

Dynamics of Dispute Resolution and Administration of Justice for Cambodian Villagers

by

William A. Collins, Ph.D.

A Preliminary Assessment Funded by USAID pursuant to Contract Number 442-0000-0-LP-7009-00, Project Number 442-0111.

The opinions expressed herein are those of the author and do not necessarily reflect the views of USAID or of the United States Government.

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EXECUTIVE SUMMARY

An examination of several concepts relevant to understanding civil society in rural Cambodia shows that the commonly used administrative divisions, *krom*, *phum*, *khum*, may not exhaust the significant categories recognized by Cambodian peasants. The family and the *wat* congregation are culturally significant, as well as the dichotomy of *phum* and *prei*, civilized space and wild space.

The heads of the administrative units, along with the family elders and the *wat* congregation lay teachers, serve extremely important roles in dispute resolution in the rural setting by mediation.

There are also associations of lay religious teachers, committees devoted to the upkeep of the *wat* which include both religious and secular authorities, and parents' associations led by the school principal which are all significant elements of village civil society in Cambodia, although not usually involved in dispute resolution beyond their association concerns. The Village Development Committees being created in some parts of the country will also be important in rural civil society and may evolve dispute management functions.

The disputes in focus in this preliminary assessment are domestic disputes, disputes over debts and damages and land disputes. In each, the major relevant cultural concepts are identified and the same process of mediation is shown to operate in dispute resolution.

The preliminary assessment is peppered with recommendations for further study and analysis to obtain a comprehensive picture of the issues, and it concludes with some recommendations donors might consider in an effort to improve the administration of justice and the promotion of human rights in rural Cambodia in the future.

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INTRODUCTION

This preliminary assessment of dispute resolution and administration of justice in Cambodian villages was undertaken to assist the Democracy and Governance Office of USAID-Cambodia in their process of developing plans for a second generation program in the "rule of law." USAID recognized that a gap in knowledge existed regarding what rural Cambodians' attitudes and practices were concerning the just resolution of disputes. It was recognized that there was a lack of understanding about which actors in rural Cambodian society played significant roles, either formally or informally in this aspect of civic life at the local level. It was apparent that a lack of understanding existed concerning the processes and dynamics by which civil rights were protected and justice achieved in rural Cambodia in the resolution of disputes in the areas of family conflicts, land conflicts and contractual conflicts.

This assessment, based on extremely limited fieldwork, could not hope to fill in all the gaps in knowledge and understanding that exist concerning the administration of justice in rural Cambodia. What is aimed at here is an overview of the prominent issues, concepts and processes in question, highlighting areas where more extensive research and analysis might be useful. My analysis aims to indicate what further question should be asked, while, at the same time, offering recommendations that might serve USAID'S plans to develop a program of assistance to strengthen democratic participation, improve the administration of justice and to advance the concerns of human rights in rural Cambodia.

*I wish to express my gratitude to Dr Ned Greeley, Director of the Democracy and Governance Office of USAID, Phnom Penh, for his advice and encouragement during this project. I would also like to thank Prof David Chandler for his comments on a draft of the paper.

METHODOLOGY

The research design was to survey five provinces in six weeks. The provinces selected were Kampot, Kampong Cham, Kratie, Siem Reap, and Battambang. Given the limited time available and the desire to make contacts in the rural environment, it was considered advisable to coordinate with the staff of programs funded by USAID and the Asia Foundation which already had long experience in these provinces in the areas of justice and dispute resolution. Accordingly, as possible, we sought the advice of the Court Training Project, Cambodia Defenders Project and Human Rights organizations. It was also found valuable to contact development oriented NGO's who were supported by USAID through PACT, and who had extensive informal contacts in the rural areas of the provinces where they were based.

These contacts were often of great help in identifying villages and communes where we were likely to find a congenial reception and where we might find informants willing to talk about their dispute resolution experiences.

The research team consisted of myself, a senior cultural anthropologist; three professors from the University of Phnom Penh, two men and a woman, who at different times during the fieldwork, when they were free from teaching duties, served as Khmer interpreters; a Cham with whom I had worked before, who joined the team when our visits were to include Khmer Islam communities; a Dutch young woman who is a recent graduate in anthropology, interested in the study of Cambodian women. In addition, from time to time our team was joined by young Khmer staff from the D/G office of USAID.

The Khmer and Cham research colleagues all had family connections in the provinces to be visited. These contacts enabled us to stay for a few days in village homes on several occasions during the fieldwork. This access allowed us to develop a degree of rapport with a variety of village informants and obtain interviews which would otherwise have taken much longer to achieve.

The research objectives as stated to potential village informants were not put in quite the same terms as in the "Scope of Work." I was looking for the native Khmer concepts and categories related to disputes and customary village processes for resolving conflict. Accordingly, I had to suspend my own ideas of "justice" and "civil rights" in order to grasp the Khmer point of view through open ended questions and relatively unstructured interviewing.

I usually began by asking what kind of problems or difficulties occurred in the village that came to public attention, and then I tried to find out how those difficulties were handled. I asked for examples which might illustrate conflicts related to land, debts and family problems and tried to find out who played active parts in the resolution of the conflicts.

My attention was focused on social space and I was looking for recurring themes and patterns in the ways public conflicts were identified, and in the expectations villagers seemed to have for how acceptable resolutions of the conflicts should look. A term which

my reading had prepared me to find used by Khmers in talking about informal dispute resolution was *somroh-somruel*.¹ *Sroh* means to get together for a purpose; *Sruel* means easy, comfortable. *Sroh-sruel* means to agree all together happily. *Somroh-somruel* means the achievement of a happy agreement. A very similar term is *Somrap-somruel* which means to arrange, to coordinate, to compromise.

I always asked about this kind of mediation and learned that the term referred especially to a fairly consistent pattern of informal procedures followed by local level state authorities. These procedures seem to reflect, on one hand, traditional conceptions of what appropriate or acceptable resolutions should include, especially the concern to preserve the possibility of an on-going village relationship between the conflicting parties. On the other hand, these procedures are clearly linked, symbolically, to the formalities of higher legal authority, in the concern for sealing the resolution with a written contract. As the research progressed, I learned about the less formal ways other religious and secular authorities contributed to the village dispute resolution process.

I tried to note the Khmer terminology for dispute settlement and to record the proverbs and folkstories which informants used, or referred to, in their discussions of the resolution of disputes. This approach was designed to show my interest in study of the Khmer language, which improved rapport with my informants. But this kind of material also reveals the way Cambodians traditionally think about important issues in their culture. An analysis of the ideals promoted in such proverbial wisdom compared to the realities observable in everyday life is worth pursuing in further research.

I included a Cham interpreter in the research team to continue to build on my earlier studies of the Muslim minority community in Cambodia. I also wished to form comparisons and contrasts between the Chams and Khmers which would sharpen my understanding of Khmer village life which was the main focus here.

I included a female researcher and interpreter when it was feasible during the research to improve our ability to gather information from female informants for this preliminary assessment.

¹ Cathy Zimmerman, *Plates in a Basket will Rattle* (1994), 147. See also, Carmen Maria Lopez-Vasquez, *Pre-trial Dispute Resolution Processes* (1996), 9 who cites Zimmerman and gives many examples from the court milieu.

PART ONE

Village Civil Society

The first question that has to be faced in an assessment of this kind is: what are the socio-cultural boundaries for the study. A vague notion of the "rural area" had to be clarified in a way that would stay within the concerns of the scope of work, that would provide a focus for the actual field research, and that would also be true to the Khmer perception of their world.

My solution has been to train my attention on a region of social space between the court and the *wat*. The formal, legal system available in the towns of *srok* (district) and *khet* (province) marked one boundary for my assessment. The formal, religious complex centered in the Buddhist *wat* marked another boundary for the study. In between, is the everyday village life where conflicts occur and are resolved.

From the point of view of village life the institutions of law and state on one hand and Buddhist morality and religion on the other have some similar features. Both are based on written traditions of rules, laws, codes, procedures, rituals and practices. Both are staffed by high-status experts, many of whom are committed to a life-long vocation. These adepts and authorities are masters of a complex protocol which sometimes intimidates villagers. Villagers are fearful of making a mistake in speech or action before people of high status which might offend them or make them angry.

From the point of view of village life, and with particular attention to the problems of conflict resolution, the two institutions of court and *wat* are also opposite to one another. The courts provide a complex process which determines winners and losers. The *wat* provides a profound teaching of non-attachment and withdrawal as a way to avoid the suffering associated with desire and craving. The court, and the state in general, in the villagers' perspective, is where power is associated with money. The *wat*, by contrast, is where moral authority is associated with a vow of poverty. The court is perceived as remote and alien from the villager point of view, while the *wat* is local and familiar.

In the center of view, then, is rural civil society. Here we find a mixture of oral and literate culture. Most villagers are aware of the rich tradition of proverbs, fables, and folktales which carries ancestral wisdom and Khmer identity from generation to generation by word of mouth.² Those who are skilled in speech which draws on the repertoire of proverbial allusions are highly respected. Everyone acknowledges the framework of customs (*tomniem-tomloap*) which guides acceptable behavior. In this milieu, the preferred mode of settling conflicts is by prolonged talking together to reach a compromise both parties can live with.

In this oral culture, one of the surest ways for someone to gain esteem among his fellows is by knowing how to deal successfully with the higher authorities in the neighboring spheres

²Collections of this material were begun during the colonial era by the Buddhist Institute. See, for example, the *Prachum Rieng Preng Khmae*, which has now reached nine volumes.

where literacy and codified procedures prevail. A person who has experience with the rules, laws and protocol of the spheres of religious authority or state power may be said to possess *suchivatoah* (knowledge of manners; good breeding). The term is semantically related to concepts like well-disciplined behavior, wealth acquired through proper means, knowledge acquired through persistent effort, well thought-out opinions, as well as concepts like honesty, generosity and charm.

This acquaintance with the proper way to behave in the spheres neighboring village civil society is translated into influence and respect in the community. From that position, the one whose understanding of propriety crosses the significant cultural boundaries may also play role of mediator to help the disputing parties within the village resolve their differences and achieve a happy agreement, *somroh-somruel*.

Another way to see the contours of Cambodian village civil society is to understand what a village is. Here we must begin with the relationship of *phum* to *prei*. *Phum* is tamed, cleared, cultivated, inhabited land. *Phum* is where human culture and social life can be found. *Prei*, by contrast, is the savage wilderness of bush and forest surrounding the *phum*. This undomesticated zone is the abode of unpredictable and dangerous spiritual powers. But *phum* and *prei* are as dependent on one another as field and ground.

It is the task of knowledgeable experts (*achaa*), in the village to attend to the cult of the *neak ta* (the old ones). The *neak ta* include ancestor spirits and the primordial spiritual beings of the *prei* forest whose influence persists in the places cleared and inhabited by man to make a *phum* village. These spirits are liable to punish those who are disrespectful or who fail to show them proper deference. The punishment they mete out to offenders is illness and misfortune.³

The foremost authority on Cambodian peasant life, Jean Delvert, stresses that it is misleading to translate *phum* as village. He maintains that the Khmer concept of inhabited space has been adopted by the government to be an administrative unit, but that this is "only a grouping of houses on paper."⁴ For Delvert, the essential element of rural life is not the village but the household which cultivates domesticated land and expands into wild land.

A recent Swedish overview of the literature on Cambodia, which also included some fieldwork in the rural area, supports Delvert's conclusion regarding the village in the late colonial period. And this study goes further to question the socio-cultural-moral reality of the "village" which the Royal Government now wants to treat as the basic element in their system of administration and in their plans for development.

Even if we can observe that Cambodian peasants tend to live in houses that are arranged in neat rows along the road (for the convenience of colonial and post-colonial administrations),

³ See May Ebihara, *Svay. A Khmer Village in Cambodia* (1968) 423-443. See also Alain Forest, *Le culte des génies protecteurs au Cambodge* (1992) and Ang Chouléan, *Les êtres surnaturels dans la religion populaire khmère* (1986).

⁴ Jean Delvert, *Le paysan cambodgien* (1961 [1994]) 203.

we are not necessarily entitled to assume that such physical concentrations correspond to any socially or culturally significant entity, let alone to a moral community. Such eventual correspondence is always a matter of empirical investigation, and in the Cambodian case it is not found.⁵

Delvert explains that many of the large concentrations of houses in rows along roads were initiated by French authorities in a practice called "*regroupement*" during the late 1940's and early 1950's to serve colonial security and administrative purposes.⁶ He notes that "it is still too early (he is writing in the late 1950's) to judge the influence of this *regroupement* on peasant mentality."⁷

Little could Delvert have known of the subsequent massive forced relocation of villagers which Cambodia would experience in the mid-1970's in the prolonged and continuing struggle of Cambodia to find its post-colonial identity. And his question remains as valid today as forty years ago: What do peasants in rural Cambodia really think about the significant social structures around them, which are partly the sediment of an ancestral past, partly the debris of a colonial past, partly the remains after civil war and radical social revolution, partly the constructions of Vietnamese occupation to which are now added innovations brought by international development? A systematic and comprehensive answer to this crucial question will require sensitive field studies and careful analysis of village society far beyond the scope of this preliminary assessment. What we can attempt to sketch here are what seem to be the main issues and prominent landmarks on the terrain.

I will consider first the systems and roles of authority discernible in village civil society under the categories: state authority, religious authority and other authorities. Then I will consider several kinds of conflict which are dealt with by these village authorities: domestic conflicts, contractual conflicts and land conflicts. I have excluded conflicts of a criminal nature, robbery, murder, rape and the predominantly urban police and justice authorities who handle such cases, as they fell for the most part outside the scope of dispute resolution in the rural context.

⁵ Jan Ovesen *et al.* *When Every Household is an Island* (1996) 68. Their title reflects this basic insight

⁶ Delvert, *op.cit.* 207-209.

⁷ *ibid.* 210.

PART TWO- ROLES

State Authority

Mekrom

Beneath the urban *srok* (district) level of administration in Cambodia are the *khum* (commune), the *phum* (village) and, in some places, the *krom* (hamlet or group). The tiny *krom*, headed by a *mekrom*, is a holdover from the Vietnamese occupation. In 1979, after defeating the Khmer Rouge, the Peoples Republic of Kampuchea organized the population into *krom samaki* (solidarity groups) on a Vietnamese model. These were collectivized agricultural working units consisting of 10 to 15 families. In 1989, when the PRK transformed into the State of Cambodia, private ownership of land was reintroduced. The *krom samaki* were accordingly transformed into *krom provah dey* (agricultural labor exchange groups). At the present time, in some villages I visited, the *krom* has fallen into desuetude. In others the *krom* is still used occasionally to gather census data. In yet other villages the *krom* is a vital unit of administration. I do not know the reason for this variation.

In these latter villages the *mekrom* still represents 10 to 20 families and are said to have been popularly elected by their constituents. The *krom* leaders I met, including a few women, had been serving as *mekrom* since the PRK period. I learned that the *mekrom* meet with the *mephum* (village chief) on a regular basis. The village chief uses them to learn informally about the situation in their groups and to learn of conflicts which may be brewing.

My sense, from few and brief encounters, was that the *mekrom* were especially proud of the fact that they really represented their people, in contrast, it seemed they meant, to the greater distance between the *mephum* and the villagers and the even greater distance between a *mekhum* (commune chief) and the villagers. I could not tell if this feeling of pride derived from an identification with the original aims of the PRK collectivization, on which the *krom* was based, or the expression of an even older form of "hamlet" unity and solidarity and labor exchange based on kinship. In any case, I think that where they exist, the *mekrom* may have some potential for inclusion in pilot development projects aimed at strengthening democratic processes at the very lowest grassroots level.

Mephum

The *mephum* I met said that they were the heads of villages which seemed to range from two or three hundred families. The *mephum* said to me that they had been elected by their people, as if expecting me to be impressed by this democratic process. A few informants clarified that in the early 1980's the *krom samaki* chief and his or her two assistants had served as electors to select a *mephum*. Three candidates for the post were proposed by the *mekhum* and all three were elected. The one with the most votes became village head. The other two became his assistants.

The *mephum*'s duties were described to me as being related to justice and politics; his first assistant was said to be concerned with security and economics (development); the second assistant is the secretary. In fact, many of the *mephum* I spoke with said they had no formal assistants at all, and that they had to rely on informal help from the villagers to carry out their duties.

The *mephum*, like the *mekrom*, has no office. He uses his home to meet with his *mekrom* or with villagers who need his assistance. The *mephum* seem to do most of their work on visits to the homes of the villagers. Since the *mephum* is virtually always a native resident of his village, his conduct of work seems to be that of a neighbor who has the esteem of his fellow villagers at least in part because of his ability to deal with official business with other village heads and with the *mekhum* in meetings at the commune office.

I was told that the *mephum* living in relatively remote villages, near the forest, would either be loved by his villagers, and thus survive, or he would be killed. At night, according to the story, Khmer Rouge would come into the village and murder the village chief unless he were protected by his villagers. In the context of prolonged civil unrest in Cambodia and the easy availability of guns and grenades, I would guess that *mephum* generally conduct themselves with some attention to what fellow villagers think is the appropriate way for a local leader to behave.

I will give more examples of how a *mephum* helps resolve disputes in Part Three, but at this point I want to draw attention to the way *mephum* speak of their general approach to their work.

The father of his village.

The *mephum* of a village in Siem Reap had been the head of a *krom samaki* from 1979 to 1984. He then became an assistant to the *khum* (commune) police. He said that after the elections in 1992, the higher authorities of *khet* (province), *srok* (district) and *khum* (commune) recognized his abilities and designated him to be *mephum* until now. The old *mephum*, had, from the point of view of higher state authorities, been retired and replaced by a younger man.

The old *mephum* is very elderly, but I do not neglect him, he is my closest companion. Earlier I said that I called on *chas tum* (older people) to help me--this is the one I take when I go to visit a home where some quarreling has taken place. Actually I did not accept to become *mephum*. I agreed to be an assistant to the old *mephum*, but I would do all the work and we would divide the salary.

This *mephum* is clearly aiming to ease into his office gradually, replacing the older man only after he dies, regardless of the official view of his superiors. The *mephum*'s deference to the elder is considered extremely virtuous and well-regulated behavior by the villagers.

This *mephum* argued that Buddhism and Government were, and ought to be, separate. But he also explained that Buddhist principles, along with village traditions and customs were essential to him in his work. He himself had been a monk (probably in his youth before 1975), and he probably had been quite gifted as he said that he had been accustomed to give *tesana* (to preach, teach, lecture).

When I see a house that is good, everyone works, the children do not take money (?), I say to others, "Do you act like that family?" When I see people over fifty, I say "Are you not worried about *bap* (bad deeds which should be redeemed with merit)?" and I urge them to go to the *wat*. When I see a child who disobeys his parents, I call him over and point out another child who obeys his parents and goes to school and I ask, "Why do you quarrel with him, that is doubly bad, first because you fight and second because he obeys his parents and you do not."

One of the most challenging aspects of the *mephum*'s job in attempting to maintain order in his village is dealing with "armed persons" or the "strong ones" (euphemisms for the army). My informant said he had asked several times to be relieved of his post on account of difficulties with armed persons, but his superiors in *khum* and *srok* would not permit it.

When there is conflict between a villager and a strong one, I go to the strong one and explain the law of the armed forces, showing the sub-decrees which I had been given by the *mesrok*. I use kind words, no strong words, to stop the offensive behavior. "Think of your poor brother or sister, if someone with a gun demands money from them, where could the money come from?" The strong one usually softens his speech. We throw water on a fire not fuel.

If someone reports a soldier threatening, I must go, I cannot say no. If the soldier kills me, it means I die for my villagers. I must go because I consider myself like the father of the villagers, not to hit the offender, but to ask the cause of the problem and what it is related to and to find some way to *somroh-somruel* (create a reconciliation).

The authority of this *mephum* seems to derive from his experience as a monk and as a policeman and from his own traditionally moral conduct as well as from his official appointment by higher state authorities. He uses reasoned comparisons and an analysis of cause and effect from a position of personal morality and willing self-sacrifice to win compliance to a vision of a pious, peaceful and industrious community, which is apparently widely shared as an ideal among his villagers.

Keeping local issues local.

The various *mephum* I met during this assessment shared, without exception, one sentiment, and that was great reluctance to refer a local issue to higher authorities. Exactly the same sentiment is shared equally universally among the *mekhum* (commune leaders) I met. I suspect this is one of the fundamental assumptions relating to the proper functioning of state authority in the rural areas of Cambodia.

One of the reasons for this view of local level government, especially for *mekhum*, is probably related to the usual attitude in any bureaucracy to avoid troubling one's already overworked superior. Another reason may be that the local leaders, especially the *mephum*, believe that their effectiveness in the eyes of their constituents consists precisely in their ability to find solutions to local problems within the resources of the village community itself.

Mephum do of course refer village problems to the *mekhum*, who is, after all, another villager, especially if the *mephum* and *mekhum* live in the same village or if a problem relates to parties from different villages. But I mention the sentiment because I think it provides the unspoken context which everyone in the community accepts and within which the village and commune leader deploy their main technique for resolving disputes, which is mediation.

Let me give another example of how a *mephum* describes his approach, this time from Kratie.

If there is a serious family quarrel [we had been talking about family violence and divorce], first I send a letter telling them to solve it in their family. But then if I think that someone will get hurt, I call them for a meeting at the office of the *mekhum*.

If the problem is some small matter, I go to the houses of the people involved. In bigger matters I call them to my house. I go with an old assistant. He has no real position, but we together. We go back and forth between the parties to improve their outlook, so they can be better toward one another. Then I get them to face one another and abandon their quarrel.

The village chief allies himself, as usual, with an elder, a *chas tum*, who adds his age and dignity to the effort to mediate between the disputing parties. In this case the elder was an *achaa*, a lay religious teacher, who was held in particularly high esteem in the village. Together they try to repair the social relations between the conflicting parties so that everyday peaceful, face-to-face interactions can resume. However, if there is a threat of violence between the parties, the *mephum* invokes other symbols, the letter and the summons to the *mekhum's* office, to suggest that the conflict may soon be beyond his competence as mediator. If the *mekhum* gets involved, the understood threat is that the matter could be treated as a criminal case which would eventually be shifted out of the village context altogether, to the realm of police and court.

The *mephum* I talked with saw their task as one of thinking up solutions to facilitate a compromise. They were *neak pdaem kamnet* (people who could originate ideas). They tried to invent solutions to achieve agreement between disputing parties. But another aspect of this intelligence or imagination is the *mephum's* ability to stem conflict before it was manifest. Many *mephum* indicated that a large part of their job was to take steps to prevent conflict by staying in close consultation with the *chas tum*, elders in the families or factions of the village which seemed to be moving towards a quarrel.

A combination of deference to holders of informal authority in a village, and enough imagination to prevent conflicts, or to create possible village solutions when conflicts did arise, seem to be the keys to a *mephum*'s effectiveness.

Mekhum

If the *krom* is a relic of the communist period in Cambodia and the *phum* is an administrative unit with dubious integrity as a traditional moral community, what about the *khum* (commune)? The answer is given by Delvert, in the magisterial work referred to above. He points out that the *khum* was an artificial creation of the French Protectorate Government by ordinances of 1908 and 1919. The *khum*, he says, corresponds to no traditional cultural reality. It is an imposed territorial unit with leadership appointed by the provincial authorities meant by the colonial government to deal with *une masse paysanne inorganisée*. He goes on to say that at the time of his research (in the early 1950's) the French were still trying to bring some life into the *khum* concept as a way to solve the problem of political integrity in the country, but the artificial nature of the *khum* presented great difficulties.⁸

An indication of the "reality" of the *khum* today might be reflected how the *mekhum* is perceived. In some places we visited, villagers had to ask their neighbors who their *mekhum* was and where he lived, when we asked directions. In other places, the *mekhum* was a village leader known to everyone. In yet others, the *mekhum* was perceived to be mainly an agent of higher government authorities.

Representing village or outside interests.

The *mekhum* I encountered and learned about during the fieldwork for this assessment seem to me to be located on the margin of village civil society. The *mekhum* are villagers, but they have regular links to powerful authorities outside the village in the town. The *mekhum* may live in one of the villages of the *khum*, or, as a sign of his wealth and sophistication, he may live in a local market town or the *srok* capital and commute to his office in the *khum*.

A *sala khum* (commune office) is usually on the road in or near the principal village of the *khum*, usually the road to the *srok* town. Here the *mekhum* convenes the *mephum* periodically, keeps *khum* records and conducts *khum* business. If there is still an active women's association or youth association from PRK days (which we found only in a remote part of Kampong Cham), the *mekhum* coordinates them. As a sign of his elevated authority, and in sharp contrast to the *mephum*, the *mekhum* does not go to the homes of villagers to handle a dispute. The conflicting parties come to the *khum* office.

Theoretically, according to some informants, the *mekhum* has a staff of four assistants, termed *chontup*. The first assistant is said to help the *mekhum* in the area of justice and

⁸ Delvert, op. cit. 199-201.

security. The second assistant helps in the area of economy, agriculture and development. The third assistant helps in the area of religion, culture and social work. The fourth assistant is the secretary of the commune. The *mekhum* and his assistants are nearly always men, but we did find some communes in which the third assistant and secretary were women. Most informants could describe this panel of *khum* administration but all explained that since the UNTAC election there was no clarity on the duties of the *mekhum* or any of his assistants.

A second assistant *mekhum* in Battambang said:

We are not real staff as in other Ministries. Our money is not *salary*. We were sent out to do the job by the *srok*, but these appointments are not officially recognized by the Ministry of Interior.

He went on to say that the jobs of the assistants to the *mekhum* were no longer distinct and that now everyone in the office worked together.

Another informant, a *mekhum* in Kratie, said:

We have no right to make any decisions or judgments. That is why we try to get the parties to come to a peaceful arrangement (*somroh-somruel*) if there is a conflict. All we can do is issue a report on the whole matter to the *srok*.

Some *mekhum* seem to use their elevated position on the boundary of the rural and urban spheres to bring advantages from the outside world to the villages of their *khum*. For example, in Kampot we met a very highly regarded *mekhum* who lived in a modest house in the village where the *khum* office was located. He met villagers in the *khum* office as usual, but he also had a large wooden table under a tree in front of his home where he was able to hold discussions with villagers informally.

This *mekhum* described his most recent activity which had been to organize the building of a road connecting several villages. He had first made arrangements with the Food For Work program, convincing the International donor that the road was needed and that he could organize the village labor. With that support assured, he proceeded to mobilize road workers from the villages, with the help of the building committee of the local *wat*. The committee included the *wat's* senior monk, an *achaa* (lay religious teacher) and a *mephum*. The *mekhum* also had to obtain what we would call easements from several property owners along the road's course. He was apparently able to get the land needed for the road by convincing the owners that the entire community had agreed on the need for the improvement and was ready to work for the rice to make the road. My guess is that public pressure, combined with some rice payment to the land owners, enabled the project to go ahead successfully.

This same *mekhum* in Kampot also used his contacts in the city to identify a Japanese NGO which was willing to fund the improvements to a school. The *mekhum* organized the parents association at the school (*mieta beyta ses*) to provide the labor to utilize the NGO supplied materials to rebuild the classrooms.

It seemed to me that this development-minded *mekhum* was so successful because he conducted himself like a *mephum*, keeping very close contact with influential voices in the community. But he had the added power of wide acquaintance with the resources of the town, which he used for the benefit of his *khum*.

In the case of another kind of *mekhum* about whom we learned, it seems that their marginal position between village and town and their connections to higher authorities beyond sphere of village civil society more often worked to the disadvantage of the villagers.

Some informants pointed out that during the PRK period in the early 1980's, the *mekhum* had been required to raise money "for our soldiers in the forest" and had forcibly conscripted young men to serve as laborers for the Vietnamese Army, from which assignments few returned. Other informants noted the widespread reputation of *mekhum* to work with the *srok* and people higher in the government and military to obtain land around villages which the authorities would sell for their own profit. Such activities of *mekhum*, which will be mentioned in detail later, clearly discredited many *mekhum* who were perceived as tools of outside and unfriendly interests.

Resolution of Conflict.

The official series of steps by which a conflict and its resolution might be considered from the village level to the court seems to be well known. The *mekrom* would report to the *mephum*, who would file a petition with the first assistant to the *mekhum*, who would pass a report to the *mekhum* for his review, who would pass the file to the justice official at the *srok* level, who would pass the file to the *mesrok* for his review, who would pass the file to court. But in fact, as I noted above, everyone associated with village justice, especially in *khum* administration, with whom we talked, was emphatic that it was best, if at all possible, to keep a problem from traveling up the hierarchy and especially from moving beyond the *khum* to the urban *srok*.

The staff of human rights organizations whom we visited in all the provincial capitals covered by the assessment usually offered the explanation that the *mekhum* were generally not very knowledgeable about or skilled in the law. Their reluctance to pass a case up to the *srok*, in this view, was due to their wish to avoid appearing incompetent in the *srok* legal arena.

The *mekhum* we ask about this preference almost always explained that for a villager the travel to court, the stay in town to deal with justice and court officials would be very costly. To save their villagers from having to sell their draft animals, as one put it, or otherwise impoverishing themselves to obtain a court judgment, the *mekhum* tried his utmost to settle cases at the *khum* level.

This perception of the ruinous expenses associated with the court was repeated time and time again by informants, often in the form of proverbial wisdom. "Go to court, become

poor" is one expression, or "At court the rich wins, the poor loses" is another. Every schoolchild knows the fable of the fox judge. Two animals in the forest both claim to have caught the same fish. They bring the disputed catch to the fox-judge to ask his ruling. The judge proceeds to divide the fish, placing each half in one pan of his scales. But the scales tip to one side, so to make the division even and just, the fox slices off a little of the heavy portion and puts it aside for himself. But now the scales tip to the opposite side, so the fox again slices off a little for himself in an effort to make the pans of the scale even. The process continues until all that is left in the pans is a few bones for the disputing parties.

Because dealing with the courts and higher authorities is considered dangerous and expensive, the *mekhum* is often the last resort for the resolution of conflicts that arises in the village. A mixture of fear and respect for the literate legal process, however, seems to me to explain another feature of dispute resolution in village civil society. That is, the *mekhum* usually solemnizes a *somroh-somruel* settlement with a written contract on which the thumb prints of the parties are pressed. The *mekhum* keeps the document in his office, in case the conflict erupts again.

I think this contract signifies for the villager that he has come close to the dangerous realm of the court, beyond the known world of the village, but in the safety of the village context. He has obtained the help of an expert in the protocol and language and dangers of the higher powers of the city, but the settlement of the dispute has been kept within village culture. The written contract actually has the effect of turning the villager back to the oral character of village civil society for a reexamination of the conflict if necessary, rather than serving as a documentary step toward the formal literate legal system of higher authorities.

By making a contract, the *mekhum's* unspoken threat is that if the mediated settlement should break down, and the contract breached, the case may no longer be able to stay within the customs and rules of the village. It may be necessary to answer to the higher authorities of the courts both for the underlying conflict and for the added breach of written contract. We can guess that the prospect of facing punishment in the complex legal machinery of the city on the basis of the document he signed, would be harrowing for the largely illiterate villagers.

Village justice.

Let me give some examples to illustrate what seem to be typical *mekhum* attitudes toward the dispensation of justice in village civil society. The first examples will highlight an aspect of the *mekhum's* approach that is virtually identical to the approach of a *mephum*. These *mekhum*, on the border of village notions of justice and state legal concerns, seem to identify with their fellow villagers.

A *mekhum* in Kampong Cham explained his concept of the sources of law that were relevant to him in settling disputes.

I only administer civil law, that is oral customs and written law (*anaacak*) from the Sangkum up to now the same rules. The *khum* can deal with these matters of divorce, land; we have the right to do so. But in the case of criminal law, that is a police matter and they deal with hitting, fighting, theft and robbery.

I seek advice from the *achaa*, from the elderly *chas tum* and from monks. And I take the Buddhist law and rules (*putcak*). I take both these [*anaacak* and *putcak*] so the judgment will be just and fair (*yuttitho*), not oppressing the people. Whoever is right must be right, who is wrong must be wrong. Not according to a combat between them or by taking money--that is not to be.

Another *mekhum*, also from Kampong Cham, explained the importance of open and public discussion and the achievement of consensus that was, for him, central in the solution to conflict. The particular case we were discussing had to do with a woman complaining about her husband who drank too much wine and went to prostitutes. Clearly, the dispute resolution here was intended to bring public pressure on the offender to mend his ways. The standard is not a written code of law, but a community sense of appropriate conduct.

We call their relatives together and ask the cause and reason for the conflict. We try to explain to them and seek a reconciliation (*somroh-somruei*). Most people do not want to acknowledge that they are wrong--on both sides. We ask many people and together make a decision and judge who is wrong and who is right. Justice is deciding carefully who is right and wrong by asking the parties about the cause and reason and by talking to many people.

The first assistant to a *mekhum* in Siem Reap described what clientele within village civil society the *mekhum*'s dispute resolution efforts served, bringing up the question of village social stratification. He also clarified how the *mekhum* used written documents to discourage the parties from bringing the same conflict back to him repeatedly.

The only people who come here to the *khum* office for help with settling their disputes are poor country folk. The poor need this help. Rich people have many relatives who can help mediate for them in their disputes. Very rich people go straight to court.

The *mekhum* has the *mephum* bring the disputing parties to the *khum* office. There, the *mekhum* draws up a contract which says: "From this day forth I will not hit my wife anymore," or, "From this day forth I will not spend foolishly, drink and be lazy." Such a case only comes once to the *mekhum*, there is never a repeat offense. Because he [the offender] has signed with his thumb print, so he fears the *mekhum* will give it to the police to handle. So after that, if conflict occurs again, they [the family] take it to the *mekrom* or *mephum* or seek the help of *chas tum* among their neighbors.

The function of the contract seems to be to alert the entire community to the increased gravity of the matter and thus to enlist community pressure in modifying the behavior of the offender. A written document purporting to be part of an official procedure is actually being used as a kind of magical threat to an individual to change his conduct and as a challenge the community to help with the matter, or face the likelihood that their fellow villager may be cast out of the village zone into the dangerous realm of the police and court.

The written document is borrowed from the urban literate culture and used in a process of village conflict resolution that is predominantly oral. The resolutions of the mediation are not final and binding. The *mekhum* has no power to exact compliance. The resolutions of conflict in village civil society are part of a recurring and pervasive rhythm of dispute and settlement which comprises village social life.

This is how a *mekhum* in Battambang described the closure of a *somroh-somruel* mediation which achieved an agreement between the conflicting parties.

I make a contract and both of them listen to it and its provisions. "From this time I agree to these articles and will not claim otherwise in the future." Then each one puts his thumb print. Each one of them gets a copy and I keep a copy. If the same issue comes up again, I read from the agreement, because it says "we will not claim again and if we do we will be punished by the *mekhum* according to the law." (Although actually we really have no right to punish anyone.) But on hearing that, they stop and smile and go home.

In this example the power of the *mekhum* to use a written contract to recollect words exactly is awesome to a villager who does not write and who relies on a flexible memory of oral agreements and disputes. The *mekhum's* generosity in declining to deal out any punishment to fellow villagers for the repetition of their conflict is repaid by the tacit acknowledgment of the disputing parties that they should return to the specific compromise and agreement which they had reached with the *mekhum's* help in the past.

Religious Authority

Preah Sang

In my picture of village civil society located between *wat* and court, there is a hierarchy of state authorities from the lowly *mekrom*, to *mephum*, to *mekhum*, and over the threshold to the *srok* and the legal institutions of the city. There is also a kind of hierarchy of religious authority, the high point of which is centered in the *wat*. The chief of the *wat* is the *chauattika* (abbot). He is often an elderly, frail man, usually well learned in the Pali scriptures. Younger monks and novices of the *wat* are ranked by years since their initiation, which usually corresponds to their knowledge.

The *wat* draws its monks from the surrounding communities. The monks, in a characteristic uniform that suggests detachment from individual identity, seek their food every morning from households in the vicinity of the *wat*. The *wat* is the ritual and social center for a congregation which may not necessarily follow the administrative boundaries of *phum* or *khum*. On a regular cycle of *ngay sil* (holy days) which are indicated by the phases of the moon throughout the year, the devout, especially women, gain merit by bringing food to the monks and praying on behalf of their families.

On certain holidays which are devoted to the ancestors, but which are celebrated at the *wat*, the ancestor spirits will visit seven *wats* in search of the food offerings brought by their relatives. This suggests that the congregation which the *wat* serves is actually variable and open to much choice by the villager.

The *wat* is in many ways central to the social and cultural world of the Cambodian villager. But the aim of the monks is withdrawal from that world, in order to devote themselves to spiritual and meditative practices. In most of the *wats* I visited during this assessment I learned that this ideal of withdrawal was reflected in the emphatic statements of the monks that they were completely uninvolved in the conflicts and disputes and processes of dispute resolution and mediation which I had learned about from *mephum* and *mekhum*.

As my research progressed, and especially when I visited Battambang at the end of the fieldwork, I was able to get a more nuanced picture of the role of monks in helping parties who were involved in conflict.

An extremely articulate monk in Battambang explained to me that in case there is a conflict in a village, the villagers always come to the monk for advice. The role of the monk, he held, was to restore people to calm, to urge patience, and to advocate a peaceful approach to any conflict. This, the monk indicated, was part of every monk's teachings. He explained that a monk would never be involved in *somroh-somruel*, because that responsibility of mediation belonged to the *mephum*. The monk's task, it seemed to me, was to put the parties to conflict in a frame of mind that would enable them to participate in the *mephum's* mediation and reach agreement.

The monk gave a hypothetical example of a mother who severely beat her son. (The mother in Khmer families is traditionally the disciplinarian, not the father). The son then ran away from home. The monk would say to the mother that she should bring the boy to him for advice and counsel. Perhaps the monk might offer the *wat* as a refuge for the boy. Meanwhile, the monk would explain to the mother the defects of violence as a solution to her problem.

Another example the monk gave, also expressed as a hypothetical example, concerned two men who had a severe conflict with one another but who were willing to submit the issue to the test of an oath (*sbath*). If they came to a monk to officiate at such an oath swearing before the Buddha, the monk would, according to my informant, normally be reluctant to use the altar for such a purpose. *Sbath* is done before the king's throne to swear allegiance or before a *neak ta* spirit shrine, invoking magical violent sanctions against a false oath, like illness and misfortune, with which the monk does not want to be associated. Nevertheless, if the conflicting parties insist, the monk will permit the procedure, but it will be managed by an *achaa* (lay teacher). One of the parties might swear before Buddha "Let my child die if I prevaricate!" Meanwhile, the monk will sprinkle holy water to cool the situation and calm the violent tempers. The monk's role in the conflict resolution seems to be to exert a moral influence of detachment and neutrality which is in service to a peaceful resolution, whatever the specific terms of the resolution might be.

Another example the monk gave illustrated his approach to domestic conflict. When a husband has a girlfriend or takes a second wife, which, the monk noted, is frequent because of the numbers of unattached women due to the loss of men in war, the first wife may come to the monk for magic holy water which will bring her husband back. The monk might ask her "Did you prepare food well? Did you please your husband?" I suppose the monk was harking to traditionally expected virtues of a wife, from a man's point of view. Then, according to my informant, the monk would sprinkle her with holy water in order to calm her temper, but which I suppose she would interpret as the magical help she had sought. I think the monk is trying to help the woman be better equipped to cope with her situation whatever she decides to do about the conflict with her husband.

The monks in Battambang seem to be much more active in village society than monks in other parts of Cambodia I visited. I learned in Battambang that the *achaa* associated with a *wat* will keep the monks informed about problems in the community which could use the monk's attention. Then, the monk might come to visit the homes of conflicting parties, in the early evening when all villagers can be expected to have returned home from their fields. These highly visible house calls by a monk are like the efforts of a *mephum* to shuttle between the homes of disputing parties to mediate a conflict. Further research will be needed to learn how widespread this kind of activity of the monks in facilitating peaceful dispute resolution is in village society.

In Battambang, again in contrast, I believe, to other parts of Cambodia, monks are willing to speak out on the quality of village civil life. As another monk put it:

The government, police and soldiers look with alarm and surprise when monks are active in other than study and meditation. But the people no longer believe the government. They see that the government sells trees and land and does much wrong. The people see and know, but cannot say anything. But the monks can speak out, more than common people...Monks should in this way give back something for the food they get from villagers everyday.

As another monk put it, "monks and *achaa* are becoming active in development and they are using the *wat* as a base of influence and leading the thinking of the people."

The expansion of influence of socially activist and politically critical religious authorities in Cambodian civil society at the village level would seem to merit close attention in any comprehensive study of democracy and governance issues in the Cambodian rural sector.

Achaa

Socially activist monks may be a new or localized development in rural Cambodia, but *achaa* are Cambodian religious authorities traditionally dedicated to social action. I think it is significant that the word *achaa* is derived from Sanskrit rather than Pali. The Pali cognate of the word exists in Cambodian and refers strictly to the teaching character of the role. The

Sanskrit origin word, from an earlier pre-Buddhist epoch, refers to a wider magico-social function of the wise elder.

To my mind, the *achaa* represent a parallel to the *mekhum*. They serve on the boundary of civil society, in this case between the village with its mundane concerns, and the *wat* with its otherworldly concerns.

The *achaa* are former monks who have given up the saffron robes to re-enter social and family life. As former members of the community of monks, they serve as lay spiritual leaders and teachers. And as organizers and fund raisers, they attend to the worldly needs of the *wat*.

Achaa are self-selected and typically adopt a uniform of black trousers and white, collar-less shirt, with a *krema* usually draped over one shoulder. Adopting such a role is probably not done lightly and undoubtedly involves a process of transition and induction, about which I am not informed. But I learned that someone who took on the outward appearance of an *achaa* would be ridiculed if he did not conduct himself in accord with the expectations for the *achaa*'s role.

The general characteristics of the *achaa* are that he knows the *thoa* (*dhamma*, ultimate reality; virtue; the order, law in Buddhist doctrine; moral principles, duty, piety). This knowledge comes from training and experience as a monk. As one informant put it, an *achaa* must be trustworthy, he will be elderly, he must be well-spoken, and he must be honest with money.

There are several kinds of *achaa*, or *achaa* with professional specialties. There are *achaa* skilled in guiding meditation, others called in to examine the horoscopes of a prospective couple to determine a propitious day for the wedding. Certain *achaa* regulate life cycle events, especially funeral arrangements. Other *achaa* are specialists in the *neak ta* cult, especially for the spirit shrines inevitably found on the precincts of a *wat*.

The *achaa* of great interest to this assessment of civil society are the *watachaa*, the *achaa* responsible for the maintenance and upkeep of a *wat*. This *achaa* is active in the *wat* building committee which draws on the significant secular authorities of the *wat* congregation who can contribute to *wat* support. The *watachaa*, I understand, have their own informal association which elects its president, organizes fund raising activities, arranges *wat* ceremonies and activities at Buddhist holidays and coordinates building activities during the year.

By a process I do not know, an *achaa* will be assigned or will adopt the duty of officiating at the Buddhist altar of a *wat*. He will accept cash donations from visitors, on behalf of the monks, for *wat* upkeep. He will provide visitors with incense sticks and candles for the visitor's prayer. These *achaa* also often provide a divination service for visitors. The visitor may take a palm-leaf manuscript to hold over his or her head, and will then be told to insert a peg or the wooden shaft of the incense stick between two leaves of the manuscript. The text on the leaves thus identified is read by the *achaa* to "answer" the question that the

visitor asked silently when performing the page selection. I think what the *achaa* earns doing this service is his own personal income.

Representing higher moral authority.

The *achaa* I talked to about village dispute resolution were unanimous that *somroh-somruel* mediation was not the responsibility of the *achaa*, but rather of the *mephum* and *mekhum*. Several times I was told that the *achaa* would never contradict a state authority and that the *achaa* were entirely separate from the government. Nevertheless, it became clear that the *achaa* often work in partnership with the village state authorities to mediate disputes.

An *achaa* I interviewed in Kampong Cham clarified for me that *somroh-somruel* was actually used as a technical term for what the state authorities were empowered to do, in contrast to the informal advice and encouragement and the Buddhist teachings which the *achaa* could provide. He explained that in case of a conflict,

first people go to the local authority who asks them the cause of the conflict. They [the state authorities] may want to *somroh-somruel*, but one of the sides of the conflict may not accept the compromise agreement. So the old people must help explain and help them both understand the compromise. Some authorities they go to in the *khum* or *srok* may know about law, some may not. But we [*achaa*, old people] have to think about what is right and what is in the way of Buddhism, although we have no authority to resolve the conflict.

If they take their conflict to the local authority and are unsatisfied they can go to the *srok* (district) and the *utor* (court of appeals). But sometimes there is no justice at the court. There they resolve it with power and it is up to money, as in the old saying, "God cannot help people, but the god of money can," as we can see throughout the world.

We can gather that the *achaa* brings the moral dimension of the conflict into focus, when consulting with the parties to a dispute, while the *mephum* and *mekhum* attend to the social and economic aspects of finding an agreeable settlement.

I learned from another *achaa*, also in Kampong Cham, how he had earned the esteem of the community and had become the *achaa* of his *wat*. He said that ten years ago, [when he would have been 58], he retired as a farmer to work on behalf of Buddhism and the *wat*. He took on the task of organizing the rebuilding of a school on the *wat* grounds. His ability to estimate the costs of the project and to accomplish the work, with other members of the *wat* building committee, within the estimated budget, earned him a reputation for fairness and honesty (and intelligence, we can guess). Since then, he says that he is usually in charge of *wat* funds. The continued confidence with which he is viewed by the *wat* congregation is apparently reflected each year at the Bon Kathin festival at the *wat*, where, the *achaa* proudly noted, Kathin gifts from the congregation to him are particularly numerous.

The example points up the fact that in Cambodian village civil society, villagers have criteria for measuring the performance of their "public servants" and they have ways of registering their approval of these people in other ways than a ballot box.

Other Authorities

Chas tum

Chas tum means "ripe old ones." It is a term used often to indicate the wise elders who are generally consulted by a *mephum* or *mekhum* in the course of creating a resolution to a village dispute. All *achaa* are *chas tum*. But not all *chas tum* are *achaa*. *Chas tum* is a general term for the elderly men and women whose age, experience and wisdom are an asset to the community. The qualities of a *chas tum* are well known. As one informant put it they are respected, honest, gentle, respectful of others and they work for the people.

The *achaa* are associated with a *wat* and thus are identified with the entire congregation which might feel an affinity to that particular ritual center, its monks and *achaa*. The congregation is a moral community in which the *achaa* might have some influence which will cut across any administrative boundaries or kinship groupings. The link of the *achaa* to the *wat* seems to detach them from their narrower family connections.

In contrast, most *chas tum*, at least in so far as they become relevant to the issue of village dispute resolution, are always identified with particular families. It is usually as an advocate for their family that *chas tum* assist the *mephum* or *mekhum* in finding agreement between parties in a dispute involving their family members. For example, in cases of marital disputes and spouse abuse, the *chas tum* who were involved in the original marriage arrangement between the two families will take part in working out a reconciliation or separation and divorce of the husband and wife.

The political role of *chas tum* was highlighted by informants in Battambang. They noted that, in insecure areas, villages often had to divide their *chas tum* into two groups. One group would represent the village to the Khmer Rouge, the other would meet with the Royal Government. The families of the village apparently decided to face in two directions simultaneously to assure the survival of all.

The *chas tum* category includes influential villagers who hold or have held, positions of prominence on account of their education and experience. So, school teachers or principals, or retired civil servants living in the village are counted as *chas tum*. The *mephum* and *mekhum* are also in effect *chas tum*, and this is reflected in a complaint occasionally voiced, that the *mephum* and *mekhum* naturally tend to favor and support their own family members who may be involved in a village conflict, or when there are resources to be divided.

Committees

I have already mentioned the *wat* building committee as an activity of the *achaa*, but I think they are also very important to consider more closely as they seem to provide a forum for religious and secular authorities to interact over a long period. This kind of committee

might also provide a context for understanding the Village Development Committees which the government is presently creating, with the help of International donors and NGO's.

I was able to talk with a full *wat* building committee in a village in Kampot. I had actually made an appointment to speak with the aged head monk of the *wat*, but the entire *wat* committee was present when I arrived at the monk's quarters at the *wat*. Evidently they thought, or hoped, that I was representing an NGO looking for a place to invest in a project.

The committee consisted of the old monk, the chief *achaa* of the *wat*, the *mephum*, the principal of the school (who also seemed to be the inspector of schools appointed at the *srok* level), and a CPP party official who was the chief spokesman for the committee during our interview. This committee had formed in 1981. Their initial aim had been to build a school partly on pagoda land and partly on land assigned to a *krom samaki*. During the Pol Pot period, a communal kitchen and dining room had been built on the site, which the committee wanted to replace with a school.

The committee related to me in detail how they had negotiated for two years with the *krom samaki* to give up a small strip of their land along the *wat* grounds for the school. They described the innumerable public meetings, called by the *achaa* and organized by the *mephum*, which were held to discuss the idea of a school and to gather contributions. They also explained that once the school was built, the monk was listed as custodian of the school land for formal registration purposes, but that the school building was actually given to the school principal.

What I found remarkable about this committee, which I gather represents similar local *wat* associations throughout the country, was the way it had brought together the major strands of local authority to attend to the needs of the community. I was also impressed by the fact that the committee had already endured for fifteen years. Once the school was completed, the committee turned to a project of digging a pond to hold rain water during the dry season. They were now contemplating an expansion of the school and an improvement to the road.

The committee was adamant that it took no part in resolving disputes and conflicts and that it never interfered with the *mekhum* or *mephum* in their efforts to achieve *somroh-somruei*. They said they were strictly separate from politics and justice and were devoted entirely to development. This is probably true and so the *wat* building committee may seem to fall outside the scope of village dispute resolution. But as a lively element in the total picture of village civil society, the *wat* committee serves the needs of the public with locally mobilized resources and I think it merits further study.

VDC, Village Development Committee

The creation of VDC's is part of an experiment in decentralization and bottom-up development planning called the SEILA program, which is being carried out primarily in five provinces by UNDP/CARERE and some other NGO's. Siem Reap and Battambang are the two provinces where the experiment is underway which our team visited.

The reason that the VDC's may be interesting to watch from the point of view of democracy and governance is that they are designed specifically to add effective voice to civil society, to increase communication and dialogue with government and to increase participation in decision-making about development priorities. The VDC's are calculated to confront the top-down command model of development with grass-roots participation in and ownership of development projects. As such, we might expect disputes to arise over priorities and control of planning and project implementation in the village. I was interested in asking what processes of conflict resolution were contemplated or encouraged in the creation and training of these committees. I was particularly interested to see how the development and the governance dimensions of the VDC's would intersect.

In the time available, I was not able to explore these questions very deeply. I had the sense in Siem Reap that the VDC chief and his assistants (which may or may not include the *mephum*) formed a kind of parallel structure to the state structure of a *mephum* and his assistants. In Battambang, I noticed that the VDC seemed to be envisioned as a development committee to assist the *mephum*, who was generally its chief. These are observations of limited reliability I admit. But it is clear to me that the process of VDC creation is identifying and empowering key people in village civil society who will inevitably have to deal with the traditional brokers, the *mephum* and *mekhum*, as resources for development are made available to the VDC's by donors.

One of the trends that informants in Battambang have discerned in the development of VDC's was a polarization between FUNCINPEC committee members and CPP state authorities in the village. In view of the forthcoming elections, that kind of trend would be important to monitor.

Human Rights Organizations

Since the human rights organizations are all located in provincial capitals, they really fall outside the scope of this assessment. However, as I noted in the introduction, the human rights organizations were very helpful to me in my fieldwork because they are so knowledgeable about a variety of disputes and problems in their provinces, whether human rights cases or not. Human rights organizations learn much informally when they enter the rural areas for their disseminations, and villagers who do not understand the limited scope of these organizations often come to their offices for informal help in finding their way through the labyrinth of the legal system, even if their case is far outside the mandate of the human rights organization. Of particular interest to me was information about conflicts between villagers and local state authorities who had confiscated village land, which was acknowledged to be within the human rights mandate to investigate.

From the point of view of this assessment, I note that the human rights organization staff in the provinces seemed to be struggling with the definition of their mandate as given by their head offices in Phnom Penh. The human rights organizations seem to have attracted staff who are deeply committed to justice in a broad sense and they sympathize with the realities

of the legal guidance people in the country side need. One human rights staff member, for example, described his frustration with the ruling that the troops who had staked claims to village lands in what had been a battle zone, had not actually seized the land from villagers, so it could not be considered a human rights case. Another human rights staff member noted with equal frustration that the internally displaced people (IDP), who have been living dispersed in wretched squalor for four to six years along road sides and canals, could get help from human rights organizations to reclaim their land only if they could produce a petition signed by their original *mekhum*.

A perception voiced by several human rights organization staff was that they were interested in taking part in the training of VDC members to promote a human rights component of the VDC civil society role. However, according to these informants, the human rights organizations were not generally made to feel welcome in the VDC creation and training process. The HR organizations maintain that the organizations creating the VDC's see human rights as "too sensitive" in the present context and so do not facilitate the participation of HR staff in VDC activities. Indeed, a provincial office of the UNHCR noted that they have never been briefed on, or asked for input to, the civil society component of the VDC training organized by their colleagues at UNDP.

I think this lack of dialogue and participation could result in lost opportunities to have a significant effect on shaping the awareness of key people in village civil society regarding resources for access to justice which could be useful to them. At the same time, a widening of the mandate of strengthened human rights organizations might also make them more active and useful to the emerging civil society roles the VDC's are designed to play.

PART THREE--DISPUTES

Domestic Disputes

Between Women

A proverbial stereotype for the Cambodian woman is that she is intensely jealous. This is understandable in a traditional context in which polygamy was accepted. In the present circumstances when there are such great numbers of widows, (in some cases up to 70% of household heads), quarrels said to arise from jealousy between women are particularly frequent.

The third assistant to a *mekhum* in Kampong Cham, a woman, described an example in which a wife might see her husband talking to a neighbor widow, assume there is a relationship and will start a fight with the widow. The *mephum* and neighboring *chas tum* will try to intervene and calm the situation. If there indeed was a sexual relationship and the widow gets pregnant, which is apparently common, the *mephum* or *mekhum* tries to mediate. The aim of the *somroh-somruei* in this case, as the informant described it to me, is to get the wife to agree to a payment of child support, if the husband will agree to separate from the girlfriend and not see her again. This arrangement among the three parties would be needed as in the Cambodian family the wife usually has control of the household finances. The third assistant *mekhum* said that the *mekhum* would have all three sign a contract stating the terms of child support, which he would witness. The *mekhum* would keep the document in his office.

If, on the other hand, there were no relationship and the widow felt that her good name and reputation had been damaged by the cursing and fighting, she might file a complaint of defamation and demand *sang chumnee cet* (repair of hurt feelings), typically in the range of two to three hundred thousand riels. The *mephum* or *mekhum* would assist in the *somroh-somruei* negotiations to find a settlement amount that both parties could agree to.

This problem of disputes between women deserves much more careful research especially in the context of a tradition of polygamy and the number of unattached women in many rural communities. The likelihood of such disputes also has an effect on the ability of widow heads of households to cope. In many villages we visited, I learned that village men were reluctant to help widows, even though they knew the widows were poor and could hardly manage much of the farming work. One man explained that if his wife saw him helping a widow she would say to him "Oh, you like her? Well go and live with her then instead!" To preserve his own domestic tranquillity he did not help the neighbor.

Disputes between women also break out in the form of scolding and cursing (*chee banchao*) usually over fights between their children or from some lingering grudge from a former conflict or some malicious gossip (about one of the women's husband). These fights are liable to involve the neighbors and eventually the men of the families, who might get

violent. The *mephum* and *mekhum* I talked to said they try to attend to such quarrels and disputes quickly. A *mephum* in Siem Reap described his approach:

I tell them "*keng koh, keng koc, keng khat*" (anger causes wrong, anger causes damage, anger causes loss). I tell them "you will only get ill results from your increasing anger." He reminds them that they all live together as siblings, without parents. As head of the *phum*, he is like the father, they are like brothers and sisters. "If you scold one another what do you get from the conflict? When you have a dire need, who can you call for help? If someone in your family is sick, who will inform the village and your distant relatives? Your neighbors. So abate your anger and forgive one another and respect one another."

Between Women and Men

Traditionally, especially among the well-to-do in the village, marriages are arranged by the parents. The wedding (*riep ka*) is a great feast to announce the marriage and to demonstrate the wealth of the parents and to show the obedience of the children in bowing to the wishes of the parents.

The girl in such an arranged marriage might be 14 or 15, the boy might be 18 to 20. The youth of the bride, her training in feminine shyness and her dislike of the groom may cause her to refuse to consummate the marriage. This will lead the groom to complain to the *mephum* and start divorce proceedings in order to have the bride's family return all the marriage gifts (*bandaa ka*) which the groom's family had given. What usually happens in these cases is that the *chas tum* of both families begin a process of *somroh-somruel* reconciliation so the girl might get an "easier heart."

From a formal point of view, the *mephum* or *mekhum* could only refer such a complaint up the state hierarchy as a divorce case. But more likely, the *mephum* or *mekhum* would take the role of a *chas tum*, detached from family partisanship by his office and thus able to take a neutral view of the dispute. This is an example of a *mekhum* I met in Kratie.

In many divorce cases the couple is too young. They know nothing of family society. I have to educate them so they understand how to be patient with one another and peaceful. They do not know how to value one another. Sometimes they separate for three months and then get back together again. If they are very young, I call in their parents. If they are older I just talk to the two of them.

Cambodian marriages are also traditionally uxorilocal--the husband comes to live in his wife's house at marriage. This leads to proverbial *mday kmeek* (mother-in-law) problems for the boy, especially over money. Here is one of several descriptions of such conflict I recorded, this one from a woman who was secretary to a *mekhum* in Siem Reap.

Sometimes they want a divorce after a week of marriage because they are too young and because they live under the supervision of the girl's mother. She may press him (*kiep*, to pinch as with pliers) saying "You came into the marriage with nothing, these are all our possessions" and call him lazy and wasteful for wanting to give presents to his family. He

may say, "My parents gave one *damlung* of gold, so I can do what I want." If he does not defer to his mother-in-law (*cho canh*), there will be many conflicts. The boy will find a girlfriend or drink and hit his wife. Then the mother-in-law will press for a divorce. But after the divorce sometimes the girl cannot forget her husband, because they have no dispute with one another, so she returns to him.

There is a very well-known Cambodian tale of two lovers, Teuv and Tum, whose adventures feature the obstacles to getting together and staying together presented by the domineering and greedy mother of the girl. I think a close examination of such folk literature concerning marriage and its tensions, combined with sensitive fieldwork focused on family life in the village, would yield insights enabling us to understand Cambodian values and expectations about family, and the stresses and strains to which the family is subject. This might help us avoid the ethnocentrism that is so likely if we make judgments about what a marriage or divorce means without adequate understanding of the Khmer point of view.

Another source of family dysfunction which, again, has not been adequately analyzed, is the psycho-social effect of the Khmer Rouge period on children who were at a formative age in 1975-79. These people are now in their thirties and account for most of the divorces that state authorities and courts see. Some informants mentioned the Khmer Rouge attitudes toward marriage to explain the divorce cases in their villages.

Under Pol Pot, the saying was "Mother and father have no children, only Angka has children." This was part of a policy of breaking up the nuclear family. At the same time, society was divided between the "old" people, who were poor and uneducated, and the "new" people, who were suspected of bourgeois contamination. The Khmer Rouge took the role of the traditional parents and carried out what was called the "special program" meaning an arranged marriage, usually for a large group at one time. These unions seem to some informants to account for many of the current divorce conflicts.

Pol Pot often married an educated woman and a man of the "old people." But as life has become better and better after Pol Pot, the woman becomes prettier and prettier and she and her husband are no longer *sak sam* (suitable, fitting). She wants a divorce and wants to take the children to Phnom Penh.

The *mephum* and *mekhum* I talked to nearly all expressed their awareness that violence between husband and wife was a "human rights" matter. But I think the general reluctance of state authorities to send cases to higher levels is combined, in these cases, with a lack of consensus in the *srok* and court and even within the Human Rights community, about the "human rights" status of family violence in the law. The result is that rural authorities try to keep the couple together through reconciliation.

A *mekhum* in Kampong Cham put it this way:

As for fighting between spouses, this is a human rights problem which, if not solved by the *mephum*, comes to me, with his report including all the accusations. We look into the matter and call both parties here [to the *sala khum*]. If they are still quarreling, I send them home first. Then at an opportune moment, I invite them back to discuss the matter. We talk

about husbands and wives and all kinds of matters which we try to clarify so they see a good path. If they are agreeable, I get them to sign a contract that says they will stop fighting from that day forth, before government officials, and that they will acknowledge one another again as man and wife and return home together to seek their livelihood. We try to get mutual agreement so they won't fight.

If they do fight again, we have notes on the matter which are brought out and read to them so they will stop quarreling and be reconciled.

This example suggests that the *mekhum* is attempting to "re-marry" the couple under the authority of the state, with a written contract and government witnesses. In effect, the *mekhum* is trying to make a new beginning for the marriage which might thence forth follow a good path which avoids violence. The *mekhum* is serving as an official mediator and as a marriage counselor for families which he thinks can be saved from dissolution. It may also be that the *mekhum's* written notes serve as a tacit threat that the documented abuse could later be referred to the police and higher authorities.

A first assistant *mekhum* in Battambang described his approach to family disputes as follows:

If there has been severe beating, I cannot deal with it, it is a police matter. If it was a quarrel mostly in words I try to explain the rights of the husband and women's rights, both traditional rights and what they teach in human rights I hear on the radio. I say to the husband, "If you have the right to beat her [by tradition], she has the right to say it hurts [and not keep silent about it to protect the family reputation]. If you beat your children they will also learn to beat. If you beat your wife and pull off her clothes, she has a right to scold you and curse you for your excesses.

Overall, my sense is that many *mephum* and *mekhum* wish to serve the couples in their community, to improve their relationships and reduce violence. The tools these authorities have are mainly their knowledge of traditional family values in the Cambodian context, the feelings families have about their name and reputation in the community as their family quarrel becomes a public matter, and the *mephum's* or *mekhum's* own personal powers of persuasion. In family disputes, the efforts of the authority to effect a reconciliation seems to depend on a balance of psychologically sensitive counseling and the threat of the official legal consequences of a failure to find a mediated resolution to their problems.

The *mephum* in Siem Reap explained that if a couple came to him demanding a divorce, he would first remind them of the costs and delays to be expected at court. Then he asks about the situation.

I ask them "Why did you once want to marry one another and now want a divorce? What memories do you have of past experiences together? Is your former happiness greater than your present quarrel? Do you remember your love letters, your promenades? Do you like your child? Why don't you like the mother from which the child came? When the child grows and asks about his father, what will you say? What will be your blessing for your children if you go off?

Sometimes, after this session, says the *mephum*, the man comes back in a few days to withdraw the divorce. The *mephum* then makes a contract noting the date and time and stating that "from this time we cease our divorce proceedings. If we have another quarrel we will come back to the *mephum* for help in solving it." If they do not come to him, the *mephum* goes to them to ask if they wish to withdraw the proceedings.

If they insist on filing the divorce, this *mephum* postpones the process by writing a contract which both must sign. The contract states that neither has the right to take another lover within a six month period. If both can respect the contract for six months, he will report the case to the court. He explained that six months was a long time and that if either had a lover he would hear of it from the neighbors. In that case, the contract would be broken and the case could not be sent to court. But if they do respect the contract, he noted, they would be likely to get together again and withdraw the divorce themselves.

As for actually effecting a divorce, the *mephum* and especially the *mekhum* with whom I spoke, seemed to say one thing and do another. This suggested to me that they were making some distinctions that were not clear to me.

My good *mekhum* informant in Kampong Cham explained his understanding of the limits of his responsibility in divorce proceedings.

Mekhum cannot grant a divorce. The matter of winning and losing is for the courts to decide. I can only help find a peaceful, agreeable settlement (*somroh-somruel*), remind them and try to get them to agree. As for dividing property, the *phum* and *khum* never do it. According to the law that must be done by the court.

But a little later in that same conversation, the *mekhum* elaborated on the kind of peaceful settlement he aimed to mediate.

As for divorce proceedings, I can take a statement from the man's side and the woman's side and witness it, but I cannot divide property, they do that themselves.

I listen to the arguments on both sides and I urge that the man should give something to the woman who has served him for these years of marriage and he should let her have the house and field to support the children. I give this advice, if they are willing to hear it. If not, we do not dare do more. If there is no agreement, I pass the case to the justice official in the *srok* for him to settle.

These examples of the ways *mephum* and *mekhum* aimed to resolve domestic disputes raised many questions which call for further exploration. I asked the *mekhum* if, once the couple themselves had divided their property and separated according to a settlement he had mediated, would the woman be considered a "widow" (i.e. a divorcee)? Yes. Could she and the man each marry another partner at that point? Yes. So, I asked, is the *mekhum* able to divorce the couple? The answer was an unclear yes and no.

If it is a matter of large property holdings of rich people who do not agree, they most likely will go to court to get divorced, meaning to get the property divided. But for poor people

who can work out their arrangement informally with the help of the *mekhum* as mediator, that is all they need to have their union dissolved. Since the state does not solemnize the marriage of couples in Cambodian villages, it is evidently not needed formally to solemnize a divorce. The wealthy get "divorced" in court in order to get state help in forcing a division of property.

There is one more wrinkle in the Cambodian concepts of marriage and divorce that I want to mention to emphasize how different their cultural values are from western "legal" notions and to suggest that further exploration of Cambodian family life is needed from a social, economic and spiritual point of view.

Cambodians make a distinction between *riep ka*, on the one hand, the arranged marriage with many guests at a large party which testifies to the respect and obedience the children show toward their parents, and, on the other hand, the *saen*.

Saen means an expiatory offering of food to the ancestors so they will not get angry. *Saen* is usually a very small meal shared by a few people from both families to solemnize a marriage, especially among the very poor. The difference between *riep ka* and *saen*, according to my informants, is that a *riep ka* is for a virgin, and *saen* is for a "widow," or non-virgin, when she gets married. If a girl sleeps with a boy and they want to get married by their own arrangement, with or, more likely, against the wishes of the parents, it will be by a simple *saen* ceremony. Everyone seems to recognize the *saen* as a perfectly traditional marriage option, but it is considered less esteemed than the elaborate and expensive *riep ka*.

My *mephum* and *mekhum* informants were reluctant to say much about premarital sex among Cambodian village youths and maidens, but they did say that conflicts in this area occur. A *mekhum* in Siem Reap gave the following clarification of the matter.

There are many conflicts concerning marriage because the man commits sexual deception. Sometimes a man falls in love with a girl and commits sex with her but then does not marry her. This makes a conflict. I try to *somroh-somrue* to get each side to agree to a compensation from the man. If the victim does not make a legal case of it (*kdey kdam*), they can get married, they can make a *saen* ceremony. If the victim does make a legal case of it and the man does not agree to pay her, I have to send it to court. It is beyond my responsibility since it is a case of abduction (rape).

I try to get both sides to agree on a compensation and a *saen* because otherwise the girl will think it will be hard for her to interact with the public and that people will look down on her and she might not be able to get married [in the future]. The man can also marry the girl he raped (?seduced). After the marriage, if the husband does not support the girl, the girl can still make a legal case of it and get a divorce, but that has to be in the court.

The example reminds us that attitudes toward sexual behavior are part of a context of cultural values and meanings. Misunderstanding of this context by outsiders can lead to much confusion. The social and marital traditions of the village and the legal framework of the courts seem to be worlds apart. It is apparently the task of the *mephum* and *mekhum* in village civil society to try to bridge those two worlds. They have a major interest in finding

workable, agreeable compromises between parties to a conflict which will enable the parties to continue peaceful social interaction in the community. At the same time, the *mephum* and *mekhum* try to find solutions which they can avow to be within their legal competence.

Debts and Damages

Compared to domestic disputes and land disputes, conflicts over debts are much less problematic. In this area, the illustrations I was given seem to indicate that the aim of *somroh-somruei* by a *mephum* or *mekhum* is to find a repayment schedule which is agreeable to both parties.

If a glass worth 100 riel is broken and the one who broke it has no money, we try to find a way for him to pay over time, until the 100 riel is reached. Even if we get him to economize, saving one or two grains of rice, until he pays the damages in full. Only the time is lengthened, not the responsibility to pay.

The dark side to this exemplary lesson on thrift and duty is that the very poor in the village might well fall into a state of perpetual indebtedness to the more wealthy in the village. This pattern is familiar in Cambodian rural tradition and deserves a new and careful scrutiny as the political conditions stabilize around the country, and the effects of recent rural development projects begin to settle into an accommodation to traditional patterns.

A *mekhum* in Kratie explained that one problem he faces is claims of borrowing and lending between members of a family, and especially between the husband and the relatives of the wife.

They usually do not have a written contract, but have made a promise between them, and one becomes forgetful about paying the debt. Then in the course of time the creditor demands the money and asks the *mekhum's* office to make a report to higher authorities. But sometimes the debtor says there is no debt so we make another report accordingly.

The *mekhum* said that if a debt were denied, he could do nothing but send the case to the *srok*. But if the debt were acknowledged, he would try to achieve a settlement on repayment. This seems to correspond to the view expressed around the issue of divorce, that the *mekhum* could not force a distribution of property. That was in the hands of the *srok* and the court.

In the area of damages, the mediation skills of the local leaders are particularly useful. If ducks or pigs or cows wander into a ricefield, and the two parties cannot agree on the compensation, the *mephum* will help them negotiate. A *mekhum* in Kampot said that this was often the case of a poor man's livestock eating a rich man's rice. The rich man was liable to get angry or even violent. So the *mekhum* will go with a *chas tum* to the victim's house to calm him and get him to forgive the poor man and his animals. This *mekhum* has the owner of the offending animals come to the house of the victim to drink tea. I take it that

this is a demonstration of deference and apology from the poor man, who raises animals, to the rich man, who owns land, in lieu of a money compensation.

A *mekhum* in Kampong Cham mentioned a kind of dispute that he has had to deal with often. A coconut tree may be planted on one man's property, but it leans and the fruit are liable to fall through the thatch roof of a neighbor's house. In keeping with the idea that the *mekhum* cannot make moves against the property of his villagers, he calls the two neighbors together.

I call both of them saying that the advantage and profit from the tree is on one side but the risk is on the other side. And I remind them of the law that says trees have to be 2-3 meters from the boundary. The solution of the *somroh-somruel* is that the neighbor buys the tree from the owner for a modest sum, say 20,000 riel, which they can agree upon, and then he cuts the tree down. So the matter has been settled amicably between them.

Land Disputes

Land disputes are reckoned by nearly all informants to be the most serious and frequent sources for conflict in village life. Everyone could give examples of land issues and personal anecdotes which amounted to a mass of data and a bewildering confusion of terminology and reports from clashing points of view. In attempting to make sense of this material for the purposes of this preliminary assessment, I found it useful to think of a picture which admittedly oversimplifies the situation but makes a brief presentation possible.

I imagine a circle representing the nation surrounded by what is called *phnom-prei*, the mountain-forest, the limits of the civilized realm. In the center of the circle is the king, or government, situated on a symbolic *phnom*, the traditional sacred mountain which is the center of the realm. Radiating from the center in four directions are four kinds of land.

In one direction is *wat* land. According to some informants, this is termed *acchariyak* (marvelous, wonderful) land. The concept for sacrosanct land can be traced back to ancient inscriptions establishing temples and shrines. In another direction is public land, termed *sathieranak*, on which public works like roads, markets, bridges, schools and the like are found. These two categories can be visualized as relatively unproblematic smaller circles completely within the larger circle. They are totally within the realm, and there is less controversy over ownership of such land compared to land which adjoins the *prei*.

In the third direction are the concessions called *sampadien*. These are given for a period of time by the ruler at the center. Originally they were probably the apanages given to members of the king's family to exploit. Later they were the lands controlled by French colonial plantations. Now they are the concessions given by the Prime Ministers to the Army or to Malaysian investors, for example, for timber exploitation and oil palm plantations. These concessions extend over a sector of the civilized realm reaching beyond it and expanding into the surrounding wilderness.

In the fourth direction are the *phum*, the inhabited spaces cleared from the *prei* by subsistence farmers and worked by peasants. The *phum* are also a sector of the realm extending to its margin and expanding into the surrounding *prei* as needed. From the point of view of village civil society and land disputes, the question is: how do peasants get authorization from the ruler at the center to have a *phum* and to expand into the *prei*?

We know the history. The Khmer Rouge erased the realm and started over. They placed the Angka at the center of what was now entirely *prei*, and began to build a new realm of *phum*, without *wat*, without concessions and without urban public works. On 7 January 1979, the PRK and Vietnamese placed themselves at the center of a state that owned all property. They assigned people to solidarity groups to work state land collectively. In 1989 the SOC reintroduced private ownership to the land. Families in *krom samaki* were allocated portions of the land they had worked, according to family size.

The term my informants used for the allocation of land to the villagers by the PRK was *robab*. In the dictionary the word is defined as order or good arrangement. But the term is heard in an expression a mother might use towards her young child who is looking hungrily at some cakes, "Don't look like someone who has not been given his portion (*robab*)." The SOC decision to reestablish private property converted the *robab* to *kamasit* (property, possession). Hanne Sophie Greve gives a scathing report on the process by which many SOC officials took personal advantage of this conversion.⁹

According to village informants, many village land disputes began in the early 1990's in the run-up to the UN brokered elections, since the two main parties held contradictory views about the land. The FUNCINPEC party, I was told, gave assurances in their campaign that the land which had belonged to people before 1975 should be returned to them. This was held to be true *kamasit*, presumably deriving from the traditional relation between the *phum* and the king, who was returning to Cambodia as Father of the Nation. On the other hand, the CPP position, as I have been told, was that *robab*, redistributed property, had now become the real and only *kamasit*.

This conflict between two claims about the origin of private property is at the root of land disputes between villager and villager. The question for villagers is: how far back does history extend? Many say history goes back to the ancestors and that the Khmer Rouge were a violent and brutal interruption in history. Others say history began on 7 January 1979, after an interruption that cut all links to the past.

Meanwhile, from the point of view of the PRK-SOC, the state had been rescued from the *prei* wilderness of the Khmer Rouge. The state allocated some land as *robab-kamasit* to new owners. All other land was still *prei*, which the state could, as usual, apportion as it wished as *sampatien* concessions which could be leased or sold. So another source of land disputes today seems to be that when government officials come into the rural area to obtain what they perceive as *prei* wild land for concessions to lease or sell, they collide with the villager's sense, that long pre-dates the *robab-kamasit* allocation, which is that the *prei* is the

⁹ Hanne Sophie Greve, *Land Tenure and Property Rights in Cambodia* (1993) *passim*.

integral counterpart to the *phum*. *Prei* is the land which traditionally provides firewood, wild herbs, seasoning, medicines; seasonal vegetable and fruit planting and gathering; grazing for livestock; materials for house building and for making containers, mats, tools; and room to expand when necessary.

Disputes between villager and villager

Boundaries

The simplest land disputes which village civil society deals with are boundary issues. Land was divided by the PRK-SOC according to family size. A solution to a dispute over boundaries is to measure the land. This is the solution suggested by *mekhum* in Kratie, Kampong Cham and Siem Reap.

If there is a land dispute between two families, I go and measure. The evidence of the measuring tape cannot be disputed. If we find that one claimant has, say, 22 are, when he was allocated 20 are, we know that 2 are must belong to his neighbor. So we ascertain the boundary. In case they want to obtain a *plong* (registration) from the Land Department, the correct boundaries are necessary. And we get the parties to imprint their thumbprint on a contract so there will be no controversy in the future.

Another *mekhum* who had to deal with a fence line that one neighbor claimed had been moved over time, called on *chas tum* who "know the cause and reason for the conflict and help me resolve it."

Nostalgia

A *mekhum* in Kampong Cham gave me an illustration of the most persistent kind of claim he heard. This appears to be the main kind of dispute between villager and villager. The informant put himself into the voice of the claimant to tell the story, which suggests to me that people generally appreciate the validity of the reasoning. The owners of allocated *robab-kamasit* land can empathize with the old owner who wants to get his land back.

Let's say I have some land during the Sangkum [the Sihanouk era before 1970], which came from my ancestors. Then during the war I had to leave the land and run. Afterwards, someone else comes and settles on that place. Then later I come back, I am nostalgic for my inheritance *sday ke maredok* (mourning for the heritage of one's ancestors). I want to get it back because it came from my mother and father and the land is good. I want to get it back so I go *somruel* (negotiate) with him, saying, "About this land, it was my inheritance from my ancestors' time down to me; I am very fond of it so I would ask and crave it back, and I would be willing to give you such and such, because you have planted plants on the land and have taken care of the land, so it is well, for which I am very grateful." So I give him money or other land I was allocated so he can go and I can come back. That is the way it is frequently.

The *mekhum's* part in this, as we would expect, is to help the two parties reach an amicable settlement. But this is a matter of moral persuasion, outside the legal sphere. There is no question of being able to force a new owner off his allocated *robab-kamasit* land.

In 1991 to 1993 there was much confusion about land *kamasit* and *robab*, but there was a law number 03 and officials from higher authority determined that land divided by the government from 1979 could not be reclaimed. There is no longer any possession [*kamasit*] from the ancestors to us. *Robab* (allocated land) has been determined to be *kamasit*.

The invocation of the ancestors in these claims is not solely a spiritual appeal. The landowners with a significant inheritance from their ancestors were often the wealthy people of a community, the descendants of the community founders. The real nostalgia, I think, for many claimants, is a wish to return to the *ancien regime* when their families were dominant, to undo the communist and socialist disruptions of the last twenty years. As many informants among the new elite of *mephum* and *mekhum* put it, "If the formerly wealthy cannot get their villas back in Phnom Penh, why should they think they could do so in the village?"

If they don't want to leave, we [*mekhum*] do not have the right to force them out. If we tried to settle this by way of chasing away the new owner [*robab-kamasit*], then the whole village would be subject to the same example--what is more, the whole nation. There would be no use in that.

Opportunistic Claims

Another group of disputes between villagers may be rooted in traditional claims, but also seem to reflect an awareness of the possibilities opened up by the confusion over the status of land ownership. For example, a successful claimant for his ancestral land also pressed a claim for the land which had been *prei* forest on the margin of his property, but which, during Pol Pot, had been converted to rice land and then allocated to a family. His claim was that the *prei* surrounding his cultivated land would have been where he would have expanded, if he had been there.

I also heard of cases in which an ancestral owner would appear when the new owner was in the process of selling the parcel. The ancestral owner claimed a percentage of the sale price, as if he had a kind of residual right to it.

Other opportunistic claims seem to rest much more on a knowledge of the new legal machinery and how it can be used to advantage. For example, a family might invite relatives and friends to share the work on a plot of land too large for them to work by themselves. After three years of work on the farm, the visitors might claim ownership of the property, in accord with the law, and obtain registered ownership without the knowledge of the original owner (but sometimes, I am told, with the help of the *mekhum*).

One villager may possess an SOC document for a plot but someone else, like the ancestral owner who was unsuccessful in persuading the villager to leave the land, might go to the Land Office in the *srok*, and, with the help of the *mekhum*, obtain a *plong* (registered ownership) to that plot of land. My informants say that when this happens, the newly registered owner would not dare live in a remote part of the village, nor work the land himself. He would have to have some members of his family do the farm work for him, because he might be killed by the villager he had outwitted.

An issue that comes up in these examples is the re-emergence of traditional social stratification in rural Cambodia, which only extensive further research can clarify.

Villager-Authority Conflict

State Authority

The *mekhum*, on the boundary of national and rural society, is the key person from the point of view of higher authorities who desire to obtain land. The *mekhum* knows the quality of local land and he is aware of all the competing claims for the land in his *khum*. During the hectic years of the late 1980's and early 1990's, when officials assumed it was a perquisite of their position to obtain lucrative land rights, the *mekhum* was often deeply involved in the process at the local level.

One of the places we visited where the controversy over these land allocations to officials and their associates was fierce until very recently (1994-95), was a *khum* in Kampong Cham Province. The land in question is near the river and has long been devoted to tobacco. The conflicts between the original, pre-1975 owners and the new, post 1979 owners, included incidents of bloodshed. As far as I could understand it, the question of ownership has now been settled by a compromise. It seems that the new owners would not actually have *kamasit* possession of the land they had acquired. Rather they would be considered holders of concessions (*sampatien*), on riverbank land which they could not resell. The reasoning depended on the idea that the state controls, through the *mekhum*, land 15 meters from the river edge. The compromise seemed to hold out the hope to the original ancestral owners, with whom I spoke, that they might get their land back some time in the future.

The conflict in this *khum* was apparently intensified by the contrasting situation just a little upstream toward Kratie. Here, the ancestral land owners moved back to their old farms in 1979 and all re-acquired their own old land. My informants in this area say that it is significant in this case that families close to the highest CPP officials are among these landowners. The importance of family and political connections in advantageous or disadvantageous land redistribution is not something likely to be ignored or forgotten by Cambodian villagers whose security is based on their relation to this resource.

Another example from Kampong Cham, a little downstream from the tobacco growing area, will illustrate the vulnerability of the Muslim minority people known as the Chams. Evidently before 1975 the Chams of one village on the riverside were mainly fishermen, but also had rice farms on the inland side of the village. After 1979, 19 Cham families out of an original 100 survived to return to the village. But soon the village grew to its former size with the arrival of Chams who were distant relatives of the original lost inhabitants. A Khmer *mephum* was assigned to the village (who, I was told, never comes into the village). The *mephum* and the *mekhum* announced that the rice land of the village could not be claimed by the new settlers, as ancestral claims would not be tolerated, and moreover, "the lands were needed by the military." But as the villagers observe, the lands were sold to Khmer farmers. The state authorities evidently reasoned that land abandoned by death of an

owner without direct heirs would revert to the state, as if it were fallow or *prei* land, and could be disposed of as *sampatien*.

A remarkable illustration of the pattern in the thinking of local officials is revealed in the case of a small riverside town in Kampong Cham. Throughout the Pol Pot period, the population, mostly Sino-Khmer, was not disturbed by any Khmer Rouge relocations. The town was largely ignored until 1986. Then, the PRK officials claimed "insecurity in the region" and completely emptied the town of its population. A little later, the officials sold the property back mostly to the original owners. These local authorities seem to me to have needed the radical rupture represented by the Khmer Rouge conversion of the state to wilderness (which they had to reenact) to sustain the legitimacy of their own claims to rebuild the state. In that transition of rebuilding, they could take a profit, as wilderness became a concession which the government local authority could dispense.

Another way *mekhum* and higher authorities are able to obtain village land is by having the wilderness cleared. Informants in Kampot and Battambang report that many village lands, which had formerly been their *phum* and *prei*, had been mined during the civil war hostilities. As the land is cleared of mines by CMAC and other NGO's, it comes into the hands of the local authorities, *mekhum* and higher, who sell it as they wish, as if it were utterly *prei*. These *mekhum* seem to assume that the danger of the mines has made the land a hazardous zone too remote from any *phum* to which the authority might think himself accountable.

The most vivid example of conflict over land between villagers and local authorities that we encountered in the brief fieldwork for this preliminary assessment comes from Kampot. The road from Kampot to Kampong Som runs through village rice growing areas which are bordered on one side by the sea and on the other by hills which rise fairly abruptly from the narrow coastal plain.

In the last two or three years, the *mekhum* has hired workers to identify and clear lands that were unused, or fallow lands between existing village rice fields and the dunes of the beach. The farmers found these lands were becoming saline so they had left them fallow for possible later development. There was apparently some grumbling about this seizure of fallow land as if it were *prei* and the suspicions were that the beach was to be developed for tourism. Relatively few villagers were involved on this side of the road, so the issue remained a fait accompli.

Then in late 1996, the villagers found that virtually over night, all the *prei* zone between their ricefields and the hills was marked off and posted with signs, indicating that the land had been taken and registered, evidently for an oil palm plantation.

In November, 1996, just a few days before our visit, the entire village, without exception, so we were told, rose up in anger, tore down the signs and took a petition to Hun Sen in Phnom Penh. The Second Prime Minister, so I was told, sent a Member of Parliament, who I believe had formerly been a high official in Kampot himself, to mediate the dispute between the irate villagers and the *mekhum*.

The example shows how the *mekhum*, on the border of village civil society, can be shifted in the direction of serving the interests of higher authorities. The Ministry of Agriculture controls the allocation of rural land to foreign investors, and would have to work with provincial authorities to obtain empty wilderness land for concessions. The *mekhum* will be the local authority to implement those decisions, but he may also have to confront the expectations of the villagers who hold that *prei* lands adjacent to their farms are, from ancestral times, essential to the identity and survival of their *phum*.

Military Authority

The last topic to take up is a conflict that is developing over land in the battleground areas of the Northwest of the country in Battambang. I can only give a superficial account of the problem because it was too dangerous for us to go into the areas where the military land-grab is reportedly underway.

In late 1992 and early 1993, the fighting in areas around Ratanak Mondul and Bavel drove many thousands of villagers into flight. The refugees from Ratanak Mondul seem very scattered and disorganized. The refugees from Bavel seem to have preserved a semblance of their original community organization. The difference is probably due to the circumstances in which they were displaced from their homes and villages.

These Internally Displaced Persons IDP were settled along roadways and canals in more secure areas, but they continue to live in the most miserable and squalid conditions as they have for the last 4-5 years. Some of the able bodied have sought work in Battambang town as beer girls or as soldiers.

As peace evolves between the Khmer Rouge and Government forces, the question arises, what will become of the lands and villages where the IDP formerly lived? What of the vast *prei* beyond these villages, where much of the fighting took place?

One point on which many informants agree is that soldiers have put up signs in former villages and farms indicating their claim to land newly liberated from warfare. Many people say that the troops have been issued this land by their commanders, in lieu of months of back pay. Most people I talked to assumed that the soldiers have no real intention of living there and working these farms. It is assumed that they are awaiting an opportunity to sell the land to returning farmers or investors. The soldiers seem to be following the same logic that we have noted before, that land abandoned to the forest reverts to the local authority who can then sell it.

The IDP who have visited their old home area report that the soldiers direct them to the nearby mine-infested *prei* if they want to return and obtain land for themselves.

I was told that in a recent radio broadcast, Hun Sen explained that he was having troops station themselves on the newly liberated land to prevent what he feared would be a massive

influx of rich Thai and Khmer speculators and business people from the cities. Meanwhile, business people are indeed arriving to explore the investment opportunities. One man I spoke to in Battambang, who was making regular trips to Pailin by helicopter, said that he was a long-time and staunch supporter of FUNCINPEC. He said he was using his contacts to obtain 30,000 hectares of land in the formerly Khmer Rouge held area in order to establish mechanized rice farming like what he had seen in the United States.

Added to this mixture of IDP wishing to return home, CPP and FUNCINPEC troops gaining alliances with the Khmer Rouge to consolidate control of various portions of the former war zone, there is wide spread anticipation for the massive development project USAID is contemplating in the Northwest which will bring roads and irrigation improvements to these same contested areas. The planned irrigation scheme is in an area which was originally part of an irrigation system developed by the Khmers of the Angkor period.

Many informants mentioned that Marie Ranariddh, the wife of the First Prime Minister, and Kenneth Quinn, the US ambassador, had promised that these projects would begin on November 15, 1996, but that as yet, in late December, there was no evidence of the American Aid.

The potentially volatile social-political implications of the massive infrastructure investments which USAID is contemplating in the Bavel area on the value of land and the potential conflicts over the control of the land should probably be the subject of a separate and in-depth assessment. The few days we had in this region did not allow us to treat the topic in the detail it deserves.

CONCLUSION

People are social creatures who create a web of intersubjectivity constituting their social space and consisting of variety in standpoints and interpretations. Society viewed through the lens of these differences in interpretative stance reveals patterned contention or conflict as inevitable and pervasive. Conflict reflects a natural diversity of perceptions and interests and power in society. Conflict arises from the clashes among an infinite variety of values, principles, needs, feelings and goals of different people. All societies develop ways by which conflicts and disputes can be resolved, either by forceful means or peaceful means.

Cambodians are familiar with forceful means by which to resolve disputes. But they also have a well developed style of dispute resolution which we can find in Cambodian villages as a form of third-party assisted negotiation or mediation known as *somroh-somruel*. The intermediary is usually a respected and powerful person who both parties to a dispute are willing to admit into the resolution process. In the rural setting in Cambodia the *mephum* (village head) and the *mekhum* (commune head) often serve as the initiators of a *somroh-somruel* settlement because, on the one hand, as representatives of the state at the lowest level, they are expected by their superiors to keep local issues from troubling higher levels of government. On the other hand, as village leaders and neighbors, they are expected to use their position to maintain peace (*sroh sruel*) in the community. They often include the

elders (*chas tum*) and the lay religious teachers (*achaa*) of the community to help them in their mediation efforts.

The aim of a *somroh somruei* mediation in a village is to achieve a settlement of the dispute that makes possible a positive strengthening of the relationship between the disputing parties. A particular conflict is not viewed as an isolated event or as the struggle of intrinsically incompatible interests. Rather, the Cambodian traditional attitude toward *somroh somruei* views conflict as an occurrence that naturally punctuates all long-term relationships. Conflict, in this view, helps clarify relationships by highlighting their currently problematic aspects against the background of perceptions and assessments about relationships in the community.

The feature of Cambodian social relations that seems most often to be the fundamental issue in disputes in the rural setting is relative strength and weakness. The way "strength" is determined can be seen in the goals of a successful *somroh-somruei*. Under the influence of the village or commune head, the two parties agree to apologize to one another (*anukruh*), to value and respect one another (*youk-youl*) and to pardon and forgive one another (*athya sray*).

The process of mutually offering an apology, expressing respect, seeking forgiveness enables the conflicting parties to ascertain, at least in the present moment of peacemaking, and each from his own point of view, who is the "stronger," who is due the apology, who deserves the proffered respect and who may grant forgiveness.

From the point of view of the mediator as villager, a settlement of the manifest dispute (for example over land, a debt, a promise, a quarrel, damages, or injuries) has to be fashioned so that the disputing parties can peacefully rejoin the face-to-face life of the community. A settlement is established between the parties on a footing of mutual acceptance of inherently ambiguous interpretations of their relative strength or precedence, which can be acknowledged by the community as a workable solution to the manifest dispute.

From the point of view of the mediator as representative of the state, the *mephum* or the *mekhum* typically has the parties to the dispute signal their achievement of a settlement by signing a contract with their thumb print. The sanction that the village or commune head threatens to invoke is to refer the now-documented dispute to higher authorities in the courts, if the same dispute should arise again.

The threat gains its power from the pervasive fear Cambodian villagers have of any dealings they are forced to have with authorities of the state, especially the higher authorities in the city. The Cambodian villager recognizes that compared to literate city authorities, especially the police and the courts, a villager is piteously weak, and the weak always loses to the strong. There is none of the ambiguity of a *somroh-somruei* in a court's decision.

Conflict resolution in the traditional Cambodian village context typically aims to reach a settlement in the local community to preserve on-going relationships and to gauge their current quality before the public opinion of the community. Settlements imposed by

outsiders are thought likely to be expensive and to fracture local relationships rather than illuminating and strengthening them.

Cambodian villagers choose mediation for their conflicts for the same reason that ADR processes have become so popular world-wide. The participants to a village mediation with the *mephum* or *mekhum* can be very flexible in tailoring a settlement to the circumstances. The process is speedy and inexpensive. The results are aimed to preserve on-going village relationships in a context of local custom and tradition rather than terminating them with the judgment of winner and loser determined by distant, urban based magistrates.

RECOMMENDATIONS

1. In view of the actual functioning of *mephum* and *mekhum* in the administration of justice at the local level, any leadership training aimed at them should include a significant component on ADR (Alternative Dispute Resolution) and effective mediation techniques to upgrade their skills.
2. The success of authorities in informal mediation is often based on a knowledge of local culture and traditions and on a knowledge of Buddhist principles. These topics should be included in leadership training, along with national law and formal legal procedures. Really excellent *mekhum* and *mephum* could be a good choice for "training the trainers" programs.
3. Much of the dispute resolution carried out in rural Cambodia includes a large element of what we would call marriage and family counseling. A significant component of training to strengthen *mekhum* and *mephum* in what many already do well would include upgrading these skills and recognizing their place in the leadership of civil society in Cambodia.
4. My sense is that *mephum* and *mekhum* could learn much from one another in training workshops outside their own provinces, where they could see themselves as part of a national corps rather than as the lowest quasi-official of a local provincial hierarchy of patrons and clients.
5. Elders or *chas tum* do not form an easily identifiable category to develop as a target for civil society leadership education, information and communication. But *achaa*, in contrast, and their associations and committees would seem to be an excellent, nationwide audience for such training. Much care would be needed, however, to assure that these individuals could preserve their neutrality and their symbolic relation to the *wat*. Highly motivated and well trained monks might be the ideal trainers, or a locale like the Buddhist Institute at Wat Onalaom in Phnom Penh, or other major *wats* in the provinces might be the appropriate venue for such training.
6. Human rights organizations are rightly divided to spread the risk, as such organizations deal with sensitive topics in their provinces. But some greater coordination among them would seem to increase efficiency. A systematic broadening of their mandate to include leadership monitoring and civil society ombudsman functions, related not just to the forthcoming elections but to the wider developments in village civil society development

should be considered. In this regard, the UNCHR provincial network might also be strengthened to take a leading role in attending to the civil society roots of possible future violations, to serve prevention purposes as well as cure.

7. Human rights sensitivity to ethnic minority issues in rural Cambodia should be enhanced. I had the sense that the plight of many disadvantaged Cham communities was overlooked by the human rights organizations in provincial towns.

8. Two important groups which we noticed, the *doun chi* (nuns) and the national staff of IO's and NGO's in the rural areas often have a significant presence in village civil society, but are not much involved dispute resolution, which was our focus. The nuns often offer refuge to women victims of conflict. It is possible that the nuns could in the future take on some of the mediation functions of *achaa*, especially in places like Battambang, where the *wat* are often centers for social action.

The Khmer development specialists spend their professional life on projects in rural Cambodia and are often very knowledgeable about the conflicts in villages where they work. I think they could profit from regular communication with their professional counterparts in the human rights organizations, and vice versa. These professionals who have an acquaintance with both the village and city, would also seem to be an important future target for civil society and leadership training.

9. A Participation Center for development and civil society professionals in every provincial town could serve as the meeting place for these professionals where much informal exchange of information on the situation in the localities of the province could be shared. Such Centers might also provide the facilities to attract a wide sector of users and visitors: Motorbikes, photocopy machine, computer and printer, subscriptions to national vernacular and English press, the literature from all local NGO's, a basic development and civics library, local maps, a directory of local services, guide to local government offices and personnel, job announcement bulletin board, daily Khmer newspaper posted on bulletin board for reading, a radio/ tape player and TV with VCR and media library materials for loan to teachers and human rights organizations. These centers could also become the nodes for a nation-wide distance learning network, either through tv links or internet links.

10. Distribution of radios/cassette players to *mekhum*, *mephum* attending workshops would improve coverage of the target audience for civil society broadcasts and for recordings of workshops.

11. School principals and teachers, especially the recently retired educators, would be another natural target for civil society communications. All the more in light of their activity with parents' associations and with *wat* building committees, when, as is frequent, the school is on the pagoda grounds.

12. The written contracts and notes kept by *mekhum* in their offices are a goldmine of information on local disputes and their resolution and could be the starting place for creating a social history of civil society evolution since the end of Democratic Kampuchea.

13. Logs of broadcasts in the provinces by the major political parties might be analyzed to reveal the world-view and patterns of values that unite the parties as members of the same Cambodian culture, and that divide them politically and socially-- at least in so far as their appeal to village Cambodians is concerned.

14. While the elders may not be a feasible target to identify for training, they hold a vast store of indigenous knowledge about the right and proper functioning of village life. Their oral culture should be collected and analyzed to gain a better understanding of Khmer national culture, on which any development that is to be sustainable must build.