

Towards equitable and secure access to land and natural resources for family farmers in the Mekong region



Thematic Study

October 2017

The Recognition of Customary Tenure in Vietnam



Mekong Region Land Governance

Thematic Study

Written by Jeremy Ironside

This thematic study presents a country-level overview of customary tenure arrangements in Vietnam. It examines the extent of customary tenure in the country, the degree to which customary tenure is recognized both legally and in practice, and explores key opportunities for better recognition.

Reviewed by:

Natalia Scurrah, MRLG

Chansouk Insouvanh, Consultant

Tran Thi Hoa, CIRUM

For more information, contact:

Jeremy Ironside, consultant: <ironsidejeremy@gmail.com>

Natalia Scurrah, MRLG: <nscurrah@gmail.com>

Suggested citation:

Ironside, J. (2017). *The Recognition of Customary Tenure in Vietnam*. MRLG Thematic Study Series #6. Vientiane: MRLG.



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-nc-sa/4.0/)

Photo cover credit (left to right): [H'mong farmer returning home after working on upland field](#) by Robert Fox - World Agroforestry Centre (ICRAF) / [CC BY-NC-SA 2.0](#); [Collecting firewood](#) by Maria Hsu / [CC-BY-2.0](#) (C); Thai Ethnic Minority group in Dong Van commune, Que Phong district, Nghe An province, worshipping the Spirit of the Forest, by Tran Thi Hoa - CIRUM / [CC BY-NC-ND 2.0](#)

Table of contents

List of Acronyms	ii
Executive Summary	iv
Introduction	1
Overview of Customary Tenure in Vietnam	2
The Extent of Customary Tenure in Vietnam	8
Forest Land Allocation (FLA) in Vietnam	11
Recognition of Customary Tenure in Vietnam’s Legal Framework	16
Recognition of Customary Tenure in Forest Areas	18
Recognition of Shifting Cultivation	22
Challenges in Recognizing Customary Tenure	23
Changes in Customary Tenure Systems and Implications for Ethnic Minorities and Women	25
Land Conflicts and their Resolution	30
Opportunities for Improved Customary Tenure Recognition	33
Recommendations for Policy Influence	37
Community Empowerment	40
Conclusion	42
References	43
Annexes	49
List of Figures	
Figure 1. Vietnam Administrative Regions and Population Density Maps	v
Figure 2. An example of a traditional Ede Longhouse	7
Figure 3. Forest cover in Vietnam	10

List of Acronyms

ASEAN	Association of Southeast Asian Nations
CBO	Community-based organization
CEMA	Committee for Ethnic Minority Affairs
CIRUM	Culture Identity and Resources Use Management
CODE	Consultancy on Development Institute
CPC	Commune People's Committee
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FLA	Forest Land Allocation
FLEGT	Forest Law Enforcement Governance and Trade
FMB	Forest Management Boards
FPIC	Free, Prior and Informed Consent
GDLA	General Department for Land Administration
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
Ha	Hectare
ICCA	Indigenous and Community Conserved Areas
IPSARD	Institute of Policy and Strategy for Agriculture and Rural Development
IUCN	International Union for the Conservation of Nature
LandNet	Forest Peoples Land Rights Network
LISO	The Livelihood Sovereignty Alliance
LURC	Land-Use Rights Certificate (Red Book)
MARD	Ministry of Agriculture and Rural Development
MoNRE	Ministry of Natural Resources and Environment
MRLG	Mekong Region Land Governance Project
NGO	Non-Governmental Organization

NTFP	Non-Timber Forest Products
PFES	Payments for Forest Ecosystem Services
PPC	Provincial Peoples' Committees
PRCF	The Centre for People and Forests
REDD+	Reducing Emissions from Deforestation and Forest Degradation
SAFC	State Agricultural and Forestry Companies
SFE	State Forest Enterprise
SPERI	Social Policy Ecology Research Institute
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
VGGT	Voluntary Guidelines on the Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
VND	Vietnam Dong

Acknowledgement

The author would like to thank all contributors to this study who freely gave their valuable insights, and those who assisted with revisions, to contribute to the greater recognition of customary tenure in Vietnam.

Executive Summary

This thematic study explores the possibilities for strengthening the recognition of customary tenure in Vietnam. Customary tenure systems have developed over centuries among the different ethnic groups throughout the country. The study begins with an overview of these customary tenure systems and an assessment of their prevalence. Customary tenure in lowland areas has largely been formalized through the issuing of land use rights certificates (red books), but these systems persist mainly among communities living in forest areas in the upland regions of the country. This is where the vast majority of Vietnam's ethnic minorities are found. The significance of recognizing customary systems is that they provide important livelihood security for these groups who make up 70% of the extreme poor in the country (USAID, 2013).

In upland areas, centralized land and forest management has seriously impacted on customary tenure. Policies such as assigning management to state forest enterprises (SFEs) has overridden customary management and been a major cause of conflict. The communal nature of customary land and forest governance has also been misunderstood and ignored. In this competition between state companies and customary users, it is invariably the smaller scale users who are disadvantaged. Attempts to reallocate forest land from state companies to households and communities have highlighted the difficult land and forest allocation politics which Vietnam continues to struggle with.

The study then turns to examine the extent to which customary tenure is recognized in Vietnam's legal framework. Conflicting demands on a limited land base means rights to land and forests for local livelihoods compete with other development priorities. Tensions that Vietnamese laws try to address but which are still being debated include: community versus individual land rights, local versus central level authority, and balancing exploitation with protection of forest resources. These debates take place in a wider context of a national drive for economic growth and policies that favour large scale agriculture and industrialization. This has implications for the place of customary management in a rapidly changing society. Land disputes have become a major political issue in Vietnam. These changes are briefly analyzed.

The final section examines policy reforms that offer potential for strengthening customary tenure recognition. Most important at present is the revision of the Forestry Law, which presents an opportunity for stronger recognition of forest tenure and customary rights for ethnic minorities and local communities. Also critical is ongoing engagement in the forestry reform process to ensure that land reclaimed from SFEs is allocated to customary users and their voice in the forest reallocation process is strengthened. Other key recommendations include supporting communities to adapt to new contexts through their own governance processes, strengthening local conflict resolution processes and supporting local networks to share ideas and strategies about customary practices and their adaptation.

Finally, new forest management mechanisms such as Payments for Forest Ecosystem Services (PFES), REDD+ and Forest Law Enforcement Governance and Trade (FLEGT), are changing thinking about forest management. The government has come to realize that without a formal community entity distribution of benefits may not be effective. More widely, the government is recognizing that state institutions alone cannot protect forests, and that communities play a critical role in ensuring the sustainable use and management of forest resources in the country.

Customary tenure systems have persisted in Vietnam despite strong forces of political, economic and social change. It is important now to understand how these systems have creatively incorporated and adjusted to this change. Both their persistence and adaptability helps to demonstrate the positive role customary institutions can play in the protection and management of Vietnam's land and forest resources and in facilitating culturally appropriate forms of progress and change.

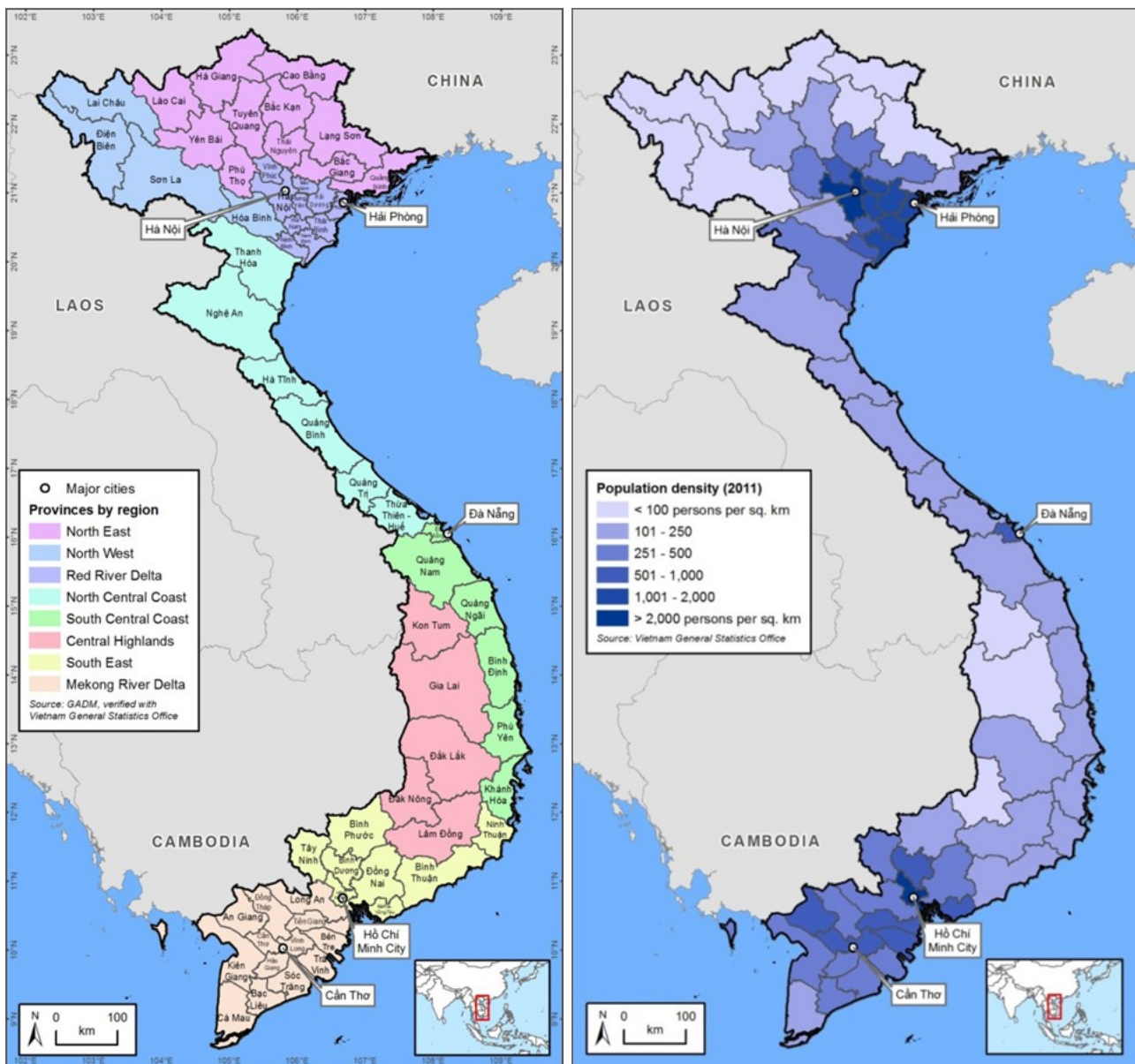


Figure 1. Vietnam Administrative Regions and Population Density Maps

Source: de Quiroz et al. 2013



Introduction

The Mekong Region Land Governance (MRLG) project aims to contribute to the design of appropriate land policies and practices, which support poverty reduction and security of tenure for family farmers. MRLG commissioned this study to document and exchange information on the recognition of customary tenure, and to develop national strategies with governments on this topic.

For this discussion, customary tenure may be defined as the local rules, institutions and practices governing land, fisheries and forests that have, over time and use, gained social legitimacy and become embedded in the fabric of a society (Palmer et al., 2011). Although customary rules are often not written down, they are generally adhered to by community members. These arrangements represent the cultural heritage of the different communities and regions throughout Vietnam.

This study is based on a review of relevant literature and interviews held with representatives from government agencies, donors, civil society organizations and individuals with relevant expertise in Vietnam. A list of interviews carried out for this study is provided in Annex 3, along with a checklist of questions used to guide the interviews in Annex 4. Interviews followed the particular expertise of individuals and issues considered relevant to that. Discussions were followed up with clarifications in person or via email. Missing, however, are discussions with customary land users themselves. While the study identifies opportunities for enhancing the recognition of customary tenure in Vietnam, future activities need to include and be driven by the views and priorities of customary users.

The study consists of seven main sections. The first two sections provide an overview of customary tenure in Vietnam, including practices of some ethnic groups and the distribution and type of land held under customary arrangements. Some common characteristics of customary tenure systems are also identified. The third section examines forest land allocation policies in Vietnam, and efforts since the 1990s to claim back forest and forest land from unproductive state-owned forest enterprises for redistribution to local forest users. The fourth section examines the recognition given to customary tenure in Vietnamese law, including for forest land and shifting cultivation areas, and highlights some of the challenges faced by ethnic minorities and local communities in getting customary land and forest tenure rights recognized. The paper then turns to look at some of the key changes underway in customary systems and their implications for ethnic minorities and women. This is followed by a discussion of land conflicts and possibilities for strengthening resolution processes. The final two sections examine key opportunities for increasing customary tenure recognition and present some recommendations to that end.

Annex 1 provides background historical context of land relations in Vietnam which is relevant to understanding customary tenure. Annex 2 provides additional detail on Payments for Forest Ecosystem Services (PFES), REDD+ and Forest Law Enforcement Governance and Trade (FLEGT), and their potential to strengthen the recognition of customary tenure in Vietnam.

Overview of Customary Tenure in Vietnam

Customary laws and tenure systems have developed over centuries in Vietnam under varying influence from the feudalist Nguyen Dynasty (1802 – 1883), the French colonial period (1858 – 1954) and the Communist Party from the 1930s onwards (World Bank, 2004). Prior to 1960, communities' customary systems were only slightly altered by these influences (CIRUM, 2012a).

After 1960 in the North and 1975 in the South, state centralization and collectivization began to seriously influence customary management systems (World Bank, 2004). The collectivization period resulted in land being controlled by state cooperatives (SPERI/CODE, 2011). Large areas of forest land in the mid and upland regions of Northern (early 1960s) and Southern (late 1970s) Vietnam were assigned for forestry under the management of State Forest Enterprises (SFEs) (World Bank, 2004). This was part of a broader effort to transform rural resource use and traditional social structures in mountainous areas that included large-scale resettlement and sedentarization programmes. This led to state policies overriding customary land management and resulted in a drastic decline in Vietnam's forest resources.

Despite these changes, the geographical isolation of many ethnic minority communities means that customary practices, while weakened, have persisted. The maintenance of customs varies between ethnic groups and between villages; however, in many upland communities customary institutions play a more significant role in regulating community access to land and resources than state law (SPERI/CODE, 2011). For example, communal tenure regimes continue in some areas, with village elders allocating land to households each year (USAID, 2013). Research conducted in three provinces (Dien Bien, Thua Thien-Hue, and Dak Lak) found that 84% of villages have their own regulations to protect forests, and 60% have community forests managed under customary law (Wells-Dang et al., 2016).

In other cases, a kind of local level coexistence has developed where community agreement is reached (for example, to cut timber for housing) before submitting formal requests to state authorities (CIRUM, 2012a). In fact, Vietnam provides many examples of customary tenure systems creatively incorporating and adjusting to often contradictory land policies by a succession of politically diverse regimes; from imperial to colonial, socialist and state capitalist (Mellac, 2011). It is important, therefore, to understand the coexistence between state policies and customary practices and to explore impediments to stronger recognition of customary tenure for enhancing its role in community governance and development (SPERI/CODE, 2011).

Customary rules covering a larger region ('Quy tắc'), and more specific sets of rules applying to a village or commune ('Hương ước'), have been documented for large numbers of ethnic groups in Vietnam (SPERI/CODE, 2011). There has been less focus, however, on documenting case studies and stories which give a better picture of the dynamism and diversity of local communities, as opposed to the more static representation of customary law as a collection of rules (SPERI/CODE, 2011). In this sense, most studies miss the role of customary practices in governing the lives of ethnic minority groups and overlook the core values and beliefs which guide peoples' views on ownership, rights to benefit and responsibilities to look after resources (SPERI/CODE, 2011; CIRUM, 2012a). The links between beliefs and resource management means customary practices are cultural, spiritual, and at the same time utilitarian (CIRUM, 2012a). Understanding this lived experience gives a better picture of the everyday interactions within communities and with the natural environment (SPERI/CODE, 2011). In general, therefore,

there is a lack of understanding of the complex way customary law regulates relationships between people and between people and nature.

Despite diverse cultural and ecosystem contexts, there are some similarities in customary tenure systems, particularly in upland areas. These include:¹

- Communities' sense of ownership come from claims established by ancestors, often remembered as spirits that continue to oversee and protect the community.
- Forests and other areas are imbued with spirits. This creates a collective responsibility for their welfare and a management approach which is perhaps more conservative and precautionary than economically oriented scientific regimes. This perspective also highlights the inter-linkages between land, forest and water, which are customarily recognized and respected.
- With varying arrangements, villages traditionally own or have collective rights to residential land, cemetery areas, lowland rice fields, shifting cultivation land (including fallow areas), grazing areas, forest land (including sacred areas, areas for watershed protection), fisheries, etc. Strong rules prevent one village encroaching on the land of another.
- Communities are led by a village head (generally a man) and elders with authority over the management and use of land, including allocation of rice paddies and upland agricultural fields to families and/or groups. Land guardians also supervise religious matters related to land.
- Customary law is flexibly adjusted to specific village situations. Community members accept and observe this law voluntarily and generally support their elders and clan leaders in developing rules and in resolving land and other conflicts.
- Individuals can use and inherit land but are generally not allowed to sell it without the consent of the community. The community may exchange, lease or sell land to other communities. Sacred areas, cemetery forests, and watershed protection forests are usually inalienable.
- All community members have equal access to land and resources. Private rights apply to land such as rice paddies and in-use shifting cultivation fields. Internal, generally participatory, decision making determines benefit sharing arrangements and who may use land for what purpose.
- Outsiders are generally excluded, but may ask permission to use forest or land resources.

The gap between government policies and traditional concepts of tenure and use rights has been one of the major causes of conflict in upland regions in the recent past (IUCN, 2008). State administrators are often unaware of customary management. More than four decades of state intervention has led to widespread loss and abandonment of customs and research is often only able to partially record customary systems (CIRUM, 2012a). Customs, such as the worship of nature spirits, are often seen by officials as superstitious and an obstacle rather than a tool for achieving forest management policy goals (SPERI/CODE, 2011; IUCN, 2008).

¹ Sourced from CIRUM (2012a); SPERI/CODE (2011); IUCN (2008); World Bank (2004).

Overview of Customary Tenure in Vietnam

The communal nature of customary land governance, especially in upland areas, has also been misunderstood and overridden by state management. Customary norms regulate this communal land and resource use and access among individuals, households, families, clans, and at the village and inter-village level (SPERI/CODE, 2011). The livelihood security these arrangements provide is key for allowing communities to protect the resources they depend on (SPERI/CODE, 2011). This highlights the need for clearer management rules at the local level to try to minimize land conflicts between state law and customary practices (IUCN, 2008).

To understand the place of customary tenure in contemporary communities, it is important to understand how customary practices are adapting to more limited physical spaces, particularly to a reduction in common areas (SPERI/CODE, 2011). Intensified competition for resources has brought to the fore governance mechanisms which may have been less visible when people/nature dynamics were less intense; for example, the need for more defined village boundaries in forested areas and stronger private rights over lands planted with newer perennial crops.

Despite changes in traditional governance, research indicates that villagers prefer customary resource allocation processes (CIRUM, 2012a; SPERI/CODE, 2011). Annual ceremonies are one way in which communities continue to maintain a strong sense of rights over forest use and management (CIRUM, 2012a). Villagers also continue to guard forest areas and customary rules regulate access to non-timber forest products (NTFPs). Following customary processes, communities discuss resource use issues and resolve conflicts, and through this strengthen and maintain social values and community relationships (SPERI/CODE, 2011).

Understanding customary practices, however, is complicated by the diverse ethnic make-up of Vietnam, with 54 recognized ethnic groups. These are divided ethno-linguistically into the Vietic (which includes the Kinh - approximately 87% of the total population), Tai Kadai (including Tay, Thai and Nung groups - 5%, the Kadai (0.02%)), the Austroasiatic (mainly in the Central, Central Highlands and Southern regions - 3%), the Hmong-Mien (including the Hmong and the Dzao - 2%), the Austronesian (Malayo-Polynesian, including the Jarai and Ede - 1.2%), Chinese (1.1%), and the Tibeto-Burman (0.05%).² The 1.3 million or so Khmer (Austroasiatic group) who live in the Mekong Delta, along with the Chăm (Austronesian group, approximately 160,000) who live in lowland areas in the Central region, tend to be the better off minority groups (Baulch et al., 2010). With the exception of the Chinese (Hoa), the other 50 ethnic groups including the Tay (1.9% of the population), Muong (1.5%), Hmong (1.2%), Nung (1.1%) and others (7.2%) largely inhabit rural, mountainous areas and make up 70% of the extreme poor in the country (World Bank, 2014a; USAID, 2013). While ethnic minorities make up a relatively small percentage of the population, their total number is roughly equal to the population of Cambodia, or double the population of Laos. Customary tenure thus affects large numbers of people and is a particularly complex issue due to the land pressure in Vietnam.³

Important socio-economic differences also exist between ethnic minorities, with some groups in the Northern Uplands and Central Highlands considerably poorer than the Tay, Thai, Muong and Nung (Baulch et al., 2010). The Tay, Muong and Nung tend to be valley-dwelling rice farmers in the northern mountains (USAID, 2013). This means that more village land is under individual family claims than communal, compared with other groups. There are also variations within ethnic groups. Some Tay groups, for example, practice shifting cultivation.

² Figures are approximate based on the 2009 Census, <http://catalog.ihsn.org/index.php/catalog/4626>

³ Vietnam's per capita land endowment is one of the lowest in the world. About one-third of Vietnam's land area is used for agriculture, and most suitable lands are being used (USAID, 2013).

The other ethnic groups are concentrated in the central and northern highlands, where they have access to smaller areas of poorer quality land (USAID, 2013).⁴ Many communities are forest-based with livelihoods dependent on land and natural resources. Their land-use focuses more on shifting cultivation, forestry and communal tenure arrangements. The following briefly describes customary practices amongst some ethnic groups.

Kinh ethnic group (Vietic group)

The Kinh have traditionally populated lowland areas such as the Red River and Mekong Deltas. A Confucian tradition emphasizing respect for central authority means that hierarchical relationships between distant authority and local peasants are a key aspect of Vietnamese culture (Hirsch et al., 2015). Prior to the French colonial period, the Vietnamese King owned the land and peasant households used both communal and private land (Hansen, 2013). Communal land was under a kind of state/private hybrid tenure arrangement. Village officials would allocate the communal land to the male adults in return for payment of taxes. Powerful landowners held the bulk of the privately-owned land (Hansen, 2013). The king rarely intervened in the distribution of communal land as tax was collected from the village (Hansen, 2013).⁵

Hmong ethnic group (Hmong-Mein group)

The Hmong operate according to clan-based social relations (SPERI/CODE, 2011), and are patrilineal and patrilocal. The Hmong generally inhabit high altitudes and traditionally have carried out both rotational and pioneer shifting cultivation. The Hmong are now more involved in cash cropping and because of this there are less communal areas. Annual ceremonies known as Thwv Tim and Nos Looj are central to Hmong respect for spirits of the land, water, and forest. A special protected tree represents the forest spirit and is worshipped (SPERI/CODE, 2011). Traditionally the Thwv Tim ceremony was practiced at the family level; however, after the collapse of the cooperative system it changed to the community level. Since 1982, Nos Looj has been rejuvenated. In the past, this was held within clans, but more recently includes members of other clans and villages (SPERI/CODE, 2011). Land pressure and changing social structures has resulted in Hmong communities changing from sharing resources among the clan, to sharing resources among all community members, including with other clans.

Thai ethnic group (Tai-Kadai group)

The 1.5 million Thai people make up about 1.6% of the population (MPI, 2009). They mainly live in Son La, Dien Bien, Lai Chau, Hoa Binh, Thanh Hoa and Nghe An provinces (CIRUM, 2012a). Sons generally inherit land and other assets, with the son who takes care of the parents inheriting the bigger proportion (Kong et al., 2015). Village elders can be both male and female (CIRUM, 2012a). Some land such as forests are owned communally, while paddy rice areas may be owned by households through purchase or occupation (Kong et al., 2015).

⁴ For example, ethnic minority groups account for 74% of the total population in the extremely difficult communes, but possess only 24% of quality cropland (Anon, 2012). Extremely difficult communes have poverty rates well over 70%, and even over 80% in the Northern Uplands and Central Highlands. In 2011, the official poverty line was VND 400,000 person/month or 1.29 USD person/day (Anon, 2012).

⁵ See Annex 1 for more discussion of communal land among the Kinh.

The Thai also have a strong belief in ancestors, spirits of forest, land and water and in living beings like trees (CIRUM, 2012a). The *San* is a spirit of the original founder of the village, often represented by an old tree or a large rock that is ceremonially worshiped (Kong et al., 2015). Through the *San* the community owns and is able to use their land and forest (SPERI/CODE, 2011). The *San* also protects the village's common land and resources such as watershed, community forest and upland shifting cultivation areas (Kong et al., 2015). Resource governance is also overseen by nature spirits such as *Phi Pa* (forest spirit), *Phi Nam* (water spirit), or '*Nang Pan Toong*' (the keeper of the sacred forest or cemetery) (SPERI/CODE, 2011). Stages of shifting cultivation such as clearing, burning, weeding, harvesting, etc. are overseen by *Phi* spirits. Among the Tai Dam (Black Thai) in Nge An Province, the spirit *Chau Din* (owner of the land) mainly presides over individually owned wetland rice areas (Kong et al., 2015).

After 1960, larger traditional ceremonies were officially discouraged, but maintained at the household level. Since the 1990s, Thai traditions have been revived (Kong et al., 2015). Several communities now worship the spirits overseeing communal land (SPERI/CODE, 2011). Some Tai Dam have reinitiated their social units such as traditional self-help groups for funerals, weddings, harvesting, building houses, etc. (Kong et al., 2015). These operate within and between clans and integrate traditional and state institutions. This has been a community response to securing livelihoods and to restoring inter-clan relations (SPERI/CODE, 2011). Heads of clans and traditional leaders resolve disputes and develop village regulations, which must be approved by the District Justice Department (Kong et al., 2015).

Ede ethnic group (Central Highlands) (Austronesian group)

The Ede (population around 330,000) and other related groups (for example, the Jarai and Raglay)⁶ are matrilineal and matrilineal. Traditionally the husband moved into the wife's longhouse which contained many matrilineally related families (see Figure 2). The governance system is made up of a council of community-elected elders (*Khua Buon*) and a judge (*Khua Pat kdi*), and female leaders at the family level (*Ana go* and *Dam day*) (SPERI/CODE, 2011). These authorities resolve all issues within the village.⁷ The Ede culture demonstrates a strong sense of collective social relationships (SPERI/CODE, 2011).

The Ede carry out various ceremonies to pay tribute to the nature spirits of land, water, and forest, which they believe come from the *Yang Spirit* (SPERI/CODE, 2011). Out of respect, these resources must not be polluted or violated. The sacred water site is a special place in any Ede community, continuing to represent an important shared common space. All community members share responsibility to keep this area clean (SPERI/Code, 2011).

⁶ These groups speak a language related to Cham, who originate in central Vietnam, and is also related to Bahasa Indonesia. In the Central Highlands, the Jarai ethnic group number around 410,000 people, while the Raglay, who live more towards the Central coast, number around 122,000.

⁷ For groups throughout the Central Highlands the village has always been considered an autonomous political unit (Lafont, 1963).



Figure 2. An example of a traditional Ede Longhouse, now largely built for tourism

Source: Photo by 1ieue / [CC-BY-NC-ND-2.0](https://creativecommons.org/licenses/by-nc-nd/2.0/)

Since 1975, resource management decision-making has changed. The transfer of land and forest management to state cooperatives, and projects such as hydropower dams and commercial plantations, have changed farming and spiritual practices. Worshipping the spirit of the new rice and community gatherings to pray for good weather and harvest have been lost due to new livelihoods based on labouring in coffee and other plantations. Religious beliefs have also changed with Protestantism attracting the highest number of followers (SPERI/CODE, 2011).

The Extent of Customary Tenure in Vietnam

The process of formalizing private land use rights has been underway since 1986 with Doi Moi. Originally, farmers leased land from the state without formal Land-Use Rights Certificates (LURCs or “red books”). The 1993 Land Law formalized the de facto situation by introducing private land distribution and allowed families’ possession (use) rights for agricultural and forest land for up to 50 years. The Law introduced LURCs and recognized the right to exchange, transfer, inherit, lease and mortgage land (Hare, 2008). It also enshrined the three categories of land rights in Vietnam: ownership, management, and use (Hansen, 2013).⁸ The state retains responsibility for the first two, which means it retains decision-making authority over the use of the land. The state’s right to decide on management overrides the right to use land.

The issuing of LURCs proceeded slowly. Measuring and digitizing land parcels focused first on lowland paddy areas, but land was significantly fragmented. In 2002, it was estimated that 11 million households in the Red River Delta farmed around 100 million plots, with eight or more plots per household, for an average farm size of less than 0.3 hectares (Akram-Lodi, 2005).⁹

By 2009, Vietnam had allocated 72% of its total land area, including almost all agricultural land (USAID, 2013). This replaced all kinds of customary arrangements. In 2010, over 31 million LURCs had been issued, covering half the total number of land parcels, with forest land lagging (Anon, 2012). Land cleared from forest is less likely to be issued a LURC (Markussen, 2015). Only 42% of plots obtained through forest clearing, and only 13% of plots cleared in the last five years have a LURC. This explains the lower percentage of land with a LURC in the Northern Uplands, where forest clearing has been most prevalent (ibid).

A General Department of Land Administration (GDLA) staff member interviewed for this study estimated that 95% of the land area in Vietnam is now covered with LURCs (Interview 2, 2015). However, other informants who work in remote areas questioned these figures. LURC coverage is high where conditions for allocation are favourable. Land allocation has often been carried out in areas where there are no land conflicts. In some lowland provinces, LURCs cover 95% or more of agricultural land and more than 90% of households (Anon, 2012). In other provinces coverage is far from complete. In remote upland areas, populated by ethnic minority groups where up to 95% of the population may be poor, allocation of LURCs may be only 2% (Interview 7, 2015).

⁸ The 1993 Land Law states that land belongs to the entire people, is managed by the state, and that the state allocates or rents land use rights to users (Hansen, 2013). An amendment to the 2003 Land Law clarified that “land belongs to the entire people, the state represents the owner (i.e. the entire people) of the land” (cited in Hansen, 2013: 6). “Land use” rights allow individuals, family households, and organizations to transfer, lease, exchange, mortgage and pass on land as inheritance, and to dispose of the land use right because land is a common property (Hansen, 2013). The ‘owner’ thus has a legal right to the property, with ownership remaining with the state (World Bank, 2004).

⁹ The average agricultural land holding in Vietnam is 1,560 square meters, less than one-third that of Thailand or Cambodia, and 70% of rural households farm less than 0.5 hectares (Wells-Dang et al., 2015). In the North, the average plot size is around 0.5 ha and one family may own four or five different parcels. In the South, plot sizes may be less than one hectare with a family owning two to three parcels. In the Mekong Delta, the average rice growing area is 1.29 ha, compared with the national average of 0.44 ha (Anon, 2012).

Despite MoNRE's focus on registering urban land, a land expert estimated that only around 70-75% of landowners in urban areas have a red book and those without continue to rely on recognition of ownership by the local authorities (Interview 17, 2015).¹⁰ In rural areas, this expert estimated that around 85% of land users and 20-25% of state-owned enterprises (SFEs) have a red book (ibid). One problem holding up the issuing of red books is that a lot of local level land ownership documentation was destroyed during and after the revolution (Informant 17, 2015).

Data from the Vietnam Access to Resources Household Survey confirms a national coverage of LURCs of around 78% in 2014, with nearly 100% coverage in the Mekong Delta and around 70% in the Red River Delta (Markussen, 2015). LURCs are least prevalent in the Central Highlands and in remote highland provinces in the North, with 41% and 46% coverage in Dien Bien and Lai Chau provinces in the Northwest respectively (Markussen, 2015).

Even in upland areas there is little customary agricultural land left (Interview 5, 2015). Upland areas are being used heavily for agriculture because only 15% of Vietnam's land area is arable. Even before decollectivization, upland areas were used for large-scale cash crop production such as cashews, coffee, and rubber. The uplands have also been seen as a source of land for a growing lowland population,¹¹ a destination for lowland migrants to pre-empt demands for autonomy by minority groups, as well as for hydropower development.¹² Hydropower development has flooded fertile rice lands. Hundreds of thousands of people have had to relocate, sometimes more than once, often to less productive land (Interview 6, 2015). With less land to compensate those who have been displaced, many people have been forced to clear forest areas to try and overcome land shortage. Because of these displacements there has been tighter government control over land use in upland areas.

The result of the above is that in lowland areas there is little agricultural land that has not already been allocated and so very little land is held under customary arrangements. Customary tenure systems mainly still operate in upland forest areas. The allocation of forest land has been slower because of competing demands for agricultural and forest uses and a more complicated regulatory framework (World Bank, 2004). The 1993 Land Law and other regulations tried to decentralize state management and devolve forest management to non-state entities (individuals, households and organizations), but not to customary village communities or groups of households because communities were not recognized as legal entities and could not receive LURCs (World Bank, 2004). The 2003 Land Law did allow allocation of land to communities but this has been slow, and it also did not mention communities as forest land users. As examined in the following section, SFEs still control large areas of forest land, despite significant efforts to reform the forest sector and reallocate this land.

¹⁰ Only 20% of condominium dwellers have legal papers because condominiums have often been constructed in contravention of approved construction plans and are illegal (Interview 17, 2015).

¹¹ Establishing "special economic zones" and policies to encourage transmigration to less populated areas such as the Central Highlands resulted in 1.4 million ha of forest being cleared from 1976-1990, largely to open up land for agriculture (Hall et al., 2001).

¹² For example, in 2001 the government resettled 260,000 new migrants into the Central Highland region after discontent, peaceful marches, and petitions by ethnic minorities. Some of these migrants had been displaced by the Son La dam (Hall et al., 2011).

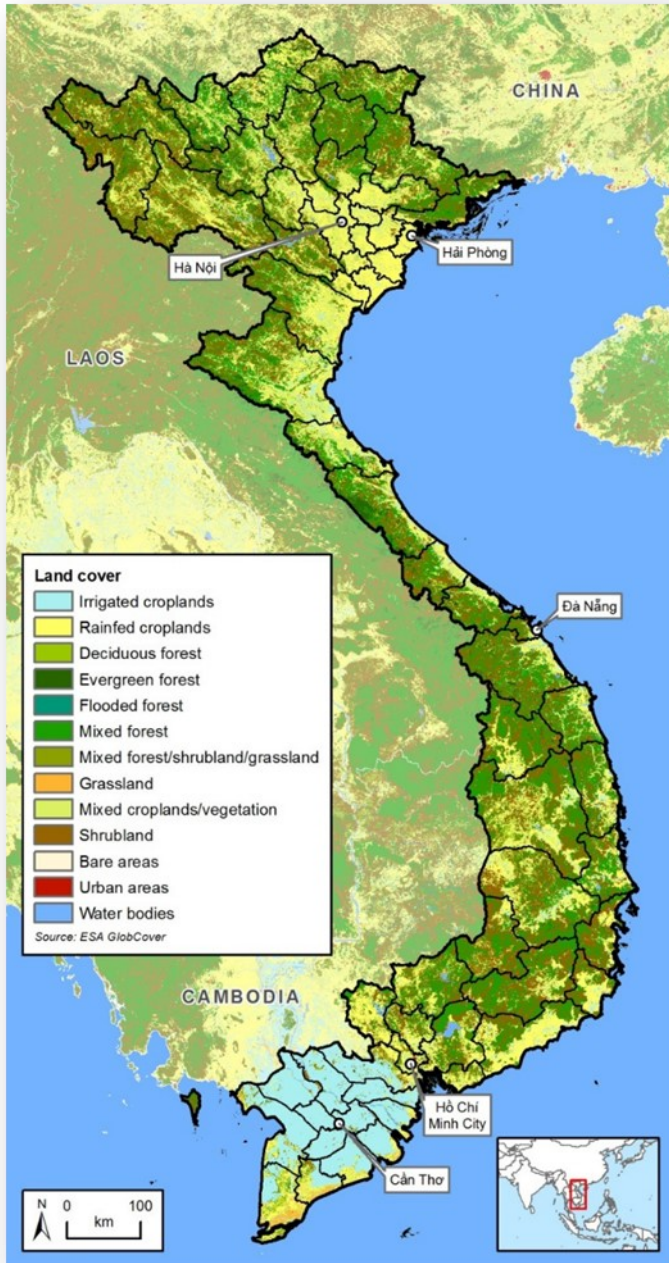


Figure 3. Forest cover in Vietnam showing 43 provinces with forests (out of a total of 63). These overlap significantly with ethnic minority areas.

Source: de Quieros et al. 2013

Forest Land Allocation (FLA) in Vietnam

Reform of State Forest Enterprises and State Owned Farms

From the mid-1950s, State Forest Enterprises (SFEs) took over the management of most forest land in Vietnam. By 1990, SFEs managed 90% of the country's forest land, with the rest controlled by the armed forces and Commune Peoples' Committees. Forest cover declined from 43% in 1943 to 27% in 1990 due to heavy exploitation (Nguyen, 2005). By 1986 half of all SFEs had run out of forest to exploit (Nguyen, 2005). To address the problem, the government strongly subsidized SFEs to carry out forest management and reforestation, particularly through the promotion of plantations. Program 327 (1993-1998) outlined policies and objectives for "greening" barren land and hills. From 1995, this Program became heavily focused on protecting forest areas from shifting cultivation, mostly in the North and the Central Highlands. This was replaced in 1998 with the Five Million Hectare Reforestation Program (5MHRP) aiming to increase forest cover to 43% of the national land area. SFEs were key beneficiaries of these programs.

However, SFEs began to be criticized for being ineffective and unproductive, and the government decided to reallocate the forest under their control. 'Unproductive' refers to areas not protected, or when an enterprise has shown it is not able to manage them. Since 1991, several reviews and restructuring of SFEs have been carried out (Wells-Dang et al., 2016). In 1994, reforms reallocated some forest land to state and non-state organizations. This began the process of breaking-up the SFE system and reallocating forest land to state forestry and agricultural companies, forest management boards (FMBs) and smaller amounts to households and communities.¹³

Decree 02 (1994) allowed for the long-term allocation of forest land to individual households, however there were problems with implementation given limited state budget. Land measurement was not clear and there were discrepancies between maps and ground level reality. Decree 01 in 1995 allowed SFEs and FMBs to contract local households (khoán) for forest protection and planting in special-use and protection forests (To et al., 2013).

In 2003, Politburo Party Resolution No.28-NQ/TW (and Decree No. 200/2004/ND-CP to implement it) aimed at determining areas controlled by state owned farms and forest enterprises that are ineffective, in legal violation, in dispute, etc. for reallocation to households and communities. In 2004, state owned farms and forestry enterprises controlled just over 4 million ha of land in the country. After 10 years of implementation, little had changed beyond renaming the state owned farms and forestry enterprises as agricultural and forestry companies (or SAFCs) (Wells-Dang et al., 2016). In 2013, another Party Resolution No.30-NQ/TW (and Decree No. 118 of 2014 to implement it) aimed to continue this restructuring by supporting innovative and active enterprises, decommissioning those that aren't performing well, and giving provincial Party Committees oversight of land reallocation from SAFCs to local authorities.

¹³ Forest area in Vietnam is divided into three categories: Protection forest (to protect the environment and watersheds, regulate climate and prevent erosion, etc.) makes up about 38% of the total forest area; special-use forest (including national parks, nature reserves), makes up 15%; and production forest makes up 46% (USAID, 2013). Forest management boards were created to manage special-use and protection forest areas.

The government is interested in creating a land fund made up of land reclaimed from agricultural cooperatives and forest enterprises. Some enterprises may be privatized and some may be dissolved and the land transferred to communes for reallocation to households and communities.¹⁴ As part of the reform, the government also plans to reclassify one million ha of protection forest to production forest. Production forest can be allocated by local authorities to poor and landless households, groups and private companies, while protection forest can be allocated to communities under Payment for Environmental Services (PFES)-type arrangements. A forestry expert estimated that some 400,000 ha now controlled by SFEs would be transferred mainly to households (Interview 19, 2015).

In 2015, Party Resolution No. 112/2015/QH13 initiated a program to monitor and strengthen the management of land acquired from SAFCs. Most provinces now have detailed SAFC restructuring plans. The government and the National Assembly aimed to complete a review of these enterprises by 2016. However, the process of claiming back forest land for local people has been hampered by a number of problems, including lack of guidance for local authorities, unclear SFE boundaries, and a lack of data, maps and funds for surveying to facilitate land allocation. Moreover, over the years people have occupied some forest land areas under SFE control, leading to overlapping land claims and conflicts when redistributing these lands.

In the case of state owned farms, these are now almost totally bankrupt and are simply collecting rent for themselves (Interview 1, 2015). It is difficult to take land back from these enterprises as the de facto ownership of the land is not clear. Some 400,000 ha of state owned farms' land has already been given to farmers. The state farm enterprises say these areas are not being used efficiently and the government should take this land back. However, since many farmers are already using this land the government has little choice but to accept reality and provide land certificates to these farmers and ask them to pay land tax.

Other problems relate to valuing the land and property on the land. For example, state owned companies argue that the farmers need to compensate them for the property on the land as part of handing over land to them. In these cases, valuation is difficult and farmers don't want to pay for the trees growing on the land.

Over the period 2004-2012, around 505,000 ha was taken back from SFEs and state agricultural cooperatives for allocation to households and communities. A further 1.5 million ha was transferred from these state enterprises to FMBs (Interview 1, 2015). The number of SFEs has fallen from over 400 to 134, and they now control 2 million ha, including 1.5 million ha of natural forest and 0.5 million ha of plantation forest. Since the beginning of the reform process in 1994, households have received 3.3 million ha or 24% of the total forest area and communities have received 458,000 ha or 2% of the forest area.

Management by Provincial, District and Commune Peoples' Committees

As seen in Table 1, Commune Peoples' Committees (CPCs) are temporarily managing a significant area of forest land which has been returned to the state from SAFCs, but they lack

¹⁴ Following Decree 118 (2014), SFEs which have 70% or more of rich or medium forest will be allowed to continue their functions. SFEs will also be maintained in border areas. SFEs with less than 70% good forest will be required to transform into a joint stock company (Interview 19, 2015).

the resources or expertise to manage these areas. This land is therefore seen as open access and land encroachment is possibly worse than under SFE management. In many cases the forest land recovered is poor in quality and consists of small dispersed plots located far from village sites which make them difficult to manage. According to a forestry expert, less than 60% of the land controlled by communes is natural forest as much of it has been converted to rubber and cassava (Interview 10, 2016). Land that is economically viable has mostly already been occupied. In the Central Highlands, some CPCs have rented out this land to companies. In this area, the land is suitable for pepper and coffee and better off households plant these crops often on unused commune land. In other cases, SFEs have rented their land out to agricultural companies to plant cassava. Planting these crops has led to a lot of forest clearing.

Table 1: Areas of forest land managed by different state agencies (2015)

State Agency	Area of forest land (Ha)	Forest area (% of total)	Comments
State Forest Enterprises	1.9 million	14%	mainly production forest
Forest Management Boards	4.8 million	35.5%	special-use and protection forest
Commune Peoples' Committees	2.4 million	17.5%	

In other cases, companies have convinced local authorities to lease 50-100 ha for rubber, or the government leases natural forest and barren land to a company, with the stipulation that the forest should be protected. However, companies often clear all the forest land for planting. This has been occurring, for example, in Ca Mau, Lam Dong and Binh Tuong provinces. There is much discussion about what forest areas can be used for agriculture, even before it is reforested. There is a need to set criteria to guide decision making. In Lam Dong Province authorities have been measuring land areas planted with coffee to try to delineate and contain agricultural land. If coffee planting expands out of this area the state will reclaim double the amount of land that was taken.

The Provincial Peoples Committee (PPC) makes decisions about allocating CPC-managed land to companies. Often the PPC doesn't consider who is already using this land and reallocation causes conflicts. Districts are often not informed and many do not know what companies are operating in their district. Because the company has paid fees and rental for the land, the PPC has difficulty overseeing them. The PPC often delegates forest monitoring to state companies. These companies are not able to perform this task and an open access scenario develops.

FLA to Households

Without explicitly stating it, the forest land allocation programme recognizes customary claims. Allocation to communities can depend on historical links with the area. Sikor and Thanh (2007) describe problems that arose in the Central Highlands when local households were allocated forest land, while migrant families were not.

In general, however, the policies around forest allocation are controversial and Vietnam is struggling to deal with forest reallocation politics. Open questions remain such as how much land each family should receive. Pilots have not been successful. An informant felt that mistakes

were made in allocating the good forest land to companies (Interview 10, 2015). In some cases, companies have used land use planning processes to take land from people. Now the government finds it difficult to recover this land. In other cases, companies, using government funds and with a mandate from MoNRE, carried out FLA with provincial officials without informing the district.

The first forest land allocation occurred in 1996 in Ha Giang Province with Mung and Dzaio people. Communities were only allocated access and use rights, instead of the five rights that go with a LURC. Decree 163 (1999) further clarified the allocation of forest land to organizations, households or individuals for 50 years. However, the allocation process relied a lot on mass organizations and there were reports of land being allocated to outsiders due to some leaders abusing their power. The implementation of FLA has been facilitated by more recent policies such as Decree 181 in 2004, Decree 135 in 2005, and Decree 23 in 2006 (To et al., 2013).

In the early phases of FLA, the government allocated only barren land which could be used for plantations to households and individuals (Tien et al., 2011). This later expanded to include the allocation of other forests. However, by the end of 2007, only 62% (8 million ha) of total forest land had been allocated (to organisations and households), largely due to lack of financial resources and also because people were often not interested in receiving degraded or barren forest land (Tien et al., 2011).¹⁵

Given the problems with SFEs, and a general agreement on the need for the involvement of local people to protect forest areas, in 2001 Decree 178 outlined benefit sharing for protecting forest and tenure rights. Households and individuals which have been allocated forests and forest land receive funds from the state for management and protection. They are allowed to harvest non-timber forest products, collect fallen and damaged trees, and exploit timber and bamboo (with restrictions) and revenues arising from them (85-90% of timber products), once taxes have been paid. They may also use 20% of the forest land for agriculture and aquaculture.¹⁶

FLA to Communities

FLA to communities started around 1998-1999 when GTZ (now GIZ) piloted the allocation of forest land to communities in Dak Lak Province. The 2003 Land Law, for the first time, formally recognized communities as land users. In 2011, a Joint Circular (07) was issued from MoNRE and MARD which allowed for the allocation of land and forest together. MoNRE issued the land use certificate and MARD allocated the forest area.¹⁷

¹⁵ By June 2009, 1,028,559 land use right licenses had been granted, including 43,314 to organizations: with a total of 4,986,482 ha; and 982,296 to households and individuals with a total of 3,372,756 ha. By 2010, nearly 10 million ha of forest land had been allocated in the whole country. Source: http://ap.fttc.agnet.org/ap_db.php?id=494&print=1

¹⁶ However, one problem is that the size of the timber is not measured so there is no payment for the increase in the amount of timber during the period of protection. There is a need to revise this decree to incorporate baseline data on which benefit sharing mechanisms could be based.

¹⁷ Land is under MoNRE and forest is under MARD. MoNRE deals with general land issues and MARD is involved in more specific agricultural and forest land use. Forest land allocation requires the involvement of both.

In 2005 there was debate within MoNRE about allocating forest land to communities rather than households. The decision was made to allocate to households and to use the state budget to fund forest protection. Some of the reasoning was that allocation to households would have a more concrete poverty reduction impact and also that allocation to communities was reminiscent of past failures of collectivization. Allocation to households, however, was the most complicated system the government could have chosen, according to one land advisor (Interview 17, 2015). One result is that ethnic minority households with little understanding of individual tenure arrangements have sold parts of their agricultural land to Kinh in-migrants, cleared the allocated production forest land for shifting cultivation and sold that land, and then gone further into the forest to cut more areas. To stop this, the state has had to buy land for people. In this scenario, the recipient has no right to transfer the reallocated land. Despite the government's hesitation to allocate forest land to communities, commons tragedies have been created by local farmers treating the state managed forest areas as an open access resource.

In cases where technical support has allowed proper consultation, allocation has been more in line with community wishes for communal rather than individual land. The allocation of land to communities or individuals depends partly on the land type and location. In upland areas, there is more of a balance between land held individually and by communities.

There have been cases in the Central Highlands of communities refusing individual use rights and forest allocation has had to be done again. In T'Ly village, Dak Lak Province, land was claimed back from households and an extra 1000 ha of forest was added as a community allocation (Nguyen et al., 2008). In another case, a Khmu community rejected allocation to households. Only dry rice fields were allocated to households. For upland agricultural areas, including grazing areas, the community wanted flexible management and only community management was suitable.

In Lam Dong Province, the whole community decided to pool the funds received by 10 households from the FMB to protect the forest. The forest was then managed by the community (Interview 5, 2015). This highlights the gap between formal allocation and management and customary systems and demonstrates the potential for community management if the community is strong. In Lang Son Province, an NGO (CSDM) has also been able to facilitate the allocation of some forest to households and some areas managed by the community. There is thus a need for flexibility in the allocation process to ensure local cultural and management contexts are taken into account. Allowing for community level governance of forest land can result in the most suitable option for meeting long term land use and management goals.

Preference for community arrangements is also prevalent in Central Vietnam along the Annamite mountain chain. Forest areas in the north of Vietnam where there is still significant natural forest, such as in Dien Bien, Cao Banh and Ba Kak, are also often managed collectively. In other areas in the north and centre of the country, Kinh people tend to prefer allocation to households as often the land is used for planting acacia. The slow acceptance of community allocations of forest land is partly the result of recent advocacy over land for ethnic minorities.

Recognition of Customary Tenure in Vietnam's Legal Framework

Vietnamese land laws attempt to deal with the key tension between the state as landowner and manager, and the importance of land for local livelihoods and income generation, as well as the basis of community identity, tradition and culture (Wells-Dang et al., 2015).¹⁸ The six million submissions and numerous studies to inform the drafting of the 2013 Land Law shows the intensity of the debate, accentuated by the small per capita land area in the country.¹⁹ In such a pressured environment with multiple interests and claims, it is little wonder that customary land tenure has been undervalued in Vietnamese law and policy (ibid). Since 1975, customary laws have not been specifically recognized in Vietnam's legal system (USAID, 2013). After the revolution, no one had the right to own land. The traditional idea of a community managed by village elders was replaced with a state appointed village head. Customary rules, however, have maintained their relevance as a reference point for developing regulations on social relations, ownership rights, property disputes as well as on issues of marriage, inheritance, contract and tort (ibid).

The 2015 Civil Code recognizes ownership of the entire people managed by the state (Article 197), private and multiple ownership. Article 5 of the Constitution and Article 7 of the 2015 Civil Code provide for the right of all ethnic groups to use their own language, to preserve their ethnic identity, and to promote and respect good customs, practices, traditions and culture.

Multiple ownership is permitted provided it is "in accordance with provisions of the law or in accordance with customary practice" (Article 208). Multiple ownership by a community means "ownership by a family line, hamlet, village, tribal village, mountainous hamlet, ethnic hamlet, religious community or other community of property which is formed in accordance with customary practice" (Article 211). Boundaries of immovable property may also be determined "in accordance with customary practice or according to boundaries that have existed for thirty (30) or more years without dispute" (Article 175).

A representative of MoNRE interviewed for this study noted that recognition of customary tenure for the large number of ethnic groups is complicated, given the migration of groups around the country (Interview 2, 2015). However, she noted that some customary practices have been recognized in the Land Law such as forest land for religious purposes. She emphasized that ethnic minorities in Vietnam are treated equally under the law, and some get preferential treatment, such as reductions in land use fees as part of poverty reduction efforts. The government will also allocate land for landless minorities, sometimes even buying land, and in cases where the state cannot provide land it may provide money and/or vocational training (ibid).

In practice, recognition of customary land often depends on acceptance by the local authorities. For example, authorities will often ignore cultivation in production forests if it is small. Customary rights to cut timber for building houses are also widely accepted. In forests and forest land areas, many officials are sympathetic to customary tenure practices and companies often find it difficult to enforce against local community resource use.

¹⁸ Following Article 53 of the 2013 Constitution and Article 4 of the 2013 Land Law, state land "includes land, water resources, mineral resources, wealth lying underground or coming from the sea and the air and other natural resources."

¹⁹ Vietnam's per capita land endowment is one of the lowest in the world. About one-third of Vietnam's land area is used for agriculture, and most suitable lands are being used (USAID, 2013).

An interesting legal aspect of this is that because the state owns the land, land users, whether they have a formal LURC or not, are recognized as such.²⁰ A land expert explained that the government will consider granting land rights to local communities based on the mechanism of “ask-give” (Interview 17, 2015). This is a key principle in Vietnamese politics. Claims of customary tenure can provide important arguments to justify these kinds of requests.

In terms of land allocation to communities, Article 5 of the 2013 Land Law allows for land allocations to “Vietnamese communities”. Article 27 also outlines state responsibilities for adopting policies “on residential land and land for community activities for ethnic minorities in conformity with their customs, practices and cultural identities and the practical conditions of each region”, and for providing ethnic minorities land for agricultural production. Article 100 allows for state allocation of LURCs over agricultural land to communities. Land allocation to communities is “to preserve national identities associated with the traditions and customs of the people” (Article 131). Article 136 also allows allocation of protection forest to communities. Communities can be given responsibility for managing land with “cultural-historical relics” (Article 158), and to use land for religious practices (Article 160).

A key challenge for community customary tenure management, however, is that the Civil Code does not recognize communities as a legal entity.²¹ Apart from perceived similarities with the discredited attempts at collectivization, the government is also wary of giving recognition to groups that might lead to calls for autonomy. There is also an ongoing debate in Vietnam about what is a community. The 2013 Land Law recognizes two kinds – one that lives in the same village or area who share the same customs and practices and one that is based on family ties.²² However, this does not include the concept of a traditional ethnic community. There may have been progress on this front with a 2014 Joint Circular outlining principles for identifying and recognizing customary elders and leaders (IWGIA, 2015). This could open the door for recognition of communal management structures and local leaders' role in conflict resolution.

The MoNRE representative interviewed was open to calls for allowing community management and multiple ownership arrangements (Interview 2, 2015). MoNRE acknowledges communities actively protect forests and that residential and agricultural land should be allocated to communities, particularly for agricultural development. However, the representative explained that community land tenure rights were not resolved in the 2013 Land Law because some National Assembly members questioned draft provisions for community ownership, based on the lack of legal recognition of communities in the Civil Code. Multiple ownership was also refused because legally the community is not an administrative unit in Vietnam. Issuing a LURC to the community requires stating who will receive the certificate (*ibid*).²³

²⁰ This follows Article 4 of the 2013 Land Law which states that “Land belongs to the entire people with the State acting as the owner’s representative and uniformly managing land. The State shall hand over land use rights to land users in accordance with this Law.”

²¹ The 2015 Civil Code recognizes as non-commercial juridical persons regulatory agencies, military units, political, social and professional organizations, social and charitable funds, social enterprises and other non-commercial organizations (Article 76).

²² Community is defined as “Vietnamese communities residing in the same village, street quarter or similar residential area sharing the same customs and practices or the same family line” (Article 5, 2013 Land Law).

²³ Article 7 of the Land Law states “the heads of villages or street quarters, or the persons appointed under agreement of resident community” are responsible for the use of allocated or recognized community land.

Furthermore, while communities can in theory receive collective LURCs (Land Law, Article 100), they do not possess any formal governance powers over the land, such as deciding about land use classification (Truong and Genotiva, 2011). This runs counter to the role of community-based institutions and differs from indigenous land ownership in other countries such as the Philippines. In Vietnam, marginalized ethnic groups are not afforded any special legal protection, as is the case in the Philippines (Truong and Genotiva, 2011).

The 2013 Land Law has further implications for the recognition of customary tenure because it has done away with the governance level closest to the people most affected by decision-making – the commune. This has led to criticism that the Land Law 2013 is actually less democratic and transparent than the 2003 Land Law. The intention was to better control local land speculation and corruption, and communes that were not following procedure or district land use plans (Wells-Dang et al., 2015).²⁴ The Land Law also attempted to link land use planning activities from the local to the central level. It shifted the main authorizing body for land-use planning from the commune to the district, in theory, allowing the province better oversight of land management decision-making (Wells-Dang et al., 2015). Power to allocate all land, change land use classifications, or approve leases has been given to the chairperson of the Provincial Peoples' Committee (CIRUM, 2012b).

Other recognition of customary tenure includes Articles 75 and 77 of the Land Law which allows for households, individuals and communities without a LURC (or on land not eligible to receive one) to obtain compensation in case of expropriation by the state, if the land was in use before 1 July, 2004.

Finally, an informal mechanism for recognizing customary tenure is found in the Hou Koa system, which recognizes 10 years peaceful possession. This consists of a family book or citizens' certification for land that is recognized as belonging to a particular family. Even when families do not possess a Hou Koa the party member in the village or the commune can verify land used by a particular family and this recognition can be validated in compensation cases.

Recognition of Customary Tenure in Forest Areas

The 2004 Law on Forest Protection and Development (Forestry Law) provides limited recognition of customary tenure. Communities are able to apply to District Peoples' Committees for forests they are managing, using efficiently, or which protect important water sources (Article 29). District Peoples' Committees can assign production and protection forests to "village population communities", giving priority to the assignment of forests associated with the customs and traditions of ethnic minority people.²⁵ This may recognize customary tenure, but assigning forests

²⁴ The Land Law also attempted to address the problem of companies speculating on land by acquiring land to plant crops and then waiting for a change of land use classification.

²⁵ Article 20(2)(a), Decree (N° 23/2006) on the Implementation of the Law on Forest Protection and Development.

to communities “for the sake of the communal interests” is on the condition that these areas cannot be assigned to organizations, households or individuals (Article 29, Forestry Law). Given that communities are not listed as forest owners in this law (Article 5), the community in this case appears to be a kind of secondary right holder compared with state organizations.

There has been some work as part of the Forestry Law revision to advocate for allocating forest and forest land to traditional ethnic communities, instead of to ‘village communities’ as defined in Article 5 of the Land Law and Article 3 of the Forestry Law. Traditional ethnic communities already have basic customary regulations on forest and forest land management and could become legalized entities. However, there is limited recognition of this customary law in the Forestry Law and the Ministry of Justice continues to insist that communities are not legal entities.

A further legal recognition of customary tenure can be found in forest protection and development conventions which villages are encouraged to develop. MARD Circulars (No. 56/1999/BNN – KL, 1999 and No. 70/TT/BNN, 2007) provide guidelines for developing these, and they support conventions based on customs (GIZ/MARD, 2010). By 2010, 34,767 conventions had been established throughout the country (ibid).

The potential for community level forest governance and management can be seen from evidence showing that the granting of user rights to the whole community protects forest and curbs illegal logging better than granting user rights to households (Tran et al., 2014). User rights granted to households have shown good results if community mechanisms to manage forests and share benefits are set up (ibid). However, even after legal recognition of village collectives in the Forestry Law, allocation to individual household continues to predominate. This is partly because of the poverty reduction emphasis of forest and land allocation and community allocations are not considered as important.

A key criticism of the 2013 Land Law is that there are no provisions for the allocation of natural production forest to households or communities. Management of natural production forests is to be allocated to “forest management organisations” (Article 135).²⁶ As a result, the 2013 Land Law and the 2004 Forestry Law differ on whether or not natural production forest can be allocated to communities.²⁷ This appears to run counter to an objective of the 2013 Land Law, as explained by a MoNRE representative, to promote the use of forest land for production to address increasing land shortage.

As a result, provinces such as Ha Tinh have been asking for changes to allow for allocation of natural production forest to households and communities. The new Forestry Law may allow for this, however, at present the 2013 Land Law overrides the 2004 Forestry Law.

Some NGOs feel disappointed that after considerable efforts to influence the drafting process, the 2013 Land Law did not turn out to be what they had hoped for. Because of the shortcomings,

²⁶ The 1993 Land Law gave the authority to provinces to allocate forest land. The 2003 law allowed districts to carry out this role, also allowing the allocation of natural forest to communities and households.

²⁷ The 2013 Land Law also says nothing about households and communities who have already been allocated natural production forest land, and this has increased insecurity for those who have already been allocated these forest areas.

the GDLA is preparing new Decrees and Circulars to guide implementation and clarify some of the provisions in the law. The allocation of natural production forest to communities is one issue being addressed but amendments to date appear unsatisfactory.

One area where advocacy during the drafting of the Land Law did bring results is the Politburo decision (Resolution 30/2014) on reforming state enterprises, following new language adopted in Article 133 (Wells-Dang et al., 2015). This has prompted several provinces to reallocate up to 100,000 ha agricultural and forest land from state enterprises to local farmers, primarily to ethnic minority households and communities in 2014-15 (Wells-Dang et al., 2015).

Recognition of Community Forestry

As discussed, the recognition of the “village community” to be allocated forest land in the 2004 Forestry Law opened the door for community forestry activities. There are now several examples of market orientation and livelihood improvement from forest areas that have led to the acceptance of this provision in the Forestry Law. However, as noted by a forestry expert, community forestry has been piloted in Vietnam for 25 years but there is still no specific policy to support it. The state retains management rights over large areas of forest. Pilots, he argued, look good for donors, but there is no formal model of community forestry management (Interview 10, 2016). The reason communities have rights to protect forest for irrigation and for religious purposes, regardless of whether it has been formally transferred to the community or not, is because both are seen as beneficial for forest protection.

Instead of forest communities going through the difficult process of being recognized as legal entities to be allocated community forest areas, one option being looked at is creating a community-based organization (CBO) which then develops an agreement with the government (see Annex 2). A collective economic organization is more suitable for the Vietnamese legal system. In theory, this could entail the community making a contract for forest management with the Commune and Commune Forest Protection Department. This would require a management plan and permits, for example, for timber harvesting. With a management plan, communities could make a request and the CPC would have to make an effort to allocate land for them. Communities could also potentially be recognized as forest user associations (see section ‘Opportunities for Improved Customary Tenure Recognition’).

Finally, the availability of PFES has changed thinking about forest management, making the government realize that without a formal community entity distribution of benefits may not be effective. The government has also realized that it cannot protect the forest and institute sustainable use with state institutions alone. In response, Decree 99 (2010) was developed to provide guidelines on how to spend PFES funds on forest protection. One problem with transferring funds to communes and ultimately to villages has been lack of transparency. Also, money can only be provided to people with LURCs and many people do not have these. Each province has its own mechanism for spending PFES funds and while provincial officials have an interest in minimizing conflicts between communities and SFEs/FMBs, larger landholders receive more of these funds. The key dilemma is that for effective forest protection local people must be involved but forest policies do not recognize their role. A recognized community organization could potentially offer a solution.

Difficulties in Recognizing Customary Tenure over Forestland

The limited area of forest land allocated to communities, as opposed to households, is indicative of the obstacles faced in getting customary forest tenure recognized. The total area allocated to communities to date is only 2% of the total forest area or 458,000 ha, compared with 3.3 million ha or 24% of the forest area to households (see preceding section on FLA). Ethnic minorities often reside near forests but do not have consistent access (USAID, 2013). In the Northwest of the country, half of all ethnic minority households report using forest land (USAID, 2013). It is particularly difficult for communities living in special-use or protection forests because in these areas communities cannot be issued LURCs. In Hanh Dich commune, Nghe An Province, for example, of 16,182 ha of forest land, only 1,015.5 ha is available for 3,422 people (802 households) in 11 villages. Villagers have to accommodate the 15,110.6 ha Pu Hoat Nature Reserve as well as 55.9 ha used by the Nghe An Rubber Company (CIRUM, 2017).

Ethnic minority communities in the Central Highlands also face difficulties having their customary tenure recognized through forest land allocation. This region contains the country's largest forest area, but only 4% of ethnic minorities report that they have forest use access (USAID, 2013). Of the 148 SFEs managing 2 million ha of forest in the country, 50 of these manage 1 million ha in the Central Highlands (To et al., 2015). In Lam Dong Province only 9,000 households or 3% of the population have been allocated forest land, and 23 SFEs manage nearly all the forest land in the province (ibid).²⁸ This can be contrasted to the 52,000 families that have benefited from forest land allocation in Son La Province in the North (ibid). Rates of landlessness of around 10% in the Central Highlands (Markussen, 2015) also create a certain obligation on the government to address this.

There is predictably also resistance from some SFEs to the dissolution and reallocation of their land to households and communities. With the current logging ban, these enterprises have been starved of funds, with the state budget only contributing 29% of the forest sector budget (To et al., 2015). As a result, many enterprises have been inactive and others have responded by becoming semi-private companies or selling off leases to companies.

To et al. (2015) argue that PFES arrangements potentially throw a lifeline to these enterprises by providing them with funds they need for their operations. In fact, they speculate that the PFES scheme may have been partially designed to allow for state enterprise funding. This could potentially limit any significant reallocation of their land to households and communities. In the face of this, any policy to dissolve SFEs and reallocate forest land to communities and households could encounter significant opposition. NGO representatives also point out that the commune and district authorities may be reluctant to allocate forest land to people because they think they will miss out on these funds. With REDD+ and other forest protection activities there is a risk that intermediaries may take more of the funds that should otherwise go to the people who protect the forest (see also Annex 2).²⁹

²⁸ One reason for the limited allocation of forest land to ethnic minority communities in this area is the ongoing protests against the loss of their land, culture and autonomy. There is a fear within the government that allocation of forest land in this region will result in short term forest exploitation. Recent flights by ethnic minorities in this area across the border into Cambodia have fed into these fears. Accusations of religious persecution by ethnic minorities have added to the complexity of this issue. A further problem still is the sensitivity at present over the border with Cambodia.

²⁹ Normally state enterprises and management boards have forest land use certificates for 50 years but they tend to contract community members to protect and manage forest areas for one year (though this can be for longer periods). Contracts for longer periods can be sold to other parties. See Annex 2 for further details about REDD+ and relevant forest management programmes.

Therefore, while PFES and other benefit sharing mechanisms represent an important opportunity to fund community forest management, centralized solutions may ultimately prevail in the form of reinvigorated SFEs. This adds to the feeling that the present arrangements to contract out forest protection work to community members are unfair as state enterprises and management boards do not have the capacity to manage all the forest under their care and they get forest protection from communities without having to pay salaries.³⁰

In this sense, poorly defined benefit sharing arrangements between communities and state companies or local authorities often mean communities receive only a minor share (IUCN, 2008). Management regulations are generally developed in consultation with villagers, but given many communities have not received legal recognition of their land rights, regulations are not generally developed with the communities' interests in mind. Most often it is state appointed village heads that administer village regulations rather than customary leaders (IUCN, 2008). Ineffective and/or inequitable benefit sharing has undermined relationships with local communities.

Another key issue is lack of budget allocated by the central government for land allocation. Forest land allocation to households and communities is often implemented because of pressure from local authorities and communities. Land conflicts are headaches for local authorities and they often cannot resolve them because they lack funds for land allocation. SFEs, FMBs and politically appointed CPCs also often lack adequate knowledge of the customary context to make sound management decisions.

Finally, state law does not consider intangible benefits of forests that are often a key aspect of customary forms of respect for areas considered sacred (CIRUM, 2012a). Given recent problems of overexploitation of NTFPs (supplying traditional medicines to China, for example), forestry legislation also does not provide clear guidelines on the exploitation of forest resources (CIRUM, 2012a).

Recognition of Shifting Cultivation

As explained by a government researcher, agricultural land that has been allocated for cultivation in theory can be used for shifting cultivation but not land classified as forest (Interview 1, 2015). In general, shifting cultivation is not encouraged because the government believes it destroys the forest. Moreover, government authorities claim that shifting cultivation is difficult to manage because people are spread throughout secondary forest (fallow) areas (Interview 3, 2015). Even though shifting cultivation is discouraged, authorities acknowledge that it continues to be practiced. This leaves some room for discussion about accepting the reality and looking at how shifting cultivation could be better managed. A better understanding of shifting cultivation may help develop more appropriate policies and laws. To understand how shifting cultivation is being accommodated in land use planning activities, study visits to Laos, for example, to visit land use planning work carried out by The Agrobiodiversity Initiative (TABI) could perhaps be useful.

³⁰ In 2010, SFEs managed more than 6 million hectares of land but only provided 267,000 jobs (Wells-Dang et al., 2016).

In practice, after forest land allocation much of the land previously used for shifting cultivation and livestock husbandry becomes forest land (Truong and Genotiva, 2011). This has caused severe economic hardship for communities and led to serious conflicts with forest protection officers (Truong and Genotiva, 2011). Tien et al. (2011) give the example of Bu and Que villages in Con Cuong District, Nghe An Province, where forest land allocation was carried out during 1999-2003. In Bu village, shifting cultivation land decreased from 150 ha to 81 ha after forest land allocation. In Que village the reduction was from 110 ha to 43 ha. This resulted in 85% of villagers cultivating their upland fields permanently, with significant reductions in food security. The collection of NTFPs, an important part of local livelihoods, also declined due to restrictions imposed after forest land allocation. Some NTFPs (such as broom grass which made up 15-20% of household incomes), declined because of reductions in fallow areas (Tien et al., 2011).

Challenges in Recognizing Customary Tenure

It is clear from the above discussion that a key issue for the recognition of customary tenure in Vietnam is centralized decision making, given the state's dominant role in managing land. Despite this centralized structure there is a lack of legal and jurisdictional harmony. Multiple laws and decrees prepared under different ministries result in conflicting and overlapping institutional mandates and these are interpreted and acted on in a variety of ways at the local level (de Queiroz et al., 2013).

State authorities from the central level down also have wide discretionary powers over land, including access, allocation and valuation. This often leads to companies being able to influence these decisions, which creates problems in a context of significant pressure on a limited land resource. Long term leasing of land to companies is particularly an issue in the Central Highlands. While maintaining central level oversight helps to regulate discretionary decision making at lower levels, better recognition of customary tenure also requires local communities to be involved in decisions about land use and management in their areas.

Centralized state management combined with the government's vision to transform Vietnam into an industrial society affords little room to consider how diverse agroecologies and customary practices might be incorporated into state legal and management frameworks. Provisions allowing for the expropriation of land for economic development are generally implemented in favour of industrialization over agriculture, leading to benefits accruing to wealthy urban populations, while rural people continue to face significant hardship (Wells-Dang et al., 2015).

Instead of small farmers and sustainability being at the centre of agricultural development, farmers are encouraged to link with agri-business and traders (Anon, 2012). Small-scale producers are generally excluded from agricultural plans and policies. The system benefits farmers who are already better off, and extension staff and services are not gender or culturally sensitive (Anon, 2012). Without being presented alternatives, farmers abandon customary practices to implement high input models, which can increase livelihood insecurity and inequality. Seventy percent of the extension services budget goes into promoting high input farming models (Anon, 2012). Meanwhile, a total of 319 state-owned enterprises still keep a leading role in the economy and manage 2,853,164 ha of agricultural and forest land nationwide (Wells-Dang et al., 2015).

Ongoing conversion of agricultural and forest land for urbanization and industrialization will continue to put pressure on areas where customary practices have managed to survive.³¹ Tenure arrangements are needed which respect customs but which allow for changes that show the government these practices can contribute to national development. Without a clearer understanding of the contribution customary practices can make, an informant felt the government will not consider their recognition a priority. This highlights the important facilitating role national and international organizations can play providing advice and support and raising awareness of international best practice such as those outlined in the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT). A key issue, though, is the limited number of technically proficient organizations that can support communities to adapt their customary practices to new contexts.

Given the conflicting demands on limited land, some informants felt that economic arguments are needed for any serious consideration of customary tenure. This perhaps encapsulates both the opportunity for customary practices to demonstrate their capacity for good management, and the economic competition they face. Customary management can offer considerable benefits for development approaches prioritizing social, environmental as well as economic criteria. With increasing large-scale agribusiness, customary land users will need to link with other smallholders to strengthen their rights and voice to hold on to their land (Wells-Dang et al., 2015). A further issue is that while reallocation of land currently controlled by state owned companies is still possible, this will become more difficult if international agri-businesses obtain land use rights (Wells-Dang et al., 2015). This highlights the importance of trade agreements such as the Trans Pacific Partnership that is now potentially being reinvigorated. In this scenario, it becomes especially important to strengthen the customary rights of smallholders and forest users to prevent further loss of their land to foreign investors.

Finally, a major barrier for the recognition of customary tenure in Vietnam is that the commune is the lowest administrative unit. The village has no legal status. While the government has more recently recognized the value of community forms of management, these have been seriously weakened and rebuilding them will take special effort and piloting. Recreating concepts of community management that follow customs and are clearly differentiated from models of collectivisation is an important first step. Strong, well-organized communities have been able to claim back forest land allocated to households. In other cases, villages have been able to sign a management contract with the district. Co-management of forest land involving several villages working together with the state also needs to be further explored.

³¹ Vietnam plans to convert around 300,000 ha of rice fields to urban, industrial, and service activities by 2020 (Anon, 2012).

Changes in Customary Tenure Systems and Implications for Ethnic Minorities and Women

A major factor that has impacted customary land management and tenure security of villagers is the increasing number of outsiders involved in forest land use and management (SPERI/CODE, 2011). The replacement of community management and exploitation of forests for commercial gain by state enterprises has led to illegal logging becoming a serious issue (CIRUM, 2012a). The result is that neither customary nor state management functions effectively, which is the worst possible outcome for the management of resources (ibid).

In particular, management by Commune Peoples' Committees has undermined traditional authorities' knowledge about resource use and tenure, forest boundaries, etc., and has disregarded what is often more appropriate management and tenure arrangements (de Queiroz et al., 2013). The allocation of forest-use rights, often to selected households or groups, has also not been accompanied by enforcement powers and therefore has undermined community-level institutions (ibid). Contracting by state enterprises and management boards to a few individuals or families in the community to protect the forest instead of allowing the community to organize the task, has often created internal disputes. Not allowing traditional selection of land in cases of resettlement and disempowering traditional community organizing and self-help have further fuelled tensions.

Communities themselves, however, are also changing and customary practices have to adapt and evolve. Communities that have become ethnically mixed as a result of displacement need internal discussions about the continuation of customary practices and the meaning of social legitimacy under new contexts. This also requires ongoing negotiation and redefining of roles with state authorities. Younger generations within ethnic groups are also becoming more dependent on outside goods and support, often contradicting local customs that promote self-sufficiency (CIRUM, 2012a).

Commercialization of forest products, including by ethnic minorities, is a further issue. In tourist areas like Sapa in the North close to the Chinese border, plants like cardamom are being cultivated inside forests more intensively and herbal plants are being collected for export to China and for herbal baths for tourists (CIRUM, 2012a). As a result, forests are being heavily exploited.

In the Central Highlands, the establishment of new economic zones has attracted an influx of Kinh migrants from the lowlands in search of economic opportunities and fertile land (SPERI/CODE, 2011). Between 1976 and 2001 the population of the four provinces of the Central Highlands (Dak Lak, Gai Lai, Kon Tum and Dak Nong) grew from 1.2 million to over 4 million, reducing the ethnic minority groups from the majority to only 25% of the population (Salemink, 2003).³² Conversion of forest and former shifting cultivation land to coffee, rubber, cashew and other commercial crops, has limited poorer minority groups' access to land and turned them into plantation labourers (ibid). This, and the allocation of agricultural land to individual households instead of to communities, means little community forest land remains and internal social relations have been significantly transformed.

³² This was accomplished by complementary policies geared at resettling migrants from the lowlands and the North into so-called New Economic Zones, and programmes to sedentarize the indigenous population (Salemink, 2003).

Rapid economic development has also extended state authority into remote areas, changing livelihoods and management systems and creating winners and losers. Agricultural policy will likely continue to be driven by the need to ‘modernize’, with significant impacts on customary tenure systems (Wells-Dang et al., 2015). Agricultural programmes that will have major impacts, particularly in upland areas, include the ‘New Rural Areas’ (*nông thôn mới*) programme to ‘modernize’ the countryside, the campaign to consolidate land in the form of ‘large plots’ to achieve supposed economies of scale in agricultural production (*cánh đồng mẫu lớn*), and efforts to reduce landholding fragmentation by exchanging and reallocating agricultural plots (*dồn điền đổi thửa*) (Wells-Dang et al., 2015). A policy focus on large-scale agriculture and cash crops will increasingly benefit large companies and a new class of private/public entrepreneurs (Anon, 2012). The success of land consolidation and other programmes will depend on whether and how farming communities can take part and benefit. If these programmes are not supported by adequate safeguards, women, ethnic minorities and other vulnerable groups who do not have secure access to land, capital, and technology, will likely face further indebtedness, dispossession and marginalization.

Given Vietnam’s historical struggles over land, the state and the Party’s legitimacy continues to be rooted ideologically in the principle of equitable distribution of land. Land concentration, landlessness and conflicts, threaten this legitimacy.³³ Vietnam’s development since Doi Moi has demonstrated the capacity of smallholder farmers to drive agricultural growth if they are enabled to do so (Wells-Dang et al., 2015). However, the bias towards industrial development and large scale agriculture will mean that changes will ultimately result in smallholder farmers coming under increasing pressures and facing the potential loss of their land (Wells-Dang et al., 2015). National projects favouring industrialization and urban areas, combined with a lack of customary users’ voice, pose significant obstacles to a fair acknowledgement of customary tenure rights.

Changes Relevant to Ethnic Minority Groups

Customary tenure systems and a reliance on natural resources are often at odds with predominant ideas of economic, cultural and technological development in Vietnam (Baulch et al., 2010). Ethnic minorities and their customary practices are often looked down on by mainstream Vietnamese society and the concept of customary management is mainly used amongst academics and NGOs. For the past 50 years the predominant view has been that ethnic minorities’ customary practices such as shifting cultivation are backward and these groups need to modernize and “catch up” with the majority culture (Salemink, 2003). This has resulted often in inappropriate policies and programmes that have tried to change the cultures of minority groups, including eradicating religious beliefs, “superstitions”, “wasteful” ceremonies, as well as breaking up community longhouses (in the Central Highlands) (Baulch et al. 2010; Salemink, 2003). Forms of development and adaptation based on ethnic minorities’ own culture and customs have been disregarded.

³³ For the period 2008-2014, rates of landlessness were 12-18% in the Central Coast and around 10% in the Mekong Delta and the Central Highlands (Markussen, 2015). Landlessness in the Mekong Delta due to distress sales and indebtedness begins to recall the inequality associated with the colonial and Republic of Vietnam periods (Hirsch et al., 2015).

Poverty reduction programmes targeting ethnic minorities such as the Fixed Cultivation and Settlement Programme have often failed to meet their intended goal because they are rooted in the logic of replacing ethnic peoples' customs and knowledge (Salemink, 2003). State policies have often displaced ethnic minority groups from their ancestral/sacred lands, resulting in a loss of traditional ceremonies which maintained customary forest management (CIRUM, 2012a). Conflicts have escalated due to disagreements and confusion over ownership, management and use rights of forest land (CIRUM, 2012a). Population pressure and the perception that forests have become public rather than communally owned has resulted in community members breaking customary rules (IUCN, 2008). For many ethnic minority people, understanding individual land-use rights is a challenge. Allocation of what was previously communal land to households has resulted in significant alienation of ethnic minority land, even after issuing red books.

As a result, ethnic minorities have not benefited from poverty reduction programmes as successfully as the Kinh majority have, despite significant public investments and numerous policies. The high rate of poverty among ethnic minorities continues to be one of the most difficult issues facing the country (Baulch et al., 2010). Social, economic and cultural marginalization, geographic isolation, limited access to quality land, and low education levels continue to be major issues which need to be addressed among these groups (World Bank, 2014).

Structural poverty among ethnic minorities is, to a significant degree, rooted in the loss of their land. In Lang Son Province in the Northeast, CIRUM (2012b) found Tay and Nung minority households surviving on an average of 0.12 ha of forest and 0.18 ha of lowlands, while remaining forest land belongs to state forest enterprises, resulting in ongoing conflicts. In Lao Cai, in the Northwest, Hmong minorities were found to have a poverty rate of 70-75%, with 0.2 ha of rice terraces and 0.9 ha of forest per household (ibid). The remaining forest land in that area belongs to the Protection Forest Management Board. In Quang Binh Province (Central Vietnam), poverty rates among the Van Kieu and Ma Lieng minorities were found to be between 60-80%. The average household has 0.15 ha of forest land, insufficient to sustain them, and the government has had to provide subsidized rice. State enterprises and private companies control 91.5% of the forest land in that area (CIRUM, 2012b). Research by CIRUM (2012b) in six villages in the Central Highlands found that only a quarter of the population had sufficient land for cultivation. Country wide, more than 347,000 ethnic minority households lack sufficient production land (Wells-Dang et al., 2016).

To tackle the problem, the government issued Decision 134/2004/QD-TTg (20 July, 2004) outlining policies to provide agricultural and residential land, housing and clean water to poor ethnic minority households. However, the amount of land to be allocated per household of 0.15 ha of double-crop (irrigated) rice paddy land, 0.25 ha of single-crop rice paddy land, or 0.5 ha of cash crop land is too small to meet basic livelihood requirements. A 2012 survey conducted in the Central Highlands by the Consultancy on Development Institute (CODE) found that this minimum area could not ensure subsistence even for experienced Kinh households with high levels of investment. The survey indicated that a Kinh household in upland areas with no rice land needs at least one hectare of cash crop land. Ethnic minorities normally have less intensive investment capacity, and therefore need an area at least one and half or two times higher (i.e. 1.5 - 2 ha of cash crop land per household) (Wells-Dang et al., 2016).

The state's promotion of rubber plantations has also resulted in companies acquiring significant areas of ethnic minorities' customary land (CIRUM, 2013). Displaced households are often forced to sign over their small areas of land to plantations without any input in decisions on the price or the trees they are asked to grow (CIRUM, 2012b). This is shown in a case in the Northwest (Son La, Lai Chau and Dien Bien provinces) where the government persuaded farmers to lease their land to a state rubber company for 30 years (Dao, 2015). Even resettled villagers, who were among the 100,000 minority people displaced by the construction of the Son La hydropower dam, were persuaded to give almost all the land they received as compensation to the rubber scheme in return for shares in Vietnam Rubber Group and low-paid contract work for one family member (ibid).³⁴ Local people found it extremely difficult to resist local officials' persuasion to take part, with some villagers being told their children could not attend school or access the hospital the rubber company had built if they did not agree (Dao, 2015: 357). On agreement, the villagers' red books (LURCs) were kept for 'safekeeping' by district authorities for the duration of the 30-year lease (Dao, 2015).

Building dams and planting rubber and other commercial crops is seen as a way for poor backward upland regions to modernize (Dao, 2015). However, this process means people are being dispossessed without any means to sustain themselves, often forced to resettle into inadequate housing, agricultural and forest land, increasing tensions between communities and companies (CIRUM, 2012b).

The above highlights a significant gap between existing policies aimed at supporting ethnic minorities on the one hand, and actual practice on the other. Where land-use planning exists, it is often carried out with few local government staff, limited funds, poor data, and little or no involvement of local forest users/owners (CIRUM, 2012b; Nguyen, 2005). Poorly mapped and often overlapping village land boundaries and allocated household land creates conflicts between companies and people and within communities themselves. Overlapping forest borders and multiple conflicts increases the difficulty for local officials to implement forest allocation (CIRUM, 2012a). Unclear reporting about forest condition and size also means decision makers do not have accurate information to make good decisions (CIRUM, 2012b). Decrees issued to solve problems often lack instructions on practical implementation and inadequate resources are allocated for the task.

Those with local knowledge and skills in managing and protecting forest, therefore, continue to have little influence over policies and decisions, and they are often uninformed of developments on their land (CIRUM, 2012b). Many minority communities are close-knit and highly egalitarian, and often have traditions of mutual support. These traditions could be built on for appropriate development programmes in minority areas.

³⁴ Before the dam many families had 5-8 ha of farm land, but as compensation received only 1 ha per family, or 0.3 ha per capita or less (Dao, 2015).

Customary Tenure Context for Women

Following the 2003 Land Law, property, including land acquired during marriage, belongs to the wife and husband and LURCs must contain both the wife's and husband's names. However, the percentage of LURCs with the names of both may be as low as 30% in some provinces (de Queiroz, et al. 2013; USAID, 2013).³⁵ Ethnic minority women are even less likely to have their name on a LURC. For example, 36% of LURCs held by Kinh/Chinese over annual agricultural land were found to be either held in the name of women or jointly held with the husband, and for ethnic minorities the figure was 21% (Anon, 2012).³⁶ Women in general are more likely to depend on customary tenure arrangements, however, LURCs are often required even for short term loans (Anon, 2012).

With more than 12 million women farmers, almost half of working women are self-employed in agriculture (Anon, 2012). Men have more opportunities outside farming as labourers or to migrate. Agricultural commercialization and the increasing size of farms also means women lose ownership over their traditional livelihood activities and have limited opportunities to become involved in new ones. Studies have shown that poor Vietnamese language skills, especially among ethnic minority women, are a barrier to accessing employment opportunities, government and legal services, engaging with markets and receiving social transfers (Baulch et al., 2010).

Women dependent on natural resources are also excluded from government programmes in other ways. The 5 million ha forestation programme, for example, ignored the role of women and their indigenous knowledge of herbal medicinal plants, the importance of NTFPs for generating sustainable incomes, and the role of youth in protecting forests from illegal logging and fires (CIRUM, 2012b). Talk of increasing local community participation in forest management has not yet resulted in concrete changes at the ground level (CIRUM, 2012b).

³⁵ For example, in the case of death of a husband, the son's name rather than the widow's is often recorded on the land-use certificate (USAID, 2013).

³⁶ Differences have also been noted with higher rates of women's names included on LURC's amongst matrilineal ethnic minority groups than patrilineal groups (USAID, 2013).

Land Conflicts and their Resolution

Land disputes are the hottest political issue in Vietnam. From 2001-2010, nearly one million ha of agricultural land was converted to non-agricultural purposes, creating livelihood vulnerability and conflicts (Anon, 2012).³⁷ The mechanism for this is *trung dung* or 'withdrawal' rights over farmland (Gillespie, 2013), which allows the government to acquire land use rights for "socio-economic development for national and public benefits" (Article 62, 2013 Land Law).³⁸ Since the tightening of conditions under which land may be compulsorily acquired in the Land Law, some progress has been made in canvassing local views for new projects (Wells-Dang et al., 2015). However, in practice this information is often not used (ibid). Projects such as urban expansion, roads, hydropower dams, government buildings and mining still fit the criteria of "national interest".

The considerable scope districts have to value land, reallocate, and repossess agricultural land, creates a ripe environment for non-transparent withdrawal of land use rights. Land disputes over expropriation have been most violent in peri-urban areas (Wells-Dang et al., 2015). The acquisition by authorities of one million ha from local farmers with LURCs actually exceeds the 810,000 ha of land redistributed from rich landowners to poor peasants in the period from 1953-1956 under the motto "farms to the cultivators" (Hansen, 2013, see Annex 1).

Expropriation continues to be by far the major cause of household land loss, accounting for 97% of cases (Markussen, 2015). However, the Access to Resources Household Survey reveals the rate of evictions has dropped from around 5% in 2006 to 3% in 2014. As Markussen (2015) points out though, even 3% over a long period creates tenure insecurity and impacts on land use choices. Moreover, while expropriations dropped in the Red River and Mekong Deltas, they increased in the North and the Central Highlands (ibid).³⁹ This means tenure insecurity seems to be rising in the poorest regions most dependent on customary arrangements (Markussen, 2015). Survey data from 2012 also confirms that the poorest members of society who rely most on land and forest resources are relatively more exposed to expropriation (ibid).

In 2014, 90% of the complaints to the government and 98% of complaints to MoNRE were related to land disputes (Wells-Dang et al., 2015). In rural areas, restricted access to productive land by state-owned or state-connected farms and forest enterprises has resulted in up to one million land-related disputes since 2003 (Wells-Dang et al., 2015). The majority are related to forced displacement, poor compensation, perceived official corruption and impoverishment. The National Assembly's Standing Committee reports that only around half of the reported one million cases were handled "correctly, or partially correctly" (ibid: 3). This highlights a lack of independent courts that are able to enforce land rights, as well as the limited legal capacity of officials dealing with land disputes. Under Article 203 of the 2013 Land Law, disputes over land

³⁷ From 2001 and 2005, for example, 366,440 ha of farmland was converted to industrial and urban land, affecting 627,495 households, including 950,000 labourers and 2.5 million farmers (Hansen, 2013).

³⁸ The government has incrementally offered compensation payments closer to market prices (Gillespie, 2013). However, studies by the World Bank have shown that land values are still well ahead of compensation payments (ibid).

³⁹ This needs further investigation but possible reasons include displacement caused by hydropower dams in both areas, and the expansion of plantations such as rubber in the Central Highlands and to a lesser extent in the North.

with a certificate can be taken to court. For land without a certificate, resolution is at the Commune Peoples' Committee, then the District Peoples' Committee or the courts based on civil litigation legislation.⁴⁰

The 2013 Land Law includes provisions for the right to information and transparent decision-making, to enable the expression of people's views, and to establish more transparent methods for addressing land issues. Since the Land Law's passing, there has been a reduction of legal cases (Wells-Dang et al., 2015). Articles 199 and 200 also allow for local level monitoring of official land management actions, including land certification, acquisition and land use planning. Reports of irregularities are to be submitted to relevant agencies. Legitimate organizations can be requested to supervise. The state agency is required to follow up and report to the person who sent the report. To date, implementation of these provisions has been dependent on local authorities' interpretation of what will be monitored and how, and their interest and access to information (ibid). Commentators have pointed out there are few tools to strengthen and facilitate peoples' participation. Despite good intentions and some indications of improved land governance since 2013, it seems the same underlying problems continue, except perhaps there is more awareness of rights among the wider population and more knowledge of how to file complaints (ibid).

Government resolutions of forest and land conflicts often result in win-lose situations. In such cases legal rights generally prevail over claims of customary tenure. Development pressures make it difficult for Vietnamese farmers to exercise their rights to protect their land. FAO and RECOFTC have been trying to introduce more collaborative conflict transformation approaches.

A lack of public interest lawyers in Vietnam willing to assist communities also hinders the resolution of conflicts. Most of the 6,000 practicing lawyers and 4,000 law school graduates per year are not aware of or interested in public interest work due to the limited career options available, as well as the complex nature of land conflicts. Case work, providing evidence and using the legal framework, however, could help to develop legal tools for defending local peoples' rights and to present cases to higher levels (Interview 8, 2015). It is important to highlight the difference between grounded reality on the one hand and law and policy on the other, and to use the media to publicize land and forest issues.

With few other avenues, farmers have tried to demonstrate and resist. Some protests have gained national prominence but many go unreported except through unofficial media channels. Protests have mixed outcomes, though there are indications of a change of government approach in a recent case.⁴¹ Increasing land protests, however, run the risk of tighter controls and limiting rural peoples' options in seeking redress and having their complaints heard (Wells-Dang et al., 2015).

Community Conflict Resolution and State Law

A major problem is that local people have limited knowledge of state law and their rights. Local government authorities also have limited capacity and access to information to use state law to

⁴⁰ There has been some criticism that the 2015 amendments to the Civil Code fail to define responsibilities of courts and other competent agencies in accepting and settling civil cases. Source: <http://vietnamlawmagazine.vn/vietnams-draft-civil-code-10-debatable-issues-1213.html>

⁴¹ See: <https://www.equaltimes.org/land-disputes-in-vietnam-the#.WT9mzoWcHbJ>

effectively resolve conflicts. In addition, community customary regulations to manage local resources need to be approved by the District Department of Justice. The district often does not understand the particular management/cultural practices of the local community and deletes articles to comply with national law. For example, in state law traditional village leaders have no right to issue fines, which means offenders cannot be sanctioned inside their own community. This also puts government officials in the position of deciding what is 'good' and 'bad' customary practice.

Imposing state law also means that penalties for forest violations are in money terms but customarily fines are in terms of domestic animals. Often minority groups feel that state law does not consider compensation to the victim, or restoring community harmony to the same degree as customary law does. Conflict resolution following state law can therefore leave conflicts simmering. At the same time, penalties following customary law can sometimes be too strict and there is a need to adapt them to be more in line with state law. Building awareness of the usefulness of customary law amongst higher levels of government is important and could be part of advocacy, for example, around the revision of Forestry Law.

The Defence of Customary Tenure

Successful cases of communities defending their rights and getting some of their land reinstated have required building close collaboration with local authorities, informing local people of their rights, and helping them to negotiate legal and administrative processes. Also important is educating villagers of their rights following land allocation, ensuring LURCs are issued, and supporting the local management of forest land.

Success in allocating land to communities has also resulted from using legal articles to convince hesitant local officials that the law supports the allocation (Interview 7, 2015). In this sense it is important to use positive aspects of law and policies. This approach is facilitated by the openness to pilot activities in Vietnam. Incrementally building evidence that can be shown to other authorities can be a way of developing better laws-in-practice. As one informant pointed out, the key issue is not whether the law is good or bad but how well it is implemented (Interview 8, 2015). Despite efforts to improve legislation, much depends on local government actors and on access to information by land users. Many Vietnamese government agencies have to understand and implement a complex array of policies and laws, which ultimately leads to weak enforcement.

Some people consulted for this study expressed that there is no united movement that will lead to change for stronger recognition of customary land tenure and that co-management type arrangements could hold more promise (Interview 6, 2015).⁴² Change will probably come one case at a time, with potential to result in a domino effect.

⁴² In Dak Toh province, for example, a Forest Stewardship Council member company with a management plan is providing funds to the local community to protect the forest. Communities have the right to harvest timber for domestic use.

Opportunities for Improved Customary Tenure Recognition

National Law and Policy Reform

Revision of the Law on Forest Protection and Development

There are possibilities to increase the recognition of customary tenure rights in the current revision of the Forestry Law. Forest management by communities is a main policy consideration in this process. NGOs, academics and other stakeholders have been engaged in efforts to strengthen the recognition of forest land tenure rights and customary forest management of ethnic minorities and local communities in Forestry Law drafts. Collecting evidence and providing clear information on customary tenure systems, community land and forest uses and forms of community organization has been an important part of advocacy efforts. Communities' commercial activities, including their rights and benefits in natural forest areas bordering protection and special-use forests, are also being discussed.

New Forest Management Mechanisms

New forest management mechanisms such as PFES, REDD+ and FLEGT offer potential for greater recognition of customary tenure, as they require that benefits accrue to local people. As part of implementing these agreements land and forest allocation is needed. PFES and REDD+ schemes will require identifying who actually manages the forest. Also important is ensuring that funds go towards forest protection and compensating communities for their protection and management roles (see 'Recognition of Customary Tenure in Forest Areas' and Annex 2 for more detail on these mechanisms).

Reallocating Forestland from State Forest Enterprises to Communities and Households

As discussed in previous sections, there are also important opportunities in the forest sector reform process to advocate for the reallocation of forest land controlled by state forest enterprises to communities based on their customary tenure. This also includes exploring opportunities to allocate forest land to communities and households that has already been reallocated from SFES and is now managed by the communes (see Recommendations for Policy Influence below).

International Agreements

Supporting Smallholder Farmers

International and regional integration will continue to have a major impact on land and forest management with trade and investment pacts such as the possible reinvigoration of the Trans-Pacific Partnership, the EU-ASEAN Free Trade Agreement, and the ASEAN Economic Community, creating an uncertain future (Wells-Dang et al., 2015). Vietnam's recognized comparative advantage in agriculture does offer some possibility that these agreements may expand thinking away from a single-minded focus on industrial development (ibid). However, international investors will continue to be interested in land and this will undoubtedly have impacts on customary users. Some of these international agreements will require stronger social

and environmental safeguards and this could be an opportunity to promote the implementation of the VGGT and other relevant international instruments.

International integration means that key questions of whether small and medium farmers will continue as a cornerstone of agriculture will need to be addressed. Supportive government policies and even new-style agricultural cooperatives can offer local solutions that accommodate smallholders while developing more commercial agriculture. One example is households agreeing to contribute finance and land and making use of common input and output markets (Wells-Dang et al., 2015). In this model, farm households use their own land and land-use rights remain unchanged, while cooperatives concentrate on input and output services. This model of farmer-led cooperatives would connect households both horizontally and vertically for access to markets, reducing production costs, and increasing productivity (ibid).

Another example is farmer associations which include landless people, being formed by Khmer people in the Mekong Delta. For example, ten families might own land and there may also be five landless families in the association. These landless families have a stake in and gain their livelihood through the association. These kinds of models developed by local farming communities could be further investigated and supported.

Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT)

The internationally agreed VGGT guidelines offer a further framework and reference point for discussing customary tenure. A review, supported by the FAO, examining the alignment of Vietnam's forestry legal framework with the VGGT found several gaps in Vietnamese law. The review identified 75 relevant pieces of legislation. A forestry expert noted the process was useful to identify the differences between formal and customary tenure and how to integrate this into policy. The process also helped to build understanding of customary tenure concepts from a legal perspective (Interview 19, 2015).

The NGO Forest Trends also carried out a study in six provinces looking at the degree to which forest land allocation conforms to VGGT principles. This was part of a broader UNDP study to assess whether forestry regulations, institutions and action plans are in line with the Cancun Agreements.⁴³ This study also found that Vietnamese laws and regulations diverge from VGGT guidelines in a number of areas. The study recommended, among other things, to revise several policies including Decree 178 that outlines benefit-sharing mechanisms for protecting forest (Interview 11, 2015). FAO is also looking at whether forest land allocation, leasing and contracting in Vietnam is based on the five main VGGT principles for state actors and non-state actors (Interview 11, 2015).

The government forestry expert above further noted that in Vietnam state ownership provides rights to all citizens to use land and the government issues technical guidelines to manage these resources. This makes Vietnam a special case with regards to land sales, transfers, and leasing, as they all have slightly different meanings in the Vietnamese context. The official felt that it is necessary to adapt the VGGTs to this particular context (Interview 19, 2015).

⁴³ The Cancun Agreements are international decisions to address and speed up the global response to climate change. They incorporate principles for implementing REDD+ programmes and to guide forest protection and development activities, including safeguards supporting indigenous peoples' rights, knowledge and participation.

Another informant noted that the VGGTs are voluntary and a level of commitment from government is necessary for them to be seriously implemented (Interview 10, 2016). By contrast, REDD+ safeguards being developed will require a level of community engagement/benefit sharing, and other agreements like the FLEGT Voluntary Partnership Agreement also have more stringent compliance requirements (see Annex 2). NGOs recognize the usefulness of the VGGTs as offering a consultation channel with different stakeholders. However, as noted by the informant, the application of VGGT principles depends partly on NGOs and lawyers finding ways to effectively promote international instruments like the VGGT in their advocacy.

Key Stakeholders

Overall, policy change in Vietnam requires building relationships, and an understanding that considerable time may be needed for advocacy to result in desired changes. To influence legislation and government functioning, NGOs, development partners and other organizations try to work with 'reform champions' within and outside the government, including: present and former senior government staff, National Assembly representatives, members of government institutions, academia, and experts. It is important to build on these networks for discussions around customary tenure.

National Assembly representatives, relevant committees and the Ethnic Minority Council are key groups because the Assembly is somewhat more sensitive to public opinion (Wells-Dang et al., 2015). The Committee on Science, Technology and Environment has recently stressed the need for state authorities to enhance the rights of people when making decisions. This includes giving priority to poverty alleviation, and people's participation and equity in land allocation. However, despite the Assembly's important oversight role and interest in forestry sector reform, it has limited information in an accessible form about the potential benefits of recognizing customary tenure.

The Department of Policy and Legislation within GDLA is a key agency as it deals with all issues related to land law. This Department led the drafting of the 2013 Land Law, and there was a genuine attempt to carry out reform for stronger community rights, better dissemination of local people's rights and more open and transparent land allocation. There are opportunities to collaborate with this Department in resolving land issues relevant to customary tenure recognition.

MARD is mandated to ensure the rights of smallholder farmers and forest users and links need to be built with this ministry. Engagement with the Vietnam Administration of Forestry (VNFOREST under MARD) is also important because it is drafting the new Forestry Law. A former Vice Minister of MARD has been leading work to develop a National Forest Users Association. NGO involvement with VNFOREST to assist with the development of this Association potentially opens the door for local level associations. MARD also has plans to restructure the forestry sector to improve its quality, efficiency and effectiveness.

The Committee for Ethnic Minority Affairs (CEMA) is also a key government stakeholder. Peoples' Councils at the national, provincial, district and commune level are another important stakeholder group with oversight of state policies and their implementation.⁴⁴

Mass organizations such as the Fatherland Front also have a role monitoring land allocation programmes, and it is important to consider how to engage them. The Fatherland Front has developed a monitoring framework that could be adapted to allow local communities a monitoring role in land allocation programmes. The provisions in the 2013 Land Law allowing monitoring by civil society of government land/forestry programmes could help to ensure local traditions are taken into account in land allocation. In this sense, it is important to identify local community leaders who can play these kinds of roles.

Local authorities, including local members of mass organizations, are also important actors in supporting the rejuvenation of customary practices. Many local authorities are ethnic minorities and they often hold important customary roles in their own communities (CIRUM, 2012a). They can help in developing processes for integrating customary practices into the formal statutory framework.

The Vietnam Academy of Social Sciences' Institute of Anthropology, the Faculty of Anthropology at Hanoi University, the University of Social Sciences, a policy institute inside CEMA, and the Vietnam Academy of Forestry Science within MARD are all involved in research relevant to customary tenure. These institutes advise government agencies, including the Politburo, about the role of customary practices. An Anthropology Institute senior researcher noted that most government agencies recognize the role of customary law and the impact that economic development has had on minority communities (Interview 18, 2015). A specialized training course implemented by CEMA, for example, looks at the role of customary law and local knowledge in development. Pilot activities supported by UNESCO in Dak Lak and Son La provinces have looked at incorporating traditions and culture into development processes.

NGOs have also carried out several studies into the customary law of different ethnic groups.⁴⁵ Researchers are thus important stakeholders and partners. Given the growing acceptance of community management over the past five years, the task now is to prepare this research for policy makers. There is also a need for pilots that can be used for learning exchanges.

⁴⁴ These are elected every five years and have the function to appoint and oversee Peoples' Committees and to monitor the implementation of the government's strategic plan.

⁴⁵ In 2010, UNDP and SPERI published a study on the use of customary law for community development. In 2012 CIRUM carried out research into the customary law of the Dzao and Thai people in Lao Cai and Dien Bien provinces (CIRUM, 2012a). Research into customary law was also recently carried out by LISO with Thai ethnic people in Nghe An province.

Recommendations for Policy Influence

Facilitate Input into the Revision of the Law on Forest Protection and Development

Several strategies could influence stronger recognition of customary tenure as part of the revision of the Forestry Law. Some key actions include:

- **Consultations with community level forest users** – Arguably, one of the most important strategies would be to ensure adequate consultation with forest users so their voice is reflected in the new law. This is particularly important in forested upland provinces where the vast majority of Vietnam's poor and ethnic minority groups are located and where competition for land and resources between companies and local people often escalates to conflicts. This could build on the consultation process developed during the drafting of the 2013 Land Law, which contributed to the Law being more responsive to community concerns (Wells-Dang et al., 2015). Experiences of the consultations carried out for the National Land Use Policy in Myanmar could also be drawn on (see Forbes 2017). One informant suggested holding more community meetings and fewer national level workshops to address a general problem of policy advocacy trying to influence the government often without knowing what the community really wants (Interview 8, 2015). Communities also need information to be able to provide their own recommendations.
- **Conduct legal analysis to clarify the issue of community management** – A key issue is recognition of communities as a legal entity. Village communities are legally recognized but developing simple procedures for recognizing communities based on local customary practices, could support their ability to claim community management rights over forest and forest land. Legal recognition in the Forestry Law could create openings for officially recognizing other forms of customary community management.

Legal analysis of customary community management could include analysis of laws of other ASEAN countries such as Indonesia and the Philippines to understand how customary tenure can be formally recognized as split forms of ownership to allow for access to certain areas, co-management, etc. Examining national laws, policies and practices against international instruments like the VGGT could also help in developing rules, standards and procedures. Analysis could also suggest ways to effectively link with other national laws, for example, with the Peoples' Council Law, which oversees the implementation of laws. Legal analysis should include discussions at the grassroots to understand how laws are actually implemented.

- **Review of Forest Land Allocation and MARD's Community Forestry Pilot Programmes** – A comprehensive evaluation, involving government stakeholders, of the impact and results of the forest land allocation programme could identify improvements to the process. Community level consultations could assess land areas allocated, numbers of people involved, cooperation issues with the local authorities, and overall impact on community livelihoods and wellbeing. The aim would be to provide suggestions for strengthening local participation in forest land allocation and for decentralized forest management. A review of MARD's Community Forestry Pilot Programme could also draw lessons, including strategies which incorporate indigenous peoples' knowledge for NTFP management. These reviews could strengthen customary users' rights to manage forest areas.

- **Customary tenure and decentralization** – As seen with the recentralization that occurred in the 2013 Land Law, the ideal degree of central control has also been an important debate in the Forestry Law revision. Suggestions are needed on how management authority might be allocated to customary communities without the central level feeling a loss of control. The delicate issue of supposed threats from community autonomy also needs to be addressed through discussions about the importance of 'localness' and the role that customary tenure institutions and community-based resource governance can play in enhancing the socioeconomic development and wellbeing of ethnic minority peoples.
- **Decentralize approval of customary regulations** – Decentralizing approval of village customary management regulations to the commune level (instead of the district) could also open the legal space for customary institutions. Better recognition of customary law would go a long way in encouraging community self-enforcement of land and forest areas. It would also allow communities to organize and share management tasks with state institutions.
- **Generate evidence to inform policy dialogue** – The above policy discussions require evidence from the ground that can justify support for customary tenure. Demonstrating improved livelihoods and better management of land and forests can strengthen alignment with government policy.

The geographic and ethnic diversity in Vietnam problematizes a blanket approach to policy development. Collecting evidence from different agro-ecological and ethnic regions of the country can demonstrate the importance of understanding different contexts and bring this into policy debates. Input from communities and local government in different regions can identify how to integrate customary management for forest protection to benefit local people. From this, some general management rules/scenarios could be developed for each area and for broad categories of similar ethnic groups. Studies could also examine traditional land and forest management, what practices could be adapted, how culture can be protected and livelihoods improved, and what role indigenous knowledge can play in this. Lessons from other countries could be collected for better understanding.

In addition to studies about the role of customary tenure, there is also a need to recognize the migration and mixing which has been underway for a number of years. Throughout the country, the composition of groups is changing. Studies and recommendations are needed about how to deal with this.

- **Pilot activities for policy recommendations** – Pilots can help to test new approaches to inform policy development and implementation. Existing pilots need to be identified and new pilots could also be established. Pilot activities could include developing procedures for consultative forest management planning and benefit-sharing, modalities for shared local forest governance, environmental service contracts with villages for ecosystem service payments and REDD+ implementation, and monitoring collaboration between communities and communes, SFEs or FMBs. Piloting transparent and participatory reallocation of forest land previously managed by SFEs/communes can also be an effective way of developing guidelines and building the competency of local authorities to ensure allocation is both in line with government policy and responds to local needs. Benefit sharing models and performance-based contracts for the provision of forest ecosystem services and carbon capture, could also provide space for communities to adapt programmes such as REDD+ to their own customs (CIRUM, 2012a).

Allocation of Forest Areas Controlled by Commune Peoples' Councils

Much of the two million hectares of forest land managed by the government at commune level is at risk of being handed over to companies. An assessment is urgently needed of the forest areas that communes manage throughout the country and how these lands could be allocated to communities and households. This would include understanding what support this will require because of the lack of government funds for forest land allocation.

- **Strengthen community level associations** – Supporting community level associations of forest users could be explored as a means of strengthening the voice and capacity of ethnic minority communities and women to meaningfully participate in forest land allocation, as well as community forestry and community protected areas initiatives. This could also lead to co-management arrangements between communes and local associations to manage forest areas controlled by the CPCs. While some organizations are supportive of the Vietnam Forest Owners Association (VNFOA), others see this platform as dominated by the big forestry companies, Forest Management Boards and wealthier forest owners. Local level associations with legitimate community level representation are thus needed to ensure the interests of local forest users are adequately represented vis-à-vis other interests, and to ensure they are able to protect their rights and realize the benefits from forest ownership.

Multi-Stakeholder Alliances

MRLG could play a useful role in convening policy think tanks to discuss lessons from the ground for policy uptake. This could help to develop coherent messaging. The culture of holding seminars and discussions on topics is not strong in Vietnam (Interview 10, 2015). However, academia is respected. Discussions could be facilitated between academics, senior government personnel and some NGOs.

Advocacy messages

Socialist Traditions

Reference could be made to Ho Chi Minh's statements that everything must be done for and with the people. One strategy could be to show evidence that many farmers are still struggling, and that some policies and their implementation are not working for the people. Reference could also be made to the idea of land as a social good, even in the context of increasing private land markets. A GDLA representative explained that the 2013 Land Law tries to promote this idea. This can at least question the commodification of agricultural land and help to promote customary arrangements.

Climate Change

Vietnam is one of the world's five most vulnerable countries to climate change and natural disasters (de Queiroz et al., 2013). Economic shocks from international integration could also be significant in the future. Piloting "ecosystem adaptation" activities that incorporate customary knowledge to build resilience could be promoted in critical watershed areas to demonstrate the potential.

Community Empowerment

Adapting Customary Tenure to New Contexts

Community strategies are needed for adapting customary arrangements to new contexts. This includes understanding how customary governance structures can be used for consultation, information dissemination, and reviving customary management. An example is herbal healers' networks and the concept of 'herbal forests'. This can extend the concept of religious forests that is already recognized in the 2013 Land Law. This also ties in with work to strengthen the recognition of ICCAs (see below).

A better understanding is also needed of traditional self-help to counter problems of increasing community dependence on government support. This can help to strengthen communities' own structures and decision-making. It requires awareness-raising of community rights and holding community discussions about what they can do to strengthen and maintain their customary practices. Innovative tools and mechanisms for closer cooperation between formal and local institutions are also needed (CIRUM, 2012a).

Strengthening Recognition of Indigenous and Community Conserved Areas (ICCAs)

An ICCA Working Group has been established in Vietnam to promote policy around ICCA recognition. Consultations with communities are needed about strengthening recognition and management of ICCAs (mountains, forests, lakes, streams and rivers, burial sites, worship places, etc.) and delineating roles between communities and government agencies. Pilots in the community management of cultural sites could be considered. At present community sacred forests are treated as special-use forests or sometimes they are not recognized or protected at all. Article 160 of the 2013 Land Law which recognizes and protects "land used for belief practices" can lend legitimacy to claims. The possibility of expanding the Cultural Heritage Law to include customary management of cultural sites could also be explored.

Incorporating Customary Management into the Forest Land Allocation (FLA) process

FLA should be seen as a process for strengthening customary management and for raising awareness of laws and people's rights. Land allocation work (e.g. boundary delineation, demarcating and allocating land) is often contracted out to a company. Given the pressure on land and resources, communities need support to be able to negotiate with government authorities and outside actors to strengthen their customary claims. Customary leaders also need to understand state laws and find appropriate ways to incorporate this into customary legal processes. In short, there is a need to even the power dynamics for collaboration with local authorities over land and forest conflicts.

Recognizing Local Conflict Resolution Mechanisms and Providing Legal Assistance

Efforts to develop effective conflict mediation processes that incorporate a cultural element could be considered. The 2014 Joint Circular recognizing the role of customary leaders provides an opportunity to formally acknowledge their role. Devising methodologies for incorporating customary practices in conflict resolution could be an important part of community level networking (see below). Exchanging experiences between customary leaders about long-term or reoccurring conflicts could help in developing a cultural element to conflict mediation processes because these types of conflicts often occur when communities have a strong customary attachment to a certain area. These conflicts will not be resolved until this cultural attachment is recognized and respected

Legal assistance to communities is also needed to solve land disputes with outsiders. Developing legal test cases in resolving land conflicts and recognizing customary tenure can provide evidence for lawmakers and judges. Assisting communities to represent their cases in court could be a powerful tool to influence lawmakers. Support could also be considered to develop a network of public interest lawyers with expertise on land and forest issues.

Facilitating and Strengthening Community/Grassroots Networking

Support is needed to strengthen community level networks and explore how these can function effectively in the Vietnamese context. Working with existing networks and building on consultation processes for the Forestry Law revision is important. So too is strengthening networks of community land and forest managers to exchange information and experiences related to the maintenance of customary practices, resolving land and forest conflicts and strengthening implementation of laws. Farmer Associations developed by Khmer in the Mekong Delta, described earlier, is an example of traditions dealing with landlessness and adapting to changing circumstances. These adaptations can provide the basis for joint learning.

Conclusion

This study has highlighted the dynamic and evolving nature customary tenure in Vietnam. It has also drawn attention to the varied nature of customary tenure arrangements and the complexity of dealing with these variations at the state level. A balance of overall policy and local level adaptation is needed to ensure policy applies to diverse contexts. In this sense, it is important to consider the role customary tenure can play in fitting national policy to local contexts and what forms of decentralized management can accommodate this.

The increasing pressure on land and resources requires new strategies and collaborations for strengthening governance structures, resource tenure rights, and livelihoods. Local communities increasingly realize that they need the support of local authorities, forest rangers, etc. for the protection of their resources against outside interests (CIRUM, 2012a). At the same time, government officials also need to strengthen their knowledge and capacity to work effectively with local communities (SPERI/CODE, 2011). The integration of customary and formal management is happening in minor ways throughout Vietnam, and the task is to understand how this is occurring, what the results are and what support is needed. This highlights the need to better understand local level practices and contexts to achieve harmony and complementarity with formal legal and policy processes.

Acceptance and recognition of customary practices is also linked to prejudicial perceptions of ethnic minorities (SPERI/CODE, 2011). Overcoming these perceptions is key for gaining greater recognition of customary tenure, for promoting positive community development, and for strengthening local rights to access and manage land and forest resources. Research has demonstrated that many communities wish to continue their customary management. Given, ongoing market driven changes and present policy orientations, there is a risk of loss of customary practices and attention is needed for their strengthening and revival (CIRUM, 2012a). The legal recognition and strengthening of customary tenure and related institutions ultimately offers the potential for achieving more equitable development, better land and forest management and solutions for new problems such as climate change.

References

- Akram-Lodi, A.H. (2005). Vietnam's agriculture: processes of rich peasant accumulation and mechanisms of social differentiation. *Journal of Agrarian Change*, Vol. 5(1), pp. 73-116.
- Anon (2012). Internal document.
- Baulch, B., Nguyen, H.T.M. Phuong, T.T.P. and Pham H.T. (2010). Ethnic minority poverty in Vietnam, Working Paper No. 169. Chronic Poverty Research Center Manchester, UK, Center for Analysis and Forecasting Vietnam Academy of Social Sciences Hanoi, Vietnam and National Economics University, Hanoi.
- Callahan, R. (2004) Vietnamese Land Reform: the Domestic Impetus to Communist Compromises at Geneva. Honors Projects, Paper 17. http://digitalcommons.iwu.edu/history_honproj/1
- CEPF (2012). Ecosystem Profile Indo-Burma Biodiversity Hotspot 2011 Update. CEPF, Washington.
- Cima, R.J., ed. (1987) Vietnam: A Country Study. Area Handbook Series. Washington: GPO for the Library of Congress. http://cdn.loc.gov/master/frd/frdcstdy/vi/vietnamcountryst00cima_0/vietnamcountryst00cima_0.pdf
- CIRUM (2012a). Customary Law in Forest Resource Use and Management by Dzao and Thai people. The Case of Muong Phang and Ta Phin Communes in North-West Vietnam.
- CIRUM (2012b). Forest Peoples Land Rights Network (LandNet) 2014-16 Program, CIRUM, Hanoi.
- CIRUM (2013). Weak governance and the deliberate exclusion of local forest people leaves critically important forest unprotected. Culture Identity and Resources Use and Management (CIRUM), Hanoi.
- Dao, N. (2011). Damming rivers in Vietnam: A lesson learned in the Tây Bắc (Northwest) Region. *Journal for Vietnamese Studies*, Vol. 6, No. 2, pp. 106–140.
- Dao, N. (2015). Rubber plantations in the Northwest: Rethinking the concept of land grabs. *Journal of Peasant Studies*, Volume 42, Issue 2, 2015, pages 347-369.
- de Queiroz, J., Griswold, D., Tu, N. D. and Hall, P. (2013) Vietnam Tropical Forests and Biodiversity Assessment □ 2013, USAID, Hanoi.
- Forbes, E. (2017). Civil Society Participation in Land Policy Making: the innovative experience of Myanmar's pre-consultation on the National Land Use Policy. MRLG Capitalization Note Series #2. Vientiane & Yangon: Mekong Region Land Governance, Land Core Group and Loka Ahlinn. <http://mrlg.org/resources/civil-society-participation-in-land-policy-making-the-innovative-experience-of-myanmars-pre-consultation-on-the-national-land-use-policy/>
- Gillespie, J. (2013) Vietnam's land law reforms: radical changes or minor tinkering? Monash University, East Asia Forum <http://www.eastasiaforum.org/2013/05/14/vietnams-land-law-reforms-radical-changes-or-minor-tinkering/>
- GIZ/MARD (2010) Forest Protection, Biodiversity Conservation, and Environmental Services Program, in Vietnam Forest Sector Progress Report 2006-2010, Chapter 8, pp. 128-152.

- GoV (2001) Decision No. 178/2001/QĐ-TTg on the Benefits and Obligations of Households and Individuals assigned, leased or contracted Forests and Forestry Land, Hanoi. <http://policy.mofcom.gov.cn/english/flaw!fetch.action?id=37c43690-cdc5-4450-9116-389d74ac633c>
- GoV (2004) Law on Forest Protection and Development (No. 29/2004/QĐ11), Hanoi.
- GoV (2006) Decree No. 23/2006/ND-CP of March 3, 2006, on the implementation of the Law on Forest Protection and Development, Hanoi.
- GoV (2013b) Land Law, No. 45/2013/QĐ13, Hanoi.
- GoV (2013a) Constitution of the Republic of Vietnam, unofficial English translation by International Institute for Democracy and Electoral Assistance.
- GoV (2015) Civil Code of Vietnam, Law No. 91/2015/QĐ13, Hanoi.
- Hall, D., Hirsch, P., and Li, T.M., (2011). *Powers of Exclusion: Land Dilemmas in Southeast Asia*. Honolulu, University of Hawaii Press.
- Hansen, K., (2013). Land Law, Land Rights, and Land Reform in Vietnam: A Deeper Look into 'Land Grabbing' for Public and Private Development. Independent Study Project (ISP) Collection, Paper 1722. http://digitalcollections.sit.edu/isp_collection/1722
- Hare, D. (2008), The Origins and Influence of Land Property Rights in Vietnam. *Development Policy Review*, 26: 339–363. <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-7679.2008.00413.x/abstract>
- Hirsch, P., Mellac, M. and Scurrah, N. (2015). *The Political Economy of Land Governance in Vietnam*. Vientiane: Mekong Region Land Governance.
- IUCN (2008) Statutory and Customary Forest Rights and their governance implications: The case of Vietnam, IUCN, Gland Switzerland and Hanoi, Vietnam.
- Ironside, J. (2015) An Overview of Social, Political and Natural Resource Management issues in Vietnam, McKnight Foundation, Minneapolis, USA.
- IWGIA (2015) Indigenous World, 2015, International Work Group for Indigenous Affairs, Copenhagen, Denmark.
- Kerkvliet, B. J. (1998). Wobbly foundations: building co-operatives in rural Vietnam, 1955–61. *South East Asia Research*, 6(3), 193–251. Retrieved from <http://www.jstor.org/stable/23746876>
- Khong D., Pham, D.V. and Dam T. (2015), Customary law and local forestland Thai ethnic group in Que Phong, Nghe An (power point presentation), LISO, Hanoi.
- Lafont, P.B. (1963). Toloï Djuat: Common Law of the Jarai Tribe. *Bulletin de l'École Française d'Extrême-Orient*, No. 51 (Unofficial English translation (Dec. 1995) by Dr. Carol Mortland). Honolulu: East West Center, pp. 1-86.
- Markussen, T. (2015). Land issues in Vietnam 2006–14: Markets, property rights, and investment. WIDER Working Paper 2015/088, United Nations University (UNU) and the World Institute for Development Economics Research (WIDER), Helsinki, Finland.

- Mellac, M. (2011) Land Reform and Changing Identities in two Tai-speaking districts in Northern Vietnam, in Michaud, J. and Forsyth, T. (Eds) *Moving Mountains: Ethnicity and Livelihoods in Highland China, Vietnam and Laos*. Vancouver: UBC Press, pp. 146-172.
- Moise, E. (1983) Land Reform in China and North Vietnam: Consolidating the Revolution at the Village Level. Chapel Hill: University of North Carolina Press.
- MPI (2009). Vietnam – Population and Housing Census 2009. General Statistics Office – Ministry of Planning and Investment, Vietnam. <http://catalog.ihsn.org/index.php/catalog/4626> (Accessed 17/6/2016).
- Nguyen, T. Q. (2005) Trends in forest ownership, forest resources tenure and institutional arrangements: Are they contributing to better forest management and poverty reduction? The case of Vietnam. In, *Understanding Forest Tenure in South and Southeast Asia*. Forestry Policy and Institutions Working Paper, FAO. <http://www.fao.org/3/a-i0440f/j8167e13.pdf>
- Nguyen, T. Q., Nguyen, N. B., Tran, T. N., Sunderlin W., Yasmi, Y. (2008) Forest Tenure Reform in Vietnam: Case Studies From the Northern Upland and Central Highlands Regions. Bangkok and Washington D.C: RECOFTC and RRI.
- Palmer, D., Friscka, S., Wehrmann, B. (2009). Towards Improved Land Governance. Land Tenure. Working Paper 11. FAO and UN Human Settlements Programme. <http://www.fao.org/3/a-ak999e.pdf>
- Prosterman, R. L. (1967) Land Reform in South Vietnam: A Proposal for Turning the Tables on the Viet Cong, *Cornell Law Review*, Vol. 53, <http://scholarship.law.cornell.edu/clr/vol53/iss1/3>, accessed Feb 12 2016
- Ravallion, M., and D. van de Walle (2008). Does Rising Landlessness Signal Success or Failure for Vietnam's Agrarian Transition? *Journal of Development Economics*, 87: 191–209.
- Salemink, O. (2003). Enclosing the Highlands: Socialist, Capitalist and Protestant Conversions of Vietnam's Central Highlanders (Draft). Amsterdam: Vrije Universiteit.
- Sikor, T., and Nguyen T.Q. (2011) Remaining Issues and the Way Forward, in Sikor, T., and Tan, N.Q. (2011) *Realizing Forest Rights in Vietnam: Addressing Issues in Community Forest Management*, pp. 48-56 Bangkok: RECOFTC – The Centre for People and Forests.
- Sikor, T. and Thanh, T.N. (2007) Exclusive versus inclusive devolution in forest management: Insights from forest land allocation in Vietnam's Central Highlands, *Land Use Policy* 24 (2007) 644–653.
- SPERI/CODE (2011). The Role of Customary Law in Ethnic Minority Community Development. Social Policy Ecology Research Institute (SPERI) and Consultancy on Development Institute (CODE), Hanoi.
- Tien, N.D., Vien, T.D., and Lam N. T. (2011) Too Much Focus on Forest Conservation, Too Little on Food. In Sikor, T., and Tan, N.Q. (2011) *Realizing Forest Rights in Vietnam: Addressing Issues in Community Forest Management*, pp 14-17. Bangkok: RECOFTC – The Center for People and Forests.
- To, P. X. (2015). State Territorialization and Illegal Logging: The Dynamic Relationships between Practices and Images of the State in Vietnam. *Critical Asian Studies*, 47:2, pp. 229-252.

- To, P. X., Huu, T. N. and Zagt, R. (2013) Forest Land Allocation in Vietnam: Implementation Processes and Results. Tropenbos International Vietnam. Hanoi.
- To, P. X., Mahanty, S., and Dressler, W.H. (2015) A new landlord' (địa chủ mới)? Community, land conflict and State Forest Companies (SFCs) in Vietnam, *Forest Policy and Economics* 58 (2015) 21–28.
- Truong, L.T. and Genotiva, O.M. (2011) Recognizing Customary Land Rights of Ethnic Minorities. In Sikor, T., and Tan, N.Q. (2011) *Realizing Forest Rights in Vietnam: Addressing Issues in Community Forest Management*. Bangkok: RECOFTC – The Center for People and Forests, pp. 18-22.
- USAID (2013) Vietnam Country Profile: Property Rights and Resource Governance.
- Wells-Dang, A., Pham, T. Q. and Burke, A. (2015). Agrarian Change and Land Tenure in Vietnam through a Political Economy Lens. Conference Paper No.45. Presented at: Land Grabbing, Conflict and Agrarian-Environmental Transformations: Perspectives from East and South East Asia, RCSD, Chiang Mai University.
- Wells-Dang, A., Pham T.Q., Ngo, H.V. (2016) Reform State-Owned Forest Enterprise and Ethnic Minority Land Tenure Security in Vietnam. Hanoi: Oxfam in Vietnam and Centre for Indigenous Knowledge Research and Development.
- World Bank (Bui Quoc Toan, Elke Foerster, Nguyen Van Chien, Thu Nhung Mlo, Thu Nhung Mi Duon Du, Ulrich Apel, Vuong Xuan Tinh) (2004) Vietnam Customary Land Tenure Study. Working Paper 37417, Rural Development and Natural Resources, East Asia and Pacific Region, Washington, D.C., USA.
- World Bank (2014) Taking Stock: An Update on Vietnam's Recent Economic Developments. Hanoi: The World Bank.

Annexes

Annex 1. Historical Background and Context

The political dynamic between land concentration and landlordism on the one hand, and the struggle by peasant farmers for their land rights on the other, has been an important factor in the historical evolution of the Vietnamese state. Vietnam has a long history of rebellion against rich property owners and redistribution of land to the poor. For centuries, Vietnam's social structure was characterized by unequal land relations with bureaucrats and landlords heavily involved in land management (Hirsch et al., 2015). High population densities, however, drove competition for land in agricultural areas such as the Red River Delta well before the French colonial period (ibid). The peasantry carried the burden of increased taxes to support the courts through long periods of dynastic fighting (Cima, 1987).

In the seventeenth century, when Vietnam was divided under the Trinh family in the north and the Nguyen family in the south, heavy tax obligations forced many peasants off their land and led to the concentration of land in the hands of wealthy landowners, the aristocracy and scholar-officials (Cima, 1987). Land concentration increased the tax burden on peasants, as scholar-officials were not required to pay taxes. Starvation and landlessness led to numerous peasant revolts between 1730 and 1770 with common demands of land reform, more equitable taxation, and rice for all (ibid). Echoing the twentieth century communist/nationalist revolution, peasants who joined the Tay Son rebellion (1771-1802) that ousted the Trinh and Nguyen rulers rallied around the slogan “seize the property of the rich and distribute it to the poor” (ibid: 25). The Tay Son rulers redistributed land, abolished taxes, burned the tax and land registers, and distributed food from storehouses to the hungry. The resettling of landless peasants on communal lands in their own villages and the cultivation of fallow lands was also used by one of the three Tay Son brothers (Nguyen Hue or Emperor Quang Trung), who seized control of the north of the country, to stimulate the economy after years of war (ibid).

After the restored Nguyen dynasty ousted the Tay Son rulers, heavy taxes and a requirement for sixty days corvee labour per year were reintroduced. With the increasing power of the bureaucracy and landowners, the proportion of communal lands maintained as reserves in cases of landlessness or population growth, dwindled to less than 20% of the total (Cima, 1987).

During the French colonial period (1887-1954) private ownership was introduced and land was used to reward loyal Vietnamese (ibid). The French allocated communal land to wealthy French and Vietnamese landowners, resulting in violent conflicts and social unrest (Hansen, 2013). Some people acquired 4,000 hectares or more in Cochinchina (southern Vietnam).⁴⁶ A French-Vietnamese landholding class developed aided by the colonial government selling large tracts of land in the Mekong Delta to speculators at cheap prices. The French also came to own more than 90% of rubber plantations. Like the dynasties, the colonial regime also depended on taxation of the peasants, rice exports, and state monopolies and excise taxes on opium, salt, and alcohol (ibid).

⁴⁶ During the French rule of Indochina (1887-1954) Vietnam consisted of three regions: Tonkin — the rice-growing area of the Red River valley in the North; Cochinchina — the rice-growing area of the Mekong Delta in the South; and Annam in the Central region, consisting of a narrow coastal plain and highlands. Tonkin and Annam had difficulty growing enough rice to feed their population and often imported rice from Cochinchina that produced a surplus.

Land alienation also came to be a key aspect of economic exploitation. By 1930, 25% of the landowners owned over 80% of the rice land in Cochinchina, and 57% of the rural population were landless labourers working on large estates (Cima, 1987). In 1938 in Annam roughly 53% of families were landless and figures for Tonkin and Cochinchina, were roughly 58% and 79% respectively (Callahan, 2004). In 1939 the 0.1% of landowners in Tonkin who owned more than 50 mau (18 ha) of land owned nearly 17% of the total cultivated land (ibid). At this time 19% of cultivated surface was considered communal or semi-public land (Callahan, 2004).

It is estimated that in 1940, seven or eight million people out of a total population of around 25 million were landless peasants (Cima, 1987). The country's richest agricultural region, the Mekong Delta, was considered one of the five worst areas in the world for the prevalence of landlessness and tenancy (Prosterman, 1970). For more than 70% of the population in the Mekong Delta who were landless or rented land to supplement their small holding, rentals were as much as 50% of the crop and the final share to the farm family was as little as one third (ibid). Needless to say the 'land factor' was a key aspect of the revolt against colonial rule. Early peasant demonstrations in Nghe An province which in 1930 was plagued by floods, drought, scarcity of land and colonial exploitation, demanded a moratorium on personal taxes and a return of village communal lands in the hands of wealthy landowners (Cima, 1987). Demonstrations soon turned to riots, burning and looting government buildings, manor houses, and markets, and destroying tax rolls. In some districts, village associations were formed which annulled taxes, lowered rents, distributed excess rice to the needy, and seized the communal land. Land redistribution was generally restricted to the communal lands that had been confiscated in earlier years by the wealthy. This revolt was mercilessly put down by the French (Callahan, 2004).

By June 1945, as the Viet Minh established control over the northern border provinces, people's revolutionary committees distributed communal and French-owned lands to the poor, abolished corvee labour and implemented democratic reforms (Cima, 1987). For the Vietnamese communists, land reform aimed not only to give land to the poor but also to destroy the traditional landlord-gentry elite, create a new group of rural leaders, and to lay the groundwork for the transition to collectivized agriculture (Callahan, 2004).

Following the struggles of World War II and then against the French return, the Indochina Communist Party implemented a more comprehensive land reform under the slogan "land to the tiller". From 1954 to 1956 land owned by landlords was confiscated and redistributed to poor and landless peasants in North Vietnam. Nearly 810,000 hectares of agricultural land was redistributed to more than two million peasants, to address issues of social and wealth inequality (Hansen, 2013). This was accompanied by executions of "landlords and reactionaries" and resistance (Cima, 1987). About one-quarter of the agricultural land was owned communally and allocated by the village or hamlet leaders to individual farmers, which negatively impacted many farming families (Moise, 1983). A correction campaign in 1957 - 58 resulted in land being returned to many families harmed during the reform (Moise 1983).

Importantly, farmers did not receive title to the land and ownership remained with the state (Moise 1983). During the 1960s, cooperative farms and state forest enterprises were established (CIRUM, 2012a). From 1960 to 1991 land reforms placed forests under state owned agricultural cooperatives and SFEs (CIRUM, 2012a). The state subsidized logging, reforestation and commercial cash cropping. Collectivization began with the encouragement of labour exchanges. In 1961 'high level cooperatives' began with land and resources used collectively (Kerkvliet, 1998). In the initial stages cooperatives were based on pre-existing villages and hamlets; later enlarged cooperatives were restructured to break traditional social units (Mellac, 2011).

In the late 1970s in the north, the average size of a co-operative was 202 hectares with an average of 378 households (Akram-Lodi, 2005). Around 97% of rural households were part of the 4,151 collectivized farms (ibid). Households were allocated around 5% of the land to allow them to grow food for consumption. This land was noticeably more productive than the collectivized land. In the south, resistance by peasant households meant that only 24.5% of households joined cooperatives (Akram-Lodi, 2005). In the central coastal region 84% joined cooperatives by 1980 but only 1.7% of households in the Mekong Delta at the same time (Akram-Lodi, 2005).

Despite this collectivization, land was not nationalized until a 1980 Constitution which recognized state and collective ownership (Hansen, 2013). A 1988 Land Law only talked about state management of land and was not clear about the rights of households.

In the Mekong Delta in the south, from 1971 - 72 the government (under pressure from the US) attempted to counter land redistribution with a “land to the tiller” programme of its own. Almost 400,000 farmers received a total of 600,000 hectares, and by 1972 tenancy reportedly had declined from about 60% to 34% in some rural areas (Cima, 1987). By the end of 1973, nearly 40% of cultivated land (1,198,000 hectares) in South Vietnam and 953,000 land titles had been distributed to poor or landless farmers.⁴⁷

In the late 1980s the government eventually suspended its attempt to collectivize the south, and implemented the *Doi Moi* reforms aimed at creating a market-oriented economy (USAID, 2013). This included the allocation of land-use rights to farmers, and in 1988 the adoption of Resolution 10 allowed farmers to lease land from the government for up to 20 years (Akram-Lodi, 2005). Land management, formally under the control of cooperatives, was contracted out to farm households initially for 15 years for annual crops and 40 years for perennial crops (ibid). Land was reallocated to households according to family size and the land they were using. In less than a year a relatively egalitarian distribution of land eventuated as peasant family farming took hold (Akram-Lodi, 2005).

Since that time, social differentiation has taken place producing a class of relatively rich peasants with larger landholdings, a larger class of small peasants with smaller landholdings, and the rural landless, whose numbers are swelling (Akram-Lodi, 2005). Mainly in the Mekong Delta, around 1.1% of farm households had farms in excess of 1000 ha (Akram-Lodi, 2005).

⁴⁷ Source: https://en.wikipedia.org/wiki/Land_reform_in_Vietnam

Annex 2. Potential for the Recognition of Customary Tenure in FLEGT, PFES and REDD+

European Union Forest Law Enforcement Governance and Trade (FLEGT) Action Plan

FLEGT is a jointly implemented initiative to control the export of illegal logs to the EU. The three principal export markets for wood products from Vietnam - the US, EU, and Japan – are increasingly concerned with the environmental impact of their consumption patterns. Vietnam must comply with these trade requirements to maintain access to EU markets. FLEGT requires a multi-stakeholder process, which potentially could allow for stronger recognition of customary rights. This includes space for considering the use of forests by ethnic groups and the possibility to expand the rights of forest-dependent communities (IWGIA, 2015). These provisions could be important for influencing the new Forestry Law. There are strong international markets for the furniture and wood processing industry if Vietnam can develop a legitimate, verifiable and sustainable supply of timber.

Payments for Forest Ecosystem Services (PFES)

Vietnam is also a leader in PFES in Southeast Asia. Decree 99 (2010) enables provinces to require hydropower plants, water companies, tourism businesses, etc. to pay for the water they use. The implementation of the PFES policy allows the forest administration to gain US\$50 million per annum, mainly from hydropower companies, an amount equal to the annual government allocation to the forestry sector (To et al., 2015). This also offers the potential for allocating funds directly to communities to manage their customary areas.

The key issue for customary management is how to establish direct payments as these are more likely to have the most impact. Normally PFES payments would be paid to the CPC which would then pass them on to community members, but in this way payments are more likely to be used for things like office buildings, etc. A NGO advisor felt that the potential for corruption would be minimized if payments were made directly to communities (Interview 13, 2015). There is a proposal to allocate PFES funds to the traditional chief of the community for supporting poor people. Efforts are also underway by Participatory Resource Conservation Foundation (PRCF) in Tuyen Quang Province to develop a community-based organization (CBO) for conservation and for the CBO to receive payments from the PFES funds directly from the district.

Reduced Emissions from Deforestation and Forest Degradation (REDD+)

At present there are 44 REDD related projects underway in Vietnam. At least US\$85 million has been committed by donors (To et al., 2015). Forests in watershed areas have been surveyed, classified, measured, and mapped to claim payments. In 2009, Vietnam signed an MoU with the UN to implement a US\$4.5 million programme to make the country “REDD-ready by the end of 2012.” To meet this timeframe, in 2011 the government issued decrees to speed up procedures for formalizing boundaries and SFE involvement. While there are possibilities for customary users being involved as recipients of REDD+ payments, to date they have not been consulted.

One problem with the UNREDD+ activities is that forest inventories to determine how much carbon credits can be sold do not specify how money will be spent and distributed in communities. This means SFEs and MARD could control the funds from the sale of carbon credits and communities will be in a weak position to lobby for their share. There has been some discussion in developing REDD+ safeguards to ensure the role and rights of customary forest users are respected. A REDD+ technical working group has been developing social safeguards. UNREDD+ activities include a five-year programme to develop safeguard systems, site based action plans for sustainable forest management and related provincial development plans. A REDD+ action plan is being developed covering six provinces.

Annex 3. List of Contributors for this Study

Government		
Interview 1	Institute of Policy and Strategy for Agriculture and Rural Development (IPSARD)	MARD
Interview 2	General Department of Land Administration (GDLA), Department of Policy and Legislation	MoNRE
Interview 3	Department of International Relations (GDLA)	MoNRE
Interview 4	Senior member	Vietnam Fatherland Front
NGOs/Development Partners		
Interview 5	Staff	International NGO
Interview 6	Staff	National NGO
Interview 7	Staff (5 people)	3 National NGOs
Interview 8	Staff	National NGO
Interview 9	Staff (2 people)	National NGO
Interview 10	Staff	International NGO
Interview 11	Staff	International NGO
Interview 12	Staff	International NGO
Interview 13	Staff	International NGO
Interview 14	Staff	International project
Interview 15	Staff	Development Partner
Advisors and Researchers		
Interview 16	Advisor/Researcher	International NGO
Interview 17	Senior Advisor	International project
Interview 18	Senior Researcher	Vietnam Institute of Anthropology
Interview 19	Senior Researchers (2 people)	Forestry Economics Research Centre, Vietnam Academy of Forest Science

Annex 4. Checklist of Questions

Objectives

Understand the situation of customary tenure, problems and opportunities for legal recognition
 Engage with key decision makers – to understand their perspective
 Initial recommendations for a road map/action plan and alliances

1) Understanding/describing the situation of customary tenure

1A) Historical background and context

1B) Customary tenure on the ground/in practice

- What is the extent of customary tenure in the country (% of farmers, lands)
- Who are the main customary right holders and what forms of tenure are there?
- What differences are there between ethnic groups in different regions?
- How does customary tenure affect women, youth, vulnerable and marginalized groups? How does obtaining secure tenure rights impact livelihoods?
- What are the problems of customary tenure systems and how are these eroding?
- What conflict resolution and grievance mechanisms are in place?
- How does non-formalized customary tenure defend its land against land concessions and other forms of encroachment?
- Are there any success stories of communities defending and maintaining their customary tenure arrangements?

1C) In the government/ institutional/ legal system

- Is customary tenure mentioned in the law? For what context, under which definition?
- What types of customary rights, responsibilities and restrictions exist?
- Who are the right holders in law?
- What legal provisions are there for the recognition of shifting cultivation?
- What community forestry tenure arrangements exist?
- What are the methods and processes for customary rights recognition and what are the technical requirements to identify the right?
- What are the main difficulties in the recognition process?

1D) What are the main opportunities for improved customary tenure recognition?

- How can existing policies for recognition of customary tenure be better implemented?
- What opportunities are there in new legal/policy frameworks?
- What other major initiatives could be tapped and/or what alliances could be formed?
- What international conferences, intergovernmental negotiations, etc. are relevant?
- What opportunities exist for the government recognizing the VGGT?

2) Engaging with key decision makers

- Who are they?
- What are their perceptions and perspectives on customary tenure, including cultural aspects?
- What do they see as valuable, useful in customary tenure systems?
- What are their buy-in/interests, what do they see as areas for engagement?

3) Action plan and alliances

- Recommendations for effective policy influence
- What advocacy messages would be most effective?
- Important multi-stakeholder alliances
- What capacity building for alliances/networks should be considered?
- What opportunities/pathways are there for community empowerment?



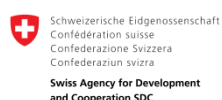
The Mekong Region Land Governance (MRLG) Project aims to contribute to the design of appropriate land policies and practices in the Mekong Region. It responds to national priorities in terms of reducing poverty, improving tenure security, increasing economic development, and supporting family farmers, so that they can be secure and make good decisions on land use and land management.

The Mekong Region Land Governance is a project of the Government of Switzerland, through the Swiss Agency for Development and Cooperation (SDC), with co-financing from the German Federal Ministry for Economic Cooperation and Development (BMZ) and the Government of Luxembourg. The MRLG project is implemented by Land Equity International (LEI) in partnership with Groupe de Recherches et d'Echanges Technologiques (GRET) and supported by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). For more information on MRLG, please visit www.mrlg.org.

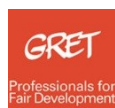
The **MRLG Thematic Study series** examines major themes related to land tenure in the Mekong Region. It is aligned with strategic priorities of MRLG and is intended as background document for all relevant MRLG partners. As such, the series consists of a synthesis of existing references in a particular theme, which can be complemented with additional enquiries and studies. The production of Thematic Study is usually undertaken at the initiative of MRLG but we also accommodate proposals originating from outside the programme.

The views, opinions and interpretations expressed in this publication are those of the authors and contributors. They should not be interpreted as representing the official or unofficial views or positions of SDC or BMZ.

Funded by



Implementing organizations



Support by

