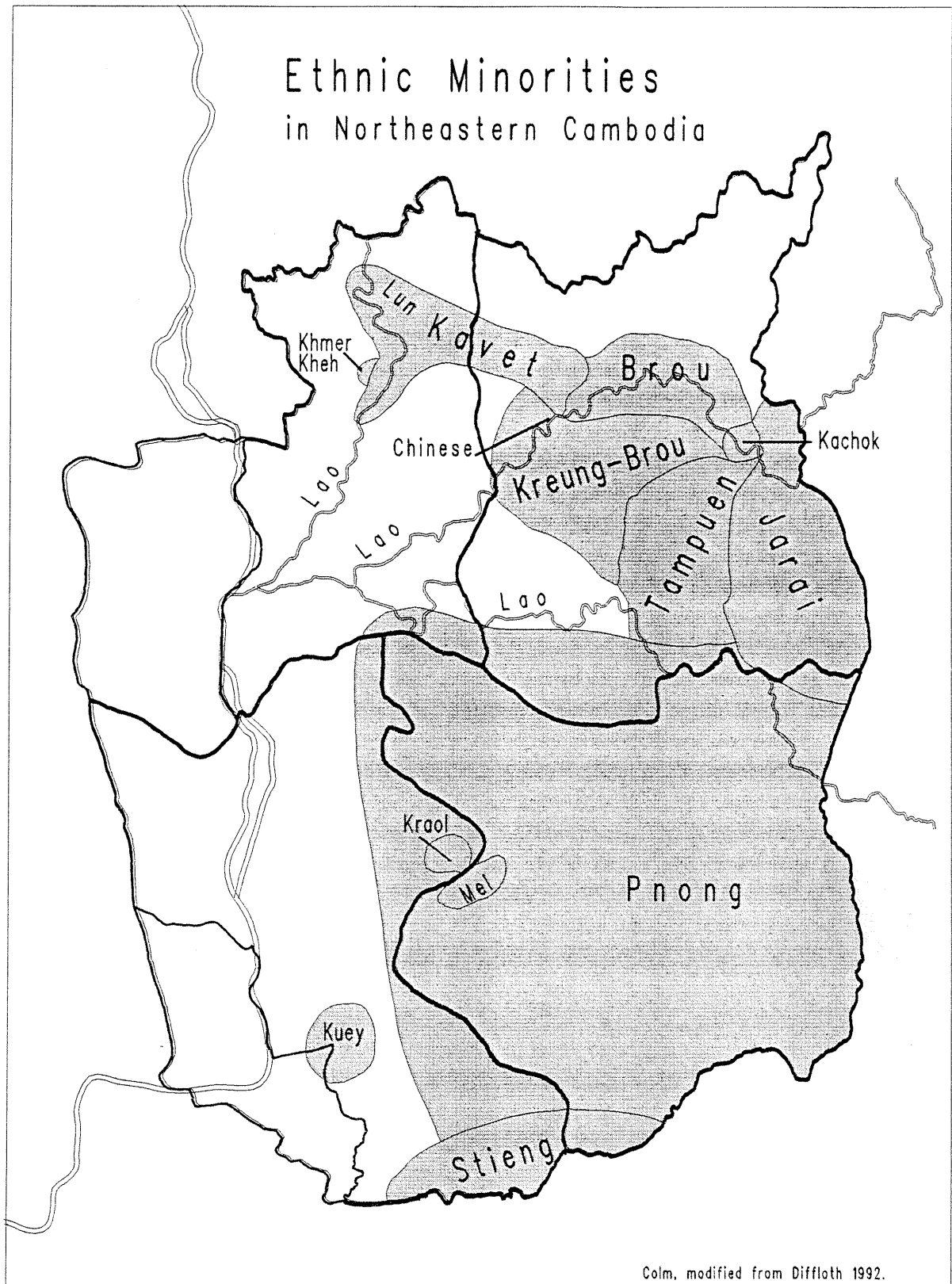


Options for Land Security  
Among Indigenous Communities

Ratanakiri, Cambodia

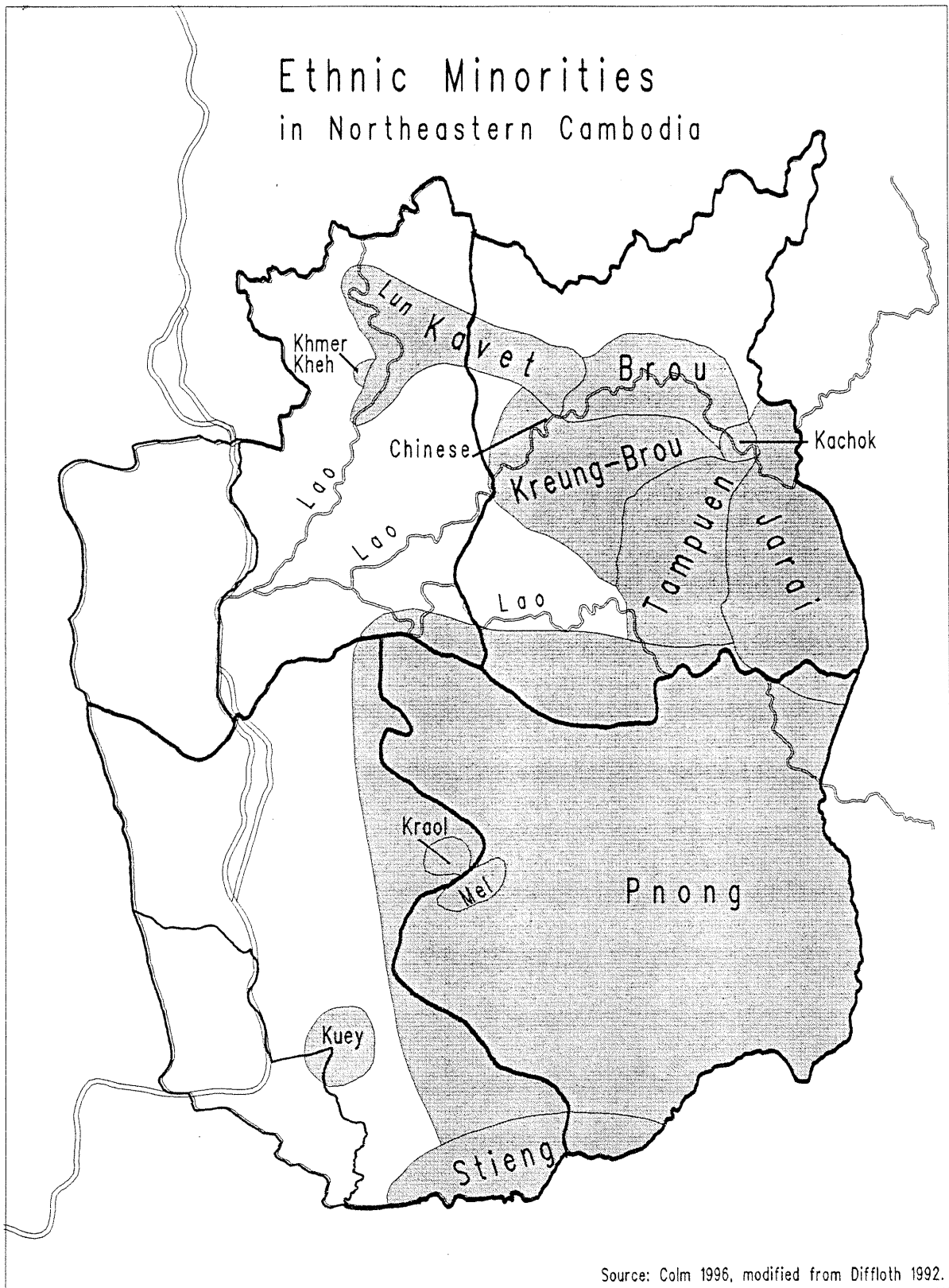
Sara Colm  
Research Consultant  
Non-Timber Forest Products Project  
Banlung, Cambodia  
May, 1997

# Ethnic Minorities in Northeastern Cambodia



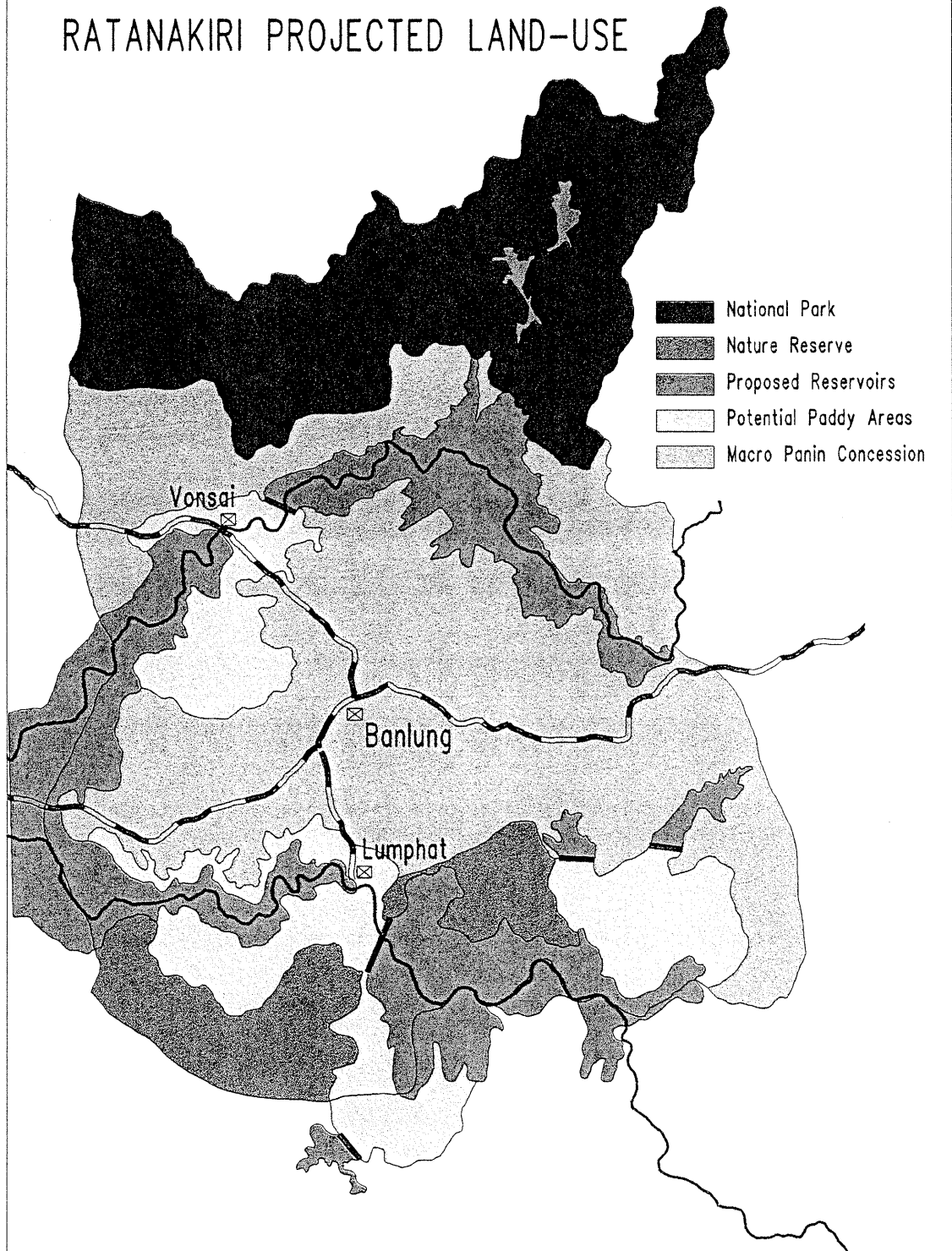
Colm, modified from Diffloth 1992.

# Ethnic Minorities in Northeastern Cambodia



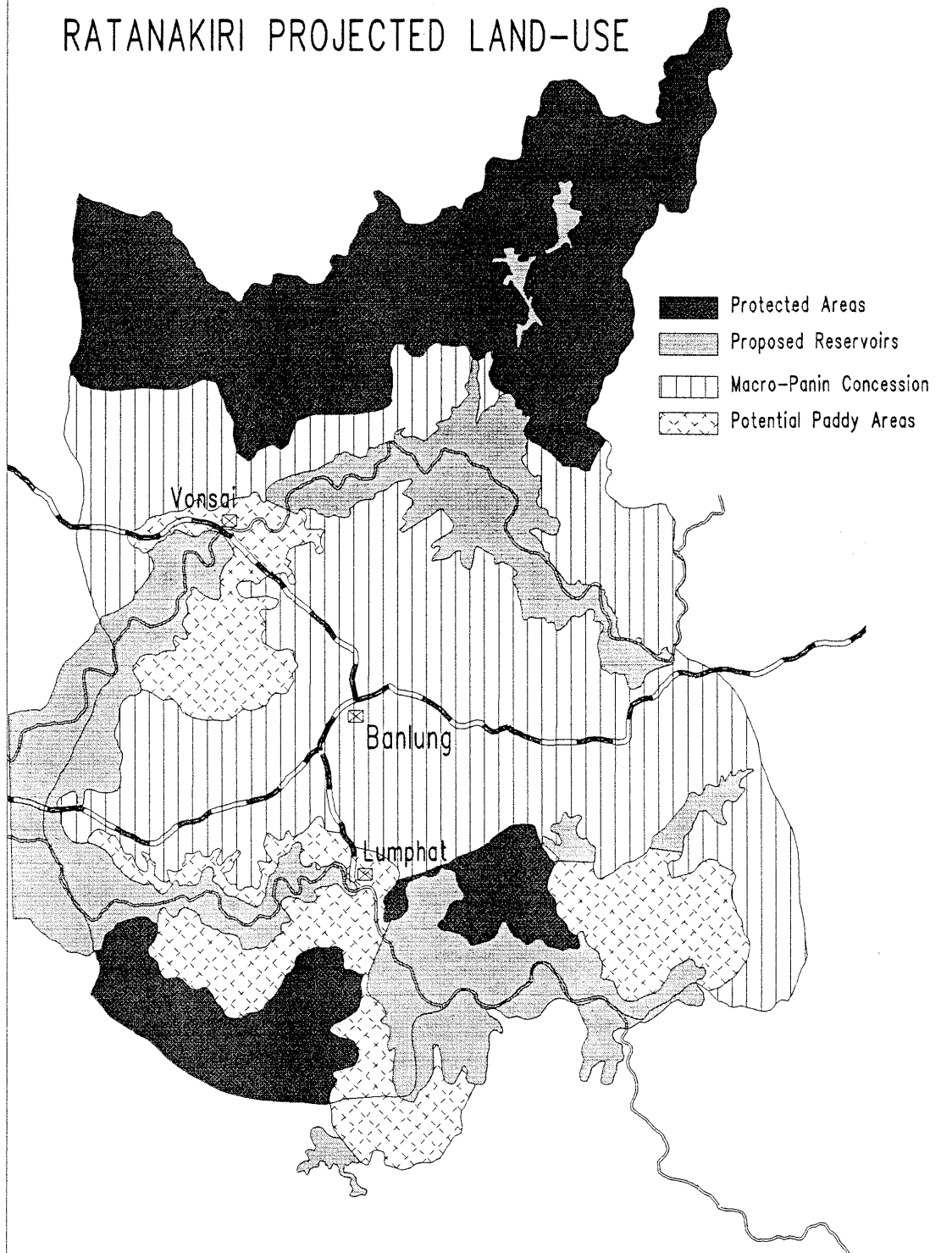
Source: Colm 1996, modified from Diffloth 1992.

# RATANAKIRI PROJECTED LAND-USE



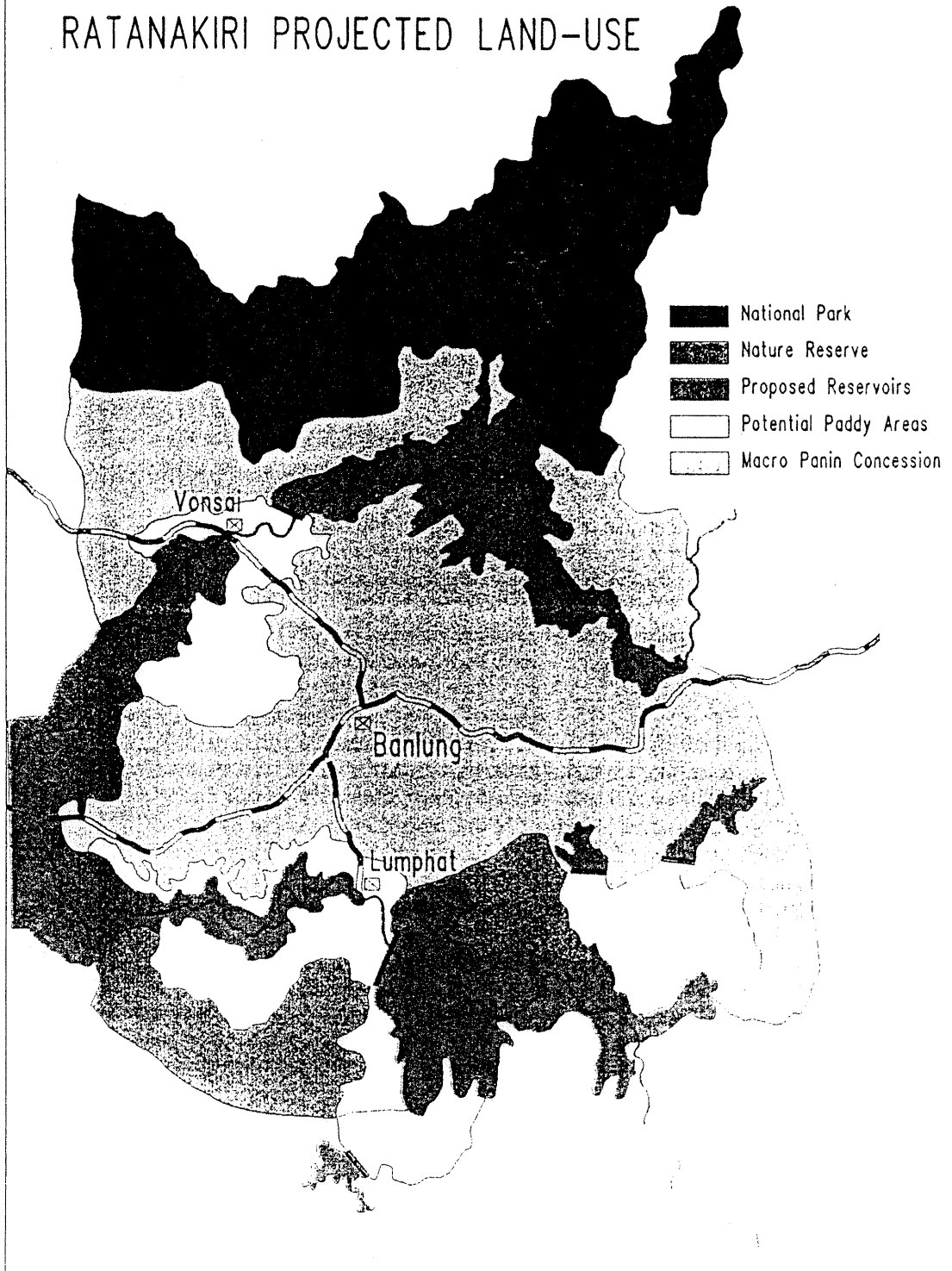
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# RATANAKIRI PROJECTED LAND-USE



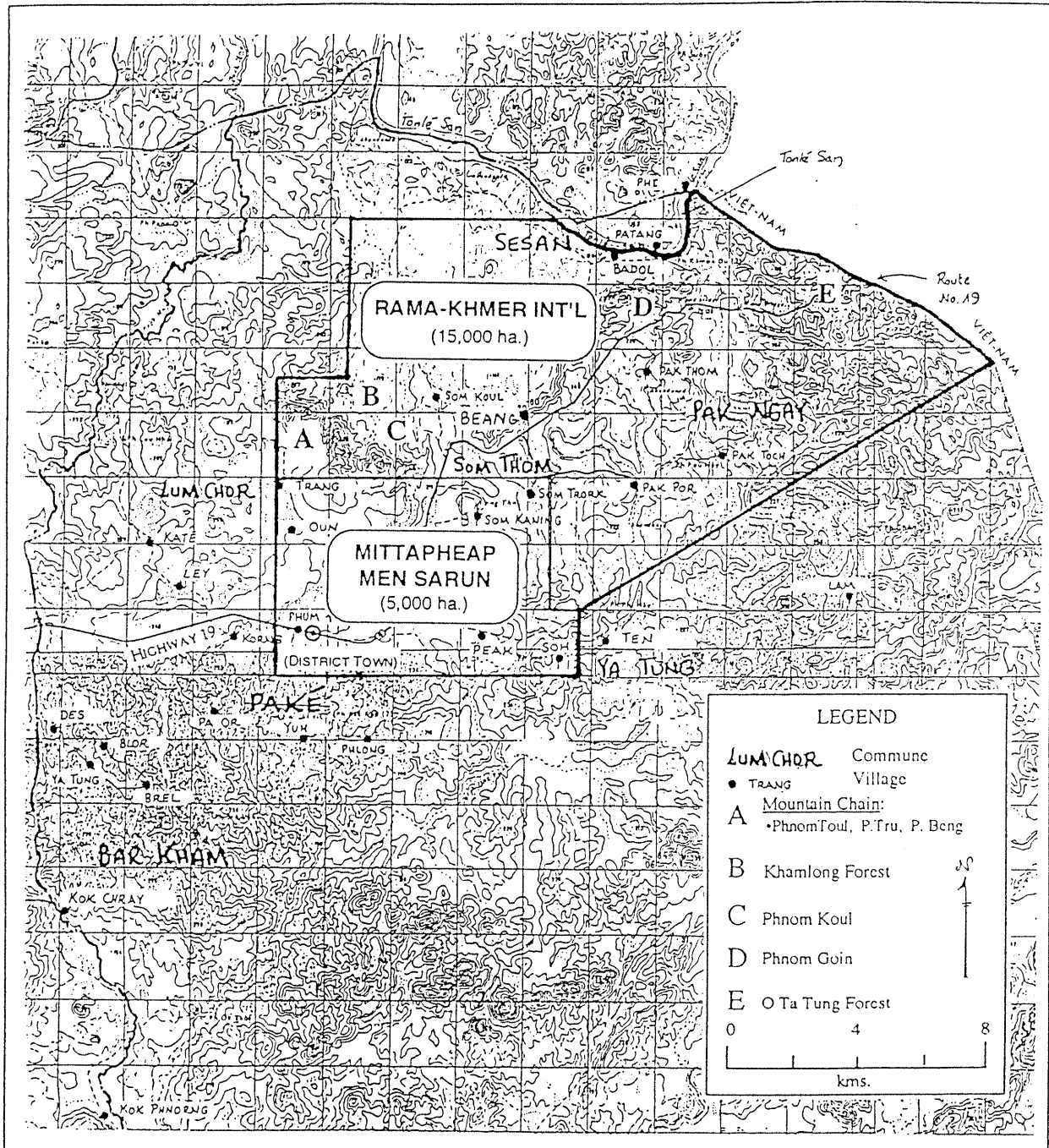
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# RATANAKIRI PROJECTED LAND-USE



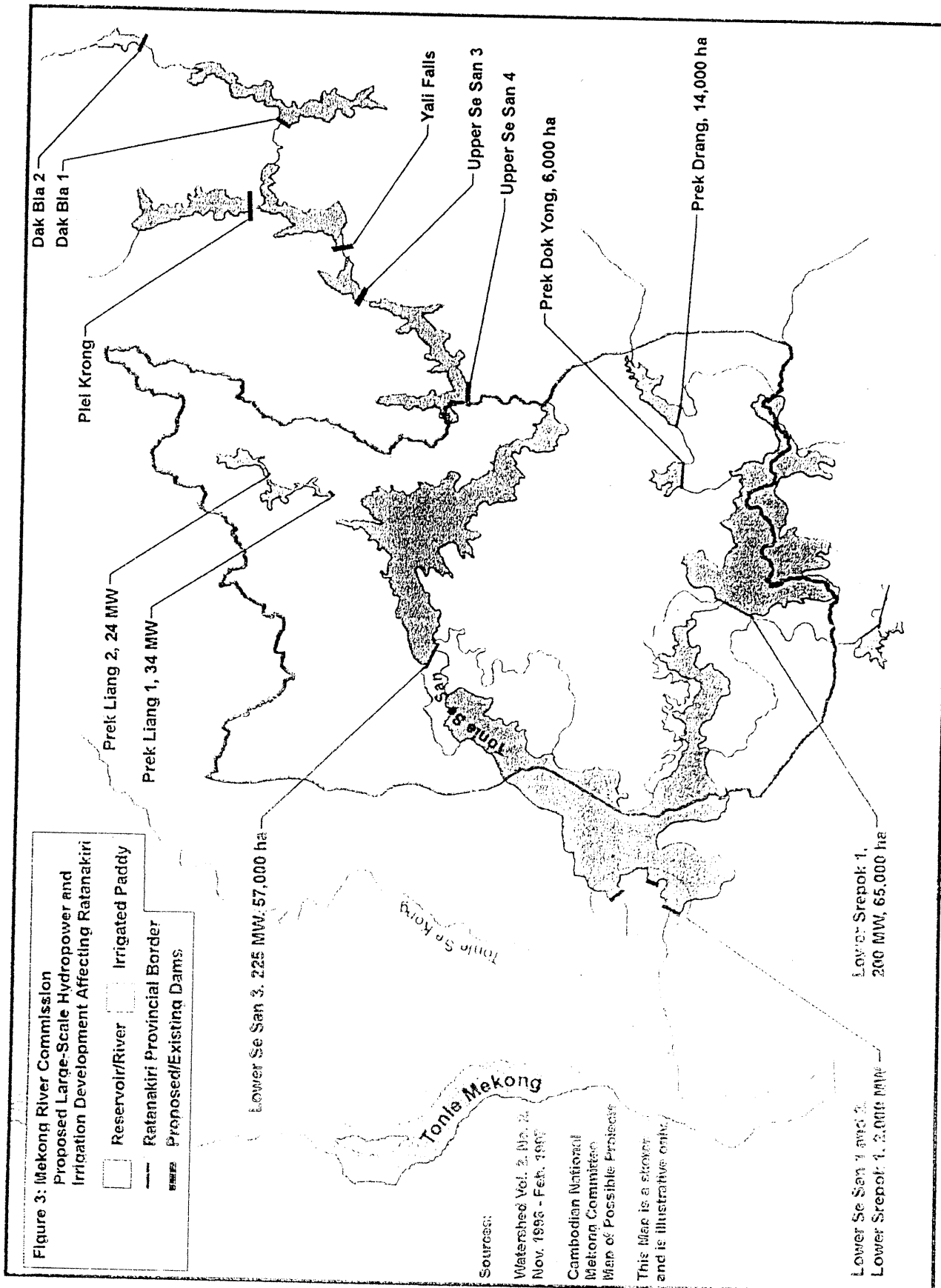
Adopted from J. Hinkel 1997.

Map 4: Proposed Oil Palm Concession

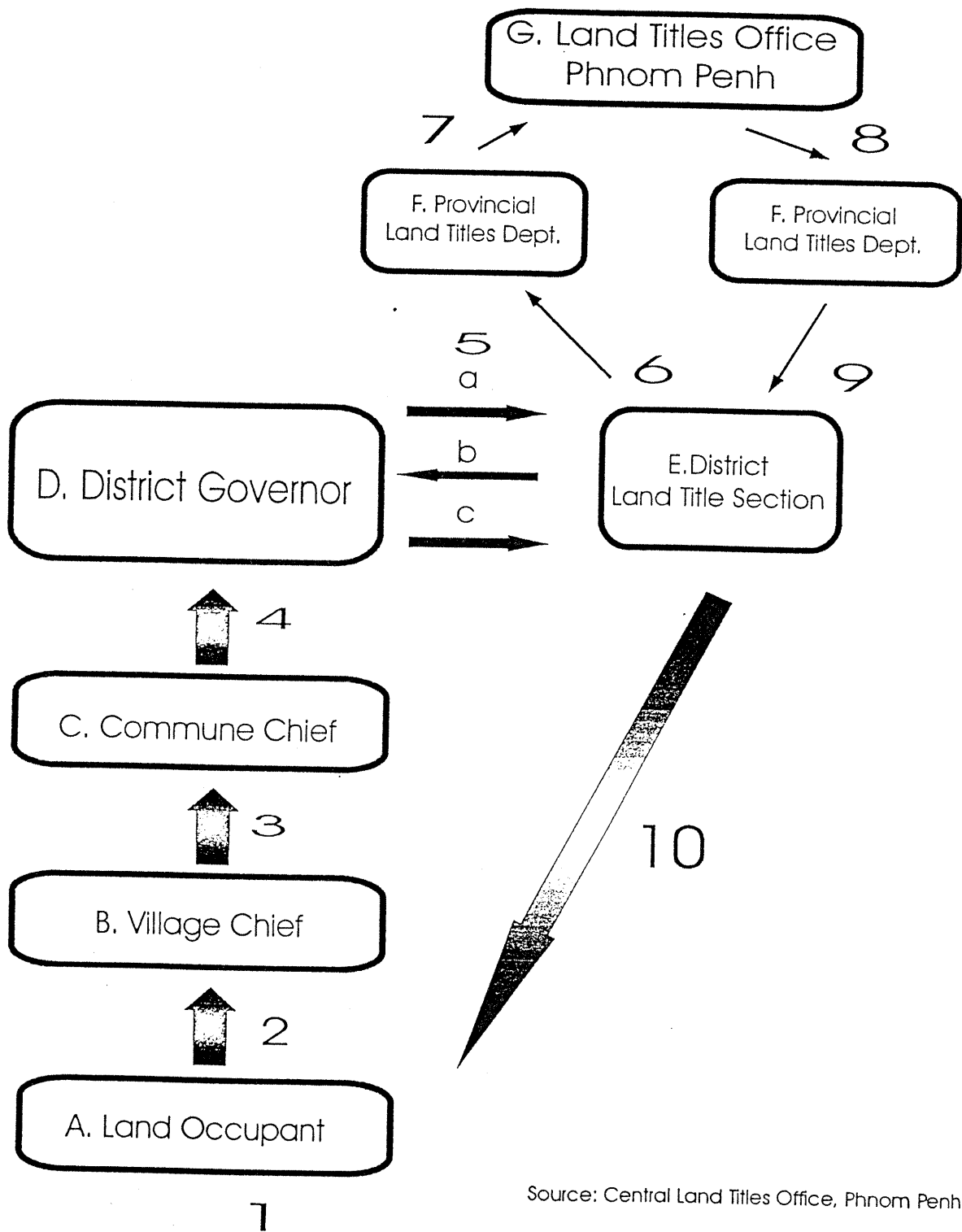


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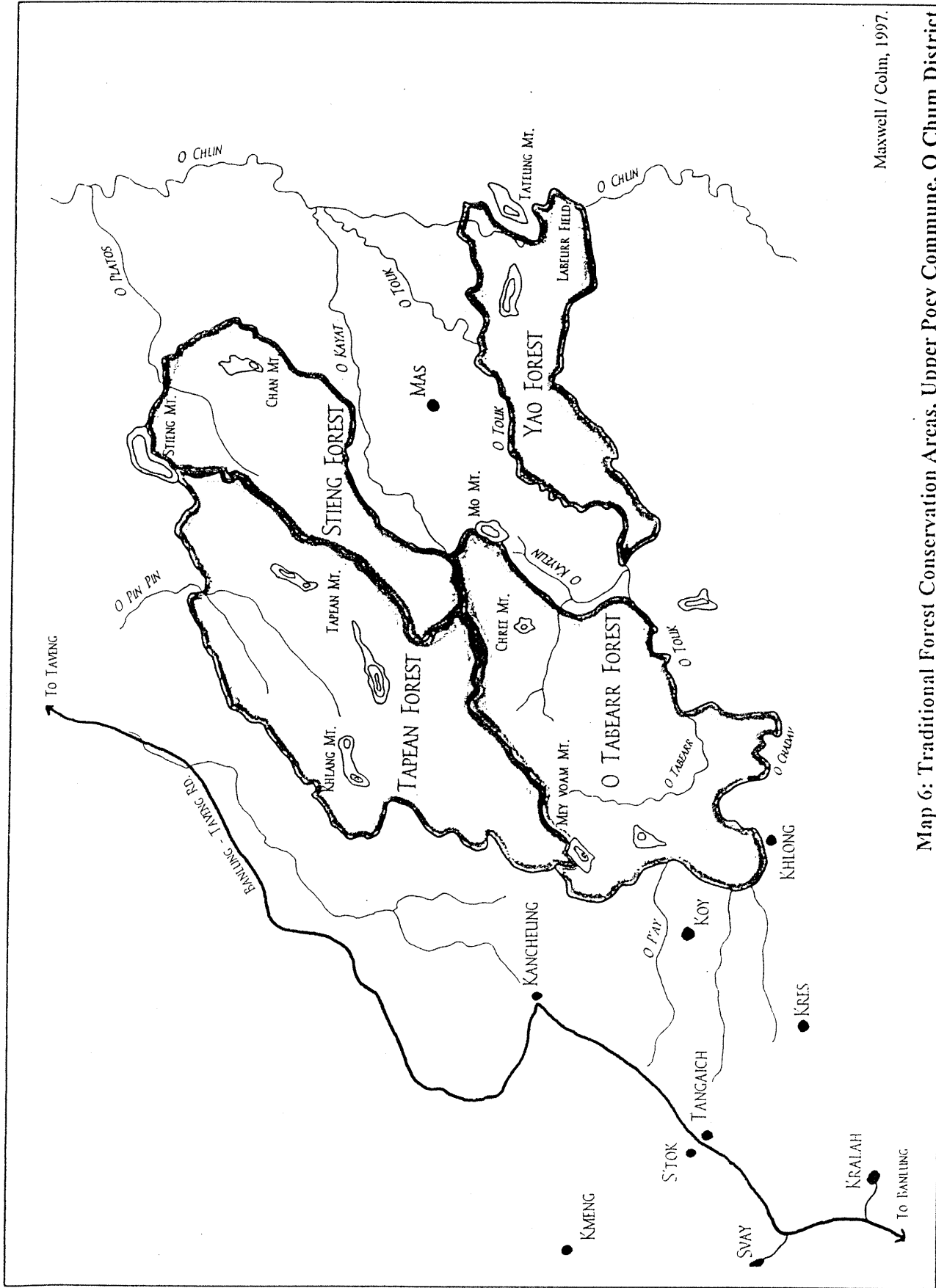
(Location of Peak and Soh villages adjusted to reflect current sites.)



# Steps in Obtaining Title to Agricultural Land



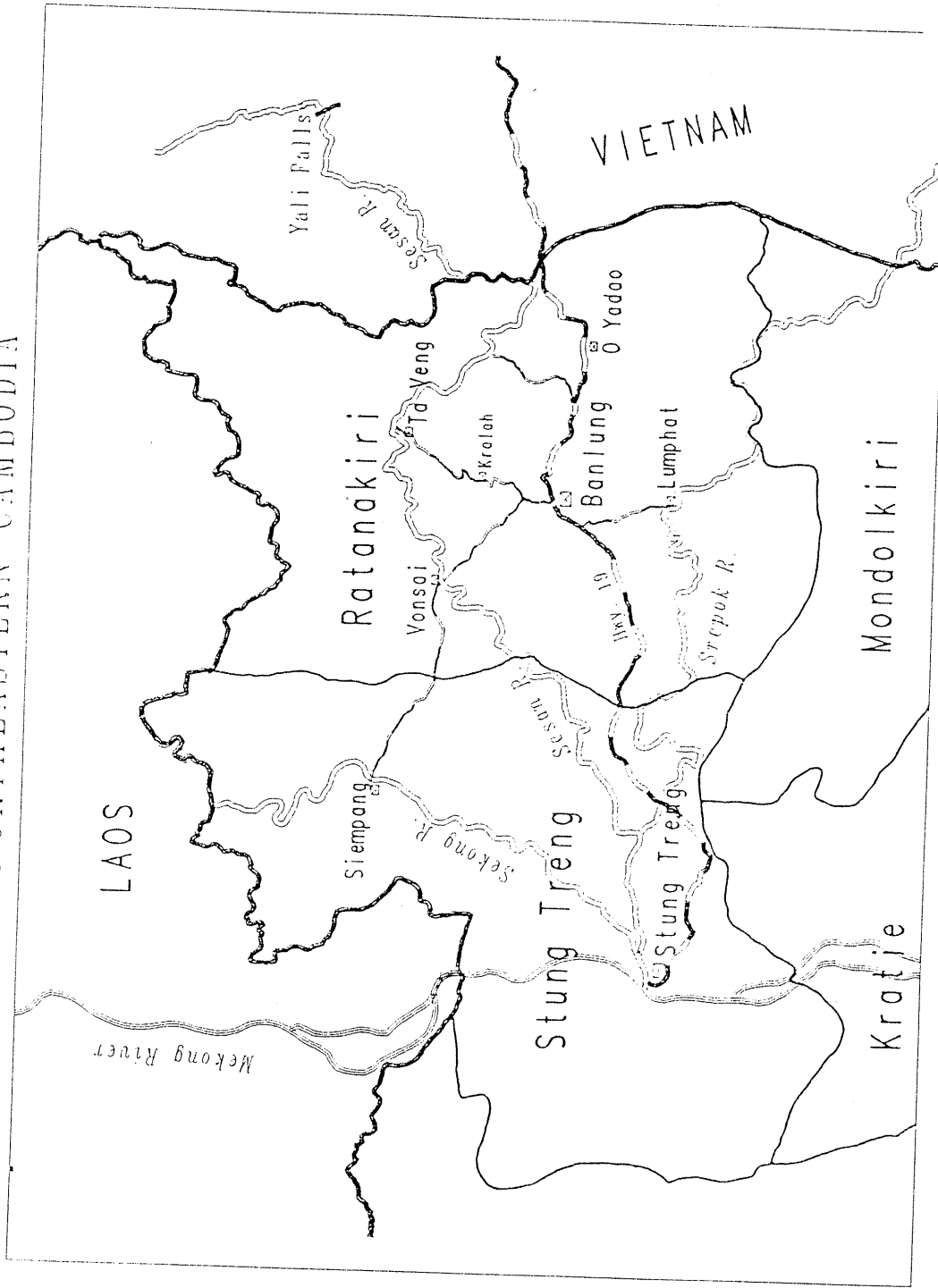
Source: Central Land Titles Office, Phnom Penh



Maxwell / Colin, 1997.

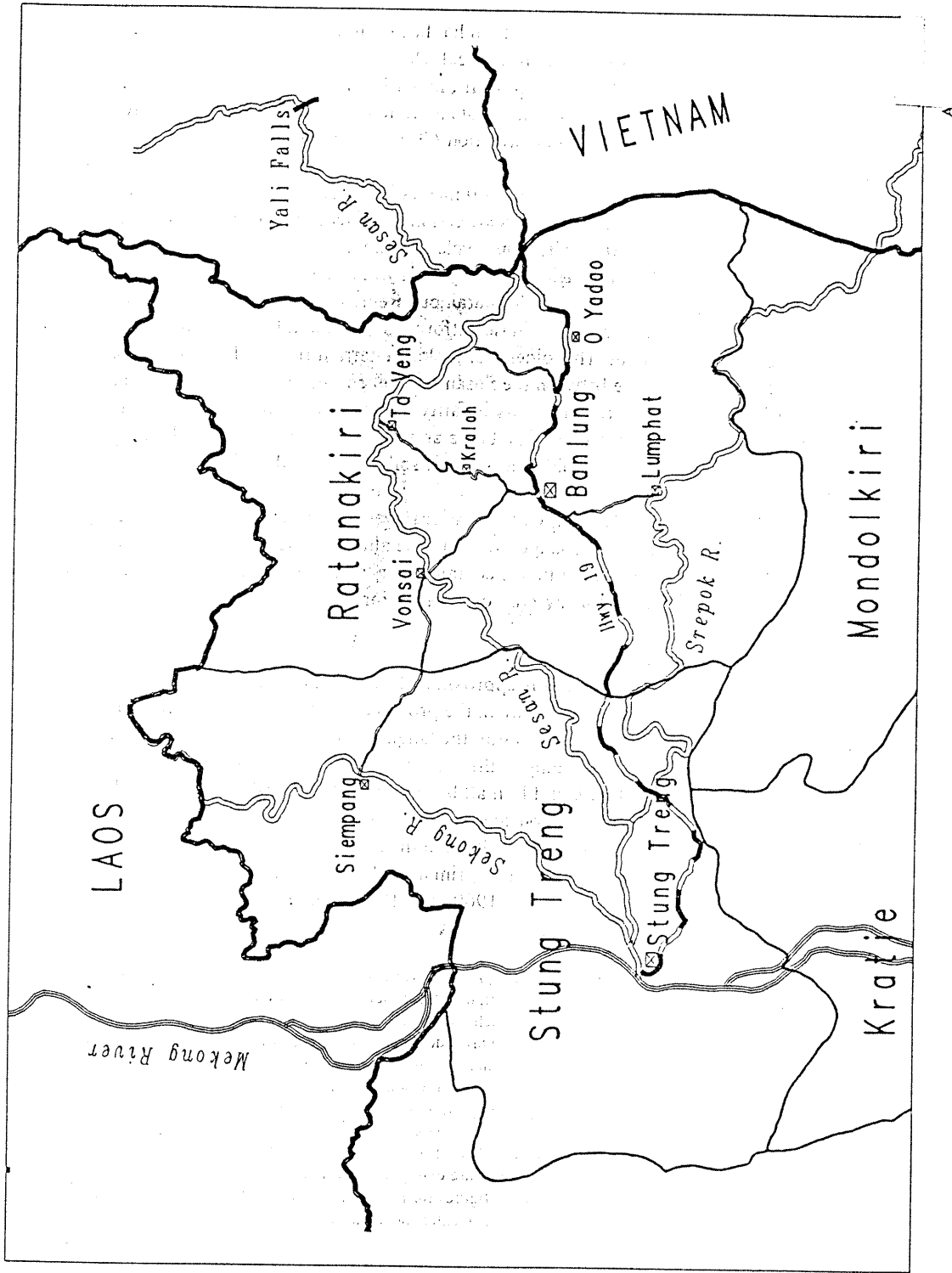
Map 6: Traditional Forest Conservation Areas, Upper Poy Commune, O Chum District

# NORTHEASTERN CAMBODIA

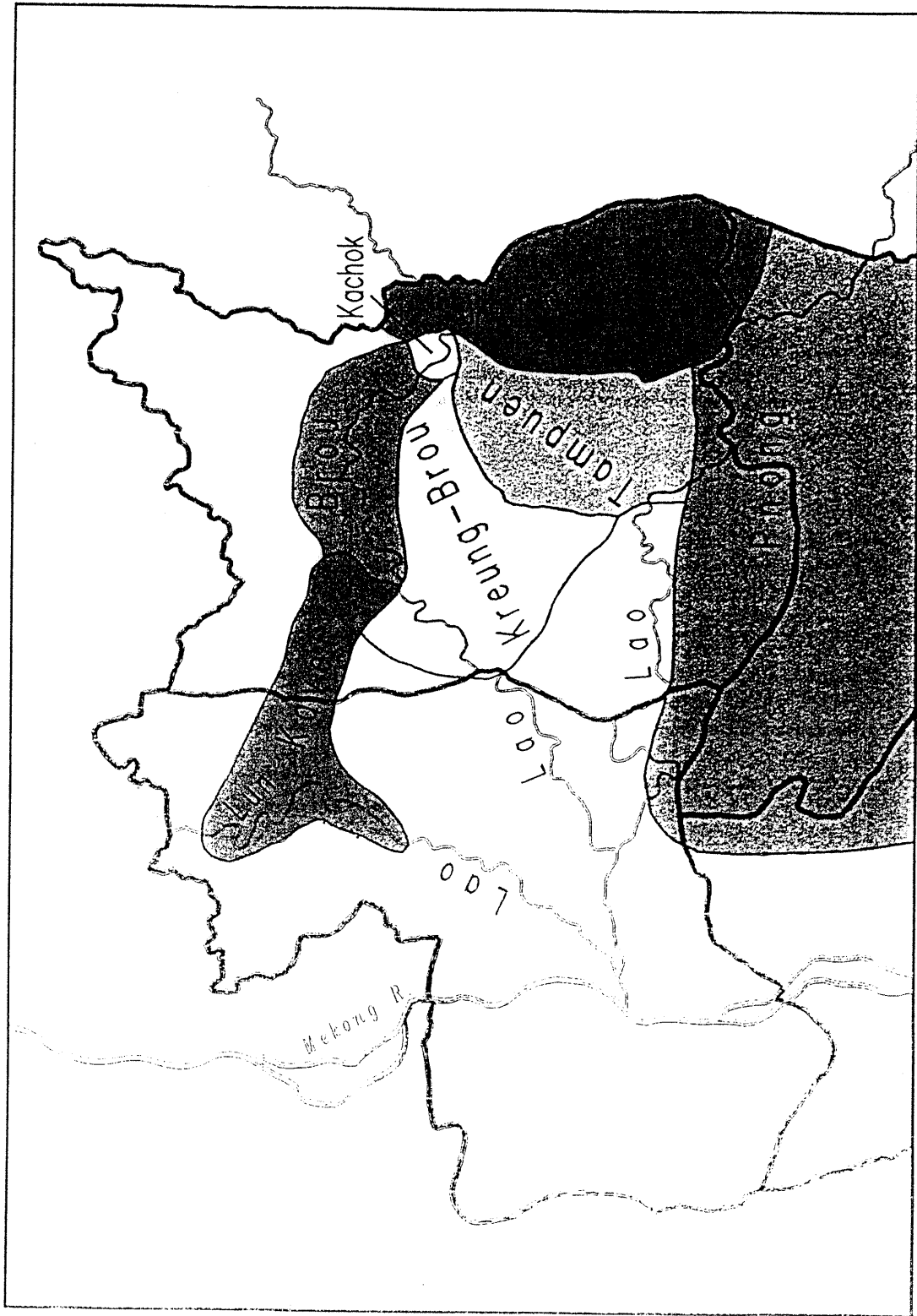


Map 1: Northeastern Cambodia

NORTHEASTERN CAMBODIA



Map 1: Northeastern Cambodia



Colm, modified from Diffloth 1992.

### Ethnic Minorities in Northeastern Cambodia

# OPTIONS FOR LAND SECURITY AMONG INDIGENOUS COMMUNITIES

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## OPTIONS FOR LAND SECURITY AMONG INDIGENOUS COMMUNITIES Ratanakiri, Cambodia

### Introduction

Eight indigenous tribal groups in Ratanakiri Province in the northeastern corner of Cambodia face increasing pressure on their ancestral lands and traditional livelihoods with encroachment from large-scale industrial plantations and property speculators.

With the nation shifting its focus from warfare to economic development and exploitation of its natural resources, Ratanakiri, with its rich red volcanic soil, pristine rivers, abundant hardwood forests, and relatively low population, has become the new frontier for proposed industrial plantations, hydro-electric projects, and logging concessions. The needs, customs, and traditional livelihoods of the indigenous inhabitants may be overlooked in this business boom, as highland farms and collection forests are overcome by commercial interests.

A key issue addressed at the February 1996 International Seminar on Sustainable Development in Northeastern Cambodia was how indigenous populations could secure their access and tenure to natural resources. The policy statement produced as a result of the Seminar encourages government, NGOs, international organizations, and local people to collaborate in researching traditional natural resource use and land tenure to insure that indigenous populations are not detrimentally affected by the increasingly rapid pace of development in the Northeast.<sup>1</sup>

In 1995 and 1996 both Prime Ministers pledged that the Royal Government would not allow any investment projects to proceed in Northeastern Cambodia that threaten the livelihoods and cultures of the highland peoples.<sup>2</sup>

With support from H.E. Kep Chuktema, Governor of Ratanakiri, and in conjunction with the Provincial Rural Development Committee (PRDC), the Non-Timber Forest Products Project (NTFP) conducted a feasibility study from January-February 1997 to explore different options for land tenure on a trial basis among indigenous communities in Ratanakiri. Funding for the study was provided by Oxfam UKI and Novib.

The primary goal of the study was to examine how highlanders who subsist by practicing swidden cultivation and collecting products from old-growth forests could obtain legal title to their cultivation land and security of access to collection forests. The challenge was not to create new laws for the uplands at this time in regard to land tenure, nor to recommend that the highlanders abandon their traditions, but to examine whether existing laws could be implemented in a way that respects the needs and culture of the highlanders.

The project started by focusing on efforts among Kreung villagers in upper Poey Commune, O Chum District, to create an association to protect traditional forest conservation areas near their villages. Technical assistance was provided to villagers to map the boundaries of four conservation and collection forests on which villagers' livelihoods depends.

This was followed by several field visits to O Yadao District to obtain updated information on a proposed 20,000 ha. oil palm concession affecting agricultural and forest land used by Jarai

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<sup>1</sup> Seminar Proceedings, "Sustainable Development in Northeastern Cambodia," 26 February-March 2, 1996, p.36.

<sup>2</sup> See comments by Samdech Norodom Ranariddh and Samdech Hun Sen at the August 1995 Seminar, "Ethnic Communities and Sustainable Development in Northeast Cambodia" organized by CIDSE.

villagers in seven communes. The study then explored the feasibility of launching a pilot titling project for agricultural land of Kreung villagers living in Kralah village in Poey Commune. As part of this effort, officials from the Banlung Land Titling Office conducted an informal workshop about the land law with Kreung in Kralah Village, O Chum District.

Preliminary results of the feasibility study were presented twice to the Inter-Ministerial Committee on Highland People's Development in Phnom Penh – at its February and March meetings. The project culminated with a day-and-half provincial seminar in Banlung on March 6-7 entitled "Security of Land Tenure for Ethnic Minorities living in Ratanakiri," sponsored by the Provincial Rural Development Committee and the Provincial Land Titles Office in conjunction with NTFP, UNDP-CAREERE, and the International Development Research Center (IDRC).

Participants at the Land Security Seminar and at NTFP's Workshop on its Annual Plan (February 13, 1997) identified several options in regard to ways villagers might obtain land security by utilizing existing legal mechanisms:

1. Individual Land Title: Individual farmers could apply for private title for their agricultural and residential land. In some senses this is the easiest and most straight-forward option, as it is clearly outlined in the country's 1992 Land Law. However, lack of funds to cover titling fees and other incidental costs, and the extensive number of titles required to insure land security for thousands of highland families could make this option prohibitively expensive and time-consuming.

2. Association Title: Members of a village could register as an association with the government and apply as a group for title to communal agricultural land, continuing to practice shifting agriculture within their traditional village boundaries. This option is also technically covered by the land law, but to date no precedent has been set for communal title to be allocated to groups of more than 5 persons. Communal title is more in keeping with highlanders' traditional approach to resource allocation, and is an approach that many highlanders have said they prefer over individual title.

3. Community Concession Rights (Usufruct):<sup>3</sup> Villages could apply for long-term renewable community concession rights to both village agricultural land as well as old-growth forests they rely on to collect essential non-timber forest products such as resin, honey, rattan, wildlife and bamboo. Under a Sub-decree being drawn up by the Ministries of Environment and Agriculture, individuals or associations can enter into contractual agreements with the government which allow them to access and use forest areas for a certain specified period of time. Normally a management plan must be submitted together with the contract. Approval from the commune and upwards would be needed.

Conceivably, all three of these options could be experimented with on a trial basis. Individual title could be applied for paddy land or plots of land close to the main roads. Villagers could register as an association to apply for communal title on common lands, which may include fallow swidden plots or communal plantations. With respect to forests that villagers rely on for non-timber forest products, or which hold a sacred value to villagers, it may be appropriate for one or several villages, or the commune, to apply for a long-term concession and usufructory rights and submit a management plan. Precedents for establishing community forests in Cambodia have been established in Takeo and Svay Rieng.

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<sup>3</sup> Usufruct is defined as rights to use and enjoy the benefits of a land area for a specific length of time, as long as it is not damaged or altered.

## **Acknowledgments**

The research team consisted of Sara Colm, NTFP Research Consultant; Chea Phalla, Cultural and Environmental Protection Association (CEPA); Ouk Ly Khim, Ministry of Environment, Department of Nature Protection and Conservation; Heng Sokha, Ratanakiri Environment Department; Dam Chanty, Ratanakiri Rural Development Department; Gaew Thoeu, NTFP Community Organizer; and Kham Saroeun, Ratanakiri Land Titles Department.

The research team is indebted to NTFP Project Coordinator Gordon Paterson for his guidance and leadership in initiating the feasibility study and facilitating contacts within provincial and national governmental institutions, the Ratanakiri NGO community, as well as local communities in O Chum District. NTFP is funded by Oxfam UKI and Novib but holds independent management and organizational identity.

In addition, Hor Hong and Koy Sokha from the Provincial Environment Department, and Thim Sinath and Meas Samay from the Provincial Land Titles Department provided invaluable insights as well as assistance in the field. South On, from the Reforestation Department of the Ministry of Forestry, contributed thoughtful and productive input into the fledgling community forestry association in O Chum.

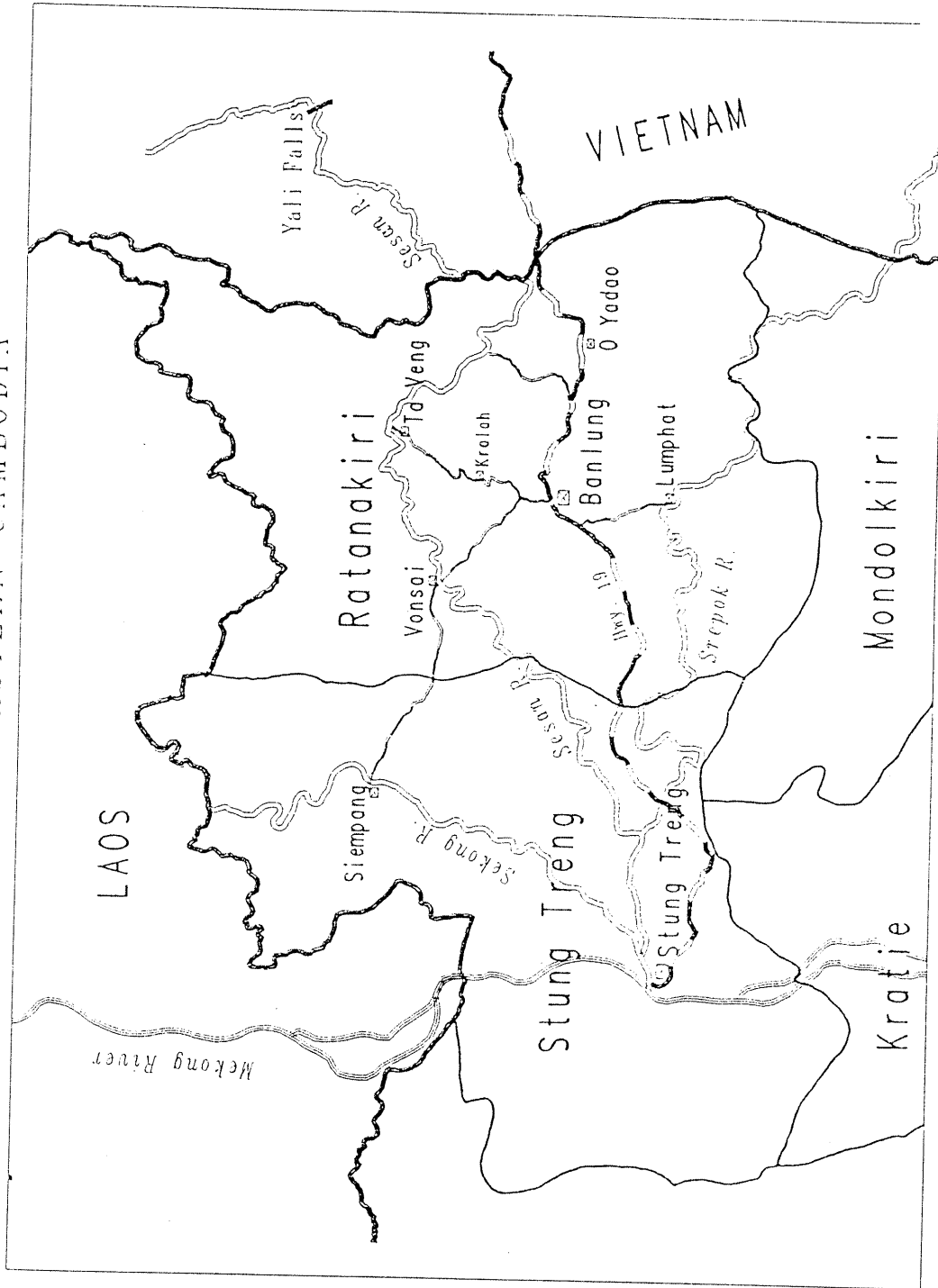
In Poey Commune the study built on prior research conducted there in July 1996 by Gordon Paterson of NTFP, Jefferson Fox of East West Center, and Sovanna and Dom Taylor Hunt of IDRC. Economic analysis and mapping of forest land use in Poey Commune conducted as part of a study by Camille Bann for the Economic and Environment Program for Southeast Asia (EEPSEA) was also very useful. Andrew Maxwell (Louisiana State University), Tim Lawrence, and Roger Steinhardt (OSB, Ratanakiri Forestry Department) advised on the technical aspects and ground-truthing of Poey Commune forest mapping. The Integrated Resource Information Center in Phnom Penh provided aerial photograph interpretation and preparation of GIS maps.

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Finally, the Research Team would like to thank the residents and commune and village chiefs in Poey Commune, O Chum and Som Thom Commune, O Yadao for their hospitality, guidance, and insights.

**Map 1: Northeastern Cambodia**

NORTHEASTERN CAMBODIA



Map 1: Northeastern Cambodia

## PART ONE: BACKGROUND

### Geographical Setting

Ratanakiri's land area of 1.16 million ha. has been classified into four main agro-ecological zones.<sup>4</sup> The Central Plateau has a peak elevation near Banlung of just over 500 meters, sloping off to around 200 meters elevation near the border with Vietnam. The rich red basaltic soils in this area support dense semi-evergreen forests as well as indigenous swidden cultivation, with relatively short crop cycles (3-5 years cultivation / 3-5 years fallow cycles) made possible by the richness of the soils.

The Hilly Region, which averages 300 meters in elevation, contains dense forests and important watersheds of tributaries of both the Sesan and Srepok rivers. It supports shifting cultivation on red and gray forest soils, with cycles averaging 2 year planting to 8-10 year fallow. Older-growth forest areas contain gritty or rocky soils which are unproductive for cultivation.

North of the Sesan River is the Mountainous Region. There, a westward extension of Vietnam's Annamite Cordillera mountain range forms the northern border of Ratanakiri with Laos and, on the east, with Vietnam. This older, non-volcanic terrain rises to 1,000 meters elevation at certain points along the divide between the Sesan and Sekong watersheds, which forms the Cambodian-Lao border. Population density is fairly low in these northeastern mountains, which support some of the densest forests in Cambodia and abundant wildlife. Upland swidden is the main type of agriculture, but with older, less fertile soils, the typical cycle runs 1-3 years cultivation / 7-30 years fallow.

The Lowland Plains Region, with elevations averaging from 60-100 meters, supports areas of lowland rice cultivation in the younger, more fertile alluvial soils of Sesan and Srepok river valleys. Other parts of the Lowland Plains contain older, relatively poor soils and support large areas of dry deciduous forests (*prey l'bah*, or savanna forest).

### Indigenous Populations

The population of Ratanakiri is approximately 72,290, of which 75 percent<sup>5</sup> are members of 8 different indigenous groups. In addition, the province is inhabited by Khmers, Vietnamese, ethnic Lao and Chinese. Except for the Jarai, the languages of all of the tribal minorities inhabiting Ratanakiri are Austroasiatic, belonging to the same linguistic family, Mon-Khmer.

The Brou, Kreung, Kavet and Lun all belong to the Western Bahnaric Branch of Mon Khmer. Kavet, Kreung and Lun are considered sub-groups of Brou, at least linguistically.<sup>6</sup> Traditionally the Brou (population 5,500)<sup>7</sup> lived in the most northeastern corner of Ratanakiri, bordering Laos and Vietnam. Now they live primarily along the Sesan river in Taveng, as a result of government relocation programs in the 1960s and 1980s. The Kreung (14,000) occupy an area

<sup>4</sup> Seng Hkum, "Agricultural Sectoral Study Report, Ratanakiri Province." UNDP/CARERE, 1995, p. 4.

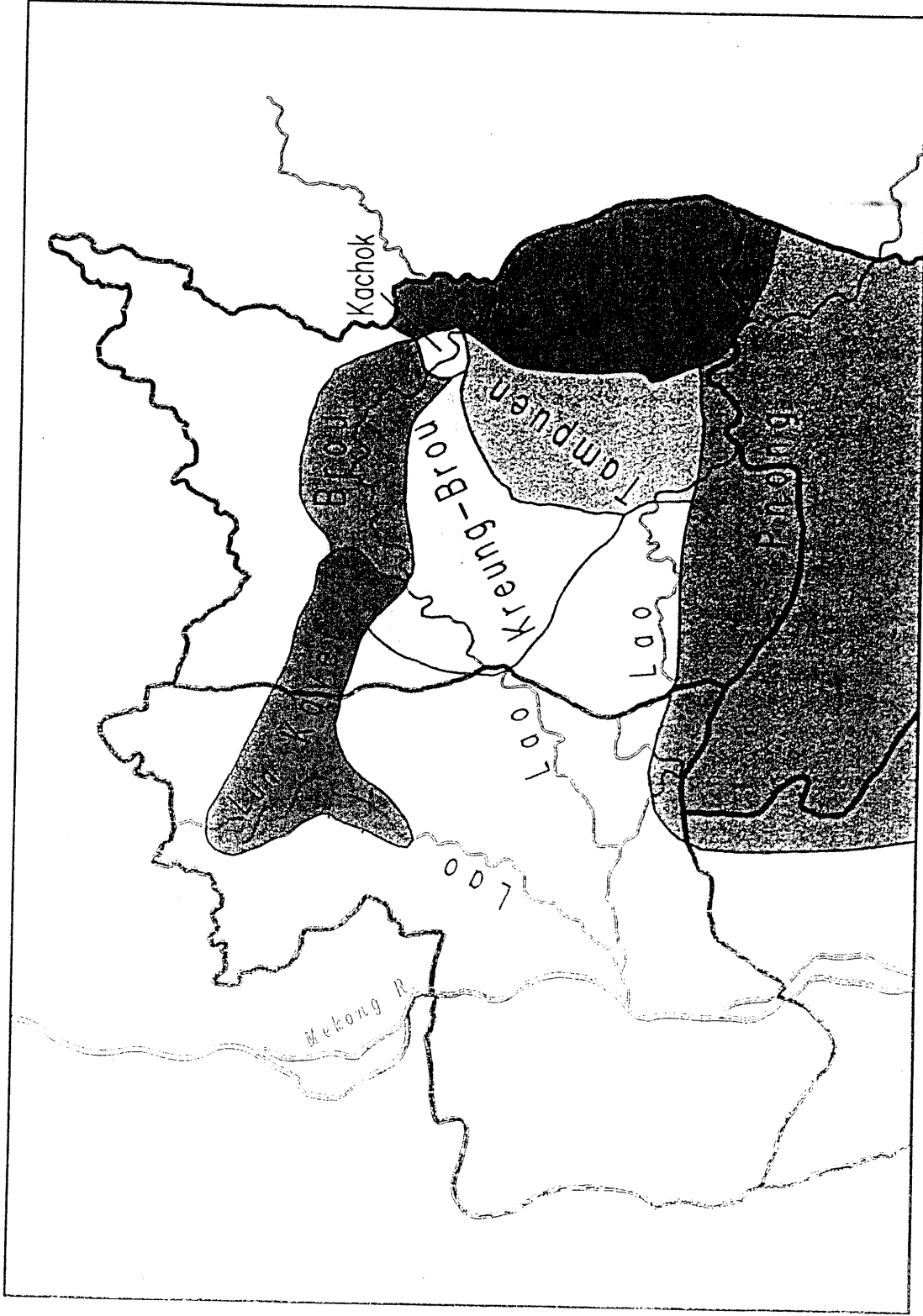
<sup>5</sup> Ratanakiri Red Cross, 1994 (general population figure) and Ratanakiri Provincial Governor's office, 1995, (ethnic breakdown) as cited in "Current Status of the Virachey National Park, Ratanakiri Province," Ministry of Environment, November 1995, pp. 13 and 15. The breakdown of 75 percent indigenous minorities does not include ethnic Lao and is also confirmed in Frédéric Bourdier, "Health, women and environment in a marginal region of north-eastern Cambodia," Abstract for the Cuban National Committee of the IGU, 1995, p. 4.

<sup>6</sup> Frédéric Bourdier, "Connaissances et pratiques de gestion traditionnelle de la nature dans une province marginalisée," 1995. Unofficial translation by Dr. Carol Mortland, p. 37. See also Pierre Bitard, "Carte ethno-linguistique de la région de Voëunsai (Cambodge)," B.S.E.I., N.S., Tome XXVII, No. 1, 1st trim. 1952, p. 6.

<sup>7</sup> Population figures for the individual ethnic groups are extrapolated from Bourdier, "Health, women and environment..." 1995, p. 4 (which includes 1994 figures for Ratanakiri) and Bourdier, *Relations interethniques et spécificité des populations indigènes du Cambodge*, Center for Advanced Studies, 1996, p. 376-377 (which includes figures for the whole Northeast region).

**Map 2: Ethnic Minorities in Northeastern Cambodia**

Colm/Maxwell, modified from Diffloth, 1992.



Colm, modified from Diffloth 1992.

## Ethnic Minorities in Northeastern Cambodia

extending from Banlung towards the western part of the Central Plateau, and towards the Sesan River in the North. The Kavet (2,000) are one of the few groups that continue to occupy the forested area north of the Sesan River. Different governmental regimes over the last 30 years have attempted to relocate them along the Sesan River, although since 1993 many have started to gradually migrate back towards their old settlement areas closer to the Lao border. Among the smallest groups in Ratanakiri are the Lun (150), who live in Vonsai and Taveng districts. Small numbers of Pnong, who belong to the Southern Bahnaric Branch of Mon-Khmer, live in Lumphat District in the southern part of the province.

The Tampuen and Kachok, who are related linguistically, both belong to the Central sub-branch of Bahnaric. The Tampuen (18,000) live in central Ratanakiri, on the Central Plateau around Banlung and throughout much of Lumphat and Bokeo districts. Their region previously extended to the Vietnam border but they were pushed westward in the 18<sup>th</sup> century by Jarai from Pleiku in Vietnam. The Kachok (2,200) live primarily in Andong Meas district of Ratanakiri, near the Sesan River.

The Jarai (14,000 in Ratanakiri) are one of the largest highland groups in Indochina, with most of their population living in Vietnam. In Cambodia they are found in present-day O Yadao and Andong Meas districts of Ratanakiri, in a belt along the Vietnamese border between the Sesan and Srepok rivers. Their language belongs to the Chamic branch of Austronesian, the language family which includes Malay.

### Highland Agriculture

Most of the highlanders subsist on swidden agriculture, supplemented by hunting, fishing and gathering of forest products such as wild fruits and vegetables, bamboo and rattan. In the dry season villagers clear swidden plots (*chamkar*), drying and burning the timber and underbrush. Areas cleared are usually secondary forest or forest fallows that are 8-20 years old. Old-growth forest is usually not cut for swidden plots except when quality secondary forest is lacking.

Swidden plots are planted at the beginning of the rainy season and the same plot may be used for a period ranging from 1-5 years, depending on the quality of the soil. The plots are then left fallow in order to regain their fertility before being cultivated again. Villagers subsequently shift their farming sites to other fields that have regained their fertility or have never been cut at all. Fallow rejuvenation varies widely according to soil evolution, length of cultivation period and susceptibility to invasion by grasses and weeds.

The highlanders grow a variety of crops in their *chamkars*, including upland (dry) rice, cassava, taro, sugarcane, maize, sweet potatoes, yams, gourds, beans, peppers, sesame, tobacco, pineapples, eggplants, tomatoes, pumpkins and cucumbers. Fruit trees are grown in the villages and *chamkars*, bearing bananas, jack fruit, cashews, papaya, and mangos.

In addition, several of the tribal groups cultivate wet rice in permanent inundated fields. Some of these paddy areas—for example in Seda Commune, Lumphat—are extensive and have played a major role in sustaining indigenous, non-swidden, agriculture. In certain cases paddy farming began during the Pol Pot regime, with many of the dams and weirs constructed then still standing today. In other cases—among some of the Jarai and Kachok in particular—paddy farming has been practiced since before the 1970s, particularly in shallow valleys at the bottom of basins which are rainfed but also derive runoff from the surrounding hills.

Depending on soil quality, on average highlanders who farm exclusively *chamkar* have 1-2 ha./family under active cultivation plus another 5-6 ha. of fallow *chamkar*. For those highlanders

who practice mixed paddy and *chamkar* farming, they require a total of between 6-8 ha. of land (cultivated, fallow and/or paddy land) to insure food security.<sup>8</sup>

The average *chamkar* size stays relatively the same – if too much land is cut and cleared, it becomes unwieldy to clear and farm, and if too little land is farmed, there's the possibility of food shortages. Generally this delicate equilibrium serves to moderate the amount of land cleared unless other factors take precedence.

Most of the highland groups follow taboos or spiritual beliefs against clearing swidden plots within another village's cultivation boundaries. If a farmer from one village clears *chamkar* on the far side of a different village's *chamkar*, it is believed that first farmer and his family—and perhaps the whole village—will fall victim to sickness, death or other misfortune caused by displeasing the spirits.

Some of the indigenous groups also follow strict regulations in regard to re-cultivating fallow *chamkars*. If someone wants to re-use another person's old *chamkar*, they must first ask that person's permission. A Jarai villager explained the system: "You have to ask for land that's been fallow for five years, 10 years also. If it's been more than 15 years, we still need to ask the former cultivator because the forest has grown large now and the spirits have returned to take over. It's become a wild place again so humans take some risk in trying to re-claim it. We establish a claim by clearing the land, but if we abandon it a long time we lose the right because the trees are big and the spirits have returned. The person wanting to farm the plot may do a ceremony before opening such an old fallow."<sup>9</sup>

The system of setting aside forest fallows serves rejuvenates soil fertility without use of chemical fertilizers. At the same time, the swidden system protects watersheds and helps conserve biodiversity by creating a patchwork of forests at different stages of regeneration within village lands.

### **Forest Conservation Areas and Spirit Forests**

As part of the village subsistence economy, the forest ecosystem is second only in importance to the swidden system. Village forest conservation areas tend to be old-growth forests that are used for hunting wildlife and collection of forest products such as resin, honey, firewood, rattan, bamboo, and herbs. Often the soil is rocky or infertile and thus not useful for cultivation.

In other forests, resident spirits forbid cutting and other activities. Different forests are ruled by different spirits, each with their own taboos or spiritual regulations that effectively provide for forest and wildlife conservation. For example, a section of O Tabearr forest in Poey Commune, O Chum contains a sacred grove of *bora* bamboo, from which villagers keep a healthy distance. Breaking off a piece of the bamboo or talking and joking loudly in the vicinity of the grove can result in illness or death. At O Batt forest near Kralah village in O Chum, people don't dare touch the *tarra pang* tree for fear of calamity. The forest spirits at Ranchean mountain do not like guns and prohibit the hunting of gibbon, deer, gaur and tiger there. Kres villagers ran into major difficulties after they cut *chamkar* on the top of Ranchean mountain in 1985. The spirits became angry and many villagers died, they said, causing the whole village to move to a new location.

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<sup>8</sup> Surveys conducted by UNDP/CARERE and Ministry of Environment/IDRC confirm the Research Team's field interviews in O Chum and O Yadao districts showing that indigenous groups need up to 6 ha. per family of cultivated and fallow *chamkar* land for food security. In addition, field interviews by the Research Team showed that lowland paddy land is also used among some of the Jarai in O Yadao, at approximately 2 ha. per family. The paddy field of Kreung farmers' in Kralah Village in O Chum has only been operating for the last two years, with about ½ hectare per family. See "Yeak Laom: Challenge for the Future: Opportunities for Protected Area Management," Ministry of Environment/IDRC, 1996, p. 5; and "Agricultural Sectoral Study Report," Seng Nkum, CARERE, 1995, p. 26.

<sup>9</sup> Interview with Jarai villagers in Som Thom Commune, O Yadao, March 1996.

Forest areas do not have as clearly-delineated boundaries as agricultural lands, with several villages sharing the same forest area in overlapping ranges. In addition, different villages may have different regulations and taboos for use of one shared forest area.

The collection forests are integral to the village economy. Therefore, secure access to these forests and conservation of their resources are essential in land use planning for each village. This requires a perspective on land security which goes beyond the boundaries of village and agricultural land, but focuses equally on the old-growth forests on which villagers depend for their livelihood. As one resident of Svay village in O Chum put it: "Our [village] boundaries extend only to our *chamkars*—that's one hour's walk—but we support our living in an area much further than that, in the forest beyond our village boundaries. These forests are like our market place – they are where we find wildlife, malva nuts, rattan and so on. If a company takes those forests, we'll be dead."

### **Customary Resource Management and Designation of Cultivation Land**

Most highlanders have a clear sense of the physical extent of village land used for cultivation, usually defined by streams, mountains, or other geographical features. Village sites do not move as much as is commonly thought, and the highlanders of Cambodia cannot be considered as "nomadic." When villages do move, it tends to be within the village's ancestral cultivation area—often within a matter of only a few kilometers—and for specific reasons such as political upheaval, government relocation, bad omens, excessive illness, or other hardships at the current site. If part of a village decides to separate from the original group because of population increase or conflicts between elders, the breakaway group looks for new, available land. Such occurrences usually only happen once in two or three generations.

Cultivation land is distributed according to decisions by village elders and spiritual beliefs, but often the result is that the land is distributed equitably. For example, among different villages in Poey Commune in O Chum district, the average number of people per square kilometer is roughly 30—regardless of village population size.<sup>10</sup>

Specific boundaries between villages are not required unless the cultivation areas from one village meet another. Thus borders are set up communally and only if they are deemed necessary, to address real needs. Many of the highland groups believe that if they farm on the other side of a different village's *chamkar*, the spirits will be unhappy and they will meet misfortune or death. Speculation is effectively prohibited because one family is not allowed to farm plots in two villages simultaneously. When *chamkar* from one village meets *chamkar* from another, elders from the two villages may meet to decide on the boundaries. Inter-village negotiations over borders are not always necessary when village cultivation lands meet, however, because the physical location of *chamkars* and taboos against farming in another village's cultivation area define the cultivation limits.

Variations do take place within the different highland communities in regard to traditional resource allocation and village movement, and exceptions occur, even within the same commune. In Poey commune in O Chum district, Kralah village has stayed in the same location for most of the last 100 years, while neighboring Kres village has moved more than 10 times in the last 40 years. Because both villages have fallow *chamkars* in the same area, this has caused a lack of consensus as to the current boundary between the two villages.

Another deviation from more common traditional practices occurs among the Kavet in Kok Lak commune of Vonsai district, whose village and agricultural sites have been disrupted numerous times by warfare and government relocation schemes during the last 25 years. Today

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<sup>10</sup> Field research conducted by NTFP, East West Center and IDRC, July 1997, with demographic analysis by Jefferson Fox, East West Center.

they do not strictly adhere to traditional cultivation boundaries, and residents from one village will farm on the other side of another village's *chamkar*—something that is forbidden among most other indigenous groups in Ratanakiri.<sup>11</sup>

In addition, in areas where there has been rapid population growth or fallow land has decreased, primarily because of encroachment of outside immigrants or commercial plantations, swidden lands may turn into less productive grasslands.

In general, however, as long as there is relatively low population density and no outside encroachment, the traditional systems can be sustainable, in which forest cover, soil fertility and watersheds are conserved and protected. Swidden agriculture works well in complex terrain, where the land is not homogenous but contains a mixture of soil types and topography. This enables people to share access to reasonably productive land to insure food security, and also facilitates the regeneration of forests and soils without chemical fertilizers.

## **PART TWO: ISSUES AFFECTING LAND SECURITY**

As development in the Northeast proceeds, dwindling access to land and natural resources is affecting the ability of indigenous populations to maintain secure livelihoods. All of the province's land area between the Sesan and Srepok rivers has been approved for a concession by Macro-Panin, an Indonesian company. Land speculation and allocation of commercial agricultural concessions are increasing because of the seemingly limitless availability of land with fertile soil. One of the largest concessions—a 20,000 oil palm plantation slated for O Yadao District—is a joint venture between Cambodian and Malaysian companies, which has been approved by both Prime Ministers.

In addition, several proposed hydropower projects on the Sesan and Srepok rivers and their tributaries could displace highlanders who have already been relocated by the government from their ancestral lands far from the rivers to new villages along the riverbanks.

Some provincial officials have suggested that highlanders could attain a better standard of living if they switched from swidden agriculture to paddy rice cultivation or found employment with industrial plantations. But both of these options need to be examined carefully as to whether there is sufficient land for all of Ratanakiri's highlanders to practice paddy, and enough jobs on the proposed industrial plantations.

Establishment of Virachey National Park in Vonsai and Taveng District and a Wildlife Sanctuary in Lumphat District—plus more than a dozen provincially-designated protected areas—may protect wildlife, forests, and touristic sites but could ultimately hem in indigenous populations. Squeezed by concessions and other development projects, villagers may feel they have no option but to encroach into officially protected areas.

In the past, highland land conflicts tended to occur only between adjacent villages, and the solution worked out between village elders was often to split the disputed parcel of land and expand the village boundary. But now, because of outside encroachment and other economic pressures, the extension of village land is not always feasible. With a population of 72,000, the question is where the residents of Ratanakiri are to live in the future and how they are to support themselves. Some provincial authorities suggest that highlanders could attain a better standard of living if they switched from swidden agriculture to paddy rice cultivation or found employment with industrial plantations. But both of these options need to be examined carefully: is there

<sup>11</sup> See Ian Baird, Kaneungnit Tubtim, and Monsiri Baird, "The Kavet and the Kreung: Observations of Livelihoods and Natural Resources in Two Highlander Villages in the Districts of Veun Say and Ta Veng, Ratanakhiri Province, Cambodia," NTFP, August 1996, p. 53.

sufficient land for all of Ratanakiri's highlanders to practice paddy, and enough jobs on the proposed industrial plantations?

The late Ratanakiri Judge Choeung Pheav, an ethnic Kreung, summed up the problem in an interview in 1995: "There are many disadvantages at present for the indigenous people. The price of land is increasing, the population is increasing, investors are coming. Meanwhile the indigenous people need a lot of land to sustain their lifestyle. Therefore if we look clearly at this, lowlanders may take over the land because the ethnic minorities have no land title certificates. The minorities are very worried about this. Unless international organizations think about this problem and how to intervene, the whole traditional land stewardship will collapse. . . As far as government is concerned, unless they see [land title] certificates, it is government land. But according to traditional rights it is the indigenous people's land because that's the way it's always been."<sup>12</sup>

## **A. PRESSURES ON THE LAND**

### **1. Approved and Pending Timber Concessions in Ratanakiri**

In October 1995 the two Prime Ministers revealed that the government had granted a 30-year concession for 1.4 million ha. in Northeastern Cambodia to Macro Panin, an Indonesian company. In Ratanakiri, Macro Pannin's concession area takes up most of the province's forested land, from Lumphat Wildlife Sanctuary in the south to the boundary of Virachey National Park in the north. To date no final management plan or Environmental Impact Assessment have been prepared for this massive concession.

In December 1996, three logging companies were granted rights to transport 29,000 m<sup>3</sup> of already felled timber from Ratanakiri to Vietnam in exchange for public infrastructure improvements in Ratanakiri.<sup>13</sup> Two of the concessions, Kikimex Company (11,711 m<sup>3</sup>) and Reaksmey Angkor (12,500 m<sup>3</sup>), were special concessions approved from the two Prime Ministers. The third concession, an economic exchange agreement between Ratanakiri and Gia Lai Province in Vietnam, authorized transport of 4,740 m<sup>3</sup> by a Vietnamese company, Lam San Mot.

Transport occurred from December 2-31, ending with Phnom Penh's Dec. 31 log-export deadline. Villagers in logged areas said that most of the exported timber consisted of recently-cut trees felled from August through December 1996. In addition, they said that logs illegally left the province via new roads bulldozed in the forest, so that more than the officially reported amount of timber could have been exported.

### **2. Large-Scale Industrial Plantations, Concessions and Smaller-Scale Speculation**

With Cambodia opening up for investment particularly since the 1993 elections, Ratanakiri with its rich red soil and relatively low population is seen as a region ripe for industrial plantations and smaller scale investment projects. The Ratanakiri Cadastral Office has records of more than a dozen pending concession projects in the province, ranging from 100 to 20,000 ha. Increasing numbers of lowland Khmer are immigrating to the province, and often they are obtaining title to parcels of land, particularly near market centers such as Banlung and Bokeo, as well as the southern part of O Chum and O Yadao districts. Land is being cleared and industrial crops planted on some of these sites, while other sites remain unplanted as speculators wait for an opportunity to re-sell the land at a higher price.

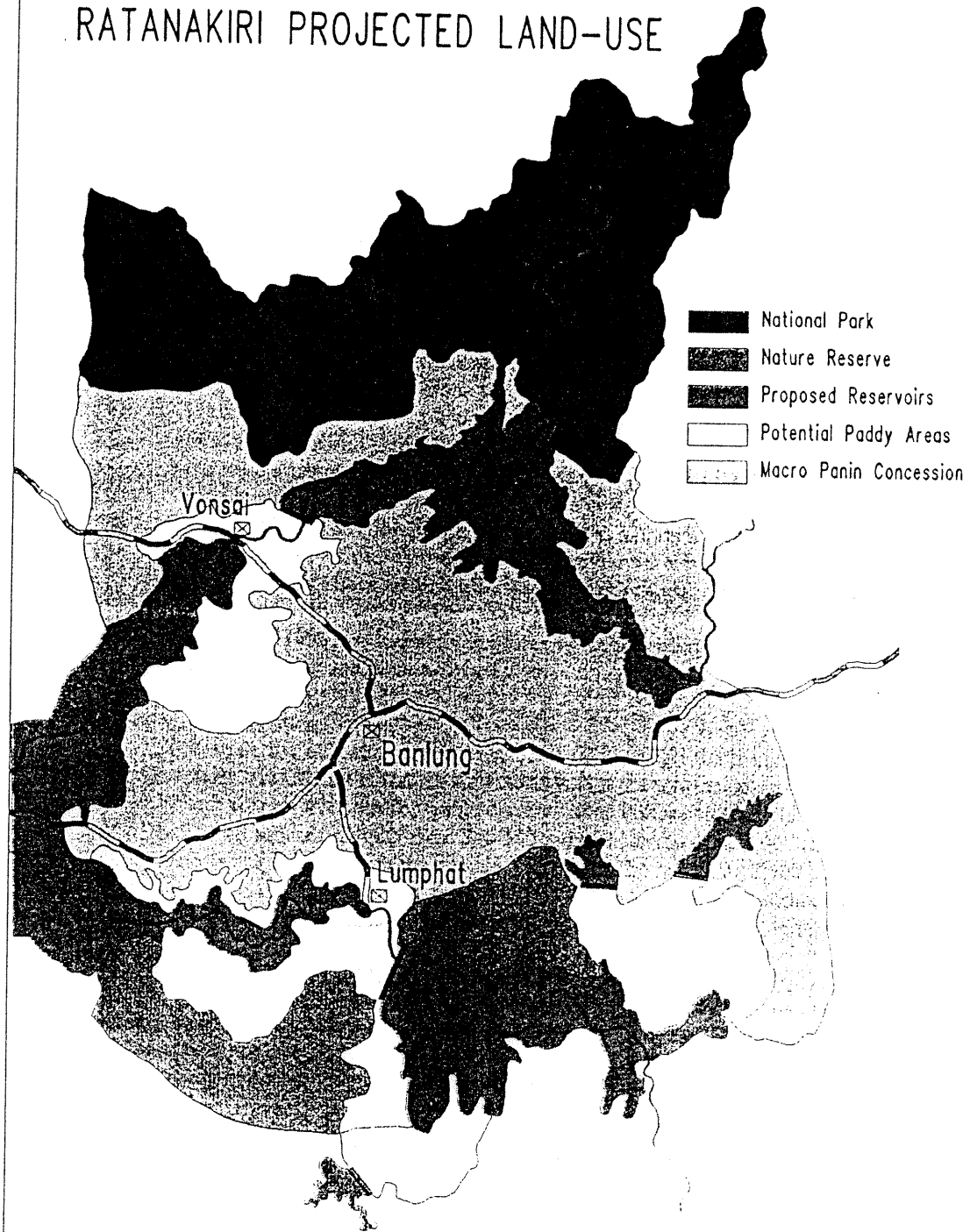
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<sup>12</sup> Interview with Judge Choeung Pheav by Gordon Paterson and Ray Russell, Banlung, 1995.

<sup>13</sup> Eric Pape and James Kanter, "VN Timber Trucks Load Up in Ratanakiri," *The Cambodia Daily*, January 10-12, 1997.

**Map 3: Ratanakiri Projected Land-Use**

# RATANAKIRI PROJECTED LAND-USE



Adapted from J. Himmel 1997.

## Case Study: O Yadao District's Oil Palm Concession

A US \$20.36 million investment project approved by the Council of Ministers and the two Prime Ministers in 1995 calls for planting 20,000 ha. of oil palm and constructing a palm oil mill in O Yadao District. This concession is a joint venture between two Cambodian companies—Rama Khmer International and Mittapheap-Men Sarun—and a Malaysian partner, Globaltech Sdn. Bhd.

Since early 1995, the oil palm company has cleared approximately 300 meters on either side of Highway 19 for a total of 400-500 ha. in O Yadao. According to local villagers, cleared land included semi-dense forest, secondary forest, secondary scrub, and cultivated and fallow *chamkars*.

Aside from planting about 20 ha. of oil palm in a trial plot near Som Kaning village, and 100-200 ha. of coffee, there has been little activity from the oil palm company since the clearing of the land along the highway two years ago. The company is reportedly facing some financial difficulties, which are making it more cautious in proceeding with the plantation. Technical experts in the Ministry of Agriculture question whether oil palm is a suitable crop for Ratanakiri because there is not enough total rainfall in the province and the dry season is too long.<sup>14</sup>

Company Representative Men Vuthny has admitted that Men Sarun's foreign partners are reluctant to proceed with the project before they receive assurances that the political situation throughout the country will stabilize. In addition they are concerned about the lack of infrastructure in Ratanakiri and the expense and difficulty of importing heavy equipment across the Vietnamese border. Security is also a concern, which is why the main oil palm seedling nursery is located in Phnom Penh, not Ratanakiri. Finally, from the onset the company has had difficulties recruiting and maintaining employees. "The tribe people do not work in a normal manner. They work two or three days and then once they get money they stop working and drink the rest of the week," Vuthny said. "Our problem is we don't have enough workers—we can't depend on the tribespeople."<sup>15</sup>

If these issues can be worked out, the company hopes to sign a contract with the government this year. In 1998 the company hopes to finish a masterplan for the plantation and commence large-scale clearing and planting of oil palm.

### Issues Posed by the Plantation

If implemented, the oil palm plantation will drastically affect the livelihood of more than 4,500 people, mostly Jarai, living in the six communes within the concession area. At best, the oil palm plantation will provide 400 jobs for local villagers. Even if those 400 individuals can support their entire families on salaries ranging from \$40-\$80 a month, at the most 2,000 people could be provided for through employment with the oil palm company. The remaining 2,500 people affected by the plantation, who currently support themselves on subsistence farming within the proposed concession area, will very likely face severe economic difficulties or be forced to move out of the area in the future.<sup>16</sup>

In interviews in March 1996, Jarai villagers said that the company never consulted with the affected communes until after they began clearing the land in early 1995. Some of the commune chiefs and villagers in the affected area said that they were placed under pressure or intimidation to sign documents from the company which were not clearly explained. In interviews in 1996, Company Representative Men Vuthny initially said that villagers' rice paddies and fallow

<sup>14</sup> Interview with an official from the Ministry of Agriculture who asked not to be named, January 1997.

<sup>15</sup> Interview with Men Vuthny, Phnom Penh, February 11, 1997.

<sup>16</sup> See Sara Colm, "Effects of Oil Palm Plantation Development on Indigenous Communities, Ratanakiri Province, Cambodia," NTFP, May 1996.

*chamkars* would be made into oil plantation. In the future all the villagers would be living along the highway and working for the company so there would be no need for them to farm rice, he stated.<sup>17</sup>

In February 1997 the company pledged not to encroach on paddy or *chamkar* land and instead would give land to the local Jarai to farm. However, any land not under active cultivation after two years will be confiscated by the company. "For example we'll give them a field to plant sugar cane," Vuthny said. "After two years, if they don't plant on that land, we'll take it back." The company expects that it will only be able to plant on half of the total 20,000 ha. concession area, according to Vuthny.<sup>18</sup>

Some two years after Men Sarun Company started its activities in O Yadao, accurate maps and information about the project have not been disseminated to affected villagers or commune and district officials, the majority of whom are unaware of the full extent of the land area granted to the company.

"The company has stopped its activity for now so the people are not complaining," said one Jarai villager interviewed in February 1997. "But that's because most villagers have never seen a map of the concession and they don't know that the company plans to start up again. They think the concession is only taking 300 meters along the road and don't understand it's 20,000 ha. We can't forbid this company from operating. We're poor, they're rich. But the company must address how we can live. There are 800 people in my village, but only three people worked for the company when it was active. How can the company provide for us all?"

Villagers request that the company communicate and collaborate with people living in the concession area and want assurance that when the company extends into areas people are currently using for *chamkar*, paddy, or to collect forest products, that the company address the impacts on the people's livelihood as well as the surrounding environment. Villagers request that surrounding forests, old village sites, rice fields, *chamkars* and new village sites be reserved from development. Old village sites with ancestral graves and old-growth forest are not negotiable. It may be possible to negotiate sale or lease of *chamkars* and paddy land. Villagers propose that if the company takes land currently being used by the people, then it should share the production of that land with the affected villagers. In addition, villagers would like to obtain legal title to their cultivation land and assurances that surrounding collection forests will be protected from commercial encroachment.

H.E. Mok Mareth, Minister of Environment has called for an Environmental Impact Assessment to be conducted on the oil palm plantation and said that the company should address serious livelihood and environmental issues posed by the concession. (See Appendix B) "The 400 jobs provided by the company are not enough to sustain the population living in the proposed plantation area," Mok Mareth said, advocating that the company set aside a portion of the concession area for local villagers to farm *chamkar* and paddy rice. Mok Mareth also expressed concerns about the environmental impacts of large-scale monocropping, which removes natural corridors of old-growth forests that help prevent erosion and flooding and maintain bio-diversity.<sup>19</sup>

On February 13 1997, H.E. Gov. Kep Chuktema met with commune leaders from the affected area to discuss their concerns about the concession. "We need to find the middle road, balancing the benefits for the company with the benefits for the people," he said. "I guarantee that anything that creates a strong impact on the people I will protect you." The same day, the governor arranged for employees from the Provincial Land Titles Department and a representative of the Men Sarun Company met with commune representatives to begin to discuss possibilities for affected villagers to obtain land title.

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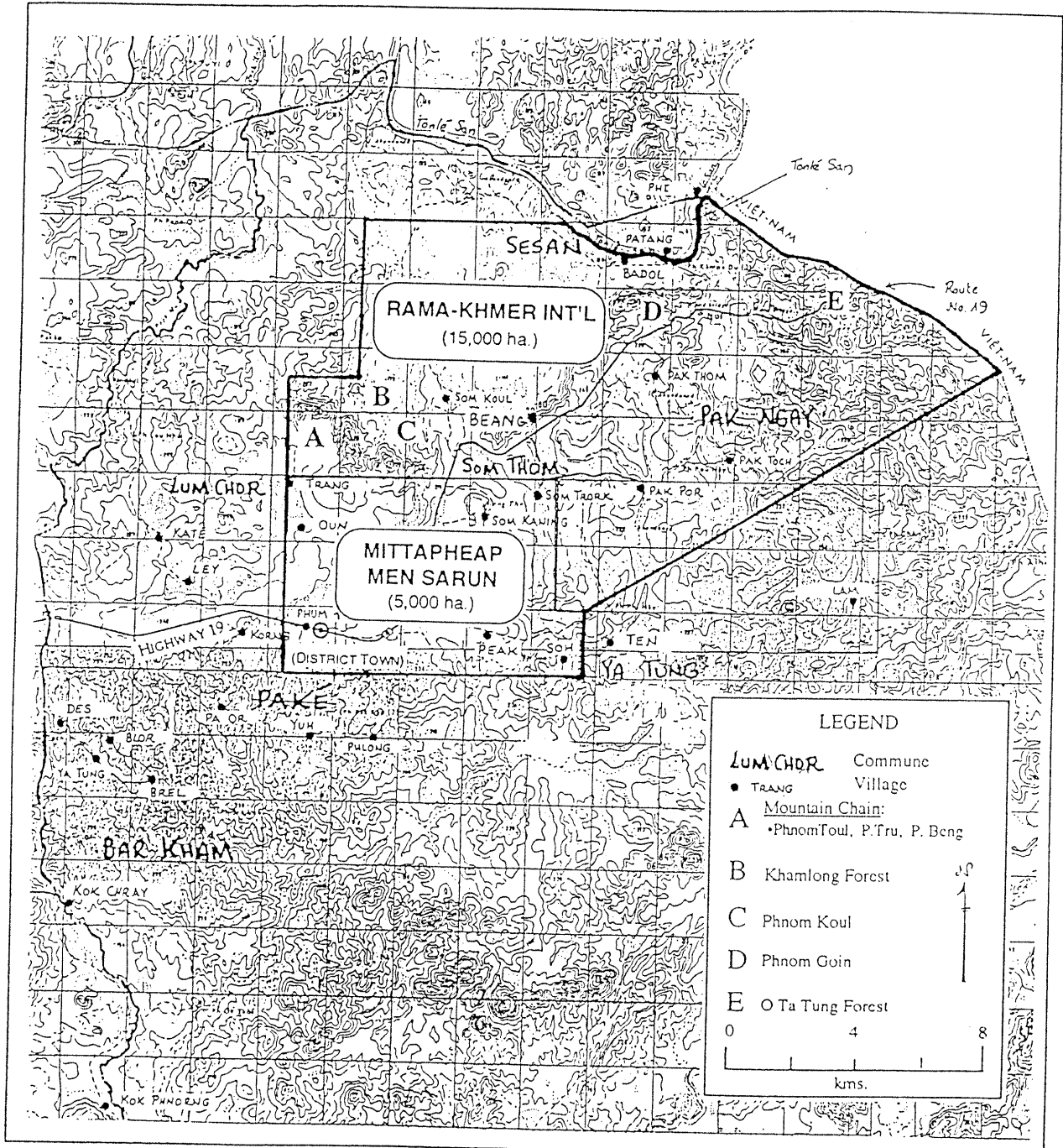
<sup>17</sup> Interview with Men Vuthny, March 1996, Phnom Penh.

<sup>18</sup> Interview with Men Vuthny, Phnom Penh, February 11, 1997.

<sup>19</sup> See Appendix B, Minutes of Meeting with Mok Mareth.

**Map 4: Proposed Oil Palm Concession**

Map 4: Proposed Oil Palm Concession



(Location of Peak and Soh villages adjusted to reflect current sites.)

Adapted from Untac, 1993.

### **Yeak Laom Commune, Banlung District**

Yeak Laom Commune is located only a few kilometers from Banlung provincial town and contains one of the province's main tourist attractions, Yeak Laom lake. Villagers complain that outsiders are taking their land without permission. Sometimes the problem involves Labansiek Commune approving land sales in Yeak Laom Commune to provincial police or military.

"Khmers from outside are taking all our land," said Chree Village Chief Nuk Tuk.<sup>20</sup> "They don't contact the owners, only the big power men. The outsiders think the land is available and take it without permission. They think we are doing nothing on the land and take it. But even if I'm not currently working the land it's my old *chamkar*."

In one instance Tampuen were convinced to give up their fallow *chamkars* and cattle-grazing land by a high-ranking local official, who promised to install electricity and other services in the commune. Those pledges never materialized, but the Tampuen lost their land and are now seeing a coffee plantation go in. "When our cows wander onto the plantation, the workers kill them and cut their tails off," said one villager. "When they deny killing our cows, we ask them where the tails came from."

The International Development Research Center (IDRC), which is preparing a management plan for Yeak Laom Protected Area, has expressed concerns that land pressures may force villagers to encroach on remaining forest areas that make up a vital part of the protected area. An April IDRC 1997 report stated: "Land is the only security these people have and now they are caught in a squeeze between having to respect rules of living in a protected area, and continual and increasing encroachment on their traditional lands."<sup>21</sup>

In these areas close to Banlung, highlanders are becoming more familiar with a cash economy and are showing a growing openness to selling village land. This was a rare occurrence in the past because villagers completely relied on their *chamkars* to make their living. Traditional systems of consensus decision-making and communal stewardship of village lands are beginning to disintegrate. A number of villagers in Yeak Laom Commune have now started to sell small plots, in some cases causing resentment among other villagers. Some people said they were initially reluctant to sell, but eventually acquiesced to continual pressure from potential buyers, who claimed if villagers didn't sell, their land would be confiscated by the government anyway.

### **Southern O Chum District**

Currently a land grab is taking place in O Chum district, particularly in La'ak commune. More than 100 people—including district officials and some local businessmen—have applied for title to much of the "available" land in O Chum to sell to future investors. Villagers are led to give up their land by coercion or promises that it is only being temporarily "borrowed" in exchanged for development of wells or other local improvements. Meanwhile the company representatives proceed to apply for land title.

After receiving complaints about one case in 1996, the provincial government intervened. The provincial governor instructed a soybean company which had encroached on 85 hectares of land from Tong Krabu village in O Chum to return the villagers' land. Chum District. Now another company has taken 200 hectares of fallow land from three adjacent villages for soybeans, coffee and cashew plantations, putting pressure again on Tong Krabu's agricultural land. In the northern part of O Chum, district officials have begun making inquiries in Poey Commune about borrowing villagers' fallow *chamkars* or "abandoned" land for 1,000 ha. proposed for cashews and other cash crops.

<sup>20</sup> Interview with Nuk Tuk, March 5, 1997, Banlung.

<sup>21</sup> Jeremy Ironside, "Land Report on Chree Village," unpublished IDRC memo, April 16, 1997.

**Figure 1: Pending, Approved and Defunct Concessions in Ratanakiri  
(excluding Banlung District)**

Location	Company/ Owner	Date (approved by province)	Area	Crop	Status
Kon Mum	Pheng Sokha	12-94	250 ha.	Light industrial crops: cassava, soybeans.	Province reclaimed the land already (inactive).
Kon Mum	Vy Simon	12-94	250 ha.	Light industrial crops.	Province reclaimed land (inactive).
Kon Mum	Heng Many		5,000 ha.	Light industrial crops.	Project abandoned in 1994 or 1995.
Lumphat: Labang I.	Thon Lon	1995	200 ha.	Concession for rice.	
O Chum: Near Kalay.	Bun Sy (and 10 others)	1995	200 ha.	Fruit.	
O Chum: Ch'ung Commune.	Nara Pianik	1994	4,000 ha.	Lahong preng (papaya oil?)	Affects state rubber land so province wants that land back. Cadastral doesn't know if there's a contract. No map.
O Chum: Samaki Commune, near Highway 19.	Amara Sonthim	1993	1,650 ha.	Rubber.	No activity. Cadastral has no map.
O Chum: La'ak Commune.	Social Welfare and Disability Ministry	1993	2,000 ha.	Industrial crops— bananas, pineapple.	No activity. Replaced by new concession on the map by Taven Tun.
O Chum: On road near Kalay village.	Pie Vesanah	10-1995	1,500 ha.	Corn, kapok, coffee.	No activity.
O Chum: La'ak Commune.	Ly Bon (Sao Phim's project).		10,000 ha.		Haven't done anything. Located near Social Welfare's former project area.
O Chum: Ekapheap Commune.	Khum Sakorn	1995	300 ha.	Industrial crops.	Cadastral has no map.
O Chum: La'ak Commune	Taven Thun (Brao) and 10 people	12-1995	100 ha.		Replaces Social Welfare's former area in La'ak Commune
O Chum: Samaki Commune.	Twun Im and 6 people	12-1995	100 ha.		
O Chum: Poey Commune.	Ta Dao and Ta Tus	1-1997	1,000 ha.	Cashews, soybeans.	Tentative request to Poey Commune (Kres, Koy, Tangaich and Satuk villages) through district for "available" parcels of land. As of 3- 1997, request not received by Cadastral.

Location	Company/ Owner	Date (approved by province)	Area	Crop	Status
Bokeo	Rama Khmer	1994	15,000 ha.	Oil palm	District and commune don't recognize this project, according to Cadastral. Part of its area is in old growth forest. Project "came from above" but signed by then-Gov. Kham Len, and provincial depts. Don't know if two PMs have approved the project - it's been sent to Phnom Penh by local departments but no answer.
Bokeo	Mittapheap		6,400 ha.	Rubber, coffee.	3,000 ha. of the 6,400 given to Ranariddh for coffee.
Bokeo: Khum Ting Chah.	Cheang Samlen, Kim Sokleap, Seng Sakadey	8-1996	5,000 ha.	Industrial crops.	Approved by Second Prime Minister Hun Sen
Bokeo, O Chum, Andong Meas	Ministry of Interior		20,000 ha.		
O Yadao	Kao Try	1995	4,000 ha.	Cassava, kapok, rubber.	No activity yet except cleared 10 ha. for soybeans in 1996. Within the 4,000 ha, title has been granted for 450 ha. along Highway 19 under the names of 90 individuals, mostly military.
O Yadao: Som Thom, Pok Ngay, Yatung Communes.	Men Sarun	1995	5,000 ha. **	Oil palm.	As of 3-1997 Cadastral Dept. did not have any official documentation or maps in regard to Rama Khmer International's 15,000 ha. oil palm concession in O Yadao, which has been approved by both Prime Ministers.

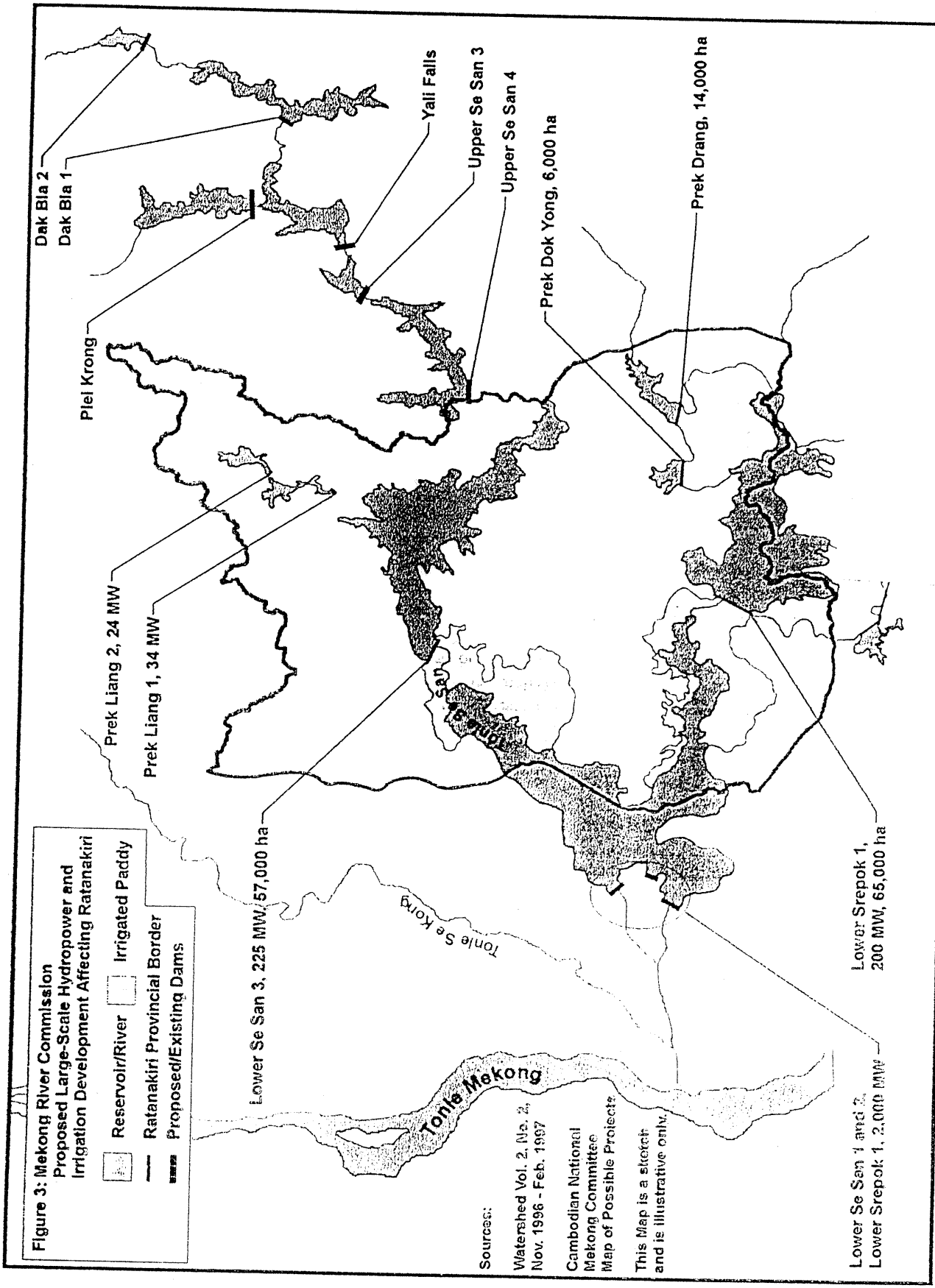
Source: Interview with Ratanakiri Cadastral Department staff, March 1997 (except for information about Poey Commune, O Chum, which came from interviews with commune and village officials).

\*\* Note: The above information does not include Banlung District, which obviously has many pending and approved concession projects.

### 3. Hydro-electric projects

Proposed dams on Sesan and Srepok rivers could displace many villages, many of whom have already been relocated along the rivers by the government. Six dam sites have been identified in Ratanakiri. Two dams on the Prek Liang, a tributary of O Ta Bok which flows into the Sesan, would together produce 95 MW. Another dam on the mainstream of the Sesan, the "Lower Sesan No. 3" project, would be located just above Vonsai District town. This 4.3 km long, 75 m high dam would produce 400 MW and possibly irrigate 57,000 ha. Flooded areas would extend from Vonsai all the way to the Vietnamese border. The "Lower Srepok 1" would irrigate 65,000 ha. and provide 200 MW. Two other dams are located in Lumphat and O Yadao Districts on tributaries of the Srepok: the Prek Dok Yong would irrigate 6,000 ha. and Prek Drang 14,000 ha.

**Map 5: Proposed Hydro-electric Projects in Ratanakiri**



#### **4. National Parks and Wildlife Sanctuaries**

Close to half of the province's 1.16 million ha. (11,600 km<sup>2</sup>) has been set aside for royally-decreed protected areas. Virachey National Park, located mostly in Taveng and Vonsai districts of Ratanakiri but also in Siempang district of Stung Treng, covers 332,500 ha., while a Wildlife Sanctuary in Lumphat District near the Mondolkiri border covers 250,000 ha. There are also more than a dozen provincial protected areas/tourist sites.

Cambodia's policy at this time does not call for exclusion of indigenous peoples from protected areas, and their use of forests within protected areas is considered through local input gathered during formulation of management plans. However, the legal status of the land under the jurisdiction of the Ministry of Environment requires that land-use security be negotiated by procedures different from those used for land outside protected areas. Such procedures have not yet been established in Ratanakiri.

#### **5. The Option of Converting to Paddy**

Some provincial authorities are under the impression that swidden cultivation is highly destructive and unsustainable, and they suggest paddy rice cultivation as a more viable option for community development. This option must be examined carefully. Current paddy land being used in Ratanakiri is primarily located in the lowland plains of the province and amounts to about 5,000 ha. The total available paddy area in the province is estimated at 11,000 ha.<sup>22</sup> In the lowland plains, ¾ of the land is farmed by lowlanders, with only small numbers of highlanders practicing paddy rice cultivation even though they live in paddy-growing areas. In the upland agro-ecological zones of Ratanakiri where the highlander population is concentrated, there is not enough paddy land available to allow all of the current residents to practice mixed lowland/upland farming.

Even in a best case scenario—if the paddy land was evenly distributed throughout the province and all highlanders switched exclusively to paddy farming—at 1 to 2 ha./family this would only account for 5,000 to 11,000 families out of a total of approximately 15,000. Ongoing land speculation further complicates the problem, as groups of businessmen form associations to buy up hundreds of hectares of paddy land for agri-business, for example in Lumphat District. This removes potential paddy land from use by highlanders. Aside from the fact that many highlanders have a strong resistance to farming paddy, the conversion of highland groups to wet rice agriculture is not technically feasible.

### **B. LAND TITLING: OPPORTUNITIES AND CONSTRAINTS**

There is growing consensus in the province that one solution is for highlanders to obtain legal title to their land, to which—through occupancy and use—they have already established occupancy rights. "We need to distribute the land clearly now, whether it's individual or communal title," said El Djurado, representative of the Inter-Ministerial Committee on Highland People's Development. "If we don't plan clearly now, there will be conflicts in the future."

While existing laws contain provisions for obtaining land title, in Ratanakiri most of the indigenous people lack knowledge of land laws, and cannot afford the standard fees for obtaining land title. For many, language is a problem, as they are only semi fluent in Khmer and cannot read and write. The remoteness of the ethnic minority communities from administrative centers, coupled with the complexities of existing laws and procedures, effectively bars many highlanders from obtaining land title.

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<sup>22</sup> Jeffrey Himel, "Balancing Change: Water Control for Lowland Rice in Ratanakiri," Draft report for IDRC, 1997.

To date, only a tiny fraction of the population of Ratanakiri have received certificates granting occupancy and possession rights to land, with the vast majority of these going to lowland Khmer and ethnic Lao residents. As of March 1997, the Ratanakiri Cadastral Office reported that 1,301 land certificates have been granted in the province, with none exceeding 5 ha. In 1996, 109 certificates were granted, and from January through the end of February 1997, 41 were granted. The majority of these were for parcels of land in Banlung, Lumphat, O Chum, and Kon Mum.<sup>23</sup>

According to the Central Land Title Office in Phnom Penh, approximately 1,500 titles are issued throughout Cambodia each month.<sup>24</sup> Finalizing land title for applicants from Ratanakiri, which is one of the most remote provinces, requires land title officials to make a planetrip to Phnom Penh for final authorization, which bogs the process down even more and adds to the expense.<sup>25</sup>

#### Land Titling Issues:

1. Use of existing laws for individuals and communities to obtain land title is complicated by the fact that individual land ownership—the type of title most easily obtained under the land law—is not a familiar concept to most of the indigenous communities.

2. The isolation of most of the ethnic minority communities from Banlung and Phnom Penh, and the fact that many of the indigenous groups are not fluent or literate in Khmer, hampers their access to administrative structures.

3. Lack of familiarity with the Land Law and limited access to courts or legal assistance in Banlung or Phnom Penh makes indigenous communities more vulnerable to administrative corruption or manipulation by speculators and companies seeking to confiscate their land. For example, there are cases where highlanders have been told their land has already been sold to a company, seemingly leaving them little choice but to give up their land for little or nothing.

4. The complex procedures for land titling—such as the need to secure approval of eight or more levels of administrative hierarchy—create obstacles for applicants seeking legal title.

4. Lack of clarity and standardization of land titling fees and the amount of time needed to complete the process makes it difficult for applicants to plan a budget for land titling. Deputy Chief of the Central Land Titles Office, Seak Vanna, confirmed that there are no set fees: “It depends on the situation—if the place is far away, in the forest, it’s costly to transport the [surveying] equipment.”<sup>26</sup> According to Provincial Land title Deputy Director Meas Samay, the actual costs for the Banlung Land Titles Office to prepare cadastral maps ranges from \$20-\$50/ha.<sup>27</sup>

Thim Sinath, director of the provincial Land Titles Office said: “The price is not fixed for titles. Near Banlung its up to \$350 (for Banlung people). For ethnic minorities, we would do it for 20,000 or 30,000 riel – or even just for a bowl of noodles.”<sup>28</sup> In another interview, Sinath said: “In terms of titling fees, I will make the most exceptions that I can. We will charge the lowest possible fee for land title.”<sup>29</sup>

5. Lack of technical expertise, equipment and funding to facilitate the land title process at the provincial and central land title offices lengthens the land titling process, or blocks the process from starting or reaching completion altogether.

<sup>23</sup> Interview with Meas Samay, March 8, 1997, Banlung.

<sup>24</sup> Cheang Huy and Keo Chhunly, Interview with Lim Vorn, Chief of Central Land title Office, December 1996.

“Report on CAREERE Land Tenure Activities and Future Programme Direction,” 13 January 1997, p. 13.

<sup>25</sup> Since January 1995, all land title applications must be approved by the Central Land Title Office in Phnom Penh.

<sup>26</sup> Interview with Seak Vanna, February 10, 1997, Phnom Penh.

<sup>27</sup> Interview with Meas Samay, February 5, 1997, Banlung.

<sup>28</sup> Interview with Thim Sinath, January 9, 1997, Banlung.

<sup>29</sup> Interview with Thim Sinath, February 25, 1997, Banlung.

## PART THREE: LEGAL ASPECTS OF LAND SECURITY

### EXPLICATION OF LAWS AND POLICIES REGARDING LAND IN CAMBODIA

#### Background

Among the legislation and policies governing land use in Cambodia are the Land Law, passed by the State of Cambodia on August 11, 1992 and the “Enforcing Instruction No. 3 of the Principles for Possession and Use of Lands,” passed by the Council of Ministers on 3 June 1989. In addition, the 1989 Sub-decree No. 25 provides for ownership rights over residential housing. The Land Law takes legal precedence over Instruction No. 3 and Sub-decree No. 25 not only because it was written and passed more recently, but because it is a formal law and not simply a sub-decree or guiding instruction.

However, in interviews conducted in 1996, researcher Ray Russell found that in general the courts tend to rely on the 1992 Land Law while Cadastral officials tend to look to both the 1989 Instruction No. 3 and the Land Law for guidance on land administration.

Instruction No. 3 directs policies for ownership of housing and occupational rights for agricultural land. It defines land under three general classifications: housing, cultivation and concession land. Housing land is limited to 2,000 square meters (1/5 ha.) per family. Cultivation land is limited to 5 hectares per family. However, interviews with officials from the central and provincial Cadastral Offices confirm that an individual can be granted possession rights to more than 5 ha. of land if the individual can show that he is actually using and managing the land. Concession land is defined as land greater than five hectares, allocated for the production of crops to “support the national economy.”

Under the system from 1989-1992, people who had occupied property for at least one year could apply for certificates for the right to occupy and use the land. The applicant would fill out a form identifying neighbors on all sides, which would be signed by the commune or district chief. A temporary receipt would then be issued for possession.

In 1990 the State of Cambodia created the Cadastral Department and passed the Land Law in 1992. The Cadastral Department was initially under the administration of the Ministry of Agriculture, but it is now directly under the Council of Ministers. A new application form was created for people to apply for new certificates of possession—not only for residential land but agricultural land as well.

According to the Land Law, land must be registered in the Cadastral office in order for an individual to acquire possession or ownership rights, to transfer ownership, or to convert temporary possession into ownership. However, although the Land Law enables individuals to apply for ownership (*gammaset*) of land, Ratanakiri Cadastral officials say that to date, only certificates of possession have been issued, because the Cadastral Department lacks the technical resources and finances to prepare proper Cadastral maps.

#### Some Aspects of the 1992 Land Law:

**Private and Communal Property:** Article 10 provides for land that is privately owned by a single individual, or several individuals. It also provides for communal property belonging to a group of people.

*Article 10: “Real estates and secured rights on those estates may sometimes be privately owned by a single individual, or several individuals each having a share of that one property or that one right which cannot be separated; sometimes it is a communal estate belonging to one group of people or to all of them...”*

Protections for the Rights of Private Property Owners: **Articles 3 and 20** provide some protections for the rights of private property owners, stating that private property cannot be violated except 1) when necessary for the public interest in cases provided by law and 2) the owner gets advance, just and proper compensation.

*Article 3: "... The violation of private property shall be forbidden except when required by the public interest in cases provided by the law. In this case the property owner has the right to receive in advance just and proper compensation."*

*Article 20: "Nobody shall be forced to transfer his/her ownership, if the forcing is not necessary for the public interest, and no proper and just indemnity is paid to the owner."*

The Temporary Possessor of a Piece of Land Can Become the Titled Owner: **Articles 74-75** provide for a person who is the temporary possessor of a piece of property becoming titled owner, if certain conditions are met, such as possessing the land in an undisputed manner for five consecutive years. Under temporary possession, ownership is not vested in any one person and a third party can claim or contest a landholder's rights. Titled ownership provides better protection for the owner's interest.

Deputy Cadastral Chief Seak Vanna has clarified that in practice, the five year provisional period applied between 1985 and 1988. Since 1989 there has been no time limit except for a one-month period for posting notice,

*Article 74: "...if any temporary possessor peacefully, honestly, publicly and without ambiguity has a piece of land for five consecutive years and the land is available with no record in the enrollment register and does not belong to anybody, the temporary possessor shall become a legitimate owner of that land."*

*Article 75: "The rights of temporary estate possession will become the rights of ownership after that estate has been recorded in the ownership register."*

Three-Year Abandonment Clause: **Article 76** states that any land that a temporary possessor has abandoned for three consecutive years shall become the private domain of the state. Cadastral officials say that the three-year abandonment rule does not apply to land to which a person has legal title/ ownership (*gammaset*).

Leaving Land Fallow Does not Constitute Abandonment: **Article 70** states that if land has been left fallow in order to regenerate its fertility, this does not constitute abandonment. Cadastral Deputy Chief Seak Vanna confirmed that the law does not specify any limit as to the number of years that land may be left fallow.<sup>30</sup> Central and provincial Cadastral officials have said that planting of perennial trees on fallow land helps to establish prior possession of fallow land.

*Article 70: "The act to keep a low-yield soil in order to make it fertilized cannot be considered as abandonment. This manner of [temporary possession] in such a condition during that period is considered continuous possession."*

Co-Ownership: **Articles 36-39** provide for co-ownership (*sahagammaset*, or *gammaset ruom knea*). This is a "joint tenancy that is indivisible," meaning the property cannot be divided up for each of the co-owners. Each owner is responsible for repair, maintenance and planting on the property. In addition, all co-owners must unanimously agree if the property is to be sold or its

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<sup>30</sup> Interview with Seak Vanna, February 10, 1997, Phnom Penh.

function changed. An exception to this consensus approach can be made if all of the co-owners have unanimously agreed to create a different procedure for making decisions.

While Deputy Cadastral Chief Seak Vanna says that in practice the Cadastral Department limits the number of co-owners to five owners, there is no provision in the land law limiting the number of people who may join together as co-owners. Certain aspects of traditional culture among some of the indigenous groups in Northeastern Cambodia—such as communally joining together to farm, build village *salas* or construct dams—may make it less complicated to have larger numbers of people in Ratanakiri joining together as co-owners; an entire village, for example.

### **Communal vs. Individual Title**

Meas Samay, Deputy Chief of the Provincial Land Titles Department, has outlined two possible models for indigenous people practicing shifting cultivation to obtain land title in Ratanakiri.

A). Individual Ownership Rights: Many indigenous families spend about 15 years rotating their agricultural plots among 4-5 places, spending 3-4 years in each. An individual family could obtain title to 4-5 plots of land (totaling no more than 5 ha.), within which they could rotate their agricultural plots. Problems may arise if people sells some of their plots, decreasing their ability to maintain food security, he said.

B). Communal Land Title: Members of a village could join to obtain co-ownership or communal title to village lands, within their customary boundaries, continuing to practice shifting cultivation within those boundaries. This model may be more suited to the traditions of the indigenous people but it could dampen development prospects, he said.<sup>31</sup>

While provision of individual land title is easier for the Land Titles Department to accept because it follows standard land titling procedures, providing land security for Ratanakiri's highland population would require the costly and time-consuming creation of thousands of cadastral maps and land title certificates. While provision of communal title is unprecedented at the village level, it may be more compatible with the highlanders' approach to customary resource allocation. Traditional village boundaries could be used, identified and quickly mapped, starting with participatory sketch mapping exercises with villagers. Cadastral maps could then be fine-tuned, using topographic maps, and aerial photographs.

More thorough surveys need to be carried out both about the possibilities for obtaining individual and communal title under the existing law, as well as the desires of different indigenous groups. Preliminary interviews in O Yadao with Jarai show that they would prefer individual title to their land, in part because they think if they apply for communal title, they will not be successful in obtaining rights to all of their village lands. "We want individual title," said one Jarai from Som Thom commune, O Yadao. "We only want communal title if we can get *all* of the village land." They don't think that is possible, however, because all of their land lies within the proposed 20,000 ha. oil palm concession.

The Jarai are also under the impression that it is more expensive to apply for individual title than communal. "We think of our land individually," explained one villager from Som Kaning village. "If we have money for title, we prefer individual title. If we don't have money, we'll do communal title."<sup>32</sup>

Tampuen in Yeak Laom commune of Banlung district say they prefer communal title: "We don't just want one patch per individual family because next year it might not be used. It's better to

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<sup>31</sup> Presentation by Meas Samay, Seminar on Security of Land Tenure for Ethnic Minorities in Ratanakiri, March 6, 1997, Banlung.

<sup>32</sup> Interviews with Jarai in Som Kaning village, February 22, 1997, O Yadao.

have one *plon* for the whole village.”<sup>33</sup> If individual plots are titled, one family might get mountainous land, another would get rice field, another would get good red soil which would eventually be depleted. So it makes more sense to obtain title for village lands as a whole, and then decide communally who is going to farm where and when.

Jarai, Tampuen and Kreung interviewed for this report say they worry that if individual title is parceled out for islands of cultivation land, surrounding forests will be open for speculators, concessions, and timber companies, leaving no collection forests, no bio-diversity, and no seeds for planting. “If we develop in the so-called development way—each family up to 5 ha.—all the land and forests will be gone,” said one villager. “If we develop in the traditional way, there will be forests and land remaining.”

At the March 1997 Seminar on Land Security for Ethnic Minorities in Ratanakiri, participants outlined some of the following advantages and disadvantages of the different types of land title.

**Figures 2-3: Advantages and Disadvantages of Individual and Communal Title**

<b>INDIVIDUAL TITLE</b>	
<b>Advantages</b>	<b>Disadvantages</b>
<ul style="list-style-type: none"> <li>• More “scientific,” easier to implement according to existing laws because it is more commonly used.</li> <li>• Identifies a clear location and land area for each family according to their title.</li> <li>• Provides ownership title which is inalienable.</li> <li>• Protection and maintenance of land is easier.</li> <li>• Land can’t be violated or interfered upon by others.</li> <li>• Individual title provides sufficient rights for an owner to manage and control their own plot of land by themselves.</li> <li>• Individual title encourages more efficient land use and better crop yield.</li> <li>• Easier to pass on land to descendants through inheritance.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires multiple titles and surveys within each village and is therefore time-consuming and costly.</li> <li>• If there are only patches of individually owned land companies can take what remains for monocropping, leaving no forests for collecting non-timber forest products or to preserve bio-diversity. Important seed sources for regeneration of the forest fallow would be lost.</li> <li>• Does not account for population increase within the family.</li> <li>• Some families may get good land while others would be left with poorer land.</li> <li>• Can negatively affect indigenous culture and traditions.</li> <li>• Difficulties can arise in development areas with companies taking land adjacent to villagers’ individual plots of land.</li> </ul>

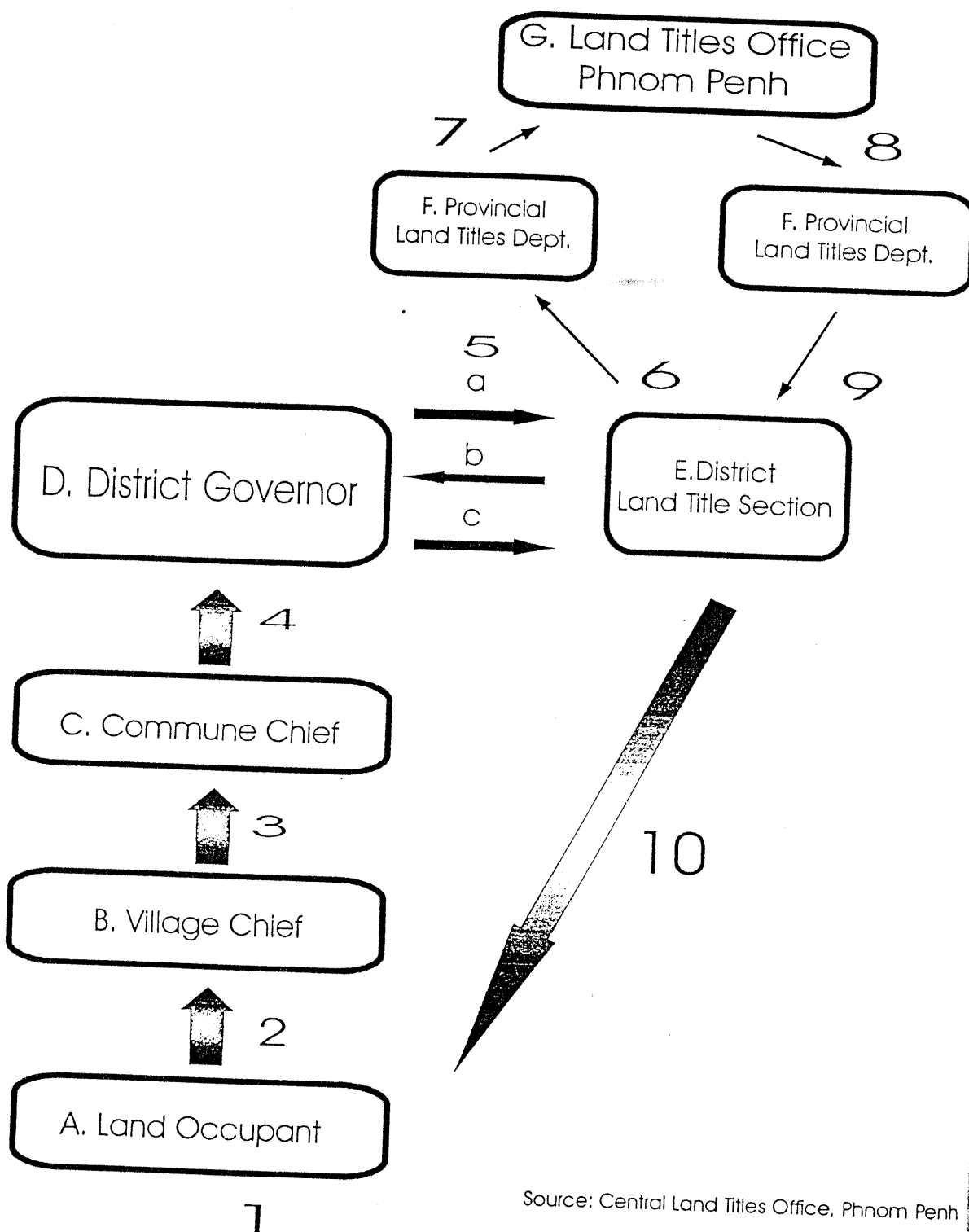
<sup>33</sup> Interview with Nuk Tuk, chief of Chree village, February 25, 1997, Banlung.

### COMMUNAL TITLE (Co-Ownership)

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>• Follows the customary land management approach of many of the indigenous groups: no effect on local traditions.</li> <li>• Because individual titles and maps are not required, rapid mapping is possible using aerial photographs, topographic maps, global positioning system and participatory sketch mapping techniques with villagers.</li> <li>• Individual plots for house, orchard or paddy – as well as land for agriculture and collection of forest products – can be allocated within the customary village boundaries.</li> <li>• Fewer internal conflicts within villages.</li> <li>• Easier to do shifting cultivation within communal boundaries. An individual is not relegated to one or two plots of land which may be rocky or lose its fertility.</li> <li>• Clear boundaries between villages means less inter-village conflict or encroachment from other villages.</li> <li>• Joint management means that the priorities of the government and the priorities of the community can both be negotiated into the management plan. There is flexibility for allocating access to land within the boundaries according to need.</li> <li>• Belts of forest are more likely to be left for soil protection, wildlife habitat and as a seed source for forest regeneration.</li> </ul>	<ul style="list-style-type: none"> <li>• Few precedents for implementing this system.</li> <li>• Communities must go through a complicated process of registering as an association and developing a charter and constitution.</li> <li>• May thwart development of large-scale industrial plantations.               <ul style="list-style-type: none"> <li>• This model has been perceived as one that is not modern or progressive and which inhibits socio-economic development of individual villages.</li> </ul> </li> <li>• Potential conflicts over inheritance; changes in ownership due to marriage, death, etc. This may cause future conflicts between village members.</li> <li>• May be difficult to provide good land for all families.</li> </ul>

**Figure 4: Steps in Obtaining Title to Agricultural Land**

# Steps in Obtaining Title to Agricultural Land



Source: Central Land Titles Office, Phnom Penh

## **Explanation of Flow Chart: Steps in Obtaining Title to Agricultural Land**

*(See Appendix F for examples of required forms.)*

### **1. A) Land Occupant:**

- Obtains Real Estate Right Identification Card (form #3).
- Fills out two Land Use Management Application forms (form #1).
- Meets with village chief to submit forms.

### **2. B) Village Chief:**

- Checks Form #1 and sends to Commune Chief.

### **3. C) Commune Chief:**

- Checks forms and sends to District Governor.

### **4. D) District Governor:**

- Sends forms to District Land Title Section (LTS) to check and verify.
- Fills out two Land Investigation Forms (form #2), and one Real Estate Right Identification Card (form #3).
- Makes a decision on the Land Use Management Application Form (form #2).

### **5. E) District Land Title Section (LTS) [not yet established in Ratanakiri]:**

- Makes public announcement about the pending application.
- Completes documents such as Land Use Management Application Forms (form #1), Land Investigation Forms (form #2), and the Real Estate Right Identification Card (form #3).
- Investigates and Measures Land.
- Sends Land Investigation Form (form #2) to District Governor for his opinion.
- District Governor Sends Land Investigation Form back to District LTS.
- District LTS checks and marks on Real Estate Right Identification Card (form #3) after the District Governor has made his decision on Land Investigation Form (form #2), which LTS then sends to the Provincial Land Title Department.

### **6. F) Provincial Land Title Department (LTD):**

- Checks and verifies Forms #1 and #2.
- Checks the Real Estate Identification Card (form #3).
- Obtains opinion of provincial governor and then sends to Central Land Title Office in Phnom Penh.

### **7. G) Central Land Title Office in Phnom Penh (LTO):**

- Checks and verifies all documents.
- Creates the Real Estate Extra Occupant List (form #4).
- Signs the Real Estate Right Identification Card (form #3).
- Registers the deed in the Real Estate Register Book (see example, #6).
- Makes copies of documentation such as forms #1 and 2 and keeps in LTD.
- Sends Documents #1, #2, #3, #4 back to the Provincial Land Title Department.

### **8. F) Provincial Land Title Department:**

- Registers the deed in the Real Estate Register Book (see example, #6).
- Keeps forms #1 and #2.
- Sends Forms #3 and #4 back to District LTS.

### **9. E) District LTS**

- Registers the deed in the Real Estate Register Book (see example, #6).
- Issues the Real Estate Right Identification Card (form #4) to the owner.

### **Some of the Documentation Required:**

Form #1: Land Use Management Application forms (form #1)

Form #2: Land Investigation Form

Form #3: Real Estate Right Identification Card

Form #4: Real Estate Extra Occupant List

Example, #6: Registration in the Real Estate Register Book

## Land Title Department's Internal Procedures

(Not necessarily specified in the law)

1. Titles are approved per adult, not family. An adult is someone 18 year and older.<sup>34</sup>
2. There is no limit on the number of places a person can apply for title: this depends on approval from local authorities, whether the land is available, and whether the applicant can show their ability to manage the land.<sup>35</sup>
3. Provincial and Central Land Title officials say that the department is not yet issuing certificates of ownership (*gammaset*) for agricultural land, but only the rights to use and occupy the land (*set gan gap*). This is because of the expense, technical expertise and equipment needed to accurately survey the land and prepare proper Cadastral maps required to issue ownership title. "If we want *gammaset*, we need Cadastral maps. Otherwise we can only grant possession rights," said Seak Vanna, Deputy Chief of Central Cadastral Office.<sup>36</sup>

Researcher Ray Russell has said that the differentiation between ownership and possession rights may be negligible: "In practice the distinction has little meaning since the rights of possession appear to be exclusive, tradable, enforceable, inheritable and enduring."<sup>37</sup> Others point out that ownership rights are inviolable and provide permanent and enduring protection and land rights. With ownership title, a person can abandon their land and not lose their rights to it. Under possession rights, the state can confiscate land that has been abandoned. In addition, the state could reclaim possession land that has been found to contain important mineral deposits or other resources. However those with possession rights can sell and transfer their land through inheritance, the same as those with ownership certificates.<sup>38</sup>

4. In terms of co-possession or co-ownership, the Land Titles Office recommends that this be limited to 5 members. If there are more than 5-10 members, an association with formal statutes should be formed. There is no limit to the amount of land an association can apply for. "It depends on the size of the association," said Seak Vanna. "If there are 100 members they can apply for 500 ha. or even more, depending on their ability to manage the land... The amount of land [approved by the Land Titles Office] also depends on the availability of land. In Ratanakiri land is available, so maybe they can apply for more than 5 ha."<sup>39</sup>

Seak Vanna acknowledged that the law does not limit the number of potential co-owners. "We keep the number small in case there's a problem, then we can distribute the land," he said.<sup>40</sup>

Thim Sinath recommended that individuals apply for possession rights (*set gan gap*) and then put their individual certificates together if they want communal rights. Co-ownership (*sahagammaset*) is primarily intended for situations such as a husband and wife going in together on a piece of property, he said.<sup>41</sup>

5. Cadastral department officials recommend that villagers plant perennial crops on fallow lands to establish residency and protect soil quality.<sup>42</sup>

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<sup>34</sup> Interview with Thim Sinath, January 9, 1997, Banlung.

<sup>35</sup> Thim Sinath, January 9, 1997.

<sup>36</sup> Interview with Seak Vanna, January 21, 1997, Phnom Penh.

<sup>37</sup> R.M. Russell, "Land Law in the Kingdom of Cambodia.

<sup>38</sup> Interview with Thim Sinath, February 25, 1997, Banlung.

<sup>39</sup> Interview with Seak Vanna, January 21, 1997, Phnom Penh.

<sup>40</sup> Interview with Seak Vanna, February 10, 1997, Phnom Penh.

<sup>41</sup> Interview with Thim Sinath, February 25, 1997, Banlung.

<sup>42</sup> Interview with Seak Vanna, January 21, 1997, Phnom Penh.

## FOREST CONSERVATION STRATEGIES

### Community Concessions and Forest Associations

The Ministries of Agriculture and Environment are currently preparing a draft Community Forestry Sub-decree, which would authorize individuals or associations to access and use forest lands by entering into contractual arrangements with the government. Community Forestry has already been introduced in several pilot programs in Cambodia, with the goal of insuring the long-term security and stability of the livelihood of rural and forest dwellers while protecting, conserving and rehabilitating the environment by increasing the area of forest cover.

Models from Takeo, Svay Rieng and Siem Reap show that local communities will take on local stewardship of local forest resources when they see long-term benefits for their livelihood. While the highlanders generally use secondary forest for swidden farming, they are dependent on the conservation of old-growth forests for hunting and collection of forest products such as rattan, vines, fruits, medicines, and fuelwood. In addition the forests protect watersheds, maintain soil fertility and stream flow, and moderate flooding.

While the main objective of community forestry in the lowlands is restoration of degraded forests, in the highlands the emphasis is on conservation, protection and subsistence use. Because old-growth forests are an essential part of the village economy, forest protection can be seen as part of economic development in Ratanakiri. Exploitation of old-growth forests, as in commercial timber extraction, can be seen as economic degradation in Ratanakiri.

One of the largest threats to the ability of the soil in Ratanakiri to regenerate is broadscale monoculture plantations. If these plantations die off due to disease or are closed down because of financial problems, there will be no regeneration unless corridors of diverse vegetation are maintained. Thus even if large-scale plantation investment does occur in Ratanakiri, community forestry could play a key role in maintaining islands of bio-diversity.

Forest conservation by highlanders is based on their indigenous knowledge of forest ecology which has been passed down for generations. Codification of existing traditional conservation schemes, and recognition of those schemes by government, would provide highlanders with legal access to clearly defined areas of forest land. This could be in the form of long-term or short-term leases between the villagers and the Ministry of Agriculture (usufruct, or rights to use and reside), with approval from commune, district and province. The leases could be renewable if certain agreed-upon standards of sustainable forest stewardship are met, as detailed in management plans submitted with the lease contract. Villagers would be allowed to gather forest products, while also guarding the forest themselves to protect it from illegal encroachers or loggers. Granting villagers the right to protect and use the forest in a low-intensity way is much more cost effective than fencing the forests or hiring guards. Sustainable timber harvest by villagers could be allowed, with set quotas for certain uses, such as construction of village communal halls, as long as there is consensus within the village and the timber is not sold on a large scale for profit outside the village.

Major conservation organizations such as WWF and IUCN, and the Ministry of Environment, increasingly recognize the importance of maintaining the bio-diversity of areas outside of governmentally-designated Protected Areas.<sup>43</sup> Particular consideration should be given to granting community leases to areas of forest adjacent to national parks and/or wildlife reserves. These unofficial conservation zones function as migration and dispersal corridors which reduce the fragmentation of natural habitat between primary Protected Areas. The belt of community managed forest around the reserve can serve as a buffer zone, effectively increasing plant and wildlife habitat and preserving watershed quality.

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<sup>43</sup> See Appendix B, Comments of H.E. Mok Mareth in regard to proposed oil palm concession, January, 1997.

Granting of association concessions for village-designated conservation forests represents the best possible cooperation between the economic interests of the local community, with their need for forest protection and extraction of forest products, and the larger national, regional and global interests of protecting bio-diversity. The management of the protected forests is vested in the village or village associations which have an immediate stake in the success or failure of the conservation effort.

#### **PART FOUR: SPECIFIC CASE STUDY IN POEY COMMUNE, O CHUM**

##### **Options for Conservation of Collection Forests and Titling of Agricultural Land**

A draft policy statement prepared by the Inter-Ministerial Committee on Highland's People's Development in January 1997 calls for recognition of customary land use rights for ethnic highlanders and demarcation of customary boundaries. In addition it mandates the active participation of ethnic highlanders in land use planning, land capacity analysis, and the preparation of environmental and social impact assessments of proposed development projects affecting highland communities. Finally, the draft statement calls for development projects to integrate the indigenous knowledge of the ethnic highlanders on forest use, land use, and agricultural practices.<sup>44</sup>

Along these lines, with the support of H.E. Governor Kep Chuktema and the Provincial Rural Development Committee, NTFP chose to examine the possibilities for launching a pilot project for protection of village forest conservation areas and titling of agricultural land in Poey Commune, O Chum district.

There were several reasons that Poey Commune was chosen as a study site. To date, the 10 villages in this northern commune in O Chum have come under relatively little speculative pressure, as opposed to La'ak, Ekapheap and Samaki communes to the south. This situation offered the study team an opportunity to examine options for land tenure and conservation among villages not under immediate threat of relocation or land confiscation. In addition, since 1996 several villages had expressed interest in trying to protect surrounding old growth forests, protect village lands from outside speculators, and map village cultivation areas.

Kralah village in Poey Commune was selected as a site to examine options for titling of cultivation land because it is the only village in the commune to farm both *chamkar* and paddy rice, enabling study of attitudes about tenure for different types of agricultural production. In addition, the village is very stable, having been located at the same site for generations (aside from forced relocation during the Khmer Rouge regime); thus customary practices are more intact than other areas. The village lies on the southern edge of the commune, near areas of encroachment by commercial industrial plantations in neighboring La'ak Commune, so we expect it will soon begin to feel the effects of speculation. However, Kralah is organized and motivated (CIDSE has chosen it as a community development site) and could serve as a good role model in the face of inevitable land pressure. One manifestation of the village's interest in managing and preserving its natural resources is its unofficial policy banning all sales of village land.

Poey Commune is located in a hilly watershed from which several important tributaries of the Sesan such as O Churr and O Tang originate. The commune population of 1,980 is primarily ethnic Kreung, who descend from two ancestral communities going back five generations to around the turn of the century. The villages of Kancheung, Koy, Tangaich, Satuk, Kres, Klong and Mas all descend from an elder named Ya Poey. The second community, consisting of the villages of Svay, Kmeng, Kralah, and La'ak (in La'ak commune) descend from Ya Ka Ol.

<sup>44</sup> "Interim Report, Inter-Ministerial committee for Highland People's Development in the Northeast of Cambodia," IMC Secretariat, January 31, 1997, p. 8-9.

### **Taboos and Traditional Beliefs in Poey Commune**

In addition to precautions taken in nearby spirit forests, such as O Batt, where travelers steer clear of the *tarra pang* tree, the Kreung in Kralah follow taboos about wild bamboo, pythons, and wild taro, as do many of the other villages in the commune. Each village has a fenced-in sacred banana grove in the middle of the village, usually near the communal hall (*sala*). No one is to break off any parts of the sacred banana grove or they will be fined or asked to organize a spiritual ceremony.

An elder from Kralah described the origins of some of the local taboos: "The villagers decided to respect and taboo the wild bamboo from the time of Ya Ka Ol, as they were fleeing from enemies and escaped by hiding in a grove of the wild bamboo. After that, a clump of bamboo sprouted in the middle of the village. Ya Ka Ol dreamed that his village and their descendants should henceforth protect the bamboo by not using it or destroying it.

"They also also respect and taboo the python because at that time when the enemies were trying to capture them, they cut all the forest so the villagers could not escape. Ya Ka Ol met a python and asked the python to swallow him in order to hide from the enemies. The python declined but asked the human to kill him because he no longer had any place to live since the forest had been destroyed. From that time they made a pact to protect and help each other. Kralah village also taboo wild taro—they cannot bring it into the village because it causes skin disease and fever."

Traditional beliefs are also important in the selection of village and agricultural sites. In choosing a place to cut *chamkar*, farmers first do reconnaissance for four or five days to find good forest. When they find a possible plot, they prepare their shoulder axes by wiping medicine on the blades. They begin by slashing a trial plot of approximately 15 by 15 meters. They then dig a small amount of topsoil (about 5 cm deep) and smell it to see if it is fertile. Afterwards they return home, eat lunch and sleep for several hours to determine by dream whether the site will be productive or not. There are three types of dreams: a good dream means the spirit gives permission for the plot to be farmed; a bad dream means the spirit is angry and will not sanction the cutting of the forest. No dream at all is ambiguous: the plot can be cultivated, or another site located. If they decide to cultivate there may be some risk.<sup>45</sup>

### **AGRICULTURAL LAND—Kralah Village**

Currently there are 269 residents in Kralah village. Most farm swidden agriculture, with 3 years of planting followed by 8-10 years fallow. They hold beliefs similar to other highland groups about not crossing over another village's *chamkar* to farm, and about obtaining permission from a former cultivator before starting to farm on someone's fallow field. It is permitted for residents of one village to farm within another village's cultivation boundaries, as long as they are not crossing over the *chamkars* of that village. This cannot be a permanent arrangement, however, and farmers should return to their own village lands after 2-3 years.

In addition to *chamkar*, for the last two years, 20 families (or about one third of the village) have also started farming paddy rice, at less than half a hectare per family. Even though not all of the villagers farm paddy yet, everyone worked together to rehabilitate a former Khmer Rouge dam to irrigate the paddy field, with the assistance of CIDSE. The goal is for all families to have the option of farming paddy, which they hope to expand each year. Eventually the village will distribute rice paddy plots to all families in the village; those who cleared paddy land earlier may give over a portion of their fields to the latecomers, who will compensate them for their labor in clearing the field.

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<sup>45</sup> Interview of Ly Kate by Sovanna, July 24, 1996, Kralah village.

## Border Issues

A study by NTFP, the East-West Center and IDRC in July 1996 mapped traditional village boundaries in Poey Commune, finding that regardless of the village population size, the average number of people per square kilometer was roughly 30. So, for example, Kralah, with a population of 269 extends over an area of 850 ha., while Kres, which is much smaller in population (150), only takes 502 ha. So while village cultivation areas are frequently determined by dreams, taboos, or other traditional beliefs, the result is an equitable distribution of agricultural land.

Demarcation of village cultivation boundaries is not seen as necessary unless agricultural land from one village encounters another village's area. Generally the limits of village agricultural land are defined in an unspoken manner by custom and taboo, rather than existing as formally recognized or demarcated borders rising out of official boundary settlements, unless there is a conflict.

"From the past there were no village cultivation boundaries," said Kralah chief Ka Tay Kuak. "Each village had its own area for doing *chamkar*. Only when the *chamkars* from one village expanded to meet with the *chamkars* from another village did we set the boundaries."

Villagers in Kralah, which has been in the same location for most of the last 50 years, have a clear sense of the extent of their village lands and the surrounding old-growth forests where they collect forest products. The neighboring village to the north, Kres, has moved around far more frequently—10 times since 1950. In 1992, Kres moved to its current site, a place where they had lived several decades ago, and where they still had fallow *chamkars*, thus entitling them to re-open swidden plots there. During the time that Kres had been away, Kralah villagers had extended their *chamkar* land into Kres' former territory, but withdrew southward when Kres moved into the area. Thus, according to the interpretation of Kralah villagers, Kres' current location is within Kralah's traditional boundaries. Kres' *chamkars* currently extend to the western side of O Tong stream while Kralah's extend to the eastern side of the same stream. Because of taboos against crossing other village's *chamkars*, a new, defacto boundary has been established at O Tong, without much formal negotiation or discussion between the two villages.

It appears that neither village is interested in confronting the problem head-on. "In the past Kres [land] was part of Kralah," said village chief Ka Tay Kuak. "Kralah was always patient about Kres encroaching. Now the population is increasing so we need to concentrate on the boundaries and not allow them to encroach. But if we go ask them to leave, it's not polite."

Kralah villagers say that the reason Kres has settled in its current location is because local authorities wanted them closer to the main road than their previous location. "If we take our land back, Kres will be very far from the authorities," one Kralah villager said. "We agree about Kres people settling where they are but we need to focus on where the boundary is exactly."

Kralah villagers say that they may give some of "their" *chamkar* land to Kres, but prohibit them from selling that land to any company. In addition, they would not want Kres to overly exploit dense forests in the vicinity that Kralah villagers depend on for their livelihood: "It is all right for Kres to have active and fallow *chamkar* in our area but we don't want them to encroach on our dense forest. We don't allow Kres to take forest products to sell, just for subsistence."

Kres villagers say that the current limits of their land are at O Tong, which is where their *chamkars* meet those of Kralah. "We don't cross the *chamkars* of another village," said a Kres resident. "So even if we don't [formally] allocate a boundary, it's there already."

The current land that Kres is farming is their ancestors' fallow *chamkar*. Kres residents descend from two lines of ancestors: one group was originally at the current site of Kres village under Ya Kachin and Ya Kaloy. Some of that group split off to settle further west in the 1940s at Pin Pin under Ya Pot, Ya Chalay and Ya Kantao.

Poey Commune Chief Cha Isen says does not see the boundary issue as a major problem and says that it can be settled by using the customary belief system. "I can facilitate the conflict between the two villages," he said. "Through the tradition and the taboo I can resolve this problem by reminding the people of the traditional beliefs. If one village violates the [land of] the other, the spirits will get upset and cause sickness or misfortune. I'm not the one who solves the problem—it's the elders who decide the ceremony or fines that are required. If we have a conflict, I can invite the elders of the two villages together to discuss it. I'm just the coordinator, the facilitator—the problem can be settled through the traditional boundaries, the traditional beliefs."<sup>46</sup>

### No Sales Policy

So far there has been very little speculative pressure on Kralah's cultivation land. Villagers say that after the 1993 elections, outsiders from Banlung attempted to claim land near Kralah by putting up plaques along the road to Taveng, but villagers tore the signs down and threw them away. Recently district officials have made inquiries in Poey Commune about "available" or "abandoned" land that could be used for a 1,000-ha. commercial agriculture enterprise, but no agreements have been made,

For generations Kralah has had a very clear internal policy banning the sale of village *chamkars*. Violators are to be fined the price of the land sale, with the proceeds going into a communal village fund, or banished outright from the village. The only condition under which one can sell land is if there is agreement from the village elders and the village committee—one person alone cannot make the decision to sell. The seller must pay a tax to the village communal fund and cannot clear any new lands for *chamkar*.

"From the time of our ancestors we never sold our land," said Kralah resident Ly Kate. "If we were to sell our land, we worry about where our grand-children will farm *chamkar* and raise their children in the future. Also if a piece of land is sold its difficult for our cattle—after the planting season we let them wander. We are afraid that the people who buy the land will shoot our buffaloes and cows because we let them range free and the cattle may eat their crops." Tuk, a woman interviewed as she worked in her *chamkar*, explained the attitude of most Kralah villagers: "If I sell my rice paddy for one *kapha* [wicker backpack] of money, I'd have money now but in the future where would my children live and how would they support themselves?"

Now that Kralah villagers have heard about adjacent land becoming valuable to outsiders, they are afraid that anyone who sells land in the village will create a precedent or a model for others to follow. Villagers may begin to plant their own cash crops such as cashews and fruit trees along the main road to thwart outside encroachment. While *chamkar* land is not to be sold, if someone has a ricefield plot but prefers to farm only *chamkar*, they can lend or even sell their land to someone else in the village to farm (but not outsiders).

### Interest in Land Title

To protect their ancestral land from speculators or companies, Kralah residents are interested in acquiring legal title to their land. They would like to apply for communal title to their village agricultural lands, and individual title for the individual rice plots. Communal title is more compatible with shifting agriculture land, they say, because the *chamkars* move around and it doesn't make sense to have title to a plot that in three years may be inactive. Ricefields, on the other hand, don't shift location, but are farmed ideally for a lifetime, with villagers having a clear sense of who owns each plot. One woman put it this way: "*Chamkar* we farm in a mobile way, but rice we plant in one place only. If we do communal title for paddy, if I leave someone can take it. If I do individual title, I can go to America even, and no one can take my land."

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<sup>46</sup> Interview with Poey Commune Chief Cha Isen, March 7, 1997, Banlung.

While only 20 families farm paddy right now, in the future perhaps each family would have title to an equal part of the total ricefield. Those who are farming paddy now may eventually give up part of their plot to others who take up paddy farming later, after receiving compensation for the work they put in clearing the field. Everyone already has a certain stake in the ricefield because the entire village works communally to rehabilitate and maintain the irrigation structures and watergates. "If one woman works on the dam but doesn't clear forest [to make paddy], later she can have riceland here," one villager explained. "But she must pay the others back for their labor in putting in the ricefield."

There is less detailed thinking about the possible effects of population growth on land title in the future. "In the future if we have 2,000 people we'll stay within the same boundaries, and not give one hectare to person 'A' and two hectares to 'B'," one villager said. "We'll take care of each other communally." Because of their tradition of settling conflicts internally with the guidance of village elders, villagers do not expect there to be new conflicts caused within the village by application for land title. "There probably will be no conflict in the future," said one man interviewed in his *chamkar*. "Now everyone cuts as they like around here and there's no conflict."

## CONSERVATION OF FOREST AREAS

### Forest Use in Upper Poey Commune

In the hills just east of the villages of Poey commune lie certain forest areas which have been used traditionally by some of the adjacent villages for the extraction of non-timber forest products (NTFPs). These areas are characterized by dense semi-evergreen forest, with patches of older secondary growth and bamboo forest. The forest structure, with mixed-age stands, a relatively open understory and occasional trees over two meters in diameter, suggests that the area has not been extensively cleared for over a hundred years, or may have never been cleared.

The products taken from these forests are used for medicine, food, construction, crafts and small-scale trade. Several of the more important products are the malva nut (*samrong* fruit, from the tree *Sterculia lychnophora*) which grows on Phnom Tapean and masts about every 7 years; *pa'or* bamboo (*Bambusa* sp.), which grows in dense patches near the floodplains of the local streams, particularly along O Kayak; and rattan (*pdao*, *Calamus* spp.). Forest products, although sometimes plentiful, are harvested carefully in accordance with traditions which have evolved to ensure a sustainable harvest in perpetuity. The diversity of products is remarkable, with well over 200 different uses for plant products from Phnom Tapean alone.<sup>47</sup> Most products are used in the villages or traded between villages. It should be noted, though, that some of the products, notably malva nuts, are sold outside the commune in a small-scale trade which brings in significant income to the villages involved (primarily Kancheung and Mas) but does not usually entail damage to the structure, diversity or productivity of the forest.

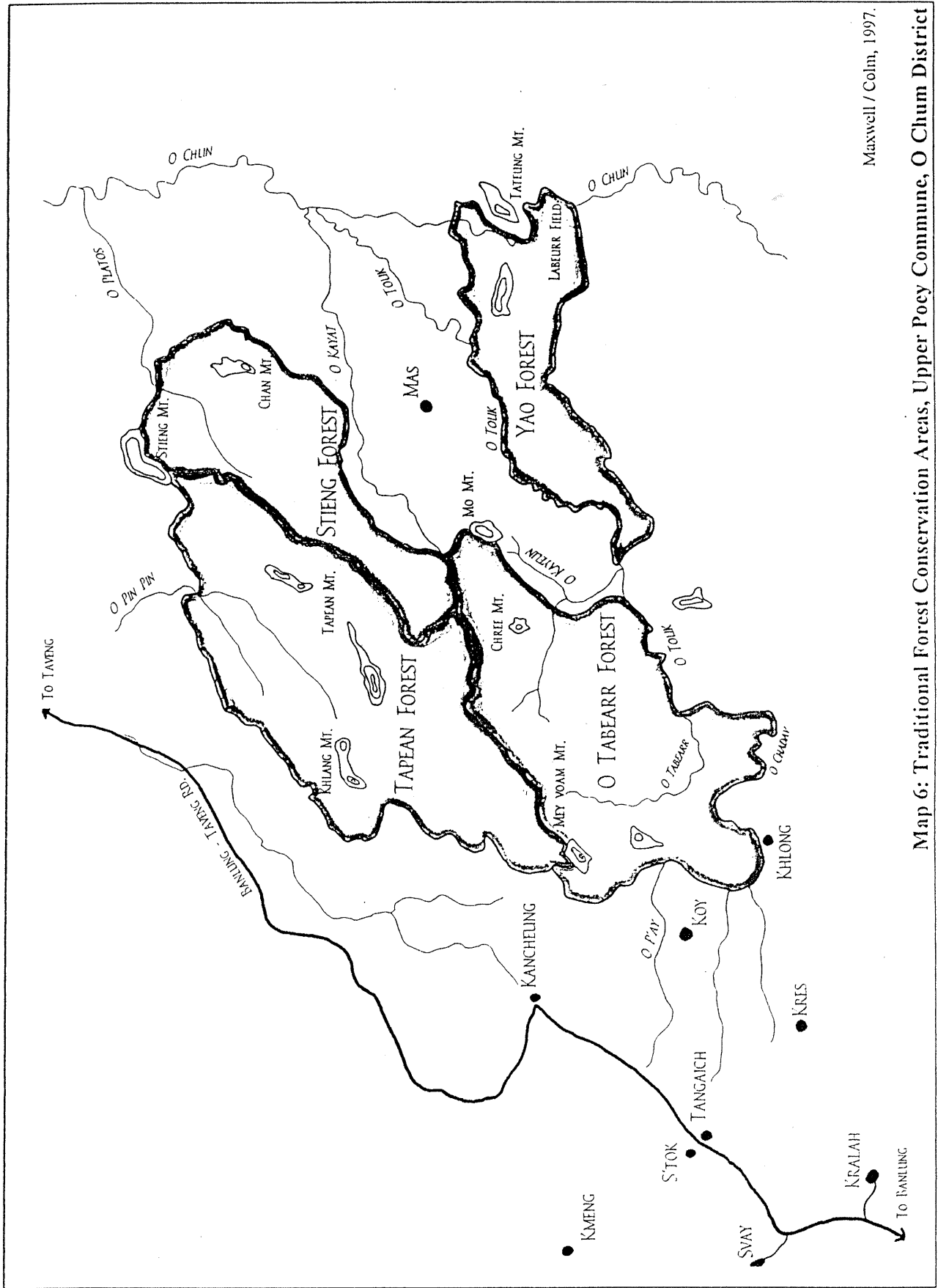
Seasonal rhythms determine when villagers will go into the forest to collect, hunt or fish. For example, each January and February residents of Koy village go to O Tabearr to collect bamboo for making knife handles and rattan. In March they may return to fish in the different streams within the forest, staying several days at a time. In June and July, villagers hunt in the forest, using traps or guns, also collecting rattan at the same time. In August and September they collect bamboo, rattan, and other forest products, and also hunt.<sup>48</sup>

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<sup>47</sup> For a detailed inventory of plants and uses see Camille Bann "An Economic Analysis of Tropical Forest Land Use," EEPSEA, 1996 and Heng Sokha, unpublished report for NTFP Project Ratanakiri, 1996. The EEPSEA study concluded that the value of non-timber forest products in Tapean Forest could be as high as US\$3,922 per hectare.

<sup>48</sup> See Heng Sokha, unpublished report for NTFP Project Ratanakiri, 1996.

**Map 6: Traditional Forest Conservation Areas, Upper Poey Commune, O Chum**



Maxwell / Colm, 1997.

Map 6: Traditional Forest Conservation Areas, Upper Poey Commune, O Chum District

### History and Process of the Forest Conservation Association in Upper Poey Commune

During the dry season of 1996 residents of several villages in northern Poey commune began to discuss the need to protect surrounding old-growth forests. In January 1997, residents of Koy village, who use O Tabarr forest east of the village, began to circulate the idea of forming an association to protect O Tabarr. Three other villages that also use O Tabarr forest—Tangaich, Kres, and Klong—were contacted. All three expressed interest in joining the association although Kres and Klong suggested that Mas village and its own forest area also be included. O Tabarr forest is of secondary importance to Mas, which along with Kancheung village, relies more heavily on Tapean forest, further to the north. It was thus decided to include Tapean, Yao<sup>49</sup> and Stieng forests, which are contiguous with O Tabarr forest, for a total of four forest sections amounting to a land area of 4,150 ha. So in the end, six villages decided to join together in an association to protect four contiguous sections of forest, from O Tabarr in the east to Stieng, Tapean and Yao.

**Figure 5: Conservation Forests, Poey Commune**

Forest	Area (ha.)	Village Use
O Tabarr	1,600	Koy, Tangaich, Kres, Klong
Yao (Phnyao)	850	Mas (also known as Chan)
Tapean	1,800	Kancheung, Mas
Stieng	900	Mas
<b>TOTAL</b>	<b>4,150</b>	<b>Koy, Tangaich, Kres, Klong, Mas, Kancheung</b>

### Upper Poey Commune Forest Regulations

At a meeting on February 1, 1997 at the Poey commune center, representatives of all six villages established a forest conservation association to protect the four sections of forest in northern Poey commune. A forest conservation committee was set up to establish rules for use of the forests and fines for offenders, oversee finances, and establish contact with higher level officials as well as villagers in regard to the association's conservation goals.

In subsequent meetings during the month of February, members discussed the possible structure and role of the association. It was decided that each village would have a four-member forestry committee. In addition, committees would be set up for each of the four sections of forest, with representation from villages that use that particular forest. The individual forest committees would then be represented on a commune-wide coordinating committee, which would oversee activities in all four sections of forest. Committee members would be responsible for different duties, such as 1) convening, chairing and preparing minutes of the meetings; 2) settling conflicts; 3) overseeing finances; or 4) mapping forest areas and disseminating forest regulations.

In addition, the representatives of the six villages agreed upon the following draft forest regulations:

1. Cutting the forest for *chamkar* or logging is completely prohibited. If any villager cuts trees they will be fined 120,000 riel or \$50 per ha. If outsiders cut trees they will be brought to court. Villagers will not be fined for cutting hollow or decayed trees. Fruit trees should not be cut, but collecting fallen fruit is permitted.

2. Rattan and bamboo can be collected, but villagers should only take what they need and be careful about not wasting either forest product. It should be forbidden to cut rattan and bamboo for sale to outside companies.<sup>50</sup>

<sup>49</sup> Yao Forest is also known as Phnyao Forest.

<sup>50</sup> This was discussed at the February 1 community forestry meeting but not included in the draft regulations agreed to at the February 19 meeting.

2. Hunting of rare and endangered species such as tigers and elephants is prohibited.
3. Burning the forest is prohibited. Those who unintentionally set fires will be fined 2,000 riel; those who intentionally burn the forest will be fined 50,000 riel.
4. Gem mining in the forest must be regulated. Villagers who mine for gems or minerals must pay 500 riel a day. Outsiders will be charged 2,000 riel/day.<sup>51</sup>

### **Study Recommendations for Land Title and Forest Protection in Poey Commune**

Kralah Village in Poey Commune is a good place for a mixed approach to be taken in regard to land title. Because villagers have indicated interest in obtaining individual title for their paddy land, this is one way to proceed. It is well known among the villagers who cleared and farmed a particular section of paddy, and because the field is not mobile, surveying and allocation of title will be fairly straight forward. The initial 20 families who are currently farming paddy could start off by applying for individual title to their paddy land.

As for swidden cultivation land, since villagers have allocated and used *chamkar* land in a communal manner for generations, co-ownership, or communal land title is recommended. Ideally the village would register as an association or apply as a village for communal title for all of the land within its ancestral boundaries, or 850 ha. If that is not possible, at least 560 ha. would be required for villagers' *chamkars*. Land use analysis from aerial photographs shows that there is approximately 138 ha. of active swidden land within Kralah's customary boundaries.<sup>52</sup> At roughly a 2:6 ratio of active to fallow swidden, this would make 420 ha. of fallow *chamkar* land, for a total of 558 ha. for swidden cultivation. The management plan for such communal lands could include "regeneration of secondary forest" or "conversion of fallow swidden plots to productive orchards."

If villagers opt for communal title for *all* of their agricultural lands—both *chamkar* and paddy—the minimal amount of total village cultivation land required would be at least 620 ha. (560 for *chamkar* plus at least another 60 for ricefield) Within the communally-titled land, villagers could allocate individual plots, with some people choosing to have permanent plots within the communal land.

If authorities do not approve for the village as a whole applying for co-ownership of 600 - 850 ha. by registering as an association, 120-170 separate adults within the village could apply for individual title on contiguous plots of land. Once title is obtained, the village could develop its own communal process for allocating land. Alternatively, the government could grant long-term user rights (preferably a perpetual concession) for Kralah village to use and manage communal lands as a swidden commons. Again, Kralah may have to register as a legal association with a charter and draw up a management plan and agreement with the local authorities.

With respect to forests that villagers rely on for non-timber forest products, or which hold a sacred value to villagers, it is recommended that the six villages in upper Poey Commune, or the commune, apply for a long-term concession with the Ministry of Agriculture for that particular forest area and submit a management plan. Most concessions with the Ministry of Agriculture are for 20, 50, or 99 years. The forest could be divided into areas for non-timber forest product collection and watershed protection, as well as an area for sustainable timber harvest, with limits on the size and number of trees cut each year.

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<sup>51</sup> For updated draft forest regulations from a workshop on May 29-30 in Poey Commune, see Appendix D.

<sup>52</sup> Analysis by Jefferson Fox, East West Center.

In sum, land security options for agricultural and forest land in Poey Commune include the following:

1. Individual title for paddy; communal title for *chamkar*.
2. Communal title for all or most of village agricultural lands, with villagers distributing individual plots of land within the communal boundaries.
3. Individual title used to apply for all or most of current village agricultural lands, which would then be distributed and managed communally through traditional decision-making processes.
4. Long term user / community concession rights for use of communal agricultural lands.
4. Long term user/ community concession rights (usufruct) for forest lands through a contractual arrangement between the government and local villages or the commune.

## **PART FIVE: CONCLUSIONS AND PROPOSALS FOR FUTURE ACTION**

The subsistence livelihoods and unique cultures of Ratanakiri's indigenous ethnic groups are intrinsically linked to the forests, rivers and agricultural lands they have lived off of for generations. Survival of the indigenous populations' cultures cannot take place unless their natural environment—as well as the peoples' right to make informed decision about how they will live and develop—are also preserved.

Protecting and maintaining the traditional swidden system is not just a form of extravagant land rights for ethnic minorities. It can be a key strategy for watershed protection and biodiversity conservation which are of benefit to the Cambodian nation as a whole. This is not to say that the traditional systems are flawless. However, trying to make people be more productive on less land and/or moving them from ancestral lands may well have disastrous environmental consequences.

The Provincial Rural Development Committee, other governmental counterparts and NGOs / INGOs working in Ratanakiri—as well as villagers in O Chum, Banlung, and O Yadao districts—were involved in the process of researching this feasibility study and organizing the provincial land security seminar. All delegates at the seminar agreed that secure land title must be provided as soon as possible to indigenous communities to avoid future conflicts and hardship in Ratanakiri. Many of the indigenous representatives favored the communal model of land title, while government delegates said the communal approach was less compatible with national goals of economic development and modernization.

However, the two approaches need not be mutually exclusive. Villagers and government could collaborate to develop cash crops on communal lands, helping to build an economic base for the village and generate income for land titling or community forestry associations. The following are suggestions as to how traditional communal approaches towards sustainable land stewardship can be integrated with governmental economic objectives:

### **I. Recommendations for integrating customary systems with development goals:**

1. Investment concessions for cash crops could still take place on communal village lands. However, investment proposals must not only be approved by the Cambodian Development Council at the national level, but should also be subject to Environmental and Social Impact Analysis and approval by local community consensus.
2. Villagers may be encouraged by NGOs or government extension services to grow cash crops on communal lands, such as coffee, cashews, or fruit trees. These could be a communal plantation or individual plots, or crops incorporated into swiddens and fallows.

3. Cash cropping (whether by villagers or investment companies) would be ideally characterized by a mixture of species rather than monoculture. A high proportion of perennial species could form a multi-storied structure to maximize productivity, creating a mosaic of plots and various types of crops rather than a continuous plantation of a single crop.

4. A contractual agreement would be necessary between a company and the village community for cash crop investment on communal land. The contract will need to specify the time frame and arrangements for rental or sharecropping.

5. Customary village boundaries could be recognized and mapped as official planning and zoning units, not necessarily as land titles. A land use plan and development could then be developed within the boundaries by participation of relevant government agencies and the villagers. In this way government planning criteria must be met (e.g. Environmental and Social Impact Assessments) and villagers' priorities and needs will be taken into account. These community-based development plans would be created in a participatory way at the village level and could include land capacity analysis, development zones, conservation zones and forest regeneration areas.

6. A village land use plan would conceivably include zoning of land for paddy, orchard (communal or individual), swidden (maintained as a mosaic of forest fallows), forest reserves, including spirit forests, and potential plantation areas. Plantation or cash crops, for instance, would be most suitable on land that is not useful for subsistence food production, for example due to invasion of weed species.

7. High priority for mapping traditional boundaries and developing village micro-land use plans should be given to areas that have already been granted for commercial concessions. In this case companies will need to be included in the process of negotiating the village management plan and rental / sharecropping agreements. This is in keeping with assurances from both Prime Ministers that all investment contracts will need to be reviewed for their impact on local people's traditions and livelihoods and their potential impacts on the environment.

## **II. Additional Action Proposals:**

### **1. Funding of Land Titles:**

Quantify the costs of providing land title to all highlanders living in Ratanakiri. Formulate a budget and identify possible sources of income to cover the land titling costs. Possibilities include concession companies contributing funds as mitigation measures for environmental impacts of development projects on local communities. Villagers themselves could develop community plantations to grow cash crops to raise money for a communal village fund, part of which could be used to offset land titling costs. In addition, international organizations such as CARERE could be approached for funding support, possibly in the form of a grant to the Provincial Rural Development Department.<sup>53</sup>

### **2. Outreach and Education:**

The Land Titles Department should hold ongoing workshops at the district, commune and village level to explain the Land Law and how to obtain title. Communities facing displacement by speculation or concessions could receive first priority for such workshops.

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<sup>53</sup> Roughly, at US \$20/title for a 5 ha. cadastral map, the cost to provide title for Ratanakiri's approximately 11,000 families would be at least \$220,000. The Ratanakiri Land Titles Department has said that actual costs for titling are closer to \$20/ha., not per title, which would bring the cost to more than \$1 million. In Siem Reap, the NGO CONCERN has assisted 460 vulnerable families to obtain title to residential land at the rate of US\$4/title, although that rate has now gone up to \$20/title. In Pursat, CARERE has provided \$30/month to district Cadastral offices, or a total of \$10,600 per district, to subsidize costs of equipment and salaries. Land titles are then provided free to applicants, at an average cost to CARERE of 7,000 riel per title.

### 3. Coordination:

Continue the work of the Land Security Seminar Organizing Committee by creating a provincial-level Land Security Coordinating Committee that involves different departments such as Land Titles, Planning, Environment, Agriculture, and the Court.

### 4. Legal Issues:

- Government, NGOs, international organizations, academic groups and highlanders themselves should conduct further study of indigenous customary practices, to assess the possible inclusion of portions of customary law within the Cambodian national legal system.
- Government should recognize, endorse and protect customary village boundaries.
- Government should protect and acknowledge rights to fallow *chamkar* lands, as stipulated in Article 70 of the Land Law.
- The idea of co-ownership / communal title (*sahagammaset*) and its particular application in Cambodia's northeastern provinces should be presented to M.P. Bou Thong, who could then introduce this as part of a session of the National Assembly addressing issues faced by indigenous communities.
- A Sub-decree should be drafted that recognizes customary village boundaries as a valid planning or zoning unit and the village as a legitimate entity that can apply for co-ownership title. If the village is recognized as a legitimate body that can apply for land title without having to go through the process of forming an association or corporation, this would streamline the process.
- Procedures for obtaining land title should be streamlined and simplified. A fee structure for land titling should be standardized and publicized.
- Clear-defined and accessible procedures should be established and publicized to resolve land claims and conflicts, with a neutral resource center set up where highlanders can register complaints and obtain information on pending concessions, development projects and land sales.
- Government should review laws and policies regarding ethnic minorities to ensure that they conform to United Nations conventions that Cambodia has signed, with particular attention to assessing ethnic minorities' rights to maintain their own culture and to acquire legal title to traditional lands.
- Measures should be taken to insure that laws and procedures for obtaining land title safeguard indigenous communities from manipulation, fraud or other abuses by individuals or corporations seeking to confiscate their land.<sup>54</sup>

### 5. Land Titling Issues in National Park Buffer Zone:

- Further study should be made of traditional land management and options for land tenure among highlanders (who are primarily Kavet), living in the buffer zone of Virachey National Park. Consideration should be given to ensuring continued access of the Kavet to forest resources while restricting over-exploitation or destruction of the forest.

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<sup>54</sup> Among the recommendations by Justice Kirby, Special Representative of the UN Secretary-General for Human Rights, after visiting Ratanakiri in January 1996: "The laws and procedures for securing effective land rights by minority ethnic communities and individuals should be radically simplified; appropriate reforms should guarantee community and/or individual rights to land which cannot be overridden by the economic interests of persons or companies pursuing developmental interests in or near to land traditionally used by ethnic minority communities. Nor should the interests of traditional users of land be overridden, including by members of their own communities, except by the freely expressed will of such communities, such will to be manifested through procedures involving full consultation and dialogue conducted in a transparent manner and according to law." "Report of the Special Representative of the Secretary-General for Human Rights in Cambodia," Commission on Human Rights, Fifty-second session, February 26, 1996, p. 22.

## 6. Community Forestry Issues:

- Government should recognize, endorse and protect customary rights of indigenous and rural communities to collect and use forest products.
- A Community Forestry Working Group should be created at the provincial level, incorporating different departments such as Agriculture, Environment and Planning, to screen and make preliminary recommendations on proposed provincial community forestry associations before sending the proposals to relevant ministries in Phnom Penh.
- Recommendations for the Community Forestry Sub-decree being drafted by the Ministries of Environment and Agriculture:
  - a. In terms of the promotion of community forestry in Northeastern Cambodia, there must be a clear distinction between secondary forests and fallow swiddens used for swidden agriculture and old-growth forests used for forest product collection and production. Community forest status should only apply to the latter.
  - b. Indigenous Communities who depend upon the forest for their livelihoods should be asked to participate and provide input into the process of formulating the Community Forestry Sub-decree.
  - c. The Sub-decree should include provisions to thwart its misuse by speculators who may register as a community and then cut down the trees for industrial plantations.
  - d. In Northeastern Cambodia, where the emphasis in community forestry is on conservation, protection and subsistence use of forests—rather than restoration of degraded lands as in the lowlands—fast-growing monoculture should not be included in the definition of a community forestry project.
  - e. The Sub-decree should provide a clear definition of who constitutes an eligible community. This should be defined as local people who are subsistence users living adjacent or in close proximity to the forest. Large-scale commercial selling of timber from community forests should be prohibited.

## Appendix A:

### *Summary Proceedings*

### **SEMINAR ON SECURITY OF LAND TENURE FOR ETHNIC MINORITIES IN RATANKIRI PROVINCE**

*Sponsored by the PRDC, Provincial Land Titles Department, CARERE, NTFP and IDRC  
Banlung, Ratanakiri, 6-7 March 1997*

The Seminar on Security of Land Tenure for Ethnic Minorities in Ratanakiri Province was opened by Ratanakiri Chief Provincial Administrator **Nap Bun Heng**. He outlined the goals of the seminar, which were to explore options for ethnic minorities who practice shifting cultivation to obtain legal title to lands that they have used and managed in a traditional manner for generations.

Speaking on behalf of the Inter-Ministerial Committee (IMC) on Highland People's Development, **El Djurado** from the Ministry of Social, Labor and Veteran Affairs discussed the IMC's draft policy statement for development in the Northeast. He highlighted policies that relate to land tenure, including the following:

*Environment 1.2: Recognition of customary land use rights for the ethnic highlanders and demarcation of customary boundaries;*

*Agriculture 2.2: Land capacity analysis and land use planning will be conducted with the participation of ethnic highlanders;*

*Culture 5.1: Indigenous knowledge of the ethnic highlanders on forest use, land use, agricultural practices, health care system will be studied, strengthened and integrated in development.*

"In order to have development and improve people's livelihood, the people need land title," El Djurado said. "We need to distribute the land clearly now, whether it's individual or communal title. If we don't plan clearly now, there will be conflicts in the future."

**Koy Sokha**, Deputy Chief of the Provincial Environment Department, discussed the environmental, social and economic impacts of development such as hydro-electric dams planned for the Sesan and Srepok rivers, land speculation occurring near Banlung provincial town, and large-scale industrial plantations. He discussed a case study of a 20,000 ha. oil palm plantation proposed for O Yadao district. There are more than 4,000 people living within the oil palm concession area but the company will be providing only 400 jobs.

"If the company takes the land, people may be forced out into forest land," Koy Sokha said. "Concessions need to consider the livelihood of the people — such as jobs and environmental impacts." The Oil Palm Concession could provide a model for future development planning if a proper Environmental Impact Assessment was carried out, he added.

**Heu Honn**, Deputy Chief of the Provincial Agricultural Department, said that the Agriculture Ministry's policy focuses on three main areas: 1) increasing agricultural productivity; 2) land capacity analysis and zoning; 3) increase in agricultural exports. Concessions can be better planned for if there is an overall zoning plan for the province, he said. According to Instruction No. 2 (15-1-96) in regard to provincial agriculture departments preparing zoning plans, agricultural land is divided into the following types: cropping land, industrial crop land (cash crops), forest concession land, factory construction land, tourism land, national park forest land, wildlife sanctuary and administrative land.

In order for the Agricultural Department to conserve agricultural land and improve agricultural productivity, it must enhance soil quality and help protect the environment. These goals can be furthered if local people learn how to use their agricultural land more effectively and gradually decrease swidden cultivation. Land titling can help stabilize the agricultural practices of the indigenous people, he added.

**Gordon Paterson**, Coordinator of the Non-Timber Forest Products Project (NTFP), discussed customary resource use in Ratanakiri, looking at examples from Kreung villages in O Chum district. Villagers have a clear sense of communal village boundaries for their agricultural land, defined by geographical characteristics such as streams or mountains. When villages do move, it tends to be within these traditional boundaries. Paterson described the traditional expertise of the indigenous people in sustainably managing their land. By shifting or rotating their agricultural plots, the soil is allowed to

rejuvenate, without reliance on chemical fertilizers. Land is distributed according to decisions by village elders and spiritual beliefs, but often the result is that the land is distributed equitably. For example, in Poey Commune, villages of different sizes contain the same average number of people per square kilometer.

"The question is how to respect the traditions and the law at the same time," Paterson said. "We're not advocating that a new land law be drawn up for Northeast Cambodia. But we need to look how existing laws can be implemented in such a way that they address the special needs of the indigenous people."

**Nou Ven**, representing the Central Land Title Department, said that in the past some of the indigenous minorities have lived on community land without relating to the Land Law. "They know how to share their land traditionally without land conflict," he said. "Land is communally owned according to their culture." If indigenous communities are interested in formally obtaining legal title, possession or ownership rights need to respect the Land Law.

Nou Ven outlined different legislation pertaining to land, including the Civil Code, Instruction No. 3 and the 1992 Land Law. He mentioned the need for good collaboration between the Court, Land Titles Department and the Ministries of Agriculture, Environment and Communication. He discussed complications relating to Family Law that affect land rights, such as the impact of population growth, marriage and inheritance. The Land Law includes provisions for ownership, possession, concessions, property easements and residential land. To receive ownership rights the person must occupy the land for 3-4 years and then register with the Cadastral Office, as long as the land does not belong to anyone else and has been acquired peacefully, honestly, publicly and without ambiguity.

**Meas Samay**, Deputy Chief of the Provincial Land Titles Department, presented two models for indigenous people practicing shifting cultivation to obtain land title in Ratanakiri:

A). Individual Ownership Rights: An individual family could obtain title to 3-4 plots of land, within which they could rotate their agricultural plots. They would have the right to sell their land. Problems may arise if people sells some of their plots, decreasing their ability to maintain food security.

B). Communal Land Title: Members of a village could join to obtain co-ownership title to village lands, within their customary boundaries, continuing to practice shifting cultivation within those boundaries. This model may be more suited to the traditions of the indigenous people but it could dampen development prospects.

Meas Samay mentioned the funding problem to finance the land titling process and development of Cadastral maps for villagers.

Ethnic Kreung representatives from Kralah and Svay villages in Poey Commune. O Chum District discussed their traditional way of communal land management.

"We choose land to make *chamkar* according to our traditions," said **Ka Tay Kuak**, chief of Kralah Village. "An elder may have a dream about a particular site, and then we make a ceremony. [Lowland] Khmers live according to trade and business, but we Kreung live off of the products of the land." Kuak said that villagers depend heavily on nearby forests, where they collect products such as rattan, bamboo, mushrooms, etc. Representatives from Svay and Kralah villages said they are starting to understand the importance of land title, and would like to have communal title to their *chamkar* land, within which they can rotate swidden plots. The problem is needing assistance from government and NGOs in understanding the process and finding funding. The O Chum representatives asked that NGOs, companies and local authorities make contact with villagers first before launching development plans. The village representatives said that they were very worried that companies would take their land for plantation development. They don't know where they will live if that happens and said that they would be even poorer than now.

Jarai representatives from Som Thom Commune in O Yadao (Som Thom Commune Chief Lan Yunh, Som Kaning Chief Village Sal Ponn, and VDC Chief Sal Yuch) discussed how the planned oil palm plantation will affect them. Most of the people living in the seven affected villages are not aware of the full extent of the plantation because they have not received specific information or maps about the concession. They think it involves only 300 meters along either side of Highway 19 when in fact the concession is for a total of 20,000 ha. **Sal Yuch**, president of the Village Development Committee in Som Kaning village presented the villagers' own development map. O Yadao villagers stressed that if

companies want to make concessions they need to make contact and clear agreements with local people first. "We can't forbid them from coming because they are rich and we are poor," said Sal Yuch. "But the companies must consider how we are going to live. There are 800 people in my village. So far only 3 have gotten jobs with the company. Meanwhile all of our land is within the plantation concession area." The O Yadao villagers stressed the importance not only of their chamkar and paddy land but nearby forests.

**Tong Krach**, Vice Chief of Yeak Laom Commune, speaking on behalf of Tampuen representatives to the Seminar, said that originally the Yeak Laom villages were located on the current site of Banlung but had to move when the provincial town was created. Currently they are facing encroachment from people from the provincial town seizing their land without making contact with villagers. Because of the encroachment, Yeak Laom villagers are feeling more and more crowded, and fear that the land pressures may affect the Yeak Laom Protected Area.

**Tin Sok Samedy** from the EIA Department of the Ministry of Environment made a presentation in which he discussed the Environmental Law and outlined the role of Environmental Impact Assessment (EIA) reports in analyzing and mitigating the impacts of development projects.

"Our society cannot live without development and we can't do development without remembering the EIA," Tin Sok Samedy said. "Both partners — development and environmental impact analysis — are necessary to guarantee future environmental quality as well as the success of development projects."

## **SEMINAR SMALL GROUP DISCUSSIONS**

### *I. Financial Issues: How can villagers, ministries and NGOs find innovative ways to help villagers finance land titling.*

#### Proposals:

- The PRDC or NGOs should provide assistance for poor people to obtain land title.
- The Cadastral Department should establish set fees and put limits on the fees for obtaining land title. What is the cost of titling communal, residential, paddy and chamkar land?
- Villagers could plant a communal plantation of industrial crops and use the proceeds to pay Land Title Department for titling fees, paying off loan over 3-5 years.
- NGOs or IOs could create credit programs for villagers, putting up funds for village loan titles up front, which villagers could pay off over time.

### *II. Concessions, Development and Land Tenure: How can Ratanakiri sustainably develop and attract investment and concessions while addressing land security issues and environmental and social impacts of development.*

#### Proposals:

- Investors and companies should not negatively affect people, their land, and the surrounding environment but should operate on a sustainable basis so that people can maintain their livelihood and traditions.
- Development should happen, but not too strongly or too quickly. Make sure that local people understand the pending projects and can cooperate. Minimize the impact on traditional culture and traditions.
- Investors and companies need to consult with villagers and local authorities before launching projects. Clear information and maps need to be provided to villagers living in or near proposed concession areas so they are aware of planned projects. If there is no consultation, conflicts will occur.
- Companies and concessions need to find jobs for local people or find other means to solve livelihood problems caused by development.
- Concessions that affect community land should compensate the people by paying villagers for using their land. Companies should provide resources for local people such as health care, education, communication, irrigation and education about environment, land titling and sustainable agriculture.
- Distribute the land and land titles to the people first. The remaining land can go to government and commercial concessions. Poey Commune asked for communal title within their current village boundaries, with remaining land available for concessions. Yeak Laom Commune asked that land be distributed individually by family, leaving whatever's left over for concessions. Som Thom Commune also

asked for individual title for housing, paddy and chamkar land. All three communes asked that community forest lands be protected in addition for hunting and collection of non-timber forest products.

***III. Information and Literacy Issues: How to address problems of lack of information about the land title application process and literacy issues affecting villagers' ability to obtain land title.***

Proposals:

- Explanation of forms used and how to complete them using a process of extension to villagers.
- Use non-formal education methods (outreach teachers) to explain the land titling process.
- The Provincial Cadastral Department should use extension methods to consult with district, commune and village chiefs, as well as village committees. Cadastral Department should visit villages to educate villagers and prepare maps.
- Before any decision is made with respect to approving land ownership requests, the provincial Cadastral Department, District and Commune must obtain feedback from villagers who will be affected. Furthermore, any decision with respect to land ownership requests must follow set rules and procedures (I.e. Complete proper forms, etc.)

***IV. Individual and Communal Title: Advantages and disadvantages of communal and individual title, looking specifically at how the process of seeking land title may affect the culture and traditions of the indigenous populations.***

**A. Individual Title:**

Advantages:

- More "scientific," easier to implement according to existing laws because it is more commonly used.
- Identifies a clear location and land area for each family according to their title.
- Provides ownership title which is inalienable.
- Protection and maintenance of land is easier.
- Land can't be violated or interfered upon by others.
- Individual title provides sufficient rights for an owner to manage and control their own plot of land by themselves.
- Individual title encourages more efficient land use and better crop yield.
- Easier to pass on land to descendants through inheritance.

Disadvantages:

- Requires multiple titles and surveys within each village and is therefore time-consuming and costly.
- If there are only patches of individually owned land companies can take what remains for monocropping, leaving no forests for collecting non-timber forest products or to preserve bio-diversity. Important seed sources for regeneration of the forest fallow would be lost.
- Does not account for population increase within the family.
- Some families may get good land while others would be left with poorer land.
- Can negatively affect indigenous culture and traditions.
- Difficulties can arise in development areas with companies taking land adjacent to villagers' individual plots of land

**B. Communal Title:**

Advantages:

- Follows the customary land management approach of many of the indigenous groups: no effect on local traditions.
- Because individual titles and maps are not required, rapid mapping is possible using aerial photographs, topographic maps, global positioning system and participatory sketch mapping techniques with villagers.
- Individual plots for house, orchard or paddy – as well as land for agriculture and collection of forest products – can be allocated within the customary village boundaries.
- Fewer internal conflicts within villages.
- Easier to do shifting cultivation within communal boundaries. An individual is not relegated to one or two plots of land which may be rocky or lose its fertility.

- Clear boundaries between villages means less inter-village conflict or encroachment from other villages.
- Joint management means that the priorities of the government and the priorities of the community can both be negotiated into the management plan. There is flexibility for allocating access to land within the boundaries according to need.
- Belts of forest are more likely to be left for soil protection, wildlife habitat and as a seed source for forest regeneration.

Disadvantages:

- Few precedents for implementing this system.
- Communities must go through a complicated process of registering as an association and developing a charter and constitution.
- May thwart development of large-scale industrial plantations.
  - This model has been perceived as one that is not modern or progressive and which inhibits socio-economic development of individual villages.
- Potential conflicts over inheritance; changes in ownership due to marriage, death, etc. This may cause future conflicts between village members.
- May be difficult to provide good land for all families.

## Appendix B:

### Meeting with Ministry of Environment in Regard to Ratanakiri Oil Palm Report January 17, 1997

#### Present:

Ministry of Environment: H.E. Mok Mareth, Minister of Environment,  
Kesaro Loeung, staff, Dept. of Nature Protection and Conservation.

Non-Timber Forest Products Project: Sara Colm, Research Consultant.

#### Summary:

On January 17, 1997, H.E. Mok Mareth met with NTFP Research Consultant Sara Colm to discuss NTFP's report entitled "*Effects of Oil Palm Development on Indigenous Communities.*"

Sara Colm summarized the contents of NTFP's research, conducted with the approval of Ratanakiri Governor H.E. Kep Chuktema, in regard to a proposed 20,000 ha. oil palm plantation in O Yadao district. Sara Colm explained that Ratanakiri provincial authorities and the NTFP would appreciate input from relevant ministries in Phnom Penh on the research findings. The goal is to publish an updated version of the report as a case study to be used in the development of guidelines for progressive investment and environmental protection processes.

During the discussion H.E. Mok Mareth support the idea of publishing the oil palm report and said that MOE would propose that the companies conduct an Environmental Impact Assessment on the proposed concession. In addition H.E. Mok Mareth made the following comments:

"I do not oppose the plantation because it does not involve a large area. The question is how to sustain the livelihood of the people and stop their encroachment into the forest when they are displaced by the plantation. If the plantation only provides villagers ½ ha. plots of land, the people will not be able to sustain their livelihood and will increase their slash and burn activities. The 400 jobs provided by the company are not enough to sustain the population living in the proposed plantation area.

"Conceivably, the company could set aside a portion of the concession area for local villagers. For example, within Men Sarun's 5,000 ha., they could perhaps leave 1,000 ha. for local villagers to provide a place for them to live and to farm *chamkar* and rice paddy. We need to calculate the amount of land the people need for their livelihood.

"The ethnic minorities don't understand the laws about the forest. They are now selling their land to the companies and then encroaching further into the forest themselves to make *chamkars*.

"We cannot say no to concessions. But at the CIDSE Seminar [held in August 1995] Samdech Hun Sen made clear the policy objectives in regard to development of plantations, small handicraft production and eco-tourism in the Northeast and the need to protect the minorities' culture and tradition.

"The question is how to sustain the culture and tradition of the ethnic minorities. We cannot force them to live along the highways the way the people in the lowlands live because this is the highland area. We must propose to the company to consider the villagers living in the proposed concession area. We have examples of rubber plantations that have been developed with villages located in the middle of the plantation area. Surrounding the rubber plantation are the rice fields. We need to think of these kinds of solutions.

"What is most destructive to the environment is monoculture—if there is no alternative intercepted area, we cannot create a better environment. Within plantation areas we must preserve natural forests along streams and at the foot of the mountains. This not only helps the plantations by creating a better environment but helps prevent flooding and erosion and maintain bio-diversity, for example by preserving insects that can be useful in cross breeding and integrated pest management.

"Thus an EIA needs to consider the following:

- Conserve natural forests along the streams and at the foot of the mountains;
- Respect the bio-diversity theory by preserving certain natural corridors;
- Avoid a monoculture approach and instead create areas of intercepted natural forest;

--Consider the local villagers. Keep them in their villages even if they are working for the plantation. If there are not enough jobs with the plantation for the local people, reserve some areas within the concession area for villagers' *chamkars*.

"We now have the National Environmental Law. We will recommend that an EIA be conducted on this proposal. I need to direct the EIA Department [of MOE] -- perhaps Departments A, B, D and E— to get involved in this. We will set up a mixed task force to go to O Yadao. I support NTFP's study and I will cooperate with you. I support the publication of the Oil Palm report. It is important that the NGOs are researching social impacts of proposed concessions and investments.

"We need to look at ways to promote village participation in the protection of their own culture and minimum livelihood. The question is how can they sustain their livelihood, tradition and culture. We need to look at social, biological and physical impacts."

**Appendix C: Proceedings of NTFP Community Forestry Workshop,  
O Chum District, Ratanakiri, May 29-30, 1997**

1. All participants in the workshop  
2. The community forestry committee  
3. The community forestry committee

4. The community forestry committee

## WORKSHOP ON COMMUNITY FORESTRY PROTECTION IN POEY COMMUNE

O Chum District, Ratanakiri, Cambodia: 29-30 May 1997

*In co-operation with the Non Timber Forest Products (NTFP) Project six villages in Poey (Chan) Commune, O Chum District have been negotiating a community forestry agreement. This workshop was held in order to inform the Ratanakiri Provincial authorities and NGO's of the issues involved, to outline the process so far, and to discuss the steps to be taken next.*

Two representatives from a number of communities were invited to participate:

- All villages in Poey Commune
- Each commune in O Chum District
- The villages of Kam, La Ak, Kalay 1,2,3, Tong Nonglea and Tong Krabu

A number of District and Provincial government staff were invited, as well as one representative from each NGO working in Ratanakiri province. The seminar was organized by NTFP Project in collaboration with the Provincial Agriculture and Forestry Departments, the Provincial Environment Department and the Chief of O Chum District.

The seminar was held at the District Headquarters meeting hall in O Chum District and the key objectives of the meeting were to:

- Summarize the results of the program since July 1996
- Analyze the draft regulations
- Analyze the draft map of the community forest boundary
- Discuss the necessary process to present the agreement to the Provincial and National authorities to seek official recognition for the regulations

**OPENING**

Mr. Bien Twern, Head of O Chum District opened the workshop and welcomed all the participants.

**INTRODUCTION TO NTFP PROJECT**

Mrs. Dam Chanti, staff of the Provincial Rural Development Department, and NTFP counterpart introduced the work of NTFP Project:

NTFP Project has three objectives:

- To work on natural resource issues in Ratanakiri province
- To support the work of communities and the Provincial authorities
- To enable communities to use their resources well

Funding is from OXFAM UK&I and NOVIB, but NTFP functions as an autonomous organization in Ratanakiri Province. NTFP was established in July 1996, but was preceded by a feasibility research study from December 1995 to May 1996.

**CUSTOMARY MANAGEMENT OF LANDS AND FORESTS**

Mr. Gordon Paterson, coordinator of NTFP Project discussed the history of the Kreung people in O Chum and their traditional use of the forest:

Although there are a number of people groups in Ratanakiri, (Kreung, Kavet, Kachok, Tampuen, Jorai, Phnong and Brao) in reality their cultures are not so different from each other. In terms of their management and use of lands and forests there are three systems of importance to the subsistence economy of ethnic minority people:

- (a) The forest is cut and cleared to make gardens (chamkars) for swidden agriculture.
- (b) Fish and crabs are caught in ponds, streams and rivers.
- (c) Non-timber forest products such as fruit, bamboo and rattan are collected from the forest.

Together these activities serve as an integrated system which provides food, shelter and medicine for local communities. If the forest is not used in a balanced way (e.g. if swidden plots and water resources are used but products are not collected from the forest) the local people will not be able to meet their subsistence needs.

In March, NTFP Project held a workshop in Ban Lung on land in Ratanakiri when we discussed (a) land distribution and the future of swidden agriculture. In May, a seminar was held in Ta Veng on (b) water resources. Today we would like to speak about (c) those forests which are used for collecting products.

In July 1996, NTFP Project (in collaboration with IDRC and East-West Centre) tried to establish the village boundaries in Poey commune by speaking to the old people in the villages of Kres, Krola, Koy and Ta Ngach. The limits of hills, old and new swidden plots and large and small forests were established by field mapping and by using aerial photographs. It is clear that the villagers only cut swidden plots inside their own village boundaries and there is a strong respect for other people's lands.

'Collection forests' are usually located far from the village and are therefore not used for swidden agriculture. Villagers go in small groups to collect bamboo, fruits or hunt wildlife for three or four days at a time as it may take all day to walk there. The local communities realize that if they cut these forests they will no longer have access to such a wide range of materials. They are committed to preserving these resources for their grandchildren and for future generations. Although a forest may be used by a number of villages, resource-use boundaries do not exist. Dialogue with the old people indicated that all villages in Poey commune spring from two ancestral communities - "Poey" and "Ka Ol" which are on the present day sites of Kancheung and Krola villages respectively. Although some villages have moved extensively, such as Mas and Kres, all villages are within the range of their ancestral lands.

#### **PROCESS TO DEVELOP COMMUNITY FORESTRY AGREEMENT**

Mr. Heng Sokka, Provincial Environment staff and NTFP counterpart described the approach that was taken in developing the community forestry agreement:

It is the hope of NTFP Project that by presenting the findings of our work in Poey commune and by providing a forum for discussion, the participants can assist the villagers and the project staff in meeting three objectives:

- To clarify if the approach taken so far is the correct procedure.
- To receive feedback on the content and wording of the draft regulations for forest protection.
- To explore and agree upon a process for formalizing the agreement.

Poey commune was chosen as a pilot project as a) it is a watershed and degradation of this site would directly influence lowland areas, b) it is the source of many streams which are tributaries of the Sesan River (a key tributary of the Mekong), and c) there is much good forest left and as yet, external pressures such as timber extraction and land speculation have had little impact on people's livelihoods and access to resources.

This process has served as a pilot project as there are no other examples to follow in Ratanakiri Province. To date, we have established the relationship between the local people and the forest, the boundaries of the community forest and a number of draft regulations for forest protection. Research indicated that since the elections in 1993, the elders of Koy village had established a number of rules for resource use in O Taberr Forest:

- The forest cannot be cleared (e.g. for swidden)
- The forest cannot be burned
- Large trees cannot be cut

Although these rules were developed by the local community it was unclear whether outsiders would also recognize the agreement so the villagers were interested to formalize the regulations. NTFP staff visited neighboring villages in Poey commune to try to establish which villages use the same forest, which other forests they use, and if they too have developed rules for resource-use. Discussions indicated that Ta Ngach, Kres, and Klung villages also collect forest products in O Taberr. NTFP staff approached each community to ask if they were interested in developing a common set of regulations and establishing a common forest area. Throughout this process,

NTFP Project worked closely with government staff from the District and the Province.

Twelve points for protection were eventually agreed on for O Taberr and O Phnyao forests. It later emerged that Mas and Kancheung villages share communal forest lands so they also joined the group and the forests of Stieng and Phnom Tapieng were added to the protected area; a total of 5000 hectares. In February 1997 three representatives from each of the six villages met together and decided to form an association (two other villages joined as observers) and they acknowledged the importance of having a common 'management plan'. The focus of this meeting was to develop the regulations, discuss the management structure of the association, and to define the boundaries of the community forest. After this meeting, NTFP staff visited each community to encourage all the villagers to give their opinions - are the regulations fair? - do they trust their representatives?

#### **USE AND BENEFITS OF THE FOREST**

Community representatives from Kancheung, Koy and Kres outlined the importance of the forest to their livelihoods:

##### **KANCHEUNG VILLAGE:**

- Hunting is a big problem and the Lao people from Veun Sai always used to come to collect animals. We must work together with other villages and with the authorities if we want the hunting to stop.
- Burning the forest is very destructive and prevents rattan from regenerating.
- In the past malva nut trees have been cut for their fruit.

##### **KOY VILLAGE**

- Rattan, wood and bamboo are used as building materials for our houses.
- Every village can collect from the forest as it does not belong to us, but to the spirits - how can we stop them?
- It is a good idea to organize a community forestry association as we cannot protect the forest by ourselves. We need recognition from the higher authorities that hunting, burning and cutting are forbidden in the protected forest area.

## KRES

- We have managed this forest for a long time and we would like to preserve the forest resources for the livelihood of future generations.

### **ROLE AND STRUCTURE OF AGREEMENT**

Mr. Cha Isen, Head of Poey commune and coordinator of the association spoke about the nature of the community forestry agreement. He explained that in the past the local people took their resources for granted and didn't think that trees were valuable. Now they understand the monetary value of timber (and other resources) to outsiders.

The following regulations have been agreed upon by all six villages:

#### Draft Regulations

- 1) The forest cannot be burned.
- 2) Large trees and fruit trees cannot be cut.
- 3) If villagers want to cut the trees they should speak to the community.
- 4) If people break these rules they will be fined according to the consideration of the community.
- 5) Rattan and bamboo can be used for their subsistence use but cannot be cut for commercial purposes.
- 6) If people clear land for swidden agriculture they must pay a fine of US\$50 per hectare, and abandon the plot.
- 7) If outsiders cut swidden plots they will be fined US\$50 per hectare and they will be sent to the local judge/courts.
- 8) For each large tree that is cut, a fine of 5000 - 200,000 Riel must be paid. Old or decayed wood can be used.
- 9) If villagers want to mine gems they must pay the community 500 Riel per day and outsiders must pay 2000 Riel. Machines cannot be used.
- 10) Large wildlife cannot be hunted and the National laws on protected species must be followed.
- 11) If villagers burn the forest they must pay a fine of 5000 Riel, but outsiders must pay 50,000 Riel.
- 12) All villagers have the right to forbid and to report violations of these rules.

## **DEFINING FOREST BOUNDARIES**

Mr. Chea Phalla, NTFP Project staff described the methodology used to establish the boundaries of the community forest:

A meeting was held in Koy and the older villagers mapped the limit of O Taberr Forest according to landmarks such as streams and forests. Afterwards, one representative from O Chum District and three villagers joined some NTFP staff in walking around the border of the forest in order to map its size and location. When the map was completed, people from all the villages which use the forest were asked to comment if this was an accurate representation or not. This research resulted in a number of new areas being added to the protected forest. When these discussions were complete, another inter-village meeting was held to finalize the draft regulations and boundaries. A number of villages have primary responsibilities for monitoring and inspecting certain forests: a) Kancheung village – Phnom Tapieng forest, b) Koy village – O Taberr forest, c) Mas village – Stieng forest and d) Kres village – O Phnyao forest. This does not mean that the other villages (or outsiders) cannot use these forests.

## **PLENARY SESSION**

The following questions were raised by the participants:

- Does a fine of US\$50 mean anything to villagers who have little money; would something like a pig be more appropriate as people can understand the loss more easily?
- Should the rules be referred to as laws as they are not recognized at the national level; would 'regulation' be a better word?
- Rule 2 states that big trees cannot be cut; does this mean that all the small and medium trees can be cleared?
- Rule 3 states that if outsiders want to cut timber they must ask the association. Is it possible to get permission or is this banned?
- What is the reason for selecting the Commune chief as the Head of the community forestry association?
- If people are taken to the judge for cutting swidden plots, how will the judge know which law has been broken if these rules are not legally recognized at the District, Provincial and National level?

Although the participants recognized that this agreement is still an internal draft, they stressed that the content and the wording must be carefully considered.

### **FORESTRY LAW**

Mr. Ten Visotta From the Provincial Forestry Department gave a presentation on forestry laws relating to community forestry, in particular to the regulations in Poey commune:

Although the following draft regulations are already an integral part of the community forestry law, the fines vary significantly as the rates were established in 1989:

- Rule 6: If people clear land for swidden agriculture they must pay a fine and abandon the plot.
- Rule 9: If villagers or outsiders want to mine gems they must pay a fine and machines cannot be used.
- Rule 10: large wildlife cannot be hunted and the National laws on protected species must be followed.
- Rule 11: If villagers or outsiders burn the forest they must pay a fine (NB. the law also states offenders can be put in prison).

### **ENVIRONMENT LAW**

Mr. Hor Hong, Deputy Head of the Provincial Environment Department stated that natural resource protection and community forestry can be interpreted widely from the 1996 Ministry of Environment law. However, he stressed the importance of community forestry if we want to pass on our resources to future generations. He urged the participants to use this opportunity to exchange ideas, finalize the draft and later, to submit it to the Ratanakiri Provincial authorities.

### **LAND TITLES LAW**

Mr. Meas Samay, Deputy Head of the Provincial Land Titles (Cadastral) Department gave an exposition on the relevant aspects of land law to the Poey Commune community agreement. A new ruling on development in North-East Cambodia is currently being finalized in Phnom Penh by the Inter-ministerial Committee on Highland People (IMC). He suggested that the community forestry association wait for these guidelines before presenting their agreement to the Provincial or National authorities. He urged the communities and NTFP Project to clarify the forest boundary by carrying out more field mapping. He stressed the importance of all parties being involved in this demarcation process, including representatives from government, communities, and NGO's, as well as external investors.

#### **INTERNATIONAL RIGHTS LAW**

Mrs. Chan Monie of the Highland People's Program (UNDP) highlighted a number of international agreements on the rights of indigenous people:

- The customs and culture of indigenous people should be protected.
- Governments must recognize people's ownership rights over their traditional lands.

She described how five workshops have already been held in Phnom Penh regarding the IMC ruling and how the law is in the process of being prepared for submitting to the National Assembly and the Council of Ministers. The Highland Development Policy will include guidelines on agriculture, environment, land, education, health, culture and infrastructure. She urged the association to continue developing their draft and to make any necessary amendments when the law is finalized.

#### **SMALL GROUPS SESSION**

Two questions were put to five discussion groups. Each group was comprised of a combination of community, district and provincial representatives:

Q1. Evaluate the wording and content of the draft regulations for forest protection. Amendments should take the Government laws and the needs of the community into account.

Q2. Evaluate the process used for defining the boundary of the community forest. How can this be improved? Which organizations should be involved in this process?

**FEEDBACK FROM GROUPS**

**GROUP 1.**

- Rules 1,3,4,5,9,11,12: No amendments
- Rule 2: No trees can be cut (large or small)
- Rule 6: The fine is 15,000 Riel
- Rule 7: The fine is 20,000 Riel and the offenders should be sent to the local authorities, not the court
- Rule 8: The fine is 40,000 Riel for villagers and 120,000 for outsiders
- Rule 10: Hunting is banned according to the government regulations
- Rule 13 (new): Villagers can collect all NTFP's

Q2. A number of departments must be involved in demarcating the forest, including Land Titles, Environment, Agriculture. Representatives from communities and local authorities (village, commune and district) should also be included.

**GROUP 2.**

- Rules 1,3,4,8,9,11,12: No amendments
- Rule 2: No trees can be cut (large or small)
- Rule 5: NTFP's like rattan and bamboo can be used for subsistence needs but only sold outside the village for community use (e.g. building a meeting hall)
- Rule 6: The fine is 13,000 Riel per hectare and the plot must be abandoned
- Rule 7: The fine is 13,000 Riel per hectare and the offenders should be sent to the local authorities
- Rule 10: Large wildlife cannot be hunted but small animals can

**GROUP 3.**

- Rules 11 & 12: No amendments
- Rules 1 & 2: The forest cannot be burned, cut or destroyed
- Rule 3: If villagers want to cut the trees they should speak to the community committee.
- Rule 4: If people break these rules they will be fined according to the community regulations

- Rule 5: Rattan and bamboo can be used for subsistence use but not destroyed. It may not be used for commercial purposes
- Rules 6 & 7: People cannot clear land for swidden agriculture
- Rule 8: The fine for cutting a tree is according to the size of the tree; from 2000 – 100,000 Riel
- Rule 9: Gems must not be exploited inside the protected area

Q2. The Provincial Rural Development Committee (PRDC) should be consulted when the boundaries are mapped. Important departments include; Agriculture, Education, Environment, Women's Affairs, Rural Development and Land Titles. District, commune and village leaders should also play a part.

#### GROUP 4.

The group has compressed the draft regulations into 7 new ones:

- Rule 1: Those responsible for the community forestry committee should be chosen from the village
- Rule 2: The fine for burning the forest is 12,000 Riel per hectare
- Rule 3: Community forest resources can be used according to the rules of the association
- Rule 4: Those who cut swidden plots must pay a fine of 120,000 per hectare
- Rule 5: As original Rule 9
- Rule 6: As original Rule 10
- Rule 7: As original Rule 12

Q2. The present map is still a draft and there may be conflicts if the boundary is not clear. Local authorities at the village, district, province and commune level should be consulted. Government departments like Environment and Agriculture should be involved in this process.

#### GROUP 5.

- Rule 1,2,7,8,9,10,11,12: No amendments
- Rule 3: If people want to cut the trees they should talk with the community even if they have permission from the Government
- Rule 4: If people break these rules they will be fined according to the community forestry committee
- Rule 5: Rattan and bamboo can be used for their subsistence use only, not for commercial purposes
- Rule 6: If people cut swidden plots they will be fined one buffalo and must abandon the plot

- Rule 13 (new rule): If the Royal government wishes to change our draft we agree to change our regulations

Q2. In addition to the association, the local authorities (village, commune, district and province) must be involved in demarcating the boundaries of the community forest. The Provincial Environment, Agriculture and Land Departments must be consulted. The old people of each community should play a part. We can also use the local militia.

#### SUMMARY

- Can bamboo and rattan be sold?
- Can outsiders mine gems?
- Is all hunting banned, or just the protected species listed by the Government?
- Can smaller trees be cut?
- Is all fishing banned, or just destructive methods such as poisons?

#### COMMUNITY FORESTRY IN TAKEO

Mr. Gordon Paterson, coordinator of NTFP Project outlined the process of reaching a community forestry agreement in Takeo Province, Southern Cambodia:

The problem in Takeo is that there is almost no forest left. The forest has all been cut and it cannot grow back as the secondary scrub is intensively used for firewood collection and much has been cleared for defacto agriculture plots. If people in Ratanakiri need materials to build a house they can cut wood nearby in the forest but the people in Takeo must buy all their timber.

In 1992, a proposal to develop a community forest was developed. Key objectives were to enable villagers to use the forests in the traditional way such as collecting non-timber forest products like fruit and medicines and to protect the degraded forest so it can regenerate. Agroforestry or woodlots can be developed on the land that has been cleared for agriculture. Eventually the people may be able to harvest high quality building timbers as well as fruits, medicines and firewood. Although this is a long term commitment (the forest may take 60 years to regenerate), the resources can also

be passed on to future generations. A community forest agreement has now been developed by twelve villages for an area of 500 hectares at "Prey Ler" forest in Tramkak District. Although the land is managed by the local people it is owned by the State. The people are responsible for following the community regulations concerning use and management of the forest. If not, the Forestry Department may annul their rights to use and manage the forest if they don't respond to a warning after three years.

The regulations in Takeo were drafted by technical counterparts from the Forestry Department in conjunction with the Village Development Committees (VDC's). In retrospect there was not enough participation in reviewing the draft by all members of the communities which later caused some misunderstanding. We can learn from this experience and that is why NTFP project is holding this workshop. In April 1994 a team of five walked around the boundary in order to demarcate the size and location of the 'forest'. This team was comprised of Central and Provincial Forestry staff, Provincial Land Titles (who were hired to do the boundary survey), District and Commune staff and VDC members.

Once the boundary and regulations were finalized, it took almost one year for the agreement to be formally recognized. This process was slow as there was no model to follow in Cambodia. The map and application had to be endorsed by the District authorities the Provincial Agriculture Department, the Provincial Land Titles Department (as the forest was adjacent to agriculture and residential areas) and the Provincial Governor before going to the Forestry Department and finally to the Ministry of Agriculture. At the end of 1994, the Department of Forestry signed an agreement for the community to manage the forest for 60 years. This was endorsed by the Ministry of Agriculture. The Forestry Department will initially provide supervision and if the villagers have success in implementing their regulations, the contract will be renewed at the end of 60 years. The Forestry Department must compensate the Association if they ever need to take the land back.

In order to sign the 60 year agreement with the Forestry Department, it was necessary for the twelve villages to form an Association, "The Tramkak District Inter-Village Community Forestry Association" which was an amalgamation of the twelve VDC's. This was done in August 1994 and the regulations and by-

laws of the Association were approved at the Provincial Level by the Governor.

An open discussion followed whereby the participants compared the Takeo community forest with the provisional agreement for Poey commune:

- In Takeo there is no forest, it needs to regenerate. In Poey Commune in Ratanakiri the forest needs to be protected.
- The Takeo agreement was submitted to the Ministry of Agriculture. There was no Ministry of Environment at this time, but this is the Ministry which is interested (and responsible for) designating and managing protected areas in Cambodia.
- The process was slow in Takeo as the association was formed late. If there is a committee it is easier to consult everyone.

#### **NEXT STEPS**

The participants made a decision to form a working group to meet on June 6<sup>th</sup> in order to synthesize the results of the group discussions into one draft for the Provincial Rural Development Committee.

#### **CLOSING SPEECH BY VICE GOVERNOR**

Mr. Sa Pim, Third Vice Governor of Ratanakiri Province thanked the participants for joining the workshop. He praised the workshop for discussing the draft regulations and the process for demarcating the boundaries of the community forest:

It is important that community regulations coordinate with the existing government laws. For example, if the government prohibits hunting and fishing, the local people may find it difficult to meet their subsistence needs. Although laws regarding natural resource protection have existed for some time, outsiders and villagers alike have continued to cut the forest and collect forest products as they please. If local people want to assist with the protection of forest resources, the government should support and encourage them. Communities should explain their problems, objectives and intentions. They may submit proposals to all levels of government in order for their plans to be formalized.

<b>List of Participants</b>
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Community Participants:

- |   |    |
|---|----|
| 1. Representatives from all villages in Poey commune<br>(10 villages x 2 people) ie village head and one elder or person who knows the forest geography well.                   | 20 |
| 2. Two representatives from each of the following villages:<br>Kam and La Ak, La Ak commune.<br>Kalay 1,2 and 3, Kalay commune.<br>Tong Nonglea and Tong Krabu, O Chum commune. | 14 |
| 3. Two representatives from each commune in O Chum District<br>(Head and Deputy Head of commune)  | 1  |

District Participants:

- |   |   |
|---|---|
| 4. Head and Deputy Head of O Chum District  | 2 |
| 5. Head of District Offices:<br>Agriculture, Women's Affairs, Education, Planning, Culture,<br>Health, Military, Police, Economic Police. | 9 |
| 6. O Chum District Elder/ Advisor   |   |

Provincial Participants:

- |  |   |
|--|---|
| 7. Governor of Ratanakiri Province                     | 1 |
| 8. Deputy Governors                                    | 2 |
| 9. Provincial cabinet                                  | 1 |
| 10. Provincial Inspection Department                   | 1 |
| 11. Head or Representative of Land Titles Department   | 1 |
| 12. Head or representative of Phumibal Office          | 1 |
| 13. Head and Deputy of Agriculture Department          | 2 |
| 14. Head of Environment Department                     | 1 |
| 15. Head or representative of:- Forestry/Agronomy Dept | 1 |
| 16. Rural Development Dept.                            | 1 |
| 17. Women's Affairs                                    | 1 |
| 18. Education  | 1 |
| 19. Planning   | 1 |
| 20. Information  | 1 |

International Organizations:

- |   |   |
|---|---|
| 21. NTFP Project staff and resource people  | 8 |
| 22. One representative from each of the following organizations:<br>CIDSE, CARERE, IDRC, HU, ADHOC, World Concern, OSB, VSO | 8 |

Draft Schedule – Day 1
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7.30-8.0	Registration of participants
8.00-8.15	Opening remarks by Head of O Chum District
8.15-8.30	Goals of the workshop and short description of NTFP Project activities in Ratanakiri by NTFP counterpart (Rural Development Department)
8.30-8.50	History of Kreung people in Poey commune and customary management of land and forest by NTFP Project co-ordinator.
8.50-9.10	Process of recognizing community forest and forest protection regulations at the local level by NTFP counterpart (Environment Department)
9.10-9.20	Process of defining boundaries and mapping of community forest area by NTFP Project staff.
9.20-9.40	COFFEE BREAK
9.40-10.10	History of use and benefits of the forest by three community representatives: <ul style="list-style-type: none"> <li>- Kancheung village, Phnom Tapieng Forest</li> <li>- Koy village, O Taberr Forest</li> <li>- Kres village, O Phnyao Forest</li> </ul>
10.10-10.30	Role, responsibilities and structure of the local community agreement for forest protection and presentation of draft regulations by the Head of Poey commune.
10.30-11.0	Plenary questions and answers about the community and draft regulations for the protection of the forest: panel including Head of Poey commune, community representatives, NTFP Project staff.
11.00-11.15	Comments by Deputy Head of Provincial Cabinet to close the morning session
11.15-1.30	LUNCH BREAK
1.30-1.50	Exposition of relevant points from Forestry law by staff of Forestry Department.
1.50-2.10	Exposition of relevant points from Environment law and International agreements by Head of Provincial Environment Department.
2.10-2.20	Exposition of relevant points from Land law by Deputy Head of Provincial Land Titles Department.
2.20-2.30	Mention of International agreements on Indigenous people's rights by HPP Project staff (UNDP).
2.20-4.10	Small discussion groups with COFFEE BREAK in between.

Draft Schedule – Day 2

7.30-8.0	Report-back from discussion groups
8.00-8.20	Summary of main points from discussion groups NTFP counterpart (Provincial Environment).
8.20-8.40	NTFP project coordinator explains the process for developing a Community Forestry Agreement in Takeo Province.
8.40-9.30	Discussion to agree on process for endorsing Community Forestry Management.
9.30-9.50	COFFEE BREAK
9.50-10.10	Future options from community forestry and community natural resources management by Deputy Head of Provincial Environment Department.
10.10-10.40	Open time for comments from participants, especially community representatives.
10.40-11.0	Closing speech by Head of O Chum District.

**Appendix D: Draft Regulations for Protecting the Forest by the Community  
at Poey Commune, O Chum District, Ratanakiri, 29-30 May, 1997**

*[Faint, illegible text, likely bleed-through from the reverse side of the page]*

## Draft Regulations for Protecting the Forest by the Community at Poey Commune, O Chum District, Ratanakiri.

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*A two day workshop organized by NTFP Project was initially held at O Chum District Headquarters on 29-30 May 1997. Small discussion groups comprised of community representatives and government officials analyzed twelve draft regulations developed by the Community Association. They discussed how the community could gain recognition for their internal agreement and developed a process for demarcating the boundary of the community forest. The conclusion of this workshop was that a working group should be formed in order to finalize the draft regulations. A meeting of this group was held on June 6<sup>th</sup> 1997 at the Provincial Rural Development Centre, Ban Lung.*

The purpose of the working group meeting was to agree on a final set of regulations which the Community in Poey Commune can use to protect the forest. The next step will be to send this draft as a proposal for the consideration of the Provincial Rural Development Committee (PRDC) Afterwards, they can forward the regulations to the higher authorities.

The participants of the working group included:

- 2 representatives from each of the 6 villages in Poey Commune
- 2 representatives from Poey Commune Committee
- The Head of O Chum District
- The Head of Agriculture and Police from O Chum District
- Representatives from various provincial Departments: Agriculture, Environment, Women's Affairs, Rural Development, and Land Titles
- A representative from the provincial Cabinet
- NTFP staff and resource people

## DRAFT REGULATIONS FOR FOREST PROTECTION IN POEY COMMUNE, O CHUM DISTRICT

*\* As discussed and modified by the working group meeting*

1. Burning the forest is forbidden.
2. All kinds of timber exploitation is forbidden in the protected forest by both outsiders and insiders. Members of the Association can cut trees for building in the village and commune but they must first get permission from the relevant authorities and they cannot sell to outsiders.
3. Whoever wants to cut trees to use in the family has to contact with the Association at the village level.
4. Villagers who violate these regulations will be fined according to the consideration of the Association.
5. Bamboo, rattan and vines can be used by insiders and outsiders according to their needs but they cannot destroy them or sell outside the community. Outsiders must ask the permission of the Association first.
6. Villagers who clear swidden in the protected forest will be fined 130,000 Riel per hectare and must discontinue use of that field (so the forest can regenerate). If there is a second offence they will be fined three times this amount.
7. Outsiders who clear gardens in the protected forest will be fined 200,000 Riel per hectare and must discontinue use of the plot. After this they will be dealt with by the relevant authorities.
8. There is a fine of 40,000 Riel for cutting a large tree. Outsiders must pay three times this amount.
9. All forms of mineral exploitation are forbidden inside the protected forest unless there is a license from the Association and the local authorities.
10. Fisheries using firearms, dragnet, electric shocks, poisons (such as “Smelly Rock” and “Treang Fruits”) are forbidden inside the community forest. Traditional fishing gears can be used. Fishing is forbidden in the breeding season.

11. Hunting:

- a) It is forbidden to hunt elephant, tiger, bear and gaur.
- b) It is forbidden to use all kinds of firearms in the protected forest.
- c) The Association requests exemption from the Government for traditional hunting gears to be allowed for catching small animals to use for family subsistence, not for sale outside.
- d) If any large prohibited animals are killed by accident in traps or pits, the carcass must be delivered to the Association who must report to the relevant authorities.

12. Whoever intentionally (or carelessly) burns the protected forest must be fined 50,000 Riel per hectare of damaged forest.

13. All citizens have the right to apprehend and report to the Association Committee if anyone is found to violate the regulations and internal by-laws.

14. All NTFP's that are not specifically mentioned in the above clauses can be used and sold by insiders and outsiders if:

- a) The internal regulations of the Association are followed
- b) The government laws are respected
- c) The forest is not destroyed

15. All of the association's income will be under the governance and management of the Association as described in the internal by-laws of the Association.

16. These regulations can only be changed if necessary and by written agreement between the Association and the Government.

## EXPLANATORY NOTES

The title uses the word “regulations” as this has been agreed between the Community and the relevant Government authorities. In addition to these regulations, the Community will also have their internal by-laws.

### Clause 2

All commercial exploitation of the forest is forbidden. The Community is responsible to control this from the inside and to report to the relevant authorities offenders from the outside. The Government is responsible for apprehending offenders from the outside who are beyond the capacity of the Community to control.

\* It is suggested that if the government fails to act after an offense from the outside has been reported to the relevant authority that the Government must compensate the Community for the value of all resources lost or destroyed from the forest as a result of the offence.

### Clause 10

Poisons such as “Smelly Rock” and “Treang Fruits” are very damaging and are strictly forbidden. The Community requests that the Government will tolerate the use of traditional vines “Chalee” and “Svert” which do not damage fisheries.

### Clause 11

As small animals from the forest are an important source of protein for villagers, the Government is requested to tolerate hunting of these animals but using only traditional gears. Poisoned arrows “Chor Chok” are among the traditional gears which villagers use for hunting small animals. The Association cannot guarantee that they can control 100% of the sales of animal products (such as pangolin skins and slow loris) from the forest. They request that the Government help by attempting to catch and fine the traders who buy these animal parts.

### Clause 12

This applies to those who intentionally burn the forest as well as those who cause the forest to be burned by accident or through carelessness.

### Clause 13

Law here should read “regulations” and internal by-laws.

Clause 14

The Association will include in the internal by-laws a schedule of non timber forest products and detailed regulations regarding their harvest and sale, including the method of harvest and a limit on amounts that can be sold. These will be designed to avoid over-exploitation of any product which could cause declining availability.

Not 'destroying the forest' refers not only to the trees but also to plant and animal biodiversity.

Clause 16

Changes to the regulations must be provided in writing with the endorsing signature / thumbprint of the authorized representative of the Community and of the relevant Government authority who has signed the contract with the Community. Evidence must be shown that all the members of the Community have been consulted and the required majority are in consensus with the changes.

## REQUESTS OF THE WORKING GROUP TO THE PROVINCIAL RURAL DEVELOPMENT COMMITTEE (PRDC)

1. Please examine and consider the forest protection regulations (16 points, as above) and make recommendations to the appropriate Central Authorities.
2. Please create a working group to verify the boundaries of the community forest. Included in the working group should be representatives of the Community, relevant District and Provincial Departments as well as representatives of other villages, communes and districts that may be affected.
3. Please consider the recommendations from the working group to:

Enter into contract between the Cambodian Government and the Community Association to jointly manage the use and protection of the Community Forest Area for a period of 99 years. The first 3 years are a trial period to test the willingness and ability of the Community. The contract should be automatically extendable beyond the 99 years so long as the Community are fulfilling their responsibilities at a reasonable level comensurate with their ability.

Part of the contract should state the responsibility of the Government and local authorities to control outsiders who may illegally exploit the forest outside of the ability of the Community to control.

This contract should be made with whatever Government agency is responsible at the central level.

**Appendix E: Proposal of Amended Version  
of Inter-Ministerial Committee's  
Highland People's Development Policy Document**

Draft

19 June, 1997

Proposed General Policy for Highland People Development

1) The Kingdom of Cambodia is a multi-ethnic society and forms a unity of cultural, ethnic and linguistic diversity.

The Royal Government of Cambodia shall promote the understanding and the respect of cultural diversity and ensure that the highland peoples can practice their own cultures while being integrated into Cambodian national community.

2) All highland peoples have right to practice their own cultures and adhere to their religions and traditions. Leaders, elders, women as well as men will be involved in the process of development and cultural preservation. Local organisations or associations established by highland peoples to conserve and strengthen their cultures and to manage their natural resources are strongly encouraged by the government.

Indigenous knowledge of the highland peoples, their cultural traditions and practices, customary land use rights as well as local history, languages and religions are to be studied, respected and strengthened, if and when appropriate, so as to ensure culturally sustainable development.

3) The livelihood for the highland peoples shall be improved through the development of the culturally appropriate health care system, education, sustainable agriculture and adequate infrastructure, based on the needs and priorities put forward by themselves.

The Royal Government, together with the provincial government and highland peoples' communities, shall establish procedures to recognise and protect customary land use rights of the highland peoples and to avoid further unlawful deforestation. The highland people must be consulted and agreement must be made to ensure that benefits will be shared by the highland peoples.

4) Sustainable and equitable human development is the means to reach the objective of the well-being of the highland peoples, the preservation of their culture, languages and religions and the conservation of their natural environment. Appropriate measures are to be studied and taken in order to reach these goals.

5) The Royal Government of Cambodia shall encourage and ensure the participation of the highland peoples, both men and women, in all levels of policy formation, development planning and decision-making directly affecting their lives, communities and interests.

Provincial Rural Development Committee structure and traditional local organisations shall be enabled to determine development priorities and implement development activities, as well as managing their natural resources and environment.

## POLICY GUIDELINES FOR HIGHLAND PEOPLES DEVELOPMENT

### 1. Environment

1.1 The natural environment and natural resources of the highland peoples shall be protected by law and regulations.

1.2 The highland peoples have managed and taken responsibility for their natural environment for many centuries. The highland peoples shall participate in the use, management and the conservation of these resources. Exchange of information and knowledge on resource management among the highland peoples, government officials and (or) non-government development agencies shall be strongly encouraged.

1.3 Further deforestation shall be put to stop by limiting any logging activities to designated areas. Designated areas shall be areas not covered by primary forest and which are not inhabited or used by the highland peoples. Logging in designated areas will require the use of sustainable forest management, including replanting, using of sustainable species and ensuring minimal impact on the biological diversity of the area.

1.4 The strengthening and improvement of fallow systems as practised by the highland peoples will be recognised and supported by the government. Measures will be taken by the government to promote sustainable agriculture.

1.5 No development project may proceed unless the affected community groups are duly notified and informed, and have had the opportunity to participate in preceding consultations, and unless Environmental and Social Impact Assessment Studies have been conducted with the full participation of the affected Highland Communities.

1.6 The integration of environment education into the school curriculum will be encouraged, in a language and manner that can be understood by the Highland Peoples.

1.7 Research on bio-diversity in the highlands and on sustainable forest use by ethnic highlanders, in which the Highland Peoples themselves should be involved, is strongly encouraged.

### 2 Land

2.1 The government respects the special relationship the highland peoples have with their customary lands and the territories neighbouring their communal lands, from which they use the natural resources.

2.2 The government will ensure that the lands the highland peoples traditionally occupy and have used over the past centuries are identified and protected. This includes the lands to which they have had access but which are not exclusively used by them.

2.3 The customary land use rights and the demarcation of customary village boundaries shall be recognised, endorsed and protected by the government. The PRDC structure and traditional village committees will monitor land use and set up measures to ensure sustainable ways of using natural resources.

2.4 Participatory landuse planning will be undertaken in the highland areas to ensure the effective use of land.

2.5 The government recognises the indigenous methods of land cultivation and forest products gathering, which the highland peoples use to support their livelihood. Improvement of indigenous methods of land cultivation will be studied and supported by the government.

2.6 The customary lands belonging and used by the highland peoples shall be respected. The government will provide the highland peoples with effective remedies against any unlawful intrusion or encroachment upon their lands.

2.7 The rules and procedures for securing effective land rights will be made accessible, adapted and available to the highland peoples' communities, which will be fully informed thereof in a way they understand.

2.8 Adequate procedures will be established to resolve all land claims. Existing indigenous procedures for transferring land rights will be respected.

2.9 Persons either belonging or not belonging to the highland peoples' communities will be prevented from taking advantage of their customs or lack of understanding to secure the ownership, possession or use of lands belonging to them.

2.10 Privately as well as collectively owned land belonging to a highland people's community can only be sold after the consultation and full consent of the community.

2.11 The highland peoples shall not be removed from the lands they occupy (Principle of non-relocation). However, where their relocation is considered necessary as an exceptional measure for national and/or security reasons, such relocation shall only take place with their free and informed consent. If there is no such consent, the relocation can only take place following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, in which the highland peoples must be effectively represented. As compensation they must be provided with lands of quality and legal status at least equal to that of the lands previously occupied by them. Furthermore any members of the highland communities will be fully compensated for any resulting loss or injury caused by the relocation. The highland peoples will have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

### 3. Agriculture

3.1 The Government will promote integrated agricultural production and increase agricultural productivity and diversification to ensure food security and cash income. This will be done after a comprehensive in-depth assessment of the needs, interests and aspiration of the different highland peoples' communities. A participatory approach to such an assessment is strongly encouraged.

3.2 All land capacity analysis and land use planning will be conducted with the participation of highland peoples.

3.3 Sustainable agriculture is encouraged through field trials and incorporation of local knowledge. On-site training programmes and a farmers exchange programme on sustainable agricultural development for highland peoples will be encouraged by the Government.

3.4 Systematic research shall be undertaken to identify viable models of shifting cultivation and ways to strengthen the fallow system in order to promote sustainable highland agriculture system.

3.5 Small irrigation systems will be developed where appropriate and managed by the highlanders in order to improve their wet rice cultivation and agricultural productivity.

#### 4. Education

- 4.1 Human resource development corresponding to the expressed needs, interests and aspirations of the highland peoples will be given priority.
- 4.2 Literacy and life skills training will be organised for women, men and youth, while indigenous knowledge, culture, languages and beliefs will be strengthened and incorporated into the school curriculum. (Boarding school)
- 4.3 A comprehensive educational system, adapted to the specific needs of the highland peoples, will be studied, planned and developed in order to provide an adequate education opportunity for highland children. Scholarships shall be given to highland students to further their study at the secondary and tertiary levels.
- 4.4 Vocational training shall be developed for highland (women and youth), so that they can have skills and knowledge for off-farm employment.
- 4.5 Training programmes for teachers and volunteer teachers shall be developed in order to prepare them to teach in the highland areas. Highland people should be given priority in taking part in this training. The training programme will emphasise the importance of indigenous knowledge and culture in development as well as gender relation and problem-solving skills.
- 4.6 Ethnic languages will be studied and used in school. Literacy books should be developed in both Khmer and local language.
- 4.7 Ethnic cultures, religions and customs will be incorporated into school curriculum.
- 4.8 Community study centres shall be constructed in highland communities so as to provide opportunity for highland adults and children to have access to information and educational materials as well as interacting with each other, elders, volunteer teachers, development workers, etc.
- 4.9 A centre for education for highland people development will be established in Northeast Cambodia with a mandate to develop appropriate educational materials, teaching modules as well as training of personnel and volunteers to teach the highland people. Education programmes and training materials on resource management, traditional medicine, highland agricultural development, etc. will be developed.

#### 5. Health

- 5.1 The Government will encourage improved sanitation and clean drinking water sources, and spread awareness and understandable information on these issues.
- 5.2 Encourage the study and usage of herbal medicine, as well as integrating the use of traditional medicine with modern medicine in order to improve the health status of ethnic highlanders.
- 5.3 Prevent and eradicate malaria and develop measures to prevent, cure and control other diseases in the highlands, whenever possible by vaccination campaigns.
- 5.4 Encourage community participation in health care and development, particularly for women and children.
- 5.5 Develop primary health care system appropriate for the situation in the highland area. (Establish community health centres and hospital to provide appropriate health care services to the highland people)
- 5.6 Develop training programmes and provide incentives for ethnic health volunteers, including traditional birth attendants, to work for the highland peoples.

## 6. Culture

6.1 Indigenous knowledge of the highland peoples on forest use, land use, agricultural practices, health care system will be studied, strengthened and integrated in development.

6.2 Cultural values, traditions and practices, as well as local history, languages and religions are to be studied, respected and strengthened, if and when appropriate, so as to ensure culturally sustainable development.

6.3 Ethnic leaders, elders, women as well as men will be involved in the process of development and cultural preservation.

6.4 Cultural preservation is in the interest for both the highland peoples and the government. Local organisations or associations, formal or informal, established by highland peoples to conserve and strengthen their cultures are strongly encouraged by the government.

6.5 Establishing a centre for highland people cultures, the mandate of which is to study and preserve highland peoples' cultures which include their traditions, knowledge, thoughts, values, belief system, handicrafts textiles, architecture and performing art.

6.6 The government shall promote the understanding and respect of cultural diversity and ensure that the highland peoples can practice their own cultures while being nationally integrated.

6.7 The highland people have the opportunity to receive and disperse information on the development process.

## 7. Infrastructure

7.1 Adequate improvement and maintenance of basic infrastructure, responding to the needs and interests of the Highland Peoples, in order to allow highland peoples to have better access to each other and to the outside world.

7.2 Highland Peoples' Communities will be given the opportunity to participate in all decisions regarding infrastructure projects that affect them. The affected community and persons must have given their full consent, after being fully informed of the project in a language they clearly understand, and all its consequences for them and their natural environment, before any development project may proceed. Furthermore, if such project would necessitate full or partial relocation of the community, this must also expressly be agreed to by the affected persons and community, they must be given new land of at least the same value, they must be given the ownership title of that land, and be fully compensated for all losses incurred by the relocation.

7.3 Infrastructure development projects may only proceed after Environmental Impact Assessment and a Social Impact Assessment processes have been completed, with positive results.

## STRATEGIES FOR HIGHLAND PEOPLE DEVELOPMENT

- 1) Human resource development should be given priority, and literacy and life skills training should be provided. A Centre for Education for Highland People Development addressing the needs of men, women and youth shall be established. Together with this centre, a Centre for Highland People Culture shall also be established. Discussion and dialogue about sustainable development should be carried out through formal training and non-formal education activities.
- 2) Information system for Highland Peoples Development
  - \* Information about development options, as well as case studies and alternative models should be made available.
  - \* An adequate Village Development Database needs to be developed for development and evaluation
  - \* A research programme on Highland Peoples should be developed to encourage and train more researchers to study the highland cultures, cultural practices, indigenous knowledge languages, religions, customs, traditions, customary law and development.
  - \* A programme of collaboration between the Highland Volunteer Program with the Royal University of Phnom Penh, emphasising research on these same issues.
- 3) Local communities, particularly elders and women's group should be strengthened and enabled to take part in community development, cultural preservation, and forest and land use management.
- 4) A Khmer Loeu Association will be established enabling the consultation between the Government and the Highland Peoples on all matters that directly affect their interests. The Association will be given the means, in terms of location, transportation and translation, to convene regularly and every time when the situation would demand such a meeting. It will consist of persons belonging to all highland peoples and effectively represent their needs, interests and aspirations. They will be indicated by the communities according to the procedures they chose, not by the Government. The Government will duly take into account the expressed opinion of the Association, which will be made public and informed to all villages.
- 5) Community leaders and elders must be enabled to participate in discussions and exchanges on development problems and on improving shifting cultivation and preserving their culture. Field trials and the ethnic cultural centre should be supported to become integral part of the interactive learning process of the men, women and youth of the Highland Peoples and all those involved in Highland Peoples development.

19 June, 1997

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**Appendix G: U.N. Covenants and Other International Agreements  
in Regard to Indigenous People's Rights**

*Bearing in mind* the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Taking into account* the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Recognizing* the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

*Proclaims* this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

#### Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

#### Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other

## 20. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

*Adopted by General Assembly resolution 47/135 of 18 December 1992*

### *The General Assembly,*

*Reaffirming* that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

*Reaffirming* faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

*Desiring* to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

*Inspired* by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious or linguistic minorities,

*Considering* that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

*Emphasizing* that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

*Considering* that the United Nations has an important role to play regarding the protection of minorities,

members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

#### Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

#### Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

#### Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

#### Article 6

States should cooperate on questions relating to persons belonging to minorities, *inter alia*, exchanging information and experiences, in order to promote mutual understanding and confidence.

#### Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

#### Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

#### Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

*Article 39*

The English and French versions of the text of this Convention are equally authoritative.

63. Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries

*Adopted on 27 June 1989 by the General Conference of the International Labour Organisation at its seventy-sixth session*

ENTRY INTO FORCE: 5 September 1991

*The General Conference of the International Labour Organisation,*

*Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its seventy-sixth session on 7 June 1989, and*

*Noting the international standards contained in the Indigenous and Tribal Populations Convention and Recommendation, 1957, and*

*Recalling the terms of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the many international instruments on the prevention of discrimination, and*

*Considering that the developments which have taken place in international law since 1957, as well as developments in the situation of indigenous and tribal peoples in all regions of the world, have made it appropriate to adopt new international standards on the subject with a view to removing the assimilationist orientation of the earlier standards, and*

*Recognising the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages and religions, within the framework of the States in which they live, and*

*Noting that in many parts of the world these peoples are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States within which they live, and that their laws, values, customs and perspectives have often been eroded, and*

*Calling attention to the distinctive contributions of indigenous and tribal peoples to the cultural diversity and social and ecological harmony of humankind and to international co-operation and understanding, and*

*Noting that the following provisions have been framed with the co-operation of the United Nations, the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural*

Organization and the World Health Organization, as well as of the Inter-American Indian Institute, at appropriate levels and in their respective fields, and that it is proposed to continue this co-operation in promoting and securing the application of these provisions, and

*Having decided* upon the adoption of certain proposals with regard to the partial revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107), which is the fourth item on the agenda of the session, and

*Having determined* that these proposals shall take the form of an international Convention revising the Indigenous and Tribal Populations Convention, 1957,

*Adopts* this twenty-seventh day of June of the year one thousand nine hundred and eighty-nine the following Convention, which may be cited as the Indigenous and Tribal Peoples Convention, 1989;

#### PART I. GENERAL POLICY

##### Article 1

1. This Convention applies to:

(a) Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

3. The use of the term "peoples" in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law.

##### Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

(a) Ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population;

(b) Promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions;

(c) Assisting the members of the peoples concerned to eliminate socio-economic gaps that may exist between indigenous and other members of the national community, in a manner compatible with their aspirations and ways of life.

##### Article 3

1. Indigenous and Tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination. The provisions of the Convention shall be applied without discrimination to male and female members of these peoples.

2. No form of force or coercion shall be used in violation of the human rights and fundamental freedoms of the peoples concerned, including the rights contained in this Convention.

##### Article 4

1. Special measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned.

2. Such special measures shall not be contrary to the freely-expressed wishes of the peoples concerned.

3. Enjoyment of the general rights of citizenship, without discrimination, shall not be prejudiced in any way by such special measures.

In applying the provisions of this Convention:

(a) The social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) The integrity of the values, practices and institutions of these peoples shall be respected;

(c) Policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

#### Article 6

1. In applying the provisions of this Convention, Governments shall:
  - (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
  - (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
  - (c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.
2. The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures.

#### Article 7

1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.
2. The improvement of the conditions of life and work and levels of health and education of the peoples concerned, with their participation and co-operation, shall be a matter of priority in plans for the overall economic development of areas they inhabit. Special projects for development of the areas in question shall also be so designed as to promote such improvement.
3. Governments shall ensure that, whenever appropriate, studies are carried out, in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned development activities. The results of these studies shall be considered as fundamental criteria for the implementation of these activities.

4. Governments shall take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

#### Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.
2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognized human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.
3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

#### Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.
2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases.

#### Article 10

1. In imposing penalties laid down by general law on members of these peoples account shall be taken of their economic, social and cultural characteristics.
2. Preference shall be given to methods of punishment other than confinement in prison.

#### Article 11

The exaction from members of the peoples concerned of compulsory personal services in any form, whether paid or unpaid, shall be prohibited and punishable by law, except in cases prescribed by law for all citizens.

#### Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or

through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

## PART II. LAND

### Article 13

1. In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.
2. The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use.

### Article 14

1. The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.
2. Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.
3. Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned.

### Article 15

1. The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources.
2. In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what de-

gree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

### Article 16

1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.
2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.
3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.
4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.
5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

### Article 17

1. Procedures established by the peoples concerned for the transmission of land rights among members of these peoples shall be respected.
2. The peoples concerned shall be consulted whenever consideration is being given to their capacity to alienate their lands or otherwise transmit their rights outside their own community.
3. Persons not belonging to these peoples shall be prevented from taking advantage of their customs or of lack of understanding of the laws on the part of their members to secure the ownership, possession or use of land belonging to them.

*Article 18*

Adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.

*Article 19*

National agrarian programmes shall secure to the peoples concerned treatment equivalent to that accorded to other sectors of the population with regard to:

- (a) The provision of more land for these peoples when they have not the area necessary for providing the essentials of a normal existence, or for any possible increase in their numbers;
- (b) The provision of the means required to promote the development of the lands which these peoples already possess.

## PART III. RECRUITMENT AND CONDITIONS OF EMPLOYMENT

*Article 20*

1. Governments shall, within the framework of national laws and regulations, and in co-operation with the peoples concerned, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to these peoples, to the extent that they are not effectively protected by laws applicable to workers in general.

2. Governments shall do everything possible to prevent any discrimination between workers belonging to the peoples concerned and other workers, in particular as regards:

- (a) Admission to employment, including skilled employment, as well as measures for promotion and advancement;
- (b) Equal remuneration for work of equal value;
- (c) Medical and social assistance, occupational safety and health, all social security benefits and any other occupationally related benefits, and housing;
- (d) The right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations.

3. The measures taken shall include measures to ensure:

- (a) That workers belonging to the peoples concerned, including seasonal, casual and migrant workers in agricultural and other employment, as

well as those employed by labour contractors, enjoy the protection afforded by national law and practice to other such workers in the same sectors, and that they are fully informed of their rights under labour legislation and of the means of redress available to them;

(b) That workers belonging to these peoples are not subjected to working conditions hazardous to their health, in particular through exposure to pesticides or other toxic substances;

(c) That workers belonging to these peoples are not subjected to coercive recruitment systems, including bonded labour and other forms of debt servitude;

(d) That workers belonging to these peoples enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment.

4. Particular attention shall be paid to the establishment of adequate labour inspection services in areas where workers belonging to the peoples concerned undertake wage employment, in order to ensure compliance with the provisions of this Part of this Convention.

## PART IV. VOCATIONAL TRAINING, HANDICRAFTS AND RURAL INDUSTRIES

*Article 21*

Members of the peoples concerned shall enjoy opportunities at least equal to those of other citizens in respect of vocational training measures.

*Article 22*

1. Measures shall be taken to promote the voluntary participation of members of the peoples concerned in vocational training programmes of general application.

2. Whenever existing programmes of vocational training of general application do not meet the special needs of the peoples concerned, governments shall, with the participation of these peoples, ensure the provision of special training programmes and facilities.

3. Any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. Any studies made in this connection shall be carried out in co-operation with these peoples, who shall be consulted on the organisation and operation of such programmes. Where feasible, these peoples shall progressively assume responsibility for the organisation and operation of such special training programmes, if they so decide.

*Article 23*

1. Handicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned, such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development. Governments shall, with the participation of these peoples and whenever appropriate, ensure that these activities are strengthened and promoted.
2. Upon the request of the peoples concerned, appropriate technical and financial assistance shall be provided wherever possible, taking into account the traditional technologies and cultural characteristics of these peoples, as well as the importance of sustainable and equitable development.

## PART V. SOCIAL SECURITY AND HEALTH

*Article 24*

Social security schemes shall be extended progressively to cover the peoples concerned, and applied without discrimination against them.

*Article 25*

1. Governments shall ensure that adequate health services are made available to the peoples concerned, or shall provide them with resources to allow them to design and deliver such services under their own responsibility and control, so that they may enjoy the highest attainable standard of physical and mental health.
2. Health services shall, to the extent possible, be community-based. These services shall be planned and administered in co-operation with the peoples concerned and take into account their economic, geographic, social and cultural conditions as well as their traditional preventive care, healing practices and medicines.
3. The health care system shall give preference to the training and employment of local community health workers, and focus on primary health care while maintaining strong links with other levels of health care services.
4. The provision of such health services shall be co-ordinated with other social, economic and cultural measures in the country.

## PART VI. EDUCATION AND MEANS OF COMMUNICATION

*Article 26*

Measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels on at least an equal footing with the rest of the national community.

*Article 27*

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.
2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.
3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

*Article 28*

1. Children belonging to the peoples concerned shall, wherever practicable, be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective.
2. Adequate measures shall be taken to ensure that these peoples have the opportunity to attain fluency in the national language or in one of the official languages of the country.
3. Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned.

*Article 29*

The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal foot-

ing in their own community and in the national community shall be an aim of education for these peoples.

*Article 30*

1. Governments shall adopt measures appropriate to the traditions and cultures of the peoples concerned, to make known to them their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their rights deriving from this Convention.
2. If necessary, this shall be done by means of written translations and through the use of mass communications in the languages of these peoples.

*Article 31*

Educational measures shall be taken among all sections of the national community, and particularly among those that are in most direct contact with the peoples concerned, with the object of eliminating prejudices that they may harbour in respect of these peoples. To this end, efforts shall be made to ensure that history textbooks and other educational materials provide a fair, accurate and informative portrayal of the societies and cultures of these peoples.

PART VII. CONTACTS AND CO-OPERATION ACROSS BORDERS

*Article 32*

Governments shall take appropriate measures, including by means of international agreements, to facilitate contacts and co-operation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields.

PART VIII. ADMINISTRATION

*Article 33*

1. The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.
2. These programmes shall include:

(a) The planning, co-ordination, execution and evaluation, in co-operation with the peoples concerned, of the measures provided for in this Convention;

(b) The proposing of legislative and other measures to the competent authorities and supervision of the application of the measures taken, in co-operation with the peoples concerned.

PART IX. GENERAL PROVISIONS

*Article 34*

The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country.

*Article 35*

The application of the provisions of this Convention shall not adversely affect rights and benefits of the peoples concerned pursuant to other Conventions and Recommendations, international instruments, treaties, or national laws, awards, custom or agreements.

PART X. FINAL PROVISIONS

*Article 36*

This Convention revises the Indigenous and Tribal Populations Convention, 1957.

*Article 37*

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

*Article 38*

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

#### Article 39

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

#### Article 40

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

#### Article 41

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

#### Article 42

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### Article 43

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) The ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 39 above, if and when the new revising Convention shall have come into force;

(b) As from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### Article 44

The English and French versions of the text of this Convention are equally authoritative.

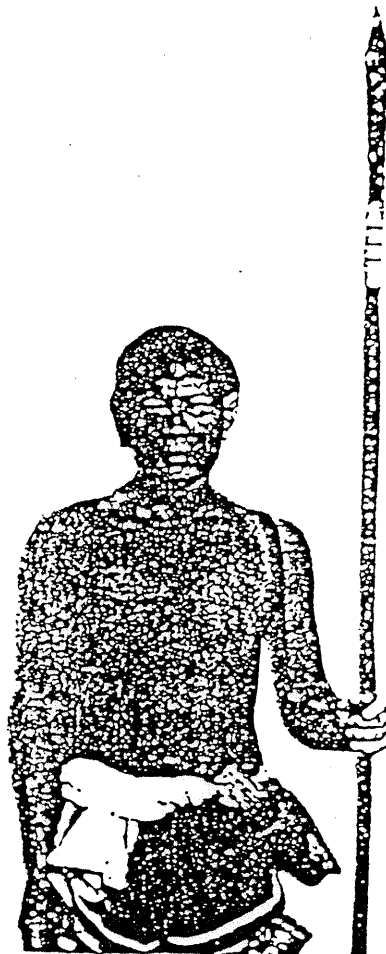
## Appendix H: Charter of the Indigenous-Tribal Peoples of the Tropical Forests

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# Charter of the Indigenous- Tribal Peoples of the Tropical Forests

*Statement of the International Alliance  
of the Indigenous-Tribal Peoples of the  
Tropical Forests*

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Penang, Malaysia  
15 February 1992

# Charter of the Indigenous Peoples of the Tropical Forests

## Article 1.

We, the indigenous-tribal peoples of the tropical forests, present this charter as a response to hundreds of years of continual encroachment and colonisation of our territories and the undermining of our lives, livelihoods and cultures caused by the destruction of the forests that our survival depends on.

## Article 2.

We declare that we are the original peoples, the rightful owners and the cultures that defend the tropical forests of the world.

## Article 3.

Our territories and forests are to us more than an economic resource. For us, they are life itself and have an integral and spiritual value for our communities. They are fundamental to our social, cultural, spiritual, economic and political survival as distinct peoples.

## Article 4.

The unity of people and territory is vital and must be recognised.

## Article 5.

All policies towards the forests must be based on a respect for cultural diversity, for a promotion of indigenous models of living, and an understanding that our peoples have developed ways of life closely attuned to our environment.

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THEREFORE WE DECLARE THE FOLLOWING PRINCIPLES, GOALS AND DEMANDS:

## RESPECT FOR OUR RIGHTS

### Article 6.

Respect for our human, political, social, economic and cultural rights, respect for our right to self-determination, and to pursue our own ways of life.

### Article 7.

Respect for our autonomous forms of self-government, as differentiated political systems at the community, regional and other levels. This includes our right to control all economic activities in our territories.

### Article 8.

Respect for our customary laws and that they be incorporated in national and international law.

### Article 9.

Where the peoples so demand, nation states must comply with the different treaties, agreements, covenants, awards and other forms of legal recognition that have been signed with us indigenous peoples in the past, both in the colonial period and since independence, regarding our rights.

### Article 10.

An end to violence, slavery, debt-peonage and land grabbing; the disbanding of all private armies and militias and their replacement by the rule of law and social justice; the means to use the law in our own defense, including the training of our people in the law.

### Article 11.

The approval and application of the Universal Declaration of

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Indigenous Peoples, which must affirm and guarantee our right to self-determination, being developed by the United Nations, and the setting up of an effective international mechanism and tribunal to protect us against the violation of our rights and guarantee the application of the principles set out in this charter.

## Article 12.

There can be no rational or sustainable development of the forests and of our peoples until our fundamental rights as peoples are respected.

## TERRITORY

### Article 13.

Secure control of our territories, by which we mean a whole living system of continuous and vital connection between man and nature; expressed as our right to the unity and continuity of our ancestral domains; including the parts that have been usurped, those being reclaimed and those that we use; the soil, subsoil, air and water required for our self-reliance, cultural development and future generations.

### Article 14.

The recognition, definition and demarcation of our territories in accordance with our local and customary systems of ownership and use.

### Article 15.

The form of land tenure will be decided by the people themselves, and the territory should be held communally, unless the people decide otherwise.

### Article 16.

The right to the exclusive use and ownership of the territories which we occupy. Such territories should be inalienable, not subject to distraint and unnegotiable.

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### Article 17.

The right to demarcate our territories ourselves and that these areas be officially recognised and documented.

### Article 18.

Legalise the ownership of lands used by non-indigenous peoples who live within and on the forests' margins in the areas that are available once title has been guaranteed to the indigenous peoples.

### Article 19.

Land reforms and changes in land tenure to secure the livelihoods of those who live outside the forests and indigenous territories, because we recognise that landlessness outside the forests puts heavy pressure on our territories and forests.

## DECISION-MAKING

### Article 20.

Control of our territories and the resources that we depend on: all development in our areas should only go ahead with the free and informed consent of the indigenous people involved or affected.

### Article 21.

Recognition of the legal personality of our representative institutions and organisations, that defend our rights, and through them the right to collectively negotiate our future.

### Article 22.

The right to our own forms of social organisation; the right to elect and revoke the authorities and government functionaries who oversee the territorial areas within our jurisdiction.

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## DEVELOPMENT POLICY

### Article 23.

The right to be informed, consulted and, above all, to participate in the making of decisions on legislation or policies; and in the formulation, implementation or evaluation of any development project, be it at local, national or international levels, whether private or of the state, that may affect our futures directly or indirectly.

### Article 24.

All major development initiatives should be preceded by social, cultural and environmental impact assessments, after consultation with local communities and indigenous peoples. All such studies and projects should be open to public scrutiny and debate especially the indigenous peoples affected.

### Article 25.

National or international agencies considering funding development projects which may affect us, must set up tripartite commissions — including the funding agency, government representatives and our own communities as represented through our representative organisations — to carry through the planning implementation, monitoring and evaluation of the projects.

### Article 26.

The cancellation of all mining concessions in our territories imposed without the consent of our representative organisations. Mining policies must prioritise, and be carried out under, our control, to guarantee rational management and a balance with the environment. In the case of the extraction of strategic minerals (oil and radioactive minerals) in our territories, we must participate in making decisions during planning and implementation.

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### Article 27.

An end to imposed development schemes and fiscal incentives or subsidies that threaten the integrity of our forests.

### Article 28.

A halt to all imposed programmes aimed at resettling our peoples away from their homelands.

### Article 29.

A redirection of the development process away from large-scale projects towards the promotion of small-scale, initiatives controlled by our peoples. The priority for such initiatives is to secure our control over our territories and resources on which our survival depends. Such projects should be the cornerstone of all future development in the forests.

### Article 30.

The problems caused in our territories by international criminal syndicates trafficking in products from plants like poppy and coca must be confronted by effective policies which involve our peoples in decision-making.

### Article 31.

Promotion of the health systems of the indigenous peoples, including the revalidation of traditional medicine, and the promotion of programmes of modern medicine and primary health care. Such programmes should allow us to have control over them, providing suitable training to allow us to manage them ourselves.

### Article 32.

Establishment of systems of bilingual and intercultural education. These must revalidate our beliefs, religious traditions, customs, and knowledge; allowing our control over these programmes, by the provision of suitable training, in

accordance with our cultures; in order to achieve tech. and scientific advances for our peoples, in tune with our cosmo-visions, and as a contribution to the world community.

Article 42.  
The best guarantee for those who practice administrative We assert th.

### Article 33.

Promotion of alternative financial policies that permit us to develop our community economies and develop mechanisms to establish fair prices for the products of our forests.

### Article 34.

Our policy of development is based, first, on guaranteeing our self-sufficiency and material welfare, as well as that of our neighbours; a full social and cultural development based on the values of equity, justice, solidarity and reciprocity, and a balance with nature. Thereafter, the generation of a surplus for the market must come from a rational and creative use of natural resources developing our own traditional technologies and selecting appropriate new ones.

## FOREST POLICY

### Article 35.

Halt all new logging concessions and suspend existing ones, that affect our territories. The destruction of forests must be considered a crime against humanity and a halt must be made to the various anti-social consequences, such as, roads across indigenous cultivations, cemeteries and hunting zones; the destruction of areas used for medicinal plants and crafts; the erosion and compression of soil; the pollution of our environment; the corruption and enclave economy generated by the industry; the increase of invasions and settlement in our territories.

### Article 36.

Logging concessions on lands adjacent to our territories, or which have an impact on our environment, must comply

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with operating conditions — ecological, social, of labour, transport, health and others — laid down by the indigenous peoples, who should participate in ensuring that these are complied with. Commercial timber extraction should be prohibited in strategic and seriously degraded forests.

### Article 37.

The protection of existing natural forests should take priority over reforestation.

### Article 38.

Reforestation programmes should be prioritised on degraded lands, giving priority to the regeneration of native forests, including the recovery of all the functions of tropical forests, and not being restricted only to timber values..

### Article 39.

Reforestation programmes on our territories should be developed under the control of our communities. Species should be selected by us in accordance with our needs.

## BIODIVERSITY AND CONSERVATION

### Article 40.

Programmes related to biodiversity must respect the collective rights of our peoples to cultural and intellectual property, genetic resources, gene banks, biotechnology and knowledge of biological diversity; this should include our participation in the management of any such project in our territories, as well as control of any benefits that derive from them.

### Article 41.

Conservation programmes must respect our rights to the use and ownership of the territories we depend on. No programmes to conserve biodiversity should be promoted on our territories without our free and informed consent as

elect with our 1d comm  
Article 42. through our representative organisations.

Article 42.

The best guarantee of the conservation of biodiversity is that those who promote it should uphold our rights to the use, administration, management and control of our territories. We assert that guardianship of the different ecosystems should be entrusted to us, indigenous peoples, given that, we have inhabited them for thousands of years and our very survival depends on them.

Article 43.

Environmental policies and legislation should recognise indigenous territories as effective 'protected areas', and give priority to their legal establishment as indigenous territories.

## INTELLECTUAL PROPERTY

Article 44.

Since we highly value our traditional technologies and believe that our biotechnologies can make important contributions to humanity, including 'developed' countries, we demand guaranteed rights to our intellectual property, and control over the development and manipulation of this knowledge.

## RESEARCH

Article 45.

All investigations in our territories should be carried out with our consent and under joint control and guidance according to mutual agreement; including the provision for training, publication and support for indigenous institutions necessary to achieve such control.

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## INSTITUTIONS

Article 46.

The international community, particularly the United Nations, must recognise us indigenous peoples as peoples, as distinct from other organised social movements, non-governmental organisations and independent sectors, and respect for our right to participate directly and on the basis of equality, as indigenous peoples, in all fora, mechanisms, processes and funding bodies so as to promote and safeguard the future of the tropical forests.

## EDUCATION

Article 47.

The development of programmes to educate the general public about our rights as indigenous peoples and about the principles, goals and demands in this charter. For this we call on the international community for the necessary recognition and support.

Article 48.

We indigenous peoples will use this charter as a basis for promoting our own local strategies for action.

Penang, Malaysia  
15 February 1992

## Resolution of the Conference of Indigenous-Tribal Peoples of the Tropical Forests.

Considering:

1. That in this conference we have proved that the problems of the indigenous and tribal peoples are similar in Africa, Asia and the Americas; that the same genocide and ethnocide carries on regardless; and that those responsible are united and coordinated at the international policy-making level regarding both natural resources and the denial of the right to self-determination of our peoples.
2. That it is necessary for the representative organisations brought together here to respond to this by joining in a common struggle through unity and solidarity.
3. That two important steps towards this unity are the Charter of shared Principles, Goals and Demands; and a Joint Plan of Action that we have now approved. Nonetheless both steps may be insufficient to achieve concrete results for our peoples. Therefore, in order to give life to this programme and common plan, the next step must be to establish here and now a minimum of coordination amongst us.

WE THEREFORE RESOLVE:

1. To constitute the 'The International Alliance of Indigenous-Tribal Peoples of the Tropical Forests', composed of the representatives of the people present here, but open to other sister organisations of the tropical forests of the world.
2. To call our Charter 'Charter of the Indigenous-Tribal Peoples of the Tropical Peoples' and to name this meeting the

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'First Conference of the International Alliance of the Indigenous and Tribal Peoples of the Tropical Forests'.

3. To structure this alliance, so as to deepen our mutual understanding and solidarity, by means of joint action; and to organise ourselves in the following way:
  - a) The fact of establishing the Alliance reinforces the solidarity in the common objectives but does not reduce or affect the autonomy of action of each organisation;
  - b) Responsibility for each working committee (established in 4, below) will be taken on by a representative indigenous organisation, which will appoint the person responsible, who will then organise a working committee based in her/his region;
  - c) The working committees will correspond to the activities approved in the action plan. Each one will be the responsibility of an indigenous organisation. The meeting of those responsible for these working committees will compose the 'Coordinating Committee of the Alliance';
  - d) The first conference of the Alliance, will elect the organisations that will make up this Coordinating Committee which will stand until the Second Conference of the Alliance; when the organisational structure will be reviewed and adjusted.
  - e) That the second Conference of the Alliance will take place in an Amazonian city and within no less than 12 months. Its organisation will be the duty of the Coordinating Committee with the help of the WRM and other solidary institutions.
4. To compose the Coordinating Committee of 5 Working Committees which will assume, in addition to those contained in the Plan of Action, the following main tasks:
  - a) Committee of Organisation and Campaigns:
    - Campaigns of solidarity and joint struggle in defense

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of the indigenous peoples, their territories and the tropical forests of the planet.

- A special campaign in defence of our brothers from Sarawak (Asia), Batwa (Africa) and Amazonia (America).

- To support the organisation of and participation at the 'Conference of Indigenous Peoples on Territory, Environment and Development' (Rio de Janeiro, Brazil 21-31 May 1992).

- Coordinate the organization of the 2nd Conference of the Alliance.

b) *Committee for Disseminating and Securing Support for the Charter:*

- International distribution and publicity

- dialogue with indigenous organisations to ensure it is understood and subscribed to, relations with the international press.

c) *Committee on Relations with UNCED and the UN System:*

- Promotion of the Charter and indigenous participation in the UNCED and the institutions which it gives rise to.

- Promotion of the Charter and indigenous participation in the UN Plan for 1993; the FAO, the Human Rights Commission, GATT, WIPO etc.

d) *Committee on Relations with the Multilateral Agencies:*

- Promotion of the Declaration and of indigenous participation in agencies like the World Bank, ADB, IDB, ITTO, TFAP, IFAD etc.

e) *Committee on Relations with International Solidarity Movements.*

- Relations with environmentalists, consumer groups, indigenous rights groups, third world

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organisations, human rights groups etc.; in order to achieve support for the Charter and the Plan of Action.

5. The election of the Coordinating Committee shall proceed as follows:

a) The indigenous peoples' organisations from the following regions shall each appoint one member to the Coordinating Committee: Amazonia, Southern Cone, Central America and Caribbean, Africa, Continental Asia, Bahasa, Maritime Asia and Pacific

b) The seven organisations so elected will form the Coordinating Committee and will meet immediately to share out the responsibilities entrusted to 5 Working Committees mentioned in Paragraph 4 and will announce the names of those persons who will provisionally take on these tasks, until ratification by the base organisations.

6. The above was approved and the seven organisations then met and took on the following responsibilities.

Region	Organisation	Responsibility for Working Committee
Amazonia	Coordinating Body for the Indigenous Organisations of the Amazon Basin	D
Southern Cone	Mocovi Centre 'Talek Lava's'	C
Central America and Caribbean	Sejekin Cultural Association	D
Africa	Association for Promotion of Batwa	A
Continental Asia	Naga Peoples' Movement for Human Rights	B
Bahasa	Sahabat Alam Malaysia (Sarawak)	E
Maritime Asia	KAMP - National Confederation of Indigenous Peoples of the Philippines	A

Charter and Resolution signed and approved by:

Vicente Peason, Confederacion Indigena del Oriente de Bolivia

Freddy Mathew Silau, Sahabat Alam Malaysia (Sarawak)

Bah Tony Williams-Hunt, Centre for Orang Asli Concerns, Malaysia

Jak Jau Evong, Uma Bawang Resident's Association, Sarawak, Malaysia

Bonerge Pacheco, Congreso Embers, Panama

Jane Dualak Rojas, Asociacion Cultural Sejekin, Costa Rica

Wan Kang, Sarawak Penan Association, Malaysia

Monirre Chantawong, Project for Ecological Recovery, Thailand

Ranjan Singh, Asia Indigenous Peoples Pact

Luingnam Luthui, Naga Peoples Movement for Human Rights, India

Marilyn Quiemez, KAMP - National Federation of the Indigenous Peoples of the Philippines

Valerio Grefa, COICA - Coordinating Body for the Indigenous Organisations of the Amazon Basin

Emerita T. Marrero, Cordillera Peoples Alliance, Philippines

Viktor Kraisiepo, West Papua Peoples Front

Ariel Arnujo, Centro Mocovi Talek Lava's, Argentina

Javier Armato, Asociacion Civil Indigena de Pueblos Yukpa, Venezuela

Thomas Jalong, Sahabat Alam Malaysia (Sarawak)

Francois Munyeshull, Association for Promotion of Batwa, Rwanda

Antonius Napitupulu, Association of Siberut People, Indonesia

Felix Tiouka, Association des Amerindiens de Guyane Francaise, France

Raymond Abin, Sahabat Alam Malaysia (Sarawak)

Roberto Espinosa, COICA - Coordinating Body for the Indigenous Organisations of the Amazon Basin (Aesor)

Daniel Cabid, Comite Intertribal: 600 Anos de Resistencia, Brazil

Jeffrey Taling, Sahabat Alam Malaysia (Sabah)

Edward Nyipe, Sahabat Alam Malaysia (Sarawak)

Maximiliano Ferrer, Congreso Kuna, Panama

Bardie Sawal, SPATF/NANGO, Papua New Guinea

Penny Atkinson, Amerindian Peoples Association, Guyana

Penang, Malaysia

15 February 1992

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The Charter has subsequently been supported by the following organisations:

Marcus Colchester, World Rainforest Movement

Chee Yoke Ling, Sahabat Alam Malaysia

Martin Khor, Third World Network, Malaysia

Bram van Ojik, Novib, Netherlands

Chad Dobson, Bank Information Centre, USA

Roberto Bissin, Instituto Tercer Mundo, Uruguay

Saakia Ozinga, Friends of the Earth (Netherlands)

Carol Sherman, Rainforest Information Centre, Australia

David McCoy, SOS Siberut, UK

Tony Juniper, Friends of the Earth (England and Wales)

Tony Juniper, Friends of the Earth (International)

Ulf von Sydow, Swedish Society for Nature Conservation

Hella Schucking, World Economy Ecology and Development (WEED), Germany

Chip Fay, Friends of the Earth (USA)

Jaganti Serrano, Green Forum - Philippines

Carolyn Marr, Down to Earth: the International Campaign for Ecological Justice in Indonesia

Wilann Permpongachamen, Project for Ecological Recovery, Thailand

Yachi Kurada, Japan Tropical Forest Action Network

Kazuko Matsume, Sarawak Campaign Committee, Japan

Angela Gennino, Rainforest Action Network, USA

Gus Galmaytan, Legal Rights and Natural Resources Centre - Friends of the Earth (Philippines)

Thomas Wallgren, Coalition for Environment and Development Concerns, Finland

Grainne Ryder, TERRA - Towards Ecological Recovery and Regional Alliances, Thailand

Mikael Stenberg, Friends of the Earth, Sweden

Fiona Watson, Survival International, UK

The Ecologist, UK