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Edited by (English version):

Pauline Beaupre
Janet Taylor
Toby Carson
Keam Han
Heng Chinda

Edited by (Khmer version):

Neth Baromey
Keam Han
Heng Chinda
Meng Monyrak
Siv Sokngy
Ken Piseth

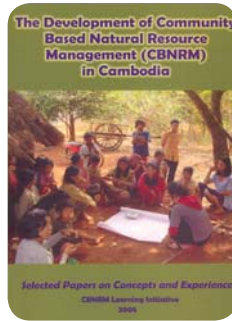
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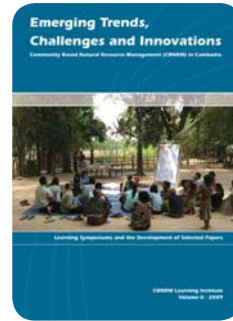
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CBNRM Learning Institute
#30, Street 9,
Tonle Bassac, Chamkar Morn,
P.O.Box 2509,
Phnom Penh, Cambodia.
Tel: +855 (0)23 994 935
Email: info@cbnrml.org
Website: www.cbnrml.org

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Coordination Team:

Keam Han
Heng Chinda
Toby Carson
Meng Monyrak
Ken Serey Ratha
Siv Sokngy
Ken Piseth
Chhoeng Sotheavann

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Chapter 9

Negotiating Tenure Conflict in Indigenous Villages of Ratanakiri Province

By: Thann Sokhann¹, Hak Sochanny², Oeur II³, and John McAndrew⁴

This chapter is based on research conducted from February to June 2008 by the participants of the Cooperation Committee of Cambodia (CCC) Analyzing Development Issues (ADI) community course with the ADI and Indigenous Community Support Organization (ICSO) teams. This research employs a participatory action research (PAR) method in an attempt to mobilize the people of three conflicting communities to solve their own problems regarding land issues. The paper provides in-depth detail of the land dispute between Pa Or, Leu Horn, and Leu Khuon with the objective to trace the historical roots of the conflict, to examine the consequences for the indigenous villages involved, and to explore possible reasons why the indigenous communities were unable to resolve the problem. The research results identified many factors that led to the failure of inclusive conflict resolution including polarization of intentions between local authorities and different claims to land possession. Overall the research concluded that the PAR method can be used effectively only with issues that do not involve powerful outside actors; the existence of these stakeholders complicate the situation such that traditional means of conflict resolution are not a viable solution.

BACKGROUND

The opening up of Cambodia's economy in the 1990s resulted in a major shift of land use and ownership patterns in Ratanakiri province with far reaching consequences for indigenous people.⁵ Traditionally, indigenous groups used

¹ Thann Sokhann, Field Worker of Indigenous Community Support Organization (ICSO)

² Hak Sochanny, Senior Trainer/Researcher of Cooperation Committee of Cambodia (CCC), Analyzing Development Issues (ADI)

³ Oeur II, Trainer/Researcher of Cooperation Committee of Cambodian (CCC), Analyzing Development Issues (ADI)

⁴ John McAndrew, Advisor of Cooperation Committee of Cambodia (CCC), Analyzing Development Issues (ADI)

⁵ The terms 'indigenous peoples', 'indigenous groups', 'indigenous communities' and 'hill tribes' are used synonymously throughout this chapter to refer to the national minorities such as the Tampuan and Jorai in northeast Cambodia who were involuntary incorporated into the larger state and who did not participate in the process of state formation. By contrast ethnic groups in Cambodia such as the Chinese, the Vietnamese, and the Muslim Cham were voluntarily incorporated into the state through migration (see Kymlicka, 2002 cited in Ehrentraut, 2004).

land resources communally to support their own subsistence. With the transition to a market economy, concessionaires and land speculators exploited land resources privately to increase their own wealth. Concurrently, road construction carried out by logging companies and the Cambodian government into remote areas of the province spurred an in-migration of Khmer settlers and the growth of market centers, particularly in Ban Lung town and Bokeo district along Highway 78. As market activity increased in these areas, Khmer migrants began to acquire land rights from indigenous people for the cultivation of cash crops or for future speculation.

Population growth in Ratanakiri province expanded exponentially from 66,764 in 1992, to 94,243 in 1998, and to 124,403 in 2005 in part due to this Khmer in-migration. As the proportion of Khmer residents increased, the proportion of the indigenous inhabitants decreased, specifically from 68 percent in 1998 to 57 percent in 2005. Khmer in-migration intensified population pressure on land resources and as property values increased land brokers and investors quickly moved to profit from land transactions. More and more, indigenous lands became viewed as a market commodity even by hill tribe people themselves (McAndrew, 2000; Fox et al, 2008).

Although the Land Law of August 2001 makes the sale of indigenous land illegal, a study conducted by the NGO Forum on Cambodia (2004) found that extensive sales and seizures of indigenous land had taken place throughout Ratanakiri province in direct contravention with the law. A follow-up study undertaken by the NGO Forum (2006) revealed that the severity of land alienation had accelerated in almost one-third of the provincial communes. The Sub-Decree on Procedures of Registration of Land of Indigenous Communities, required to clarify the provisions contained in the law, was not drafted until 2008 and had yet to be finalized and adopted.

The land dispute in Ke Chong commune, Bokeo district, examined in this chapter was precipitated by the incursion of Khmer settlers and buyers into Ratanakiri province in the late 1990s and early 2000s. During these years land in the study area increasingly became a scarce and valuable resource. Conflict erupted over the 224 hectares of land in question precisely because it was a contested area under conflicting claims of three indigenous villages.

OBJECTIVES

This research has three objectives:

1. To trace the historical development of the land dispute,
2. To examine the consequences of the land dispute for the indigenous villages involved; and
3. To explore the reasons why the indigenous groups were unable to resolve the problem.

RESEARCH METHODS

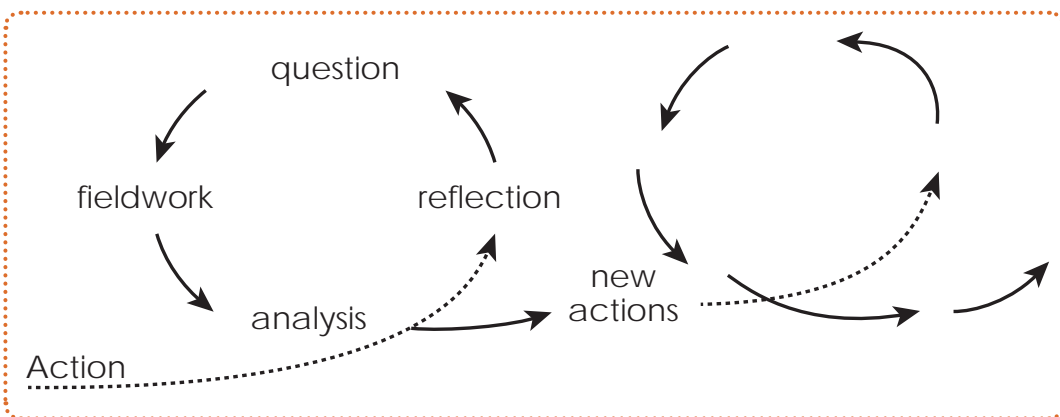
The research was conducted as part of the ADI community course convened from March to June 2008. In February 2008 the ADI project team met with the ICSO staff in Ratanakiri province to discuss the research topic of the upcoming course. For several years ICSO had been working in Bokeo district with indigenous communities involved in land conflicts and this presented itself as a relevant topic for research. ADI and ICSO staff made a field trip to several villages in Bokeo district and, in Ke Chong commune, visited Leu Khuon, Leu Horn and Pa Or villages where indigenous groups were embroiled in a tenure conflict. By the end of the visit to Ratanakiri, the ADI team and ICSO staff decided upon the land conflict in Ke Chong commune as the research topic for the community course training.

In March 2008, the community course commenced in Ratanakiri with ICSO and other NGO fieldworkers from the northeast provinces. The participants spent the first week in a classroom setting and began by reflecting on their current development practice and its relation to the rapid economic and social change occurring in northeast Cambodia. During the initial classroom sessions the participants came to understand development as building the capacity of people to respond and adapt to the changes taking place in their lives. The participants realized that NGOs had much potential to mobilize people to respond to issues emerging in their communities. During this first week of training the concept of participatory action research (PAR) was introduced as a precursor and guide to the fieldwork that would follow immediately in the second week.

PAR is a cyclical method that moves from analysis to planning to action and then to more analysis, planning and action (Figure 1). PAR aims to mobilize people to solve their own problems. The process allows for change and adaptation as action on issues of common concern lead to reflection, analysis, and planning for new action. PAR involves the immersion of the researchers in the communities where the research takes place. The session on PAR was pivotal to the first week of classroom training for it included the steps that participants would implement in the second week of fieldwork: gathering information, identifying and analyzing issues, sharing analysis and ideas with the people, and encouraging the people to develop a community action plan on a specific issue that affected them.

At the start of the second week of fieldwork the participants were divided into three groups with ADI team members assigned to respective groups as facilitators. The three groups then took up residence for five days in one of the three indigenous villages of Leu Horn, Pa Or or Leu Khuon in Ke Chong commune. Through this immersion the participants and team researchers sought to understand the inter-village land conflict from the respective points of view of the various actors through informal interviews and village meetings with a view towards the dispute's satisfactory resolution.

Figure 1. Participatory Action Research Cyclical Process



Source: Yoland Wadsworth, "What is Participatory Action Research?" *Action Research International*, November 1998

After three days of informal interviews, indigenous people came together in their own villages to identify the key issues of the conflict from their respective points of view. At the end of these separate meetings, each village developed a plan or strategy to resolve the tenure conflict. On the day following the village meetings, representatives from the three villages came together in an inter-village meeting to listen to the plans of the other groups and to move towards a resolution of the conflict. Initially, representatives from the three villages achieved some progress agreeing to stop all further land sales until a resolution of the conflict had been reached. However, as the negotiation continued the representatives of Leu Khuon village reversed their position arguing that the land under dispute should first be divided up before setting a moratorium on land sales. This led all three groups to become intransigent and revert back to their original positions of exclusive ownership which effectively undermined any prospect for a negotiated settlement.

During the course break from mid-March to early June, the ICSSO participants made an effort to follow up with the respective village parties. However, the entrenched positions of the indigenous groups exacerbated by pressure from real estate agents and commune authorities to sell tracts of the land to



Leu Khuon village meeting, March 2008
Photo by: ADI Team - 2008

Khmer buyers appeared to preclude a satisfactory resolution. While the course participants were unsuccessful in moving the indigenous groups towards a resolution of the conflict, the documentation of the case account was seen to provide valuable insights into the process of indigenous land alienation endemic throughout Ratanakiri. The focus of the research thus shifted from an attempt to bring people together to resolve the tenure conflict to an investigation of the reasons why the negotiations were unsuccessful.

In June 2008, the participants of the community course returned to Ratanakiri to reflect on the outcomes of their participatory action research. The ICSO participants presented an update of the situation in Ke Chong commune, which had worsened since March due to subsequent encroachments and land sales. Although disheartened by the developments of the tenure conflict in Ke Chong commune, the ADI team and the ICSO participants decided to write up the case in detail for submission and discussion at the regional and national symposia organized by the CBNRM Learning Institute.

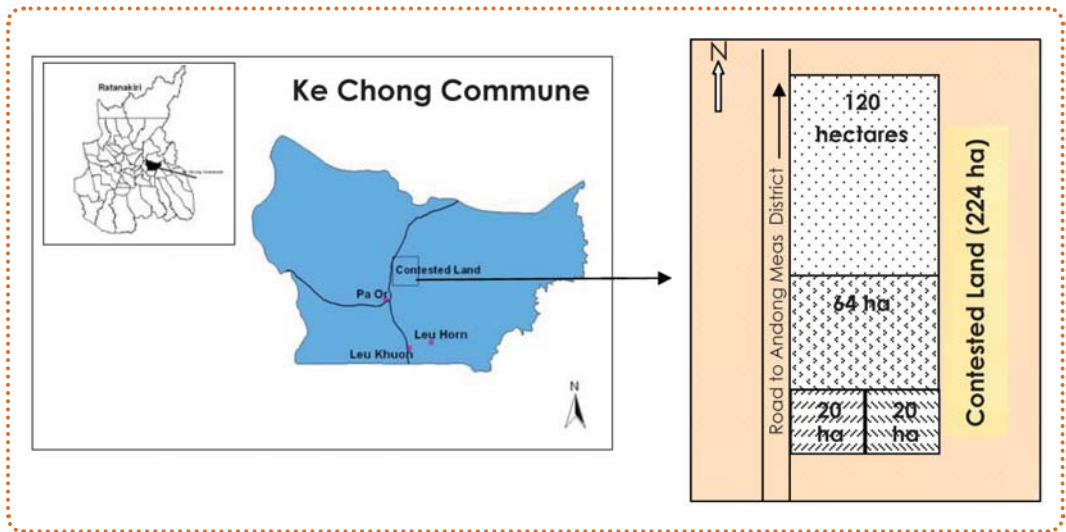
MAJOR FINDINGS

Description of the Case Dispute

Background

The land conflict in Ke Chong commune involves three indigenous villages: Leu Khuon, Leu Horn, and Pa Or. The residents of Leu Khuon village are primarily Jorai with Khmer settlers, those from Leu Horn village are primarily Jorai, and those from Pa Or village are mostly Tampuan. The land in dispute comprises three parcels of contiguous land in Ke Chong commune on the east side of the road traveling north on the provincial road from Bokeo to Andong Meas district. In total the disputed land area contains about 224 hectares and is divided into three tracts of 120 hectares, 64 hectares, and 40 hectares respectively (Figure 2).

Figure 2. Location of Tenure Conflict in Ke Chong Commune



Leu Khuon and Leu Horn villages have long been established in the area near the disputed land. Pa Or village, which was originally established near the O'Suong stream in Ke Chong commune, was transferred by the government in 1982 to its present site adjacent to the now disputed area. This was done to remove the village from the government's sporadic conflicts with the Khmer Rouge who were still active near O'Suong. The Pa Or villagers established a residential site for their new village and started to clear and cultivate chamcar or slash-and burn farms on both sides of the provincial road. Given the abundance of slash-and-burn farming land in the vicinity both the Leu Khuon and Leu Horn villagers acceded to the government policy to relocate the Pa Or villages into their area. While some Pa Or villagers returned to O'Suong after the conflict with the Khmer Rouge subsided, the majority continued to live in the new settlement. In 1995 the Provincial Governor of Ratanakiri granted Pa Or villagers the right to rebuild their homes in the area after their village was destroyed by fire.

The incursion of Khmer settlers and land buyers into Bokeo district in the late 1990s and early 2000s gave rise to the current land dispute. In this period Khmer migrants began to move into Leu Khuon village particularly along the road to Andong Meas district while absentee land buyers bought up lands along the road for cash crop production. Leu Khuon and Leu Horn villagers

both sold communal lands to Khmer buyers and Pa Or villagers reportedly sold land in the O'Suong area near their former village. Meanwhile, indigenous villagers recognizing the value of permanent crops started to cultivate cashews and other cash crops on their slash-and-burn farms. Land in Ke Chong commune was becoming a scarce and valuable community and the long-standing accommodation with Pa Or was now being questioned by Leu Khuon and Leu Horn.

In 2002 elders from Leu Khuon met with elders from Pa Or and asked them to vacate their residential and slash-and-burn lands along the provincial road and to return to their former village site in O'Suong. The Leu Khuon elders claimed that the areas occupied by the Pa Or villagers were in fact Leu Khuon ancestral lands granted to Pa Or for temporary use. The Pa Or villagers refused to accept the claims of Leu Khuon villagers arguing that they had established their village and cultivated slash-and-burn farms in the area since the early 1980s.

In 2003 some Leu Khuon villagers were involved in sketching a participatory land use planning (PLUP) map with support from the government's GIS unit under the Seila programme. According to the commune chief this was a natural resource management map of the entire Ke Chong commune demarcating burial places, spirit forest areas, mountains, farm land and streams. However, the PLUP map did not indicate clear village boundaries and the participation of commune villagers in the drawing and development of the map was limited. Around 2004, Pa Or villagers drew their own village map indicating residential and farming areas. Not surprisingly, the boundaries drawn up by the Pa Or villagers were not recognized by the Leu Khuon and Leu Horn villagers.

The Dispute Worsens

In 2004 the land dispute took what appeared to be an irreversible turn for the worse. Leu Horn villagers found themselves in a situation where they needed to raise money to repay a Khmer buyer who had advanced them money for a parcel of land in their own village. For some reason after the transaction was completed and the money received, the Leu Horn sellers were unable to deliver the parcel due to resistance from other Leu Horn villagers. The only way for the Leu Horn villagers to generate money to requite the Khmer buyer and cancel the agreement was to sell another parcel of land.

The Leu Horn villagers who likewise had ancestral claims to the land used by Pa Or asserted their presumed rights. Leu Horn villagers decided to sell the 64 hectare tract cultivated by Pa Or villagers in the central part of the disputed area to a Khmer businessman for a reported USD 20,000 (Figure 2). To legitimize their purchase of the 64 hectare parcel the Leu Horn villagers obtained the thumbprints of six Pa Or cultivators in the area on a document which attested that they had sold their farms. Two of the six Pa Or households reportedly received about USD 500 each, two received motorbikes, and two had yet to receive anything.

The sales transaction was undertaken without the broader knowledge or consent of the Pa Or villagers and transferred without the signed notification of the Ke Chong commune chief or the Pa Or village chief. However, the sales contract was made with the signed notification of the district chief. Of greater consequence, the Leu Horn transaction with the Khmer businessman was done without the broader knowledge or consent of the Leu Khuon villagers.

The immediate reaction of the Pa Or villagers was to declare the transaction with the six farmers null and void. They argued that the six Pa Or farmers did not understand the transaction and thought that it represented compensation received for cashew nut trees that had been cut down on areas that they worked. In its entirety, the 64 hectare parcel was cultivated mainly to cashew nut trees by 12 to 14 Pa Or farmers and large sections of it were forest area. Given its value to the community, the Pa Or villagers aggressively resisted attempts by the Khmer businessman to take control of the land. Workers hired by the Khmer businessman arrived several times with chainsaws to clear the land but the Pa Or villagers quickly mobilized to stop them. Over the next few years the conflict on the disputed lands remained at a stalemate. However, the Leu Horn villagers had received money for the 64 tract from a Khmer buyer which could not be indemnified. The inclusion of this outside actor effectively placed the dispute beyond traditional means of conflict resolution.

Subsequently, the Pa Or villagers took legal steps to disassociate themselves from the six Pa Or farmers who had made their thumbprints on the sales document held by Leu Horn. Acting through a representative in late 2007, 523 Pa Or villagers filed a complaint in the Ratanakiri Provincial Court against the farmers from Pa Or who had received money from Leu Horn to relinquish

the 64 hectare tract. The complaint accused the errant farmers, who had since left the village, as having secretly sold Pa Or village's communal land. At about the same time the Pa Or villages also submitted a complaint to the King Father and the Queen Mother asking that the disputed land be recognized as belonging to Pa Or. Provincial authorities advised the Pa Or villagers to resolve the dispute among the indigenous villages involved.

Recognizing that the Leu Horn villagers had benefited from the sale of the 64 hectare parcel while Leu Khuon had not, the Leu Khuon villagers insisted that the entire 224 hectares of land in question should be divided up among the three villages. Leu Khuon further threatened to sell parcels of the disputed areas to Khmer buyers without prior consent if the Pa Or villagers refused to accede to their demand. The Pa Or villagers argued that the loss of their permanent and slash-and-burn farms in the 224 hectare area would greatly undermine their subsistence.

The resolution of the dispute was further complicated by land encroachments taking place in other parts of Ke Chong commune. In O'Suong a Khmer businessman who had purchased indigenous lands in nearby Roy village had encroached upon 300 hectares of slash-and-burn and forest lands at the site of the Pa Or former village. This left the Pa Or villagers without sufficient ancestral lands in O'Suong to support their subsistence in the event of their return. The Leu Khuon villagers countered that Pa Or villagers actually sold this land for USD 3,500 and therefore had no legitimate claim to the ancestral lands of Leu Khuon. The Pa Or villagers tried to make the case that money was received as compensation for trees destroyed and not as payment for land sold. But feelings of mistrust and resentment persisted among all three groups and undermined the credibility and sincerity of the individual positions.

Recent Developments

In May 2008, the Pa Or and Leu Khuon villagers reached a settlement on the 40 hectare tract on the southern portion of the 224 hectares of disputed land (Figure 2). Unfortunately the agreement was reached by selling more land to outside buyers; the Pa Or village apparently sold 20 hectares of the 40 hectare tract to a Khmer businessman. This parcel was located adjacent to the provincial road. The remaining 20 hectares was given back to the Leu Khuon villagers in addition to USD 1,000 in compensation. It is unknown how much the Pa Or villagers received for the sale of the 20 hectares or how this

amount was divided. However as a result of the land sale and the agreement with the Leu Khuon villagers, the Pa Or villagers no longer had the use of the entire 40 hectare area. The conflict on this tract was resolved although half of the land was lost to outsiders.

As of June 2008, the conflict on the 64 hectare tract which had been sold by Leu Horn villagers was still pending. Despite petitions submitted by the Pa Or villagers to several bodies, no resolution had been reached. The Khmer buyer had not made recent attempts to take possession of the 64 hectare parcel and about 15 Pa Or village families cultivated farms on the property. While the dispute was dormant it was only a matter of time before the Khmer buyer would reassert his claim of ownership over the purchased land.

In June 2008, indigenous people from Sa Krieng village in Ke Chong commune started to clear 30 hectares of land within the northern 120 hectare tract of the disputed area (Figure 2). The Sa Krieng villagers claimed this land as their ancestral land. Of the 30 hectares cleared, 10 hectares were reportedly already sold to a Khmer businessman. This development led the opposing Pa Or and Leu Horn villagers to join forces and prepare a petition to the authorities to stop the Sa Krieng villagers from clearing this land and encroaching on the area.

This resistance notwithstanding, Leu Horn villagers approached 10 Pa Or households who cultivated land in the 120 hectare tract and asked them to sell their land rights. The 10 families agreed to give up their lands and each reportedly received USD 200 or USD 2,000 in total. The Leu Horn villagers claimed that they were buying up the land for their married children who did not have slash-and-burn farms and not to sell to Khmer buyers.

Many Pa Or farmers were prepared to sell land rights on the 120 hectare tract and maintained that they preferred private over communal land titles. As a result of the land transactions taking place within the village without prior consultation or discussion, Pa Or villagers had generally lost trust and confidence in their ability to deal with land issues collectively. While conflict over the 120 hectare tract persisted, agents from Leu Horn village actively sought to buy up parcels in this area from the Pa Or villagers. Meanwhile the Leu Khuon villagers who had once made claims over the 120 hectare tract were silent about developments in this area.

Discussion and Analysis of Key Findings

Competing Rights to Land: What is Legitimate and Legal

Indigenous peoples' rights to land and forest areas in Ratanakiri province have been passed down through generations based on commonly accepted principles of customary law. Under this law land is considered as communal property and held in stewardship for the use and sustenance of future generations. While indigenous groups are able to clear new lands as part of their shifting cultivation, they have to respect village limits and refrain from accessing areas which entail crossing over lands under cultivation by neighboring villages. In the past the abundance of land available for slash-and-burn farming precluded major disputes between neighboring communities (Fox et al. 2008; Pel et al., 2008).

Throughout the 1970s indigenous groups in Ratanakiri were displaced from their ancestral lands as a consequence of war and the coming to power of the Khmer Rouge regime. After the fall of the Khmer Rouge in 1979 indigenous people started to return to their ancestral areas although not all were able to do so on account of sporadic conflicts which persisted between the government and remnants of the Khmer Rouge forces. In the case of Pa Or the government relocated Tampuan villagers onto the ancestral lands of Jorai villagers in Leu Khuon and Leu Horn. Customary law which allocated territorial boundaries to tribal groups was effectively compromised by the prolonged years of conflict and the intervention of the state. While the Jorai villagers in Leu Khuon and Leu Horn had legitimate claims to their ancestral lands in the contested area, the Tampuan villagers from Pa Or had derived rights to their residential and slash-and-burn lands as a result of historical circumstances. That the lands in question remained uncontested for more than a decade indicated that mutual claims of legitimacy were respected.

While all three indigenous groups had legitimate claims to the contested area, all three also had a legal basis to support their claims. The passage of the Land Law in 2001 provides a legal framework for indigenous groups to gain collective ownership of their lands. Article 23 states that: "An indigenous community is a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use." The Tampuan

villagers of Pa Or and the Jorai villagers of Leu Khuon and Leu Horn fulfill the conditions of this definition. Article 25 of the Land Law further states that: “The lands of indigenous communities are those lands where the said communities have established their residences and where they carry out traditional agriculture.” Again the three indigenous groups are able to claim ownership of land under this directive. Relevant to this case Article 25 continues: “The measurement and demarcation of boundaries of immovable properties of indigenous communities shall be determined according to the factual situation as asserted by the communities, in agreement with their neighbors....” This provision puts the burden of conflict resolution on the indigenous groups involved and requires clarification in the proposed Sub-Decree on Procedures of Registration of Land of Indigenous Communities. Meanwhile Article 28 of the Land Law makes clear that: “No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community.”⁶

Beyond Traditional Means of Conflict Resolution

Elders in indigenous communities possess an intimate knowledge of customary law and for generations have played a pivotal role in negotiating and mediating conflicts. A recent study on indigenous traditional legal systems and conflict resolution in Ratanakiri and Mondulakiri provinces revealed that preserving community solidarity is a key objective of traditional law which seeks to reach agreement between two parties so that the aggrieved is compensated, the guilty party punished, the two parties reconciled, and harmony restored. The study found that indigenous communities overwhelmingly supported their traditional legal system, although it lacked the authority to deal with the growing number of disputes over land and natural resources. The research indicated that indigenous communities were marginalized within the formal legal system, which was often used as a mechanism by powerful people to further disenfranchise them. It also recognized that the formal and informal systems often addressed different kinds of conflict, and that the informal system could not be made to stand in for the formal system. The study argued that efforts to reform the formal legal system were necessary and urgently needed (Backstrom et al. 2006; see also McAndrew and Oeur 2009).

⁶ While the 2001 Land Law provides for the issuance of collective titles to indigenous peoples, it does not prohibit the issuance of individual titles to indigenous citizens. Article 30 of the Land Law states that: “Any person who, for no less than five years prior to the promulgation of this law, enjoyed peaceful, uncontested possession of immovable property that can lawfully be privately possessed, has the right to request a definite title of ownership.” This article would appear to bolster the legal claims of the Pa Or villagers who do not possess ancestral rights but who settled in the area prior to 1996 and enjoyed uncontested possession until 2002.

In Ratanakiri the forces driving the land market generally eroded the role of elders in mediating land disputes. Threatening, cheating, and persuading were commonly used by outsiders to acquire land from hill tribes (Pel et al. 2008). Khmer land buyers and speculators normally by passed village elders and negotiated directly with indigenous households; often working through Khmer literate village and commune chiefs to broker their land deals. This was certainly the case in Leu Khuon commune where the commune chief was reputed as an active broker in local land sales (Fox et al. 2008). Elders in the study villages acknowledged that they had no influence over land sales which involved people with money and power.⁷

Although deemed illegal by the 2001 Land Law, the transfer of indigenous land to Khmer outsiders for cash nullified the role of village elders as mediators. In effect, these transactions placed tenure disputes beyond the realm of traditional conflict resolution where an agreement could be reached, the aggrieved could be compensated, the guilty party could be punished, and the two parties could be reconciled. Ultimately, the land market drastically eroded local governance structures and communal solidarity. Land sales in the contested area of Ke Chong commune not only diminished land resources necessary for sustaining livelihoods, they also debilitated cultural and social resources needed to deal with the exigencies of change itself (see McAndrew 2000).

Market Influences and Communal Solidarity

While the expansion of the market economy has had far reaching consequences for indigenous villages in Ratanakiri, it would be unfair to assert that it has produced only disastrous results. Indigenous groups have showed themselves ready to participate in the benefits brought about by the cultivation of cashews and other cash crops, the growth of local markets, the opportunities for wage work, and the greater access to health centers. The changes brought about by improved roads and expanded trade have not all been detrimental to the valued life ways of the indigenous people (McAndrew 2000; Fox et al. 2008).

⁷ The elders expressed this by saying that they no longer had *toeuk mort prai* or salty saliva which one must have to influence others.

Nonetheless, Khmer in-migration which accompanied the rise of the market economy resulted in increased population pressure and higher market prices on indigenous lands. Faced with constricting areas available for shifting agriculture, eager to earn cash income from cashew production, and needing to protect their farmlands from encroachment, indigenous groups shifted to more permanent land use cultivation. Communal systems of land management gave way to more independent farming of cash crops with benefits accruing to individual households. Land increasingly began to be viewed as a market commodity that could be sold by individuals to acquire motorbikes, televisions, video players, and other consumer goods. To be sure villagers with plots along the road often felt that their land would be encroached upon or sold by others, if they did not sell it themselves. Unable to rely upon the state protection of common property and confronted with the dissolution of communal land use systems, villagers could no longer trust each other to act in the common good. With households looking after their own immediate interests, it was extremely difficult to foster mutual cooperation and communal solidarity so critical to halting further marginalization through land alienation (McAndrew 2000; Fox et al. 2008; see also Diokno 2008).

KEY LESSONS LEARNED

The research undertaken for this chapter provides key lessons learned for the development of theoretical and methodological approaches to the study of tenure conflicts among indigenous peoples in northeast Cambodia.

With respect to theory, understanding how the land market works in Ratanakiri province requires in-depth research on land right transactions as social processes and interactions among a variety of social actors. Pierre-Yves Le Meur defines this empirical orientation as 'ethnography of land rights'. This involves studying land rights in context; how rights are defined, enacted, contested, negotiated and transformed. Within this framework the notion of land market refers not only to land sales and purchases, it encompasses the whole range of land right transactions which may comprise elements of threat, violence, force and corruption. The land market thus constitutes an arena of actors linked in land right transactions involving the transfer of money, goods, information, and the expression of power (Pel et al. 2008).

Le Meur argues that agrarian contracts should be studied as social processes of negotiation between actors, which in the case of conflicts involves political and legal authorities. He maintains that it is critical to identify the places and processes of where and how land transactions are validated and to assess both their legitimacy and legality. This entails taking into account local state workings at commune, district and provincial levels as well as the involvement of formal and informal local leadership. This theoretical approach requires long-term fieldwork that respects the actors' point of view (Pel et al. 2008).

With regard to method, the PAR approach undertaken in Ke Chong commune underestimated the complex factors surrounding the tenure conflict which it sought to address. The sale of contested land in 2004 to a Khmer buyer operating outside of the indigenous community, and the state's failure to rescind this illegal transaction, effectively placed the dispute beyond the means of traditional conflict resolution. By comparison, PAR approaches implemented by NGOs in the indigenous Ratanakiri villages of Krala (Poey commune, Ou Chum district) and La En (Toeun commune, Koun Mom district) proved to be effective precisely because villagers were mobilized before land sales had undermined local governance structures and communal solidarity (Fox et al. 2008; Pel et al. 2008).

CONCLUSIONS

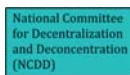
In September 2007 Cambodia, together with 142 other member states, voted to adopt the United Nations Declaration on the Rights of Indigenous Peoples. This non-binding declaration establishes that 'Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. States shall give legal recognition and protection to these lands, territories and resources.' Indeed Cambodia's 2001 Land Law enables indigenous peoples to gain communal title to their traditional land. However, after seven years the Sub-Decree on Procedures of Registration of Land of Indigenous Communities has still to be finalized and adopted. Moreover, the provision in the 2001 Land Law which prohibits the sale of indigenous land even before rights are recognized and titles awarded is rarely, if ever, enforced.

The tenure conflict described in this chapter emerged within the context of the expanding land market and indigenous land alienation endemic to Ratanakiri province. In the end the negotiations failed to reach a satisfactory settlement and reconcile the parties due to the involvement of outside buyers and brokers, the failure of the commune participatory land use planning (PLUP) map to delineate clear village boundaries, the resentment and mistrust which undermined the credibility of respective village positions, the lack of articulation between traditional and formal conflict resolution systems, the ascending view of land as a market commodity, the breakdown of communal solidarity, and perhaps most crucially the state's lack of political will to enforce the provisions of the 2001 Land Law.

REFERENCES

- Backstrom, Maria, Jeremy Ironside, Gordon Paterson, Jonathan Padwe, and Ian G, Baird (2006). *A Case Study of Indigenous Traditional Legal Systems and Conflict Resolution in Ratanakiri and Mondulkiri Provinces, Cambodia*, Phnom Penh, UNDP/Ministry of Justice Legal and Judicial Reform Programme.
- Diokno, Maia (2008). *The Importance of Community: Issues and Perceptions of Land Ownership and Future Options in 5 Communes in Mondulkiri Province, Cambodia*, NTFP Exchange Programme for South & Southeast Asia and NGO Forum on Cambodia.
- Ehrentraut, Stefan (2004). *'The Theory of Multiculturalism and Cultural Diversity in Cambodia'*, Freie wissenschaftliche Arbeit zur Erlangung des Grades eines Diplom-Verwaltungswissenschaftlers an der Wirtschafts-Und Socialwissenschaftlichen Fakultat Universitat Postdam.
- Fox, Jefferson M., Dennis McMahon, Mark Poffenberger, and John Vogler (2008). *Land for My Grandchildren: Land-Use and Tenure Change in Ratanakiri, 1989-2007*, Community Forestry International and the East West Center.
- Kymlicka, Will (2002). *Contemporary Political Philosophy, An Introduction*, Oxford, Oxford University Press.
- McAndrew, John, (2000). *'Indigenous Adaptation to a Rapidly Changing Economy: The Experience of Two Tampuan Villages in Northeast Cambodia'*, in *Bulletin of Concerned Asian Scholars*, Volume 32, Number 4.
- McAndrew, John and Oeur Il, (2009). *'Upholding Indigenous Peoples Access to Natural Resources in Northeast Cambodia'* in Jayanatha Perera, ed. *Indigenous People and Communal Land Management in Asia*, Manila, Asia Development Bank.
- NGO Forum on Cambodia (2006). *Land Alienation in Indigenous Minority Communities, Ratanakiri Province, Cambodia*.
- NGO Forum on Cambodia (2004). *Land Alienation from Indigenous Minority Communities in Ratanakiri*.
- Pel, Sokha, Pierre-Yves Le Meur, Sam Vitou, Laing Lan, Pel Setha, Hay Leakhena, and Im Sothy (2008.) *Land Transactions in Rural Cambodia: A Synthesis of Findings from Research on Appropriation and Derived Rights to Land*, Working Paper 18, Gret Publications.

LIST OF SUPPORTERS AND CONTRIBUTORS



Rohal Suong
Community Fishery

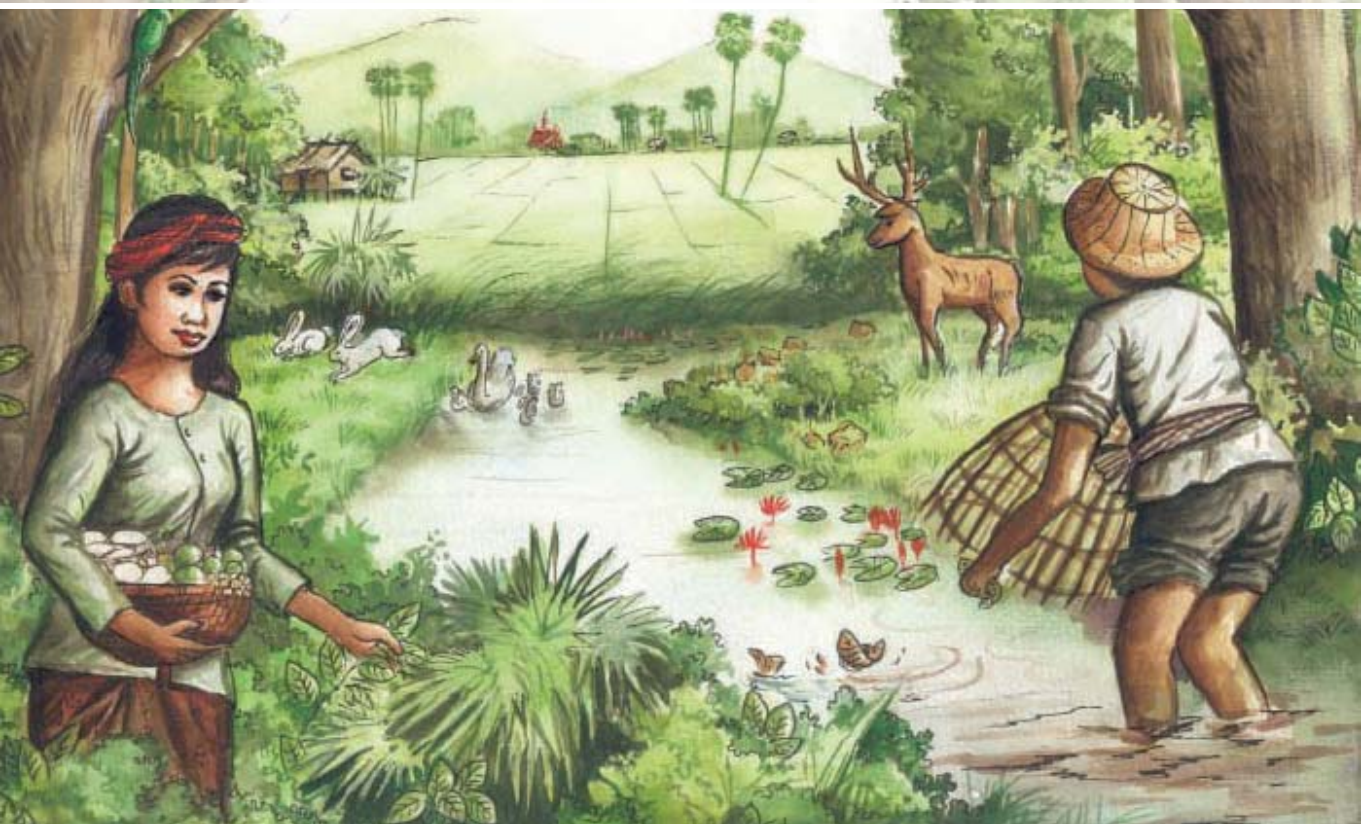
Preaek Luong
Community Fishery

Peam Krasaop
Community Protected Area

This is the second in a series of publications focusing on CBNRM in Cambodia. It is published by the Community Based Natural Resource Management Learning Institute (CBNRM Learning Institute). Like Volume I, CBNRM Volume II is the outcome of a series of learning symposiums, consultations, meetings and workshops, staged over a period of two years with local and international practitioners and academics. All are working in the field of CBNRM, although they are based in different geographical areas primarily across Cambodia, but also in the wider Southeast Asian region. A total of 73 authors and 30 peer reviewers have collaborated – sharing their skills and experiences in this important topic. Their collective effort has produced 31 chapters giving a wide overview of current practices, thinking, challenges and opportunities in the field of CBNRM in Cambodia, now and in the years to come.

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Community Based Natural Resource Management Learning Institute

#30, Street 9, Sangkat Tonle Basac,
Khan Chamkar Morn, Phnom Penh.
P.O. Box 2509 Cambodia.
Tel: +855 (0)23 994 935
Fax: +855 (0)23 224 171
Email: info@cbnrml.org / office@cbnrml.org
Website: www.cbnrml.org

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