

The background of the cover is a photograph of a woman in traditional Dzao and Thai clothing, including a red headband and a dark long-sleeved shirt with a patterned skirt. She is carrying a large woven basket on her back and is standing in a forest. The image is overlaid with several semi-transparent geometric shapes in shades of green, yellow, and orange. On the left side, there is a vertical decorative element consisting of a series of yellow and green chevrons.

Customary Law in Forest Resources Use and Management

A Case Study among
the Dzao and Thai People
in North-West Vietnam

Culture Identity and Resources Use Management (CIRUM)

2012

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Calling Mother Water's Breast

Baby, sleep well,
Mama is making sticky rice and chicken
for her long day in the wet rice fields
also the fish soup is ready, to feed you my
baby

Calling for Mother Water's breast
Baby, sleep well!

Mama is going into the forest
to collect bamboo shoots and other
richness from the forest
while papa is catching more fish
in the fifth and the sixth streams
to feed you my baby

Baby, sleep well!

Thai Folk Lullaby

ACRONYMS

CIRUM	Culture Identity and Resource Use and Management
CPC	Community People’s Committee
DPC	District’s People Committee
FMB	Forest Management Board
ICCO	Interchurch Organisation for Development Cooperation
IPADE	Instituto de Promoción y Ayuda al Desarrollo
MARD	Ministry of Agriculture and Rural Development
NRM	Natural Resource Management
NTFP	Non-Timber Forest Products
SFE	State Forest Enterprise
SFM	Sustainable Forest Management
TEW	Toward Ethnic Women

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1. INTRODUCTION

Vietnam is gifted with a tremendous amount of mountains, rivers, forests and a biodiversity with species that cannot be found anywhere else in the world. Forests are mainly located in mountainous areas where most of the 12 million ethnic minority¹ people live. Over centuries, these ethnic minority groups have lived in close intimacy with forests and have always been highly dependent on forests for their livelihood. This intimacy inevitably shaped value and belief systems, traditions and institutions which are not sufficiently understood and taken into account in interventions from outsiders that aim to support these groups. Government policies and plans have often been formulated and implemented in a top-down manner, usually failing to address local dynamics and needs and at times even conflicting with local values and customary laws. The consequence is that the right of ethnic minorities to self determination and their cultural rights are undermined, which makes them outsiders of their own development. At the same time, the government has not always been able to reach their envisaged development results among minorities. It is widely acknowledged that ethnic minorities are the most disadvantaged groups in the Vietnamese society, accounting for the lowest level of education and high levels of poverty. And these figures are on the increase (Baulch et al., 2002, Writenet 2006, Kimai & Garia 2007, Dang 2010). Moreover, environmental degradation, forest depletion and conflicts over natural resources are recurrent problems especially in areas where ethnic minorities reside.

1.1 Forest Rights, Customary Law and REDD plus

In June this year, Heads of State and Government and other high-ranking government officials from across the globe will meet in Rio de Janeiro in Brazil for the United Nations Conference on Sustainable Development (UNCSD). The event marks the 20th anniversary of the 1992 United Nations Conference on Environment and Development (UNCED), also held in Rio de Janeiro, and the 10th anniversary of the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg.

By agreeing on ‘Forest Principles’ the UNCED of 1992 has put forest protection on top of the global environmental conservation agenda. However, it had hardly any impact and tropical forests continue to be destroyed on a massive scale. Between 1990 and 2005, an average of about 13 million hectares of forests disappeared every year, most of it in tropical countries. There has been progress in reforestation in some countries and some experience a natural expansion of forests. Nevertheless, globally, we are at present still losing about 200 km² of forest each day (FAO, UNDP, UNEP 2008: 1).

After previous efforts to halt deforestation in tropical countries have largely failed, a new attempt is currently being made to protect and restore forests as part of the global initiative to address and mitigate climate change. REDD plus – Reduced Emissions from Deforestation, forest Degradation, conservation, sustainable management of forests, and enhancement of forest

¹ The Vietnamese government does not use the term ‘indigenous peoples’ for any group, but it is generally the ethnic minorities living in the mountainous areas that are referred to as Vietnam’s indigenous peoples. Even though the two terms are often used interchangeably, it was decided that in this report only the officially recognized term ‘ethnic minorities’ is used.

carbon stocks in developing countries)² – is considered by many an historic opportunity for forest conservation and to some even the last hope for tropical forests.

Critics tirelessly point at the complexity of REDD plus and its inherent difficulties, predicting it to fail just like UNCED's 'Forest Principles'. Others however consider REDD already a "remarkable achievement" since the idea of REDD has been taken "to the point where a working model is on the horizon – all in a mere five years" (Mercer et.al. 2011: 272).³

While the debate on the pros and cons of REDD plus is going on, there are a number of lessons on forest conservation that have been learned over the past decades which are highly relevant for REDD plus. According to a recent report by the Rights and Resources Initiative (2011) 78 nations with significant forest cover have been able to either maintain or even increase their forest areas – precisely what REDD plus aims to achieve. By looking at five countries which record an increase in forest cover, the RRI report assesses the key factors making the transition from net deforesters to net forest growers possible.

The report concludes with the identification of factors that these five countries have in common that made reversing the deforestation trend possible (Ibid. p. 8). For us of particular interest is the third factor mentioned in the report:

"3. shifts in the ways in which Indigenous Peoples and forest communities are brought into the forestry picture—towards intensified forest-tenure reform and the establishment of various forms of protected areas that respect forest dwellers' uses of the forest for essential goods and services and to meet livelihood needs."

Indeed, as the authors of the report conclude, "It makes sense to move forest rights and responsibilities towards communities and individuals living in or near the forest" And they see this as "an opportunity for win-win-situations": to promote at the same time forest conservation, sustainable resource use and better livelihoods for communities (Ibid. p. 16).

Vietnam, which is one of the five countries covered by the RRI study, has conducted a thorough forest land tenure reform over the past decades. Since the start of the forest land allocation programme in the early 1990s, long-term use rights over 3.3 million ha of forest land have reportedly been provided to local communities (Ibid.: 52). These tenure rights were given either to individual households, to household groups, or village collectives, and by the end of 2009, communities thus held tenure rights to 26% of Vietnam's forest area (Sikor and Tan 2011: 1).

The result of forest land allocation program has been a rapid increase of forest cover. Under the previous centralized state forestry, the country lost more than 2.6 million ha of natural forest between 1976 and 1990. After the launch of the forest land allocation programme, forest cover expanded from 11 million ha to over 13 million ha in 2009, which marks an increase of over 10% in 19 years (Ibid. p. 7).

However, what this overall figure disguises is the fact that while forest regeneration and the establishing of tree plantations lead to an overall expansion of Vietnam's forest cover, its mature natural forests, which are much richer in biodiversity continue to be lost, and other natural forests

² Originally called just REDD - Reduced Emissions from Deforestation and forest Degradation – this definition is in accordance with the new and more encompassing understanding of REDD (therefore "REDD plus") that was reached at the UNFCCC Conference of Parties 16 in Cancun, Mexico (see Draft Decision document available at http://unfccc.int/files/meetings/cop_16/application/pdf/cop16_1ca.pdf

³ Mercer et.al. however point out that despite the progress made, REDD is "still a long way short of being a workable plan for successful tropical forest conservation and restoration" and identify four key challenges (ibid.)

continue to be degraded. Reliable statistics on the actual rate of loss of natural forests do not exist, but it is considered to be still significant (Rights and Resources Initiative 2011: 53).

The benefits of the forest land allocation programme have also been unevenly distributed. In mountainous areas, where the majority of ethnic minorities live, its implementation has been slow and many communities remain without secure tenure rights. Furthermore, the results have not only been positive and Tan et al (2008, cited in Rights and Resources Initiative 2011: 53) conclude that: "In most cases, the effects of these (forest land allocation) policies on the poor have been rather limited, or even negative."

As Sikor and Tan (2011: 1) point out,

"experience from Vietnam and elsewhere shows that tenure rights are not enough. The transfer of tenure leads to desirable environmental, economic, political, and cultural outcomes only if local communities can realize the rights given to them in legislation. For example, tenure transfers have little meaning if forest regulations and logging bans severely restrict the concrete rights accorded to people. Transfers also possess little value if they emphasize protection obligations over rights to forest management. In addition, legal tenure rights often do not translate into real rights on the ground if local authorities and communities do not have the capacity to implement legal stipulations. In many situations, tenure rights do not bring economic benefits to local people who lack access to markets and forest ecosystem services."

One of the key challenges for the forest land allocation programme identified in RRI's report (2011: 53) is how customary land rights and institutions can be formally recognized under statutory law. Articles 29 and 30, of the Forest Development and Protection Law, one of the two laws in Vietnam that form the basis for the forest land allocation programme, recognize all households and individuals living in the same village as rights holders to forests they have been managing or using efficiently. The law also acknowledges customary practices and culture as the basis for assigning forests to these populations." (Beaney et al 2009, cited in Rights and Resources Initiative 2011: 53). There is however a considerable discrepancy between the law on paper and its implementation on the ground.

Customary law in general (i.e. not just with respect to land and resource rights), and traditional knowledge are aspects of indigenous peoples' and other local communities' cultures that have long been overlooked or consciously ignored in policy formulation, conservation and development planning. This despite the fact that the Rio Declaration on Environment and Development, one of the outcomes of the UNCED of 1992, clearly recognizes, in principle 22, that

"Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development."

With growing international recognition of indigenous peoples' rights, reflected in the passing of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) by the UN General Assembly in 2007, and the commitment to ensure indigenous peoples' full and effective participation in the implementation of REDD in the UNFCCC's Draft Decision of COP 16 in Cancun, there is also an increasing interest in traditional knowledge and customary law of indigenous peoples, and how this can contribute to more effective forest conservation.

While participatory and culturally sensitive approaches in conservation and development are gaining ground, studies that take a closer look at the role of customary law in forest management

and conservation are still scarce. This is particularly true for Vietnam. There is an emerging notion in Vietnam that local traditions like customary law might be essential for a sound development among ethnic minorities. However, these are mere presumptions because there are no well grounded studies to prove the importance of customary law in Vietnam. At the same time, Vietnam is developing at a rapid pace and local customary laws are getting lost. Therefore, we believe it is time to take a closer look at these traditions. To this end, Culture Identity and Resource Use and Management (CIRUM) with support from Instituto de Promoción y Ayuda al Desarrollo (Fundación IPADE) and Interchurch Organisation for Development Cooperation (ICCO) conducted this research on customary law in two communes in Vietnam, the Thai commune Muong Phang in Dien Bien province and the Dzao commune Ta Phin in Lao Cai province.

This research may be of particular relevance in light of the fact that Vietnam is currently busy preparing for REDD plus. Vietnam is part of both the World Bank's Forest Carbon Partnership Facility (FCPF) and UN REDD. During the presently ongoing readiness phase REDD countries like Vietnam are supposed to draw up national strategies or action plans, policies and measures for implementing REDD. This also creates a necessity to amend or make new laws and to build up technical and administrative capacity for the implementation of REDD.

UNFCCC's Cancun Draft Decision clearly states that while implementing REDD a number of environmental and social safeguards should be promoted and supported. Among them are the respect for the knowledge and rights of indigenous peoples and local communities, and the full and effective participation of relevant stakeholders, in particular, indigenous peoples and local communities. During the readiness phase for REDD, countries will have to devise mechanisms that also ensure the safeguards related to indigenous peoples' and local communities' rights mentioned in Cancun agreement. We hope that this report can contribute to the strengthening of existing and bringing about the legal and policy changes needed for a true win-win situation under REDD, a situation which benefits forests and the people who live in and with them.

1.2 Research Goals and Objectives

Customary laws embody important values, knowledge and practices that are gained over centuries and the underlying goal of this research is to find out the contributions of customary law to sustainable and effective management of natural resources. Ethnic minority groups developed knowledge and customs by virtue of their dependence on forests, which allowed them to survive and live with nature in harmony over centuries. Through this research, we attempt to get a better understanding of the functions of customary law in relation to forest sustainability and how these functions changed over time. By showing the functions of customary law, we hope to incite the concerned authorities to take customary laws into account while designing policies and programs for ethnic minorities. The continuing environmental degradation and enduring social conflicts over forest lands are severe threats to long-term livelihoods and social stability of communities. Our assumption is that integrating the elements of customary law will strengthen the quality and effectiveness of state law - this shall ultimately lead to interventions that are better tailored to local traditions and thus will allow for more effective and sustainable protection, use and management of forests. More importantly, we believe that the increased role of customary law in mainstream development is an important step in fulfilling the ethnic minorities' right to self determination. Based on this understanding, the specific objectives of the research are:

1. To define customary law from the perspective of different groups, including ethnic minorities, authorities and experts
2. To identify customary law and practices related to forest and water resources management and use in order to assess their sustainability in environmental, socio-economic and cultural terms

3. To understand the possible conflicts between customary law and state law, policies and programs
4. To get an overview of the social, economic and environmental effects of recent socio-economic developments
5. To provide recommendations to create a free space for dialogue between community members, policy makers, donors and other key development stakeholders to facilitate the coherence between customary law and policies/projects/programs

1.3 Research Questions

Based on the above outlined objectives, we formulated and attempted to answer the following main and sub questions:

Main Question

How does customary law relate to sustainable use of forests and water resources and how can customary law strengthen state law?

Sub-Questions

1. What is customary law? What is the customary law related to forest and water resources management and use?
2. Which aspects of customary law lead to sustainable use and management of forest and water resources?
3. What are the social, economic and environmental effects of state policies on people's interactions with forests?
4. How do state laws and policies affect customary law and its functions in natural resource use and management?

Study-Questions

1. **What is customary law? What is the customary law related to forest and water resources management and use?**
 - 1.1 How do different actors (local people, authorities and experts) define customary law?
 - 1.2 Which values and functions do Dzao and Thai attach to customary law, how do they view customary law in relation to development?
 - 1.3 What is the difference between customary law and cultural practices and habits?
 - 1.4 What are the traditional structures and institutions to enforce and maintain customary law?
2. **Which aspects of customary law lead to sustainable national resources use and management?**
 - 2.1 What is sustainable forest and water resources use and management?
 - 2.2 What are Dzao and Thai people's daily practices on forest and water resources use and management?
 - 2.3 What are these daily practices based on? Are they based on customary law and indigenous knowledge or on official policies? How did people learn these practices?
 - 2.4 What kind of ceremonies and traditional institutions still play an important role in the community?
 - 2.5 What is the significance of these daily practices, ceremonies and institutions to the people?

2.6 Do these daily practices and ceremonies promote sustainability? How?

3. What are the social, economic and environmental effects of policies on people's interactions with forests?

3.1 What is the current situation with regard to water and forest resources use and management?

3.2 Is this management and use based on customary or state law?

3.3 How is the socio-economic situation?

3.4 How do policies affect the socio-economic and environmental context?

3.5 How do people explain these problems?

4. How does state law affect customary law and its functions in forest and water use and management?

4.1 What are the underlying values and principles of state law and customary law in forest and water use and management?

4.2 What are the similarities and differences in the values and principles of state and customary law?

4.3 (How) Does state law take customary law into account? How do customary and state law co-exist?

4.4 What are the attitudes of the local authorities towards customary law? How do the local people feel about the attitudes of authorities towards customary law?

4.5 Are people aware of the policies on forest and water resources use and management and do they agree with them?

4.6 How does state policy affect customary law? What social, economic, cultural and institutional obstacles do people face in adhering to state policies?

4.6 How did customary law and the related practices change over time? Do people face difficulties in maintaining these practices?

2. METHODOLOGY

This research has been carried out between July and December 2010 by a research team consisting of members with different backgrounds like researchers, NGO workers, local Thai and Dzao elders and experts on customary law and forestry. The research was conducted through a combination of methodologies like desk study, literature review, observations and collecting information from (key) informants through interviews and group discussions. During the process, the research outline, questionnaires and field findings have been intensively discussed among the team members during various meetings. The first step of the research team was to visit Lao Cai and Dien Bien provinces in two groups in order to select communes that were suitable for the purpose of this research. Based on a set of criteria, the research members assessed the eligibility of two communes and decided that Muong Phang and Ta Phin are suitable for this research. Following are the criteria based on which the communes were selected:

- People in these communes still strongly hold on to their traditional cultures, habits and customary law in general and in natural resource governance
- The commune has a rich amount of water and forest (land) that are important in peoples (daily) lives
- Primary forest is still existing and seems to be well managed by the communes
- The commune visibly shows the existence of a mix of customary law and state law because this combination will show how customary law and state initiatives exist next to each other

This first trip was also used to obtain information on the basic socio-economic indicators and to make initial contacts with relevant actors like village elders, traditional healers and local authorities. The involvement of the Thai and Dzao elders as members of the research team in the first and the following two visits was essential for the interaction with local actors and also for gaining a deeper understanding of the subjects studied. After the first field visit, the research design was further developed and discussed within the research team.

The first field visit to collect data was conducted for 15 days in September 2010 and for practical reasons the research team was divided into two. The goal of this visit was to understand customary law on a more abstract level, like its related values, beliefs and regulations. Therefore, the focus during this trip was mostly on village elders and spiritual leaders who had deep knowledge and understanding of customary law. Besides the several group meetings with elders and spiritual leaders, information was also collected through several interviews and informal talks with villagers and local authorities. An overview of the people interviewed can be found in the Annexes. After the first round of data collection and analysis, the research team identified information gaps and organised a second round for data collection during which information was collected through semi-structured interviews and observations. The informants were selected in a way to ensure a balanced mix of men, women, young and old. The focus in the second field trip for data collection was more on the existence and translation of customary law in daily practices and the status of forest and water resources. Also, local officials and actors responsible for the protection of forest resources were interviewed. During the second data collection trip, a forestry expert was also involved to observe and to collect information on the situation of forests and water resources.

We would also like to mention the several shortcomings in this research, mainly caused by limited amount of time and resources to conduct the study. We could only study two communes and two ethnicity groups and we realise that this is inadequate to generalise our conclusions for other

ethnic groups in other localities. Also, the qualitative nature of the study and the relatively short amount of time spent in the villages enabled us to present only a general picture of customary law rather than an in-depth analysis. Therefore, this study should be seen as a first step to touch upon the link between customary law and natural resources management and to identify questions that we need to explore further.

The report is structured as follows:

- In Chapter 3, we are giving the conceptual framework of how customary law is defined in this study. This framework has been reviewed in the course of the study through talks and an understanding revealed by different informants and is therewith answering the first research question *'What is customary law in forest and water resources management and use?'* At the same time, this chapter is the conceptual frame for the criteria used to analyse customary law and its relation to sustainable natural resources use and management.
- In Chapters 4 and 5, the cases of Muong Phang and Ta Phin communes are described.
- Chapter 6 provides an overview of state law and its impact on customary law and forest management
- In Chapter 7, the two cases are analysed and the sub-questions (under main questions 2, 3 and 4) are addressed through putting the cases in the conceptual framework.
- Finally in Chapter 8, the final conclusions on the main questions are given, which is followed by our recommendations.

3. CONCEPTUAL UNDERSTANDING OF CUSTOMARY LAW AND SUSTAINABILITY

3.1 Defining Customary Law

The general philosophical basis of the concept '*Custom*' is that it refers to a set of established patterns of interactive behaviour among humans, which can be objectively verified in a particular social setting, because these behaviours are adopted in everyday routines (Ørebech 2005). '*Law*' refers to principles, rules, rights and obligations that govern social interactions and processes. Looking far back in the history, law has always existed in societies and got more sophisticated as a society increased in complexity. History also shows that law can come into being through different dynamics and can be maintained through various institutions and mechanisms. For instance, law can be defined and enforced by a powerful coercive authority like a king or an oppressive regime or it can develop from bottom up and can be maintained through acknowledged institutions. In most current modern societies, formal laws are based on universal principles that are enforced by an accepted authority like the state. Based on this understanding of 'custom' and 'law', a relevant question in the context of this study is *'when does custom become customary law?'* Since there is no fixed set of criteria that is widely agreed upon, in this study, we need to identify where to draw the line between custom and customary law and we also need to define the criteria when customs attain the status of customary law.

As mentioned above, laws can develop from the bottom up and when this is the case in traditional societies, it is often defined as customary law. It is a way to organise social life and can accordingly be seen as a part of culture, which is the collection of various aspects related to social organisation within a group. Customary laws come into being as customs evolve over time and become the expected norm of a group. However, the selection which customs turn into law does not happen randomly but is rather a process of practice, learning, adaptation and selection through which behavioural patterns and strategies are created that are helpful for people to survive. These patterns often include self imposed limitations of exploitation of common-pool resources because this has proven to be crucial for human groups to adapt and sustain themselves over time. Tuan (2006) gives a good illustration on how people in upland areas developed customs and turned these into norms and rules for the use of forest and land resources. Customary law systems in different settings evolved as a means to turn common-pool resources like forest into so called, 'limited common property'. This implies that the property is commonly owned but not subject to open or unlimited access. Currently, the recognition of the value of such *common property right* systems increased after research demonstrated that customary law in different settings has prevented the overuse of the common resources and that customary law creates a delicate balance between animals, humans and nature (Ørebech 2005:24). In addition, there are various case studies that describe the functionality of customary-based management and use of natural resources. For example, a case study on the Co'Tu' minority in Thuong Quang commune showed that land conflicts within and between neighbouring communes never occurred before 1975 due to clear customary rules on land ownership, use and management. However, severe conflicts over access and control over the forests erupted after 1975 when state forests enterprises where authorised to manage and utilize forests for production and Co' Tu' people's customary practices became 'illegal' (Tuan 2006).

But what are the mechanisms in customary law that makes people avoid overuse and maintain a balance with nature? According to Thomas Reid, the philosophical basis of the concept custom is that it is an interactive behavioural pattern among humans and that customary law is 'grounded in the operations of the mind that lead people to conceptualise legal rule as normative propositions that are binding and mandatory since they are supported by sanctions' (Ørebech 2005: p17). People take for granted that there 'must be' law. Pivotal to customary law is that people subject to it recognise the benefits and necessity of the law to survive and to maintain social order. Hence they recognise, accept and adhere to its provisions; therefore, it requires relatively less force and coercion to enforce customary law. This description given by Reid is similar to the understanding revealed by the village elders and respondents in Muong Phang. Here in the early days, the Thai customary law itself was not considered as customary law but rather interpreted as good practices and behaviours. People complied with expected rules and norms in specific and separate practices like the custom on marriage, building a Thai house, conducting a funeral and so on. Over many years, these norms and practices became more detailed, systematic and scaled up into '12 Hits' which refers to the Thai customary law that covers all aspects of daily life. Village elders in Muong Phang consider that the Law of the Thai people is in the first place a set of lessons about good practices and how to avoid bad habits that are orally passed on from generation to generation. These 'Hits' are not forced upon people but are voluntarily applied. They are the original faith of people regardless of age and gender and they reveal conventions and function as a source of ethical advice to guide individual behaviour and public opinion. The 'Hits' were defined by community elders in the following ways:

Law is the practice of procedures made by the community. No one forces anyone and it is voluntary. Descendants themselves learn pro-actively and eagerly, they do not wait for the information to come to them. Cà Văn Hop, 86 years, Muong Phang)

Hit is the root of belief, behavior and attitude which drives the people from generations to generations. Though there is no official compulsion to force people to follow them, it is their belief which convinces the people to apply them. (Traditional Village Priest, LÚỜng Văn Nanh, 78 years, Muong Phang)

Also in Ta Phin, the general interpretation of customary law is that it refers to a set of rules that drives individual behaviour and creates social criteria to judge human behaviour. In Ta Phin, customary law is seen as guidelines for people to do good, to love and to respect each other and the nature which gives them their lives. Here, the aspect of customary law that was mostly stressed was that it provides teachings, ethical advice and guidance for individual behaviour. Similar to Muong Phang, also in Ta Phin, people's beliefs that underlie customary law have strong power, and they therefore adhere to the rules naturally. One of the worst punishments for those who break customary law is their exclusion from the community and community life and this is considered much worse than financial penalty or imprisonment. However, it is not only beliefs that make people adhere to customary law, they can also be enforced through institutions and mechanisms like local leaders and social taboos. Nevertheless, to be viable, customary law and the related mechanisms and institutions must be dynamic and adjustable in nature. Societies and their environment change continuously, which requires people to adjust their organisations and customs to meet the conditions of new situations. However, adjustments in customs stemming from gradual societal change are different from custom changes that occur due to governmental practices. Therefore, these two things should not be confused. It is important to

note and understand this difference considering the various programs and reforms introduced by the government in the last decades, which have different underlying values than customary law⁴.

A point of dispute among academics and development practitioners is whether a custom must also be recognised by courts in order to gain the status of 'customary law'. With 'recognition', they refer to customary law being integrated, used and interpreted by formal courts. The reason of advocating for formal recognition stems from their concern to avoid 'fictitious customary law'. Although their concern is legitimate, the criterion of court recognition would obstruct this research because it will rule out the inclusion of many customs in the study. Moreover, the very reason to conduct this study is to promote the acceptance of customary law by formal authorities and subsequently by courts. At the same time, the concern to avoid fictitious customary law cannot be neglected. It can be assumed that when a behavioural pattern is broadly accepted by the local people, it is not 'fictitious' but rather a social fact. Hence, only studying customs that have broad acceptance in the community could be considered as a mechanism to avoid fictitious law. In this study the definitions given in the table below are used for the given concepts.

Table 1. Definitions of Customary Law, State Law, Culture and Habits

Customary Law	State Law	Culture	Habits
Customary law is a form of local knowledge formed spontaneously in the course of a long history through experience with human behaviours and interactions among people and between man and nature. It is passed on from generation to generation through teachings and practice and it instructs and regulates human relations with each other and the natural environment. Customary rules are recognised and accepted by the whole community and applied in daily practice to create unity and balance each community's society. Customary laws are spiritual and profound (deep and touching beliefs).	State law is a system of reasoning closely with the procedures promulgated and strictly expressed in written form by the state. The legal system of the state was promulgated to maintain a stable order for the development of society. State laws are regulations and laws regulating relations in the society.	Culture is the united collection of all products of human organisation. Culture includes physical aspects such as housing, clothing and non-material aspects such as language, ideology and values and other philosophy.	Habits are a set of established patterns of interactive behaviour, ways of living and lifestyles that are rooted in our actions and which are repeated over time. They become part of life and are difficult to change. Unlike customary law, habits are not applied by all members of a community and are not necessarily accepted by all.

3.2 Building Blocks of Customary Law in Natural Resource Management

At the core of customary law lie the beliefs and values which are the foundation on which rules and regulations are based. These rules are maintained and enforced through institutions and mechanisms and are translated into people's daily behaviour. Below we outline the criteria we use to define the borders between cultural custom and customary law. Though we realise that this set

⁴ These reforms accommodated the expansion individual land tenure rights and their duration. An underlying principle and assumption is that individual autonomy should be increased as to encourage them to use land as an instrument to create economic benefits. This is very different from ethnic minorities' customary law which denotes spiritual, ecological and social values, beyond economic benefits.

of criteria can be disputed as there is no widespread accepted definition and criteria to outline the borders of customary law.

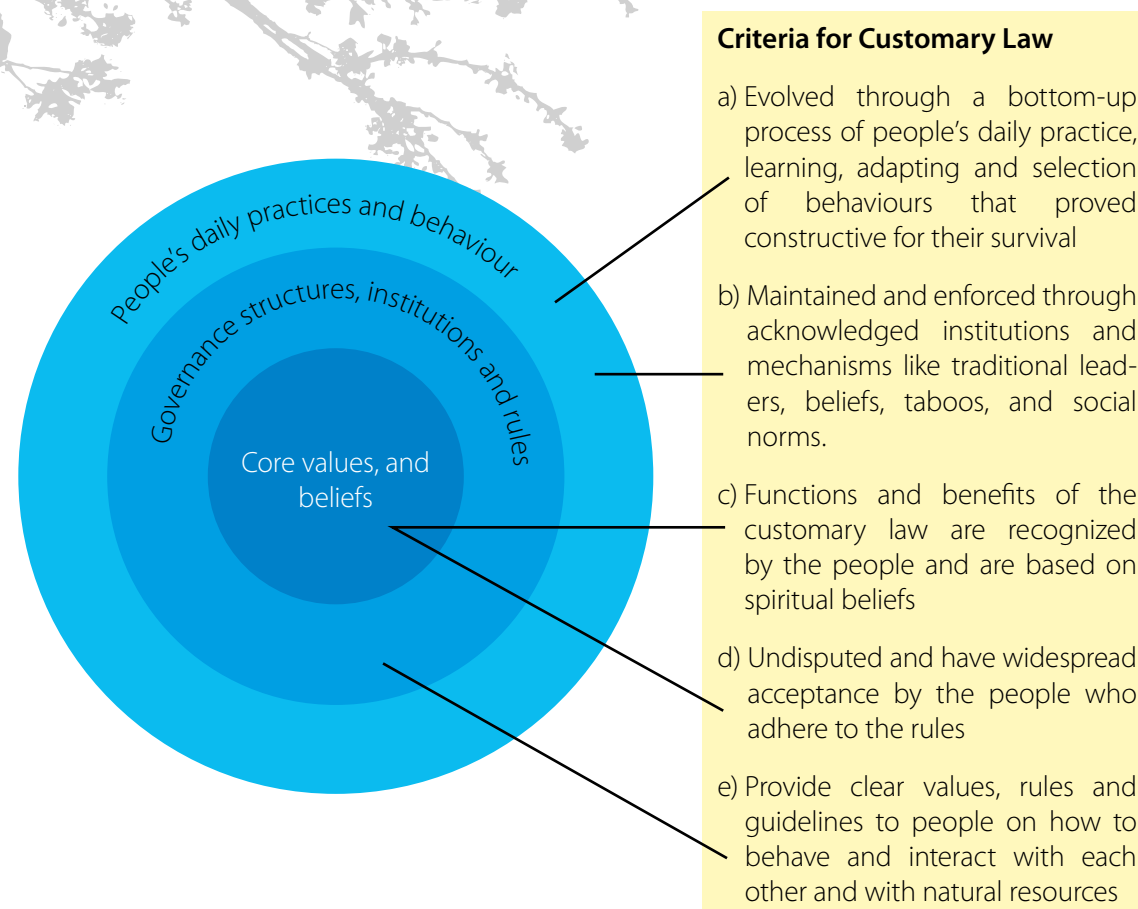


Figure 1. Building Blocks of Customary Law (Graph based on an idea of TEW)

3.2.1 Core Values and Beliefs

At the core of customary law lie the fundamental values and beliefs that determine people's outlook to the world, how the world is organised and what their and other people's roles and positions are in this society. In terms of natural resources, these core values and beliefs shape people's views on who should own and control the resources, who has the right to benefit from them and who has responsibilities to take care of the resources. Based on the experience of the research team and the literature review, we can conclude that most studies fail to address the core values and beliefs underlying customary law. Therefore, in this study, there will be a strong emphasis on people's belief systems and their significance for customary law in natural resources use and management.

3.2.2 Governance Structures, Institutions and Rules

Most crucial to human management of natural resources, like land, water and forests, is the issue of ownership. Ownership deals with the social relations and institutions that govern the access to and use of land and natural resources. In traditional societies, land ownership is closely linked with institutions of marriage, inheritance and traditional structures, and existing customary rules and regulations define the rights for distribution, ownership, use and benefit sharing (Xuan Thin 2001). The matter of ownership entails various dimensions like the question of who decides on the distribution of natural resources, what is the process of distribution, who has the right to get the distributed resources, what are the rights and responsibilities of owners over these resources

and the issue of gender. Other important subject to natural resources is its use, control and management with the central question of who has the mandate to control and manage and what are their roles and responsibilities. Agrawal & Ribot (cited in Xuan Thin 2001: p264) distinguish between four powers relevant in the context of land tenure:

1. Power to create new rules or modify existing ones
2. Power to make decisions about the particular use of resources
3. Power to implement and ensure compliance to the new and altered rules
4. Power to adjudicate in disputes that arise in the effort to create a new rule

For instance, some ethnic minorities in Vietnam traditionally authorise an entire community as user, administrator and owner of land over various types of communal land, whereas in other ethnic groups, communal land are held by aristocratic classes. Traditional forms of private ownership can also be found in some minority groups living in valleys (Xuan Tinh 2001).

3.2.3 Daily Behaviours and Practices

The outer circle in Figure 1 refers to the daily behaviours and practices of people that can be considered as the visible revelation of the two inner circles. People translate their beliefs and values into norms and rules to organise their life which all together influence the daily conducts and practices. In turn, these daily conducts influences the two inner circles because people learn from their practices over time and these lessons alter their beliefs and norms. When we observe daily practices in this study, we look at the way people interact with natural resources in their daily lives that include the following:

- Agricultural use of (forest)land and farming methods
- The collection and use of non-timber forest products (NTFP) for domestic use or other economic benefits
- The collection of NTFP (specifically herbal plants) for medical purposes
- Water sources and their use (collecting water, bathing, fishing, agricultural purposes and cattle raising)

3.3 Sustainable Natural Resources Use and Management

3.3.1 Defining Sustainability in Natural Resources Use and Management

It is obvious that forest and water resources are invaluable for human life and the amount and quality of resources vary over space and time. The rich or poor status of the resources can be a result of their use and management by humans. People can either take measures to conserve and develop the quality, quantity and diversity of resources or they can exploit it in a way that causes depletion and deterioration. In this section, we will define and outline the building blocks for sustainable use of natural resources use and management, therewith answering sub questions under the first main question.

The earliest modern definition of the principle of sustainability in forestry was given by Hartig "[] utilise them [the forests] to the greatest possible extent but still in a way that future generations will have at least as much benefit as the living generation" (Hartig 1804 cited in CIFOR 1999:75). The UN Brundtland commission defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (United Nations World Commission on Environment and Development 1987:41). Since this formulation was confirmed in the 1992 Rio Declaration, it has become a mainstream and accepted definition, especially in the area of natural resource management. However, the broadness of the definition also allows for multiple interpretations and creates the need to specify sustainability for every

theme, level and context it is applied to. Accordingly, we also need to establish a more practical definition of sustainability that allows us to operationalise the concept. Relevant in the context of this study is to define criteria for what we consider as *sustainable forest use and management*. A recent definition of sustainable forest management was developed by the Ministerial Conference on the Protection of Forests in Europe and adopted by FAO (1999:20), which is as follows:

The stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems.

Central to this definition is the aim to reach a balance between socio-economic demand for forest products and the conservation of forests and biodiversity. Socio economic and environmental interests can at times be conflicting and it is a challenge to find ways to overcome the conflicts and to create a win-win situation. There appears to be a growing international consensus on elements of sustainable forest management (SFM) and a set of criteria and indicators for SFM are widely accepted and used. When we aim to manage and use a resource sustainably, we are considering that there is a set of natural factors that are kept constant, or at least, above a certain level, that will allow the ecosystem to maintain its integrity. The ecosystem can be defined as the biotic (related to living organisms) and a-biotic (non-living chemical and physical factors in the environment) components of an environment that interact to produce a flow of energy and cycling of nutrients. The ecosystem in a specific area must meet some criteria in order to be called sustainable, also referred to as eco-system integrity by Schneider (1992 cited in CIFOR 1999:77). He defines it as “*the ability to support and maintain a balanced, integrated, adaptive biological community having a species composition, diversity and functional organisation comparable to that of natural habitat in the region.*” And the integrity of the ecosystem is context specific and depends on three factors: the ecosystem structure, ecosystem function and the ecosystem resilience.

Each eco-system has its own *structure*. The ecosystem structure comprises the species composition, dispersion pattern and organisation of plant and animal species into higher ordered levels, such as trophic levels, food webs or guilds. The ecosystem *function* is the set of processes that results from interactions among biotic and a-biotic components of the ecosystem. CIFOR (1999:78) defines four classes of important processes:

- Processes that affect the rate and total quantity of energy flow (biomass)
- Processes that affect the rate and total quantity of nutrient cycling
- Processes that influence ecosystem services important to human beings
- Processes that affect the life and diversity of living organisms over both short and long time periods.

Lastly, the ecosystem resilience is a measure of the ability of the system to absorb changes of state variables and parameters, and persist or rebound within a given amount of time.

Socio-Economic Conditions for Sustainable Natural Resource Management (NRM)

When seeking the sustainable management and use of the resources, the final objective is to maintain, from the social point of view, the well-being of the people. In terms of socio-economic sustainability for NRM, CIFOR (1999) provides indicators such as security and sufficient access to resources, the economic opportunity, the right to conserve heritage and identity, a certain level of justice in the distribution, the safety and health conditions (CIFOR 1999).

NTFPs and Sustainable Use

In this study, the focus is on forest and water resources. With respect to forest resources, the specific attention goes to NTFPs (herbal plants, not animals) and timber. NTFP refers to the natural resources collected from the forest apart from timber or other industrial wood products that are used at household level for domestic, social, cultural or economic purposes. Access to NTFP is a way of rural households to diversify their livelihoods and can have significant social, cultural or spiritual value. However, the (economic) value or functions of NTFPs is rarely taken into account in assessing gross domestic product. The need to recognise the values of NTFP for households and communes is necessary for two reasons. The first reason is, as stated earlier, that NTFP's have important socio-economic and cultural functions. The second reason, stemming from these functions, is that the use of use of NTFP's facilitates for the protection of forests because it increases people's relation to the forest and feeds values to interact positively with its resources. Researches in Meso-America for instance show that management of tropical forest for timber alone yields lower financial returns whereas other authors show that integrating the production of timber and NTFPs increases the financial benefits (CBD & UNEP 2001:6).

Authors like Nepstad and Schwartzman (1992) or Kiernan et.al. (1992) show that NTFP use is a good way to ensure sustainability of forest management. At the same time, history shows that traditional harvesting systems can not ensure sustainable production if the product is included in a growing global market. In sum, there is no blueprint for using NTFP in a sustainable way as sustainable uses are tailored to local, ecological, cultural and political circumstances (CBD & UNEP 2001: 28). Therefore, policies and efforts for scaling up should be based on experience and (field) research in each specific context. At the same time, there is a need for research that will result in the development of technical approaches for the sustainable management of NTFP. One of the first attempts to describe the steps for sustainable management of NTFP was done by Peters (1996). Also useful are the preliminary results of a multi-case comparative study on NTFP use (CIFOR 2004) covering more than 60 cases in several countries. This study shows that it is possible to predict when and under which ecological and social conditions a given NTFP can be effectively and sustainably managed. Based on what has been outlined above, environmental, social and institutional criteria for sustainable NRM have been identified and are summarised in the table below. Our analysis of the data collected from the field was based on these criteria.

Table 2. Criteria and Conditions for Sustainable Natural Resource Management

Criteria and Conditions for Sustainable NRM	
Customary Law	• Evolved through a bottom-up process of daily practice, learning, selecting and adapting behaviours that proved beneficial for survival • Functions and benefits of the customary law are recognised by the people • Are undisputed and have widespread acceptance by the people to adhere to the rules • Provide clear values, rules and guidelines to people on how to behave and interact with each other and with natural resources • Are maintained and enforced through acknowledged institutions and mechanisms like traditional leaders, beliefs, taboos, norms, etc.

Criteria and Conditions for Sustainable NRM	
Environmental	• Ecological system and its functions are well maintained (forest, land, soil, biodiversity etc.) • No over-exploitation of land, forest and water resources; these are available in the seasons they are supposed to be available • Amounts of timber and NTFPs collected do not have adverse effects on each other's quantity and quality • No pollution of land, forest and water resources • No adverse social and environmental health impacts by human interventions • Logging and benefit-sharing systems allow for regeneration of timber and NTFP
Socio-Economic	• People who use the forest have positive values and commitment towards its conservation and development • Boundaries of distribution of forest benefits and forest use rights are clear and widely agreed upon • Not only timber but also NTFP benefits are generated through the forest, and they are important part of livelihood • Multifunctional uses of forests promoted • Users of the forest have the capacity to protect resources from outsiders • People have means for settling disputes both internally and externally to the group • Information on the quality of the resource is available to the group • Incentives and benefits of the resource to the people are positive and might include cultural (intangible) benefits • Incentives might also be negative in the form of sanctions
Institutional	Regulations and Rules • There are clear (customary-law based) rules and criteria to collect and manage NTFPs • Rules and regulations have guidelines to promote biodiversity and protect the ecosystem Management (structures to manage and enforce rules) • People dependent on a resource have a say in all decisions on how the resource is managed and benefits are shared • Groups are sufficiently small to enable regular contact and communication Indigenous Knowledge and Inputs • There is indigenous knowledge (or information) on sustainable NTFP use techniques, relating to: - Location and extension of areas where the species are productive (knowledge about light, water, phenology, optimal harvesting regime to obtain a good product without reducing a species' reproductive capability) - The quantity of harvestable products in each area (and how harvesting rights are distributed among the villagers) - Harvesting cycles and the project quantity of harvestable product - Possible technical interventions to grow or regenerate the NTFP if necessary • People have adequate inputs necessary for sustainable management like labour, information and support from relevant formal / informal institutions

4. CUSTOMARY LAW IN MUONG PHANG

4.1 Introduction to Muong Phang Commune

Map 1. Dien Bien Province and location of Muong Phang Commune
(Sources: Google Map and Wikipedia)





View of Muong Phang

Muong Phang commune is located in the outskirts of Dien Bien district, 25km away from Dien Bien Phu, the capital of Dien Bien province. It is a very mountainous area with Armor Muong Ang in the north, Shield of Dien Bien Phu City in the south, Armor Dien Bien Dong district in the east, and Jia Na Tau commune, Na Swallow in the west. Located at an altitude between 600 and 1200 meters above sea level, Muong Phang has a tropical monsoon climate with two distinct seasons: the rainy season from May to October and the dry season from November to April. The average annual rainfall varies from 1500 to 2100 mm and average temperature is 21.5 to 22.5°C. With seven streams and nine reservoirs, Muong Phang can be classified as a water rich area. The biggest water reservoir, Pa Khoang accommodates 40 million m³ and provides water to the 1200 ha Muong Thanh rice fields that produce for national and international markets. Therefore, Pa Khoang and its surrounding forest are of great significance to the district's economy.

With the main soil groups being alluvial, black and red soil, Muong Phang is a suitable area to grow (industrial) crops and short-term plants. The area is also suitable for livestock, hence, raising livestock like pigs and buffalo are common⁵. In recent years, livestock has been hit by a number of diseases resulting in their decline, especially chickens and ducks. The Thai people here have long developed and used irrigation systems like canals, dams to hold water and waterwheels to transfer spring water to higher level fields. This enabled them to grow wet rice which is currently the main crop in Muong Phang, though other crops like maize, bamboo, cassava, soybean and peanuts are grown as well to prevent food shortages. Many households also have their own fishpond. However, despite the diversity in crops, from the average amount of land area used for agricultural production (0.1 ha per person), we can estimate that an average households faces 1 to 2 months of food shortage per year. In 2010, Muong Phang was included in the list of poor communes of the Dien Bien province and a survey in August 2010 identified that 21.1% of the households in the commune are living below the poverty line. Muong Phang has therefore

⁵ See Table 1 on livestock raising in Muong Phang in the annex.

been receiving support from government's poverty reduction programs and has seen support from the state in the form of power lines, roads, water supply systems, schools and a health station. However, infrastructural development in the commune is still poor. Only around 15% of the population have access to electricity and roads in the commune are of low quality and are mostly dirt roads that are difficult to pass or non usable in the rainy season. Water flowing in the streams is polluted and less in quantity, therefore, people dig wells to get water for everyday use. The gravity water supply system introduced by the government reaches 36% of the population. There is one commune health station with two physicians, four mid-level nurses, an assistant pharmacist and 47 nurses trained in primary health care. There are four primary schools and one secondary school with a total of 1868 students. In the town centre, there is a post office and a market. Tourism is also starting to emerge in Muong Phang. In 1954, Muong Phang was the headquarter of the Dien Bien Phu campaign of General Giap and Major General Hoang Van Thai who delivered a successful battle against the French. Symbolising the nation's victory over the French, this headquarter has recently been upgraded causing an influx of tourists.

Tourism is creating opportunities for economic activity like the selling of herbal (medicinal) products. The increased tourism coupled with the various poverty reduction programs initiated by the government have had positive effects on the local economy and provided better access to services like domestic water, irrigation, health care and transportation. People acknowledge that their lives have improved as compared with the older generations and the added income enables them to purchase equipment like motorcycles and televisions. There is a growing local economy and some families formed a number of small businesses in the service sector like restaurants, milling machines, groceries and repairing garages. The other side of the coin is that the new developments have put a higher pressure on local resources, the environment and the existing traditions. (In later sections this will be elaborated upon in more detail). One unequivocal example is that since 2008, Muong Phang has been a site for exploiting sand from creeks and streams to meet the increasing demand in Dien Bien. There are around 22 sand exploitation stations in the whole commune that operate without official license from the Department of Natural Resources and Environment and they are identified as one of the reasons of soil erosion, recent floods and the loss of aquatic biodiversity.



Women selling vegetables in Muong Phang

4.2 Customary Law and Natural Resource Management in Muong Phang

With a population of over 1.2 million, the Thai people make up about 1.4% of the population of Vietnam and they live mainly in mountainous districts, such as Son La, Dien Bien, Hoa Binh and Thanh Hoa and Nghe An provinces. Muong Phang commune has 47 villages and 1754 households with 8319 inhabitants. 95% of the population belong to ethnic minority groups. In 36 villages, around 70% of the population is Thai and in another 11 villages 70% consist of Kho Mu minority people. The remaining populations belong to Hmong and Kinh ethnicity. The Thai people in Muong Phang have, like some other ethnic minorities in the mountainous Northwest, a long history of customs and culture which they maintain up to date. Thai women and men can be recognised by their traditional costumes⁶ and they have their own, distinct writing system. Throughout history, the Thai people in Vietnam also developed their own characters and characteristic. The Thais still use their own language, for instance, they have the Thai radio system Voice of Vietnam. Thai people love to sing and dance; specifically songs and dances that belong to the Thai community today. Thai people have a rich cultural life full of traditions, rituals, festivals and ceremonies which are still vivid and play a vital role in their community.



Thai Women in their traditional costumes

4.2.1 Core Beliefs and Values

The life of Thai people in Muong Phang is characterized by distinct rules and customs that determine the way they organise their interactions and keep peace and harmony. These rules and customs are congregated in a set of 12 '*Hit*' that guide the relations between different actors like village leaders, elders, community members and parents and children. Besides the *Hit*, there are traditional teachings to ensure the transfer of lessons and knowledge on customary law. These customs have evolved and developed into laws since ancient times and the Thai people maintained and transferred these both orally and through their writings (Cam Trong and Ngo Duc Thinh 2003). In these 12 *Hit*, the core concepts are formulated that form the basis for rules for interaction. Each *Hit* is a thematic category that describes the rules for behaviours, rituals

⁶ These include a short tight blouse with different colors and sewn silver buttons, a black or indigo dress of brocade fabric, a green silk tied around the waist and a silver side bar. The head scarf Thai women wear is also particular with its so called 'Pieu pattern' embroidered with bright colors. Married Thai women often tie their hair up on top of their heads. Thai men wear black pants that are striped and a black head scarf.

and ceremonies (*Le Hoi*) for that specific category of social interactions like marriage, heritage, building and organising a house and household. In this section, we will first look into the core beliefs and regulations that constitute the customary law and after that we will describe how the beliefs and rules (inner two circles in figure 1) are translated in daily behaviours (outer circle).

Under each of the 12 *Hit* and their provisions lies a rich world of beliefs, symbolism and conscious choices that are complex and difficult for outsiders to understand. Central to these choices and symbols is an absolute belief in ancestors, Mother Spirits of Forest, Land and Water and other spirits of living beings like trees. Especially the three Mother Spirits are perceived as holy entities that protect the people and towards which people can turn in times of need and support. Therefore, it is paramount to serve the three spirits well, in order to ask for blessings, to bring good luck and to prevent punishment. There is a deep belief among people that compliance with the *Hit* will be rewarded by prosperity, peace and harmony whilst non compliance will dissatisfy the ancestors and spirits and lead to punishments like bad luck, sickness, natural disasters and social instability. It is therefore not only the individual but the whole community who is responsible to keep the spirits satisfied. This sense of shared responsibility and dependence might be one of the reasons for the strong sense of community that characterises the Thai people in Muong Phang. Traditionally, Thai people help each other without calculation or expecting merits and support each other in aspects of daily life, for instance, when building a house.

One of the most significant ceremonies that reflect people's beliefs is the *Sen Ban* ceremony. *Sen Ban* ceremony is organised yearly by village elders for the whole village shortly after the Tet (Vietnamese new year) ceremony (this will be discussed in detail later) to celebrate living in peace, happiness and in harmony with nature. In this ceremony, the holy *Sen Ban* tree plays a crucial role. It is one of the oldest and biggest trees in the forest and it symbolizes longevity, protection continuation and the foundation on which the village relies. As this tree is considered sacred, people classify the forest area surrounding it as the 'Sacred Forest' as long as this tree is alive. When the tree dies, village elders and spiritual leaders in the village select a new tree and they ask permission from the Mother Forest Spirit through various rituals and initiation rites. It is believed that after these rites, the *Sen Ban* tree becomes the house of the Mother Spirit of the Forest. The *Ta Leo* sign, which is a round pattern made from bamboo⁷ is placed in front of the *Sen Ban* tree. It is believed that doing so prevents bad spirits from entering the tree. Although very simple, the *Ta Leo* sign is recognised by the villagers and the people in the surrounding areas and is a very powerful mechanism that makes people protect the tree and the land on which the *Sen Ban* tree is located. They believe that making the Mother Spirit of the Forest angry might bring harm to the village, community or their family. Besides *Sen Ban*, there is a set of rituals related to birth in which the interaction and connection with the three Mother Spirits are the core elements. These rituals and ceremonies are crucial moments where people remember ancestors, worship the three Mother Spirits and connect to them. At the same time, these are seen as occasions when the life teachings and traditions of the Thai people are transferred to younger generations. Despite slight differences in details, the essence and perceptions on the *Sen Ban* tree and the *Sen Ban* ceremony, and birth rituals show many similarities among the villages studied. Long talks with village elders and villagers gave us the following impression of the *Sen Ban* ceremony and the birth rituals which are still widely applied:

⁷ There are several *Ta Leo* signs with different patterns that are used on different occasions.

Sen Ban Ceremony

Every year village elders in Phang village gather to select the auspicious day shortly after *Tet*, called *Mu Hai*, on which the *Sen Ban* ceremony should take place. After setting the date, the elders inform the villagers about this and start making arrangements for the ceremony. They firstly need to identify one household that will be responsible for the offerings to the sacred *Sen Ban* tree. Since this is a responsible task, it is assigned to a household with a good reputation. Its family members must respect each other and other villagers, well educated, prosperous and serve as a good example to all villagers. This household must prepare the *Sen Ban* offerings very carefully and exactly according to customs because each item and amount has an underlying meaning. The offerings comprise various things: one pig, two chicken, four bamboo baskets for the sticky rice, four bowls of soup and one bowl of fresh pig blood, one pack of salt, four bottles of rice wine and eight cups, one cup of water, two bundles of incense sticks, two candles, eight spoons and eight chopsticks, one handmade umbrella, four traditionally embroidered clothes, one silver ring and one rattan mat.

During the first day of *Sen Ban*, village elders, spiritual leaders and male representatives from some households go to the holy *Sen Ban* tree to construct the altar. This altar leans against the tree and consists of four poles covered with leaves from the tree representing the protective function of the *Sen Ban* to the community. After praying to the three Mother Spirits of Forest, Land and Water, the offerings are made to each spirit through different rituals. During these rituals, it is prohibited for other villagers to enter the sacred forest because that will reduce the spiritual power of the ceremony and bring bad luck to the whole village. People are also not allowed to pass near the sacred forest while carrying things because this suggest labour, and during *Sen Ban* the Mother Spirits wants people to pay full attention and dedication to the ceremony. After the praying and offerings, the remaining part of the ceremony takes place at the household that prepared the offerings and the elders discuss and evaluate last year's happenings during this occasion.

The second day of the *Sen Ban* is celebrated by all villagers who gather around the sacred *Sen Ban* tree to play games and perform traditional dances and songs. Every household brings an equal contribution to the celebration including rice, rice wine and other food. Poor households can opt not to contribute and wealthier households can contribute more if they desire. During the second day, attention is also given to young children to educate them on customary law and how to live in harmony and peace with each other, with nature and spirits. Specific messages in these teachings include pointing out the importance of saving resources like trees, medicinal plants and water sources.

After *Sen Ban*, villagers are not allowed to enter the sacred forest for several days, the amount of days depending on what the spirits say. This prohibition is indicated through a special *Ta Leo* sign with chicken feather and a pig hair on it, which keeps people from entering the forest. During these days, the Mother Spirits are believed to bless the villagers; therefore, it is important not to disturb them.

Birth Rituals

Shortly before a woman gives birth; her mother-in-law has to collect seven sorts of herbal medicinal plants. But before doing this she has to prepare offerings to the Mother Forest Spirit that consist of white fabric, some rice and two small coins. Then she goes into the watershed forest to find the required herbal plants. When cutting the plants she must follow several rules and steps for the plants to gain the spiritual power. The first rule is that before cutting the plants, she must pray to the Mother Forest Spirit to explain why she is taking the plant and ask permission. Then she cuts the herb on the side of the sunrise and puts the coins and rice down near the root of the herbal plant. The same ritual is repeated with the remaining herbal plants as well. After having all the herbs and collecting water from the forest in the early morning, the mother-in-law prepares a herbal bath and drink which her daughter-in-law must consume within 10 days after delivery (*Than Kan Khong* ritual).

The mother of the woman also prepares a bag made from a special herbal plant (*Kep*), some clothes, a cradle made from bamboo and a hand fan; all these things symbolize a smooth life for the newborn. Then there is the important *Com Lam* ritual that must be carried out by the mother-in-law or husband within three days after giving birth. For this ritual, the mother-in-law or the husband has to collect young bamboo from the forest and prepare rice with water from the forest. The bamboo collected must be clean and fresh and she or he must eat part of the rice and put the rest slowly into the bamboo. This is to symbolize that the child grows and learns in a stable way without force and that the child and the family will have a happy relation. Having prepared the bamboo, the mother or father goes into the forest and selects a tree to hang the bamboo in order to inform the Mother Spirit of the Forest about the new born, who in turn will inform the two other Mother Spirits. It is important to select a visible tree that is near a main path where people often pass. The more people notice, the more blessings the child gets, and thus more smoothly and lucky his or her life will be and the easier he or she will be able to get married. If these rules are not followed in the right way, the power of the ritual will be weak, affecting the whole life of the new born child.



Ta Leo Sign on the Sen Ban Tree



Com Lam Bamboo on tree

4.2.2 Rules and Regulations and Role of Traditional Institutions

In the customary law of the Thai people in Muong Phang, it is necessary to have a village leader to guide villagers and village elders (as outlined in *Tăng Bán* which is the first provision of the 12 Hit). As already highlighted in the previous sections, traditionally village elders play an important role in the Sen Ban ceremony and in passing knowledge on customary law and traditional teachings to younger generations. However, the role of elders in the community is not limited to this and reaches further. According to the residents, village elders are the most loyal and trusted persons in the commune with the most trustworthy children. When an elder reaches a certain age and a level of maturity and all villagers give approval, the person becomes a village elder after initiation rites (*Pue Su* Ritual). Village elders can be both male and female and in general, and they are the ones to advice people on customs and good behaviour. Whenever people need advice regarding their personal life, for instance, family matters like marriage, interaction between parents and children, or on public affairs, they consult a village elder. In Muong Phang, this function of the village elders is still existing and accepted by all generations, including the young. Village elders also play a role in mediating conflicts within the commune, including disputes over natural resources. Also water conflicts are common in the dry season when water becomes scarce. Therefore, households have to discuss how to distribute water equally to rice fields and in case of conflicts which cannot be resolved among themselves, they come to the village elders. The village elders act as mediators trying to show different parties each other's perspectives and reduce the conflict as much as possible. Only when a conflict involves actors from outside the village, for instance in disputes over access to forests, the government intervenes to resolve the conflict. In these cases the role of the village elders is merely to provide emotional guidance to the villagers involved.



Thai elders



Thai woman in her kitchen

Muong Phang has a large amount of forest land covering almost 60% of the total land area. The customary law to manage and protect these resources is concentrated in *Hit* 2 and 3 which include rules and guidelines for owning and using forests and interacting with these resources. *Hit* 2 and 3 also provide guidelines for organising rituals and ceremonies like the Sen Ban and birth rituals. According to these *Hit*, land and forests are owned by all people and under the supervision of 'Chau Muong' (the commune leader), who has a moral responsibility to ensure healthy use of natural resources. In the past, land boundaries and fields used to be informally agreed upon. If necessary, it was changed on a yearly basis with an understanding among neighbouring households who would inform each other and mark the boundaries by plants, ditches, streams, mountains, rocks or trees with accompanying rituals and ceremonies. The Thai in Muong Phang identify the following three kinds of forests:

1. The sacred forest (*Đông Sơn*) which can range from 0.2 to 2ha including the grave forest (*Đông Pa Heo*)⁸
2. The watershed forest (*Đông Khuong*) where the head of the stream lies and where the Mother Spirits of Land and Water live
3. Besides these forests there is also the common 'use forest' which is considered to be under common ownership and hence everyone has the right to access and use the resources freely.

While taking benefits from the forest, villagers take into account customary rules that are accepted by all and if disagreements and conflicts emerge, they are settled through village elders whose authority is widely accepted. Another specific restriction in the customary law is the prohibition of mining. If someone is caught breaking this rule, the benefits of the mining is divided among all villagers. The sacred forest and the watershed forest have high spiritual significance because the Mother Spirits live there and different ceremonies and rituals take place there to ask for

⁸ When someone passes away, people in Muong Phang bury the body in the burial forest, after permission is asked from the Forest Spirit. Then people pray to the spirit to accept and protect the soul of the person.

blessings and protection from them. Consequently these forests are strictly protected by the people. In daily life, particularly the use forest is important for collecting NTFP and timber.



Traditional Thai houses near the community forest



Inside the community forest

4.2.3 Customs Related to Daily Uses of the Forest

Forests and water resources still play a crucial role in people's live and livelihoods in Muong Phang and this is clearly indicated by many villagers who highly value these resources and recognise the need to protect them as reflected in statements like the following:

Forest is vital to our life. Therefore, it is necessary to protect forests, it means protecting our lives.

(Mr. Ca Van Thuan, 42 years old villager)

Logging Timber

In all villages, most houses are still built in the traditional way with the main source being timber. The custom in Muong Phang requires that people ask permission from village elders and villagers before collecting timber to build their traditional Thai houses or for other household needs. Nowadays, a similar procedure is part of the village regulation, which requires the village leader to organise a meeting to ask permission from all villagers when a household requests to log timber.

Only if everyone agrees on the household's request to collect wood, the household can go into the forest for logging. The rule according to customs is that people shall get just as much wood as they need for their house and not for commercial exploitation. Before cutting down a tree, the villagers explain the purpose of cutting to the spirit of the tree and to the Mother Spirit of the forest and they ask for their permission through specific rituals. This explanation and the rituals are considered very important because with the wood they are bringing the spirit of the tree into their house and hence the blessings of both spirits are crucial for the happiness and luck of the family that is going to live in the house. Another rule is that while cutting trees, they should ensure that the surrounding trees are not damaged and no young trees are cut down.

NTFP collection

NTFP play an important role in the daily life of the people and the main NTFP collected are bamboo and firewood for household use. Herbal plants are collected for health care, drinking or to make the traditional pillows and mattresses, which play an important role in marriage rituals. People collect, use and sell bamboo for three purposes: housing, handicraft and for food⁹. Sometimes bamboo is obtained from an own piece of forest (if they have any) or from bamboo shoot growers, but a large amount is still collected from what is perceived as the community's use forest. Instruments to collect bamboo are knives and spades and women and children are commonly the main collectors. When collecting bamboo, women choose mature plants and cut it far from the root to ensure regeneration as they learnt from their grandparents. This is supposed to be applied by everyone. Almost without exception the respondents consider all forests in the commune as open and available for NTFP collection, (including the Pa Khoang watershed forest, a special protected area). People say that selling NTFP such as, bamboo, rattan, forest vegetables and medicinal plants helps them to generate additional income.

⁹ Bitter bamboo shoots are harvested from May to August and young shoots are taken from February to October.



Carrying fire wood

Collecting Herbal Medicinal Plants

According to some residents, before the year 2000 only about 5 to 7 women entered the forest to collect herbal medicinal plants for family use. However, with the promotion of the historic forest area (General Giap's forest) for tourism and the resulting increased number of tourists in the area, the collection of herbal plants has been revived. In Table 2 in the annex, an overview of the current herbal medicinal resources in Muong Phang and their functions is given. At the time of research an estimated of 20 to 25 women collect and sell herbal medicinal plants from the natural forests to tourist to generate additional income.

These women have learnt about herbal medicines from their mothers and grandmothers and are still practicing herbal treatment in Muong Phang. Sometimes they go deep into the forest, up to 10 km from their village, to collect herbs; some of them have their own herbal garden near their house. These traditional healers still strictly take into account customary rules because if they don't, so they believe, the herbal medicine will not be very powerful and effective. The way they collect herbs is similar to the way the mother-in-law collects the seven herbal plants for the birth ceremonies as described before. When collecting herbal plants, people never take more than two third of the plant and ensure that the root remains undamaged.



Mushroom with medicinal properties



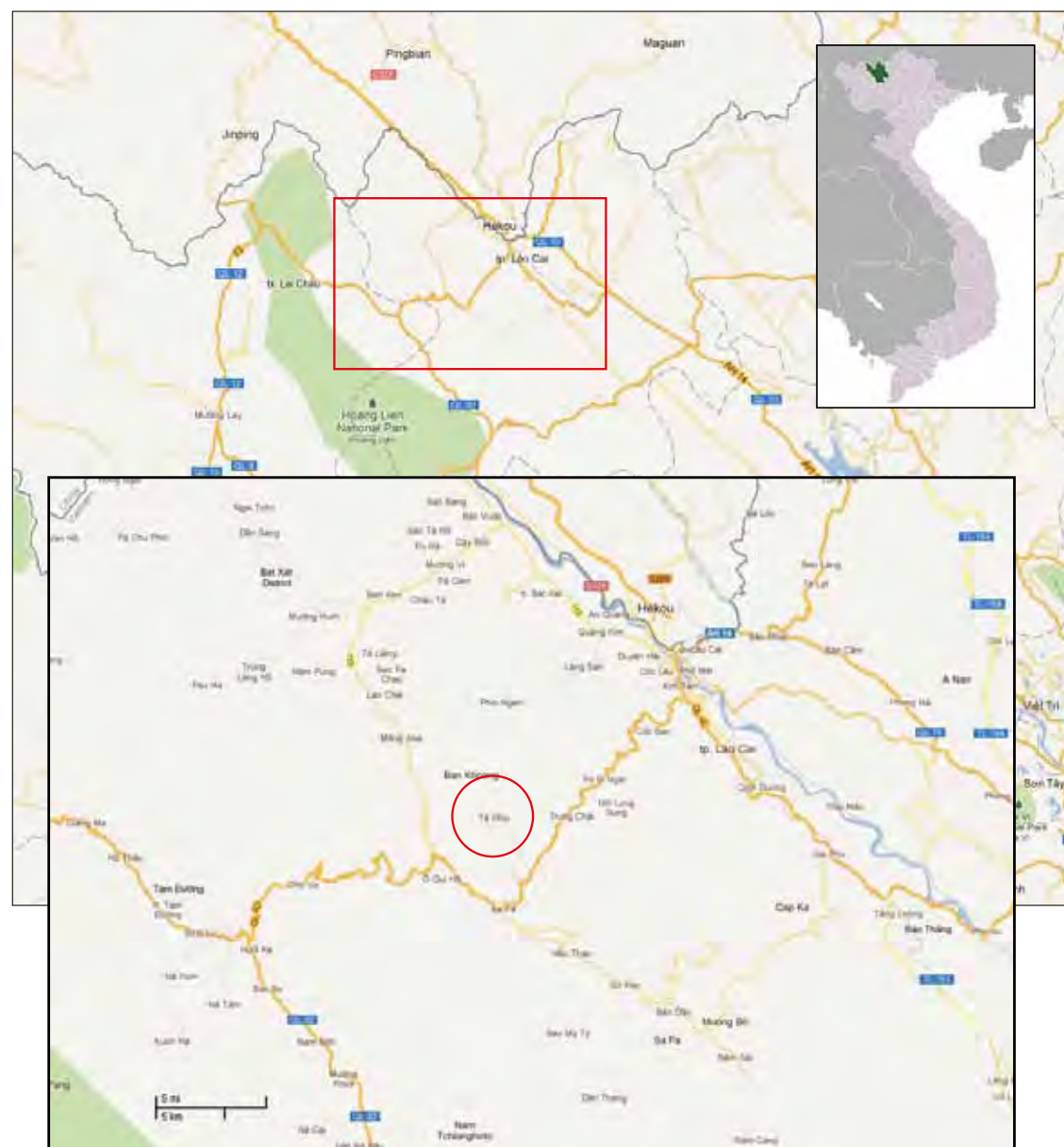
Selling NTFP's in Muong Phang

5. CUSTOMARY LAW IN TA PHIN

5.1 Introduction to Ta Phin Commune

Map 2. Lao Cai Province and location of Ta Phin Commune

(Sources: Google Map and Wikipedia)



View of Ta Phin

Ta Phin commune is situated in the Sapa District, in the North West of the Lao-Cai province, at altitudes between 700 – 1600m above sea level. The climate here is sub-tropical with hot summers and cold and foggy winters, with snow at higher altitudes. The average temperature is 16°C and annual rainfall is 2700 mm per year. Ta Phin commune is located in a valley surrounded by high mountains and steep slopes, on which six villages are settled. A 200 meter long cave at the foot of limestone mountains is the commune's social centre and a major tourist attraction. Ta Phin commune has 475 households and 2766 inhabitants of which 1239 are female and are 1527 males. According to the census, 263 households (1573 people) are recorded as belonging to the Hmong ethnic group and 185 households (1106 people) to the Red Dzao ethnic group. They live in separate villages. The remaining 26 households (84 persons) are Kinh and one household (3 persons) belong to the Day ethnic group (People's Committee Ta Phin 2010). Historical documents show that the Dzao people in general, as well as the Red Dzao people in Ta Phin originated from China and migrated to Vietnam during the period between the 13th century and the 1940s. Till date people in Ta Phin hold on strongly to their traditional cultures, this is among others visible through their traditional clothing. Red Dzao men's traditional costume is simple, women dress more plentiful with a 'Yem shirt', skirt or pants and a red head scarf that is colourfully decorated with traditional patterns such as swastikas, trees, bird images, people, animals and leaves. These patterns are also made available on canvas painting or embroidered on a fabric.

Between 700 and 1000 meters the main soil found in Ta Phin is a reddish soil which is suitable to grow rice and maize. The alluvial soil along the streams is also suitable for agricultural production. Above 1000 meters, the light yellow and humus-rich soils allow the growth of forest trees such as *Sa MÔc* (*Cunninghamia*) and *Thông* (*Pinus merkusii*). The two main stream systems (Sa Seng and Sa Thau) and various ponds covering 28.8ha provide the water for agriculture and daily use. Water in upstream areas is suitable to be consumed for daily use, whereas middle and downstream waters

are mostly used for cultivation. The rice terraces with their round curved edges are characteristic to the picturesque landscape. These rice fields are grown in the middle of a relatively dense stream system. The main source of income in Ta Phin is rice and maize production. People also grow vegetables like pumpkin and sweet potatoes and generate additional income from animal husbandry and poultry farming. Another set of income generating activities is related to tourism like the selling of NTPF such as honey, herbal plants, or of handicrafts and the offering of services like herbal baths and home stays.

The registered amount of students in primary and secondary school is 657. Official poverty rate is estimated at 152 households (32% of all households) but the accuracy of this figure can be doubted because the findings of the research team suggest a much higher rate. The total land area in Ta Phin is 2718 ha, of which 390ha is agricultural land and 1541 ha forest land, of which 1284 ha is natural forest. Although the main source of income is from rice and maize cultivation, the total agricultural land area for these crops is only (14% of the total land area). Ta Phin is classified as one of the poor districts of Sapa and receives support under the government's poverty alleviation programme 134/135 and also from different non-governmental organisations (NGOs).



Terraced fields of Ta Phin



Dzao women selling handicraft

5.2 Customary Law and Natural Resource Management in Ta Phin

5.2.1 Core Beliefs and Values

The Red Dzao people have a culture that is rich with beliefs, customs, ceremonies and rituals and people in Ta Phin still hold on to their traditional customs and rituals regarding farming, birth, death, wedding, and ancestor worshipping¹⁰. However, in the last four decades the context of Ta Phin has greatly changed which has influenced the local culture. In this section, we will describe the customary law and its underlying beliefs in its original form.

One of the most sacred beliefs of the Red Dzao people in Ta Phin is the worship of *Ban Ho* / *Ban Vuong*. They are, according to the legend, the first persons who crossed from China to Ta Phin and established the community. However, the worship of these ancestors is only one aspect in people's complex belief system which is based on animism. At the core of animism lies the belief that natural phenomena like trees, streams and stones are living things in which spirits and ghosts are resting, which generally results in a more gentle and considerate attitude towards life. On a more aggregated level, there is the Spirit of Land, Spirit of Mountains and the Spirit of Water who are protecting these natural resources. Worshipping these spirits play an important role in people's life. According to the 'hierarchy of needs theory' of Abraham Maslow (1908-1970), humans have a fundamental need for stability and to feel sheltered, protected and safe. One aspect of feeling safe and stability is people's tendency to have a religion or world-philosophy that organizes the universe into a coherent and meaningful whole (Maslow 1943:379). In his later

¹⁰ For instance, according to their funeral custom, the Dzao people traditionally burn dead people who are 12 years old and above. In marriage custom, Dzao men have to come to stay in his wife's house temporarily or permanently. In Dzao culture, every mature man undergoes the cap sac ceremony to be recognized as a member of Dzao community.

work (Maslow 1963) Maslow elaborates in detail upon how religion and a world-philosophy that includes the worshipping of supernatural powers fulfils people's need to feel safe.

Also in the case of Ta Phin, the role of a world-philosophy that includes spirits has the function to help people feel protected and to organize people's behaviours towards each other and towards nature. It provides people guidance on how to reward good and to punish bad behaviours. They consider events like natural disasters, diseases and social conflict as a result of people's behaviours. In this context, the role of customary law in Ta Phin is to instruct people on good behaviours and to steer them towards loving each other and nature because that is the source of their existence. This love is shown in a large number of ceremonies with rituals, music, dances and offerings. One example is the '*Sip Beo Van*' in which people pray to the Rice Spirit and bring offerings for two days in August to ask for blessings and a good harvest for that year. Another purpose of the many ceremonies, rituals and taboos is to teach people about behavioural norms, lessons and the knowledge that are hidden in the customary law and to keep the customs and culture alive. For that people rely on the support of other households, so it is very much a collective undertaking. Some of these ceremonies and taboos are related to forests. For instance, when a household organises a ceremony for the spirits, members of the households are not allowed to kill living beings, including plants. One of the interesting ceremonies we came across and which characterizes the identity of Red Dzao in Ta Phin is *Tet Nhay*.

Tet Nhay

Tet Nhay is organised annually on the first day of the lunar calendar and takes place at the house of the head of each clan. *Tet Nhay* ceremony is organised to thank the supreme-beings for protection from ocean storms according to yin-yang theory. According to legends, when the Dzao ancestors were crossing the ocean from China, some of their ships almost sank during a storm just before reaching the mainland in Vietnam. The storm was so strong that the ancestors had to jump and ask for help from the Mother Spirits and from their ancestors and they promised to organise *Tet Nhay* every year to show their gratitude if they arrived on mainland safely. In the Dzao perspective on life, people come across many difficulties and challenges in one's life and rely on the protection and support of their Spirits to be save and to overcome difficulties.

During *Tet Nhay*, different rituals and traditional dances are performed by young boys and girls, under the guidance of the leader called '*Chai Peng Pi*'. These young people carry out particular dances for different spirits to invite them for the Tet ceremony (the traditional new year celebration of the lunar calendar). These dances are for example, the 'opening the-way dance', the 'bridge building dance', and dances to invite ancestors. After these dances, there is the ritual of carrying and bathing the statutes of the ancestors followed by offerings (chicken, rice wine and incense sticks) accompanied by different dances like the 'red cock', 'yellow cock' and the 'flag dance'. Finally, there is a priest who prays for the health, prosperity and good crops for all the clans.

Red Dzao people have spiritual leaders, who may be called 'priests'¹¹, at the community and village levels. They play the role of mediators between common people and the supernatural realm. There are four types of priests with different functions and they are considered to be very important because they have the ability to communicate with supernatural powers, like spirits and ancestors. This communication is crucial for the protection of people and to control uncertainties or natural calamities. Some priests have more power than others which depends on the amounts of 'lights' they receive during the 'lightning ceremony'. The amount possessed varies from three lights to seven lights (the more lights, the more powerful the priest). Most important among the priests is the one who communicates with spirits related to nature like land, water

¹¹ There is no proper translation of this in English, but these 'priests' and their function does not relate in any way to Christianity.

and forests. This priest tells people which days of the year people are prohibited to enter the forest for collecting products like firewood or herbal plants, or for any other purpose. On these special days, the nature spirits are believed to be resting. The second and the third type of priests communicate with spirits that protect the animals and people from disease and the fourth type of priest communicates with spirits that ensure good health and solidarity among the people.

Praying to the Forest Spirit for Curing

When people in Ta Phin have a disease that can not be cured by the local health care station, people go to a 'priest' to ask which of the Mother Spirits has given him or her the disease: the Forest or the Mountain Spirit? Once the priest identifies the spirit, the priest organizes the necessary ritual to help the person. To carry out the ritual, the sick person is sent to the biggest natural tree (the tree is not planted by people but has grown naturally) in the village. This is the tree where the Forest Spirit lives and is usually far away from the residence area. It is absolutely prohibited to cut down this tree and people believe that after the ritual is carried out in the right way, the tree will take away the disease and release the person from illness. In this forest, people also must ask permission from the Forest Spirit by lighting a fire, before they collect herbal plants or stay the night over for some reason. Otherwise the spirits might get angry.

People of Ta Phin have a temple to worship '*Mr. Sia*', the Land Spirit. The community gathers here annually on the first day of the lunar calendar for a worship ritual to ask the Land spirit to support the local people and nature for their health and peace, suitable weather and productive crop and livestock. During the ritual, the so called '*Thin*' date is selected, which refers to three days in April and May (normally the 5th, 17th, 19th) after planting the rice field is finished.

5.2.2 Rules and Regulations and Role of Traditional Institutions

The social structure in Ta Phin is largely based on clan and neighbour relations. The main clans in the commune are Ban, Dang, Trieu and Ly with each having their own sub-clans. Each of the four clans has a clan-head who are the most prestigious men in the commune and who deal with community issues on a broad basis. Another traditional institution that still exists is that of the village elders, selected by the people, who have a good knowledge on local history and culture, customary law and who play an important role in maintaining and reinforcing traditional knowledge. It is obvious and easy to recognise that in general, elder people with experience who are well educated get a lot of respect and recognition in the commune. Another traditional institution is that of the previously mentioned priests who have important spiritual as well as social roles. Firstly, they have a deep knowledge on customary law, ceremonies and are the medium through which people communicate with the world of spirits. They also have extensive experience and authority in resolving community issues. These village elders and priests in general have the role of teaching people on good behaviours, including the need to show respect and love towards trees and other plants.

The Red Dzao in Ta Phin have their own writing system called the *Nom Dzao* and they have a tradition of folk songs, stories, legends and related customs. This has enabled the Red Dzao to pass on knowledge and to preserve their cultural identity over a long period of time. *Nom Dzao* is a script based on a combination of Han and the more widely used Dzao writing system. Almost all household possess traditional books with stories and legends. However, not many people can read *Nom Dzao* anymore except for the priests. The Dzao also have a written traditional education program for children at different grades.

The strongest mechanism for applying the customary law is through people's spirituality and the strong belief that behaving as expected will be rewarded and bad behaviours will be punished. The customary rules are traditionally maintained through widely accepted social conventions,

social control and traditional institutions. Some conventions are so strong that not adhering to them could lead to exclusion from community life or even exclusion from the community. Such punishment is much more feared than formal convictions like imprisoning or monetary fines.

Before 1960, the smallest administrative unit used to be the village, with a village leader responsible for public administration. The villages were sparsely populated and scattered, forests were considered as belonging to the community and every household had its own piece of forest. Forests where forest spirits were believed to be present were not allocated to households and no one was allowed to cut down trees or take any other products from these areas. In the past, village regulations were set up by villagers who decided upon signs to outline borders and signs to recognise forest areas and to warn of unsafe forests. In the watershed forest and areas around water resources, it is also prohibited to bury the dead, to release livestock or to build a house.

5.2.3 Customs Related to Daily Uses from the Forest

Forests still play an important role in people's livelihoods. The question we are trying to answer in this section is: what does or did customary law (the beliefs, accepted behavioural norms and customary rules) say on interactions with forest and water resources? And how is this reflected in people's daily interactions with these resources?

Logging Timber

Wood is mostly used to build houses or for other household facilities. The timber needed for that is usually collected from the area classified as regeneration forest.¹² When cutting down trees people have to follow specific rules. Firstly, they must identify the area where they intend to collect the trees and ensure that it is not within a prohibited area in the forest, such as the area where the Forest Spirit lives, where other spirits live or that is near rivers and streams. It is also necessary to ask a priest to identify the auspicious day on which the trees must be collected (usually the 1st to 5th and 10th to 15th days of the month). Before cutting big trees, a ritual praying must be done for the spirit of the tree and while cutting, saying bad things must be avoided. If only parts of the trees are needed, for instance for household facilities or to make an altar, only the parts needed should be taken, to ensure that the tree spirits is not harmed and to ensure that the altar (or other facility built) will be blessed. Another rule is that a new tree needs to be planted for every tree cut because the Dzao people believe that with cutting a tree they are taking away a life and need to compensate this life through planting a new tree.

NTFP collection

NTFP still play an important role in people's daily lives and comprise a long list of products like forest vegetables, fruits, honey, mushrooms, bamboo, firewood and herbal plants. Since the recent past commercial products like cardamom and orchid flowers are also gathered in the forest. An overview of NTFP products and prices can be found in Table 4 in the annex. The Dzao's customary law includes some measures to prevent the depletion of bamboo like the prohibition of harvesting young bamboo shoots and the prohibition to harvest the first bamboo shoots of the year. Another rule is that only the bamboos that grow in the direction of the sunset should be cut down. According to customary law, people are not allowed to release livestock like buffalos in the bamboo forest to prevent it from being destroyed. However the actual practice of these traditional customs has seen a dramatic loss in the past few decades.

¹² Due to unsustainable management Vietnam's forest quality and quantities have declined tremendously between 1975 and 1990. Since then policies have been adopted to rehabilitate forests and some forests were zoned for natural regeneration where timber harvest is prohibited.



Collecting Tháo quá from the forest

There are new commercial products like orchids and cardamom (*Tháo quá*) growing in the forest for which no customary rules apply. These are sold at the market to Kinh people, especially during *Tet* holidays. Cardamom is an effective medicine for many diseases. It is usually grown by people in the forest under the shade of trees, and then both seedlings and the herbal products are sold. The forest land has thereby gained a new economic significance for the people. In the past, they simply grew new shoots of wild cardamom and planted them in another place but since 1996, people learned to grow seedlings from seeds of cardamom. According to the experience of many local people, the cardamom plants planted from seedlings in nurseries have a longer harvesting time than those planted from shoots. Each year, the ripe cardamom fruits are harvested and stored for 15 to 25 days and then sowed; 20 days later, the seeds will germinate and the young plants are taken care of in a nursery. After 12 to 24 months, when the seedlings attain a height of 60 to 80 cm, they are planted in a plantation forest or natural forest. Planting normally takes place from June to August or from October to December.



Herbal medicine is now successfully grown in fields: Cardamom garden in Ta Pinh

Firewood is mainly collected by young women from the nearby forest and is only used for cooking and heating. The average demand is one bundle a day for a household of 5 to 7 people and 2 to 4 pigs. Some Kinh households living in the commune have no forest and buy firewood from other households for 300,000 VND (14 US\$) per m³. Today, some families use electric cookers to cook rice so that the demand for fire wood is less. According to the local forest protection regulation people are allowed only to take dead wood from the forests that belong to the community people's committee (CPC) or forest management board (FMB). Firewood is collected with a knife and carried in a basket to prevent harming younger trees and other NTFPs in the forest.



Fire wood is an important NTFP



Wood-based handicraft: Men making traditional drums

Herbal Plants

Herbal plants are of particular importance to people and are therefore discussed separately. The Red Dzao people possess unique knowledge on herbal medicinal plants and curing diseases. According to the Dzao of Ta Phin commune, more than 100 species of herbal plants are collected in the natural forests. At an average, about 10 to 20 people (mostly women) collect herbal medicine plants on a daily base. Herbal medicinal plant resources in natural forests are rich, and each person can collect around 30 to 50 kg of herbal medicinal plants per day.

According to customary law, herbal medicine can only be collected in the early morning, and before cutting people need to come close to the tree or plant and say a prayer to explain to the spirit of the plant the purpose of collecting it. The prayer may go as follows:

'I have to collect this medicine to cure my patient. I do not intend to hurt the tree. I am only taking some parts of it and hope that the tree will recover and grow ever greener and I hope my patient will recover'.

According to the established rule people are supposed to harvest herbal medicine in a sustainable manner. They are only allowed to take parts of a tree like branches or leaves and not cut it down totally. They only collect from old and mature plants that have already spread their seeds to allow young plants to regenerate. They also should be careful during collection and, for example, are not allowed to pull down the top of the tree, to prevent damaging the plant.

However, nowadays it is mainly the elder people who continue to follow these rules and they are not widely considered and applied among younger generations, mainly because the purpose and the amounts of herbal plant collection underwent major changes in the past decades. Increasingly more people are attracted by the commercialisation and are cultivating plants intensively. Ta Phin is for instance famous for its herbal bath services offered to tourists on a large scale. Whereas in the past these baths were used by women right after child birth to restore health, they are nowadays offered to tourists for the purpose of relaxation. At the time of research, there were six families who were running businesses for herbal bath services which are certified by local government. Besides the purpose of herbal baths, several families also harvest herbal plants and sell them on the market and to the joint stock company SANAPRO (which employs 40 workers from the village). This company uses herbal plants for medicinal production and they are also reported to do business with local people to sell their handicrafts. Another example is the Sapa Seedling Research Station which contracted some households for a trial to plant herbal plants that cure insomnia. With such socio-economic changes, it should not come as a surprise that forests are being overused and customary law rapidly lost.



Distilling herbal medicine



Tourism has become a major source of income

6. STATE LAW AND ITS IMPACT

6.1 History of Formal Laws on Forest

Looking back at the recent history in both communes, various changes have taken place in terms of forest ownership, management and use in a relatively short period of time. Before 1960, lands and forests belonged to communities and were used and managed according to the local customary law. In that period no shortages or conflicts over natural resources existed because population density was low and the land and forest resources were plenty. Between 1960 and 1991, several land reforms placed forests under state ownership, and under the management responsibility of agricultural cooperatives or State Forest Enterprises (SFE). The same happened in the two research areas. In Ta Phin, cooperatives were divided into sub-groups, with each having its own selected leader. The administrative changes meant that formal law and actors replaced customary laws and traditional actors like commune leaders and village leaders. In the case of Muong Phang, the SFE harvested timber and cleared large areas of the forest for industrial tree plantation. In Ta Phin no commercial exploitation of wood took place.

Even though laws assigned the land to state institutions, local people continued to extract wood from forests for domestic use and over time illegal logging increasingly emerged because SFE and FMB were not able to protect the vast amounts of land under their jurisdiction, whereas the need and pressure for land increased. These institutions were also not able to deal with the forest fires that emerged regularly, which added to the scarcity of resources. Also, parts of forests were used for shifting cultivation because people lacked enough land for permanent farming and were facing food shortages and increasing poverty. Eventually, in both communes, the combination of state exploitation, illegal logging, shifting cultivation and uncontrolled forest fires led to a severe depletion of forests, water sources, soil degradation and loss of biodiversity¹³. Especially in Muong Phang, damages to forests have been significant and they have not been fully recovered yet. People are therefore still dealing with the consequences like soil erosion and floods, poor soil quality and less quantity and quality of water. In earlier days, people used to consume water from streams in forests but currently the streams are shallow, polluted and do not contain as many fishes as before. In the past, the stream used to provide enough water for daily use like washing and bathing but this is no longer the case.

The Land Law (1993, revision 2003), Law on Forest Protection and Development (1991, revision 2004) and the related decrees (01/CP/1995, 02/CP/1994) and programs (327 and 661) are meant to enable recovery and ensure a better protection of forests. The current situation regarding forest use and management in Muong Phang and Ta Phin is determined by the latest reforms and laws. This will be further discussed in the next section.

¹³ Like, for example, the *Michelia braiaensis* and *Cinnamomum obtusifolium* that disappeared in Muong Phang. There are currently no scientific reports to show the diversity and animal species in Muong Phang but data from the Department of Planning and Investment indicate that in previous years the forest had 61 mammals, 270 birds, 27 species of amphibians, 25 reptiles and 50 species of fish.

6.2 The Current Status of Natural Resources

In both research areas, the forests are formally classified into three types:

- Natural forests which exist naturally or which are restored through natural regeneration
- Restoration and Production forests which exist as a result of deliberate planting

Natural Forests

In Muong Phang, natural forests are evergreen forest located at an altitude of 800 to 1200 m above sea level. With 2548.28 ha they account for 47% of the total forest area. A large part of the natural forest is sub-classified as *Protection Forests* (1887,87ha) and the remaining area (659,9ha) is classified as Special Use Forest or 'Forest of the General', where the Headquarters of the Dien Bien Phu campaign during the independence war against the French was located. This area is now under management responsibility of the district's FMB and has since recently been promoted for tourism. Due to its historic and strategic value, this special Use Forest is strictly protected. Since 1995, the FMB has contracted several households in Muong Phang to protect an assigned area in the Protection Forest for which they get compensation¹⁴. At the time of the research, the natural forest area showed only little signs of human impact and had a stable vegetation structure and natural regeneration of eight valuable trees per 50m² (in the Special Use Forest) and four commercial trees per 50m² (in the Protection Forest). It is rich with many tree species¹⁵ and forest products for different uses. The Special Use Forest has trees as high as 30-40 meters and stands virtually unchanged in its pristine state.

Restoration Forest

Another 2539.59ha in Muong Phang is Restoration Forest accounting for 46.7% of the total forest land. These forests are located on lower slope lands near the residential areas and are the forests that were destroyed by years of exploitation by the state and shifting cultivation by local people. This area is still covered mainly with shrub, but in good condition and has the potential to regenerate naturally. Our findings reveal that since the contracting of forest to households and the community, as further explained below, forest burning has been reduced significantly and in lower areas natural regeneration is as high as eight trees/50m².¹⁶ If well protected, the restoration forests would become natural forest in about 12 to 15 years. Restoration forests are officially managed by the CPC which at the commune level has appointed a forest ranger who is responsible for the protection of forests (including natural forests) and to prevent illegal logging. Since the forest ranger cannot oversee all forests in the area, in each village forests are divided among household groups who cooperate with the ranger in forest protection and management. Each household group consists of 7 to 12 representatives from different households, usually young healthy men and each member receives a remuneration of 21 to 25 kilos of rice per year. In each village, the household-groups are headed by an elected representative. Every year the forest ranger and the local officials from the forestry department discuss and if necessary revise the rules on forest protection and management, and discuss this revision with the people through village meetings.

Ta Phin has a total natural land area of 2718 ha of which almost 57% (1541.2 ha) are covered with forest. Forests are divided into natural forests (1283,7ha) and plantation forests. Here the natural forests are tropical rainforest with some tree species of high value¹⁷, though forests above 1500 m

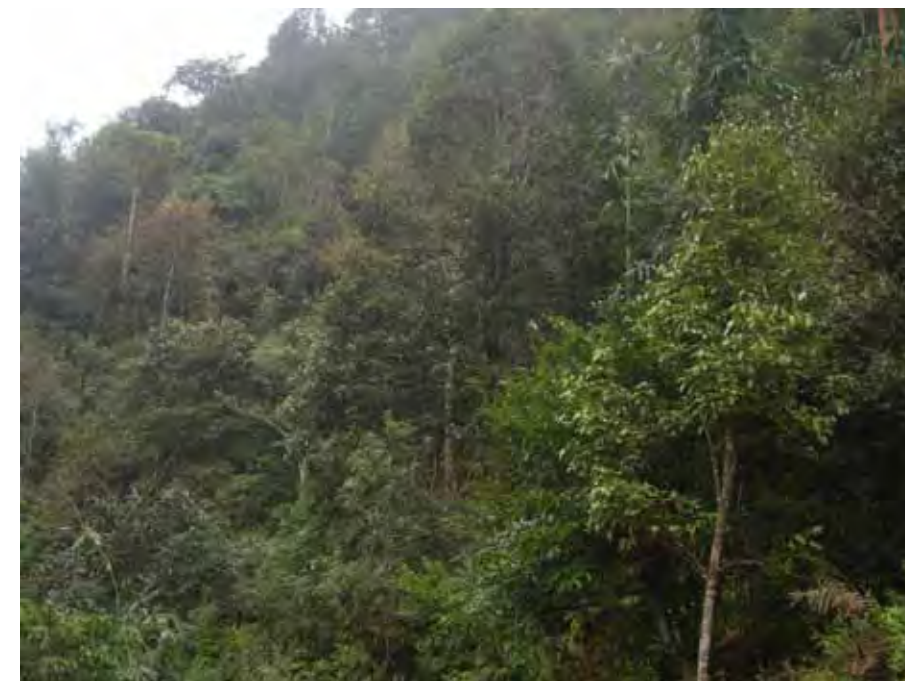
¹⁴ Under Decree 01CPm level of compensation increased from 30,000 VND (1.4 US\$)/ha/year (1995-1999) to 50,000 VND (2.4 US\$)/ha/year (2000-2006) and to 100,000 VND (4.8 US\$)/ha/year (2007-2008)

¹⁵ The main species are: *Parashorea chinensis*, *Michelia mediocris*, *Cinnamomum obtusifolium*, *Quercus areca*, *Syzygium Sp.*, *Magnolia dandayi* Gagnep, *Canarium*

¹⁶ Regeneration trees are mostly De (*Quercus areca*), Tram (*Syzygium Sp.*), Khao (*Machilus odoratissima*)

¹⁷ Such as Gioi (*Michelia Tonkinensis*), Khao Vang (*Machilus Odoratissima*), De (*Quercus Areca*) and Tram (*Syzygium Sp.*)

altitudes have low forest canopy densities with shorter trees of heights between 15 and 20 meters. Here natural forests have also suffered from exploitation leading to the current low stock volume of 120-150m³/ha. There are ongoing efforts to regenerate the natural forests but so far the forest quality is still poor and vegetation not very rich despite thick layers of humus and good moisture. Above 1200 m and far away from residential area, the regeneration rate is only three commercial trees per 50m² and in lower areas regeneration is as high as eight commercial trees per 50m². Through the program, 661, these types of forests have been handed over to Sapa FMB which is responsible for protection and management.



Regenerating forest in Ta Phin

Plantation Forests

Another kind of forests is the *Plantation Forests*, which in Muong Phang also under the Dien Bien Forest Management Board. Under the re-greening program 327 and Decree 02/CP, some households in Muong Phang were allocated forest land via certification of Land Use (Green Books) for a plot of forest plantation and were supported to plant the *Trau* trees (*Vernica Montana*). The forest land areas allocated to households are located in the lower foothills of the mountain and have infertile soils. In the first years, households received financial and technical support to plant the trees, and once mature this support stopped and people were allowed to sell the fruits from the trees. The natural regeneration in *Trau* stand is low and due to their lower location young trees are often destroyed by cattle. Residents and outsiders are also illegally logging the trees for sale because the fruits and incomes generated from the trees have been decreasing and hence they become less attractive to people. The second type of plantation is the Pur pine trees planted between 1978 and 1980. These trees have been growing well to an average diameter of 20 to 30 cm and a stock density of 800 to 1000 trees per ha, or 7 trees per 50m².

In Ta Phin, plantation and regeneration forests (257.5ha, mainly *Cunninghamia*) were established between 1980 and 1990 by local people with seedlings support from the Sapa SFE. After the previous period of severe degradation due to logging, shifting cultivation and forest fires these forests are now well protected. These forests are healthy with diverse tree species with straight bodies. Natural regeneration in *Cunninghamia* stands is good, with 8 trees per 50m².

Water Resources

Muong Phang is a water rich area with seven streams and many ponds and dams around the commune. Pa Khoang, located in the protection forest, is the largest reservoir with a surface of around 600ha and nearly 40 million m³ water. This reservoir is crucial for the district's rice production. In Bua village, all households have a fishpond of approximately 300m². Originally, Ta Phin was also rich in water sources and about 30 years ago the rivers were big and were home to various species of aquatic animals. But the high level of deforestation in the period 1960 to 1970 also led to the degrading of water sources. Moreover, with the increase in population the demand for water for cultivation increased. As a result, the stream flows were severely reduced over the years and there is now water scarcity. Currently, UNICEF is running a program to provide household water for daily use, but some households still lack water due to system break downs and at least four households were excluded because their location is too high up on the slope.



Lake in Muong Phang



Creek in Ta Phin

Table 3. Formal Land and Forest Distribution and Management in Muong Phang

Target	Management and Protection	Area (ha)	%
Total Natural Land Area		9159	100
1. Forest Land	FMB	5429	59.28
1.1 Natural forest		2548	27,82
Special Use Forest		660	7,2
Protection Forest	FMB + contracted households	1888	20.61
1.2 Plantation forest	FMB + user rights for households	341	3.72
1.3 Bare land		2540	27,23
2. Agricultural land		1299	14.18
3. Bareland (a.o. roads, settlement areas)		1832	20
4. Streams and Ponds		600	6.55

Source: Forest Ranger officer Muong Phang

Table 4. Formal Land and Forest Distribution and Management Ta Phin

Target	Management and Protection	Area (ha)	%
Total Natural Land Area		2718	100
1. Forest Land Area		1541.2	56.70
1.1 Natural forest	SAPA Forest Management Board (FMB)	1283.7	47,23
Protection forest		146.9	5,4
Special forest		1136,8	41,82
1.2 Plantation forest	CPC and Households	257.5	9,47
2. Agricultural land		569.78	20,96
2.1 Rice Land		177.8	6,54
3. Other land (roads, settlement, etc.)		177.74	6,54
4. Surface Water (Streams and Ponds)		29.8	1.1
5. Unused Land (rocky, barren)		399.48	14,69

Source: Forest Ranger Official Ta Phin

6.3 State Law and Customary Law: Changes, Causes and Consequences

6.3.1 Changing Culture and Customary Law

In chapters 4.2 and 5.2, we gave a short overview of the customary law related to forests in Muong Phang and Ta Phin respectively. From our findings we can conclude that the local culture and customary law in both communes are still strong. However, at the same time the current way in which forests are managed is not based only on customary law anymore due to changes and the legal and policy context. Before 1960, when the village was the de-facto owner of forest and solely in charge of forest management, customary law was applied in its original form. Changes occurred when forests were declared state property, and the corresponding laws were passed and reforms undertaken, and as a result of social and demographic changes. Changes in the two

communes under study vary in detail but reveal similar general patterns. These will be discussed in this chapter.

One of the first things that came forward in talks with village elders in Muong Phang is the loss of the Sen Muong ceremony which used to be the up-scaled version of Sen Ban at the commune level. This ceremony got lost because of forest degradation and lack of community ownership over forests. People stated that nowadays it is even a challenge to find all the necessary ingredients for the Sen Ban and birth ceremonies, or that the sacred Sen Ban tree is nowadays much smaller than the enormous trees they were in the past. Another visible indication of change in the community is the introduction of brick buildings next to the Thai wooden houses which traditionally have a great significance in the Thai culture. In addition, customary law and the important social roles of village elders is getting lost. European clothes are slowly replacing the traditional clothing and the traditional writing system is disappearing. Another indication of change is the difference between the older and the younger generations. Like in many other parts of the country, here too young people are much more materialistic than older generations and prefer to purchase mass produced items rather than using traditional and hand made products. Especially older generations stated their concern that younger generation is becoming dependent on outside support contradicting the Thai customs which promote self-awareness and self-sufficiency. Respondents also reported that changes in the local economy are exposing young people to social evils like drug abuse and prostitution.

Similar trends are also present in Ta Phin where several ceremonies and rituals are getting lost or they are celebrated in a less extensive way. For instance, in the past every household used to organise a ceremony to worship the spirits for good crops yearly but nowadays most households organise it only once in every three years. In addition, some beliefs and rules are getting lost. For example, one former rule was that people were allowed to cut down trees only if it would not affect any other villagers, but during our field visit, this rule appeared to be not well known among respondents. Also the customary belief that trees are living beings with their own spirit and which can be hurt when cutting down was not widely referred to during conversations, although it used to be an important component of the traditional belief system. The collection of herbal plants which used to be done through a spiritual approach also seems to be getting lost. The tourism in the area has created great opportunities to generate income through herbal products and services, therefore, both the amount of herbal plants and the purposes have changed from domestic to a commercial use. Our findings suggest that tourism in general has a great impact on the local culture and values.

6.3.2 State Law versus Customary Law

Perceptions and Attitudes

Local authorities have a positive and respectful attitude toward local people's culture and customary law. Actually, in Muong Phang some local officials belong to the Thai ethnic minority and there are programs run by the local government to preserve and promote the local culture. One of the villages in Muong Phang for instance was pointed out as a cultural village and was therefore receiving funds to build a cultural house. The house was to be built in the form of a traditional Thai house taking into account all details and requirements. Although the effectiveness of these programs could not be assessed, their existence reveals a positive attitude from government officials. But this positive attitude is not yet fully translated into integrating the local customary law in forest use and management in Muong Phang. At the same time, in both study areas local people seem to find openings to integrate their customary law into formal decisions. For instance, in Ta Phin, the key people in mass organisations (such as members of the Women Union) and government units (such as the communal party secretary) were often village priests, who are knowledgeable about customary law. Here, the customary law was taken into account in village

regulations including the local regulation on natural resource management. Though to a lesser degree, also in Muong Phang there was some overlap between customary rules and formal village rules for forest use, like timber collection.

In terms of awareness and knowledge on laws and policies, the information obtained reveals that people in general, and especially women, are poorly informed about state laws and rules, regulations and institutions responsible for forest protection and management. State law remains complex and not easily accessible to people, and the formal administrative systems for forest protection and benefit sharing are not fully understood.

Ownership and Allocation

Forest resources are all owned and managed by state institutions like FMB and CPC who, together with functional departments, have ultimate responsibility to implement laws and policies. In customary law of both the Red Dzao and Thai people, forest lands belong to the community and are allocated through traditional rules and institutions. However, since the land reforms in 1960, forests have become state property and allocated to state institutions like cooperative farms, FMBs and SFEs. When these national reforms were carried out in the two communes, existing community boundaries and their local cultures and customs were neglected totally and the people who entirely depended on forests were denied access to the lands and forests they perceived to be their own and their ancestors'. The taking over of people's land also implied the taking over of sacred areas to which people were deeply attached. As we found in our study, this is leading to loss of local culture and is a source of conflicts. One example is that in Muong Phang Sen Muong is not celebrated anymore because the sacred forest where it used to be celebrated is not owned by the people anymore but belongs to FMB. A more recent example from 2009, of a conflict between a company and a village, is given in the box below.

Late 2009, there was an irrigation program in Muong Phang and the government planned the construction of the system through our sacred Dong Sen forest without informing the villagers. The construction company destroyed the Dong Sen, cut down the sacred tree and hired two outsiders to cut it into pieces. After a short time, the driver of the truck and the two persons who cut up the sacred tree got mental diseases. Also, suddenly many buffalos in our village died without reason. [] So all the villagers gathered and decided to stand up to protect our sacred spirit []. We demonstrated at the construction site and demanded that the company prepare a ritual to apologize to the Forest Spirit and support us in organizing the ceremony to assign a new Dong Sen forest [] our village elders played an important role in calming us (villagers) down and to heal the broken relations between people. (Yen Village, middle aged male)

Under the new Land Law (1993) and Law on Forest Protection and Development (1991), ownership of land remained under the state and no attempts have been made to understand and take into account the existing customary boundaries, forest classifications and rules. Till date, the formal law in Vietnam does not fully recognize communities as entities that can own and manage land. From the perspective of ethnic minorities and customary law this is a major gap in the law. However, with the latest reforms law at least allows for the (re-)allocation of land to private actors. This means that forest and lands of SFE's were partly shifted to households and individuals who obtained land use rights for a maximum of 50 years with the possibility to receive or transfer inheritance and to receive compensation. Since 1995, some households in both communes have been contracted by or received land from FMB and/or the CPC for plantation, protection or regeneration. Under programme 327, people who live near the natural forest have been contracted to protect pieces of forest in return for an allowance. Since 2008, this allowance is 100.000 VND (4.8 US\$)/ha/year. Unlike in customary law, the allocation of forests did not take place through involvement of and seeking consent from all community members, nor did it

take into account the significance of sacred lands. Yet another gap in implementation of the land law is the fact that in Muong Phang, local authorities still have not carried out a land re-allocation program. Up to now people are still sticking to the traditional borders to classify land and forests as findings revealed in different villages in Muong Phang. For instance, in Banh village, people still use the boundaries formulated by ancestors, even though the allocation does not take place independent from state institutions. Thus, customary law is combined this with customary law. Villagers decide upon boundaries based on traditional borders, each household registers this with the village leader, and then a village meeting is organised with representatives from the Agro-Forestry Development Department and the forest ranger to confirm the new boundaries.

Management and Protection

As stated earlier, before 1960s, the smallest administrative units in Ta Phin were villages with a village leader (appointed by the government) responsible for public administration. Besides that, there were also the village elders (a select group of respected villagers) who played an important social and spiritual role in the villages. It is clear that local institutions like village elders who used to have important role in customary law are now replaced by state appointed actors. Unlike under customary law where forests can only be exploited in a modest way, State Forest Enterprises in Muong Phang extensively exploited the forests for profit. Although in that period people joined the state initiated cooperatives, the local customary law continued to exist parallel to state laws and policies. As forests were depleted and resources became scarcer, conflicts emerged between people who relied on the forests. Residents of Muong Phang had only limited amount of land for cultivation and no access to timber which gave rise to illegal logging. In addition, unlike in customary law where protection of forests is a collective responsibility and based on shared values and beliefs, state law assigned responsibility of protection to individual households. One example in Muong Phang illustrates very well how giving sacred land to individuals is in conflict with local beliefs: In one of the villages, a family who had formally received a piece of the sacred forest renounced from having this land because the family experienced punishment from the sacred Mother Forest Spirit. Shortly after moving into the sacred land, the daughter-in-law gave birth to a dead baby and then to a deaf child. Similarly, in another village, a family gave back their piece of plantation forest to the community because it was part of the sacred forest, without expecting any compensation.

Since 1995, under the programs 327 and 661, the FMB signed contracts with household groups for forest protection. In Muong Phang as well, these household groups are responsible for maintaining and protecting forests. Some households have also been contracted under Decree 01/CP/1995 to protect the natural forest and for that receive remunerations. Although the contracted households have not received any remuneration since early 2009, they are still committed to protect the forest. In addition, households are also assigned plots of restoration forest by the CPC that they can protect and manage for regeneration. Next to remuneration in rice, they are also allowed to use NTFP products.

Formal Forest Use

It is more than obvious that people still highly depend on forests, though the form of dependence and the level of access to benefit from forests have changed over time. The foremost reason of these changes is the depletion of forests and people's lack of ownership over forests. Till 1960, every household in both communes would use a piece of forest land where they derived their forest products from. Nowadays all the lands belong to institutions like FMB and SFE's and there has been no effective land reallocation that gave people legal rights for land use. Since 1995, several households have been assigned forest land in the natural forest area for regeneration against compensation; however, at the time of conducting the research, people had not received any compensation for almost two years. Furthermore in many contracts signed between households

and FMB, the amount of compensation for protecting forests is often not stated, or they received poor and depleted forests which do not generate any benefits. Some households are issued Red Books, which is the legal document that outlines the amount of production forest they receive and their rights in this forest, but which does not give them the right to develop and manage these resources according to their own wishes.

In Muong Phang, the *Trau* trees did not provide significant incomes to the people because the market prices of its fruit had been fluctuating and finally dropped to a low level. But since the land and the trees belong to the FMB, they are not able to use the land for any other purpose and as a consequence they started to illegally cut the *Trau* trees and sell the timber.

The growing of cardamom in production forests in Ta Phin is beneficial to people because there is a high demand for it, hence many people desire to start growing it or extend their production. Moreover, the growing of cardamom is a good way to promote biodiversity because the plant can only grow under a rich canopy of forest trees. However, the district authorities have recently issued a decision to prohibit the extension of cardamom production. So one can see that in both communes, the local people are not able to use, benefit and develop the forests as they wish because they lack the legal rights.

Formally, if commune members desire to log timber for house construction or repair, they must get permission from the CPC (for less than 5 m³) or DPC (for more than 5 m³) and are subject to inspection by the ranger after logging and transporting the wood to their homes. Each village has included specific steps in their village regulations that allow to retain aspects similar to customary law. For instance, village regulations include that the application for request for wood must be first certified by village heads, who organises a community meeting where all people have to agree on the application. Here people's criterion for their judgement is in accordance with the custom: people should not extract more wood than they need. Only after this approval the village leader submits the application to the CPC and/or the DPC. The space that formal regulations give to customary law might be one of the reasons why new formal structures as household units and forest rangers are accepted and receive support from people¹⁸. After submitting the application to the district, it takes officially around one or two days at CPC and one month at the DPC level to approve the request and to identify the area where the household can get the timber. This can be either the regeneration or protection forests; the special use forests remain untouched. However, the transport of timber from the natural forest is an expensive matter because the forests are now far away and hiring people to bring the wood is simply unaffordable to some households. Sometimes the trees are left in the forest for a long time after cutting as there is no capacity to transport them, with the risk for their wood to be stolen. It is also difficult to find good quality wood that is suitable to build houses. Our findings in Muong Phang also reveal that the process to get approval for timber collection is found complicated and not widely known among villagers. As a consequence, formal regulations are often bypassed leading to punishment of the people.

With regard to NTFP collection, the customary law is still predominating. NTFP are considered to be belonging to all villagers and can be collected freely by everybody, so the borders of the forest plots allocated to household groups are not taken into account. People can enter forests of other household groups without permission or any trouble if it is for the collection of NTFP. The same applies for timber cutting. If someone from the village needs timber but doesn't have enough in forest allocated to them, they can seek and are given permission to get it from the forest of another household group. That household group only expects to be informed. The role of the forest ranger is recognised and accepted by the people and it is generally known that permission from the authorities is necessary for timber collection. However, the responses reveal that people

¹⁸ Study findings reveal that local people feel a strong responsibility to protect the forest and report illegal loggers to the ranger or head of household groups.

still perceive the forests to be belonging to the community with free-access right for everyone. Despite the fact that the village regulation is pre-formulated by local officials, there seems to be a general feeling that what really counts is the community’s own regulation.

As we have tried to show, at present, forest use and management are regulated by both customary law and state law. In some respects they are reinforcing each other, in others they are conflicting. Before we proceed to an analysis of this situation, we provide in table 5 a brief summary comparison of the forest use and management rules in customary law and state law.

For a long time, people discuss, people set up and spontaneously follow customary laws without force []. It is a rule in the commune that deforestation offence will be penalized by 1000 kg rice for the first offence and twice the amount for a second offence. The community regulation is agreed upon and signed by all villagers. (Village elder, Mr. Cà Văn Hợp, 86 years old)

Table 5. Comparison of Forest Management Rules and Regulations under Customary Law and State Law

Customary Law	State Law
Forest Classification and Ownership	
Forests belong to the community and are given to them by their ancestors to whom they are deeply attached and from whom they derive their current identity. The ancestors have given them the land and established the relationship with supra-natural entities on which the community relies for protection, safety and its resources. Forests are classified based on spiritual values and interests of the community as a whole.	All forests are owned by the state. Protection and Special Use Forests are under state management. Classification is done by government officials. Communities are not recognised as a legal entity that can own forests and land. Forest land and production forests can be allocated to individual, households and organisations for use and management via long-term use rights. Community forests are mentioned in state policies and at present MARD is doing a pilot project in 40 communes on community-forests managed by local people.
Forest Land Allocation and Management	
Forest land is allocated through customary law based on ancestral borders, actual needs and with consent from all villagers. Certain forest areas are prohibited to be allocated to households due to their spiritual significance for the whole community. Taking this into account is important for the safety and wellbeing of all and hence widely accepted. Village elders and chiefs are the key actors in allocating forest resources, overseeing the management and use and ensuring that customary law is respected. They play a key role in settling disputes over natural resources.	State decides the objectives and functions of land use and this can only be determined and changed by the state. Land use plans of the government provide the frame for land allocation and use. Forests according to official classification are allocated by FMB/CPC to households. FMB/CPC and forest rangers are responsible for management. Some households are contracted to protect the forest for financial rewards and some households have use rights over specified production forest areas.

Customary Law	State Law
Protection of Natural Resources	
Protection of natural resources is a collective responsibility and inherent value in people’s life and daily interactions with nature. Customary law regarding the interaction with resources and the spirits that protect these resources are accepted and applied voluntarily and naturally. The rules and underlying values of customary law promote the protection of forests and these values are kept alive through ceremonies, rituals and traditional teachings where people are thought to interact gently with natural resources and supra-natural entities that protect natural resources. Some measures in customary law at collective level promote protection of forest and trees: • Different areas are assigned as sacred land which are strictly protected by all villagers • There are various mechanisms to ensure that some trees are not cut down (for instance trees with Com Lam in Muong Phang and trees where a spirit lives in Ta Phin) or are collected in a way that ensures regeneration. • No commercial use of forests is allowed: people or households take only as much resources as they need for domestic consumption • During certain days or periods in a year people are not allowed to enter the forest or extract resources • Forest near a water source cannot be used to collect timber and NTFP	Ultimate responsibility to protect the resources lies with state institutions like FMB and CPC. Individual households that are contracted or have been allocated land also have the responsibility to inspect resources. Forest Ranger in cooperation with household-groups in each village are responsible for protection (Muong Phang) Some measure to ensure protection of forests and trees include: • For less than 5m3 of wood CPC permission is needed and for more than 5m3 of wood a DCP district resolution must be requested. The request must be certified by the village leader • CPC or DCP reviews the requests and the ranger inspects the actual needs of the household and makes a decision. Households must pay a fee for the official approval. • Forestry officials identify the area where trees can be cut and guide the family to ensure sustainability • The use of chainsaws to cut down tree is limited and the user must make sure that the surrounding trees are not damaged • Firewood can only be collected from the households’ own forest, otherwise a request must be submitted to FMB / CPC • A monetary fine is imposed for illegal logging

Customary Law	State Law
Protection of Natural Resources (continued)	
Beliefs and intrinsic values also make people consciously or unconsciously apply customary rules. Some of such beliefs and values are: • Dissatisfying supernatural powers can have negative effects on a person, household or the whole community • For collecting timber, the permission of the villagers must be obtained through a village meeting. The requested amount must not exceed the household’s actual need • Before cutting a tree or plant, permission must be asked from a supernatural entity like a spirit or the sprit/soul of the plant • The root of a plant or tree should not be damaged and handled with care during cutting • Only the amount and the parts that are needed should be collected (maximum 1/3rd) without damaging the rest of the plant • Only old trees or older parts of a plant should be cut to preserve younger parts and to ensure that seeds can mature. • There is an obligation to replant a tree for each one cut (in Ta Phin only) • When cutting down a tree, surrounding trees should not be damaged • Some plants should only be collected during a certain season or part of the day • Collection of firewood must be reported to village elders/chiefs	The state law and commune authorities have neither detail guidance on harvest and sustainable management of NTFP in general, nor a strategy to protect herbal plants State initiatives promote commercial use of NTFP.
Benefit Sharing	
The community decides on change of land use and planning. All community forests are open to all to enjoy its benefits. Customary rules are applied voluntarily in interactions with resources	State authorities decide on the land use purpose and communities are not allowed to change. Individual households assigned with (forest) land, are entitled to benefit from the land conform laws and policies and under state guidance.

Customary Law	State Law
Values	
Natural Resources are inhabited and/or protected by supernatural entities, and hence can not belong to anyone. The relations with the supranatural powers are important for people’s protection and well being. The rules and customs to interact with the nature is governed by the supranatural powers. All aspects related to allocation, land use purposes, benefit sharing, etc., must be discussed and agreed upon by all villagers with transparency. Community is self-reliant and takes care of itself through traditions and indigenous knowledge Respectful interactions with natural resources is an intrinsic driving force because it denotes respect towards the supranatural powers like the three Mother Spirits of Land, Forest and Water; and resources must be taken and used with modesty. Benefit sharing should be for all, equal and based on actual needs.	Forests fulfil ecological and economic functions. People’s interactions with forests are governed through state institutions and are regulated through written laws, policies and formal procedures, which prescribe the rules and conditions for people to protect, use and control forests. The rules, conditions and use rights differ according to state’s zoning and classification of forest areas and purposes, ranging from production, income generation to recovering bio-diversity or special use like territorial safety or tourism. State arrangements and mechanisms like incentives, law enforcement and education are the driving force for people to follow formal rules. In these rules and policies local values, customs and institutions play no role. These do not take into account peoples historical and spiritual relations with forests.

7. ANALYSIS

In the previous sections we tried to outline the customary law on forest use and management in Muong Phang and Ta Phin. In both these communes, customary law is generally understood as a set of rules that is formed in the course of a long history and which is based on the local indigenous knowledge, beliefs and experiences. These rules regulate people's behaviours towards each other and towards nature and are adhered to by people based on their spiritual beliefs, taboos and social acceptance. Especially in the case of Ta Phin, the punishments based on customary law are considered much worse than punishments by formal law. Customary law can be passed on to the new generations orally like in Muong Phang, or orally and through writings like in the case of Ta Phin. The law can be revised when necessary with consent of all commune members and enforced by traditional institutions like respected village elders.

In this final analysis, we are discussing a few of the most pertinent aspects of customary and state law with respect to natural resource management, and how these two systems interface.

What aspects of Customary Law lead to sustainable national resources use and management?

In both communes, the customary laws (the '12 Hit' in Muong Phang and 'Chuong Mien' in Ta Phin) include a set of rules on people's interaction with natural resources and the spirits. It is clear that their customary law is highly interwoven with natural resources and provides rules for their ownership and protection. From our findings we can conclude that in its original form customary law comes along with strong beliefs and habits that promote a balanced living with forest resources and promote their conservation. These beliefs are still widely acknowledged by commune members and translated into their daily practices.

Both in Ta Phin and Muong Phang, there is a strong belief in the spirits of natural phenomena like forests, land and water and these spirits can protect, reward or punish people according to their behaviours. Stemming from this belief, people have rituals to interact and connect with these spirits and nature, as illustrated with the Sen Ban and birth ceremonies in Muong Phang and the Tet Nhay in Ta Phin. As long as such beliefs and the spiritual importance of nature exist, people will value and protect resources like forests and water. Moreover, it is not only the spiritual function that connects people to forests but also its significant role in people's everyday life. The combination of these spiritual beliefs and everyday dependence creates an intrinsic value and desire among people to respect and protect forests and forest resources over time. Therefore, the rules provided in the customary law are followed naturally and traditional institutions like village elders or spiritual actors play an important role in passing on knowledge and traditions.

Apart from the intangible values, customary laws also promote visible and concrete actions that promote the forests' regeneration and protection. This is for instance reflected in the considerate way NTFP are collected. The right of using forest resources is not taken for granted but must be derived with permission and is often supposed to be followed up by giving something back to the source (like offerings) and trying to limit the damage to the plants and surroundings as much as possible to allow for their regeneration. Also at the collective level, there are mechanisms that promote the protection of forests. Forest areas that are classified as sacred or in areas where spirits are believed to live are clearly well protected. Other rules are also followed such as the prohibition to cut down trees near water sources. In the case of Muong Phang, the trees with the 'Com Lam' bamboo stay untouched. Based on our findings, in both communities we can conclude that customary law in these two communities entails strong mechanisms to protect and sustain forests.

What are the social, economic and environmental effects of state policies on people's livelihoods? How did state law affect customary law and its functions in natural resource use and management?

In both communities, our findings reveal a strong existence of local culture and customary law. After having concluded that customary law promotes sustainable forest use and management, it might seem contradictory that the quality of forests and water resources in the areas studied is not very high. However, we can assert with a fair level of certainty that deforestation and environmental degradation are not due to customary law, but are rather the consequence of changes in customary law that undermine its functioning. Recent socio-demographic developments are influencing local cultures and thus customary law, and state reforms and interventions have so far not taken into account customary law sufficiently. Although poverty reduction programs and the emergence of tourism is increasing people's economic opportunities and access to services, their negative effect is that they lead to a loss of local cultures, institutions, identities as well as environmental degradation. On a longer term this might lead to social disintegration and instability. The loss of local cultures and identity is especially visible among the youth, who still recognise and naturally apply traditional customs but do not fully understand the underlying (spiritual) values and meanings. In addition, state policies in the last four decades have caused forest depletion which also led to the loss of ceremonies and which is still causing problems like the decreased level of forest resources, such as timber, NTFP and water.

In both communities before 1960, the rich forests were managed through customary law implying that forests were owned by the community, allocated through local institutions often based on ancestral boundaries and its resources were used in a modest way to meet local needs. During that time, the population density was low and people used a large area of forests. Therefore, the resources could meet people's needs and no conflicts existed yet. Post 1960, forests were disowned from the people and given to cooperatives, such as FMB or SFE, while local people were still dependent on forest lands and resources. However, since people had no other option, they continued to collect forest resources and to practice traditional shifting cultivation which, according to the new official state law, made them intruders of lands they perceived as their own. Conflicts emerged because state institutions and local people had different and sometimes conflicting perceptions and values on owning, managing and using forests and its resources. The villagers, who had strong local identities and beliefs could not accept or understand why they could not benefit from the lands and forests that they inherited from their ancestors. In the most recent land and forestry reforms, too, local belief, value systems and customary laws have not been taken into account. However, it must be noted that at the local government level there is a positive attitude towards communities and officials reveal an understanding of the importance of customary law in these societies. In Muong Phang, the culture and cultural identity of the Thai people have been a focus and discussed at the communal Party Congress in 2010. This concern has received attention and was taken into consideration in their policies and programs promoting social development. However, these positive attitudes and plans are quite recent and still do not explicitly take customary law into account in local systems of forest management and use.

Looking at mechanisms of ownership, allocation and management of forests, state laws gave user rights to institutions, and later on to individual households. Only very recently have community forest management rights been included in policies and pilot programs. Land allocation in customary law takes place through traditional institutions and is based on ancestral land boundaries. Consequently, when asked, local people still classify forests based on customary laws rather than the formal classification (i.e. Protection Forest, Special-Use Forest, Production Forest). More striking is that the local people still perceive these lands as belonging to the community, even though this is officially not the case because up to date state law (Civil Code) does not recognise rural communities as a legal entity that can own and manage forest lands. In

customary law, protection of land, forests and water is considered as community's responsibility because they are collectively protected, rewarded or punished by supra-natural entities. People in both communities, including younger generations, understand well that their lives are intimately tied to natural resources and have a desire to recover and maintain forests. The combination of these spiritual beliefs and dependence on forests is what created intrinsic motivation to protect forests and to abide to customary rules rather than rewards like money or rice. This is a clear example where state and customary law differ from each other, and where customary law still seems to be stronger. For example, our findings in Muong Phang clearly reveal a high value conferred to sacred forests, whereas local people did not show much interest in the fruit trees of the production forests nor their current benefits. When asked about the potential benefits in the future, people still preferred rich natural forests over production forests. However, people have no longer ownership over resources and most forest still belong to the state and this is negatively influencing people's motivation to protect these resources. This is especially in the case of Muong Phang where no land allocation has taken place yet which is weakening people's sovereignty to manage and use resources.

Another difference between the state and customary law is the process through which they are formulated. People's customary law requires that decisions on allocation, management and use of forests and natural resources should be taken by traditional institutions, with involvement and consent of all villagers. In contrast, the state law is initiated from above by alien institutions, without much influence by villagers. This lead to interventions that are not effective or which lack flexibility to be timely adapted by local people to become effective. One instance where this became visible is the case of Trau trees grown in the production forests in Muong Phang which are no longer desired because of the low price they get for the fruits and because the land on which these trees are grown can not be used for any other purpose. Another case is that of the government initiated cardamom production in Ta Phin where people did not receive technical guidance and the plants were affected by drought and disease. They later developed their own methods for growing cardamom.

Another problem is that local people are inadequately informed about state policies. The formal legal and policy system is complex and continuously changing, access to information is very limited and information reaches people slowly. As a consequence, state law is not fully understood or accepted, which undermines its effectiveness.

At the same time, state and customary law are not harmonized with each other and the original functions of customary law are now often limited by state law. Here, it is especially important to mention the eroding of the role of traditional institutions like village elders. These institutions are important not only because they have a crucial role in maintaining social stability and cohesion but also because they can play an important role in bringing the state and customary law closer together, so that these two laws can complement each other. In the current situation, both law systems do not optimally function which leads to a non-viable situation, especially when local economic development projects and tourism are leading to an increasing pressure on natural resources.

State laws have the role of regulating social relations. To play this role well, law must reflect aspirations of people, be collectively accepted, voluntarily adhered to and be consistent with the level of social development. Currently, the development level of each region, locality and ethnic group in Vietnam is not the same, so the law enforcement at each locality differs. This suggests that law would become more suitable and enforcement more effective if local values and customs in different regions are taken into account in legislation. This applies particularly for customary law, because it has the same regulatory roles and functions to maintain social order as the state law. It is therefore necessary to understand the functioning of customary law in different localities

in order to assess the role of customary law and how, in particular cases, it can be integrated into, harmonized with and complement state law. This is not to say that state law is necessarily in contradiction with customary law because there is certainly some overlap in goals, i.e. promoting good behaviours, and to some extent state law leaves space for people to practice their customary law. This is for instance the case in Muong Phang where the forest rangers yearly discusses formal regulations with villagers and where people have integrated elements of customary principles in formal regulations on forest protection. Therefore, these formal regulations and new structures like forest protection groups for forest protection are widely accepted and function well. Still the formal laws and policies lack the specific provisions that ensure a more profound analysis and a systematic integration of customary law.

How can customary law and state law strengthen each other towards more sustainable Natural Resource Management?

Although the data we have is limited, it is possible to make a general assessment of state and customary law's potential for promoting and ensuring sustainable natural resource management, based on the criteria identified at the beginning of this report (table 2). We are trying to do this in table 6. In this table we are also including recommendations on how state and customary law can be integrated and harmonised so that they reinforce each other and thus lead to a more effective and thus more sustainable natural resource management. However, do note that the information on customary law in table 6 and the scores assigned are based on customary law in its 'original' form and functions, even if some of these functions have as we already discussed, been subject to change in the recent past. We are using + and – to indicate the level to which state law and customary law fulfil the respective criteria.

A plus (++) implies that the criterion for sustainable NRM is well enabled by the state or the customary law. A plus minus (+/-) implies that the respective law has some positive but also some less positive aspects related to the criterion. Finally, a minus (-) means that the law and its application does not contribute to the criterion.

Table 6. Assessment of state and customary law’s potential for ensuring sustainable NRM

Criteria for Sustainable NRM		CL	SL	Explanation	Recommendations for integration and harmonisation of CL and SL
Legal					
Rules evolved through a bottom up process of people’s daily practice, learning, adapting and selection of behaviours that proved beneficial for their survival	+	-		Customary law has evolved bottom up, it is unclear through what process the rules came into being - but it is clear that these rules were beneficial for people’s survival and living in harmony with each other and with their surroundings. State law is not bottom up; experiences so far reveals that state interventions lead to environmental degradation, conflicts, food shortages etc.	<i>Give local people the space to formulate their own regulation (rather than a pre-formulated form) and allow them to revise this regularly if they think necessary</i> <i>Try to understand the indigenous knowledge (for instance through research or through pre-assessment before designing interventions) that is intimately built into customary law</i>
Functions and benefits of the (customary) law are recognised by the people	+	+/-		Recognised benefits of customary rules are in the first place cultural and spiritual. If customary law is applied well, the whole community or villagers are rewarded. The benefit of rules to protect forests is also recognised: people realise their dependence on forests and put a high value on preserving forests. Benefits of state law are also recognised and it is seen as a necessity in the current context. But the benefits are not always specific or high like in the case of Muong Phang: people are committed to protect forest but do not have much benefit from it, like the plantation trees and its fruits. In the case of Ta Phin, land and forests are better allocated and people are able to generate benefits from them.	<i>State laws and interventions should not neglect the cultural and spiritual benefits and values of natural resources – for instance, it can be done by taking people’s own classification of forests into account</i> <i>People should have more participation in planning on how to benefit from the forest</i>



Criteria for Sustainable NRM		CL	SL	Explanation	Recommendations for integration and harmonisation of CL and SL
Rules are undisputed and have widespread acceptance by the people	+	-		Traditionally, customary rules and institutions are unquestionably recognised at individual and commune level. It is the inheritance from their ancestors and seen as necessary to be protected. Nowadays, state law is not rejected but considered to be necessary to protect forests in the current context. However, when it comes to the specific level of rules, people do not know about state laws and apply customary law. For instance, this is clearly indicated by the fact that people classify forests differently and still consider the forest as belonging to the community.	<i>Integrating the two law systems will increase people’s awareness and acceptance of formal state rules. An important measure could be, for instance, allowing forest ownership by communities in state law or allowing communities to protect sacred sites. Measures to bring state and customary law closer together are context specific and require a much deeper study and analysis.</i>
Provide clear values, rules and guidelines to people on how to behave and interact with each other and with natural resources	+	+/-		Rules for behaviours and interactions are central to customary law. As they have evolved from within the community, these rules are consistent, well understood by people and part of their everyday life. State laws and rules also guide people on how to interact with each other but people are not fully informed and aware of these rules. Furthermore people’s confusion is further increased by the overlapping and the non consistency in the values in state policies. There is some overlap in the state and customary rules for interacting with the forests, but state law is more static and tends to stress restrictions and prohibitions more rather than lessons for interactions in general.	<i>Customary law can provide lessons on how to have a more ‘behavioural’ approach and this can be used to design state law and policies aimed towards behaviour change</i>

Criteria for Sustainable NRM	CL	SL	Explanation	Recommendations for integration and harmonisation of CL and SL
Are maintained and enforced through acknowledged institutions and mechanisms like (traditional) leaders, beliefs, taboos, social norms etc.	++	+/-	For customary law: beliefs, ceremonies and taboos keep the acceptance alive, and village elders, priests etc. are respected and play a key role in important roles in the society. They are respected and play a key role in educating people and solving disputes. Apart from spiritual beliefs, this study could not point out what mechanisms exist to enforce the rules and what happens to people who do not follow customary law. Today, the role of traditional institutions is less strong because they have been undermined by formal institutions. Village leaders, for instance, have nowadays more formal power but are in social terms less important than elders and priests. Nevertheless, state initiated institutions like household groups and forest rangers are also accepted and supported. One of the reasons for this might be the community's involvement in setting up the household groups. However state rules that focus on punishment does not seem to be very effective considering the fact that illegal logging is still prevalent and people maintain their customary relations with forests.	<i>The social roles of traditional institutions must be recognised and used in the formulation of rules and in educating people on these rules.</i>
Ecological				
Ecological system and its functions are well maintained (forest, land, soil, biodiversity etc.)	+	+/-	Before 1960s when customary law was fully in place, forests were rich in resources. The ecological systems were destroyed after forests were put under state law and management. After the reforms in 1993 forests are being protected and being regenerated again through a hybrid mix of state and customary rules. There are policies and programs that try regenerate forests and safeguard healthy eco-systems. To certain extent these contribute to the recovery of forests. However their positive effects are mitigated by other measures and policies aimed at local economic development, which on their turn not always yield expected results.	<i>When state programs are implemented at local level, the contradicting effects of different state programs should be first assessed thoroughly and addressed through meaningful participation by local people</i>

Criteria for Sustainable NRM	CL	SL	Explanation	Recommendations for integration and harmonisation of CL and SL
No overexploitation of land, forest and water resources; these are available (in the seasons they are supposed to be available)	+	+/-	In customary law resources can only be used to the extent needed, and not for commercial use. The state system promotes the non-exploitation and regeneration as well. In the research areas, there was also no commercial logging activity. On the other hand, the state policies also promote commercial use of forests and leaves space to outsiders to come in and exploit local resources. Also, formal plans for the general socio-economic development of the locality can create favourable conditions for over exploitation.	<i>Authorities should ensure that state guidelines for sustainability and local participation are followed when local plans are formulated or when external actors like companies come into communities</i>
Amounts of timber and NTFP collected do not have adverse effects on each other's quantity and quality. Use and benefit-sharing systems allow for regeneration of timber and NTFP	+	+	Both set of laws promote that timber use should be limited to people's actual needs and should not harm the forests, and are aimed at regeneration. However, unlike customary law, the state law has little to no mechanisms to regulate the collection of NTFP and this is important especially considering that herbal medicine and other NTFP play an important role in people's lives. Supporting the valuable role of NTFP in daily life does not only contribute to people's livelihoods but also to their values and attitudes toward forest protection.	<i>The state has not yet formulated clear guidelines for NTFP collection and use. State laws and policies can highly benefit from the customary law on NTFP collection which are based on indigenous knowledge and more naturally accepted – adopting them in state law will prevent the loss of this indigenous knowledge and will guide people towards sustainable NTFP use over a longer period of time.</i>
No pollution of land, forest and water resources. No adverse social and environmental health impacts by human interventions	+	+/-	In customary law there are clear guidelines to prevent adverse effects on resources – and the link between land, forest and water is well recognised and taken into account. State law specific to forestry aims at protecting and regenerating forests but at the same does not fully prevent pollution and overexploitation. Especially other state development plans and programs can be in conflict, like infrastructure development or the promotion of tourism.	<i>Ensure local participation in different plans to make sure their long-term aspirations are taken into account and local plans are not conflicting.</i>

Criteria for Sustainable NRM		CL	SL	Explanation	Recommendations for integration and harmonisation of CL and SL
Socio-Economic					
Conservation value and commitment to sustainability – people using the forest give value to forest conservation and seek to maintain the quality of the resource	+	+/-		Based on their spiritual beliefs and dependence on forests, the value to conserve forests is high among people. However, although customary rules in its pure form highly promote conservation. Nowadays attitudes and approaches towards the forests are changing. Examples are government's promotion of commercial use of forest products (fruit trees, cardamom or orchid growing) and emergence of tourism. This is inevitably a change in the perceptions on the forest and changing values from conservation towards commercial exploitation.	<i>When formulating programs and policies, not only the economic value of forests should be considered but also spiritual and social values as local communes perceive them.</i>
Boundaries of forest allocation and use are clear and widely agreed upon	+	+/-		Boundaries based on customary law are clear to people and people tend to classify areas based on these boundaries (especially in Muong Phang). The land reallocation program is not carried out well (Muong Phang) and hence there are conflicts.	<i>When carrying out forest land allocation programs, technical institutions should take customary boundaries into account while conducting mapping.</i>
There are benefits from forests not only in the form of timber but also NTFP, and they are an important part of livelihood (both for domestic use as for income generation). Multifunctional uses of forests are promoted.	+	+/-		In customary law, forests are open for village or commune members for the collection of NTFP with specific guidelines and rules for sustainable use. These NTFP are still widely used and important in people's daily lives. Because of this dependence people highly value the forest and want to preserve forests. The state does not have a clear strategy or approach to NTFP. In Ta Phin, NTFP are planted for commercial purposes and this is quite beneficial to people.	<i>State law should have a clearer strategy and approach to NTFP use and management – thereby promoting their sustainable use through customary rules. The focus of the state is much more on commercial growing of NTFP. This can be positive for local people in terms of benefits and sustainable at the same time – if it is ensured that this kind of intensive plantation does not adversely affect forests.</i>



Criteria for Sustainable NRM		CL	SL	Explanation	Recommendations for integration and harmonisation of CL and SL
Users of the forest have the capacity to protect resources from outsiders	-	+		Illegal logging is persistent in both communities, and in Ta Phin due to fire caused by other ethnic groups, people were not able to protect the resources totally. Household groups in cooperation with forest ranger were recognised for their role to deal with outsiders. Here people strongly recognise that there is need for state support to protect their resources	<i>Innovative tools and mechanisms should be created that facilitate a closer cooperation between formal and local institutions for forest protection.</i>
Conflict Resolution: people have means for setting disputes both internally and externally to the group	+	?		Traditional actors like village elders and priest still play the role of mediator in internal and external disputes. People themselves turn to these institutions first if there is a conflict. But the role of these institutions is getting lost. It is not clear what state mechanisms are available for conflict resolution and how they function.	<i>Local officials should recognise and make use of the important social roles of traditional institutions for conflict resolution.</i>
Information on the quality of the resource is available to the group	?	?		People are in general aware that some forests and water sources have changed over time, have depleted and cause a shortage of resources. This research could however not reveal how specific their knowledge is.	<i>Local governments and officials should set up clear and consistent information management systems to monitor and analyse indicators related to the forest and set up a systematic mechanism to share the information with local people.</i>
Incentives/benefits to people from the resource are positive and might include cultural as intangible benefits	+	-/+		In customary law the spiritual and economic benefits of forests and water are unambiguously clear. State law intends to provide (economic) benefits to the people but this is not in practice: people have no ownership over forests, do not decide about its benefits, and the forests given to them are of poor quality. The state law does in no way take into account intangible benefits of forests or the importance of NTFP.	<i>Benefits from NTFP must have more formal recognition and there is a need for a strategy for sustainable NTFP use. Secondly, the spiritual importance of forests must gain formal recognition by local authorities and should be taken into account in local natural resources management and conservation planning.</i>

Criteria for Sustainable NRM	CL	SL	Explanation	Recommendations for integration and harmonisation of CL and SL
Incentives might also be negative in the form of sanctions	+	+	Both laws include negative sanctions. In customary law the sanctions are mostly stemming from belief in supernatural entities. But they also include social sanctions like exclusion, which are highly feared. However, we lack specific information on sanctions related to natural resource management to make a statement here. State law sanctions around natural resource management are mostly monetary.	<i>Research on how customary law is enforced could contribute to a better understanding of how state law can be enforced more effectively and how state and customary law can be harmonized.</i>
Institutional				
Rules and regulations provide indicators and guidelines to promote biodiversity and protect the ecosystem. This includes rules and criteria to collect and manage NTFP	+	+/-	See previous comments on ecology criteria. Customary law clearly includes rules to preserve forest and water sources which are widely known and applied. State laws promote biodiversity as well and these overlap with customary rules. However, they are less widely known and do not include elaborate rules for NTFP.	<i>More attention is needed for researching a) indigenous knowledge on NTFPs and 2) how and under what conditions NTFP's can contribute to local people's livelihood in a sustainable way. Based on research, more elaborate rules for NTFPs should be adopted.</i>



Criteria for Sustainable NRM	CL	SL	Explanation	Recommendations for integration and harmonisation of CL and SL
People dependent on a resource have a say in decisions on how the resource is managed and how benefits are shared. Group size and organisation: groups are sufficiently small to enable regular contact and communication. People have adequate inputs necessary for sustainable management like labour, information and support	+ (?)	-/+ (?)	At village level, decisions regarding natural resources and distribution of benefits are traditionally taken through participation of all members. However we lack information on the details about how decisions and communication regarding natural resource management, use and allocation were made in the past (explaining the question-mark). Today, formal decisions on resource distributions and benefit sharing are taken by local authorities and proposed to the villagers through village meetings in which they are asked to support decisions that are already made (is thus not formulated bottom up and not really participatory). The household groups at village level are small but we lack information on their inputs for management, and the way they are organised to make any judgement (explaining the question mark).	<i>Ensure local participation in different plans to make sure their long-term aspirations are taken into account and local plans are not conflicting</i>
There is indigenous knowledge or information on sustainable NTFP	+	-	The customary ways of collecting NTFPs are originally based on indigenous knowledge on growth and regeneration of plants. However, the indigenous knowledge inherent to these customs is getting lost and nowadays people apply the custom not fully understanding the meanings and reasoning.	<i>There should be more attention for the revising and preservation of peoples indigenous knowledge before it gets totally lost.</i>

8. CONCLUSIONS AND RECOMMENDATIONS

Customary law is a set of rules that governs people's interactions and it comes into being through a bottom-up process where customs evolve over time and become the norm within a group. These rules are supposed to help a community to maintain social order, to create collective benefits and to survive. Therefore, the set of rules in customary law is flexible and adapted over time according to contextual changes. From the two cases presented, we conclude that at the core of customary law lies a value and belief system that acts as a strong enforcing mechanism for people to recognise and to voluntarily follow the expected norms and behaviours. In Muong Phang, the belief is manifested through the worshipping of the three Mother Spirits of Land, Water and Forest and in Ta Phin, it is manifested through belief in supernatural powers like the ancestor spirits of the village founders Ban Vuong and Ban Ho. People perceive the punishments that stem from these powers and customary law as more severe than those based on state law like imprisonment or monetary fines. Based on this study we can say with confidence that the Thai and Dzao in the areas studied still keep their beliefs, values and norms alive. In particular with respect to natural resources our findings reveal that customary law in Ta Phin and Muong Phang entails guidelines for people to interact with nature in a harmonious way.

Until 1960, the control and protection over forest and water resources in Ta Phin and Muong Phang used to be based on customary law, indigenous knowledge and traditional institutions. During that time, natural resources in both localities used to be rich and conflicts were non-existent or easily solved through traditional institutions. People considered forest land and water resources as common property from which all community members should benefit equally and in a transparent way. However, this did not mean that resources could be exploited unconditionally because through customary law there was wide agreement on the limitations to prevent depletion of local resources. In their daily practices people adopted a modest, respectful and a nurturing attitude towards nature which was promoted by customary law. This is for instance illustrated by the way people were required to carry out rituals and to ask permission from trees and plants before cutting. And whenever natural or societal changes required a modification, people adjusted their rules on resource use to fit to the new situation.

There is no doubt that the beliefs underlying customary law are still strong among the Dzao and Thai people and customary rules and practices are to a certain extent still recognised. Accordingly, there is a clear link between people's belief and the way they protect forests. Nevertheless, it is also visible that customary law in the two locations is in a process of breaking down and some parts of it have already been lost, which is the reason why this study could only unravel part of customary law. Traditionally, customary law exists by memory and is in most cases orally passed on to younger generations by key actors like village elders, clan heads and priests. Yet in the past few decades, the social role of these traditional institutions has been under pressure from the formal structures and institutions set up by the government. Due to major changes in the forest land management and administration system since 1960, the roles of district authorities, FMBs and formally appointed village leaders have become stronger than traditional institutions. Also socio-economic changes and the technological development in general have affected (and is still affecting) the two communes and existing cultural values. Therefore, although our findings show the existence of attitudes and behaviours towards a balanced relation with nature, customary law is seriously threatened as the social and technological progress is unfolding.

A main issue of concern is that, till date, state laws and programs have failed to take customary law and indigenous knowledge into account and do not recognise their positive functions for nature and society. State initiated programs after 1960 handed ownership and control over forests to cooperatives or state organisations without taking the existing local rules, boundaries and structures in the two communes into consideration. In both cases, the period between 1960 and 1993 has been characterized by damaging and depletion of natural resources. Since 1993, the government has made efforts to reverse this situation through laws and programs and has been able to improve people's livelihoods in Ta Phin and Muong Phang. However, even in the most recent policies and programs, the government has still failed to take into account customary law, like, for instance, the creation of conditions that will allow for community ownership of forests. On the other hand, there has been a low awareness on state laws and policies among the communities because they had hardly any access to the respective information. Consequently, the Dzao and Thai people are excluded from their own development process and face obstacles in technically managing state initiated plans. Another issue of concern is that at the time of research, local authorities had still not carried out a land reallocation program effectively and thus people had very limited rights to access and to use land and forest resources. In addition, there exists much confusion and conflicts over boundaries which are leading to ineffective use, protection and development of the forests.

A major conclusion in this study therefore is that customary law is getting lost while state policies and programs are not optimally functioning. This is a highly unviable situation both for people and nature in Ta Phin and Muong Phang and we have therefore come up with the following *recommendations*:

1. There is a pressing need for policy makers and legislators to study and understand customary law, its spiritual values and positive functions for social development and environmental conservation. It is highly recommended to take action to adjust current laws on land and forests to close the gap between customary law and state law, for instance, through allowing community ownership of forests or taking into account people's own classification of forests and boundaries. There should be more formal recognition of functions of forests other than economic. Especially the spiritual importance of forests must gain formal recognition by authorities and should be taken into account in local natural resources management and conservation planning

Integrating the two law systems will increase people's awareness and acceptance of formal state rules and make state interventions more responsive to the real needs and aspirations of local people. Moreover customary law can provide lessons for state law to have a more 'behavioural' approach and behaviour change, which can increase state law's effectiveness.

2. In the processes of national and local planning, including for REDD plus, space should be created for communities to formulate, to regularly revise and to practice their own rules on natural resource management use and protection, based on their cultural values and customary law. Authorities at different levels should try to understand the indigenous knowledge that is intimately built into customary law. This is also important to prevent the loss of indigenous knowledge and valuable mechanisms to maintain social order. On the other hand, it will encourage people to control and protect their resources effectively and in cooperation with state institutions.

In addition when state programs are implemented at local level, the contradicting effects of different state programs should be first assessed thoroughly and addressed through meaningful participation by local people.

3. Local authorities should recognise and utilise the role of traditional institutions like village elders and priests in natural resources management, use and protection but also in education and conflict resolution. Therefore it is recommended that innovative tools and mechanisms are created that facilitate a closer cooperation between formal and local institutions for forest protection. It is recommended that local governments set up clear and consistent information management systems to monitor and analyse indicators related to the forest and set up a systematic mechanisms (that includes traditional institutions) to share the information with local people.
4. State laws should recognise the significance of NTFP and must formulate a clearer strategy for NTFP use and management, and in doing this make use of indigenous knowledge and customary rules that guide people towards sustainable use and development of NTFP. It is also recommended that studies are conducted to research indigenous knowledge on NTFPs in different contexts and under what conditions NTFPs contribute to people's livelihoods in specific contexts in Vietnam.
5. There is an urgent need to complete land-use planning and forest-land allocation to households and communities in mountainous areas as soon as possible. This is an essential condition for clarifying and securing their rights, and thus strengthening their roles in protecting and using these resources. Tenure security should be provided on the basis of customary ownership and use rights to ensure full acceptance and support by the communities under consideration.
6. The evolving social and environmental safeguards for REDD plus should be seen as an opportunity for Vietnam to revise existing forest and conservation laws and policies towards a collaborative approach that ensures the respect of the rights, customs and cultures, and the full and effective participation of ethnic minorities (indigenous) communities. This will create the desired win-win situation in which forest and biodiversity conservation goals and the rights and well-being of ethnic minorities and other local communities are simultaneously addressed.
7. We like to emphasize that no matter how the social and economic conditions are among ethnic minority groups, there is the need to conduct research for a thorough understanding of customary law and indigenous knowledge among different ethnic minorities and how it could strengthen state laws and policies towards sustainable natural resources use and management. This study has merely been an initial step to understand customary law and its link to sustainable natural resource management in a small area and we hope to continue our efforts to get a deeper understanding of customary law.

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ANNEX

List of informants

Interviews and Group Discussion Participants in Muong Phang and Ta Phin communes

Name		Gender		Age	Position	Village
		M	F			
Muong Phang commune, Dien Bien Phu, Dien Bien						
Trip 1+2						
1	Luong Van Nanh	x		78	Oracle	Phang
2	Lo Van Bien			44	Secretary of the commune party committee	
3	Cam Van Khut	x		46	Vice chairman of the People's council	
4	Cam Van Khut	x		46	Vice chairman of the People's council	
5	Lo Thi Duyen		x	37	Member, commune women union	Banh
6	Cam Van Luon	x		78	Villager	Banh
7	Ca Van Cu			80		Banh
8	Lo Thi Tieng		x	95	Village elder, healer, oracle	Banh
9	Ca Van Pang	x		70	Villager	Banh
10	Ca Thi Pan			70	Priest	Banh
11	Ca Van Sam	x		65	Villager	Banh
12	Ca Van Uong	x			Village leader	Banh
13	Luong Van Dai	x		38	Village leader	Phang 1
14	Luong Van Thuong	x		36	Village leader	Phang 2
15	Lo Van Uong	x		37	Village leader	Phang 3
16	Lo Van E			36	Secretary of the party cell	
17	Ca Thi Mien			32	Women group leader	
18	Cam Van Sang			52	Villager	Chai Can
19	Ca Van Hop			54	Villager	Chai Can
20	Luong Van So			57	Villager	Chai Can
21	Lo Van Un			59	Villager	Chai Can
22	Lo Thi Thu		x	49	Vice director of Department of Foreign Affairs , Dien Bien province	

	Name	Gender		Age	Position	Village
		M	F			
23	LuongVan Phien	x			Vice chairman of Dien Bien district	
24	A. Luong	x			Official in charge of cultural issues of the district	
25	Ca Van Oi	x		49	Villager	Chai Can
26	Lo Van La	x		55	Villager	Chai Can
27	Lo Van Doi	x			Vice leader of the village	Bua
28	Luong Van Bich			56	Commune police chief	Bua
29	Luong Van Dung			32	Village leader	Bua
30	Quang Thi La		x		Chairman of village women union	Bua
31	Luong Thi Kem				Villager	Bua
32	Tong Thi Lon		x	90	Villager	Bua
33	Lo Thi Tien		x	27	Official in charge of cultural issues of the commune	
34	Ca Van Thuan	x		42	Deputy leader of village security	Banh
35	Ca Van Cu	x		42	Village security chief	Banh
36	Lo Thi Thu		x	24	Vice chairwoman of women union	Bua
37	Luong Thi On		x	43	Former Chairwomen of women union	Phang I
38	Lo Thi La		x	29	Villager	Phang II
39	Ca Thi Panh		x	30	Villager	Phang II
40	Tong Thi Hoa		x	30	Villager	Phang III
41	Luong Van Yen	x		47	Head of Fatherland front	Phang III
42	Lo Thi Tinh		x	50	Villager	Phang III
43	Luong Van Lien	x		31	Secretary of trade union	Bua
44	Luong Van Lo	x		24	Villager	Bua
45	Luong Thi Hoan		x	25	Villager	Bua
46	Lo Van Chum	x		50	Leader of forest protection team	Bua
47	Luong Thi Thanh		x	18	Villager	Bua
48	Luong Thi Nghia		x	65	Villager	Bua
49	Ca Thi Minh		x	22	Villager (tourist guide in General Giap forest)	Phang II
50	Ca Thi Tin		x	37	Villager, herbal medicine collector	Phang II
51	Luong Thi Sua		x	42	Villager, herbal medicine collector	Phang II
52	Lo Van Bien			44	Secretary of the commune party committee	Muong Phang commune

	Name	Gender		Age	Position	Village
		M	F			
53	Quang Van San	x		43	Deputy Secretary of the commune party committee	Muong Phang commune
54	Lo Van Tinh	x		44	Villager	Muong Phang commune
55	Lo Van Chieng	x		41	Head of commune Fatherland Front	Muong Phang commune
56	Lo Van Xum	x		40	Vice Chairman of commune People's Committee	Muong Phang commune
57	Lo Thi Duyen		x	37	Member, commune Women union	Muong Phang commune
58	Duong Van O	x		41	Chairman of commune veteran association	Muong Phang commune
59	Luong Van Khut	x		44	Secretary of commune Trade Union	Muong Phang commune
60	Cam Van Khut	x		46	Vice Chairman of commune People's Council	Muong Phang commune
61	Cam Van Thinh	x		36	Deputy Secretary of commune Trade Union	Muong Phang commune
62	Lo Van Bun	x		55	Villager	Bua
63	Ca Thi Duong		x	26	Villager	Banh
64	Ca Thi Cuong		x	24	Villager	Banh
65	Luong Van Hoa	x		32	Villager	Phang 3
66	Lo Thi Ui		x	26	Villager	Bua
67	Luong Van Muon	x		50	Villager	Phang 1
68	Luong Thi Ngoan		x	40	Villager, herbal medicine collector	Phang 3
69	Cam Thi Dien		x	20	Villager	Phang 1
70	Luong Van La	x		48	Villager	Phang 2

Name		Gender		Age	Position	Village
		M	F			
Ta Phin commune, Sa Pa, Lao Cai						
Trip 1+2						
71	Bui Duy Chien	x		34	Commune official	
72	Ly Pu Hang	x		48	Commune official	
73	Ly Phuc Chieu	x		47	Official of Fartherland Front	
74	Chao Senh Tinh	x		65	Priest	
75	Ly Pu Liem	x		48	Village leader	
76	Chao Que Nga	x		34	Villager	
77	Phan Giao Quan	x		53	Village leader	
78	Phan Giao Trinh	x		48	Villager	
79	Chao Quy Vang	x		30	Priest	
80	Ly Tai Van	x		54	Priest	
81	Ly Lo May		x	52	Herbal healer	
82	Ly Pu Kinh	x		57	Villager	
83	Ly Pu On	x		50	Priest	
84	Ly Sai Chiu	x		75	Village elder	
85	Ly Pu Chiu	x		40	Head of local Red Cross	
86	Tan Phu Quan	x		51	Former head of collective farm	
87	Giang A Cho	x		46	Commune Forest Protection	
88	Ly Pu Tinh	x		50	Villager	
89	Ly Quay Liem	x		40	Priest	
90	Ly Pu Chiu	x		66	Priest	
91	Ly Pu Seng	x		30	Leader	
92	Chao Van Chan	x		51	Priest	
93	Ly Phuc Quay	x		66	Priest, healer, oracle	
94	Ly Pu Trinh	x		47	Priest	
95	Ly Pu Sieu	x		37	Commune official, priest	
96	Ly May Chan	x		53	Herbal medicine collector	
97	Ly Phu Hang	x		44	Secretary of commune party organization	
98	Chang A Xa	x		42	Chairman of commune People's Committee	
99	Ly Pu Sieu	x		44	Vice - chairman of commune People's Committee	
100	Ly Phu Chieu	x		45	Head of commune Fatherland Front	



Name		Gender		Age	Position	Village
		M	F			
101	Chao Su May		x	41	Chairperson of commune Women Union	
102	Ly May Chan		x	43	Handicraft making association	
103	Chang A Thao	x		52	Leader of Suoi Thau village	Suoi Thau
104	Nguyen Thi Huong		x	36	Cultural Department of the commune	
105	Giang A Chu	x		39	Forest Protection Department of the commune	
106	Nguyen Viet Ha	x		35	Forest Protection	Sapa Forest Protection
107	Ly Quay Seng	x		51	Farmer	Ta Chay
108	Chao May Khe		x	37	Do business on herbal material for bath	Sa Seng
109	Ly Quang Sy	x		47	Retired official at commune level	Ta Chay
110	Ly Phu Ta	x		32	Farmer	Sa Seng
111	Chao Van Phu	x		41	Do business on herbal material for bath	Sa Seng
112	Ly Phu San	x		53	Farmer	Ta Chay
113	Ly Thao San	x		56	Farmer	Ta Chay
114	Ly Lo May		x	57	Official of Women Union	Sa Seng
115	Cheo Van Vang	x		30	Oracle	Sa Seng
116	Cheo Sinh Tinh	x		65	Farmer	Sa Seng
117	Ly Quay Sieu	x		34	Farmer	Ta Chai
118	Ly Phu Hang	x		53	Secretary of commune party organization	Sa Seng
119	Ly Phet Sieu		x	26	Farmer	Ta Chai
120	Ly Quay Sinh	x		37	Farmer	Ta Chai
121	Cheo Van Chan	x		39	Farmer	Ta Chai
122	Ly Quay Choi	x		41	Farmer	Ta Chai
123	Ly Lao San	x		24	Farmer	Ta Chai
124	Phan Dao Phau	x		49	Farmer	Ta Chai
125	Tran Van Sieu	x		48	Oracle, priest	Ta Chai
126	Phan Dao Ta	x		52	Herbal healer	Sa Seng
127	Ly Sai Van	x		41	Leader of Ly clan, priest	Sa Seng
128	Chao May Liu		x	41	Farmer	Ta Chai
129	Chao Van Phu	x		24	Farmer	Sa Seng
130	Ly Phu Trinh	x		48	Priest	Sa Seng

Name		Gender		Age	Position	Village
		M	F			
131	Chao Ta May		x	52	Farmer	Sa Seng
132	Ly Ta May		x	52	Farmer	Sa Seng
133	Ly Lo May		x	47	Farmer	Sa Seng
134	Phan Su May		x	82	Farmer	Ta Chai
135	Ly Phu Chiu	x		40	Farmer	Ta Chai
136	Ly Phu Tinh	x		49	Farmer	Ta Chai
And 18 people in Nghiu village (4 female, 14 male) working at Nghiu village, Muong Phang commune, Dien Bien district: group meeting and interviewing						

Table 1: Livestock raising in Muong Phang

Animal	Unit	Quantity	Notes
Buffalo	Head	2317	
Cow	Head	782	
Swine	Head	6126	
Poultry	Head	52,362	
Fish	ton	16 tons	Annual yield estimate

Source: Report on the implementation of socio-economic tasks in 2010 the first 6 months of Muong Phang commune

Table 2: Some medicinal plants in Muong Phang Forest

Name and use of selected medicinal plants		
Thái	Vietnamese	Use
	Cây Xương Khì	Osteoarthritis treatment
	Hà Thủ Ô	
Công Sè rên		Osteoarthritis treatment
	Củ nâu đá	Curing stomach ailment
Cây một củ	Cây một củ	Liver Healing
	Củ Hoàng Tinh	Heart supplement
	Củ mài	
Cong Se Len		Nourishing health
Khám chia		Colitis, intestinal diseases

Table 3: Agricultural production in Muong Phang

Plant	Area (ha)	Yield (tonnes per ha)
Paddy field for Spring season	248	5.9
Paddy Field for Autumn	391.7	N/A
Corn	215	3.7
Upland rice	65	N/A
Groundnut	10	1.45
Soybean	32	1.67
Cassava	227	5.5
Sweet potato	7	7.7
Canna	55	N/A

Source: Report on the implementation of socio-economic tasks in 2010 the first 6 months of Muong Phang commune

Table 4: Price of some main NTFPs in Ta Phin (based on interviews)

	NTFPs	Price in 2010	Note
1	Honey	150,000 VND (7.1 US\$)/bottle 700ml	
2	Fresh bamboo shoots	5000 – 7 000 VND (0.25 - 0.33 US\$)/kg	
3	Bamboo	3000 VND (0.14 US\$)/stem	
4	Fire woods	300,000VND (14 US\$)/m3	
5	Herbal plant use for bathing	30,000 VND (1.4 US\$)/kg	
6	Herbal plant for women to use after giving birth	30,000 VND (1.4 US\$)/kg	
7	Fresh cardamom	40,000 – 50,000VND (1.9 - 2.4 US\$)/kg	
8	Dry cardamom	190,000 -198,000VND (9 – 9.4 US\$)/kg	12kg fresh cardamom produce 1 kilogram of dry cardamom
9	Herbal bath concentrate	120,000 VND (5.7 US\$)/litre	100 kg fresh herbal plants (13-15 different species) produce 30 litre
10	Essential oil massage for treatment	3,000,000 VND (142 US\$)/litre	1000 kg fresh herbal plant (13-18 different herbal species) produce 1 litre essential oil

Vietnam is home to 53 ethnic minority groups who mostly live in the forested uplands. Numbering over twelve million people, they highly depend on forests for their livelihood and development. But the pressures on these forests are ever increasing, posing a serious threat to the lives and stability of millions of people.

Since the early 1990s, Vietnam has attempted to address deforestation by decentralizing forest management. Under the forest land allocation programme long-term use rights over forest land are provided to individual households and communities. However, while the programme has been successful in improving forest conservation, the benefits of the programme have been unevenly distributed. Especially in mountainous areas, where the majority of ethnic minorities live, its implementation has been slow and many communities remain without secure tenure rights.

One of the key challenges for the forest land allocation programme is how customary land rights and institutions can be formally recognized under statutory law. Vietnam's forest law recognizes local forest users as rights holders and customary practices and culture as the basis for assigning forests to these people. There is however a considerable discrepancy between the law on paper and its implementation on the ground.

While participatory approaches in conservation and development are gaining ground, research that takes a closer look at the role of customary law in forest management and conservation in Vietnam is still scarce. This study seeks to help fill this gap. It documents customary law applied in forest resource use and management among Thai and Dzao communities and concludes with a set of recommendations which can contribute to an improvement of forest related laws and policies.

The findings and recommendations of this report are particularly relevant in light of the fact that Vietnam is currently busy preparing for REDD – Reduced Emissions from Deforestation and Forest Degradation, one of the global initiatives to mitigate climate change under the United Nations Framework Convention on Climate Change (UNFCCC). During the presently ongoing readiness phase REDD countries like Vietnam are supposed to draw up national strategies or action plans, policies and measures necessary for implementing REDD. This also includes devising mechanisms to ensure the social and environmental safeguards provided for in UNFCCC's Draft Decision of December 2010. Among these safeguards are the respect for the knowledge and rights of indigenous peoples and local communities, and their full and effective participation in REDD.



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