

CAMBODIA'S NATIONAL AUTHORITY FOR LAND DISPUTE RESOLUTION: AN EXPLORATORY STUDY

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Executive Summary

- The National Authority for Land Dispute Resolution (NALDR) was established in March 2006 and has focused its work on encroachment upon state land. It has been largely ineffective in securing land rights for the poor.
- The NALDR was created following an agreement between opposition leader Sam Rainsy and the Prime Minister Hun Sen. It has questionable legal foundation and displays a mixture of political and administrative functions.
- The NALDR acts primarily as an administrative shop front, assisting the Council of Ministers, and particularly the Prime Minister to resolve disputes and by allowing greater central government control of other institutions involved in land management.
- The NALDR warrants further study for two reasons: no comprehensive study has been undertaken of the land dispute resolution processes of the powerful – and the most powerful still retain a disproportionate role in resolving land disputes; further, the possibility that the NALDR represents a small shuffle in the direction of the institutionalisation of individual power makes it an interesting case study in how institutional reform processes do (or do not) work in difficult political environments.
- A full research study would face considerable challenges accessing both the NALDR and the more powerful parties which utilise it.

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1. Why study the National Authority for Land Dispute Resolution¹?

The purpose of this exploratory study is twofold: firstly to ascertain whether a full research study of the NALDR is worthwhile, and secondly to provide an

¹ Also translated in English as 'National Land Authority', 'National Authority for Land Conflict Resolution', and 'National Authority for the Resolution of Land Disputes' (amongst others). It is referred to here as 'National Authority for Land Dispute Resolution' as this is the translation used by the Authority itself in its 2007 First Half Year Report.

overview of the Authority, including its legal framework and a preliminary analysis of its operations.

A full research study of the NALDR would be worthwhile as land and natural resource conflicts are some of the most serious disputes in Cambodia and the NALDR is a high level body specifically constituted to deal with them. Much research has already been conducted on the work of 'ordinary' land dispute resolution mechanisms (eg the Cadastral Commissions (CAS 2006)) as well as on the experience of the least powerful. Nothing has yet been done at the other end of the spectrum. Zitelmann (2005, 33) states that 'we need to study the "rich and powerful" like we study the poor, to learn more about internal differentials and potentials.' Powerful political, military and business elites play a disproportionate role in the creation and resolution of land disputes in Cambodia. However, the powerful do not act completely arbitrarily. Their actions are constrained and influenced by norms, relationships with other sources of power and, to some extent, the law (CAS/WB 2006a). It is useful to study the NALDR to reveal the way power operates, with the ultimate aim of influencing its operation in favour of the poor.

A study of the NALDR would contribute to our understanding of how institutional reform processes do (or do not) work in difficult political environments. In particular it has been argued that in a country like Cambodia with plural legal norms and entrenched political interests there may be "value in seeking interim institutional arrangements rather than looking to transplant international best practice" (World Bank 2007:173). An interim institution in this sense is one which supports more equitable forms of contestation even if it falls short of ideals of justice or bureaucratic practice.

As an example of a body which may represent a shuffle away from the individualisation of power the NARLD might be characterized as an interim institution. This said our initial observations are that it is not currently effective to resolve disputes for the poor.

What is the NALDR? A first attempt at a model

In Cambodia it is not always easy to determine an organisation's purpose and functions. This is often due to a lack of information, but also because organisations are created (intentionally or otherwise) to obscure their true nature. Despite these constraints, the following model of the NALDR is proposed.

Prime Minister Hun Sen is regularly called upon to influence the outcome of land disputes, and a common way for poorer people to access his authority is to appear publicly outside his house or to protest while holding pictures of him and his wife. On the basis of our preliminary research we hypothesise that the NALDR has been created as an administrative shop-front for the Council of Ministers and particularly the Prime Minister. In this view the Authority represents a partial bureaucratisation of street protest, with the creation of an

office where complaint documents are submitted and staff process disputes.² The Authority influences the resolution of disputes by determining which ones to accept, which to refer to other bodies (including the courts), the manner in which it investigates complaints and finally the cases it forwards to the highest levels of government for action.

This 'administrative shop-front' model highlights the primary role of the NALDR but is by no means exclusive. The Authority is still establishing its position within the land dispute resolution system and the conduct of many cases questions the model – a reflection of the 'messy' nature of Cambodia's dispute resolution system.

This exploratory study was conducted by reviewing documents and undertaking interviews with government officials, politicians (including members of the NALDR) and NGO representatives in Phnom Penh.³

2. Legal Framework of the National Authority for Land Dispute Resolution

The NALDR was created by Royal Decree⁴ and established on 15 March 2006. The creation of the Authority by Royal Decree (which is issued by the King on request of the Government) rather than under the 2001 Land Law (which was enacted and is amended by Parliament) makes its role formally difficult to reconcile with other land dispute resolution bodies (such as the Cadastral Commissions and courts). The absence of a basis in Law for the Authority also raises the question of its constitutionality.

Reconciling the Authority's place amongst other land dispute resolution bodies is further complicated by the following 'missions, roles and duties', which are set out in the Royal Decree as follows:

- i. Prevent and reduce land disputes by means of **education and dissemination** to members of the public.
- ii. Take **disciplinary measures** against encroachers.
- iii. **Receive complaints** which are beyond the competence of the National Cadastral Commission and receive complaints from everywhere.
- iv. Research, investigate and **resolve** land disputes.
- v. **Monitor** the resolution of land disputes by the Cadastral Commission and competent authorities at all levels.
- vi. **Report** results to the Head of Government.

The power to 'receive complaints beyond the competence of the National Cadastral Commission' as well as from 'everywhere' is vague and creates an oversight role not foreseen in the Land Law. The extent of the NALDR's power to 'resolve land disputes' is unclear and overlaps with the legal authority of the Cadastral Commissions and courts to determine rights to land. The Royal

² The NALDR has not assumed 'exclusive jurisdiction' in this. On 10 January 2008, evicted Phnom Penh newspaper sellers protested outside the Prime Minister's house and had documents accepted by officials there (Cambodia Daily, January 11 2008).

³ A list of interviewees is contained in Annexure 1.

⁴ 0206/097 of 26 February 2006.

Decree also provides the right to appeal decisions of the NALDR to the court,⁵ but as far as can be determined this right has never been exercised. In resolving land disputes it is not clear which cases go to which land dispute resolution body, in what order the organisations should be accessed by complainants and how 'two-way' rights of review operate.

At the first meeting of the NALDR it was resolved that the Authority would draft legislation to re-constitute the Authority as a land court within the framework of the Land Law. This has not yet occurred but it indicates the uncertainty which its members have about its proper role and powers as well as the ambiguity of the Authority's current legal position.

What other functions does the NALDR have?

In addition to the powers granted under the Royal Decree, the NALDR has been given powers by various subsequent sub-decrees and regulations, and is thus increasingly entangled in Cambodia's land management system.⁶

Functions given to the NARLD by subsequent regulation or contemplated by draft regulation include:

(i) The Power to Adjudicate Disputes Over the Reclamation of State Land: When actions are taken to reclaim state land (other than land listed in the Land Register) the NALDR plays an adjudicatory role, determining who holds the land.⁷ However, if parties with an interest in the land file a complaint *after* the NALDR has made its decision (but whilst the land is being registered) then the matter is referred to the National Cadastral Commission for decision.⁸

The court, not the NALDR, plays the final adjudicatory role in cases dealing with the reclamation of forested land.⁹ Nevertheless, provincial and municipal authorities must report the status of conciliation complaints to the NALDR 'so that the National Authority can report further to the Head of Government.' The NALDR is given the power 'if necessary' to inspect the conciliation of any complaints to determine if any 'irregularities are found.'¹⁰ This power is a common example of the way the regulatory framework is drafted with the effect of blurring who holds final adjudicatory power (the courts or executive) and also highlights the continuing power of the Prime Minister to oversee disputes, even when a specific body (the NALDR) has been created to deal with them.

It is interesting to note that while the NALDR is given a function under the *Circular on Measures Against the Illegal Holding of State Land* there is no evidence that the Provincial State Land Management Committees are referring cases to the Authority as envisaged in the Circular.

⁵ The particular court is not specified.

⁶ See Annexure 2 for a full list of governing regulations.

⁷ Articles 3 & 4 of the Circular on Measures Against the Illegal Holding of State Land. Note the version cited is only a draft.

⁸ Article 3.8 of the Circular

⁹ Governmental Order No.01, May 10, 2006.

¹⁰ Sub-section 5.5, Circular. See also Article 4 of Order No. 1 on the Prevention of Clearance of State Forestland of All Types of Ownership.

(ii) A Secretariat Function for the Prime Minister in Relation to Land Acquisition Cases: The Prime Minister retains a key role in determining disputes under the draft sub-decree *Land Acquisition and Addressing Socio-Economic Impacts Caused by State Development Projects*. The sub-decree provides that anyone not satisfied with a decision in relation to a state development project can complain to the Prime Minister, through the NALDR. The NALDR will also serve as a conduit to the Prime Minister for state agencies that wish to review a decision made that a project is *not* in the national or public interest (and thus it is unable to involuntarily acquire land).

(iii) Other Functions: the NALDR plays a repository role, receiving reports from the Minister for Agriculture Forestry and Fisheries for actions taken against undeveloped land concessions.¹¹ The Authority was also given a specific job to disseminate information about a regulation limiting the use of circular saws.¹²

The structure of the NALDR

The NALDR is a council of very high ranking and powerful officials, the majority of whom are from the executive branch.¹³ It is chaired by the Deputy Prime Minister, Sok An and includes members of parliament, government advisors and lawyers. NGOs were invited to nominate representatives, but declined to do so as they did not wish to be associated with an organisation they could not influence and which they feared would be ineffective. The Vice-Chairmen are the Minister for Land Management (Im Chhun Lim), the Minister of National Assembly and Senate Relations and Inspectorate Affairs (Men Sam On), and the Secretary-General of the opposition Sam Rainsy Party (Eng Chay Eang).

The appointment of individual members by sub-decree was not in accordance with the Royal Decree. Three additional pro-government members were appointed, including a Vice-Chairman (the Minister of National Assembly and Senate Relations and Inspectorate Affairs) and two government 'advisors', Heng Vong Bunchat and Om Yienteang. It is also interesting to note that the position of Chairman is referred to as 'Representative of the Prime Minister' in the sub-decree. One interviewee with close knowledge of the internal workings of the Authority stated that the Chairman refers all matters to the Prime Minister for final decision.

The Royal Decree creating the NALDR also creates a general secretariat. This is headed by Svay Sitha (Under Secretary of State at the Council of Ministers). The general secretariat does not decide land disputes – a task reserved for the members. Within the NARLD, staff are reluctant to provide even the most

¹¹ Regulation No 780 SCN issued by Deputy Prime Minister Sok An on 18 May 2006. Regulation No. 762 SCN, issued by H. E Deputy Prime Minister Sok An on 11 May 2006, purportedly also mandates the NALDR to act but this has not been sighted to confirm.

¹² Order No 2 on the Management and Control of the use of Mechanical Saws (Specifically for logging), 20 Sept 2006.

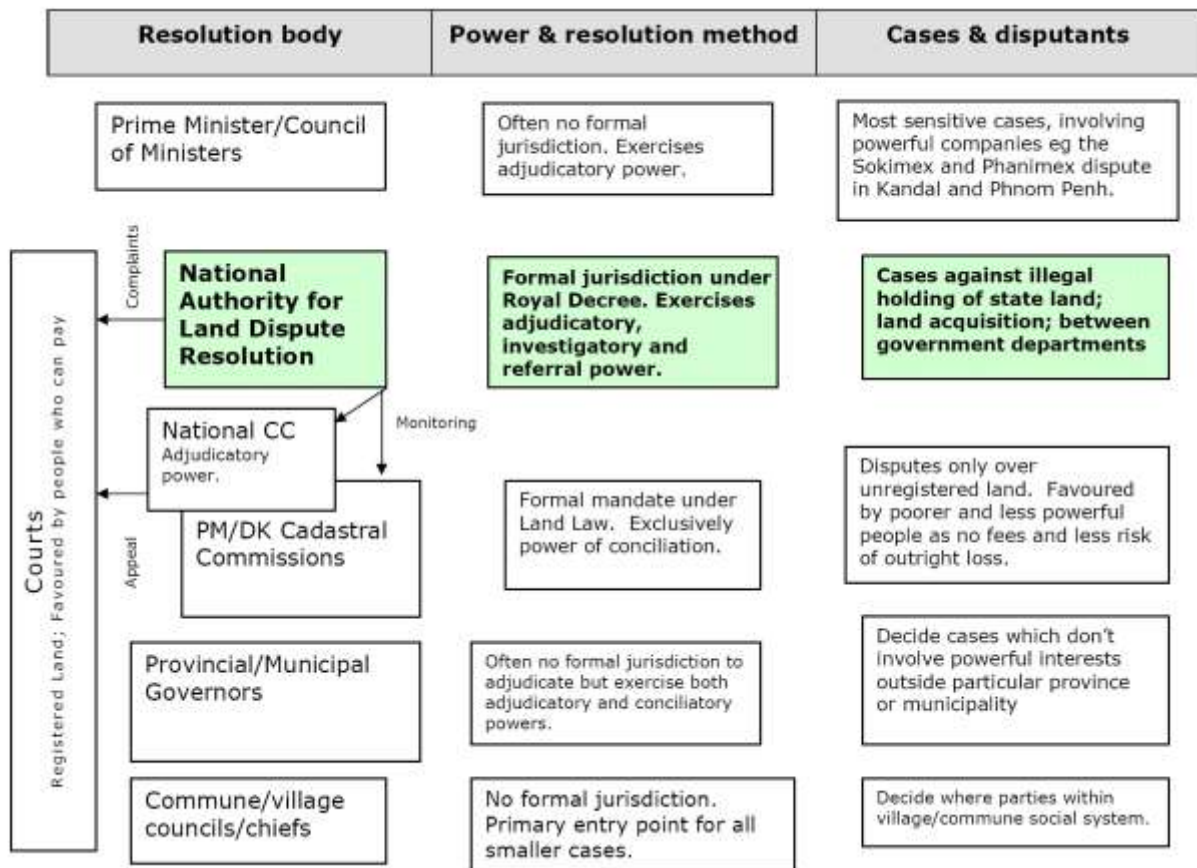
¹³ See Annexure 3 for a full list of members.

basic information to the public and Sok An, Svay Sitha and Men Sam On are said to tightly control operations.

NALDR in the schema of other land dispute resolution institutions

There is no clear delineation between the many bodies which have the power and influence to resolve land disputes and the NALDR further muddies the picture. Even with the creation of the NALDR people with land disputes continue to take a multi-track approach, often accessing various bodies concurrently (CAS/WB 2006). Research into the NALDR thus has to be situated within the system as a whole. The following figure draws some schematic distinctions (to which there are clearly exceptions):

Common Land Dispute Resolution Mechanisms in Cambodia¹⁴



Overlaps between within the system make it easy for the powerful and informed to use it to their advantage. Overlaps also provide room for the government to intervene and decide cases as it sees fit. A striking feature of the system is the continuing role of the Prime Minister. Protesting outside the Prime Minister's house remains a popular means of airing a land dispute and one NGO representative claimed that local people have more access to the

¹⁴ Other popular mechanisms used to resolve land disputes include line ministries the Senate and the National Assembly the Presidents and Military Police as well as Military Courts, Civil society and the King.

Prime Minister than to the courts or the Cadastral Commissions. This arrangement preserves the role of the most powerful individuals to resolve disputes, but (if nothing else) is administratively impossible with many thousands of complaints to manage.

3. Preliminary empirics

It is difficult to ascertain accurate data on the NALDR's operations. The Authority has issued two Half Year Reports (October 2006 and August 2007) summarising its work but has not provided more comprehensive data. These reports state that the NALDR has been undertaking legal work (preparing sub-decrees and circulars and issuing notices), conducting dissemination activities (including holding a student land forum) and receiving, investigating and resolving complaints.

Number of complaints

The total number of complaints is not available, but the reports indicate that 1956 complaints were submitted from March - October 2006 and 116 were submitted in the first half of 2007.¹⁵

Of the 1956 submitted during the first reporting period, 527 were accepted and among these:

- 153 were referred to the Ministry of Justice (for referral to the courts)
- 130 were referred to the National Cadastral Commission
- 4 were resolved, and
- 28 were determined to be duplicates.

This makes a total of 315 cases. It is not clear on what ground such a large majority (1429 of 1956) were not accepted nor what occurred to the remaining 212 of the 527 not separately accounted for.

Of the 116 cases submitted until August 2007, 113 were accepted and of these:

- 2 were referred to the Ministry of Justice
- 79 were referred to the National Cadastral Commission
- 22 were referred to relevant ministries
- 7 were referred to provincial or municipal authorities, and
- 3 were withdrawn.¹⁶

The NALDR has so far had a very low 'resolution rate'.

Nature of the cases

The NALDR has no rules governing the types of complaints it accepts and in practice receives all kinds of cases.¹⁷ NGOs generally reported adopting self-

¹⁵ There is no public report covering the period October – December 2006.

¹⁶ Leaving 3 unaccounted for.

limiting procedures, sending only the 'most serious' cases, such as those involving many families, high-ranking officials and/or state owned land.¹⁸

Reflecting the varied nature of the cases, the parties are also diverse, including powerful individuals such as high-ranking government officers, business people and military commanders, as well as local government representatives and villagers.

Despite including some of the most senior government officials in its membership the NALDR appears not to be powerful enough to deal with all cases. For example, the Council of Ministers was called upon in December 2007 to resolve a case between two of Cambodia's most powerful companies, Sokimex and Phanimex. This case illustrates the partial nature of the NALDR's power.¹⁹

Where are the disputes located?

The NALDR has received cases from every province and municipality and has acted in more than half of them, with no specific region favoured. Cases are located in both urban and rural areas, and whilst complaints *submitted* involve all types of land, in terms of *action*, the NALDR (according to NGOs) has been prioritising the illegal grabbing of state forested land. This prioritisation disappoints NGOs who want the Authority to focus on securing the rights of the poor. More comprehensive data is needed to enable a more nuanced analysis of the cases pursued.

What do we know about how the NALDR functions?

Complainants must lodge written documents in person with the NALDR at its only office in Phnom Penh. This makes access more difficult to access than other dispute resolution institutions such as the courts, Cadastral Commissions and local authorities. A complaint does not have to be in any specific form but certain supporting documents, such as copies of ID cards and family books, must be attached. A collective complaint must also include a document showing that the families have transferred their rights to a representative.

It does not cost anything to lodge a complaint and NGO representatives have not reported any unauthorised payments being sought by Authority staff. This compares favourably with the courts, where official fees are required and unofficial payments are common.

Complaints are investigated by the Authority itself (which can lead to on-site visits and active conciliation) or are referred to other institutions (most commonly Ministries and the courts) for action. The NALDR has no formal procedures, so we don't know the process for determining which cases get taken up and which are referred. Similarly there is no information on how cases are decided or decisions enforced.

¹⁷ As full case data was not available, this taken from the sample provided by the Authority in its reports.

¹⁸ The LAC was an exception, sending all their land disputes to the NALDR.

¹⁹ Another example of the NALDR's limited role is the creation of an ad-hoc commission of nine ministries to resolve the case of the filling of Krob Sov lake by Long Chhin resorts in Kandal Province (Cambodia Daily, July 26, 2007).

Cases

The following two cases illustrate some of the peculiarities of the NALDR's operations. A more in-depth study of these, and the cases found in Annexure 4, could form the basis of further research:

Peam Krasob Case

A business located in Peam Krasob commune, Mondul Seima district, Koh Kong province cleared land in a coastal wildlife sanctuary, with the knowledge of the provincial governor and the provincial departments for land management and environment.

Other officials in the provincial government were concerned by the clearing and in 2006 lodged a complaint with the NALDR. The NALDR conducted an investigation in close cooperation with Hok Lundy, the chief of the national police and member of the NALDR. As a result the matter was referred to the court which eventually found against the governor and departmental officials.

The Ministers of Land Management and Environment (Mok Mareth and Im Chhun Lim respectively) were purportedly reluctant to act against their departmental officials. The NALDR was able to neutralise the position of both Ministers (who are members of the NALDR) and have the respective department officials removed. Notwithstanding the NALDR's power and despite the court order, the government-aligned provincial governor escaped sanction.

The case illustrates the role of the NALDR in assisting the court by conducting investigations and also its ability to encourage a court prosecution. It also shows the Authority's ability to overcome the power of (some) ministries to sanction officials within government, but also the limits of that power – punishment remains ultimately a political decision and some government officials remain immune.

Phnom Penh Land Case

In 1996, three individuals bought 5 hectares of rice fields in Kakab commune, Dangkor district, Phnom Penh. The three owners attempted to encircle the land with a fence but were stopped by another party who claimed to own the land. In fact, the land had been transferred to a third party in a scheme with the Kakab commune chief, the chief of the district cadastre and the district governor via a counterfeit land certificate. In 2001 and 2002, the matter proceeded through the Phnom Penh Municipal Court, the Appeals Court and the Supreme Court. At all levels the holders of the land certificate were successful. In 2006, the case came before the NALDR and was referred to the Ministry of National Assembly-Senate Relations and Inspection for investigation. The investigation found in contradiction to the court. It recommended that: (1) the Supreme Court's verdict be suspended, (2) the Supreme Council of the Magistracy review the matter and (3) the case be referred to the Ministry of Justice to find a solution for the 'real' land owners. One Vice-Chairman of NALDR, Eng Chhai Eang brought the matter to the attention of opposition leader Sam Rainsy, who wrote to Prime Minister Hun Sen on 9 March 2007 in support of the recommendations. Following this letter, Hun Sen personally referred the matter to the Minister of Justice for action.

This case illustrates that even small disputes, involving individuals and small pieces of land, can come before the NALDR. It illustrates how the NALDR, an executive body, in effect has the ability to 'overrule' a decision of Cambodia's highest court and also that a decision of the NALDR (in this case for the Ministry of Justice to act) was insufficient without the direct intervention of the Prime Minister.

For more details see Annexure 4.

4. Findings and Analysis

Why create the NARLD?

The following three theories, developed by the authors, explore why the NALDR was created, help explain its performance to date and also whether it could become an effective interim institution. These theories are not mutually exclusive and indeed different actors will pursue the same institutional outcome for differing reasons.

- I. Increase system efficiency:** A specialisation of the bureaucracy and the removal of backlogs in the system allows more disputes to be handled.

Cambodia has a growing number of land disputes and a backlog of cases in the courts and the Cadastral Commissions. The National Cadastral Commission is often too weak to resolve cases involving rich and powerful people (Zitelman 2005; CAS 2006). The Authority assists the courts in conducting investigations and verifying documents, as well as putting pressure on officials and the courts to progress cases. The NALDR compels ministries to take action and also provides institutional support to the Prime Minister to resolve land disputes. The creation of the NALDR also recognises that it is practically impossible for the Prime Minister to be personally involved in all land disputes.

In practice, efficiency gains are compromised because members of the Authority are occupied with (often multiple) jobs elsewhere. The Authority has met just four times in two years. Top-down intervention from the NALDR represents an additional (often competing) influence for local authorities, the Cadastral Commissions and the courts to manage. The failure to adopt internal procedures and external networks further undermines claims of increased efficiency.

- II. **Satisfying clients:** Increasing access to resources, appeasing competitors and providing a symbol of state responsiveness satisfies both the government's clients and critics.

Nepotism drives the establishment of a new national body whose functions largely overlap with existing state institutions. The underlying motivation for having the NALDR is the creation of new, unnecessary, jobs to satisfy clients.

It is also a means of appeasing competitors. Sam Rainsy raised the idea for the NALDR and Hun Sen agreed to create the Authority during a 'thawing' of relations between the government and opposition. The Sam Rainsy Party was subsequently allocated a position as Vice-Chairman. In practice, the Vice-Chairman has little power and the NALDR has been a successful way for the government to demonstrate it can capture and nullify the opposition.

The NALDR was created to show citizens and donors that the government is serious about resolving land disputes - both a politically important move and a means of securing continued external funding.

- III. **Control of power:** power is controlled either through centralisation (in the hands of a few) or dispersal (whereby different institutions provide a check and balance on its abuse).

In comparison to the Council of Ministers (where high level disputes are also aired) the NALDR centralises power in the hands of relatively few people. The NALDR also provides greater functional ability for the most powerful individuals to influence ministries involved in land administration. The NALDR is not unique in this manner. The Authority's Chairman, Sok An, is the chairman of many other national authorities whose mandates also overlap those of regularly constituted ministries. The NALDR also allows greater control of the courts by the executive, as illustrated in the Phnom Penh land case.

A separation of powers is a classic method of controlling power by dispersing it amongst competing institutions which check each other. By marshalling adjudicatory power and the power to influence the judiciary in a body almost wholly constituted by members of the executive (and without rules to guide its operation) the NALDR does not further the separation of powers. If it was a model institution in a rule of law environment, these executive (administrative) decisions would be

reviewable (often only in limited circumstances and on limited grounds) by an independent body (most usually a court). The Royal Decree *does* provide the right to appeal decisions of the NALDR to the court, however, this right has little value as the courts are almost certain to never overrule the NALDR.

Interim Institutions

The NALDR could not be expected to meet a separation of powers 'test' in the current Cambodian context. A more prescient question is whether the Authority is a step in the right direction - away from the individualisation of power and towards the creation of a forum where more equitable contests occur. Currently the NALDR fails such a test as it seems that poor complainants do not even get their substantive cases heard (though they do often manage to obtain a court order to have people, incarcerated because of land disputes, released).

Could the NALDR become an interim institution and/or will it help in the creation of new institutions which are more equitable? Civil society representatives were not prepared to entertain the idea that the NALDR was a useful step. Civil society has clear ideas about the ideal dispute resolution architecture and is unwilling to accept anything else. However, effecting change involves more than designing a model system and then hoping it comes about. NGOs want strengthened, independent and uncorrupted courts and Cadastral Commissions, but simply wishing for such considerable changes overlooks the powerful forces and incentives preventing their realisation. Engaging with the ways power currently operates does not necessarily compromise the realisation of model institutions – it may be the only way of obtaining them.

Is it accurate to say that the NALDR is a move in the right direction? Or is it harmful, a ruse, to gain popularity and appease the opposition, citizens and donors, setting back the cause of the rule of law, further entrenching the power of certain individuals to dispense 'justice' with no effective gain in the resolution of disputes. By way of analogy, Cambodia's Constitution dresses up a pre-existing political system in a democratic, human rights and rule of law framework, in the hope that the body politic will mould to fit the clothing. The Constitution has both changed Cambodia and acted as a cloak behind which anti-democratic practices continue. The result is largely business as usual, though institutions and rules sometimes take on a life of their own and constrict those who create them. Relevantly, the shadow of forthcoming elections is often noted to spur the resolution of land disputes. It is too early to tell whether the same will happen with the NALDR but a shuffle in the system to resolve high level land disputes has occurred.

Powerful individuals and land disputes

Powerful individuals are ascribed great influence in the resolution of disputes in Cambodia, but power is usually seen as monolithic and neatly hierarchical. That conflicts occur at all indicates competing sources of power yet these sources are rarely analysed.

When first proposed, the NALDR was hoped by NGOs to have sufficient power to engineer solutions as it had a membership of powerful individuals. It has, however, proved largely ineffective. If resolving disputes is all about power in Cambodia, and the NALDR has powerful members, why has it been ineffective?

What do you need to make decisions (on land) in Cambodia?

	Power (or connections to it)	Commitment/Will (incentives)	Resources
Does the NALDR have it?	<ul style="list-style-type: none"> o Yes, it has powerful members. o But, rival power exists elsewhere – e.g. Ministries of Defence and Interior. 	<ul style="list-style-type: none"> o No, for cases which the members themselves (or associates) are involved o Yes, for cases involving competing sources of power. 	<ul style="list-style-type: none"> o Yes, e.g. NALDR has over 40 lawyers.

The above framework suggests that solving land disputes requires not only the power to do so, but also incentives and resources. The NALDR would appear to have considerable power, but there are other competing sources which undermine its work. Another impediment to the resolution of disputes is a lack of incentives. Many of the members of the Authority are said to be involved in, or closely associated with people who are parties to, many of the disputes. If this is the fact they may have few incentives to recognise the rights of poor people in these cases. In such circumstances there is a spectrum of choices open to the NALDR: deciding in favour of the powerful at one end to deciding in favour of the powerless at the other. It is noteworthy that the Authority's usual action is *not* making a decision but rather rejecting the case or referring to another authority for action. The NALDR doesn't just decide in favour of government institutions and powerful people and against the powerless, which it should do, if the 'powerful individual' thesis held in full. Its reluctance to make *any* decision indicates that power (and or incentives) reside elsewhere (at least to some extent). Hun Sen has hinted at this when stating he is mindful of taking action against average citizens for fear of triggering a 'farmer revolution'.²⁰

5. Conducting further research

Engaging with the NALDR by conducting further research risks legitimising the political resolution of land disputes and undermining independent disputes systems based in law. However, as politicians will not, in the short term at least, cede significant influence over land disputes, a pragmatic approach requires further research to understand the workings of the NALDR and to explore whether it can become more responsive to the needs of the poor. This research would need to gain concrete data about the operation of the Authority

²⁰ See Cambodia Daily, 'PM Blasts Land Grabbing and Complicit Officials' February 17-18, 2007.

and also conduct investigations into a range of cases, particularly over forested land where the NALDR has been most active. Determining the true power and role of the NALDR can best be done by also exploring cases where it has *not* assumed (or not been given) a mandate to resolve disputes.²¹

The results of this new research would help confirm whether the NALDR could serve as an effective interim institution. In particular it could explore the following options for improving the NALDR's performance:

- i. Encouraging the NALDR to adopt internal procedures which indicate, at a minimum, which cases it accepts, the processes for consideration of cases and expected timeframes for response/resolution. Going further, the procedures could indicate the factors the NALDR takes into account when deciding whether to investigate or refer cases.
- ii. Formalising the relationship between the NALDR, the Courts and the Cadastral Commissions. Determining whether the NALDR should be approached before, after or during a claim before one of the other bodies. Establishing whether the NALDR can usefully provide services (investigation; documentation verification; response from government) which the other bodies require. This could ultimately lead to rules limiting forum shopping.

There are considerable constraints to further research, not least access to the NALDR itself. Relatively easy access to less powerful complainants has only limited utility if most of them have not received any real service from the Authority. Government departments and powerful complainants would make more interesting research subjects, but may not be willing to disclose their experiences as the powerful have much to gain from maintaining the current system from which they profit and public exposure threatens change.

Nevertheless, the NALDR casts an important shadow over land conflicts and their resolution and warrants greater understanding.

²¹ See Annexure 4 for examples of both forestry cases and cases where the NALDR has not acted.

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Annexure 1: Interviewees

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<p>Ms Chuon Chamrong Land Rights Program Officer ADHOC 012 832 069 chamrong@online.com.kh</p>	<p>Mr Am Sam Art Senior Human Rights Monitor LICADHO 012 901 199/023 720 032</p>	<p>Mr Khieu Sann FUNCINPEC member of the National Assembly and Member of the NALDR 012 845 045</p>
<p>Mr Nhek Sarin Executive Director Star Kampuchea 016 273 728 star-director@starkampuchea.org.kh</p>	<p>Mr Eng Chhai Eang Secretary General of SRP, MP and Vice-President of NALDR 012 731 111 srphq@online.com.kh</p>	<p>Mr Sok Sam Oeun Executive Director Cambodia Defenders Project 012 901 199 samoeun_sok@cdpcambodia.org</p>
<p>Mr Kin Sovan Vice-Director Vigilance 011 910 920</p>	<p>Mr Brian Rohan Technical Advisor Community Legal Education Center 012 333 758 brianrohan2001@yahoo.com</p>	<p>Ms Li Fung Human Rights Officer Cambodia Office of the High Commissioner for Human Rights 012 476 494 lfung@ohchr.org</p>
<p>Mr Kit Touch & Ms Seng Maly Land and Natural Resources Team CLEC 012 120 6663/012 609 865 kittouch@clec.org.kh malyseng@clec.org.kh</p>	<p>NALDR²²</p>	

²² An interview with the Secretary General of the NALDR was requested but as at the time of writing no appointment could be made.

Annexure 2: Governing Regulations

Royal Decree for the Establishment of the National Authority for Land Dispute Resolution, NS/RKT/0206/097, February 26, 2006.

Sub-Decree On the Composition of the National Authority for Land Dispute Resolution, 15 March 2006

Order No 1 on the Prevention of Clearance of State Forestland of All Types of Ownership, 10 May 2006

Order No 2 on the Limiting of the Use of Mechanical Saws for Forestry

Circular on Measures against illegal State Land Holding, 9 February 2007

Draft sub-decree on Land and Property Acquisition and Addressing Socio-Economic Impacts caused by State Development Projects.

Regulation No 780 SCN, issued by H. E Deputy Prime Minister Sok An on 18 May 2006

Regulation No. 762 SCN, issued by H. E Deputy Prime Minister Sok An on 11 May 2006

Annexure 3: Members of the National Authority for Land Dispute Resolution

1.	Sok An , Deputy Prime Minister, Minister-in-charge-of the Council of Ministers, Chairman.
2.	Im Chhun Lim , Senior Minister, Minister of Land Management, Urban Planning and Construction, 1 st Vice-Chairman.
3.	Lok Chumteav Madam Men Sam On , Senior Minister, Minister of National Assembly and Senate Relations and Inspectorate Affairs, Vice-President. <i>[Note: position not specified in Royal Decree]</i>
4.	Dr. Heng Vong Bunchat , Advisor to the Royal Government, Vice-President. <i>[Note: not in Royal Decree]</i>
5.	Eng Chay Eang , Member of Parliament, Vice-Chairman. <i>[Note: Sam Rainsy Party]</i>
6.	Om Yienteang , Advisor to Samdach Prime Minister Hun Sen, Vice-President. <i>[Note: position not specified in Royal Decree]</i>
7.	Mok Mareth , Senior Minister, Minister of Environment, Member.
8.	Chan Sarun , Minister of Agriculture, Forestry and Fisheries, Member.
9.	Suy Sem , Minister of Industry, Mines and Energy, Member.
10.	Ith Sam Heng , Minister of Social Affairs, Veterans and Youth Rehabilitation, Member.
11.	Khiev Sann , Member of Parliament, Member. <i>[Note: FUNCINPEC Party]</i>
12.	Chhay Saing Yon , Secretary of State of the National Defense Ministry, Member.
13.	Nouth Saan , Secretary of State of Interior Ministry, Member.
14.	Uk Rabun , Secretary of State of Economy and Finance Ministry, Member.
15.	Phon Sareth , Secretary of State of Water Resources and Meteorology Ministry, Member.
16.	Khim Sarith , Secretary of State of Culture and Fine Arts Ministry, Member.
17.	Hok Londy , General Commissioner of the National Police, Member.
18.	Kun Kim , Deputy Commander-General of the Royal Khmer Armed Forces, Member.
19.	Meas Sophea , Commander of Overland Troops, Member.
20.	Sao Sokha , Commander of the Royal National Gendarmes, Member.
21.	Ung Samkhan , Commander of the Royal Navy, Member.
22.	Svay Sitha , Undersecretary of State of the Council of Ministers, Member.
23.	Sok Chenda , Secretary-General of CDC, Member.
24.	Long Nourin , Lawyer to the Royal Government, Member.
25.	Tech Chandara , Cambodian Human Rights Committee, Member.

Annexure 4: Possible Cases to Explore for Further Research

- **Koh Kong Sugar Industry Company and Koh Kong Plantation Company:** Villagers in Sre Ambel District (Koh Kong Province) filed complaint (date not known) with the NALDR against activities of Koh Kong Sugar Industry Company and Koh Kong Plantation Company. The villagers also delivered their concerns to the National Assembly and Cabinet, protested at the concession site and in front of the National Assembly. [Source: UNCOHCHR, 'Economic Land Concessions in Cambodia: A Human Rights Perspective, June 07, p19]
- **AZO Tank Unit Case:** A dispute over land between villagers and a tank unit stationed in Taing Sya commune, Phnom Sruoch district, Kompng Speu. The tank unit claims a right, within a 50km x 50km area, to conduct military exercises. Exercise of this right affects the livelihoods of the local population. The villagers have filed complaints with the Provincial Hall, Ministry of National Defence, Cadastral Commission and the Cabinet of the Prime Minister Hun Sen. However, there has been no response from these institutions. The villagers submitted a complaint to the NALDR in late 2006, but there has been no result. There has been little will to address the dispute, allegedly because it involves Ministry of National Defence officials and the two-star general in command of the tank unit is apparently well connected.
- **Golden Company:** In 1995, a dispute broke out between Golden Company, a foreign investor, and residents of Ta Ngork village, Pheakdei commune, Baseth district, over 80 hectares of cultivated and forest land which the villagers traditionally farmed or exploited for non-timber products. There is also a dispute Van Sorn, deputy commander of Brigade 44 and a former Khmer Rouge officer. The investors received authorisation from Prime Minister Hun Sen, and cleared the land which was resisted by armed villagers. In an attempt to reduce the tension between the disputing parties, the NGO Vigilance negotiated an agreement between the villagers, company workers, police, the commune chief and district governor. As a result, the company was bound to stop clearing the disputed land while the villagers voiced their complaints at both the provincial and national level, including with the National Assembly, the Senate and the Council of Ministers. No response was received. At the end of 2006, some representatives of the villagers lodged their complaint with NALDR. So far, the villagers have not been contacted. The villagers are still arguing over farming land with both challengers.
- **You Ay:** You Ay, Secretary of State for the Ministry of Women's Affairs, claims ownership of 1 100 hectares in Treng Trayeung district of Kampong Speu. Ms You claims to have bought the land from local people in 1998. A dispute broke out when she accused 898 families of having grabbed her land. The NGO ADHOC has been assisting the villagers. The NALDR has referred the case to Om Yean Teang, advisor to Prime Minister Hun Sen and vice president of NALDR, who has apparently been involved in resolution of the case.

- **Phnom Penh Private Land Case:** In 1996, three individuals (Ste Chheng Te, Ang Y Lan and Hou Y Min) bought 5 hectares of rice field from several villagers in Trapeang Lvea village, Kakab commune, Dangkor district, Phnom Penh and received a land certificate. In October 1996, the three land owners attempted to encircle the land with a fence but failed when Pov Chantha stopped them, claiming the land belonged to him. In fact, the land had been transferred to Phat Bun and his wife, Meang Sophea, in a scheme with the Kakab commune chief, the chief of the district cadastre and the district governor, using a counterfeit land certificate. The matter proceeded through the Phnom Penh Municipal Court in January, 2000, the Appeals Court in 2001 and the Supreme Court in 2002. At these three levels Mr Phat and Ms Meng were successful. The case reached the NALDR in 2006, where it was transferred to the Ministry of National Assembly-Senate Relations and Inspection for investigation. The investigation found in contradiction to the court. In a letter (No 221/06 T.R.P.A.R.B. dated 10 May 2006) to Prime Minister Hun Sen, Men Sam On, Senior Minister, Minister of National Assembly-Senate Relations and Inspection and Vice-Chairman of the NALDR recommended the following action:
 - Taking a strict administrative measure against the government officials who conspired to counterfeit documents: Kroch Phan, the Dangkor district governor; Kith Sopha, the deputy Dangkor district governor; Kol Nath, ex-chief of the Dangkor district cadastre and currently a retired official; Sok El, chief of Kakab commune.
 - Recognising the 56,414 square-meter plot of land belonging to Hou Y Min and Ang Y Lan.
 - Destroying the counterfeit land certificates.
 - Suspending implementation of the verdict made by the Supreme Court (No 230 dated 17 September 2002).
 - Recommending the Supreme Council of Magistracy review irregularities in investigations and judgments by the Municipal Court, Appeals Court and Supreme Court.
 - Transferring the case of counterfeiting documents to the Ministry of Justice to find a solution for Hou Y Min and Ang Y Lan as the real land owners.

The Vice Chairman of NALDR, Mr. Eng Chhai Eang reported the matter to Sam Rainsy who wrote to the Hun Sen on 9 March 2007 in support of the recommendations. On 29 May 2006, Hun Sen concurred with this and signed a letter referring the matter to the Minister of Justice for intervention.

- **Boeng Pram Case:** Located at the convergent point of three communes in Bovel district of Battambang province, Boeng Pram (literally, five lakes) was brought under the control of Division 53 of the Armed Forces by a 19965 consent. Division 53 was meant to develop the area for de-mobilized and disabled soldiers but instead sold the land to four businessmen, who continue to clear thousands of hectares of forested to this day. Clearing the forest has attracted people and over 3 000 new families have occupied the land. They have built houses and grown rice causing confrontation with the businessmen. The businessmen lodged a lawsuit with the provincial court and on 7 September 2006, 6 representative villagers filed a complaint with the NALDR seeking a solution to the land problem. The Provincial Human Rights Action Committee conducted an investigation of the disputed

land and held a meeting between the villagers and the military. The NALDR has accused the villagers of being illegal owners of state property, but Eng Chhay Eang (Vice-Chairman of NALDR) feels optimistic regarding the Authority's ability to resolve the dispute. A decision was made at the April 2007 meeting of the NALDR to conduct an investigation into the dispute. Khieu San strongly accused the provincial court of corruption, by making a decision against the affected people and found a lawyer to support the villagers. Mr Khieu stressed that a social land concession should be approved.

- **Inaction:** Determining the true power and role of the NALDR is also highlighted by exploring cases where it has *not* assumed (or not been given) a mandate to act. Possible cases include:
 - The **Sokimenx/Phanimex dispute** over 55 hectares in Kandal Province and Phnom Penh, which was resolved the Council of Ministers by notice dated 12 December 2007, ordering the disputed land be shared.
 - The **Kob Sov case** of illegal filling of a lake by Long Chin Resorts in Ponthea Leu District, Kandal. A commission of nine ministries was established on 25 July 2007 to investigate the dispute and find a solution.

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