The use and effectiveness of mediation in forest and land conflict transformation in Southeast Asia: Case studies from Cambodia, Indonesia and Thailand

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ABSTRACT

The abundance and intensity of forest and land conflicts in Southeast Asia highlights the importance of sound and robust strategies in transforming the conflicts. This study aims to increase the understanding of the role of mediation in transforming these conflicts, examine the effectiveness of mediation, gain insights into the challenges as well as opportunities to improve mediation practices. This was achieved by analyzing six mediation cases in Cambodia, Indonesia and Thailand. Various data acquisition methods were used including literature review, expert workshop, semi-structured interviews and focus group discussions. A conflict mediation analysis framework was also developed and applied.

Our findings suggest that mediation has played an important role in facilitating the process of conflict transformation. It has facilitated the creation of a conducive environment for multi-stakeholder dialog, built trust among the conflict parties, as well as assisted problem solving processes, resulting in mutually agreed solutions, improved relationships, and commitment to long-term cooperation. The parties also felt that successful mediation has also contributed to the improved social, economic, and environmental conditions in the study sites. However, the study found that mediation is not a silver bullet and that mediation alone is not enough in dealing with the underlying causes of conflict, specifically the structural inequalities. Other challenges in the application of mediation have also been identified such as the capacity requirements, as well as the costs involved.

In moving forward, the paper makes recommendations to promote mediation for conflict transformation at policy and institutional levels, and suggests how to promote mediation and raise awareness about the availability and effectiveness of mediation to conflicting parties and the general public.

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1. Introduction

Southeast Asia is a forest and land conflicts 'hotspot' (Mola-Yudego and Gritten, 2010; Gritten et al., 2013), affecting a significant number of people. In Indonesia, for example, in the period 1990–2000, forest conflicts affected between 12.3 and 19.6 million people, while in Cambodia it has affected over 1.7 million people (USAID, 2006). Conflict with local communities can also significantly augment financial risks for companies, significantly increasing their operating costs (Munden Project, 2012).

Contrary to popular belief, however, forest and land conflict is not always destructive. Rather it can be seen as a starting point for positive changes, including for dialog, collaboration, clarification of tenure, and for development of collective action (Castro and Nielsen, 2001; Dhiaulhaq et al., 2014a). The outcomes of conflict are, however, greatly dependent on the methods employed by those addressing it (Engel and Korf, 2005) and the application of inappropriate approaches in addressing these conflicts will likely lead to a more intense and destructive conflict (Wall and Callister, 1995; Dhiaulhaq et al., 2014a,b). This underlines the need to improve our understanding of the theories and practices of different conflict transformation approaches within the context of forest and land.

There are a number of approaches that can be used to transform conflict; these broadly include negotiation, mediation, arbitration, and adjudication (Engel and Korf, 2005). It is believed that mediation, used appropriately, can transform conflict and build a long term peace (Porter and Bagshaw, 2009). Previous studies of community-outsider conflicts over forests in Asia have also shown that mediation is one of the most effective and accessible approaches in achieving conflict transformation (Yasmi et al., 2010; Dhiaulhaq et al., 2014a,b). Mediation is often selected when negotiation between conflict parties fails due to the complexity of the conflict, unequal negotiation power, where the willingness of the parties to settle peacefully is in doubt (Bercovitch and Jackson, 2001) or when the conflict involves violence and destructive acts (Glasl, 1999). While considered an effective approach in transforming conflict, few studies have been conducted examining the use and effectiveness of mediation in transforming forest and land conflicts in the region (Yasmi et al., 2010).

This study aims to get a deep understanding of the potential role of mediation in transforming forest and land conflicts, examine its effectiveness, gain insight into the challenges as well as on how to increase the potential of mediation in transforming conflict. Additionally, the examples and case studies used in this paper will be the basis for presenting lessons (e.g. theoretical and practical knowledge) for conflict management practitioners, mediators, and academics. Furthermore, this study also develops a framework for analyzing conflict mediation which will be a theoretical foundation for future research in conflict over natural resources.

2. Conceptual and analytical framework

2.1. Conflict mediation

Conflict mediation is a process to address conflict that involves a third party who has limited or no authority to impose a solution (Wall et al., 2001; Bush and Folger, 2005). Mediation can also be understood as an assisted negotiation, as it is essentially an extension of the negotiation process where an acceptable third party helps to facilitate the negotiation process (Bercovitch and Houston, 1993). The third party can be a mutually agreed individual, a team of mediators or an organization. Some of the common roles of the mediator are to help the conflicting parties improve their communication and reach a better understanding of their conflict situation, thereby they can identify and develop an agreement that meets all parties' interests and needs (win-win solution) (Engel and Korf, 2005). While the decisions in mediation are made by the conflict parties, previous research found that the mediators' intervention, their characteristics and behavior (including their strategies and techniques), can influence the conflict situation, interaction among conflict parties, the parties' motivation and expectations, as well as the mediation's outcomes (Bercovitch and Houston, 1993; Wall and Lynn, 1993).

While literature on mediation has emphasized the importance of impartiality in mediating the conflict (e.g. Folberg and Taylor, 1984), some mediators and practitioners feel that it tends to get over-emphasized as the defining element of mediator. Questions remain about what exactly "impartial" and "neutral" mean and whether it is realistically attainable (Field, 2000). Nevertheless, it is important for the mediator to be perceived as impartial by the conflict parties, because any suspicion of partiality may cause the disputants demonstrating a more guarded communication to the mediator (Isenhart and Spangle, 2000). A key facet of mediation is its commitment to leveling the playing field in bringing the conflict parties together (Bercovitch, 1996), and what this signifies in terms of, for example, participation, mutual understanding and the implications for addressing the conflict in a sustainable manner.

Mediation has been used in different parts of the world to address various conflict types (e.g. environmental, business, family and international conflicts), though in practice it is not a uniformly applicable process (Bercovitch and Gartner, 2006). Some studies of mediation in Asia show that this region, to some extent, has a unique practice of mediation compared to Western countries (e.g. Bagshaw and Porter, 2009). For example, there is a longstanding history of traditional conflict mediation practices in some countries in Southeast Asia which involves broader extended family or community such as the involvement of community or religious leaders in mediating conflicts (e.g. Wall and Callister, 1995; Bagshaw, 2009). Furthermore, Bagshaw (2009) also highlights the different mediation approaches in Asia that are more likely to value indirect or circular communication, harmony, face saving and relationship restoration, while the Western approaches tend to emphasize impartiality, neutrality, objectivity and be solution focused.

2.2. Conflict transformation

Conflict transformation is a relatively new field in conflict studies (Botes, 2003). It emerges partly because of a concern that the earlier frequently used "conflict resolution" term could not adequately convey the vision of seeking a constructive outcome