Section3

Conflict Resolution Mechanism in Sustainable Forest Management: From case studies in Thailand, Indonesia and Malaysia

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1.Overview

The objectives of this report are to explore ways of settling conflicts in forest management by clarifying the causes and their processes, and to present common factors of conflict resolution in the context of international patterns and norms. Conflicts are mainly caused by improper forest management, which sometimes disregards traditional ways of forest management and the participation of indigenous people.

The Montreal Process - the process that embraces a number of agreements and arrangements that deal with sustainable forest management - addresses these issues. Section 4, Criterion 7 encourages and outlines a policy framework for countries to facilitate sustainable forest management. It emphasizes customary and traditional rights of indigenous people, mechanism for resolving property disputes by due process, opportunities for public participation in public policy and decision-making related to forests, and public access to information within a legal framework.

In addition, it is necessary to consider how to design international agreements can be designed effectively. The management system of forest and implementation of laws and policies varies by each country. In most countries, the legal or constitutional responsibility for management of public forest lands rests with regional governments. In some countries, the central government more commonly has primary responsibility.

Therefore, in undertaking case studies, this report focuses on three countries; Thailand, Indonesia and Malaysia. The model of centralization is seen in Thailand while decentralization is the pattern in the other two countries. Another element is a difference of the current status of forests in the three countries, i.e. in terms of tropical timber, while Malaysia and Indonesia were significant exporters, Thailand had already exhausted its exporting potential and has in fact become an importer of tropical forests.

The First Report of the Montreal Process concludes that “public participation in decision-making process is becoming increasingly common” and “the right of indigenous people are recognized in legislation”. Another objective of this report is to verify these statements.

2.International Background

At the international level, five main elements should be included in a legal framework for sustainable environmental management.

- To manage the environment in a sustainable way, a considerable amount of information is required. All information needs to be compiled and made accessible well before decisions on forest use are made.
- The rights of the indigenous or local people should be recognized, represented, and guaranteed by laws.
- The nature and scope of ownership over land, regardless of collective or private ownership, should be clearly identified.
- Transparency and accountability should be guaranteed to enable public hearings and consultation to be substantial tools for sustainable management of natural resources.
- A multipurpose approach should be adopted, for example one which includes watershed protection, recreation, bio-diversity and improving quality of atmosphere. This can lead to policy with positive effects beyond sustainable timber management. It is essential that people

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are aware that this approach will bring multiple-benefits to them.

3. Conflict Resolution Mechanism in Thailand

3.1 Administrative and Legal Framework

Along with the introduction of the Economic and Social Development Plan (1960), forest areas were turned into cultivation areas, communities and deserts. Even after establishment of the National Forest Policy (1982), forest area continued to decrease despite various policies that enhance forest protection. Often cited as the main reasons for the decrease are measures planned by ministries and departments without consultation involving local people. Therefore those measures did not reflect the interests of indigenous people.

As an administrative structure, the Ministry of Agriculture and Cooperative (MOAC) has responsibility for conservation of forest resources, while the Ministry of Science, Technology and Environment (MOSTC) is responsible for environmental protected areas including critical watersheds.

As a legal framework, at least 6 related laws played significant roles in the forest management: the Forest Act (1941), the Wildlife Protection Act (1960), the National Park Act (1961, revised in 1992), the National Forest Reserve Act (1964), the Enhancement and Conservation of National Environmental Quality Act (1992), the Local Administration Act (1996), Land Reform Act (1975), and laws related to national security. There are, however, overlaps of authority regarding the enforcement of these laws. No single organization has full authority to settle the forest problems.
The new constitution, revised in December 1997, is worthwhile to mention, as it reveals a tendency toward decentralization of natural resource management, including forests. It stipulates that indigenous people have:

- rights to preserve local customs and to take part in the management of natural resources (Article 46)
- rights to cooperate with the government and to utilize natural resources in a sustainable way (Article 56)
- rights to access to information and receive information and explanations from the government before conducting projects which can affect the quality of environment (Article 58 and 59)
- rights to take part in meetings with authorities to discuss issues related to their rights and freedoms (Article 60)

In addition,

- Government shall encourage and support people to participate in conservation and utilization of natural resources in accordance with sustainable development criteria (Article 79)
- Local administrative units shall promote and maintain the environmental quality (Article 290)

However, the decentralization and the designation of people's rights stipulated in the Constitution have not been implemented in practice since there are no specific laws and regulations that assure these rights.

3.2 Causes of Conflicts

The main conflicts have occurred in relation to matters over land, forests and water. According to a survey on conflicts over management of natural resources, 54.8 percent of conflicts are over land, 31.12 percent over forest, 9.55 percent over water, and 5.29 percent over minerals. Regarding parties concerned, conflicts have occurred between villagers and government organizations (53.55 percent), and among villagers themselves (22.92 percent). Within conflicts over forests, 61.12 percent are on forest reserves, 16.55 percent on protected forests, and 6.7 percent relating to reforestation.

Conflicts in protected areas are to be settled according to Cabinet decisions, the Wildlife Protection Act (1960), and the National Park Act (1961), though there have been no definite solutions to the problems.

Two selected case studies of conflicts over forests are outlined below.

Wat Chun Case: Chiang Mai

This area has been under the Royal Project since 1980, with objectives to conserve forests, to develop cultivation in the watershed area, and to make use of pine for promoting economic and social status of the villagers by developing forests in the watershed areas naturally. Twelve organizations join this royal project, most of them governmental organizations. Among them, the Forest Industry Organization (FIO) was responsible for rural development to help villagers to make use of local forest resources under the Forest Industry Development Plan.

FIO divided the forest area into three parts: protection forest, production forest, and agricultural forest. Then the protection forest was divided into 15 plots, with a cutting cycle of 15 years. But this criteria was not appropriate; trees to be cut down were unhealthy and old.

Villagers, who had made use of the pine trees for a long time, objected to this cutting. An NGO supported the villagers from viewpoint not only that the way of cutting down trees is not appropriate, but also that it would affect villager's lives, the ecosystem, and the environment.

The government finally stopped timber cutting, but allowed FIO to continue to develop tourism in order to promote the area as a conservation attraction for tourists. In 1998, non-teak wood and pine trees were downed by storms. Although FIO asked for a permit to sell these timbers, the villagers objected to this request. This brought an end to FIO timber business. FIO lost its investment of at least 40 million baht.

Dong Yai Forest Case: Buriram Province

Forest Cooperative Village was established to allocate land for people, and release deteriorating forest in Dong Yai, a national forest reserve, to the private sector for forest tree planting. Two hundred ninety-seven out of 1,297 families did not receive any piece of land and they had to move out of the forest area. The villagers rallied to ask for justice but in vain. Two thousand villagers complained against the authority and burned down 20 rai of eucalyptus forest and one nursery. A Buddhist monk formed a Forest Conservation Committee to assist the villagers. The committee was composed by three representatives from each village, and they patrolled the area and closed timber tracks. Then on the charge of encroaching upon and destroying a forest reserve, the monk and village leaders were arrested pursuant to the National Forest Reserve Act (1964). The government put the person involved on trial and they are still on trial, but the problem has not been solved.

Community forests

Community forests are found in both forest reserves and protected forest areas. The National Forestry Act (1964), empowers the RFD to set up community forests. Problems are caused because people are not allowed to make use of community forests in protected areas, such as National Parks, Wildlife Sanctuaries, and critical watershed area. The government authorizes the RFD to conduct public hearings on a draft on Community Forest Act. Other public hearing were conducted by a central committee designated by the Prime Minister, although they both hardly affect decisions on utilization of wood in protected area. On 14-15 January, 30 organizations from governments and non-governmental organizations (NGOs), and more than 800 villagers from 11 northern provinces held discussions on community forest law, but still no agreements were reached.

Promotion of commercial forest plantations

Forest plantations in deteriorated forest have been promoted according to the National Forest Reserve Act (1982). Villagers opposed a lease grant to a private sector by the Royal Forest Department (RFD) to use of the forest for cultivation, because generally the area was found fertile.Forest concessions

Inland forest concessions were first granted in early the 1960s to serve the needs of the demand for timber in the country. The concessions were terminated by a cabinet decision. In 1979, half of the concession area was closed, and in 1989 all concessions were totally canceled. Concessions on mangrove forests are another main form of forest concession. The government used to grant concessions to small private sector firms. Many mangrove forest concessionnaires turned to

prawn farming. In 1987, the government resolved that there must be certain limitations on the used of mangrove forests. Prawn farming was allowed only in certain areas. However, problems with destruction of mangrove forest were not resolved. As a result, all kinds of land use permission in the mangrove areas were ended and the government ordered banks not to loan money to prawn farmers.

Illegal logging

Because forest plantations didn't succeed efficiently, illegal logging prevailed among timber and furniture industries in both natural and man-made forests. Though the government had arrested many illegal operators, illegal logging continued. It is said that this is because local villagers as well as local authorities do not cooperate with the government.

There are many sorts of conflicts over forests: conflict over forest concessions, commercial reforestation, illegal logging, community forests, expansion of protected areas into village living areas, compensation for dam construction, debts incurred by villagers under the government's loan plans, installing gas pipelines through protected areas by overseas companies, and so on.

3.4 Conclusion

Government's decentralization in natural resource management basically causes conflicts concerning sustainable forest management in Thailand. The problem could not be solved locally because there was no proper mechanism. With constitutional provisions on decentralization, the government, including many responsible organizations, became involved. However, as the government organizations had their own rules and regulations, policies, and practices, it was difficult for them to cooperate well with each other. Specific mechanisms need to be designated to harmonize the governmental entities concerned.

On the other hand, local decisions must be encouraged. Most of conflicts result from lack of awareness of the community's needs and from deference of ideas and methods on natural resource management. Therefore, in order to maintain forests in a sustainable way, one must start with giving villagers the basic right to earn a living, such as a right to make a living in an agricultural land and in community forest. Next, the local people must be given the right to participate in decision making processes at the local level.

4. Conflict Resolution Mechanism in Indonesia

4.1 General Background

Three approaches are recognized as conflict management in Indonesia, namely Power-Based conflict management (highly respectable money and physical enforcement), Right-Based conflict management (usually performed through judicial mechanisms), and Interest-Based conflict management (performed through negotiation processes).

In a traditional society, it is common to achieve a win-win solution through Interest-Based management. This traditional negotiation process has been proved to bring justice to every one with the help of a tribal chief. However, this can only be applied in societies where the people are bound to the traditional values. In the modern society, the traditional mechanisms of conflict cannot be evenly applied to find a solution. In the society which both of the disputing parties are familiar to one another, they recognize that a mediator is leader of their community, and that they have a strong tendency to try solving the dispute with maintaining a good relationship among themselves. In contrast, in the modern society the disputing parties do not recognize a necessity of harmonization, so there is no attachment to unite them.

In addition to the differences of recognition and attitude between traditional and modern society, there is also lack of respect to the law and enforcement as well as absence of a democratic environment.

This situation results in the emergence of Power-Based management. Moreover whenever discontent becomes intolerable because the other two legal approaches fail to work, people have come to believe that power and money are the best weapons for resolving problems.

4.2 Conflict Resolution According to Indonesian Legal System

Conflict of natural resources involves generally a number of parties, such as indigenous

people, a company which hold concessions from government to exploit natural resources, and government, in particular, local governments which use military forces.

Act on Forestry Basic Provision (UU. No.5 1967)

This law acts as solely enforcement on principle of forestry issue. But no scheme for conflict resolution is contained.

Public participation

Article 8 of UU No. 8/1967 on Forest Industrialization do not give opportunities for the local people to participate in the process of conflict resolution nor managing forest products. Therefore, People's involvement is collective and supportive but not meaningful or genuine participation.

Right of Indigenous people

Act on Forest Industrialization (UU. No. 8/1967) mentioned that indigenous people have a right to take forest products and maintain the forest as source of living (revised by No.5 1999). However UU No.17 on Forest reservation provides a tool to Government and capital owner as being enable to neglect rights of indigenous people. In order to reform law enforcement, PP.No.5/1999 was issued. According to this law, UU No. 8/1967 and other regulations were changed. Under this new law, public participation of the local people is also treated better. No.8/1999 mentions two main points. It conveys that indigenous people have right to harvest forest products to meet their daily life need, and that Indigenous people and local community are given priority to be involved in the process of forest industrialization.

Forest concession and Cooperative

Moreover, new policy on the forest concession emphasis the role of cooperatives. Government Regulation No.6 1999 provides that cooperative established by forest community has a right to have/make a concession, which is called by community forest concession rights (article 10). Forest concession in certain area may be stipulated by Government just for local community (article 32). These can somehow minimize and avoid conflicts regarding forest management.Among laws and regulations on conservation, the Environmental Management Act (EMA) provides a crucial framework for forest management, though it is not directly related to the field of forestry.

Environmental Management Act (No. 23 1997)

This Act provides not only a conflict resolution basis through the court, but also out-of-court settlement, such as negotiation, mediation or arbitration. Third party services must be neutral and independent. Article 32 stipulates four requirements to be considered neutral; 1) to be approved by disputing parties; 2) to have no relationship with any disputing parties; 3) to have skill/capacity to conduct negotiation and mediation, and 4) to have no interest to the negotiation process and its results. In order to follow up, the Government is arranging Draft of Government Regulation on the Dispute Settlement Service Provider.Article 5 stipulates that the community has a right to participate in the process of decision making in relation to environment management starting from planning, environmental impact analysis, permits, policies up to dispute settlement in or out of court. In order to realize effective participation, Article 5 also says that the community has a right to access environmental information. According to this law, the community is entitled to participate in the lay out planning process, and to obtain information.No other laws or regulations in the fields of environment and natural resource management, regulate and provide any objection mechanisms. Only Government Regulation No.18 1999 on Dangerous and Toxic Material Waste Management provides a feed-back interaction facility between the apparatus that serves as a receiver of objections, and community as a litigant.

4.3 Points from analysis of 4 case studies

Four case studies were conducted. The first one is a case on a disruption of water resources caused by cutting of a reserved forest (Mangilang Village, West Sumatera, 1997-98). The second case deals with executing forest industrialization within a supporting area of national park, where initially belong to the indigenous people (Bukit Tiga Puluh, Riau, 1998). The third case is on overlapping forest industrialization against the existent of the land of the indigenous people (Kecamatan of Sandai, West Kalimantan, 1994), and the fourth on destruction of the land belonging to the indigenous people (areas for plantation and for communal cemetery) for the construction of infrastructure of the HPHTI-Transmigration (building roads) without involving the people in the

decision making process (East Kalimantan, 1993).

All of these cases occurred in the remote area of Kilimantan and Sumatra, and generally speaking, patterns of these settlements have not been satisfied. From the above cases, the following points can be identified:

a. Conflicts are caused as a matter of the implementatoin forest concession rights granted by the government.
b. Location of concessions occasionally overlapps with business areas, residential or traditional areas of local community.
c. Exploitation has threatened community livelihoods by cutting trees and plantations without compensation.
d. The government's response is slow, and in fact many conflicts have been neglected.
e. The decision making process on natural resource allocation is not transparent to the local community. As a result, few interests of the community can be reflected.
f. Weak control by related agencies makes violations difficults to be resolved.
g. A geglect of the interests of the local or traditional community have resulted in the absence of recognition on the traditional community rights.
h. Settlement processes occasionally involve people or a institutions as a mediators or arbitrators who have no relevancy with the case.
i. Both communities and the government concerned do not recognize the importance of neutral and independent mediators in conflict resolution processes, despite the fact that a neutral third party who has skills and the capacity to settle conflicts could positively influence the settlement process.

4.4 Recommendations

To set up a conflict resolution mechanism in the field of forestry which is harmonious with sustainable forest management, four points below can be recommended.

1. Tenure status for local and traditional communities should be clarified and stipulated. With legal certainty, local people can better manage their land resources. They can be better prepared to avoid the negative consequences caused by capital flows and globalization.
2. The role of communities should be recognized and they should be encouraged in the decision making process. In order to prevent corruption and misuse, transparency and the involvement of the local people concerned are essential, in particular in the process of allocating forests and issuing concessions.
3. The social and political role of ABRI (the Indonesia Armed Forces) must be redefined. Intervention of ABRI into civil dispute matters has made a bad situation worse.
4. A conflict management mechanism in the field of natural resource management, including forestry, should be developed to include two components: first, an objection mechanism allow the public to response or object to the government, obliging it to give them adequate time to register objections; second, a reliable dispute settlement mechanism or ombudsman which is truly independent. The environmental dispute settlement mechanism based on Article 33 of the Law on Environment Management (No. 23/1997) can be used to settle disputes out of court.

5.Conflict Resolution Mechanism in Malaysia

5.1 Legal System

The Constitution stipulates a separation of legislative powers of the federal and regional states' governments. The Federal lists, the State list, and the Concurrent list are provided in Article 74. Any matters not included within these lists are regarded as matters of the states (Article 77). Matters in the Concurrent list are legislated by both national Parliament and the state legislative assemblies. On any inconsistency between a federal law and a state law, however, a federal law prevails and a state law, to the extent of the inconsistency, is void (Article 75).

Land and forestry are enumerated in the States list, hence, each state is empowered to enact laws and formulate policy on land and forestry matters. On land issues, the National Land Council (NLC) plays a role to promote cooperation between the states, and between the federation and the states.

The NLC consists of a Minister as Chairman, not more than ten representatives appointed by the Federal Government, and representatives from each state. The NLC works to formulate policies on utilization of land for mining, agriculture, and forestry. On these issues, the federal and states government are obligated to follow the policy so formulated. It should be noted that Parliament's powers to legislate on land matters do not apply to Sabah and Sarawak. These two states retain exclusive legislative competence over land (Article 95D).

Land Codes

Land laws and administration are governed by the National Land Code 1965, which applies to the Peninsular Malaysian states of the Federation. Each of the states are competent and administer land laws in their respective states. The National Land Code as well as the Sabah Land Ordinance and the Sarawak Land Code do not provide for biodiversity or conservation uses of the land. Hence categorization of land is on the basis of "uses"; such as agriculture and industry.

Land Conservation Act 1960 (Revised 1989)

The Land Conservation Act is a federal law and adopted by all the 11 Peninsular Malaysian states. LCA would be a useful tool for protecting forests on steep land. The Department of Agriculture and the Drainage, and Irrigation Department which would be more capable of enforcing the Act, unfortunately are not given any executive authority to enforce it.

Forestry Law

National Forestry Act 1984 confines functions of federal agency to planning, research and development and technical advice, and service and facilities for training. It is difficult to synchronize the management of the forests between the various states.

Environmental Quality Act (EQA) 1974 and Environmental Impact Assessment (EIA)

The Environmental Quality Act 1974, a federal law, provides a legal framework for environmental management policies. The Department of Environment (DEO) was established by the EQA within the Ministry of Science, Technology and the Environment. The requirement for Environmental Impact Assessments (EIAs) was not a part of the EQA in 1974. EIAs were first introduced in 1980 for three large projects. Over the next six years at least 39 projects were subjected to EIA studies. In 1985, the EQA 1974 was amended to insert a new section 34 A making EIA mandatory. This was followed by the EIA Order in 1987. EIA requires assessing impact of activities in 7 fields: agriculture, Airport, Drainage and Irrigation, Forestry, Infrastructure, Resort and Recreational Development, and Water Supply. In the field of forestry, EIA prescribes five activities, that is: (a) Conversion of hill land to other land use covering an area of 50 hectares or more, (b) Logging or conversion of forest land to other land use within the catchment area of reservoirs used for municipal water supply, irrigation or hydro-power generation or in areas adjacent to state and national parks and national marine parks, (c) Logging covering an area of 500 hectares or more, (d) Conversion of mangrove swamps for industrial, housing or agriculture use covering an area of 50 hectares or more, (e) Clearing of mangrove swamps on islands adjacent to national marine parks.

5.2 Conflicts over forest use

The diminishing forests and conflicts over resources are disputed by a variety interests. The most significant actors concerned are:

- The indigenous people and communities;
- Corporations and individuals who have permits from authorities to develop forests;
- NGOs and individuals who represent the interests of indigenous people
- The government and its agencies (in Malaysia, 13 states and the federation)

Three sorts of typical conflicts are addressed here.

A.Federal-State Conflicts

The mismanagement of the forests by the separate states is in part due to the financial position of the states. First, the Constitution allocates limited revenue sources as to perform their duties. Second, the Constitution also bars the states from raising loans without federal government consent. Therefore states have sought to use their resources. Third, since forest revenue is principally in the form of

royalties and premiums, states have designed forest policy as a means of rapid exploitation to get resources.

B.Conflict over National Park and Reserve

The Endau-Rompin Case

Endau-Rompin is located on the borders of Pahang and Johore states. Through the area run more than 5 important rivers, significant as the sources of water-based economy of southern Malaysia. An informal agreement was reached in 1972 between the State Government of Pahang and the Federal Government in order to reserve the Endau-Rompin as a National Park. Under the agreement, a core area was left all the time while a limited area was permitted for logging. The Sultan of Pahang pronounced that "10-15 Sumatra Rhinoceros, which the largest known group in the world, were found in the Endau-Rompin. In response to this finding, the state government is in the process of gazetting a game reserve to save the species". Despite this pronouncement, the state government issued new logging licenses for exploitation of the core area, declaring that "the National Park would only be set up after the state had fully exploited its economic potential", and that "when it comes to choosing between human welfare and animal survival, the state had to opt for the former"

C.Conflicts involving the Indigenous People of the Forests

The state authorities are empowered to declare lands as native area land or native customary land. They have also several clauses that enable the government to remove or extinguish these rights. Generally land codes and subsequent amendments provide little protection of customary rights. The natives have organised themselves to make known their unpleasant situation, and sometimes have done direct action. Theses actions are assisted by a number of Malaysian NGOs, but unfortunately laws and state's authorities back those who would act with negative impacts on the land and forests of these people.

The forest (amendment) Ordinance 1987 of Sarawak is one example. Kenyah and Kelabit people set up their barricades, asking for a cessation of logging. Courts decided that the building of barricades on their land was not breaking the laws. After this judgment, nonetheless, the state government brought an amendment to the forestry law. The amendment states that "any person who set up structures on roads which are constructed by a holder of a permit issued under this Ordinance so as to cause a barrier, or any person who prevents any forest officer or police in the execution of his duties or a holder of a permit of his employee from removing the barrier, shall be guilty of an offence: Penalty, imprisonment for two years and a fine of six thousand dollars".

5.3 Conflict Resolution Mechanism

Conflict between the federal government and the states has been resolved at the level of the National Land Council, National Forestry Council, and by negotiation between federal and state leaders. State leaders rely on the federal government for extra constitutional grants to their states. Only when different political parties are in power at state level versus at the federal level, does the need to appeal the court arise (State of Kelantan is one instance).

Conflict between a state or a corporation which has permission to use the forest, and the indigenous communities and NGOs, have occurred quite often. Two conflict resolution mechanisms have been used in Malaysia: the courts and the EIA system, which is now a statutory obligation for project proponents in forest areas.

A. Resolution by Courts

Kayan Case, Sarawak

The plaintiffs were three member of the Kayan community. The Kayan had been granted native land rights over protected forest area by the colonial government. In 1987 they found their land being logged by a timber company under a license granted by the state government. The plaintiff contended that they could bring a representative action on behalf of the Kayan community. High Court upheld this. This itself is a major victory for these communities since land is held collectively[2].

Adong bin Kuwau & Ors v Kerajaab Johor &Anor Case

Fifty-two plaintiffs were heads of aboriginal families around Sungai, which had been acquired by government of Johor State for construction of the planned Sungai Linggiu Dam. The plaintiff contended that rights of the aboriginal people accorded by common law and statutory law were property rights within Article 13 (1) of the Federal Constitution, therefore, that when these right were taken away, they should be compensated pursuant to Article 13 (2). The court judged that the aboriginal people's rights over the land, including rights to move freely and to live from products of the land, are given by a common law since they have been continuous from the time immemorial. The plaintiffs had suffered deprivation of various interests, then the court ordered that the defendants pay the plaintiff the total loss of income of the aborigines (RM 26.5m). The government of Johor appealed to a higher court on the grounds that the forest land in question had not been declared an aboriginal area or aboriginal inhabited place under the provisions of the Aboriginal People Acts 1954. The Court of Appeal, however, dismissed the appeal and held the following: This case is not based on a claim that the land in question was an aboriginal area. They rely upon the absence itself in the Act that excludes their common law rights. Herein lies the fallacy in the appellant's argument. A major problem of resolution by courts is that public interest groups and NGOs, which attempt to protect the collective interest, face the rule of standing. No other person can bring an action unless some private rights of his or her being interfered with, or he or she suffered special damage to himself. Public interest groups are thereby denied standing. They have to find qualified individuals willing to lend their name for a test case.

B. Resolution through the EIA Process

As mentioned above, the EIA is introduced by 34A of the EQA 1974. The EIA Handbook provides five essential points to make a valid assessment: 1) Monitor community needs, 2) Identify both material and psychological impacts of the project, 3) Measure and promote social acceptance of the project, 4) Monitor changes of environmental values in the community, and 5) Obtain additional environmental information. Among those, public participation is emphasized. The Handbook highly recommends having public meetings with a Citizens Committee to hear public opinion. It further provides that a detailed assessment report should be made available to the public, and that the public is invited to comment on the proposed project. A review panel, which reviews EIA reports and makes recommendation to authorities, will take comment from the public into account and append them to the Detailed Assessment Review. Federal EIA laws applied throughout federation in 1994 except Sarawak state. EIA process in Sarawak is governed by the Sarawak EIA Order 1994 by which public participation is not mandatory. Furthermore, the EIA Amendment Order 1995 stipulated a retrospective effect to "disprescribed" from the ambit of section 34A activities covered by the Sarawak EQA Order. This denial of public participation in the EIA process for activities governed by the Sarawak Enactment was the subject of litigation in the Bakun Case.

Bakun Case

Three native residents (plaintiffs) asked that Ekran Bhd (defendant), contractors for a dam, had to comply with section 34A of the EQA 1974 and regulations made thereafter. They contended that the approval of the EIA report under Sarawak EIA Order 1994 was a breach. They had been conferred the right to comment on the EIA report by EQA 1974. Amendment Order 1995 with retrospective effect to "disprescribe" from 34A activities covered by the Sarawak EIA Order. The trial judge declared that EIA Amendment Order 1995 is invalid and that Ekran Bhd had to comply with the EQA 1974. The most notorious difference between the federal EIA process and that required by Sarawak legislation is the right of the public to a copy of EIA reports and the right to make comments before approval of the EIA is granted. Input by public participation may cause authorities to take different actions or to impose certain conditions that may be beneficial to the project and the public as a whole. That is the reason that the authorities need to hear the views of the public first. The court of Appeal, however, held that the EQA 1974 did not apply to the Bakun HEP. Because powers to legislate on land and water is wholly within the State of Sarawak, according to the Constitution which describes the division of powers between the federation and the states.

5.4 Conclusion

Legitimate interests of indigenous communities will have to be assessed, clearly demarcated and guaranteed. The states have failed to do so. This is a task of the federal government to treat this as a matter of priority. The National Land Council and the National Forestry Council can play a role to help.

Public participation in the EIA process can help to minimize conflicts over forest land use. Sarawak EIA Order denies this as a right. This shortcoming needs to be urgently addressed.

6.Analysis and conclusion concerning conflict resolution from the standpoint of sustainable forest management

From the case studies of three countries on forest management, special circumstances in each country can be seen. In Thailand, the government's centralization on natural resource management, including forest, and its harmonization among authorities are required. In Indonesia the obstruction of intervention of armed forces is essential. In Malaysia, the issue of centralization from states' governments to federal government on certain matters, such as recognition of interests of local people, is raised.

Several elements are evident across all the cases. The following components should be considered to design a mechanism for solving conflicts over forest management: In order to prevent conflicts, it will be important to clarify and guarantee basic rights of indigenous people by laws, give tenure status over land to the local community, and provide opportunities to participate in decision making processes at various stages, in particular at the early stage. This process should also be transparent. The introduction of EIA will be a useful method to improve the participation of local people.

Once conflicts occur, a neutral and independent mediator, who has no vested interest in the case and the parties, should be involved in the conflict solution mechanism. The rights of people should be clearly defined and reliable in court.

Most of the above elements have been mentioned and discussed at international forums. Though at national or sub-regional levels, the importance of these elements has been recognized, few concrete measures have been taken to realise these concepts.

References

FAO Publication:1993/16, Report of the Regional Expert Consultation on Forestry Policy and Developments and Research Implications in Asia and the Pacific, 1993.

Review on European Community and International Environmental Law: Forest, Vol.4, Issue 3, BLACKWELL, 1995.

SACEP/UNEP/NORAD Publication Series on Environmental Law and Policy No.3, Compendium of Summaries of Judicial Decisions in Environmental Related Cases (with Special Reference to Countries in South Asia). 1997

Our Forest, out Future: Summary Report of the World Commission on Forest and Sustainable Development

Asia-Pacific Agroforestry Profiles: second edition, FAO, 1996

Forestry Policies of selected countries in Asia and the Pacific, FAO Forestry Paper 115, 1993

S.B.Roy, Mitali Chatterjee, Gasesh Yadav, and Raktima Mukherjee Edition, Policy to Practice of Joint Forest Management.

Yoshihiro Nomura and Naoyuki Sakumoto Edit., Chikyu Kankyo to Asia Kankyoho, 1996

Winfriend Lang Edit., Sustainable Development and International Law, Graham & Trotman Ltd., 1995

APCEL Document Series Issue No.1: Selected ASEAS Documents on the Environment, 1996

Thailand

Tropical Forestry in the 21st Century, FORTROP'96 International Conference, Volume 7: Community Forestry/Agroforestry, 1996

Thai no Horitu Nyumon, Kobayashi Corporation, 1998

Indonesia
ICEL, Decentralization and Participation on Protected Areas Management in Indonesia: Law and Policy Analysis, draft 1, 1998
Guidelines for Hazardous Waste Management, BAPEDAL, 1998
Indonesian Journal of Environmental Law Edition I, ICEL, 1996
Indonesian Journal of Environmental Law Edition II, ICEL, 1997
Strategic Directions 1994-1998, BAPEDAL
Cleaner Production in Indonesia, BAPEDAL

Malaysia
Guideline of National Forestry Policy 1978 (Revised 1992), 1995
Forestry Statistics Peninsular Malaysia, Forestry Department Peninsular Malaysia, 1996
Forest Sector Review Peninsular Malaysia, JIL. 13 BIL.1/VOL.13 NO.1, 1997
Establishment and Formation of National Forest Development (NAFDA) and National Forest Development Act 1974, Forestry Department, 1974
Annual Report 96, Forestry Department Peninsular Malaysia
Annual Report 97, Forestry Department Peninsular Malaysia