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LAND USUFRUCT FOLLOWING LAND AND FOREST ALLOCATION PROGRAM IN ETHNIC MINORITY REGIONS IN VIETNAM

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TABLE OF CONTENTS

01 Page 7 - 8

Preamble

04 Page 18 - 25

Land and forest
Allocation in
Yen Chau and
Dak G'long

05 page 28 - 31

Land Usufruct
under
Customary Law

02 Page 11 - 14

**Methodology
and Resources**

03 Page 16

**“Power of
Exclusion”**

06 page 34 - 46

**Land Usufruct
following Land
Allocation and
Forest Allocation**

07 page 49 - 51

Conclusion

Vietnam, like many other countries around the world¹, has implemented the policy of "*devolution*" since the early 1990s through land allocation and forest allocation to communities, households and enterprises, which was a result of the inherent inadequacies in financial management and exploitation of land potentials in economic development of the previous management model. Land allocation and forest allocation, in comparison with the previous centralized land management model, are considered by the State and international development organizations as an institutional change for the development of rural and mountainous areas. By allocating land and forests with accompanying rights, this policy is believed to create land stability and security, thereby encouraging people to invest resources in land. Being able to transfer the use rights of allocated plots also provides the basis for the transfer of this important resource to those with more skills and capital. In addition, the legal basis for allocated plots can work as collateral that allows people to earn more capital to reinvest in the land (UNDP - FAO, 1989; World Bank, 1993; Sikor 2004).

As soon as the new model of resource management policy was put into practice in the world, as well as in Vietnam, it has attracted the attention of social science researchers. Their studies, despite being conducted in a variety of political, geographical and ethnic contexts, all have a common finding that forest allocation, contrary to the assumption of policy makers, not only fails to effectively solve the problem of poverty and environmental degradation but also creates many negative economic, social and environmental consequences. In the international context, Agarwal (2001), in his study of the impacts of the devolution policy on forest management in India and Nepal, shows that instead of providing equal access to resources for disadvantaged groups, the model of community forestry, one of the forms of "*devolution*" in forest management, has completely excluded women from accessing forest land and forest products as well as from their participation in decision-making process. "*Devolution*" in South Africa, similarly, also creates many inequalities and social conflicts in access to resources there. The assignment of new state-assigned rights to local communities in forest resource management, according to research by Shackleton and Campbell (2002), often favors groups with social status and power rather than local communities. This policy also excludes the access and management rights of village elders, thus leading to many social conflicts. Researching in the broader context of Southeast Asia, Hall et al. (2011) also convincingly show that the policy of land allocation in Southeast Asian countries, including Vietnam, by "formally" giving use rights in land access to some social groups, also grants the right to exclude the access and usufruct of other social groups. The "formal" state-created power of exclusion through land allocation and forest allocation, along with the three other powers of exclusion, has brought land issues in these areas into the state of "*land dilemmas*".

According to a study on the policy of forest allocation to farmers and "community forests" in Dak Lak by Thomas Sikor, Nguyen Quang Tan and Tran Ngoc Thanh (2005), Hoang Cam and Thomas Sikor (2019), instead of providing equal access to forest resources for local ethnic groups, devolution and, at the same time, assigning the responsibility to prevent "foreign access" to specific individuals and communities to allocated forests has completely excluded the access and benefits of many social groups from forests and forest products to

¹ State centralization of land management is one of the important ways in building nation-states in most developing countries. However, entering the 80s of the twentieth century, many regions in the world have witnessed a major change in resource use and management policies. Stemming from the weaknesses in state centralization of land and forest resources management, as well as the increasing emergence of social conflicts in resource access between local communities and state management agencies, many countries in Southeast Asia, Africa and Latin America have begun to implement a new model of forest management, known as devolution or decentralization in English. The main objective of this policy is to create a radical change in the power relation between the state and local communities in terms of resource ownership and management. The implementation of the policy in many countries, though in different forms in different contexts, basically share one thing in common, which is the transfer of resources management and use rights from state agencies to communities and local people as well as other components of the society, including enterprises (Sikor and Tran Ngoc Thanh, 2006; White and Martin, 2002; Edmunds and Wollenberg, 2003).

which they had pre-existing rights under customary law. The exclusion not only creates social conflicts between indigenous ethnic groups and between indigenous peoples and outsiders, but also leads to forest resource degradation. In Ha Tinh, research by McElwee (2001) also shows that forest allocation policy, especially in areas classified as “bare land and hills” in Kinh communities, has abolished equal access to forest resources as provided for by village conventions. Similar to in South Africa and India, the most disadvantaged, according to McElwee, are women and poor farmers.

Vietnam is under the process of studying and reviewing the current state of land use across the country in order to revise the Land Law to be in line with the economic, cultural and social transformation in the contemporary context. It is necessary to have more in-depth studies on the status quo of land usufruct, especially on challenges after 30 years of implementing the policy of land allocation and forest allocation in certain communities, especially in mountainous ethnic minority areas where there used to be a variety of customary land use and management models. This research, with such awareness, examines the status quo of land access and usufruct in ethnic minority areas in the Northwest and Central Highlands under the impact of land and forest allocation policies. The research is particularly interested in challenges in land access and use in the communities when the model of customary land access and use was replaced with a new model of land usufruct, which has been implemented nationwide since the early 1990s.

From field data collected in two Thai communities in Yen Chau, Son La and M'Nong in Dak Glong, Dak Nong, the research goes deeply into presenting and analyzing the policy of land allocation and forest allocation, and at the same time, in how the shift from subsistence farming to commercial farming affects land usufruct in the two areas. Like in many other areas in the country, as soon as the government policy on land allocation and forest allocation was issued, local authorities at all levels implemented the "devolution" of forest use and management rights to local communities, villages and households. District-level authorities, using the “approach of exclusion” (Sikor and Tran Ngoc Thanh, 2006) guided and regulated in the Land Law 1993 as well as in the 2004 Law on Forest Protection and Development, directed the implementation of granting forest use and management rights to a number of households and villages. These rights are also tied to responsibilities of preventing 'illegal' access to the assigned resources. Field documents show that, like the research results in other localities cited above, the policy of land allocation and forest allocation in Dak Nong and Son La has created a number of unwanted socio-economic and environmental consequences. Land allocation and forest allocation have completely abolished the customary regulations, established under the previous social institution *ban - muong*, in resource management and use both at the village level and at the regional - *muong* level in Thai-living areas. In Dak Nong, land privatization and the process of exclusion due to land allocation and forest allocation were accelerated as people switched from subsistence farming to perennial industrial crops. These two processes, at the same time, radically abolished the practice of sharing and reciprocity of community ownership of land, contributing to the status quo that Tania Murray Li (2014:4) regards as “land's end” or “enclosure”. In the context of this new development of social relations in production, while many people have the opportunity to prosper, the livelihoods of many others fall into a dead-end precarious situation.

Apart from the introduction, conclusion and recommendations, the report also gives information about the research areas and methodology. The next part of the report summarizes the concept of exclusion, which is used as the analytical framework. Part III of the report focuses on presenting and analyzing the social relations in resource ownership and use in the traditional society of the M'Nong and Thai people. Part IV analyzes the policy and implementation of land allocation and forest allocation in Son La and Dak Nong, while part V discusses the unintended consequences of the policy of land and forest allocation on resource access and use in Son La and Dak Nong today.

METHODOLOGY AND RESOURCES

RESEARCH AREA

The research was carried out in two areas: Dak Glong district, Dak Nong province (in the Central Highlands, Southern Vietnam) and Yen Chau district, Son La province (in the Northern Midlands and mountains region, the Northern region of Vietnam). The two sites were selected as their locations represent national territories, differences in natural conditions, ethnic characteristics, management history, land use and key economic characteristics, which allows a more diverse view of the relationship between customary law and the Land Law in Vietnam. In each area, one ethnic group was selected to survey: the M'Nong in Dak'Glong and the Thai in Yen Chau. The survey was limited to a few hamlet/ban/bon in two communes of each district. These communes were selected because basically they share geographical, economic and ethnic characteristics in common.

Dak'Glong is located on a large plateau with an average height of about 600 - 700m above the sea level, in the upstream of the Dong Nai river basin - a place of special significance to agriculture in the Southern Delta. This is one of the poorest and most sparsely populated areas of Dak Nong in particular and the Central Highlands in general. Key economic challenges come from the highly fragmented terrain, limited groundwater, and underdeveloped transportation. The great area of basalt land fund makes Dak Glong, thanks to its great area of basalt, is classified by the State of Vietnam as an area with potential for the development of perennial industrial crops, forestry and large-scale cattle farming in regional economic plans.

Quang Hoa and Quang Son are two large communes located in the north of Dak Glong, accounting for nearly half of the total natural area of the district. From the center of Dak Glong district, it takes about 40km by car to reach the center of Quang Son and another 10km to reach the center of Quang Hoa. Quang Son has an area of about 450km², nearly half of which is within the scope of the Nam Nung Nature Reserve, a large primeval forest complex including popular tourist attractions of the province. Dak Nong. Quang Hoa was separated from Quang Son in 2007, covering an area of approximately 86km², near the Krong flowing from the hydropower reservoir Tua Srah (located between Dak Nong and Dak Lak) to Dam Rong (Lam Dong). Compared with Quang Hoa, Quang Son has better exchange conditions because it is located at the junction connecting Gia Nghia town (the provincial capital of Dak Nong) with Dak Song and Krong No districts.

Quang Hoa and Quang Son today house 10 ethnic groups of different origins, among whom the M'Nong has the longest history of residence. The M'Nong there consists of two local groups, M'Nong Preh and M'Nong Prang, which have very close kinship and linguistic relations with other M'Nong groups in the region. Prior to 1945, they established *bon* (village) in Quang Son. Each bon has a few dozen households whose main livelihood is swidden farming. From the 1960s onwards, their settlement was strongly disturbed due to military conflicts, the establishment of forestry farms, and the emergence of other local ethnic groups. At the commune level, from being the main and sole population group, they become a minority group compared to the newly arrived ethnic groups, including the Kinh and some ethnic groups from Northern mountainous areas

like H'Mong, Tay, Nung, Dao, Muong, etc. While many M'Nong people in Quang Son still live in 7 bons where they make up the majority, only a few dozen households remain in Quang Hoa in two mixed ethnic minority villages. The bons/hamlets they are currently residing in are all classified as having "extremely difficult socio-economic conditions" according to the Government's classification criteria.

Yen Chau is a mountainous district not far from the Vietnam - Laos border, located on the National Highway 6 connecting the Red River Delta with the Northwesternmost provinces of Vietnam. The Da River located in the Northeast of the district is a major waterway in the region, and Yen Chau is also one of the upstream sections of the Da River. With an altitude varying from 200 - 1.400m above the sea level, Yen Chau has diverse terrain and climate, suitable for many different crops and livestock. The economy of the district is mainly based on rice and maize production for self-sufficiency combined with industrial crops, tropical fruit trees and livestock to generate cash income. The favorable trade ability, together with the buffer position between two key industrial zones of Son La province, namely Mai Son and Moc Chau districts, has been helping Yen Chau to promote the production of a number of agricultural products for industrial processing.

Chieng Pan commune and Chieng Dong commune are located in the north of Yen Chau district, on a low basin of about 50 km² of the total natural area of 112km², along the Highway 6, between Moc Chau and Na San plateau. From the center of the provincial capital, it takes 4km by car to go to Chieng Pan and 12km to Chieng Dong. Residential areas remain relatively stable for a century, despite significant changes in their number and scope during the formation and dissolution of agricultural cooperatives in the 1960s-1990s. The population today is concentrated in locations near the National Highway, near rivers, streams, ponds and lakes, surrounded by high mountains, convenient for irrigation and also a typical place of wet rice farming for centuries.

The Black Thai (Tay Dam) is the oldest and dominant population in both Chieng Pan and Chieng Dong. They call themselves *Thay Vat*, which means Thai people in *Muong Vat* - the ancient name of Yen Chau in the 13th century, when Thai people migrated from Laos to Muong Sang in Moc Chau district. They live in 17 *ban* (village) consisting of 80 to 300 households on average, where there are completely no other ethnic peoples or only with a very small number. Although the *ban* (villages) are classified as "those having extremely difficult socio-economic conditions", the Thai people living there are generally better off than the M'Nong people in Dak Glong. The number of Kho Mu, H'Mong, and Kinh villages is small, some of which lie in between and some far from the Thai villages. The Kho Mu and H'Mong people in the area follow the State's sedentary cultivation and settlement program to protect watershed forests and special-use forests, while the Kinh people who came from lowland areas stayed and settled after the process of reclamation, road opening, and construction of public works in the second half of the twentieth century.

METHODOLOGY

This research uses ethnological and anthropological fieldwork to collect data for presentation and analysis.² Field data collection took place in two phases: the first in Dak Glong - Dak Nong (February 2020) and the second in Yen Chau - Son La (June 2020). During the two field visits, the research team worked with 28 informants: 14 in Dak Glong and 14 in Yen Chau, ranging from local officials, heads of hamlets/ban/bon, other reputable people in the community to representatives of farmers.

Secondary documents collected in the survey area are mainly on population situation, socio-economic situation, land allocation, forest allocation, payment for forest environmental services in recent years provided by local officials when the research team started getting to know the site. Stamped documents stored at the Commune People's Committee provide an overview of the local situation with censored public information. A number of village conventions, community codes of conduct, demographic and land ownership records were also collected from monitoring diaries of hamlet/ban/bon heads when the team worked with them. The data from these records are somewhat more detailed compared with the communes' reports, helping to visualize the parameters of each village/hamlet/bon and each specific household, but they are also cautiously used due to limitations in data editing. Extracting data directly from their memory is an effective way to collate and supplement written information.

In Yen Chau, once receiving permission from the local authority, the research team, started working with hamlet/ban heads. These people continue to introduce some other reputable people in the community such as village elders, witch doctors, and shamans who have extensive knowledge of local customary law. They also help in reaching out to representatives of farmers in their area who have problems with land ownership and use in the process of changing laws and policies. The research team suggests prioritizing looking for typical cases of households lacking or losing production land, or encountering difficult conditions in farming related to land location and quality. The hamlet/ban/bon heads and reputable people in the community are also informants as representatives of their own households. In this case, they often represent households that have better access to information and better adaptation to changes in laws and policies than the remaining.

In Dak Glong area, the process of finding informants became simpler with the support of Tien Phong Network members: one in Quang Hoa and one in Quang Son, both of whom are M'Nong people living in the area. The members of the Tien Phong group led the research team to meet reputable people in the community and households who are facing difficulties and problems with land rights in their hamlet/bon. They are also one of the key informants who enthusiastically told about their households' land use and ownership.

² Compared with other research methodologies and approaches, ethnographic fieldwork, together with in-depth interviews and participatory observation, allows the research team to approach people's life and perspectives. Visits and conversations help us to minimize the gap between the chaotic "normal" of real life (Li 2014:5) with the theoretical categories that we acquire through the books to make sense of these "chaotic" living realities. This narrowness, we hope, will help us break through the preconceived notions and categories of ethnography, revealing unexplored territories which do not belong to any familiar categories, thereby opening up the possibility of finding new knowledge.

Semi-structured interviews at the hamlet/ban/bon were carried out at culture houses and the house of each household. Each interview lasted from 1 to 3 hours depending on the actual problems existing for the locality and households. General issues range from customs and customary law on land in particular and on natural resources management and use in general, changes in land ownership and use over time under the influence of laws and policies; agricultural production, agricultural and infrastructure development projects in the locality; access to community- and family-level land ownership and use, etc. The households' own issues include the origin and change of land ownership, their exercise of legal and customary rights to the land, land role to livelihoods and land profitability, conflicts [if any] of the household with other land users and managers, etc.

The emphasized topics differed by location following the suggestions of existing research papers: In Dak Glong, the research team paid much attention to the form of community management of swidden fields of the M'Nong people, impacts of free migration, of mixed-ethnicity residence and of formation of state-owned agro-forestry farms on the M'Nong people's land access. In Yen Chau, the research team paid attention to the typical form of land management of the former Thai society of ban-muong, impacts of the formation and dissolution of old-style agricultural cooperatives on the history of land use, consequences of the policy of land allocation to individual households; problems in the relationship between Thai villages related to land and forest management and use. The collected data does not represent the relationship between customary law and state laws and policies on land applicable to all ethnic groups in Dak Glong or Yen Chau, but only represents the two ethnic groups mentioned in the report.

"POWERS OF EXCLUSION"

This research uses the framework of the " *power of exclusion* " approach of Hall et al. (2011) to learn about impacts of land and forest allocation policies on usufruct issues in the two communities of M'Nong and Thai. In the work *Powers of exclusion: Land dilemmas in Southeast Asia*³, Hall et al. show that since the 1990s, social relations of land in Southeast Asian countries were transformed into a new status quo, with new exclusions, making the issues of land access in this area fall into a dilemma. The authors point out that there are four power of exclusion working together to create the new status quo of land usufruct, namely- **regulation, force, market** and **legitimation**. Regulation, whether formal (state laws) or informal (moral patterns, customary law, village conventions, etc.) sets the rules regarding access to land and conditions of use. **Force** excludes by violence or non- violence, and is brought to bear by both state and non-state actors. **Market** is a power of exclusion as it limits access through price and through the creation of incentives to lay more individualized claims to land. **Legitimation** serves to establish the moral basis for exclusive claims regardless of where it is from market, force, or regulation.

It is pointed out that the policy of land and forest allocation belongs to the category of **regulation**, which operates as the perfect and radical power of exclusion. Although it is noted that exclusion is not a new issue but it always exists in all forms of management, including customary management models. Compared with traditional management forms, land and forest allocation, a neo-liberal management model, have greater exclusion and social consequences because this new management model transforms flexible and overlapping land access into a more rigid form and with clearer limits. In addition, land and forest allocation also completely transform the regulations and norms of access based in kinship and other locally constituted social relations into a form of "more State-centered and formalized means of establishing the right to exclude". With the policy, the State plays a leading and decisive role in measuring and allocating each plot of land and forest, assigning which is for agricultural land, which is for forest land, and which is for nature reserves, etc. The state,

besides, seeks not only to regulate and assign "who can access land, for what purposes and under what conditions" but also "to intervene to shift the grounds of access from social identity to market power" (p.193). Land allocation and forest allocation, with land use certificates with a term and accompanied rights, therefore, act as a power to completely exclude [*licensed exclusions*] others from the assigned resource, including "seasonal use, physical access, and right of way across the land" (p.36). This perfect exclusion, in other words, not only manifests itself on paper as a concept, but it is also the purpose that land and forest allocation aims at "removing what are seen as the insecurities and ambiguities of customary tenure systems" (p.36). Exclusion through land and forest allocation or "licensed exclusions", resonated by the other powers of exclusion, especially market power, has created the status quo of *dilemmas* in land approach and use in communities in countries that strongly implement this program.

The approach developed by Hall et al., in our opinion, not only provides an analytical framework for understanding impacts of the land and forest allocation policy on social relations in land in ethnic minority regions today, but also serves as a prism to analyze the interaction between the policy and the other exclusion powers, especially market power in ethnic minority regions, in marginalizing different social groups from resource access and use.

Before going deeper into analyzing the process of land allocation and forest allocation and the operation of this policy as a force of social exclusion in land access in the Thai community in Yen Chau and the M'Nong community in Dak Nong, the next part of the report presents and analyzes the customary social relations in these two communities.

³ See also "the powers of exclusion" towards women's access to land in contemporary Vietnam in Hoang Cam et al. (2013), *The Women's Access to Land in Contemporary Vietnam*, Hanoi: United Nations Development Programme.

**LAND USUFRUCT
UNDER
CUSTOMARY LAW**

In his influential theoretical work in the study of land usufruct in traditional non-European societies *The Ideas in Barotse Jurisprudence*, anthropologist Max Gluckman coined two concepts namely "estate of production" and "estate of administration" to analyze and explain social relations in land management and use in "tribal societies"⁴. By analyzing the complexity of the concept of "ownership" [bung'a in Barotse] - an instrumental concept to identify a system of rights associated with an object - Gluckman shows that land relations in tribal societies, such as in the Barotse region, is basically a system of overlapping rights linked to a social hierarchy. Estate of production and estate of administration are attached to the social functions and status of particular individuals and social groups, and these rights are distributed from high to low by the social hierarchy. In monarchical societies, the distribution was ordered from king to village chief, from village chief to clan head, and from clan head to family head and individuals. Estate of production or estate of administration of individuals and groups is tied with duties and responsibilities. People have the right of production when they fulfill their duties and responsibilities associated with their social status, for example, renters have to hand over part of the produce on the land to people of higher social status, work for them or complete community work. The right of production and administration, in other words, depends on and is attached to the fulfillment of duties and responsibilities associated with one's social status.

Estate of production and estate of administration, according to Gluckman, are not generic but are tied to specific types of resources, such as production land, forests, forest products or trees. Therefore, the right to use and access resources, in many cases, overlaps geographically. For example, on the same parcel of land, some people will have the right to a certain product while others have the right to access and exploit one or more other types of products. As rights are associated with duties and responsibilities, rights are also subject to constant change. If an individual waives or fails to fulfill his duties and responsibilities, the right to his land will be transferred to someone else. Rights, both

in terms of production and administration, can change and vary by context to ensure that everyone can have a chance to secure a minimum of subsistence livelihoods. In resource-limited places or contexts, the village chief will have to adjust the redistribution of fields or other types of land to meet this goal. People can explore new plots of land for farming where resources permit (see also this discussion in Sikor, 2004).

An important point in property ownership according to the model that Gluckman summarized is that there is no such thing as absolute and immutable ownership of land and resources, even though individuals or groups with the highest socio-political position can benefit more. Despite different socio-political structures, traditional social relations in land among Thai in Yen Chau and M'Nong in Dak Glong, as detailed in the next section, share the most basic principles according to the model that Gluckman pointed out.

The features that Gluckman mentioned are also basically consistent with and complementary to the power of exclusion approach of Hall et al. The agreement between duties, responsibilities and rights to land, at first glance, looks like the fairness of the land usufruct system in traditional societies. However, the relevant laws ensure that as long as the duties and responsibilities are not fulfilled, the individual's rights to the land are stripped or reduced, which means they are excluded. In addition, in societies with monarchy or strict class divisions, social disparities sometimes provide some rights difficult to deprive from some people, while implicitly stipulating some rights that are not easily obtained by others. This mechanism contributes to the structure of land usufruct in particular and social structure in general. However, exclusion in traditional societies should not be seen as merely a condition that ruling social forces imposed on the ruled ones. Rather, it is a tripartite activity in which: potential land users are excluded by those who already have the right to use the land; those who have access to land lose access; and those who do not have access to the land are not allowed to access.

⁴ See also a discussion of these two theoretical concepts and their application in the study of social relations in land among Thai people in particular and Vietnam in general in Sikor, T. (2004), "Conflicting Concepts: Contested Land Relations in North-western Vietnam", *Conservation & Society*, Vol. 2 (1). In his work, *The Land Control and Social Structure in Indian History* (1969), Robert Frykenberg developed two theoretical concepts, "land to rule" and "land to own" to compare the similarities and differences in social relations in property in European and non-European countries. Despite using two different concepts, but, like Max Gluckman, Frykenberg argues that, unlike the European model, social relations in property in other traditions are associated with socio-political status. In this "land to rule" model, there is no absolute right to land ownership, although higher status social groups may enjoy more benefits than lower social groups.

LAND USUFRUCT BY THAI COMMUNITIES

For Thai communities in Yen Chau and other areas in the Northwest region, this form of asset ownership is recapped in the Thai saying "*din an nha, na hang muong*" [land is owned by an nha and paddy field is owned by the entire muong]. In other words, the land relations in the muong system, as shared by Thomas Sikor (2004:80), "resembled the hierarchy of overlapping powers", wherein, *an nha*, who had the highest position in the traditional political and social system of a *muong*, was recognized as the landholder (*chau din*) and had the highest authority over land and other natural resources within a *muong*. In Chieng Dong, in 1953, farmland and forests were generally owned by the *phia muong* Muong Vat - a local name of Yen Chau district today.

In order to exercise the powers of *chau din*, the *phia* demarcated his territory from the land owned by other *phia muong*. The boundary between different *muong* was marked by mountains and streams, which was passed down orally from generation to generation. To affirm its symbolic ownership, *phia* often organized a muong worshipping ceremony [*xen muong*], requiring all members of his muong to participate. The venue for the ceremony was around the cot muong [*lac muong*] in the land of present-day Yen Chau town. At the end of the muong worshipping day, guns were fired to begin the days of "ban closure" [*kam ban*] and "muong closure" [*kam muong*]. Within three days, villagers were not allowed to conduct economic activities such as hunting, hill farming, farming, trapping and fishing. Also, during the three-day shutdown, outsiders of a *muong* were not allowed to enter the territory of the *muong*.

The *phia* was the landholder of a *muong*, though; this is only symbolic. Accordingly, natural resources, especially the entire farmland area in a muong, according to customary law, were the assets of the entire community or publicly owned. In Muong Vat, or present-day Yen Chau, for efficient management and use, natural resources in a *muong* were allocated to the smaller *muong* units led by *phia* and, within each *muong*, further allocated to *ban* which are led by *tao*. Chieng Dong, now a commune in Yen Chau, had a *phia*, equivalent to a Commune's People Committee chairman nowadays, who was supported by four chanh *phia* (pho phia), each to manage two *ban*, and each *ban* was directly managed by a *tao ban*.

In the highest aspect of management, land management was symbolic, under the authority of an nha. However, the persons who directly managed and allocated farmland were *tao ban* and each *ban* had its own farmland area, separately demarcated from farmland of other *ban*⁵. Under the principle of decentralization, farmland in each ban was divided into different categories, including *na chuc*, *na sang*, *na hang muong* and *na ti*, and the right to use each category of farmland depended on social status. *Na chuc*, usually the most productive farmland, was allocated to *phia* and chanh *phia*. *Na sang*, also productive farmland, was for those who were good at speaking, reputable and doing social work in the muong. *Na hang muong*, farmland of lower quality but larger in size, was the shared farmland of all other

⁵ According to the principle, villagers in one ban organized sharecropping in that ban. However, there were still exceptions. Lots of people in ban Nhom used to have paid work in the former ban Chieng Dong, and they were the ones who worked outside most often. It was not that ban Nhom is the ban of slave [*cuong*], but it had very little farmland and its people had to work on sharecropping in the former ban Chieng Dong. They were quite hardworking, and did public work for those in other ban. After 1954, ban Nhom was allocated its own farmland for cultivation.

members of a ban. Na ti, which was farmland cleared by local households and located next to ravines or close to the foothills of mountains, was not owned by the community and the right to farm belonged to the households who have cleared it. In addition, each ban set aside a farmland area for the reputable witch doctors of a muong, called *na mo*.

The right to farm, regardless of farmland to be allocated, like in Gluckman's modeled principles, was tied to the fulfillment of a duty or responsibility linked to the social position of an individual. Civilians or free farmers [páy], were given the right to farm on the ban's land if and only if they had fulfilled the responsibilities set forth by their muong. Depending on the allocated farming area, they had to contribute a corresponding number of working days of community service to their muong, including work in the muong and in the province and district (called public works managed and handled by local managers.) The more farmland was allocated, the more working days of community service would be contributed and vice versa, that is, in each year, they had to balance their needs and working capacity of family members to have enough food and human resources for both farming and community work. This distribution principle was quite flexible because, in the event that the number of family members in a family increased or decreased, they would be allocated more or less farmland accordingly. With this principle, it was not required to have farmland reallocated periodically every few years or few decades, but rather annually, between those who had "excessive" farmland and those who had "inadequate" farmland to ensure that those who were able to fulfill their community obligations as *pay* had enough farmland. Similar to shared farmland in a muong, the principle of reallocation also applied to *na ti*, meaning that the those engaged in land clearing were given land title in 3 to 5 years. Following this period, farmland had to be confiscated and allocated to other families. Should the families that had cleared farmland wished to continue working on the same land plots, they had to contribute their labor to community work and to phia and tao, similar to when they were using farmland of their muong. In addition to these rights, there was an obligation to contribute to community work of their ban and muong, or referred to as "*hap bach*".

Likewise, like the *pay*, when they no longer held the leadership positions in their ban-muong, phia, chanh phia, tao ban, or witch doctors were required to return their farmland to the community. Farmland would then be reallocated to their replacements in the respective positions. According to customary law, privatizing farmland allocated to leaders of a muong was not allowed. Leaders, including phia, were not allowed to sell their land to other people, especially those from other muong (Cam Trong and Ha Huu Ung, 1973: 51-52; Hoang Cam and Thomas Silkor, 2019).

Similar to paddy farmland, although the forest land in the mountains (especially in the watershed areas) and around the valleys were quite far from the Thai villages, these were also shared assets of a muong community, under the direct management of phia muong. Households, rich or poor, of any ethnic or social group, had equal rights in finding the right land plots (productive land that was not occupied by any other households) within the boundaries of their ban or muong for their farming to meet their food needs depending on working capacity of their households. Land clearing is restricted in the watershed areas in accordance with the customary law on the protection of natural resources. They could also explore other unoccupied forest areas for such purpose when their existing plots were no longer fertile enough for farming. However, the common law of the community stipulated that the old plots left fallow (abandoned) were not ownerless. For the land being left fallow, the right to farm still belonged to those who had cleared it. The farmland area being left

fallow was an important part of the Thai farming system, preventing soil erosion and promoting forest regrowth. So, while families could rotate farming on their farms for 10 to 20 years, customary law prohibited outsiders from using their farmland that was being abandoned.

Farmland and main yields obtained, according to customary law, were assets of the corresponding landholders, but these plots would "temporarily" become the common assets of the community after each harvest. In particular, after each harvest of maize, potato or cassava, other community members were free to enter harvested plots for firewood, medicinal plants or collection of what's left from maize or cassava planting, etc. as livestock feed. In addition, each ban had a public land plot for everyone's use. All villagers might visit this land plot for collection of forest products and firewood or hunting. Grazing their cattle on the land plot was also allowed.

In addition to forest land that could be used for farming, there were also forbidden forests and sacred forests in ban and muong, that were under direct management of *phia muong* and *tao ban*. These forests were called *dong sua muong* or *dong sua ban* (forests where the muong and ban gods reside), located at the ending point of a ban, or sacred forests at the entrance of streams. In addition, *phia muong* also issued a number of regulations related to harvests of forest products, especially wild animals, in the territory of the muong. Anyone, even those who live far away from the center of muong, who had hunted large mammals such as tigers, bears, deer or wild boar was required to give *phia* the head and one black thigh of the hunted animal as a tribute.

In 1954, the socio-political institution of ban and muong in Yen Chau was abolished and therefore, the management and use of farmland was performed using a different model (CCP, 2001). Following the Resolution on land use adjustment of Son La province, between 1955 and 1958, the entire cong farmland [*na muong*] and chuc farmland [*na chuc*] of *phia* and *tao* families were recovered for reallocation to households and agricultural production was conducted through formation of "mutual-aid teams". From the early 1960s to the early 1980s, farmland was under the cooperatives led by the Boards of Directors. Forest land in Yen Chau was divided into two types: production forest and protection forest. While, for the production forest land, the right to farm was still under existing landholders and owned by the entire muong, the protection forest land was under the direct management of the Commune People's Committees. However, according to local people, during this period, it was still quite common practice for local people to visit the forests in other ban and communes for timber logging and farming. The fairly equal access to resources prescribed in customary law as described was completely abolished when the government implemented the policy of forest land allocation, as to be discussed in part 3 of the report.

LAND USUFRUCT IN M'NONG COMMUNITIES

In the traditional organizational structure of the M'Nong people, bon (village) was the highest social unit led by a *kroanh bon* [bon leader]. Unlike the Thai as a patriarchal society, the M'Nong formed a matriarchal society. A bon was a collection of matrilineal families with the family leader being the eldest woman. Although the socio-political institution of the M'Nong Dak Glong people was different from that in the ban-muong system of the Thai communities in Yen Chau in a sense that there was no socio-political unit that was above/managing a bon, the land relations in social aspects among the M'Nong people, regardless of the M'Nong population subgroups⁶, followed the principles of overlapping powers and resources were allocated hierarchically for two categories of “farmland” and “land for management purposes” as in Gluckman's management and use model.

As an independent social unit, each bon of the M'Nong people had its own territorial area that was named differently from one another and relatively demarcated from the territory of other bon through natural boundaries, such as streams, ravines, cliffs, etc. In principle, the name of a bon remained unchanged even though its geographical boundary changes due to swidden agriculture. The bon people, especially reputable ones, were aware of all the place names within the bon's geographical boundary. An unknown location was the one to which they had not visited, nor had they claimed sovereignty over that

area. The name of a bon⁷ and traditional place names with specific meanings validated the understanding - and sovereignty - of the entire bon population over a land that belonged to them.

The land of an entire bon nominally belonged to one or a few clans. The head of a clan was usually female and considered the landowner [*tam uk*]. The landowner was the representative of the clan that was the first to establish the ownership over the land within the territory of the bon, or more broadly, was the representative of the clan whose land blocks together formed the territory of the bon. Although the land was originally cleared and then used consistently by a clan, since the need for a switch from a kinship-based community to a bon-based community in population organization became urgent, the landowners had to face the fact that others might also have access to their clan's land. That led to the fact that a bon's land, regardless of landowners, was collectively managed and used, and local people generally used its land by "borrowing it" from the landowner. This happened equally to all people who were full and “legitimate” members of a bon⁸, whether or not they belonged to the clan of landowners. In other words, landowners only had symbolic ownership over land and their role was mostly ceremonial⁹.

The above-mentioned land use and management model was derived from the traditional livelihood practice of the M'Nong people, which was

⁶ The M'Nong population had different subgroups which diverged in some cultural features, including Bunong, Preh, Gar, Prang, Rlam, etc., residing mainly in two provinces of Dak Lak and Dak Nong.

⁷ In the viewpoints of the M'Nong people, every ravine, every hill, every old tree, every big rock had its own gods and stories around it, for example: For streams, there were lot ravine, R'yol ravine, Tek ravine; for hills, there were Niep (one) hill, Dip lop (*Dioscorea hamiltonii*) hill (meaning that these tubers could be found here in large quantities). A bon was usually located near a water source, named after a certain stream, for example Dak lot, Dak R'yol, Dak Tek (Dak means “water”). It could be named in different ways, such as bon Phi Wah (meaning “land of/occupied by people”). Those bon together formed a large cluster of bon/land blocks called Dak N'Ting - named after a large stream called N'Ting stream, meaning “instructing”. Legend has it that the stream was home to a good deity who never harmed anyone and instructed the M'Nong people not to cross that stream on certain days as they would have been otherwise taken away by dragons.

⁸ To become a member of a bon, one had to have permission from the bon leader and organize a ceremony to be introduced to the community. Any individual or family that was evicted from a bon would also lose the right to live and farm on the community land.

⁹ People who “borrowed land” from a landowner whose identity was unknown to them would be provided such information by the bon leader; if the traditional rituals were followed, by “farming on the land” of any clan, villagers had to invite the landowners to their new rice ceremony as a thank-you to the landowners. In practice, this reward was optional and the landowners did not require the land users to hand over a portion of the produce from farming on their land.

semi-nomadic farming [*mirr*] on the principle of rotational fallowing¹⁰. It required the entire community to relocate both their residences and farming plots in a cyclical and closed system. This was very different from the Thai groups who chose to settle down in one place for a long time to meet the requirements of wet rice farming. A bon leader was the one who was fully aware of the land use history in his bon, had a thorough understanding of the names and stories around each stream, hill and mountain as well as rich knowledge on local soil and climatic conditions and organisms, and was tasked for farmland allocation to households in his bon. Every year, when the farming season came, the bon leader would lead all households in the bon to move to and "live on their upland farms" in a certain area, with the land belonging to a certain clan. Once the overall scope had been determined, he gradually dropped locations where farming should not be practiced - as believed by the M'Nong to be where ghosts reside, and locations where enabling conditions for farming were not in place - infertile soils, slopes or any locations where yields were expected to be low. Once a suitable area had been selected, the bon leader started allocating land to the families. The size of land to be allocated to each household depended on the working capacity of the household (usually based on the number of family members in each household). For fair allocation, the bon leader managed to give families an equal opportunity to all own plots of good quality.

In about 1-2 years of farming, the land was left fallow and local people would choose another piece of forest land for farming. Whenever the bon community moved to a new farming area or used old plots that had been left fallow for 10-15 years, the bon leader would undertake land allocation according to customary practices passed down from generation to generation¹¹. In other words, the bon leader - not the landowners - was the one who has the power to decide land uses within his bon. The decision of the bon leader was absolute, at least to the members of the bon. He was also the person responsible for the protection and handling of any issues related to the land in his bon. The bon leader's knowledge was the traditional ground to validate a bon's land sovereignty in relation

to other bon, and hence, he had the power to judge how land in his bon should be distributed among the member households. This was particularly useful with community-based ownership of land and subsistence agriculture, where land should not be viewed as an asset for stable use by only one landholder and where land distribution easily changed over a cycle of farming.

The hierarchical relationship between social classes did not exist in the M'Nong society. The bon leader as the head and representative of a bon was "empowered", not "delegated" the power by someone else. There was no one superior than the bon leader to ask him what to do, but the community itself empowered the bon leader according to social conventions or customary law. But all the people involved in this system are still linked together by a particular kind of hierarchical relationship. All families followed the decision of the bon leader on farmland allocation; the bon leader, based on his powers and responsibilities of a leader, managed to link the land use rights of families with the symbolic land ownership of the landowners; the landowners, as the representative of their matrilineal clan, had "agreed" for everyone to use their land and thus sometimes received rewards in the new rice ceremony; while clans were a factor to form a bon community. In general, land-related rights overlapped and were linked with symbolic and moral social hierarchies, not any kind of social hierarchies between social classes as in the ban-muong society of Thai people.

Although the land could not be sold or transferred to members outside the community, a certain number of bon could lend land to families in other bon for farming. In this case, anyone who wished to conduct farming in another bon had to request his bon leader to obtain permission for such a purpose. If there were sufficient grounds to obtain such permission, his bon leader would go to meet the leader of the other bon to "beg for land" for that person. No one who needed farmland shall not go to meet those in other bon in person. This ensured that the members of a bon were not free to transfer their land use rights to external

¹⁰ *Shifting cultivation involved clearing a patch of forest. After plants were cut down and burned, rice and other crops were planted on the fertile land with ashes. After a year of farming, the land was left fallow and local people would choose another piece of forest land for farming. About 10 to 20 years later, having moved to different areas in the territory of their bon, they would return to the old plots where the forest had regenerated and the soil had become fertile again.*

¹¹ *An interview with a reputable person in bon Sa Nar, Quang Son commune, revealed that the bon leader failed to perform this step. After determining the extent of the overall farming area, he let each family to demarcate the land among themselves.*

members as a land plot within the territory of a bon, from a management perspective, belonged to the community regardless of the landowner who was using it. If the permission was granted, the land borrower would be able to conduct farming on the land up to 2 years as traditional shifting cultivation practices did not

allow intensive farming beyond this period to avoid soil degradation. After each harvest, the land borrower had to give the other bon community something in return as a way to show his gratitude, which could be as big as a buffalo or a pig, accompanied by a basket of unhusked rice as a ritual offering. Thanksgiving offerings were divided into two parts, one for the landowner's family and the other equally distributed to the members of the bon. In case a person who was not a member of the bon asked for land allocation to settle down in the bon, he was required to obtain permission from the bon leader and organize a ceremony to become a member of the bon where he wished to receive land allocation. Such a concept of nominal owners was practical in the traditional society of the M'Nong in different respects. First, it somewhat reminded each community member of the bon history and origin, and of his moral relationship with those who came before him. Second, it made land trading between individuals impossible. Land users, who were "eating off the land" (actually receiving land allocation from the bon leader), could not arbitrarily sell land to others, in or out of their bon. Landowners also could not sell a land plot on their own, as it was being used by other people who already had membership interests protected in the bon. In fact, before being exposed to the market economy, the M'Nong people was unclear about the land trading relationship, but only "begging for land" or "borrowing land" for a short period of time. The concept of land buyers rarely existed, but when it did, land could not be sold, because, for them, land was a means of survival, not a commodity and, importantly, not owned by any individual. A land plot had its landowner and still belonged to that owner even if it was left fallow for decades. There was a concept of debts, but they were almost never in a situation where they had to sell land to clear their debts. One could not sell land for cash, nor could he use it to pay off debt. This was clearly stated in the customary law of the M'Nong:

Ancestors pass away, descendants inherit [the land]
Parents pass away, descendants inherit [the land]
Selling forest, fines of the bon will apply
Selling hilly farmland, complaints of the bon will be filed
Selling hilly farmland, land ownership will be lost
Causing troubles to children and grandchildren
Trees are no longer available for use
Nor are there bamboos
Nor are there shade trees¹²

The customary law on property rights in land ownership and use among the M'Nong people, as described by Gluckman in land ownership patterns in other regions outside Europe, was also linked with the specific resources, overlapping and flexible. In addition to actual overlaps between the right to manage and the right to farm over hilly land as described above, people were also entitled to exploit forest products on the forest land belonging to a certain clan or landowner, whether it was trees for housing construction, bee honey, vegetables or animals found in the forest. For a land plot allocated by the bon head and being used for farming by a family, the main produce such as upland rice, maize and others obtained on the plot belonged to that family, but the plot itself would become the common asset of the community after harvests were completed. In particular, after each harvest of maize, potato or cassava, other community members were free to enter harvested plots for firewood, medicinal plants or collection of what's left from maize or cassava planting, etc. as livestock feed.

In addition, each bon had a public land plot for everyone's use, often called by the M'Nong people as a sacred forest or a common cemetery of the bon. In the past, the M'Nong people used to bury the dead in the forests with many big ancient trees along with personal objects of the dead. They did not make graves and the poor just wrapped up the dead while the rich had coffins made from tree trunks. Although the sacred forests as cemeteries were located far from the residential area of a bon, they were also linked with the bon as, when the members of the bon relocated, the location of cemeteries also changed. This means that in the territory of a bon, there was more than one such cemetery forest. Graves were all earth graves, with no signs on the ground, but there would be pieces of jars, bowls, skeletons, among others, underneath.

¹² Ngo Duc Tinh (1998), "Customary law and management of natural resources", *Van hoa dan gian*, No. 4, p. 13-14.

The M'Nong people believed that was where the souls of the dead stayed and farming, tree cutting or burning, firewood collection or hunting should not be practiced, nor should they care for the graves (after the grave removal ceremony) or go in there unless it was for the purpose of burying the dead. In addition, there was another concept of sacred forests which were home to many gods and ghosts. These were usually murky swamps and considered to be home to many tree, land, rock and water ghosts that could do harm to people. Similar to the cemetery forests, the M'Nong - especially children and mothers of new-born babies - avoided visiting forests which were home to gods and ghosts. They believed that if these forests were destroyed or cleared for farming, causing fires, the gods and ghosts would get upset and haunt local people who ended up getting sick or unlucky in their business.

Thus, despite the large differences in historical, environmental, socio-cultural and livelihood features, land relations in social terms of the Thai in Son La and the M'Nong in Dak Glong both had similar things in common. In particular, the most prominent was the collective nature of land ownership, management and use. Rights were linked with social status, obligations and responsibilities, land ownership rights were separated from land use rights, but the rights of each individual and family were still guaranteed, but not necessarily linked with privatization of land ownership. Land use by individuals and families was associated with customs and practices, coordinated by the head or representative of the community, and there was no room for any abuse of social power for land privatization. The allocation (distribution) of productive land was flexible and continuous, with changes from time to time to reflect the availability of land resources, needs and working capacity of each family. As a result, there was high social efficiency in land uses, delivering both equality (equal access to farmland) and equity (the size of production land for a family to be always relevant with the labor/demographic features of that family).

**LAND AND FOREST
ALLOCATION IN
YEN CHAU AND
DAK GLONG**

In the early 1990s, Vietnam adopted its new land and forest resource management policy nationwide. The National Assembly of Vietnam passed the Law on Forest Protection and Development in 1991 and a new Land Law was also introduced in 1993. One of the biggest changes of the two laws was the recognition of land use rights of people using certificates (also known as Red Books), with a fixed land use period of 20 years for farmland, and 50 years for forest land. Recognition of landholders and their land use rights was in place when households and organizations were granted land use certificates by the government, with a bundle of rights, including “the right to use the land, but also to dispose of its produce, *to exclude others from using the land*, to use the land rights as bank collateral, and to alienate use rights to third parties” (Sikor 2004: 83; see also Hoang Cam and Thomas Sikor, 2019; Hall, Hirsch and Li, 2011).

The forest land allocation went hand in hand with two technical tasks, including: 1) land classification by function/use purpose and 2) land measurement and allocation to households and government agencies.

For land classification, land was classified into different categories of different uses such as residential land, production land, forest land, etc. For forest land, Decree 02/CP dated January 15, 1994 provided specific guidelines for land classification and beneficiaries of forest land allocation as well as related rights and responsibilities. Forest land, according to this Decree and specified in the guiding documents of the Ministry of Forestry, was classified into three categories of protection forest land, special-use forest land and production forest land. Entities to which forest land was allocated included organizations (Forest management boards, agro-forestry-fishery enterprises, fishery farms, forestry seedling enterprises, schools, vocational training and other economic entities), households and individuals permanently residing in the locality and “villages where there was customarily high respect to village elders, village heads representing communities or clans belonging to ethnic minorities in mountainous areas”. For forest land, actual land uses of local households should fit the land use purposes as designated by the government. If the land was not used for the intended purposes as classified by the government, the use rights might be recovered.

For productive land, farmland was allocated based on

the demographics of families, and its size of allocation to an individual depended on the total size of local farmland. The second aspect of the process began with land measurement and mapping at all levels. This was linked with the redistribution of the boundaries of the provinces based on clear, specific and demarcated

borders. Similar work was carried out in parallel at district, commune and village levels. At the national level, the measurement, division and allocation of land parcels were combined with land use registration and issuance of certificates that provided full information such as land use purpose and function, adjacent land parcels, name of the household head and, more importantly, land use duration, except in special cases. Compared with the traditional model of Thai and M’Nong communities as described above, in this new model of land management and use, rights were not linked with social/community obligations and responsibilities. At the same time, the land relation in social terms was a direct relationship between the government and individuals given land use rights (Sikor, 2004), rather than a hierarchy of overlapping rights.

In Yen Chau, under the guidance of the province, starting in the mid-1990s, the district authorities organized land and forest allocation to local households. In addition to forest classification, especially identification of “barren land and hills”, the district cadastral staff measured, adjusted and divided the boundaries between communes and ban. During the mapping and demarcation process, customary tenure and practices that were established by the Thai *phia* and existed until the agricultural cooperatives were dissolved were not taken into account. For protection of forest land, the most common principle of distribution was based on “topographical and geographical proximity”, with a *ban* located near one forest to be allocated the rights to use that forest. The ban located in the middle of a valley, not bordered with any forest, were allocated land in “remote locations” and so some villages, such as Luong Me, were not allocated land, nor were they willing to receive land allocation in such locations as it was difficult for them to manage forest protection and development as required by law. As protection forest land allocation to households was tied with forest protection and development obligations, many households in forested ban, especially at the beginning of the forest land allocation process, were not

prepared to perform such obligations because they were afraid that they would be subject to penalties if they failed to protect the allocated forest (causing forest fires for example).

For production forest land, especially upland fields and gardens, the land distribution was based on demographic features. As the district government had adjusted the hilly land boundary between communes and ban, the size of upland land allocated to each household was quite similar, about 2,000m²/person on average. Some of the ban were distant from forests and upland areas and their allocated land was lower on average, only 800 m²/person in ban Luong Me for example. During the distribution process, the households would retain the best part of their existing upland areas and give up any excess land for reallocation to other households. However, in the initial stage, the land area computed for redistribution in 1994 only existed on paper as, according to a survey by Thomas Sikor (2004) in 1997, 4 years after Yen Chau district implemented land and forest allocation, many households had more than doubled their upland holdings. The actual area used by these households was larger than the size of allocated land because they borrowed land from other households for farming or expanded their fields by clearing the protected forest land of the community. This means that the use of hilly land in this period remained quite flexible. In 1999, in order to reflect demographic changes in local communities, Yen Chau district continued to readjust hilly land boundaries between communes and in each ban, despite the fact that the land use right certificates, with indicated land area, were granted back in 1994. Adjustments to land distribution have been kept unchanged since 1999. Such adjustments led to a fact that the plot actually used by one household is mapped on the land use right certificate granted to another household.

Similar to hilly land, farmland distribution was also adjusted, at an earlier time point though, to ensure more equal allocation between communes and ban based on their demographic features, with 200-300m²/person or 130m² of two-season paddy land and 140m² one-season paddy land per person. Initially, farmland allocation, similar to upland allocation, was challenging to the government as local people wanted to stick to customary law and principles in farmland distribution - which was deemed by them to

be more equal, especially regarding farmland redistribution over a period of 5 years, with flexibility in terms of land boundary and size. Therefore, from 1994-1999, authorities at all levels in Yen Chau continued to adjust its farmland distribution, especially in each ban, to deliver equality as required by the people, although, similar to upland allocation, the specific size of farmland proportional with the household size had been included in the land use right certificates of each household. In addition, the farmland established through land clearing during the years of agricultural cooperatives were not included in the Red Books and local people could continue their farming. In addition, "cooperative farmland" was not included in the Red Books, allowing local ban to further allocate rice farms not included in any land use certificates to local people. This created space for the community to self-regulate land uses by more or less applying the Thai customary law and principles in land division.

In 2003, at the request of local people, the ban in Yen Chau again redistributed farmland in each ban to reflect changing demographics of households. However, given legal constraints, the government could not re-issue the Red Books to reflect the newly redistributed area. Similar to issues in upland management, many paddy fields actually used by one household were mapped in the Red Book of another household, meaning that they were legally not entitled to own the land on which they were farming.

In Dak Nong, like in other Central Highlands provinces, the land use history was quite complicated as both productive land and forest land were largely under the management of state-owned forest enterprises. Legally, as of the date of fieldwork as part of this study, most of the arable land or productive land of the M'Nong in Quang Hoa and Quang Son, as mentioned above, were under the management and protection of these entities. This is also the situation in many provinces in the Central Highlands. The land and forest allocation to local people in Dak Glong, therefore, was carried out quite late, with lots of limitations, compared to Yen Chau. In addition, land and forest allocation was not undertaken at the same time, but at different time points with different ethnic groups and in different forms.

Regarding beneficiaries, land and forest allocation in Quang Son and Quang Hoa was organized in three main

ways: (1) Provincial People's Committee, Ministry of National Defense allocated forestland to forestry companies or defense companies or leased it out to a number of private enterprises and organizations; (2) The People's Committees of districts and communes allocated forest land to local households for long term use, together with issuance of land use rights certificates; (3) Forest companies and defense companies signed forest protection contracts with local households or leased it out under contracts.

From the late 1970s through 1980s, given security instability caused by FULRO operations, the M'Nong in Quang Son, Quang Hoa had to move to concentrated resettlement areas protected by Government. Their life was unstable due to the collective farming work on the fields near the resettlement areas and a small area of available rice fields. In 1986-1987, they were gradually allowed to cultivate and clear land in distant areas, including locations that were formerly owned by their old bon. Food security was then ensured through hilly farming activities instead of wet-rice farming as practiced by the Kinh people. Each household could clear about 1-5ha of upland, with the hard-working households to have cleared more land than others. However, they were still restricted from using forest land, especially protected forest land. In 1999, the government had not issued land use right certificates in masses, although the Land Law had been in effect since late 1993.

In 1999-2000, the concept of free migrants began to exist locally who participated in clearing of "unused" land for coffee, cashew, pepper, fruit tree farming, among others. The local government at the time began to tighten control over land uses, prohibiting the unplanned clearing by local people. In Quang Hoa, the M'Nong people basically stopped clearing new upland (forest clearing) in 2003-2004 for a long term switch to sedentary and specialized farming as practiced by the Kinh and the newly inhabited ethnic groups. The traditional practice of rotational fallowing was ruled out as it increased the risk of land loss given the fact that land-deprived residents might come and use the land being left fallow or the government might recover land use rights granted to annual cropland that were not used within 12 consecutive months.

In 2001, the Ministry of National Defense approved the investment project to develop Quang Son Economic - Defense Zone. Company 53 (affiliated to Truong Son Construction Corporation) was appointed as the developer. A large area of "unused" and "already occupied" land was allocated to Company 53. Quang Son Economic - Defense Unit (founded in October 2001) used the resources of Company 53 to undertake projects on sedentary farming and resettlement for existing or new ethnic communities. Households subject to resettlement projects were allocated residential land and farmland at a smaller size compared to their former land area, but granted land use right certificates earlier than other households. In March 2010, Company 53 was merged into Coffee 15 One Member Company Limited (established in April 1996, stationed in 12 communes of 7 districts, cities and towns in 3 provinces of Gia Lai, Dak Lak and Dak Nong)¹³. Quang Son Economic - Defense Unit, then affiliated to Coffee 15 Company, continued investments in electricity lines, roads, land clearing, coffee farming, fruit tree cultivation, wet rice farming, etc., managing and protecting thousands of hectares of natural forests and new inhabitants. Depending on the progress of infrastructure development, the Unit organized sedentary farming and resettlement for new inhabitants. As of 2016, there were about 500 households and 2,000 migrants accepted and organized into 4 new villages and bon in Quang Son. The land allocation area was equal among households and they were also granted household registration books. About 580ha of residential land and productive land was cleared and allocated to these households - including land portions formerly owned by the M'Nong people - with about 1,000 m² of residential land and 1ha of productive land allocated to each household.

Under the Land Law 2013, review and issuance of land use right certificates to households were strongly promoted. Dak Glong district government started to undertake land measurement and issuance of land use right certificates to M'Nong households if they had been granted household registration books, their upland was not part of the forest land according to the current forest status map and there was no dispute between households in the community. Following these, another important criterion was that they could provide evidence of their long-term land use history using papers, civil contracts for land sale and sale (in a small

¹³ Ở Quảng Sơn, lực lượng của Công ty được tổ chức thành các Đội từ 15, 16, 17, 18, 19, không có chủ trương giao khoán lô cà phê của công ty cho người dân canh như với Đội từ 1 đến 14 ở hai tỉnh Gia Lai và Đắk Lắk.

number of cases) or the status of their perennial trees on a plot (in most of the cases). There was only a small area of productive land that met all the requirements of the government. The arable land parcels to which the Red Books were granted could be fragmented and scattered, sometimes as large as about 500m² to about 2,000-3,000m², interspersed with land parcels ineligible for Red Book issuance. For M'Nong households not subject to resettlement, the land parcels that they had been using and that were under the management of Company 15 were usually not recognized by the government as these were for defense purposes, even though these households had been farming there since before establishment of the Company. However, with the agreement of Company 15, local households were still allowed to temporarily continue using the land areas bordered protection forests that are at lower altitude and with little vegetation, with "legal" use rights indicated in a contract. This led to the fact that, in Dak Glong, 34.7% of forest land was being used for agricultural production.

A similar situation was observed at Quang Son Forestry One Member Limited Liability Company, where the resulting outcomes were somewhat more complicated. The company is not under the Ministry of National Defense but the People's Committee of Dak Nong province, and, unlike Company 15, it is not mandated to implement resettlement projects. Since 2011, the Company has signed coffee farming contracts with its officials, employees and local people for more than 30 hectares of forest land. This has been determined to be a serious violation as the land has not been converted from forest land to land for perennial crops, and some households contracted with the company have transferred their contracts to other entities. In 2018, the Inspectorate of Dak Nong province found that there were 1,344 households charged with "illegal appropriation" and 313 households charged with "illegal residence" on over 30% of land for which the land use right certificate was granted to the Company. Due to this, forestland use contracts were suspended along with the fact that local ethnic households had increasingly difficult access to the Company's land.

For forests and forest land, from 2007-2013, the government of Dak Glong district coordinated with agro-forestry enterprises in the district to organize temporary allocation contracts for 4,500 ha with 25 households, 61 groups of households, 6 village/bon communities in 7 communes. In addition, the district had 24 forest owners who managed nearly 94,000 hectares of forests and forest land. Forest allocation to local communities was quite limited, mainly conducted under small-scale projects on REDD+ and ETSP (Training Support Project for Forestry and Agriculture in the Uplands). As a pilot, 335ha of forest was allocated to the bon R'But community in Quang Son commune in 2013, with the bon leader as the forest management board. The same activity was also implemented in bon N'Doh (also in Quang Son commune), bon Pang So and bon B'Nor (in Dak Som commune). Similarly, the bon N'Jrei and bon Sre Uh in Dak Nia commune (Gia Nghia) were also allocated 450ha of forest by the People's Committee of Dak Glong district for their management and protection.

**LAND USUFRUCT
AFTER
LAND AND FOREST
ALLOCATION**

We would like to start discussing the impacts of land and forest allocation on current land access and use among the M'Nong people in Dak Nong with the story of H'Drang, a M'Nong woman in hamlet 11, Quang Hoa commune, because her case helped to typify the livelihood challenges created by land and forest allocation in the context of perennial industrial crops. When we visited her home in March 2020, H'Drang, spoke in a low voice that "our whole family will not know how to live in the near future".¹⁴ Her family with 5 members still has an acre of coffee, but this field is being sold so that the family can pay off a debt of VND 300 million borrowed many years ago. Out of this long-term debt of VND 300 million, VND 100 million is a "payday loan" (vay nong) borrowed in 2016 to "avoid the case" and pay fines because her family re-cultivated the old field but has now been classified as protective forest land in Lam Dong province, VND 20 million is a loan with interest borrowed from her younger brother, and the rest is from the bank for social policies and informal credit system in the area, with interest rates of "30,000 VND/month for one million dong" (equivalent to 36%/year).

The main income of H'Dang family now depends entirely on hired labor with 250,000 VND for spraying pesticides and about 180,000-200,000 VND for weeding. However, such income is not enough to meet the family's minimum consumption needs because work is not always available and she and her family are not always healthy enough to work as a hired laborer every day. As for the loan from her brother, although in the past 3 years, she and her daughter worked a total of 60 wages to repay the loan of VND 20 million from 4 years ago for the younger brother, but due to a high interest rate, that amount is only enough to pay the monthly interest. Her family is unable to find another plot for production because all productive land plots in the area have been allocated to the households while the forest land that can be cultivated is classified as protection forest land and now managed by the authorities. H'Dang said that her brother's family currently has about 14 hectares of coffee, of which one-third was lent by H'Dang for his family to plant rice fields before switching to coffee in the early 2000s. When asked why she didn't borrow or take back the land plot that she lent to her brother before to have more farming land, H'Dang said sadly that, since the local people changed to "solid business" (lam an kien co), no one, not even siblings, "lent each other or gave each other anything for free".

"Solid business"¹⁵ is a phrase used by the M'Nong people in Dak Glong district to refer to the market-oriented model of growing long-term industrial crops, mainly coffee, to replace the traditional upland rice farming model, which was first implemented locally since the early 2000s. After a number of years, people "studied while working", from 2006 onwards¹⁶, the entire arable land of the district has been completely covered with coffee. The people here called the cultivation of perennial industrial crops, whether it is coffee or other long-term industrial crops such as pepper, cashew, etc., "permanent business" because unlike the practice of upland rice cultivation and other crops, the land used to grow coffee plants need to be used for a very long time and cannot be used to grow other crops and share with others. The transition from upland rice cultivation to coffee farming occurred in parallel with land

¹⁴ According to the people in the Central Highlands, one acre is equivalent to 1 hectare.

¹⁵ "Solidification", such as "solid building", "solid canals, modernizing canals", etc... In the development discourse in Vietnam in recent years, is a term that represents an indicator of modernization and development. The living method, especially the traditional way of living and housing of the mountainous ethnic minorities, in this discourse, was not considered solid and therefore obsolete.

¹⁶ Unlike many areas in the Central Highlands, coffee cultivation in Dak Glong was spontaneous and quite late. According to the village elder K'Bieng - the first person to try planting coffee in his family land plot in 2000, people started to grow coffee in a few households, since 2000. At first, some households asked for seeds from the surrounding areas and tried to grow in a corner of the field. It was not until the late 2010s, when coffee prices began to rise again, that coffee was grown in mass and was the main crop.

and forest allocation and the issuance of Land use rights certificate, a form of "solidification" of land use rights. So, how specifically did the two processes of "solidification" of land use rights take place and how did they impact the livelihoods of H'Dang's family, as well as many other M'Nong families, making them fall into the current "dilemma"?

First of all, unlike the flexibility, bargaining and collective nature of the model of land ownership and use in the traditional society practiced until the early 2000s, social relations in management and use of land formed through land and forest allocation, as described above, have fixed long-term land use at all levels towards privatization and complete exclusion. At the family level, in the case of H'Drang's family, land and property attached to the land is customary to be passed down through the female line, with the manager being the eldest sister. However, all that land is indivisible but collective, meaning that the right to use (to cultivate) the land belongs to all members of the family. The fact that H'Drang "lent" her brother the land for rice farming was a compliance with the principle of collective ownership as prescribed by traditional customary law. When the process of land and forest allocation was implemented, the younger brother, with the advantage of being the one cultivating on the family's land plots, quickly completed the procedures to get the land use certificate and by this certificate, the younger brother was granted the absolute right to legally appropriate a part of the family's valuable property. This also means that H'Dang and other siblings in her extended family are also excluded from the legal use of this land area. While the land use right certificate excluded the other siblings in terms of management, the exclusion of any access to and use of the land is more complete and more permanent when the younger brother used the entire land area "borrowed" from her sister to cultivate upland rice to grow coffee. Being a perennial crop and its cultivation attached to a land plot for many years, coffee cultivation, unlike cultivation of upland rice and other short-term crops, completely eliminated the flexibility and mutual support in livelihoods, such as lending land for farming - a practice that was common in the Central Highlands and other local ethnic groups, in the use of land at the family level.

The solidification of land use rights (formed by land and forest allocation) and the solidification of cultivation on a land plot (due to the conversion from upland rice to perennial industrial crops) also created exclusion and inequalities in access and use of land among the families themselves within the bon. As analyzed in part 2 of the report, until the early 2000s, people in many villages surveyed by the research team all used land very flexibly, where families in the bon working together on a certain common land chosen by the head of the bon, and the field area of each family depended on the number of workers that the family had. When the district authorities issued land use right certificates, the households with "good economic conditions" quickly completed the procedures to be granted the areas that their families were cultivating, even if this area could be much larger than the area of many other families in the bon. The issuance of certificates with unequal land area between households, unlike in Yen Chau, is consistent with the provisions of the current Land Law as one of the important criteria for applying for a land use right certificate is based on the farming histories of households even though such privatization of land is not acceptable under customary law. When coffee cultivation completely covered the land area of the whole bon in 2010s, exclusion and inequality in land access between households, like at the family level, has been going on stronger and stronger. Field records in Quang Hoa commune show that currently, there are households with a large land area, as in the case of H'Dang's brother (14ha), but many households have only a few, like H'Dang's family.

According to the village elder K'Bieng in Sa Nar Bon, Quang Son commune, currently his family and the family of his two daughters are cultivating 1.8ha of coffee together. The

reason why each family only had an average of 6 pole (= 6,000m²) of coffee was because “at that time [when the whole village was still working in rice fields], the children were still small, and only he and his wife worked as the main labor, so they could only cultivate 1.8 hectares of rice fields even if they tried their best. By the time their children were grown up and the family has more labor resources, the land that could be extended to the field were completed allocated. In the past, everyone had land to work on. Now, many households have plenty of land to work on, others have nothing because the land has already been allocated.” The increasingly high value of coffee land in the market, together with the long-term land use right certificate, have completely eliminated the flexibility and the ethics of mutual assistance in livelihoods as commonly practiced in the traditional society. In addition, with land use right certificates, many families sold their land to pay off debts due to loss of coffee cultivation or other types of debt. In hamlet 11, Quang Hoa commune, there are thousands of coffee fields around H'Dang's house, but according to her, due to the fact that people here had to sell the land to pay off debts, most of the area around her village is owned by people from other places, especially Kinh people. In Sa Nar bon, Quang Son commune, in 2019, 2 M'Nong families had to sell both production and residential land to pay their debts. Creditors "sympathized" with the debtor's plight, so they let the families continue to stay in the house temporarily, but warn that in the future, if they still cannot pay the debt, they will definitely have to foreclose.

In areas with a very large number of free migrants and where the land is of great value due to the development of coffee, the policy of land and forest allocation also creates a great exclusion for M'Nong people in accessing and using large areas of land and forests previously owned by bon. As mentioned above, when people migrated freely from the northern provinces, especially the H'Mong group moving into Dak Glong, they quickly encroached on the lands where the M'Nong followed, even if those belonged to forestry or community land for living and farming. In 2000s, when they first migrated to this land, H'Mong families came to borrow land from the M'Nong people and compensated to the landowner VND 500,000 to 3-4 million per hectare, or just a pig. Half of these artifacts were kept by the M'Nong landowner, and the other half was divided among the community because bon's land is a common property. However, later on, the land price "increased" gradually. Some M'Nong people exchanged 2-3 hectares for a Dream motorbike. When the migrants were more crowded, they no longer asked to borrow land from the M'Nong people, but sought to occupy the fields for farming, despite the opposition of local residents. They also cut down trees more arbitrarily with more sophisticated methods (including bribing the forest management team) - something the M'Nong dare not imitate. Mr. Sardong Ot E took an example about a hill next to his house where there is still a little part of forest, saying that legally it belongs to an afforestation yard, but in fact, he has managed and protected it for a long time and with great enthusiasm. But plants disappeared slowly because the H'Mong people secretly come to cut it at night. In Quang Hoa, because the M'Nong people are only a minority with a few dozen of households, no longer a "strong" community, other ethnic minority migrants with hundreds of families are even more reckless when encroaching on their land¹⁷. According to Mr. Sardong Ot E, while the M'Nong people do not dare to use force to drive away the invading migrants, H'Mong families used homemade guns to chase away the M'Nong people who came to reclaim their land. They also know that not only H'Mong people, some Tay and Muong

¹⁷ Ở Quảng Sơn, cư dân bon Sa Nar nhận xét rằng người di cư vẫn biết nể nang người dân tại chỗ khi tìm nơi phát rẫy với tục lệ xin mượn đất cũng giống như Quảng Hòa. Theo lời của mục sư M'Soan, người dân tộc thiểu số di cư, bất kể là người H'Mông, người Tày, người Nùng rất ngại đụng đến những khu rừng thiêng trước đây của người M'Nông, vì họ - chứ không phải là người M'Nông - vẫn là thiểu số. Ngay cả ông, không những với tư cách là một mục sư truyền đạo Tin lành, mà còn với tư cách là người Ê Đê, cũng quan niệm rằng những con “ma” rừng của người M'Nông có tồn tại và cần phải được tôn trọng.

households also have guns in their homes, so they don't dare to cause too much stress. The Kinh people rarely blatantly invade their land, but M'Nong people lost many land plots to the Kinh creditors.

Because the 1993 Land Law does not recognize customary rights to land, and even specified that land that has not been cultivated for more than 1 year is considered wasteland, people have no legal basis to take back the lands which have been fallowed when they are occupied. Ever since upland rice was replaced by coffee and especially when the land and forest allocation was implemented locally, migrant households quickly completed the procedures to be granted land use right certificates on lands that meet the criteria. A similar situation occurred in many Kinh migrant families. In particular, households in the resettlement program would be granted with Red Books faster than other households. Meanwhile, many M'Nong households, despite petitioning the authorities for many years, have not yet been granted a Red Book. This brings many disadvantages to them, because in addition to certifying the land ownership, a Red Book is also a means for households to borrow money with preferential interest rates (under 9%/year) from the bank of social policies, instead of having to borrow from individuals and credit institutions with high interest rates. This money is important for investment in intensive farming of coffee or pepper, thereby further "solidifying" their land use rights. Some people - such as Mr. Kla in Sa Nar bon - chose the solution of "re-borrowing" from those who already have Red Books and are borrowing from the bank of social policies. In other words, Red Books can be a means to demonstrate the different powers of those who have and those who have not.

Due to a lack of resources, even the issuance of residential land rights certificates - which takes precedence among all basic problems of the people - has not been fully implemented. Some households like Mr. Sardong Ot E have not been granted with Red Book, even though he has settled and built a house since 1998, and is recorded as a long-time resident of hamlet 11, while his son, Sardong Nguyen was issued a Red Book and the two houses are only one yard apart¹⁸. Due to such reasons, those who generously share land with a few new residents asking to borrow land for cultivation in the beginning gradually became losers in the process of competing for land use rights with newcomers who are nimble, defiant and more numerous, as shared by a M'Nong man in Quang Hoa:

In the past, farming was not a problem because there was still a lot of land. Now it's not like in the past because migrants come to grow perennial crops, then buy and sell land, invade land, and there are also state owned land, we no longer have greater powers. I said they invaded our land, they said: that land belongs to the State, not yours;

¹⁸ On the other hand, some people hope that the State will recognize their land rights based on the land use history of their ancestors prior to the establishment of the state forest enterprise. For many years, they went to the Commune People's Committee to ask for the allocation of land that the family had previously used. The problem is the basis that they mentioned was often considered vague or lacking a mechanism for recognition by governmental officers. In the past, residents of a bon could use their familiarity with place names or a thorough understanding of the natural environment in a land to demonstrate their sovereignty over another bon. Nowadays, such oral knowledge is not considered to be legal compared to paper or in-kind evidence. Local officials could sympathize with the local ethnic minorities by not consistently requiring them to provide proof of land ownership prior to 1975, but instead, asked them to prove their personal relationship with a certain M'Nong person in the past mentioned in old records of the locality. However, as admitted by the Secretary of Quang Hoa Commune, it is very difficult to trace back to whom a piece of land once belonged by this method: "Only known for processing, backup is prohibited", because many important documents are restricted from accessing and are managed by the National Defense agency.

In the end, everyone minds their own business¹⁹. [...] When the village elders were still there, they tried to invade the land around here, we could say that they shouldn't invade that much. But gradually they found out that the land was good, they migrated from the other side to our area, we were a minority, we couldn't say anything, nor could we rely on the law. In general, we were allocated with the State's land, so our grandparents' land is no longer ours.

As mentioned above, before land and forest allocation, land in Quang Son and Quang Hoa was mostly under the management of forestry enterprises. The implementation of the policy of land and forest allocation in the area, till date, as happening now in Dak Lak (Sikor and Tran Ngoc Thanh, 2006) and in Lam Dong (Hoang Cam et al., 2013), does not change the central position in the legal relationship to land management of the government and forestry enterprises. For the forestry land area contracted to local people for protection, the state forestry companies and national defense agencies have the right to decide on who to allocate, regulations on responsibilities and penalties, etc... because they were granted land use right certificates. Groups of households that are contracted, in fact, only act as hired workers to receive wages according to their labor, and are paid from the forest environment service fund. However, they tend to misunderstand "land contracting" as "land allocation", that is to say the State (or organization or representative of the State) grants the rights, assigns duties and responsibilities to exclude households outside the scope of the contracted household groups - who have equal rights to access and use land resources equally as any other household in the community based on the traditional social relationship in terms of land. H'D, whom we mentioned at the beginning of this subsection, said that her parents had an old farm in Lam Dong. That land is now contracted by the State to another forest owner to manage and protect, but according to the law of the M'Nong people, the "grandparents' land" in the past is still their descendants'. Her younger brother thought so, and in 2016, he took a risk to clear the fields for cultivation, but was discovered by another M'Nong household, who was now contracted by the Forest Management Board to look after the field, and reported to the authorities. The first time the brother was only reminded, but in the second time, he was detained by the Lam Dong Police and charged with the crime of trespassing on the watershed forest land. The younger brother's family panicked and asked H'Dang to borrow VND 100 million to "avoid the case". In court, the younger brother was only given a suspended sentence, but H'D's family has been suffered from debts as mentioned above.

Although local officials sympathized the situation of the local ethnic people, it is not easy to change the land use scope of the State Forest Company. Support from commune authorities does not always mean smooth legalization of household land use rights. A former Chairman of the People's Committee of Quang Hoa Commune was once disciplined for signing documents certifying the origin and time of land use and signing a request for a certificate of land use rights for 57 households with an area of 58.98ha in October 2013. Based on the current land use map in 2005 and 2010, this 58.98ha area originated from encroaching on forest land from July 1, 2004 to January 1, 2010, managed by Quang Son Forestry Company,

¹⁹ *In the perception of many ethnic minorities today, the legislative concept of "the land of the State" is both misunderstood and not misunderstood, on the other hand. Although the Constitution and the Land Law declare that "land belongs to the whole people" and is "administered by the State" (and not "owned by the State"), in essence, land is still treated as a property of the State. Due to unclear communication, and low education qualification, many ethnic minorities truly believe that the land today belongs to the State. Their fear/respect for the law or state power may be taken advantage of by some people to seize their land.*

then land use right certificates to households and individuals were issued by the People's Committee of Dak Glong district without the permission of the People's Committee of Dak Nong province.²⁰

In Quang Son commune, under the management of a state forestry enterprise managed by Coffee Company 15 - a defense agency - the M'Nong people's access to production land is a bit more favorable. As explained by the village elder of K'Bieng in Sa Nar Bon when taking us to see his coffee farm - which is 8km from his house - Coffee Company 15 allows households to continue farming in the same land plots as long as they do not encroach on the protection forest. Some will be "legalized" by contracts, although not as strong as the Red Book issued by the local People's Committee, but is a condition for households to be contracted with land plots for long-term and stable cultivation. On the other hand, due to the policy of the Ministry of National Defense, its subsidiaries will be very limited in contracting "Defense land" to third parties who are economic organizations and companies in the locality.²¹ The exclusion here takes place in two ways: Firstly, with the power of the National Defense Organization, the Company has absolutely enough power to push households out of the protective forest areas and a large part of the special-use forest area - also where the land is rich and the best for farming - to the periphery where the land is poor, scattered, more difficult to access, and the People's Committees at all levels do not have the power to interfere in this decision; Secondly, households, regardless of their ethnic group, who have been allowed to do farming anywhere by the Company, will automatically think that the land belongs to them and do not want to share it with anyone other than their children. At that time, the long history of land use of the ethnic group was no longer important. We could realize the regret of the village elder K'Bieng when he showed us the land in the fields right next to his field: "All these places were bon's before. Now, this part belongs to the Company, this part belongs to Kinh people, this part belongs to H'Mong, and the M'Nong people, my sons, only have this part. We have no other choice but to accept that".

As for Thai people in Yen Chau, like in Dak Glong, land and forest allocation along with the complete abolition of traditional social relations in terms of land also create social exclusion and inequality in access to and use of land resources even though the methods are not exactly the same. First of all, for forestry land, especially protection forest land, the division, setting up the landmark and then allocating the land to different villages according to the principle of being close to the residential area created an equal distribution between the villages although the district authorities tried to balance and adjust many times as mentioned above. With different habitation histories, the villages residing on or close to the mountain slopes, around the valley, close to the forest or living in the forests, receive many times more forest area than villages with a history of residence in the central regions. Of the nearly 2,988 ha of protective forest land in Yen Chau district receiving payment for forest environmental services, Luong Me ban (250 households) was contracted with no forest area, Then Luong ban (132 households) had the lowest contracted forest area of 24ha. Meanwhile, 6 ban of Chum (143 households), Dong Tau (237 households), Huoi Sieu (38 households), Nhom (137 households), and Huon (120 households) were allocated 10 times more forest area than Then Luong village. In particular, Na Pan ban (295 households) had the largest area with nearly 1,185 hectares (accounting for 37.6% of the commune's total protective forest land)(see more in Table 1). When explaining this disparity, the Vice Chairman in charge of economics

²⁰ Cited

https://www.nhandan.com.vn/nation_news/item/38400602-ky-luat-sau-can-bo-lanh-dao-o-dac-nong.html

²¹ In 2012, the people of Sa Nar bon sent an application to Coffee Company 15 asking for 500ha of forest land to be managed by the community, which has not been approved so far. The company replied to the people that they had to wait for the approval of the Central Government (i.e. the Ministry of Defense) before they could allocate the land, while the Company itself only had the highest authority to "contract the land" but not to allocate land.

of Chieng Dong commune explained that: “When we introduced the program of forest allocation in 1999, the forest was allocated based on the principle that ban close to the forest could be allocated that forest, but Luong Me was too far away, so no one accept it. It was the people there who said that they were too far away to look after the forest, so they had no forest land.” When realizing that the villagers received no forest environment fee due to having no forests, the people of Luong Me ban repeatedly asked to claim the redistribution of forest land in many forms, including in the meetings with voters. However, because the forest area was allocated between the villages with the use right granted by the state with a term of up to 50 years, it is not feasible to readjust.

After being allocated, some villages, such as Ngua (Chieng Pan commune), Nhom, and Na Pan (Chieng Dong commune) divided and managed the forest in two ways: dividing among households and keeping the rest as the community forest with the person named in the use right certificate being the village head. Many other villages only distributed among households. Only Dong Tau ban managed completely as the community forest with the person named in the land use right certificate being the village head. Because the assignment of rights is also accompanied by protection contracts to limit the access of other villagers, right after the forest allocation, the groups of households strengthened their management to limit the encroachment of outsiders to exploit forest resources as well as to exploit for cultivation. According to the regulations of forest protection unit, outsiders are not allowed to enter these forests to cut trees for firewood, exploit bamboo shoots and especially to make wood for houses. To restrict the entry of outsiders into the community's forests, team members take turns in daily inspections. If the assigned forest owners cannot manage the forest well, their environmental protection fee will be deducted. Those who violate the regulations established by the forest rangers and the community are also punished in different ways. According to the people of Nhom ban, the fine is set at VND 3-4 million if they lose 150-200m² of forest. The fine for picking bamboo shoots is VND 5,000/shoot. In Luong Me ban, the strange thing is that even though there is no forest in ban, and no one in ban has been allocated forest, the community still prescribes a fine of VND 50,000/cattle for the act of grazing animals in the forbidden forest or community forest. The community must pay the person who catches the destructive animal at VND 100,000/head (but not slaughtering the cattle). The village head explained that it was a regulation on community forest management in some surrounding villages, but was forced to apply the convention of Luong Me ban so that the people of Luong Me would not dare to encroach upon and destroy the forests of other ban. And, these measures are not completely replacing legal remedies²².

In cases where families with extremely difficult circumstances wish to go to the forest to collect bamboo for fencing or repairing their houses, etc., they must obtain permission from the secretary, village head or protection group. It should be recalled that in the past, as long as they did not violate the regulations on harvesting seasons and protecting sacred forests, people in one village could go far to exploit forest products in the forest near another village. Forest allocation with strict protection regulations completely excludes many other households, in other communities, from accessing and benefiting from a resource that was previously shared by everyone in the area in the muong according to traditional principles.

²² Sometimes, people who were allocated land/forest also create their own rules. For example, Lo Van S. in Luong Me Ban has 500m² of land for growing sugarcane. In 2019, due to a negligence when burning upland, he let the fire spread to the sugarcane cultivation land of the village head's household. The land for growing sugarcane of the village head was in the contract to supply products to Son La Sugar Company. The company specified with the households that have signed the contract that if the sugarcane is unfortunately burned, the company still buys it for 800 VND/kg, which is a "good" price if the event is less than 24 hours and the molasses is still good, but after 24 hours, the price will be reduced to 600 VND/kg. With this regulation, both Son and the village head had to urgently cut down the burnt trees to sell to the Company. But they still could only sell for 600 VND/kg. As for the "loss" 200 VND/kg, according to the principle, the person causing the fire must compensate the person suffering the damage. The village head knew that his family was very poor, so he did not collect this amount.

Table 1. Allocated forest area and the actual area receiving forest environmental service fee in Chieng Dong commune in 2019

No.	BAN	APPROVED (ha)	PAID (ha)
1	Bản Chai (Thái)	92,23	90,324
2	Bản Chùm (Thái)	256,61	259,585
3	Bản Đông Tấu (Thái)	292,16	291,6
4	Bản Huổi Pù (Thái + Kinh)	34,97	33,691
5	Bản Huổi Siểu (H'Mông)	289,49	287,57
6	Bản Hượn (Thái)	249,96	249,547
7	Bản Kéo Bó (H'Mông)	73,24	71,944
8	Bản Na Pản (Thái)	1187	1184,93
9	Bản Nặm Ún (Thái)	40,16	39,841
10	Bản Nhôm (Thái)	330,19	329,821
11	Bản Púng Khoai (H'Mông)	125,2	124,553
12	Bản Thèn Luông (Thái)	24,4	24,369
13	Bản Luông Mé (Thái)	-	-

The large disparity in allocated forest area occurs not only at the village level but also at the household level in villages with forest allocation. The reason why there is a difference in the area of protection forest land at the village level is because, unlike the division of farmland, which is done based on the principle of equal distribution according to demographics, the acceptance of protection forest land, according to the law is voluntary, but the right to accept protection forest land comes with responsibilities of protection. Therefore, when it was first implemented in practice, many households did not dare to accept it because they were afraid of not being able to take on the associated responsibilities and obligations. This situation was common in the 1990s when the benefits that people received from the management and protection were not clear because there was no fund to pay for forest environmental services. Only households with houses or arable land near the forest were brave enough to accept the responsibilities in the form of a group of households, firstly because it was much easier for them to take care of the forest than other households, and because they had more space... to graze cattle. Only when the forest environmental service fund is available, many households "ask" to share forests from the community forest fund or from groups of households who accept the forest allocation before. But the equal distribution of forests is still very difficult to implement, partly because of the location restriction mentioned above, partly because the "lately formed" households after the forest allocation period are also among the households who do not have forest land. The percentage of households who were allocated forest is different from village to village: 220/292 households (75%) in Na Pan, 70/137 households (51%) in Nhom, 53/150 households (35%) in Ngua. In addition, there is also a large disparity in allocated forest area among households having forests. In Na Pan, at the beginning when allocating forest, while Ha Van C.'s family was allocated over 20ha, Hoang Van S. was allocated 19ha due to "taking risk", other households had less than 1ha because they did not dare to accept much for the fear that they would not be able to manage the forest with their limited resources. In Ngua ban, as shown in Table 2, the disparity between households is also very large. The household with the largest forest has 2,521ha of forest, the household with the smallest forest has 0.195ha of forest (13 times difference). 3 households with the largest forest have 5,893 ha of forest, 3 households with the smallest forest have 0.794 ha of forest (7.4 times difference). While the average level of forest allocation in Son La is 0.5-10ha/household (Tropenbos International Vietnam, 2020), the level of 0.8ha/household in Ngua ban can be classified as the "bottom line". It also means that the average level of forest allocation per household between villages may vary further.

Table 2. Allocated forest area and the actual area receiving forest environmental service fee in Ngua ban (Chieng Pan commune) in 2019

No.	Name of legal person	Approved (ha)	Paid (ha)	No.	Name of legal person	Approved (ha)	Paid (ha)
1	Lường Văn Thật	0,773	0,7	29	Quàng Văn Quyết	1,65	1,49
2	Lêm Văn Phớ	0,77	0,69	30	Lò Văn Phóng	0,306	0,28
3	Lò Văn Kiểu	0,588	0,53	31	Hoàng Văn Yên	1,073	101
4	Lường Văn Cương	0,815	0,73	32	Hà Văn Kính	0,952	0,86
5	Lường Văn Khâu	0,758	0,68	33	Lường Văn Dong	2,521	2,27
6	Lò Văn Hoàn	0,727	0,65	34	Lò Văn Dũng	0,195	0,18
7	Lường Văn Háy	0,821	0,74	35	Lường Văn Chứa	0,293	0,26
8	Lường Văn Quyết	1,375	1,24	36	Lêm Văn Chính	0,942	0,85
9	Lò Văn Hồng	0,719	0,65	37	Quàng Văn Quý	0,459	0,41
10	Quàng Văn Thích	0,806	0,73	38	Lò Văn Thuận	1,093	0,798
11	Lò Văn Sơn	0,687	0,62	39	Lường Văn Dương	0,529	0,48
12	Quàng Văn Mậu	0,709	0,64	40	Lò Văn Sướng	0,489	0,44
13	Lường Văn Quyển	0,552	0,5	41	Lường Văn Khù	1,007	0,9
14	Lò Văn Hóa	0,453	0,41	42	Lêm Văn Chinh	0,524	0,47
15	Lò Văn Sùm	1,034	0,93	43	Lò Văn Bình	0,499	0,45
16	Lò Văn Bèo	0,711	0,64	44	Lò Văn Kim	0,786	0,71
17	Lò Văn Dũng	0,773	0,7	45	Hoàng Văn Chung	0,793	0,71
18	Lò Văn Viêng	0,695	0,63	46	Quàng Thị Đào	0,708	0,64
19	Lò Văn Liễn	0,617	0,56	47	Hoàng Văn Thắng	0,931	0,84
20	Lò Văn Khù	0,709	0,64	48	Nguyễn Thị Liên	1,137	1,02
21	Lò Văn Lun	0,582	0,52	49	Quàng Văn Bường	0,6	0,54
22	Lò Văn Bông	0,966	0,87	50	Lò Văn Xuân	0,471	0,42
23	Lò Văn Định	0,442	0,4	51	Lò Văn Hùng	1,142	1,01
24	Lò Văn Sớ	0,487	0,44	52	Lêm Văn Nộc	1,551	1,4
25	Lò Văn Đăm	0,527	0,47	53	Lò Đình Hồng	0,627	0,56
26	Lường Văn Thiết	0,528	0,48	-	Tổng cộng giao cho các hộ	42,4	38,2
27	Lò Văn Yên	0,52	0,47	54	Lò Văn Hùng (đại diện cộng đồng)	188	188
28	Lò Văn Tiến	1,722	1,8	-	Tổng cộng	230,4	226,2

Because the principles of land access and use prescribed in the new Land Law are different from those of customary law, at the initial stage when this policy was implemented in the locality, households in the village still implemented their traditional livelihood practices. Many households still sought to expand their land by encroaching on forest land that had been allocated to other households, and the assigned households were not able to prohibit this encroachment. Access to forest products was also common in the forests. Commune and district authorities, at this time, also accepted the continuation of customary practices of the local people even though forest land had been allocated. Therefore, in 1995-1996, only two families were fined for violating the new forest law and the watershed protection project in Yen Chau had to be stopped after 3 years of implementation (Sikor, 2004). The law on protection forests was only made stricter when the forest environment service fee program was implemented in Yen Chau in 2013. Also later on, seeing the benefits of the environmental service fee payment program along with the complete exclusion from the owned forests, households - especially in the villages without community forests, realized they were disadvantaged and therefore sought to be allocated forests to manage and develop. However, even the local government with its power could not satisfy their request. For example, in Luong Me, all the forest areas closest to where they live and work are "owned" (residing in another village), with a valid land use right certificate, effective until 2053²³, so the adjustment is beyond the ability of both the government and the village community. The rebalancing/adjustment, in this context, depends entirely on the goodwill of households in the same or different villages. In some villages, some households have ceded a part of protection forest land in the spirit of "offering their own coat and food" to disadvantaged households so that they can have a little more income from the environmental service payment fund, although the forest land is still on the Red Book of the donor's family. Such a principle of forest allocation in general has created a situation that Sikor and Tran Ngoc Thanh (2007) call [*exclusive devolution*] in a permanent and radical way to a resource that is a common property and everyone should have equal access.

As described above, for arable land which is upland and garden land, in the early stages of implementation of the new land policy, their use and management was quite flexible even though the entire cultivated land had been divided and allocated to each household with clear specifications. Households still negotiated to lend, adjust the border themselves without having to change the information on paper issued by the state as they did decades ago. The owner's family, as practiced in the traditional social relations, only asserts their supremacy over the main product on the land, while the other products are the common products of all people. Due to this flexibility, the area of management for upland field does not match the field of cultivation. However, when land became increasingly scarce and especially when people began to change the structure of crops from one-crop crops to perennial crops according to the model of "house in the village + shack on the hill"²⁴, as a consequence of the new Land Law, the exclusion of rights has room to develop. In the past, Thai people only made tents on the upland field to stay temporarily during the crop season, but today, many families invested in building solid fences around the fields and upgrade the tents they made in the past into "semi-permanent" houses on the land to protect their property and assert their rights on the land. For example, the fence running

²³ Yen Chau district granted the certificate of use right for protection forest land in 2003

²⁴ The business model appeared in Chieng Dong in the mid-1990s. In hilly areas far from the village (which may be in/near the area of regenerated forest allocated to people for long-term protection), some households have made livestock shacks, grown vegetables and raised fish. The upland shack/tents also have houses on stilts, electricity from the grid, and pumped water to serve daily life. Some upland areas are actually farms to raise cows, pigs, poultry, grow many fruit trees such as mango, lychee, plum, banana, papaya, etc. and seasonal green vegetables. The barn is sturdy and has a fence and a locked door. Households are separated: Some of them stay in ban, some in the field, living and working at different times.

surrounding the upland field of Duong's family along the provincial road that we had the opportunity to visit was a woven iron fence with iron doors and solid locks. On this land, next to the old shack that has now been converted to a cow shed, he built a two-story house on stilts with many expensive furniture, next to a modern toilet. His family and many other families, such as Kha Van Lai's family in Nhom ban, moved to permanently settle on the family's farm a decade ago. In addition to planting fruit trees and other crops, they also invest to expand livestock and poultry, digging ponds for fish farming.

For farmland, by allocating land use rights with a long term to households, the new land policy has completely abolished the customary practice of dividing land based on changes in the labor force of families in short-run cycles. This abolition created inequality in access to and use of farmland among households in the village. In the context that the entire farmland of the villages was divided equally among households since 1999, those who were yet born, those who were not at home (going to school, going to the army, going on business trips), those from other villages married to someone in the village, and also newly separated households (newly established) will not have land to cultivate, or if they do, the area is every small because it is divided from the parents' fields that were previously allocated. They, in other words, have become those "born in the wrong century", having to "grab on" their parents' property to survive. Young orphans who were not at home during land allocation, have to face an even more difficult situation because they did not have parents at home to "keep the land". Meanwhile, households with grown-up children, who receive a state salary or work and live elsewhere do not need to return the "excess" fields to the community. That field becomes an asset of inheritance for their children in the future. They just need to do some cultivation (so as not to be confiscated by the State), or temporarily lend it to others for cost savings. Such virtual scarcity occurred in all of the villages we did surveying²⁵. For example, in Nhom ban, after adjustment, in 2003, Hoang Van Xuan's family was allocated 8 fields of 270m² each. Although the family now has only 5 people left because 3 of his sisters married and moved to other places, his household still manages to keep the same area. Meanwhile, Duong's family had 4 people at the time of land allocation, so they got only more than 1,000m². Currently, because the community has no fields, his family with 10 people only has the same area allocated since 2003. In the case of Duong's family, fortunately, there was still land back then, his family has reclaimed more than 1,000m² of *na ti* field. However, in recent years, it is impossible to exploit more fields because the lands and streams that can be exploited for farming, even if they are only very small fields, have been fully exploited.

The case of Lo Thi Thu Thuy in Luong Me is more special. At the time of land and forest allocation in 1993-1994, Thuy family was allocated 2 slots of fields, including one for her and one for her child with a total area of 500 m². Thuy's husband was a government official, so he was not eligible for land allocation. Therefore, although her family now has 5 people, her family only has 500 m² of fields because her 2 children were born after 1994 and therefore were not allocated. Because there is not enough land for farming, she and her husband now have to go harvest mangoes for mango growers and sell fruit along the provincial road to earn extra income. There is another case where land usufruct from the State's policy has not been accompanied by the obligation that the individual has made to the State. That is Lo Van Son, who served in the Northern Border War in 1979 and served in the army until the end of 1994, before returning to his hometown. At that time, he was not allocated with any land at all. After getting married, his relatives shared to him 400m² of residential land to build a

²⁵ This situation happens in many other Thai communities (see more in the publication of Hoang Cam and Thomas Sikor,

house. Talking to us, he expressed his frustration, "I went to serve the country but I didn't receive what I deserve, like other people. I could not get a wife, and had no land. When I first came back, I only had 2 pounds of rice, I didn't know anything, I didn't know where I should stay, and no one asked if I got allocated. Fortunately, my father gave me 400m² to build a house". At the present time, Son's family has 7 people, but his family only has 375m² of one-crop field, divided by his wife's family and 500m² of self-exploited upland area away from home. As he admits, that area is "not enough to eat" and "not even a sugarcane cart".

Most of the people in the villages we had the opportunity to speak with are not only looking forward to the end of the 20-year term of the land use certificate, but also looking forward to the change on legal regulations at the central level so that the community has the opportunity to balance and redistribute land based on traditional principles. As confided by Hoang Van Sum, Head of Na Pan Working Committee of the National Front: "Only when there is a resolution of the province or the central government, we can work on a solution, but now only with the feedback from the people, without instructions or resolutions of the superior, who can make the decision. The village can ask the commune or district level but they can barely do anything." According to the local people, the method and time to balance and reallocate farmland should be assigned to the village community as before because the community is the ones who best understand the needs and working capacity of each family. Some people who now claim to be "sufficient in field" - meaning that they have really benefited from the Land Law, also support this approach as the most effective way to solve difficult situations in the community.

CONCLUSION

This research, contrary to the assumption of *neo-liberal* economic and public policy researchers (de Soto, 2000; World Bank, 2004) who believed that land allocation, forest allocation and commercialized agricultural development could improve the economic life of rural people, shows that the transformation has created many unexpected social and economic consequences.

Land allocation, forest allocation together with the Red Book has transformed the flexible and overlapping social relations on land into a rigid form with clear limits on land rights and land boundaries. Although the Red Book, a legal tool to maximize the use rights to allocated land, helps to protect the rights and interests of those who are allocated land by the State, it is also a "red card" (a simile of the M'ngong) to completely deprive others of access and usufruct rights from the land. In any land dispute, when the Red Book is presented, those without one usually have to give up the disputed area which is believed to be under their ownership and usufruct according to their customary law. Obviously, the Red Book serves as two of the four exclusion powers according to the model of Hall, Hirsch and Li (2011). It is both the power of regulations and the power of legitimation. The State, by issuing the Red Book, establishing the related regulations and the universal laws of land, has provided a mechanism to formally exclude individuals who have not been recognized by

the State for land use rights., including pre-existing rights in customary law. This happens both in the relation between state-owned or private entities with individuals - as in the case of the agro-forestry farms in Dak Glong and in the relation between individuals and individuals - which is commonly seen everywhere.

A radical change from the traditional land management system under the traditional customary law of the Thai and M'ngong people to the current system post land and forest allocation could be seen from the model of Gluckman. In both systems, overlapping rights exist, but the characteristics and consequences of the overlap are completely different. In the traditional customary law-based system, overlapping rights are associated with social hierarchy, with the performance of duties and responsibilities to the community, and the overlap is mostly positive as it ensuring the maintenance of the whole system. Furthermore, in the context of collective or community ownership of land, it also creates minimal subsistence for the disadvantaged. For example, the separation of land use rights and ownership rights under customary law allows non-landowners to access certain types of resources located on land they do not own. It also backs up an important moral principle: those with legitimate benefits must, in one way or another, be mindful of the plight of those around them.²⁶

²⁶ *The loss of the human spirit in land management is also seen in many other ethnic minority communities who are feeling disappointed by the disappearance of customary law. Addressing this topic among members of the "Pioneering Group - For the Voices of Vietnam's Ethnic Minorities" in Hanoi, Mr. Kray Suc, from A Lieng village, Ta Rut commune, Dakrong district, Quang Tri province described that the customary land management and use of the Pa Co (Pakoh) ethnic group was almost similar to the traditional practices elsewhere in the Central Highlands: There was absolutely no private ownership of land and few questioned who owned the land and all would agree that the land belonged to the village, was managed by the village leader and the village council of elders and allocated to villagers. External people who wished to become recognized members of a village or young families who wished to be separated from an registered family and do business on their own were always allocated a piece of land by the village for farming in accordance with the farming cycle. The widows and single mothers were receiving support, with their houses built by the villagers and the farmland allocated by the village leaders. Given less significant roles of village leaders and elders, fellow villagers negotiated over land and conflicts began to appear. Mr. Kray Suc emphasized that in his commune after 2010 when the government stepped up the free-of-charge issuance of Red Books for ethnic minorities, land-related disputes, conflicts, even clashes, between villagers started to become more serious. This was due to the fact that, in response to any requests for land borrowing, the village elders accepted the requests but only provided verbal agreement. After the Red Books were granted to the descendants of those who earlier borrowed land, they then came back to locate their land for farming but it was being used by others already. Besides, with the Red Books, the land sale of the Pa Co people was made easier, yet, their sale of residential and farming land then triggered conflicts related to forest land between them and the government: "In my commune, there is one village where local people don't have land anymore. The land parcels near the main road have been sold to the Kinh people. People do not have farming land and start to go to the old forests. When the commune government came to meet local people to settle the issue, there were police and representatives of government agencies but the village elders did not participate. Some were fined and some others were sentenced to jail. Most of land-related losses or conflicts in the community were widely believed by local people to have arisen soon after the Red Books were granted in masses, meaning that private land use rights were legally recognized; or even before that when the government performed land and forestland surveys and allocation - possibly a few months, years or decades before the issuance of Red Books. Ms. Nguyen Thi Diem, a Tay person (Thai Nguyen) shared a case in her village where a 95-year-old old woman who left her village and joined pre-war assignments was not allocated land as she came back to her village and started receiving her pension when land allocation was completed (1993). Ms. Diem felt sad for the old woman, sharing that: "The government has not allocated a land parcel to her as a place of residence but she has been keeping the will of her parents and never given up her hopes." The same story was also shared by Mr. Kray Suc in his Pa Co community, related to those who returned to the community after the government had completed land surveys and issuance of Red Books to the masses (in 2010). Rigid surveys ignored subsequent demographic changes, i.e. those who were not included in the surveys (either away from home or born after the time of surveys) were excluded from access to the land. Some were determined to build a house on "a piece of land with starfruit and bamboo trees planted by their grandparents", and then found themselves in conflicts with the legal land holders (those having the Red Books) where they were often in a disadvantaged position.*

In the new land usufruct model, overlapping rights were linked with inconsistent administrative decisions that determine rights based on fixed demographic features or socioeconomic status, with no attached duties and responsibilities to the community. The overlapping rights created by the new land use model would influence the effectiveness of the model itself, as those who have not been granted “legal” rights by the State must use the land of the legal right holders” (the only option for them to have access to land), while the degree of “legality” itself is controversial due to land boundary changes²⁷. This is the key driver of the ongoing conflicts and disputes that threaten community cohesion. Red books for residential and farm land or legal rights to forest protection through payment for forest environmental services can ruin the tradition of mutual assistance in each community. Private land ownership encourages many ethnic minority households to consider land as an asset that must be protected for their families or relatives, not one that can be freely shared with others in the community. This contributes to exacerbating the vulnerability of disadvantaged groups in the community who have been and are currently restricted in their access to land²⁸.

Faced with these challenges and issues, many communities self-adjusted, to a certain extent, certain types of land and followed customary law in land uses to address their practical needs of the community, although there was currently no available mechanism to effectively bridge common law with customary law as well as leverage the flexibility of traditional community organization. Apart from Yen Chau, as described above, in the case of Lieng village in Noong Luong, Dien Bien district, Dien Bien province, there were other adjustments related to land usufruct. In 1997-1998, the government allocated forests to each village, then each village to each household, with the quota of 1,000m²/family member. At that time, ban Lien was allocated 55 hectares of production forest.

In 2002, land use right certificates were issued to households, but maps to locate the forest location were missing. During the discussion on forest land management, the village leaders realized that it would be unfair if only households to whom land was allocated could manage such land, given the fact that any forests near the residential area would be better managed while forests in remote areas were of lower quality. As proposed by forest rangers, it was agreed that households with land titles would still own the land but it would be managed in reality by the entire community. In 2014, the government issued a certificate of land use right to the community without revoking the certificates previously granted to each household. For this, local people in Lieng village now have two land use right certificates: one granted to each household in 2002 and one granted to the community in Lieng village in 2014. But there is only one form of forest management, i.e. community-based forest management. This is highly rated by the local people of Lieng village for the following benefits: there are more people involved in forest management and protection, with peer supervision; the fact that forest land is “common property” discourages unplanned tree logging in the allocated area; in case of forest fires, households tasked to manage affected areas and others in the community will jointly work in forest fire responses; local people are allowed to visit the forest for bamboo shoots and other tubers... Most importantly, it will prevent future disputes and conflicts. Mr. Tong Van Han, who shared this story, said that: “We think that the land does not expand by itself while trees can grow up on land. We have seen social development with more cultural exchanges, and many young people are working outside where they were born and staying their permanently after their marriage. For the land and forest allocation as in 1999, I am afraid that we will lose our sense of community as some will have more land than needed and others will face shortage of land, and our community will nothave forests for bamboo shoots and tubers. So we

²⁷ This is typical in land and forest allocation in Dak Glong. Local people had long used the land before state-owned forestry enterprises were established (since 1986) and much of their land overlapped with the land being used by local people as allocated by the Provincial People's Committee (since 2000); after this, the People's Committee of the district undertook land surveys for issuance of the land use right certificates to local people (since 2013); the People's Committee of the province and/or district recovered land covered by contracts between the forestry enterprises and the local people before reallocation to private third-parties (since 2010), leading to different land-related issues in Dak Glong today.

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have to protect our community forests.” However, local people are afraid that if the forest is recovered for forestry projects one day, they will lose community forests.

The unintended consequences of land and forest allocation as analyzed above become more serious when ethnic minority communities change their crop structures. As mentioned above, in order to improve their livelihoods and move along with the national development, the M’ning communities in Dak Nong and Thai communities in Yen Chau actively switched from traditional shifting cultivation to long-term industrial crops. However, they and those engaged in policy making for agricultural development could not foresee that the restructuring of crops, like land and forest allocation, could increase exclusion and inequality in land access between community members. As analyzed in the Li (2014) study in the highlands in Indonesia, the development of the commodity agricultural production model in the ethnic minority areas in the Central Highlands and Northwest regions on the one hand encouraged more people to own and accumulate land. On the other hand, for households with land titles, engagement in agricultural commodity production by practicing sedentary farming is a risky transition as, faced with losses, many households, like H’Dang family, will have no choice but to sell the land that they have been using. In order for those who are currently stuck in the situation of “not knowing how to live” as a result of these two transitions, as in the case of Ms. H’Dang’s family, it is necessary to make changes in land policies in a more inclusive and equitable manner for ethnic minority areas as practiced in customary law by the Thai and M’Nong.

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