanna will lose some of the land that she uses to grow crops. Some of her crops will also be destroyed.
2. Two years ago, Socheat built a small home on the riverbank. A government official came to his village to tell everyone that a bridge was going to be built across the river nearby. Because of the construction, the land near the bridge will become very unstable and could fall into the river. The government official told Socheat and some other families that they will have to move from their homes.

3. Sothea has title to her land. An official came to her house and told her that the government was taking her home to build a public hospital. The government official promised to give compensation to Sothea only after she moved out and the hospital was built. Sothea refused because she wanted the compensation before she moved. She was later forcibly evicted by government forces.
4. One day villagers in Sothanin's community were told that a new farming concession had been granted to a company over part of the community's farmland. They were told that everyone without title has no right to compensation for their rice fields, but they would be able to get jobs working on the new rubber plantation.

Sothanin does not have title to his four hectares of rice paddy, but he has farmed the land since 1987. Sothanin and many other community members refused to give up the land. Eventually the company brought in bulldozers and took the land.

- Participant groups should move to different parts of the room to read and discuss their case studies. Tell the groups that they have 15 minutes to discuss their case.
- The groups should discuss the case and decide if the eviction is legal or illegal and whether the affected people have a right to compensation.

### 3. PRESENTATION AND DISCUSSION:

- The small groups should each present their case studies to the other Participants.
- After the group presents their case study, they should act as Facilitators and ask the other Participants if they think the eviction is legal, and if the affected people have a right to compensation.
- The group should lead a small discussion on these questions.

#### **Suggested Answers:**

##### Case 1:

- If the sewage canal widening is needed in the area to improve sanitation, it will serve the public interest. Taking Phanna's land is probably legal as long as the land is actually used for making the sewage canal bigger.
- If Phanna is the legal owner of her land, she should be properly compensated for the land that she loses as well as the crops.

- If Phanna has no land title but is a legal possessor, no eviction should be carried out until the land is registered. After it is registered and Phanna has title, the government can take the land but must properly compensate Phanna before taking it.
- If Phanna can no longer live in her home, the government needs to respect her right to adequate housing and should make sure that Phanna is compensated and has access to an adequate home.

Case 2:

- If a bridge is needed in the area so people can get across the river it is probably in the public interest. This will make the land unsafe to live on and moving people from unsafe land is also in the public interest. This means that the eviction is likely to be legal.
- Socheat and the other families cannot legally own their land because riverbanks are State public property. This means that Socheat is not a lawful possessor.
- The eviction is legal for both of these reasons. The eviction is in the public interest *and* Socheat is living on State public property.
- Socheat does not have the right to compensation for his land, however, the government still has a duty to Socheat to respect his right to adequate housing. This means that the government must make sure that Socheat has access to another adequate house somewhere else on safe land.

Case 3:

- Even though the land would be used for a public hospital, which is in the public interest if a hospital is needed in the area, the eviction was illegal because Sothea should have been given adequate compensation *in advance*.
- Sothea should get compensation for any damage to her home and property that was caused by the eviction.

Case 4:

- Sothanin is a lawful possessor, so his farmland should not be given to the company unless he agrees to sell his land.
- The planned eviction is illegal, because the government can only evict owners if it is in the public interest. Because Sothanin is a legal possessor the government cannot evict him even if it is in the public interest because the land must first be registered.
- This farming concession is not in the public interest because it benefits the private company and not the public.
- Sothanin should be paid compensation for the land that was taken by the company because it was an illegal eviction.

#### 4. DEBRIEF:

- To debrief the lesson, divide the flipchart or whiteboard in half. Ask the Participants to give examples of developments that could be in the public interest and examples of developments which would not.
- Following this, take one example of an eviction carried out in the public interest. Then ask for three volunteers to summarize how the right to compensation differs for:

- Owners

Suggested Answer: Owners should *always* be compensated in advance.

- Legal possessors

Suggested Answer: Until an area has been investigated and registered by the Cadastral authorities, no evictions should happen, even if there is a public interest reason. This means that evictions of legal possessors are not legal.

- Unlawful possessors and renters

Suggested Answer: Unlawful possessors and renters are not entitled to compensation under the law. However, everyone has the right to adequate housing. No eviction should leave anyone in a worse situation than before, even if the evicted people are unlawful possessors or renters.

### 3. HOW MUCH COMPENSATION SHOULD YOU GET?

Remember, there are two situations in which you may be entitled to compensation:

1. When anyone, including the government, illegally takes your land; or
2. When the government legally takes your land in the public interest.

If you are evicted and are entitled to compensation, you should get compensation worth an equal amount to the property that was damaged or taken away. You should get compensation for your house, land and other possessions that were lost or damaged. Compensation can also be given for things such as earnings from jobs and businesses that were lost, or crops or trees that were destroyed or lost because of an eviction.

If you are entitled to compensation, it should be **fair and just** and paid to you in advance of your land being taken.<sup>65</sup> The law has not defined what “fair and just” compensation means, but it should be at least equal to the value of what you will lose. Fair and just compensation is enough to replace the housing, land and other things lost and to make sure that the replacement is of equal or better quality.



<sup>65</sup> The Constitution of the Kingdom of Cambodia 1993, Article 44; Land Law 2001, Article 5.

## LESSON 4: WHAT IS FAIR AND JUST COMPENSATION?

**Aim:** Participants will discuss the meaning of ‘fair and just’ compensation and begin to think about how it applies to real situations. Participants will understand the benefits and problems of different forms of compensation such as money or relocation.



**MATERIALS:** Whiteboard or flipchart, markers, copies of Handout 5.

**METHOD(S) USED:** Group discussions, case studies, presentations.

Procedure	Time Frame (in minutes)
1. Money or replacement housing discussion	10
2. Introduce the information in Section 3	10
3. Case study and group discussions	20
4. Group presentations	30
5. Debrief	15
<b>Total:</b>	<b>85</b>

## INSTRUCTIONS TO FACILITATOR

### 1. MONEY OR REPLACEMENT HOUSING DISCUSSION:

- Before teaching from the text, explain to Participants that in cases where people have received compensation, sometimes they have received cash, and sometimes they have received new homes or a piece of land.
- Explain that in this exercise, the group will discuss the benefits and problems with different types of compensation. To begin, ask the Participants to think about which the best option is: (1) money or (2) a new house or piece of land.
- Ask those who would prefer money to go to one side of the room and those who prefer land or housing to the other side. If people cannot decide, they can stay in the middle.
- Once the Participants have chosen a side, ask Participants on both sides and in the middle why they chose that side.
- After the exercise, introduce the information in Section 3.

### 2. INTRODUCE THE INFORMATION IN SECTION 3:

**Sections 3** - It is important that Participants understand:

- If you are entitled to compensation, that compensation should be “fair and just.”
- There is no clear definition of what this means, but it is generally agreed that this should be at least equal to the value of what you lose.

### 3. CASE STUDY AND GROUP DISCUSSIONS

- Divide the Participants into groups of four or five and tell them to discuss the following situation (see Handout 5 also):

#### CASE STUDY

*The Municipality needs to take your land in the city center in order to build a new road. The road is necessary for the public and there is no other place where the road can be built except across your land. The Municipality offers you three different compensation packages that you can choose from:*

1. Money equal to what you would get if you sold your land. This does not include the value of your house, other personal property, lost income, or the cost of moving.

2. A 4m x 10m apartment at a relocation site near a garment factory where there are jobs available, but far from your current home in the city centre. You will receive an ownership title for the apartment.
3. One hectare of land with no house in a rural area 30 kilometers from the city and one million riel. You will receive the title for the land after staying on it for five years.

- Give each group fifteen minutes to think about and discuss the advantages and disadvantages of each package. Groups should also discuss whether they would accept the packages and why.
- Groups should discuss what the packages would need in order to be fair and just compensation if they are not already.
- Give each group a large sheet of paper and pens to make notes of their ideas and reasons.
- During the group discussions, walk around and make sure the groups are considering all of the options. Ask questions that encourage the Participants to consider the following:
  - Where are they going to live?
  - Where are they going to work or how will they earn a living?
  - What will the cost of moving be?
  - What services will be available to them, for example, clean water, sanitation, and health care?
  - Will it be close to a school for their children?
- Participants should think about the good points and bad points of each compensation package. They should rank the three packages in order from best to worst. Ask them to discuss if they would accept any of the packages themselves and to give reasons why. The groups can also discuss what else the packages would need or how they would have to change in order to be fair and just compensation, if they are not already.

#### 4. **GROUP PRESENTATIONS:**

- The groups should present their ideas to the other Participants.

#### **Suggested Answers:**

- Below are some suggested good and bad points for each of the three compensation packages. Participants may have some of the same answers or they may have different answers. There are no wrong answers to this question because it asks for the Participants' personal opinions.

- Make sure to mention the good and bad points listed below if they are not mentioned by Participants.

Package 1:

GOOD POINTS	BAD POINTS
We can decide for ourselves where we want to live.	We might become landless.
	We might be homeless until we can buy or rent a new place to live.
	The money may not be enough to buy or rent a new place.
	Even if we have enough money, we still may not be able to find a new place that is suitable and as good as where we used to live.
	There is no compensation for our lost income, other personal property, or the cost of moving.

Package 2:

GOOD POINTS	BAD POINTS
We would have a place to live right away.	There is no compensation for our lost income, other personal property, or the cost of moving.
We may have access to new jobs.	We have no choice in where we are relocated.
We will have land title.	Being far from the city may mean that we are far from many basic services such as medical care and education.
	We may not want, or may not have the skills, to work in the factory.

Package 3:

GOOD POINTS	BAD POINTS
We will have land title in five years.	If we do not get the money in advance, we will not have an immediate shelter when we are forced to move.
We will be able to make a living if we know how to farm.	We may not know how to farm and there might not be any other jobs available.
If we get this package in advance, we might have enough time to build a house.	One million riel may not be enough to cover the cost of replacing our home and lost property or the cost of moving.

**5. DEBRIEF:**

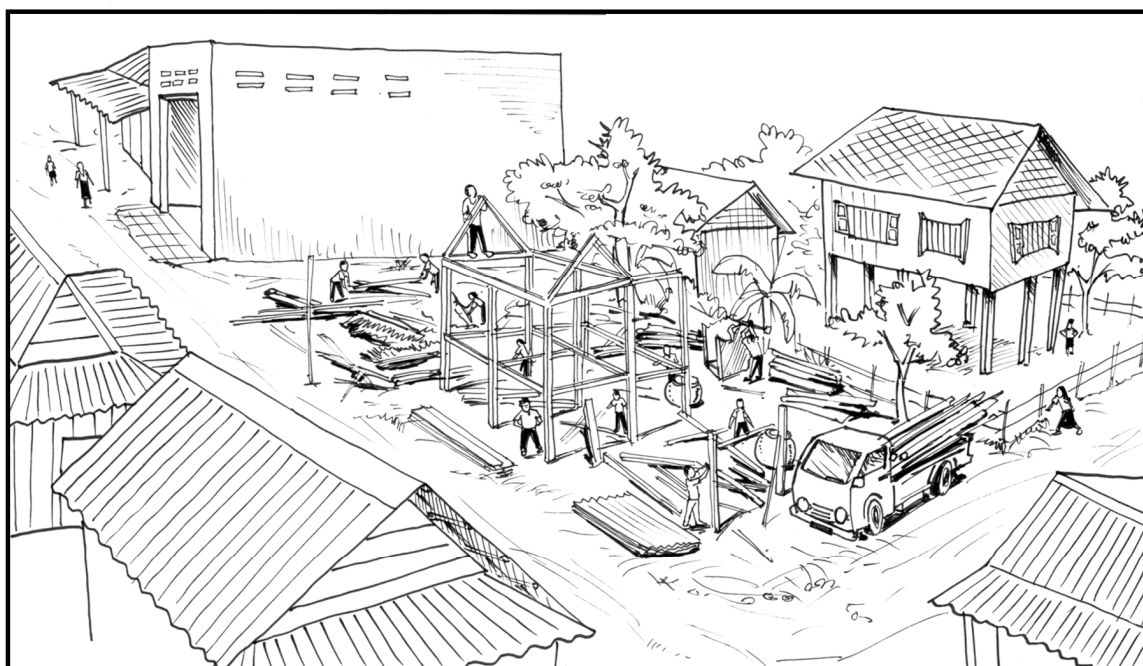
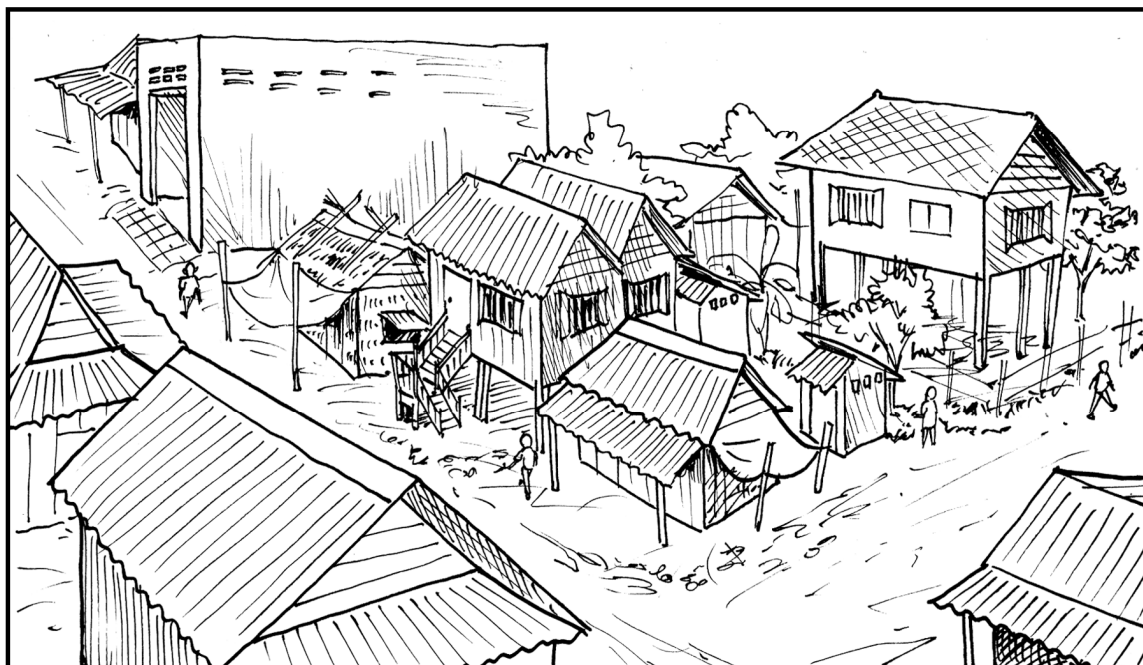
- At the end of the exercise, ask all of the Participants whether any of the three packages included everything that they would hope to receive if they were evicted. Make sure Participants give reasons for their answers.
- Ask the Participants to look back at the three compensation packages and think about how the packages might affect owners and possessors differently.
- Also, ask the Participants if the government has fulfilled its duty to provide adequate housing after an eviction with any of the three packages. Ask the participants to describe a compensation package that would fulfill the government's duties and respect their rights.

## DIFFICULT TERMS:

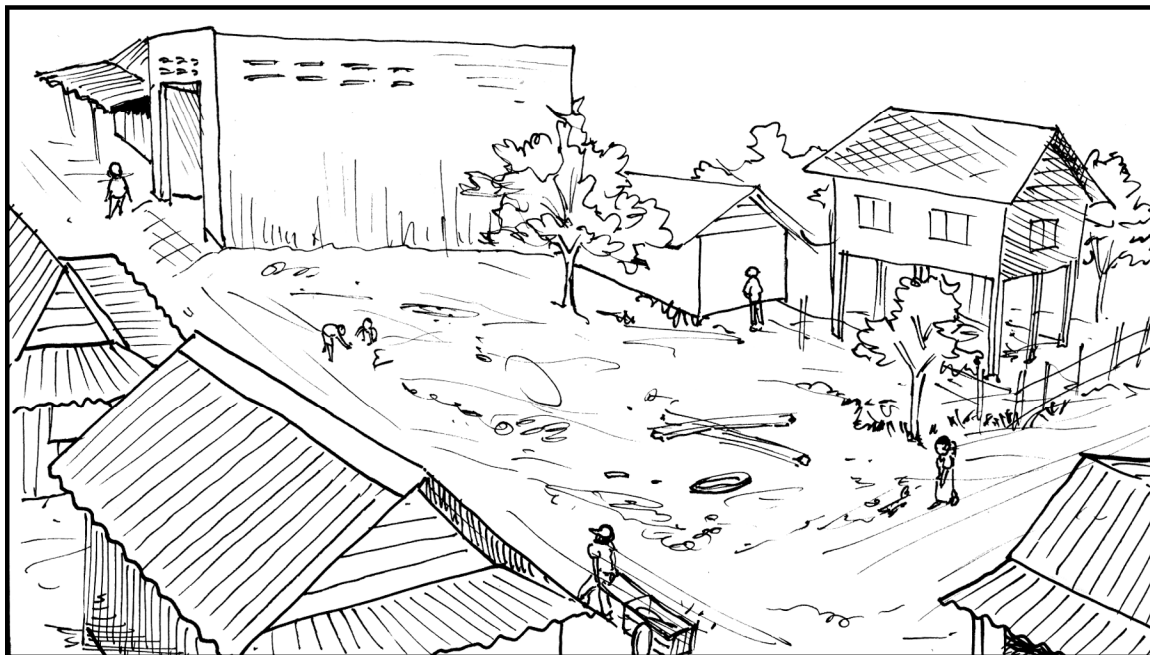
1. **Compensation:** An amount of money or something else of value paid to make up for damage or loss caused. In the case of an eviction, compensation can be money, replacement land, new housing or any combination of the three. Compensation can also be given for things such as earnings from jobs and businesses that were lost, or crops or trees that were destroyed or lost because of an eviction.
2. **Fair and just compensation:** This term is not explained in Cambodian law. In practice, most people believe that to be fair and just, compensation should be at least equal to the value of the property that is taken or damaged.
3. **Public interest:** Something that is for the benefit of the people because it will help them improve their standard of living, provide an important service, or keep them safe.

**ROLE PLAYS**

1. Narin comes back to his land one day and sees that construction workers are building a new office next to his home and have dumped lots of soil onto his land. They say that part of the land belongs to the company that they are working for.
2. Someone posted a note on the door of every house in Virak's community. The note was from a big company. It said that the company has title to all of the land in the community, and that everyone in the community has to move off the land in one week. It also says that if they do not, the company will force them off the land.
3. A very rich businessman showed up at Chundy's house and said that he is the real and true owner of the land. Chundy has lived on his land since 1994 and thought he was the true owner of the land. The businessman shows Chundy a title and says that he has to leave in one week or he will be forced out and arrested.
4. Mathoura comes back to her land one day and sees that a local wealthy landowner has put up a fence around most of her farm land. Mathoura has no title to the land but has lived there and used the land for farming since 1998.
5. Sochea lives on a piece of land with her family. The land is also claimed by a wealthy individual. One morning Sochea is woken up by many police officers outside her house. They force her to leave her home and then they set it on fire.
6. Piseth has been living on and farming a piece of land for two years. He moved there thinking that the land did not belong to anyone. Last month someone came and said that they owned the land. This person had a legal title for the land. Soon after this the true owner of the land got a court order, and personally evicted Piseth.

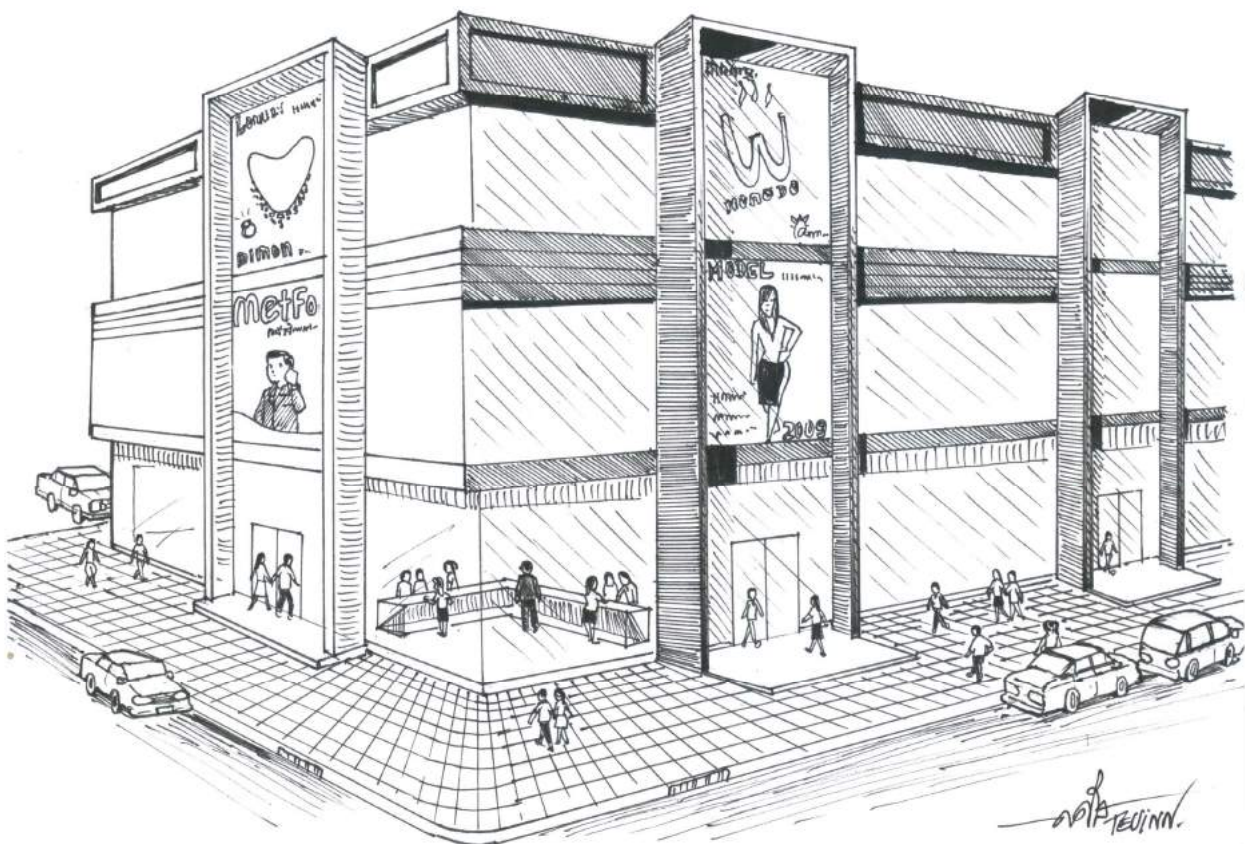
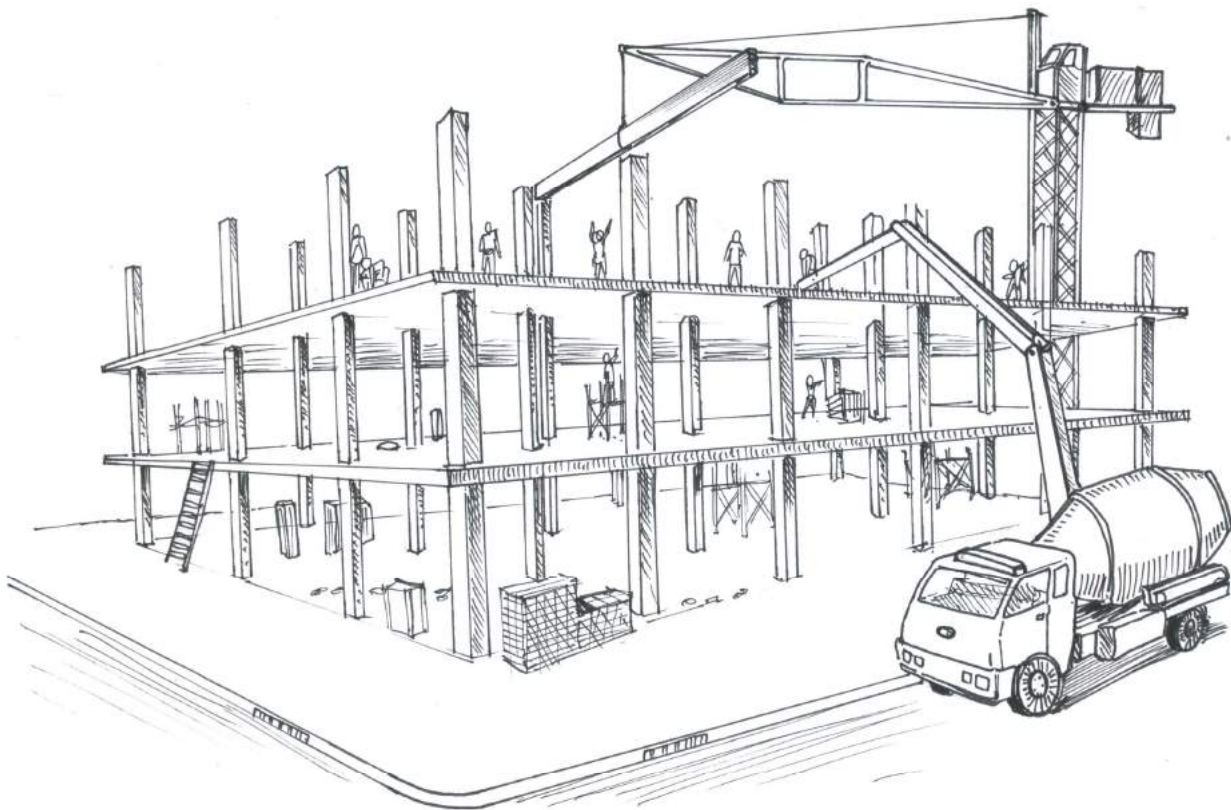


## HANDOUT 2 – LESSON 3 (CONTINUED)





## HANDOUT 3 – LESSON 3 (CONTINUED)



**HANDOUT 4 - LESSON 3****CASE STUDIES**

1. Phanna has lived in the town of Pailin since 1994. Her house and land are close to a sewage canal. She has used the land to grow crops for many years. A government official came to her village and told the village chief that the canal was going to be made wider by three meters. This means that Phanna will lose some of the land that she uses to grow crops. Some of her crops will also be destroyed.
2. Two years ago, Socheat built a small home on the riverbank. A government official came to his village to tell everyone that a bridge was going to be built across the river nearby. Because of the construction, the land near the bridge will become very unstable and could fall into the river. The government official told Socheat and some other families that they will have to move from their homes.
3. Sothea has title to her land. An official came to her house and told her that the government was taking her home to build a public hospital. The government official promised to give compensation to Sothea only after she moved out and the hospital was built. Sothea refused because she wanted the compensation before she moved. She was later forcibly evicted by government forces.
4. One day villagers in Sothanin's community were told that a new farming concession had been granted to a company over part of the community's farmland. They were told that everyone without title has no right to compensation for their rice fields, but they would be able to get jobs working on the new rubber plantation.

Sothanin does not have title to his four hectares of rice paddy, but he has farmed the land since 1987. Sothanin and many other community members refused to give up the land. Eventually the company brought in bulldozers and took the land.

### CASE STUDY

*The Municipality needs to take your land in the city center in order to build a new road. The road is necessary for the public and there is no other place where the road can be built except across your land. The Municipality offers you three different compensation packages that you can choose from:*

1. Money equal to what you would get if you sold your land. This does not include the value of your house, other personal property, lost income, or the cost of moving.
2. A 4m x 10m apartment at a relocation site near a garment factory where there are jobs available, but far from your current home in the city centre. You will receive an ownership title for the apartment.
3. One hectare of land with no house in a rural area 30 kilometers from the city and one million riel. You will receive the title for the land after staying on it for five years.

# CONTRACTS FOR LAND SALE

## OUTCOMES

After completion of this module, Participants will:

1. Understand what a contract is.
2. Know how to identify when a contract is invalid.
3. Understand that an invalid contract is not enforceable and cannot legally be used to take someone's land.

## 1. WHAT IS A CONTRACT?

A **contract** is a type of promise between two or more people. It is a promise made by one person to do something if another person does something else.<sup>66</sup> There is an important difference between a contract and a simple promise. A contract is **legally enforceable**, which means a person can go to court to force the contract to be followed.<sup>67</sup>

### Decree No. 38D Referring to Contract and Other Liabilities, 1988

Article 1: A contract is an agreement freely entered into by two or more persons to create, change or terminate one or more obligations which bind them.



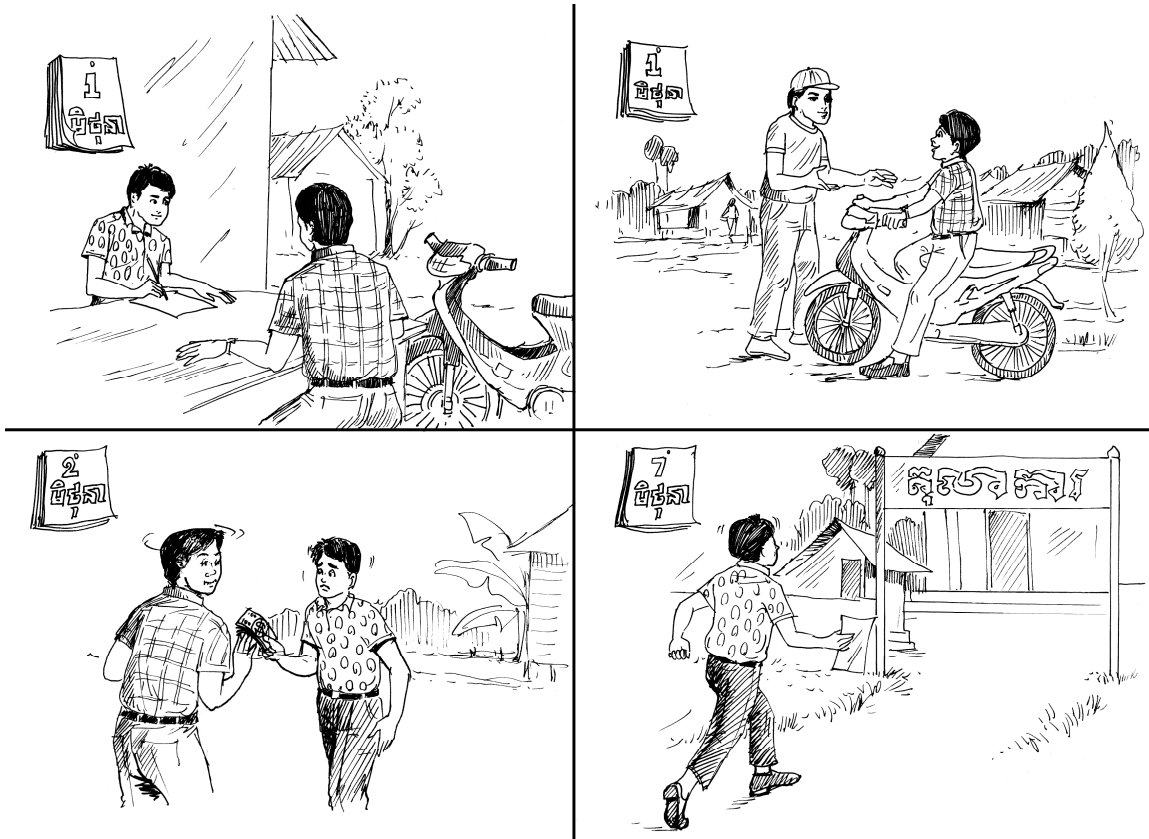
For example:

- Piseth and Narin make a contract which says that Piseth will sell his moto to Narin for \$500.
- Narin agrees to bring the money to Piseth the next day.
- That night, Piseth decides not to sell his moto to Narin because someone else wants to buy it for \$600 next week.
- When Narin comes with the money, Piseth tells Narin that he will not sell the bike to him because he can get more money from the other person.

Because Narin and Piseth made a contract, and Piseth broke the contract, Narin can go to court. If Narin goes to court, he should be able to get the court to order Piseth to sell the bike to him for \$500.

<sup>66</sup> Decree No. 38D Referring to Contract and Other Liabilities, 1988, Article 1.

<sup>67</sup> Civil Code 2007, Chapter 3.



Because contracts make promises legally enforceable, they can make it easier and safer for people to agree to do important or expensive things, like buying land, renting a house, or paying someone to build something.

## 2. WHAT MAKES A CONTRACT INVALID?

A contract must have all the necessary ingredients and follow the law to be **valid**. A contract is made up of several different parts. If a contract is made but any one of these parts is missing, the contract is not good. It is like making a recipe that needs all the necessary ingredients for the meal to taste good. For example, if you are making sour soup, but you do not add lime, it will not be good. Similarly, if one of the legal ingredients of a contract is missing, the contract is not good, or it is **invalid**. Likewise, if you are making sour soup and you add mango, it will not taste good. If a contract is made and it has a bad ingredient, it is invalid.

There are two ways that a contract can be **invalid**:

- One of the necessary ingredients is missing; or
- An ingredient is added which should not be there.



## WHY IS IT IMPORTANT TO KNOW WHAT MAKES A CONTRACT INVALID?

*If a contract is valid, it must be followed by everyone who agrees to it. If a contract is invalid, it does not have to be followed.*



Many people involved in land disputes in Cambodia are forced off their land by a bad or invalid contract. To protect yourself, it is important to be able to see when a contract is invalid.

### 2.1. NO WRITTEN CONTRACT

All sales of land must be in a written contract. This is stated in the Contract Law<sup>68</sup> and the Land Law.<sup>69</sup> If the contract to sell land is just a spoken agreement, it is not valid.



<sup>68</sup> Decree No. 38D Referring to Contract and Other Liabilities, 1988, Article 4.

<sup>69</sup> Land Law 2001, Article 65.

## 2.2. NO CAPACITY

A contract is only valid when it is signed by people who have the **capacity** or ability to sign a contract.<sup>70</sup> This means that children, or people who have a severe mental illness, cannot sign contracts. If a child or someone with a severe mental illness signs a contract, that contract is invalid.

### Decree No. 38D Referring to Contract and Other Liabilities, 1988

Article 3: A contract is valid provided that it ... is made by parties who have capacity to enter into a contract.

Article 6: Every contract shall be deemed void ... that is made by a party lacking capacity to contract.



Only a true owner or possessor can legally sell their land.<sup>71</sup> If someone tries to sell land that is not theirs, they do not have legal capacity. For example, if a commune or village chief sells someone else's land, or if a community representative agrees to sell some of the community's land, the contract is invalid. This is because the land is not theirs to sell and they do not have capacity to make a contract to sell the land.

### THE CASE OF DEY KRAHORM

In 2005, a company secretly signed a contract with the village chiefs and representatives of Dey Krahorm community living in the centre of Phnom Penh. The contract was an agreement to exchange the community's land for housing in a relocation site 20km outside of Phnom Penh. The community was never told about the contract and never agreed to it. The families of Dey Krahorm only learned about the deal after the contract was signed.

According to the law, this contract is invalid because the village chiefs and community representatives had no right or *no capacity* to transfer the villagers' land. Only the villagers themselves have the right to transfer their own land, so this contract cannot legally be used by the company to claim any rights over the land of Dey Krahorm.

## 2.3. FRAUD

If someone is tricked into making a contract, this is called **fraud**, and the contract is invalid. Someone could commit fraud by tricking community members into signing a contract by saying that it is something else, or by changing the details in the contract after it is signed.

<sup>70</sup> Decree No. 38D Referring to Contract and Other Liabilities, Article 3 and 6.

<sup>71</sup> Decree No. 38D Referring to Contract and Other Liabilities, Article 35.

### Decree No. 38D Referring to Contract and Other Liabilities, 1988

Article 10: Fraud is a ground for avoiding the contract when there are acts of deception, dishonesty, or misrepresentation committed by one party to the contract without which the other party would not have entered into the contract.



If someone tricks another person into signing a blank contract, or a contract that they cannot read, this is also fraud. The Contract Law says that any contract that is the result of fraud or dishonesty is invalid.<sup>72</sup>

#### INDIGENOUS LAND DISPUTE IN RATANIKIRI

In 2004, commune authorities told an indigenous community in Ratanakiri that it had to give up 50 hectares of its land so the land could be given to disabled soldiers. A party was organized and community members were offered alcohol. People became very drunk and while they were drunk, they were asked to thumb-print a blank document.

The community members found out later that the document they had thumb-printed was a contract to sell 450 hectares of the community land to a powerful person.

This contract was invalid because there was *fraud*. The people were tricked into giving their thumbprints even though they did not agree to sell their land.

## 2.4. DURESS

**Duress** is when someone pressures someone else to do something they do not want to do. The Contract Law says that a contract must be “freely entered into” and not the result of duress.<sup>73</sup> This means that people who make a contract must do so because they want to, not because they were forced or threatened to agree to the contract. If someone signs a contract because they feel scared or under pressure, this is duress. Duress makes a contract invalid.<sup>74</sup>

<sup>72</sup> Decree No. 38D Referring to Contract and Other Liabilities, Articles 7 & 10.

<sup>73</sup> Decree No. 38D Referring to Contract and Other Liabilities, Article 1.

<sup>74</sup> Decree No. 38D Referring to Contract and Other Liabilities, Articles 6, 7 & 9.



### Decree No. 38D Referring to Contract and Other Liabilities, 1988

Article 7: An agreement that is the result of mistake, duress, or fraud is not a valid agreement.



For example, if someone scares another person into signing a contract by using violence or threatening to use violence against that person or their family, this is duress. Sometimes buyers try to scare people by telling them that if they do not sell their land they will end up with nothing: no money and no home. If a person signs a contract under these conditions, then the contract is invalid because there was duress.

### LAND DISPUTE IN PHNOM PENH

In 2008, at least 150 families living around a large lake in the north of Phnom Penh were pressured into signing a contract to give up their houses and move to a relocation site outside the city. The families had been told they would not be offered a better deal. Some people were also afraid because they had heard rumors that their houses would be burned down if they did not sign the contract.

People signed the contract because they were scared. Because they signed under *duress*, the contract is invalid under the law.

### 3. WHAT HAPPENS IF A CONTRACT IS INVALID?

If a contract is invalid it does not have to be followed. The person who signed a contract because they were tricked, pressured or signed by mistake, should tell the other person that they will not follow the contract because it is invalid.<sup>75</sup>

#### THE CASE OF DEY KRAHORM

After learning about the invalid contract that the Dey Krahorm village chiefs and representatives signed with the private company, the community fired the representatives and elected new ones.

In February 2005, the new representatives wrote a letter of complaint to the Municipality of Phnom Penh, thumb printed by 804 families to ask for the contract to be cancelled. They also sent a copy of their complaint to a member of Parliament. The community filed many other complaints to ask for the cancellation of the contract. They sent these complaints to different government departments, including the Ministry of Land Management and the Ministry of Interior, as well as the Prime Minister and the National Assembly. Community members also filed a criminal complaint against the former chiefs and representatives for breach of their duties.

#### CONTRACTS AND INDIGENOUS PEOPLE

*Traditionally, most indigenous people in Cambodia do not use formal contracts for land sales.* Land is usually dealt with between community members according to traditional community rules.

Indigenous communities across Cambodia traditionally do not sell land to people outside the community.<sup>76</sup> Because of this, contracts to transfer land to outsiders are not legal. Until community land is registered, the Land Law says that communities should manage their land according to traditional customs.<sup>77</sup>

Some indigenous people live on collective land and follow the traditions of the community, but also own private land elsewhere. These people can sell their private land just like any other private individual. But, they cannot sell any land that could be considered part of their community's traditional land.

<sup>75</sup> Decree No. 38D Referring to Contract and Other Liabilities, Article 19.

<sup>76</sup> Statement by Indigenous Peoples at the first Forum of Cambodia's Indigenous Peoples, Kampong Speu Province, September 2004.

<sup>77</sup> Land Law 2001, Article 23.

# LESSON 1: INVALID CONTRACTS

**AIM:** Participants will understand the importance of not signing or thumb-printing blank documents or documents which they cannot read. Participants will be able to identify things that make a contract invalid. They will then be able to apply this knowledge to their own situation if they are in a land dispute involving an invalid contract.



**MATERIALS:** Whiteboard or flipchart, markers, ball, copies of Handouts 1, 2 and 3.

**METHOD(S) USED:** Demonstration, class discussion, role-play, group discussion, game.

Procedure	Time Frame (in minutes)
1. Prepare trick attendance sheet before teaching lesson	-
2. Introduce the information in Section 1	15
3. Explain trick and class discussion	15
4. Picture demonstration	10
5. Introduce the information in Sections 2 & 3	45
6. Explain the exercise and divide the Participants into groups	5
7. Participants prepare role-plays	10
8. Participants perform role-plays and large group discussion	30
9. Debrief	20
<b>Total:</b>	<b>150</b>

## INSTRUCTIONS TO FACILITATOR

### 1. PREPARATION FOR EXERCISE:

- Before the lesson, prepare a “trick” attendance sheet. This sheet should have space for each Participant’s name and a place to sign, but should have no writing on it, except the date. In between the date and the place to sign there should be a blank space with enough room to write two sentences. See sample below and Handout 1:

**September 1, 2009**

[Leave this space blank until after the Participants sign]

Name	Signature

### 2. INTRODUCE THE INFORMATION IN SECTION 1:

**Section 1** - It is important that Participants understand:

- What a contract is.
- Why people use contracts.

- Before you start teaching this section, hand out the trick attendance sheet and ask all the Participants to sign it. Start the lesson while the Participants sign and pass around the sheet.
- When Participants have all signed the trick attendance sheet, take it back and put it to one side while you finish the lesson.
- **IMPORTANT:** This trick exercise should be done at the same time as teaching from Section 1. (This exercise can be used with other topics also.)

### 3. EXPLAIN TRICK AND CLASS DISCUSSION:

- After teaching from Section 1, take the trick attendance sheet and write at the top of it:

---

*“We agree to sell our land to \_\_\_\_ [insert your name here] \_\_\_\_ and move out of our homes within one week, for the price of 500,000 riel each, which we will receive after we move out.”*

---

- Show the Participants what you have written above their signatures. Ask them if they think this is a legal contract and if it should be respected.
- Tell the Participants that this contract would not be legal under the contract law for a number of reasons, including that it is an example of fraud. However, Participants should be aware that many people have been tricked in this way.
- Tear up the trick sheet.
- Explain that the aim of this exercise is to show that people should never sign a blank document or a document that they cannot read or understand because their signature can be used by someone on a fake contract.
- Ask Participants if they have ever heard of anyone being tricked into signing a contract or document that was blank or they could not read.
- Ask if any Participants have ever used a contract, and if so, what did they use a contract for.

### 4. PICTURE DEMONSTRATION:

- Before teaching from Sections 2 and 3 of the text, ask the Participants to look at the picture below of the man cooking (see Handout 2 for large copy).
- Ask the Participants:

1. What is happening in the picture?

Suggested Answer: The man is cooking food.

2. What goes into the food?

Suggested Answer: Different ingredients.

3. What happens if one of the ingredients is missing?

Suggested Answer: The food will not be good.

4. What happens if a bad ingredient is added?

Suggested Answer: The food will not be good.



- Explain to the Participants that a contract is like a recipe. If one of the ingredients is missing, the meal will not be good. If a bad ingredient is added, the meal will not be good.

## 5. INTRODUCE THE INFORMATION IN SECTIONS 2 & 3:

**Sections 2 and 3** - It is important that Participants understand:

- That there are valid and invalid contracts.
- That a contract is invalid if something is missing, or if it has a bad ingredient.
- What the meaning of fraud and duress are.
- That invalid contracts do not have to be followed.

- As you teach, when you reach the case studies (Dey Krahorm, Ratanikiri and Phnom Penh), you should hold a short group discussion. Read out the facts of the case study but before you read the last paragraph of each case, ask the Participants to try and explain why the contract in the case was invalid.

## 6. EXPLAIN THE EXERCISE AND DIVIDE THE PARTICIPANTS INTO GROUPS:

- Divide the Participants into five groups. Each group will receive a case study from Handout 3 and have 10 minutes to prepare it as a role-play. The role-play should not last more than five minutes.

ROLE-PLAYS	
1.	Two people who live in the same commune are talking. Sopheap says that she would like to sell her land. Sochea says that she would like to buy the land. They agree to a fair price quickly and are both very happy about the deal. They have known each other for a long time and trust each other. Sochea takes out a large amount of money from her pocket and gives it to Sopheap. They shake hands happily and both believe the contract is final.
2.	<p>A rich businesswoman wants to buy land to develop. Many people already live on the land that the businesswoman wants to buy. She has told the people living there that life is going to get very difficult for them because if they do not sell the land soon it will be taken anyway and they will get nothing.</p> <p>One member of the community argues with the businesswoman and the businesswoman becomes angry and says, “If you do not sell your land to me I will come back and take it anyway, and you will get nothing.” This makes the villager very worried for the safety of his family and he agrees to sign a contract even though he thinks that the money offered is not enough.</p>
3.	Sophat has owned two hectares of land in Battambang since 1998. One day he is offered a very good job in Phnom Penh and he decides that he wants to sell his land in Battambang. Sophat and Phanna negotiate a price for the land that they are both happy with and write a contract to sell the land. Sophat and Phanna both thumb-print the contract in front of the village chief. Later Phanna thinks that there are bad spirits occupying the land and he gets angry with Sophat for selling him this land.
4.	A government official posts eviction notices around a lakeside village saying that the area has been sold and everyone must leave within the month. Many of the people living there have been there since the 1990s, but the official says they are illegal squatters without any title.
5.	The people try and negotiate with the government and the company, and they are offered a plot of land and house at a resettlement site. The resettlement site is outside the city and far from jobs, schools and services. Many of the residents sign an agreement to go to the resettlement site because they are scared and the government says it is the best offer they will get because they are illegal squatters.

6. A community that was threatened with eviction decided to choose community representatives to deal with the government and company involved. Two of these representatives persuaded people in the community to join a community savings group.

Some community members signed a document that they thought was about the savings group, but the representatives had tricked them into signing a contract to sell the land. Some children signed the document for their parents. Some people refused to sign the document, but the representatives signed for them.

## **7. PARTICIPANTS PREPARE ROLE-PLAYS:**

- Visit each group to make sure they understand what they are supposed to do and to answer any questions they might have.

## **8. PARTICIPANTS PERFORM ROLE-PLAYS AND LARGE GROUP DISCUSSION:**

- Before calling groups to come and act their role-plays, remind them that each role-play should not last more than five minutes.
- After each role-play, ask the Participants if they think the contract is valid or not, and why. Make sure that people give reasons for their answers.
- Make sure that all the things covered in the Suggested Answers are discussed by the Participants. Add anything that is missed by the Participants.

### **Suggested Answers:**

1. The contract is not in writing and even though Sopheap and Sochea have known each other for a long time, a contract to sell land must be in writing to be legally valid.
2. This contract is made under duress because the seller is scared that he will lose the land if he does not sell.
3. This contract is valid because it is freely entered into by both Sopat and Phanna. It is in writing and was made in an atmosphere of trust and honesty. The fact that Phanna later thought that there were bad spirits does not make the contract invalid so he cannot cancel the contract.

4. The contract is invalid because of duress. The people who agree to the resettlement are scared because they have been told they are illegal squatters. Many of the residents have been on the land for many years, so they may be legal possessors. If this is the case, the officials who said that they are illegal have also been dishonest by saying they are squatters.
5. The community representatives tricked some people into signing the document. This is fraud so the contracts are invalid. Children cannot sign the contract because they do not have legal capacity. The contracts which the representatives signed for the community members are not valid because they cannot sell land that does not belong to them. Also, there is no agreement from the real owner of the land.

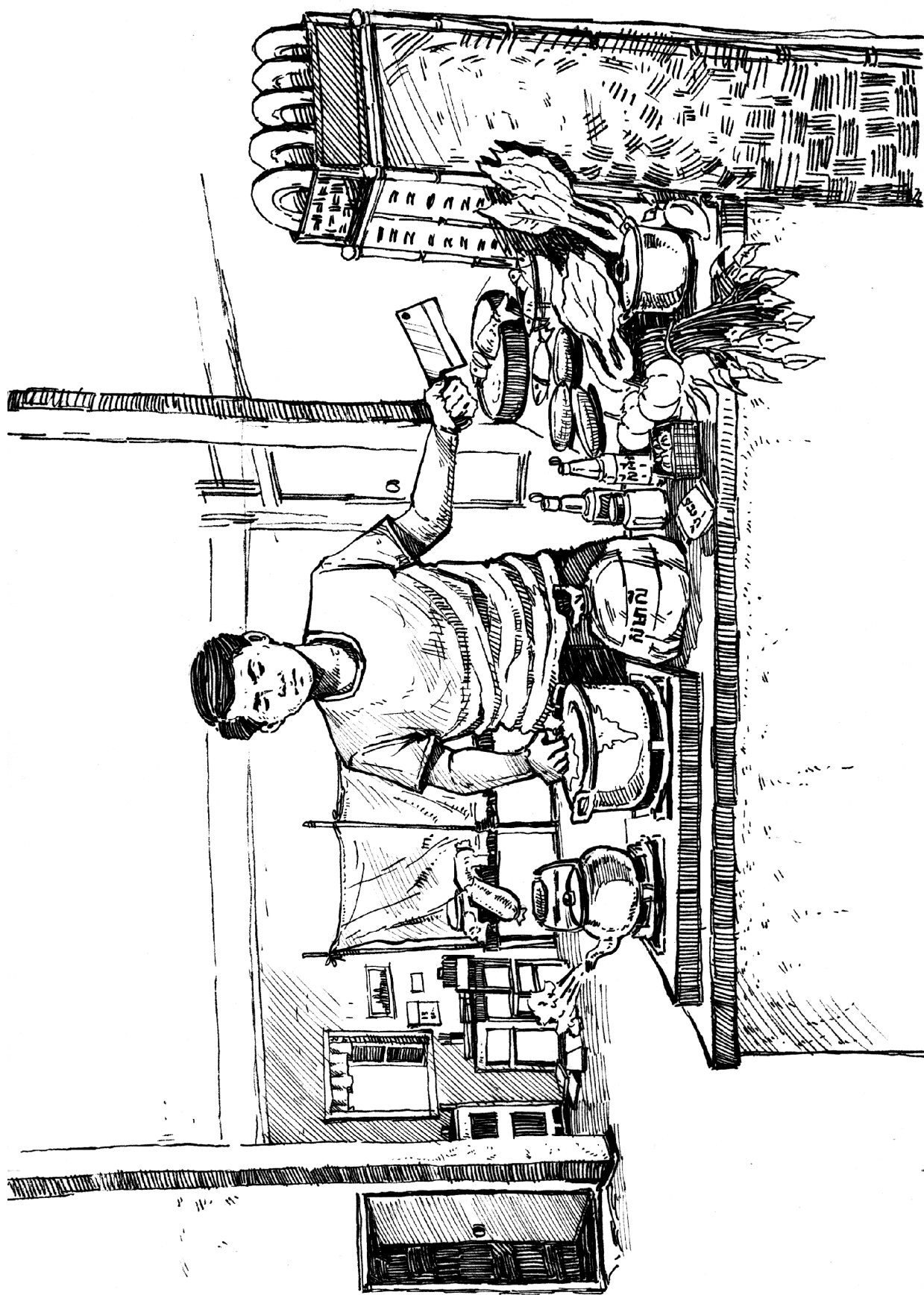
## 9. DEBRIEF:

- Ask Participants if they have ever heard of any of these things happening in their community or in other communities. Encourage Participants to share their stories.
- To review this exercise, organize the Participants into a large circle and play a quiz game for ten minutes. Play some music and ask the Participants to throw a ball to another person in the circle. Stop the music after a few seconds and ask the Participant who is holding the ball a question (if you have no music, you can sing a song or clap).
- You can ask questions about anything that was covered in this exercise, for example:
  - What is a contract?
  - What is the purpose of a contract?
  - What is one thing that can make a contract invalid? (*This question can be asked several times.*)
  - What is fraud?
  - What is duress?
  - What is incapacity?
  - Can you give one example of an invalid contract?

## DIFFICULT TERMS:

1. **Capacity:** Capacity is the ability to do something, in this case the ability to make a contract. Some people do not have the capacity to make a contract for example, children or people with a severe mental illness. A lack of capacity makes a contract invalid.
2. **Contract:** A legal agreement that two or more people enter into freely. If this agreement is broken, the people who signed the contract can go to court to force the contract to be followed.
3. **Duress:** When someone is pressured or scared by another person to do something. Duress makes a contract invalid.
4. **Fraud:** When someone is tricked into doing something. Fraud makes a contract invalid.
5. **Invalid contract:** If one of the ingredients necessary for a valid contract is missing, the contract is not good, or *invalid*. If a contract is invalid, it does not have to be followed and no one can legally be forced to do what an invalid contract says.
6. **Legally enforceable contract:** A valid contract that must be followed. If someone who agrees to a contract later does not follow it, the court can order them to do what they agreed to.
7. **Valid contract:** A good contract that has all the necessary ingredients and follows the law is *valid*. A valid contract must be followed by all the people who agreed to it. If someone does not follow the contract, the other person can go to court and ask the court to tell them they must do what they agreed to.

NAME	SIGNATURE



## ROLE-PLAYS

1. Two people who live in the same commune are talking. Sopheap says that she would like to sell her land. Sochea says that she would like to buy the land. They agree to a fair price quickly and are both very happy about the deal. They have known each other for a long time and trust each other. Sochea takes out a large amount of money from her pocket and gives it to Sopheap. They shake hands happily and both believe the contract is final.
2. A rich businesswoman wants to buy land to develop. Many people already live on the land that the businesswoman wants to buy. She has told the people living there that life is going to get very difficult for them because if they do not sell the land soon it will be taken anyway and they will get nothing.

One member of the community argues with the businesswoman and the businesswoman becomes angry and says, “If you do not sell your land to me I will come back and take it anyway, and you will get nothing.” This makes the villager very worried for the safety of his family and he agrees to sign a contract even though he thinks that the money offered is not enough.

3. Sophat has owned two hectares of land in Battambang since 1998. One day he is offered a very good job in Phnom Penh and he decides that he wants to sell his land in Battambang. Sophat and Phanna negotiate a price for the land that they are both happy with and write a contract to sell the land. Sophat and Phanna both thumb-print the contract in front of the village chief. Later Phanna thinks that there are bad spirits occupying the land and he gets angry with Sophat for selling him this land.

4. A government official posts eviction notices around a lakeside village saying that the area has been sold and everyone must leave within the month. Many of the people living there have been there since the 1990s, but the official says they are illegal squatters without any title.

The people try and negotiate with the government and the company, and they are offered a plot of land and house at a resettlement site. The resettlement site is outside the city and far from jobs, schools and services. Many of the residents sign an agreement to go to the resettlement site because they are scared and the government says it is the best offer they will get because they are illegal squatters.

5. A community that was threatened with eviction decided to choose community representatives to deal with the government and company involved. Two of these representatives persuaded people in the community to join a community savings group.

Some community members signed a document that they thought was about the savings group, but the representatives had tricked them into signing a contract to sell the land. Some children signed the document for their parents. Some people refused to sign the document, but the representatives signed for them.

# GLOSSARY

1. **Capacity:** Capacity is the ability to do something, in this case the ability to make a contract. Some people do not have the capacity to make a contract for example, children or people with a severe mental illness. A lack of capacity makes a contract invalid.
2. **Classification (of land):** In Cambodia all land belongs to one of these groups: private property, State public property, State private property, indigenous community property, and monastery property. Each one of these is a separate type or classification of land. The classification of a piece of land will determine who can own it and what purposes it may be used for.
3. **Collective ownership:** If land is collectively owned it belongs to a group of people instead of one person. For example, indigenous community land belongs to all the members of the indigenous community who live or farm there.
4. **Collective property:** If land is collectively owned, it belongs to a group of people instead of one person. For example, indigenous community property belongs to all the members of the indigenous community living there.
5. **Collective title:** An official document given by the government that states that an indigenous community has ownership over a piece of land. Collective title gives ownership rights to the whole community, not an individual. This means that individuals cannot sell indigenous land.
6. **Compensation:** An amount of money or something else of value paid to make up for damage or loss caused. In the case of an eviction, compensation can be money, replacement land, new housing or any combination of the three. Compensation can also be given for things such as earnings from jobs and businesses that were lost, or crops or trees that were destroyed or lost because of an eviction.
7. **Continuous (possession):** Possession must be continuous. This means a possessor cannot leave the land unoccupied or unused for a long period of time and then come back, unless this is part of the natural use of the land.
8. **Contract:** A legal agreement that two or more people enter into freely. If this agreement is broken, the people who signed the contract can go to court to force the contract to be followed.
9. **Duress:** When someone is pressured or scared by another person to do something. Duress makes a contract invalid.
10. **Evidence:** Facts or information that show that something is true or valid.

11. **Fair and just compensation:** This term is not explained in Cambodian law. In practice, most people believe that to be fair and just, compensation should be at least equal to the value of the property that is taken or damaged.
12. **Fraud:** When someone is tricked into doing something. Fraud makes a contract invalid.
13. **Good faith:** Honest and not trying to deceive others.
14. **Immovable property:** Property that cannot be moved. For example, land and anything that is attached to the land and cannot be moved without destroying it, for example a house or large tree.
15. **Indigenous community property:** Land on which an indigenous community lives or carries out traditional agriculture.
16. **Indigenous community:** A group of people in Cambodia who share ethnic, social, cultural and economic unity. They practice a traditional lifestyle and have distinct customs and practices.
17. **International indigenous movement:** During the last 40 years, indigenous people around the world have come together to advocate for indigenous peoples' rights. They formed organizations of indigenous people from different countries. These indigenous organizations worked together to help create and influence new laws and rules that protect indigenous peoples' rights.
18. **Invalid contract:** If one of the ingredients necessary for a valid contract is missing, the contract is not good, or *invalid*. If a contract is invalid, it does not have to be followed and no one can legally be forced to do what an invalid contract says.
19. **Land Register:** The official list and description of land plots and owners in Cambodia.
20. **Legally enforceable contract:** A valid contract that must be followed. If someone who agrees to a contract later does not follow it, the court can order them to do what they agreed to.
21. **Monastery property:** Land and buildings within the grounds of Buddhist pagodas.
22. **Ownership:** Ownership gives a person full rights to a piece of property. Ownership is the strongest right anyone can have over land. It allows the owner to use their land in any way they want, as long as the way they use the land does not break any laws.
23. **Possession:** When someone lives on, uses or occupies a piece of land but does not officially own the land by having title. When someone meets all the criteria in the 2001 Land Law they are legal possessors and have many of the same rights as

owners. They also have the right to apply for title. Renters and people with other specific rights to use and live on the land are not possessors.

24. **Private property:** Property that is owned or legally possessed by a private individual or company.
25. **Public interest:** Something that is for the benefit of the people because it will help them improve their standard of living, provide an important service, or keep them safe.
26. **Register:** To add something to an official list. When land is registered the person it is registered to is given a document of ownership (or title) and this can only be questioned in court.
27. **Shifting cultivation:** Sometimes an indigenous community leaves part of the land unused but plans to farm the land in the future. This is called shifting cultivation. It is a traditional method of farming that renews the soil so that crops can grow better. For example, a community may not use part of a rice paddy now but may plan to use this land next year.
28. **State private property:** Property that belongs to the State but is not State public property, because it is not available for the public to use or does not provide a service to the public. If State public property loses its public interest use, it can be changed to State private property.
29. **State public property:** Property that belongs to the State but is available for the public to use or provides a service to the public. This may be property of natural origin (e.g. lakes and forests), property for public use or service (e.g. railways, roads and public parks), and archeological and historical sites.
30. **Title:** An official record that states that a person legally owns a piece of land.
31. **UN Declaration on the Rights of Indigenous People (UNDRIP):** The Declaration recognizes the right of all indigenous peoples to be free from discrimination, to practice their religious traditions, manage their land according to their customs, and to be involved in the decisions that affect their lives. While the Declaration is not law it is an important international document, agreed upon by most nations, that recognizes indigenous peoples' rights.
32. **Unambiguous:** Possession must be clear, including the boundaries of the land.
33. **Valid contract:** A good contract that has all the necessary ingredients and follows the law is *valid*. A valid contract must be followed by all the people who agreed to it. If someone does not follow the contract, the other person can go to court and ask the court to tell them they must do what they agreed to.