

Narrowing the gap between statutory and customary rights in Vietnam's community forest management

In Vietnam, there exist a gap between statutory rights from legally allocated forests and informal customary rights to community forest management. In some cases, this gap has led to conflict, community displacement and loss of, or reduction in livelihood opportunities. The gap stems from lack of, or inadequate support given by local authorities to forest people after being allocated with forest lands. As a result, forest people could not exercise their formal rights, and resort to managing community forests according to customary rules. Often, collective action is used as a means to exercise customary rights.

Photo: ICRAF Vietnam/Ha My

Key messages

- 1 There is a need to develop specific legislations recognizing villages/local communities as legal entities, and acknowledging existing community forest management (CFM) practices as a forest management strategy.
- 2 There is a need to provide financial and management support after initial forest allocation to enable forest owners to exercise statutory rights.
- 3 Institutionalizing CFM has potential to harmonize the gap between statutory and customary-based approaches to forest management.
- 4 A systematic approach for understanding the history and nature of land tenure conflict is important in conflict resolution.

Policy recommendations

To address the gap between statutory and customary rights, there is a need to:

- Promulgate policies or rules that legally recognize community-based forest ownership. Existing policies are focused on organisations holding land tenure only.
- Invoke complete bundle of rights to communities practicing CFM.
- Establish and support Forest Management Learning Groups (FMLG) as well as develop livelihood improvement models in accordance with local ecological conditions.
- In the context of Thua Thien Hue province, the Commune's People Committee (CPC) and Forest Protection Unit (FPU) need to support forest owners in preventing and sanctioning land use rights violations.

Land Tenure and Property Rights

- Tenure refers to bundle of rights ranging from access and use rights to management, exclusion and alienation (*Schlager and Ostrom, 1992*).
- Land tenure is the name given to the legal regime in which land rights are held by individuals, groups of individuals, or the community.
- Land tenure rules define the allocation of property rights to land within societies. Property rights can be defined as relationships among social actors with respect to things such as natural resources (*Agrawal and Ostrom, 2001*).
- Tenure regimes conflict when the rights to use/ access a piece of land are not recognized across both systems or overlapping rights are assigned (*Catacutan, 2012*).

Bundle of Rights

Schlager and Ostrom's "bundle of rights" approach to classifying property rights (1992)

- Access: Rights related to accessing or entering the forest for recreation.
- Withdrawal: Rights related to obtaining forest products such as the right to collect timber or Non Timber Forest Products (NTFPs) and earn income (money) from Payment for Forest Environment Service (PFES) and REDD+.
- Management: Rights related to regulating internal use patterns or transforming the forest resource by making improvements such as the right to use forestland without forest cover for agricultural production, to plant trees in the forest, to thin the forest, and to enrich the forest.
- Exclusion: Rights related to determining who will have access and withdrawal rights, as well as those related to enforcing these rights such as stopping violators who cut timber or perform other activities without permission.
- Alienation: Rights related to selling or leasing the aforementioned rights such as the right to transfer, exchange, lease, inherit and mortgage the community forest/allocated forest.

Steps applied in tenure conflict assessment

The figure below presents an iterative process of understanding the history and nature of land tenure and resolving conflict. The process includes understanding the complexity of land and forest tenure, the status of actors, the interest and claims that each actor hold, the rights and power they use to justify their claims, and conflict resolution.

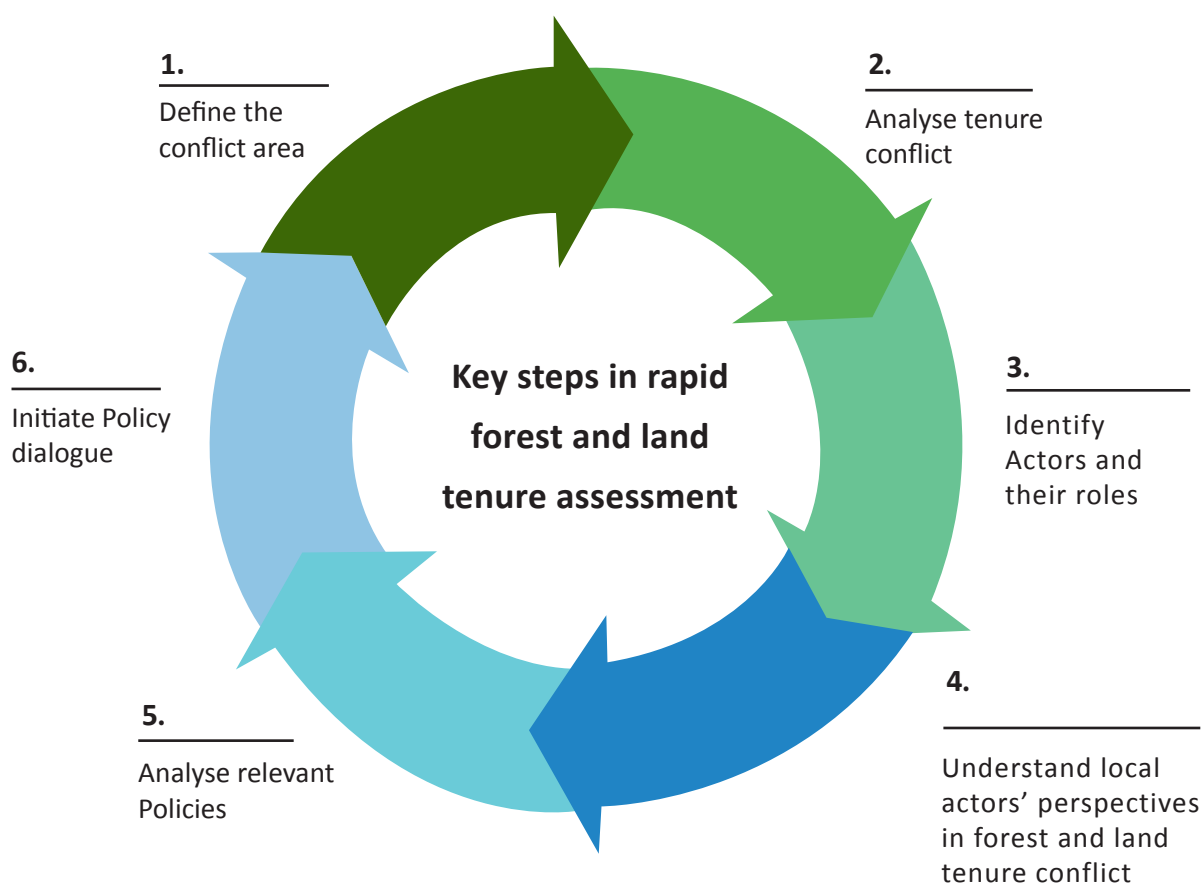




Photo: ICRAF Vietnam/Dam Viet Bac

Community Forest Management in Thua Thien Hue Province

Forest and forestland are managed by various stakeholders including state forest owners (Protection Forest Management Boards, National Park, Natural Resource Reserves, Forestry Companies); Commune People's Committees (CPCs); and communities, household groups, households and individuals. CFM in Thua Thien Hue can be categorized into three forms: (1) forest allocated to village population communities for management, (2) forest allocated to household groups for management; and (3) forest managed under customary law.

Although statutory rights-based forest allocation provides recipients with statutory rights (rights of access, withdrawal, management, exclusion) over allocated community forest, many recipients find their ability to exercise/enforce these rights limited. This is primarily due to the following:

1. Conflict between transferred rights and conditions required to exercise/enforce these rights (e.g. communities have been allocated logging rights over forest areas that do not meet logging criteria).
2. Lack of legal and or financial support after formal forest allocation. Without legal and financial support, forest land owners are unable to exercise land use rights after forest allocation, making statutory-based frameworks inadequate, and encouraging communities to revert to customary-based approaches to forest management. Communities receiving forest allocation rights require legal and financial support to enforce rights over community forests.
3. Differences in opinions in the approach to community forest management. Existing legislations focus on organization-based forest land owners (such as state forest enterprises), and do not recognize villages/local communities as legal entities. Community forest ownership is often not regarded as an acceptable forest management approach.
4. Customary law in forest management. Many communities recognise customary rights over forest areas, even after statutory-based forest allocation. This is frequently related to subsistence farming (e.g. shifting cultivation to maintain traditional culture) but may include cutting timber without permission, gathering NTFPs (rights of withdrawal), performing shifting cultivation (rights of management) and swidden agriculture practices (rights of alienation).

Gaps between statutory and customary rights in community forests across four villages

Bundles of rights	Statutory rights received by community	Customary rights being exercised by community	Study sites (Villages)	Status of rights implementation	Causes
Withdrawal	Timber logging (final felling, domestic use purpose)		Kan Sam village, Village 4, Village 2	Community members unable to exercise Timber logging Statutory rights	Inadequacy between rights and responsibility in community forest management. Customary law in forest management
		Timber logging (domestic use purpose)	Kan Sam village, Pahy village, Village 4, Village 2	Community members perform Timber logging through traditional Customary rights	Inadequacy between rights and responsibility in community forest management. Customary law in forest management
		Trapping wildlife	Kan Sam village, Village 4, Village 2	Community members perform Wildlife trapping through traditional Customary rights	Customary law in forest management
Management	Planting forest tree on bare land in community forest		Kan Sam village, Village 2	Planting forest tree Statutory rights have been allocated but not exercised by community members	Lack of support from local authorities after allocation Differences in opinions between community elders and younger members on community forest management
		Shifting cultivation	Kan Sam village, Pahy village, Village 4, Village 2	Community members perform Shifting cultivation through traditional Customary rights	Customary law
Exclusion	Patrolling		Kan Sam village, Village 4, Village 2	Patrolling Statutory rights have been allocated but not exercised by community members	Lack of support from local authorities after allocation
	Preventing violators		Kan Sam village, Village 4, Village 2	Community members unable to exercise Preventing violators rights	Lack of support from local authorities after allocation
Alienation		Inheritance of swidden land	Kan Sam village, Pahy village, Village 4, Village 2	Community members perform swidden land inheritance through traditional Customary rights	Customary law

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