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ACCESS TO LAND OF HIGHLAND INDIGENOUS MINORITIES: THE CASE OF PLURAL PROPERTY RIGHTS IN CAMBODIA

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Access to Land of Highland Indigenous Minorities: the case of plural property rights in Cambodia[1]

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Abstract

The paper describes the development of plural property rights in Cambodia, with particular attention to the current recognition of indigenous community rights to land by the state. Cambodian state laws on property rights have been heavily characterised by the tendency of any new regime to invalidate or abolish all the pre-existing state arrangements for land rights created by old regimes. In the various political battles by the various regimes, however, indigenous community rights to land have never been viewed as important issues. In July 2001, the National Assembly passed a draft "Land Law" which later signed into law by the King in August 2001, includes a chapter on indigenous community rights. The paper argues that the promulgation of a chapter on indigenous community rights as part of the Land Law is primarily a result of the increasingly important role of international organizations in Cambodia, be they UN organizations, international financial institutions, or international donor NGOs.

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Introduction

On 20 July 2001, the Cambodian National Assembly passed a new draft Land Law, which was signed into law by the King on 31 August 2001. With the promulgation of the Land Law of 2001, Cambodia has entered a very interesting period in the development of its property rights. While various degrees of plural property rights have been in existence since before colonial times, as explained throughout the paper, the Cambodian Land Law of 2001 marks an unprecedented period where the land rights of indigenous communities are legally and explicitly recognised by the state. The new Land Law includes a section on "Immovable Property of Indigenous Communities" under Part 2 of the Chapter on Communal Immovable Property Rights.

The inclusion of indigenous community rights in the Land Law should be understood in the specific historical context of Cambodia, where the various state regimes in the past hardly formally recognized the land rights of indigenous communities. After the Paris Peace Accord of December 1991, concluded under the pressure from international communities, the development of Cambodia has been directed and funded, either in the form of grant or loan, almost entirely by the international communities. The promulgation of the Land Law, and in particular the state recognition of the indigenous community rights to land, should be seen as a result of the increasing role of the multilateral organizations, international NGOs and civil societies in the country's legal development. The paper provides an analysis of how the current process of legal pluralism, in particular plural property rights, has taken place in the historical context of Cambodia.

The focus of this paper is the conceptualisation of an indigenous land tenure system as a political process since, following F. and K. von Benda-Beckmann (1999), referring to Indonesia, and Shipton and Goheen (1992), referring to Africa, control over land and its diminishing resources will continue to provide the most effective leverage in the governance of people. Considering how land use regulations served to control people, the ideological content of land policies appears to be important. The paper describes major policy shifts in Cambodia, from supporting private property and individual tenure arrangements to a more socialist and collectivised property system largely controlled by the state, coupled with the total abolition of private property rights, to a more liberal tenure arrangement with a growing commitment to individualized holding, coupled with the recognition of indigenous community land rights. In general, policy shifts serve the political and economic interests of the various governments. To the socialist-inclined government, indigenous land tenure systems were condemned not only as

inefficient but also as conducive to capitalist class formation if they were allowed to evolve on their own. To the more liberal regime, indigenous tenure systems were assumed to have created insecurity for farmers while the systems were often accused of having caused environmental degradation (cf. Basset: 1993: 11).

The paper will also look into the content of the rules for the state recognition of indigenous community land rights since rules need to be interpreted and negotiated. Indeed, land rights are rooted not only in changing economic and political structures but also in the interpretation and transformation of meanings associated with the regulated access to indigenous community property resources. To this tendency, Peters (1987: 192) aptly asserts:

> "Competition among rights and claims takes place through competition in meanings. These are assigned, accepted and imposed: whose right, which meaning, whose definition are critical questions in deciphering changes in land rights."

Highland Indigenous Minorities

Many scholars and writers have pointed out that reliable socio-cultural and economic data, information and studies on indigenous minorities or highland ethnic minorities in Cambodia are very rare, and if any, very limited (McCaskill and Kampe 1997: 17-19; Erni 2000: 4). Speaking of Indochina in general, King (1996: 152-153) mentions that during the war and conflict period (the Khmer Republic period between 1970-1975 and the Democratic Kampuchea period between 1975-1979), and after the communist victories (The People's Republic of Kampuchea period between 1979-1989 and the State of Cambodia period between 1989-1993)[3], access to data and permission to undertake fieldwork locally were made virtually impossible. According to King, academic studies have commonly focused on politics, history and economics, while there has been very little sociological or anthropological research worth mentioning from the early 1960s to early 1990s.

Most scholars, who studied the socio-economic and cultural aspects of Cambodia prior to the 1990s, tended to pay more attention to the, mainstream' and, hence, ‚dominant' Cambodian ethnic group, the Khmer[4]. Attention was also paid to the main non-indigenous minorities, namely

[3] For a summary of a political periodisation of Cambodia, see appendix 1.
[4] For example, J. Delvert's book, *Le Paysan cambodgien* (1961) is full of detailed information on many aspects of Khmer rural society in the 1940s and 1950s. S. Thierry's *Les Khmers* (1964) offers an account of the early history and traditional culture of the Khmers.

the Chinese[5], the Vietnamese and the Cham[6]. Systematic studies on the customary land rights of the Cambodian highland indigenous minorities are equally rare. Williams (1999b: 3) points out that the earliest comment on customary Cambodian land law was an unpublished work by Lafont (1963) who wrote about the Jarai people[7]. About twenty years later, a study on a village and forest of the Brou was carried out by Matras-Troubetzkoy (1983). A new wave of writers on indigenous minority issues has emerged since the 1990s. These writers, who mostly have a mixture of NGO, development and human rights backgrounds, have started to pay serious attention to the customary land rights of indigenous minorities of Cambodia with particular focus, but not limited to the impacts of various development programmes and projects on indigenous minorities. These are, among others, a study by Greve (1993); a study by ICES and Minority Rights Group International (1995); an interpretation of land laws prepared by Joshua (1995-96); an analysis of some land cases by Russel (1996/1997); an analysis of the ethnic minorities situation in Ratanakiri by Colm (1997a, 1997b and 2000); Rendal and Murdock (1998) who developed teaching materials of the University of San Francisco for Faculty of Business undergraduates; and, a gender analysis of environmental problems of upland ethnic minorities in Ratanakiri by Van den Berg (2000). Fox (n.d.) has written a brief paper on customary land-use practices of certain indigenous communities in Ratanakiri. Almost all of the writers are foreigners, especially from Europe, Australia and the US. Works by Cambodians, and in particular indigenous minorities themselves, is difficult to find.[8]

The description of how in general the highland indigenous minorities arranged their communal tenure systems is often mentioned by existing studies. However, most of these studies lack an analysis of, quoting from Franz and Keebet von Benda-Beckmann (1999: 20), "a layered structure of property regimes" in order to get a full understanding on how and under which conditions indigenous tenure does or does not work. Existing studies of Cambodia do not provide an adequate analysis of indigenous ideological and cultural notions of property relationships, of

[5] See W.E. Willmott (1968) and (1970).

[6] The Vietnamese and the Cham have particularly captured the attention of many writers because the two ethnic groups severely suffered from prosecution under the rule of the Khmer Rouge during the Democratic Kampuchea period between 1975-1979. After this period, the Vietnamese have continued to suffer from discrimination (see ICES and Minority Rights Group International 1995).

[7] The Jarai (or Gia Rai) are the main ethnic minority group that occupies the Central Highland of Vietnam (Salemink 1997).

[8] Compared to Thailand or Vietnam, Cambodia is very much behind in terms of its citizens` written contribution to the discussion on ethnic minority issues. In other fields, for example rural development planning and programme, there has been a similar concern over the scarcity of Cambodian writers (see, for instance, Ledgerwood 1998).

legal regulations in a plural setting, and of property relations as actual social relationships. Fox (n.d.: 2) has raised some concern when saying:

> "The variety and complexity of customary stewardship in Ratanakiri has been poorly documented and even more poorly understood by outsiders. The little evidence available, however, suggests that customary systems may vary from a very individualistic approach among the Krung, perhaps with little concept of community lands or community boundaries, to a very community dominated approach among the Jarai, with a clear sense of community lands and boundaries."

There are no fixed data about the number of the different ethnic groups in Cambodia. McCaskill and Kampe (1997: 18-19) have noted that in 1992, the dissolved Department of Ethnic Minorities reported a total population of 309,245 for 36 different groups, constituting 3.6 percent of the total population with the following major groups listed below:

Cham	195,215
Lao	21,649
Phnong	19,000
Kui	15,771
Tampuon	13,556
Kroeung	9,368
Prov	5,286
Thai	3,976
Stieng	3,571
Kavet	3,012
Kraal	2,877
Mil	2,076
Por	1,294
Kachok	1,282
10 other groups	2,538
12 other groups	n/a

However, the Center for Advanced Study (1996) puts the number of ethnic minorities higher as groups like the Lao, Thai, Burmese, Chinese and Vietnamese were considered ‚foreign residents' and thus not counted in the earlier survey. Bourdier (1996) indicates that the number of the minority indigenous population across the entire country reached 142,700 in 1995. The

Interministerial Committee for Ethnic Minority Development notes that the ethnic minority population counted up to about 105,000 people in the three north-eastern provinces of Mondulkiri, Ratanakiri and Stung Treng (IMC 1997). The location of individual groups is not very well known and there is no reliable map of the distribution of ethnic minorities in the country. Collectively, the largest population resides in the northeast (near the border between Laos and Vietnam), in the north (along the Laos border) and in and around the capital of Phnom Penh (mainly the Cham).

Since most available studies on indigenous minorities are on those living in Ratanakiri province, my analysis of the indigenous community land rights cannot but depend on the information available on this area. Ratanakiri of the northeastern Cambodia, which was made a province in 1957, lies about 600 kilometres northeast of Phnom Penh and covers approximately 12,500 square kilometres. It has a population of 94,000 people, 75 percent of which belong to eight indigenous minority groups, in addition to the more recently arrived lowland Khmers, Vietnamese, Laotians and Chinese. Johnsson (1997: 546) argues that there are no clear markers to distinguish one group from another, and he asserts that the notion of ethnic minority groups having a particular, fixed social organization is promoted by anyone wanting to administer upland people. For practical reasons and for a better understanding of the subject, however, it is worth following Colm (2000: 32) who largely divides indigenous minorities in Ratanakiri into two ethno-linguistic groups: the Austroasiatic and the Austronesian. The Austroasiatic group can be divided into three sub-groups: (a) the Western Bahnaric branch of Mon-Khmer Brou sub-groups, consisting of the Brou (5,500 people), Kreung (14,000), Kavet (2,000), and Lun (150 people); (b) the Central Bahnaric branch of Mon-Khmer, consisting of the Tampuon (18,000) and the Kachok (2,200); and (c) the Southern Bahnaric branch of Mon-Khmer, namely the Pnong who are only a few. The Austronesian are of the Chamic branch, namely the Jarai who consist of 14,000 people. Other groups living in Ratanakiri are Lao (6,500 people), Chinese (200) and Vietnamese (750).

Plural Property Rights in Cambodia

Cambodia has a land area of 181,040 sq km with a population of 11.4 million according to a 1999 estimate (ISEAS 2000). It is a country where legal pluralism in general exists, with or without state law(s). Cambodia's legal pluralism originates from its very own socio-political history of the Khmer Empire and invasions by neighbouring countries especially Thailand and Viet Nam,

French colonialism, monarchy, communism and the current quest for market economy and globalization. It shares a border in the upland areas with Thailand, Laos and Viet Nam, a condition that has made Cambodia a home to various ethnic groups. The Khmers, who form no less than 94 percent of the population, are the majority and the mainstream of Cambodian society. They are considered an indigenous ethnic group of Cambodia. A much smaller number of distinct ethnic minorities have occupied the upland areas of Ratanakiri, Mondolkiri and Steung Treng provinces. These groups are called *Khmer Loeu*, literally the ‚upper Khmer' who are often referred to as the highlanders, uplanders, hill tribes or indigenous minorities. They are indigenous in the sense that, like the Khmer, they are deemed to be the original inhabitants of Cambodia as opposed to the Cham, Chinese[9] and Vietnamese ethnic minorities who migrated to Cambodia centuries or decades ago.

Geographically speaking, Cambodia's borders have always made it vulnerable to invasion and accessible to immigrants. Chandler has noted that since 1780, Cambodia has been harassed, dominated, protected, exploited and undermined by Thai or Vietnamese regimes (Chandler 1998). The carved stone galleries of Angkor Wat, a twelfth-century temple dedicated to Vishnu, bear witness to the historical struggle of the Khmer Empire to preserve its pre-eminence in continental Southeast Asia. The Khmer Empire once conquered the neighbouring countries, but then had to fight off the incursions of the Siamese, the Cham who are Muslim, and later the Vietnamese. The Empire eventually collapsed in the early fifteenth century and was taken apart by Viet Nam and Thailand until it became a French protectorate in 1864 (Brown and Timberman 1998). After the downfall of the Hindu Khmer Empire, Theravada Buddhism, now the main religion of the Khmers, was adopted under the influence of Thailand (Keyes 1997: 102; Marrison 1996: 79). Chandler (1998) notes that the involvement of Thailand and Viet Nam in Cambodia's affairs intensified in the early nineteenth century as the newly installed dynasties in Bangkok and Hue (Viet Nam) grew strong, competitive, and ambitious. In the 1830s and 1840s the wars fought between them on Cambodian soil devastated the smaller Khmer kingdom and weakened its fragile institutions.

[9] The Chinese in Cambodia originated from four different regions of southeastern China and speak five distinct Chinese languages: Teochiu, Cantonese, Hainanese, Hakka, and Hokkien. The Chinese population first came to Cambodia in the sixteenth century and its greatest growth had occurred since the French occupation of Cambodia and in particular since the end of Sino-Japanese war in 1945 (see Willmott 1970).

With French intervention, Thai influence diminished[10] while Vietnamese involvement persisted in another guise. France has instituted a ‚protectorate' system, which enabled it to exert overall control while maintaining intact the traditional system of government (Christie 2001: 61). France quarantined Cambodia from Siam and tied the country's export economy to that of Southern Viet Nam, so called "Cochin-China". Since ethnic Vietnamese had greater access than Cambodians to French-language education, they occupied favoured positions in the protectorate's civil service. "Indochina", made up of three segments of Viet Nam plus Laos and Cambodia, was a French concoction dominated by its Vietnamese components. Cambodia had become an adjunct of Viet Nam: Vietnamese and other immigrants, like the Chinese and Cham, dominated the networks of the modern economy that had been created, while the Khmers remained marooned in their traditional, mainly rural world (Armstrong 1964: 37-38).

The traditional property system of the Khmers before French colonization was similar to usufruct, the recognized right to use a piece of land and benefit from its outputs. The Khmer King was the lord of the land in the kingdom, which meant that he could reward people with the right to use it (Thion 1993: 41). Since the indigenous minorities in Ratanakiri should not be viewed only in terms of relations with Cambodia or the Khmers (Johnsson 1997: 543), it is worth assuming that these indigenous minorities were not necessarily subject to the traditional property system of the Khmers. Johnsson further explains that the indigenous minorities belong to a continuum of upland social formations, which has never been static, that stretch from the Central Highlands of Viet Nam and across to the Bolovens Plateau of Southern Laos. Indeed, the national borders are a recent reality, which may mask this continuity.

As mentioned earlier, there is not much information on how the indigenous minorities had arranged their property rights, or what relations there were, if any, with the traditional property system of the Khmers. Keyes (1997: 19), who looked into the structure of the traditional relationship between highland and lowland people, mentioned that highland peoples were incorporated into social systems dominated by the lowland peoples. The highland people remained the "holders of the wild," "the people of the upland fields" who rendered periodic obeisance to the lowland rulers in return for the recognition of their status as the first inhabitants of these lands. These relationships, Keyes continued, found a symbolic expression in rituals

[10] Relations with Thailand in the colonial era were insignificant, especially after 1907 when France made Thailand relinquish the Cambodian provinces of Battambang and Siem Reap, which Cambodia had ceded in the 1790s. In 1941, after France's defeat in Europe, the Thai reoccupied most of the lost territory in Cambodia. They were forced to give it up again five years later.

involving both lowland and highland peoples. Keyes mentioned that one of the most famous of such symbolic acts was the triennial exchange of gifts between representatives of the Khmer ruler and the *sadets*, or Lord of Fire and Lord of Water, of the Jarai tribe. The basis for the relationship was a myth about a sacred sword, originally belonging to a Cham ruler. The *sadets* had obtained possession of the sword itself, whereas the Khmers held only the scabbard. This unequal division was reflected in the gifts subsequently exchanged between the two parties. The Khmer would send a convoy of bull elephants and richly decorated palanquins along with buffaloes, clothes, musical instruments, dishes, mattresses and cushions, salt, iron, lead, silk, needles, and other gifts. In return, the Jarai gave a little ivory, rhinoceros horn and some beeswax.[11]

The myth about the Jarai's relation to the King of Cambodia was, according to Salemink (1997: 488-489), misused by the French to justify its political claim over the Central Highlands of what is now Vietnam in the clash with Annam (Viet Nam) and Siam (Thailand) over control of the tribal area. France backed up its claim to the strategically important area by referring to the ritual tributary relationships that existed between the Jarai "kings" and both the Cambodian and Annamese courts in pre-colonial times. With this claim, the Central Highlands of Viet Nam were considered *Pays Montagnards du Sud* (the mountainous region of the South), which was created as a "crown domain", with the effect of separating it from the other administrative entities of Indochina (Keyes 1997: 22). In effect, the north-eastern area of Cambodia tended to be treated by the French as belonging to Viet Nam's *Pays Montagnards du Sud*.

Johnsson (1997: 545) shows other aspects of relations between the highland indigenous minorities and the lowland people in Ratanakiri during pre-colonial and colonial times. Prior to the colonial period, warfare was quite common in the region, and highland indigenous minorities often organised for defence in fortified villages. Slave trade was a source of wealth as much as of repute, as highland indigenous minorities raided each other's villages and sold the captives to Khmer lowland rulers. Since the French were abolishing the slave market, captives were no longer sold to Khmers lowlanders but to Siamese and Lao.[12] The abolition of the slave trade basically reduced the contacts between the highland indigenous minorities and the lowland Khmers.

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[11] The exchange took place from about A.D. 1600 until A.D. 1860, when King Norodom of Cambodia brought the practice to an end (Keyes 1997: 19). Salemink (1997) emphasizes that the tributary relations and the exchange were foremost religious in nature, and not political. He provides a different account of what the exchange was about when saying: "…every three years the Cambodian king would receive grains of upland rice from the Jarai delegation coming down to Buddhist monastery of Sambor at the Mekong, and use these in elaborate rituals in Phnom Penh to ensure sufficient rainfall and good harvest in his realm" (Salemink 1997: 489-490).

[12] See also Chandler (1992); Hickey (1982); Matras-Troubetzkoy (1983); Murdoch (1974).

Private Property Rights

It was in the French colonisation period that the concept of individual land ownership or private property rights was introduced in Cambodia (Greve 1993: 6; Kusakabe et al 1995: 87; PADOC 1995: 2; Thion 1993: 26).The French legitimised land ownership and protected it by law. The first Land Act was promulgated through the Convention of 17 June 1884, which was imposed on the King by the French under threat of bombardment. Article IX of the Convention stipulates, "The land of the kingdom, up until today the exclusive property of the Crown, will no longer be inalienable. The French and the Cambodian authorities will proceed to establish private property in Cambodia". Thirteen years later, the Ordinance of 11 July 1897 confirms: "The government reserves the right to alienate and to assign all the free lands of the kingdom. The buyers and the grantees will enjoy full property rights over the land sold or assigned to them" (Thion 1993: 29). This legal development met strong resistance among the Cambodians, especially the elite. As a result, the land reform was not fully implemented before 1912 (Greve 1993: 6). In 1920 the authorities promulgated a new civil code, which reconfirms a single landholding system.

The institution of the Land Act occurred in connection with a growing recognition of the importance of land as revenue generating property, a transformation that came about mainly as a function of the commercialisation of rice agriculture. The French reserved themselves the right to determine the distribution of virgin land and the right of eminent domain over all lands under their political control (Keyes 1997: 142). Under French colonial rule rubber plantations were introduced to Ratanakiri, where most of the indigenous minorities were employed for 15 days a month (ICES and Minority Rights Group International 1995: 12). The indigenous minorities were mainly organized by their chiefs, and therefore had very little or no contact with the colonial administrators. Outside the rubber plantations, however, the traditional practice of indigenous minority land tenures remained intact.

At the end of the Second World War, it was a key objective of French policy to establish a self-governing Cambodia that remained closely linked to France. This involved a gradual transfer of power to the ‚reliable' Cambodian Monarchy then headed by Sihanouk, and the maintenance of a stable, essentially patriarchal political structure, within which the principle of democracy would only be introduced gradually (Christie 2001: 134). After the French were ousted in 1953, the various regimes tried to assimilate the indigenous minorities using covert and overt means (ICES and Minority Rights Group International 1995: 12; Colm 1997b: 5, 7). At that time the Khmer elite had embraced private property as an acceptable form of investment, although the Khmer

rural masses did not necessarily embrace it. Perhaps it was the Khmer elite's idea of private property and individual land holding that inspired the promotion of government resettlement projects to bring the highland indigenous minorities into sedentary rice farming. Colm (1997b: 5) notes that the Brou, who traditionally lived in the most north-eastern corner of Ratanakiri, bordering Laos and Vietnam, were relocated along the Sesan River in the 1960s. These resettlement projects had some success but also met with some opposition (ICES and Minority Rights Group International 1995). Fox (n.d.: 3) also reports that when a rubber plantation was set up near Banlung in the 1960s, many indigenous minorities were driven off their land and they responded with armed resistance. Authorities responded with military power, killing people and burning down villages (Matras-Troubetzkoy 1983).

In the late 1960s of Sihanouk's regime, the situation of the Khmer rural population got worse, with more and more farmers becoming indebted and eventually landless. Meanwhile, discontent among upland indigenous minorities became visible and organised. Since members of the secret leadership of the Khmer Rouge had taken refuge in the mountains of Ratanakiri[13], royal government troops indiscriminately burnt the indigenous minority villages and killed the villagers. An increased number of working days and harassment by government troops greatly aggravated the inhabitants in the northeast, which culminated in a street protest in 1966 (ICES and Minority Rights Group International 1995). In March 1970, Cambodia's royal government was ousted by a military *coup d'etat*, carried out by Lon Nol who founded the Khmer Republic, but the system of private land ownership was untouched and the French-based civil code and judiciary were still practiced. Lon Nol tried even harder to bring the highland indigenous minorities into the lowland Khmer way of life, which was very much resented by the minorities (ICES and Minority Rights Group International 1995: 12; Colm 1997b: 5). Within weeks of the Lon Nol coup, the Soviet Union had sharply reduced its technical assistance personnel and program.[14] The Khmer Republic was surviving economically only through U.S. airlifts into government centers and armed convoys up to the Mekong and Tonle Sap Rivers.[15]

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[13] Kiernan (1982: 251) mentions Pol Pot's closeness to the various ethnic minority groups in Ratanakiri. According to him a disproportionally large number of members of the Jarai, Brou, Tampuon and Stieng ethnic minority groups joined the Pol Pot forces between 1968 and 1976. It was reported that, while hiding, Pol Pot once lived among the Phnong ethnic group in Ratanakiri, where he discovered the tribal life of these "original" Khmers. He learned to deeply appreciate these people and later holding them up as examples of "purity" (Thion 1994: 170).

[14] The Soviet Union's loans and grants to Cambodia had amounted to about $20 million in the period from 1946 to 1970 (see Kroef 1974: 83).

[15] American Aid for the Treasury 1974 included $325 million in military supplies, $170 million in food, and $75 million in other economic support. Food aid included some 265,000 tons of rice, accounting for more than two thirds of Cambodia's needs (see Simon 1975: 206).

When the Khmer Rouge, under the leadership of Pol Pot, took over the country in 1975, a new political entity emerged, Democratic Kampuchea. Reportedly, the Khmer Rouge and dissident intellectuals were influenced by the French Communist Party, with Soviet sympathies (Simon 1975: 199). Sensitive to allegations that they were merely North Vietnamese puppets, Khmer Rouge leaders increasingly stressed their independence from Hanoi. This regime implemented a Maoist communist system promoting ultra-collectivism where everything became common property of the state. Private property was totally abolished and the right to property previously gained by working the land, became merely a ‚right to work on it'. All agricultural lands were collectivised. The government explained this shift to collectivisation as just a variant of the traditional Khmer principle of usufruct (Williams 1999a: 7). Under this collectivisation, the population was organised into work teams that laboured long hours in agricultural production and for the construction of a vast network of irrigation canals (Ledgerwood 1998).[16] During Pol Pot's regime, a number of indigenous minorities became involved in rice farming in Ratanakiri.

The abolition of private property by Democratic Kampuchea in 1975 constituted one of the most extensive expropriations of property by any state in the latter half of this century (Williams 1999a: 12). During this period, market economy and business activities were completely abolished. All land records, including cadastral maps and titles were destroyed. The regime brought about one of the greatest population displacements in human history, forcing hundreds of thousands to move from cities and towns to the countryside and from one part of the countryside to the other. Many thousands, including indigenous minorities, also fled across the border. Since the Khmer Rouge were more interested in collectivising rice fields and rice production, the property systems of indigenous minorities, who were merely into upland shifting cultivation, were not directly affected by their policy. While their means of production was not affected, however, the minorities were subject to forced cultural and economic assimilation.[17]

By 1977, the geopolitics in Indochina led to a pattern by which China aligned with the United States and was the principal supporter of the anti-Vietnamese Khmer Rouge regime in Cambodia, while the reunified Viet Nam was backed by the Soviet Union to exercise dominance over Laos (Yahuda 1996: 178, 250). In 1979, the Vietnamese forces, armed by the Soviet Union, invaded Cambodia and drove the Khmer Rouge out to enclaves near the Thai border. They installed the

[16] This forced labor system, coupled with starvation and political persecution, cost the lives of two million Cambodians.

[17] ICES and Minority Rights Group International (1995: 13) note that the Khmer Rouge confiscated indigenous ceremonial jars and took away their ceremonial gongs. The indigenous minorities were forbidden to speak their own languages and had to learn Khmer.

People's Republic of Kampuchea (PRK). Many people fled the countryside to urban centers like Phnom Penh seeking refuge and food. After 1979, people had no legal title to agricultural land and claims to ownership of residential land were mainly based on actual occupancy. The PRK regime did not recognize the ownership of land in the previous regime. Following a socialist economic model, policies of solidarity and collectivism were adopted. The PRK appealed to its internally displaced citizens to return to their village of origin of the pre-Democratic Kampuchea period. Continuing the line of collective property rights, the PRK divided the people into collective work groups called *krom samaki* (or solidarity groups). *Krom samaki* were composed of ten to fifteen families each. Every family was allocated a small plot for its home, while other land was held as property of the state.

The level of collectivisation of these groups varied from village to village (Kusakabe et al. 1995: 87; Ledgerwood 1998: 129-130; Muscat 1989: 38-39). The first level was fully collectivised. Labour was collectively performed, animals and other inputs were collectively owned and shared, and produce was divided equitably among the members according to a work point system representing the relative work contributed by each individual. Muscat (1989: 38) notes that active adults received a full share, the active elderly and those aged ten to fifteen received half shares, and others received quarter shares. In the second level there was collective ownership of major means of production. Land was divided into plots allocated on a family basis corresponding to the number of family members, but the group performed tasks such as transplanting and harvesting. Animals and inputs were privately owned but shared along lines set by the state. On the third level, all means of production were privately owned but with labour exchange among members of the group. Again, the *krom samaki* were directed towards the production of rice, which basically did not affect the indigenous minorities.

Muscat (1989: 38) mentions that the original rationale for introducing the *krom samaki* was the need to ensure maximum use and availability of scarce animal and tractor power and guaranteeing their access to these inputs would protect vulnerable families. However, Williams (1999a: 8) noted that the highly schematic nature of the method of redistribution of *krom samaki* land was always bound to cause discontent. He explained that whilst the area of land to be provided to each family was prescribed, the possibility for bias, in favour of the families and neighbours of village chiefs, was provided by variations in quality and locations. This is not surprising, since many authors on other countries in Asia and Africa have pointed out similar phenomena on how the legal regulation of the ‚modern' state law has been interpreted and implemented in a ‚traditional' way (see, for instance, Fisiy 1992). After 1987, collectivity within

solidarity groups, except in some model villages, started to dissolve under pressure from the widespread revival of private enterprises.

In 1989, the People's Republic of Kampuchea, changed its name to ‚State of Cambodia', and embarked on a transition to a market economy. A national summit of district, provincial and central government officials acknowledged the failure of collectivism and opened Cambodia's markets to the world. It started a liberalisation process and the *krom samaki* system was officially abandoned. In the land redistribution that followed, farmers were allocated between 0.1 and 0.2 hectares per family member, which meant landholding ranging from 0.5 to 2 hectares per household (Ledgerwood 1998). Ljunggren (1993: 75) and Williams (1999a: 8) mention that an amendment to the constitution in April 1989 granted land ownership rights with three tenure regimes: private property around the house of plots not larger than 2,000 square meters, usufruct rights to state-owned land of plots less than five hectares, and concession rights granted to farmers who are in a position to expand their cropping activities into plantation plots larger than fife hectares. Thus, the state reintroduced limited private ownership rights devised by the French, which had been abolished in 1975 by the Khmer Rouge. These rights were only available to Cambodian citizens who had used and cultivated their land continuously for at least one year before promulgation of these open market policy principles. Land left vacant for more than three years reverted to state ownership. Following the enactment of the 1992 Land Law, the government initiated a program for land tenure certificates to confirm occupancy and use rights. It was reported that four million applications were submitted, but by mid-2001 only fifteen percent of them had been processed due to limited capacity of the government.

The above explanation indicates that in the realm of Cambodia's "state legal system", as illustrated by the property law case, there is plurality of law created through the temporal dimension of the law making process. The tendency of Cambodia state laws is to invalidate the existing rights created by the preceding state laws. It is simply an application of a "zero-point-principle" in the law making process, an assumption that a newly promulgated law is projected to invalidate any existing tenure arrangements. It is the new law, and not other laws, that should define the temporal aspect of the law's point of departure. This legal culture can be associated with what Chandler (1998) cynically labels the socio-political culture of Cambodia as "the winner-takes-all-culture". Perhaps the state land laws did not abolish indigenous minority land rights just because they simply did not even notice that traditional rights to land ever existed. When these traditional rights were acknowledged, however, they were not important enough to

get equal attention from the Khmer regimes who were more keen to invalidate or abolish the formal legal systems created by their Khmer fellow enemies preceding them.

Transnational Concern for Indigenous Peoples

I have stated earlier that the state recognition of the indigenous community land rights in the Land Law of 2001 should be seen as a result of the increasing role of multilateral organizations and international NGOs in Cambodia's legal development and law making. The strong presence of international communities in Cambodia has been very obvious since the Peace Accord of 1991, starting from the official arrival of the United Nations Transitional Authority in Cambodia (UNTAC) in March 1992.[18] UNTAC's mission was to assist in the governing of the country until general elections could be held and a new, legitimate government sworn in. A total of $2 billion was allocated for UNTAC, which primarily supported peacekeeping operations prior to the elections. Bilateral and multilateral organizations promised an additional $2.3 billion in assistance for development from 1992 to 1995, although only part of the amount was delivered (Hourn 1998). Curtis (1998: 91) recites the World Bank's 1995 report that the Royal Government continues to depend heavily on outsiders funded by foreign agencies to both spearhead the recovery programme and perform routine tasks.

The UNTAC period from 1992 to 1993 was a watershed in the emergence of civil society in Cambodia. Large numbers of international NGOs began their work in Cambodia, and local NGOs sprang up rapidly, many would say more in response to the availability of funding from aid agencies than due to genuine grassroots efforts (Kato et al. 2000). The staff of international donor agencies and international NGOs is commonly seen especially in Phnom Penh, but also in the provinces. Before the Peace Accord, there were relatively few NGOs operating in Cambodia. Their numbers increased dramatically after the Accord was finalised. In 1998 alone, there were at least 133 international NGOs, 163 national NGOs, and four NGOs peak bodies or umbrella organizations who were involved in more than 500 projects (Kato et al. 2000: 31; see also Curtis 1998: 131-145).

Findlay (1995: 149) notes that a major issue arising in Cambodia was how far the UNTAC should intervene to establish a legal system in a country for which it has assumed responsibility. Donovan (1993: 70) aptly mentions three complex legal issues to be considered. The first and

[18] For more information on the role of UNTAC in Cambodia, see Findlay (1995) and United Nations (1995).

most fundamental is how to remake a legal system in a country without lawyers. The second is how to accomplish, within and by means of legal institutions, the transition from socialism to liberal democracy to which the country has formally committed itself. The third is whether to return Cambodia's legal system to its immediately post-colonial past or forge a new system at once, more Khmer and more modern. In Cambodia, both the DK and the PRK systems were clearly flawed, while the French system, on which Cambodia's original postcolonial legal system was based, was regarded less than satisfactory by those trained in the Anglo-American legal tradition.

The drafting of the Land Law was carried out shortly after some important laws regulating the private sector were enacted between 1993 and mid-1997.[19] It was carried out almost simultaneously with the drafting of a significant number of other state laws covering such areas as the penal code, the civil code, criminal and civil procedures, law of evidence, of the forestry law, of the law on audit, anti corruption legislation and the commercial code. Support from international aid agencies was received in the drafting of all the laws.[20] UNTAC, for instance, created a provisional Criminal Law in 1993. Japan provided assistance in the drafting of the Civil Code and the Civil Procedures Code. Australia provided assistance in the drafting of the Penal Code. In 1999, the ADB provided technical assistance to prepare a draft Forest Law, building on the earlier draft prepared with the assistance by the Food and Agricultural Organization and the World Bank.

The major international aid agencies and lending institutions working in Cambodia, at different degrees, operate under the worldwide growing awareness for the importance of recognising and protecting the rights of indigenous peoples. This is due to the development of international conventions and declarations related to indigenous peoples, among others: the *UN Universal Declaration of Human Rights* (1948), *International Covenant on Civil and Political Rights* (1966), the ILO Convention No. 107 on *Protection and Integration of Indigenous and Other Tribal and Semi-tribal Populations in Independent Countries* (1957), and the ILO Convention No. 169 on *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* (1989). Agenda 21 adopted by the UN Conference on Environment and Development in 1992

[19] Among them were a Civil Aviation Law (1994), a Land Management, Urbanisation and Construction Law (1994), a Law on Investment (1994), a Chamber of Commerce Law (1995), a Commercial Register Law (1995), a Law on Organisation and Functioning of Council for Development in Cambodia, and a Cambodia Investment Board (1995) and a Law on Taxation (1997) (see Kato et al. 2000: 30).

[20] For a more comprehensive understanding of the international donor agencies' involvement in Cambodia's legal and judicial reform after the Peace Accord, see Siphana (ed.) (1998).

recognises the actual and potential contribution of indigenous and tribal peoples to sustainable development. The 1992 Convention on Biodiversity calls on contracting parties to respect traditional indigenous knowledge with regard to the preservation of biodiversity and its sustainable use. The Vienna Declaration and Programme of Action, emerging from the 1993 World Conference on Human Rights, recognises the dignity and unique cultural contributions of indigenous peoples, and strongly reaffirms the commitment of the international community to the economic, social, and cultural well-being of indigenous peoples and their enjoyment of the fruits of sustainable development. It is in the middle of this development that international lending institutions, such as the World Bank and the Asian Development Bank, have also set up their policy on indigenous peoples.[21]

Cambodia is a party to some of the important legal instruments such as the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of all Forms of Racial Discrimination. It has, however, not ratified the ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention number 169/1989). Although Cambodia has not ratified the most relevant international convention on indigenous peoples, the Cambodian Constitution recognises the equal legal status for the ethnic minorities[22] while the new Land Law of 2001 explicitly recognises the rights of indigenous communities. Like in some other countries, this situation is not surprising. There is a tendency that a number of countries that do not formally ratify any of these international instruments are, indeed, applying the substantive aspect of the international conventions into their national legislation (see also K. von Benda-Beckmann 2001a).

There are at least two major occasions where internationally driven moves towards the recognition of indigenous peoples' rights in Cambodia took place prior to the discussion on the inclusion of the indigenous community chapter in the new Land Law. The first was the creation of the Inter-ministerial Committee for Ethnic Minorities Development (IMC) as the principal government agency with responsibility for policies and programmes towards ethnic minorities.

[21] The World Bank introduced Operational Directives No. 4.20 on indigenous peoples, which is now under revision with the release of the draft Operational Procedures No. 4.10 on indigenous peoples. The Asian Development Bank introduced a Policy on Indigenous Peoples in 1998, followed by its Operations Manual Section 53 on indigenous peoples in December 2000.

[22] Article 32 of the Constitution of the Kingdom of Cambodia states: "Khmer citizens shall be equal before the law and shall enjoy the same rights, freedom and duties, regardless of their race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, resources and any position." During the debate on the Constitution in the National Assembly, the term "Khmer citizens" includes Cambodian ethnic minorities (see ICES and Minority Rights Group International 1995).

The IMC was formed in 1994 at the same time that a Highland Peoples Programme was established by the United Nations Development Program (UNDP), following initiatives taken in connection with UNDP's Year of Indigenous Peoples in 1993. The IMC secretariat was located within the Ministry of Rural Development.[23] The main contribution of the Highland Peoples Programme was to help the IMC develop its policy guidelines for highlands peoples' development through a participatory process. With technical assistance from the ILO, the IMC prepared the first ever general policy guideline for the development of the highland people, dated September 1997 (see IMC 1997). The draft's general policy states that all highlanders have the right to practice their own cultures, adhere to their own belief systems and traditions, and use their own languages. The draft also requires the government to strongly encourage and support the local institutions established by the highlanders. In all legal and administrative matters, all persons belonging to highland communities should be considered and treated as Cambodian citizens, with the same rights and duties. However, until now the National Assembly has not approved this draft.[24]

The second major occasion of the move towards the recognition of indigenous peoples' rights was the action of the UN Commission on Human Rights to specially include indigenous peoples' issues in the Report of the Special Representative of the UN Secretary General for Human Rights in Cambodia to the UN Commission on Human Rights in February 1999 (see Horvath 1999).

Previously, two reports to the UN Commission on Human Rights, dated 26 February 1996 and 20 February 1998, have focused on the situation of Cambodia's highland peoples. Since international attention was paid to Cambodia's record for human rights in the 1990s, the inclusion of the indigenous peoples' issues in the Report has somewhat put a heavy moral and political pressure on Cambodia to pay attention to the issues.

[23] In 2001, the Government decided to create a new Department of Ethnic Minorities Development, also within the Ministry of Rural Development, to follow up the work of IMC. Its roles have included planning programmes for ethnic minority development; improving the current draft policy for highland peoples' development; conducting research on the identity, culture and traditions of ethnic minorities; and training development workers in cooperation with local and international development agencies active in highland areas (ADB 2002a and 2002b).

[24] Indeed, it is the issue relating to traditional land and forest use rights of indigenous peoples, which was not guaranteed by the Land Law or Forest Law at the time of the submission of the policy that has delayed the approval by the Council of Ministers (see ADB 2002b).

Creating the Land Law of 2001: the process and the actors

Various international organizations working in Cambodia have raised concerns over the shortcoming of the Land Law of 1992. Williams (1999a: 5), for instance, has pointed out the major flaws of the 1992 Land Law, which include:

(i) Lack of explicit and comprehensive definition of private and state rights on real property;
(ii) Obscurity of the applicable circumstances for the state's over-ride of private property interest and lack of legal protection against abuse of state eminent domain;
(iii) The absence of a requirement for compulsory registration of state property, thereby creating corrupt practices with respect to state property;
(iv) The absence of an explicit recognition of private ownership rights for the majority of Cambodians because of the requirement for a written application for property rights;
(v) Obscurity about the level of government responsible for granting various kinds of private property rights;
(vi) Inaccessibility of the cadastral records to the public;
(vii) Contradictory provisions with the existing decree on Contracts and Liabilities, therefore making property sales inherently insecure.

At a National Conference on Land Policy in July 2000, convened jointly by the Ministry of Land Management, Urban Planning and Construction and the World Bank, priority areas for action were identified as land administration, land management and land distribution. The promulgation of the Land Law of 2001 is expected to add to, complement, and correct the existing sources for the state regulation on property law in Cambodia, namely:

(i) The Constitution of the Kingdom of Cambodia (1993), which provides for the right of Cambodian citizens to own property, sets out the circumstances under which the State can resume it, and defines State property;
(ii) Sub-decree No.25, Council of Ministers of the Peoples' Republic of Kampuchea (22 April 1989), which created private property rights to houses, buildings and apartments;

(iii) Instruction No.3, Council of Ministers of the State of Cambodia (3 June 1989), which established private ownership rights to residential land and property rights to cultivation land and a system of registering them through the Land Titles Department;

(iv) Land Law of the National Assembly of the State of Cambodia (13 October 1992), which set up a comprehensive regime for all real property (immovable property) rights, mortgages, succession, and contracts of sale and reservation of these rights;

(v) Regulation No.30, Council of Ministers of the Royal Government of Cambodia (25 December 1997), which established a regime for the privatization of state property under the supervision of the Ministry of Economics and Finance.

The government prepared the draft Land Law with technical assistance from the Asian Development Bank (ADB). In recognition of the importance for farmers' certainty with respect to their rights to agricultural land, ADB required the revision of the 1992 Land Law as one of the conditions under its Agriculture Sector Program Loan[25] and provided technical assistance for drafting the new land law.[26] With respect to this phenomenon, some authors have argued that international lending institutions, donor countries and international donor NGOs may put pressure on the government to comply with their policy requirements as a condition for providing grants or loans (see for instance Vatikiotis 1989; Benda-Beckmann 1989).

The incorporation of a chapter on "Immovable Property of Indigenous Communities" in the Land Law 2001 was a long and tedious process of negotiation and consultation between the government, international financial institutions and civil society organizations, especially the Cambodian NGO/International Organization Land Law Working Group (NGO/IO Land Law Working Group).[27] The NGO/IO Land Law Working Group has played a major role in ensuring that the drafting process of the land law would be transparent and open to public scrutiny. It was the NGO/IO Land Law Working Group that pro-actively discussed the content and process of the land law drafting with various bodies, ranging from government offices, to the ADB, the World Bank, the UN Secretary General of Human Rights in Cambodia, the UNDP and many others.[28]

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[25] ADB Loan No. 1445-CAM (SF), approved on 20 June 1996.

[26] ADB Technical Assistance No.2591-CAM: Agriculture Policy Reform Support, approved on 20 June 1996.

[27] The Cambodian NGO/IO Land Law Working Group was established in 29 November 1998 by the Kingdom of Cambodia Bar Association, comprising legal aid and human rights NGOs and International Organizations and supported by a secretariat provided by the Oxfam GB Cambodia Land Study Project. The NGO/IO Land Law Working Group's objective is to increase public participation in the revision of the land law.

[28] See the chronology of participation by International Financial Institutions, Royal Government of Cambodia and Civil Society Organizations in Revision of Cambodia's Property Law prepared by Oxfam GB-Cambodia Land Study Project for NGO/IO Land Law Working Group (n.d.).

Parallel to the effort of the NGO/IO Land Law Working Group to promote indigenous peoples rights in Cambodia, an England-based NGO called Global Witness has launched a worldwide campaign against the logging activities in the indigenous peoples' area in Ratanakiri, and made a call for serious attention to the plight of indigenous peoples.

The NGO/IO Land Law Working Group actively conducted seminars and campaigns, and unofficially translated the Khmer draft into English to be able to get a wider audience in the international arena. At the local level, and at least in Ratanakiri province, some international NGOs have actively promoted indigenous peoples' community rights to natural resource management since 1995 (CIDSE et al. 2001). The international NGOs sponsored conferences or workshops, and invited both the government representatives and indigenous peoples themselves to discuss the issue. In 1995, for instance, The International Cooperation for Development of Solidarity (CIDSE) sponsored a conference on sustainable development for northeast Cambodia, opened by Prime Minister Hun Sen and closed by the then co-Prime Minister Prince Ranaridh. Other NGOs such as Oxfam UK and Novib funded a study to explore different options for land tenure on a trial basis among indigenous communities in Ratanakiri (Colm 1997). The Non-Timber Forest Product (NTFP) who then organized a public forum to discuss land security options for indigenous communities in 1997, carried out the study. The International Cooperation for the Development of Solidarity (CIDSE), the Cambodia Area Rehabilitation and Regeneration Project (CARERE), the International Development Research Centre (IDRC), the Non-Timber Forest Product (NTFP), the International Cooperation for Cambodia (ICC) and Health Unlimited-HU sponsored an international conference on ‚Strengthening Partnerships in Community Natural Resource Management' in March 2001.

The NGO/IO Land Law Working Group looked into various issues of the draft Land Law, and the issue of indigenous community land rights formed only one of the many (and often more important) concerns in the context of the country's economic development. Since the 1992 Land Law has been grounded in a socialist framework of state ownership of resources and means of production, one of the overriding concerns in the drafting of new land law is the issue of state versus private property rights.

The NGO/IO Land Law Working Group had actively discussed the draft with various entities since its inauguration in November 1998. However, the first notable occasion for the NGO/IO Land Law Working Group to specifically discuss the indigenous minority land right issues was on 11 August 1999, when it briefed UNDP Assistant to Deputy Representative on the indigenous land rights provision in the draft land law prepared with ADB technical assistance. The second

notable occasion was on 6 January 2000, when the NGO/IO Land Law Working Group reviewed the unofficial English translation of the French version of the draft chapter on indigenous community land rights. A more serious attention was paid to the indigenous community land rights chapter when, on 1 May 2000, NGOs working with indigenous minorities in north-eastern Cambodia expressed concerns over the new weakened provisions in the land law relating to indigenous community land rights. Reiterative discussions of the issue took place in the weeks to follow and an NGO delegation lobbied various government ministers and officials. Finally, on 7 July 2000, ADB, the NGO/IO Land Law Working Group and a representative from a Ratanakiri NGO met and negotiated a compromise over the indigenous community land rights provisions with the Minister of Land Management, Urban Planning and Construction. Indeed, the consultative process in the preparation of the draft Land Law has been praised by many. As Shaun Williams, Coordinator, Oxfam GB Cambodia Land Study Project and Secretary to the NGO/IO Land Law Working Group, puts it: "This process has been extremely constructive and has set a benchmark for policy and legislative development in a country that has been trying to improve its governance practices after years of despotic rule and civil unrest."[29]

The Land Law 2001: defining indigenous peoples community rights

I shall now look into some aspects of the content of the Land Law itself. From a socio-legal perspective, the inclusion of indigenous community land rights in the formal land law of the state is, on the one hand, a process of uniformation of the existing plurality of property rights and, on the other hand, a legitimisation of state law hegemony over the indigenous minorities. The Land Law defines what an indigenous community should look like in general. The definition of an indigenous community according to the new Land Law is

> "a group of people who are resident in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use" (article 23).

In this respect the rights of indigenous peoples are recognized in the context of, first, the ‚mcommunity', and secondly, ‚customary land use practices'. In short, customary land use practices pre-define an indigenous community. The land law requires a legal construction of an indigenous community, which implies redefinition and reinvention of tradition in the

[29] Personal communication with Shaun Williams, Phnom Penh, August 2000.

establishment of the new entity acceptable to the state (law). In other regions, for instance in Africa, researchers have been concerned that the search for the ‚legally acceptable' tradition and the western legal interpretation of customary tenure may create the conditions for promoting individualized holdings in the future (cf. Bassett 1993: 8).

The Land Law 2001 provides a definition of individual members of an indigenous community.

> "An individual who meets the ethnic, cultural and social criteria of an indigenous community, is recognized as a group member by the majority of such a group, and who accepts the unity and subordination leading to acceptance in the community shall be considered a member of the indigenous community and is eligible to have the benefits of the guarantees, rights and protections provided by this law" (article 24).

The Land Law further states that: "lands of indigenous communities are those lands where the said communities have established their residence and where they carry out traditional agriculture" (article 25a). This leads to ambiguous implications of such definitions for social relations and for struggle to control meanings. Membership in an indigenous community elsewhere may be based on descent, residence, or both. Since anthropological studies on indigenous minorities of Cambodia are very rare, it will be challenging to see how indigenous community membership will be devised to fit the requirement of the new Land Law. This process is very often based on a struggle to control meanings. Many studies conducted in other countries have indicated that the process of acquiring and defending rights to land is inherently a political process based on power relations among members of the social group. Membership in the social group is, by itself, not a sufficient condition for gaining and maintaining access to land. In this respect Johnsson (1997: 544) has rightly stated that the notion of an ethnically shared and bounded social organization among indigenous minorities obscures, on the one hand, a fundamental cultural similarity and, on the other hand, various tensions inherent in these social formations.

The Land Law recognizes the traditional mobility of the members of an indigenous community as part of their way of managing their land:

> "The lands of indigenous communities include not only lands actually cultivated but also reserved land necessary for the shifting cultivation which is required by the agricultural methods they currently practice and which are recognized by administrative authorities" (article 25b).

While in the past the various regimes actively relocated indigenous minorities in order to stop traditional shifting cultivation, the new Land Law's legal recognition of traditional mobility, as part of a traditional way of managing land is a phenomenon worth praising. Cambodia's

neighbors, especially Viet Nam and Laos, have indiscriminately considered shifting cultivation practiced by their upland ethnic minorities as something that has caused soil erosion and environmental damage, and therefore, something that has to be totally abandoned. Both countries have strongly promoted sedentarization of highland indigenous minorities as part of their national program to integrate highland indigenous minorities into the mainstream society and, at the same time, protect the environment from the damage unfairly accused to have been caused by this traditional practice.[30] This kind of official reaction obviously follows the classic blaming-the-victim approach (cf. Blaikie 1985). The fact that settlers and logging companies occupied the most fertile land and best forest areas and that the majority of the indigenous minorities is forced to farm on marginal soils and is restricted from entering the forest did not count. The new Land Law in Cambodia has shifted away from such an approach.

The characteristics of the communal ownership rights of the indigenous community, as opposed to those of private ownership rights, is generally depicted by the Land Law:

> "Ownership of the immovable properties described in article 25 is granted by the State to the indigenous communities as communal ownership rights. This communal ownership includes all the rights and protection of ownership as are enjoyed by private owners under this law, but the community does not have the right to dispose of any communally-owned property that is State public property to any person or group" (article 26a).

Ambiguity lies in the fact that the protective aspect of law to avoid land alienation by indigenous community has, in turn, limited the right of disposal of the community. Within the communal rights, individual rights over the community ownership are also generally recognized:

> "For the purpose of facilitating the cultural, economic and social development of members of indigenous communities and in order to allow such members to freely leave the group or to be relieved from its constraints, the right of individual ownership of an adequate share of land used by the community may be transferred to them" (article 27).

The Land Law acknowledges the existence of the traditional authorities.

> "The exercise of all ownership rights related to immovable properties of the community and the specific conditions of the land use shall be subject to the responsibility of the traditional authorities and mechanisms for decision-making of the community, according to their customs, and shall be subject to the laws of general enforcement related to immovable properties, such as the law of environmental protection" (article 26b).

[30] The controversial sedentarisation issues in Viet Nam and Laos have been discussed by many, for Vietnam see Wandel (1997); and for Laos see Chazee (1994).

This way the protection of the indigenous community rights to land is subordinate to and restricted by ‚the laws of general enforcement', including the regulations protecting the environment.[31] The Land Law eventually highlights the superiority of the state; "The provisions of this article are not an obstacle to the undertaking of works done by the State that are required by the national interests or a national emergency" (article 26c). On the other hand, the exclusivity of the indigenous community rights is well recognized by the state: "No authority external to the community may acquire any rights related to any immovable properties belonging to an indigenous community" (article 28). This condition can be called a weak' (J. Griffith 1986), ‚relative' (Vanderlinden 1989) or ‚state law' (Woodman 1995: 9) legal pluralism where the existence of customary laws is recognized within the confines of the state laws.[32] The Land Law's provisions would be a challenge to Kidder's (1979: 296) call for a more complex understanding of legal pluralism through his analysis of "levels of externality" and of the differential extent to which indigenous laws may be experienced as imposed by the indigenous peoples themselves.

Conclusion

The paper has described the development of plural property rights in Cambodia's political processes, with particular attention to the current recognition of indigenous community rights to land by the state law. The property rights development in Cambodia has always been a highly political project as the paper has tried to illustrate. Cambodian state laws on property rights have been heavily characterized by the tendency of any new regime to invalidate and abolish all the pre-existing state land rights created by old regimes. In the various political battles by the various regimes, however, indigenous minority land rights have almost never been viewed as important issues. The situation in which indigenous minorities have never been the center of attention by the various regimes has kept the indigenous minorities relatively undisturbed in terms of their customary rights to land.

[31] Compare this to the Rio Declaration and Article 26 of Agenda 21. Although both have clauses to protect the rights of indigenous peoples, however, the protection is subordinate to and therefore restricted by regulations protecting the environment (see K. von Benda-Beckmann 2001a: 10-11).

[32] See K. von Benda-Beckmann (2001b: 5) for an explanation of the distinction between legal pluralism that is a result of the recognition of one legal system by another legal system and, on the other hand, legal pluralism that exists irrespective of mutual recognition of one legal system by another.

The attention paid to the indigenous minority land rights issue in the Land Law of 2001 is a new development in the legal history of Cambodia. The main triggers for the introduction of the new Land Law of 2001 were the facts that the Land Law of 1992 did not provide enough clarity for private and state rights on real property, was not clear about the level of government responsible for granting various kinds of property rights, and did not guarantee secure property transfers among people, all of which had caused more conflicts among citizens and between different government agencies, and made it impossible to maintain peace and stability.

The paper has argued that the promulgation of the chapter on indigenous peoples is not because those involved in the drafting of the law understand and are well informed about the complexity of the indigenous minority traditional arrangement to land in Cambodia. Indeed, systematic and comprehensive studies on indigenous minority land rights in Cambodia are very rare. Further more, those which do exist are not enough to give an appropriate picture of the actual condition of the existing indigenous minority community and their land rights, while a proper identification of this community and their rights is actually implicitly required by the Land Law in order to be able to have a "legally recognized" status as an indigenous community. Because of this, it is arguably more appropriate to view the recognition of indigenous community rights under the new Land Law as a result of the increasingly important role of international organizations and international NGOs in the current development arena in Cambodia. The international organizations and international NGOs have used the "substantive international law as a source of legal pluralism" (cf. K. von Benda-Beckmann 2001a: 9-10). Despite the lack of information on the actual condition of the land laws and practices of indigenous minorities in Cambodia, and despite the fact that Cambodia has not ratified many of the important conventions relevant to indigenous peoples' rights, the international organizations and international NGOs involved in drafting the Land Law have been influenced by the new tendency in the international arena to legally recognize indigenous peoples' rights.

Cambodia still needs to do more systematic studies on the various existing indigenous group rights in relation to the individual rights within the group. As Jefferson Fox (n.d.: 4) rightly points out: "There is an urgent need for a comprehensive study of traditional land-use practices and systems of customary tenure in order to recognize and protect the rights of indigenous peoples." This will enable policy makers to appropriately view indigenous minority systems as embedded systems characterized by "multiple overlapping rights" and by a "combination of individual and group claims" (cf. Peters 1987: 181). More importantly, if security of tenure is to be genuinely promoted by the new Land Law, it is worth noting that the issue of secure rights to

land under indigenous control cannot be answered outside of those indigenous social systems in which rights are assumed, negotiated and lost.

Appendix 1

Transition of Political, Legal and Economic Systems in Cambodia

Era/System	Legal System	Political System	Political Power	Economic System
Pre-1953	French-based civil code and judiciary	Under the French Protectorate	Held by the French	Colonial type
1953-1970 (The Kingdom of Cambodia)	French-based civil code and judiciary	Constitutional Monarchy	Held by Prince Sihanouk as Prime Minister	Market and later nationalization
1970-1975 (The Khmer Republic)	French-based civil code and judiciary	Republic	Held by Lon Nol	Market, war economy
1975-1979 (Democratic Kampuchea)	Legal system destroyed	All previous systems abolished, extreme Maoist agro-communism	Khmer Rouge	Agrarian, centrally planned
1979-1989 (The People's Republic of Kampuchea)	Vietnamese-oriented model	Communist party, central committee, and local committees	Cambodian People's Party	Soviet-style central planning
1989-1993 (The State of Cambodia)	Greater economic rights	Communist party, central committee, and local committees	Cambodian People's Party	Liberalized central planning
1993-present (The Kingdom of Cambodia)	French-based civil code combined with common law in certain sectors	Constitutional Monarchy	Shared between FUNCINPEC and CPP	Transition to a market economy

Source: see Kato et al. (2000: 6).

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