

Natural Resource Management Country Studies

Cambodia



Photo Colin Nicholas

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Cambodia Report

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1. Indigenous Peoples of Cambodia

There is no special provision in the Constitution of the Kingdom of Cambodia for indigenous peoples¹. However indigenous peoples argue that they should not be discriminated as all citizens have equal rights according to Article 31.2 of the Constitution, which states that:

"Khmer citizens shall be equal before the laws and shall enjoy the same rights, freedom and duties, regardless of their race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, resources and any position".

There is no official definition of “indigenous peoples” in Cambodia. However this does not indicate the absence of the concept. There are laws and policies which uses different terms such as “indigenous communities”, “indigenous ethnic minorities”, “highland peoples” etc whose intent clearly refers to indigenous peoples.

For instance, Article 23 of the Land Law 2001 refers to “indigenous community” as “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.”²

Other laws such as the Forestry Law of 2002 refer to “local communities”³. The Sub-decree on the Community Forestry Management (2003) under the Forestry Law defines “Local Community” as “minority ethnic community or a group of local residents with original settlement in one or more villages...”⁴. Further, the draft Protected Area Law in its lexicon defines “indigenous ethnic minorities” as “people living in mountainous areas, most of whom make their living by practicing shifting agriculture and other additional livelihoods, such as hunting, fishing, and collection of forest products/by-products”.

From these, it is very clear as the Asian Development Bank Study on Indigenous Peoples, Ethnic Minorities and Poverty Reduction (2001) states: “Cambodia has a reasonably clear definition of the vulnerable groups considered to be indigenous for practical development purposes”⁵.

The 1998 Population Census⁶ estimated that about 0.9 percent or 101,284 people of Cambodia’s total population of 11.4 million people belong to indigenous groups⁷, constituting almost 64 percent of people living in Ratanakiri Province (ADB, 2002).⁸

¹ In this report, government (particularly the Department of Ethnic Minorities Development), NGO and indigenous peoples representatives agreed to the use of the term "indigenous peoples". Some documents still use the term "ethnic minorities" and are left as it is when the document is quoted but this term is not used as it is often confusing when used in the context of Ratanakiri and Mondulakiri where they represent the majority in these provinces (67% and 71%).

² Article 23, Land Law of 2001, Cambodia.

³ Article 11, para (ii) and Article 37, para (i)

⁴ Article 5, Sub-decree on the Community Forestry Management (2003).

⁵ Quoted from Suzie Brown et al.

⁶ Institute of Statistics, Cambodia, 1998

⁷ The definition of “indigenous” does not include *Chinese, Vietnamese* or *Cham* people.

⁸ This figure is likely to underestimate the numbers of indigenous minorities in Cambodia, as the data were only inferred from a question about the mother tongue of the respondent. In some areas of the country people may not have felt comfortable with admitting they were an ethnic minority (Helmert and Wallgren, 2002).

Indigenous groups are defined according to the World Bank's Indigenous Peoples' Policy guidelines (World Bank, 1991) as groups with:

- (a) a close attachment to ancestral territories and to the natural resources in these areas;
- (b) Self-identification and identification by others as members of a distinct cultural group;
- (c) An indigenous language, often different from the national language;
- (d) Presence of customary social and political institutions; and
- (e) Primarily subsistence-oriented production.

Article 24 of the Land Law 2001 also allows for self-identification when it stated "an individual who meets the ethnic, cultural and social criteria of an indigenous community, is recognized as a group member by the majority of such group, and who accepts the unity and subordination leading to acceptance into the community shall be considered to be a member of the indigenous community".

At a National Indigenous Forum in Kompong Speu in September 2004, the participants defined self-identification to include the following:

- having a lineage of indigenous blood (parents and grandparents were indigenous),
- living permanently within the community,
- managing and using lands and forests communally,
- practicing rotational agriculture,
- having ceremonies related to agricultural practices,
- having burial forests,
- respecting spirits (*neak ta*) and holding ceremonies for the village *neak ta* every year,
- calling/praying for help and having thanksgiving ceremonies when spirits help,
- having own languages
- individual self-identification as indigenous

The Forum also recommended that the "process to verify eligibility of an indigenous community should be simple and streamlined while preventing potential manipulation by a non-indigenous person or group attempting to gain rights to traditional lands. The State should defer authority to communities, following their own traditional customs, to allow them to claim their indigenous ethnic identity".

2. Indigenous Natural Resource Management System

2.1 Concepts and Principles of Indigenous Natural Resource Management

Indigenous peoples of Cambodia have their own traditional concepts and principles of natural resource management systems, which are still being practiced today. Some communities have adapted the system with the changes that has been brought about by statutory laws and policies, as well as the growing change within indigenous societies.

Indigenous communities still maintain clear territorial boundaries between community lands and community members do not allow strangers to use community land, although any individual may hunt on the territory of other villages. For example, people from highland villages in Ratanakiri do not allow rotational agricultural farms of other villages to be established within their territory. Indigenous peoples in Mondolkiri Province or other provinces however do allow other villagers to use their land for rotational agriculture and to collect products from their community forest but anyone using neighboring land in this manner would need to get prior permission from the traditional village leader. In most cases however, families have enough resources from their own land or around their own village. If inter-marriage occurs, and the couple has no land, they can approach the village elders or their relatives to request for their own plot. The couple are normally allowed to collect non-timber resources for their own use without getting the permission from the village elder.

Indigenous Resource Management

Traditionally, the land is owned by the community but each family has access to resources and to their own plot of land. This arrangement is governed by a group of elders. Each community has clear boundaries associated with a stream, mountain, rock or big tree. Farm lands are divided and demarcated and encroachment on other peoples' farms is not allowed. Traditionally, people from different villages are not allowed to draw water from a given pool if one village has been granted rights over that pool. Communities also used to relocate their settlement and farming when they were confronted with diseases or disasters or when the population became too big.

Pat Chan Seng, *Tampoun* from Patang commune, Lumpath District

Communally-owned lands are further sub-divided into several individually managed plots. Each family within the community decides on the type of crops and varieties depending on the soil to ensure they adequately meet diverse food needs and to manage the farm work throughout the year. The family also uses their plots for different needs, for example plots for long-term crops are also used to graze livestock. Cultural, spiritual and social systems also integrated into natural resource management system, and as such festivals and ceremonies are tied into agricultural cycles. Social support among family members in terms of sharing of labour is also taken into consideration when opening up land and the planting and harvesting cycles.

2.2 Framework and Institution of Indigenous Natural Resource Management

A number of studies on indigenous resource management systems show a highly organized system that is closely linked to culture and adapted to the local environment. Institutional structures and mechanisms exist, such as traditional land laws, to govern such a system. An example below shows how land use is governed by traditional customs and institutions of the *Brao*, *Kavet*, *Kreung* and *Lun* peoples, a concept that is similar to other indigenous peoples in Cambodia.

Concept and Institutional Land Management of *Brao* People

Land use is governed by a *Brao* custom called '*tang gup*'. The concept of *tang gup* is an important spatial taboo for the *Brao*, *Kavet*, *Kreung* and *Lun*, and it is fundamental for understanding their land use patterns. It explains the cultural significance of and the way traditional boundaries are delineated. It also explains the reason why *Brao* villages tend to move in one direction up one side of a stream, and then move back down the other. It is important not only on a village-to-village basis, but also within communities. The concept of *tang gup* prevents someone from one village making a swidden in the territory of another village. The concept also governs how swidden agriculture plots are distributed within the village area, as a person cannot have one active swidden plot on one side of a recent fallow area, and another active plot on its other side. This would be considered *tang gup* and could lead to poor harvests, a cut foot or even being bitten by a poisonous snake when crossing the fallow. It is also considered to be *tang gup* if someone has to pass through another person's active swidden to reach the stream where they regularly bath, reach wood resin trees that they regularly tap, or even to dig wild potatoes in the forest. *Tang gup* also applies for a family to eat rice from the same pot to have one active swidden on one side of a stream, and another on the other side.

A sophisticated body of traditional law, which governs all aspects of *Brao* society, backs up these traditional beliefs. For example, every village has at least one traditional judge, called '*Ya Weu*'. These individuals are elders who are considered by their communities to be fair-minded, good talkers, and with a good understanding of legal precedent. There are also senior judges that may be called in to deal with particularly difficult cases that standard *Ya Weu* cannot deal with, and may be called in to make decisions on cases in other villages when the judge for that particular village agrees. A brief description of how this traditional legal system operates illustrates how organized it is. The *Brao* recognized plaintiffs, called '*Me Drenij*', and defendants, called '*Me bij kadee*'. When a *Ya Weu* makes a decision regarding a case, he is expected to base it on oral precedent, from the different eras of government, such as the *Thai*, *French*, *Japanese*, *Sihanouk*, *Khmer Rouge*, *State of Cambodia* and the present. This legal code is part of an oral tradition that is passed from generation to generation and from *Ya Weu* to *Ya Weu*. Therefore, *Ya Weu* will have a younger assistant who attends cases with the practicing *Ya Weu* so that he can learn from the senior judge, and eventually take over his job when the senior elder either dies or is too old to continue practicing.

Ironside and Baird, 2003

Judicial matters on indigenous resource management are often the responsibility of traditional village leaders. Traditional village leaders often work with other elders in the community to ensure community members abide by customary laws on the collection of medicines, land use, hunting and respect traditional rules prohibiting wrong actions such as killing someone, couples living together before marriage and other wrong actions. Although such traditional structures still exist and are very much respected in most indigenous communities in Cambodia, there is often confusion when the government

appoints Commune Councils regarding the relationship between these two institutions that now exist at the same time in communities. In the eyes of the community, there is now a hierarchy between the traditional village leaders and commune councils. A number of traditional village leaders within the commune are under the administrative control of the commune council – but even though the commune councils are elected, they are perceived to be promoting the interests of the government.

Customary laws on natural resource management may differ from community to community, with well-defined penalties for wrong-doers. There is a strong belief that social misbehavior affects resources through drying of rivers and lakes, bad harvests or degradation of the environment, and therefore communities place great importance to inter-generational education to ensure everyone understands and adheres to customary practices and rules.

Brao Traditional Penalties

Penalties for particular offenses are well defined, based on the fines levied for transgression, often in the numbers of buffaloes. For example, a human life is considered to be worth 12 buffaloes, and if someone were to make a large wildlife trap in the forest nearby, without telling other villagers, and then a person got caught in the trap and was killed, the owner of the trap would be required to pay half the value of a person, or six buffaloes, to the family of the dead person. However, if the trap owner had informed the community about the trap in advance, he would have to pay one third of the value of a human life, or four buffaloes. Cold-blooded murder requires a penalty of three times the value of a human life, or the equivalent of 36 buffaloes. If an unmarried young woman becomes pregnant, the family of the man who impregnated her would have to supply a pig and a jar of rice wine for the spirits. If the man did not agree to marry her, he would have to pay six buffaloes or six sets of traditional musical gongs. If someone became guilty of *tang gup*, they would have to pay for the cost of sacrifices required in case somebody was injured or became ill as a result of the mistake.

Ironside and Baird, 2003

2.3 Indigenous Practices in Natural Resource Management

2.3.1 Agricultural Land Management

Indigenous community members recognize the need to minimize impact and allow sufficient time for forest regeneration by rotating farm plots and maintaining evenly dispersed populations rather than concentrating settlements in one area. Swidden plots are farmed for three to five years and then left fallow for 8 to 10 years, re-opening the original fields only after the forest and soil have sufficiently regenerated. Different crop varieties are planted in different plots depending on their age, soil type, etc. This allows for lengthening harvest times, shortening hunger gaps, more effective exploitation of plant variety, spreading risk of seasonal variations, etc. Longer term crops are also cultivated in the fallows and they are used as grazing areas.

Indigenous Agricultural Management

Indigenous agricultural systems consist of short rotation of swidden agriculture along the edges of mountains, streams and rivers. Generally, people did not cut swiddens far from the stream, as doing so makes it difficult to access water. Depending on the area, people would spend 5-10 years moving up one side of a stream, and then they would change sides and start working their way back down, or they would change stream valleys and start working their way down the new valley. When the village centre became too far away from the swidden plots, it would be moved in front of current swidden areas. It took about 10-20 years to return to the same location. Bamboo re-growth is preferred for swidden agriculture, because soil fertility is restored in 6 years or less and a large amount of ash is produced after burning. Local people therefore have benefited from the "humanized ecosystems" that they have created.

Source: Ironside and Baird, 2003

2.3.2 Wildlife Management

The diverse activities and land-use of indigenous peoples in Cambodia supports the mosaic of habitat types that is important for maintaining wildlife. The fallow fields are popular with deer, as they provide young shoots, and farmers purposely plant a variety of food crops that attract these animals. Forests are also not only maintained as a source for timber and other products, but also as a source of wildlife. Some communities also clearly demarcate hunting areas. Certain breeding areas are not disturbed and are in fact, strictly maintained by communities.

Hunting is only done by the community during dry seasons and mostly carried out in groups, although individuals and family members may hunt in areas close to the village. Only limited number of animals are allowed to be hunt during group hunting, while only one animal is allowed during individuals or family hunting trips. The animal is divided among community members, thus discouraging over-hunting. It is considered a taboo to mix more than one animal species when cooking. Every family and even a whole village prohibit a certain animal to be killed or hunted, as these animals are considered their *kanchang* or "helper". Taboos and rituals are very important part of indigenous hunting traditions and can be seen as wildlife management. Omens and other beliefs are grounds for controlling over-hunting since the hunter is not allowed to proceed with his hunting trips if he observes anything unusual.

Practices and Beliefs in Wildlife Management

Many families and often whole *Tampuon* villages do not hunt bears. There is a story that bears fought tigers to protect our villages. It is also believed that in the old days, bears bring food to villagers and even taught them how to start a fire. Even now, according to my father, you can still coach a bear to get honey from very tall trees.

Wanai Lieng, *Tampuon*

2.3.3 Biodiversity Management

The use of medicinal plants is still practiced as part of indigenous health systems in Cambodia, and both young and old people believe that only the use of traditional herbs can cure certain ailments. Medicinal plants are mainly collected from forest areas that are conserved by communities for such purposes. Forest spirits are believed to be protectors of these areas and only old or knowledgeable herbalists, mostly women, are allowed to collect medicinal plants. Families who are in need of medicines from the protected forest area must first ask the elders who will then advise them on how much they may collect and how to collect these medicinal plants. Communities still believe that they should not sell these medicines, nor should they give them to outsiders - those found doing so can be punished.

An intricate system of seed sharing and exchange still exists. For example, if a person desire to get some seeds from another person, a knife, a chicken or a pig must be given in exchange. However, if the owner of seeds can no longer maintain the seeds but considers them precious, the seed may be given to a person who has "good hands" i.e. a successful seed breeder without expecting anything in exchange. Most families consider the best way of ensuring a continued seed supply is by simply maintaining a small garden plot or patches.

Many plants species are also protected through a similar belief system to that which governs actions impacting on wild animals. For example, there is a belief that bamboos protected communities during wars by magically encircling whole villages, thus hiding it from enemies. Some communities do not allow any cutting of bamboos, and if a person passes such a community with cut bamboo, he can be fined. Certain tree species are also prohibited from being used as building materials based on stories of natural disasters that once happened when such species were used. These stories and beliefs are significant with respect to management of biodiversity.

2.3.4 Water and Aquatic Life Management

It is common among indigenous communities in Cambodia to protect forests immediately surrounding springs and water sources. For lakes and rivers, community members are only allowed to use fishing methods that do not deplete fish resources, such as hooks and lines. Outsiders are not allowed to fish in lakes or rivers that are within the boundaries of a community. To ensure a constant supply of fish, communities prohibit the cutting down of fruit trees that are known to be a good source of food for aquatic life.

2.4 Intergenerational Transfer of Knowledge

Most of Cambodia's indigenous communities still live in a traditional setting, placing importance on elders and kinship systems. Natural resource management is part of the daily life of people, with transfer of knowledge on resource management system a daily occurrence. Each night, young people will gather in the house of elders or a knowledgeable person, bringing tobacco as gifts, in exchange for stories and anecdotes. Young people and even children are free to ask questions. Daily, children and youth "learn by doing" through the examples of the elders and family members. One way in which such learning takes place is through the numerous ceremonies and rituals (for example those observed prior to harvesting) that youth take part in, thus performing the physical work needed for the elders.

Learning by Doing

Community leaders and families pass traditional knowledge to their kin during ceremonies and rituals. Use of certain plants, vegetables and animals that are restricted by taboo are taught to children from a young age. Weavers, blacksmiths and farmers also pass their skills and knowledge to anyone in the community who wishes to learn by joining in the work and through practice. Pieces of land along streams, water catchments areas and mountain areas with big rocks and big trees are considered to be governed by spirits and so opening of farming areas in such places is prohibited. I am told that we should be very vigilant to ensure fire does not start or if it does, it does not spread resulting in the destruction of the land.

Pat Chan Seng, *Tampuon* from Patang village, Patang commune, Lumpath District

The settling of disputes, such as land and resource conflicts, is usually conducted in community halls or in the houses of the elders in the community. Again young people are allowed to listen and to ask questions. Transfer of knowledge is not limited to the village chiefs and elders but also those who hold knowledge and are good at presenting messages and information to other members of the community. Parents and grandparents, as well as siblings, are also responsible for providing guidance and advice on natural resources management.

3. Legal and Policy Framework on Natural Resource Management

3.1 Natural Resource Management Laws and Policies in Cambodia

The Constitution of Cambodia in Article 59 states that, “The State shall protect the environment and balance of abundant natural resources and establish *a precise plan of management* of land, water, air, wind, geology, ecological systems, mines, energy, petrol and gas, rocks and sand, gems, forests and forestial (sic) products, wildlife, fish and aquatic resources.” (Italics added).

The framework of laws in Cambodia is hierarchical in structure, each deriving its authority from the law placed above it. The Constitution as the supreme law in Cambodia is the backbone of all other laws which needs to conform to it (Article 131). Then down the hierarchy come laws passed by the National Assembly and Senate called ***Chhbab***. Next are the Royal Decrees or ***Reach-Kret*** followed by the Sub-Decrees or ***Anu-Kret***. Under the Constitution, a Royal Decree is signed by the King (or Head of State as the case may be) for a list of very specific tasks after being proposed by the Council of Ministers. The Sub-Decrees are drafted by a single ministry or in collaboration with other ministries over competent subject matters, to implement and clarify the ***Chhbab*** further, and is signed by the Prime Minister and the Minister/s in charge of implementation, upon approval of the Sub-Decree by the Council of Ministers. Next down the line in the hierarchy are the ***Prakas***, which also clarify and set out implementation guidelines for laws. Like the Sub-Decrees they are drafted by the Ministry/ies having competence over the subject matter but with a much more limited scope. However, in the case of the ***Prakas***, they can be signed into effect by the Minister/s in charge of the ministry having competence over the subject matter without having to go to the Council of Ministers. In that sense, it is much easier to bring into effect than Sub-Decrees. The next in line is the Circular or ***Sarachor*** which are issued by the Prime Minister or relevant minister to instruct, clarify and further explain legal or regulatory provisions. Finally comes the ***Deika***, which are orders given by the provincial governors or commune councils which are effective only within the geographical region under their authority.

While there are many laws and policies governing natural resource management in Cambodia, most appear to be ambiguous, contradictory and sometimes difficult to access. They are certainly not the realization of the vision recorded in Article 59 of the Constitution envisages. It is also the case that some subjects have a number of laws and policies enacted and formulated (sometimes in contradiction with each other) while some do not have any. For instance, land as an area of policy and law-making seems to attract a lot of attention. Besides the Land Law of 2001, there are a few sub-decrees already issued under it, yet other important subject matters for natural resource management like wildlife conservation are discussed only in four articles in the Forest Law of 2002.⁹

The Land Law of 2001, the Forest Law of 2002, the law on Commune/*Sangkat* Administrative Management of 2001 are some laws that have significance for indigenous peoples and natural resource management, including also some Royal Decrees and Sub-Decrees. Above all of these is the constitution which is important to include in the analysis as the expression of the countries overall intentions for the management of the natural resources found in the country.

⁹ In Articles 48 to 51 of Chapter 10 of the Forest Law of 2002.

3.1.1 The Constitution of the Kingdom of Cambodia

According to Article 44 of the Constitution “All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by law. The right to confiscate possessions from any person shall be exercised only in the public interest as provided for under law and shall require fair and just compensation in advance.” The Constitution makes it clear that private citizens and legal entities enjoy the right to own property, notably land. Although it is implied, it is not clear whether indigenous groups as a collective can claim this right. (*See also Section 1: Indigenous Peoples of Cambodia*).

The Constitution goes further on state land than it does private (individual and collective) ownership. In a catch-all provision in Article 58 the Constitution provides that, “State property *notably* comprises land, mineral resources, mountains, sea, underwater, continental shelf, coastline, airspace, islands, rivers, canals, streams, lakes, forests, natural resources, economic and cultural centers, bases for national defense and other facilities determined as State property. The control, use and management of State properties shall be determined by law”¹⁰ (italics added). The italicized words, on a plain reading of the provision, indicate that the types of property listed are not exhaustive and if the State so wants, it has the power to include other natural resources within the definition of or to define the scope of state property. This they have done through legislation such as the Land Law of 2001.

The next provision, Article 59, requires the state to protect the environment and natural resources by establishing a precise plan of action.

3.1.2 Law on Environmental Protection and Natural Resource Management

The first Law on Environmental Protection and Natural Resources Management was prepared by the Ministry of Environment (MoE) between 1993 and 1995 and was passed by the National Assembly on the 24th of December 1996. In the legal hierarchy, this law is the supreme legal instrument governing environmental protection and natural resources management.¹¹ However, the law is very general and does not provide the specific guidance needed, setting out only a basic overall framework based on sustainable and natural resources management

Amongst other things, the law provides for the formulation of a National and Regional Environmental Plan (Article 2) for environment protection and sustainable natural resource management (Article 3). The law requires Environmental Impact Assessments to be conducted for any projects, for which the procedures is determined by a sub-decree that was promulgated in 1999 (Article 6). Echoing Article 58 of the Constitution, the law defines natural resources of the Kingdom of Cambodia as including land, water, airspace, air, geology, ecological systems, mines, energy, petroleum and gas, rocks and sand, precious stones, forests and forest products, wildlife, fish, and aquatic resources, which it states “shall be conserved, developed, and managed and used in a *rational and sustainable* manner”¹². Activities related to the conservation, development, management or use of natural resources must be sustainable (Article 10) and if it is found that such activities are not sustainable, then the MoE shall inform the concerned ministries undertaking the activities (Article 11).

The law also has a provision regarding participation of the public in protecting and managing natural resources (Article 16). However, the wording of the provision is not strong enough to require

¹⁰ Article 58, Constitution of Cambodia.

¹¹ *Environment: ETAP Reference Guide Book*, p. 491

¹² Article 8, Constitution of Cambodia (italics added),

participation from the public, providing only recommendations that it should be done. Besides this, the law also contains a few penal provisions as well as the creation of an environment endowment fund for environmental protection and natural resource conservation.

3.1.3 Land Law 2001 and Land Policies

Before the Land Law of 2001 came into being, the Land Law of 1992 was in force. This law, based on the culture and land-use practices of lowland Cambodians, did not reflect the concept of communal land ownership of indigenous peoples. In response to increasing concerns by indigenous peoples and donor pressure, a series of consultations and negotiations were held between 1995 and 1999. After an intensive period of study and public debate, a draft law was developed with funding from the Asian Development Bank (ADB). This draft Land Law was approved by the National Assembly and the Senate and signed by the King on August 30, 2001.¹³

The Land Law of 2001 has 268 articles divided into 19 chapters. Of these, Articles 23 to 28 in Part II, Chapter 3, entitled “Communal Ownership or Communal Property”, have direct significance for indigenous peoples and are very important as they set out the basis for land ownership by indigenous communities in Cambodia. The chapter starts by defining “indigenous community” in Article 23.¹⁴ Article 24 seeks to further define membership in an indigenous community.¹⁵

Article 25, seeking to identify indigenous communities’ lands, provides that they are “lands where the said communities have established their residences and where they carry out traditional agriculture” and includes “not only lands actually cultivated but also includes reserves necessary for the shifting of cultivation” as per their traditional agricultural practice. In many cases where land is owned by the community and where traditional shifting cultivation is practiced, land may be left fallow for a number of years. Because of the non-recognition of such land use patterns and the inclination towards a concept of individual property ownership and use superseding the collective concept, conflicts often arise. As such, this Article is particularly significant for its recognition of community lands to include lands for shifting cultivation in addition to residential and other agricultural lands. However the qualification in the provision that such lands should be those “recognized by the administrative authorities” weakens the provision immensely as it gives the administrative authorities the final say over demarcating land as belonging to a community or not.

The third paragraph of the same Article gives indigenous communities the right to assert their own claim for land and register for collective title based on negotiations with neighboring villages and authorities “according to the factual situation as asserted by the communities”. Communities can exercise their rights under this provision collectively or through their traditional authorities. Once boundaries are agreed upon the Cadastral Department¹⁶ shall coordinate with other authorities to verify a community’s claim and determine what lands to register for title.¹⁷

¹³ ADB: *Indigenous peoples/Ethnic Minorities and Poverty Reduction – Cambodia*, p.13.

¹⁴ “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.”

¹⁵ “An individual, who meets the ethnic, cultural and social criteria of an indigenous community, is recognized as a group member by the majority of such group, and who accepts the unity and subordination leading to acceptance into the community shall be considered to be a member of the indigenous community.”

¹⁶ The Cadastral Department was brought to function under the direct control of the Council of Ministers in 1990 from the Ministry of Agriculture.

¹⁷ Suzie Brown et al. *Legal Issues Related to Registration of Lands of Indigenous Communities in Cambodia*. p 31.

Article 26 then goes on to provide for communal ownership to have “all the rights and protections of ownership as are enjoyed by private owners” except the right to “dispose off any communal ownership that is State public property to any person or group.” Article 26 then goes on to emphasize and recognize the role of traditional authorities, mechanisms and customs in decision making and exercising the ownership rights of immovable properties of the community.

In the event that an individual wants to leave the community, an adequate share has to be provided to her/him (Article 27). However a share that is allotted to such person cannot be from lands that fall under state public property.¹⁸ Read together with Article 26, communal title may be claimed even over state public property. Article 28 reiterates the absolute right of indigenous highland peoples to immovable property stating that “No authority outside the community may acquire any rights to immovable properties belonging to an indigenous community”. Besides these provisions dealing specifically with lands belonging to indigenous communities, there are other general provisions in the Land Law of 2001 which are of importance.

Article 2 classifies immovable property into three types – immovable property by nature, immovable property by purpose and immovable property by law. Of these, immovable property by nature refers to all natural grounds such as forest land, cleared land, land that is cultivated, fallow or uncultivated, land submerged by stagnant or running waters and constructions or improvements firmly affixed to a specific place created by man and not likely to be moved. Article 8 recognizes only natural persons or legal entities of Khmer nationality as having the right to the ownership of land. Such legal entities include public territorial collectives, Cambodian communities or associations.

Article 11, concerning exceptions to the Land Law of 2001, provides that “the legal regime for ownership of immovable property varies in accordance with the requirements of the Cambodian society, such as agricultural land, forests, waterways, lakes, reservoirs or expanses of water, seashores, riverbanks, urban immovable property, and land for construction of industrial development zones”. It further goes on to provide that “specific laws shall supplement the provisions of this law or shall derogate this law in order to meet socio-economic, land management and urban planning exigencies.”

Article 14 envisages two types of property – public property of public legal entities or state public property, and private property of public legal entities or state private property. Article 15 of the law establishes seven categories of State public property.¹⁹ All other properties not classified as State public property is state private property.²⁰ In effect, this means that State private land is all land that is (a) not State public land and (b) not privately owned. The basic distinction between the two is that while state

¹⁸ Article 27 reads as: “For the purposes of facilitating the cultural, economic and social evolution of members of indigenous communities and in order to allow such members to freely leave the group or to be relieved from its constraints, the right of individual ownership of an adequate share of land used by the community may be transferred to them. Immovable property that is subject to such private individual ownership cannot fall under the general definition of public properties of the State public property category.”

¹⁹ (i) Any property that has a natural origin, such as forests, courses of navigable or floatable water, natural lakes, banks of navigable and floatable rivers and seashores; (ii) Any property that is specially developed for general use, such as quays of harbors, railways, railway stations and airports; (iii) Any property that is made available, either in its natural state or after development, for public use, such as roads, tracks, oxcart ways, pathways, gardens and public parks, and reserved land; (iv) Any property that is allocated to render a public service, such as public schools or educational institutions, administrative buildings and all public hospitals; (v) Any property that constitutes a natural reserve protected by the law; (vi) Archeological, cultural and historical patrimonies; (vii) Immovable properties being royal properties that are not the private properties of the royal family. The reigning King manages royal immovable properties.

²⁰ See Article 14.

private property can be the subject of sale, exchange, distribution or transfer of rights, state public property is inalienable and ownership of those properties is not subject to prescription and also cannot be acquired by the special acquisition provisions of the Land Law of 2001.²¹

The distinction of land as state public and private property becomes significant because it affects the rights and duties of indigenous communities to their lands – before, during and after the titling process.²² As a result of this classification and the resulting difference in rights and limitations imposed, a number of questions arise; chief among them is whether state public property, because of its “inalienability”, can be part of the community title as envisaged in the land law. It appears from the overall intent of the law and the wordings used in Chapter 3; and reading other laws such as the forestry law with it, that state public property can indeed be part of indigenous community property. This position has been argued by experts on the land issue in Cambodia, but remains in dispute.²³

Another significant feature of the Land Law of 2001 is its recognition of the impact of the “period of crisis from 1975 – 1979” on reconstituting ownership over land and therefore providing for a right *in rem* over “immovable property which was recognized since 1989” that “may lead to the acquisition of ownership by the holder of the property” in accordance with the conditions set by the land law.²⁴

The condition for transforming possession into ownership is set out in Article 38 which provides that “in order to transform into ownership of immovable property, the possession shall be unambiguous, non-violent, and notorious to the public, continuous and in good faith”. The law is unclear however whether land left fallow as part of the traditional cultivation system constitutes an obstacle to a claim of ownership.

In the case of a dispute over immovable property, Article 47 also provides that “such dispute[s] shall be submitted for investigation and resolution... The results of the investigation shall be submitted to the Cadastral Commission ... (who) shall make a decision on the dispute.” If there is disagreement or dissatisfaction with the decision made by the Cadastral Commission, the disputants can file complaint to the courts. The organization and functioning of the Cadastral Commission is determined by a relevant sub-decree that was promulgated in 2002.

Article 69 provides that the transfer of ownership shall be considered valid only upon the registration of the contract of sale with the Cadastral Registry Unit. This provision has given rise to some concerns vis-à-vis the draft Civil Code wherein it is stated in draft Article 133 that in relation to land, the creation, transfer and alteration of a real right shall take effect in accordance with those agreed upon between the parties. In other words, land can be legally transferred through a contract between the buyer and the seller without the requirement of registration to complete the transaction.

The Land Law of 2001 sets out important provisions on communal ownership of property, specifically land, by indigenous communities. The law suggests the recognition of prior rights and claims of indigenous peoples over land and its resources. Another positive thing about the law is its recognition of traditional indigenous authorities and their customary law as a valid legal process in the determination of land claims. Its inclusion of some form of conflict resolution mechanisms is also encouraging. However it “does not specifically spell out any mechanisms for land use planning and management that would link to community based natural resource management activities.”²⁵ What it does is provide an opportunity for indigenous communities to claim title over land which could lead to stronger control over their resources.

²¹ See Articles 16 and 17.

²² Suzie Brown et al.

²³ Katrin Seidel et al.

²⁴ Article 29.

²⁵ The development of CBNRM in Cambodia. p. 68.

It is also true though that the Land Law of 2001 is, at times, in conflict with other laws in Cambodia, such as the Forest Law (to be discussed below) and such conflicts have yet to be resolved.

3.1.4 The Forest Law 2002

Cambodia has the largest intact deciduous forests in the Southeast Asian region and retains a large proportion of its natural forest cover. There are varying estimates on the amount of forest cover remaining, ranging from 30% to over 60%. Extensive deforestation has taken place since 1992-3, reflecting the lack of effective forest management plans and ongoing security problems.²⁶

Ever since the early 1990s when concerns were raised about forest cover, the forest sector has seen many changes and transformations. “For international donors, forestry became the emblem of the governance problems facing the Cambodian state... (With) sustained attempts over nearly a decade to reform the sector and put in place a policy and legal framework that clearly defines the parameters of the sector. However, the sector has been marked by acute polarization around the problematic issue of concession allocation; abuse of the resource has been serious with evidence of over-logging and corruption. Despite a series of critical reviews, the concession system was accepted by major donors as the most effective form of institutional arrangement for resource management in Cambodia. This acceptance has cast long shadows over the policy debate and management of the sector. In effect, it has meant that forest policy has become equivalent to the management of forest concessions rather than starting from a broad societal viewpoint of agreement around what forest resources there are, how they are to be managed and for whose benefit”.²⁷

However some progress has been seen over the last few years. The Forestry Law came into force in August, 2002 seeking to define “the framework for management, harvesting, use, development and reservation of the forests ... (and) to ensure the sustainable management of forests for their social, economic and environmental benefits, including conservation of biological diversity and cultural heritage.”²⁸ The Forestry Law came on the heels of the Statement of the Royal Government on National Forest Policy, an important policy document issued in 2002 which outlines the government’s commitment to conservation and sustainable management goals. The Policy designated Cambodia’s remaining forest resources as Permanent Forest Estates to be maintained in perpetuity.²⁹

It has been stated that this Policy is “one of the most important existing pieces of legislation that links to CBRNM issues. This law contains important provisions on traditional use and access rights to forest resources, though these do not include management rights. More important are the provisions that allow for the creation and management of community forests, whereby communities are granted an area of the Permanent Forest Reserve to manage and derive benefits from.”³⁰

Article 2 ensures traditional user rights of timber products and Non Timber Forest Products for local communities. Article 4 is remarkable in its recognition of “*full public participation* in all government decisions that have the potential to impact on concerned communities, livelihoods of local communities and forest resources”.³¹ (Emphasis added). Forest management is under the jurisdiction of the Ministry of

²⁶ Country and Regional Perspective on Resource Management.

²⁷ Independent Forest Sector Review, p. 42

²⁸ Article 1, Forest Law

²⁹ Singapore Yearbook of International Law (SYBIL) [2004] Vol. VIII, pp. 177-192 Alan Khee-Jin Tan

³⁰ The development of CBNRM in Cambodia. P. 70.

³¹ Article 4 Forest Law.

Agriculture, Forestry and Fisheries (MAFF)³² under which the Forest Administration (FA) is the government institution for implementing the management of forest and forest resources.³³ One of the duties of the FA is to “assess boundaries, classify and demarcate forests in order to establish a land use map of the Permanent Forest Estate in coordination with MLMUPC, local authorities *and communities*”³⁴ (Emphasis added). This provision is significant for its mandating of coordination between the two governmental agencies as it should reduce competing interest between them, a problem which has plagued forest management in the past. Similar mandates can be found in other provisions in the same law, and in this it is an improvement over the Land Law where such cooperation is not specifically mentioned. The FA is also required under the law to “prepare a National Forest Management Plan with broad public participation of all authorities and communities concerned”.³⁵

Under the law, Permanent Forest Estate is categorized into Permanent Forest Reserve and Private Forest. The first is again further sub-categorized into: 1. Production Forest;³⁶ 2. Protection Forest;³⁷ and 3. Conversion Forest.³⁸ The Permanent Forest Estate to be managed according to the principle of sustainable forest management should be classified, registered and demarcated by the MAFF who coordinates with concerned local communities, authorities and the Ministry of Land Management, Urban Planning and Construction (MLMUPC) to assist in registration of land property of indigenous community and preparation of the national land use map.³⁹

It is important to look at the whole land use system of indigenous communities to ensure there is a coherent approach taken to the support of their livelihoods i.e. community forestry and communal land titling should go together to ensure that the intrinsic links between swidden agriculture and forest use are maintained with integrity.⁴⁰ Article 15 & 16 also seem to support the contention that indigenous community title can be given over forest lands demarcated as state public property by providing that activities of a concessionaire should not interfere with the customary user rights taking place on the land of indigenous communities and the customary access and user rights practiced by communities residing within, or adjacent to, concessions.

Another indication of continuing title can be found within Article 37 which provides that local communities that traditionally practice shifting cultivation may conduct such practices on the lands of indigenous communities registered with the State. At the same time Article 37 restricts recognition of swidden agriculture where it demands a sub-decree to delineate forest areas in which swidden agriculture can occur. An independent review of the forestry sector in Cambodia observed that “this appears to imply

³² Article 3.

³³ Article 5.

³⁴ Article 7 (3)

³⁵ Article 8.

³⁶ Production Forest to be maintained in a manner to allow for the sustainable production of Timber products and, NTFPs, and protection as a secondary priority may consist of the following: Forest Concession; Production forest not under concession; - Rehabilitation Forest; Forestland for reforestation or tree plantation; reserved forestland for regeneration; and Degraded forestland. Article. 10.

³⁷ Protection Forest shall be maintained primarily for protection of the forest ecosystem and natural resources therein. However exceptions are made for local communities who have traditional user rights to collect timber products and NTFPs within the Protection Forest. It may consist of: Reserved forest for special ecosystems; Research forest; Forest for regulating water sources and Forest for watershed protection, Recreation forest; Botanical gardens; and Religious forest. Article 10.

³⁸ Conversion forest is idle land, comprised mainly of secondary vegetation, not yet designated to any sector, that shall be temporarily classified as Permanent Forest Reserve until the RGC designates the land for a specific use and purpose.

³⁹ Article 11

⁴⁰ Mary Hobley - Forest

that the prior allocation of land under the Land Law under communal title is an important step prior to any demarcation of forest land under the Permanent Forest Reserve (PFR). If the PFR demarcation precedes the Land Law communal titling, it is likely that indigenous peoples will have their access to future lands for swidden agriculture confined by the PFR.”⁴¹

3.1.5 Protected Areas

In 1993, a Royal Decree established a national system comprising of 23 protected areas classified under four major categories: National Parks, Wildlife Sanctuaries, Protected Landscapes, and Multiple Use Areas. The Department of Nature Conservation and Protection under the Ministry of Environment has the responsibility for overseeing these 23 protected areas and an additional 3 Ramsar sites, two of which are contained within the 23 protected areas. Combined, all of these areas cover 32,289 km². In addition to these areas, the Ministry of Agriculture, Forestry and Fisheries has set aside a number of areas for biodiversity conservation, forest protection, genetic conservation, and wildlife habitat protection. Together, these areas represent an additional 14,860 square kilometres under intentional protection. The country’s entire system of protected areas covers 47,845 km², or about 26.3% of Cambodia’s land territory.⁴² A 2003 review of protected areas found that more personnel are needed for managing the protected areas.⁴³

The draft law seeking to define the framework for management, conservation and sustainable development of protected areas set out its objectives, amongst other things, as the management and conservation, and sustainable use of natural resources in protected areas; to determine standards and procedures for managing protected areas; to determine the responsibilities and participation of local communities, indigenous ethnic minorities, and the public; and to implement regional and international conventions, protocols and agreements on the protection of biodiversity and ecosystem of protected areas.⁴⁴ This draft law would also govern the management of the State public properties in protected areas.⁴⁵ The Ministry of Environment is responsible for implementing the law, and developing a National Strategic Plan for Protected Area Management.

Under the new draft law there are 9 categories of PAs: 1. National Park; 2. Wildlife sanctuary; 3. Protected landscape; 4. Multiple use area; 5. Ramsar site; 6. Biosphere reserve; 7. Natural heritage site; 8. Marine park; and 9. Provincial/municipal protected area.⁴⁶ These PAs are to be managed by the Ministry of Environment under a new secretariat called the “Natural Protection and Conservation Administration” which the law requires to be created.⁴⁷ Amongst other things, this Natural Protection and Conservation Administration shall perform its duties *to guarantee the rights of local communities, indigenous ethnic minorities and the public to participate in the decision-making on the sustainable management and conservation of biodiversity.*⁴⁸ (Italics added).

These categories of PAs are further divided into four zones:⁴⁹ 1. Core zone;⁵⁰ 2. Conservation zone;⁵¹ 3. Sustainable Development zone;⁵² and 4. Local Community zone.⁵³ The procedure for identification of

⁴¹ Mary Hobley - Forest

⁴² Biodiversity and Protected Areas Management Project. “Cambodia’s Protected Areas.”

⁴³ ICEM, *Cambodia National Report on Protected Areas and Development*.

⁴⁴ Draft Article 1

⁴⁵ Article 2

⁴⁶ Article 7

⁴⁷ Article 4

⁴⁸ Article 4

⁴⁹ Article 13

protected areas and their classification into different categories are also set out in the law. The classifying criteria have to be based on clear scientific information and pursuant to the policies and strategies of the government.⁵⁴

The first three categories are prohibited from any procurement or ownership, with the first two specifically to be used for public interest and can not be sold, exchanged, rented, mortgaged, transferred or donated.⁵⁵ This is potentially problematic, especially if the demarcation of protected areas is made without the active participation of indigenous communities, and if the law on protected areas is interpreted to exclude indigenous collective title. However the law provides for use rights of the sustainable development and conservation zones for traditional, customary, belief and religious purposes for local communities and indigenous ethnic minorities.⁵⁶ At the same time it provides that collection of forest products, by-products and natural resources shall be allowed only in the sustainable development zone.⁵⁷ It also recognizes the practice of traditional shifting agriculture, but only on lands that have been registered for such a purpose with the state.⁵⁸

The draft law provides for “modifying the boundaries of each divided zone”,⁵⁹ and the “modification of any protected areas”.⁶⁰ Although not expressly stated, there is a strong indication that this could mean the power to alter the status of protected areas, including the power to declassify them.

The law recognizes the importance of local communities, indigenous ethnic minorities, and the public and civil society’s participation. However the language of the draft law confines this participation only to “giving and receiving information related to protected area management.”⁶¹ Community resource management is also recognized in the law through the formation of the Protected Area Community, who could enter into an agreement with the Natural Protection and Conservation Administration to manage part of the protected area set out in their agreement.⁶²

3.1.6 Environment Protection

⁵⁰ A zone for conservation of rare, endangered, vulnerable and threatened animal and plant species and a delicate ecosystem. Except for authorized officials and scientific researchers with permission, entry into this area is prohibited. Article 13 (1).

⁵¹ The zone adjacent to the core zone, valued for conservation of natural resources, ecosystem, slope and landscape. Entry is permitted after obtaining advance permission as also the use of forest products, under close monitoring, for livelihood by local communities and indigenous ethnic minorities which do not have strong impacts on the biodiversity. Article 13 (2).

⁵² A zone of high economic value contributing to national economic development, to the management and conservation of the protected area itself, and to promoting the living conditions of local community people and indigenous ethnic minorities. It also includes conservation of national culture and heritage; Ecotourism; Wildlife conservation and recreational services; Restoration of biodiversity resources; Protected area community; Botanical garden; Geology; Infrastructure development, including irrigation, reservoir, hydroelectricity, electrical network; Environment-friendly resin exploitation in the protected area and surroundings. Article 13 (3).

⁵³ A zone for socio-economic development of the local communities and indigenous minorities with existing houses, rice fields and vegetable gardens.

⁵⁴ Article 14

⁵⁵ Article 15.

⁵⁶ Article 25.

⁵⁷ Article 26.

⁵⁸ Article 27

⁵⁹ Article 14

⁶⁰ Article 9

⁶¹ Article 24

⁶² Article 28

The law on Environmental Protection and Natural Resource Management has a chapter consisting of two articles (article 12 &13) dealing with environment protection. It provides that the MoE, in collaboration with other ministries, shall develop an inventory that indicates the sources, types, and quantities of pollutants and wastes, toxic and hazardous substances being imported, generated, transported, recycled, treated, stored, disposed, or released into the airspace, water, land, or on land; the sources, types, and extent of noise and vibration disturbances.

3.1.7 Inland Fisheries and Aquaculture

Cambodia's freshwater fisheries produce over 400,000 tonnes per year and is the fourth largest national fisheries catch in the world after China, India and Bangladesh. The estimate of 400,000 tonnes is additionally considered to be an under-estimate.⁶³ Fisheries in Cambodia are interlinked with annual floods of the Tonle Sap (Great Lake) and the Mekong-Bassac Delta around and downstream of Phnom Penh. About 14,000 square kilometres are flooded annually and fish migrations, as part of their breeding cycles, coincide with these floods. It is reported that more than 100 species regularly occur in the Tonle Sap catches, although up to 200 species have been recorded in the Tonle Sap itself and over 500 in the freshwaters of Cambodia.⁶⁴ About 90% of the total inland production is from capture fisheries and the rest from aquaculture.⁶⁵ Concerns have been raised about over-fishing, particularly of larger and less fertile species.

The Fisheries and Administration Law (Fiat-Law No. 33 Kro chor of 1987), which is the principal fisheries legislation, does not provide for co-management arrangements or mechanisms. It does allow for subsistence fishing year round. The law identifies a fishery resource as "live animal and vegetable" found in the "fishery domain" which could be either inland⁶⁶ or marine⁶⁷. The Department of Fisheries under the Ministry of Agriculture is responsible for implementing the law. In June 2005, the Sub-Decree on Community Fisheries Management designed to promote co-management of fisheries resources was adopted. It provides the rules and procedures for establishing and managing community fisheries throughout Cambodia. Each community fishery is to be led by a Community Fisheries Committee (CFC). No community fishery is allowed to manage fisheries in a designated area unless it has entered into an agreement, referred to as a community fisheries area agreement, with the Government of Cambodia through the Department of Fisheries (DOF). This agreement defines the extent of the designated area (a plan must be attached), provides the list of community fisheries and CFC members, local fisheries regulations and a statement setting forth management objectives. Community fisheries areas remain state public property, but community use rights are granted for a renewable three-year period.⁶⁸

3.1.8 Water Resources

The Overseas Development Agency (ODA) in 1993 proposed the creation of a Cambodian Water Management Authority to coordinate all government agencies involved in water use and management. However, the government requested that this agency should be under the authority of the Department of

⁶³ N.P. van Zalinge

⁶⁴ N.P. van Zalinge

⁶⁵ Country and Regional Perspective on Resource Management

⁶⁶ Rivers, tributaries of rivers, lakes, streams, small rivers, canals, inundated forest areas or water channels, natural ponds, holes in ground, which having the water source from the river, tributaries of the rivers, lakes, streams, small river.

⁶⁷ It extends from the coastline to the outer borderline of the economic zone of Cambodia.

⁶⁸ Macfadyen, G., Cacaud, P., Kuemlangan, B. (2005).

Agricultural Hydraulics and Hydro-Meteorology of the MoA. That request was not accepted by the ODA and there are now at least six different ministries involved in water management in Cambodia.

Cambodia has the second highest hydropower generating capacity in the Lower Mekong Basin, amounting to 8,000 MW. However, present electricity generation is entirely by thermal power plants using imported fuel and per capita power generation is the lowest in the region at 0.007 kW (Mekong Secretariat April 1995, pg 55).

Despite the numerous ministries charged with water management in the country, not a single authority has looked at watershed management. Such attention is critical as communities rely on water supply from gravity feed. Most communities have also been looking after community catchments areas and the destruction of such areas would not only affect the communities but wildlife within a particular habitat.

3.1.9 Commune Administration Law 2001

The Commune Administration Law (2001)⁶⁹ provides for the establishment of Commune Councils to manage small groups of villages (communes) through local elections, government funding for their work, and a local development planning process. The Commune which governs the local affairs based on the Constitution⁷⁰, with legislative and executive authority vested to the Commune. While the recognition of the Commune Council is important and would provide indigenous communities the opportunity to have a say in local affairs, in practice the system has been shown to be subject to abuse. Most land sales and registration apparently involve Commune Chiefs without the consent of the affected communities. As such, the tendency to address this is to limit the scope of Commune Councils to avoid abuse of power and ensure that any dealings with respect to indigenous lands should be consistent with the Sub-decree on Registration of Indigenous Land Rights.

There is a growing awareness for the need to recognize that the traditional authority provided for in the Land Law 2001 need not be assumed to be the Commune Council. Thus the role of the Commune Council may be seen more for the physical development of communities such as infrastructure, education and participation in local government, while the traditional leaders can take the role of maintaining the cultural and territorial integrity of the community.

3.1.10 Management and Exploitation of Mineral Resources⁷¹

Under this law, the word "land owner" refers to general landowners, where indigenous communities could be included. Under Article 5, "legal owners or possessors of private land can use gravel, sand, stones and clay without requiring license, but they are not permitted to transport beyond the boundary of that land for business purposes".

The law does not provide a mechanism for obtaining free, prior informed consent. Neither does it mention the right of land owners to reject exploitation of resources in their lands. However, it does provide for compensation under Article 26.⁷²

⁶⁹ Passed January 12, 2001, and promulgated March 19, 2001

⁷⁰ Article 5

⁷¹ Passed on 30 May 2001, and promulgated July 13, 2001

⁷² If there are people living in licensed operating areas for mining resources before an operating license is issued, the mining licensed concessionaire must pay just and equitable compensation to owners in case of impact upon land ownership. This compensation must arise from the agreement between owners and the concessionaire.

3.2 Policy for Highland Peoples' Development

The Cambodian Government established an Inter-Ministerial Committee (IMC) in 1994 to develop a policy on indigenous and ethnic minority peoples, as part of the government's plans to improve the quality of life of indigenous peoples living in highland and mountainous areas. The Inter-Ministerial Committee (IMC) is composed of a wide range of Ministries, including the Ministry of Rural Development (MRD), the Ministry of Agriculture, Forestry and Fisheries; the Ministry of Education, Youth and Sport; the Ministry of Health; the Ministry of Public Works and Transport; the Ministry of Social Affairs, Labors, Vocational Training and Youth Rehabilitation; the Ministry of Women's and Veterans Affairs; the Ministry of Environment; and the Cambodian Mines Action Centre.

At present, IMC is the main body that represents the government in coordinating activities with national and international institutions working in the northeastern provinces of Cambodia, where the majority of indigenous peoples are living. From 1994 till 1999, IMC did several meetings and workshop in order to develop the draft of the indigenous policy and then the IMC officially ended its mandate at the end of 1999. From 2000 through until June 2001, there was no real work done and the policy was remained in draft form. In June 2001 the Government created the Department of Ethnic Minorities Development (DEMD) within the Ministry of Rural Development (MRD), whose role is to prepare short-, medium-, and long-term development plans for indigenous peoples, to conduct research on identity, culture and traditions of indigenous peoples and to provide training for development workers in cooperation with different local and international development agencies. In addition the Department was given the mandate to prepare and revise the policy on the indigenous people in order to submit to the government for approval.

The DEMD is playing an important role in finalizing the Policy for Highland Peoples' Development (now called National Policy for Development of Indigenous Peoples after the national consultation in August 2005). The drafting of the policy for indigenous peoples demonstrates the Government's intention to accommodate and preserve indigenous groups, give them some group-specific citizenship rights and promote a multicultural society. Strongly influenced by ILO Convention No. 169, this document details a number of objectives, intentions, and measures to accommodate the country's indigenous communities. The policy consists of three chapters - General Provisions, Guidelines and Action Plan. The main difference in the current draft to the original document is that the previous references to "*indigenous minority people*" have now been replaced with "*indigenous peoples*".

The General Provisions highlight the need for indigenous peoples to be consulted in development processes and to be part of the decision-making process, and for indigenous peoples to have the same rights and duties as other Cambodian citizens. It also affirms that indigenous peoples have the right to manage their natural resources. Among the gaps in the present policy draft is the need to respect indigenous land rights, culture and indigenous knowledge per se and not judged based on what is appropriate.

In Chapter 2, the guidelines to implement the policy address issues on environment, land, agriculture, education, health, culture, access to justice for indigenous peoples and infrastructure. Under environment, one gap identified is the lack of recognition of the role that indigenous peoples play in the management of their natural environment and natural resources as an important contribution to the preservation of national natural resources. The language on consent is weak and needs to be strengthened in line with emerging principles of Free, Prior and Informed Consent. On land, the proposed monitoring of the effectiveness of land use and the development of measures to ensure the sustainable use of natural resources by the Village-Commune Natural Resource Management Committee (VCNRMC) may not align with the interest of indigenous communities. There is a need to first explore the possibility of

allowing village elders within traditional authorities and members of the community to take on this role. There are some major gaps under the Guidelines for the Agriculture Sector. The existing statement in the Khmer version talks about research and extension and the increase of tree planting. This should be changed to emphasize improving existing agricultural methods by working jointly with farmers and making use of their local knowledge. There should be a clear statement of Government support for traditional and rotational forms of swidden agriculture. Emphasis to "*promote the investment in agricultural sector and organize an integrated agricultural production in order to increase agricultural production*" (Article 3.1) may not be the best option for indigenous communities.

The guidelines discussion on education is progressive, including an article calling for the establishment of community learning centres and the training of indigenous teachers who would then teach in the own community. However, the policy could further include the use, practice and development of indigenous languages to be guaranteed by the State, the strengthening of, and respect for, of indigenous forms of education and transmission of knowledge, and the establishment of formal and informal, bilingual intercultural educative and literacy programmes in consultation and with participation of indigenous peoples. Likewise the guidelines for implementation under the Health Sector could look into the establishment of traditional health centres. The suggested policy guidelines under the Culture Sector appear to be comprehensive. On infrastructure, the main the issue is the lack of a mechanism to obtain Free, Prior and Informed Consent of communities prior to any development taking place.

Chapter 3 of the Policy on the priority action plan outlines six points, namely: human resource development, particularly for women; poverty reduction; improving the information system for indigenous peoples; strengthening indigenous communities especially for traditional elders, women and children; ensuring community participation; and training of government staff and NGOs working with indigenous peoples.

This policy was first submitted to the Council of Ministers in 1997 and discussed in two sessions, but was not approved. After several rounds of revisions through wide consultations, the Policy was again presented to the Council of Ministers in February 2006, but it was again rejected.

4. Interface between Indigenous and Statutory Systems on Natural Resource Management

This Chapter is devoted to assessing the interface between indigenous and State systems and laws on natural resources management with a view to identifying gaps and challenges for further action. It will also look at current efforts to harness indigenous natural resource management systems with other systems to illustrate the need to further develop such initiatives, as well as examine and illustrate the roles of government, NGO's, community organizations and donors. Recognizing the need for indigenous peoples' involvement in natural resource management, section 3.4 will highlight mechanisms and issues for effective participation.

4.1 Indigenous Peoples and State Legal and Policy Framework

4.1.1 Implementation of Laws and Policies

It may appear that currently several laws and policies exist that protect indigenous rights. However, the actual implementation of these laws and policies is far from being realized. For example, the implementation of Land Law 2001 is hindered by lack of efforts to resolve land tenure issues with respect to affected communities who were included in national parks. As a result, the recognition of indigenous knowledge on forest resources, and community participation in park protection and management are takes a back seat. Conflicting information, such as the prohibition from living and conducting swidden agriculture within certain zones inside the park, are confusing for indigenous peoples and must be clarified. Although there is some progress in the titling of communal lands, many issues and questions remain.

Pilot Project on Community Title

Three areas were selected as pilot sites for the communal titling of land - two in Ratanakiri and one in Mondolkiri province.

Lessons learned/issues

1. Where there are strong support groups, the project appears to have gone well. One of the pilot site in Ratanakiri which lacks such support groups is proving to be difficult;
2. Except the MoE, other Ministries are not actively involved in the project;
3. Too many issues and agencies involved, making the process confusing;
4. No person and body who works on the project consistently, either from NGOs or from other advisory bodies;
5. Indigenous organizations and communities are not empowered to pursue communal land titling;
6. There are doubts on whether the community is really interested in communal titles, even after the communities have clearly showed their preference for communal title. A series of information workshops were held to explain the difference between communal and individual titles. However, the process was over-simplified for example the provincial governor once came and asked the people to put up their hands to choose and they all chose to opt for communal titles;
7. Many see the community consultations as a time-consuming and unnecessary exercise;
8. Although many discussions were held about traditional authority, there are still doubts as to what this actually refers to;
9. "Communal Title" used in the land law has some negative connotations; and
10. A number of donors are willing to support the titling of land and there are plans to expand the project to another area.

Although indigenous rights are now legally recognized in Cambodia under the Forest Law and the Community Forestry Sub-Decree to complement community management of forest that has been a traditional form of forest management in Cambodia, these legal instruments have not yet to be developed and implemented.

4.1.2 Implementing Ownership Rights Framework

In Cambodia, indigenous peoples have traditionally managed natural resources communally under the guidance of community leaders. Currently they have come to accept ownership of land through communal titling of areas based on territories traditionally occupied by a particular community. Communal titles are perceived as providing security and would ensure that communities are in control and are better able to manage natural resources in traditional territories. This compliments the government's clear policy and recognition on the importance of the social function of land for sustainable economic and social development, poverty reduction, decentralized administration, good governance, equitable land distribution to assist the poorest of the poor, and tenure security to prevent or resolve conflicts. It also recognizes the importance of preventing illegal land acquisition and land concentration. However, titling on areas where indigenous communities are most vulnerable to being dispossessed has not been given priority.

Indigenous Land Titling

At a planning meeting in 2002 for the National Poverty Reduction Strategy (NPRS), some of the reasons why communal land titling will be beneficial for indigenous communities:

1. Ensure traditional access of established local communities to common property resources (land, forest and waterways) is not usurped by new groups;
2. Improve limited/insecure access of the poor to common resources;
3. Ensure tenure security for rural people by correcting weaknesses in existing land practices and laws,
4. Examine gender bias in land policy and registration systems to ensure that women and girls have access to land titles and natural resources; and
5. Improve farmers', rural poor and other vulnerable groups' access to land, water and other productive inputs for sustainable livelihoods, food security and overall socio-economic development.

NPRS 2002

4.1.3 Implementing Use Rights Framework

Cambodia's law on recognition of customary use rights is among the most progressive in the region. The Forest Law (Article 15) and the Sub-Decree on Forest Concession Management (Article 2) both provides for the rights of indigenous peoples living within or adjacent to a forest concession by ensuring that they do not interfere with the customary user rights of indigenous communities and to protect and maintain their access rights to forest resources that are of economic, subsistence and spiritual value to them. Recognizing that indigenous peoples are not immune to the possibility of overexploiting forest resources does not necessarily mean that their rights to use of resources should be curtailed, but rather that a check and balance for ensuring sustainable management should be put in place. Root causes for local overexploitation also need to be ascertained, and if necessary, relevant assistance provided.

4.1.4 Recognition of Customary Law

Again the recognition of traditional authorities' i.e indigenous governance over natural resource management, by the Land Law 2001 is very progressive. Customary laws on natural resource management is still very much respected by Cambodia's indigenous communities, and are being implemented as part of peoples' way of life. However, with the introduction of the commune councils and the Commune Council Law, coupled with the tendencies by most governments to look up to leaders who are literate or to put in place regulations that are more in line with state laws and policies, it can be very easy to replace the traditional authorities and customary laws. If this happens, it would pave the way for illegal land acquisition and land concentration and over-exploitation of resources that could seriously result in conflicts within the community and among authorities. In the long run, this could contribute towards the lack of confidence among community members themselves.

Section 2.2 illustrated a highly evolved and time-tested system that remains very applicable to the everyday lives of *Brao* people. It suggests that indigenous natural resource management strategies can be much more effective, at least at the local level, if they were integrated into *Brao* law. For example, established *Ya Weu* could be asked to act as judges in cases when community natural resource management regulations are broken by outsiders or members of the community.

Thus far, other laws on natural resource management have not attempted to incorporate customary practices and laws into statutory laws as seen in many countries in the region. The recognition of customary law and traditional authorities is a step in the right direction. A programme to train traditional leaders to engage and communicate effectively with government departments, and vice-versa would be more appropriate than introducing other forms of governance within indigenous communities. It is also important to clarify the roles of both commune councils and traditional authorities in every community. A new project by UNDP Cambodia is working with communities to clarify roles of traditional authorities and build from these existing institutions instead of promoting new ones that are alien to indigenous peoples.

4.1.5 Conflict in Perceptions

Contrasting perception between locals and outsiders, and wilderness and cultural landscape continues to dominate the debate over natural resource management. Conservation thinking tended to opt for preservation of "wilderness" areas and therefore the automatic rejection of any human influence. However, this focus on the steady state of "wilderness" has hindered a realistic appraisal of the role of disturbance processes and change in maintaining ecosystems (Ironsides and Baird, 2003).

Often the "balance between protection of indigenous culture and becoming developed" is equated with giving up certain rights. While culture is dynamic, it does not necessarily mean accepting modern lifestyles, but rather embracing aspects of both. Being able to attend school is used as a measure of development, even though indigenous peoples insist that school curricula must respect indigenous cultures as it has resulted in the alienation of indigenous youths from their own community.

These are but a few of the conflicting perceptions of indigenous peoples and natural resources conservation and management held by communities and by outsiders. These conflicting perceptions tend to complicate the issues and result in indigenous peoples being treated as subjects for studies, rather than owners of the process of their own development and little effort is placed in trying to gain an understanding of indigenous peoples' own perceptions of their path of development.

4.1.6 Recognition of Indigenous Natural Resource Management System

Indigenous knowledge on natural resource management needs to be recognized, an recognition that remains in Cambodia partial and even then, only on paper. Many of the recommendations for natural resource management still tend to rely on western concepts, rather than promoting indigenous customary practices. In the process of enhancing the capacity of indigenous peoples to promote natural resource management, there is a need to look at these issues to ensure that the process will promote traditional systems of natural resource management. A management plan that outlines benefits and responsibilities for both government and indigenous peoples would ensure that indigenous culture is protected, sustainable incomes from the forests are assured, and wildlife and biodiversity is conserved.

Yeak Loam Lake Ecotourism Project

Tampoun community around the Yeak Loam Lake harnessed their traditional knowledge in managing the habitat in and around the lake to provide an income through an ecotourism project. The community also established a museum and traditional structures to provide information about *Tampoun* cultures to visitors. Though the income is modest, the community is proud of their efforts, which has at the same time enabled them to conserve the natural beauty of the lake and surrounding forest.

Wanai Lieng, *Tampoun* from Yeak Loam

4.1.7 Land Demarcation

Land as a vital part of indigenous peoples' lives must be clearly demarcated. Numerous issues remain to be addressed that touch on key issues, particularly in the interface between indigenous peoples' concept of land and that of the State. Failure to recognize this would render much of the effort on natural resource management useless and may only end up facilitating further conflicts.

Considerations on Land Demarcation

There are some serious issues of sequencing and policy process to be considered.

1. There needs to be definition, identification and agreement of what constitutes 'state public property' – this requires a set of subsidiary processes to clarify what can sit within this overall category
2. There needs to be agreement on the definition and identification of the lands of indigenous communities
3. There needs to be definition and identification of those core areas of forests that should be retained under a protected area system and areas of high environmental service function (e.g. watersheds)
4. There needs to be definition and identification on the ground of those areas of forest that could be managed under some form of production (the actual institutional arrangements to be determined – e.g. groups (communities, communes), small-scale 'industrial' forests, concessions, direct management by the public sector)
5. There needs to be definition and identification on the ground of those areas that are available for agriculture (the actual institutional arrangements to be determined – family farms, small scale 'industrial' farms, large-scale concession agriculture)

Without this clarity and agreement about the broad process and criteria for allocation of lands, insecurity will continue and permit the continued and escalating alienation of land by those who have the most power and political connections. In terms of sequencing, although logically the Land Law should take precedence, there is no mechanism to ensure that it does. Cambodia does not have a hierarchy of laws, although in terms of precedence set by when a law was passed, the Forestry Law should be applied

subsequent to the application of the terms of the Land Law. Under Forestry Law the Administration is empowered to determine the Permanent Forest Estate, even though logically steps 1 and 2 above should happen prior to the definition of the Estate. In both cases the process followed for definition and demarcation must be a local participatory process for clear mechanisms to address grievances over land allocation decisions.

Mary Hobley - Forest

4.1.8 Developing Partnerships and Mutual Learnings

Mistrust between government authorities and indigenous communities still hinders openness and sharing of responsibilities. Consultation and information-sharing that could build partnerships and mutual learning are not built into mechanisms on natural resource management. For example, villagers believe that since the local people withdrew from the Virachey National Park, outside hunters and NTFP collectors have had more opportunities to exploit resources. It is not possible for park rangers to effectively control this influx, due to the park's size. The destruction of the rattan and eaglewood resources over the recent past can be partly attributed to the fact that there are no longer communities living in these areas. If partnership between park authorities and the people exist, villagers can assist in monitoring the park, as has been successfully demonstrated in other countries in the region. Indigenous peoples believe that if they were allowed to live in the park, they could help to control illegal hunting and NTFP exploitation. Some communities have already established committees for this purpose. (Ironsides and Baird, 2003).

The policy to move indigenous peoples' communities and to change their cultures, thinking and way of life has only served to perpetuate mistrusts and suspicions, instead of harnessing the knowledge and skills on other livelihood strategies, particularly on swidden agriculture.

Historical disharmony

Challenges for developing partnerships and mutual learning are enormous as this goes against the history of relationships between indigenous peoples and outsiders. For indigenous groups, particularly in Northeast Cambodia, the slave trade, which continued over such a long period and with such intensity, was cultural rape. The disharmony continued with the relocation of *Brao* and *Kavet* people to lowland villages adjacent to the Sekong and Se San Rivers in the early 1960s in order to "educate" and "Khmerise" them; then continuing with the draconian policies of the Khmer Rouge to make wet rice paddy rice cultivators out of swidden agriculture farmers, and finally with the policies of the State of Cambodia government to keep the people in the lowlands

Ironsides and Baird, 2003

4.1.9 Strengthening Links Between Government and Indigenous Communities

The Inter-Ministerial Committee (IMC) for Highland Peoples Development formed by the Royal Government of Cambodia in 1994, and is composed of the Ministry of Rural Development (MRD), the Ministry of Agriculture, Forestry and Fisheries; the Ministry of Education, Youth and Sport; the Ministry of Health; the Ministry of Public Works and Transport; the Ministry of Social Affairs, Labors, Vocational Training and Youth Rehabilitation; the Ministry of Women's and Veterans Affairs; the Ministry of Environment; and the Cambodian Mines Action Centre. Having a committee at such a high political level to look specifically at indigenous issues is an important step in ensuring a broader understanding indigenous peoples' situation and is critical in the establishment of more equitable laws and policies. It is

unfortunate therefore, that the IMC was apparently dissolved after the creation of the Department of Ethnic Minorities Development (DEMD).

Nevertheless, the DEMD has played an important role in finalizing the Policy for Highland Peoples' Development and has a potential role to act as an important link between government departments and indigenous peoples. There is a need to raise the profile and capacity of the DEMD as it appears to be at a low rank in the hierarchy of the government.

An obstacle for strengthening links between the government and indigenous communities is the weakness on the side of the government staff in their understanding of the cultures and histories of indigenous peoples, in linking biodiversity conservation and indigenous resource management systems, ecological agriculture, forest management and regeneration processes and understanding the significance of swidden agriculture and forest collection activities for peoples' livelihoods. There is also an obvious lack of skills in communicating effectively with local people. Such a lack of understanding and ability to communicate is a crucial issue that must be addressed before effective relationships between the government and indigenous communities can be established and strengthened.

4.1.10 Research and Information Dissemination

Several good examples exist in Cambodia of research work with indigenous communities in the field of natural resources management. There are also many institutions that involve government, local and international NGO's and UN agencies that have developed tools and models of participatory action research. However, the inaccessibility and remoteness of most villages hampers information dissemination. Producing information that is easily understood also poses a challenge. Many indigenous peoples did and still do not have access to formal schooling, making it difficult to promote written materials. More popular forms such as radio programmes and audio-visuals have been found to be most effective.

Community Documentation Project

The Ratanakiri Natural Resource Management Network (RNRMN) started a video project to document the situation faced by indigenous communities. In this project, indigenous representatives are given basic training in handling video cameras and editing, and subsequently assigned to take footages of interviews and scenes in their own villages. Video productions are done in Khmer or indigenous languages and translated into English for wider distribution. This activity has proven to be of immense support to communities facing various problems and an important awareness-raising and alliance-building tool.

Wanai Lieng, RNRMN

Sharing of Information

The Community-Based Natural Resources Management (CBNRM) Learning Initiative in Cambodia has been considering plans to scale up its efforts in promoting CBNRM in the country and in the region towards the formation of a "CBNRM Learning Institute". Initiated in June 2001, the CBNRM Learning Initiative has been actively working with local communities in the areas of capability-building, learning, networking, and policy support. The learning initiative is being co-sponsored by the World Wide Fund for Nature (WWF), Oxfam America (OA), and the International Development Research Centre (IDRC), and is being supported by the Regional Community Forestry Training Centre (RECOFTC), the CBCRM Learning and Research Network (LeaRN), and the Mekong Learning Initiative (MLI). A major activity of the CBNRM Learning Initiative has been the holding of case study writing workshops that aim to synthesize insights from CBNRM efforts by local communities, enhance people's research and analytical skills, and

develop and extend the network of organizations and institutions in CBNRM. These case study writing workshops have not only served as a venue for the sharing of experiences among CBNRM practitioners in Cambodia and Southeast Asia, but have also contributed in promoting CBNRM as a viable and important aspect of socio-economic development efforts particularly in the case of the Royal Government of Cambodia. The workshop outputs have likewise served as basis for the development of relevant policy and legal frameworks in CBNRM.

Regional Newsletter on CBCRM

4.2 Harnessing Indigenous Natural Resource Management

Indigenous peoples' detailed knowledge can be use in community mapping to identify important cultural sites, terrestrial habitats and place names in their traditional territories, etc. Traditional resource management systems and the traditional legal systems of indigenous peoples or *vice-versa*, can also be integrated with other resource management systems. In remote areas, this traditional legal system could continue to be used to resolve their conflicts.

Although the contribution of traditional knowledge on resource management such as the above has often been quoted, there is still a tendency for these statements to be mere lip service. The ground reality requires not only political will but active engagement especially from communities themselves. Nevertheless, there are already ongoing efforts particularly mapping of community protected areas.

4.3 Impact of Natural Resources Development on Women

Women and Development

Indigenous women play a major role in agriculture and collection of forest products. While men mostly do the hunting and fishing, and undertake more physical agricultural work, women have to be more knowledgeable and hardworking than men as their work involves the maintenance and the supervision of the field crops, and regular harvesting visits to the forest areas. Women also have to collect firewood and water, take care of the children, farm animals and manage with all the traditional activities. Women have good knowledge of resources available in the forest and around their fields.

As more lands are taken for orchards, cash crops, oil palm and rubber plantations, women will be severely affected as they lose control of an important part of the surrounding village area which they currently use to gather, collect and cultivate food resources. While collective rights traditionally include women, sometimes even as primary managers, private ownership that has been introduced through the land law could exclude women in ownership and control of natural resources.

In an impact assessment of the Yali Falls dam on the Se San River in Ratanakari, indigenous women complained about the loss of their livelihoods. Activities by women such as fishing using scoop baskets and nets to catch small fish and shrimps along the river, collecting of wild vegetables and bird eggs from the riverbanks during the dry season has been severely affected. The dam has also disrupted gold panning and dry-season gardens and women feel that have lost their independence, and have to rely on men to supply fish and some other food sources.

4.4 Institutional Structures

For many years, NGOs promote food security programs including providing seeds of a variety of fruit trees, and promoting livestock rearing and agricultural technologies. Many NGOs and government departments are also working on natural resource management, which had established forest committees. Those organizations are Ratanakiri Network Support Project (RNSP), Highlander Association (HA), Non-Timber Forest Project (NTFP), CIDSE (now called Development and Partnership), ICC, Seila and CEDAC. At the same, many NGOs also involved with improving the infrastructures including school, Health Center, and rural road.

Indigenous organizations in Cambodia are still unable to effectively engage with governments, local and international NGOs and UN agencies. The next four sub-sections will look at the institutions involved in natural resource management and the mechanisms for engagement.

4.4.1 Government

Cambodia's current institutional approach on natural resources management is to assign responsibility for state resource management to sectoral ministries at the national level, which subsequently assign it through the provincial departments. Provincial governors also exercise control over state resources, particularly in areas where ministries do not have active management control. Active and sustained mechanisms to coordinate among these ministries and governors are lacking and very dependent on financial resources from international donors. As seen in Chapter 2, each ministry would be guided by the laws and decrees.

4.4.2 Community Organisations

The growing capacities of a number of indigenous networks such as the Indigenous Forum and associations have played an important role in raising the awareness of communities, especially in remote areas. Particularly important are the roles in organizing activities to enable communities to understand the provisions in the land law, forest law and in international human rights instruments on indigenous peoples' rights as well as the ongoing processes such as the policy on indigenous peoples' development and the draft protected area law. Indigenous networks and associations could also play a role in encouraging collaboration with local and international NGOs and donors to enhance the capacity of community representatives and organizers to improve knowledge and skill to dialogue with the government, investors and donors as well as assist community representatives in attending relevant workshops and conferences at the national and international levels.

Community organizations at the village level have an important role in promoting traditional natural resources management system and strengthening traditional authorities and mechanisms for decision-making of the community. This implies the active promotion and inter-generational transfer of knowledge on indigenous culture and identity. The village-level community organizations also need to coordinate their engagement and to participate effectively in various processes to voice their perspectives on community development to guarantee the rights and interests of indigenous peoples.

Highlander Association

The Highlander Association (HA), which was set up as a network that is governed by committees at the village and commune level to strengthen solidarity and traditional practices such as reciprocity within communities, be it exchange of food or labour. It has conducted studies of indigenous peoples' livelihoods, history and traditional culture. It also conducts workshops and other educational activities to discuss about land tenure and natural resource management issues. Where requested, it also promotes income generating activities such as cashew nut marketing, animal husbandry and credit project as well as the collection and marketing of forest products. Members of the HA are actively involved in the process of registering communal land titles and in urging the government to implement laws and develop legal mechanisms to protect natural resources and indigenous peoples' rights.

Dam Chanty, Highlander Association

Roles of Traditional Leaders

Traditional leaders govern the communities, including natural resources, using customary law. Traditional leaders mobilize labor and other resources to support community members during harvest, planting and ceremonies. They also play a role in supporting weak community members. Particularly, when conflicts arise, they have to bring the offenders and offended together in order to find mutual agreed settlements. The elders and women healers, who are also considered traditional leaders, conduct spiritual ceremonies, communicate with spirits and pray for the good health of community members. Leaders are also responsible for transferring traditional knowledge to young people. For many years now, traditional leaders have increasingly small roles and authority in governing communities, with the government progressively claiming more power. It is the government who created and gave authority to the local administrative structure which is now key in the management of local areas.

Pat Chan Seng, *Tampuon*

4.4.3 Local, National and International NGO's

Many NGOs have been active in promoting the land law, forest law and indigenous peoples' rights, focusing their efforts on the right to utilize, own and control land and natural resources. NGOs that have good relations with government have also facilitated engagement between communities and relevant departments. NGOs and the SEILA program of the government established the community forest and also strengthened the capacity of NRM committees. These NRM committee play an important role in facilitating the community in establishing rules and regulations for the community forest. These committee also developed the participatory land use plan (PLUP), assisted in demarcating community boundaries, provided classification of several types of land use and protection areas. However, the committees largely failed in these activities due to lack of support from local authorities (commune councils) and community members.

A number of communities have also expressed a need for NGOs to have a more sustained campaign for the recognition of indigenous peoples' rights to natural resources, and to pressure the government to enforce laws have been adopted and which are supposed to protect their interests.

NGO Forum

The NGO Forum is made up of local and international non-governmental organizations grounded in their experience of humanitarian and development assistance to Cambodia. The NGO Forum exists for information sharing, debate and advocacy on priority issues affecting Cambodia's development. The NGO Forum has an important role to highlight the impact of development processes and economic, social and political changes on Cambodians. Under the land and Livelihood Programme of NGO Forum there is a project on indigenous peoples and a project on forest livelihoods. The former is aimed at cooperating with various organizations to ensure that the capacity of indigenous peoples to advocate for their own rights is strengthened and that their concerns are heard and acted upon by the government, donors and the wider community, particularly in relation to their rights to land and natural resources. The forest livelihood project strives to enable local communities living in and near forest areas to gain secure tenure over the forest resources that they have traditionally relied upon for their social, economic, and cultural development.

www.ngoforum.org.kh

4.4.4 Donors and UN Agencies

Donors and UN agencies played a very important role in shaping the laws and policies on natural resource management in Cambodia. Further technical and financial support to clarify these laws and policies to ensure their feasibility for implementation on the ground, particularly with and for indigenous peoples, has been significant. Nevertheless, it is important to recognize that gaps in understanding indigenous systems, which also exists for donors and UN agencies, need to be addressed so as to avoid imposing western ideas on local institutions and customary laws and practices. The concerns that donors and UN agencies themselves have identified, such as having effective consultations, providing continuity and avoiding financial dependence, need to be seriously addressed in order to ensure that continued support is effective.

5. Challenges and Drawbacks

This Chapter will focus on cases illustrating challenges and drawbacks in the implementation of laws and policies on natural resource management.

5.1 Illegal Land Sales and Land Grabbing

The foremost challenge in relation to indigenous peoples and NRM today is the illegal sale and acquisition of land - 'land grabbing'. Communities, concerned government officials, international agencies and NGOs concur that if this land grabbing continues, indigenous peoples are at risk of being displaced and all past efforts on legal and policy change and poverty-reduction strategies will be rendered useless. Many indigenous communities are being deceived daily into losing their lands, although there is a growing awareness within indigenous communities of the danger of illegal land acquisition, as expressed by the statement by a gathering of indigenous peoples in 2004.

Indigenous Peoples' Statement on Land Sales

Numerous illegal land sales and land grabbing have been identified in Ratanakiri and Mondolkiri as confirmed by indigenous peoples by the Indigenous Forum in 2004. A statement by the NGO Forum to draw the attention of the government and developers in October 2004 stressed that this contradicts the intent of the 2001 Land Law and the policy priorities identified by the Poverty Reduction Strategy of the government. To illustrate the nature of the problem, the statement mentioned examples such as the issuance of 70,000 ha of land concession over the land of the *Suy* indigenous people in Kompong Speu; 1,400 ha and 2,000 ha of gem mining concession over indigenous peoples' land in Lumphat district and Borkeo district respectively in Ratanakiri province and 200,000 ha concession proposed for Mondolkiri province.

The statement said that the traditional management systems of indigenous communities are being destroyed by individual land sales of community land mainly to powerful businessmen. Land sales were approved by individuals within the community but in an environment of insufficient information, disinformation, and sometimes threats and intimidation. In other cases, the local authorities (commune councils) arbitrarily sell land without informing the people living on the land, while in other cases land is forcibly occupied by powerful indigenous and non-indigenous individuals with strong connections with powerful individuals. Indigenous communities are demanding for a moratorium on land sales and on granting land concessions that affects traditional lands until the adoption of the sub-decree on both indigenous collective titles and economic concessions.

Indigenous communities also want the forests and water resources traditionally used by them to be recognised as part of the traditional management and ownership of indigenous communities. Respect for traditional structures is also urged to ensure community solidarity and cultures are kept strong, and for new governance structures need to respect and consult traditional systems.

www.NGOForum.org.kh

5.2 Developing Partnerships and Mutual Learning

Information dissemination as an important mechanism towards partnerships and mutual learning is a major challenge, due largely to language and cultural barriers. Most indigenous peoples have lacked access to formal education and Khmer literacy levels are low. In strengthening links between government and indigenous communities, a major challenge includes encouraging government staff to spend more time in villages, to learn from local people and increase interactions with key elders in the communities.

Meanwhile the formulation of policies for the development of indigenous peoples faces major challenges from the lack of detailed resource use plans to guide State resource management decisions, and lack of capacity for monitoring resource use and revenue availability. A report on the latest National Consultation Report states that "the indigenous representatives seemed to get lost in the midst of these intellectual debates on the meanings of words and phrases. Some of them seemed to have difficulty to read the documents, hence clearly limiting their participation. All these are just observations without real discussion due to limited timeframe". This indicates that there was a lack of information on the policy paper despite the length of time it has been in circulation. In circulating documents, local languages should be used and promoted as much as possible through appropriate media such as community radio and audio-visual materials discussed earlier.

Another drawback is misunderstanding about indigenous land use practices:

"Misunderstandings abound regarding land use practices of indigenous peoples. Outsiders and government officials assume that the local people are nomadic, and that their farming systems are environmentally destructive, with low agricultural productivity. Even though humans have lived in and helped shape large areas of Virachey National Park, for example, within the wilderness paradigm it is heretical to suggest that swidden systems might have had, and could have, a role in conserving overall landscape biodiversity. The real question about the future role of swidden is: can swidden be used to stimulate the ecological processes that can best achieve the most productive food webs and the most biodiversity habitats both for community use and wildlife?" (Ironside and Baird, 2003)

More recently in Cambodia, efforts on collaborative management in protected areas have received a large amount of interest among government, international NGOs and funding agencies. However, the collaborative management initiatives in protected areas where indigenous peoples have been residing are facing major challenges as the case in Virachey National Park illustrates.

Collaborative Management, Indigenous Peoples and Protected Areas

Community members say collaboration so far has only been shallow and that a lot of what the Park staff says is empty because there has been a lot of discussion but little implementation. People feel the Park staff do not allow them to understand too much (access sufficient information) and that the staff work very far from the people. Kok Lak people compare the NTFP's regular partnership with the community with the partnership efforts of the Park staff in Virachey NP. Meetings are only once every 2-3 (up to 6) months. Sometimes meetings are short – 1-2 hours. People say that if they have long meetings, the Park staff and rangers are afraid people will ask a lot about illegal activities in the park. People suspect Park staff of being involved in illegal activities. Before the staff did not have anything, now they have motorcycles and houses.

Community representatives say there is no justice or equitability in the management of the Park. Examples used to illustrate these feelings included the fact that no Kok Lak people are employed, only Lao and Khmer people; that the community committees have been chosen to assist with Park activities but there have been no meetings with them for nearly a year; that a signed agreement was made about the boundary for a CPA but now they are told that people do not have any right to manage that area and must get a permit to enter anywhere in the Park; and that there is still no assistance with agriculture and with buffaloes for lowland rice growing despite promises by the Park staff prior to the establishment of the Park.

Now, since the recent logging, villagers are starting to say that rangers want to stop people from going into the Park because they can make partnerships with local businessmen/companies (made up of Police, Military Police, Chinese traders) to exploit the resources of the Park. At present, small scale loggers are cutting *Granugn* wood in the forests to the south of the Park and people are worried that in the future this activity will encroach into the Park. Park Rangers are telling people not to hunt animals, and will even be stopped if they have a fish. People however see the rangers going on patrol and then they hear mines and guns going off in the forest. People also say they have seen the remains of sambar deer, gibbon and monkey in the forest that have been eaten by the rangers. Local villagers have also followed up on a pangolin that was confiscated from a villager. When they asked the rangers they were told that the pangolin was freed but some villagers saw the animal in a local Chinese wildlife traders' house. Such observations and discrepancies serve to increase the mistrust with which communities view the establishment and management of National Parks.

Ironside and Bunma 2004

5.3 Coordination between Government Departments

Another major challenge is the lack of coordination between departments dealing with natural resource management. One example is the pilot project to title communal land in three areas in Ratanakiri and Mondulkiri. The departments involved are the Ministry of Environment (MoE), Ministry of Agriculture, Forestry and Fisheries (MAFF) and Ministry of Land Management Urban Planning and Construction (MLMUPC). However, only the MLMUPC was actively coordinating with NGOs and the community to implement the project. To ensure success of the project and extension to other communities, it is imperative to have all three departments involved. Resources would need to be set aside for such inter-departmental coordination.

5.4 Land Alienation for Logging and Plantations

As mentioned, the most serious problem that indigenous peoples face is land alienation. Large scale land alienation occurred during the last 2-3 years after the roads were built to Ratanakiri and Mondulkiri provinces, when newcomers moved in and land price increased. Alienation of land stemmed especially from the government planning development through land concessions. As a consequence of the land alienation, indigenous communities are deprived of their lands, threatening their very existence as peoples. Associated with indigenous land alienation and the expansion of cash cropping agriculture, deforestation is becoming a serious environmental problem.

Many communities continue to be cheated by others - be they politicians or business people - to sell their land. More recently, communities from Ratanakiri and Mondulkiri have organised peaceful protest actions to draw the attention of the government to their plight. While such actions received consideration from local government officials, the central government still tend to use police action against the communities.

Monitoring Land Alienation

The agency responsible for overseeing the implementation of the Forestry Law and the Sub-Decree is the Ministry of Agriculture, Forestry and Fisheries (particularly its Department of Forestry and Wildlife). In this respect, there are concerns that the Ministry's overt pro-exploitation policies conflict directly with its responsibility to implement the community management goals of the 2003 Sub-Decree. Despite the passage of the new Forestry Law and a moratorium against logging announced in January 2002, the acute problem of forest mismanagement persists. For one thing, the government continues to grant timber concessions outside the revised legal framework and has also failed to terminate many non-performing concessionaire contracts. The few contracts which were in fact terminated in recent times appeared to involve companies which were either bankrupt or not aligned with the 'right' political groupings.

Overall, illegal logging by companies backed by political clout persists, and provisions of the Forestry Law are flagrantly breached. While the Forestry Law requires concessionaires to produce Strategic Forest Management Plans and Environmental and Social Impact Assessments, the government has reportedly been willing to accept assessments of extremely low quality. In some instances, assessments had simply been copied from previous reports. In this regard, the World Bank itself has been severely criticised for releasing loans to the government in breach of its own forest-reform conditions. The Forestry Law itself contains inherent weaknesses – one unsatisfactory feature is the failure to distinguish between “natural” and “planted” forests. Thus, logging companies can simply claim to be engaging in reforestation and disguise the reality, that is, the destruction of villagers' community forests, grazing land, commons and fallows, to be replaced by even-aged stands of species of fast-growing (but often alien) trees. The influence of vested interests over the forestry sector is also illustrated by the government's decision in

April 2003 to terminate the representation of an independent NGO monitor in the Forest Crimes Monitoring Office. This Office had been established to monitor illegal logging activities and comprised officials from the Department of Forestry and Wildlife and the Ministry of Environment, together with Global Witness - as an independent observer. Subsequently, Global Witness was fired following conflicts with the government over the documentation of several cases of connivance by government officials in illegal logging.

Singapore Yearbook of International Law (SYBIL)

5.5 Large-scale Development Projects

Another major challenge with respect to indigenous peoples and natural resource management is the implementation of large-scale development projects such as dams without obtaining the consent of affected communities. In some cases, the appeals and suggestions of indigenous peoples are disregarded. Problems of lack of consent and redress are compounded in projects that are trans-boundary, involving neighbouring countries.

Indigenous Voices Falling on Deaf Ears in Dam Construction

Extreme problems have been reported since mid 1996 with the impact of hydropower dams located on the Sesan River in Vietnam, which flows through Ratanakiri and Stung Treng provinces in the north-east of Cambodia. The dams have resulted in deaths from floodings, erratic river levels, worsened water quality, increased health problems, a severe decline in fisheries and riverine biodiversity, and these effects continue to threaten the livelihoods and lives of the people who depend on the river. While these problems continue, they are likely to be exacerbated by more dams that have already been commenced or are being planned in Vietnam and Lao PDR, on the Sesan River, Srepok River, Sekong River and Mekong River.

These dams are being planned or built without adequate assessment of past impacts, without rectification of the problems of existing dams, and without first conducting comprehensive future environmental and social impact assessments. International donor agencies and multi-lateral banks continue to support and validate their construction without funding the construction directly by supporting associated projects such as power line construction and funding feasibility studies. In this way, large international institutions such as the Swedish International Development Agency, the World Bank, the Japanese Bank for International Cooperation and the Vietnamese and Lao governments, along with funding from the Russian and Ukrainian governments, effectively undermine the lives of indigenous peoples in north-east Cambodia. In addition, it has been announced during the past year that the Cambodian and Vietnamese governments have signed agreements for the construction of two hydropower dam projects, which will be built on the Sesan and Srepok Rivers inside Cambodia. There are very strong local concerns that industrial power generation and the model of industrial development that it supports have profound and long-term negative impacts on the lives of indigenous people.

All of these dams are being built despite the demands of the communities who live along these rivers. The demands of the villagers include the restoration of the natural flow (of the river); compensation for past harm; no more dams until agreement is made with the villagers; improvement of the notification system; benefit sharing and economic development; insurance if the dam breaks; and greater participation in environmental governance.

In addition to dams affecting the northeast, a survey by the Cambodian Ministry of Industry, Mines, and Energy has proposed hydro-power dam projects in numerous areas throughout Cambodia. If constructed, these dams will affect indigenous people in at least eight provinces.

5.6 Enhancing Capacity of Indigenous Communities

In cases of indigenous land alienation, it is very clear that indigenous communities do not know that the Land Law grants them rights to collective property under the responsibility of their traditional authorities and their mechanisms for decision making. If they were aware of this they would not be so vulnerable to the threats of brokers. It is also clear that they do not know that the Land Law prohibits indigenous common property alienation, so a contract to sell indigenous land has no legal effect, because the subject matter of the contract is illegal.

Indigenous peoples have expressed as a problem the loss of their culture, languages, customs, and traditional authorities. It seems that many groups of indigenous peoples are not aware of the legal statutes enforce protecting their rights. Further, they do not find institutional channels to actualise their demand for the enforcement of those rights. A handful of indigenous students at the local universities and colleges, and indigenous community leaders have therefore found it extremely important to get exposed to relevant laws, international instruments as well as learn from the experience of other indigenous communities outside of Cambodia.

5.7 Harnessing Indigenous Livelihood Strategies

If poverty reduction is to be effective, indigenous peoples' customary use of natural resources in their territories needs to be harnessed in partnership with conservation strategies. The challenge is to use a combination of effective joint management strategies and recognition of the rights of communities over their resources.

Access Rights to NTFPs

There should also be recognition of local community rights to control the use of several NTFPs in National Parks. In the recent past, exploitation of NTFP in National Parks has been anarchic and destructive. Part of the reason for this has been the inability of local communities to control access to important resources, and, therefore, to implement their own form of sustainable management. The recent effort by the park and communities to control the destructive harvesting of malva nuts is a good example of the kinds of joint management approaches that can be successfully implemented. However the park needs to go further in granting local communities management rights, so that they have an incentive to sustainably manage natural resources, knowing that they will be able to benefit from them in the future if they are manage them properly now. People wish to protect for their own future use, and more specifically, to protect from unsustainable exploitation and destruction by outside interests. Due to the historical records of communities collecting and trading these forest resources for considerable periods of time, several of these NTFPs could be considered to be the "cultural inheritance" of the *Brao*, *Lun*, *Kavet* and *Kreung* people.

Ironside and Baird, 2003

5.8 Use of Criminal Laws and Police in Land Conflicts

Although there are specific laws regulating the use of various natural resources, these laws are often not used when conflicts arise. Instead, the police are brought in and criminal laws exercised, which are often more expedient in dealing with indigenous peoples who are struggling for their rights to their land.

Unjust Treatment of Indigenous Persons

There are a considerable number of indigenous people in prison. Several prisoners stated that they had been tortured during the period of detention in police custody. The President of the Court and the prosecutor told us of the lack of lawyers in the province to defend the accused persons during the trial. Even though the law states that a defendant is entitled to legal representation. Indigenous minorities have faced trials without lawyers or translators. Prisoners complained that they did not have resources to pay for lawyers or the other fees that they were asked to pay. An indigenous prisoner told us that his wife had to sell all the family property (two buffalos and lands) to pay for all the costs related to his case. He has eight children, and now he has no property to support his family.

Pathways to Justice, p103

5.9 National Implementation of International Instruments

The presence of several UN agencies and international NGOs in Cambodia has provided the necessary financial and technical support to indigenous organizations and provided an avenue to share international legal instruments such as the United Nations Draft Declaration on the Rights of Indigenous Peoples. The World Bank (WB) and the Asian Development Bank (ADB) have also adopted policies to recognize and respect indigenous peoples' rights, and have determined that their policies apply to indigenous peoples in Cambodia. However, the challenge to ensure that projects supported by such agencies and bodies to implement human rights standards are not met by mere lip service by local and national government officials is a major challenge. One drawback that is observed is the implementation of pilot projects that are money-driven and which have not seen long-term commitments or benefits.

The International Labour Organisation (ILO) established an office in Cambodia to promote ILO Convention 169. It has been a major challenge to get government departments to support the activities of this office, even the promotion of the UN-declared International of the World Indigenous Peoples' Day on August 9 each year. The ILO office and the Department of Ethnic Minorities Development, which organized an event to celebrate the international day in 2005, were disappointed when several indigenous representatives traveling from several provinces to Phnom Penh were not allow by the local authority and stopped by police, a recent instance of a regularly observed tendency on behalf of some parts of the police to obstruct and hinder indigenous organizations and associations..

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