



# STUDY ON CUSTOMARY USE RIGHTS OF ETHNIC COMMUNITIES TO FOREST AND FOREST LAND IN VIETNAM





## **Study on Customary Use Rights of Ethnic Communities to Forest and Forest land in Vietnam**



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## **List of Acronyms**

CPC	Commune People’s Committee
FLEGT	Forest Law Enforcement, Governance, and Trade
LURCs	Land Use Right Certificates
MARD	Ministry of Agriculture and Rural Development
MRLG	Mekong Region Land Governance
NGOs	Non-Government Organizations
PFES	Payments for Forest Environment Services
PRA	Participatory Rural Appraisal
VND	Viet Nam Dong
VNFOREST	Vietnam Administration of Forestry
VUSTA	The Vietnam Union of Science and Technology Associations

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## Summary

This research was conducted from 1st August to 31st October 2017. The research team carried out fieldwork in Cao Bang, Dak Nong, and Thua Thien Hue provinces, and conducted interviews with forestry and other government agencies, local communities and other stakeholders.

This report presents an overview of ethnic communities in Vietnam, including their history and development, community structure, living space, population and distribution, and their cultures and beliefs. Specifically, the report examines the origin, living spaces and natural resources of the communities that we visited. The customary rules and practices of ethnic communities in forest management are described in detail and their linkage with living space, spirituality and culture. The report reveals that each ethnic community has different customary rules and practices for sustainable forest management.

The report also considers the influence of statutory law and government institutions on customary law and on the structure and organisation of ethnic minority communities in Vietnam. Previously, village elders who were elected by their community managed the relationships within that community. However, nowadays village heads are assigned by the Commune People's Committee to manage socio-economic and political affairs in the village, while village elders have been relegated to advisors, mainly on cultural matters.

The research indicates that many communities continue to follow their own customary rules and regulations for forest use, management, and protection that do not conflict with state law. The cultural and spiritual beliefs that underlie customary law make its enforcement effective and contributes to sustainable forest management.

However, some state policies and regulations on forestry are undermining or even replacing the customary law of communities in forest use and management. For example, state regulations on developing community forest protection conventions tend to follow a template, which makes it harder for communities to take initiative or follow their traditional culture. Moreover, state management boards and forestry companies who contract local people to protect forests often dictate the terms of forest use, management, and development. Communities often have to follow official regulations under the guidance of these state forest owners, rather than manage forests according to customary norms. The report also highlights how migration has impacted the life and customs of the local ethnic minority peoples in mountainous areas, especially the migration of ethnic minorities from the north to the Central Highlands in the last decade.

Although customary tenure is not described in detail in state forestry law, there are some constraints in the current forestry law relating to customary tenure rights of communities.

This report provides recommendations to forestry managers and policy makers as follows:

- Customs and traditions of ethnic minorities need to be respected and maintained in forest use and management.

- Institutionalize customary law in forest use and management; recognise the customary rights relating to living space of communities in forestry policies.
- Improve forestry policies to provide stronger recognition of customary tenure to land and forest.

Customary laws of ethnic communities are complicated. The study was conducted in a short time frame and only in three provinces. Therefore, this report presents initial findings and further study is needed in order to have more detailed recommendations.

## **1. Introduction**

During the feudal dynasties, kings owned the land, and some areas were granted to those who had made a contribution to the country's development. The kings recognised domains that were managed and used by communities. Communities managed land according to customary law, forming traditional villages with their own customs.

The management and use of land and forests in rural areas has since changed to adapt to new political and social regimes. In 1972 the Vietnam National Assembly issued Ordinance No. 147/LCT on forest protection regulations. In 1991 the state passed the Law on Forest Protection and Development. Both of these legal documents did not stipulate communities as forest owners so there was no allocation of forest or forest land to communities.

Since 2000, the economic and social context has changed, and policies on land and forest have changed accordingly. The Land Law (2003) stipulates that communities are to be allocated forest land for cultural purposes, specifically sacred forests or spiritual forests. The Law on Forest Protection and Development (2004) stipulates that the state allocates communities the types of forest which they are using and managing effectively or which are watershed forests or forests on the boundaries of different villages or communes that cannot be allocated to households or organisations.

Use rights to community forests and land is recognized by the state, but customary tenure is not recognised, which limits the role of the communities in forest management. Nevertheless, the new Forestry Law (2017) for the first time recognises communities as forest owners, and mentions the need to respect the “living space” and “traditional customs” of communities. It also prioritises the allocation of forest land to ethnic minorities. This reflects a growing recognition that it is necessary to broaden the forest use rights allocated to communities.

Therefore, it is important to clarify the definition of customary tenure, its influence on forest management, and how policies impact on customary tenure. These points need to be analysed from a theoretical and practical perspective to provide information and social critique to the Ethnic Council of the National Assembly for review and verification of policies on customary tenure of ethnic communities in Vietnam.

The recognition of customary tenure is one of the priorities of the Mekong Region Land Governance project (MRLG). MRLG has initiated activities aimed at strengthening the recognition of customary tenure in four countries: Cambodia, Laos, Myanmar and Vietnam. In a regional workshop in March 2017, MRLG promoted stronger recognition of customary tenure and shared experiences from the four countries and throughout the region.

### **Objectives of the study**

This study has three main objectives:

- Identify the legal and practical foundations of customary forest and land use rights of ethnic communities;

- Contribute to the improvement of policies on community natural resource management;
- Share experiences within the Mekong region

## Methodology

Research questions were geared at understanding diverse customary tenure systems of forest communities in Vietnam, and the impact of state forest policy on traditional systems of tenure and forest governance. The research is based largely on interviews conducted in three provinces with local forest users, particularly village elders and village heads, forestry policy-makers and other government officials, non-governmental organisations, scientists and relevant experts. A list of interviews conducted for the study is provided in Annex 1. Secondary documents related to customary tenure in forest land in Mekong countries was also reviewed.

## Field sites

Before field trips, criteria for selecting field sites were developed. Three provinces were chosen to represent three regions in Vietnam:

- Cao Bang province is representative of fifteen northern mountainous provinces with Tay, Nung, Thai, HMong and Muong ethnicities.
- Dak Nong is representative of five provinces in the Central Highlands with Ede, M’Nong, and Ma ethnicities.
- Thua Thien Hue is a representative of eight provinces in the Central region with Pa Co, Van Kieu and Ca Tu ethnicities.

In each province, one district, two communes and two villages were selected to conduct the research and community consultations. A description of the provinces, districts and communes studied, including ethnic population dynamics and extent of forest and land allocation to communities, is provided in Annex 2. An overview of the local history of settlement and forest use and management in the village study sites is provided in Annex 3.

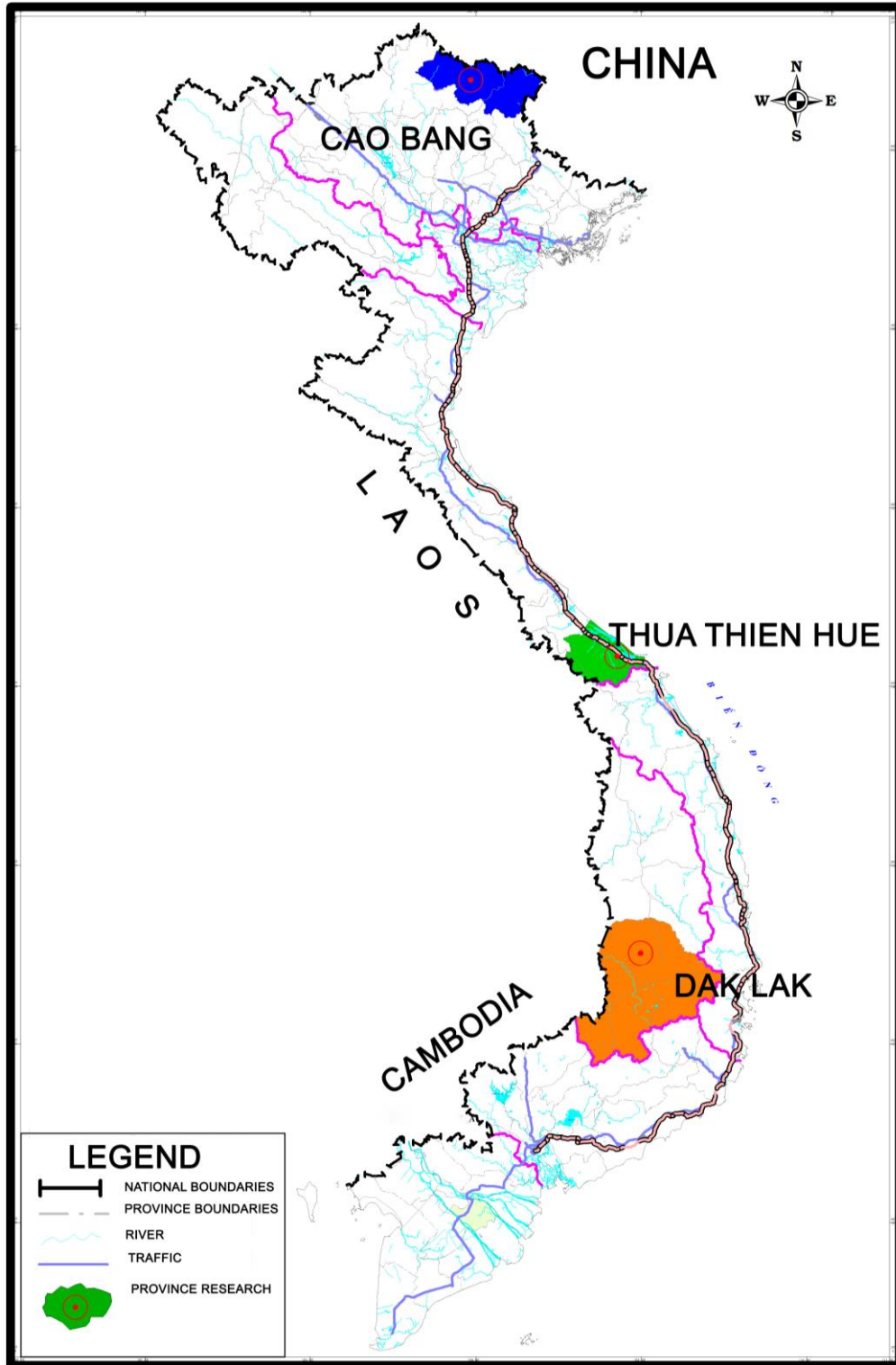
Table 1: Information regarding field sites

No	Province	District	Commune	Village	Number of households	Population	Ethnicity
1	Cao Bang	Quang Yen	Phuc Sen	Lũng Vài	43	211	Nung
				Dau Co	57	245	Nung
			Quang Hung	Pac Ai			Tay
				Na Tao			Tay, Nung
2	Dak Nong	Dak R’Lap	Hung Binh	Bon Chau Ma			M’Nong
			Nghia Thang	Bon Buzarah			M’Nong
3	Thua Thien-	A Lưới	Hong Kim	Atia 2	40		Pa Co
				Dut 1	66		Pa Co
			Bac Son	A Đeeng Par			Ca Tu

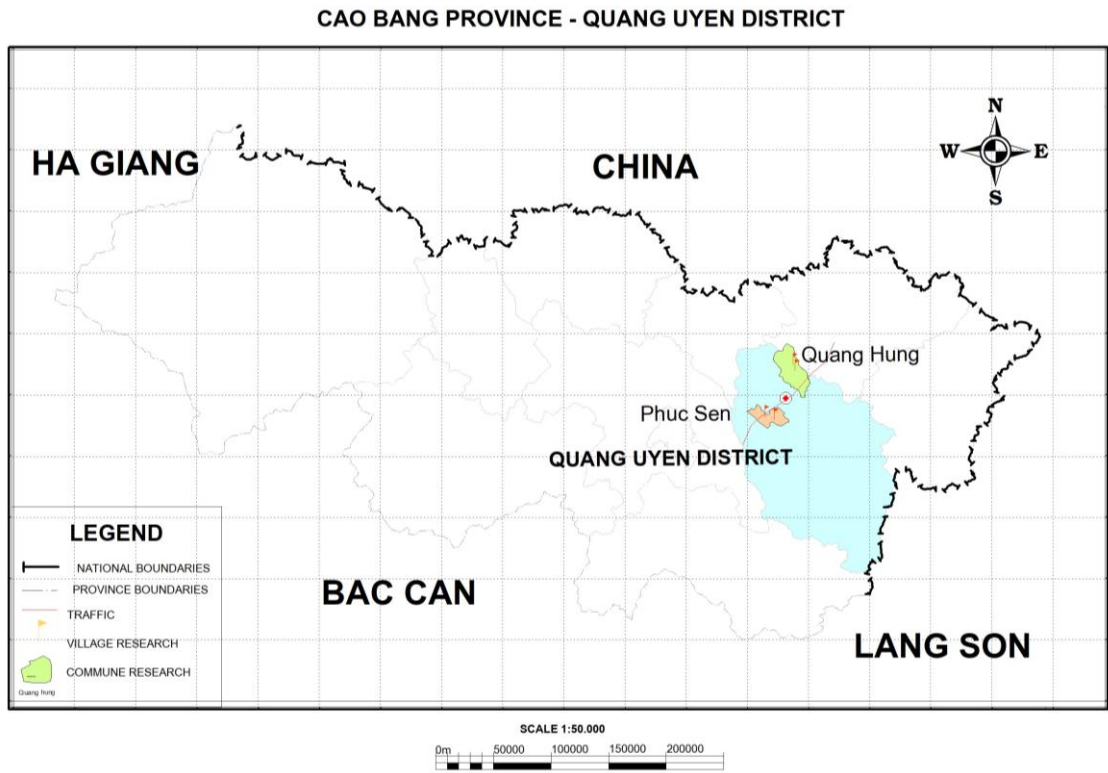


	Hue			Leng 1			
				A Deeng Par			Ca Tu
				Leng 2			

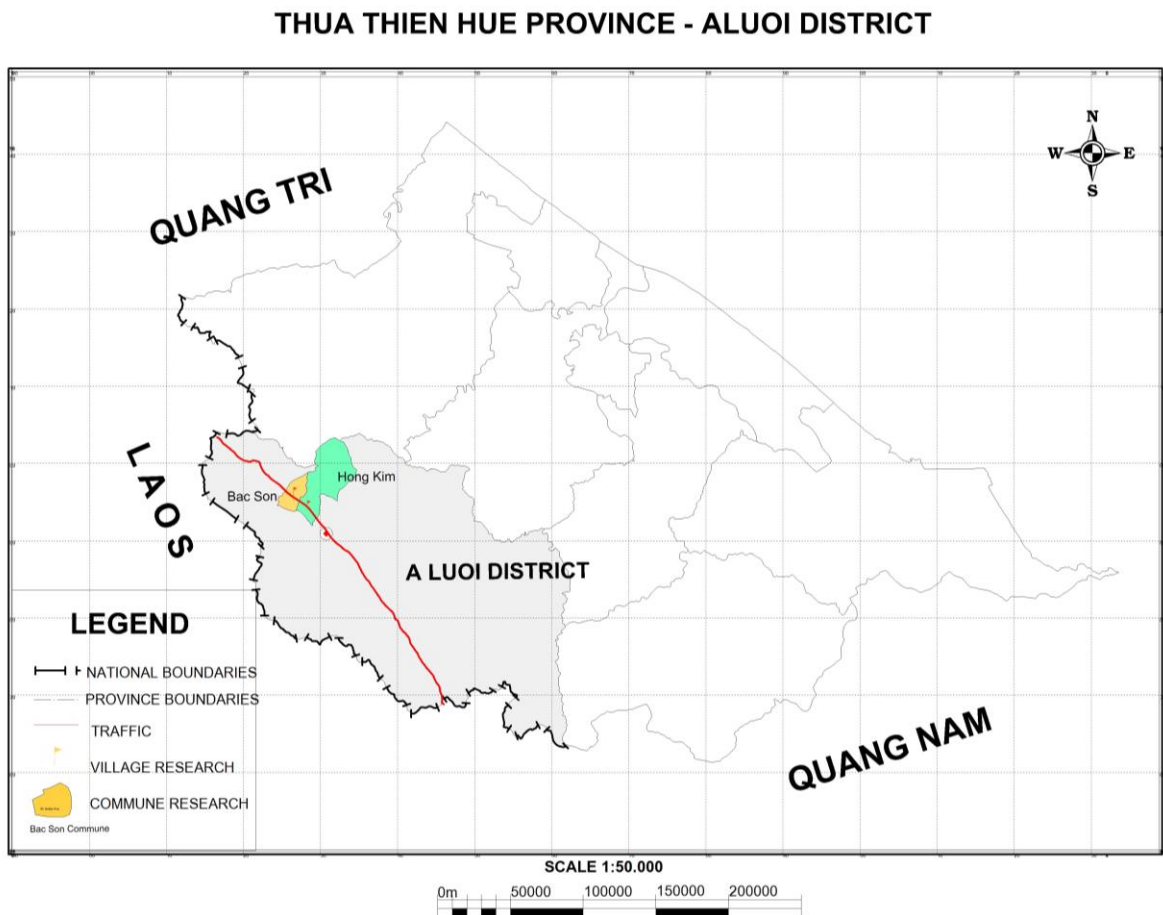
**Maps of field sites**



**Figure 1: Map of Vietnam with provinces containing field sites highlighted**



**Figure 2: Map of Cao Bang province with Quang Uyen district and field sites highlighted**



**Figure 3: Map of Thua Thien Hue province with Aluoi district and field sites highlighted**

# DAK LAC PROVINCE - DAK R'LAP DISTRICT

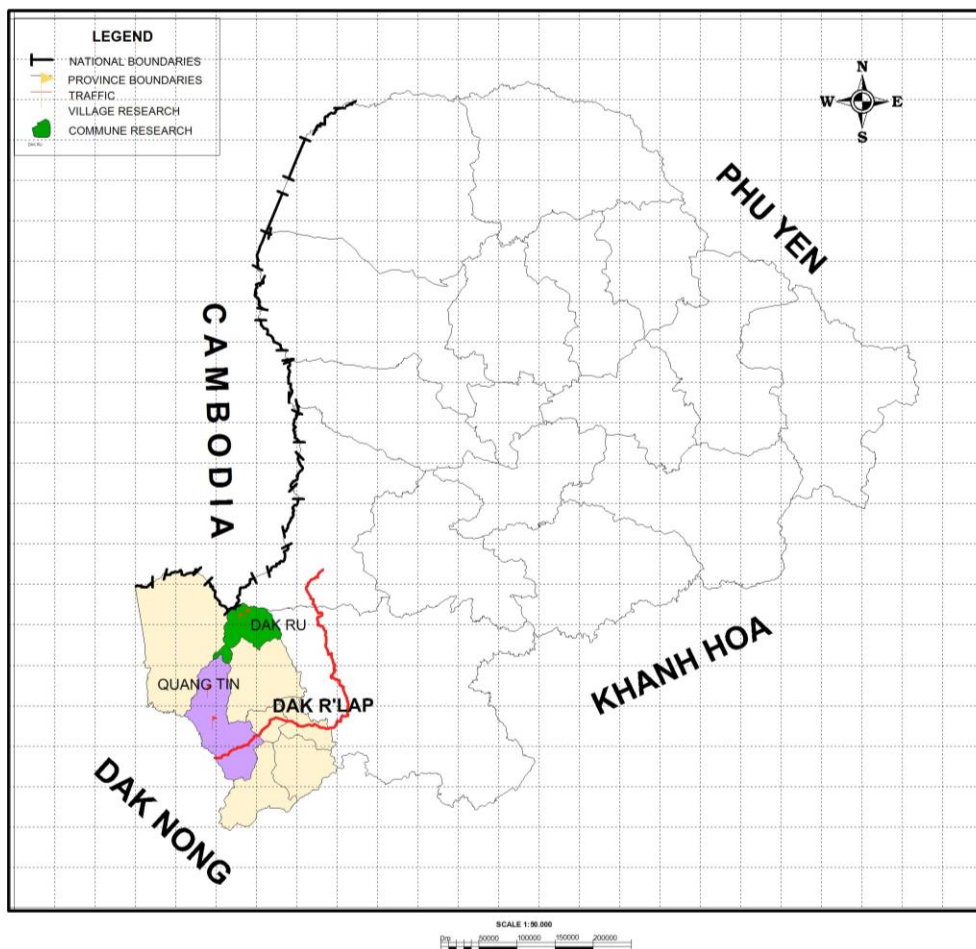


Figure 4: Map of Dak Lac province with Dak R'Lap district and field sites highlighted

## **2. Overview of ethnic minority communities in Vietnam**

Ethnic minorities are recognised in Vietnamese law and international law. The United Nations (UN) has noted that the difficulty in arriving at a common definition of ethnic minorities because of the diversity of situations in which minorities live and the history of different groups. In 1992, the UN adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The UN Minorities Declaration defines minorities based on national or ethnic, cultural, religious and linguistic identity, and provides that States should protect their existence. However, the existence of a minority concerns both objective factors (such as the existence of a shared ethnicity, language or religion) and subjective factors (including that individuals must identify themselves as members of a minority).<sup>1</sup>

In 2007, the United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly. The Declaration recognises the need to respect and promote the rights of indigenous peoples, especially their rights to their lands, territories, and resources.

In 2011 the Vietnamese government adopted the Decree No 05/2011/ND-CP dated 14 Jan 2011 on ethnic minority affairs. The decree indicates ethnic minorities are ethnicities that have a smaller population than the majority in the whole country. “The area of ethnic minorities” is where many ethnic minorities live in harmony as a community in Vietnam territory.

During the formation and development of the country, migration over thousands of years led to the fragmented habitats of ethnic groups interspersed in valleys and mountains. This meant ethnic minorities in Vietnam were concentrated in particular villages, communes, districts, and provinces. A region or province may have local ethnic minorities who have lived there for a long time, with other ethnicities also migrating there more recently. According to statistics, there is no province or district in Vietnam that has only one ethnicity present. In the mountainous areas of the north, only 2.8% of total communes have only one ethnicity. Ethnic minorities are scattered in different provinces or areas. For example, the Dao ethnic group live in 17 provinces, HMong ethnic group in 13 provinces, Tay ethnic group in 11 provinces and Thai ethnic group in eight provinces.

The way in which ethnic groups are scattered across Vietnam is a symbol of the unity of the people of Vietnam. It demonstrates the harmony, trust, relationships and mutual support and cooperation in work, spirituality, culture, and marriage. The relationships and cooperation between ethnic groups in Vietnam are fundamental to strengthening relations between ethnic groups and preventing conflicts relating to resources and culture, and to maintaining the unity and stability of society.

In terms of distribution, historically most ethnic groups in Vietnam reside in mountainous and border areas that are important locations for policies relating to the economy, security, defence and the environment.

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<sup>1</sup> United Nations (2010). *Minority Rights: International Standards and Guidance for Implementation*.

Ethnic minority groups reside along the border in the North, West, and Southwest since there are many border gates for trading between Vietnam and other countries in the region and internationally. These areas have potential in mining (such as coal, iron, copper, lead, zinc, gold, silver and gems), hydropower, forest, and ecology. Rivers start flowing from mountainous areas to deltas and annually provide billions of litres of water for hydropower plants and billions of cubic metres of sediment for deltas. In the fertile land in the mountains, ethnic communities are developing industrial crops such as coffee, pepper, green tea and rubber, and raising livestock. These areas can also provide timber and non-timber products from the forest. Therefore, mountainous areas are becoming increasingly important in industrialisation and modernisation.

From the past until now the areas where many ethnic minorities live have been critical places for fighting and defeating invaders. Dangerous topography and the patriotism of ethnic minority groups made the mountainous areas effective places to hide and support soldiers, gather weapons and establish revolutionary bases. Currently, ethnic minorities play an important role in policies for economic and social development, ensuring security and defence, and protecting Vietnam's territory.

### **Population and distribution**

According to a demographic survey conducted in 2014, the population of Vietnam is 90,493,352. However, this survey did not count the population according to ethnicity. The report refers to an ethnicity-based population structure survey conducted in 2009. According to this survey, the majority of the population is Kinh and 53 ethnicities are minorities. Kinh ethnic people number 73,594,427, accounting for 86.2% of the total population. Ethnicities with a population over 1 million include Tay, Thai, Muong, Khmer, Nung and Hmong. Sixteen ethnic minority groups have less than 10,000 people, including La Hu, La ha, Pa Then, Lu, Ngai, Chut, Lo Lo, Mang, Co Lao, Bo Y, Cong, Si la, Pu Peo, Ro mam, Brau and O du.

Located in Indochina and connecting to the Southeast Asia mainland and Southeast Asia islands, Vietnam became a place for cultural exchange in the region. There are eight types of languages in Vietnam:

- Viet-Muong is used by four ethnicities: Chut, Kinh, Muong, and Tho.
- Tay-Thai is used by eight ethnicities: Bo Y, Giay, Lao, Lu, Nung, San Chay, Tay, and Thai.
- Mon-Khmer is used by 21 ethnicities: Ba na, Brâu, Bru-Vân kiều, Chơ-ro, Co, Cơ-ho, Cơ-tu, Gié-triêng, Hrê, Kháng, Khmer, Khơ mú, Mạ, Mảng, M'Nông, Ó-đu, Rơ-măm, Tà-ôi, Xinh-mun, Xơ-đăng, Xtiêng.
- Mong-Dao is used by three ethnicities: Dao, Mong, and Pa Then.
- Kadai is used by four ethnicities: Co Lao, La Chi, La Ha and Pu Peo.
- Austronesian is used by five ethnicities: Cham, Chu-ru, Ê đê, Gia-rai, Ra-glai.
- Hán is used by three ethnicities: Hoa, Ngái, Sán diu.
- The Tibetan language is used by six ethnicities: Cống, Hà Nhì, La Hủ, Lô Lô, Phù Lá, Si La.

In terms of geographical distribution, the central and mountainous parts of the North are home to over 30 ethnicities. In the lowlands, Tay and Nung people are concentrated along the Hong Riverbank. Thai and Muong people reside from the Hong River to the Ca River. Dao people live mostly in mountain slopes with an elevation of 700 to 1000 meters. High elevation mountains are home to HMong people.

The Central area and the Central Highlands have over 20 ethnic minorities. They reside in specific areas. For example, the Ê đê people live in Đắk Lắk, Gia-rai people live in Kon Tum and Gia Lai, and Cơ Bo people live in Lam Dong province.

Provinces in the South Central region and in the South are home to Cham and Khmer people. They live alongside Kinh people. Ethnic Chinese (Hoa) people are concentrated in cities, especially in Ho Chi Minh city.

However, the distribution of ethnicities is changing. Some ethnic minorities from the North have moved to Tay Nguyen in the Central Highlands of Vietnam. Due to programmes on sedentarisation associated with poverty reduction, nomadism of mountainous ethnicities has been limited, and their living standard has increased, and the environment has been improved. Interspersed residence among ethnic minorities and the majority group is happening more often due to economic and social development, which gradually erases the historic domains of ethnic minority communities. However, some ethnic minorities are concentrated in particular provinces and only have a small population without much fluctuation.

Table 2 below summarises demographic dynamics for 16 ethnic minorities based on administrative units as of 1<sup>st</sup> July 2015.

Table 2: Demographic dynamics of 16 ethnic minority groups in Vietnam

No	Ethnicity	Province	Population (People)	No	Ethnicity	Province	Population (People)
1	Ở Đu	Nghệ An	403	9	Cơ Lao	Hà Giang	2,574
2	Brâu	Kon Tum	448	10	Lô Lô	Cao Bằng	2,592
3	Rơ Măm	Kon Tum	479			Hà Giang	1,594
4	Pu Páo	Hà Giang	685	11	Mảng	Lai Châu	4,243
5	Si La	Lai Châu	587	12	Lự	Lai Châu	6,380
		Điện Biên	187	13	Chứt	Quảng Bình	5,642
6	Ngái	Thái Nguyên	498				
7	Cống	Lai Châu	1,473	14	Pà Thên	Hà Giang	6,555
		Điện Biên	1,076	15	La Ha	Sơn La	9,459
8	Bố Y	Lào Cai	1,648	16	La Hủ	Lai Châu	11,083
		Hà Giang	921				



## Culture and religion

Material and spiritual values, communication and social relations are the basis of culture and religion. Globalization has resulted in the introduction of new religions, which to some extent influences the life of local people and communities. This can cause issues if not managed appropriately.

Vietnam has 54 ethnicities, each with its own identity, culture and religious beliefs. According to a legend, it is believed that all ethnicities are the children of the mythical dragon Lac Long Quan (father) and fairy Au Co (mother). Half of their children followed their mother to the mountain, and the other half followed their father to the sea, creating the territory of Vietnam from Lung Cu mountain in the North to Rach Tau village in the South, from the Truong Son mountain in the West to the Truong Sa island in the East<sup>2</sup>.

Living together in one country for a long time, ethnicities have patriotism, unity and mutual support in social development and building the country.

In the deltas and midlands, ethnicities have been farming rice for generations and have developed a culture that is linked to village halls and village wells. In the delta, agriculture and villages inspire the source for traditional clothes, traditional music and folk songs of the region.

In the lowlands of mountainous areas, ethnic groups cultivate rice and corn and perennial industrial crops (cinnamon, *Illicium verum*, etc), replacing the natural forest. They live in stilt houses and wear clothing with diverse patterns such as forests and animals. They have the tradition of drinking “Rượu Cần” (rice wine drunk out of a jar through pipes) to enhance community spirit.

In the North and Central Highlands, ethnic people traditionally practiced shifting cultivation. Due to the sub-tropical climate, crops grow in summer-autumn season. In order to benefit from the weather and make use of the soil, local people have been growing cash-crops to increase their income, protecting soil and preventing erosion from summer rains. Women are skilful in making beautiful clothes with diverse and colourful patterns but convenient for working in sloping fields. Mountainous communities have developed rituals for their daily life and agricultural production. Most of the ethnicities in the Central Highlands have the ritual of sacrificing elephants for the worship of gods and for the wellbeing of the village. The Central Highlands have legends and epics that are as vivid and intricate as Chinese or Indian legends but have not been documented or studied. Local communities in the Central Highlands are also the owners of some traditional instruments such as lithophones and gongs and have many traditional dances.

Spirituality and beliefs of ethnic minorities in Vietnam are quite complicated and diverse. Most ethnic minorities follow traditional customs such as ancestor worship and spirit worship. During the invasion and colonial regime of the French and the Americans since the nineteenth century, Catholicism and Protestantism have been introduced in many ethnic minority areas.

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<sup>2</sup> Lac Long Quan and Au Co legend....

Some ethnic minorities in Vietnam have religious and clan relations with communities in neighbouring countries beyond national borders due to the demography and dynamics of history.

### **3. Concepts of customary tenure and customary law in Vietnam**

Customary law is a set of customs, practices, and beliefs that are accepted as obligatory rules of conduct by indigenous peoples and local communities. Customary law forms an intrinsic part of their social and economic systems and way of life. Customary tenure is a set of rules and norms that govern community allocation, use, access and transfer of land and other natural resources. FAO defines customary tenure as the relationship, customarily defined, among people with respect to land and natural resources that determines how property rights are allocated within societies. The term “customary tenure” invokes the idea of “traditional” rights to land and other natural resources: tenure is usually associated with indigenous communities and administered in accordance with their customs, as opposed statutory tenure usually introduced during the colonial period (FAO, 2002).

In the Vietnamese context, the term “tenure” has not been legally defined. Vietnam only uses the term “use right” to land and natural resources, which is not the same as tenure. Land use rights in Vietnam include limited discretionary powers. In Vietnam, land and forests are owned by the state, not by private units or individuals. Therefore when “tenure” is interpreted in Vietnam, it is understood not to include private ownership of land and forest.

Vietnamese law does not include the term “tenure”, “tenure rights” or “customary tenure”. For this report and to adapt to the situation in Vietnam, customary tenure or tenure rights refers to a collection of rights (but without the private ownership right to land and forest), how they are allocated to community in terms of who has rights to different land and forests, and the terms and conditions for exercising each right.

It is difficult to advocate for customary tenure rights in Vietnamese land and forest policies in the current context. However, based on the above definition of customary tenure and land-forest use rights in the law, we can understand that the recognition of customary tenure means the recognition of the customary land-forest use rights of local and ethnic communities.

#### **Customary law and living space**

Customary laws are traditional, informal rules and practices that have developed over time that are followed by people within their ethnic groups, and which impact on ways of thinking and behaving.

The Vietnamese concept of ‘không gian sinh tồn’ is difficult to translate into English. While it can be understood as ‘living space’, this may not capture the full meaning of the term. The living space is where a community practices their culture and their livelihoods. It is the place where they have lived for generations and which holds the history of the community. Humans interact harmoniously with nature. The people and living space have a reciprocal relationship as each depends on the other to survive and flourish. The living space provides natural and economic resources such as food,

timber and water. It is also central to the culture and spirituality of the community, and the community honour and protect the living space.

FORLAND and other civil society organisations advocated for lawmakers to recognise customary law and living space in the 2017 Forestry Law, in order to recognise the relationship between ethnic minority communities and the land and forest.

The research results show that for Nung people in Quang Yen district, Cao Bang province, customary law is always linked to living space and influences forest protection and management. Many forest areas have been managed collectively and they have preserved rare wood species by virtue of customary law.

Resident areas of Nung ethnic people are narrow valleys surrounded by natural forest mountains. This topography benefits local people who depend on forest and forest land for agricultural production and their livelihood. Therefore, forest plays an important role in their life. Nghiến (*Burretiodendron hsienmu*) is a dominant tree in the forest of Nung or Tay people.

According to ethnographic studies, Nung people in Vietnam mostly migrated from Quang Tay province in China over 300 years ago. At first, they were scattered in the northern provinces bordering China. Currently, they live in many different provinces across Vietnam. The migration process was through family lines and every village has two or three family lines living together. In Dau Co village, Phuc Sen commune, some of the villagers believed that in 1979 during the war between Vietnam and China, the Chinese soldiers did not burn the houses with Chinese parallel sentences in altars, which suggests further evidence of their origin from China.

Before 1954 the forest of the Nung people was managed according to the regulations of the French colonial administration. If the villagers wanted to cut the wood, they had to get approval from the village mayors. Although French colonialists exploited the forest, Nung people maintained community forests, collecting timber and non-timber products for community events or spirit worship. From 1954 to 1986, Nung villages were managed by cooperatives. The villagers received benefits based on their working hours in the era of cooperatives. The interviews revealed that during this time, the forest was exploited significantly for export from the cooperatives and other purposes. In addition, local people exploited wood for housing, cooking and furniture, changing the forest to become degraded. Most of the good quality and valuable wood was cut down during this period. However, no one cut trees in the sacred forest and spirit forest because they were afraid of disturbing the spirits and affecting the village. In the 1979 border war, Chinese soldiers entered local villages of Nung people in Quang Yen district, burning their houses. After the war, villagers went to the forest and cut wood to rebuild new houses.

After large areas of forest were lost, villagers and authorities became concerned with forest protection. Since 1993 the state has issued policies for allocating forest and forest land to local people. After many forest areas were degraded the local authority started the forest allocation program. The provincial forest ranger department cooperated with local authorities to allocate forest and forest land to people, except for the areas managed commonly by the villages. From 2003 to 2008, Cao Bang province implemented a project to produce a cadastral map with a scale of 1/10,000 and cadastral dossiers of unused forest land from the basic cadastral map (Space images

project). During the project, households with less than 5000 square meters of forest land were grouped and received a land use right certificate with one representative. Villages were granted a land use right certificate for community forest areas, which is regulated by Circular 38/2007/TT-BNN on the procedure for forest allocation and lease and forest recovery of organisations, individual households and community by the Ministry of Agriculture and Rural Development.

Forest management and protection by Nung people in Phuc Yen so far has been effective. The forest is protected well and the local people are aware of protecting the forest in line with state and customary law.

## **Customary law and culture**

### *Customs and spiritual culture of Nung people*

Nung people have two key customs. The first is worshipping the earth god who governs the land, wishing peace, luck and plentiful crops. The second is the ceremony for becoming an adult when a man reaches 36 years old. This custom only applies to men.

### *Spirit worship in Chau Ma village, Dak Nong province*

In Chau Ma village, local people have customs for worshipping their god and receiving his approval before clearing the forest for cultivation. After slash and burn activity, they bring the firewood back home to continue their worship. Following this, they worship twice more before and after harvesting. If other villages encroach the land of Chau Ma village, they need to get approval from the village by sacrificing a pig for the village. The village elders and related stakeholders have to resolve cases of illegal slash and burn activities or land conflicts.

### *Spirit worship and buffalo sacrifice in A Lưới district, Thua Thien Hue province*

In A Lưới district over 80% of the population are local ethnic people, mainly Pa Co, Ta Oi and Van Kieu. They have maintained two customs: spirit worship and buffalo sacrifice festival.

Spirit worship is a feature of Pa Co culture. They believe in a mountain god so they have customs of worship before cultivation and after harvest or for significant events for the village or households. Through these activities, they worship for a plentiful harvest. Pa Co believe that their god always stands by them and helps them to overcome difficulties, accidents, and diseases. The worship of the god brings them luck and good things in their life, and their spiritual practice makes them feel peaceful and satisfied. Pa Co people perform worships before slash and burn for a new crop, at new year, for community forest patrolling, harvesting season, and community activities relating to infrastructure development and renewing graves (Pa Co people have the custom of renewing graves 5-7 years after burial, called 'Aeu' in Pa Co language).

The buffalo sacrifice festival is practiced to wish good things for the villagers. Sacrifices include buffalo, pig, chicken, and goat. In the past, this festival was organised every year, but the Ministry of Culture, Sports and Tourism banned the practice. Villagers still practice it on a small scale.

## **4. Customary law and forest management**

### **Nung and Tay ethnic communities in Cao Bang province**

Phuc Sen commune is 97% Nung ethnicity. Before 1960 the forest was used as commons. The villagers considered the forest a gift of God that anyone could access and use. At that time there were no community regulations regarding use, protection and management of the forest.

In the early 1980s, cooperatives started dissolving. There were no policies on forest allocation. The villages of Phuc Sen commune formed the common forest and established community regulations and groups for forest protection. The community had specific regulations that allowed trees to be cut for building or fixing houses and to collect firewood. These regulations did not need the approval of the local authority. The villagers were aware of the need to protect natural forests, particularly when they contained valuable species such as Nghiến (*Burretiodendron hsienmu*), a species that grows in the rocky mountains.

In the common natural forest in the commune, villagers chose old trees like Banyan, Bombax ceiba and fig trees near to their resident area as a marker. In this area, they built a temple for the worship of the earth god who governs their living area. The community organises the worship of the earth god annually on the 25<sup>th</sup> day of the 12<sup>th</sup> month of the lunar calendar. After this day villagers finish harvesting sweet potato and they let buffaloes enter the forest.

Traditional customs are linked to community regulations, benefiting community forest protection. For example, traditional ceremonies are mostly practiced in the forest, therefore community regulations on forest protection both reflect and reinforce spiritual values and holy places for their practices. Indeed, ethnic minority people usually consider forests as their living space relating to their religion, spirits and their love. The economic value of wood and forest products is not as important as the spiritual and traditional values. The current forestry policies often emphasise punishment and retributive regulations in order to limit wood exploitation from the forest by the community. In fact, this mechanism has limited effectiveness in forest protection.

Forest is a part of the cultural space of Nung people; therefore, they establish regulations on forest protection within their community as follows:

- Do not cut the trees near the place for worshipping the god of the village. In fact, even if a tree falls down the villagers do not dare to collect it.
- Only collect wood and firewood in the community forest when having funeral ceremonies or with the agreement of the whole village.
- Do not have forest and forest land conflicts among households in the village.
- Collecting wood, non-timber products, herbs and wild vegetables is agreed in the village regulations.
- If a tree falls down in the community forest, it is allowed to be collected for common activities of the community.

- Everybody has a responsibility to protect the community forest. If anyone finds illegal loggers, they have to inform the whole village to solve the issue.
- Those who violate the regulations will be punished or expelled from participating in community activities.

These regulations have been transferred from generation to generation. If there is to be any change, there must be a community meeting to agree on it.

Expelling violators from participating in community activities is the highest punishment for infringements of the above regulations, although so far no one has been punished this way. These regulations have adjusted human behaviours towards the forest, establishing stability in the community by customary law, not by the state law.

However, the regulations on the state management of forests have influenced forest management in the community. During the period of French colonial rule, timber exploitation had to follow the regulations of the French. For the period of cooperatives, the local people had to protect the forest according to regulations of the cooperatives. Currently, the forest is managed by the state legal system, and some of the community regulations cannot be applied. For example, some communities want to implement strong punishment for violators according to customary law, but the local authority does not allow it.

Research in four villages of Nung people in Cao Bang indicates that the influence of customary law on forest protection and management is quite strong compared to state law. Forest use and management is stipulated through the granting land use right certificates to communities and regulations on community forest management. However, the local community carefully follows their own regulations that do not conflict with the state law. Protecting the forest has been part of the Nung community's beliefs and customs for thousand years.

### **M'Nong, Ma and Ede ethnic communities in Dak Nong province**

The soil in the Central Highlands is quite good and is suitable for the development of industrial crops like rubber and coffee. Due to many reasons, forest land is decreasing and being replaced by these crops. Currently, most of the remaining forest land is managed by state forest owners, such as protection and special use forest management boards and forestry companies. State forest owners make contracts with local people to manage and protect forests following their guidelines and regulations. Within provinces of the Central Highlands area, especially Dak Nong, there are no more natural forest areas to allocate to individuals or households. Therefore, customary law in forest protection has been gradually lost. However, in some areas, the state has promoted the reallocation of forest to the community to manage and customary law on forest protection is being practiced.

*Châu Mạ village, Hung Binh commune, Dak R'Lap district*

In the 1980s the state forestry farms managed all forestry land according to state regulations. Local communities also adhered to state law. At that time, the state law had no regulations on community sacred forest protection. Since 2007, the Cat Tien protection forest management board has contracted the Chau Ma village community to



protect the forest. Local ethnic households or poor Kinh households were given priority in entering the contract. In Chau Ma village, there is no forest allocation to households. Local people have no use rights; they only benefit from the contract assignments such as wages for annual forest protection for six months per time by the forest protection management board, collecting bamboo, wild vegetables and wild animals such as mice and squirrels.

In order to protect the forest, the community drafted regulations following the regulations of the forest protection management board. Each day there are three households to patrol the forest with Nam Cat Tien forest protection management board. If the households violate the regulations, they will be eliminated from the contracts or be punished according to state regulations.

*Buzarah village, Nghia Thang commune, Dak R'Lap district*

Different from Chau Ma village, Buzarah village had a forest area which was managed by Dao Nghia forestry farm since liberation until 2007. The farm grew pine within the vacant land. After the farm was dissolved, Nam Cat Tien protection forest management board was established. During this time, local people did not care for the forest; they adhered to regulations of the forestry farm and the protection forest management board. In 2008-2009, the local authority allocated 123 ha of forest land to Buzarah community for management and protection. The community considers this area as their community forest, so they make their own regulations according to their customary law. Currently, their forest is protected well. The following are some of the regulations:

- Identify clear boundaries of the forest, no one can enter freely.
- Violators will be punished by sacrificing buffalos and cows.
- No one is allowed to deforest. If they violate, the holy forest and mountain god will punish them.
- The local community is allowed to collect bamboo, wild vegetables, mushrooms and so on.

## **Pa Co, Ma and Van Kieu in Thua Thien Hue province**

*Atia 2 village, Hong Kim commune, A Lưới district*

Atia 2 village has 192 households with 725 people from Pa Co, Ta Oi, Ca Tu, Pa Hy, and Kinh ethnic groups. In 2013, the state allocated 127 ha of protected natural forest to two communities in Atia 2 village. The first community was allocated 68 ha, the second community was allocated 59 ha. Both have four groups for forest protection with 22 members. Each group is in charge of patrolling the forest one week each month. The village established a community forest management board with five people. Community forest protection regulations were developed with tenure rights to forest and 'dos and don'ts'. The community has grown 40 ha of rattan under the natural forest cover. Since 2014, the community has received money from payments for forest environmental services for the forest area that they protect.

Atia 2 village only has an allocation of natural forest to the whole community but has no allocation to individual households because there is not enough forest land.

*Dut 1 village, Hong Kim commune, A Luoi district*

Dut 1 village has two communities managing 80 ha and 62 ha respectively. The community forest management board educates local people on forest protection and mobilises them to participate in forest protection groups. Every community established a forest protection group with 23 people and makes community forest protection plans.

The communities developed regulations on community forest protection with the same content and form as regulations of the other villages in the commune. Only Dut 1 village stipulates every household contributes five working days to patrol the forest and take care of the forest or participate in building community infrastructure. If a household cannot contribute working days, they can contribute 100,000 VND per working day.

*A Đeeng Par Leng 1 village, Bac Son commune, A Loui district*

A Đeeng Par Leng 1 village was allocated 218 ha of community forest to two communities. Each community established forest protection groups with 5-6 people. The group head is directed by the community forest management board. The first community has 20 people protecting 58 ha. The second community has 27 people protecting 160 ha. Hence, A Đeeng Par Leng 1 village has 47 people protecting 218 ha of the community forest. They count the working hours of members to calculate their wages.

The communities have developed regulations on forest protection, stipulating:

- That a community fund is generated from exploiting wood from community forest, payment for environmental services (PFES), solving administrative violations, financial contributions from local people;
- The rights and responsibilities within the community for sharing water sources for domestic use and crop cultivation, sharing the community fund according to the community forest management board;
- Penalize community members according to the extent of damage stipulated by the community forest management board; violators may not benefit from community forest for three to five years. Those households who violate the regulations will not be recognised as a good family;
- Using money from punishments: 20% is for the person who discovers the issue, 30% is for participants solving the issue, 50% is for village fund on forest protection and management.

In terms of benefits from the forest, the community is paid by the state for forest environmental services. In 2004, they received 580,000 VND per ha. In 2005, they received 646,000 VND per ha; in 2016 they received 738,000 VND per ha. This is the main source of payment for the forest protection group.

Production forest land is allocated to households for cassava and acacia cultivation. The extraction cycle of acacia is 5-6 years. For wood, one hectare of acacia trees is valued at 25 million VND. The average income is 20-30 million VND per household.

Following the regulations faces some difficulties and constraints such as:

- Conflicts within communities: some villagers who are not members of forest protection groups may question the wages received by the group members for forest protection (100,000 VND/working day).
- Many people think that the state should not allocate forest to the community, but allocate to individual households or groups of households to protect and utilise. They argue that allocating forest to individual households is an easier way to protect and bring effective results from PFES, and so every household may have a chance to benefit from PFES.
- If the community does not continue managing the forest, the Commune People's Committee will establish a management team with the participation of the commune police and local forest rangers to manage the forest.

*A Deng Par Lièng 2 village, Bac Son commune, A Loui district*

A Deng Par Lièng 2 village was allocated 110 ha of natural protection forest for management and protection since 2014. The community has built regulations for forest protection and development, which refers to the establishment of village forest management and protection board. This includes eight forest protection groups, each with six people, making it a total of 48 people participating in forest protection. They have clear regulations on the rights and punishment for community members relating to community forest management and protection.

Benefits from the community forest: The community receives around 50 million VND per year from PFES. After spending on uniforms for patrolling, meetings, stationery and so on, the rest of the money is divided according to working hours, equivalent to 100,000 VND per work day.

If a household wants wood for building a new house or repairing an old house, they must write to the community forest management board for permission. After that, they submit their request to the Commune People's Committee for review. After consulting the local forest ranger force, the CPC will approve or not the request to cut trees in the community forest. All households can request to use wood for building houses, regardless of whether they are in the forest protection groups or not.

All households in the community are allowed to enter the forest and collect non-timber products such as wild vegetables, mushrooms, bamboo, and honey. All villagers can use water sources from the forest for domestic use and agricultural irrigation.

In cases where villagers violate the community regulations, they must pay compensation as punishment. If members of forest protection groups violate the regulations they will be eliminated from the group and will not benefit from the forest for three to five years.

After three years, the community forest is protected well. There has been no illegal logging or forest fires and no encroachment.

One of the most significant challenges for implementing community regulations on forest protection is the low wages from PFES. The average wage is 100,000 VND per work day, while villagers can earn 150,000 VND per day if they work for private farms. Therefore, some people do not want to join the forest protection groups.

## **5. The impact of state forest policies on communities**

### **Restrictions of customary rights in forest use and management**

In order to manage the forest, the state forms protection forest and special use forest management boards, or forestry companies for forest management with the state being the owner. These state owners have signed contracts with local people to protect the forest and pay wages annually. If the local people want to exploit wood, they must write a letter to seek approval from the District People's Committee. If approval is granted then they are allowed to cut trees according to the regulations of the district forest ranger department. The development, management and use of forests follow the guidance of the state forest owners. As communities must follow the official regulations, customary law is often no longer developed or applied.

### **State regulations override customary law in forest management and protection**

Since the establishment of forestry farms, forest management boards, and relevant state policies, ethnic minorities have started to change their mindset and behaviour. They follow state regulations on forest protection and protect the forest through contracts with forestry farms. Therefore, customary law in forest use and management has been gradually lost. Nowadays the younger generations have less knowledge of customary law, especially customary tenure since they only know and follow the laws of the state.

In the past, ethnic minorities formed effective regulations on protecting community forests and holy and sacred forests. However, in recent years the state has issued guidelines on developing and implementing regulations on forest protection and development in villages (cited in the resolution No.70/2007/TT-BNN dated 1/8/2007 of MARD).

Therefore, regulations on community forest protection at village level follow the same template with the same content and regulations. There are few differences between villages. These regulations are imposed by the local authority and are not developed from the practical demand of the community. In fact, the current regulations lack valuable, traditional regulations in natural forest management and use. Long lasting and traditional customs have not been included in the current regulations. Worship of gods has not been introduced into the current regulations although this activity is necessary for some ethnic minorities, for example in the Pa Co culture.

Study of the development of regulations on forest protection of the Nung and Tay ethnic communities in Lũng Vài village, Phuc Sen commune, Quang Uyên district indicates that developing the village regulations based on resolution 70/2007 of MARD has the following issues:

- Village regulations have followed a specific template both in content and form.
- Village regulations do not respect traditional customs and nor do they include customs on forest management such as worship of gods, enforcement of

punishments for infringements of community regulations such as sacrificing of buffalo and cow, etc.

- Village regulations have to be approved by the District People's Committee and reviewed by the Commune People's Committee.
- The regulations are not flexible and adaptable to the changing context.

### **The impact of migration on the life and customs of local ethnic communities**

In recent years the migration of ethnic minorities from the North to the Central Highlands has increased and added complexity to the situation. Migration has brought changes to the lives and customs of local ethnic minorities.

In the past, the natural forest of Dak Nong province was managed by state forestry farms, then partly allocated to the local authority with mainly poor forest. Later the Commune/District People's Committee allocated this forest area to communities. The local authority and forestry management units have supported M'Nông communities in planning forest protection and management and developing community regulations. Communities believe this area of forest belongs to them and next generations so they have to protect the forest well.

However, when ethnic groups migrated from the North, they cleared forests for crop cultivation, especially commercial crops like coffee, pepper and rubber. They do not follow the regulations of the M'Nông ethnic group, so there are contradictions between approaches to forest protection and use by local ethnic groups and migrant ethnic groups. Tensions have risen since local ethnic minorities have started to exploit the forest in unsustainable ways, as they believe if they do not then others will. At the present time, land for coffee and rubber is valuable with price ranging from 0.5 to 1 billion VND per ha. Therefore, many forest land areas allocated to communities have been converted to agricultural land for industrial or agricultural crops. Hence migration has altered the life of local ethnic minority groups and led to conflicts among ethnic minorities on forest use and protection.

In Chau Ma village, Hung Binh commune, Dak Lap district, natural forest used to be abundant, and the villagers only deforested a small area for crop cultivation. However, Kinh ethnic people migrated from the North and deforested and changed a much larger area of the forest. Migration has led local people to sell their coffee, pepper and rubber fields to outsiders at a very low price (two bags of rice per ha). Deforestation, conflicts, and encroachment have occurred frequently. The customs of local people have also changed significantly. For example, their cuisine has changed; whereas in the past they mainly grilled food, now they fry food.

In Buzarah village, Nghia Thang commune, Dak Lap district there was a wave of migration from the North to the Central Highlands in 1993-1994. Before the migration, local ethnic communities were farming in the mountains far away from their villages and protecting nearby forest mountains and sources of water. When migrants arrived and cut down forests for farming, it was difficult for local ethnic communities to protect their nearby forests. The migrants deforested and cultivated in the low area while the local ethnic groups already used the upland areas for cultivation.

## 6. Recommendations

We make the following recommendations to forestry management agencies and policymakers:

### **Recommendation 1: The customs and traditions of ethnic communities must be respected and maintained in forest use and management.**

As examined above, customary law has developed alongside the spiritual and cultural life of ethnic communities. Customary law has been followed by community regulations based on local customs, especially in the use and management of forest and forest land. These customary regulations have shaped the behaviours of ethnic people towards nature and forests, helped to stabilise the community, and have co-existed with the state law system.

Each ethnic community has their own specific regulations which are effective in protecting the forest. Tay and Nung ethnicities in the North always prioritise spiritual and religious beliefs, and worship of gods, to ensure peace, stability and sustainable use of resources. Ma, M'ông and Ê đê people in the Central Highlands consider natural forest and mountains to be controlled by their god. These beliefs have contributed to the effective enforcement of customary law, thus contributing to the sustainable management and protection of forest resources. Pa Cô, Tà ôi and Vân Kiều ethnic people in Thua Thien Hue province have adapted their traditional customs to new social and economic contexts to protect forest resources of the community. By virtue of traditional customs of ethnic communities, the forest is protected and managed well.

When the forest is allocated to a community it means the forest is a common asset of the community, which provides incentives to protect and manage the forest. Community forests such as sacred forests are managed well, protecting the ecosystem and forest cover, and avoiding deforestation or illegal logging.

**Recommendation 2: Institutionalise customary law in forest resource use and management, and recognise customary rights in the use and management of the living space of communities in state forestry policies.** As outlined in this report, recognising customary law and customary rights of ethnic minority communities is important in order to ensure sustainable management of forests and land, and that ethnic minorities can continue to practice their culture and traditions.

### **Recommendation 3: Improve forestry policies to strengthen the recognition of customary tenure of ethnic communities to land and forest.**

According to article 257 of the Civil Law (2015), “Usufruct right is the right of subjects to use and benefit from property under the ownership of other subjects for a certain time”. This article means that to some extent, subjects are able to benefit from assets that they do not necessarily own. The terms “usufruct rights” and “tenure rights” could be understood as the same in Vietnam. However, the term “tenure” has not been used officially in the laws on forest and land. Based on the findings of this study, we recommend that this term be used in the forestry law.

In practice, there are many who rely on the forest and are involved in forest protection and development, although the law limits their rights. Therefore, the decrees need to recognize the tenure rights of communities to forest resources.



## **7. Conclusion**

Strengthening the recognition of customary tenure of ethnic minority communities in Vietnam is crucial to the social and economic wellbeing and development of ethnic communities, as well as for the sustainable use, management and protection of forest resources in the country.

The study results highlight the following points:

Firstly, the results indicate that customary law is always linked to the living space of ethnic communities, as customary rules and practices continue to regulate social relations in the community as well as relationships between people and the environment.

Secondly, the traditional customs of each community have different features based on their ethnicity and ecological region. Some customs have lasted a long time; others have changed and adapted or been lost in the new context of society. The dynamics of customs should be recognised, respected and practiced.

Likewise, each ethnic community has different customary rules and traditions in forest protection, management, and natural resource use. Ethnic minority communities in different regions have different farming and living practices, as well as customs in managing and using natural resources and community assets.

Thirdly, customary law and state law are both the basis for controlling and regulating community customs and behaviours, but also for allocating rights and responsibilities in managing land and forests. The convergence of these systems needs to be understood and recognised to promote the sustainable use and management of natural resources and assets of the community.

Fourth, forests have co-existed with and are integral to the material, cultural and spiritual life of ethnic minority communities. Changes in the political, economic and social context through different periods in Vietnamese history has led to the marginalisation of ethnic communities and their loss of access and control over forests and related resources. This, in turn, has impacted on their customary systems for managing forests alongside broader social, cultural and economic change. Forestry policies continue to have negative impacts on customary rights and often override effective customary laws and practices in forest protection and management.

Community tenure rights to forests are legitimate rights of ethnic communities who have lived with forests for a long time. The tenure rights of ethnic communities have been restricted by state policies and regulations on forests. Therefore, it is imperative to advocate for greater recognition of customary tenure rights in state policies and promote the allocation of forest land to local communities.

Fifth, traditional customs, beliefs and customary tenure rights to forests have existed for generations but have been changing due to political, social and economic changes. It is essential to protect these traditional features in a way suitable to the development and harmonious relations of all 54 ethnic groups in Vietnam.

This study presents initial results based on limited timeframe and scope of case studies examined. More exploration of the topic is needed to develop concrete recommendations and actions for change.

## Annexes

### Annex 1. List of interviews conducted for the study

Venue	Interviewee	Number
<i>Hanoi</i>		<b>18</b>
MRLG project	National Facilitator and MRLG staff	3
Ethnic council	Official	2
VUSTA Vietnam	Official	1
Relevant departments of VNFOREST/MARD	Leaders and official	4
Relevant NGOs	Leaders and official	5
Relevant projects	Experts	3
<i>Cao Bang, Dak Nong and Thua Thien Hue provinces</i>		<b>118</b>
Agriculture and Rural Development Department	Leaders and official	12
District people's committee	Leaders and official	15
Commune people's committee	Leaders and official	16
Village elders, village head/community	Forest owners/community	75
<b>Total</b>		<b>136</b>

### Annex 2. Description of field sites

Three provinces were selected for this research study. In each province, one district, two communes and two villages were selected to conduct fieldwork and community consultations.

Below is a brief description of each province, district and commune including ethnic population dynamics and land and forest allocation. As alluded to below, the extent and effectiveness of forest and land allocation from the state to communities varies according to the area. There are more success stories in the northern and central regions of Vietnam than in the Central Highlands. In the Central Highlands, forest land has changed dramatically in order to grow commercial crops. The value of the land in the Central Highlands is quite high for industrial crops, which drives deforestation. However, many forest areas need to be allocated to ethnic communities since they depend on forest areas for their livelihoods and to practice their customs.

## Cao Bang province

Cao Bang is a mountainous province in the Northeast of Vietnam. It shares a 333-kilometre border with Quang Tay province of China in the north. Mountains and forests account for 85% (670,342 ha) of the province. There are many rocky mountains with a slope of 25 degrees. The agro-forestry production area is 628,729 ha, in which agricultural land accounts for 94,724 ha and forest land is 534,004 ha. Special use forest area is 17,623 ha (3.3%), protection forest area is 297,450 ha (55.7%), and production forest is 218,931 ha (41.0%). Within the forest land area, forest vegetation is 358,264 ha with the percentage of forest cover being 53.5%.

Eight ethnic minorities live in the valleys, with a population of approximately 520,000 people and a population density of 78 people per square kilometre. Tay, Nung, Dao, H'Mông and other ethnic minorities account for 42.6%, 32.9%, 9.6%, 8.4%, and 1.8% respectively, while Kinh make up 4.7% of the population. Almost half (42.5%) of the total population in Cao Bang province is classified as poor, giving Cao Bang the third highest poverty rate in the country.

In line with policies on the allocation of forest and land since 2005, Cao Bang authorities have allocated 162,592 ha of land and forest to ethnic communities, and allocated 224,280.01 ha to households and individuals. From 2003-2008, provincial authorities implemented a project which developed a cadastral map of land ownership with a scale of 1:10,000 and prepared cadastral dossiers and issued forestry land use right certificates. Therefore, 96% of forest area was allocated to communities and households with land use right certificates.

*Quang Uyên district is one of twelve districts of Cao Bang province. Most of the forest area is rocky mountain (over 80%), belonging to protection forest that is allocated to the protection forest management board. The rest is allocated to households and community management. Due to the forest being well protected, there is no illegal logging in the district. The community was granted a land use right certificate. The households signed a commitment which agrees not to log or destroy the forest. The villages organised community meetings to make their own forest protection regulations. Currently, sacred and spiritual forests are managed well by the community.*

*Phuc Sen commune, Quang Uyên district was chosen to conduct research on the ethnic communities' customary practices in forest management and use. Nung ethnic people constitute 97% of the population of Phuc Sen commune. Besides agricultural production, forging steel is an important source of livelihood and source of income. Therefore, the pressure on the forest is reduced, and natural forest managed by the community is well protected compared to other communes. Traditional blacksmiths have existed for a long time, but recently it has been developing quickly and has a good reputation. In Dau Co village, 80% of households are doing blacksmithing, creating a significant income. They can afford to buy wood and build houses. For them, buying commercial timber is cheaper than logging in the forest. When building community houses they have to contribute physical work or wood. Instead of cutting trees in the forest, villagers were willing to contribute money to buy wood and spend time and effort on steel production instead. Technology for blacksmithing has changed*

from using firewood to using coal. Villagers use gas for cooking at home, so there is no longer any logging. Hence, the forest is protected and preserved.

*Quang Hung commune*, the second research site in Quang Uyên district, shares a border with Trung Khanh district. It has a total natural area of 2,259 ha. The commune consists of Coc Nhan, Khuoi Ri, Ban Lang, Na Cuoum, Na Kha-Po Re, Nam Phan, Pac My, Pac Ai, Po Rien, Thac Det and Tuc villages. Quang Hung is one of the communes producing the highest amount of vegetables in Cao Bang province, with cultivation area of around 30-40 ha (according to the season). The main crops include cabbage, kohlrabi, cauliflower, bitter melon, cucumber, and chilli. They follow traditional cultivation methods, not using herbicides, pesticides or growth stimulants. Therefore, they have a good production model with high income which reduces the pressure on the forest.

### **Dak Nong province**

Dak Nong is one of five provinces of the Central Highlands, located in the southern part of the Central Highlands. The province has a total area of 653,300 ha. Currently, forest coverage in Dak Nong province is lower than other provinces, at 38.8% (252,820 ha). Authorities plan to increase forest coverage to 348,625 ha, accounting for 53.5% of the province.

Dak Nong has 149,689 households with over 630,000 people and 40 ethnic minorities. There are 42,666 ethnic households with 195,823 people, accounting for 31.4% of the total population. Three local ethnic groups include M'Nông, Mạ and Ê Đê with 13,437 households and 62,235 people equivalent to 10% of the provincial population and 32% of the provincial ethnic population. These ethnicities have similarities in customs, traditions and forest management. They protect the forest very well.

Dak Nong province has 15 communes in area I, 44 communes in area II, and 12 communes in area III. Area III is ranked as being especially disadvantaged. The result of a survey in 2016 indicated that the percentage of the poor in the province was 19.2% (28,739 households). The main crops are industrial perennials such as rubber, coffee, pepper, and cashew.

*Dak R'Lap district* is located in the south of Dak Nong province. It has 10 communes, one town, 108 villages. The total population of the district is 80,115 with 23 different ethnicities, mainly M'Nong, Ma, and Ede. There are three main religions (Catholic, Protestant, and Buddhist) with 18,962 religious followers (23%).

Dak R'Lap district has a total natural area of 63,585 ha. Forest area is 25,505 ha with a forest cover of 40.15% (Decision 936/QĐ-UBND dated 9 June 2017 of Dak Nong People's Committee on the disclosure of forest situation in 2016). Land area for forestry planning is 13,405.8 ha, in which protection forest accounts for 12,450.6 ha, and production forest accounts for 955.3 ha. Another area for rubber and crops is 12,099.2 ha.

The buffer zone of Nam Cat Tien National Park belongs to Dak R'Lap district covering 13,000 ha. There is a forest management board. In 2008, the District People's Committee assigned 100.3 ha of natural production forest to 17 local ethnic households in Buzarah village for management and protection. In 2009, the District

People's Committee assigned 23 ha of non-forested degraded production forest land to the 17 local ethnic households for growing trees. Of the six villages in the district, only Buzarah village was assigned forest land.

After forest and land allocation, Buzarah village planted 22 ha of forest (in 2009 with 13 ha of acacia, in 2010 with nine ha of acacia and *Khaya senegalensis*). The area of natural forest is well protected. Since 2008, there have only been four cases of deforestation covering 1.9 ha.

Besides the allocations to Buzarah village, there has been no forest or land allocations to individuals and households from 2006-2016 in Dak R'Lap district. Currently, 195 ha of forest land is managed by the Commune People's Committees, but the area is fragmented and could not be allocated to households.

*Hung Binh commune* in Dak R'Lap district was established in 2007. It has a total natural area of 8,890 ha, in which 5,000 ha of natural forest is protected forest of the buffer zone of Nam Cat Tien National Park. The Nam Cat Tien protection forest management board manages this area. In 2008-2009, the District People's Committee assigned this area to 18 local ethnic poor households to protect and manage 120 ha. They managed the area well and prevented illegal logging and forest encroachment. In Hung Binh commune, as well as the whole Dak R'Lap district, most of the natural forest area is allocated to the protection forest management board, so there is no more forest land to allocate to households, individuals or communities. However, local villagers want more forest land assigned to them to increase their income.

*Nghia Thang commune* in Dak R'Lap district has no natural forest to allocate to households or communities. However, there is 123 ha of natural forest of Nam Cat Tien protection forest of Dao Nghia commune which is allocated to 17 households in Buzarah village, Nghia Thang commune. In the past, Dao Nghia and Nghia Thang communes were one commune. Therefore, the forest area of Dao Nghia commune was allocated to villagers who live in Buzarah village of Nghia Thang commune because their resident area is close to the forest area. Therefore, those who live in another village could manage the forest – this is a special feature of forest land management in this area.

In Nghia Thang, there are nine villages belonging to area II, in which there are three villages ranked as having especially difficult conditions: Quang Loi, Quang Tin, and Buzarah villages.

Agricultural land is mainly used for industrial crops. For example, Buzarah village has 266 ha of agriculture land, including 22 ha of rice, 5 ha of pepper, 101 ha of rubber, 74 ha of coffee, 64 ha of mixed coffee and cashew.

The main ethnic group is M'Nong representing 90% of the population. 88% of M'Nong people follow the Catholic religion and 12% follow Protestantism.

Due to increasing development of industrial crops, large areas of forest have been replaced by industrial crops such as rubber and coffee, and there is no more natural forest for community use and management. This has led to the loss of traditional customs in forest protection and management.

## **Thua Thien Hue province**

The total area of Thua Thien Hue province is 502,629 ha. Forest area is 266,066 ha, in which protection forest, special use forest and production forest account for 32%, 30%, and 38% respectively. Currently, the percentage of forest coverage is 52.9%, however authorities plan to increase forest coverage to a total of 348,863 ha.

Thua Thien Hue is one of the provinces in the central region of Vietnam which develops production forest with fast-growing crops like acacia for processing and exporting woodchips. Annually, the province grows 7,500 ha plantation forest.

Forest and land allocation to ethnic communities have been implemented in 225 communities (39%) with 20,254 ha, in which 61% of the area is production forest and 36% of the area is protected forest. 96% of ethnic communities have forestry land use certificates. Forest and land allocation to ethnic households has taken place in 2,954 households (17%) covering 3,176 ha, accounting for 5.6% of total forest area allocated to households in the whole province (report no 170/BC-UBND dated 1 Sept 2017 of Thua Thien Hue People's Committee about the situation of forest and land allocation to ethnic community and households in the mountainous area from 2006-2016).

*A Lưói district* is located west of Thua Thien Hue province in the highly mountainous area of A Shau Valley bordering Laos. The total natural area of the district is 123,273 ha, in which the area for forestry planning is 101,858 ha (83%). Forest area is 97,397 ha (86,647 ha natural forest, 10,750 ha production forest). Forest cover is 79%.

From 2010 to 2014, A Lưói district allocated 20,278 ha of natural forest to 39 communities (7,244 ha), 191 household groups (11,383 ha) and 26 individual households (239 ha). Out of the 20,278 ha of natural forest allocated, protection forest accounts for 9,359 ha (46%), production forest accounts for 10,543 ha (52%), while the remaining area is unused. Most of the forest assigned to the community is poor quality forest (72%), while 28% is average quality forest.

Forest allocation must be implemented with land allocation, which is linked to land use right certificates. In fact, the percentage of land use right certificates is low. Only 7,297 ha of allocated forest has land use right certificates issued (LURCs), accounting for 36% of the total area of 20,278 ha.

In the past, A Lưói district had a large forest area but much of it was destroyed during the American-Vietnam war, although it is currently recovering. Allocating forest to communities is a better way to protect and manage the forest. For the last year, the district has developed rattan under forest coverage, increasing the income and living standards of local people.

In A Lưói district, various projects were implement for forest development, forest enrichment and growing rattan under forest coverage. Program 147 planted 199 ha of Rattan. CarBi project (carbon sinks and biodiversity project) enriched the forest with local plants in 84 ha and restored 280 ha of forest in the four communes of Huong Phong, A Roang, Hong Ha and Huong Nguyen. BCC project (greater Mekong subregion biodiversity conservation corridors) planted 540 ha of rattan in the eight communes of Huong Phong, A Roang, Hong Ha, Huong Nguyen, Hong Kim, Hong Trung, Hong Van and Huong Lam. FLEGT project protected 158 ha of forest in Tan Hoi community. Since 2014, the whole district receives a forest service payment fee for 11,260 ha.

*Hong Kim commune* has four villages: Atia 1, Atia 2, Đút 1 and Đút 2. This commune is ranked in area III which has especially difficult conditions. All villages in the commune benefit from program 135 (the National Target Program on Poverty Reduction). The population is 1,984 with 496 households. There are three ethnic minorities, namely Pa Co, Van Kieu and Pa Hy, with Pa Co being the most common. In the commune, there are 223 poor households and 48 near-poor households, accounting for 56%. Agricultural land area for annual crops is 118 ha (rice farming: 48 ha, corn: 10 ha, cassava: 50 ha, vegetables: 6 ha). Since 2013, a natural forest protection area was allocated to Dut 1 village community covering an area of 142 ha. The economic forest has 20 ha of acacia. The local authority is preparing to allocate 100 ha of production forest to ethnic households.

The commune has A Nor ecotourism destination. From January-May 2017 they received 1,920 visitors generating revenue of 56 million VND.

*Bac Son commune* is a small mountainous commune bordering A Lưói town. The population of the commune is 1,233 people with 300 households. There are 128 poor households and 50 near-poor households, together accounting for 59% of the commune population. The main ethnic group is Pa Co (99% of commune population).

The total natural area of the commune is 1,033 ha, in which forestry area is 875 ha (86%), including production forest (616 ha), protection forest (258 ha) and agricultural land (90 ha or 9%). Forestry area under the commune local authority management is rocky mountains.

Production forest area was allocated to households with land use right certificates. Natural protection forest was allocated to communities in two villages – A Đeeng Par Leng 1 with 210 ha and A Đeeng Par Leng 2 with 100 ha. The rest is under the management of A Lưói protection forest management board.

Currently Bac Son commune has over 100 ha of production forest managed by the Commune People's Committee. The local authority plans to reallocate this area to local ethnic households for growing acacia.

### **Annex 3. Local history of forest use and management in village study sites**

#### **Cao Bang province (Tay and Nung ethnic minorities)**

##### *Lũng Vài village, Phuc Sen commune, Quang Uyên district*

In the late 19th century, some households from the outskirts of the buffalo hill (which was grazing land) moved to the hill and lived there, forming Lũng Vài village (Vài means buffalo). Ordinary Nung people live in small villages of around 40-45 households. Lũng Vài village currently has 43 households and 209 Nung people and two Tay women who are married to Nung men from the village. In recent years the number of households has not changed much. Every couple has only two children. Some young people go out and work in other places. At first the village had three clans but currently, they have only two clans because one clan moved to the Central Highlands in the 1990s, forming a new Nung village there. The village still keeps their

customs, traditions and identity, such as the annual worship of land spirits and protection of the community forest.

In the early history of Lũng Vài village, some households cleared the forest for rice farming and cultivating corn and cassava, and they claimed this area as their property. In 1957-1958, all the land of farmers was gathered and managed by the cooperatives. All villagers cultivated together and received benefits based on their working hours per day. Production materials were used commonly and managed by the cooperative management board. When the cooperatives dissolved after 1987, cultivation land was reallocated to households. The natural forest remained as common property. Forest protection regulations started in the 1970s by the community, as the villagers were aware of the need to protect the forest and grow trees for firewood.

Lũng Vài village is located in the middle of a valley surrounded by low mountains. In the village, there is a water spring that favours rice farming. The cultivation systems of villagers are quite diverse and sustainable. The uplands is covered by natural forest, the foothills are for crop cultivation and the lowland is for rice farming and resident houses of villagers.

Currently, the forest of the village is classified into three types: household forest (groups of households manage the forest), community forest and spiritual forest.

Research on the history of forest management and protection indicates that before 1954 the forest was managed by the village mayor. He applied the regulations of the French colonial regime. During this time, the community continued to manage the forest according to Nung customary law. They only cut the trees for community ceremonies. From 1960 to 1988, the forest was managed by the cooperatives.

In 2008, the pilot project on community forestry of the Ministry of Agriculture and Rural Development (MARD) allocated 81 ha of forest for community management, mainly natural rocky mountains. The allocation process was implemented in line with the law and the project's regulations.

Currently, no one is allowed to enter the forest and cut trees. However, villagers were allowed to cut trees for building new houses after four houses were burnt down in 1979 during the war with China. Regulations on exploiting wood and non-timber products are strictly adhered to by villagers. Since the MARD project was introduced in the village, villagers eliminated the regulations on cutting trees for household purposes. Firewood is collected from the private forest but is not allowed to be collected from the community forest. Importantly, the forest protection fund is maintained. Villagers patrolling the forest do not receive a stipend. Instead, they keep this money for community activities, part of which is spent on buying furniture for community events. Individual households can borrow the furniture for events such as weddings or funerals, paying 10,000 VND per item to the community fund. This means that the community fund is increasing gradually.

#### *Đâu Cọ village, Phuc Sen commune*

Đâu Cọ village was formed a long time ago. The village has two clans, namely the Luong and Hoang, and over 95% of the population are Nung ethnicity.



Nung people chose to live in narrow valleys surrounded by limestone mountains. Flat areas are used for houses and rice farming, cultivating corn and some vegetables. There is a spring for domestic use and agricultural irrigation. In 1979 Chinese soldiers entered the village and burned some of the houses. When the war was over, the community helped these households to build new houses.

The village y has three types of forests: community forest, spiritual forest and household forest. Household forest is allocated to groups of households, each group has one representative.

In the village, if someone dies, he or she will be buried in their allocated forest area. However, if someone under the age of 36 dies, they are not allowed to be buried next to the adults since they are not considered an adult according to Nung customs.

#### *Pác Ái village, Quang Hung commune*

According to the village elders, the community is actually Kinh people who migrated from Son Tay, Hanoi, to Cao Bang province over 300 years ago. They then adopted the Nung culture and language and are recognised as Nung people, although they are ethnically Kinh. The village was allocated forest managed by households, except for two areas allocated for village spirit worship. Ceremonies of this village on forest protection do not link to original Nung culture but are similar to Kinh culture. Therefore, because the villagers are ethnically Kinh the research team did not interview this community.

#### **Dak Nong province, (M'Nông, Mạ, and E Đe ethnic minorities)**

##### *Châu Mạ village, Hung Binh commune, Dak R'Lap district*

Châu Mạ village was established in 1982. At first, there were several households who migrated from Lam Dong and Binh Phuoc province. In 1988-1989 there were 30 households, and currently there are 69 local M'Nong households. In addition, there are some Muong, Tay, and Kinh households who migrated from the North. M'Nong villagers follow Christianity with 36 households following Catholicism and 33 households following Protestantism. The education level of local villagers is low. Most of them only finished primary school. A high percentage of the village is poor. The infrastructure provided by the state has only met 50% of local demand.

M'Nong households reside in a large area of around three Sao (1 Sao is 1,000 square metres). The households are separated, not clustered like Nung, Tay or Thai ethnic groups. Before 1975, local M'Nong ethnic people lived there, including respected elders. At that time the population was small, natural resources were quite abundant, and wild animals like elephants and tigers still lived in the forest. Local people practiced shifting cultivation. Land and forests were managed by the village, not by the state. The elders made decisions and were respected. For example, if people from other villages wanted to borrow village land for cultivation, they could ask the elders for approval.

In 1962, American soldiers burned the village houses, and villagers fled to Lam Dong province. In 1982, these villagers returned to their hometown with 16 households. The village had natural forest, and the villagers continued doing shifting cultivation in areas nearby to the village. At that time, the government did not manage forests but

managed demography. Mr. To Rúc was the elder. Customary law was quite strict. For example, if they found illegal logging near their cemetery area, the loggers would be punished by giving one buffalo and one pig to the village. Since the village is near to the Nam Cat Tien protection forest, in 2000-2006, Nam Cat Tien protection forest management board assigned forest land to households and community for protection. Each household was assigned 30 ha forest on average. Every five years, the management board renews and reassigns the forest again to all households, including new households. Due to the growth in a number of households, each household is currently assigned 15-20 ha of forest.

The village established protection groups. When they see illegal loggers, they transfer them to the management board for punishment. The protection groups receive an allowance for their work, and they can collect non-timber products like bamboo shoots, vegetables and so on. Regulations on forest protection are strictly adhered to by villagers, preventing deforestation.

#### *Buzarah village, Nghia Thang commune*

Buzarah village was established with links to the sacred forest and cemetery area of their ancestors. For a long time, ancestor graves of M'Nong people were located in the forest in village 1 and village 2, which belongs to a different commune (Dao Nghia commune). After liberation in 1975, Buzarah village was established to manage and use this forest area. After the establishment of Nam Cat Tien protection forest management board, 123 ha of protection forest was assigned to 17 local ethnic households to manage and use. Although 17 households officially registered in Nghia Thang commune, they were assigned this forest area and ancestor graves area in Dao Nghia commune. The reason is that these areas are near to these 17 households of Nghia Thang commune, and in the past, they were in the same community. In brief, sacred forests and spiritual forests are meaningful to ethnic minority groups, and because of this, they continue maintaining and protecting their ancestral lands and forests.

#### **Thua Thien Hue province, A Luói district (Pa Co and Ca Tu ethnic minorities)**

##### *A Deng Par Leng 1 village, Bac Son commune, A Luói district*

A Deng Par Leng 1 village was formed after 1975. Around 150 years ago some Pa Co ethnic households migrated from Paru village, So Muu district, Salavan province in Laos to this village. The other Pa Co households still live in Laos. After liberation in 1975, the country became united, and A Deng Par Leng 1 village was established. Currently, there are 154 households with 650 people, mainly Pa Co ethnicity. There are 61 poor households and 39 near-poor households, accounting for 60% of the village population. The village has two forest protection groups.

When villagers came to this area to build their village before 1975, they cleared the forest to create agricultural land, practicing shifting cultivation with three-year rotations. At that time, they considered forests to be granted to them by nature. No one owned or managed the forest so villagers could exploit wood based on demand without the approval from any agencies. However, for the upland fields, the community had the regulation that no one was allowed to invade other people's upland

fields or damage crops. If anyone violated the regulation, they were punished by providing a pig, chicken, buffalo or cow for spiritual worship. They have the custom of spirit worship before cutting trees for rice farming or harvest to ask for good weather conditions and good luck.

#### Annex 4: Photos from fieldwork







# MEKONG REGION LAND GOVERNANCE



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