Discrepancy Between Customary Law and State Law in Forest Management: A Study of a Dao Upland Community in Northern Vietnam

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Introduction

In Vietnam, forests are perceived differently by the government and the local people. For the government, the forests are resources that protect the environment as well as provide the social, economic, and ecological needs of all people. The forests thus must be protected for the sustainability of society in the long run. To this end, the government promulgates policies and institutes programs that halt what it considers to be the prime causes of forest degradation - swidden cultivation, timber logging and overexploitation of non-timber forest products (NTFPs).

The Dao, an ethnic minority group living in the Yen hamlet of the Tan Minh village,[1] considers forests not only as a source of livelihood but also as culturally and socially significant. To protect it, customary laws involving its use and management were established by the group.

The Dao's customary law, however, significantly differs from the state's policies. This clash in policies has led to the disruption of the Dao's swidden cycle, the reduction in crop productivity brought about by the degradation of the soil's condition, the exploitation of its timber and non-timber forest products, and conflict between the local people and the local government, and among the people themselves. While these events favor the more powerful actors in the community, these deteriorate the condition of the forests. In addition, the local government has failed to enforce the appropriate regulations.

This paper explores this discrepancy in forest management policies between the state and the local community. It also looks into the effects of this incongruity on the use and management of the forests' resources.

The paper is divided into five parts. The first section presents a general description of the Yen hamlet – its population, literacy level, educational and health facilities, and others. It describes the area's ecological conditions, agricultural production, and timber and non-timber forest extraction situation. The second section discusses the Dao's customary law on forest utilization and management. The third section explains the land policy and its implementation processes. The fourth section reviews the impacts of these policy differences on forest and focuses on swidden land, and timber and non-timber extraction. The last section discusses the impacts of the discrepancy on the forest and people's livelihoods.

[1] Tan Minh is located within the Da Bac district in the Hoa Binh province.

I. Present Characteristics of the Community

A. General features

Yen hamlet is one of the 10 hamlets in the village of Tan Minh. The hamlet, 32 kilometers (kms) away from the district center and 120 kms away from the country's capital, Hanoi, is located in a tropical humidity zone at an elevation of 300 meters (m). It is situated within the Da watershed area where it helps stabilize the area's ecological conditions to the benefit of the upland people in the northwest region and the lowland people of the Red River delta. At present, 213 people make up the 45 households in the community.

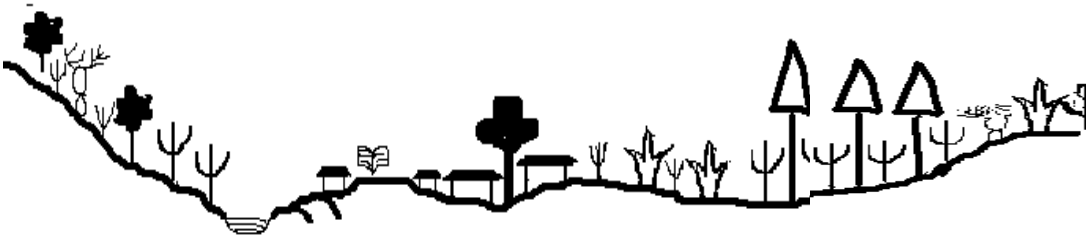
Roads constructed in the area enable people from the village to interact with other communities. For instance, exclusive road No. 433, which passes through the Dao village, allows the villagers to travel to other hamlets and vice versa. A secondary road, however, becomes impassable during rainy days for both light and heavy vehicles. During these times, the people are forced to walk to reach their destinations.

Electricity is not yet available in the hamlet even though the Hoa Binh hydropower plant, the biggest in Southeast Asia, is located in the provincial center. Health care centers are totally absent in the hamlet. An exclusive primary school stands in the area. However, for those pupils who want to pursue secondary study, they have to go to other village centers that are six kilometers away from the hamlet. For higher education, they have to go to the district center, which is 32 kms away from the hamlet. Generally, people in the Yen are poorly educated, finishing only the third grade level on the average. Compared to the standard in the national level, the Yen village's level of education is very low. Illiteracy rate is around 18 percent, much higher compared to the national standard.

B. Ecological features

At present, the forests of the hamlet are of the secondary growth type found on highly steep mountains. The villagers' swidden fields, meanwhile, are fixed in low steep mountains. These fields are planted with tree crops such as Xoan (Melia azedarach L.) and Bo De (Styrax tonkinesis Pierre). Figure 1 shows the transect map of the Yen hamlet.

Figure 1. Transect map of the present Yen hamlet



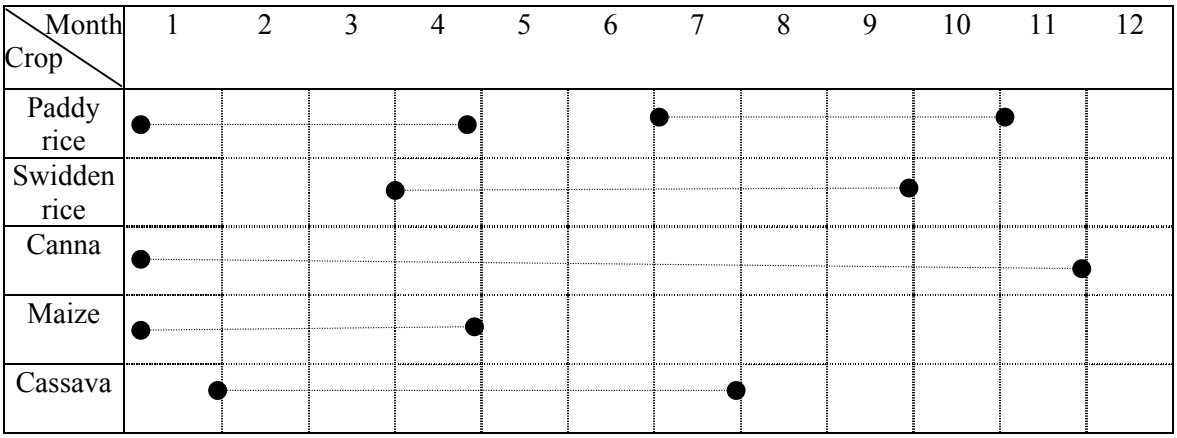
Vegetable feature	Timber forest, Nua bamboo forest, Co forest, secondary forest	Stream, road, paddy rice	Households, school	Nua bamboo forest	Swidden field (dry rice, cassava, maize, canna), intercropped with Xoan and Bo De	Bamboo forest
Topographical features	Steep mountain	Terrace	Low mountain, valley	Low mountains	Low mountain	High mountain
Slope	$30 - 60^0$	Flat	Below 20^0	30^0	20^0	$30^0 - 50^0$

C. Agricultural production

The Dao traditionally practice swidden farming on an exclusive basis. The wetland culture was introduced by the government since the formulation of the Yen cooperative in the early

1960s. Because of high population growth -- 3.2 percent annually during the 1980s -- and government policies, the Dao people had to alter their traditional method of farming and practice semi-agriculture. Majority of the people are currently practicing both fixed field farming, used for paddy rice, and swidden cultivation, used for other crops. Table 1 shows the cropping calendar of the Dao.

Table 1. Cropping calendar



In a year, villagers experience food scarcity in two periods: February to April, and July to September. During the first period, maize is harvested by the people. The area allocated for this crop, however, is small and thus inadequate for a household to subsist in. When the second period arrives, the villagers have almost nothing to eat until the end of September when swidden rice is harvested. In turn, the wetland area is very small, totaling only 2.6 hectares (ha) at present. People therefore seek other livelihood sources in the forest, cultivating swidden farms, logging, and collecting NTFPs to augment their income.

D. Timber and non-timber forest product extraction

Timber and NTFPs such as mushroom and medicinal plants play an important role in the daily life of the Dao. Table 2 below shows the importance of the different NTFPs to the Dao.

Table 2. Importance of non-timber products

Product	Purpose	Harvest time	Importance	Proximity	Availability
1. Timber	Sale/use	Entire year	10	8	3
2. Firewood	Sale/use	Entire year	8	1	6
3. Giang bamboo	Sale/use	Sep - Oct	6	5	3
4. Nua bamboo	Sale/use	Entire year	10	6	5
5. Bamboo shoot	Sale	May - Jul	10	3	6
6. Palm leave	Sale/use	Entire year	5	1	5
7. Cat's ear	Sale	December	3	3	6
8. Animal vegetable	Animal	Entire year	10	6	7
9. Chuoi vegetable	Use	Apr - Aug	4	1	10
10. Rattan	Use	Entire year	2	10	2
11. Medicinal plants	Use	Entire year	5	1	6

Source: PRA in Yen 2000

Note: Importance: 10 - the most important 1 - the least important
Proximity: 10 - the farthest house 1 - the nearest house
Availability: 10 - the most available 1 - the least available

II. The Dao's Customary Law on Forest Utilization and Management

A. Land management

Having lived in the mountains for a long time, the Dao, in general, have already acquired their own traditional knowledge in agricultural production and their own way of managing the forestland. For the Dao in Yen, forests are clearly demarcated across other communities. Springs, mountain ridges, top line, and big trees, which serve as boundary landmarks, are usually relative and recognized by the people even in the absence of certificates and written agreements.

In the hamlet, except for residential lands and swidden lands, which are already occupied and owned by individual households, other areas like forestland, springs, and rivers belong to everyone in the hamlet. Everyone has the right to access to these resources. Under this system, people are free to choose lands in the forest for their swidden farming. Once a person selects an area and marks it with a stick, he is then entitled to use the land. Other people then have to ask permission from the owner before they can work the same land.

The Dao's customary law prohibits outsiders from accessing forestlands and its resources in the Yen territory. A new person in the village is not entitled to receive a land unless he is accepted by the hamlet elder and all the people in the hamlet. Once the person gets accepted, he/she will be asked to offer wine, rice, and meat to the ancestors and the forest god. He is also required to host a meal for all the people in the hamlet. Like the others, the person has to do community work and help others during the planting, weeding, and harvesting seasons.

B. Land use

According to Thang (1995), the Dao generally show their awareness of and observe their traditional practices of conserving and protecting the forest. Thang observed that in some areas where the Dao reside, different crops are intercropped on the same swidden field to prevent soil erosion. They also build hedges by planting trees or earthwork edges. A multi-canopy structure is thus created, which apart from conserving the soil also provides soil nutrition. The Dao also cultivate large areas of trees such as cinamon, cassia, and Tung (Alenrites montana). They also grow various tuber crops such as edible yam and yam bean that increase soil fertility.

What Thang has observed on the Dao's land use practices can very well be found in the Yen hamlet. The Dao in Yen hamlet usually choose swidden fields in old forests where the land is fertile. They prefer bamboo forests for their swidden farms because of the great amount of ash that will be left after the burning activity.[2] Swidden farming is usually practiced at the lower part of the hillside where trees that cover the hilltop prevent soil erosion and maintain humidity of the soil.

In the field preparation step, the Dao in Yen hamlet do not apply clear cutting, unlike other ethnic groups (i.e, Tay, Muong do). They do not clear all the trees and would leave a number of stems at a certain height, about 50-60 cm from the soil surface. This practice proves to be beneficial in three ways. One, the root system of the remaining trees preserves the humidity of the soil. Two, a strong root system allows a high rate of forest recovery after cutting. Three, a root system enhances the soil's condition, which, in turn, reduces soil erosion. In their swidden farming system, the Dao use only rudimentary tools such as knives, axes, hoes, and sticks to exploit the thin upper layer of the soil. They typically cultivate the field for three years, and then let it fallow for 10-15 years. This system allows the forest to fully regenerate.

[2] Ash increases the level of soil nutrition.

C. Rituals and beliefs regarding land use and management

The Dao's livelihoods are connected to the forest. For the Dao, the forests are a common property. They provide material goods as well as play a crucial role in the Dao's cultural life (Be et al. 1971).

The Dao in Yen hamlet have numerous rituals and beliefs involving the use and management of forestlands that have become part of their customary law. To start planting season, for instance, the hamlet elder asks hamlet members to contribute and bring to his house some wine, meat, and rice. Rituals are then conducted by the hamlet elder. The hamlet elder is also the one who determines the period for planting and harvesting crops. All households in the hamlet follow his decision.

Within the swidden practice cycle - from field selection to crop harvesting - each household prepares its own offerings (i.e., wine, meat, and sticky rice) for the gods. According to the Dao, since each thing has its own god, practicing swidden farming in the forest can disrupt the land, water, and tree gods. The permission of the gods must therefore be sought if swidden farming is to be conducted in the area. Failure to do this, according to the Dao in Yen, will cause natural disasters such as drought, flood, and death to happen.

The Dao in Yen refer to a number of special days as "community's Sundays." According to their traditional law, people are not allowed to go to forest or to the field on these days. Otherwise, the gods will punish either the people or the crops by taking them away. To illustrate, on the 3rd of March (lunar calendar), no one is allowed to go to the forest and fell trees because it is believed that felling trees on this day will disturb the thunder god which, in turn, will produce negative consequences to the people. On the 7th of July, the female and male rice get married and have their nuptial night.[3] As such, people should not visit them in the field for they will feel reticent and thus cannot pollinate.

The above discussion shows that the cultural belief system of the Dao is heavily bound to the forest. Accorded proper ritual and respect, these forces (i.e., gods and other land spirits) will bring about peace and well-beings to the whole community. Improper activities and disrespect, in contrast, incur the wrath of super natural beings. Thus the forest is a sacred place where their ancestors and the spirits live, where the Dao meditate and go on pilgrimage to seek divine guidance to achieve oneness, and where peace, order, and harmony prevail

III. Land National Policies and Implementation in the Hamlet

For the state, forests are a natural resource which sustain ecological conditions in the upland and lowland regions. For the, swidden cultivation is destructive to the ecosystem. The state assumes that swidden farming is a unique cultivation method and not a culture with a fixed field determined by stable boundaries and low economic efficiency (Ty 1995). This cultivation method is believed to be one of the causes of soil erosion, drought in the upland, and flood in the lowland. The state, therefore, is strongly concerned with the environmental destruction caused by swidden farming. The state likewise places importance in protecting the watershed areas.

Behind all these, little concern has been given to traditional way of life of the local people. For generations, the Dao have been strongly dependent on the forests for their subsistence. It is here where they practice swidden cultivation and harvest timber and non-timber products. Swidden farming gives food security to families. The Dao look at swidden cultivation not only as a source of livelihood but also as a practice that has cultural value. Swidden farming

[3] The Dao in Yen hamlet believe that the rice are living things which have sexes.

is not fixed on one plot but is flexible. The farmer moves from one plot to another in a period of 10-15 years, long enough to allow the forest to recover naturally.

Before the 1960s, when the cooperative system was not yet introduced by the state, there was no state law that existed pertaining to forestland management. Instead the forest was managed through indigenous institutions. During this period, wetland agriculture was not yet introduced. Swidden cultivation was an exclusive livelihood source of the Dao. Since then, however, the resource management system of the Dao has gradually been shaped by state policies.

In the 1960s, when the cooperative was formed, land and other means of production were given to the cooperative. People collectively worked the land. Their share of the produce was based on the number of labor days they contributed to the cooperative. Swidden cultivation, at this time, was believed to be harmful to the environment. State policies, therefore, gradually restrained swidden cultivation and promoted wetland agriculture. The cooperative system negatively affected the traditional method of production of the Dao by placing the management system under the control of the cooperative board.

In the 1980s, a contractual system was introduced. The tightly managed state-run cooperative did not encourage people to work (Sikor 2000) and decreased crop productivity. As a result, the households were gradually given more autonomy to manage the cooperative land. Later on, land was annually distributed to households each of whom was responsible for its own production during the year.

The new Land Law, issued in 1993, mandated the state to allocate lands to individual households under long-term lease arrangements. Households were entitled to use the land for a period of 20 years in the case of annual crops and 50 years or more for perennial crops. The law likewise stipulated that the allocated land can be transferred, mortgaged, leased, inherited, and exchanged. The household who received the land was then given Land Use Certificates.

In January 1994, the state issued Decree 02/CP, which serves as a guide for forestland allocation. Under this decree, forestlands are categorized into three types namely, special use forestland, production forestland, and protection forestland.[1] The Ministry of Forest has issued specific regulations for the management and use of each type of forestland (Sikor 2000). According to the decree, land with standing forest can be allocated to a household for a period of 50 years, while barren land can be allocated for a much longer period.

In the Yen hamlet, forestlands were allocated to households in 1995. The People's Committee of the District assigned the Forest Protection Unit as the main office to implement the land allocation. In the village level, a task force team was formed whose members were staff members of the Forest Protection Unit and village officials. Village chairmen served as team leaders. At the start of the land allocation process, the task force team came to the hamlet and organized meetings with the household heads. District

[1] Forestlands are categorized into three types: (1) Special use forestland: This land is found mainly in national parks and biodiversity reserves that have strict limitations on exploitation. These lands may or may not have any forest cover. Responsibility for its management falls upon the Department of Forest Protection at the provincial and district levels. (2) Protection forestland: This type of forest is deemed critical to the protection of water resources, the prevention of soil erosion and natural disasters, and the protection of the ecology and environment. Thus, it cannot be exploited for agricultural purposes. These lands are allocated to farm households under the supervision of provincial and district Forest Inspectorates or State Forest Enterprises. (3) Production forestland: There are two types of production forestland--Production forest with forest cover, and production forestland without forest or the barren land. The latter type is allocated to individual households who are then granted Land Use Certificates.

guidelines obligated the team to explain the purpose of the allocation activity and other upcoming activities. Households were requested to report to the hamlet chairman the land holding areas that they wanted to receive. The hamlet chairman then submitted to the task force the report to the task force. The land was allocated based on the present land use pattern of the household. The land area allocated to the families was positively associated with the family size. The household then had to sign written declarations, which are countersigned by representatives of the hamlet, village people's committee, and the forest protection unit.

In late 1995, the team completed their work in the Tan Minh village, specifically Yen hamlet. Approximately 592 has of production and protection forestland were allocated to 35 existing households in the hamlet. Of the 35 households, one received production forestland but not protection forestland, two received protection forestland but not production forestland, and 32 received both production and protection forestland. Of the total forestland allocated to households, 39 percent (229 has) is composed of production forestland. Protection forestland comprises 61 percent (364 has) of the total land distributed. Of the total production forestland allocated, 78 percent (179.3 has) is composed of barren land. Aside from individual households, the cooperative received 36 has of forestland for community-self managing.

According to Decree 02/CP, the production forestland (including barren land) allocated to households is designed for forest planting/protection. Protection forestlands, meanwhile, is allocated to households for mere protection. No land was allocated for agricultural production. The decree also stipulates that the households who were allocated barren land would receive government support for forest planting activities.

On September 1992, the government issued the 327 Program, which aims at improving the productivity of barren land through the provision of technical guidelines, financial incentives and subsidies, and legal provisions that applies to barren land development projects.

In Da Bac district, Decree 327 was implemented by the Department of Fixed Agriculture and Sedentarization in 1995. The District People's Committee announced an ambitious public investment program in the Tan Minh village; however, the actual budget allocated to the village is only US$74,428, which is only 25 percent of the original proposed budget. As a result, program activities were shortened from 5 years to 3 years. In the district, a total of 1084 has of barren land were allocated for forest planting; however, Tan Minh was only given 6 percent (60.51 has) of this area. Yen hamlet did not receive any budget for forest planting.

Under the program, the Dao in Yen hamlet were to receive fruit trees (i.e., plum and apricot) at no cost. The seedlings were distributed to and planted by the Dao on their swidden fields. At present, however, all the fruit trees have died for a number of reasons: (1) there was a lack in technical guidance in planting and taking care of the trees, (2) poor and unsuitable soil condition, and (3) free grazing. Even though the Dao wanted indigenous trees such as the Luong bamboo and the Mep bamboo which can be easily marketed locally, the Department proceeded to give the people fruit trees with the hope that the expected produce can be commercialized widely. However, this was not the case for the Dao.

In addition to the forest production component of the 327 program, a forest protection component was also included. Individuals were selected and paid to protect certain areas of the forests allocated for the said component. In the village, a total area of 1080 has of forestland was designated for protection. In Yen hamlet, only 16 households of the 35 were chosen to protect the designated forest area. Because of budget constraints, however, not all forest areas were protected. In addition, though the original payment was actually 50,000 VND/ha/year, only 40,000 Vietnam Dong per year per hectare was given since designing

fees for the district office, hamlet funds, and other expenses were subtracted from the original amount.

Several problems were encountered while implementing this component. For instance, the designated forest area for protection overlapped with the area of those households who were allocated forestlands under the decree 02/CP. But because they were not chosen to protect the forest, they did not receive any compensation from the government. Similarly, in one case, the forestlands of two households border each other. The quality of their forest is also similar. However, only one household was entitled to receive the pay since the other one was not chosen to protect the land.

The customary law of the Dao considers the forests as a common property in which all Dao people are given equal access to. As a result, the total payment received by the district for forest protection was collected by the hamlet chairman and then equally distributed among all the households existing in the hamlet, regardless of whether they were chosen to protect the forest or not. In 1999, for example, all 41 existing households in the hamlet received payment for protecting the forest albeit majority were not chosen for the protection activity. This arrangement clearly manifests the strong influence of the customary law among the Dao people that it undermined the state's intention for the project. Within this context, state law, in general, was not able to prevent the Dao from extracting resources from the forest.

IV. The Effects of the Difference Between Customary Law and State Law

A. Swidden practice: an inevitable reality

When forestlands were allocated to households in 1995, the local state strictly monitored the Dao's practice of swidden farming in the Yen territory. At present, all Dao households in the Yen hamlet are practicing some form of swidden cultivation despite its being banned by the state.

Since the allotted wetland rice area was too small to provide the needed staple food of the households, the Dao had to encroach the forestlands in Vinh Phuc--a province adjacent to the Hoa Binh province—to cultivate their swidden fields and to sustain their families. In 1995, forestlands in Vinh Phuc were not yet allocated to its people, thus, the Dao were free to practice swidden in the forest. In 1997, however, the Dao encountered resistance from the people of Vinh Phuc when forestlands in the province were allocated to the households. The Forest Protection Unit in Vinh Phuc strictly enforced regulations that prevented the Dao from practicing swidden farming in the area. The Dao, therefore, had to return to Yen where they continued to engage in swidden farming in their forest. But then the local state curtailed this practice by imposing fines on those who cultivated swidden fields. In 1998, for instance, all households in Yen were fined for engaging in the activity. This move by the government however failed to stop swidden farming in the forest as the Dao continued to cultivate swidden fields in their forests. Swidden farming is clearly inevitable.

Gradually, the local state realized that their effort to restrict the Dao from engaging in swidden farming will not succeed unless they are provided with alternative livelihoods. Both parties were able to negotiate and arrive at an agreement regarding this activity. The local state and the Dao agreed that before planting dry rice for the year, the Dao will seek permission to farm swidden fields from the local state. Based on the requirements listed by the Dao, the local state designates certain areas of the barren land where the people can freely practice swidden farming.

The designated area, however, is usually small and not enough for cultivation. The Dao therefore have to cultivate swidden fields in grazing areas to escape punishments from the government. Swidden fields in grazing areas are fenced to prevent animals from damaging

the field. Grazing areas, however, are getting smaller, thus, it generates conflicts among households in the hamlet. Recent village regulation totally prohibits free animal grazing. However, it is clear that this regulation does not work since swidden fields are commonly damaged by grazing animals. The owners would usually hit the animals when these enter their fields.

In addition, many households practice swidden farming in the protection forest. Large areas of forest have been cut for the activity. Swidden fields are usually located in deep areas of the forest, very far from the hamlet, and difficult to access. Most of the time, people would build shelters on their own fields and stay there during the planting, weeding, and harvesting periods. Because of the fields' far location, the local state usually fails to enforce the regulation.

The Dao's customary law allows people to practice swidden farming in any areas which they find suitable, regardless of who the land was granted to under Decree 02/CP. People are not afraid of being reported to the local state by the landowner because customary law does not allow the latter to do so. In this context, allocation of land to individual households does not help in protecting the forest. The provision of Land Use Certificates given to household does not completely assure the forests' sustainability in the long run. In this situation, the Dao's customary law proves more important than the state law.

B. Illegal logging

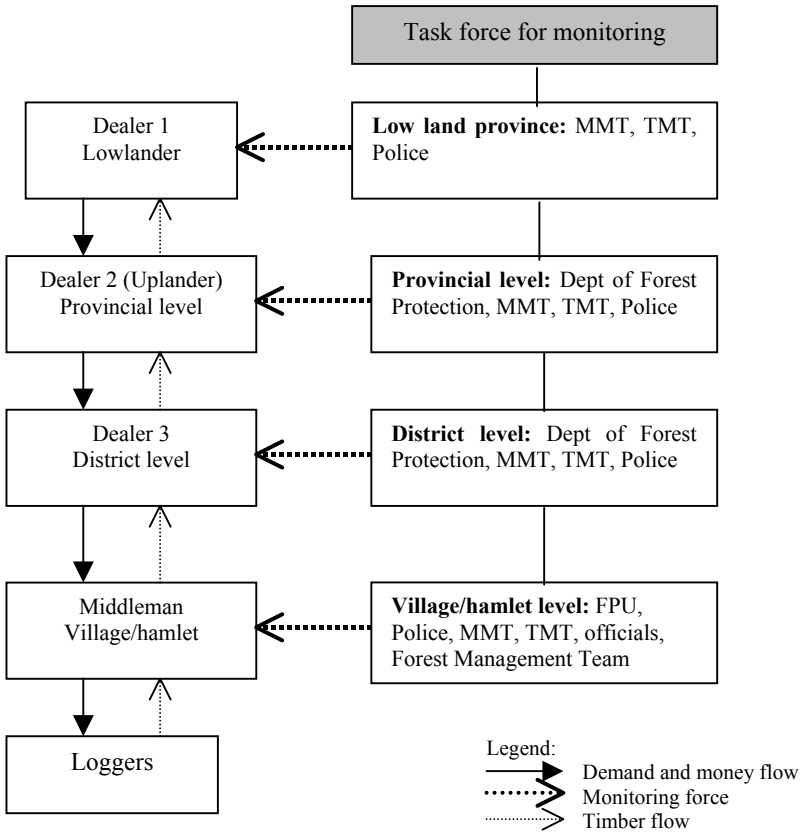
Since Doi Moi (open door) policy in 1986, the Yen hamlet has been rapidly integrated into the national market. Free market has promoted the flow of commodities from the lowlands to the uplands and vice versa. The uplands respond to the demands of the lowlands for timber. Accordingly, a chain for the distribution of timber has been established between the upland communities and the lowland market. In response to the strong demands on timber from the lowland market, timber has been severely extracted in the Yen hamlet in recent years. At present, all young men in the hamlet are engaged in timber extraction despite the prohibition of the state. In Yen, the Dao's customary law serves as a driving force for timber exploitation by allowing people to fell timber wherever they find it convenient. Accordingly, high value timber is not found in Yen territory anymore. All loggers thus are pressured to encroach the forest in Vinh Phuc to extract timber. However, unlike swidden practice which local authorities in Vinh Phuc are able to stop, timber extraction by the loggers in Yen cannot be halted.

Loggers and middlemen have existing business arrangements between them. Usually, before loggers go to the forest to extract timber, middlemen lend them cash on the condition that the loggers will sell the logs to them. The extracted timber is afterwards handed over to private traders or dealers. There are different dealers responsible for the transportation of the timber products. To illustrate, timber is transferred from the middlemen in the village/hamlet to dealer three in the town district, from dealer three to dealer two in the provincial center, and finally from dealer two to dealer one in the lowland market. At each level, a task force such as the Market Management Team (MMT), the Tax Management Team (TMT), police, and officials is responsible for monitoring the transportation of illegal timber products. The transportation and monitoring network (chain) is illustrated in figure 1.

At the hamlet and village level, the task force is composed of the Forest Protection Unit, hamlet and village officials, the TMT, and the MMT. At the district level, the task force is composed of the Forest Protection Unit (FPU), the MMT, the TMT, and the police. At the provincial level, the task force is made up of officials in the Department of Forest Protection, the MMT, the TMT, and the police. Unfortunately, bribery is prevalent within the task force. Rather than giving fine to violators, the dealers at various levels, the task force prefers to receive unofficial payment and to ignore the case. Data provided by a dealer shows that

he/she has to make 14 unofficial payments to the different levels of task force groups for them to transfer timber products from the hamlet to the lowland market. It is evident from this system of distribution that the power given by state to the task force has been misused and abused for personal interest.

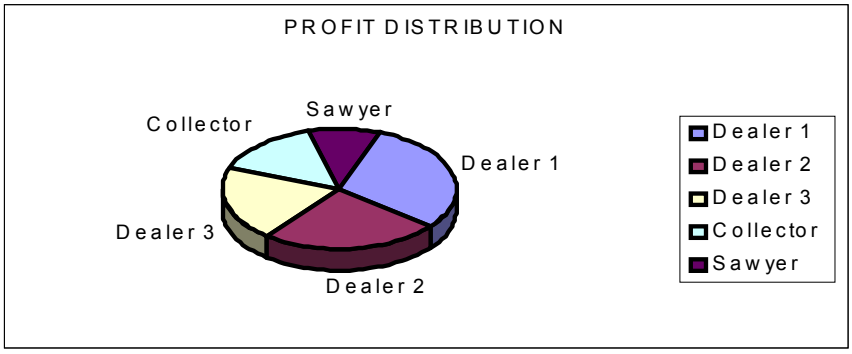
Figure 1. Timber distribution and monitoring network



Laissez-faire practice is not found among the participants in the chain. In short, inequality in terms of benefit sharing among the actors occurs. Vertically, dealer one in the lowland province has around 30 percent of the benefit; dealer two owns 25 percent; dealer three owns 20 percent; the middleman (collector) owns 15 percent; and the logger (sawyer) owns 10 percent of the profit derived from the sale of timber. The profit distribution is indicated in figure 2:

Horizontally, not all households in the hamlet and loggers benefit equally from timber extraction. How much the households and loggers would benefit depends on the availability of their labor and productive assets such as water buffalo. The more labor and productive assets that they have, the greater the benefits that they will gain from timber logging.

Figure 2. Vertical profit distribution among members of the chain



Source: Field notes 2000

D. Non-timber forest products harvesting

Non-timber forest products (NTFPs) play an important role in the daily life of the Dao. NTFPs include such products as firewood, bamboo products, mushroom, and medicinal plants. Of these products, bamboo is the most commonly sold product. During the harvest season, an estimated 24 tons of bamboo shoot are collected monthly in the village. The NTFPs are harvested for commercial purposes and sold at selling-buying points, usually located in households adjacent to the main road. In the Tan Minh village, a total of eight buying-selling points are found. So far, NTFPs contribute an average of 60 percent to the total household income.

Recently, NTFPs have been excessively harvested owing to incentives provided by the market and the household cash income. Large areas of bamboo forest have been overwhelmingly exploited. Despite the state law prohibiting excessive harvest of NTFPs in the forest, people keep harvesting these products in areas where these are available. Again, the Dao's customary law which defines forests as common property provides all people in the hamlet with equal access to the resources regardless of the state law. The state, however, assumes that by allocating land to individual households, the forest will be protected. Yet this was not the case among the Dao in Yen hamlet. In this case, state law was undermined by the Dao's customary law. The Vietnamese saying, "The laws of the Emperor bow for village custom" is well suited to this case.

Market economy makes the Dao more dependent on cash economy. In hamlets adjacent to Yen such as the Tat hamlet where the Tay ethnic people reside, and the Enh hamlet where the Muong ethnic reside, people have excessively extracted their forest resources. The incentives from the market economy has acted as a driving force that changes the way the Dao traditionally used their forests. As a Dao puts it, "The Tay and Muong eat all the forests. Now, they are encroaching into our forests. If we do not use our forests, they will use it all." This attitude plus the strong demands of the cash economy have brought about an excessive extraction of NTFPs in the Yen territory in recent years.

In response to this problem, several measures have been implemented by the District People Committee to prohibit such excessive exploitation. To cite an example, the Decree No 45, issued in June 10, 2000 and signed by the Vice Chairman of the Da Bac People's Committee prohibit harvesting and the transport of several kinds of bamboo products in the forest. The decree has also dismantled the buying-selling points in the community. Likewise, it stipulates that violators of its prohibitions will be punished. The decree, however, is short-lived. In Yen hamlet, the selling-buying points close in some days and opens a few days later. Bamboo products still continue to be extracted. The hamlet chairman has been

criticized by the village chairman for poorly enforcing the decree. Explaining their side, village officials and staff members of the Forest Protection Unit blame the shortage of staff as well as facilities needed to supervise the situation. The reason for the short-lived decree, however, rests on both sides--the local state and the Dao. On the one hand, bamboo products are one of the most important sources of household income, and harvesting such products is not labor intensive. On the other hand, the local state is too weak to implement the decree and they usually fail to enforce the regulation.

VI. Conclusion

Forest policies formulated in recent years have reportedly achieved significant success in protecting forests in many places in the country (Hung 1995; Ty 1995). According to Hung, for example, the policy has halted deforestation and improved the socioeconomic situation of people in many areas. This is not always true, however, in the Yen hamlet.

The state and the Dao people view the forests differently. On the one hand, since the state views the forests as material resources, it issues policies aimed at protecting it. One such policy allocates forestland to individual households on a long-term use basis. The Dao, on the other hand, who have lived in the forests for a long time have developed their own customary law regarding its use and management. This customary law considers forest and its resources as a community property with all people in the hamlet entitled to use it. Moreover, for the Dao, forests are not only material resources but are also part of their social and cultural life.

The discrepancy between state law and customary law has produced crisis in forestland use and management. Customary law strongly influences the extractive ways the Dao use the resources. More often than not, their customary law undermines the state law. Forestland, in this context, is what Sato (2000) calls ambiguous land--the land legally owned by the state but are used and cultivated by the local people. On the one hand, the state is trying to protect forest; on the other, local people are seeking for arable land for agricultural purpose. This land does not fit neatly into the private property regime that is based on fictions of exclusive use rights and alienability. It consists of the residual land of the state simplication process on land tenure. According to Sato, the various stresses from social, economic, and political demands are represented on this ambiguous land. This has been the case in Yen hamlet. However, the discrepancy is not only between the state and local people but within the state itself. This is reflected by the overlap between the allocation and protection contract. Discrepancy also exists among people in the hamlet. The powerful people have taken advantage of the discrepancy using their connection with outside village to market illegal timber product. All of these bring about degradation of the forests and institutional crisis caused by the misuse of power to pursue personal interest.

The policy implementation at the community level overly emphasized the quantitative target rather than the qualitative one. In the Dao community where customary law and not state law determines the people's access to forest resources, the land certificate given to the people is the only one that provides them the access to government support such as the credit program. Unfortunately, the loan is very limited and only very few households can access to the loan. Therefore, even though some households were allocated forestland, they did not want to claim land use certificates. According to them the certificate did not help them with anything. Allocating forestlands to individual households and then granting them the certificate do not help protect the forests.

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References

Dang, Be Viet; Tung, Nguyen Khac; Trung, Nong; Tien, Nguyen Nam Tien. Nguoi Dao o Vietnam. Hanoi: Social Sciences Publishing House, 1971.

Forestland Allocation: General Department of Forest Protection, Ministry of Agriculture and Rural Development. Agricultural Publishing House, 1996.

Hung, Le Duy. "Some Issues of Fixed Cultivation and Sedentarization of Ethnic Minority People in Mountainous Areas of Vietnam in the Highlands." In The Challenges of Highland Development in Vietnam. Edited by A. Terry Rambo, Robert R. Reed, Le Trong Cuc, and Michael R. DiGregorio. Hawaii: East-West Center, 1995.

Qui Hoach Su Dung Dat va Giao Dat Lam Nghiep. Proceedings of the National Conference organized by the Ministry of Agriculture and Rural Development and the Food and Agriculture Organization. Hanoi: Agricultural Publishing House, 1998.

Sato, Jin. "People in Between: Conversion and Conservation of Forestlands in Thailand." The Development and Change Vol. 31 No. 1, January 2000.

Sikor, Thomas. "Decree 327 and the Restoration of Barren Land in the Vietnamese Highlands." In The Challenges of Highland Development in Vietnam. Edited by A. Terry Rambo, Robert R. Reed, Le Trong Cuc, and Michael R.DiGregorio. Hawaii: East-West Center, 1995.

Sikor, Thomas and Truong, Dao Minh. Sticky Rice, Collective Fields: Community-based Development Among the Black Thai. Hanoi: Agricultural Publishing House, 2000.

Thang, Nguyen Van. "The Hmong and Dzao Peoples in Vietnam." In The Challenges of Highland Development in Vietnam. Edited by A. Terry Rambo, Robert R. Reed, Le Trong Cuc, and Michael R. DiGregorio. Hawaii: East-West Center, 1995.

Ty, Hoang Xuan. "Highland Development and Forest Resource Protection in Vietnam: Status and Research Priorities." In The Challenges of Highland Development in Vietnam. Edited by A. Terry Rambo, Robert R. Reed, Le Trong Cuc, and Michael R. DiGregorio. Hawaii: East-West Center, 1995.

Vo Chi Chung et al. "Community Case Studies From Upland Vietnam." Stewards of Vietnam's Upland Forests. Research Network Report 1998. Asia Forest Network.