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ALTERNATIVE LAND CONFLICT TRANSFORMATION: A CAMBODIA INNOVATION

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Abstract

When Cambodian Government granted Economic Land Concessions (ELCs) to investors from 2005 onwards, Indigenous People, rural people, women, and children in the targeted areas have been affected by many land disputes left unsolved despite the Government's efforts. However, there are successful cases of land dispute resolution through mediation. The dispute between Hoang Anh Gia Lai and 14 IPCs in Ratanakiri which was mediated by the Compliance Advisor Ombudsman (CAO) has come to an agreement yet has not been officially approved by the Government yet. For the case of six communities in Northeastern province and a foreign rubber plantation company, the Independent Mediation organization (IMG) supported by Mekong Region Land Governance has accomplished the pre-mediation/assessment stage and a first round of negotiation stage following the key principles of mediation. However, mediation approaches still face many challenges like power imbalances and capacity building, lack of trust, and miscommunication.

Key Words: Land Conflict Transformation, Land Conflict Resolution, Alternative Dispute Resolution (ADR), Mediation in Cambodia.

ALTERNATIVE LAND CONFLICT TRANSFORMATION: A CAMBODIA INNOVATION

I. Introduction

As generally known, Cambodia is an emerging market dominated by a government that has sought to increase exports and exploit its natural resources for the purposes of national development (Cambodian Center for Human Rights, 2013). With the desire to develop the country came a new initiative, the so-called “Economic Land Concessions”. According to Cambodian Land Law 2001, with Economic Land Concessions (ELCs) the beneficiaries are given rights to lease state-owned land for a maximum of 99 years, for the purposes of industrial agricultural use or mining (Land Law, 2001). The goal, as stated in the National Strategic Development Plan 2009-2013, is to develop the industrial agricultural sector to build and sustain economic growth and accelerate poverty reduction (Royal Government of Cambodia, 2010). Through ELCs, a number of social and economic benefits have been brought to the country (e.g. jobs, tax revenues, etc.). These benefits were also acknowledged by the Prime Minister of Cambodia (Speech by, Prime Minister of the Kingdom of Cambodia on "Rectangular Strategy" for Growth, Employment, Equity and Efficiency –Phase II, 26 September 2008).

While ELCs may bring about some benefits for the country, it has also been seen that they, contrary to their intended purpose, have also brought numerous negative impacts on the society and have fallen short on positive effects at the local level. Since the Sub-Decree on Economic Land Concession (ELC) was adopted in 2005, the Royal Government of Cambodia (RGC) has granted many ELCs to foreign and domestic companies, as well as to wealthy political elites, for industrial development. In the process, there has been a general lack of meaningful consultation with affected people before ELCs were granted. As a result, those communities living on the land or inside these ELCS are frequently victimized and subjected to forced eviction. Affected people such as Indigenous People Communities (IPCs), ordinary rural people, women, and children living in areas targeted by large ELC projects are also generally denied access to appropriate remedies when they are disproportionately affected by ELCs. IPCs are among the most vulnerable groups in Cambodia as they are particularly dependent on access to their customary land and natural resources for their entire way of life. Despite the concerted efforts from the RGC to solve the conflicts through several mechanisms, these still remain limited, unable to be accessed and they are not satisfactory for the people. Therefore, the concept of “Mediation” was introduced by IMG with funding by MRLG as an innovation to solving the conflicts.¹

¹ The Independent Mediation Organization (IMG) was founded by Cambodian and foreign experts and was registered as a Cambodian consultancy firm in August 2016. Its legal status however was changed to an NGO in March 2017 as Independent Mediation Organization (IMG). IMG operates as a non-profit, independent and

II. Root Cause of Land Conflict

Speaking of conflicts in general, there can be a lot of factors involved. However, with regard to the land sector in Cambodia, at least two major components, the pressure on land and natural resources and the weakness of land governance contribute to the occurrence of these land conflicts.

For the pressure on land and natural resources, two key factors play a very important role here. The first one has to do with large-scale land acquisitions, especially for agro-business and mining activities. An increasing number of investors aim for land exploitation for economic purposes, including domestic and foreign investors. Cambodia has experienced a Foreign Direct Investment flow, of which, 10% are believed to be invested in the agricultural sector, while another 31% go to the industrial sector (Council for Development of Cambodia, 2012). This, as a result, has led to many private companies working in the agro-industrial sector and causing a lot of disruption to land and natural resources in the country. For instance, with the existence of these companies, thousands of hectares of land have been converted for commercial purpose (e.g. rubber plantations, sugar cane farms, etc.) and consequently pose numerous negative impacts on the natural resources (e.g. minerals, forests, biodiversity, etc.) and livelihood of the local communities.

Apart from this, upland migration among Khmer and Cham populations can also be considered another key factor that contributes to the increasing pressure on land in Cambodia. Given the high population density in lowland areas, access to land has become more competitive and further complicated by restricted opportunities for agricultural intensification and by the restricted opportunities for acquiring non-farm jobs in the central plains. There is a high influx of these migrants who see prospects in agricultural activities in the upland areas (e.g. growing pepper, rubber, etc.). They move to the upland regions (e.g. Mondulkiri, Ratanakiri, etc.) in order to buy land from the local people while others just come and encroach forest land (Diepart et al., 2016).

In terms of weak land governance, at least six pressing factors are involved (World Bank, 2006):

- Insecurity of tenure: The absence of transparency, accountability, equity, fairness and legal security and the rule of law in land administration can easily lead to land transfers through which legitimate land users lose their possession or ownership rights.
- High transaction costs: Informal payments that have to be made in addition to the existing taxes and fees for registering property transactions increase transaction costs. Moreover, high transaction

impartial organization. IMG is an all-Cambodian organization working to promote land conflict resolution through mediation in Cambodia.

IMG is among the first organizations in Cambodia working to support Indigenous Peoples Communities (IPCs) and private companies in their efforts to resolve land conflicts through mediation.

costs also provide disincentives for people, especially the poor, to register property transaction, which in turn increases informality and insecurity.

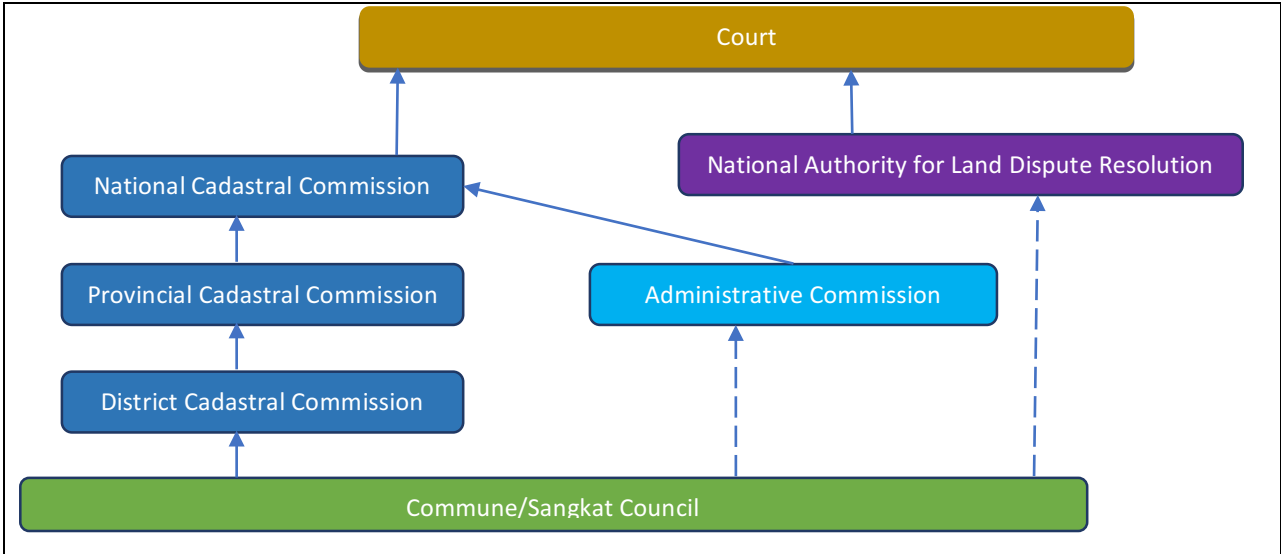
- Land grabbing and illegal transfers of state land: Lack of transparency, accountability and effective mechanisms for sanctions encourage corrupt government officials to transfer state land to political elites, or for their own benefits.
- Landlessness and inequitable land distribution: The systems that are corrupted often marginalize the poor, who may not be able to afford to legalize their transactions, leaving them with little or no protection under the law and often making them vulnerable to eviction by political elites.
- Social instability, social exclusion and political instability: Administrative corruption and state capture reduce confidence in the government and may generate land conflicts, land poorness and even landlessness. This may undermine the political stability of the nation.
- Due to illegal transfers of property rights (e.g. awarding illegal logging concessions or poorly prepared ELCs) in forests, biosphere reserves, national parks, catchment areas of water reservoirs, protected areas and the like, natural resources are harmed or even devastated.

As can be seen from the above discussion, pressures on land and natural resources alone might not directly lead to land conflicts in Cambodia. However, once combined with or influenced by the factors of weak governance in the land sector, the outcomes are numerous land conflicts throughout the country. This relationship between pressure on natural resources and weak governance is what constitutes a huge proportion of land conflicts in Cambodia.

III. Existing Land Conflict Resolution Mechanisms

Land conflict resolution mechanisms in Cambodia vary depending on the nature and types of conflicts---whether land is registered or unregistered. According to The NGO Forum on Cambodia's report (2016), there are six mechanisms for resolving land conflicts on titled or registered land. These include Commune/Sangkat Council, Cadastral Commission, Administrative Commission, National Authority for Land Dispute Resolution, Special Unit for Dealing with Land Disputes under the MLMUPC and Court. (NGOF, 2016)

Hierarchy of Land Dispute Resolution Mechanisms in Cambodia



Source: NGOF (2014)

Commune/Sangkat Council: As shown in the figure above, at the bottom level of conflict resolution is the Commune/Sangkat Council. This council plays a very significant role in resolving the differences among people in the commune, yet it does not hold decision making power. Despite the fact that there are no formal procedures for resolving the conflicts, it is still seen that most conflict cases are filed to the Commune/Sangkat Council.

Cadastral Commission: This conflict resolution institution has jurisdiction over conflicts on untitled land. This commission is available at the district/Khan, provincial/municipal and national level. In the initial stage, the conflicts shall be brought under the jurisdiction of the district/khan commission. However, if the commission fails to resolve the aforementioned conflicts at this level thrice, the case will then be passed on to the provincial level and later to the national level if the former also fails to resolve it.

Administrative Commission: This commission is not a permanent mechanism for resolving conflicts. Its presence is ad hoc and important during the systematic land registration (SLR) process. Its principal role involves resolving conflicts inside the adjudication areas of SLR. In case of failure, the case shall then be passed on to National Cadastral Commission.

National Authority for Land Dispute Resolution (NALDR): National Authority for Land Dispute Resolution is a conflict resolution body responsible for resolving land conflicts beyond the jurisdiction of the National Cadastral Commission or from all institutions. This body is led by one Deputy Prime Minister and consists of 26 other institutions as members. The other 10 members serve as the general secretariat led by a minister and secretary general.

Special Unit for Dealing with Land Disputes under the Ministry of Land Management:

Established on May 2016, this special unit aims at resolving urgent land disputes in provinces throughout Cambodia. The resolution process, to be specific, rests on the principle of reconciliation between dispute parties. In this regard, each dispute case received from a plaintiff shall be dealt with by a group consisting of five MLMUPC staff members, one of whom is the chair and the other are members.

Court: In Cambodia, the courts are responsible for resolving land conflicts over titled land. In the process, conflict parties can file their complaints at three different levels of court: First Instance Court, Appeal Court and Supreme Court. Nevertheless, it has been witnessed that the level of accessibility is still a big issue for Cambodian people owing to the fact that the procedures are costly.

Informal Mechanisms: Despite the existence of these six formal mechanisms, there also appears to be other informal mechanisms available for resolving land conflicts in Cambodian society. One among these is through “the middle men” who claimed to have links with powerful authorities, government or particular ministries and have been asked for ‘behind-the-scene’ interventions (Star Kampuchea, 2014). However, this process, in many cases, has not led to acceptable resolution, in some cases, associated with frauds and can impose hidden cost and time on one or both conflict parties. Other possible mechanisms involve the support of NGOs. Despite the fact that their interventions might not be direct (e.g. help in terms of preparation for filing complaints to the court, etc.), they do play an important role.

Despite the existence of many resolution mechanisms, not all of them, can be easily accessed by the people. According to CCHR (2014), it is suggested that in practice, the use and implementation of these so-called mechanisms still remain limited. In other words, the extent to which these mechanisms are accessed are still a big issue owing to a number of factors. According to (Grimsditch and Henderson, 2009), the wide range of dispute resolution bodies and the lack of clarity over the jurisdiction of each mechanism themselves have been acknowledged as sources of confusion for potential complainants. This has therefore made it confusing and difficult for the complainants to access. Apart from this, other factors include time-consuming administrative and procedural burdens, and financial costs associated with submitting a complaint, the costs associated with transportation despite the fact that no official fees are associated with court filings, lost wages, lack of legal assistance, inconsistency in the decisions issued by the existing dispute resolution bodies which are believed to be subject to political pressures and last but not least the lack of trust among those affected by land conflicts over the absence of independence in the judiciary (CCHR, 2014). All these factors together make the accessibility to the existing conflict resolution mechanisms still a challenge.

IV. Alternative Land Conflict Transformation - Experience and Lessons Learnt

Concerning the effectiveness and practicality of the above-mentioned mechanisms, it has been acknowledged that the so-called mechanisms have also, to some extent, contributed to the resolution of some land conflict cases throughout Cambodia. Despite the achievements, comparing the number of unresolved conflicts and those resolved, it is possible to say that the currently available mechanisms still prove challenging. For instance, in the year 2016, there were 382 land conflicts recorded in total, yet only 58 of them were resolved, thus showing the limited effectiveness of those available mechanisms (NGOF, 2016). Factors causing these shortcomings involve among others a wide range of social, individual and political factors, including corruption, inadequate knowledge among the public, lack of political willingness, political interference, lack of negotiations, lack of technical knowledge (Star Kampuchea, 2014).

Despite the fact that all these mechanisms for conflict resolution exist, very few major land conflicts have been permanently resolved through these mechanisms. Therefore, by considering the challenges and shortcomings of existing mechanisms, alternative land dispute resolution namely “**Neutral Mediation**” was introduced. The land tenure security of IPCs affected by large scale investment is improved through a neutral mediation where parties have reached a certain level of agreement. By experience, the so-called HAGL case was the first example of a major land conflict to be resolved through mediation. The HAGL land conflict occurred as a result of the Economic Land Concessions (ELCs) granted by Cambodian government to the Vietnamese multinational Hoang Anh Gia Lai (HAGL) in Ratanakiri province in northeastern Cambodia without the required preparatory steps. Following the granting of the ELCs consisting of 47,370 hectares of land, the company started to clear land for the purpose of establishing rubber plantations (Equitable Cambodia, 2015). This, as a consequence, affected a lot of people, namely 14 indigenous communities, with their ways of life, tradition, identity, food security, access to water and human rights threatened. As a result, protests erupted among the affected people, and in 2014 a complaint on behalf of 17 indigenous villages was submitted to the Compliance Advisor Ombudsman (CAO) with the assistance of Equitable Cambodia (EC) and Inclusive Development International (IDI). This was made possible by the fact that HAGL had received a major loan by the International Finance Cooperation (IFC) under the World Bank Group. As a response, a mediation undertaken by the CAO itself was proposed and put into practice. As a result of the efforts, historical agreements were reached through the CAO mediated dispute resolution process in Siem Reap in 2015 (what is known as the Siem Reap Agreements). As part of the agreements, HAGL is expected to: (1) not conduct any further land clearance or development around its concessions; (2) provide infrastructure improvements; (3) return land belonging to the communities or provide compensation; (4) restore the damaged roads, bridges and water resources, engage in joint trips with the communities and CAO to map the lands of the communities; (5) support the communities in acquiring communal land titles should they choose to do so; and (6) establish a long-term grievance

mechanism for the company's activities (Equitable Cambodia, 2015). With some agreements reached and further negotiations to follow, it is possible to say that the HAGL land conflict bears high prospects of being resolved. Lately, the process of finalizing the settlement in the HAGL case was slowed down by the fact that parts of the Hoang Anh Gia Lai Company have filed for insolvency in Vietnam and that the Cambodian Government has still not provided its full support to the agreements reached so far as a result of the mediation.

Alternative Land Conflict Transformation by Independent Mediation Organization (IMG)

The land dispute between six communities in a northeastern province of Cambodia and a foreign rubber plantation company can be considered a chronic dispute that first erupted in 2008.² Existing land dispute resolution mechanisms have proven to be insufficient to address the ongoing land conflicts affecting IPCs in the area. Despite the fact that both the company and the communities with support from local authorities have tried to resolve their dispute many times, e.g. through the establishment of a tri-partite committee and through compensation payments to household claimants, the dispute still continues unresolved.

In this context, the Mekong Region Land Governance is supporting the Cambodia-based Independent Mediation Organization (IMG) to develop neutral mediation as an alternative and innovative approach to conflict resolution. IMG currently is engaged in the “Cambodia Land Dispute Independent Mediation (CLAIM) Project”, funded by MRLG under an Innovation Fund (IF) grant agreement. IMG started off with a project on “Preliminary Mapping for the six IPCs in the northeastern province of Cambodia for ICLT Application”. The project started in November 2016 and will continue until October 2018. Through this work, IMG was able to establish close collaboration with IPCs, private companies, local authorities, and the district state land working group involved in the mapping process and ICLT. In total, three ELC areas for rubber plantations held by the foreign rubber plantation company are located in the area of the six communities. So far, the stage of pre-mediation with all its sub-steps has been successfully concluded and first negotiation stage has partly succeed and will continue further until the end of 2018.

For this first case of mediation, IMG has had to play several roles, such as coordination and facilitation roles among stakeholders, IPCs, private companies, local authorities, legal aid NGOs, and the UN Office of the High Commissioner for Human Rights (UNOHCHR), and also as mediators. These various roles have made the current operations of IMG sometimes difficult to implement. The Independent Mediation Organization (IMG) follows key processes and principles of mediation as it has been practiced in other countries.

² For reasons of confidentiality, specific names cannot be mentioned.

IMG's accomplishment

Pre-mediation and assessment stage are:

1. The first step in the pre-mediation process is a number of *awareness creation activities on mediation*. All key stakeholders involved in the case were informed on the land conflict resolution through mediation and its process. Three major dissemination events including a workshop, meetings, and training exercises with participants from the six IPCs were organized for this purpose, especially focusing on women and youth, the foreign rubber plantation company's representatives, NGOs, UN-OHCHR, local authorities, the district state land working group (DSLWG) and provincial departments. Stakeholders have now understood the concept and procedures for mediation of a land conflict, the role of the mediators and the possibility of reaching a mutually agreed settlement. Moreover, information was also provided to communities on which qualified NGOs can support them with capacity building in undertaking the mediation process.

2. *The mapping of conflict areas by village and by households* follows next. In general, a mediation process does not necessarily involve a conflict map (e.g. in cases of labor conflict, company dispute, household conflict, etc.). However, in a mediation on large-scale land conflicts, it is not only important for the mediators to understand the conflict, but it is also fundamental when both parties come to the negotiation table as these conflict maps will serve as a visualization tool for both parties. Without a map showing the size, location and type of land, or the overlapping claims and boundaries, a negotiation would not be possible and both parties would just talk abstractly without anything to represent the land they are talking about.

To gather geographical data on the conflict areas in the seven villages, the IMG mapping team, with the participation from 68 members of the community, the company and local authorities, conducted a mapping of village boundaries and land use boundaries in the area. The process started with three training sessions for the participants on the use of hand-held GPS, how to collect and fill-in GPS data point forms, and the identification of boundaries and land uses. Upon the completion of the trainings, the team moved on to collect the data and demarcate the boundaries in their respective villages. This stage was marked by active involvement and participation from various stakeholders such as the community committee and the tripartite committee which had nominated their members, comprising of men, women, youth who were literate and willing to walk long distances and persons who know the location of land parcels and those of neighboring villages to join as field teams. In each village, the mapping team was divided into 4 groups to work in different locations. Led by one IMG staff, each group consisted of representatives of local authorities, members of the district state land working group, the village chief and community representatives. The results of the field work and data collected from the field were then entered and

digitized into QGIS by the IMG mapping team. The draft preliminary maps showing the boundaries, locations, and estimated sizes of each land use type were consequently produced for each respective village. Next, the seven village maps were discussed and verified with the community representatives in each village at village level. The results of the discussions at village level were then presented at the district meeting, chaired by the District Governor.

3. The IMG team jointly elaborated *a short conflict analysis report* which includes all the data collected, evaluated the information provided by the conflict maps, classified the conflict into sub-types, provided a summary of the legal analysis, the actor map and outlines a first concept for dealing with the land conflict during negotiations. In any mediation process in the land sector, a conflict analysis, also known as pre-mediation assessment, is indispensable. Through the conflict analysis, the mediators are able to understand the nature of the conflict, factors behind its complexity, its evolution, its legal aspects, stakeholders involved, and many other important pieces of information and on that basis, they can develop the mission and vision and the strategic objectives of the mediation process itself.

Furthermore, actor mapping is another key part of the conflict analysis. In any mediation process it is always of great importance to identify who are the actors involved. Concerning the actors in land conflict, there is no clear classification or division of actors involved. Instead, the number of actors involved or who those actors are obviously depends on the types and nature of the conflict itself and more importantly their interests at stake.

4. *Classification of the conflicts into homogenous conflict types* - in mediation, it is important for the mediators to keep in mind that the conflict itself can be complicated and non-homogenous. Trying to get the whole conflict solved once and for all is strategically not possible. For instance, the conflict involves many groups of people or they consist of many types with small sub-categories. Categorizing conflicts, as already mentioned, can be an effective approach to mediation. The purpose is to break down the conflicts into smaller parts so that they can be handled better and more effectively. In the case of the six communities, it is generally known that the conflict itself between the two parties is chronic and complicated. As a result, IMG broke down the conflict into five main categories based on the types of land the people use. Those five categories include (1) Communal Land, (2) Family Rubber Plantation, (3) Chamkar and Rice Field along the Stream, (4) Chamkar and Rice Field, and (5) Cases with prior compensation. Through this approach only certain aspects will be resolved at a time, not everything all at once. In addition to this, IMG also broke down the conflict based on the villages involved. To be specific, IMG started its mediation first with the first two villages with the highest chances of success. Then it started with the other remaining villages later. This conflict categorization approach, as a result, significantly helped IMG in the mediation process. Mediation is an entirely voluntary process. Once the conflict parties are sufficiently informed about

mediation and everything it includes it is time to request the parties to make a full commitment to the process. This commitment makes use of elements of the Free Prior Informed Consent (FPIC) approach. In order to express their full consent, both conflict parties sign nomination letters. The nomination letter serves as a proof showing that the mediators, IMG, have been voluntarily nominated by both parties. In other words, it shows that there are no physical or emotional forces or threats being put upon the conflict parties by the mediators. Representatives for each sub-category of the overall conflict have been elected to participate in the negotiations in the name of their group. Issues of collective land will be presented by the elected committee of the community as a whole.

5. Ground rules are then developed jointly by the conflict parties, with coordination from the mediation team. Similarly, to the confidentiality agreement, ground rules also serve as an instrument governing the mediation process covering key aspects of the process including: key purposes and principles, legal representation, meeting process, engagement of government authority, etc. With ground rules, both parties, mediators and other relevant stakeholders are bound to conform to certain rules during the mediation process and for this reason help provide a level playing field with each party having the same rights and being restricted to a certain extent by the same rules. Confidentiality agreements are one of the most important mediation tools in the mediation process. It governs the relations and all activities happening before, during and after the mediation process. With this confidentiality agreement, all parties and stakeholders involved, especially the mediators, are bound to the principle that all pieces of confidential information and documents communicated in the mediation process are kept strictly confidential and will not be the subject of dissemination. This is one of our great achievements. The ground rules and confidentiality agreement between two communities and the rubber plantation company were agreed and signed after a joint workshop on drafting of ground rules and confidentiality agreement. Other stakeholders such as local authorities at commune and district, community elders from the two villages, UN-OHCHR, LAC, IMG's mediators including translator also agreed to sign on these documents. Moreover, the other three communities and all key relevant stakeholders have also agreed on the ground rules and confidentiality agreement and signatures will follow in the near future.

6. Capacity Building - it is very important for the mediators to ensure that both parties in the conflict are standing on an equal level. In other words, the mediators need to guarantee that both parties have roughly similar, if not equal, capacity to participate in the mediation process, especially the negotiation. In this case, generally, the community is the party with weaker capacity (if the conflicts involve a community and a company). As a result, they really need capacity building opportunities to strengthen their negotiating power and to smoothen the mediation process. Therefore, the role of the mediators is very important here to make sure that there is balance of power between the parties. However, given the fact that mediators must be

impartial as stipulated in the principles of mediation, it is crucial that a third impartial party with no interests in the conflict become involved. It is expected that selected NGOs, especially locally-based ones, will work with the communities to prepare them for their negotiations and provide advice during the whole mediation process. However, due to the limited understanding of mediation and availability of the required resources, it has been very challenging in the past to identify suitable training providers. In such cases, the team of mediators work to ensure that the communities are well supported in at least two aspects: (i) basic and general negotiation skills in the process, (ii) timely and reliable communication between the representatives and their community members. The mediator’s team consult with other stakeholders how this kind of support can be provided in ways that won’t compromise their impartiality and confidentiality principles.

Stage 1: Pre-Mediation/Assessment

| No. | Activities | Duration |
|------------|--|---|
| 1.1 | Awareness Creation | |
| 1.1.1 | Dissemination workshop on mediation for all involved stakeholders. | 2 days |
| 1.1.2 | Conduct bilateral meetings with conflict parties and their representatives to disseminate on a mediation process and to clarify issues and concerns raised by parties. | 1-2 days per village; 0.5 day with company |
| 1.2 | Conflict Mapping the overlapping claim | |
| 1.2.1 | Conduct joint mapping exercise of all claimed overlapping land. | 3-4 weeks per village |
| 1.2.2 | Prepare detailed conflict maps for the area | 1 week per map |
| 1.3 | Detailed Data Collection | |
| 1.3.1 | Collect secondary and review key documents (including maps) relevant to the case. | 3-4 weeks |
| 1.3.2 | Primary data collection, interview, clarify overlapping claimed land maps with conflict parties and to understand their perspectives and to identify parties’ preferences to address the dispute. | 1 week per village; 1 day with company |
| 1.3.3 | Conduct bilateral meetings with conflict parties and their representatives to identify the parties’ interest in conflict and to discuss on the nomination of mediators and elections of their representatives. | 1 day |
| 1.3.4 | Conduct meeting with other stakeholders, local authorities, CSOs/NGOs, to understand how they see the situation. | 2-3 days |
| 1.3.5 | Prepare legal analysis of the case | 1 month |
| 1.3.6 | Classify the overall conflict situation into sub-categories and prepare for sequencing of conflict categories during the negotiations | 1 week |
| 1.3.7 | Prepare conflict analysis report including an actor map and develop strategy, methodology for mediation and dispute resolution process. | 1 month |
| 1.4 | Training of Local Authorities on Mediation | |
| 1.4.1 | Provide a basic introduction on mediation to representatives of the local authorities (district authorities, commune councilors, village chiefs etc.). | 2 days |
| 1.5 | Commitment by Conflict Parties | |
| 1.5.1 | Request the signing of nomination letters by all concerned conflict parties. | 1 day |
| 1.5.2 | Request election of representatives to participate in the negotiations. | 1 day |

| | | |
|------------|---|---------|
| 1.5.3 | Draft ground rules and confidentiality agreement for conflict resolution with community representatives and share these with the other conflict parties (e.g. the company). | 2 days |
| 1.5.4 | Conduct joint workshop on draft ground rules and confidentiality agreement with all relevant stakeholders, conflict parties, local authorities, CSOs/NGOs. | 1 day |
| 1.5.5 | Facilitate agreement and signing on ground rules and confidentiality agreement for conflict resolution by all relevant stakeholders. | 1 day |
| 1.6 | Build the capacity of conflict parties (especially community representatives) for negotiations on equal footing (to be delivered by an external service provider (e.g. NGO)) | |
| 1.6.1 | Conduct training on roles and responsibilities of community representative and negotiation skills and development of options for community representatives (to be delivered by an external service provider (e.g. NGO) trained and experienced in capacity building of community members for conflict negotiations. | 7 days |
| 1.6.2 | Provide support and coach community representatives on the preparation and development of suitable and beneficial options readiness for negotiation | 5 days |
| 1.6.3 | Provide support to communities throughout the mediation stages as coach or advisor in view of avoiding power imbalances between the negotiating parties | xx days |

Mediation / Negotiation

After the successful conclusion of the pre-mediation stage, IMG immediately kick-started the first negotiation process for one among the 5 land conflict categories which is **communal land** (spiritual forest land, sacred forest land cemetery forest land and reserved land) claimed by the two villages. In the process, IMG called out both conflict parties to join the negotiation process where each party has the same equal rights to voice their concerns and issues over the conflict. The list of concerns and issues raised by parties was then created and agreed by parties. Both parties agreed to negotiate one by one on the concerns and issues being raised. There were also several separate bilateral meetings conducted by the mediator whenever the negotiation process got stuck.

The minutes of the negotiation state clearly what was agreed and what was not agreed. Once the concerns and issues had been agreed and settled by both parties these were drafted into the settlement agreement. Each party met separately with the mediator to prepare the draft settlement agreement. It was then jointly discussed, printed and read before it could be signed and thumb printed.

As a result, one location of sacred forest land in the first village has been successfully settled and agreement was reached to give this area back to the community with an agreed ritual ceremony. For three other locations, agreements were only partly reached and pending issues will be discussed again in the next round.

For the second village only four out of nine locations of communal land were negotiated. For three locations (cemetery and sacred forest land) settlement has been reached, while the remaining locations will be discussed again in the second round, scheduled for February 2018.

The signing of the provisional agreements, all parties are given 20 days final acceptance, especially for community representatives as they need to refer back the results of the negotiations to their community members.

Stage 2: Mediation/Negotiation

| No. | Activities | Duration (will be filled in later) |
|------------|---|---------------------------------------|
| 2.1 | Negotiation Sessions | |
| 2.1.1 | Prepare negotiation sessions (select venue, prepare mediators, organize logistics etc.) | |
| 2.1.2 | Conduct joint negotiation or dialogue meetings: <ul style="list-style-type: none"> • Exploration of parties' needs and interests related to the issues • Prioritization of parties needs and interests • Identifying possible joint needs and interests • Brainstorming of options and actions that resolve or mitigate the issues while addressing the parties needs and interests • Explore parties' alternatives to a negotiated agreement • Focus on actions identified that create mutual gain | |
| 2.1.3 | Conduct private meetings with the conflict parties when required | |
| 2.2 | Recording of Decisions | |
| 2.2.1 | Record the negotiated agreement of the joint meetings: <ul style="list-style-type: none"> • Recording of agreed decisions • Recording of agreed of non-settlement for further negotiation | |
| 2.3 | Prepare Settlement Agreement | |
| 2.3.1 | Write agreement/settlement <ul style="list-style-type: none"> • Bilateral meetings for preparing of settlement draft • Draft agreement of settlements • Joint discussion of settlement agreement | |

Stage 3: Post-Mediation/Implementation of Agreement

| No. | Activities | Duration |
|-----|---|----------|
| 1 | Parties' involvement in the agreement implementation | |
| 2 | Possible involvement of mediators or other stakeholders | |
| 3 | Monitoring instruments for agreement implementation | |
| 4 | Sustainability for ongoing dialogue between parties | |
| 5 | Facilitate and support for official recognition and apply for communal land titling | |

V. Key challenges in Mediation:

Despite the achievement so far, mediation process is still facing many challenges. These challenges include:

- **Trust Building:** The emphasis on trust comes mainly from two main premises. First, the chronic nature of the conflicts and limited results from past conflict resolution efforts. Drawing on the experiences of IMG, these have severely affected the emotions of both conflict parties. As a result, they for now might want to see results so that they feel motivated to continue investing their time, resources and efforts in the process. Second, trust building is important for the mediation process to go on with full participation from the parties. With trust in the mediators, the conflict parties are more likely to share important information, be less defensive, more able to state their needs, more willing to give and take in negotiations, more accepting of the mediator's actions and enabled to better bridge the gaps between them.

- **Communication:** The mediators and any NGOs supporting the community in their preparation and the actual negotiations must provide clear, understandable and neutral communication to all conflict parties. It has been widely acknowledged that misperception and miscommunication can be a root cause of conflict. In the case of land conflicts, the same concept also applies. With parties having misperception and miscommunication with one another, conflicts will be very likely to prolong and get complicated. In the meantime, trust between the two parties can also be severely eroded. Given this reason, it is crucial that the mediators work to minimize miscommunication and misperception as much as possible, and specific tools and processes shall be developed in order to overcome these specific communication challenges. Another important aspect of communication is the feedback by the community representatives after each negotiation session to the group they represent and a thorough discussion of the options to go forward.

- **Balance of Power between the parties:** During mediation it is of utmost importance that the conflict parties get exactly the same treatment, the same rights and negotiate on equal terms. Very often this is difficult to achieve, as representatives of local communities will naturally see themselves as “underdogs”, will face some difficulties in expressing their views, often confronted with language barriers and they will be handicapped by their inexperience in negotiating a favorable solution to their conflict. This requires them to develop clear demands, propose and select options and stick to their views and decisions. As mediators have to stay absolutely neutral between the conflict parties, a certain balance of power has to be established well before the start of the actual negotiations. This requires earmarked support to the community representatives by trainers and advisors in order to:

- understand the community's point of view
- develop clear demands and prepare the community to identify, define and select possible options which benefit the community and how to defend these positions

- provide capacity and training for community representatives on roles and responsibilities of community representatives and their negotiation skills
- prepare the community to be ready for negotiations e.g. in terms of how to provide information, how to make statements, how to answer to company representatives etc...
- provide honest and clear feedback to the community and the group they represent
- get group consent before engaging in any final offer or settlement

This support the communities needs to start during pre-mediation and continue through mediation (negotiation) and post mediation. If no support by civil society to mitigate power imbalances can be identified and secured, the mediators should not pursue the mediation and negotiation of the case at all.

- **Capacity building on negotiation skills of community representatives:** NGOs play important role to provide support to the communities in preparing for and engaging in the mediation process. However, supports from NGOs to the communities has not helped the latter to be better prepared for the upcoming mediation. The challenge is that it is not clear which NGOs will involve and what roles they will play, and while mediation is being pushed as the main conflict resolution in the six communities of the Northeastern province case. Moreover, most local NGOs have extensive experiences working with communities, but they lack the understanding of what a negotiation process includes and how to prepare members of the community to act and talk during these sessions. At present, there is only one local NGO and who is in the context of the other mediation case has experience and has then built up negotiation capacities in the local communities involved in the mediation case.

VI. Future Land Conflict Transformation - Mediation in Cambodia

As mentioned above, conflict resolution in Cambodia has achieved a limited level of effectiveness and been complicated by many factors such as corruption, lack of political will, political interference and high transaction costs, not to mention the low level of accessibility of those existing mechanisms. This means that a better resolution mechanism is very crucial for resolving land conflicts in Cambodia (Star Kampuchea, 2014).

Mediation, as a result, can play a very significant role in filling in this gap. With its potentials such as being less-costly, less time-consuming and more accessible, mediation can be a very effective means for resolving land conflicts in Cambodian society. In addition to this, mediation can also be a suitable approach in a sense that it allows the conflict parties to take all decisions and make their choices, which can surely lead to a win-win outcome rather than a win-lose result like the judicial or the formal approach currently in use. It is important to note that an engagement in a mediation process is always based on voluntary commitment. All conflict partners can decide at any stage to withdraw from the mediation process. More importantly, with mediation, no corruption or political interference will be complicating and slowing down

the resolution process like in the currently available mechanisms. Mediation is not a rigid resolution mechanism. It can be flexibly bent and adopted to different situations, types or nature of the conflicts. All these benefits, as a result, make mediation a really effective and suitable means for resolving the land conflicts in Cambodia (Australian Disputes Centre, 2015).

VII. Outlook

In general, conflict resolution through neutral mediation in Cambodia is a suitable approach which avoids the shortcomings of the existing mechanisms by the Government. Despite many challenges, it has achieved a limited level of effectiveness. Based on the achievement so far, IMG and the whole mediator team have the optimistic view on further mediation process, particularly on the land conflict case of six communities in the Northeastern Province of Cambodia and the foreign rubber plantation company.

After the successful conclusion of the pre-mediation stage, IMG is currently preparing for the mediation or negotiation stage. There will be joint dialogues and meetings among all relevant stakeholders and private meetings at this stage. IMG will start to organize its first negotiation sessions with the first two villages based on the land conflict categories which have been agreed by conflict parties. Those five categories include (1) communal land, (2) family rubber plantation, (3) chamkar (farm) and rice field along stream, (4) chamkar (farm) and rice field without compensation, and (5) cases with prior compensation. Through this approach only certain aspects will be resolved at a time, not everything all at once and this would make the agreement and settlement among the conflict parties possible. IMG and conflict parties have agreed that in case that the negotiation of each land conflict category does not move forward, the negotiation will continue with another category.

After the agreement and the settlement by the consent of the conflict parties, the post mediation stage, the last stage of mediation process, involves the implementation of the agreement. This really needs a concrete strategy and ongoing dialogue between parties in order to have an effective agreement implementation. Moreover, IMG will also have a specific instrument or framework to monitor the implementation of the agreement. Furthermore, IMG will work to facilitate with the RGC and local government for the official recognition of the settlement and assist in the application for communal land titling.

At present, mediation in Cambodia is very much seen as a suitable approach in the case of conflicts between communities and ELC companies, such as in the HAGL or the six IPCs in the Northeastern Province case mentioned above. In both of these cases it was foreign companies managing the ELC. What will be needed in future is to expand this approach to Khmer companies holding an ELC and being involved in a land conflict with neighboring communities. In addition, mediation would not only be applicable for this type of conflict, but also for conflicts between communities themselves (such as boundary conflicts),

between the state and individual land encroachers (e.g. in the case of protected areas being encroached by settlers) or local communities and encroachers or well-connected land grabbers. All these types of conflicts are common in Cambodia.

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