

AVOIDING FORCED EVICTION

A COMMUNITY GUIDE TO NEGOTIATION AND ADVOCACY



Participant Manual
Cambodian Edition



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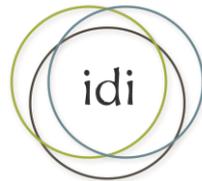
Participants' Manual

Cambodian Edition

A publication of Equitable Cambodia and Inclusive Development International



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development
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Avoiding Forced Eviction: A Community Guide to Negotiation and Advocacy
Cambodia Edition

Participants' Manual

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Inclusive Development International is a human rights organization that works to make the international economic system more just and inclusive through research, casework and policy advocacy. IDI works to strengthen the human rights regulation and accountability of corporations, financial institutions and development agencies.

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INTRODUCTION

Many poor Cambodian families are at risk of forced displacement from their land, homes and productive resources. There are many different reasons for this. People are evicted to make way for large infrastructure projects like roads, railways and dams, or for private investments like agricultural plantations, tourism developments and shopping malls.

People are usually evicted in the name of “development” but those who are evicted are almost always left worse off. For them, evictions are the opposite of development. They lose their property and the investments they have made in their houses, they lose their community support systems, and they often lose their jobs and access to resources that they rely upon. Meanwhile, children of evicted families are often forced to drop out of school, which has a lasting impact on their future.

When cash compensation is offered to evictees, it is usually never enough to make up for all that they lose, so evicted families end up falling into debt while trying to rebuild their lives.

In short, evictions create poverty rather than alleviating it. They contribute to conflict, political instability and other social problems. It is in the government’s interest, as much as the people’s interest, to avoid evictions whenever possible.

The good news is that almost all evictions are preventable. There are alternatives to eviction that can be “win-win” options for both sides – they can contribute to the government’s development plans and even company investment plans as well as benefiting communities.

This guide aims to help communities develop “interest-based” negotiation skills and understand how to use a range of tools to deal with the power imbalance between them and those trying to take their housing, land and resources. It may be useful to communities threatened with eviction, as long as the other party is willing to negotiate. It can also be useful for communities that are negotiating solutions for evictions already suffered. The guide encourages communities to develop a negotiation strategy that incorporates advocacy at key points in order to strengthen their position. Communities can use this guide to negotiate and advocate for solutions or alternatives to eviction that improve the lives of the whole community.

INTRODUCTION TO NEGOTIATION AND FORCED DISPLACEMENT

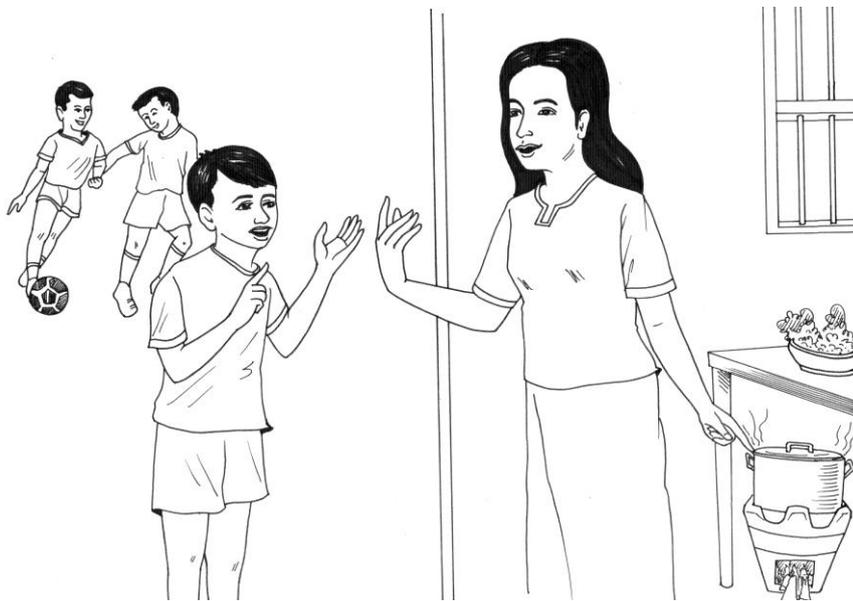
1. WHAT IS NEGOTIATION?

Negotiation involves communication between two or more people with the aim of reaching an agreement on a particular issue or situation. When we negotiate we try to convince the other person or people to agree to something that will improve our situation. The most successful negotiations usually aim to reach an agreement that all **parties** are happy with because it improves all of their situations.

In our daily lives we all negotiate with other people to try to get what we want in different situations. For example, when you are buying fish at the market, you talk to the fish seller to try to convince her to sell the fish to you for a cheaper price. The fish seller tries to convince you to pay a higher price or to buy more fish. You may finally agree that you will pay 10,000 riel for two big fish. Both you and the seller are happy with the agreement because you both got something you wanted and improved your situations.



Another example of negotiation is when you want your son to stop playing with his friends and help you prepare dinner. Your son may argue that he is having fun and wants to keep playing. You negotiate with your son and may finally agree that he can play for ten more minutes but then must come home to help you cook!



2. USING NEGOTIATION IN CASES OF FORCED DISPLACEMENT

Many families and communities in Cambodia are facing the threat of **forced displacement**. In some cases people are being evicted from their homes and in others they are faced with threat of losing their farming land or access to forests and other **natural resources** that they depend on.

Communities in Cambodia and around the world that have faced the threat of displacement have fought to defend their land rights. Some communities have been successful in their struggle and have been able to stop evictions altogether and protect their land and homes. In other cases, the community's struggle has been successful in getting the authorities or company behind the eviction to agree to negotiate with them. In these cases, communities need to be prepared for the negotiation in order to get the best outcome possible.

3. POWER IMBALANCES IN A NEGOTIATION

Often the threat of displacement comes from someone powerful. When this is the case, genuine negotiation can be difficult because there is a **power imbalance** between the people threatened with eviction and the people trying to take their land or destroy natural resources. A power imbalance happens when one person or group has more power than the other person or group involved in a particular situation. A power imbalance can exist because one person has more money, a high position in government, or close connections with someone else in a powerful position.



When we think about a negotiation between someone buying and someone selling fish at a market, the buyer and the seller usually have about the same amount of power. This is because the seller needs to earn money and the buyer needs to buy some food. The seller and the buyer both have something to offer the other. The seller and buyer both have something that the other needs. That makes the negotiation easier.

When we think about cases of displacement however, the situation is quite different. It is not always easy to think of what the families threatened with displacement have to offer the person or company behind the eviction. Because of this, just getting the person behind the eviction to negotiate might be difficult. What can you do when there is a very large power imbalance between you and the other party?



4. STRENGTHENING YOUR POSITION IN A NEGOTIATION

Negotiation should be seen as one part of a community's strategy to challenge forced evictions and land grabbing. In this book we discuss tools you can use to strengthen your position and increase your power in a negotiation. For example, we will discuss how you can:

- find information about the situation and all the people involved,
- think about all of the possible options for a good solution,
- use rules and rights and good practices in similar cases,
- use different forms of advocacy during the negotiation process,
- get support from other communities and organizations, and
- Control the process of negotiation.

We cannot ignore the power imbalance that exists in many cases of forced eviction and land grabbing in Cambodia. However becoming better negotiators and better **advocates** can help you strengthen your position and try to achieve a result that is acceptable to you and your community. In this book we look at how we can use different tools to make the power relationship more equal.

After you learn these tools, we encourage you to work with your community to prepare a **negotiation strategy**. We encourage you to think about all the different tools you can use to try to strengthen your position and reach an agreement that will improve your situation.



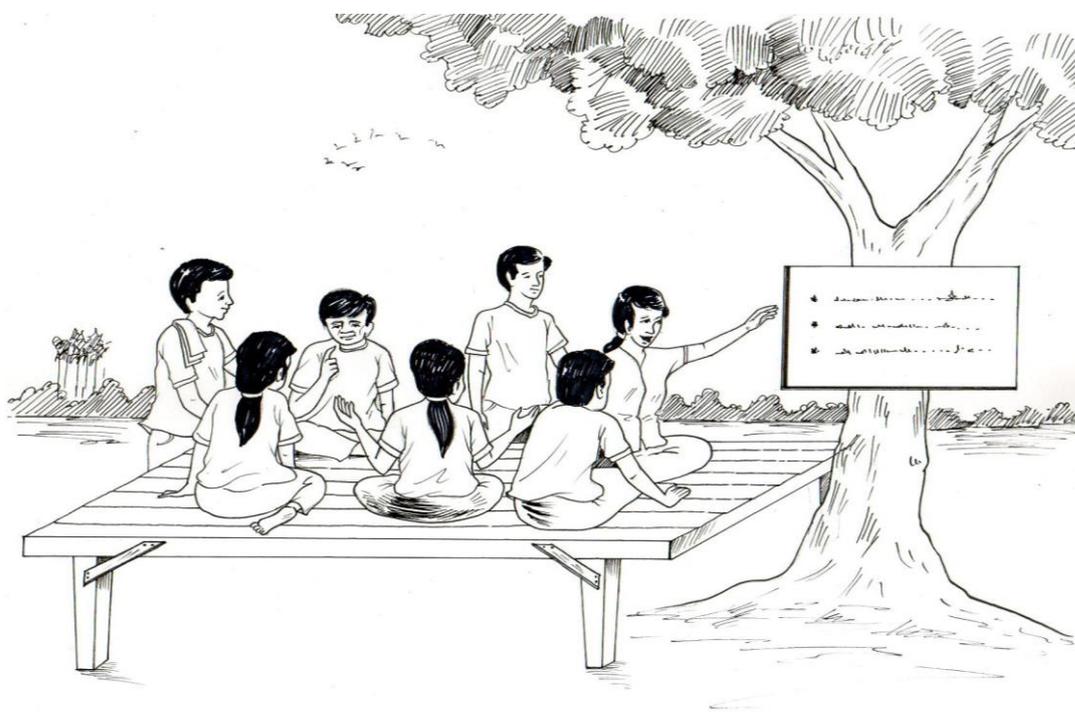
PREPARATION AND INFORMATION

1. THE IMPORTANCE OF PREPARING FOR A NEGOTIATION

The aim of a negotiation is to reach an agreement that will improve your situation. The most successful negotiations usually aim to reach an agreement that improves both (or all) of the parties' situations.

To be a good negotiator and have successful negotiations it is important to prepare carefully before you start communicating with the other person. If you prepare carefully you are more likely to reach an agreement that you are happy with. If you do not prepare you are more likely not to reach an agreement or be pressured into a bad agreement that you are not happy with.

The main purpose of preparing for a negotiation is to collect and organize information about yourself, the other party and the situation. This will mean that you are ready to clearly express what you want and why it is fair and reasonable. If you prepare and understand the situation clearly the other party is less likely to be able to confuse or trick you. Preparing and understanding the situation will also help you to know how you should communicate with the other party and if it is useful to use advocacy instead of negotiating at a particular stage.



2. THE IMPORTANCE OF INFORMATION

Information is a very powerful tool. In any negotiation you will be in a stronger position if you think about and gather as much information as you can about:

1. Your own situation
2. The other party to the negotiation, and
3. The issue you are negotiating about

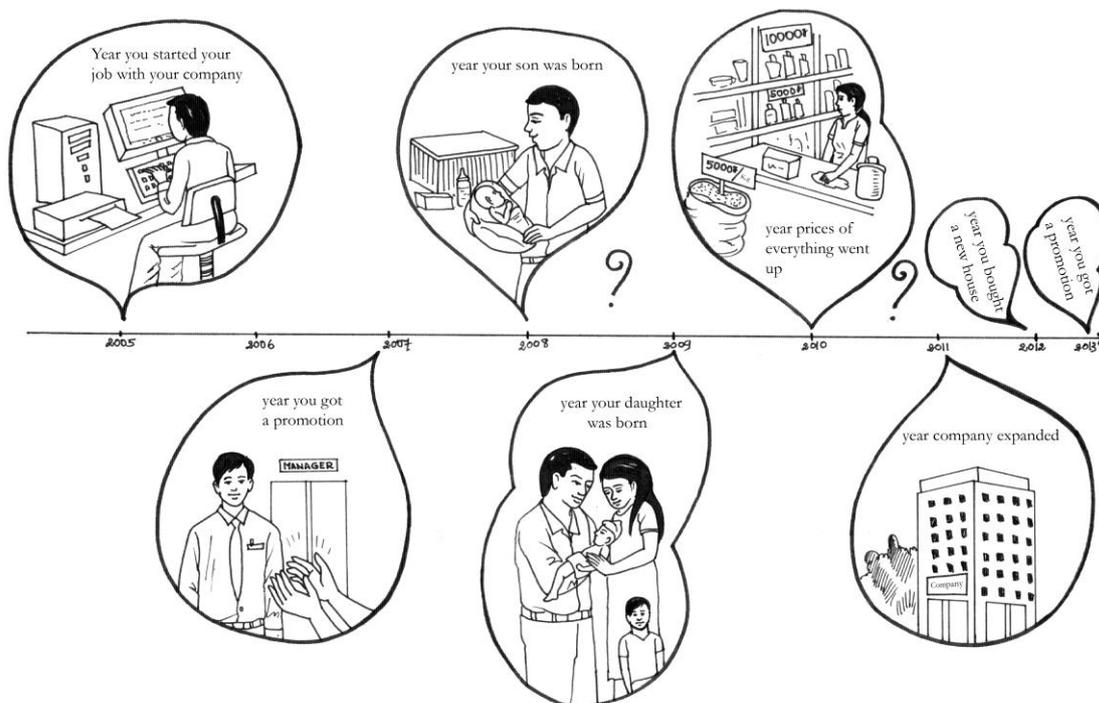
Thinking about your own situation or the situation of your community can help you think of a number of different results that you would be happy with and what results you want to avoid. Learning about the other party can help you understand what they want to achieve. When you research the situation you can find out information that helps you to understand what sorts of agreements are possible to reach. You may also find information that helps you learn about the other party's weaknesses and vulnerabilities. When you know all this information you will be a stronger and smarter negotiator and it can help you reach a better result.

You should try to gather this information during your preparation but you can continue to learn more during the negotiation. If you find out new information during a negotiation meeting with the other party you might decide that it is time to stop the negotiation meeting and think about or discuss the new information and how it affects your situation.

3. UNDERSTANDING THE SITUATION

3.1. MAKING A TIMELINE

One way to think about your situation and organize the information that you have is to make a **timeline**. A timeline is a drawing of all the events that have happened that are relevant to your situation, put in order of when they happened. For example, if you are negotiating with your boss about whether you should get paid more money, you could make a timeline that looks like this:



A timeline can use words or pictures to represent the event that you are recording. Making a timeline about the situation can help you work out what information you need to find out such as when something happened, who was involved or the details of the event.

3.2. ACTOR MAPPING

In most situations there are more than two **actors** involved. Even though it might seem as though there are only two parties involved in a negotiation, if you spend time thinking about it, you will probably find that there are several other people, groups or organizations that are influencing the parties or affecting the situation.

Example: Khmer New Year Negotiation

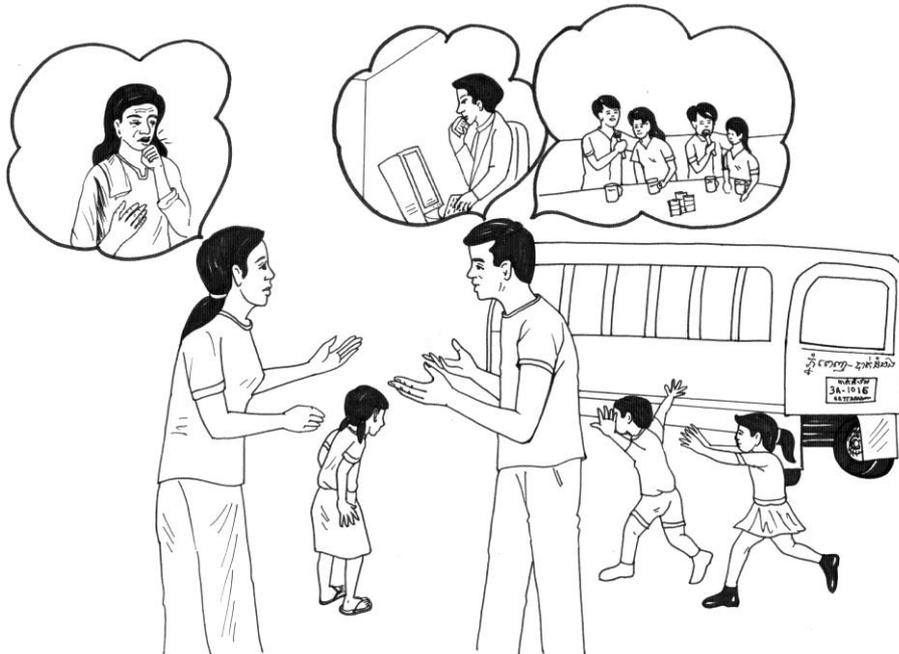
Imagine a husband and wife arguing about whether or not to visit their family in Battambang over Khmer New Year. The negotiation seems to just be between the husband and wife. The wife argues that she wants to go to Battambang and the husband argues that he wants to stay at home.

However, there are many other people involved who influence the situation. The couple's three children might want to go to Battambang to see their grandmother. The grandmother in Battambang might feel that it is very important that they visit her because she is old and they had not seen each other for a long time.

On the other side, the husband's boss might be pressuring the husband not to go because she wants him to work over the New Year and will pay him more. The husband's friends might not want him to go because they want him to join their karaoke party over the holidays.

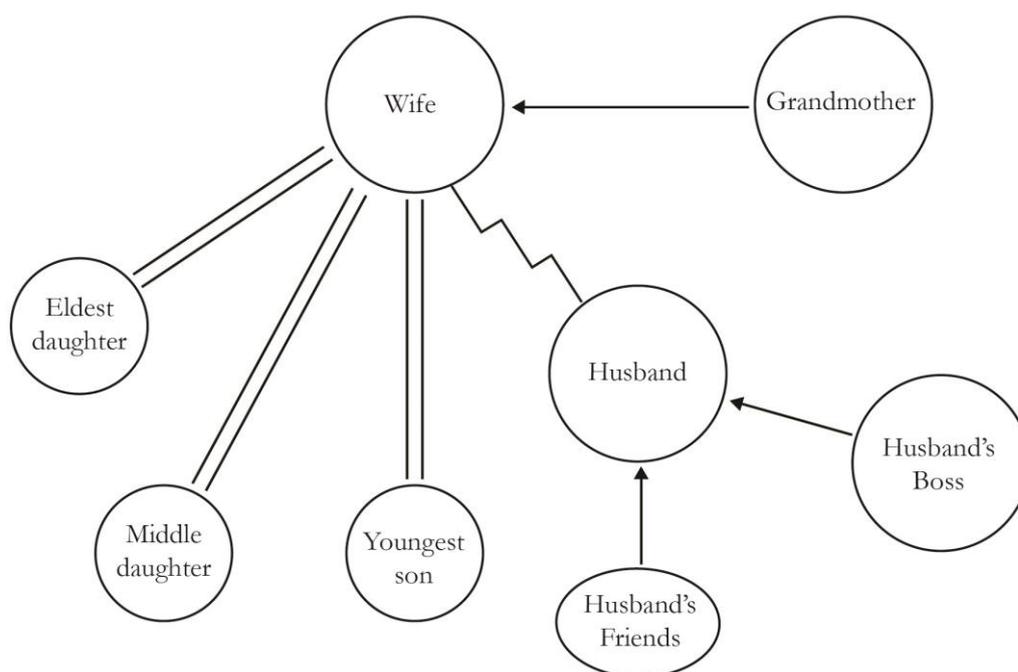
In this scenario, the negotiation is between two people – the husband and wife. But there are at least six different people involved in the situation:

1. The wife
2. The husband
3. The children (who may each have a different view)
4. The grandmother in Battambang
5. The husband's boss
6. The husband's friends



One tool that can be used to help you think about these relationships is called **actor mapping**. This involves writing or drawing all the actors that you have identified in your list in one big picture. You can use different sized circles around each actor to show how powerful you think they are. You can also draw different types of lines between each actor to show what sort of relationship they have with each other.

Below is an example of an actor map using the example of the husband and wife who are arguing over whether or not to go to Battambang.



In this actor map, we have used big circles to show the people who have a lot of power – the wife and husband as well as the grandmother and boss. We have used smaller circles to show people with less power – the children and the husband’s friends. Instead of writing you can draw pictures or use photos of the actors.

We have use different types of lines to show the type of relationships between each actor. The key below shows what each line means. You do not have to use these symbols and you can think of many others to use to explain different types of relationships. You can also use different colors, pictures and shapes to represent different things in your map.

Situation map symbols:

To show a relationship of conflict between actors we used:



To show a strong alliance (people who agree with and support each other) we used:



To show a strong influence of one actor on another we used:



In more complex situations, such as when a community is being threatened with eviction by a company, there are often many actors who can influence the situation, for example:

1. The community (and different members may have different views)
2. The company (the boss and employees might have different views)
3. Investors in the company's project (eg. banks)
4. The commune authority
5. The district or municipal authority
6. The national government
7. Other communities
8. Local and international NGOs
9. Donors to Cambodia and embassies of other governments
10. The media (different media might influence the situation in different ways)
11. Different political parties

These are all actors that could be involved in the community's situation. Thinking about all of these actors and about their relationships with each other can help you develop an effective negotiation strategy. It is especially helpful to think about the influence each of the actors has on the company behind the eviction.

You can use actor mapping to think about or have a discussion with your community about all the actors involved in your situation and how they can influence it.

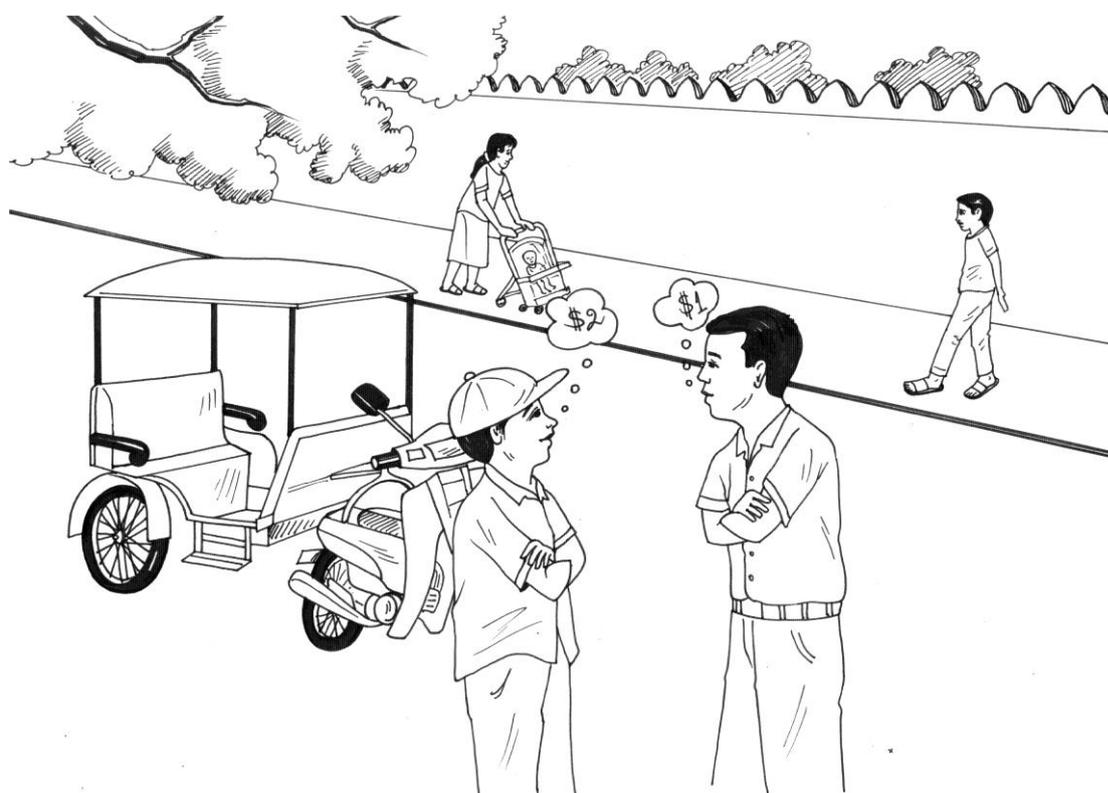
You can then develop a negotiation strategy that involves the actors that you think are important:

- You can ask **allies** to support you in a negotiation.
- You can use different types of communication to improve bad or weak relationships.
- You can use different advocacy methods to persuade actors that have an influence on the other party to the negotiation to help you get what you want.

For example, in the case of the husband and wife arguing about whether or not to go to Battambang for New Year, the wife might decide to ask the grandmother to talk to her husband and explain why it is very important that they go to Battambang. She will try to persuade the grandmother to use her influence on her husband to try to get what she wants.

4. WHAT ARE THE INTERESTS OF THE NEGOTIATING PARTIES?

When people negotiate they usually focus on a single result that they want. During a negotiation it is very common to hear both parties keep repeating what they want. There might be some compromise but when the thing one party wants and the thing the other party wants do not match, the negotiation ends with neither party getting what they want.



Here the tuk-tuk driver wants \$2 to take the man to the market and refuses to take less. The man only wants to pay \$1 and refuses to pay more. They cannot reach an agreement so neither person gets what they want

It is important to try to avoid this type of situation in a negotiation. You can do this by looking behind the demand of each party to the negotiation and thinking about *why you want something* and by finding out *why the other party wants something*. This can help you to think about more options for a possible agreement.

Understanding why you or your community want something involves thinking about your **interests**, such as your needs, your hopes or plans for the future as well as your fears and things you want to avoid.

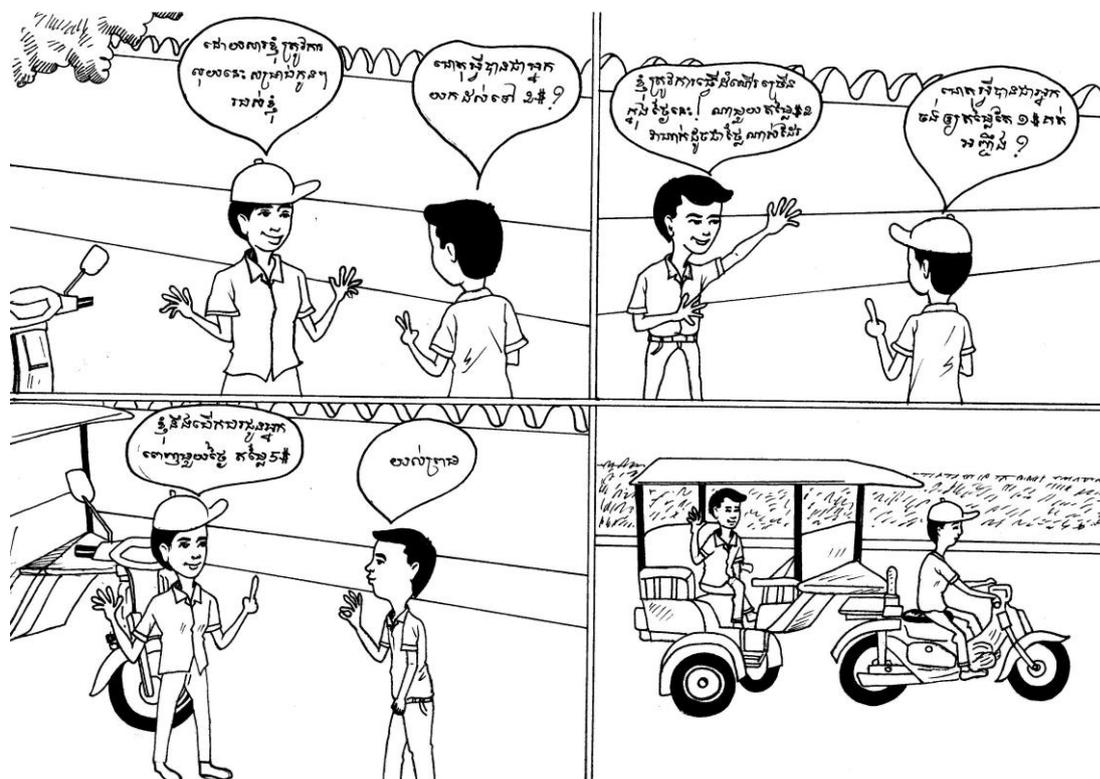
Understanding the reasons behind the other party's demand involves finding out what their interests are, such as their needs, hopes and plans, as well as their fears.

Example: The Tuk-tuk Negotiation

We can ask: *why* does the tuk-tuk driver want to be paid \$2 for the trip? If you ask her she may reply that she has not had many customers lately because there are so many other tuk-tuks. The price of fuel for her tuk-tuk has increased and she is worried that if she does not start to make more money every day she will not be able to look after her family. She also wants to earn enough to save up so she can buy a tuk-tuk, so she doesn't have to rent one anymore.

We can also ask the passenger: *why* do you insist on paying only \$1? The man may reply that he has to make many trips that day. He has to go to the market and then to his job and then to pick up his children from school and then home. He does not want to spend much more than \$4 on all of these trips. He has a very busy day and he is also concerned about being late to his job and picking up his children from school.

If the tuk-tuk driver and the man had this conversation and found out *why* they each insisted on getting what they want, they might be able to negotiate a deal. The tuk-tuk driver could offer to drive the man around all day and wait for him so that he does not have to find a tuk-tuk and waste time negotiating a price each time. They might settle on a price of \$5 for the whole day.

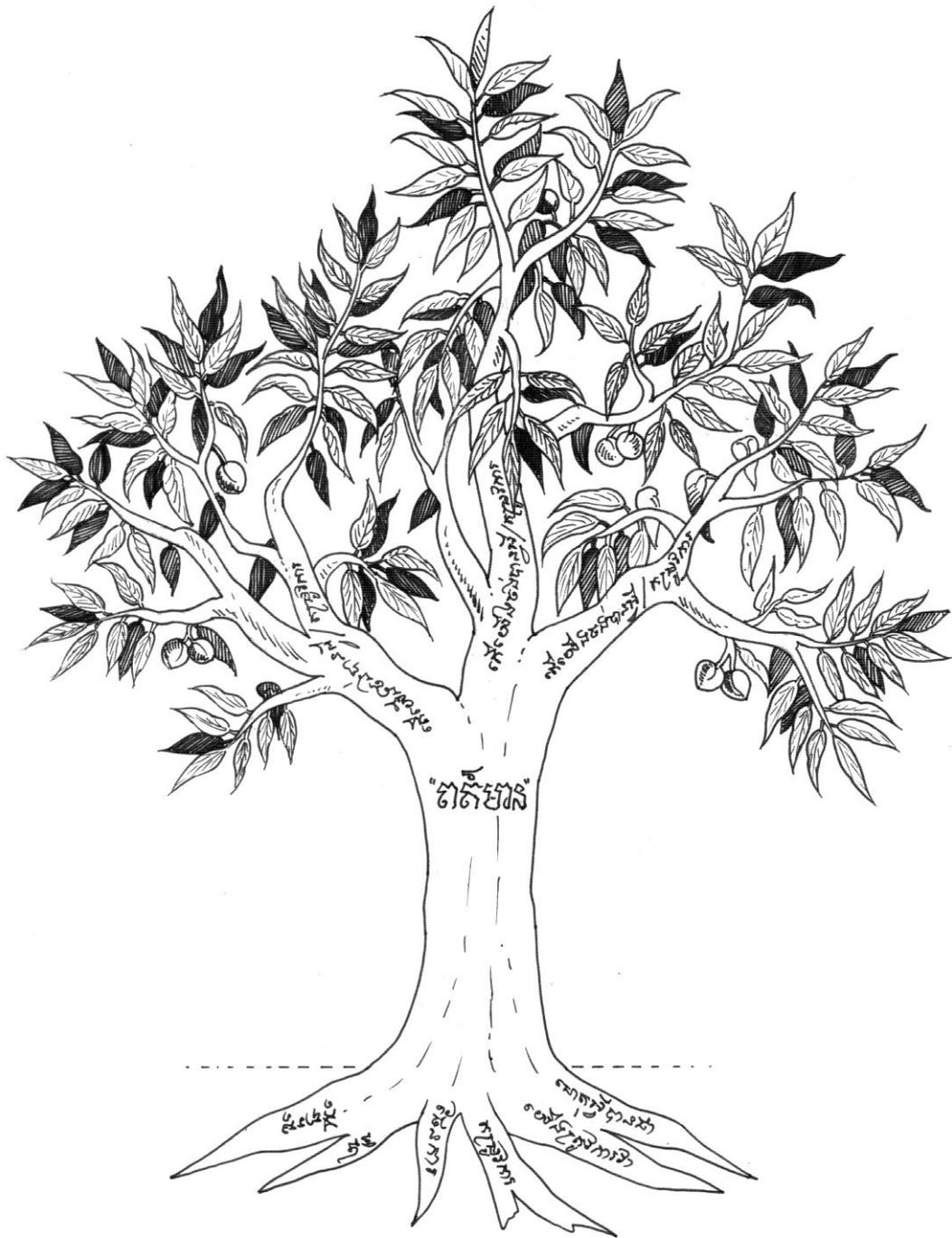


Imagine you are looking at a big tree. You can see the branches and leaves, but you know that under the ground are the roots that are feeding the branches and leaves and keeping the tree alive.

In a negotiation, at first we only see the parties' demands. But underneath those demands are the parties' interests that are "feeding" the demands.

The things a party demands in a negotiation are like the *branches and leaves* of the tree that we can always see. For example, the \$2 that the tuk-tuk driver demanded is like the branches and leaves.

Why the party wants something is like the *roots* of the tree. We cannot see the roots but they feed the branches and leaves. For example, the reasons behind the tuk-tuk driver's demands - her fear of not earning enough money to look after her family and her hopes and plan to buy a tuk-tuk - are like the roots. These are the interests of the parties. We can only see these once we dig and find out the information.



Negotiation Tree: Understanding the interests, such as the needs, hopes and fears of the parties will increase the chances of reaching an agreement that both parties are happy with.

5. UNDERSTANDING YOUR COMMUNITY'S INTERESTS

To understand your community's interests, you will need to gather information about your community and each household. For example, it is a good idea to collect information about:

- The size of the community's and each household's land;
- The number and type of houses;
- Other property and important resources;
- Important facilities nearby, such as schools and hospitals; and
- Jobs, livelihoods and incomes of all the families.

This information can help you understand what is important to the community and the concerns of different families facing eviction about what they could lose, or what they have lost already if they have already been evicted.

The information can also be used to assess the value of the land, housing and other property and resources. This is important if you are negotiating about fair compensation amounts or replacement land, housing and property. Information about livelihoods and incomes can help in negotiations about livelihood support if your community resettles somewhere else. Knowing the value of all of your property and the resources and facilities that your community uses can also help you argue that the eviction should not happen at all.

GATHERING COMMUNITY INFORMATION

You can organize a research team made up of members of your community, who will be responsible for collecting all of the information. The team can visit each household and work with them to collect the information. Alternatively you can ask each household to come prepared to a community meeting with all the information about their households. You can then add information about property, resources and facilities that have value to the whole community.

You should also collect copies of household documents that show ownership or rental of land and housing. You can also take photos around the village, including photos of each family standing outside of their home, and of all the different types of property and resources. Photographs can be important evidence during a negotiation before an eviction or for demanding compensation after an eviction occurs.



OPTIONS FOR A POSSIBLE AGREEMENT

1. USING INFORMATION TO THINK OF MORE OPTIONS FOR AN AGREEMENT

The more information that parties to a negotiation have about each other's interests, the more options they will be able to think of for a potential agreement. If you have more options for an agreement, it is more likely that you will find one that both parties will find acceptable.

Often people think of only one possible result that they would agree to and when this does not match the other party's demands, no agreement can be reached. If instead you think carefully about all needs, plans and fears of both parties, you can begin to develop some more creative options for a possible agreement that satisfies those interests.

Using this method in your preparation will mean that when you start negotiating you can discuss more than just the main thing that you are negotiating about. You can also discuss other things that you and the other party have or can do for each other that will satisfy both of your interests.

Example: Negotiating over more than rice

Sothea sells rice and her neighbor Phanna wants to buy a bag. Sothea usually sells her rice for 100,000 riels per bag but Phanna only has 50,000 riels. If they do not find out any more information about each other's interests the situation is that Sothea wants 100,000 riel and Phanna can only pay 50,000 riel. They will not reach an agreement.

But Phanna knows that Sothea has had difficulty looking after her two sons because she has to work at the market all day. Sothea generally earns enough money from working at the market but she works long hours and does not have enough time to look after her sons and do housework. Phanna does not have much money but she does have a lot of time because she cannot find work lately. Because Phanna has this information she thinks of a new possible agreement: Phanna can look after Sothea's sons after school for three hours each day and do some housework at Phanna's home in exchange for plenty of rice. Both Sothea and Phanna are happy with this agreement because it satisfies both of their interests.



In this negotiation Phanna and Sothea thought of an option for an agreement that did not just involve money, even though they were talking about buying and selling something. This is a good agreement because:

- It satisfies both of their interests: The agreement allows Sothea to work longer hours without worrying about her sons and provides Phanna with a job and enough rice to eat.
- It is even bigger than what they were originally negotiating about, which was only one bag of rice. Now Sothea will have her sons looked after every day and Phanna has plenty of rice to eat.

When you can think of possible agreements that involve satisfying each other's interests there is a much better chance of reaching an agreement that both parties will be happy with. The options can involve much more than just money and can lead to an agreement that brings longer-term and bigger benefits to both parties.

2. DEVELOPING ALTERNATIVE OPTIONS TO EVICTION

If you are facing eviction from your homes or farmland, it can be very hard to think of possible options for an agreement that are in your interests as well as those of the powerful actors that want to take your land. Many communities facing eviction only try to negotiate for more cash compensation and do not think about other possible options that may be

much more beneficial to their lives. However, there are cases where evictions have been avoided by finding alternatives besides compensation that satisfy the interests of both parties.

For example, some urban communities have been able to avoid eviction by allowing the government to use part of their land in return for upgraded housing and infrastructure on another part of their land. Others have found alternative land and negotiated the terms of their own planned resettlement. Rural communities facing displacement from large agricultural plantations have avoided eviction by agreeing to grow specific crops on their own land and sell it to the company at an agreed price.

All of these options involve risks and should be considered very carefully to ensure that they are really in your best interests. If you think you can successfully resist eviction by protesting or going to court, then that may be the best option. But many communities find that they are unlikely to be able to successfully resist eviction by stopping the development project. In this situation, the best way to avoid eviction may be to propose alternative development plans that satisfy both parties' interests. The case studies below from Cambodia, Thailand and Vietnam are examples of successful alternatives to eviction that communities were able to negotiate.

Participatory resettlement of Akphivat Mean Chey community, Phnom Penh, Cambodia

In 1997, 129 households living in the roadside settlement at Toul Svay Prey found themselves threatened with eviction, to make way for a municipal drainage project. Through their community savings group, the people managed to use the crisis to organize themselves and negotiate their own planned resettlement to new land at Akphivat Mean Chey. The alternative to forced eviction involved many different actors:

- **Community members** searched for alternative land and chose the final site from several site options.
- **UNCHS** (part of the United Nations) provided infrastructure through “community contracts” in which community members were paid to construct roads, drains, pit latrines, water pumps and plant trees.
- **The Municipality** purchased the new land using funds from the drainage project budget and granted each household land title after they repaid their housing loans.
- **Young architects** working with several **NGOs** helped the people design the layout plan and houses.
- **The District Chief** helped to negotiate and push through the whole

process.

- **A micro-finance organisation** provided housing loans of US\$ 400 to each of the 129 households.
- **Households** built their own houses, which they had developed with the architects.
- **The Community Savings Network** turned each step of the process into training and inspiration for communities around the city, through a constant stream of exchange visits.

The Akphivat Mean Cheay case showed that, if given the opportunity, poor communities can effectively plan and undertake a voluntary resettlement process in collaboration with different actors. The result satisfied the interests of the community, which ended up with better housing with security of tenure, and the municipality, which was able to move ahead with drainage project.

Sources: Asian Coalition for Housing Rights (www.achr.net) and Hallam Goad, "Phnom Penh and its informal settlements: A chronological overview of key events (1992-2012), 2014.

Onsite upgrading of Loung Vichet canal community in Bangkok, Thailand

The government planned to evict the Loung Vichet community living along a canal in Bangkok because it believed that the canal required widening due to flooding. The government believed that the community was causing the flooding by throwing their garbage into the canal.

The community learned of the government's plans and decided to organize community cleaning of the canal. Each family was assigned a regular cleaning day once per month; if a family did not participate, it was required to pay money into a fund. Some families that had been living too close to the canal agreed to move back from the canal to stop erosion and flooding. The canal became clean and no longer flooded. The community planted fruit trees along the canal, and used environmental management techniques to reduce the smell from the canal.

The government's view of the community changed from considering them polluters to seeing them as a positive influence. As a result, the government abandoned its eviction plans and granted the community members land titles.

Source: Four Regions Slum Network, Thailand

Contract farming in Nam Din province, Vietnam

Many rural and forest communities face the threat of displacement from companies that are awarded land concessions by the government to develop large agricultural plantations. Often, the concession areas overlap with the land of local farmers and communities.

There are alternative models for agriculture that can be profitable for a company but don't involve massive plantations that grab land and resources that local communities depend upon. One example is contract farming. This means that local smallholder farmers use their own land to grow crops that the company wants and then sell it to the company at an agreed price.

This type of arrangement was set up successfully in Vietnam's Nam Dinh province. A Chinese company called Luveco signed contracts with 20 farmer organisations, which in turn signed contracts with individual farmers. Before contract farming, local farmers cultivated rice. The company wanted them to grow cucumbers, tomatoes and corn. Luveco provided farmers who agreed to the arrangement with seeds, fertilizers and technical training and committed to buying the produce at a fixed price. The cost of all of the inputs is deducted from the final price that Luveco pays to the farmers. Luveco will only accept produce that is good quality.

This scheme has grown over the past 20 years, with more farmers getting involved. Farmers are happy with the higher and more stable income compared to what they used to earn. The arrangement is also profitable for the company, which is why it has continued for many years.

However, contract farming is not always positive for smallholder farmers. There is often a danger that the company will abuse its power by delaying payments, setting unfair purchase prices and forcing the farmer to take most of the risk if there is a bad harvest due to poor weather. Farmers that have organized themselves into an association and obtained legal advice and support have often been able to negotiate better contract terms that avoid these dangers.

Sources: "Making the most of agricultural investment," Food and Agriculture Organization (FAO) and International Institute for Environment and Development (IIED), 2010; and "Positive Investment Alternatives to Large-Scale Land Acquisitions or Leases," Transnational Institute, 2012.

3. REALISTIC OPTIONS FOR AN AGREEMENT

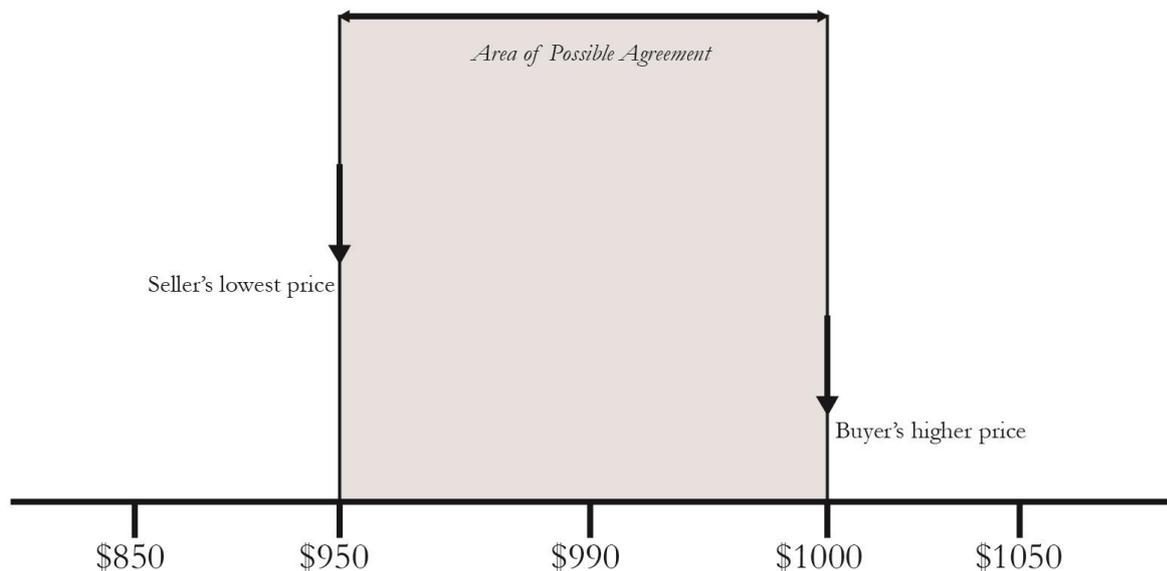
3.1. FINDING THE AREA OF POSSIBLE AGREEMENT

Successful negotiations depend on both parties being realistic about the agreement. If you demand more than the other party is willing to give, you will not reach an agreement. If the other party does not offer you what you need, you will also not reach an agreement that you are happy with.

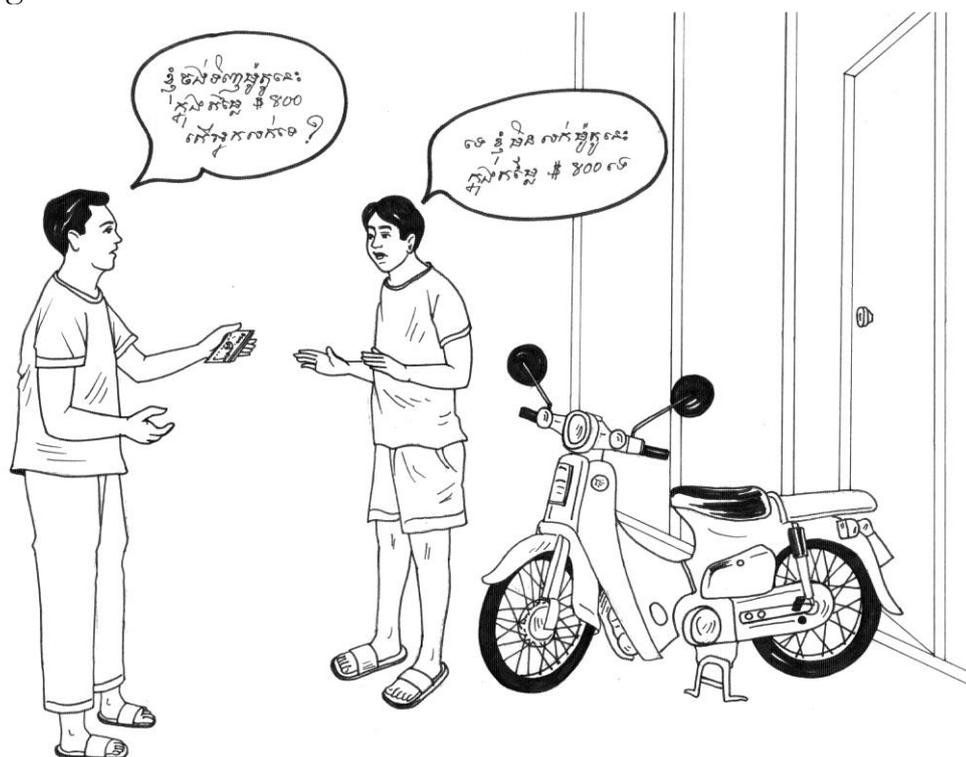
That is why it is important to think about the **area of possible agreement**. This is the space between the lowest or worst offer that one party to the negotiation would be willing to accept and the most the other party would be willing to give.

If you are negotiating about buying and selling something, the area of possible agreement is the area between the *lowest price* the seller is willing to accept and the *highest price* the buyer is willing to pay. This is the boundary within which the buyer and seller might be able to reach an agreement.

For example, if you want to buy a motorbike and the most you are willing to pay is \$1000 (but you would rather pay less) and the seller is not willing to sell the motorbike for less than \$900 (but would rather get more), the area of possible agreement is between \$900 and \$1000.



If the buyer offers the seller \$800, the seller will reject the offer. If the seller asks for \$1100, the buyer will reject this. These amounts are outside the area of possible agreement.



3.2. MAKING THE AREA OF POSSIBLE AGREEMENT BIGGER

The area of possible agreement will be bigger or smaller depending on how much information you have about what you want and about what the other party wants. If you have more information about the needs, plans and concerns of both parties, the area of possible agreement can be wider because you can negotiate about more than just one thing, such as money. It will also depend on how creatively you can think about the options for a possible agreement.

If you do not get enough information, or give enough information to the other party, the area of possible agreement is smaller. This means that you are less likely to reach an agreement. You might fail to reach an agreement in a negotiation just because you did not get or give enough information, rather than because an agreement was not possible.

Example: Negotiating over more than rice

Remember Phanna and Sothea who were negotiating over a bag of rice? Sothea wanted 100,000 riels for the bag of rice but Phanna could not afford to pay that much. Phanna could offer 50,000 riels but Sothea would not accept such a small amount. Both 100,000 riels and 50,000 were outside the area of possible agreement in this negotiation. If they continued to only negotiate about money, the area of possible agreement would have been very small or may have not existed at all. They would never reach an agreement.

If Phanna and Sothea did not find out more information about each other's needs, the negotiation would have failed. But because Phanna knew about Sothea's situation and understood her needs she could make the area of possible agreement wider by negotiating about other things.

Eventually they reached an agreement. Sothea gave Phanna the bag of rice and in exchange Phanna would do housework for Sothea and look after her children.



4. DEMANDS IN A NEGOTIATION

The first offer or first demand that a party makes in a negotiation is usually the ideal result that they would like to achieve even though they know the other party may not accept it. First demands are often outside of the area of possible agreement.

For example, in a negotiation about rights to land, the community's demand might be that they want the company to stop its operations and leave them alone. The authorities or company might demand that the community moves away and offer a small amount of compensation.

After both sides have expressed their demands, the parties can then start talking about their interests and exploring different options to reach an agreement that satisfies the interest of both parties.

WHAT SHOULD YOUR DEMANDS BE?

It is usually a good idea to begin by demanding more than what you would be happy to end up getting in an agreement, especially if you are negotiating about an amount of compensation. This allows you to compromise during the negotiation but still reach an agreement that you are happy with.

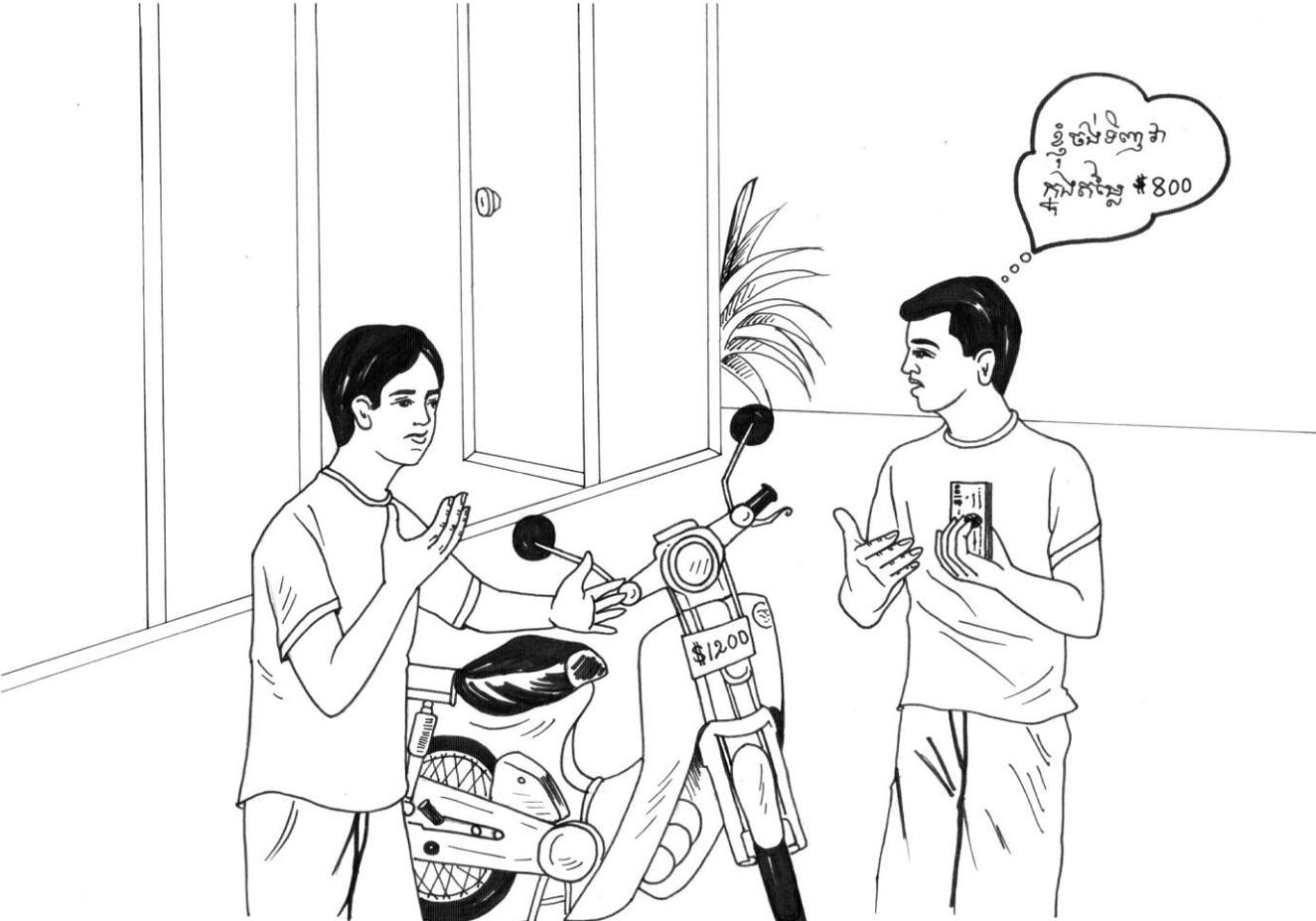
However if you make very high demands, the other party might think you are not serious about negotiating fairly. They may think that you are unreasonable and that you will never be able to agree. The other party might walk away from the negotiation after hearing your demands if it is too far outside of the area of possible agreement.

Your demands should be somewhere in between. It should be:

- more than what you would be happy to get in an agreement,
- but not so high that it will make the other party walk away from the negotiation.

Your first demand is important because it tells the other party how confident you are about your strength in a negotiation and also whether you are likely to be a fair and reasonable negotiator. It might tell the other party whether you will be very tough in the negotiation or whether you are more interested in reaching a quick agreement. The other party may respond to your demands by making an offer, which tells you the same information about them.

For example, imagine you are buying a motorbike and you make a first offer of \$700. The seller than says she wants \$1200. You now know that the seller is going to be tough and try to get a high price for her motorbike and may not care if she sells it to you today because she is confident that there will be others who want to buy it or that she thinks it is a very good motorbike.

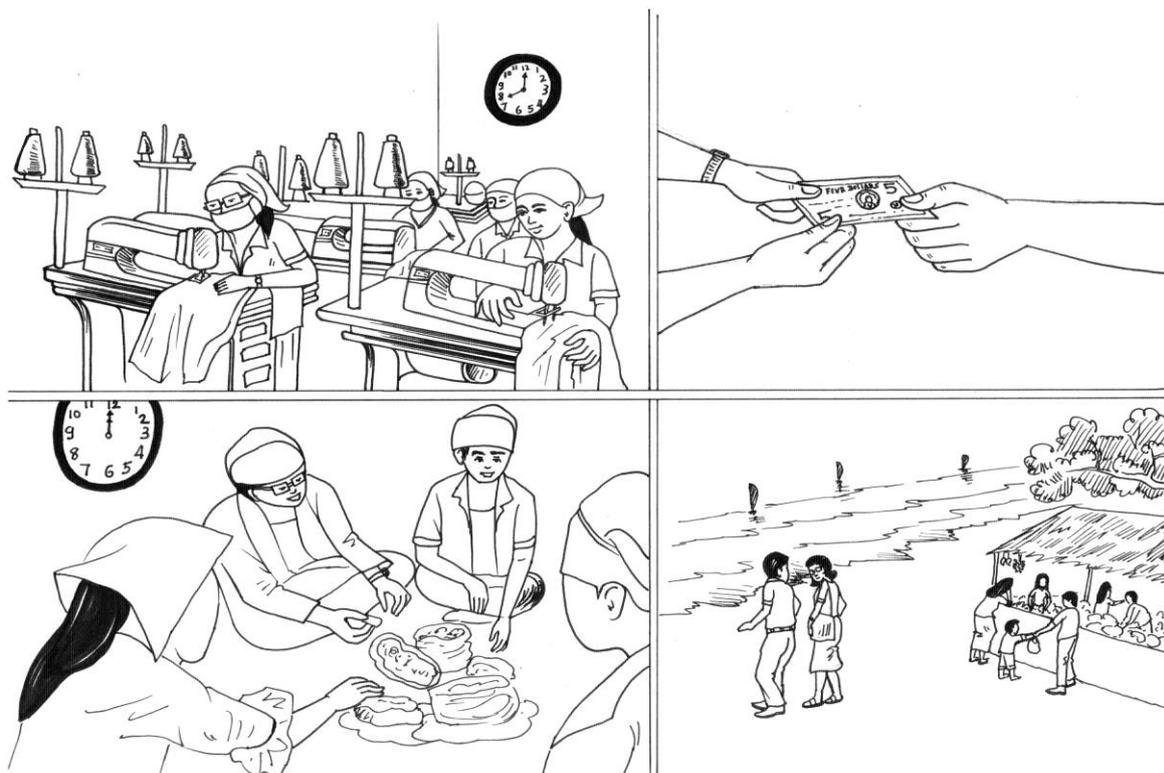


LAWS, POLICIES AND OTHER STANDARDS

1. WHAT ARE STANDARDS?

For any issue that is being negotiated there will be standards that apply. For example, if you are negotiating with an employer about how much you will get paid if you accept a new job and how many hours you will work in a week, there are Cambodian and international laws that apply and that you should use to help you reach a decision. Your employer might also have policies that say how much workers should get paid and how many hours they should work. These laws and policies are standards that are important to know and use to help make sure that the agreement is fair and reasonable.

For any issue that is being negotiated it is also a good idea to find out about **good practices** in similar situations. For example, you could find out how much workers with similar jobs get paid by other businesses in the industry that is regarded as fair and reasonable. You might find out that workers in a similar job with a fair employer get paid \$5 per day, work eight hours each day, five days per week with a lunch break at noon for one and a half hours. These good practices are also standards that may be helpful to you in a negotiation.



2. USING STANDARDS IN A NEGOTIATION

Laws, policies and other standards can be used in negotiations to persuade the other party that what you are asking for is fair and reasonable.

- If you can show that what you want and what you are asking for is based on standards, this will help to strengthen your position in the negotiation.
- If you can show that what the other party is demanding is against the law or their own policies, violates your rights or that it is unacceptable practice in Cambodia or around the world, this can help weaken their position.



Asserting Your Rights in a Negotiation

You should aim to find an agreement that respects the law and your rights and is based on good practices. But it is not always easy to convince the other party to use these standards. If the other party refuses to do so, you can stop the negotiation and use different types of advocacy to try to pressure them to negotiate fairly.

For example, you can talk to the media and organize a petition or demonstration. You could also consider contacting a lawyer or a legal NGO to get advice about going to court or using other legal strategies if the other party is violating laws and your rights.

3. FINDING STANDARDS ABOUT EVICTIONS

An important part of preparing for the negotiation is finding the standards that apply to your case. Standards can come from your community, your province, all of Cambodia or from other countries in the region and around the world.

There are many standards that apply to evictions that can be used to strengthen your position in a negotiation.

For example, there are Cambodian laws that are relevant, including:

- The Constitution
- The Land Law (2001)
- The Expropriation Law (2010)
- The Sub-decree on Economic Land Concessions (2005)

If you have rights to your land according to these laws, you can use these to strengthen your position in a negotiation. You can ask legal aid NGOs to help you understand the laws that are relevant to your situation.

USING HUMAN RIGHTS LAW TO STRENGTHEN YOUR POSITION

It is important to know that forced evictions are illegal under international law.

The **International Covenant on Economic, Social and Cultural Rights**, is an international treaty that the Cambodian government signed and committed to respect. Article 11 of the Covenant requires signatories to “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” This article means that governments must protect people from forced evictions that will make their living conditions worse.

According to the United Nations Committee on Economic, Social and Cultural Rights, which oversees the Covenant:

- An eviction is only allowed when it is absolutely necessary, for

example when there is a development project that is genuinely in the interests of the public.

- An eviction can only happen if there are no possible way to avoid it, for example by redesigning the project or finding other alternatives to the project that don't require evictions.
- Before an eviction takes place, the government has a duty to make sure:
 - Information about the eviction and reasons for the eviction is provided to affected people;
 - Affected people are consulted properly;
 - Adequate and reasonable notice is given before the eviction is to take place;
 - Adequate compensation is provided to ensure that people can access alternative housing and land. People must be able to maintain or improve their living conditions after an eviction and nobody should ever be made homeless or landless due to an eviction. Compensation can be in the form of money, land, housing and other kinds of support.

Indigenous Peoples have particular rights under international law. These rights are explained in the **United Nations Declaration on the Rights of Indigenous People**, which the Cambodian Government and many other governments supported. This declaration says that indigenous communities have the right to give or withhold their **free, prior and informed consent** for any project that will affect their lands, territories or resources. This means that indigenous communities have the right to say “no” to being relocated against their will or to any other impacts to their lands and resources that they do not agree with.

You could also find out what is considered **good practice** in countries around the world in cases of eviction. What creative and fair solutions are used around the world so that people's rights are respected?

The best international practice is not to evict people, but to find solutions that allow communities to remain onsite or close to their existing location and resources. However, if you are considering accepting cash compensation and buying another house or piece of land of your choosing, then you should find out how much your property is worth. You can ask your neighbors and other people in your community that recently bought their land how much they paid. You could also ask a real estate agent how much your land is worth.



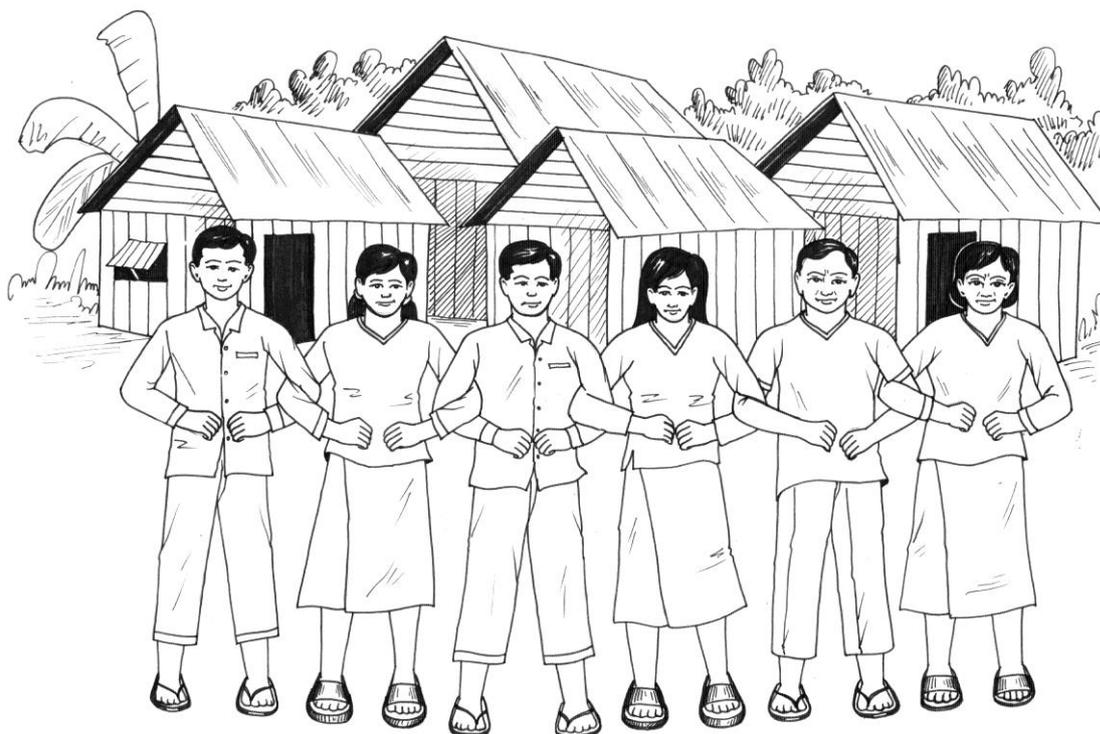
Finding out about all of these types of standards, including laws, human rights, good practices and the value of property, is a very important part of preparing for a negotiation. NGOs can help you with this research.

INCREASING YOUR POWER IN A NEGOTIATION

1. Uniting your community

Often in cases of displacement, the people or company trying to take the land do things to try to divide the community. The people behind an eviction will often invite each family separately to negotiate a compensation amount. They do this to weaken the community. If the community insists on negotiating with one voice it will be harder to ignore its collective demands.

This does not mean that every family in a community must want the same result. For example, the community may decide that it is fair for families to get different amounts of money depending on the size of their houses. Some may be happy with receiving money and others may prefer to receive alternative land and housing. Others may want to find more creative options that do not involve moving away from their housing and land. This does not mean that the community cannot be unified. The community can still work together to develop and implement a strategy that aims to increase its power in a negotiation.



If your community is organized and united, your position in a negotiation will be much stronger. There are many things you can do to unite your

community. First, it is a good idea to select community representatives whom you trust. Some communities choose to select a few representatives. This makes it more difficult for one community representative to be pressured by those trying to take the community's land. It is a good idea to select a mix of people that represent all the different members of your community, such as women and men and people from minority groups.

It is also important to have regular community meetings to discuss the situation, share information and give everyone an opportunity to express their ideas. You might decide to organize a meeting with the whole community every week or every month. At these meetings, the representatives can make sure they understand the views and ideas of the whole community.

Another way to organize the community is to choose volunteers to visit each family to collect information about their household and ask them about their needs and plans as well as their fears and concerns. A summary of the information can then be reported at the group meeting so that the entire community has a better understanding of the members. This information can also be used to understand the community's interests and think of creative options for an agreement in the negotiation.

2. USING ADVOCACY TO INCREASE YOUR POWER

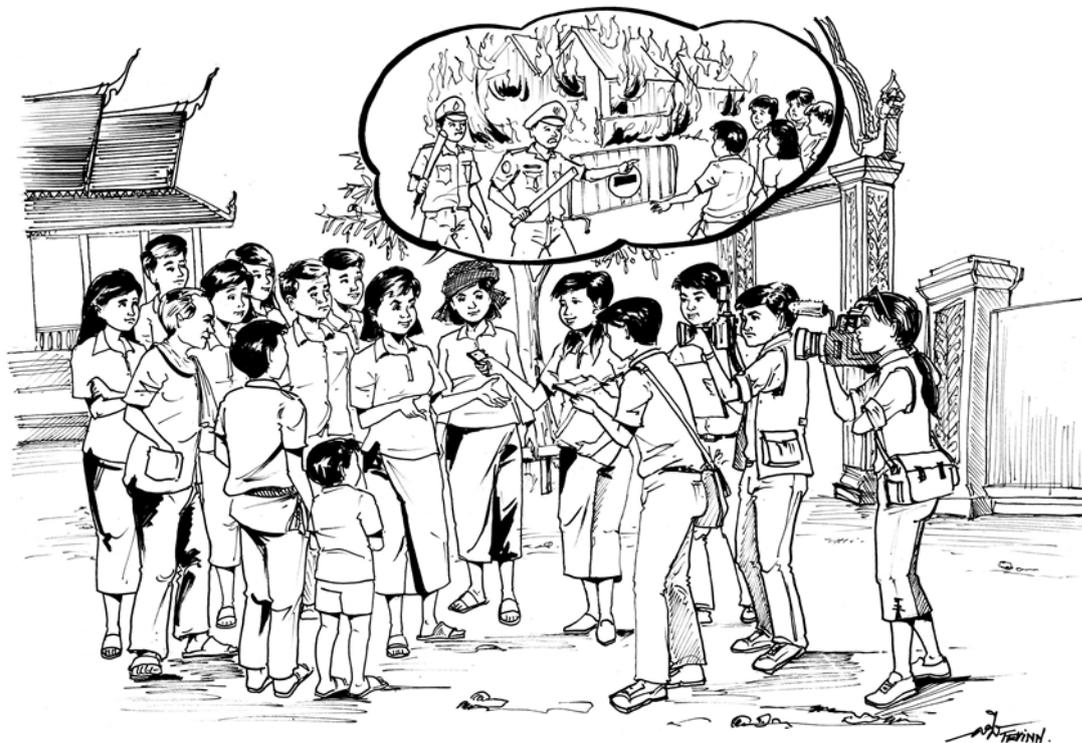
An important way to increase your power is to use different types of **advocacy** before you negotiate. When you use advocacy as a part of your negotiation strategy you are using words or actions outside of the negotiation meetings to try to pressure the other party to negotiate fairly and reach an agreement that you are happy with.

There are many different advocacy methods that you can use to try to influence the other party's decisions or actions. These can include:

- Letters of complaint to national or international institutions.
- Organizing meetings with officials, the company and other actors who can influence the other party.
- Organizing a demonstration outside the company's office.
- Asking people to sign a petition to send to the government or company and do other influential actors.
- Using social media, such as Facebook and Twitter.
- Talking to the media, such as newspaper, television or radio journalists about your situation.
- Using the court in Cambodia or in other countries if possible.

For example, in a case of forced eviction by a company, you might decide to

talk to a journalist about your situation and how the company is breaking the law and harming your community. You might talk to journalists in Cambodia as well as overseas. This can help make your community's position stronger in a negotiation because the company might not want to have a bad reputation.



USING ACTOR MAPPING TO HELP YOU PLAN YOUR ADVOCACY

It is a good idea to use actor mapping when you are thinking about using advocacy to increase your power.

- Look for actors who can give you support and strengthen your position. Think about how you can communicate with them and get them to help.
- Look for actors who have an influence on the other party. Think about how you can develop or improve your relationship with them or use advocacy to convince them to try to influence on the other party to negotiate fairly.

3. GETTING SUPPORT FROM COMMUNITY NETWORKS

Another important way to increase your community's power is to get support from other communities. In cases of forced displacement, a common concern of companies and governments is that large numbers of people will oppose their actions or decisions and make their plans or situation insecure. When many people join together to speak with one voice to send a message, the message is much stronger and it is much harder for the other party to ignore.



For example, other communities can support you by joining a demonstration, signing petitions or writing letters of support. They can also support you by coming to your community's land to help defend your land and housing during an eviction. Meeting with people from other communities facing a similar situation and sharing experiences can make both of your communities stronger. Your communities can support each other to resist eviction and achieve your goals.

4. IDENTIFYING YOUR STRONGEST ADVOCACY OPPORTUNITY TO USE IF NEGOTIATIONS FAIL

If you have gotten to the point where the authorities or company is willing to negotiate with you, then you have probably already had success in your

advocacy. Now you should think about what you will do if the negotiation fails and you are not able to reach an agreement that you are happy with.

In a negotiation, if you find that the other party is not negotiating fairly or has not proposed any reasonable options for a solution, it can be useful to let them know you have an **alternative to negotiation**. This alternative should usually be your strongest possible advocacy strategy. For example, if you are negotiating with a company that is very worried about maintaining a good reputation, your alternative may be to launch a public international campaign against the company. You may also find that it is possible to file a complaint against the company in court or through an international complaints mechanism. It is important that your alternative to negotiation is something that you have the capacity to do. You should seek advice from NGOs that are supporting you to help develop your alternative strategy.

If you have a good alternative strategy, you can threaten the other party with this if the negotiation is not going well. Just the threat of using your advocacy strategy may be enough to get the other party to negotiate fairly and make a better offer to the community.

FORMS OF COMMUNICATION

1. FORMS OF COMMUNICATION

Communication means sending or receiving information, ideas or messages through words or actions. Choosing how to communicate at different stages of the negotiation process is an important way to increase your power.

There are many different ways that you can communicate with the other party. For example you can:

- Hold face to face meetings
- Send letters or emails
- Talk over the phone
- Ask someone to represent you

All of these are communication methods that you can use to negotiate. You can choose to use different types of communication depending on your situation. Your community should consider which form of communication is most strategic to increase your power at each stage of the negotiation.

If the negotiation does not work or an agreement cannot be reached, the community should think about types of communication (advocacy) that can put pressure on the other party to take responsibility. Some examples of communication are:

- Ask the media, such as a newspaper, television or radio station to report your story and include your message.
- Organize a demonstration at a place that will catch the attention of the other party using posters or a loudspeaker to convey your message

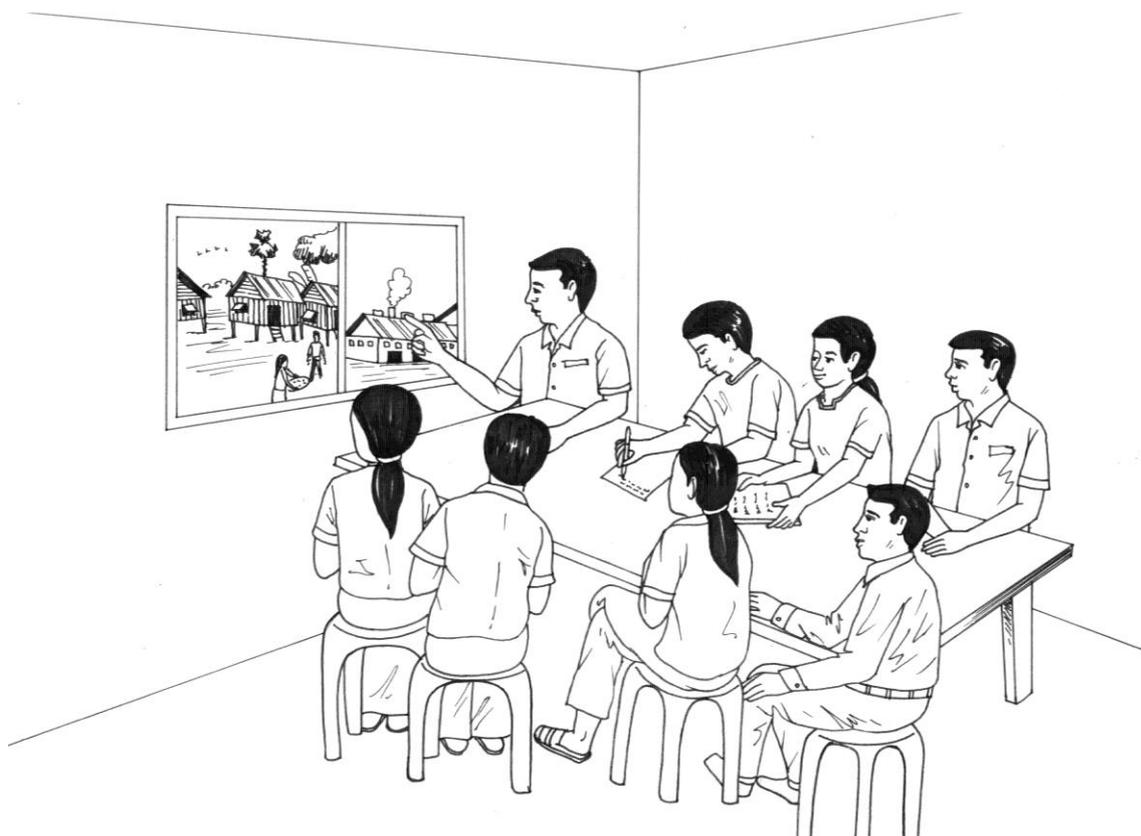


2. DIRECT AND INDIRECT COMMUNICATION

In some situations it might be most effective to communicate *directly* with the other party, which can be done at a meeting, through a letter or a phone call. If the negotiation does not work or an agreement cannot be reached, it will be more effective to communicate *indirectly*, such as through the media or through other people who have influence over the party you have been negotiated with. If you think about negotiation as a process, it can include a range of both direct and indirect forms of communication at different stages of the process depending on whether the other party is negotiating fairly.

When you use indirect types of communication, you are using advocacy to pressure the other party to negotiate fairly by making your message public or getting the support of others. This can be a more effective way to negotiate if you do not think the other party will negotiate fairly without influence or pressure from others.

However, if the other party is willing to negotiate or has responded in a positive way to advocacy that you have already done, it might be a good idea to stop doing advocacy and begin direct negotiation. Most negotiations happen over more than one meeting. Having several meetings can help you control the process of negotiation. For example, at the first meeting you might decide only to discuss the other party's reasons for wanting the land and the community's needs and concerns.



You can then stop the meeting and talk with the community about the new information you have learnt and whether the other party seems to be willing to negotiate fairly. If the meeting went well, your community might decide to continue the negotiation and arrange another meeting to discuss options for possible agreement.

If the meeting did not go well, your community might decide to stop negotiating and use advocacy to pressure the other party to negotiate fairly. Sometimes just threatening to do advocacy can make the other party more willing to negotiate fairly. It may be strategic to use the threat of doing advocacy in the negotiation meeting itself. For example, you might decide to tell the other party that unless they start negotiating fairly, you will talk to the international media or, if they are acting illegally, lodge a complaint to the court.

THE CASE OF THE POM MAHAKAN COMMUNITY

Pom Mahakan is a community of around 300 residents in Bangkok, Thailand. The community has been living on their land for 150 years, earning a livelihood by selling traditional crafts. Many residents have also built their ancestral shrines on the land.

In January 2003 the community received eviction notices from the municipality. They were offered a resettlement site 45 kilometers away. The government planned to turn their land into a park to improve tourism in the area.

The community did not want to be relocated so far away and told the government that they refused to move from their land.

But the community did want to attract tourists to the area so they could sell their traditional crafts. The community decided to work with architecture students from a university to develop an alternative plan for the area, which included onsite upgrading and a park. The plan took into consideration both the needs of the community and the plan of the government authority. The community started to implement some parts of the plan themselves. They put up a board presenting their plan. The community started to receive support from NGOs and the United Nations.

The community also spoke to the media to keep the government and public aware of the situation and its plans. The community contacted the media each time a government official came to their village.

The community then organized the first negotiation meeting with the government. The community and the students presented their plan and their arguments in support of it. They argued that the eviction would violate the rights of the community. They also told the government authority that they also wanted a park to attract tourists but that it would be better for the economy if they could stay living there to sell their traditional crafts to the tourists.

They did not reach an agreement at the first negotiation meeting and the government authority continued to threaten the community with eviction. Some community members lost hope and left but most stayed and kept using advocacy to protect their rights.

In December 2005 the parties had another negotiation meeting and reached an agreement to develop the area based on the plan of the community and architecture students.¹

3. RESPONDING TO NEW INFORMATION: DO YOU NEED TO TRY TO REACH AN AGREEMENT URGENTLY?

The process of negotiation might need to happen quickly if there is an urgent need to reach an agreement, for example, because your community is facing imminent eviction. If there is no urgency, the negotiation can happen more slowly to allow you to stop and think about any new information and what your next steps should be.

In cases of forced eviction it is important to always monitor the situation and consider all new information about when the eviction might happen. Sometimes communities receive several eviction notices with different dates. Communities also often hear many different rumors about when the eviction will occur.

It is often difficult to know which information is true. However, all of the notices and rumors should be taken seriously. The community should share and discuss all new information about the threat of eviction and decide together how to react. The community might decide that the eviction is not likely to happen and that they have more time to negotiate. The community might decide that the eviction threat is real and that they should try to find the best possible solution urgently. The community might also decide that even though the threat is real they want to continue to resist.

THE CASE OF DEY KRAHORM

The Dey Krahorn community in Phnom Penh faced ongoing threats of forced eviction by a company and the Municipality of Phnom Penh over several years. Some of the community members decided to leave and accept the inadequate compensation they were offered because of pressure and intimidation. They also feared that they would not receive any compensation at all if they refused to leave and their houses were destroyed by the company.

¹ COHRE, *Successes and Strategies: Responses to Forced Evictions*, 2008, page 57-64.

The company started to pay men to harass and even beat community members to get them to leave. Community leaders were charged with criminal offenses that they did not commit.

But community advocacy became stronger. There were regular protests and many media events that showed the strong spirit of the community. This advocacy sent a strong message to the company and Municipality.

Eventually the company agreed to negotiate. One negotiation meeting was held but no agreement was reached. Negotiations continued through indirect communications using the media. The community members who continued to resist insisted that they wanted enough compensation so they could afford to buy another apartment in the city. The company offered a bit more money but still not enough.

Around the same time there were also rumors that a mass forced eviction of the whole community would take place soon. The community was very nervous and some took the compensation offer and left.

But the community advocacy was still very strong and soon afterwards the remaining families were offered \$20,000 to move, much more than the initial offer. Several families immediately took the offer. Others thought that this amount was still below the value of their homes and land and submitted a counter-offer, hoping to continue the negotiation despite the real threat that the forced eviction would happen soon.

A few days later the whole village was destroyed by mixed forces and company workers using bulldozers, rubber bullets and tear gas. Some families were given flats at a resettlement site far away, but no compensation.

The Dey Krahorn case illustrates the importance of assessing the seriousness of the risk of eviction and negotiating within the zone of possible agreement. These factors need to be considered in deciding what the next step should be.

NEGOTIATION MEETINGS

1. PLANNING THE NEGOTIATION MEETING

When you decide to hold a negotiation meeting, it is a good idea to plan carefully before the meeting.

WHAT SHOULD YOU PLAN BEFORE A NEGOTIATION MEETING?

Planning for the negotiation meeting involves making decisions about the following:

- Where and when will the meeting be held?
- Who will go to represent the community?
- Will you ask other people to join the meeting, such as supporters of the community like NGOs?
- Will you ask someone to facilitate the meeting?

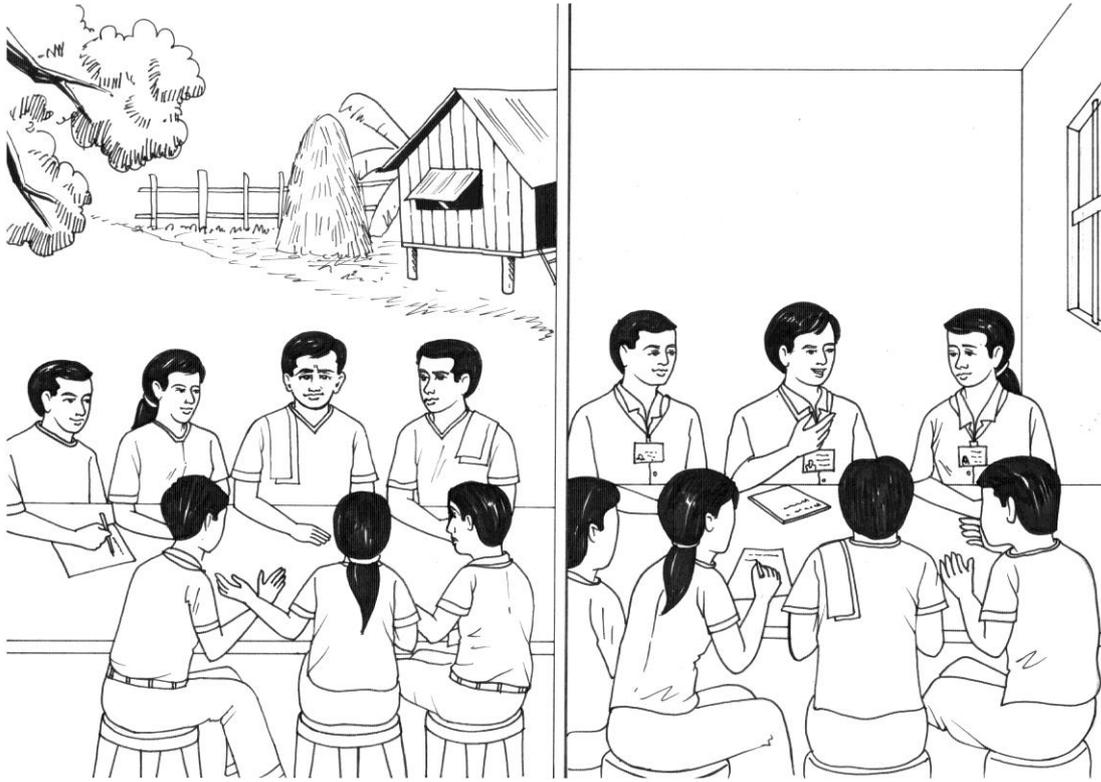
When you plan for the meeting you should also decide on the following:

- What messages do you want to communicate at this meeting?
- What information do you want to get from the other party at this meeting?
- What do the representatives have the authority to commit to on behalf of the community?

1.1. WHERE, WHEN AND WHO?

Think about which **location** would be suitable for the meeting. The location of the meeting can be important because you might feel less strong in a negotiation if you are not comfortable in your surroundings.

If you meet at your village, you will be able to show the other party certain things about your village that are important to you and you might feel more comfortable. However the other party might not be willing to negotiate openly. In other cases it might be a good idea to find a neutral location, such as an office of an NGO or a government building. Each case is different and your community can think about the best location in that particular case and then suggest it to the other party.



The **timing** of the meeting can also be important. Make sure you have plenty of time in the meeting to discuss everything that you have planned.

Another thing to plan is who will attend the meeting. Will the whole community join or just a few **representatives**? If a large group will go, who will be the **spokespeople**? If only a few representatives will go, who will they be? There should be enough people from your community to make sure that the representatives feel strong and can cover all the issues important to the community. The representatives should be good communicators and trusted by the community to represent everyone's interests. It is a good idea for women to join the meeting and for representatives of any **minority groups** within the community who have particular needs and concerns to join in.

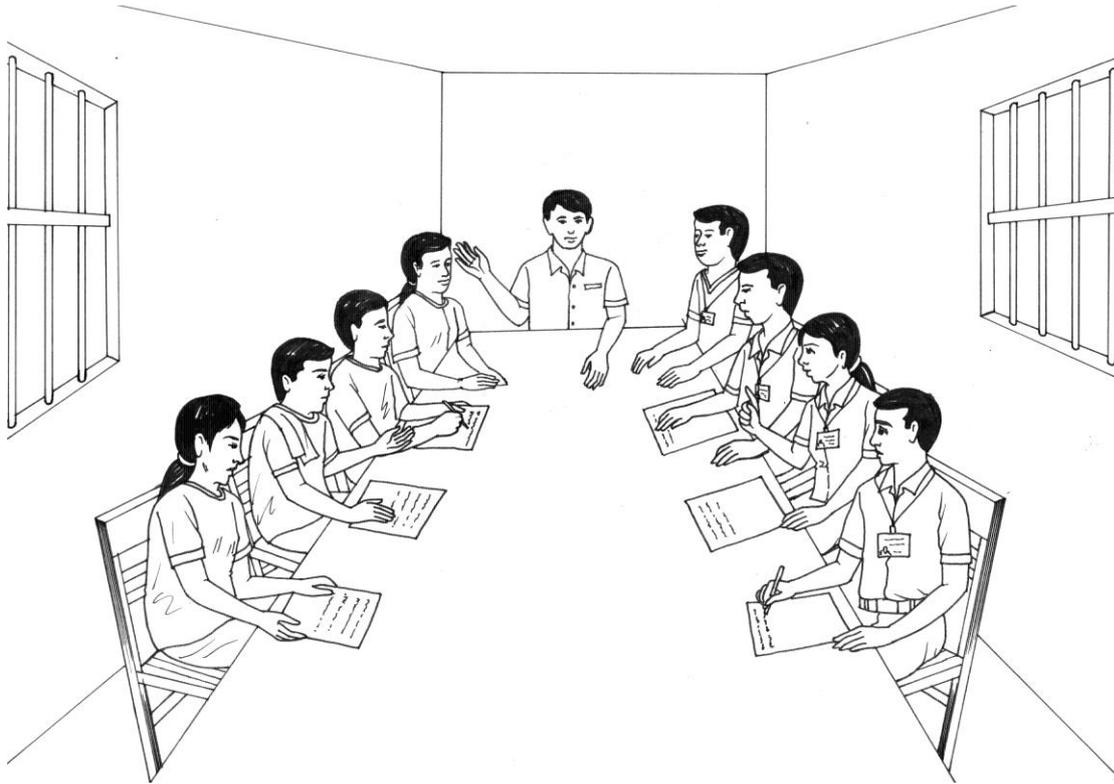
You can also consider inviting **supporters** of your community to join the meeting, such as members of community networks or NGOs. Having them there may be an effective way to make sure that the other party does not use intimidation and threats at the meeting, and negotiates fairly.

1.2. USING A NEUTRAL FACILITATOR

In some cases it is a good idea to ask someone who is not a part of the community and who is not connected to the other party to facilitate the negotiation meeting. This person should be someone that both parties to the negotiation respect. The **facilitator** does not make any decisions about the

negotiation agreement for you or the other party or give advice to the parties but can help improve the communication at the meeting.

A facilitator can be in charge of making sure the negotiation runs smoothly, that everyone has a chance to talk and ask questions, decide when there should be a break in the meeting or when the next issue should start being discussed. The facilitator can also decide that the meeting should end if the parties are not cooperating.



1.3. WHAT MESSAGES AND INFORMATION SHOULD BE COMMUNICATED?

MESSAGES AND INFORMATION

Before you go to the meeting it is very important to make sure that the community representatives are clear on three things:

- What messages does the community want to communicate at this meeting?
- What information does the community want to get from the other party at this meeting?
- What do the representatives have the authority to commit to on behalf of the community?

The whole community should be involved in answering these three questions before the negotiation meeting so that the representatives are able to properly represent the community at the meeting.

Your community should meet and work together to make a list of information that you want to convey to the other party. This could include the community's interests and evidence of problems or expected problems faced by your community because of the other party's activities. The community will need to work together to gather all the information that you want to communicate to the other party at the meeting, such as documents, photographs and results of research about impacts.

You should also make a note of the things you do not want to tell the other party so that you do not make your position weaker. For example, you may not want to tell the other party about divisions within your community.

It is also a good idea to make a list of questions to ask the other party to find out any information that you need. For example, you might want to find out more about the company or government's plans that will affect you and their interests. You may also want to ask about who else is involved in the project and who the investors or funders are.



The representatives that the community has chosen should also be clear about what authority the community gives them to make commitments or promises to the other party at the negotiation. The community might decide that the representative can make a commitment to the other party if they agree to very particular things. If they do not agree to these particular things your community might decide that you should not make any commitments before discussing what the other party said with the rest of the community. Remember that the negotiation process usually happens over several meetings and an agreement is usually not reached at the first meeting.

As a community representative at a negotiation you have a very special responsibility and you should always remember your community's interests and never make a commitment that your community has not agreed to. You should never reach an agreement at a negotiation that will benefit you but harm your community.

YOU CANNOT SELL LAND THAT BELONGS TO SOMEONE ELSE

The law says that you cannot sell land on behalf of other members of your community.² If a community representative agrees to sell some of the community's land, the agreement is against the law. This is because the land is not theirs to sell.

Even if the community gives the representative authority to agree to sell the land, the other party still needs to ask each family to thumbprint an agreement to legally sell their land. Each family must understand the agreement and agree to sell their land freely without any tricks or pressure.

² Decree No. 38D Referring to Contract and Other Liabilities, Article 35.

2. GOOD COMMUNICATION

Good communication between you and the other party is very important in negotiation meetings. Good communication involves clearly presenting and sharing your information as well as listening and asking questions. Consider how much time you have to talk and make sure you leave time to communicate all the information and messages that you prepared with your community. If there are several representatives that have prepared to talk make sure everyone has a chance. You can ask the other party if they have any questions or anything they would like you to explain or clarify.

Remember to also listen carefully to the other party so that you can understand their plans and interests, because this information will help you think of options for a possible agreement. You should ask the other party questions and listen carefully to their responses. Sometimes people say things that you do not expect that might help you in your negotiation. Remember to ask all the questions to find out the information that you need as agreed upon by your community.



If the other party is talking for too long and not giving you an opportunity to speak, you can politely interrupt and tell them that it is your turn to speak. Preparing a meeting **agenda** and having a neutral facilitator at the meeting can help to avoid this situation. An agenda is a list of topics or issues that will be discussed at the meeting and sometimes also sets out how long you will spend discussing each topic or issue.

Sometimes the other party may not listen to you while you are speaking in a negotiation. For example, they may get a phone call and start talking on their mobile phone. If this happens, you should stop talking and wait for them to pay attention to you.

Even if the other party is being rude or aggressive it is not a good idea to lose your temper and yell in a negotiation. When people are aggressive and angry it is very difficult to communicate effectively. It is a better to try to remain calm. You can end the meeting if the other party refuses to communicate politely.

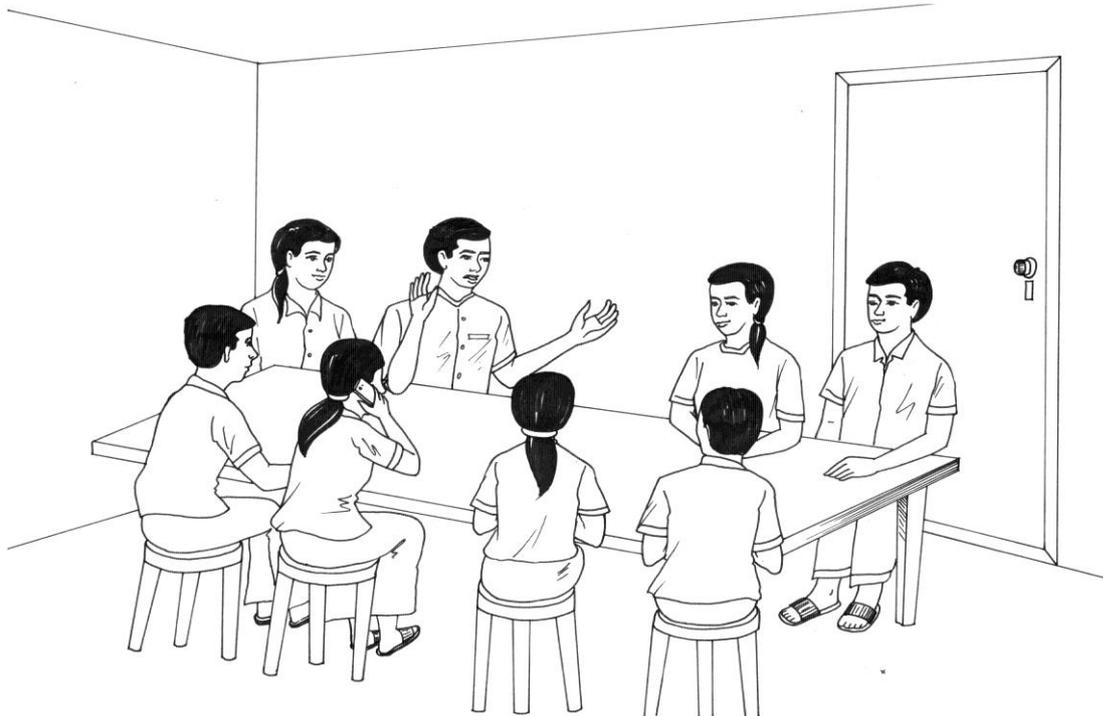
3. BODY LANGUAGE

We communicate a lot of information through our “body language”. Sometimes we communicate messages that we do not intend. For example if we cross our arms we can look angry or stubborn. If we nod our heads while the other person speaks they might think that we agree with everything they are saying.



If you use respectful body language and show that you are listening carefully, and encourage the other person to speak, you are more likely to have clear and effective communication. Making “eye contact” with the

person speaking or the people listening to you is a good way to get their attention or show you are listening. Try not to fidget or whisper to the people around you while others are speaking.



PROTECTING YOUR COMMUNITY

1. GUARDING AGAINST TACTICS USED TO DIVIDE THE COMMUNITY: SPIES, BRIBES AND THREATS

Many communities around Cambodia have told stories of companies or people behind evictions using spies in the community to find out who is likely to bow to pressure and who is refusing to move. They might also secretly pay people to convince others in the community to accept a deal that they may not be happy with. There are stories of bribes being paid to community leaders so that they leave the community or sign deals on the community's behalf.



In other cases those behind the eviction have threatened leaders or other members of the community who speak out and refuse to move. For example, community members may be told that they or their family will lose their jobs, be physically harmed or that they will be charged with a crime even if they did not do anything illegal. In some cases they threaten to ruin the community leader's reputation by spreading lies about the person so that the community and others no longer trust or respect them. Unfortunately there have been cases in which the company or person act on these threats.

Companies or people wanting to grab land use these tricks to try to divide the community and take away their solidarity. They do this because they know that it is easier to pressure individual members of the community to leave and give up their land if the community is not united.

It is important for your community to talk about the possibility that the company or people behind the eviction will use these tricks against you and to be prepared by developing strategies to guard against them. Open and regular communication within the community, having several strong leaders and making sure that everyone feels that their concerns are being taken into account by community representatives are good ways to guard against tricks. Getting everyone's input into the community's strategy, including when to use advocacy and what to try to achieve in the negotiation are also important ways to keep the community united and strong.

2. PROTECTING AGAINST FALSE PROMISES

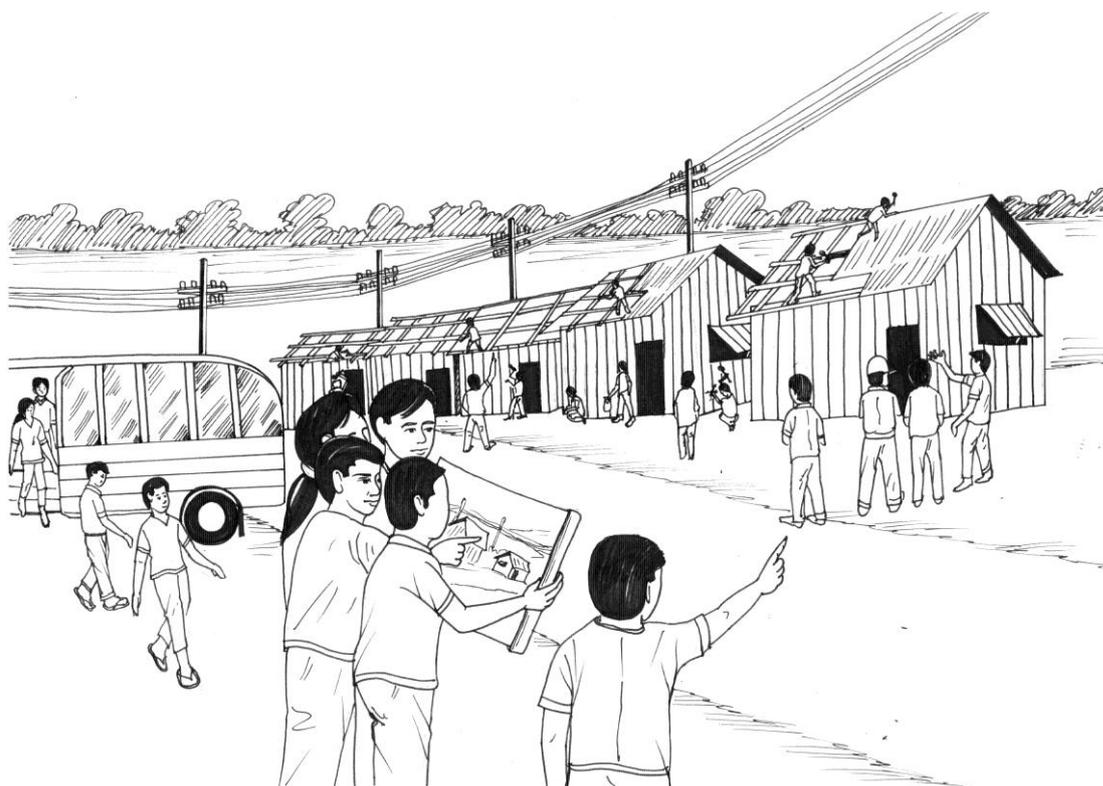
If you do not trust the party that you are negotiating with, you will probably not trust any promises that they make during or at the end of the negotiation. There are a few things you can do to protect yourself in a negotiation when you do not fully trust the other party.

Using a neutral facilitator, as discussed earlier, is one way to help a negotiation run smoothly when the relationship between the parties is poor and there is little trust. If both parties respect the facilitator they may be more likely to be honest during the negotiation meeting.

The facilitator can also act as a **witness** to any statements or promises made during a negotiation meeting. This is very important because it is much harder for the other party to break their promises if there is an independent witness. You can also ask people to sit in at the meeting just to act as witnesses. The witness will be more useful if it is someone that the other party respects or who has some authority. It is important that the witness is willing to speak out if the other party breaks their promises. It might also

be possible to record the meeting to use as proof of promises made, for example by filming it. If possible try to make sure someone takes written notes of the meeting.

You can insist that the agreement reached is implemented in stages so that you do not give anything up until the other party keeps its promises first. For example, if the government or a company promises to build your community new houses at a resettlement site, you may include in the agreement that the community should be able to visit the resettlement site and make sure that good houses and infrastructure are built *before* you will move.



THE BOXER

A village in Phnom Penh was threatened with eviction. One of the residents of the village was a famous professional boxer and some of the youth were his students. At first the boxer refused to move to the resettlement site 20 kilometers away that the company was offering. After a while, however, the company negotiated with the boxer and offered to build him a boxing center with all the equipment he needed to practice and teach his students. Because of the pressure to move and the offer, the boxer finally agreed to move even though the resettlement site was far away on much less valuable land. The company promised that soon it would build the center, so he and his students agreed to move. However, the company never built the boxing center as it had promised.

3. SIGNING CONTRACTS

It is important to have the agreement reached written down clearly and signed by both parties.

However, do not sign or thumbprint anything that you do not fully understand or without agreement from your community. You should not feel pressured to sign anything quickly. Make sure that you take the time to carefully read or have someone else read and explain to you everything that it says on the paper. Also make sure that the members of your community agree to the things that it says on the paper if it will affect them. You should only sign the paper after you are sure that you, and anyone else that it affects, agree with what it says.

Once you sign the paper it could be a **legally binding contract**. This means that if you do not do the things that it says, the other party could file a complaint against you in a court. A judge could order you to do the things it says in the contract or order you to pay a fine for not doing the things that you promised to do when you signed.

Contracts for Land Sale

It is important to know when a contract is **valid**. A valid contract is **legally enforceable**, which means that a person can go to court to force the other person or people that signed the contract to follow it.

A contract for the sale of land must be in writing and signed or thumb-printed by an adult who can fully understand the meaning of signing the contract. For example, if an adult who has a severe mental illness signs a contract it will not be valid.

If someone is tricked or pressured into signing a contract, the contract will not be valid.

Remember that only the true owner or legal possessor of land can legally sell it.



COMMUNITY NEGOTIATION STRATEGIES

1. WHAT IS A NEGOTIATION STRATEGY?

A negotiation strategy is a plan that sets out:

1. Information about the situation, parties and options for a possible agreement:
 - Who are the parties to the negotiation?
 - What situation is the negotiation about?
 - What are the interests of the parties?
 - What are all the issues or problems that should be discussed in the negotiation?
 - What are the standards that are relevant?
 - What are the options for a possible agreement?
 - What is the area of possible agreement? What is the best possible agreement and the minimum you would accept?
 - What will your first demand be?

2. How you will use advocacy to increase your power and strengthen your position:
 - Who are all the possible actors that can influence the situation?
 - Will you use advocacy in your strategy? If so, what type of advocacy will you use?
 - Will you try to get the support of others? If so, who and how?
 - How will you communicate with the other party? (What form of direct or indirect communication will you use?)
 - What is your alternative to negotiation? What advocacy strategies can you use if the negotiation fails?

3. How you will protect against tricks and tactics used to divide the community.
 - What sort of tricks or tactics might the other party use?
 - How will your community protect itself?

While you are planning the strategy it is a good idea to make a list of information that you need and how will you get it. When you get new

information you can use it to develop or change your strategy. This means that negotiation strategies can change over time when there is new information or the situation changes.

2. PLANNING A COMMUNITY NEGOTIATION STRATEGY

If the situation affects the whole community it is important that your community has several meetings to discuss all of these things and to develop the negotiation strategy. You should continue to have regular meetings to discuss how well the negotiation strategy is working, any new information and whether it is time to introduce new ideas or tools.

If your whole community participates in developing these plans your community is more likely to be united and speak with one voice to make your position stronger.

It is very important to plan your strategy as early as possible, as soon as you hear that someone wants to take your community's land, homes or resources. The more time you have to plan and implement your strategy the more effective you are likely to be at getting a result that you are happy with.



NEGOTIATION STRATEGY WORKSHEET

Who are the parties to the negotiation?

What situation is the negotiation about? (List all the issues or problems that need to be solved in the negotiation?)

What are the interests of the parties?

Our party

The other party

Information we need to find out about the other party:

Standards

What are the standards that apply?

Information about standards we need to find out:

Options for possible agreement

What are the options for a possible agreement? (list options and mark the ones that you think are realistic and fall inside the area of possible agreement)

What is your best possible agreement? (Your ideal agreement)

What is the minimum that you would accept?

What will your first demands be?

Advocacy strategies

Who are all the possible actors that can influence the situation?

Will you use advocacy while you are negotiating? If so, what type of advocacy will you use? Will you try to get the support of others? If so, who and how?

What is your alternative to negotiation? What advocacy strategies will you use if the negotiation fails?

GLOSSARY

1. **Actor (involved in a situation):** A person, group, community, organization, government authority or anyone else who is affected or may be able to influence the situation in some way.
2. **Actor mapping:** A drawing or a diagram that shows all the relevant actors involved.
3. **Advocacy:** Delivering a message through words or actions to try to influence someone's decisions or actions.
4. **Advocates:** People who use advocacy to try to influence someone's decisions or actions.
5. **Agenda:** A list of topics or issues that will be discussed at a meeting, sometimes including how long you will spend discussing each topic or issue.
6. **Allies:** Actors that support you and might be able to influence the situation.
7. **Alternative to negotiation:** A strategy that the community can use to achieve its goals other than negotiating. This alternative should usually be the strongest possible advocacy strategy that a community has, which they would use if negotiation fails.
8. **Area of possible agreement:** The area between the lowest or worst offer that one party to the negotiation would be willing to accept and the most the other party would be willing to give.
9. **Defamation:** An untrue statement or writing about a person that harms the honor or reputation of that person. Defamation is against the law.
10. **Disinformation:** Spreading information that is untrue, if, and only if, you do so in bad faith, your reasons for spreading the information are malicious, and if the information is likely to disturb the peace.
11. **Good practices (in cases of displacement):** Finding solutions that are fair and respect people's rights so that their lives are not made worse off and are improved wherever possible.

12. **Household:** The individuals, family or families that live in a particular house.
13. **Incitement:** When somebody says or writes something that encourages others to break the law. Incitement is against the law.
14. **International Covenant on Economic, Social and Cultural Rights:** An international treaty that recognizes the right of everyone to an adequate standard of living, housing, health, education and other rights. The Cambodian government signed this treaty and committed to respect it.
15. **Legally binding contract:** Once you sign or thumbprint something it could be a legally binding contract. This means that if you do not do the things that it says, the other party could file a complaint against you in a court. A judge could order you to do the things it says in the contract or order you to pay a fine for not doing the things that you promised to do when you signed.
16. **Legally enforceable agreement:** A legal agreement made between two or more parties that can be brought to court to enforce if any of the parties does not fulfill their commitments.
17. **Nature resources:** The things from the environment that people use to do or make things. For example, land, water and trees.
18. **Negotiation:** Communication between people with the aim of reaching an agreement on a particular issue or situation.
19. **Negotiation strategy:** A plan including information about the situation and parties to a negotiation and the options for possible agreement, demands, first offers, methods of communication and advocacy, the process of negotiation, and anything else that will make you stronger negotiators.
20. **Parties (to a negotiation):** The people, groups, community, organization or government authority that are negotiating.
21. **Power imbalance:** A power imbalance happens when one person or group has more power than the other person or group involved in a particular situation. A power imbalance can exist because one person has more money, a high position in government or a company, or close connections with someone else in a powerful position.

22. **Free, Prior and Informed Consent:** The right of indigenous peoples to participate in decisions affecting their land and resources, especially related to the development of natural resources. This includes the right to allow or refuse any development activity affecting their land, territories and resources.
23. **Public interest:** Something that is for the benefit of the people because it will help them to improve their standard of living, provide an important service, or keep them safe.
24. **Representative(s):** A person or persons that have been selected by the community to act on their behalf and according to their instructions in negotiation meetings.
25. **Secure Tenure:** A legal arrangement that allows people to live in their homes in security, peace and dignity without fear of eviction.
26. **Situation mapping:** A drawing of all the actors involved in a situation and showing their relationships to each other. A situation map can help you to identify who your allies are and who has influence over the other party. This can be useful when you think about using advocacy to make your position stronger.
27. **Spokespeople:** Those who are authorized to speak on behalf of another person, group of people or organization.
28. **Timeline:** A drawing of all the events that have happened that are relevant to your situation, put in order of when they happened.
29. **United Nations:** An international organization created by the world's governments in 1945. The United Nations works for peace and security in the world. 193 countries are currently members of the United Nations.
30. **United Nations Declaration on the Rights of Indigenous People:** An international declaration that 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, signed by most nations including Cambodia, which recognizes indigenous peoples' rights.
31. **Valid contract:** A contract that follows the law and is signed by an adult who has the authority and capacity to understand what he or she

is doing. If someone is tricked or pressured into signing a contract, it is not valid.

32. **Witness:** Someone who observes or knows about a situation or something that happened and can give evidence about situation or event to work out the truth.

This guide aims to help communities threatened with eviction to develop “interest-based” negotiation skills and understand how to use a range of tools to deal with the power imbalance between them and those trying to take their housing, land and resources.

The guide encourages communities to develop a negotiation strategy that incorporates advocacy at key points in order to strengthen their position.

Communities can use this guide to negotiate and advocate for alternatives to eviction that improve the lives of the whole community. It may also be useful for communities that have already been forcibly evicted to prepare for settlement negotiations.

