

Case study

## CAMBODIA

# Indigenous communities take back their land through the Peace Table

*By Community Legal Education Center (CLEC)*

### **Cambodia's NGO-facilitated alternative dispute resolution mechanism**

#### ***Case 1: The Chi-Klorb Bunong indigenous community in Mondulhiri Province***

Sok San Commune, in Koh Nhek District, of Cambodia's Mondulhiri Province, is home to the Chi-Klorb Bunong indigenous community. The latter consists of 289 families, or 754 persons, 314 of whom are women. They make a living from farming, rearing livestock, bamboo weaving, and gathering non-timber forest products.

The Chi-Klorb Bunong community has been registered and recognized since 8 July 2015. At a meeting of the State Land Management Committee in 2019, a survey of their land was conducted, and a preliminary map was created in preparation for registering the land for communal land titling.

In 2022, persons A and B — who are residents of another commune (Or-Buon Leu) within the same district — cleared a portion of the indigenous community's reserve land, measuring 80 meters wide and 450 meters long, without the knowledge and consent of the community.

The community's representative, person C, thus filed a complaint with the Sok San commune chief.

On 7 April 2023, the local authorities of Sok San commune organized the first mediation meeting to resolve the dispute. However, A and B refused to return the land to the community, claiming that they possess a letter of land transfer from A's mother that had been signed by the chief of the Chi-Klorb village in 2008.

Following the unsuccessful mediation, the Sok San commune chief requested the Community Legal Education Center (CLEC)<sup>1</sup> to organize a Peace Table.

A Peace Table is a form of alternative dispute resolution (ADR) that is designed to solve smaller-scale local land disputes through mediation. It is a voluntary procedure where all relevant parties and stakeholders are invited to discuss the issue in the form of a local dialogue, meeting or round table discussion. If the parties reach an agreement, this will be signed and there will be commitment to enforce it among the parties and local authorities.



The Peace Table in October 2023, chaired by Koh Nhek District Deputy-Governor at the head of the table, facilitated by CLEC, successfully solved the land dispute between the Chiklorb Bunong indigenous community and the two private individuals. *Photo by CLEC.*

During the Peace Table, it was determined that the disputed land cannot be privately owned. As stated earlier a map of the land has already been created to register it with the Land Management Department, and all that remains is the official publication of the fact. Furthermore, the letter of land transfer that was signed in 2008 by the village chief was not deemed valid as it did not meet the five requirements for ownership as stipulated in the 2001 Land Law. Thus, the land cannot be taken from the indigenous minority, who have a right to it under Articles 23 to 28 of the same law.

On 30 October 2023, the dispute was resolved and a mutual agreement was reached. Persons A and B agreed to return the land to the community.

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<sup>1</sup> CLEC facilitates access to social justice and inclusive development of vulnerable communities affected by land and natural resources issues through legal empowerment.

The agreement also provided that:

- The boundaries of the indigenous community's land would be recognized by all parties.
- While the community has the legal rights to the land, they would pay a fee of 500,000 Cambodian Riels (about 122.50 US Dollars in 2024 prices) to A and B to cover the bulldozing costs.
- The Community Committee must respect this agreement without requiring anything further.
- The parties would act peacefully towards one another in the future.

## **Types of land disputes and parties to a Peace Table**

Peace Tables generally seek to mediate three main types of disputes: conflicts arising from the impact of development projects on communities and other forms of community-based land disputes; conflicts involving communities managing protected areas; and, disputes between indigenous communities and private stakeholders over rights to communal land.

### ***Parties that participate in a Peace Table***

The parties to a Peace Table are generally indigenous communities on whose lands, protected areas, and communal land the dispute arises, and private companies or private individuals.

### ***Steps to conducting a Peace Table***

CLEC conducts the Peace Table through the following steps:

- **Case Selection and Study of Dispute:** In the selection of cases, a long process of research and consultation takes place with key partners and stakeholders.
- **Information Gathering:** Once a case is selected and deemed appropriate for the Peace Table, interviews are conducted individually with the disputing parties to obtain background information on the conflict.
- **Preparation for the Peace Table:** CLEC engages with communities to organize the logistics of the Peace Table (including drafting: a concept paper, a letter requesting cooperation, a letter of invitation to representatives of villagers, local authorities, and relevant institutions, and a letter of invitation to representatives of the project implementing Ministry).
- **Peace Table Meetings:** The parties participate in the Peace Table meetings, where they discuss potential solutions. At the end of the Peace Table, the parties will try to reach a mutually agreeable solution. CLEC serves as a facilitator. District authorities preside over the meetings.
- **Implementation of the Peace Table Agreement:** CLEC facilitates the implementation of the agreement/s resulting from the Peace Table in cooperation with task forces of competent authorities and civil society partners. If no agreement is reached at the Peace Table, parties may choose to pursue formal legal mechanisms.

## ***Case 2: Bunong Indigenous Community in Keo Seima District, Mondulakiri Province***

Boeng Kamblok lake, which is located in Keo Seima District of Mondulakiri Province of Cambodia, is a State-owned lake but is used by three indigenous communities (belonging to the Bunong ethnic group) from the villages of O'Rona, Srae Khtom, and Sre Lvy to fish, herd cattle and collect drinking water. The communities have likewise made a living from farming for many generations, helped by the fertile soil around the lake. Currently, these three indigenous groups have a population of 198 families, or 893 persons, 455 of whom are women.

The rich soil around Boeng Kamplaok has made the surrounding lands a target for land grabbing, especially as land prices have significantly increased. In 2012 to 2013, the government commissioned a survey of the lake, during which the indigenous communities acknowledged that the lake land was public property but expressed their desire to be allowed to continue using it.

In 2015 and 2016, five individuals, referred to here as V, W, X, Y, and Z, grabbed eight hectares of land from the indigenous communities and began cultivating it. They built a canal and grew crops on the land.

The parties tried to resolve the dispute themselves within the community committees but they did not reach an agreement. After two unsuccessful community committee meetings, the indigenous communities tried to file a complaint with the Keo Seima District authority of Mondulakiri Province. Again, no resolution was arrived at. Instead, a conditional agreement was reached whereby Z would be allowed to grow rice for one season and would then return the portion of land he occupied to the indigenous community if the other land users did the same. Unfortunately, Z did not honor his commitment. After these unsuccessful attempts at resolution, CLEC was asked to intervene to resolve the dispute.

On 19 February 2021, CLEC hosted a Peace Table. It was chaired by the Deputy Director of the Keo Seima District Administration, and was attended by the defendants, four community representatives, the Commune authorities, the Cadastral officer, and CLEC representatives. The Cadastral officer is a representative of the Cadastral Commission, which is the authority on land disputes over untitled land. The participants totaled 22 persons, three of whom were women.

It was agreed during the Peace Table that the four defendants — V, W, X, and Y — would return six hectares of land to the communities. However, Z refused to return the two hectares of land that he had taken. The communities refused to accept this outcome. The district authorities also did not accept this outcome, declaring that State land may not be privately owned and may only be used by the indigenous community for traditional use. As a result of this, Z withdrew from the Peace Table in order to reconsider his position, and the case was not fully resolved.

A second Peace Table had to be organized on 5 March 2021. This time, it was held at the commune level, rather than at the district level, like the previous one. At this Peace Table, the representatives of the communities refused to compromise, insisting that the lake land should be returned to the communities and forbidding any private ownership of it. Defendant Z offered the same compromise as at the earlier Commune mediation, asking for one season of growing rice before returning the land. Following this impasse, CLEC was requested to share the relevant legal frameworks, which supported the position of the indigenous communities.

The CLEC staff educated the different parties about the law and the rights of indigenous people to the land, including articles about the 2001 Land Law, which states that indigenous people have the right to enjoy public State land. It further stipulates that no one has the right to deny the land rights of indigenous communities.

## **Why do Peace Tables work?**

Indigenous people are marginalized in the formal legal system for a number of reasons.

Firstly, the formal legal system was not designed to account for indigenous laws and customary practices. Policies and laws are also generally incompatible with indigenous practices and customary laws.

Secondly, indigenous people lack sufficient understanding of the formal justice system and of judicial mechanisms, and are often unfamiliar with the language that is used therein. In addition, the high cost of going to court and existing cultural barriers put indigenous people at a disadvantage when they seek formal legal remedies.

At the same time, indigenous people harbor a mistrust of the formal legal system, which they perceive as corrupt. Especially for dispossessed people who are challenging land grabs, Cambodia's court system cannot be relied upon as it tends to favor politically powerful interests. Moreover, many complainants are unable to present formal land titles, rendering their claims inadmissible in court.

Alternative dispute resolution (ADR) mechanisms that operate at the international level generally do not serve the interests of indigenous people. Cases filed with international ADR mechanisms tend to be decided in favor of existing power hierarchies and usually fail to address the structural and fundamental imbalances that exacerbate dispossession in Cambodia.<sup>2</sup> Furthermore, international ADR requires significant resources and NGO cooperation, and are thus generally inaccessible to indigenous peoples.

National mediation is marred by similar issues, including slow progress and failure to keep the land grabbing company from disengaging from the mediation process. As a result, communities may decide to shape their claims around strategic concerns rather than rights-based entitlement.<sup>3</sup>

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

Meanwhile, commune dispute resolution committees, a local council mediation mechanism, have very low capacities and usually work under the influence of the powerful party and the government and cannot ensure their solution provided is trustful with fairness. This is exacerbated by lack of legal comprehension and respect for the law on the part of the council and of individual disputants.<sup>4</sup>

In contrast, Peace Tables are effective because they are facilitated by an impartial third party which helps to reduce unfairness. Additionally, CLEC's capacity-building interventions enhance the mediating parties' legal literacy.

Peace Tables have other important benefits, as follows:

- A grassroots solution that encourages local participation and engagement in disputes;
- A format that encourages parties to freely express their opinions, exchange ideas, and seek mutually acceptable solutions;
- Empower communities through local participation in dispute resolution processes;
- Integration of customary practices in proposed solutions and use of local methods of dispute resolution;
- A tailored approach to achieving justice and resolving disputes involving indigenous peoples;
- Building and reinforcing trust within communities because disputes are adjudicated within existing community structures;
- A flexible process which enables tailored solutions to fit the dispute and allows greater accessibility; and,
- Fostering collaboration rather than conflict as parties seek to find mutually agreeable solutions.

### **CLEC: Making Peace Tables work for indigenous peoples**

The foundational work that CLEC does to empower indigenous people through capacity building is key to the success of Peace Tables. Traditional Authorities (TAs) are provided with a comprehensive training program covering fundamental legal rights for indigenous peoples, training on contract law, ADR mechanisms, and mediation techniques. This legal literacy training includes information about the court system and potential judicial remedies. Through this process, CLEC seeks to strengthen capacity at the community level to encourage empowered decision-making and effective community organizing. Due to high rates of illiteracy and limited comprehension among Cambodia's indigenous communities, learning is based on a Participatory Learning Approach, and there is a strong emphasis on self-initiated mobilization and collective action.

The capacity building undertaken by CLEC also informs communities about Peace Tables, and develops skills in effective fact-finding and communication with other stakeholders, which is essential to the Peace Table process.

<sup>4</sup> Coghlan, D., 2009. Transforming Conflict and Building Peace in Cambodia. In: D. Bagshaw & E. Porter, eds. *Mediation in the Asia-Pacific Region*. London: Taylor & Francis Group, p. 154



Peace Table meeting in December 2018 involving a land dispute between three Kuoy indigenous communities in Pramae commune, Tbaeng Meanchey district of Preah Vihear province against Chinese companies granted economic land concession by the Royal Government of Cambodia. *Photo by CLEC.*

At the same time, Peace Tables have some limitations, as follows:

- Peace Tables are voluntary, so parties may decline to join the mediation;
- The agreement reached at Peace Tables may be difficult to enforce if one party chooses to ignore it. Such agreements operate largely on good faith;
- Peace Tables may not always be suitable, depending on the subject matter of the dispute and the number of parties;
- Resource shortages, lack of accessibility, and inadequate funding may severely limit the effectiveness of Peace Tables; and,
- While CLEC works to increase accessibility through the use of basic language and an interpreter where possible, Khmer is still the default language used in Peace Tables. It is difficult to provide translations into all indigenous languages.

## Conclusion

Peace Tables address many of the issues that render ineffective both court systems and some forms of ADR. It is more accessible, especially for indigenous communities, and can overcome many challenges in rural areas, such as illiteracy, corruption, and a lack of legal understanding. The inclusion of NGOs and local and district authorities in Peace Tables provides effective authority and oversight, as well as enhancing invaluable knowledge of the law and mediation processes. Peace Tables achieve this without invalidating the agency of local people and indigenous communities, which is a weakness of other dispute resolution methods.

Instead, Peace Tables are a collaborative and peaceful process that result in a culturally appropriate, mutually agreeable solution in a constructive way. It is highly likely that other communities both within and outside of Cambodia would benefit from using the Peace Table process for land dispute resolution. ■

**Reference:**

Backstrom, M., Ironside, J., Paterson, G., and Padwe, J. (2007). *Indigenous Traditional Legal Systems and Conflict Resolution in Ratanakiri and Mondulakiri Provinces, Cambodia: A Case Study*. United National Development Programme (UNDP).

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