

TENURE  
SECURITY

## Legal Support



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Uttaran

TENURE SECURITY

## Legal Support

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*This document has been produced with the financial assistance and technical support of the European Union, Manusher Jonno Foundation-MJF, Shiree, the UK Department for International Development (DFID) and Bangladesh Government. The contents of this document are the sole responsibility of Uttaran and can under no circumstances be regarded as reflecting the positions of donors.*

## Credits

Published by : Uttaran  
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Website: [www.uttaran.net](http://www.uttaran.net)

Published : September 2015

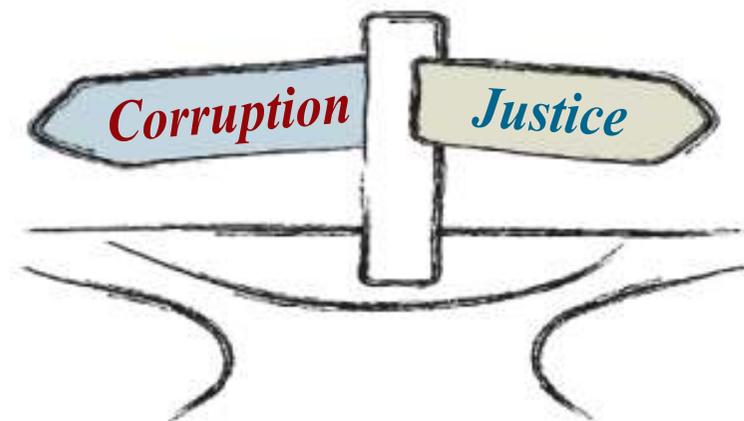
Content edit / design : Philip Humphreys

Translation support : Farhana Khan

Photos by RupalShah : Cover page + pages 10, 12, 16,  
22 (bottom), 23, 24, 25, 26, 27

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and/or Uttaran, except where indicated and acknowledged*

Printers : Runic



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## Introduction

**Uttaran recognises the paramount importance of tenure security in the land redistribution process. It knows that without a widely held belief in the system and an absolute confidence in its outcomes, the push to rebalance the economy of land in Bangladesh will fail.**

So how does Uttaran provide tenure security through its legal work?

After clearly explaining the procedure of the Digital Land Record and Survey (as detailed in the other booklet in this section titled 'Public awareness raising activities'), Uttaran must communicate its intended impact in relation to their land ownership and rights. In such a way can people be made secure both on paper and in mind. They are given legal guarantees while also being made to feel that the state apparatus, the Government of Bangladesh and Uttaran are supporting their cause, so that they can say with absolute confidence: "This is my land".

When the people are failed by the system put in place to protect them, however, Uttaran is on hand to provide assistance.

This booklet, therefore, aims to highlight Uttaran's long experience in providing legal support before, during and after settlement and khasland redistribution process.

It seeks to explain how Uttaran can provide legal aid to the most needy of the landless people, and how the organisation tries through village-level mediation to resolve land-related disputes without recourse to the courts. Where an informally negotiated settlement is not possible, the booklet details the procedure for finding a solution through the judiciary. Finally, it lists some case studies as examples.

We hope you find it useful.

## Legal aid



All too often in Bangladesh, the legal instruments of the State fail to ensure justice for the poorest and most vulnerable people. The colonial judicial system which the first government of Bangladesh inherited in 1971 is no longer fit for the purpose for which it is needed; rather, it is a reformed, reviewed and updated version of an old model.

Hence, the judicial system is overly complex, expensive and time consuming for the people who most need protecting by it. Not only that, a lack of integrity means justice must often be bought and guilt can be sold off to the highest bidder. Such barriers to justice dissuade the extreme poor landless people from seeking resolutions to their problems and conflicts through the conventional system. In the worst cases, they lose everything they have and become destitute, without ever having their grievances heard in court.

Uttaran's experience has found that providing both procedural and financial legal support allows them to access the judicial system and argue for their rights before a properly appointed court of law. Under these circumstances, Uttaran can assist with legal aid and legal representation to give the poor claimants the best possible chance of winning their cases, settling their disputes, and improving their livelihoods through khasland.

## Rules of Uttaran legal aid services

1. Target beneficiary groups
  - a) Landless, small and marginalised farmers
  - b) Members of the primary organisations
  - c) Poor day labourers
  - d) Poor women and children
2. Scope of services

Legal support and representation for civil, criminal and writ cases heard in the Lower and Higher Court (as needed), including:

  - ✓ The honorarium of the lawyer
  - ✓ The fees of the Mohuri (lawyer's assistant)
  - ✓ Court expenditures, as per the law
  - ✓ Transport and food costs of the landless extreme poor complainant on the date of hearing in court
  - ✓ The project provides financial support to the family members of a victim, who is in jail due to criminal case for the interim period.
3. Nature of claims
  - a) Land related
  - b) Environment related
  - c) Human rights related
  - d) Women and children's rights related
4. Process of providing assistance

The initial process of filing a case is started through the application of an Uttaran staff member or an associate organisation or the target group. The prescribed application should be filled up and submitted to the Uttaran office or citizen committee or associate organisation office (see flow chart on page 8)
5. Process of commissioning a lawyer

In consultation with the director and/or project coordinator, a lawyer is commissioned for each case filed in the lower courts. They will observe, monitor the progress and prepare the report of the case, and coordinate with the case managers

6. Financial Assistance/ Management

The commissioned lawyer will be paid on the basis of the bill chart, as approved by the Uttaran director. But the payment could be increased on the basis of the merit of the case and seniority of the lawyer. In addition to this, Uttaran will extend financial support to the applicant on the basis of the ability of the applicant and recommendations from the field for his or her transportation and for collecting and preserving legal papers. All expenditure should be approved by the Uttaran director and/or project coordinator

7. Uttaran Legal Aid Committee composition:

President	Uttaran Director
General Secretary	Advocate
Members	Uttaran project coordinators (for projects providing legal aid services)
Member	Advocate
Member	Uttaran project legal aid officers

8. Uttaran legal aid officers will preserve all the documents related to the case. The relevant officer will write down the name, address and the section of the case in the cover page of the file
9. The legal aid officer will maintain the register of the case and cooperate with the applicants to manage the progress of their case
10. The commissioned lawyer will prepare the monthly report of the case for submission to Uttaran.
11. The legal aid officer will share the problems and mediations in the monthly coordination meetings and in the meetings of the Uttaran Legal Aid Committee.

## Process for evaluating legal aid requests



If any support is beyond the capacity of the Legal Aid Department of Uttaran, then it also assists in transferring the case to the District Legal Aid Committee. For example, in cases of dowry or child marriage, the cases are transferred to another Uttaran partner project named Misirior Germany (funded by Germany).

## Legal aid and the land projects



Since the inception of the APAR project in 2004, Uttaran has been providing legal support to extreme poor households engaged in the various stages of the khasland allocation process, to help give them access, acquire and retain the land.

The below table for the 11 years from March 2004 provides an illustration of the volume and type of legal aid support discharged by Uttaran for its three land governance projects, and a measure of their success in the total volumes of khasland redistributed.

### Uttaran land projects total legal support through SEMPTI, APAR & APARAJEO project

March 2004 – March 2015

Legal cases supported	Number of Cases	BHH
Higher Court case	50	1,498
Lower Court case	559	4,833
Mediation	725	880
<b>Total khasland returned through legal support</b>	1685.55 acre	2,122

## Meet the Uttaran legal support officers

**Monir Uddin**  
Assistant Coordinator  
Legal Aid and Advocacy  
MA & LLB



**Md Mahbulul Haque**  
Legal Support Officer  
MSS & LLB



### What is the legal definition of khasland?

**Mahbulul:** “Khasland can be any land which does not have an owner in accordance to the land records.”

**Monir:** “Let’s take the example of a river which has become dry land. It is measured 30 acres from the left and 30 acres from the right, and altogether this coverage of 60 acres belongs to the Bangladesh Water Development Board. This area is then leased by the government to the newly formed ‘Committee of Fishermen’ for a period of three to five years. This is especially given to these fishermen for their livelihood and to make proper utilisation of the land, otherwise the land might go into the hands of the brokers or to any other third party.”

**Monir:** “Then there is the khasland which is ‘property of the enemy’. This is referred to as the property of the people who deserted East Pakistan and fled to India during 1965-1970, during the war between India and Pakistan. They left behind their properties in what is present day Bangladesh. The government has taken over these lands

but they are pending lands which cannot be given to anyone for permanent settlement because they are not suitable for any sort of cultivation. They have to be made suitable for cultivation through classification first.” (Note: For more information on the Enemy Property Order, see page 12 of the first booklet in this series, titled ‘History’).

### What is the legal basis for distributing khasland?

**Monir:** “Khasland can be distributed in two ways: through a duplicate carbon receipt (DCR) or as permanent settlement. DCR is given for one year where as permanent settlement is given in the form of a lease for 99 years. Through the DCR process khasland is first given in action for one year. Only after this land is made suitable for cultivation can it be classed as permanent and acquire 99-year lease.”

**Mahbulul:** “In 1997, the government made a policy which said only the landless are entitled to the privilege of obtaining permanent settlement for 99 years. DCR, on the other hand, is received by anyone who is in control of a particular land.”

**Monir:** “The DCR is especially preferred to be given to the rich who can take the lease and pay the government an amount of money which the poor cannot afford. But each year the DCR is given to different people, so in theory nobody is given the DCR twice.”

**Mahbulul:** “In practice, however, those who are illegally in possession of the land take DCR in the name of a poor person such as a household help or their poor relatives, so that they can obtain the land again easily.”

### So who are the landless?

**Monir:** “What we understand by ‘landless’ is a person who has no land and is dependent upon agriculture for their livelihood, or who possesses 10 decimals of land but is still dependent upon agriculture.”

### And how is the land classified for DCR or permanent settlement?

**Monir:** “There are three types of office to conduct the process of land



classification. They are the Union Level Office, AC Land Office and ADC Revenue at District Level. These three offices have to monitor and report that the lands have become suitable for cultivation and agriculture and only then can these lands be given over to permanent settlement.”

**Mahbubul:** “During the selection of the landless, both people in and out of control of the land are eligible for permanent settlement.

### How are the landless people identified?

**Mahbubul:** “There are 14 of our centres in every upazila. In each of these centres there are area managers, land managers and field facilitators. Uttaran work with the help of the government and local chairmen and call for a meeting among the poor in the area in order to identify the landless.”

**Monir:** “There are ward and union level committees to identify the landless. The influential members of the committee such as the Imams of the mosques, Purohits of the temples, and ward member chair people are in charge of identifying the landless and calling them to a public meeting. People are given an application form which they can either complete on their own or with assistance if they are illiterate. Therefore there are some set criteria on which lands will be distributed on a priority basis” (see the table below and booklet 3 in this series on ‘Landless Identification’).

### Khasland distribution criteria in accordance to priority level

1. Family of the Freedom Fighter
2. Families affected by river erosion
3. An old lady who has an able son who does not look after the mother and whose husband has deserted her or who is a widow
4. The person who do not possess any type of land be it residential or agriculture
5. A person who possess only 10 decimals of residential land but does not have cultivable land.
6. A person who has lost land because the Government decided to build a Hospital or School in it or used it for any other public service

### When does Uttaran become involved?

**Mahbubul:** “The government sends out land surveyors to measure the land and also demonstrate to the land grabbers how much land they are illegally occupying. The next morning the land grabbers again go to the poor landowners with threats to keep quiet. It is then that Uttaran steps forward to provide legal assistance, for example through the filing of cases, writ petitions, and village courts.”

### What is the reach of Uttaran’s legal support services?

**Mahbubul:** “We have 33,000 beneficiaries, 14 branches and in all branches monthly meetings and workshops are held to make people aware of the legal assistance provided by Uttaran. The legal officers are instructed to look after those beneficiaries who did not get any khasland, who are left sitting idle or who could not get any control over it. They are entitled to the legal assistance of Uttaran. The legal officers instruct the field facilitators to bring these cases to the knowledge of the settlement officer. Then the field facilitator and the beneficiary come to the Uttaran centre office for reporting. When the centre manager monitors and evaluates the cases, they approve and contact the legal aid officers. After that, a process is followed to determine who requires legal assistance from Uttaran.



Uttaran provides a full range of legal support to help its target group overcome the many obstacles to acquiring khasland and water bodies

**Monir:** “But there are exceptions to the rule as well. If a case requires urgent attention, for example someone’s house has been burnt down or someone has been injured in a conflict over land, then Uttaran acts immediately instead of going through the normal lengthier process. Formalities can be conducted later on.”

**How does Uttaran select those landless who need legal assistance?**



**Monir:** “There is a specific format for identifying the landless people who require legal assistance. They have to fill up the application format and submit to the manager of their respective Uttaran area office. Our field facilitators also help them fill up the application form during their household visits. Lots of applications are received but the legal aid officer filters them during the selection process and sorts them out on a need and priority basis.”  
*(see flowchart on page 8)*

**How many cases do you deal with in a typical year?**

**Monir:** “The legal team has dealt with six High Court cases under the APARAJEO Project and 54 Lower Court cases in 2014. The success rate of all cases is on an average 80 percent in favour of Uttaran.”

**Mahbubul:** “I have dealt with three cases involving the High Court and 46 cases regarding the Lower Court in 2014. The SEMPTI success rate is also around 80 percent, as that of the APARAJEO project.”

**What opposition do you encounter in your work?**

**Mahbubul:** “We have received and still receive countless threats by

the land grabbers, local UP chairmen, the local Member of Parliament and even the police for standing by the poor and the helpless, but we still did not step back from our task. The Upazila Committee and District Committee have greatly supported us in our mission. We know that our jobs are risky and there is no security in our lives but we feel proud of the fact that in spite of all these challenges we are able to overcome these threats and fight for the rights of those who are more helpless than us. This is our greatest mental satisfaction and inspiration.”

**Monir:** “Yes, it’s very risky. Sometimes lives are at stake and I have myself received threats. They say ‘If you come we will kill you’. I was not frightened because we work as a team and we have people to support us. We are getting respect from everyone one. Everybody knows about us and what we are doing to help the needy people.”



**Mahbulul:** “The UP chairmen and police are in favour of the land grabbers most of the time. I have also been threatened; one chairman has already met me and said ‘What are you doing? I want to win the majority of votes and I will not spare you if your activities hamper me in that’. I say I am involved in an organisation and I am just doing my job. I’m not scared. I will die one day anyway, naturally or unnaturally.”

## Mediation



Uttaran provides legal support to deprived people including the extremely poor and helpless, and widowed, abandoned, low caste and landless people. Not all of their cases, however, need to reach a formal court. Indeed, it is preferable for all of the parties concerned if civil disputes are resolved as amicably, efficiently and with as little expense as possible. Uttaran believes that in all civil cases, a court of law should be the measure of last resort.

Salish (meaning ‘mediation’ in Bangla) is a common practice to resolve conflict at a village level in Bangladesh. Salish is an alternative approach to the conventional court system, saving money and time outside of the formal judicial process. Such alternative dispute resolution when mediated through a village court can impact positively on a community by maintaining social harmony, discipline, peace and cooperation. If properly conducted, none of the parties are affected negatively by this process.

### Rules of salish (mediation)

1. Any of the conflicting parties of the working areas of Uttaran should submit an application, referring the incident to the centre office of Uttaran for legal support
2. On the basis of the approval of the Uttaran centre manager, the relevant staff/supervisor will investigate the incident and give a recommendation on whether to convene a salish village court on the incident.
3. If after considering the inquiry report mediation is sought, a notice is circulated among the parties to be present at the salish at a certain time and location. At the same time the arbitrators are also invited to be present in the salish.
4. In order to complete the mediation process, a seven-member committee should be formed with the following persons:

Convener	1 acceptable person agreed by both parties and being either the UP chair or a UP member (male or female)
2 x member	Local influential civil society member
2 x member	One each selected by the parties
Member	Union federation committee member
Member secretary	Uttaran representative

5. The parties attempt to solve the conflict themselves through discussion.
6. If any conflict arises among the members of the Union Federation Committee and Primary Organisation, the following members of the seven-member committee of arbitration will be involved:
  - A. 1 acceptable person selected by both parties (to act as convener)
  - B. 1 Lawyer
  - C. 1 representative from Union Federation
  - D. 4 representatives from both conflicting parties (2 from each party)

7. If the village salish court of the UP fails to solve the case, the Uttaran legal aid committee will consider extending support for moving the case to a formal court of law
8. Uttaran legal aid officers are responsible for submitting a monthly salish report and register
9. Uttaran legal aid officers will cooperate to write down the decisions of the salish meetings.
10. Uttaran legal aid officers must submit the updated progress report after the completion of a salish mediation
11. The salish committee must attempt to resolve all solvable issues under the criminal and civil law of Bangladesh.
12. Forms of conflict under salish:
  - Family conflict
  - Domestic violence
  - Maintenance
  - Dowry
  - Child Marriage
  - Polygamy
  - Divorce
  - Inheritance
  - Fight
  - Land related conflicts i.e. boundary ownership, authentication of ownership documents.
13. Uttaran legal aid officers are responsible for preparing a case study after the completion of each salish mediation
14. If the salish committee fails to resolve a case, the Uttaran lawyer will run the case based on the approval from the Uttaran legal aid committee. In addition to this, an external lawyer could be employed to run the case for the greater interest of the case.





# Court

## What type of cases does Uttaran handle?



**Monir:** “There are three types of cases: civil, criminal and writ. Civil and criminal cases are heard in the Lower Court and the High Court, while Writ cases are fought against a government tender and can only be heard in the High Court. High Court cases are by their very nature fewer in number.”

## How do civil and criminal cases differ?

**Mahbubul:** “All civil cases related to land distribution, records and compensation. Criminal cases are related to land disputes, conflicts and criminal activities which require police involvement. Criminal cases involve punishment whereas civil cases involve compensation.”

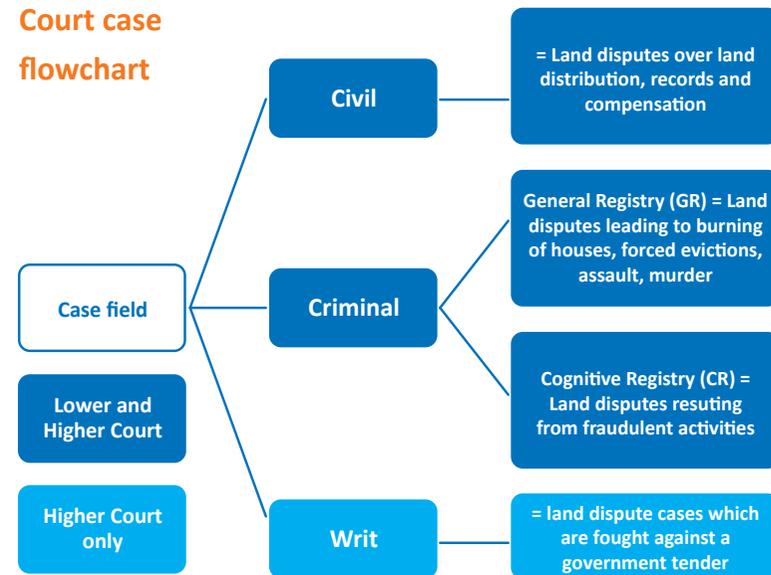


## Are all criminal cases handled in the same way?



**Monir:** “Criminal cases are then again divided into two portions: General Registry (GR) and Cognitive Registry (CR). GR cases are extreme criminal cases such as burning houses, forced evictions, and even rape and murder, for which the police do not need any warrant to arrest the perpetrator. CR deals with filing cases in the court related to fraudulent activities and forgery. Police investigate these cases before or after the court hearing as decided by the court, but they do not have the power to arrest anyone without a warrant.”

## Court case flowchart



*This is Nobijan. Her house in Paikgacha Upazila of Khulna District was burnt by land grabbers on 8 April 2015 Uttaran filed hers as a criminal case*

## Meet the lawyer

**Name:** Advocate S M Haider

**Age:** 67

**Address:** Shawon Lodge, Munjitpur,  
PS & Dis- Satkhira.

### When did you qualify as a lawyer?

I was enrolled as Lawyer in the month of Oct' 1972, but Practically I started my since middle of March 1973, Enlisted as member of Bangladesh Supreme court High court Division in the year of 1982.



### How many cases do you have a month?

"The number of cases, I had the opportunity to sometimes it might be five or more and sometimes it comes down to nil."

### What type of cases are you given?

"The cases I conduct mainly the violence cases relation to land dispute. The poor oppressed people come to me to get legal relief thinking me as their last resort."



### What has been your biggest success story with a land-related case?

"So far I recollect, my biggest achievement dealing with uttaran cases, perhaps a lady named Anwara khatun who've laud was under the control of the grabbers for a long time and lost her last hope of getting bake the same. Her husband of the unfortunate lady left her long before, which put the grabbers in an advantageous position. After years long legal fighting, I was able to win the case and managed to return back the same to her in the year 2013."

## Court case in point

The people of **East Jhiler danga**  
in  
Dumuria Upazila and Uttaran



The Bangladesh Water  
Development Board



There are **170** people from **34** households occupying **3.13** acres of land in **East Jhiler Danga, Koibazaar** in **Dumuria Upazila** of **Khulna District**. The land belongs to the **Bangladesh Water Development Board (BWDB)**, but the land grabbers want to exert their power and influence to assume full control of it. The people have filed complaints against the **BWDB**, but they are indifferent towards the **plight of the landless people**.

Every year the **BWDB** gives lease of the land to the poor people, but still it is grabbed by the influential people. The **BWDB** does not care who takes the lease of the land or into whose hands it goes. **BWDB** only becomes involved when they have to undertake a project in the area. So even when the people lodge a complaint with the **BWDB**, the utility says that the land has already been distributed and so it is now the people's problem to solve.

The people, however, were never given any paperwork by the BWDB. Seeking to exploit their insecure position, the land grabbers filed a writ petition against the people in the High Court, saying that they have no legal records or documents. In addition to providing legal support, Uttaran has given the people cows, goats, hens, and ducks for farming.

On 1 January 2013 a Write petition was filed in the High Court Division of the Supreme Court of Bangladesh under Article 102 of the constitution, directing the respondents (see below) not to evict the petitioners (landless people) from their households except in accordance with the law for a period of three months.

**The case respondents were:**

1. The Government of Bangladesh, represented by the minister for water resources
2. Bangladesh Water Development Board, represented by its chairman
3. The executive engineer of the Bangladesh Water Development Board
4. Dumuria Water Management Multi-purpose Central Co-operative Society Ltd
5. Deputy Commissioner, Khulna
6. Officer-in-charge, Dumuria Police Station
7. Chairman, Guturia UP



**Landless committee chairman Abdur Razzak Sardar:** “Our people took lease of the land through the committee. But we were thrown off the land in 2007. The land grabbers tortured us but we are helpless and do not find any cooperation from the BWDB, the police or the High Court because we are only poor. The land grabbers do not let the slightest interference deter them when they have great plans to work on something like building a street or conducting any other projects.



“They even filed false cases against the innocent poor land owners. Some of us were even jailed for it.” If I was thrown off of my land, I would feel helpless and would not know what to do or where to turn to. I am afraid and suffering from insecurity which is the reason why I am always looking up to Uttaran for assistance. We have high hopes that we will get our land back but still everything is left to fate nevertheless.”

**Landless activist Okkho Kumar Das:** “I was jailed for nine days in 2009. I had two acres of land and a quarter of this was taken from me by force by an influential landowner. I was jailed because I was preventing all sorts of illegal grabbing from taking place. There were even cases of burning houses for which a writ petition was filed.”



**Mahbulul Haque, Uttaran Legal Support Officer:** “Whenever a member of one family is tortured and taken to jail, the rest of the families step back due to fear. Instances of jailing and torture take place on Fridays because the land grabbers are aware that the Uttaran office is closed that day and so the helpless people have nowhere to turn to then. The torture continues even when there is an ongoing writ petition.”



**Head of Household Sheikh Abdullah:** “There are six members in my family and we have been living in the area for the past 22 years. I feel the most pressure as I have to handle everyone in times of emergencies since I am the head of the family. I have nowhere to go but submit to the helpless fact that his land has been taken away.”

**First chairman of the committee, Motlebur Rahman:** “I am 95 years of age - the oldest one here. I have lived in this area for 30-35 years.

There are four generations of my family all living in this same locality. I took a lonely stand against the land grabbers. I have faced all kinds of threats and I have answered them courageously. The police have supported the land grabbers in the past by barging into their locality and arresting the poor and the innocent. I had to pay a fine of 1,000 BDT to the police to prevent my own arrest, and this sum means a lot to these poor people. Our people would have been jailed had it not been for the assistance provided by Uttaran.”



**Mahbulul:** “The land grabbers have stooped to such a level that they even burnt their own houses to lay the blame on the common people. 12 cases have been filed against the people but Uttaran has solved all the cases with success.”



**Female head of household, Asia Khatun:** “I have lived in this area for 20 years. I have eight children, so I will do what Uttaran tells me to do in order to stop my land being taken away and me being left destitute.”

**Mahbulul’s legal assessment:**

“Because the khasland belongs to the government, the landless cannot claim it unless the government gives orders to hand it out. All laws related to land are handled by the government advocates. The government has absolutely no headache if one’s land is in possession of another. They only take account of the fact that they have distributed the khasland and then it is up to the people as to how they utilise it.

The land grabbers take advantage of this government indifference towards monitoring of the distribution. Being the ‘powerful and mighty’, the land grabbers can even buy off the police with their money. It is at this point that Uttaran is playing the big part by giving them legal assistance and money to buy cows, goats, vans and providing training so that they are able to make proper use of their land. As well as helping people with the processes of legal assistance that is required to seek justice, we are also training them to make the best utilisation of their land through IGAs.”

