

# **CONFLICT RESOLUTION MECHANISM IN SUSTAINABLE FOREST MANAGEMENT: FROM CASE STUDIES IN THAILAND, INDONESIA AND MALAYSIA**

Makiko Yamauchi<sup>1</sup>

## **ABSTRACT**

The object of this report is to explore ways of settling of conflict on forest management by clarifying causes and their processes, and to present common factors of the resolution in the context of international patterns and norms. Conflicts are mainly caused by improper forest management, which sometimes disregards conventional 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, on 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 is a difference of the current status of forests in these three, 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 importers of tropical forests.

Though the First Report of the Montreal Process summarizes “public participation in decision-making process is becoming increasingly common” and “the right of indigenous people are recognized in legislation”, to verify this statement is also another object of the report.

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<sup>1</sup> Makiko Yamauchi, Programme on Environment and Sustainable Development, The United Nations University, 53-70 Jingumae 5-chome Shibuya-ku, Tokyo 150-8925. Fax: 03-3406-7347  
Email:yamauchi@hq.unu.edu

## **INTERNATIONAL BACKGROUND**

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

- To manage environment in a sustainable way, a considerable amount of information are required. All of information needs to be compiled and made accessible well before decisions on forest used 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 collective or private ownership, should be clearly identified.
- Transparency and accountability should be guaranteed to enable public hearing and consultation to be a substantial tool for sustainable management of natural resources.
- A multipurpose approach, which combines more than one purpose, such as watershed protection, recreation, bio-diversity and improving quality of atmosphere, should be adopted. This can lead to a policy with positive effects beyond sustainable timber management. It is essential that people are aware that this approach will bring multiple-benefits to them.

## **CAUSES OF CONFLICTS OVER RESOURCE MANAGEMENT IN THAILAND**

The main conflicts have occurred in relation to the matter over land, forest and water. According to a survey on conflicts over management of natural resources, 54.8% of conflicts are over land, 31.12% over forest, 9.55% over water, and 5.29% over minerals. Regarding parties concerned, conflicts have occurred between villagers and government organization (53.55%), and among villagers themselves (22.92%). Within conflicts over forest, 61.12% are on forest reserve, 16.55% on protected forest, and 6.7 % on reforestation (Prasit et al, 1995).

### **1.Wat Chun Case: Chiang Mai**

This area has been under the Royal Project since 1980, which objectives are to conserve forest, to develop cultivation in the watershed area, and to make use of pine for promoting economic and social status of the villagers in order to naturally develop forests in the watershed areas. Twelve organizations joins with this royal projects, most of them were governmental organizations. Among them, the Forest Industry Organization (FIO) was responsible for rural development to help villagers make use of local forest resources under the Forest and 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, which a cutting cycle was 15 years. But this criteria was not appropriate; trees to be cut down were unhealthy and old.

A villager who had made use of the pine trees for a long time objected to this cutting. An NGO supported the villagers with viewpoints of not only cutting down

trees, rather than with viewpoints that it would affect villager's lives, ecosystem and environment.

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

## **2.Dong Yai Forest Case: Buriram Province**

To allocate land and release deteriorating forest in Dong Yai, where a national forest reserve, to private sector for forest tree planing. 297 out of 1297 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. 2000 villagers claimed against the authority and burned down 20 rai of eucalyptus forest and one nursery. A Bhuddist monk formed Forest Conservation Committee to assist the villagers. The committee 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 (by National Forest reserve Act 1964). They were imprisoned and are still on trail.

The government put the person involved on trail, but the problem still has not been solved.

## **3.Community Forest**

Community forest are found in both forest reserves and protected forest areas. 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 forest in protected areas, such as National Parks, Wildlife Sanctuaries, and critical watershed area. Government authorizes the RFD to conduct a public hearing on draft on Community Forest Act. Another public hearing was conducted by a central committee designated by the Prime Minister, which although hardly affects decisions on utilization of wood in protected area.

On 14-15 January, 30 organizations from Government and NGOs, and more than 800 villagers from 11 northern provinces held discussions on community forest law, but still no agreement are reached.

Government's centralization and natural resource management are key words in sustainable forest management in Thailand.

In order to solve problems of conflicts over forest, it must start with, firstly, giving villagers basic right to earn a living, such as a right to make a living in an agricultural land and in community forest. Secondly, giving right the local people to participate in decision making process at local level.

## **CASE STUDIES ABOUT CONFLICT RESOLUTION MECHANISM IN INDONESIA**

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).

### **1. Points from Analysis of 4 Case Studies**

All of them were occurred in the remote area of Kalimantan and Sumatra, and generally speaking, patterns of these settlements have not been satisfied. From the above cases, it can be pointed out as follows:

- a. Conflicts are caused as a matter of forest concession right granted by Government.
- b. Location of concession is occasionally overlapped with business area, residential or traditional areas of local community.
- c. Exploitation has threat community occupation by cutting trees and plantation without compensation.
- d. Government's response is late, even many conflicts have been neglected.
- e. Decision making process on natural resource allocation is not transparent to local community concerned. Therefore few interest of the community can be reflected.
- f. Weak control by related agencies makes deviations difficult to be solved.
- g. Neglecting interests of local or traditional community have particularly caused no recognition on the traditional community right.
- h. Settlement process occasionally involves people or a institution as a mediator or an arbitrator which have no relevancy with the case.
- i. Both community and government concerned do not recognize importance of neutral and independent mediator in conflict resolution process. A neutral third party who have skill and capacity to settle conflicts highly influence on settlement process.

### **2. Recommendation**

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

1. To clarify and stipulate tenureship status to local and traditional community. With legal certainty, local people can manage their land resources and make use of it as a tool to prevent threat by capital flow and its globalization.
2. Community role should be recognized and motivated in the decision making process. In order to prevent deviations and misuse, transparency and involvement of local people concerned are essential, in particular in the process of allocating forest and issuing a permission of concession.
3. Social Politic role of ABRI (Indonesia Armed Forces) must be redefined. Intervention of ABRI into civil dispute matters have made a situation worse.

- 4 To develop a conflict management mechanism in the field of natural resource management, including forestry, it should consist of two components. Firstly, objection mechanism to response or obligations from Government in order to object to them on time. Secondly, a reliable dispute settlement mechanism or dispute settlement provider which is truly independent. Environmental dispute settlement mechanism based on Article 33 of Law No. 23/1997 on Environment Management can be used as one out of court.

## **CONFLICTS OVER FOREST USE IN MALAYSIA**

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

- The indigenous people and communities
- Corporations and individuals who have permits from authorities to develop forest
- NGOs and individuals who represent the interest of indigenous people
- The government and its agency (In Malaysia, 13 states and federation)

Three sorts of typical conflicts are addressed here.

### **1.Federal-State Conflicts**

The mismanagement of the forest by the separate states is in part due to the financial position of states. Firstly, the constitution allocates limited revenue sources as to perform their duties. Secondly, the constitution also bars the states from raising loans without federal government consent. Therefore states have sought their resources. Thirdly, since forest revenue principally in the form of royalty and premium, states designed forest policy as rapid exploitation to get resources.

### **2.Conflict over National Park and Reserve: The Endau-Rompin Case**

Endau-Rompin is located on the borders of Pahang and Johore states, and within the area more than 5 important rivers run through and their importance is significant as the source of water economy of southern Malaysia. An informal agreement 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 limited area was permitted for logging but core area was left all the time.

The Sultan of Pahang pronounced that 10-15 Sumatran Rhinoceros, which the largest known group in the world was found in the Endau-Rompin. In response to this finding, the state government is in the process of gazetting a game reserve of 'save the species'.

Despite these pronouncements, the state government issued new logging licenses for exploitation of the core area, with 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."

### **3.Conflicts Involving the Indigenous People of the Forest**

The state authority is empowered to declare lands as native area land or native customary land. It has also several clauses that enable the government to remove or extinguish these rights.

The natives have organised themselves to expose their unpleasant situation, and sometimes done direct action. These actions are assisted by a number of Malaysian NGOs, but Unfortunately Laws and state's authority backs those who would take these actions on the land and forest of these people.

The forest (amendment) Ordinance 1987 of Sarawaku is one example of this. Kenyah and Kelabit people set up their barricades, asking for a cessation of logging. Court decided that the building up barricades on their land was not breaking the laws. After that 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.

### **4.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 are reliance on the federal government for extra constitutional grants to their states. Only when deferent political parties in power at state level from at federal level, the need to appeal court arises (State of Kelantan in an instance).

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

### **5.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 federal government to treat 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 helps to minimize conflicts over forestland use. Sarawaku EIA Order denies this as of the right, this shortcoming needs to be urgently addressed.

### **ANALYSIS AND CONCLUSION CONCERNING CONFLICT RESOLUTION WITH VIEWPOINT 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, centralization from state's government to federal government on certain matter, such as recognition of interests of local people, is raised.

However, 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 tenurship status over land to the local community, and give chances to participate in decision making process 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 participation of local people.

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

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

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