Access to Justice in Cambodia: The Experience of Grassroots Networks in Land Rights Issues

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1. Introduction

In early June 2011, a team of lawyers, doctors and human rights field monitors from the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), a local human rights non-governmental organization based in Phnom Penh, Cambodia, drove to Kampong Speu Province to try to defuse a stand off between hundreds of Cambodian military police and farmers. The villagers had closed the main highway into the village and the military police had sequestered the villagers by blocking off the rice paddies. Eventually, the situation escalated and fighting ensued. The military police fired on the villagers who attacked them using rudimentary weapons.

The violence was over a 65-hectare parcel of land that 88 families in the community claimed they had lived on since the early 1980s, and thus rightfully owned. The disagreement escalated when the Cambodian armed forces sold the land, which they asserted was theirs, to a Taiwanese company called Meng Keth Company. It went to court and in 2009, the Supreme Court, the highest judicial authority in Cambodia, ruled against the villagers. The violence broke out when the prosecutor came to the village to enforce the verdict, leading “a force of hundreds of armed police and military police.”

I use this example to illustrate a point: if communities involved in land disputes in Cambodia do not have what they perceive as access to justice, they may resort to violence as the only alternative. While this situation might not lead to another Khmer Rouge regime, it does suggest that despite all the development and peace building efforts invested in the country by Cambodians and the international community, it remains unstable.

Land rights abuses were still the leading cause of human rights violations in the country in 2011, showing no signs of abating. The key argument in this essay is that, in addition to other efforts, grassroots or community networks advocating for access to justice must be empowered to help prevent further violence. In particular, these groups should be encouraged to increase the scope of their cross-community efforts and to work towards a national bottom-up movement for justice.

In making this argument, I draw on the framework of legal empowerment and Amartya Sen’s thesis in The Idea of Justice. I also consider the history of development and access to justice*

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2 Ibid.
3 Ibid.
4 This comment is also supported by an interview with Mathieu Pellerin, who has worked as a Human Rights Abuses Monitoring Consultant for LICADHO for over ten years, is fluent in Khmer, and has liaised closely with evicted communities. He explains: “Overall, the situation [of lack of access to justice] leaves communities throughout the country with no mechanism to seek redress for the land-related abuses committed against them. One tangible by-product of communities being barred access to justice is an increase in violent incidents within the context of land disputes” (Interview of Mathieu Pellerin, Human Rights Abuses Monitoring Consultant with LICADHO in Phnom Penh, Cambodia (13 October 2011) [Pellerin].
programs in Cambodia, the causes of land rights abuses, and the methods and challenges used by existing community networks to access justice in land rights issues. In conclusion, I offer a number of policy suggestions that may be applicable to other land grabbing situations, which are now a global phenomenon.5

2. Conceptualizing Justice and Access to Justice

Theoretical frameworks

In order to understand the grassroots movement for justice and access to justice in Cambodia, one must better understand the concept of justice itself. John Rawls has arguably written the seminal piece on justice from a Western perspective.6 He theorized a vision of the world where actors – behind a ‘veil of ignorance’ rendering all parties equal – determined the principles of the institutions governing their social relations.7 Rawls’ institution-focused theory of justice essentially led to two central principles. First, each person has the right to the same liberties as those received by others. Second, if there are to be social and economic inequalities, they must be attached to offices predicated on fair and equal hiring and must be advantageous to the worse off.8

In The Idea of Justice, Sen presents an alternative interpretation of justice. He does not necessarily offer a concrete definition of justice, but rather a way of considering how an effective pursuit of justice might happen. Sen’s focus is not on institutions but rather on the behavior of people in societies. He underlines the importance of the “comparative approach,” rather than focusing on a utopic goal, such as the overall perfectly just institution, Sen suggests comparing different communities facing similar challenges and understanding the mechanisms that provide them with more just outcomes.9 This approach moves the focus away from institutions and is concerned with an individual or community’s “actual realizations and accomplishments.”10 The comparative approach also recognizes that “different reasonable principles of justice” exist and is thus a more flexible construct when trying to understand justice as perceived by a different culture or community.11

Sen also emphasizes the idea of open impartiality. He writes that this concept allows “different types of unprejudiced and unbiased perspectives to be brought into consideration, and encourages us to benefit from the insights that come from differently situated impartial spectators.”12 He continues: “In scrutinizing these insights together, there may well be some common understanding that emerges forcefully, but there is no need to presume that all the differences arising from distinct

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5 The World Bank reported that in 2010 an estimated 45 million hectares of arable land around the world had been covered by recent large-scale land acquisitions. For more information see Saturnino M. Borras Jr. and Jennifer C. Franco, “Political Dynamics of Land-grabbing in Southeast Asia: Understanding Europe’s Role” in Transnational Institute in the context of the Just Trade project (Amsterdam: Transnational Institute, 2011) 4 at 14.
7 Idea of Justice, supra note 6 at 54.
8 Ibid at 59.
9 Ibid at 7.
10 Ibid at 10.
12 Idea of Justice, supra note 6 at 144.
perspectives can be settled similarly.”¹³ Sen’s idea of justice welcomes a plurality of opinions on what can be considered more or less just and emphasizes the process of reasoning. The latter, he says, can be “concerned with the right way of viewing and treating other people, other cultures, other claims and with examining different grounds for respect and tolerance. We can also reason about our own mistakes and try to learn not to repeat them.”¹⁴

Local understanding of justice and access to justice

Moses Ngeth, who works with the Community Legal Education Center and liaises closely with grassroots networks, writes that communities believe a lack of justice is defined by only the rich and powerful receiving immediate responses to their complaints through the judiciary, the Cadastral Commission, which is a body meant to solve disputes over registered and unregistered land in the country, and other bodies.¹⁵ Injustice is thus closely linked to inequality in the delivery of services by institutions. At the same time, the type of institution administering property is not of concern: “Communities don’t mind who finds solutions or is the competent [body to do so] but they want to see that their conflict is solved justly,” explains Ngeth.¹⁶

Thus, while communities refer to institutions, they are primarily concerned by a process of justice where the rich and powerful are favored over the poor. As Chamnan Suy, an activist who runs the LICADHO communications office, explains: communities calculate justice relative to how much protection the “powerful, wealthy people and high ranking officials” are receiving.¹⁷ This complaint has been frequently re-iterated. For example, in its 2007 report on human rights in Cambodia, LICADHO writes, “The judiciary continues to play a key role in protecting the economic interests of the rich and powerful, in particular relating to land and natural resources.”¹⁸ In a report on the Cadastral Commission, Sithan Pannh writes: “Land cases in Cambodia that pit the poor against the powerful are normally cases of seizure, of expropriation. Normally the powerful are seeking to evict the poor from land that the poor have been living on and farming for some time.”¹⁹

Lee Robinson, who founded LICADHO-Canada, an independent organization that works exclusively with communities on land rights issues and in close partnership with LICADHO, says that based on her work with communities, “they define justice as ‘fairness’ and as ‘win-win’ solutions.”²⁰ In her opinion, “[the communities] would not define ‘access to justice’ because they don’t have any.”²¹

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¹³ Ibid.
¹⁴ Ibid at 47.
¹⁵ Interview of Moses Ngeth, Communications Coordinator with the Cambodian Center for Legal Education in Phnom Penh, Cambodia (19 September 2011) [Ngeth].
¹⁶ Ibid.
¹⁷ Interview of Chamnan Suy, Communications Coordinator of LICADHO in Phnom Penh, Cambodia (2 October 2011) [Suy].
²⁰ Interview of Lee Robinson, Director of LICADHO Canada in Phnom Penh, Cambodia (25 September 2011) [Robinson].
²¹ Ibid.
Mathieu Pellerin, who has worked with evicted communities for over a decade, says: “Justice for communities affected by land disputes equals to a recognition and respect to the ownership rights of the affected community members. This ownership right is what is put out of their reach and they seek to obtain.”22 Like Robinson, Pellerin also highlights the overall lack of access to justice:

Access to justice is virtually inexistent for communities facing well-connected Okhnas [businessmen] in land disputes. Officials will have been bribed, received orders from high ranking members of the ruling Cambodian People’s Party, or simply too afraid to help the communities. Courts will be bribed and obedient to ruling party’s orders. At the national level, individuals will either turn a blind eye to people’s grievances or be part in the granting of large-scale concessions overlapping with people’s land.23

Theory in practice

As these interviews with activists demonstrate, a number of community networks understand justice and access to justice by reference to the institutions that administer land titles and property rights. It is also clear that these communities do not appear to care what institutions are serving them, provided that the process itself is just. While these interpretations of justice may initially seem to resonate better with Rawls’ focus on the end goal, Sen’s view of justice provides important insights into how one might work towards establishing new processes that could offer greater justice in the short-term. As Sen argues, Rawls’ concept of justice is bound to institutions and not to the people behind them.

Indeed, the veil of ignorance actually masks human behavioral characteristics, which invariably play a key part in the development of just institutions, as witnessed by the complaints against the rich and powerful, and removes the role of communities in the process of seeking justice. Moreover, Rawls’ principles do not encourage an understanding of why institutions in Cambodia are corrupt. Additionally, while these principles offer a concrete end goal, it is not necessarily an attainable one within the resource constraints faced by grassroots networks and civil society.

Instead, I would argue that Sen’s exploration of the notion of justice serves as a better starting point, not only for understanding justice, but also for developing a more just society. In particular, Sen shifts the focus from the unattainable perfectly just society – which would be a particularly tricky goal in the Cambodian context – to the behavior and processes of individuals and communities in seeking justice. Thus, Sen’s view allows for a greater consideration of alternative means to access justice, which grassroots communities exercise in practice, rather than solely considering the quality of institutions.

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22 Pellerin, supra note 4.
23 Ibid.
3. Development and Access to Justice Programs in Cambodia

International Efforts

Cambodia is a particularly interesting case study because of the United Nations Transitional Authority in Cambodia (UNTAC). UNTAC was established in Cambodia after the 1991 Paris Peace Agreements on Cambodia, where the international community put in place the means to transition the country towards its first peaceful democratic elections.24 UNTAC became the temporary head of the country’s political and legal systems in collaboration with the Cambodian Supreme National Council, which was made up of representatives of the country’s four warring political factions.25 UNTAC cost $1.6 billion and involved over 22,000 international civilian and military staff.26

The Human Rights Component of the UNTAC mandate included rebuilding judicial institutions. Starting from scratch was a daunting task since intellectuals were targeted and murdered during the Khmer Rouge regime; institutions like the judiciary were abandoned, and few jurists survived.27 The post-Khmer Rouge socialist regime, in power with Vietnamese support from 1979 until the early 1990s, did not put any emphasis on developing the judiciary.28

A study by Caroline Hughes shows that UNTAC focused on building institutional capacity through training programs for judges and lawyers, stressing the independence of the judiciary and the elements of a fair trial. UNTAC also helped draft some of the first laws, including the UNTAC Criminal Code. Ultimately, Hughes writes, the UN’s mandate, which was aimed at securing peaceful elections, “severely constrained its attempts to rebuild a functioning legal system.”29 Thus, the first attempt at developing access to justice in Cambodia was secondary to other peace building efforts and institution-focused.

Since UNTAC, Cambodia has become home to a plethora of international and local NGOs working on general development programs, as well as access to justice. However, despite significant donor investment,30 the country remains extremely poor, ranking 124th out of 169 countries on the global Human Development Index (HDI).31 In 2000, the United Nations Development Program (UNDP) first recorded the country’s HDI at 0.412. By 2010, Cambodia had an HDI of 0.494, an 8.2 per cent increase. Comparatively, the Asian region had an average HDI of 0.650. Despite this slow

30 Since 2007, Cambodia has received over $700 million in bilateral and multilateral official development assistance funding per year. Moreover, instead of receiving a decreasing amount of donor assistance since 2000, the total disbursements have generally increased. For more information see Organization for Economic Co-Operation and Development, *DAC 2a ODA Disbursements Cambodia*, online: OECD.StatExtracts <http://stats.oecd.org/Index.aspx?DatasetCode=TABLE2A>.
progress, in June 2010, donor governments pledged another $1.1 billion to the Cambodian
government, ignoring complaints from the local NGO community demanding that bilateral donors
use their role as funders to pressure the Cambodian government to improve its governance
measures.32

While it is difficult to measure the number of development programs focusing on access to
justice, Yash Ghai, the former UN Special Rapporteur on the Situation of Human Rights in
Cambodia, provides a useful general framework for understanding the type of efforts being
implemented. He defines access to justice, like rule of law, in ‘thin’ and ‘thick’ versions. The ‘thin’
version focuses on “the courts and other institutions of administering justice, and with the process
whereby a person presents her case for adjudication.”33 The ‘thick’ version looks, in addition, at “the
process of law making, the contents of the law, the legitimacy of the courts, alternative models of
legal representation and dispute settlement.”34 UNTAC’s initial efforts would likely have qualified as
‘thin’ efforts for access to justice.

Both the ‘thick’ and ‘thin’ definitions of access to justice provided by Ghai are primarily
focused on institutions and are technocratic in nature.35 Thus, he also provides a secondary way of
looking at access to justice programs: those focusing on the “supply side” and those working on the
“demand side.”36 Access to justice programs that are focused on the “supply side” aim at the
“reform and strengthening of the machinery for the administration of justice and procedures for
bringing disputes to courts.”37 Programs focused on the “demand side” aim to facilitate the use of
the courts by people.

Yet, even in these alternative definitions provided by Ghai, who has worked extensively with
the American Bar Association, a body that has made significant investments in access to justice
efforts in Cambodia, there is a distinct lack of focus on the empowerment of grassroots movements
and their particular conceptions of access to justice in land rights abuses. This is reflected in the
actual work of INGOs in the country.

Stephen Golub offers an in-depth critique of why INGOs are slow to become more
inclusive in their programming and implement more “demand-side” efforts. He underlines that
orthodox rule of law programming assumes, in addition to the importance of institutions, that the
judiciary is a central component of rule of law reform and that judicial reform is an end in itself –
assumptions based on Western intellectual understandings of the rule of law and strongly influenced
by Rawls’ focus on the institution.38 Whether or not people can actually access to justice is not
adequately taken into account. Additionally, institutions implementing traditional rule of law
programs are impeded from changing their programming because of “bureaucratic inertia,” funding
requirements favoring boilerplate approaches, “use it or lose it” funding schemes that force

32 Sebastian Strangio, “$1.1 billion pledged in donor aid” Asia Times (06 June 2011) online:
33 Yash Ghai and Jill Cottrell, “The Rule of Law and Access to Justice” in Yash Ghai and Jill Cottrell eds, Marginalized
Communities and Access to Justice (New York: Routledge, 2010) 1 at 3 [Access to Justice].
34 Access to Justice, supra note 33 at 3.
36 Ibid at 5.
37 Ibid.
38 Stephen Golub, “Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative” (2003) 41 Rule of Law
Series: Carnegie Endowment for International Peace 3 at 14 [Beyond the Rule of Law].
institutions to spend big on inflated and often unreal objectives in order to be eligible for funding the following year, and “structural biases” which, through explicit mandates and governing structures, push for partnerships with national governments rather than the poor.\(^{39}\)

**Local efforts**

There are also a number of local NGOs working on access to justice in Cambodia. The majority focus on a thin understanding of “demand-side” efforts. For example, they provide victims with free legal aid, help them navigate the Cambodian court system, and work on developing alternative dispute resolution mechanisms. However, other local NGOs have begun to focus part of their work on grassroots empowerment and are broadening the scope of “demand-side” programming. For example, the Cambodian Center for Human Rights (CCHR) includes a “community trainings and hearings” dimension in its programs that aims to “increase human rights understanding among marginalized rural and urban communities involved in land conflicts and to transfer the skills required to claim those rights.” The project “seeks to empower individuals and communities so they can negotiate the resolution of land conflicts, and to prevent or minimize associated rights violations.”\(^{40}\) The Cambodian Center for Legal Education says it provides “legal and technical support [to communities facing evictions] in any circumstance.”\(^{41}\) However, a majority of ‘mainstream’ or ‘elite’ NGOs involved in access to justice and human rights issues in Cambodia still seem relatively unaware of the importance of fostering grassroots advocacy for access to justice.\(^{42}\)

LICADHO is an interesting exception to this rule. LICADHO takes a holistic approach to access to justice issues. When an individual or community reports allegations of human rights abuses, LICADHO provides on site crime scene investigation, free legal aid and representation, medical care, food and shelter, support to incarcerated human rights defenders, and psychosocial support. The organization takes a person-centered approach to human rights, recognizing the particular experiences of an individual or community, and the realities they face. Additionally, LICADHO, with the assistance of LICADHO Canada, is mainstreaming into its programs a focus on fostering community movements. LICADHO works extensively with grassroots networks in Phnom Penh and provinces that are fighting for access to justice. LICADHO not only works on providing alternative means of dispute resolution or access to courts, but also acts as a support resource for communities, who determine what actions they want to take in seeking justice. In line with Sen’s conception of justice, LICADHO focuses on facilitating the processes involved in incrementally developing a more just society.

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\(^{39}\) Beyond the Rule of Law, supra note 38 at 22-24.


\(^{41}\) NgEth, supra note 15.

\(^{42}\) For example, I attended a number of meetings with Phnom Penh-based NGOs and INGOs lobbying against a draft law seeking to regulate non-government organizations and associations in Cambodia (For more information see Cambodian Human Rights Portal, “Draft Law on Associations and Non Governmental Organizations,” July 2011, available online at http://sithi.org/temp.php?url=view_law.php&id=200), A representative of a grassroots group, People’s Action for Change, repeatedly suggested drawing on existing grassroots networks to spread awareness of the law and to help foster resistance. None of the NGOs or INGOs at the table were interested in taking this approach, but instead wanted to run a number of ‘focal groups’ among their constituents and provide training to them specifically first. While this experience was not in the context of access to justice programs, it did demonstrate a relative resistance to the empowerment of highly decentralized networks. Additionally, LICADHO managers regularly discussed the resistance of other NGOs towards better incorporating grassroots networks in their programs.

4. Land Disputes in Cambodia: A Brief Overview

The Khmer Rouge regime essentially destroyed the institution of property in Cambodia. It emptied Phnom Penh and other areas of the country of people and forcibly displaced them into new communes. Private ownership was abolished and land rights collectivized. Land right titles were destroyed.

In the early 1990s, after the end of the Khmer Rouge regime and the subsequent Vietnamese-backed socialist regime, the country re-introduced private land rights. Former collectively owned land was distributed to returning Cambodians. Ghai writes that “apparently the nominal distribution of land after the reforms in 1989 was remarkably egalitarian.” However, rife with corruption and inundated with requests, the land titling system never really took effect. The end result was that “titles have never been issued for the land distributed in 1989” and land grabbing began soon after Vietnamese withdrawal.

The 1992 Land Law permitted ownership by “actual, open and continuous possession for at least five years … provided certain conditions were satisfied, including the absence of any other claim.” The absence of distributed titles as a defense against possession and de facto possession itself facilitated this land grabbing process with the Land Law quickly becoming “a get rich quick manual for the upwardly mobile who knew how to satisfy the registration requirements: few rural families had managed to secure the necessary documentation to prove their land ownership rights.”

A new Land Law was passed in 2001. Ghai and NGOs working in Cambodia have acknowledged that the law itself provides “a fundamental basis for the reduction of land disputes.” However, the effective administration of the law requires land titling, and Ghai reports, “There is a continuing problem of lack of capacity to complete the titling process, and a serious problem of corruption.”

The government has also passed a number of sub-decrees, such as the Sub-Decree on Economic Land Concessions. While these land concessions are ostensibly meant to spur economic development efforts, authorities have failed to enforce the necessary pre-conditions for allowing such concessions and thus have facilitated the arbitrary eviction of communities. Furthermore, as the United Nations Office of the High Commissioner for Human Rights (OHCHR) reports, “the

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43 The aim of this paper is not to detail the framework for land rights abuses in Cambodia, a topic that has been extensively covered by academics and NGOs working on Cambodian human rights issues. This brief overview is meant to give the reader an idea of how pervasive and widespread the issue is.


46 Ibid.

47 Ibid.

48 Anatomy of a State, infra note 44 at 46.

49 Ibid.

50 Ibid.

51 Ibid at 47.

judicial system has failed to uphold the rights of affected communities and respect for the law, and to hold companies accountable for their actions.”

Indeed, since the Land Law was passed in 2001, forced evictions and land grabbing continue to occur in rural and urban areas. In Phnom Penh alone, 30,009 families have been forcibly displaced since 1990, which represents about 9.5 per cent of the city’s population. LICADHO reported that during the first half of 2010, an estimated 17,000 people were newly affected by land grabbing in 13 out of the country’s 24 provinces. An estimated 150,000 people continue to face the threat of eviction.

There are a number of causes behind land grabbing, particularly the continued granting of land as “Economic Land Concessions, extractive industry licenses/concessions, infrastructure development, so-called city ‘beautification,’ private development projects, including tourist industry development and land speculation.” Influential government members, private investors and the Royal Cambodian Armed Forces work together to sell off large tracts of Cambodia for their own profit. While the 2001 Land Law might theoretically offer protection, “laws are applied selectively or by-passed altogether” and “such collusion between authorities and powerful individuals who are laying claims to land opens the door for the issuing of dubious land titles and eviction orders, and the misuse of the court system to prevent victims from acting to defend their rights.”

Additionally, international bodies are sometimes complicit in the situation. The World Bank Inspection Panel recently found that the World Bank had improperly administered its Land Management and Administration Project (LMAP) in Cambodia and failed to protect 4,000 families living around Boeung Kak Lake in Phnom Penh from evictions after the World Bank followed government orders and decided not to issue land titles to residents facing evictions even if they had satisfied land ownership requirements under the 2001 Land Law. The government declared that the land was theirs and leased it to a Chinese developer, who continues to evict residents.

5. The Grassroots Advocacy Movement

In their article “Whose Justice? Rethinking Transitional Justice From the Bottom Up,” Patricia Lundy and Mark McGovern discuss the importance of empowering grassroots movements in transitional justice. “Failure to embrace locals’ lived experiences and opinions, it is argued, can

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53 Ibid.
57 Ibid at 3.
58 Ibid.
59 Ibid.
lead to a poor understanding of peace transformation,” they write. “The answer, therefore, is to view local people [...] as stakeholders in, and active agents of, change.”

Golub, who recognizes the potential of grassroots movements, suggests a new framework to foster such community-centered activities. He defines “legal empowerment” as “the use of legal services and related development activities to increase disadvantaged populations’ control over their lives.” Legal empowerment emphasizes “strengthening the roles, capacities and powers of the disadvantaged and civil society,” working with administrative agencies, local governments and informal justice systems, developing partnerships with civil society and mainstreaming “domestic ideas and initiatives.” Golub highlights a number of studies which have shown that such strategies can help “advance good governance and to reduce poverty in both substantial and subtle ways” and has an impact on “equitable and sustainable development.”

The Asian Development Bank, which conducted yearlong research on legal empowerment in seven different countries, reports that the use of collective mobilization strategies in the process is key. The Bank notes the effectiveness of “pursuing law reform through collective advocacy,” “building networks and coalitions,” and “group formation in more restrictive environments.” It also reports: “While national policies play an important role and can reflect progress toward empowerment, not all law or regulatory reform takes place on the national level. In fact, the most positive results generally emanate from community specific work.” Additionally, “even if the disadvantaged understand their rights, they may remain powerless unless they work together to assert common interests or to protect members of their group. A common feature of successful integrated legal empowerment strategies is the element of community organizing.”

The following paragraphs demonstrate that Cambodian grassroots groups are taking a mixed approach in asserting their rights. This approach marries litigation, which enriches the process of social mobilization through confidence building and the development of more formalized organizational structures, as well as traditional social movement tactics including protesting and leafleting, which focuses on community organizing and bottom-up empowerment. Michael Mann notes that this combination of tactics contributed to the success of major human rights movements in other countries, notably in the United States on the issue of racial discrimination. Thus, the rule of law and access to justice programs currently being implemented in Cambodia require a broader understanding of the role of grassroots movements. This essay argues that new resources need to be invested in “legal empowerment” for access to justice, and, in particular, in collective mobilization for access to justice.

62 Beyond the Rule of Law, supra note 38 at 25.
63 Beyond the Rule of Law, supra note 38 at 25-26.
64 Ibid at 29-30.
66 Ibid at 68.
67 Ibid at 84.
68 Ibid at 77.
70 Mann, supra note 69 at 27.
Mass mobilization and the grassroots movement over land rights is burgeoning in Cambodia. For example, community members from around Prey Lang forest, a tract of protected land several hours from Phnom Penh where many indigenous groups live, and which is slowly being sold off by the government, have started joining urban communities facing evictions in Phnom Penh to protest.\footnote{LICADHO, News Release, “Community Leaders Rally for Land Rights in Phnom Penh” (21 June 2010) online: LICADHO <http://www.licadho-cambodia.org/articles/20100621/118/index.html> [Rally for Land Rights].}

**Methods**

A community facing evictions “chooses a community representative who is wise, knowledgeable, honest and self-confident.”\footnote{Suy, supra note 17.} However, Pellerin notes that in reality very few communities have formal structures:

The communities have a much more organic functioning. Outspoken and active members of the communities will be on the front line and will lead their communities, but the process is rarely a formal one. In these instances, authorities will try to force the communities to come up with “formal” leaders, claiming it is needed to receive complaint letters and enter into discussion with communities. This demand it itself becomes a threat within a Cambodian setting.\footnote{Pellerin, supra note 22.}

This person then leads the community through the following three steps, which are the general starting point for communities seeking justice in Cambodia:\footnote{It is interesting to note that communities in China facing land evictions use similar tactics as grassroots networks in Cambodia to advocate for access to justice. This includes civil litigation, protests, roadblocks, and petitioning. They also face similar challenges with corrupt local authorities, and courts subject to the control of the government. For more information see Eva Pils, “Peasants’ struggle for land in China” in Yash Ghai and Jill Cottrell eds, *Marginalized Communities and Access to Justice* Peasants struggle for land in China (New York: Routledge 2010).} (1) they initially try and get assistance from local authorities (the village chief, the commune chief or the Cadastral Survey Department); (2) they lodge a complaint in the trial court; (3) and they appeal the verdict up to the Supreme Court.\footnote{Suy, supra note 17.}

In addition to these three formal steps, communities rely strongly on “meta-legal tactics,”\footnote{Legal Empowerment Strategies, supra note 65 at 53.} such as distributing pamphlets, petitioning and peaceful/non-peaceful protesting both in rural and urban areas,\footnote{Economic Land Concessions, supra note 52 at 17.} media statements, blocking roads, posters and banners, songs, holding hands to protect community lines, marches, t-shirts, public forums and burning tires.\footnote{Robinson, supra note 20.} These “meta-legal” tactics have been identified as “a key element of the successful legal implementation efforts.”\footnote{Legal Empowerment Strategies, supra note 65 at 53.} Communities have also begun to rely on new meta-legal tactics, which I will discuss in more detail below.

Interviews with community leaders and NGO workers about what they consider to be justice and access to justice clearly highlight that, despite corruption, institutional mechanisms have a place
in conflict resolution. Thus, communities do try to seek justice through the courts. However, they face a number of challenges, which I address further on. Moreover, they refrain from suing the government or ministry officials, the individuals generally authorizing evictions:

Communities sue the companies involved (which is usually run by or owned by a powerful government official anyway). Communities are not stupid, they know clearly who is evicting them, or alternatively who has the power to help them but chooses not to. But they don’t dare sue the government. Communities have filed complaints against police officials, but the cases that I know of have never actually come to trial.80

Communities also appeal to bodies like the Cadastral Commission. This institution was founded in 2002 and was designed to address disputes over unregistered land. Interestingly, a 2006 World Bank report notes that only 27 per cent of persons using the Cadastral Commission make informal payments/bribes to the Commission, suggesting that corruption at the lower level of the Commission is still manageable and thus more accessible to disadvantaged groups.81 However, Sithan Phann, in a report on the Commission, writes that the body “is only able to deal through conciliation when both disputants have similar power.”82 Considering that land disputes often pit the poor against the ‘rich and powerful’ as noted above, this leads to a number of unresolved cases. Phann notes that the Commission’s percentage of resolved cases is dropping and a backlog is building up.83

Community networks are also aware of the Cambodian government’s dependency on aid funding, as well as the growing sensitivity of international governments to blatant human rights abuses. Vanny, who is a leader for the Boeung Kak Lake community that has been fighting evictions since 2007, describes a new tactic taken by her group:

In my community, before doing advocacy, we wrote letters to different government bodies to get information and solutions. But there was no solution, so we began protesting. As you know, in my community, most are women. We go in a big group to show the government that not only one or two people are concerned, but the whole community is concerned and wants a solution … Our community sees that government and local authorities do not want to help; we do not expect that they will change their minds or do something for us. Now we change our strategy: going to different embassies in Phnom Penh. For example, recently we went to the French embassy. Many police were present. We thought that those police might take action against us as they have in other areas, when we went to the government buildings but the French embassy official said not to use violence against us.84

80 Robinson, supra note 20.
82 Phann, supra note 19 at 5.
83 Ibid at 6.
84 Interview of Venerable Loun Sovath, Mr. Yu Tho, Mr. Chem Dara, Ms.Hem Sokhorn, Mr. Hoeun Sopheap (10 July 2011) by Frank La Rue during his unofficial visit to Cambodia [La Rue and Land Rights].
Local communities are finding some support among international political bodies and their complaints to embassies may be having an effect. For example, in May, a Member of the European Parliament acknowledged the devastating effects of the EU’s “Everything But Arms” tariff system in encouraging concessions to sugar plantations around Cambodia and prompted greater scrutiny of the policy. Vanny and other community leaders have also been active in presenting their cases to individuals like Frank La Rue, the UN Special Rapporteur on Freedom of Expression and Opinion, and Surya Subedi, the UN Special Rapporteur on the Situation of Human Rights in Cambodia. While these advocacy efforts are not necessarily delivering new means of access to justice, they may serve to draw attention to the systemic problems behind land grabbing.

Communities have also started to work with religious authorities during protests. For example, Venerable Luon Sovath, a Cambodian monk, began attending protests in his own community, which faced eviction, and has since become a common sight in protests in Phnom Penh and other provinces. As a religious figure in a devoutly Buddhist country, his presence at protests has had an important effect by further legitimizing community struggles. Sovath has also added an original media component to the struggle. During the first protests in his community, he began filming and photographing the evictions and ensuing protests. This approach has been aided and adopted by NGOs like LICADHO, which now works in partnership with Global Witness and the Open Society Institute to distribute FLIP Video Cameras to community activists. The ability to film police officials when they beat up protestors has played a role in deterring such actions, as well as enabling the recording of concrete proof that authorities cannot tamper with and that provides important first hand evidence to the media.

Some communities have found support in local political leaders, even those in the Prime Minister’s majority party. Vannat, who is from a rural province called Kampong Speu, describes how the community council representative, although a member of the majority Cambodian’s People Party (CPP), joined protests against evictions by a company owned by a CPP Senator. While the community leader eventually lost his position and was imprisoned, advocacy efforts targeted at recruiting local level authorities would likely bolster communities’ opportunities to access justice at a decentralized level.

Recently, communities have started to expand the scope of their advocacy movements by forming cross-community partnerships. In 2009, representatives from 158 villages launched a “coordinated complaints” campaign whereby “communities presented legal complaints to the National Assembly, the Supreme Council of the Magistracy, and to the Ministry of Land Management wanting to expose their cases and hoping for legal protection.” In 2010, LICADHO reported that 350 community representatives from 24 provinces and municipalities gathered

87 Ibid at 17.
88 La Rue and Land Rights, supra note 84.
together in protest of land rights abuses. Pellerin writes:

Communities are getting stronger in raising their own voices through peaceful activism. Groups of villagers travelling to Phnom Penh to gather in front of key national institutions are occurring on a near-weekly basis. Protests by community members on the disputed land to prevent clearing of farmland and rice paddies are also happening throughout the country.

However, Robinson, who has been a part of the grassroots movement over the past few years, writes:

Even with the growing number of communities fighting for their rights, the growing number of families displaced, the growing number of communities filing complaints in the court, we still have yet to see one community win their land case. This goes to show that efforts of communities have not yet reached a critical mass.

While these efforts have not necessarily been successful in providing access to justice mechanisms, if expanded, community activists believe mass social mobilization may provide greater leverage to communities. Pellerin insists that this form of activism is “crucial” because “while the government can easily dismiss reports by organizations, both national and international, it is much harder, and politically costlier, do so with a growing chorus of disenfranchised Cambodians.”

**Key Challenges**

Grassroots networks face a host of challenges in their efforts to promote access to justice. One such challenge is the government’s use of new legislation to justify the incarceration of community leaders involved in land rights disputes, as well as a means to neutralize protests. One example is the use of the *Law on Peaceful Assembly*, which gives government authorities the power to approve of or disperse any public assembly. The authorities often use this law in an abusive fashion. For example, in August 2011, authorities detained community activists who were attending a peaceful gathering and distributing flyers against the sale of Prey Lang forest. Authorities cited the law, saying individuals were detained “because they had not given notice to the authorities prior to the distribution [of the flyers]” and that the event “could disrupt social order.”

The government also interferes with private meetings, which have previously required approval by local authorities under the *Law on Peaceful Assembly*. Additionally, the government uses civil defamation suits filed by high-level government authorities and business owners as a means to bankrupt community leaders. The crimes of disinformation and defamation, included in the former UNTAC Criminal Code, have also been used to imprison community leaders.

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90 Rally for Land Rights, *supra* note 71.
91 Pellerin, *supra* note 22.
93 Pellerin, *supra* note 22.
96 *Economic Land Concessions*, *supra* note 52 at 19.
Protesting communities are regularly subjected to brutal acts of violence. During Boeung Kak lake evictions in late September 2011, one man was almost beaten to death. Ony Nan, an activist who attended the evictions, described the scene:

About 40 of the Shukaku Company’s security officers and Government’s riot police forces used two bulldozers to destroy eight houses of villagers and beat a Chief of the Sam Rainsy Party [opposition party] Youth Movement named Ruong Sophorn until unconscious by using a hand gun, baton, stone, and kicking.

This was not an isolated incident, and NGOs working with grassroots groups have responded by putting together riot gear kits for community protests. Being the target of such acts also dissuades communities from organizing more formally. Pellerin writes that “communities tend to avoid creating formal leadership structures to avoid being targeted by the authorities.”

When communities try to fight for justice using the court system, they are faced with insurmountable challenges. First of all, free legal representation in Cambodia is limited and the Cambodian Bar Association, which should help with the provision of legal aid, “is closely allied to the government.” NGOs are the main source of free legal aid in Cambodia; however, as Ghai reports, “The fear of other reprisals has led many lawyers working for NGOs to resign and move into private practice.” Additionally, new rules have been passed that significantly increase the cost of bringing cases to court and deter NGOs from representing victims. Even if community members have access to legal representation and use more robust collective litigation methods, they are still faced with a corrupt and arbitrary institution directly under the control of the government. Suy explains that even if villages successfully appeal a verdict up to the Supreme Court, “the Prime Minister asks the Ministry of Justice to recheck [the outcome of cases]” and villagers generally lose. Civil litigation can also backfire and render grassroots networks more vulnerable:

Organizations litigating in housing cases identify another trend: when civil cases are dismissed by the courts and sent to the Cadastral Commission, criminal complaints are filed against the same complaints. Sometimes it is defamation that is relied on, and sometimes the laws protecting private property based on Article 247 of the Property Law – infringement against ownership – even though ownership is still being contested before the Cadastral authorities.

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99 Interview of Ony Nan, former policeman, Cambodian activist and media monitor with LICADHO, Cambodia (22 September 2011).
100 Pellerin, supra note 22.
101 Anatomy of a State, supra note 44 at 42.
102 Ibid at 42.
103 Ibid at 43.
105 Suy, supra note 17.
106 Anatomy of a State, supra note 44 at 43.
Other communities face resistance from their community leaders. The *Phnom Penh Post* reported that a commune chief in Preah Vihear had “threatened to arrest and detain 160 villagers in Srayong commune for blocking a rubber company from clearing forest land.” They had asked the commune chief to intervene in the dispute over the land. The District Governor defended the commune chief. While some bodies like the UNDP are introducing alternative dispute resolution processes, it is clear that existing power differentials between local institutions vested with problem-solving authority and the community might prove ineffective and unjust.

The government remains apathetic to citizens’ concerns, despite the latter’s advocacy efforts. At least in the short-term, the government benefits directly from the concession of land to major developers. As the Office for the High Commissioner for Human Rights (OHCHR) reports, “there has been no real action by the Government to enforce company compliance with the Land Law and with concession contracts.” They offer an example: in one case the Cambodian Ministry of Environment found that a company had “violated the terms of its contract by logging outside the concession area and destroying a section of Botum Sakor national park.” The Ministry filed a lawsuit against the company, but it was “dismissed by the provincial court in November 2005 after a hearing where the Council for Development of Cambodia and the Ministry of Agriculture testified in favour of [the company].”

Finally, a major challenge to grassroots communities is the competing objectives of seeking access to justice while supporting the basic needs of their families. Fighting for justice while being plagued with the challenges of abject poverty is a losing battle. Indeed, in cases of forced evictions, families are often left without access to basic needs like food and shelter. Furthermore, the cost of protesting in Phnom Penh and organizing countrywide mobilization can be prohibitive, particularly for rural communities.

6. Policy Suggestions

*Recommendations for NGOs and international stakeholders*

It is undeniable that NGOs, INGOs and other international stakeholders play a key role in the struggle for access to justice in Cambodia. A number of programmatic changes can be made by these bodies to become more inclusive and supportive towards grassroots networks, as well as to assist with long-term institutional change:

- NGOs and INGOs should develop the means of offering more flexible funding to community groups. Grassroots groups themselves, according to the strategies they wish to use in accessing justice, should determine the use of this funding. Similarly, NGOs must be

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108 Ibid.
110 *Economic Land Concessions*, supra note 52 at 19.
111 Ibid.
112 Economic land concession, supra note 52 at 19.
flexible in their responses to different situations and be able to assist in a range of circumstances.\textsuperscript{113}

- Donors should offer more options for core funding to local NGOs. LICADHO is fortunate to have secured a number of core donors who allow the organization to determine independently how its funding is spent. However, most NGOs do not benefit from this autonomy as their respective donors are subject to rigorous reporting requirements and earmarked funds, which often have a narrow focus such as building access to justice solely through institutional reforms.\textsuperscript{114}

- Embassies should similarly offer a flexible source of emergency funding that can be rapidly dispensed to communities who appeal for it. The European Union Guidelines on Human Rights Defenders (HRDs) provide an important starting point.\textsuperscript{115} A number of strategies in the Guidelines have already proved effective in the struggle for access to justice, including sending EU officials to monitor trials (which can serve as a deterrent to corrupt judicial practices) and by having EU embassies publicly support community access to justice efforts. One good example of effective monitoring and public support is by the French embassy, which has begun sending staff to eviction areas in Boeung Kak Lake District to ensure there is no violence.\textsuperscript{116}

- NGOs and INGOs need to make clear political statements against the government’s arbitrary and violent behavior towards its citizens. Foreign NGOs fear that the government will ban them from working in the country, which is a very real threat. However, if NGOs and INGOs are united and send a clear message to the government, protesting against what it is doing, the government would find it more difficult to react with the collective dismantling of these bodies.

- Major bilateral donors should follow in the World Bank’s steps and freeze aid funding to the Cambodian government.\textsuperscript{117} Donors fund half of the government’s budget and a major withdrawal of this funding would likely have a strong impact. The fear of becoming a pariah state in the eyes of the international community can spur governments like Cambodia into taking action. In June 2010, during an international donor meeting for Cambodia, a group of 15 local NGOs issued a statement saying donors should “take responsibility and speak out against the deterioration of rights and democracy in Cambodia. Doing nothing, they added, could be seen as ‘tantamount to complicity.’”\textsuperscript{118}

- As a local NGO, LICADHO is able to liaise closely with local government authorities, judges, and lawyers. In order to break down some of the power barriers between these bodies and community networks, LICADHO should consider continuing to hold training sessions that bring these groups together in more neutral territory. For example, LICADHO used a government prosecutor to conduct training on the implementation of the new Criminal Code for LICADHO staff and community networks. This prosecutor was, that same week, representing the government against a human rights defender represented by LICADHO lawyers. Focusing bridge building efforts on particular individuals within institutions involved in land rights disputes, like the judiciary, could serve to work against

\textsuperscript{113} Legal Empowerment Strategies, supra note 65 at 81.
\textsuperscript{114} Beyond the Rule of Law, supra note 38 at 22-24.
\textsuperscript{115} European Council, Strategy for the Implementation in Cambodia of the EU Guidelines on Human Rights Defenders (Brussels: European Council, 2010).
\textsuperscript{116} Robinson, supra note 20.
\textsuperscript{117} Robinson, supra note 20.
\textsuperscript{118} Strangio, supra note 32.
institutionalized corruption. The Asian Development Bank reports that such efforts have, for example, “exposed judges to new ways of thinking about issues ranging from human rights to the environment.” They cite a case study in Bangladesh where interaction initiated by a number of NGOs “paved the way to successful test case litigation on issues of standing and compensation for communities relocated by government flood mitigation projects.”

Recommendations for grassroots networks

In my initial overview of some of Sen’s key points, I emphasized his focus on the process of pursuing justice rather than the institutions of justice – incorporating elements of impartiality and public reason, for example. This approach is practically useful and could serve as a guiding principle for grassroots networks involved in human rights protection and the struggle for access to justice in Cambodia. As it stands, grassroots networks in Cambodia tend to focus on the outcome of institutional processes and how unjust they are. When discussing human rights efforts, community leaders regularly identify the unjust decisions of the courts, the arbitrary exercise of police power against protestors, or the corrupt practices of local authorities. While these are accurate assessments, the pervasive nature of corruption across Cambodian institutions is paralyzing. Communities, which are drawing on every advocacy technique available, do not see any large-scale changes.

In addition to the core need for a national movement against land rights abuses, I would suggest that grassroots communities consider integrating some of the following processes, which are inspired by Sen’s thesis, into their learning and advocacy efforts:

- Sen focuses on the role of reasoning and objectivity in the struggle for access to justice. Reasoning – understanding the causal factors behind a situation that communities consider to be unjust – can likely better equip individual members in identifying and addressing injustices. Moreover, developing a reason-based approach to access to justice could help prevent violent reactions to situations of injustice and contribute to a more peaceful and sustainable process of social change. It can also prepare the type of leadership required to carry forward mass social movements. The Asian Development Bank notes that in South Asian countries implementing access to justice programs, knowledge is a necessary precondition to successful legal empowerment, followed by awareness of how to use this knowledge in practice to protect rights.

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119 Legal Empowerment Strategies, supra note 65 at 76
120 Ibid.
121 Marina Kurkchiyan writes that “neither the optimism nor generosity [of social movements] last very long” and that “they need to be quickly channeled into the constructive reforms by honest, educated and determined leaders.” For example, she suggests emphasizing “ethical values against corruption,” which was a key part of a successful corruption reform program in Hong Kong. Curbing corruption and unfairness in institutions requires building a legal culture that resists and rejects corruption. LICADHO has introduced this approach in its work with the legal system by refusing to engage in corrupt practices and by pressuring judges to abstain as well, using both direct communication and foreign trial monitors. For more information on practices to curb corruption in the judiciary see Marina Kurkchiyan, “Judicial Corruption in the Context of Legal Culture” in Corruption and Judicial Systems (Cambridge: Transparency International, 2007) 99 at 105.
122 Legal Empowerment Strategies, supra note 65 at 69.
NGOs provide training in land law, human rights law and forest law for community members facing evictions.\textsuperscript{123}

- Sen also recognizes the danger of parochialism, which can be debilitating in the process of seeking a more just society. He encourages the broadening of horizons and the inclusion of impartial spectators in evaluating justice. In practical terms, introducing human rights defenders and community networks to others involved in similar struggles would help expand their understanding of the scope of the problem, the networks of communities combating it, and the mechanisms being used to fight. It would also serve as a platform for building a cross-country, if not cross-border, advocacy movement. Understanding that one is not the only victim is also useful in combating the victimization and self-defeat that can set in after continued years of abuse. The Asian Development Bank corroborates this view, noting that one of the essential features for legal empowerment is cooperation between civil society and community-based organizations,\textsuperscript{124} and that the first necessary condition for successful legal empowerment is a vibrant civil society.\textsuperscript{125}

- Communities could integrate Sen’s comparative approach into determining what qualifies as access to justice. In particular, communities could look at other processes for resolving land rights disputes. While these mechanisms may not provide the degree of justice desired by communities, they may represent the attainable goal of a more just society, and serve as a stepping-stone to larger institutional reforms. An exploration of additional access to justice measures could include the training of paralegals at the community level. These legally trained laypersons can assist with gathering evidence for a case, processing claims at the Cadastral Commission, appearing in front of tribunals or in alternative dispute resolution forums and furthering legal and rights based education among community movements. The Asian Development Bank notes: “In view of the central importance of community-specific work in legal empowerment, paralegals assume particular significance in some societies.” While they can be expensive to train, “Paralegals fill the substantial gap created by the shortage of lawyers dedicated to legal assistance and the vast numbers of disadvantaged who may not have the time, inclination or aptitude to make use of specialized training.”\textsuperscript{126}

- Sen’s perspective on understanding justice also underlines the importance of having donors offer more support to grassroots networks that can define and embrace the struggle for access to justice. He writes: “In the pursuit of justice, positional illusions can impose serious barriers that have to be overcome through broadening the informational basis of evaluations.”\textsuperscript{127} Moreover, “Judgments about justice have to take on board the task of accommodating different kinds of reasons and evaluative concerns.”\textsuperscript{128} Sen seems to suggest that input from outside bodies could lead to valuable cross-border networks providing groups with new ideas and tactics. Thus, grassroots networks should continue lobbying to NGOs and INGOs for financial and political assistance on the basis that the inclusion of their voices in policy level decisions and international advocacy efforts is key to the end goal of developing just institutions.

\textsuperscript{123} Suy, supra note 17.
\textsuperscript{124} Legal Empowerment Strategies, supra note 65 at 72.
\textsuperscript{125} Ibid at 86.
\textsuperscript{126} Legal Empowerment Strategies, supra note 65 at 82.
\textsuperscript{127} Idea of Justice, supra note 6 at 144-45.
\textsuperscript{128} Ibid at 395.
7. Conclusion

In the midst of global social unrest, Nicholas Kulish recently wrote in the *New York Times*:

Their complaints range from corruption to lack of affordable housing and joblessness, common grievances the world over. But from South Asia to the heartland of Europe and now even to Wall Street, these protesters share something else: wariness, even contempt, toward traditional politicians and the democratic political process they preside over. They are taking to the streets, in part, because they have little faith in the ballot box … Increasingly, citizens of all ages, but particularly the young, are rejecting conventional structures like parties and trade unions in favor of a less hierarchical, more participatory system modeled in many ways on the culture of the Web.¹²⁹

Kulish’s article highlights the role of organic social change in reforming entrenched governments and speaks to a growing number of people around the globe who are dissatisfied with the status quo. However, one of the key concerns of these protesters is whether they will be able to ensure long-term transformation in society and in domestic governance systems. Do these movements have leaders capable of resisting the corruption that all too often seems to come with power? Will they refrain from using dictatorial measures to retain power as previous regimes did? Are the members of such movements educated or aware enough to foresee these trends and to lobby against them relentlessly?

The grassroots movement discussed in this essay, while fighting primarily for access to justice, is part of this larger picture of dissatisfaction fueled by pervasive corruption and dictatorial governance structures. If it is to succeed in the long term, these networks will need to develop a strong infrastructure of educated constituents aware of their rights and willing to organize across the country to ensure these rights are respected. Fostering this wider movement and securing long-term positive change in Cambodia will require implementing new approaches by both NGOs/INGOs and grassroots networks.

In particular, this paper argues that a coalition of NGO, INGO and grassroots networks can work towards achieving tangible change in access to justice and offer a basis for enforcing broader institutional reform by mainstreaming Golub’s “legal empowerment” model into both general development and access to justice programs. As Golub argues, “legal empowerment” is helping “advance poverty alleviation, good governance and other development goals” and thus “merits substantially increased financial and political support.”¹³⁰ Additionally, these efforts should draw on Sen’s guiding principles of how to achieve justice, and thus break away from the traditional rule of law programs, which, drawing on their Western roots, are primarily focused on institutions.

¹³⁰ Beyond the Rule of Law, supra note 38 at 4.