

Na Ot village, Na Ot commune, Mai Son district, Son La province, Viet Nam

LAND TENURE AND RESOURCE RIGHTS

Grassroots Equity and Enhanced Networks in the Mekong Program

1. Case Background

1.1 Introduction - brief summary of ‘story’

Securing forest tenure and resource rights is a critical cornerstone and a first prerequisite for promoting community forestry through mobilising local communities to manage and benefit from forest sustainably, to participate in the democratic decision-making process, and establish their own customary practices of forest management in Viet Nam. It is also one of eight equity dimensions in sustainable forest management, which will be examined through case study in the Na Ot Village, Na Ot Commune, Mai Son District, Son La province.

Almost all villagers are Thai people – an ethnic minority group, who migrated to the Na Ot village as victims of the Resistance War against the French (1946–1954), and after ending this war, they still lived there up to now. During a period between 1955 – 1999, irrespective of all land, forests and their resources under centralised state management, Thai communities tend to organised themselves to protect forests surrounding their village and paddy fields with their own customary institutions and management as they possess the belief that “Land is sacred and land is life”. During this period, although their customary tenure and resource rights was not legally recognised by the Vietnamese government, but they still survived. This situation created a challenge for Thai people to prevent outsiders from other villages to access and harvest forest resources in their self-recognised community forests because they did not have legal tenure and resource rights.

This situation continued until 1986, when the Vietnamese government started to transform from a centralized planning and subsidising economy to a market economy, in order to enhance the roles of local authorities, and promote the active participation of production and business units. A forest tenure transfer was initiated by the Social Forestry Development Project (SFDP) Song Da, a 12-year technical project funded by GTZ (German Technical Assistance) in Son La and Lai Chau (now called a Dien Bien province) since 1993.

Based on successful initiatives of land allocation schemes by SFDP, Son La authority issued a resolution no 06/NQ-TU in 1998 for reforming and strengthening forest protection and development in Son La for the period 1998-2010 and following by a decision no 2396/QD-UB in 2000 about approval a provincial scheme of natural forests and forest land allocation in the province. Remarkably, the Viet Nam government issued a decree no 163/1999/ND-CP provided guidance for the allocation and leasing of forest land to organizations, households and individuals for forest management purposes.

With the support of Mai Son District Forest Protection Department and Mai Yen State Forest Enterprise, the Na Ot community got a certificate of land use rights no 212 QSDD/30/H-QD-UB/2003 dated 15/01/2003, issued by the Mai Son district people's committees with around 541.4 ha of forests and 50 year duration. With this certificate, the forest tenure and resource rights were officially granted to the community. This process of securing tenure and resource rights was continuously supported by two projects: "Community Forest Management Pilot Program 2006-2007", with extension until 2009 (so called CFM1) and "Strengthening community-based forestry in Viet Nam 2012-2013" (so called CFM2).

These projects supported the Na Ot community to develop its community forest management plan and Community Forestry Protection and Development (CFPD) Regulations, as well as regulation for the management and utilisation of CFPD funds along with awareness raising and capacity development programme. These kinds of support help local villager to understand, claim, defend and exercise their tenure and resource rights for managing, using and benefiting from forest sustainably.

1.2 Site and community background

Na Ot Commune is located in the North West of Mai Son district, Son La province. It was legally established by a decree 31/1998/NĐ-CP, dated 16th May 1998. The commune comprises of 17 villages, with the population of 3,102, mainly of the Thai, H'Mong, Xinh Mun, Kho Mu and Kinh ethnic groups. The commune has an area of 10.650 ha, of which the forest land area is 6.922,95 ha, including 5.424,68 ha of natural forest. It shares borders with Chieng Kheo and

Chieng Ve communes in the North, Song Ma district (Thanh Hoa province) to the South, Phieng Pan Commune to the East and Phieng Cam commune to the West.

Na Ot village is located in the centre of the commune. Its population is 245 people (114 males and 131 females) with 57 households of Thai ethnic minority group and 3 households of the Kinh majority group, of which 28 households are categorized as poor. A total areas of the Na Ot village are 1,700 ha with 843 ha of forest land. Main incomes of the village come from rice, 24 ha of corn, 45 ha of coffee, 17 ha of cassava and other fruits.

During the French war, many people from lower land had to relocate in Na Ot forests and lived there until the end of the war. After peace was resumed, in 1954, a group of them remained here, and established Na Ot village, initially with 25 households. The villagers depend their lives on forest and agricultural products. Most of them earn an income from cultivation of rice paddy, corn and cassava. Only 20% of the households have pigs and/or goats. Local people also generate income from selling forest products, such as bamboo shoots, bamboo, honey and herbs. In recent years, villagers have learned the coffee plantation techniques from district forestry extension and have planted 45 ha of coffee, which start with fruit and is becoming an alternative livelihood in this village.

Thai people have the culture of paddy cultivation so they have rich experience with irrigation systems for providing water for small paddy fields in the mountain, this makes them different with other ethnic groups in the region. Therefore, watershed forest protection is very important for them. Irrespective of all land, forests and their resources under centralised state management, Thai communities tend to be organised by themselves to protect forests surrounding their village and paddy fields with their own customary institutions and management. This is because land forests remain essential productive resources for not only them but also other minority ethnic groups living in mountainous and remote areas.

These communities associate high political and cultural importance of land and forests. They have a special connection with the land, forests and other flora and fauna. This connection goes beyond mere economic interests to cultural and spiritual links to the places they have lived. These links have been transmitted and nurtured from one generation to another and ethnic

minorities still possess the belief that “Land is sacred and land is life”. The expression of this sacredness is the worship of deities and spirits within the land, forests and its resources that provide the fundamental nature of their survival. The relationships between ethnic minorities and their land and forests are deeply intertwined with their customs, culture, and political practices as the expression of their social wholeness. In their moral values and norms, living, working and nurturing the land and forests with full control, a security of tenure is essential to fully live and survive as human beings.

According to the Thai’s customary law, if somebody wants to burn off land for cultivation, his action must be first approved by the village head; otherwise he will be fined from one to three bars of silver, plus wine and meat. Every year, by the end of lunar May, people are allowed access into a forest to get bamboo shoots, but they only get the first and fourth brood. If someone breaks this rule, he will be fined a bar of silver, wine, and meat. If a timber or cinnamon tree has a mark (+ or X) in its trunks, it means this tree belongs to someone: nobody is allowed to cut that tree down on a “first come first serve” principle. The Thai identifies the following three kinds of forests: (1) The sacred forest which can range from 0.2 to 2ha including the gravel forest; (2) The watershed forest where the head of the stream lies and where the Mother Spirits of Land and Water live; (3) 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.

1.3 Key stakeholders involved

At the grassroots level, Na Ot is managed under village management board with main members are: Village Leader, Vice-Leader, Village Communist Party Secretary, Village Fatherland Front, Village Farmer Union, Village Women Union, Village Youth Union, Village Veterans Association, Village Elderly Association,...

Regarding managing community forest, a village forest protection team (VFPT) was voted by villagers with 11 members, of which nine of them are members of village management board and the other two members were nominated by local community. The VFPT is responsible for conducting two patrols per month with two members for each time.

Na Ot commune people's committee is the lowest administrative level within the jurisdiction of the forest governance structure. At this level, there is a forestry officer, who is in charge of any related forestry activities. Another position is the field forest ranger, who is more a forest law enforcement officer at the commune level. He is supervised by the district's Forest Protection Department; his duty is to give support and advice to the CPC on how to manage and protect the forests within the commune's borders.

Na Ot community forestry also got technical and financial support from two national projects: "Community Forest Management Pilot Program 2006-2007", with extension until 2009 (so called CFM1) and "Strengthening community-based forestry in Viet Nam 2012-2013" (so called CFM2).

2. Equity dimension

2.1 Equity 'problem'

Before the period of the Resistance War against the French (1946–1954), Na Ot areas were naturally healthy and productive forests. During this War, many people from lower land as war victims moved and relocated in Na Ot forests and lived there until the end of the war. After peace was resumed, in 1954, a group of them remained here, and established Na Ot village, initially with 25 households.

In the period between 1955 and 1975, the North of Viet Nam was the Democratic Republic of Viet Nam, which collectivised and nationalised all land, forests and their resources under centralised state management. Forests were managed by state-owned organisations and cooperatives, focussing on forest product harvesting, and converting forest land for food production. Under the centralised forestry management regime, all forestry activities were in compliance with a comprehensive plan that extended from the central to the local level. The state allocated land and forests to State Forest Enterprises, administration units and co-operatives for management and use.

This situation continued until 1986, when the Vietnamese government started to transform from a centralized planning and subsidising economy to a market economy, in order to reduce the role

of the Government, enhance the roles of local authorities, and promote the active participation of production and business units. In this context, the forestry sector was also changed step by step, from forestry mainly basing on forest exploitation and over-utilisation to a comprehensive forest development.

2.2 Process in solving the issue

Recognition of customary community forestry and granting forest tenure and resource rights to the community

Fortunately, the Social Forestry Development Project (SFDP) Song Da, a 12-year technical project funded by GTZ (German Technical Assistance) and implemented by the Department of Forestry under MARD, started in Son La and Lai Chau (now called a Dien Bien province) since 1993. This SFDP project was considered as an initial privatisation of forestry in Viet Nam dominated by conceptual development and piloting of technical and administrative procedures for forest and forest land allocation with various guidelines on land use planning and land allocation. The SFDP carried out piloting forest land allocation in 2 communes in Yen Chau (Son La) and Tua Chua (Lai Chau) districts.

The applied land allocation methodology was gradually developed and tested in the field, and subsequently presented to the provincial and district authorities in a workshop held in Son La town in 1996. During this meeting the methodology was generally approved by the participants and calls were made to apply it on a larger scale throughout both Son La and Lai Chau provinces. One of the remaining issues to be solved is the definition of land use criteria as a guideline for the process of land use planning, a crucial step in the applied land allocation methodology.

Based on successful initiatives of land allocation schemes, Son La authority issued a resolution no 06/NQ-TU in 1998 for reforming and strengthening a forest protection and development in Son La for the period 1998-2010. Remarkably, the Viet Nam government issued a decree no 163/1999/ND-CP providing guidance for the allocation and leasing of forest land to organizations, households and individuals for forest management purposes.

For implementing the significant resolution, Son La PPC approved a provincial scheme of natural forests and forest land allocation in the province by decision no 2396/QD-UB and established a provincial steering committee of natural forests and forest land allocation by decision no 2397/QD-UB on the same day 17/10/2000. These two decisions were considered as breakthrough at that time because a legal framework has not supported this privatisation of forestry, especially in the community.

This customary community forestry institutions and management have gradually recognised by the local government and the privatisation of forestry, especially to the community started in Son La province and the Na Ot village in 2000 through two mentioned decisions no 2396/QD-UB and 2397/QD-UB. The provincial forest land allocation applied the methodology in participatory land use planning and land allocation, as implemented by the SFDP throughout the province. This methodology consists basically of the following 6 steps: (i) Preparation with the district land allocation committee and collecting of basic information; (ii) Village meeting for discussing and explaining the land allocation process; (iii) Mapping of existing land use; (iv) Village meeting, including land use planning, (v) Allocation of land in the field; and (vi) Administrative procedures and issuing of the official documents. During this process, local people have been informed and consulted through organising the village meetings and checking on the field. Therefore, the customary boundaries were respected when determining the boundaries of the allocated forests, including their shifting cultivation land. It also meant the forests were allocated to the customary forest owner – Na Ot community.

As a result, with the support of Mai Son District Forest Protection Department and Mai Yen State Forest Enterprise, Na Ot community got a certificate of land use rights no 212 QSDD/30/H-QD-UB/2003 dated 15/01/2003 (and so called Red Book), issued by the Mai Son district people's committees with around 541.4 ha of forest and 50 year duration. With this certificate, the forest tenure and resource rights were officially granted to the community. Noticeable, giving forest tenure and resource rights to communities in Na Ot and in other localities throughout Son La province at that time created a legal precedent in forestry sector history. This is because the highest statutory law supporting land allocation was the decree

163/1999/ND-CP only allowing the allocation and leasing of forest land to organizations, households and individuals but not for the community.

However, although the Son La's governments pioneered in the allocation of forest land to the community, there was no follow up activities in order to support Na Ot community to manage their forest. Moreover, the allocated forests to the Na Ot community were protection forests, which too much focused on forest protection responsibility and too little on the benefits and livelihood development. Due to lack of legal framework and guidance defining clearly tenure and resource rights, the community did not know, claim and exercise their resource rights. Therefore, the local community had no motivations, and/or incentives to fully participate in their community forestry activities.

Evidence-Based Practice of land allocation feeding into revising two laws in terms of securing forest tenure

The legal precedent of forest allocation in Son La and in other provinces had fed into changing the Law on Land (LOL) 1993 to LOL 2003 and the Law on Forest Protection and Development (LFPD) 1991 to LFPD 2004. The most important in these two laws were recognition of local communities as land users (LOL 2003) and as forest land users (LFPD 2004). These new laws define the rights of land users and forest landowners. However, these laws did not recognise them as land and forest land owners like other entities¹ (Figure 1). Specifically, regarding bundle of rights, local community does not have alienation right like the other forest landowners. It means they are not allowed to 'divide forests among their members; not to convert, transfer,

¹ According to an Article 5, there are seven forest owners:

1. The protective forest or special-use forest management boards, which are assigned forests or land by the State for forest development.
2. Economic organizations which are assigned or leased forests or land by the State for forest development or which have their forest use rights and ownership right over planted production forests recognized by the State or which are transferred with such rights.
3. Domestic households and individuals that are assigned or leased forests or land by the State for forest development or that have their forest use rights and ownership right over planted production forests recognized by the State or that are transferred with such rights.
4. People's armed force units which are assigned forests or land by the State for forest development.
5. Organizations involved in forestry-related scientific research and technological development, training or vocational training, which are assigned forests or land by the State for forest development.
6. Overseas Vietnamese investing in Vietnam and assigned or leased forests or land by the State for forest development.
7. Foreign organizations and individuals investing in Vietnam and leased forests or land by the State for forest development.

donate, lease, mortgage, provide guarantee or contribute business capital with, the value to the use rights over the allocated forests' (Figure 2).



Figure 1. Bundle of rights



Figure 2. The tenure and resource rights of Na Ot community

Getting government support from two national projects in order to strengthen tenure and resource rights

Three years after getting the certificate of forest use rights, Na Ot community got the technical and small financial support from two projects: “Community Forest Management Pilot Program 2006-2007” (with extension until 2009) (and so called CFM1) and “Strengthening community-based forestry in Viet Nam 2012-2013” (so called CFM2). CFM1 implemented in September 2006 in 64 villages belonging to 38 communes in 10 provinces throughout Viet Nam, including Na Ot community. By the end of CFM1, there were 12 guidelines and a Handbook for CFM (summarising 12 guidelines in abbreviated and simplified format) have been produced by experts with top-down approach for streamlining planning and management of community forestry, including regulations related to the use of funds. These guidelines provide a quasi-legal framework for implementing community forestry. They relate to all steps that need to be taken to allocate forest and forest land to communities, to plan forest management, to the manage forests and to establish, manage and utilise community forest protection and development funds.

Remarkably, there were two legal documents issued in 2007: a circular no. 38/2007/TT-BNN about orders and procedures for allocation and lease of forests to and recovery of forests from organisations, households, individuals and village communities and a circular no. 70/2007/TT-BNN about the formulation of village forest protection and development regulations.

In order to help the Na Ot community understanding, claiming, defending and exercising their tenure and resource rights, CFM1 organised village meetings to raise awareness of local people about their CF, rights, responsibility and benefit they might get from their CF. For better understanding of rights and responsibilities, besides village meetings, and communication through village speaker system, villagers are also provided with various materials in both Vietnamese and Thai language as nearly whole Na Ot village is Thai community. Information is shared among all villagers, man and woman, old and young. No one is excluded from this process.

CFM1 also supported the Na Ot community to develop its community forest management plan and Community Forestry Protection and Development (CFPD) Regulations, as well as regulation for the management and utilisation of CFPD funds. These regulations have been reviewed, revised and better documented. Some customary laws were integrated into CFPD regulations, which consists of 7 articles, covering 4 tenure and resource rights that the community members can exercise. Regarding access rights, Na Ot community members and outsiders can enter or pass through a particular space in their CF area. The Na Ot villagers are allowed to use and benefit from NTFPs for subsistence and in some cases for commercial purposes such as bamboo shoots, mushroom and rattan, and from timbers for domestic use from their forests. Harvesting bamboo shoots, mushroom and rattan brought them an additional income of around 90 million Viet Nam dong (VND) (app. USD 4,285) a year. They can log timber for public purpose, for household domestic use. If households want to log timber, they have to submit a timber logging application to forest protection team and village management board for agreement, and then ask district authorities for permission. They also set harvest rules based on ecological knowledge and customary harvest practices, resulting in sustainable utilisation of natural resources. For instance, for harvesting bamboo shoots, they defined what areas and gave a certain period for local people can harvest for each season. This practice gives enough time allowing bamboo forest to

regenerate for long time. In terms of management right, the Na Ot community can regulate and make decisions about the forest resources and territories for which they have recognized access and withdrawal rights through developing CF management plan. They also have an exclusion right to decide that only Na Ot villagers can use the forest resources and outsiders cannot.

These regulations includes the prohibition of hunting animals in their forests, set by villagers as a good way to preserve the remaining animals and attracting new animals to the forests. As a result, there are two groups of stump-tailed macaque coming and living in their forest. Another benefit is that men in the village have more time to focus on other livelihoods activities rather than spending all day in the forest to hunt for only one animal, with high risks of getting injured.

Na Ot community also received a small grant of 44.16 million dong for establishing CFPD Fund. Using CFPD Fund, the Na Ot community, with support of local authorities, conducted a field demarcation of their community forest boundaries with concrete and permanent land markers. These land markers helped insiders as well as outsiders to recognise where the Na Ot community forest is. They also established formal village forest protection team (VFPT) consisting of 11 members, nine of them are members of village management board and other two members were nominated by local community. The VFPT is responsible for conducting two patrols per month with two members for each time. A number of patrols will increase in harvest season and forest fire prevent period. Every villager is encouraged to be an informant if they know or see any illegal activities occurred in their forest during their time of cultivation around forests. Along with enforcement, a 'compensation' (fining) system mechanism has been developed, agreed to and is being implemented by local villagers. For example, a sanction was applied to those who log timber illegally in the forests, regardless of villagers or outsiders for the first time by keeping and handing over to local government and district forest ranger.

Capacity development was also one of CFM1 objectives in order to empower rights holders and to ensure improved service provision by duty bearers. Some training courses were organised for participants such as field forest rangers and key villagers, including Na Ot representatives. Another training courses were also conducted in CFM2. These training courses have empowered Na Ot community to be able to better claim, defend and exercise their tenure and resource rights. In general, local people in Na Ot have believed that with planning and functional zoning their forest, they have been able to share benefits equitably, to manage and exclude outsiders easily.

2.3 Current state

For the last 13 years, since the land allocation, there have been many changes on how Na Ot villagers practice their rights. From passively protecting the forests, now they are learning to make good use of the forest resources.

Currently, Na Ot community is submitting their application to Mai Son DPC for requesting to exclude 19 ha of their old shifting cultivation land from community forests. This was a mistake during land allocation process due to lack of new technology such as GPS and GIS. This process is expected to get result in the coming months.

Because their forest is protection forest, which too much focused on forest protection responsibility and more restrictions on harvesting forest products and developing livelihood activities, therefore the village received a compensation for natural forest restoration of 330 ha for a period of 5 years with 200,000 VND per ha per year. In total, they received 66 million VND (around USD 3,140). They are also expecting to get a Payment for Forest Environmental Services (PFES) from Ma river hydro power plan but not yet confirmed. Hopefully, with the potential sustainable financial source from PFES, the Na Ot community will be able to enjoy and practice their tenure and resource rights and more important, to develop livelihood activities and get long term benefit from their forests, that contributing to poverty reduction.

With the recognition of values of the forest, and the establishment of forest management board, people realize as they benefit more from the forests, they hold more responsibilities to it. As people contribute more time and participate more in the management of the community forest, there is increasing sense of ownership as well as more efforts to protect what they have been building through the years.

Even though villagers know the potential values of the forest and wish to utilise these values, lack of financial resources and understanding of agro-forestry techniques are main challenges to them. Villagers expect that they can plant medicinal herbs in the forest to increase their income but hope that there will be supports from outside organizations or government to provide them with technical support and seedling. Other projects to plant trees to the forest areas which was burnt are also welcome by villagers as according to them, more trees in forest will help to prevent landslides and other disaster risks.

2.4 Why is it important for sustainable forest management?

Tenure is at the root of forest problems and prospects, therefore, the transfer of tenure rights is a critical cornerstone and a first precondition for promoting CF through mobilising local communities to manage, use and benefit from forest sustainably, to participate in the democratic decision-making process, and establish their own customary practices of forest management. Securing tenure could have multiple co-benefits for not only local communities but also governments and individuals beyond improved forest condition and reduced deforestation. It also increases local responsibilities placed upon the communities which can free up state resources.

With tenure security, local people can access the natural resources they need to develop livelihood and/ or earn a living. Moreover, securing tenure also makes local people feel confident to make investments in their community forests that will have positive impacts on their lives. By doing so, forest tenure security may contribute to increased income communities derived through community forestry and then to poverty alleviation of local people who depend directly or indirectly on forest resources for their livelihoods, and reduce forest degradation, and more generally, to sustainable forest management.

Other co-benefits of tenure secure and good forest land governance are to help address potential conflicts before they occur, and provide avenues of redress after conflicts arise, and focus critical attention on managing forest land resources to reduce and address resource conflicts; lead to increased sense of personal security, preservation of cultural identities.

3. Lessons Learned and Recommendations

3.1 Key lessons learned

As mentioned earlier, forest tenure is a fundamental cornerstone and a first prerequisite for managing, using and benefiting from forest sustainably by local people. However, it should not be considered as a destination, but the first precondition of a journey toward a goal of sustainable forest management. Additionally, giving forest tenure to local community should take a customary community forestry law in the area into account, thereby retaining the flexibility and capacity to adapt that often gives these systems their power.

Tenure arrangements should be clear, understandable to all and supported by legislation, thereby it will become a strong incentive for sustainable forest management as it guarantees both short- and long-term benefits from investments made and minimizes conflicts. It should also include disadvantaged groups and provide valuable resources in order to provide the basis for poverty alleviation. It appears that granting forest tenure to communities would strengthen and legalise their customary rights to forests, the forest territory marking is more respected by outsiders, and people know how to use the proof to prevent outsiders from their forests as well as to make use of support from the commune and the forest ranger in forest protection.

Transferring tenure rights and management responsibilities to local communities should be not seen as simply allowing communities increased access to the forest resource, but as a process of power sharing and capacity building. Therefore, these processes need to be accompanied by comprehensively enhancing tenure holders' capacity so that to enable them as the new forest managers to exercise the new rights and responsibilities and to manage and market forest resources sustainably. Furthermore, a necessary support systems are required in order to provide appropriate policies, incentives, and logistical support to better perform their roles, rights, responsibilities and returns.

3.2 Why can this be considered a positive story of change?

Na Ot villagers have protected their forest ever since the establishment of the village, but poverty has been one of the reasons why they didn't take part in the protection more proactively in the previous years as they had to focus on income generation. Awareness raising with too much focus on responsibilities without helping them to understand their rights and the benefits of the forest didn't encourage them to participate in forest management. However, changes in legal rights, awareness and better capacity to take up new livelihoods activities help Na Ot people to become more responsible to the forest. Through different states, now they have patrolling teams and everyone in this village is being a part of forest management. From closing the forest, now they know how make an income from the forest with better arrangements of forest products harvest and initial investment in forest plantation.

3.3 Recommendations for strengthening the positive equity impacts of forest management?

As mentioned above, the community forests in Na Ot are protection forests with too much requirements on forest protection responsibility and more restrictions on harvesting forest products and developing livelihood activities. According to a decision no. 186/2006/QĐ-TTg, dated 14/08/2006 about regulations on forest management by Prime Minister, the State shall provide investment supports and adopt benefit policies for protection forests it has allocated to communities as compensation for their efforts and investments in their community forest. However, the compensation with 200,000 VND for each ha of protection forest per year is not enough to cover cost of forest management activities. This is an inequality in comparison with other protection forest areas, which have been assigned to state protection forest management boards set up by ministries or Provincial People's Committees. This is because the State shall allocate regular fund to maintain forest protection activities; arrange budget for investment projects for the protection and development of protected forests, managed by such state protection forest management boards. Therefore, the Na Ot community needs an intensive and continuous support in terms of technical and financial aspects of governments and other agencies in order to enjoy their tenure and resource rights and fulfil their responsibility of forest protection.