



Land and Cultural Survival

The Communal Land Rights of
Indigenous Peoples in Asia

Edited by Jayantha Perera

Asian Development Bank



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Chapter 4

Access to Natural Resources: Case Studies of Cambodian Hill Tribes

**John P. McAndrew
Oeur II**

The region of northeastern Cambodia that includes Ratanakiri, Mondulakiri, Kratie, and Strung Treng provinces has historically been a crossroads of diverse influences. As early as the 13th century, Khmer and Cham people living along the Mekong River in Strung Treng Province are thought to have been in contact with the indigenous inhabitants of the forest areas through the Sesan and Srepok rivers. Trade was conducted through these river systems to secure forest products such as elephant ivory, hides, feathers, wood, wild spices, and herbs. In addition to the trade in goods, there was also a trade in slaves, which lasted until the 19th century. In the late 19th and early 20th centuries, the French colonialists operated rubber plantations and gem mines in the area. For centuries the Khmer and Cham, the Vietnamese and the Lao, and later the Thai and the French have been in contact with indigenous peoples of the highlands.¹⁴

¹⁴ The terms “indigenous peoples,” “indigenous groups,” “indigenous communities,” and “hill tribes” are used synonymously throughout this chapter to refer to the national minorities such as the Tampuan, the Phnong, and the Stieng in northeast Cambodia who were involuntarily incorporated into the larger state and who did not participate in the process of state formation. By contrast, ethnic groups in Cambodia such as the Chinese, the Vietnamese, and the Muslim Cham were voluntarily incorporated into the state through migration (Kymlicka 2002 cited in Ehrentraut 2004).

While indigenous peoples of Cambodia's northeast highlands maintained trade relations with lowland groups, they were nevertheless able to assert domain over their own territories. This began to change during the French colonial period with the establishment of permanent settlements around plantations and mines. After independence in 1954, the Sangkum Reastr Niyum regime took decisive steps to incorporate the indigenous hill tribes of the northeast into mainstream Khmer society. Inhabitants of the plains regions of the country were encouraged to resettle in the northeast highlands and teach the hill tribes how to follow Khmer ways. This in-migration was curtailed in the 1970s as a consequence of the civil war and later the Khmer Rouge regime. After 1979, the indigenous peoples who had been relocated by the Khmer Rouge began to return to their own villages.¹⁵ In the 1980s, the in-migration of Khmer settlers into the northeast remained limited with the exception of Kratie Province.

Since the 1990s, the opening up of Cambodia's economy has had far-reaching consequences for the indigenous peoples of the northeast region. The pursuit of forest concessions and economic land concessions granted without the involvement of indigenous groups has occasioned a major shift in the use and ownership of land resources.¹⁶ Traditionally, indigenous peoples used land and forest resources as communal property to support their own subsistence. Now, private commercial interests exploit such natural resources to increase their own wealth.

¹⁵ The village is the smallest administrative unit in Cambodia followed by the commune, the district, and the province. In some instances, the district is followed by the municipality.

¹⁶ The Forestry Laws of 1988 and 2002 govern the granting of forest concessions. Between 1994 and 1997, the Government of Cambodia granted 33 forest concessions to companies encompassing an area of almost 7 million hectares, equal to more than half of Cambodia's forest area. In December 2001, the logging permits of the forest concessionaires were suspended pending the approval of their Strategic Forest Management Plans. However, as of June 2007, 40% of the 59 economic land concessions in Cambodia covering one-third of the total 943,069 hectares under these concessions were located in the four provinces of northeast Cambodia (United Nations Cambodia Office of the High Commissioner for Human Rights 2007). Global Witness (2007) reported that economic land concessions had been used as a pretext to cut timber in forests. The Land Law of 2001 envisages "other kinds of concessions...such as mining concessions, port concessions, airport concessions, industrial development concessions, [and] fishing concessions," which do not fall within its scope (Article 50).

The granting of forest concessions in Cambodia in the mid-1990s sought to eliminate illegal logging and generate more state revenues from forest exploitation. In 2001, the government banned excessive logging operations under large-scale forest concessions. But illegal logging continued unabated under the concession regime and was often abetted by it (Global Witness reports 1997 to 2002). Similarly, the forest concessions never generated the state revenues expected because they were unable to capture the proceeds from illegal logging controlled by the major political factions. From 1992 to 1998, the estimated value of Cambodia's timber exports reached a staggering \$2.1 billion, while the estimated government revenue during the same period was only \$98.8 million (Le Billon 2000). With respect to northeast Cambodia, Forest Concession Review (Fraser 2000) gave the Hero Taiwan Company operating in Ratanakiri Province the lowest performance score of all inspected forest concessions and detailed several contractual breaches by the Malaysian Samling company operating in Mondulakiri and Kratie provinces.

The impact of illegal logging that continued unabated and the effects of forest concessions on local communities were devastating, including severe forest deforestation and degradation. Logging operations on indigenous peoples' land diminished their access to non-timber forest products such as resin. Concessionaires also destroyed "spirit forests", which constitute sacred sites in indigenous villages (Colm 2000; McKenney 2002; Evans et al. 2003).

In northeast Cambodia, efforts to establish economic land concessions involved the takeover of large tracts of land in villages of indigenous peoples. In Ratanakiri Province, economic land concessions were initially established in the mid-1990s for growing palm oil, coffee, and cashew nuts on the rich, volcanic red soils of indigenous villages along national road 78 from the provincial capital of Banlung to the border with Viet Nam (Colm 1997). At the beginning of the 21st century, economic land concessions in Ratanakiri Province were awarded in indigenous villages for the production of rubber and teak. Also in Ratanakiri Province, gem mining concessions were granted in 2003 in Lumphat and Bokeo districts. In Mondulakiri Province, the Chinese Wuzhishan L.S. Group requested a 199,999-hectare (ha) pine tree plantation in Sen Monorom and Ou Reang districts. Development of the 10,000 ha initially approved by the Council

of Ministers began in September 2004 despite complaints from Phnong villagers. In 2006, large-scale mining development began in Mondulkiri Province with the Australian companies, Oxiana and BHP Billiton, exploring for gold and bauxite (Kinetz and Yun 2007). In Kratie Province, six economic land concessions, awarded to companies in 2006, encroached upon land of Phnong, Mil, and Kuy indigenous peoples in Sambo District. In Stung Treng Province, five economic land concessions, granted to companies in 2005 and 2006, encompassed forested areas in Sesan District in violation of the law. These included evergreen forests under the traditional use of Phnong, Prov, and Kuy indigenous peoples. Concessionaires in Stung Treng's Sesan District also cut down resin trees tapped by local villagers, contrary to the 2002 Forestry Law (United Nations Cambodia Office of the High Commissioner for Human Rights [UNCOHCHR] 2007).

The opening up of Cambodia's economy, which included the construction of roads by logging concessions and the government, likewise spurred a new in-migration of Khmer settlers to the northeast and the growth of market centers. From 1992 to 1998, the population of Ratanakiri Province increased by 41%.¹⁷ Accelerated market activity in Ratanakiri Province led Khmer settlers to buy up land from indigenous peoples for the cultivation of cash crops or for future speculation. In one notorious case, a high-ranking general in the military obtained title to 1,250 ha of land in Bokeo District in Ratanakiri Province from Jorai and Tampuan indigenous villagers in exchange for bags of salt. With the support of nongovernment organizations (NGOs), the villagers filed a complaint with the Ratanakiri Provincial Court. After 2 years of legal disputes, the Provincial Court in 2001 upheld the general's title to the land. After Prime Minister Hun Sen and King Norodom Sihanouk intervened, the Appeals Court reversed the decision and invalidated the land titles sold by the Jorai and Tampuan plaintiffs. In Mondulkiri Province, the construction of a new road early in the 21st century through Keo Seima District into the provincial capital of Sen Monorum precipitated land speculation and the incursion of economic land concessions.

¹⁷ The United Nations Transitional Authority of Cambodia Population Census of 1992 records the population of Ratanakiri Province at 66,764, while the General Population Census of Cambodia 1998 documents the population of Ratanakiri Province at 94,243.

Although the Land Law of 2001 made the sale of indigenous land illegal, a 2004 study found that extensive sales and seizures of indigenous land had taken place throughout Ratanakiri Province in direct contravention of the law (NGO Forum 2004). A follow-up study undertaken in 2006 revealed that the severity of land alienation had accelerated in almost one-third of the provincial communes (NGO Forum 2006). In all likelihood, the trend of land usurpation in indigenous communities will worsen. The government has indicated on several occasions its plan to develop by 2015 the four provinces of northeast Cambodia into the fourth development pole of the country, after Phnom Penh, Siem Reap, and Sihanoukville. Mining, agro-industry, and eco-tourism are seen as the drivers of this growth. The government's plan for economic growth in northeast Cambodia appears to sanction and foreshadow further alienation of indigenous land (UNCOHCHR 2007).

Communal Land Titles and Forestry Rights

While indigenous groups in northeast Cambodia struggle to adapt to the rapid depletion of their natural resource base, progressive legislation enacted in Cambodia in recent years provides a legal framework for preventing further decline of the natural resources base. Paramount among such legislation is the Land Law of 2001, which enables indigenous communities to gain collective title to their "traditional land", variously known as residential land, agricultural land, and the "reserve land" kept for swidden or slash-and-burn cultivation (Blackstrom 2006). The Land Law of 2001 protects the rights of indigenous communities to use and manage their traditional lands, even before their rights are recognized and collective titles are granted.¹⁸ As such, the sale of indigenous land since the promulgation of the Land Law of 2001 is deemed illegal. The sale of individual and communal land is prohibited after the issuance of communal titles, although individual possession rights under communal land ownership are allowed. This is consistent with the traditional allocation of use rights on communal land to individuals and families.

¹⁸ The 1992 Land Law previously in force primarily dealt with land-use practices of lowland Cambodians and did not reflect the communal land management practices of indigenous peoples (ADB 2002).

In 2003, the Ministry of Land Management Urban Planning and Construction initiated a pilot land-titling program in two indigenous communities in Ratanakiri Province and in an indigenous community in Mondulakiri Province.¹⁹ Procedural issues in this process were to be addressed in a sub-decree issued to clarify the provisions contained in the law. In March 2004, the ministry formed an inter-ministerial national task force to coordinate the work in the three pilot villages and to oversee the development of the sub-decree for communal land titling.

Efforts to develop and implement the indigenous land provisions of the Land Law of 2001 involved the participation of indigenous peoples. Leaders of indigenous peoples consulted on the proposed law in 1999 expressed the view that communal land titling is more in keeping with traditional land-use practices than individual titling. At a series of provincial consultations convened in 2004, indigenous peoples in different parts of the country strongly supported communal land titling that respected individual user rights under collective land ownership. It was significant that NGOs, the United Nations (UN), and several international financial institutions promoted indigenous law reforms in Cambodia (Simbolon 2004).

Despite the auspicious start, the process of drafting and adopting the Sub-Decree on Communal Land Titling stalled. In May 2005, an independent legal review announced that the framework for registering indigenous collective titles was largely complete. The review recommended that the sub-decree be drafted and adopted even in a simplified form to set out a process for the recognition of indigenous communities as legal entities. The review noted that Article 23 of the Land Law of 2001 provided a sufficiently clear legal definition of indigenous communities based on four criteria: (i) residing in the territory of Cambodia; (ii) manifesting ethnic, social, cultural, and economic unity; (iii) practicing a traditional lifestyle; and (iv) cultivating the lands in their possession according to customary rules of collective use. The review argued that these four criteria formed the basis for the recognition of indigenous communities as legal entities for the purpose of land ownership (Brown et al. 2005).

¹⁹ The pilot land-titling villages in Ratanakiri Province were La' In village in Toeun Commune, Kon Mom District; and L'eun Kreang village in Ou Chum Commune, Ou Chum District. The pilot village in Mondulakiri Province was Andong Krolung village in Sen Monorum Commune, O'Reang District.

The land titling program remained in its pilot phase even though the Land Law was enacted in 2001. Moreover, the Sub-Decree for Communal Land Titling also remained as a draft. As a result, indigenous minorities, particularly those in the northeast Cambodia, continued to lose their ancestral land rapidly to outsiders. Some of them, to obtain at least an interim protection for their ancestral lands, attempted to register such lands under Article 7 of the Sub-Decree on Sporadic Registration.

While communal land titling under the Land Law of 2001 provides a legal basis for curtailing encroachments into lands in indigenous communities, the Forestry Law promulgated on 31 August 2002 reaffirms the protection of resin tapping rights of local communities contained in the Forestry Law of 1988. In contravention of the common practice of forest concessions operating before the 2001 logging ban, the law prohibits the cutting of trees that local communities have tapped to extract resin for customary use (Article 29). The 2002 Forestry Law likewise recognizes and guarantees the traditional user rights of local communities to collect forest by-products. In addition, the Sub-Decree on Community Forestry Management approved by the Council of Ministers on 17 October 2003 enables local communities to enter into community forest agreements with the Forestry Administration for a period of 15 years. These leases temporarily transfer the management of forest resources to local communities. They are different from community forestry agreements that local communities have entered into with the Ministry of Environment in protected areas. Because security in land tenure and access to forest resources are inextricably linked with the lives of indigenous peoples, the signing of community forest agreements should be done at the time of communal land titling.

Disharmony: Two legal cultures in conflict

In August 2006, the Legal and Judicial Reform Programme of the UN Development Programme and the Ministry of Justice completed a study on indigenous traditional legal systems and conflict resolution in Ratanakiri and Mondulakiri provinces (Backstrom et al. 2006). The study revealed that preserving community solidarity was a core objective of customary law, which sought to reach agreement between the two parties so that the aggrieved was compensated, the guilty party punished, the two parties reconciled, and harmony restored. The study found that indigenous

communities overwhelmingly supported their customary legal system, although it lacked the authority to deal with the increasing number of disputes over land and natural resources. It also found that indigenous communities are marginalized within the formal legal system, which is often used as a tool by powerful interests to further exclude them. The study recognized that the formal and customary legal systems often address different kinds of conflict and that the latter cannot substitute the former. Therefore, reform of the formal legal system is urgently needed to accommodate customary rights of indigenous peoples.

The clash between customary legal systems and the formal legal system is evident in the Phnong indigenous community's conflict with the Wuzhishan L.S. Group over the pine tree plantation in Mondulkiri Province.²⁰ As mentioned earlier, Wuzhishan began operations on the 10,000 ha initially approved for its plantation in September 2004. As a result, six villages in Sen Monorom and Dak Dam communes in Ou Reang District were adversely affected.²¹ The lack of clarity in concession plans led more than 400 Phnong villagers to submit a petition to the Ou Reang district governor. The petition asserted that the plantation would affect Phnong rice fields, cemeteries, spiritual sites, and grazing land. A large demonstration erupted on 16 June 2005, when more than 650 Phnong villagers affected by the plantation protested in front of the company's office in the provincial capital of Sen Monorom. This led the Council of Ministers to issue a notification on 17 June 2005, ordering Wuzhishan to suspend planting immediately in all areas of the concession. An inter-ministerial committee was appointed to resolve the problem. Despite this, the company continued to plant, and villagers protested by setting up roadblocks for about a week in late June to prevent company trucks from going to the sites. Dismantling of the roadblocks was overseen by Mondulkiri's second

²⁰ Among the hill tribes in northeast Cambodia, the Phnong are known for their unbroken record of opposition to foreign incursions. White (1996) reports that the Phnong's resistance to French rule in Mondulkiri Province erupted in attacks against several colonial posts; as a result, from 1914 to 1933 the French abandoned their control over some areas following the killing of French civil servants and Khmer militia and settlers.

²¹ McAndrew et al. (2003), which constitutes the Mondulkiri case study in this chapter, was researched in Dak Dam and Srae Preah communes. One year after the study, Dak Dam Commune became a principal site of the Wuzhishan pine tree plantation.

deputy provincial governor, who promised the protesters that a solution to the dispute would be found (Environment Forum Core Team 2006; UNCOHCHR 2005a).

On 5 July 2005, the special representative of the UNCOHCHR called for the cancellation of the Wuzhishan concession. The commissioner pointed out that environmental and social impact assessments had not been conducted prior to the establishment of the plantation and that the local people and authorities had not been consulted in public discussions (UNCOHCHR 2005b). The high commissioner's report stated, "The provisions of domestic law and the international human rights treaties and ILO [International Labour Organization] conventions that bind Cambodia apply to both the government and the Wuzhishan L.S. Group. Many breaches of the law and of human rights have been committed" (UNCOHCHR 2005a). Retired King Norodom Sihanouk supported the high commissioner's statement, calling the Wuzhishan operation "an illegal and inadmissible violation of the Phnong's rights, human rights and constitutional rights" (Vachon 2005).

On 9 July 2005, about 200 village demonstrators met with Cambodia's secretary of state of the Ministry of Interior in the provincial capital of Sen Monorum. It was agreed that a provincial committee would be formed to conduct field research reporting to the inter-ministerial national committee and that Wuzhishan would immediately suspend planting in Sen Monorum and Dak Dam communes. On 26 July 2005, the inter-ministerial committee, in reporting the provincial committee's findings, said that negotiations with villagers in the two communes had been difficult and that at present it had been agreed only that the company would be required to build fences around its concession to avoid encroachments. On 18 August 2005, Wuzhishan began planting activities once again with permission from provincial government authorities, who asserted that conditions required by the Council of Ministers had been met (Environment Forum Core Team 2006). In December 2005, the government signed a long-term contract with the Wuzhishan Company. In 2007, a report from the UNCOHCHR (2007) noted that the Wuzhishan concession continued to operate although its activities had desecrated the spirit forests and ancestral burial grounds of Phnong villagers and had affected their reserved land, grazing land, and farmland.

The Wuzhishan case in Mondulkiri cogently illustrates the difficulty encountered by indigenous peoples in northeast Cambodia in adopting traditional conflict resolution approaches to a modern legal system that is strongly subject to political influences. In the Wuzhishan conflict, agreement was not reached between the two parties, the aggrieved were not compensated, the guilty party was not punished, and the two parties were not reconciled. Despite strong support from the UNCOHCHR, the Phnong villagers involved in the Wuzhishan land dispute were unable to assert their rights under traditional law or under the Land Law of 2001.

Expanding Economy and Shrinking Natural Resources: Three Case Studies

This chapter draws on three studies of changes among indigenous peoples of northeast Cambodia as a result of increased market activity and diminishing natural resources.²² Data were collected from two Tampuan villages of Ratanakiri Province (McAndrew 2000), two Phnong communes of Mondulkiri Province (McAndrew et al. 2003), and two Stieng villages of Kratie Province (Analyzing Development Issues 2004). This chapter traces broad emerging trends in the three provinces and documents how indigenous groups response to these trends. The chapter also assesses livelihood strategies and market participation of indigenous groups. The authors argue that indigenous peoples who retain control over their communal land and natural resources are in a stronger position to adapt to the rapid and inevitable changes brought on by the market economy than those who do not.

Field research was conducted in Ratanakiri Province at the Tampuan villages of Kahoal (Andong Meas District) and at Kamang (Bokeo District). Field research in Mondulkiri Province was undertaken at the Phnong communes of Dak Dam (Ou Reang District) and Srae Preah (Keo Seima District).

²² The authors, who work with the Analyzing Development Issues Project of the Cooperation Committee for Cambodia, acknowledge the contributions of the following in developing this paper: Maria Backstrom, Graeme Brown, Susie Brown, Jeremy Ironside, Megan Macinnes, Russell Peterson, Katrin Seidel, Maly Seng, Thany Seng, Todd Sigaty, and Peter Swift.

Field research in Kratie Province was completed at the Stieng villages of Mil and Thmar Hal Veal (both in Snoul District) (map).

Natural Resource Depletion

Many forces have put pressure on the shrinking natural resources of the region, including an influx of Khmer settlers with money to buy land for cash crops, the relocation of a district center, the illegal logging of resin trees, and large-scale deforestation that has caused soil erosion and loss of wildlife. The six villages studied have responded in different ways.

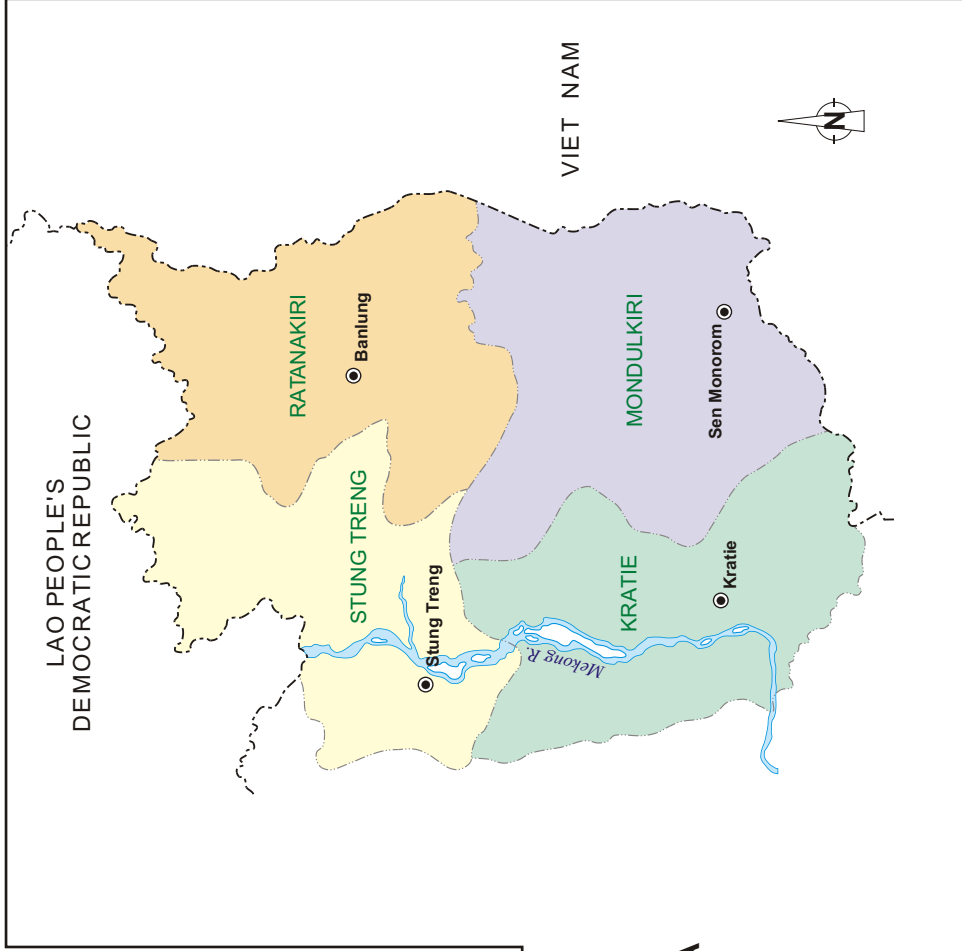
Tampuan responses in Kahoal and Kamang villages

Despite the rapid increase of market activity in Ratanakiri Province, the growth of Andong Meas District had been slow, albeit steady. As of May 2000, none of the 67 households at Kahoal village had sold their land rights. But even then the reach of the market was evident. The residents of Kahoal reported that Khmer buyers had come to the village desiring to purchase land. Prices offered for 1 ha of swidden land already cultivated reportedly reached as high as 10 *chis* of gold (\$400). Prices for 1 ha already cleared but not cultivated reached up to 4 or 5 *chis*. Prices for 1 ha of forest area not cleared ranged from KR100,000 to KR200,000 (\$25 to \$50). The buyers did not make their offers through the village chief or elders. They talked directly with individual villagers, undermining communal approaches to decision making.

As a result of these inquiries, Kahoal villagers formed their opinions about land sales in the village. The central position they took was that villagers did not have the right to sell their land. If an individual household sold land without the knowledge of the others, that household would be forced to leave the village and would not be allowed to open up new swidden plots within the village boundaries. A variation of this course of action was that Kahoal villagers would not permit the land buyer to cultivate the land. The villagers would force the Tampuan seller to remain on the land and return the money received from the land sale to the Khmer buyer, even if this meant selling a buffalo or borrowing money from relatives. While Kahoal villagers had yet to reach consensus on how to deal



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with those involved in land sales, they were in agreement that communal rights took precedence over other rights in all land transactions. As the most respected elder in the village stated resolutely, "The land in the village is communal land. It should be used for communal purposes and not for personal gain."

In Kahoal, local governance had evolved incorporating various leadership roles into a collaborative process. The elders were looked upon to resolve disputes between different families and between husbands and wives. If the conflicts were serious, the elders would discuss them with the village chief and include him in the imposition of sanctions. Similarly, the village chief would inform the elders before calling a village meeting to talk about directives that came down from commune or district officials. For his part, the village development committee chief kept the village chief informed about the progress of the development activities. As a result of the close interaction and mutual respect that existed among village leaders, Kahoal was able to deal effectively with communal issues such as land use and land sales.

In contrast to Kahoal, the rapid growth of the Bokeo market and district center had far-reaching effects on Kamang village. The transformation began in 1988 when the district center of Bokeo was transferred to its current location along national road 78. According to Kamang village leaders, government workers employed in Bokeo District cultivated farms along the national road within the boundary of Kamang village. Permission to cultivate these lands was given by a former district governor. No permission was sought from, or given by, the Kamang villagers. When the government workers left the district, they sold the parcels they had acquired to Khmer buyers, who planted them in cash crops. The government workers who sold the first parcels were police officers. They claimed that the district had the authority to allocate the lands to them. The Kamang villagers countered that the parcels were old swidden plots under crop rotation. But there was little they could do to get them back.

After the initial land sales along the road in the mid-1990s, the Khmer population of Bokeo town center increased steadily along with the expansion of the Bokeo market. With large numbers of Khmer migrants seeking to acquire land for the cultivation of cash crops, the pressure on Kamang

villagers to relinquish their land rights was severe. The land parcels most desired by the Khmer buyers were those located along the national road because they were accessible by motorcycles and are linked to the Banlung market and the Vietnamese border.

According to the chief of the Kamang Village Development Committee, land sales along the national road brought about KR200,000 (\$50) per hectare. At some locations, land was sold for as little as KR50,000 (\$12.50) per hectare. Some Khmer buyers bought land parcels and then extended the boundaries of those parcels without purchasing any more land. Few others occupied and cultivated land without buying it. Most land sales took place between 1997 and 1999. By the end of 1999, there were few parcels of land along the national road that had not been sold. Kamang villagers transacted independently with land buyers without consulting the village chief or elders. As a result, it was not precisely known how many villagers were involved in land sales or how much land they had sold. The village chief identified between a third-and-a-half of the 67 Kamang households as having sold land to Khmer buyers. The village chief, who himself had sold 1 ha of land in the interior of the village, argued that Kamang villagers with plots along the national road feared that their land would be taken free, if they did not sell it. This argument expressed the sense of powerlessness and resignation that had come to characterize Kamang villagers in their property dealings with Khmer people.

Individual decisions of households to sell land parcels to outsiders without consulting the village chief or the elders or the village community as a whole eroded the communal approach to decision making that had long characterized Tampuan villages. Most households that sold land along the national road were reluctant to admit it and harbored a sense of shame. Those who had not sold land resented those who had. The narrative of one elder graphically illustrated the situation. The elder said he personally did not have the right to sell his land, for the Tampuan people in the past had never sold land. He likewise confided that he did not want other villagers speaking out against him, questioning why he had sold land and demanding to know where villagers would cultivate swidden crops in the future. The elder was acutely aware of the resentment villagers held

against those who had sold land. Only later did the research team learn that this elder had been named by the village chief as someone who had sold land.

Since the village chief had sold rights to a parcel of land, he was in no position to generate communal resistance to other land sales. If anything, his participation in the land sales deepened resentment. Nonetheless, a sense of resignation emerged among many Kamang villagers that they really had no choice but to sell their land. True, the market pressure was formidable, but it also provided an excuse for villagers to act in their own short-term interest rather than in the interest of the larger village community. Land sellers made small cash gains, but they were left with feelings of self-pity and diminished self-respect. Villagers could no longer trust one another to act in the communal interest. With households acting on their own behalf, looking after their own immediate interest, it was difficult for them to foster communal solidarity and cooperation.

The land parcels sold to Khmer buyers along the national road were small compared with the sale of a 100 ha tract of communal land in the interior of the village. Much like the negotiations over individual plots, the sale of the 100 ha of Kamang communal land in late 1999 and early 2000 was done without the full consultation among all village residents. The transactions started when police officers came to the village with an offer to purchase the land. They claimed that they represented a police commander from Banlung and that they had already discussed the matter with the village chief. The buyer was reportedly willing to pay \$50 per hectare or \$5,000 for the entire 100 ha. Subsequently, two officials from the provincial land title office traveled to Bokeo and called the village chief to the district headquarters to receive payment for the land. The village chief objected, saying that he could not receive the money alone. Eventually, a group of five village leaders (which included the development committee chief but not the three village elders) went to the district headquarters to collect the payment. At the district office, the two provincial officials offered them \$2,500 for the 100 ha. The officials reportedly told them that if they did not accept the money, the land would be taken without any payment. The district authorities advised them to take the money.

While the village chief and development committee chief insisted that everyone in the village agreed to the sale of the 100 ha, this actually was not the case. Several villagers remarked that they learned about the land sale only after it had been concluded. Only one of the three village elders expressed agreement with the sale of the 100 ha. This elder belonged to the extended family of the development chief. The two other elders were not in agreement with the land sale and resented the fact that they were excluded from the deliberations and decision making. One elder expressed his objections this way: "People in Kamang will encounter difficulties if they continue to sell land, for the land is becoming smaller and smaller and the population is getting bigger and bigger. If the land sales continue, future generations will have no land to cultivate their crops. How will they survive?"

The sale of the 100 ha plot of interior land further eroded communal decision making in the village. The provincial buyer worked through government agents, who in turn worked through the village chief. The village chief relied on a small group of village men and effectively excluded the elders and others. As members of the negotiating team, the village chief and development chief insisted that they acted in the best interests of the village. But by excluding the elders and the village community as a whole from the negotiations, they deepened mistrust and resentment among many villagers. The situation appeared beyond remedy. The Kamang villagers were unable to rely on their own resources to deal effectively with the forces that were driving the land market. At the same time, they were unable to depend on the commune and district officials for assistance.

Phnong responses in Dak Dam and Srae Preah communes

Logging of Mondulkiri forests diminished natural resources in both Dak Dam and Srae Preah communes, although the immediate impact of logging was felt more severely in Srae Preah than in Dak Dam because of the loss of resin trees. In Dak Dam commune, villagers from Pou Less, Pou Chob, and Pou Ontreng observed that forest cover had steadily declined in the commune since their return from Khmer Rouge resettlement in Koh Nhek District in the 1980s. The most severe decline occurred after 1998. The Phnong villagers attributed the loss of timber resources mainly to the

operations of the Khmer Construction Company in the late 1990s, illegal logging by people with chain saws, and the building of homes to accommodate the growing commune population.

Dak Dam villagers reported that the Khmer Construction Company represented itself as a legal entity that had a contract with the government. Early on, company representatives convened a meeting with the villagers and told them that they could benefit from the logging operations. The officials encouraged the Phnong to cut and sell logs to the company, and several of them did just that. Village residents, both men and women, were also hired at \$10 per month to work at the company sawmill. By the time it closed its operations, the company had cut and left a large number of logs in the forest. Villagers noticed that illegal loggers later came into the commune and hauled this timber away.

Illegal logging in Dak Dam was conducted on a large scale. Villagers remembered that truck convoys used to pass through the commune taking logs across the border into Viet Nam. The illegal loggers were armed and at times accompanied by border police and soldiers from Ou Reang District. In recent years, the once rampant illegal export of logs to Viet Nam had been considerably contained. Nevertheless, some illegal logging ventures continued. Villagers mentioned that people from Sen Monorum sometimes logged at night, using trucks to transport the timber. Provincial officials, too, had reportedly made requests for wood to build homes. Within the commune, a few households had chain saws and still cut trees for sale. Dak Dam villagers were not legally allowed to cut trees to build houses, but as long as they used handsaws, commune officials did not object.

In Srae Preah commune, Phnong residents of Pou Kong, Ochra, Pou Ya, Gati, Srae Ampil, and Srae Preah villages described a decline in timber resources and linked this directly to logging activities. In several Srae Preah commune villages, large-scale logging was carried out from 1993 to 1996 by members of the Royal Cambodian Armed Forces, working in collusion with Vietnamese loggers. In Pou Kong, villagers remembered the Khmer soldiers telling them, "The trees belong to the government. We are the government." While some villagers resisted the felling of their resin trees, they soon realized that district officials would not support their protests.

In 1997 and 1998, the Samling Company, whose forest concession covered most, if not all, of Srae Preah, accelerated the pace of logging in the commune, cutting down large resin trees as part of their operations. When villagers protested the cutting of their resin trees, the loggers often replied derisively, "Why do you complain? We are not cutting the tapping hole of the resin tree. We are cutting above the tapping hole." Since armed guards protected the Samling loggers, the villagers could do little to prevent their resin trees from being cut. Villagers present when their resin trees were felled received KR5,000 (\$1.25) per tree. Others received no compensation at all. In Gati, resin tappers protested by seizing the chain saws of the company and bringing them to the district center. During a meeting shortly after with the district governor, Samling officials promised the protesters that the cutting of resin trees would stop. The Gati villagers relented, but the cutting of resin trees continued.

By the time Samling ceased its operations in early 1999, the loss of resin trees in Srae Preah commune had severely affected the incomes of most local inhabitants. Key informants interviewed reportedly lost from 20 to 80 trees; one Khmer tapper in Srae Ampil village lost 600 trees. Estimates of average resin tree losses in the six villages were around 50%. These estimates were higher than those of a study conducted by the Wildlife Conservation Society, which recorded a 20% resin tree loss in Pou Ya and a 26% resin tree loss in Gati (Evans et al. 2003). But by any of these measures, the losses were severe. One villager in Pou Kong observed, "If the forest is destroyed, my life and the life of my family will also be destroyed." A widow with three dependent children in Gati lamented, "My resin trees provide the rice in my rice pot. They are my family's major source of income." Another villager in Pou Ya expressed this concern: "Our children are increasing but not the number of our resin trees." By the late 1990s, resin tappers had staked ownership claims to almost all of the large resin trees found in Srae Preah commune. As a consequence, households were not able to offset the losses incurred from logging by expanding resin tapping into new areas. In several villages, resin tappers sought to compensate by making more than one hole in their resin trees. Small immature resin trees were also tapped, although the quantity and quality of the resin they produced were low. Commune residents also linked low rice yields to soil erosion and droughts brought on by deforestation.

Stieng responses in Mil and Thmar Hal Veal villages

From 1960 to 1975, forest resources were plentiful in Kratie's Mil village. Stieng villagers reported that timber was abundant during this period, as were rattan, honey, medicinal plants, vegetables, and fruits. Wildlife, including tigers and elephants, inhabited the surrounding forests. Villagers also had ample lands to clear and cultivate paddy rice, and practice swidden cultivation. The soil was fertile, rains were regular, and rice yields were sufficient for household consumption. Under the Khmer Rouge regime, Mil inhabitants were forced out of the village to work for the revolutionary government in another area of Khsim commune. Since the Khmer Rouge focused its efforts on irrigated rice cultivation, forest areas remained largely untouched.

Under the Vietnamese-supported governments of the 1980s, the population of Mil increased, as did the exploitation of forest resources. In Mil, people returning to the village cut timber for houses, cleared forests for cultivation, collected forest foods and products, trapped wild animals, and fished in nearby rivers and streams. The growing needs of villagers increased the level of forest exploitation but not to an unsustainable extent. By contrast, logging activities controlled by the military and police ushered in a rapid decline of forest resources. In an attempt to counter the deleterious effects of logging, the Snoul Wildlife Sanctuary, which encompassed Mil village, was established in 1993 by royal decree under the jurisdiction of the Ministry of Environment.

From the 1993 national election to the present, forest resources in Mil suffered a severe decline as the Samling concession and illegal loggers conducted major logging operations in Snoul District, including areas located within the wildlife sanctuary. In Mil, the loss of resin trees that resulted from Samling's operations substantially reduced the cash incomes of many villagers. This occurred precisely at the time when Mil villagers were coming to terms with the expanding market economy. Loss of income from resin trees reduced the buying power of villagers. At the same time, the price of rice went up because of scarcity due to low productivity and high demand from a growing population. Meanwhile, ferns, vegetables, and other edible forest products except for bamboo shoots became more difficult to find. Wildlife also became scarce as animals moved farther into

the forests. Fish supplies were depleted as villagers and outsiders resorted to illegal practices to catch fish. Villagers reported that in recent years, deforestation had caused floods and soil erosion and that soil fertility had declined. In short, villagers had less food to eat than in the past.

In an effort to counter the decline of natural resources in Mil and two nearby villages, the residents established a community-protected area of 2,459 ha within the wildlife sanctuary in March 2004 with the approval of the Ministry of Environment. The impetus for the protected area came from the Cambodian NGO Satrei Santepheap Daoembei Parethan, or Women of Peace for the Environment. The people were given the responsibility of monitoring the area and reporting any illegal operations within it. Mil villagers with the permission of the three-village Forest Committee were allowed to collect non-timber forest products for family use and cut timber for community purposes. They were likewise able to gather resin as permitted by the Ministry of Environment. However, they were not allowed to clear and expand farm areas; trap or hunt wildlife; cut trees for poles, firewood, or charcoal; or engage in illegal fishing. This limited opportunities to expand farmland, particularly as the protected area bounded the Samling concession.

From 1960 to 1975 in Thmar Hal Veal village, forest laws were respected and only old logs were cut for timber. Forest foods were also plentiful. Wildlife such as rabbits, musk deer, large lizards, wild chickens, and pigs roamed close to the village, and their sounds could be heard from inside village houses. Villagers had easy access to land for rice farming and cleared forest areas for swidden cultivation. In Thmar Hal Veal, villagers were also displaced under the rule of the Khmer Rouge. At the same time, the closed borders with Viet Nam precluded the trade of forest products, which minimized forest destruction.

In Thmar Hal Veal, people returned to the village after the Khmer Rouge era to rebuild their lives. Similarly, in the 1980s, the population of Thmar Hal Veal increased, as did the exploitation of forest resources. The growing population cleared forests for cultivation and cut trees for house construction. Villagers gathered forest food and forest products and trapped wild game. As Vietnamese traders came across the border to buy forest products and wildlife, an incentive grew to exploit forest resources beyond the needs of consumption. The local illegal logging for sale to Vietnamese

businesses proved particularly destructive. Decimated forests reduced habitat for wildlife and the abundance of forest foods.

In Thmar Hal Veal, forest resources from 1993 to 2004 were rapidly depleted by Samling operations and by illegal logging continued by the military and police. Thmar Hal Veal's proximity to the Vietnamese border made illegal logging lucrative. Even after the issuance of the logging ban in 2001, illegal logging continued in this area, with border guards acting in collusion with Vietnamese loggers. The Thmar Hal Veal villagers found it more difficult to find timber for constructing their houses and began to construct thatched houses. The gathering of forest food and products and the trapping of wild game became infrequent and less critical in villagers' daily subsistence. Fish resources were virtually exhausted by illegal fishing. While villagers took no steps to reverse the decline of forest resources, the Provincial Department of Rural Development with the support from the World Food Programme constructed a \$120,000 reservoir in the village in 2003 to increase rice production. Although the long-term benefits of the reservoir could offset the losses in forest income, its immediate contribution to increased agricultural productivity remained unclear because of the limited supply of water and the lack of irrigation canals. The construction of the Samling logging road through the village opened up the village to further incursions from outsiders.

In contrast to Mil, the depletion of forest resources in Thmar Hal Veal left the villagers despondent and immobilized. When officials from the Provincial Department of the Environment requested the help of Thmar Hal Veal villagers to reforest the degraded areas, the village leaders replied, "Let those who cut the trees replant the trees." Without strong support from community forestry NGOs and government officials acting together to ensure the enforcement of community statutes, it was unlikely that Thmar Hal Veal villagers would take active steps to reverse the natural resource decline as illegal logging, backed by powerful actors, was just too pervasive.

Livelihood Strategies

Despite the rapid depletion of natural resources, indigenous residents were still largely dependent on land cultivation and forest resources to sustain their livelihoods. This was true of villages located close to market centers.

Tampuan livelihood strategies in Kahoal and Kamang villages

Although Kahoal was more remote than Kamang, and more removed from the exigencies of Khmer in-migration and a burgeoning land market, the livelihood strategies in the two villages were similar. All sample households in both villages were involved in swidden cultivation. Few Kahoal households and no Kamang households cultivated rice. In Kahoal village, a majority of households raised pigs and chickens; in Kamang village, about half of the households did so. In both villages, a large majority of households gathered food from the forest and went hunting and fishing. Neither the making and selling of goods nor the buying and selling of goods enjoyed wide appeal in the villages. Wage work was a very common source of income in Kamang and much less so in Kahoal, although more than two-fifths of the Kahoal households earned income from wage work.

Despite the rapid growth of the market economy, Kahoal and Kamang households remained subsistence swidden cultivators who supplemented their livelihoods by gathering, hunting, and fishing. In Kamang village, the numerous sales of land rights had yet to transform the basic livelihood strategies. Because most of the land sold had been lying fallow under crop rotation, the long-term effects of the land transfers had yet to be fully appreciated. Similarly, the consequences of opening up of forest areas for cultivation had yet to be felt on the sustainable yields of food gathered and hunted. Meanwhile, the proximity to the market had created few Kamang entrepreneurs or traders. By contrast, more than 80% of the Kamang sample households earned income from wage work, mainly from seasonal farm labor. Kahoal households were predominantly engaged in swidden cultivation and gathering, hunting, and fishing. Many Kahoal households raised chickens and pigs to sell to Khmer middlemen who regularly visited the village. About 40% of Kahoal sample households earned their income from wage work, mostly as short-term farm laborers.

Phnong livelihood strategies in Dak Dam and Srae Preah communes

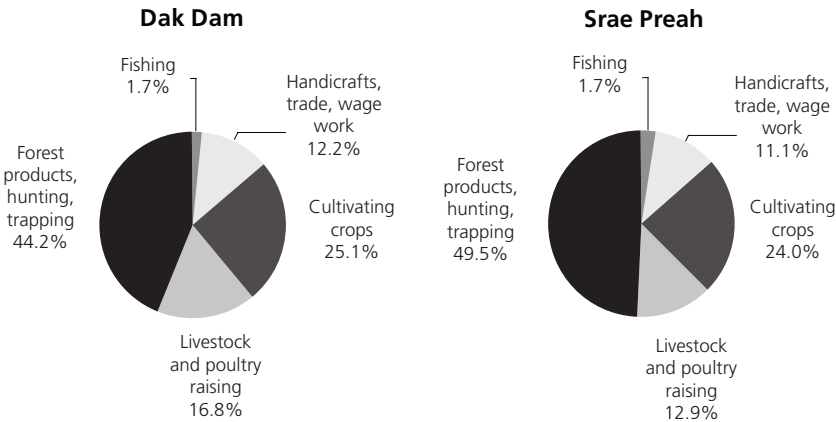
Household livelihoods in Dak Dam and Srae Preah communes were supported by a multiplicity of productive activities. Almost all sample house-

holds in Dak Dam and a large number of sample households in Srae Preah were involved in swidden agriculture. While only a few households cultivated rice in Dak Dam, more than half of the households in the lower areas of Srae Preah cultivated rice. The raising of pigs and chickens was prominent at both communes. The majority of households in both Dak Dam and Srae Preah hunted and trapped wildlife and gathered food and other products from the forest. Fishing was likewise prevalent in both communes. By comparison, neither the making and selling of goods nor the buying and selling of goods were pursued by residents in both communes. Wage labor was common to both Dak Dam and Srae Preah but was not a major livelihood source in either.

A comparison of household income shares by source at the two communes reveals noticeable differences and similarities. The Dak Dam sample households earned their largest share of income from hunting and trapping and from swidden cultivation. By contrast, the Srae Preah sample households earned their largest income shares from forest gathering (particularly resin tapping) and from rice cultivation. But to both communes, forest and land resources were critical (figure).

The incidence of poverty in both communes was high. In 2003, the Government of Cambodia in consultation with the World Food Programme

Household Income Shares by Source



Source: McAndrew et al. 2003; Ministry of Planning 1999.

set the poverty line for rural Cambodia at KR1,036 per capita per day (\$95 per capita per year). In Dak Dam, 54% of the sample households fell below the poverty line; in Srae Preah, the number was even higher at 63%. The incidence of poverty in the two communes was considerably higher than the national rural average of 40%.

Stieng livelihood strategies in Mil and Thmar Hal Veal villages

Livelihood strategies in Mil and Thmar Hal Veal show diverging patterns. Nearly all sample households in both villages cultivated crops. In Mil, 92% of sample households cultivated rice, and 36% of households engaged in swidden cultivation. In Thmar Hal Veal, rice and swidden cultivation were equally pursued by 72% of the sample households, with some families doing both. Raising pigs and chickens was important in both villages. Despite the decline of forest resources, gathering forest food was done by 83% of Mil households and 72% of Thmar Hal Veal households. Similarly, collection of other non-timber forest products was practiced by 93% of Mil households and 66% of Thmar Hal Veal households. Hunting was not a major livelihood source in either village, but fishing was very prominent in Mil and much less so in Thmar Hal Veal. Wage work was more common in Thmar Hal Veal than in Mil.

Market Participation

Indigenous households in the study villages were well integrated into the market economy. Large numbers of the households bought and sold cash crops, livestock, forest products, and wildlife. These transactions and the sale of labor provided them with income to buy rice in periods of annual shortfalls and purchase manufactured goods for everyday use. While indigenous groups in the study areas had embraced many opportunities brought about by the market economy, their lack of tenure security over land and forest resources made them more vulnerable to other impacts of that economy.

The expansion of the market economy had far-reaching consequences for indigenous communities. In both Kahoal and Kamang, for example,

villagers demonstrated that they were eager to share in the benefits created by the growth of local markets. By raising pigs and chickens, by cultivating cash crops such as black sesame, and by hunting wild animals such as squirrels and python, villagers were able to barter or buy manufactured goods that they desired. Daily wages supplemented their household incomes. By living close to roads and district centers, villagers also were able to take advantage of development projects introduced by the government and NGOs. The villagers did not consider the changes that were brought about by improved roads and expanded trade as detrimental to their way of life.

The market forces that were operating in Ratanakiri Province demonstrated nonetheless the potential to drastically undermine the well-being of indigenous communities. This was dramatically highlighted in the experience of Kamang village. In Kamang, the market economy, particularly the market for land, seriously eroded local governance structures and communal solidarity. Land sales not only diminished natural resources required for sustainable livelihoods but also debilitated cultural and social resources needed to deal with the exigencies of change itself. By comparison, the experience of Kahoal illustrated how a village, while collectively resisting land sales, could build capable local governance structures and maintain communal cooperation.

In Mondulakiri Province, despite the destruction of forest resources through forest concessions, illegal logging, and unregulated hunting, indigenous Phnong inhabitants in Dak Dam and Srae Preah communes remained largely dependent on forest resources for their subsistence. The adaptation to the decline in natural resources had been to subsist on smaller quantities and to exploit further their diminishing resource bases. This led to intensive hunting in Dak Dam and the tapping of young resin trees in Srae Preah. Losses of income from forest resources encouraged the cultivation of crops and the raising of livestock and poultry. But declining soil fertility and irregular rainfall were directly linked to deforestation, which in turn limited crop production. Market demand for cash crops such as cashew nuts was also less than expected. Meanwhile, increased market activities that were controlled by outsiders had not transformed the local residents into entrepreneurs or traders, nor had it provided them with remunerative and sustained opportunities as wage workers.

Given the inward orientation of household subsistence strategies and the lack of viable short-term alternatives, access and control over natural resources remained critical for household survival. A resumption of logging activities in the two communes would be devastating for both communities, but especially for the resin-tapping households in Srae Preah. As almost all resin trees were currently tapped in Srae Preah Commune, its households would not be able to expand into new resin tapping areas to offset losses incurred by renewed logging activities. As a result, already declining levels of income and food security would fall even further. Higher percentages of Dak Dam and Srae Preah sample households fell below the poverty line, compared with the average of all rural households in Cambodia.

In Kratie Province, legally sanctioned operations of the Samling concession and the illegal logging activities perpetuated by military and police had devastating impacts on villages in Snoul District. Mil and Thmar Hal Veal villages revealed a downward trend in the availability of natural resources for earning their livelihoods. This decline exacerbated the incidence of poverty in both villages. But although natural resources had diminished in both areas, villagers were still dependent on land and forest resources for their subsistence.

Mil village in the Snoul Wildlife Sanctuary had responded more creatively to the challenges in natural resource management. By forming supportive links with NGOs and the Ministry of the Environment, Mil villagers established a community-protected area within the sanctuary. They also had received support from some district officials.²³ These interactions helped them to deal more effectively with illegal logging and the deterioration of natural resources.

By contrast, Thmar Hal Veal village, located within the forest concession along the Samling Road and close to the Viet Nam–Cambodia border, failed to respond proactively to the decline of natural resources in the area. The villagers of Thmar Hal Veal lacked contacts with NGOs and gov-

²³ McKenney et al. (2004) pointed out it is essential to identify community forest “patrons” within government who can ensure tenure security and the enforcement of community forest rules for the benefit of the villagers.

ernment officials and as a result were unable to stop illegal logging in the area. The downward slide in the quality of their resource base was likely to continue.

Conclusions

After Cambodia became independent in 1954, the Sihanouk regime took deliberate steps to incorporate the indigenous peoples of the northeast into mainstream Khmer society. Inhabitants of the country's lowlands were encouraged to resettle in the northeastern highlands and teach hill tribes Khmer ways. This resettlement was cut short in the 1970s by the civil war and the Khmer Rouge regime. In the 1980s, Khmer in-migration into the northeast remained circumscribed with the exception of Kratie Province. In the early 1990s, Cambodia's transition to a market economy and the increased mobility of its population came to have far-reaching consequences for the indigenous peoples of the region.

The granting of forest concessions in the mid-1990s had devastating outcomes for indigenous groups in northeastern Cambodia, including severe forest deforestation and degradation. Logging operations in indigenous areas diminished access to non-timber forest products and resin trees that had been traditionally tapped by indigenous communities and were now illegally cut down. Concessionaires also destroyed "spirit forests", which were sacred sites in indigenous cultures. Despite the logging ban imposed in 2001, illegal logging activities continued unabated in hill tribe areas. Commercial exploitation of indigenous lands in the northeast provinces also occurred through economic land concessions awarded to companies for agro-industrial plantations. Detrimental impacts of economic land concessions on indigenous groups included encroachment on agricultural and grazing land and encroachment on forested areas, which included the felling of resin trees. The construction of roads by forest concessions and the government also precipitated a new in-migration of Khmer settlers to the region. Immigrants bought up indigenous lands along roads and near market centers for the cultivation of cash crops or for future speculation. Government officials and military and police officers took advantage of their positions to grab large tracts of land from indigenous communities. Indigenous peoples have responded to the corporate and settlement

incursions in northeast Cambodia in different ways, as discussed in the case studies of the six villages.

The government's development program for northeast Cambodia, which involves the granting of forest, mining, and economic land concessions and the encouragement of Khmer resettlement, disadvantages indigenous peoples. At the same time, the government's ratification and adoption of progressive legislation concerning indigenous peoples indicate that it has not completely disregarded the significance of indigenous rights. Cambodia's vote to adopt the UN Declaration on the Rights of Indigenous Peoples marks an important step forward in the country's recognition and commitment to the protection of indigenous peoples' rights. This vote paves the way for Cambodia's ratification of the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries. It also provides an impetus for Cambodia to adopt its own General Policy for Indigenous and Highland Peoples, which has been in draft form for more than 10 years.

The Land Law of 2001 enables indigenous communities to gain collective title to their traditional land. However, after 6 years the Sub-Decree for Communal Land Titling has still to be finalized and adopted. Meanwhile, the provision in the Land Law of 2001 that prohibits the sale of indigenous land, even before rights are recognized and titles awarded, is rarely if ever enforced. Provisions of the 2005 Sub-Decree on Economic Land Concessions similarly lack strict enforcement and compliance. Economic land concessions have violated Article 29 of the 2002 Forestry Law, which prohibits the cutting of trees tapped by local communities to extract resin for customary use. The judicial system in Cambodia has generally failed to provide adequate protection for indigenous peoples under the law and to hold concessionaires and land grabbers accountable for their actions.

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Land and Cultural Survival: The Communal Land Rights of Indigenous Peoples in Asia

Development in Asia faces a crucial issue: the right of indigenous peoples to build a better life while protecting their ancestral lands and cultural identity.

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