

Respecting community farming traditions in handling land conflict

By Tran Viet Dong and Nguyen Quang Tan

Key Message

A lack of respect for the role of local people in land use planning and local farming traditions have led to the encroachment of forest land in many areas in Viet Nam, hindering the sustainable management of forest resources. Based on a review and assessment of overlapping forest land boundaries, and taking into account local customs, this brief offers a solution to this challenge. For any solution to work, it is important to ensure the active participation of local people in implementing land use planning and land allocation.

Introduction

In Viet Nam, land disputes, including disputes over boundary overlaps, between local communities and the state, as well as disputes among local communities, pose significant challenges to the sustainable development of forest resources. Land disputes also affect the effective implementation of forestry-related initiatives, including the Timber Commercial Voluntary Partnership Agreement (VPA-FLEGT) signed in 2016, the National Action Program for Reducing Emissions from Deforestation and Forest Degradation (NRAP), and the Payment for Forest Environment Services (PFES).

Based on the results of a study in five provinces - Binh Dinh, Kon Tum, Nghe An, Hoa Binh, and Lam Dong - undertaken by the VN NGO-FLEGT network, overlapping land boundaries are largely due to outsiders' lack of understanding of traditional farming practices and roles of local people in land use planning and land allocation processes. To address this challenge, it is important to revise land use planning and land allocation policies so that they take into account relevant local traditions and customs.



Current land use planning and land allocation policies lack recognition of traditional practices and the roles of local people

People, especially ethnic minorities, have developed long-term traditions in forest and land uses. In the course of daily life and work, common land boundaries based on farming and migration patterns are recognized by community members. For instance, ethnic minorities in the Central Highlands use mountain peaks and rivers surrounding their community and farming areas as boundary markers. They have also set up protection and management regulations for the forests and farmlands within their territory (see Box 1).

However, in the course of forest land use planning, little attention has been given to local boundaries or traditional farming practices. Instead, state-defined administrative forestry boundaries for lots, plots, sub-areas, etc. are used (see Box 2). In addition, there is a lack of local people's participation in land use planning and land allocation (LUPLA). For instance, some households in Kon Tum and Binh Dinh provinces had overlapping boundaries with state forestry enterprises, but the problem was not discussed in the LUPLA process due to the lack of consultation with local people. There was also lack of recognition of locally defined boundaries in the LUPLA process, despite the fact that local communities have been cultivating the area for decades; and despite the fact that some local people even have land use certificates that were issued some time ago.

Box 1. Boundaries for traditional farming areas of M'Nam ethnic community

Vi Glong community was formed before 1945. The community boundaries are signified by surrounding mountain peaks and rivers. For example, villagers have used the Nuoc Che river as a boundary between Vi Glong and the neighboring Dak Lom village.

The community has also developed land use rules together with surrounding villages. The rules allow local households to cultivate rice and other crops within the community boundary. Community members hang wooden crosses on big trees around their fields to let others know that the field belongs to them. If anyone breaks the rules, they will have to pay a fine by giving rice, pigs, or chickens, etc...

Box 2. Forest land use planning and land allocation process in Kon Tum province

The forest LUPLA process for organizations was undertaken in 2007. An independent land survey was carried out by the organization in charge of the LUPLA process. The survey zoned forest areas according to three functions: production, protection, and special use forest. Based on the survey results, local State Forest Enterprises (SFE) and Forest Protection Management Boards (FPMB) sent requests for forest land allocation to the Provincial People's Committee (PPC). The PPC approved the requests and issued a decision to allocate forest land to these organizations. A similar process was observed in the forest land allocation process for other organizations and private enterprises. In other words, local authorities allocated forest lands to these organizations based upon their requests only.

In 2012, the government implemented the LUPLA for local households. It was done by the Forestry Consultative Companies. During the LUPLA process, the companies conducted a survey of the current land and forest status, and proposed a land allocation scheme. Local people were only informed of the process in meetings and took part in listing the households that qualified for land allocation. Household members were then allocated forest plots. After that, they received Land Use Titles for the allocated forest.

Problems in forest management due to encroachment and overlapping land boundaries

Imposing a new regulation on land boundaries that directly affects local people without proper consultation will inevitably lead to land use conflicts. With local farming guided by traditional practices, local people farm their land and use natural resources in their traditionally claimed areas, with or without

permission from local authorities. By *de jure*, such activities are not legal. Yet, they are totally legitimate by *de facto* as local people have been cultivating the land and using the forest long before the formation of state forest management bodies. As a result, state forest organizations cannot enforce their policies over traditional boundaries designated by local people.

In Binh Dinh province, local households cultivated the land before the area was allocated to the local Forest Protection Management Board (FPMB). After allocation, local households continue to use the land. The FPMB is aware of this but has not been able to address disputes or gain support from local people in terms of forest management and protection. A similar situation is found in Kon Tum, where there is conflict between local people and state bodies (State Forestry Enterprise (SFE) and FPMB). Local households have been using the forest and cultivating land within their traditional boundaries for generations. The SFE and FPMB have tried various ways to raise awareness of the local people but face resistance. Currently, local people continue their farming activities, and they have even arrested officials from SFE who trespass on the community's forest land by bringing them to the Commune People's Committee.

Challenges in implementing forestry projects and programs

The above mentioned requirements have made it impossible for areas within the conflict areas to implement any forestry projects or programs. In Dak Lak province, Chu M'Lanh Forestry Company managed over 147 000 ha forest land, of which more than 6 000 ha overlapped with local people's land. In 2012, the Chu M'Lanh Forestry Company could not implement a joint project with Vinamit Company for an industrial plantation due to land conflicts in the project areas.

Similarly, many forest companies in the Ea Sup district of Dak Lak province, like Chu M'Lanh company, have not been able to finalize contracts with local people for payment for forest environmental services (PFES) as forest lands are still in dispute. Mang La SFE in Kon Tum also encountered a similar situation, where forest area under conflict with local people is not included in the PFES scheme. In general, major forestry projects or programs implemented by the Government are delayed until forest land conflicts are resolved.

Land overlap and encroachment are also a concern of many international forestry projects and programs. It took a REDD+ project in Kon Tum province a significant amount of time and resources to resolve problems on boundary overlaps between Mang La SFE, Thach Nham FPMB and the local M'Nam ethnic communities.

In addition, Viet Nam will soon sign the FLEGT VPA with the EU, where clear forest land use titles are required for legal timber harvesting (see Box 3). In other words, forest products are only legal when they come from land that is free of conflict and the rights to it are legally recognized by the state. The requirements needed to certify timber legality is currently stipulated in Circular No. 35, which stipulates land use titles (or similar documents) for extraction, transportation, sale and purchase of forest products.

However, many households and communities do not have forest land use titles for land in overlapping areas. This poses a challenge for the households and communities to fulfill the requirements for forest harvesting prescribed by law, which means that the products produced on such land will not be considered legal. Consequently, local production and sustainable development will be adversely affected.

Box 3. Requirements for harvesting timber

The timber legality definition (found in Annex II of VPA) clearly outlines seven principles for households to follow when harvesting timber. Principle 1 states that, "Households must comply with regulations on land use, forest utilization and environmental management for domestic timber exploitation."

Article 20, Item 20, and Annex 3 of Circular No. 35/2011/TT-BNNPTNT require proof of land/forest rights, such as a forest land use certificate, or a forest allocation or land leasing contract, when applying for permission to harvest forest products.

Summary and policy recommendations

To promote the sustainable development of forest resources and to meet the requirements of national and international projects and programs, it is important to address current land use disputes. A major factor that leads to the prevalence of land conflicts in many locations is a lack of respect for traditional farming practices and the roles of local people in land use planning processes. To address this challenge, the following activities need to be considered:

- Assess the current state of boundary overlaps between local communities and forest organizations nationwide. This should be done at the same time as reviewing land use planning and land allocation processes. Based on this, guidelines for LUPLA should be revised to include reference to traditional farming practices and locally defined boundaries in land use planning processes. When developing strategies for sustainable forest management, it is important to involve local people to ensure their consent and concerns are reflected in the joint plan for resource management.
- Develop detailed guidelines on how to implement a participatory process (including land use planning and land allocation) and organize capacity building in facilitation skills for field (forestry) officials.
- In the long term, the legal forest framework needs to institutionalize the adaptation of local traditions and customs at the local level into state forest management policies.

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Headquarter Office:

P.O. Box 1111
Kasetsart Post Office
Bangkok 10903, Thailand
Tel (66-2) 940-5700
Fax (66-2) 561-4880
info@recoftc.org
www.recoftc.org

RECOFTC – Trung tâm vì Con người và Rừng

Office in Viet Nam:

Tầng 3, số 2 Trần Huy Liệu
Ba Đình, Hà Nội, Việt Nam
Tel: (+84) 4.3726 4745
Fax: (+84) 4.3726 4746
vietnam@recoftc.org
www.recoftc.org/country/vietnam