

Customary Law in Forest Resources Use and Management by Dzao and Thai People



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Calling Mother Water's Breast

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

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

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

Baby, sleep well!

Thai Folk Lullabye

ACRONYMS

CIRUM: Culture Identity and Resource use and Management

CPC: Community People's Committee

DPC: District's People Committee

FMB: Forest Management Board

IPADE: Fundacion para el desarrollo

NRM: Natural Resource Management

NTFP: Non Timber Forest Products

SFE: State Forest Enterprise

SFM: Sustainable Forest Managment

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1. INTRODUCTION

Vietnam is gifted with a tremendous amount of mountains, rivers, forests and a biodiversity with species that cannot be found anywhere else in the world. Forests are mainly located in mountainous areas where most of the 25 million ethnic minority people live. Over centuries these ethnic minority groups have lived in close intimacy with forests and have always been highly dependent on forests for their livelihood. This intimacy inevitably shaped value-and belief systems, traditions and institutions which are not sufficiently understood and taken into account in interventions that aim to support these groups. Government policies and plans have often been formulated and implemented in a top down manner, usually failing to capture local dynamics and needs and they have at times even been conflicting with local values and customary laws. The consequence is that ethnic minorities' right for self determination and cultural rights have long been undermined and tended to make them outsiders of their own development. At the same time the many government interventions have not been able to reach their envisaged development results among minorities. It is widely acknowledged that ethnic minorities are the most disadvantaged groups in the Vietnamese society accounting for the lowest level of education, high levels of poverty and poor living standards and that these figures are on the increase (Baulch et al., 2002, Writenet 2006, Kimai & Garia 2007, Dang 2010). Moreover environmental degradation, forest depletion and conflicts over natural resources are recurrent problems especially in areas where ethnic minorities reside.

There is an emerging notion in Vietnam that local traditions like customary law might be essential for sound development among ethnic minorities. These are however mere presumptions because well grounded studies to prove their importance are rare in Vietnam. At the same time Vietnam is developing at a rapid pace and local customary laws are gradually getting lost. We therefore believe it is time to take a closer look at these traditions and therefore CIRUM and IPADE conducted this research on customary law in two communes in Vietnam. First is the Muong Phang Thai commune in the Dien Bien province and second is the Dzao commune Ta Phin in Lao Cai province.

1.1 Research Goals and Objectives

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

1. To define Customary Law from the perspective of different groups including ethnic minorities, authorities, experts
2. To identify customary law and practices on forest and water resources management & use in order to assess their sustainability in environmental, socio-economic and cultural terms.
3. Understand possible conflicts between customary law and state law policies and programs
4. To get an overview of social, economic and environmental effects of recent developments. To identify people's coping strategies with adverse effects and in what ways do coping strategies relate to customary law?
5. To provide recommendations that will create free space for dialogue between community members, policy makers, donors and other key development stakeholders to facilitate the coherence between customary law and policies / projects/ programs.

1.2 Research Questions

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

Main Question

How does Customary Law relate to sustainable use of forests and water resources and how can customary Law strengthen State Law?

Sub-Questions

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

Study-Questions

1. What is Customary Law and Customary Law in forest and water resources management & use?

- 1.1 How do different actors (local people, authorities and experts) define customary law?
- 1.2 Which values and functions do Dzao and Thai attach to Customary Law, how do they view Customary Law in relation to development?
- 1.3 What is the difference between Customary Law and cultural practices and habits?
- 1.4 What are the traditional structures and institutions to enforce and maintain the Customary Law?

2. Which aspects of Customary Law lead to sustainable national resources use and management?

- 2.1 What is Sustainable forest and water resources use and management?
- 2.2 What are Dzao and Thai people's daily practices on forest and water resources use and management?
- 2.3 What are these daily practices based on? Are they based on customary law and indigenous knowledge or on official policies? How did people learn these practices?

- 2.4 What kind of ceremonies and traditional institutions still play an important role in the community?
- 2.5 What is the significance of these daily practices, ceremonies and institutions to the people?
- 2.6 Do these daily practices and ceremonies promote sustainability? How?

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

- 3.1 What is the current situation with regard to water and forest resources and management?
- 3.2 Is this management and use based on customary or state law?
- 3.3 How is the socio-economic situation?
- 3.4 How do policies affect the socio-economic and environmental context?
- 3.5 How do people explain these problems?

4. How did State law affect Customary Law and its functions in forest and water use and management?

- 4.1 What are the underlying values and principles to state law and customary law in forest and water use and management?
- 4.2 What are similarities and what are differences in the values and principles of state and customary law?
- 4.3 (How) Does state law take into account customary law? How do customary and state law co-exist next to each other?
- 4.4 How are local authority's attitudes towards customary law? How do local people feel about authorities attitudes towards customary law?
- 4.5 Are people aware of policies on forest and water resources use and management and agree upon these?
- 4.6 How does state policy affect customary law? What social, economic, cultural and institutional obstacles do people face in adhering to state policies?
- 4.6 How did customary law and related practices change over time? Do people face difficulties in maintaining these practices?

2. METHODOLOGY

This research has been carried out between July and December 2010 by a research team consisting of members with different backgrounds like researchers, local Thai and Dzaio elders, experts on customary law and forestry. The research team conducted this research through a combination of methodologies like desk study, literature review, observations and the collecting information from (key) informants through interviews and group discussions. During the process the research outline, questionnaires and field findings have been intensively discussed among the team members during various meetings. First step of the research team was to visit Lao Cai and Dien Bien provinces in two groups in order to select communes that were suitable for the purpose of this research. Based on a set of criteria the research members assessed the eligibility of two communes and decided that Muong Phang and Ta Phin are suitable for this research: a) People in these communes still strongly hold on to their traditional cultures, habits and customary law in general as in natural resource governance; b) commune has a rich amount of water and forest (land) that are important in peoples (daily) lives; c) Primary forest is still existing and seems to be well managed by the communes; d) in the commune there is visibly a mix of customary law and state law because this combination will how customary law and state initiatives exist next to each other. This

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

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

It can not go without mentioning the several shortcomings to this research, mainly caused by limited amount of time and resources to conduct the study. We could only study two communities and two ethnicity groups and we realise this is inadequate to generalise our conclusions over other ethnic groups in other localities. Also the qualitative nature of the study and the relatively short amount of time spend in the villages allows us only to present a general picture of customary law, rather than allowing us an in depth analysis. Therefore this study should be seen as a first step to touch upon the link between customary law and natural resources management and to identify questions that we need to explore further.

The report is structured as follows. In the coming chapter (3) we are giving the conceptual framework of how customary law is defined in this study. This framework have been reviewed in the course of the study through talks and an understanding revealed by different informants and is therewith answering the first research question 1 '*What is Customary Law in Forest & Water Resources Management and use?*'. This chapter is at the same time the conceptual frame for criteria used to analyse customary law and its relation to sustainable natural resources use and management. In the Chapters 4 and 5 the cases Muong Phang and Ta Phin are described, which is followed by an analysis in Chapter 6. In this chapter the two cases are analysed and the sub-questions (under main questions 2, 3 and 4) are addressed through putting the cases in the conceptual framework. Finally in Chapter 7 the final conclusions on the main questions are given which is followed by our recommendations.

3. CONCEPTUAL UNDERSTANDING OF CUSTOMARY LAW & SUSTAINABILITY

3.1 Defining Customary Law

The general philosophical basis of the concept ‘*Custom*’ is that it refers to a set of established patterns of interactive behaviour among humans, which can be objectively verified in a particular social setting, because these behaviours are adopted everyday routines (Ørebech 2005). ‘*Law*’ refers to principles, rules, rights and obligations that govern social interactions and processes. Looking far back in the history law has always existed in societies and got more sophisticated as a society increased in complexity. The history also shows that law can come into being through different dynamics and can be maintained through various institutions and mechanisms. Law can for instance be defined and enforced by a powerful coercive authority like a king or an oppressive regime or it can develop from the bottom up and be maintained through acknowledged institutions. In most current modern societies, formal laws are based on universal principles that are inherent to human nature and they are enforced by an accepted authority like the state. Based on this understanding of ‘*custom*’ and ‘*law*’ a relevant question in the context of this study is ‘*when does custom become customary law*?’ Because there is not a fixed set of criteria that is widely agreed upon, we need to define for this study where we set the borders between custom and customary and we need to define the criteria when customs attain the status of customary law.

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

But what are the mechanisms in customary law that makes people avoiding overuse and reaching a balance between human and nature. According to Thomas Reid the philosophical basis of the concept custom is that it is an interactive behaviour pattern among humans and that customary law is ‘*grounded in the operations of the mind that lead people to conceptualise legal rule as normative propositions that are binding and mandatory since they*

are supported by sanctions' (Ørebech 2005: p17). People take for granted that the law 'must be'. Pivotal to customary law is that people subject to it recognize the benefits and necessity of the law to survive and to maintain social order. Hence they recognize, accept and adhere to its provisions, due to which the law's enforcement requires relatively less force and coercion. This description given by Reid is similar to the understanding revealed by the village elders and respondents in Muong Phang. Here in the early days the Thai customary law itself was not considered as customary law but rather interpreted as good practices and behaviors. People complied with expected rules and norms in specific and separate practices like the custom on marriage, custom to build the Thai house, custom to conduct a funeral and so on. Over many years these norms and practices became more detailed, systematic and scaled up into '12 Hits' which refers to the Thai customary law that covers all aspects of daily life. Village elders in Muong Phang consider that the Law of Thai people is in the first place a set of lessons that are orally passed from generation to generation about good practices and how to avoid bad habits. These Hits are not forced upon people but are voluntarily applied. These 'Hits' are the original faith of people regardless of age and gender and they reveal conventions and function as a source of ethical advice to guide individual behavior and public opinion. As defined by community elders;

Law is the practice procedures made by the community. No one does force anyone and it is voluntarily. Descendants themselves learn pro-actively and eagerly, they do not wait for the information to come to them (Village Elder (86 years) Muong Phang)

Hit is the root of belief, behavior, attitude which drives the people from generations to generations. Though, there is no official compulsory to force people to follow but it is their belief which convinces the people to apply (Village Prayer (78 years) Muong Phang).

Also in Ta Phin the general interpretation of customary law is that it refers to a set of rules that drives individual behaviour and creates social criteria to judge human behaviour. In Ta Phin customary law seen as guidelines for people to do good, to love and to respect each other and the nature which gives them their lives. Here the aspect of customary law that was mostly stressed is that it provides teachings, ethical advice and guidance for individual behaviour. Like in Muong Phang, also in Ta Phin peoples beliefs that underlie to customary law have a strong power and therefore people adhere to the rules naturally. One of the worst punishments for those who break customary law is their exclusion from the community and community life and this is considered much worse than financial punishment or imprisonment. However it is not only beliefs that make people adhering to customary law but they can also be enforced through institutions and mechanisms like local leaders and social taboo's. Nevertheless, to be viable customary law and the related mechanisms and institutions must be dynamic and adjustable in nature. Societies and their environment are continuously due to change, which requires people to adjust their organisations and customs to meet the conditions of new situations. However, adjustments in customs stemming from gradual societal change are different in nature than custom changes that occur due to governmental practices. Therefore these two things should not be confused. This is important notice considering the various programs and reforms introduced by the government in the last decades and which have different underlying values than customary law¹.

¹ These reforms accommodated the expansion individual land tenure rights and their duration. An underlying principle and assumption is that individual autonomy should be increased as to encourage them to use land as an

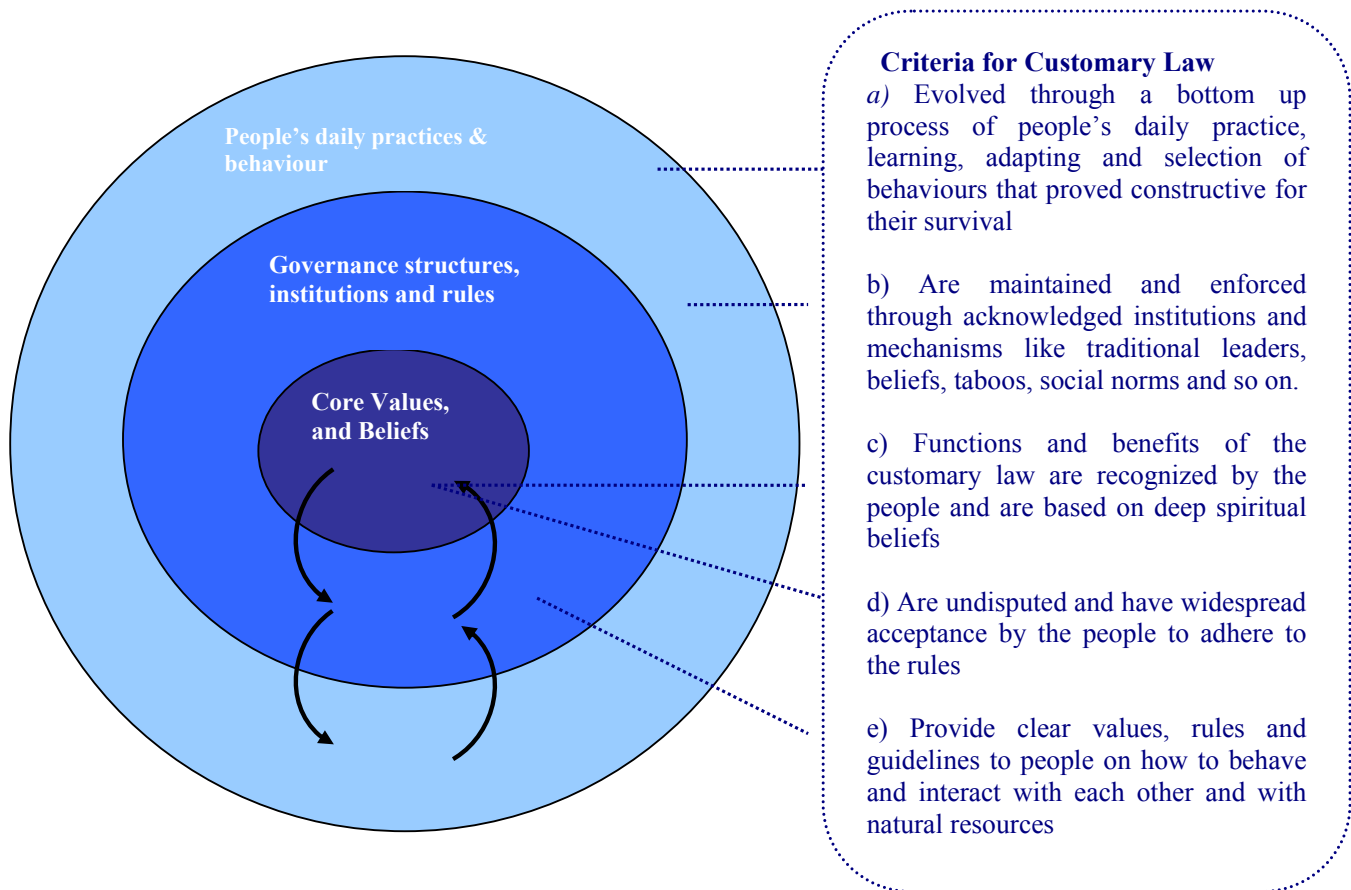
A point of dispute among academics and development practitioners is whether a custom must also be recognized by courts in order to gain the status of 'customary law'. With 'recognition' they refer to customary law is integrated, used and interpreted by formal courts and the reason they advocate for formal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

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

3.2 Building Blocks of Customary Law in Natural Resources

Based on what is set out before the next illustration and criteria can be used as a base to understand and analyse customary law. At the core of Customary Law lie beliefs and values which are the foundation of the rules and regulations are based. These rules are maintained and enforced through institutions and mechanisms and this all together translate into people's daily behaviour. The criteria are given to define the borders between a cultural custom and customary law though we realise that this set of criteria can be disputed as there is no widespread accepted definition and criteria to outline the borders of customary law.

instrument to create economic benefits. This is very different than EM people's approach who have an intrinsic ecological value that goes beyond economic value



Initiated by TEW

3.2.1 Core Values & Beliefs

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

3.2.2 Governance Structures, Institutions and Rules

An important foundation of human management of natural resources like land, water and forests is the subject of *ownership*. Ownership deals with the social relations and institutions that govern the access to, use and owning of land and natural resources. In more traditional societies, land ownership is closely linked with institutions of marriage, inheritance and traditional structures and existing customary rules and regulations define the rights for distribution, ownership, use and benefit sharing (Xuan Thin 2001). The matter of ownership entails various dimensions like the question who decides on the distribution of natural resources, through what process and who are distributed the resources, what are the rights and

responsibilities of owners over these resources and the gender issues. Other important subject to natural resources is its use, control and management with the central question who have the mandate to control and manage and what are their roles and responsibilities? Agrawal & Ribot (cited in Xuan Thin 2001: p264) divide powers relevant in the context of land tenure into four:

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

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

3.2.3 Daily behaviours and Practices

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

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

3.3 Sustainable Natural Resources Use & Management

3.3.1 Defining Sustainability in Natural Resources Use and Management

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

The earliest modern definition of the principle of sustainability in forestry was given by Hartig (1804) stating *‘utilize them (the forests) to the greatest possible extent but still in a way that future generations will have at least as much benefit as the living generation*. The UN commission Brundtland, defines sustainable development as *‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’*. Since this formulation is confirmed during the 1992 Rio Declaration, it has become a mainstream and accepted definition, especially in the area of natural resources. However the broadness of the definition also allows for multiple interpretations and creates the need to specify sustainability for every theme, level and context it is applied to. Accordingly we also

need to establish a more practical definition of sustainability that allows us a useful operationalisation and use of the concept. Relevant in the context of this study is to define and set criteria for what we consider as *sustainable forest use and management*. A recent definition of sustainable forest management is developed by the Ministerial Conference on the Protection of Forests in Europe and adopted by FAO, which is as follows;

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

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

Each eco-system has its own *structure* (the species composition, dispersion pattern and organisation of plant and animal species into higher ordered levels, such as trophic levels, food webs or guilds). The ecosystem structure comprises the species composition, dispersion pattern and organization of plant and animal species into higher ordered levels, such as trophic levels, food webs or guilds. The ecosystem *function* is the set of processes that results from interactions among biotic and a-biotic components of the ecosystem. Prabhu, Colfer and Dudley 1999 define four classes of important processes: 1) Processes that affect the rate and total quantity of energy flow (biomass); 2) Processes that affect the rate and total quantity of nutrient cycling; 3) Processes that influence ecosystem services important to human beings; and 4) Processes that affect the life and diversity of living organisms over both short and long time periods. Lastly, the ecosystem resilience is a measure of the ability of the system to absorb changes of state variables and parameters, and persist or rebound within a given amount of time.

Socio-Economic Conditions for Sustainable NRM

The second set of factors concern the social conditions. When seeking the sustainable management and use of the resources, the final objective is to maintain, from the social point of view, the well-being of the people. In terms of sustainability for NRM, socio-economic component comprises the *security and sufficient access to resources, the economic*

opportunity, the right to conserve heritate and identity, a certain level of justice in the distribution, the safety and health conditions (CIFOR 1999).

NTFPs and Sustainable Use

In this study the focus is on forest and water resources. Within water resources the specific attention goes out to NTFP's (herbal plants, not animals) and Timber. NTFP refers to the natural resources collected from the forest apart from timber or industrial wood and that are used at household level for domestic, social, cultural or economic reasons. Access to NTFP is a way to rural households to diversify their livelihoods and can have significant social, cultural or spiritual value. However the (economic) value or functions of NTFPs is rarely taken into account in assessing gross domestic product. The need to recognize the values of NTFP for households and communes is necessary for two reasons. First reason is, as stated earlier, that they have important socio-economic and cultural functions. At the same time these functions increase people's relation to the forest and feed values to interact positively with forests and its resources. Several researches show that management of tropical forest for timber alone yields lower financial returns whereas other authors show that integrating the production of timber and non timber forest products increases the financial benefits (CBD & UNEP 2001).

One advocate to show that NTFP use is a good way to ensure sustainability are Nepstad and Schwartzman² & Kiernan³. At the same time history shows that traditional harvesting systems can not ensure sustainable production if the product is included in a growing global market. However there is no blueprint for using NTFP in a sustainable way as sustainable uses are tailored to local ecological cultural and political circumstances (CBD & UNEP 2001:p28), and therefore it is asserted that policy development is enriched through 'scaling up' experiences and knowlegde from the field level to policy levels. At the same time there is need for research that will result in the development of technical approaches for the sustainable management of NTFPs. One of the first attempts to set out criteria was done by Peters (1996)⁴ who describes the steps for sustainable management of NTFP's. Also useful are the preliminary results of a multi-case comparative study by CIFOR covering more than 60 cases in several countries and NTFP's. This study show that it is possible to predict when and under which ecological and social conditions a given NTFP can be effectively and sustainably managed. Based on what is outlined above the following environmental, social and institutional criteria are identified for sustainable NRM. Our analysis of the data collected from the field will be based on these critieria of assessment.

² Nepstad and Schwartzman (1992), Non Timber products from tropical forests: Evaluation of a conservation and development strategy, New York Botanical Garden

³ Kiernan, M.; Perl, M.; Mccaffrey, D.; Buschbacher, R.; Batmanian, G. 1992. La ordenación de los bosques naturales en América Latina: enseñanzas y ejemplos. Unasylva 43(169):16-23.

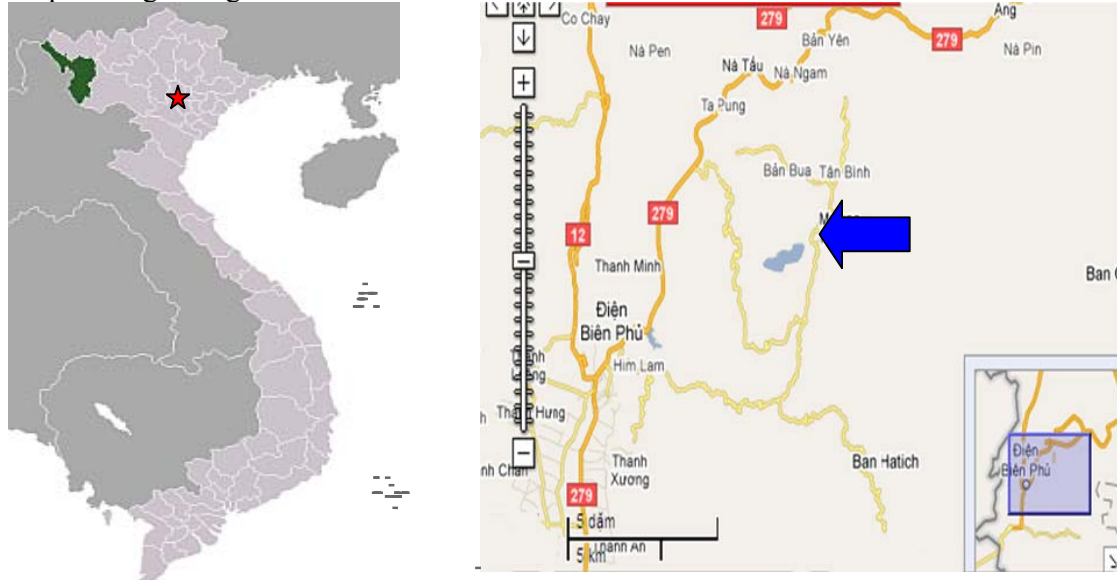
⁴ Peters, C.M. (1996). *The ecology and management of non-timber forest resources*. World Bank Technical Paper No. 322, World Bank, Washington, D.C., USA.

Criteria & Conditions for SUSTAINABLE NRM	
Customary Law	<ul style="list-style-type: none"> a) Evolved through a bottom up process of daily practice, learning, selecting and adapting behaviours that prove constructive to survive b) Functions and benefits of the customary law are recognized by the people c) Are undisputed and have widespread acceptance by the people to adhere to the rules d) Provide clear values, rules and guidelines to people on how to behave and interact with each other and with natural resources e) Are maintained and enforced through acknowledged institutions & mechanisms like traditional leaders, beliefs, taboos, norms etc.
Environmental	<p>Ecological system and its functions well maintained (forest, land, soil, biodiversity etc.)</p> <ul style="list-style-type: none"> - No over-exploitation of land, forest and water resources; these are available (in the seasons they are supposed to be available) - Amounts of timber & NTFP's collected do not have adverse effects on each others quantity and quality - No pollution of land, forest and water resources - No adverse social and environmental health impacts by human interventions - Lodging and benefit sharing systems allow for regeneration of timber and NTFP's
Socio-Economic	<ul style="list-style-type: none"> - People who use the forest have positive values and commitment towards its conservation and development - Boundaries of distribution and use are clear and widely agreed upon - Not only timber but also NTFP benefits are generated through the forest, and they are important part of livelihood - Multifunctional uses promoted - Users of the forest have the capacity to protect resources from outsiders - Conflict Resolution: people have means for setting disputes both internally and externally to the group - Information on the quality of the resource is available to the group - Incentives / Benefits of the resource to the people are positive and might include cultural as intangible benefits - Incentives might also be negative in the form of sanctions
Institutional	<p>Regulations & Rules</p> <ul style="list-style-type: none"> - There are clear (customary law based) rules and criteria to collect and manage NTFPs - Rules and regulations have guidelines to promote biodiversity and protect the eco system <p>Management (Structures to manage and enforce rules)</p> <p>People affected by a resource have a say in all decisions on how the resource is managed and benefits are distributed</p> <ul style="list-style-type: none"> - Group size and organisation: groups are sufficiently small to enable regular contact and communication <p>Indigenous Knowledge & Inputs</p> <ul style="list-style-type: none"> - There is indigenous knowledge (or information) on sustainable ntfp's techniques, relating to: <ul style="list-style-type: none"> * <i>Location and extension of areas where the species are productive</i> * <i>the quantity of harvestable product in each area (and how harvesting rights are distributed among the villagers)</i> * <i>harvesting cycles and the project quantity of harvestable product; and,</i> * <i>possible technical interventions to grow or regenerate the NTFP if necessary</i> * knowing light, water, phenology, optimal harvesting regime to obtain a good product without reducing population productive capability - People have adequate inputs necessary for sustainable management like labour, information and support

4. CUSTOMARY LAW IN MUONG PHANG

4.1 INTRODUCTION TO MUONG PHANG COMMUNE

Map Muong Phang



Muong Phang commune is located in the outskirts of Dien Bien district, 25km away from Dien Bien Phu. This is a highly mountainous area with The North - Armor Muong Ang, The South - Shield of Dien Bien Phu City, East - Armor Dien Bien Dong district, The West - Jia Na Tau commune, Na Swallow. Located at an altitude of 600 - 1200 meters above sea level, Muong Phang has a tropical monsoon climate with two distinct seasons; the rainy season from May to October and the dry season from November to April. The average annual rainfall from varies from 1500 to 2100 mm and average temperature 21.5-22.5 oC. The dry season in Muong Phang influenced by the southwest wind blowing from Laos with temperatures which can rise as high as over the 42oC. With seven streams and nine reservoirs accommodating 40 million cubic meters, Muong Phang can be classified as a water rich area. The biggest water reservoir Pa Khoang accommodates 40 million m3 reserves and provides water to the 1200ha Muong Thanh rice fields that produces for national and international markets. Therefore Pa Khoang and its surrounding forest are of great significance to the district's economy.

With main soil groups being alluvium, black and red soil, Muong Phang is a suitable area to grow (industrial) crops and short term plants. The area is also suitable for livestock hence raising cattle like pigs and buffalo are common⁵. In recent years livestock has been hit by a number of diseases resulting in the decline of especially chickens and ducks. Thai people here have long developed and used irrigation systems like canals, fade dams to hold water and the use of a wheel to transfer spring water to higher level fields. This enabled them to grow rice which is currently the main crop in Muong Phang, though other crops like maize, bamboo, cassava, soybean and peanuts are grown as well to prevent food shortages. Many households also have their own fishpond. However, despite the diversity in crops, from the average amount of land area used for agricultural production (0,1 ha per person) we can

⁵ See Table 1 in Annexes for the cattle breeding structure in Muong Phang

estimate than an average households faces 1 to 2 months shortage of food per year. In 2010 Muong Phang was listed on the list of poor communes of Dien Bien Province and a survey in August 2010 identified that 21.1% of households in the commune is living under the poverty line. Therefore the commune benefits from the program 135/134 and has seen support from the state over the years who built power lines, roads, water supply systems, schools and a health station. Though, infrastructural development in the commune is still poor. Only around 15% of the population has access to electricity and roads in the commune have low quality and are mostly dirt roads that are difficult to pass or non usable in the rainy season. Water flowing in the streams is nowadays polluted and less in quantity and people dug wells to get water for everyday use. The gravity water supply system introduced by the government reaches 36% of the population. There is one commune health station with two physicians, four mid level nurses, an assistant pharmacist and 47 nurses trained in primary health care. There are four primary and 1 secondary schools educating 1868 students. In the town centre there is a post office and a social market. Muong Phang is classified as a poor area and has therefore been receiving support from government's poverty reduction programs ⁶ for infrastructural development like road building and the construction of water systems. Also tourism is starting to emerge as Muong Phang could be considered as an attractive destination to those who are interested in the history of our country. As stated before, in 1954 Muong Phang was the headquarters of the Dien Bien Phu campaign of General Giap and Major General Hoang Van Thai who delivered a successful battle against the French. Symbolizing the nation's victory over the French, this headquarters has recently been upgraded causing an influx of tourist and creating new openings for economic activity.

Since recent the influx of tourist is creating openings for economic activity like the selling of herbal (medicinal) products to tourists. These poverty reduction programs and tourism have positive effect on the local economy and access of people to services like domestic water, irrigation, health care and transportation. People point out that their lives have improved compared to older generations and their income has accumulated which enables them to purchase equipment and facilities like motorcycles and tv's. There is a growing local economy and some families formed a number of small businesses in social services like restaurants, milling machines, groceries and repairing garages. The other side of the coin is that the new developments put a higher pressure on local resources, the environment and existing traditions. (In later sections this will be elaborated upon in more detail). One unequivocal example is that since 2008 Muong Phang has been site to exploiting sand from crevices and streams to meet increasing demand in Dien Bien. There are around 22 sand exploitation stations in the whole commune that operate without official license from the Department of Natural Resources and Environment and they are pointed out to be one of the reasons of to soil erosion, recent floods and the loss of aquatic biodiversity.

4.2 CUSTOMARY LAW & NATURAL RESOURCES IN MUONG PHANG

With an amount over the 1.2 million, Thai people make up about 1.4% of the population of Vietnam and they live mainly in mountainous districts in the northwest such as Son La, Dien Bien, Hoa Binh and Thanh Hoa and Nghe An. Muong Phang commune has 47 villages and 1754 households with 8319 inhabitants and 95% of the population are ethnic minority groups. In 36 villages, around 70% of the population is Thai and in another 11 villages 70% consist

⁶ In 2010 there were 65 reported households receiving support from the household assistance program 167/CP, 32 households receive support to develop fish farming from program 134 and 57 households are supported in chicken raising gardens and another 150 households in growing fruits.

of Kho Mu minority who share the same language with the Thai people. The remaining populations belong to Hmong and Kinh ethnicity. Thai people in Muong Phang have, like some other ethnic minorities in mountainous North West, a long history of customs and culture which they strongly maintain up to date. Thai women and men can be recognized through their traditional costumes⁷ and they have a distinctive writing system and through the history the Thai people in Vietnam also developed their own characters and characteristic. After years of oblivion the Thais still use their own language and have for instance the Thai radio system Voice of Vietnam. However the Thai language has also been transcribed by many scripts. Thai people love to sing and dance songs and dances that specifically belong to the Thai community today. Thai people have rich cultural lives full of traditions, rituals, festivals and ceremonies which are still vivid and play a vital role in community. Discussions with elders in Muong Phang gave insights on Thai beliefs and values that underlie to their customary law and these are outlined next.



4.2.1 Core Beliefs and Values

The life of Thai people in Muong Phang is characterized by distinctive rules and customs that determine the way they organize their interactions and keep peace and harmony. These rules and customs are congregated in a set of ‘12 ‘Hits’ that guide the relations between different actors like village leaders, elders, community members and parents and children. Besides the hits there are traditional teachings to ensure the transfer of lessons and knowledge on customary law. These customs have evolved and developed into laws since ancient times and Thai people maintained and transferred these both orally and through their writings (Law in Vietnam to the Thai-Cam Ngo Duc Thinh and Trong-Ethnic Culture Publishing House, 2003). In these ‘12hits’ behaviours are the core concept around which rules for interaction are formulated. Each Hit is a thematic category that describes the rules for behaviours, rituals and ceremonies (*‘Le Hoi’*) for that specific category of social interactions like marriage, heritage, building and organising a house and household etc. In this section we will first look in to the core beliefs and regulations that constitute the customary law and after that we will describe how the beliefs and rules (inner two circles) are translated in daily behaviors (outer circle).

⁷ Including a short tight blouse with different colors and sewn silver buttons, a black or indigo dress of brocade fabric, a green silk tied around the waist and a silver side bar. The head scarf Thai women wear is also particular with its so called ‘Pieu pattern’ embroidered with bright colors. Married Thai women often married tie their hair up on top of their heads. Thai men wear black pants that are striped and a black head scarf.

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

One of the most significant ceremonies that reflect people's beliefs is the Sen Ban ceremony. Sen Ban ceremony is yearly organized by village elders for the whole village short after Tet to celebrate the living in peace, happiness and in harmony with the nature. In this ceremony the holy Sen Ban tree plays a crucial role. The Sen Ban tree is one of the oldest and biggest trees in the forest and it symbolizes longevity, protection continuation and the foundation on which the village relies. As this tree is considered as holy, people classify the forest area surrounding it as the 'Sacred Forest' as long as this tree is alive. When the tree dies, village elders and spiritual leaders in the village select a new tree and they ask permission from the Mother Forest Spirit through various rituals and initiation rites. It is believed that after these rites the Sen Ban tree becomes the house of the Mother Spirit of the Forest. The Ta Leo sign which is a round pattern made from bamboo⁸ is placed in front of the Sen Ban tree that is believed to keep bad spirits from entering the tree. Although very simple, the Ta Leo sign is recognized by villagers and people in surrounding areas and is a very powerful mechanism that makes people to protect the land and trees on which the Sen Ban tree is located. They all know that making the Mother Spirit of the Forest angry might bring harm to the village, community or their family. Besides Sen Ban there is a set of rituals related to birth in which the interaction and connection with the three Mother Spirits are the core elements. These rituals and ceremonies are crucial moments where people remember ancestors, worship the three Mother Spirits and connect to them. These are at the same time seen as occasions where the life teachings and traditions of Thai are transferred to younger generations. Despite slight differences in details, the essence and perceptions on the Sen Ban tree and the Sen Ban ceremony an birth rituals show many similarities among the villages studied. Long talks with village elders and villagers give us the following impression of the Sen Ban ceremony and birth rituals which are still widely applied:

⁸ There are several Ta Leo signs with different patterns that are used in different occasions

Sen Ban Ceremony

Every year village elders in Phang village gather to select the lucky day short after Tet, called Mu Hai, on which the Sen Ban ceremony should take place. After setting the date, the elders inform the villagers about this and start with making arrangements for the ceremony. They firstly need to point out one household that will be responsible for the offerings to the holy Sen Ban Tree. This is a responsible task and is therefore assigned to a household with a good reputation because its family members are respectable to each other and others, well educated, prosperous and who serve as a good example to all villagers. This households must prepare the Sen Ban offerings very carefully and exactly according to customs because each item and amount has an underlying meaning. The offerings are comprised of: one pig, two chicken, four bamboo baskets for the sticky rice, four bowls of soup and one bowl of fresh blood, one pack of salt, four bottles of wine and eight cups, one cup of water two bulks of scented sticks, two candles, eight spoons and eight chopsticks, one handmade umbrella, four traditionally embroidered clothes, one silver ring and one rattan carpet.

During the first day of Sen Ban, village elders, spiritual leaders and male representatives from some households go to the holy Sen Ban tree to construct the altar. This altar leans against the tree and consists of four poles covered with leaves from the tree representing the protective function of the Sen Ban to the community. After prayings to the three Mother Spirits of Forest, Land and Water the offerings are made to each spirit through different rituals. During these rituals it is absolutely prohibited for other villagers to enter the Sacred Forest because that will reduce the spiritual power of the ceremony and bring bad luck to the whole village. People are also not allowed to pass near the sacred forest while carrying things; because this suggest labour and during Sen Ban the Mother Spirits want people to pay all attention and dedication to the ceremony.

During several days right after the Sen Ban people are not allowed to enter the forest After the praying and offerings all leave to the household that prepared the offerings and the elders discuss and evaluate during this occasion last year's happenings.

The second day of the Sen Ban is celebrated by all villagers who gather around the holy Sen Ban tree to play games and perform traditional dancing and singings. Every household brings an equal contribution to the celebration including rice, wine and other food but poor households can recede from contributing and wealthier households can contribute more if they desire. During the second day there is also attention to young children and to educate them on the customary law, how to live in harmony and piece with each other, with nature and spirits. Specific messages in these teachings include pointing out the importance of saving resources like trees, medicinal plants and water sources.

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

Birth Rituals

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

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

Ta Leo Sign on the Sen Ban Tree



Com Lam Bamboo on tree



4.2.2 Rules & Regulations and Role of traditional institutions

In the customary law of Thai people in Muong Phang it is necessary to have a village leader to guide villagers (Tăng Bản provision) and village elders. As previous sections already gave

the impression, traditionally village elders play an important role in the Sen Ban and in passing knowledge on customary law and traditional teachings to younger generations. Though, the role of elders in the community reaches further. According to residents village elders are the most loyal and trusted persons in the commune with the most trustworthy children. When an elder reaches a certain age and a level of maturity and all villagers give approval, the person becomes village elder after initiation rites (*Pue Su Ritual*). Village elders can both be males and females and in general they are the traditional institution that advice people on customs and good behavior. Whenever people need advice regarding their personal life, for instance family matters like marriage, interaction between parents and children, or on public affairs they consult a village elder. In Muong Phang this function of the village elders is still existing and accepted by all generations, including the young. Village elders also play a role in mediating conflicts within the commune, including disputes over natural resources. Also water conflicts are common in the dry season when water becomes scarce. Therefore households have to discuss how to distribute water equally to rice fields and in case conflicts occur that they are not able to resolve among themselves, they come to the village elders. The village elder acts as a mediator trying to show different parties each others perspectives and explaining different points of views and tries to reduce the extent of conflict as much as possible. Only when people from outside the village are involved, for instance when they enter the forest, government must intervene to solve conflicts. Then the role of village elder is only for the emotional processing.

Muong Phang has a large amount of forest land covering almost sixty percent of the total natural land area. The customary law to manage and protect these resources is concentrated in the Hits 2 and 3 which include rules and guidelines for owning and using forests and to interact with these resources. Hits 2 and 3 also provide guidelines to organize rituals and ceremonies like the Sen Ban and birth rituals. According to these hits land and forests are owned by all people and under supervision of the 'Chau Muong' (the commune leader) who has a moral responsibility to ensure healthy use natural resources. Village elders play an important role in passing knowledge on customary rules onto younger generations through their teachings in traditional ceremonies and festivals. In the past land boundaries and fields used to be informally agreed upon and if necessary changed on a yearly basis among neighboring households who would inform each other and mark the boundaries by natural plants, slots, streams, mountains, rocks or trees with accompanying spiritual rituals and ceremonies. In terms of forest land the Thai in Muong Phang distinguish between three kinds of forests 1 the sacred Forest (Đông Sến) which can range from 0.2 to 2ha including the grave forest (Đông Pa Heo)⁹; 2) the watershed forest (Đông Khuong) where the head of the stream lies and where the Mother Spirits of Lan and Water live and; 3) and the Use Forest. These forests and its products are considered to be under common ownership and hence everyone has the right to access and use these resources freely. Though when benefiting from the forest villagers take into account customary rules that are accepted by all and if disagreements and conflicts emerge, these are settled through village elders whose authority are widely accepted. Another specific restriction is that prohibition of mining is in the customary law and if someone is caught the benefits of the mining is divided among all villagers. The sacred Forest and the Watershed forest have high spiritual significance because there the Mother Spirits live and different ceremonies and rituals take place to ask blessings and protection from

⁹ When people pass away, people in Muong Phang bury the body in the grave forest, after permission is asked from the Forest Spirit. Then people pray to the Spirit to accept and protect the soul of the person.

them. Consequently these forests are strictly protected by the people. In daily life particularly the Use Forest is important to collect NTFPs or timber.

People's Daily
Practice & Behaviour

4.2.3 Customs related to Daily Uses and Benefiting from the forest

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

Forest is vital to our life. Therefore it is necessary to protect forests, it means protecting our lives
(Male, 42 years old)

Logging Timber: In all villages the houses are still built in the traditional way with main source being timber (apart from some exceptions). The custom in Muong Phang requires people to ask for permission from village elders and villagers before collecting timber to build their traditional Thai houses or other household needs. Nowadays this process has been integrated into the formal forest law. This process includes first the organization of a meeting by the village leader to ask permission from all villagers.

Only if everyone agrees on the household's request to collect wood, the household can go into the forest for logging. Rule according to customs is that people shall get just as much wood as they need for their house and not for commercial exploitation. Before cutting down a tree the villagers explain the spirit of the tree and the Mother Spirit of the Forest what the purpose is of cutting down and they ask for their permission through specific rituals. This explanation and the rituals are considered as very important because with the wood they are bringing the spirit of the tree into their house and hence the blessings of both spirits are crucial for the happiness and luck of the family that is to live in the house. Another rule is that people do not cut down young trees and are cut down without damaging other surrounding trees.

NTFP collection: NTFP's play an important role in people's daily lives and main NTFP's collected are bamboo and firewood for household use. Bamboo is used for baskets, chairs, kitchen tools, fishing bowls. Also herbal plants are used for health care, drinking or to make the traditional pillows and mattresses which play an important role in marriage rituals. People collect and use three types of bamboo: for housing, for selling and for food¹⁰. Sometimes the bamboo is obtained from their own piece of forest (if they have) or from bamboo shoot growers, but a large amount is still collected from what is perceived as the community's Use Forest. Instruments used to collecting bamboo are knife and spade and women and children are the main collectors. When collecting bamboo, women choose mature plants and cut it far from the root to ensure regeneration. This is what they learnt from their grandparents and is applied by everyone. Almost without exception the respondents consider all forests in the commune as open and available for NTFP collection, (including the preservation Pa Khoang watershed forest, special protection area). People say that selling commodities as brocade, bamboo, rattan and other forest products as cement, forest vegetables and medicinal plants helps them to generate additional income.

¹⁰ Bitter bamboo shoots are harvested from May to August and young shoots are taken from February to October.

Selling NTFP's in Muong Phang



Collecting Herbal Medicinal Plants

In Muong Phang the practice of medicinal treatment dates back far in history. For the current residents as well as reflected by the statement of a female respondent that her mother used to collect herbal medicinal plants from the forest in the years 1940s. Nowadays the knowledge and practice on herbal medicinal plants is only practiced by few traditional healers (in Muong Phang it seems to be more often women rather men) because in the period between 1960 and 1990 the forest were destroyed and herbal plants had become scarce.

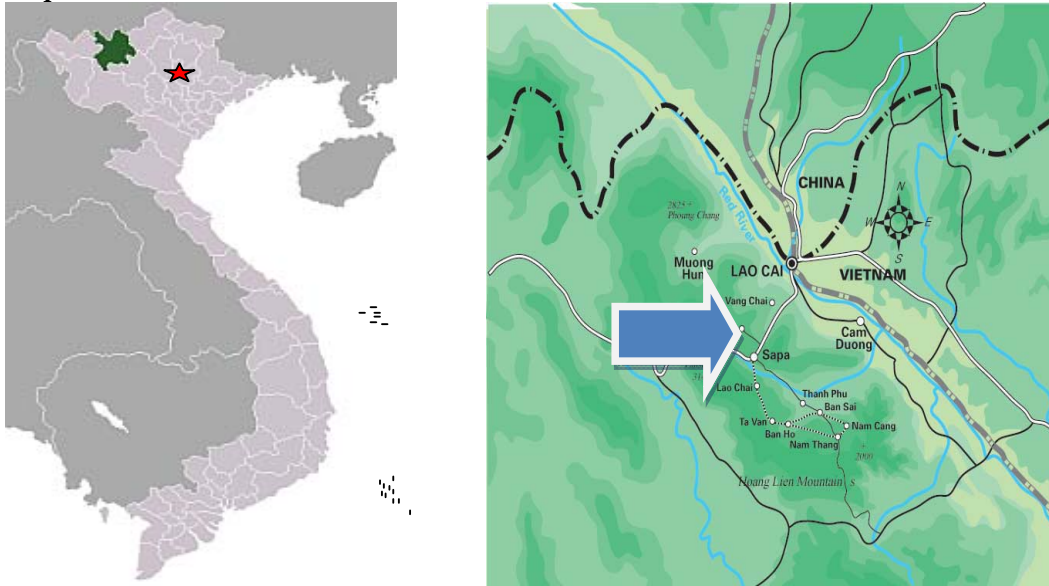
The respondent herself had entered to forest to collect herbal medicinal plants for family use only for about 5 to 7 women before the year 2000. However since the upgrading and operation of the historic forest area (General Giap's forest) and increased amount of tourists in the area, the collection of herbal plants has revived. In Table 2 in the Annexes an overview is given of the current herbal medicinal resources in Muong Phang and their functions. An estimated amount of 20-25 women collect and sell herbal medicinal plants from natural forests and sell this to tourist to generate additional income¹

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

5. CUSTOMARY LAW IN TA PHIN

5.1 INTRODUCTION TO TA PHIN COMMUNE

Map Ta Phin



Ta Phin commune is situated in the Sapa District, the North West of Lao-Cai province, at altitudes between 700 – 1600m above the sea level. The climate here is on the one hand tropical with hot summers and extremely cold and foggy winters with snow. The average temperature is 16⁰C and annual rainfall 2700mm per year. Ta Phin commune is located in a valley surrounded by high mountains and steep slopes where six villages are settled. A 200 meter long cave at the foot of limestone mountains is the commune's social centre and a major tourist attraction. In Ta Phin there are 475 households and 2766 inhabitants of which 1239 female and 1527 males. 263 households (1573 people) are recorded as belonging to the Hmong and 185 households (1106 people) Red Dzao who live in separate villages. The remaining 26 households (84 persons) are Kinh and 1 household (3 persons) have the Day ethnicity (Ta Phin annual socio-economic report 2010). Historical documents show that Dzao people in general and Red Dzao people in Ta Phin originate from China and migrated throughout the period between 13th century and the 1940s. Up to date people in Ta Phin hold strongly on to their traditional cultures which is first of all visible through their traditional clothing. Whereas Red Dzao men's traditional costume is simple, women dress more plentiful with a "Yem Shirt" skirt or pants and a red head scarf that is colourfully decorated with traditional imaginary patterns such as swastikas, tree, bird image, people, animals and leaves. These patterns are also made available on canvas painting or embroidered on the left side of a fabric.

The main soil groups in Ta Phin is the reddish coloured soils rich with humus that is found between 700-1000meters and this soil is suitable to grow rice and maize. The Alluvial soil along streams is also suitable for farming and agricultural production. Whereas above 1000 meters the light yellow and humus-rich soils allow for forest trees such as Sa Mộc (*Cunninghamia*) and Thông (*Pinus merkusii*). The two main stream systems (Sa Seng and Sa Thau) and various ponds cover 28,8ha and which provide the water for agriculture and daily

use. Water in upstream areas are suitable to be consumed in daily use whereas middle and downstream waters are mostly used for cultivation. The main source of income in Ta Phin is rice and maize production. Especially the rice terraces with their round curved edges is characterising the picturesque landscape. These rice fields are grown in the middle of a relatively dense stream system. People also grow other vegetables like pumpkin and sweet potatoes and generate additional income from animal husbandry and poultry farming. Another set of income generating activities relates to tourism like the selling of NTPFs like honey, herbal plants or handicrafts and the offering of services like herbal baths and house-stays.

The registered amount of students in primary and secondary school is 657. Official poverty rate is estimated at 152 (32%) households but the preciseness of this amount can be doubted as the findings of the research team suggest a much higher rate. Although the main income source is from rice and maize, the total agricultural land area for these crops is only 488ha (18% of the total natural area) generating a total rice yield of 3,5-4 tonnes and average household has 178m² to grow rice and other crops. Ta Phin is classified as one of the poor districts of Sapa and receives support under the government programme 134/135 and also from different Non Government Organisations.

5.2 CUSTOMARY LAW & NATURAL RESOURCES IN TA PHIN

5.2.1 Core Beliefs and Values

Red Dzao people have a culture that is rich with beliefs, customs, ceremonies and rituals and people in Ta Phin still hold on to their traditional customs and rituals around farming, birth, death, wedding, and ancestor worshipping¹¹. However in the last four decades the context of Ta Phin has greatly changed which has influenced the local culture. In this section we describe the customary law and its underlying beliefs in its original form.

One of the most sacred beliefs of the Red Dzao in Ta Phin is the worship of Ban Ho / Ban Vuong. They are according to legend the first persons who crossed from China to Ta Phin and established the community. However the worship of these ancestors is only one aspect in people's complex belief system which is based on animism. At the core of animism lies the belief that natural phenomena like trees, streams and stones are living things in which spirits and ghosts are resting, resulting in a more gentle and considerate attitude towards life. On a more aggregated level there is the Spirit of Land, Spirit of Mountains and the Spirit of Water who are protecting these natural resources. The worship in these ghosts and spirits play an important role in people's life and this is *Hierarchy of Needs* by *Abraham Maslow* (1908-1970) explained by the 'demand theory'. According to this theory humans have a fundamental need to feel sheltered, protected and to be safe and worshipping of supernatural powers fulfills people's need to feel safe. Therefore the people have different prayings and rituals for each spirit. However in the case of Ta Phin the role of spirits is not only protection

¹¹ For instance: funeral custom, Dzao people traditionally burn the dead people who are 12 years old and above. In marriage custom, Dzao men have to come to stay in his wife's house temporary or permanently. In Dzao culture, every mature man is awarded Cap sac ceremony to be recognized as a member of Dzao community. It is one of the religious rituals of Dao giao. Agricultural ceremonies are affected by Khong giao, Buddahism and Dao giao.

as spirits can also punish people for their behaviors towards each other and the nature. Hence events like natural disasters, diseases and social conflict are seen as result of people's behaviors. In this context the role of Customary Law in Ta Phin is to instruct people on good behaviors and to steer them towards loving each other and loving the nature because that is the resource of their existence. This love is shown through large amount of ceremonies with rituals music, dances and offerings. One example is the 'Sip Beo Van' in which people pray to the Rice Spirit, and bring offerings during two days in August to ask for blessings and good harvest for that year. Another function of the large amount of ceremonies, rituals and taboos is to teach people about behavioral norms, lessons and the knowledge that are hidden in the customary and to keep them alive. Therefore they rely on the support of other households. Some of these ceremonies and taboos are related to forests. It is for instance taboo that when a household organizes a ceremony for the spirits, members of the households are not allowed to kill living things, including plants and vegetables. Tet Nhay is one of the most interesting ceremonies we came across which characterizes the identity of Red Dzao in Ta Phin.

Tet Nhay

Tet nhay is annually organized annually on 1st February of the Tet Holidays (Lunar calendar) and takes place at the house of the clans head. Tet nhay ceremony is organized to thank the super-powers for protection from ocean storms according to yin-yang theory. According to legends when the Dzao ancestors were crossing the ocean from China some of their ships almost sank during a storm just before reaching mainland in Vietnam. The storm was so heavy that the ancestors had to jump and ask for help from the Mother Spirits and from their ancestors and they promised to organize Tet Nhay every year to show their gratitude and thankfulness if they arrived on mainland in safety. In Dzao life perspective people come through many difficulties and challenges in one life and rely on the protection and support of their Spirits to be save and to overcome difficulties.

During Tet Nhay different rituals and imaginative dances are performed by young boys and girls, under guidance of the leader 'Chai Peng Pi'. These young people carry out a particular dance for each spirit to invite it to the ceremony, like the open-way dance, bridge building dance and dances to invite ancestors and the the Angle Pe Ho. After these dances, there is the ritual of carrying and bating the statutes of the ancestors followed by offerings (chicken, wine and scented sticks) accompanied by different dances like the red cock, yellow cock and the flag dances. Finally there is a prayer / priest who prays for health, prosperity and good crops for all the clans.

Red Dzao people have so called 'priests' at community and village levels that play the role of mediator between common people and supernatural (there is no proper translation of this into English but this person called 'priest' and its function does not relate in any way to Christianity). There are four sorts of priests with different functions and they are considered to be very important because they have the ability to communicate with supernatural powers, like spirits and ancestors. This communication is crucial for protection of people and to control of uncertainties or risks from nature. Some priests have more power than others which depends on the amounts of 'lights' they receive during the 'Lightning ceremony' and this amount varies from 3 lights up to 7 lights (the more lights, the more powerful the priest).

Especially the first priest is important as he is the one to communicate with spirits related to nature like land, water and forests. This priest tells people which days of the year everyone is prohibited to enter the forest or to collect products like firewood or herbal plants. On these special days the nature spirits are thought to be resting. The second and third sort of priests communicate with spirits that protect the animals and people from disease and the fourth priest communicates with spirits that ensure good health and solidarity among the people.

Praying to the Forest Spirit for Curing

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

Temple for worship Mr. Sia (Land spirit)

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

5.2.2 Rules & Regulations and Role of traditional institutions

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

The Red Dzao in Ta Phin have their own writing system called the Nom Dzao language and they have a tradition of folk songs, stories, legends and custom. This has enabled the Red Dzao to pass over knowledge and to preserve their cultural identity over a long period of time. Nom Dzao is a language based on a combination of Han and Dzao writing system. Almost all household possess traditional books and stories and legends, for instance about Ban Vuong and his establishing of the commune, are widespread and known. Though

nowadays, not many people are able to read Nom Dzao anymore except for the priests. The Dzao also have a written traditional education program for children at different grades. The strongest mechanism for the customary law to be applied is people's spirituality and strong belief that behaving as expected will be rewarded and bad behaviors punished. Secondly the customary rules are traditionally maintained through widely accepted social conventions, social control and traditional institutions. Some conventions are so strong that not adhering to them could lead to exclusion from community life or even exclusion from the community. Such punishment is much more feared than formal convictions like imprisoning or monetary punishment.

Customary Law and Ownership / Allocation / Use and Management

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

People's Daily
Practice &
Behaviour

5.2.3 Customs related to Daily Uses and Benefiting from the forest

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

Logging Timber: Timber is usually collected from the area formally classified as regeneration forest, and wood is mostly used to build houses or for other house facilities. When cutting down trees people had to follow some guidelines. Firstly they must identify the area where to collect the trees and to make sure this is not on prohibited areas in the forest: the area where Forest Spirit lives, where ghosts are living or near to rivers and streams. It is also necessary to ask a priest the lucky day on which the trees must be collected (usually the 1-5 and 10-15th days). Before cutting big trees a ritual praying must be done for the spirit of the tree and during cutting it must be avoided to say bad things. If only parts of the trees are needed, for instance for household facilities or to make an altar, only parts of the trees should be taken, to ensure that the trees spirits is not harmed and the altar is blessed. Another rule is that for every tree people cut, another tree needs to be planted because Dzao people believe that with cutting a tree, they are taking away a life and need to compensate this life through planting a new tree.

NTFP collection NTFP's still play an important role in people's daily lives and comprise a long list of products like forest vegetables, fruits, honey, mushrooms, bamboo, firewood and herbal plants. Since recently also commercial products like cardamom and orchid flowers are grown in the forest. An overview of NTFP products and prices can be found in Table 4 in the Annexes. Customary law included some measures to prevent depletion of the bamboo source

like the prohibition of harvesting young bamboo shoots and the non harvesting of the first bamboos of the year. People would start to collect bamboo of the second crop. Another rule was that only bamboo that grow in the direction of the sunset were allowed to be cut down. According to customary law people are not allowed to release livestock like buffalo in the bamboo forest to prevent it from being destroyed.

Collecting Thảo quả from the forest



There are new and commercial products like orchids and cardamom growing in the forest for which no customary rules apply. These are especially sold at the market to Kinh people during TeT holidays. Cardamom is one of an effective medicines for many diseases for local people and women develop seedling and plantation to sell products and these plants live and grow well under the forest and shades of forestry trees. In this sense the forest land has gained a new economic significance for the people. Previously people went to forest to find new growth buds and used a knife to take away buds and then to plant in another place. This method is easy to apply and it helps trees to grow well.

But since 1996, locals have known seedlings from seeds of cardamom. According to the experience of many local people, the cardamom which planted from seedling in nurseries have a longer harvesting time to those which planted from buds. Annually, the ripe cardamom fruits are harvested and stored 15-25 days and then sowed; 20 days later, seeds will germinate and continue to be took care in nursery.

After 12-24 months of care, seedling has a height of 60-80 cm, then will be planted under the plantation forest or natural forest. Seasonal plantation normaly is taken place from Jun to August or from October to December every year.

Herbal Plants

Although this is also an NTFP herbal plants can be mentioned separately because of its particular importance to the people. According to the locals, the source of medicinal plants from natural forest in Ta Phin commune has more than 100 species, mainly small and relatively low vegetation. Most medicinal plants are identified on the forest and translated by Dao language. Herbal medicinal plant resources in natural forests are rich according to people, each person can get 30 to 50 kg of Herbal medicinalplants per day. Daily from 10-20 people (mostly women) go into the forest to get herbal medicine plants. Red Dzao people possess unique knowledge on herbal medicinal plants and curing diseases. According to customary law herbal plants can only be collected in the early morning and before cutting people need come close to the tree and speak out a prayer to explain the spirit what the purpose is of collecting the plant *‘I have to collect this plant to cure my patient, I do not intend to hurt the tree. I am only taking some parts of it and hope that the tree will recover*

and grow ever greener and I hope my patient will recover'. Rules that people apply during collecting herbal plants is that they are only allowed to take parts of the tree and not to cut it down. They only collect from old and mature plants that have already spread their seeds to allow young plants and branches to grow for regeneration. They are also careful during collection and are not allowed to pull down top of the tree. Nowadays especially elder people take these rules into account.

Customary rules for harvesting herbal plants are not widely applied among young people as the purpose and the amount of collected herbal plants underwent major changes in the last decades. Ta Phin is known for its herbal bath services offered to tourist on a larger scale whereas in the past these baths were meant for women right after child birth to restore their health. Now it is offered to tourists for the purpose of relaxation. There were at the time of research 6 families who are running certified businesses on herbal bath services. These baths and their health functions have been analysed and certified by the Department of Vegetation of Hanoi University of Pharmacy. Besides the purpose of herbal baths, several families also harvest herbal plants to sell on the market and there is a joint stock company with 40 members doing business on herbal plants and handicraft products of Red Dzao. During talks in a village it was estimated that round 20 people daily go into the forest (mostly women) to collect herbal plants. Some families are planning to request for forest to cultivate medicinal plants intensively and besides, Sapa Seedling Research Station contracted some households for a trial to plant herbal plants that cure insomnia. The trees are planted on terrace fields and harvested after 1 year of plantation.

Fire woods

In Ta Phin firewood is mainly collected by young women from the surrounding forest. Firewood is only used for cooking and heating and average demand is one bundle a day for a household of 5-7 people and 2-4 pigs. Some Kinh households living here have no forests and buy firewood from other households for 300,000 VND/m³. Today some families use electric cooker to cook rice so that demand on fire wood is less. According to the local forest protection regulation and principle of forest ranger, people are allowed only to take the dry fire woods in the forests that they are managing. In forests that belong to the CPC or FMB people have to ask permission to collect fire woods and this process needs to be controlled by the commune forest protection department. Firewood is collected with a knife and carried by a bearer as to prevent harming younger trees and other NTFP's in the forest. Although the local practices and formal regulations for collecting firewood try to prevent harming the forest, there are nowadays two companies in the community that collect firewood for herbal medicinal production. One is a join stock company (SANAPRO) has 40 workers from the village and another private company run by a local villager.

6. STATE LAW & EFFECTS

6.1 SHORT HISTORY OF FORMAL LAWS ON FORESTS

Looking back at the recent history in both communes various changes took place in terms of forest ownership, management and use in a relatively short period of time. Before 1960 lands and forests belonged to communities and were used and managed according to the local customary law. In that period there no shortages or conflicts over natural resources existed because the population rate was low and land and forest resources were plenty. Between 1960 and 1991 several land reforms placed forests under state property and under management responsibility of the agricultural cooperatives or State Forest Enterprises (SFE's) including the two research areas. In Taphin cooperatives were divided into sub groups with each having its own selected leader. The administrative changes meant that formal law and actors like commune leaders, village leaders took over customary laws and traditional actors. In the case of Muong Phang, the SFE harvested timber and cleared large areas of the forest for industrial tree plantation although in Ta Phin no commercial exploitation of wood took place. Even though laws assigned the land to state institutions, local people continued to extract wood from forests for domestic use and over time illegal logging increasingly emerged because SFE's and FMBs were not able to protect the vast amounts of lands under their responsibility whereas the need and pressure for land increased. These institutions were also not able to deal with the forest fires that emerged regularly which added to the scarcity of the resources. Also pieces of forests were used for shifting cultivation because people lacked enough agricultural land and were facing food shortages and increasing poverty. Eventually in both communities this in combination of shifting cultivation, many uncontrolled forest fires and illegal logging led to a severe depletion of soil, water sources, forests and loss of species^{12 13}. Especially in Muong Phang damages to forests have been significant and at present the nature has still not recovered and people are still dealing with the consequences like soil erosion and floods, poor soil quality and less quantity and quality water. In the old days people used to consume water from streams in forests but currently the streams are shallow, polluted and do not contain as much fish as before. In the past the stream used to provide enough water for daily use like washing and bathing but this is no longer the case.

The Land Law (1993, revision 2003), Law on Forest Protection and Development (1991, revision 2004) and the related decrees (01/CP/1995, 02/CP/1994) and programs (327 and 661) are meant recover and allow for a better protection of forests. The current situation in Muong Phang and Ta Phin regarding to forest use and management is determined by the latest reforms and laws, as is outlined in the next sections.

¹² Like the *Michelia braiaensis* and *Cinnamomum obtusifolium* losses in Muong Phang.

¹³ There are currently no scientific reports to show the diversity and animal species in Muong Phang but data from the Department of Planning and Investment indicate that the forest has 61 mammals, 270 birds, 27 species of amphibians, 25 reptiles and 50 species of fish in previous years.

6.2 CURRENT STATUS NATURAL RESOURCES

In both research areas the forests are formally classified into two types: 1) Natural Forests which exist naturally or which are restored through natural regeneration and 2) Restoration Forests which exist through deliberate plantation.

Natural Forests

In Muong Phang *natural forests* (2548,28 ha) are evergreen forest located at an altitude from 800 up to 1200 above sea level and accounting 47% of the total forest area. Large part of the natural forest is sub-classified as *Protection Forests* (1887,87ha) and remaining area (659,9ha) classified as Special Use Forest or 'Forest of the General' where the Headquarters of the Dien Bien Phu campaign during the independence war against the French was located. This area is now under management responsibility of district's FMB and has been recently upgraded to promote tourism. Due to its historic and strategic value this special use forest is strictly protected. Since 1995 the FMB has contracted several households in Muong Phang to protect an assigned area in the protection forest for which they get compensation¹⁴. At the time of research the natural forest area showed only little signs of human impact and had a stable vegetation structure and natural regeneration of 8 commercial trees per 50m² (in the Special Use Forest) and 4 commercial trees per 50m² (in the Protection Forest). It is rich with many tree species¹⁵ and forest products with different functional uses. The special use forest accommodates trees as high as 30-40 meters also stands virtually unchanged in its primitive state.

Another 2539,59ha in Muong Phang is *Restoration Forest* accounting for 46,7% of the total forestland. These are located on lower slope lands near to residents and are the forests that were destroyed by years of exploitation by the state and shifting cultivation by residents. This area is still bare and shrubby but in good condition to generate naturally. Our findings reveal that since the allocation the forest burnings have reduced significantly and in lower areas natural regeneration is as high as 8 trees /50m²¹⁶ and if well protected, the restoration forests' will become forest reservation in about 12 to 15 years. Restoration forests are managed by CPC which has at commune level appointed a forest ranger who is responsible for the protection of forests (including natural forests) and to prevent illegal logging. As the forest ranger cannot oversee all the forest area – in each village forests are divided among household groups who cooperate with the ranger on forest protection and management. Each household group consists of 7 to 12 representatives from different households, usually young healthy men and each member receives a remuneration of 21 to 25 kilos rice per year. In each village the household-groups is headed by an elected representative. Every year the forest ranger and local officials from the forestry department discuss and if necessary revise the

¹⁴ Under Decree 01CPm level of compensation increased from 30 000d/ha/year (1995-1999) to 50 000d/ha/year (2000-2006) and to 100.000d/ha/year (2007-2008)

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

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

rules on forest protection and management, and discuss this with people through village meetings.

Ta Phin has a total natural land area of 2718ha of which almost 57% (1541,2ha) are covered with forests. Forests are divided into Natural forests (1283,7ha) and Plantation forests. Here the natural forests are tropical rainforest with some tree species of high value¹⁷, though forests above 1500meters altitudes have low forest canopy densities with shorter trees of heights between 15-20 meters. Also here natural forests have suffered from exploitation leading to the current low stock volume of 120-150m³ / ha. There are ongoing efforts to regenerate the natural forests but so far the forest quality is still poor and vegetation not very rich despite thick layers of humus and good moisture forests. Above the 1200m and far away from residential area the regeneration rate is only 3 commercial trees per 50m² and in lower areas regeneration is high as 8 commercial trees per 50m². Through the program 661 these forest have been handed over to Sapa Forest Management Board (FMB) which is responsible for protection and management.

Plantation Forests

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

Ta Phin: Plantation and regeneration Forests (257,5ha, mainly *Cunninghamia*) after a period of severe degradation due to shifting cultivation and forest fires, these forests were regenerated and planted between 1980 and 1990 by local people with seedling support from the Sapa SFE. Since then these forests have been well protected and environmental characteristics are suitable for the trees, these forests today are healthy with diverse tree species with straight bodies. Natural regeneration under *Cunninghamia* stand is in good situation of 8 trees per 50m².

Water Resources

Muong Phang can be classified as a water rich area with seven streams and many ponds and dams around commune. Pa Khoang, located in the protection forest, is the largest lake with a

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

surface around 600 ha and nearly 40 million m³ water reserves. This reservoir is crucial for the district's rice production. In Bua village all households had a fishpond of approximately 300m². In origin Ta Phin is also rich in water sources and around 30 years ago the rivers were big and inhabiting various species. But the high level of deforestation in the period 1960-1970 also led to the degrading of water sources, while at the same time the demand for water for cultivation increased. As a result the stream flows changed over years and caused soil erosion, water scarcity and droughts. Currently UNICEF is running a program to provide household water for daily use, but some households still lack water due to system break downs and at least four households were excluded because of their high location.

Formal Land and Forest Distribution and Management Muong Phang

Target	Management & Protection	Area (ha)	%	
Total Natural Land Area		9159	100	
1 Forest Land Area	FMB	5429.27	59.28	100.00
1.1 Natural forest		2548.28		46.94
<i>Special use forest</i>		659.9		
<i>Protection forest</i>	<i>FMB + contracted households</i>	1887.87		
1.2 Plantation forest	<i>FMB + user rights for households</i>	341.4		6.29
1.3 Restoration Forest (bare land, shrubs)	CPC (delegation to forest ranger and household groups)	2539.59		46.78
2. Agricultural land		1299.7	14.19	
2.1 Land for food production		919.7		
2.2 Land for short term industrial species (Groundnut, Bean)		42		
2.3 Land for vegetables		49		
3. Other land		2430.03	26.60	

Source: Forest protection officer Muong Phang

Formal Land and Forest Distribution and Management Ta Phin

Target	Management & Protection	Area (ha)	%	
Total Natural Land Area		2718	100	
1 Forest Land Area		1541.2	56.70	100
1.1 Natural forest	SAPA Forest Management Board (FMB)	1283.7		
<i>Production Forest (Special Use)</i>		146.9		

<i>Protection forest</i>		1136.8		
1.2 Plantation forest	CPC and Households	257.5		
2. Agricultural land		569.78		20.96
2.1 Rice Land		177.8		
2.2 Land Crops		310.28		
2.3 Perennial Crops		81.7		
3. Other land (roads, settlement, etc.)		177.74		
4. Surface Water (Streams and Ponds)		29.8		
5. Unused Land (Rocky, Barren)		399.48		

6.3 STATE LAW AND CUSTOMARY LAW: Changes, Reasons and Consequences

6.3.1 Changing Culture and Customary Law

In sections 4.2 and 5.2 we gave a short overview of the customary law related to forests in Muong Phang respectively Ta Phin. From our findings we can conclude that the local culture and customary law both in communes are still strong. However at the same time the current way in which forests are managed is not purely based on customary law anymore due to contextual changes. It dates before 1960 that customary law was applied in its original form when the village was still an important management unit and forests the only source for people's livelihoods. Reasons for customary to change over time is among others government laws, formal reforms and socio-demographic changes which will be touched upon on in this section. The changes in both communities vary in detail but reveal similar patterns in general.

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

Similar trends also present in Ta Phin where several ceremonies and rituals are getting lost as well or they are celebrated in a less extensive way. For instance in the past every household used to yearly organize a ceremony to worship the spirits for good crops but nowadays most households organize this one time in every three years. In addition some beliefs and rules are

getting lost, one example being the former rule that people were only allowed to cut down trees if it would not affect any other villagers, but during our field visit, this rule appeared to be not well known among respondents. Also the customary belief that trees are living beings with their own spirit and which can be hurt when cutting down was not widely referred to during conversations, although it used to be an important component of the belief system. The collection of herbal plants which used to be done through a spiritual approach also seems to getting lost as well. The tourism in the area has created great opportunities to generate income through herbal products and services – therefore both the amount of herbal plants and the purposes have changed from domestic to a commercial use. Our findings suggest conclusion that tourism in general has a great impact on the local culture and values.

6.3.2 State Law versus Customary Law

Perceptions and Attitudes

Local authorities have a positive and respective attitude toward local people's culture and customary law. Actually some local officials belong to Thai ethnic minority and there are programs run by the local government to preserve and promote the local culture. One of the villages for instance was pointed out as a cultural village and was therefore receiving funds to build a cultural house, to be built in the form of a traditional Thai house and taking into account all details and requirements. Although the effectiveness of these programs could not be assessed, their existence reveals a positive attitude from government officials. But this positive attitude is in Muong Phang not yet fully translated into integrating the local customary law in forest use and management. At the same time in both cases local people seem to find openings to integrate their customary law into formal decisions. In Ta Phin for instance key people in mass organizations and government units were often village prayers and knowledgeable about customary law. Here the customary law was taken into account in village regulations including the local regulation on natural resource management. Though to a lesser degree, also in Muong Phang there was some overlap between customary rules and formal village rules for forest use, like timber collection, which suggest these have been taken into account at some point.

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

Ownership and Allocation

Forest resources are all owned and managed by state institutions like FMB and CPC who, together with functional departments, have ultimate responsibility to implement laws and policies. In Customary Law of both Red Dzaio and Thai people forest lands belong to the community and are allocated through traditional rules and institutions. However, since the land reforms in 1960 forests have become state property and allocated to state institutions like cooperative farms, FMBs and SFEs. When these national reforms were carried out in the two

communes, existing boundaries, their local cultures and customs have been neglected totally and the people who entirely depended on forests were denied access to the lands and forests they perceived to be their own and their ancestors'. The taking over of people's land also implied the taking over of sacred area to which people were deeply attached. As we found in our study this is leading to loss of local culture and is a source of conflicts. One example is that Sen Muong is not celebrated anymore because the sacred forest where it used to be celebrated is not owned by the people anymore but belongs to FMB. A more recent example from 2009 on a conflict between a company and a village:

In late 2009 there was a program for irrigation and the government planned the construction of the system through our sacred Dong Sen forest without informing the villagers. The construction company destroyed the Dong Sen, cut down the sacred tree and hired 2 outsiders to cut off the sacred tree into pieces. Only short time later the driver of the truck and the two persons that cut off the sacred tree got mental diseases. And suddenly also many buffalos in our village died without reason.... So with all villagers we gathered and decided to stand up and to protect our sacred spirit [...] We demonstrated at the construction site and required the company to prepare a ritual to apologize to the Forest Spirit and support us in organizing the ceremony to assign the new Dong Sen forest [...] our village elders played an important role in calming us (villagers) down and to heal the broken relations between different actors (Yen Village, Male)

Also later under Land Law (1993) Law on Forest Protection and Development (1991) ownership of land has remained under the state and no attempts have been made to understand and take into account existing customary boundaries, forest classifications and rules. Up to present the formal law in Vietnam does not recognize community's as entities that can own and manage land, which in the light of customary law can be seen as an existent gap in law. Though with the latest reforms the law does allow for the (re) allocation of land to private actors, hence forest and lands of SFE's were partly shifted to households and individuals who obtained land use rights for maximum 50 years with the possibility to receive or transfer inheritance and to receive compensation investments¹⁸. Since 1995 some households in both communes have been contracted or received land from FMB and / or the CPC for plantation, protection or regeneration. Under programme 327 people who live near the natural forest have been contracted to protect pieces of forest against an allowance. Since 2008 this allowance is 100.000vnd / ha/year and although people in Ta Phin had not received the allowance since early 2009, they were still committed to protect the forest. Unlike required by customary law, the allocation of forests did not take place through involvement of and seeking consent from all community members, nor did it take into account the significance of sacred lands. Yet another gap in implementation of land law is the fact that in Muong Phang local authorities still have not carried out a land re-allocation program. Up to now people are still sticking to the traditional borders to classify land and forests as findings revealed in different villages in Muong Phang. For instance in Banh village, people still used boundaries as formulated by ancestors, though the allocation does not take place outside of state law but combines this with customary law: villagers decide upon boundaries based on traditional borders, each household registers this with the village leader, and then a village meeting is organized with representatives from Agro Forestry Development Department and the forest ranger to confirm the new boundaries.

¹⁸ Other specific decrees and decisions are: 01CP/1995 Decree on assignment of land use for agriculture and forestry purposes; CP/1999 Decree 163 on the allocation and leasing of forest land. Circular 56 BNN 1999 Guide conventional construction and development of forest protection in the community population hamlet decision 178 / QD-TTg/2001 Benefits and obligations of households receiving forest land allocation

Management and Protection

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

Since 1995 under the programs 327 and 661, the FMB signed contracts with household groups to protect the natural forest. These household groups in Muong Phang are responsible to maintain and protect forest. Some households have also been contracted under Decree 01/CP/1995 to protect the natural forest for remuneration. Although the contracted households have not received remuneration since early 2009, they are still committed to protect the forest. Thirdly households are also assigned plots of restoration forest by the CPC that they can keep to regenerate without paying tax, instead they are allowed to use the forest products.

Formal Forest Use

It is more than obvious that people still highly depend on forests, though the form of dependence and the level of access to benefit from forests have changed over time. The foremost reason of these changes is the depletion of forests and people's lack of ownership over forests. Up to 1960 every household in both communes would use a piece of forest land where they derived their forest products from. Nowadays all the lands belongs to institutions like FMB and SFE's and while there has been no effective land reallocation that gave people legal rights for land use. Since 1995 several households are assigned forest land in the natural forest area for regeneration against compensation¹⁹ but the moment of research people had not received any compensation for almost two years. Furthermore in many contracts signed between households and FMB, the level of compensation for protecting forests is often put blank or they received poor and depleted forests which do not generate any benefits. Some households are issued Red Books in the production forest but this does not give them the right to develop and manage these resources according to their own wishes. In Muong Phang

¹⁹ Compensation increased from 30 000d/ha/year (1995-1999) to 50 000d/ha/year (2000-2006) and to 100.000d/ha/year (2007-2008)

the Trau trees did not provide significant incomes to the people anymore as the market prices of its fruit had been fluctuating and finally dropped to a low level. But because the land and the trees belong to the FMB they are not able to use the land in any other way and as a consequence people have started to illegally cut the Trau trees and sell the timber. The growing of cardamom in production forests in Ta Phin is beneficial to people because there is a high demand for it, hence many people desire to grow or extend their production. Moreover the growing of cardamom is a good way to promote biodiversity because the plant can only grow under a rich canopy of forest trees. However the district authorities have recently issued a decision to prohibit the extension of cardamom production. So here one can see that in both communes the local people are not able to use, benefit and develop the forests as they wish because they lack the legal rights.

Formally if commune members desire to log timber for house construction or repair, they must get permission from the CPC (for less than 5m³) or DPC (for more than 5m³) and are subject to inspection by the ranger after logging and transporting wood to their homes. Each village has included specific steps in their village regulations that allow aspects of customary law; for instance village regulations include that the application to request for wood must be first certified by village heads, who organizes a community meeting where all people have to agree on the application. Here people's criterion to judge is same as the customs: people should not extract more wood than they need. Only after this approval the village leader submits the application to the CPC and / or the DPC. The space that formal regulations opens for customary law might be one of the reasons why new formal structures as household units and forest rangers are accepted and receive support from people ²⁰. After submitting to the district, it takes officially around 1 or 2 days at CPC and one month on DPC level to approve and to appoint the area where the household can get the timber. This can be either the regeneration or protection forests but the special forest remains untouched. However the carrying of timber from the natural forest is an expensive matter because the forests are now far away and a household needs to hire people to transport the wood which is to some households simply unaffordable. Sometimes the trees are left in the forest for a long time after cutting as there is no capacity to transport them, so people leave them in the forest with the risk for their wood to be stolen. It is also still difficult to find good quality wood that is suitable to build the houses. Our findings in Muong Phang also strongly reveal that the process to get approval for timber collection is found complicated and not widely known among villagers. As a consequence formal regulations are often bypassed leading to punishment of the people.

With regard to NTFP collection the customary law is still predominating. NTFPs are considered to be belonging to all and member of every can be collected freely by all villagers, so the borders assigned to household groups are not really considered but people enter forests of other household groups without permission or any trouble. The same counts for timber collection; if someone from another area wants to collect timber, they are given permission, though the household group only expects to be informed. The role of the forest ranger is recognized and accepted by the people and it is generally known that permission from the authorities is necessary for timber collection. However the responses in reveal that people still perceive the forests to be belonging to the community with right for everyone to access

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

freely. Despite the fact that the village regulation is pre-formulated by local officials, there seems to be a general feeling that the village regulation is really the commune's.

It has been for long time customary laws that people discuss, people set up and follow spontaneously without force [.....]. It is a rule in the commune that deforestation offence will be penalized by 1000 kgs of rice husk for the first offence and twice time more for 2nd offence. The community regulation is agreed and signed by all villagers (Village elder, Mr. Cà Văn Hợp 86 years old)

Customary Law	State Law
Forest Classification and Ownership	
Forests belong to the community and are given to them by their ancestors to whom they are deeply attached and from whom they derive their current identity. The ancestors have given them the land and maintained the relations with supra-natural entities on which the community relies for protection, safety and its resources. Forests are classified based on spiritual values and interests of the community / village as a whole.	Protection and special use forest belong to the state management. Classification is done by functional officials. Communities are not recognized as a legal entity that can own forests and land. Forest land and production forests can be allocated to individual ,households, organization for use and management via long-term land use rights. Community forests are mentioned in state policies and at present MARD is doing a pilot in 40 communes on community-forests managed by local people.
Distribution and Management	
Forest land is distributed through customary law based on ancestral borders, actual needs and with consent from all villagers. Certain forest areas are prohibited to be allocated to households due to their spiritual significance for the whole village / community. Taking this into account is important for the safety and well being of all and hence widely accepted. Village elders and chief are key actors in allocating resources, overseeing the management and use and ensuring customary law is in place. They play a key role in settling disputes over natural resources.	Forests in the formal classification are distributed by FMB/CPC to households. FMB / CPC and forest ranger are responsible for management. Some households are contracted to protect the forest for financial rewards and some households have use rights over areas production forests.
Protection of the Resources	
Protection of the resources is a collective responsibility and inherent value in people's life and daily interactions with nature. Customary Law to interacting with resources,	Ultimate responsibility to protect the resources lies at state institutions like FMB and CPC. Also individual households that are contracted or allocated land have the

<p>and the spirits that protect these resources, are adapted voluntarily and naturally. The rules and underlying values of customary law promote the protection of forests and these values are kept alive through ceremonies, rituals and traditional teachings where people are thought to interact gently with natural resources and supra-natural entities that protect natural resources.</p> <p>Some measures in customary law at collective level promote protection of forest and trees:</p> <ul style="list-style-type: none"> - Different areas are assigned as sacred land which are highly protected by all villagers / community - Various mechanisms to ensure that some trees are not cut down (for instance trees with ‘com lam’ in Muong Phang and trees where a ghost lives in Ta Phin - No commercial use of forests: people or households take as much resources as they need for domestic consumption - Certain days or periods in a year where people are not allowed to enter the forest or extract resources - Forest near a water source may not be collected <p>Beliefs and intrinsic values also make people consciously or unconsciously apply customary rules:</p> <ul style="list-style-type: none"> - Dissatisfying supra natural powers can have negative effects on the person, household level or the whole commune - For collecting timber, villagers must be asked permission through a village meeting. The requested amount may not exceed the households actual need - Before cutting down a tree or plant, permission must be asked from a supra-natural entity like a spirit, ghost or soul 	<p>right to inspect and control resources. Forest Ranger in cooperation with household-groups in each village are responsible for protection (Muong Phang)</p> <p>Some measure to ensure protection of forests and trees</p> <ul style="list-style-type: none"> - For less than 5m3 CPC permission is needed and for more than 5m3 DCP district resolution must be requested. The request must be certified by the village leader - CPC or DCP reviews the requests and the ranger inspects the actual needs of the household and makes a decision. Households must pay a fee for the official approval. - Forestry officials identify the area where trees can be cut and guide the family to ensure sustainability - Limit the use of chainsaws to cut down tree and make sure surrounding trees are not damaged - Rules on firewood: can only be taken from house holds own forest and otherwise must be requested from FMB / CPC - Monetary punishment to illegal loggers of wood <p>The state law and commune authorities have no detail guidance on harvest and sustainable management of NTFP’s or strategy to protect herbal plants</p> <p>State initiatives promote commercial use of NTFPs</p>
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<p>of the plant</p> <ul style="list-style-type: none"> - The root of a plant or tree should not be damaged and handled with care during cutting - Only those parts should be collected that as much as needed (maximum 1/3rd) without damaging the rest of the plant - Only old trees or older parts of a plant should be cut down to preserve younger part and to make sure seeds are mature. - Replant a tree for each one cut (case Ta Phin only) - When cutting down a tree, surrounding trees should not be damaged - Some plants should only be collected during a certain season or part of the day - Collection of firewood must be reported to village elders / chiefs 	
Benefits	
<p>Community decides on change of land use and planning. All community forests are open all to make use of its benefits. Customary rules applied voluntarily in interactions with resources:</p>	<p>State authorities decide on the land use purpose and communities are not allowed to change. Individual households assigned with land benefit according to laws and policies and under state guidance</p>
Values	
<p>Natural Resources are inhabited and / or protected by supernatural entities</p> <p>All aspects related to allocation, land use purposes, benefit sharing etc must be discussed and agreed upon by all villagers, transparency</p> <p>Community is self-reliant and takes care of itself through traditions, indigenous knowledge</p> <p>The interactions with natural resources must be respectful and considering the three Mother Spirits of Land Forest and Water and resources</p>	

are taken and used with modesty. Benefit sharing should be for all, equal and based on actual needs.

7. ANALYSIS

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

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

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

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

Apart from the intangible values, customary laws also promote visible and concrete actions that promote forests' regeneration and protection. This is for instance reflected in the considerate way NTFP's are collected. Taking forest resources is not taken for granted but

accompanied by asking permission, giving something back to the source (like offerings) and trying to limit the damage to the plants and surroundings as much as possible to allow for regeneration. Also at the collective level there are mechanisms that promote the protection of forests. Forest areas that are classified as sacred or in which spirits are believed to live are clearly well protected and also other rules are lived up to like prohibition to cut down trees near water sources. Or specific case of Muong Phang, the trees with the 'Com Lam' bamboo stay untouched. Based on our findings in both communities we can conclude that customary law in these two communities entails strong mechanisms to protect and sustain forests.

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

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

In both communities before 1960 the rich forests were managed through customary law implying that forests were owned by the community, allocated through local institutions often based on ancestral boundaries and its resources used in a modest way enough to meet local needs. As the population density was not high and people used forests of a large area, the resources could broadly meet people's needs and no conflicts existed yet. In the time that followed forests were disowned from the people to be given to cooperatives, FMB's or SFE's while local people were still dependent on forest lands and resources. Hence people had no choice than to continue with getting forest resources and traditional shifting cultivation which officially made them intruders of lands they perceived as their own land. This gave rise to conflicts because these institutions and local people had different and sometimes conflicting perceptions and values on owning, managing and using the forests. These people who had strong local identities and beliefs could not accept or understand why they could not benefit from the lands and forests that they inherited from their ancestors. Also in the most recent land and forestry reforms these local belief value systems and customary laws have not been taken in to account. But it must be noticed that at local government level there is a positive attitude towards communities and officials reveal an understanding of the importance of customary law in these societies. In Muong Phang culture and cultural identity of the Thai people have been a focus and discussed at the communal Party congress in 2010. This concern is always paid attention and taken into consideration in their policies and programs promoting social development. However these positive attitudes and plans are still stayed and

not yet specifically taking into account of customary law in local systems for forest management and use.

Looking at mechanisms of ownership, allocation and management, state laws gives ownership to institutions and later on to individual households for material returns whereas in the traditional customs land is owned by the whole community. Land allocation in customary law takes place through traditional institutions and is based on ancestral land boundaries. Consequently when asked local people still classify forests based on customary laws rather than the formal classification (Protection forest, Special- Use forest, Production forest). More striking is that local people perceive these lands as belonging to the community whereas this is formally not the case because up to date state law (Civil Code) does not recognize rural community as a legal entity that can own and manage forest lands. In customary law NTFP's are free for anyone to access. In customary law protection of land, forests, water is considered as community responsibility because they are collectively protected, rewarded or punished by supra-natural entities. People in both communities, including younger generations, understand well that their lives are intimately tied to natural resources and have a desire to recover maintain forests. The combination of these spiritual beliefs and dependence on forests is what created intrinsic motivation to protect forests and to abide to customary rules rather than rewards like money or rice. This is a clear example where state and customary law differ from each other, and where customary law still seems to be stronger: our findings clearly reveal a high value of sacred forests whereas they did not show much interest in the fruit trees of the production forests nor its potential benefits. However people have no longer ownership over resources and most forest still belong to the state and this is negatively influencing people's intrinsic motivation to protect these resources. This is especially in the case of Muong Phang where no land allocation has taken place yet which is weakening people's sovereignty to manage and use resources.

Another difference between the state and customary law is the process through which they are formulated. People's customary law requires that decisions on allocation, management and use should be taken by traditional institutions, with involvement and consent from all villagers, whereas the state law is initiated from above by alien institutions, without much influence and consent from villagers. On the one hand does this lead to interventions that are not effective. One instance where this becomes visible is the case of Trau trees grown in the production forests in Muong Phang which are no longer desired, or the case of cardamom production in Ta Phin where people did not receive technical guidance in cultivation and the plants are hit by drought and disease. On the other hand there is the problem that state and customary law are not aligned to each other and local people are inadequately informed about state policies. The formal policy system is often complex and continuously changing while related information reaches people slowly and access to information is limited. As a consequence state law is not totally understood or accepted which undermines its effectiveness. At the same time the original functions of customary law are limited by state law. In this sense especially the eroding role of traditional institutions like village elders is important to mention. Not only because they have a crucial role in maintaining social stability and cohesion but also because they can play an important role in bringing state and customary law closer together for complementing each other. In the current situation both law systems do not optimally function and this is non-viable, especially when local developments are taken into account like economic activity and tourism which is increasing the pressure on natural resources.

State laws have the role of regulating social relations. In nature it is created by and based on ideas of the ruling class to maintain dominance of that class. However to be functional law must reflect aspirations of people, be collectively accepted voluntarily adhered to and be consistent with the level of social development. Currently, the development level of each region, locality and ethnic group in Vietnam is not equal so the law enforcement at each locality differs. This suggests that law would become more suitable and enforcement more effective if local values and customs in different ecological regions are taken into account in legislation. This counts especially for customary law because in certain aspect it has the same regulatory roles and functions to maintain social order as the state law. It is therefore necessary to understand the functioning of customary law in different localities in order to assess the role customary law can be integrated into state law and how it can complement state law in particular cases. This is not to say that state law is completely in contradiction with customary law because there is certainly also overlap in goals, promoted behaviours and at some points state law leaves space for people to practice their customary law. This is for instance the case in Muong Phang where the forest rangers yearly discusses formal regulations with villagers and where people have integrated elements of customary principles in formal regulations on forest protection. Therefore these formal regulations and new structures like forest protection groups for forest protection, are widely accepted and well functioning. Still the formal laws and policies lack specificity to ensure a more profound analysis and integration of customary law.

How can Customary Law and State Law strengthen each other towards a more sustainable NRM ?

Although the data we have is relatively limited, it is possible to make a general comparison between State and customary law to derive preliminary conclusions. Do however note that the information on the customary law in the following scheme and the related scores are based on customary law in its 'original' form and functions and some of these functions have been subject to change under socio-economic and political changes.

Criteria for Sustainable NRM	CL	SL	Explanation	Recommendations to Bring CL and SL closer to each other
Rules				
Rules evolved through a bottom up process of people's daily practice, learning, adapting and selection of behaviours that proved constructive for their survival	+	--	Customary Law has evolved bottom up, it is unclear through what process the rules came into being - but clear is that these rules were constructive for their survival and living in harmony among each other and with their surroundings. State law is clearly not bottom up and did certainly not lead to constructive situation but the opposite: the mixing of state mechanisms led	<ul style="list-style-type: none"> - Give local people the space to formulate their own regulation (rather than a pre-formulated form) and allow them to revise this regularly if they think necessary - Try to understand the indigenous knowledge (for instance through research or through pre-assessment before designing interventions) that is intimately built into

			to environmental degradation, conflicts, and food shortages and so on.	<i>customary law</i>
Functions and benefits of the (customary) law are recognized by the people.	++	+/-	Recognized benefits of customary rules are in the first place cultural and spiritual. If customary law is applied well, whole community or villagers are rewarded. Benefit of rules to protect forests is also recognized: people realise their dependence on forests and have a high value to preserve forests. Benefits of state law are also recognized and it is seen as a necessity in the current context. But the benefits are not always specific or high like in the case of Muong Phang: people are committed to protect forest but do not have much benefit from it, like the plantation trees and its fruits. In the case of Ta Phin land and forests are better allocated and people are able to generate benefit from it.	<p>- <i>State laws and interventions should not neglect the cultural and spiritual benefits and values of natural resources – for instance through taking people’s own classification of forests in to account</i></p> <p>- <i>People should have more input in plans on how to benefit from the forest</i></p>
Are undisputed and have widespread acceptance by the people to adhere to the rules	++	-	Customary rules are recognized at individual and commune level. It is the inheritance from their ancestors and seen as necessary to be protected. State Law is not rejected but considered to be necessary to protect forests in current context. However when it comes down to the specific level of rules, people do not know about state law and apply customary law. This is for instance	<i>Bringing the two law systems closer will increase people’s awareness and acceptance of formal state rules. A measure is for instance the allowing of forest ownership by communities in state law or allowing communities to protect sacred grounds. Measures to bring state and customary law closer together are context specific and require a much deeper study and analysis.</i>

			clearly shown through the case that people classify forests differently and still consider the forest as belonging to the community.	
Provide clear values, rules and guidelines to people on how to behave and interact with each other and with natural resources	++	-	Rules for behaviours and interactions are central to customary law and these rules are part of every day life. There is some overlap in the rules for interacting with the forests, but state law is more static and stresses more on restrictions, prohibitions rather than on interactions in general	<i>Customary law can provide lessons how to have a more 'behavioural' approach and this can be used to design state law and policies aimed towards behaviour change</i>
Are maintained and enforced through acknowledged institutions and mechanisms like (traditional) leaders, beliefs, taboos, social norms and so on	++	+	For customary law: beliefs, ceremonies and taboos keep the acceptance alive, village elders, priest prayer etc. are respected people and play important social roles in the society. They are respected and play a key role in educating people and solving disputes. Apart from spiritual beliefs, this study could not point out what mechanisms there are to enforce the rules and what happens to people that do not follow customary law? The role of traditional institutions is less strong as they have been undermined by formal institutions. Village leaders for instance have nowadays more formal power but are in social terms less important than elders and priests. Though state initiated structures like household groups and	<i>The social roles of traditional institutions must be recognized and used in the formulation of rules and in educating people on these rules.</i>

			forest rangers are accepted and supported. One of the reasons might be the community's involvement in the set up of the household groups.	
Ecological				
Ecological system and its functions are well maintained (forest, land, soil, biodiversity etc.)	++	+	Before 1960s when customary law was fully in place forests were rich in resources. The ecological systems were destroyed after this period under state law (under breaking sustainable functions of customary law). After the reforms in 1993 forests are being protected and being regenerated again through a hybrid mix of state and customary rules	
No over-exploitation of land, forest and water resources; these are available (in the seasons they are supposed to be available)	++	+	In CL resources can only be used to the extent needed, and not for commercial use. State system promotes the non-exploitation and regeneration as well. In the areas of research there was also no commercial activity around timber production. On the other hand the state leaves space to outsiders to come in and exploit local resources and local plans outside the forestry sector can lead to over exploitation.	<i>Authorities should ensure that state guidelines for sustainability and local participation are lived up to when local plans are formulated or when external actors like companies come into communities</i>
Amounts of timber & NTFP's collected do not have adverse effects on each others quantity and quality. Lodging and benefit sharing systems allow for regeneration of	++	+	Both set of laws promote that timber use should be limited to peoples actual needs and should not harm the forests and is guiding towards regeneration. However unlike customary law, the state has little to no	<i>The state has not yet formulated guidelines for NTFP collection and use. State laws and policies can highly benefit from the customary law on NTFP collection. These rules hide indigenous knowledge and</i>

timber and NTFP's			mechanisms to guide NTFP collection and this is important especially considering that forests largely consist of herbal plants and NTFP's play important role in people's lives. Supporting the valuable role of NTFP in daily life does not only contribute to people's livelihoods but also to their values and attitudes for forest protection.	<i>are widely accepted – adopting them in state law will prevent the loss of this indigenous knowledge and will guide people towards sustainable NTFP use over longer time.</i>
No pollution of land, forest and water resources. No adverse social and environmental health impacts by human interventions	+	+/-	In customary law there are clear guidelines to prevent adverse effects on resources – and the link between land, forest and water is well recognized and taken into account. State law specific on forestry aims at protecting and regenerating forests but at the same time leaves space open for pollution and exploitation. Especially other state plans in other areas can be in conflict, like infrastructural development or the promotion of tourism.	<i>Ensure local participation in different plans to make sure their long term aspirations are taken into account and local plans are not conflicting.</i>
Socio-Economic				
Conservation value and commitment to sustainability – people using the forest give value to forest conservation and seek to maintain the quality of the resource	++	+/-	Based on their spiritual beliefs and dependence on forests the value to conserve forests is high among people. However although in its pure form customary rules highly promote conservation, nowadays attitudes and approaches towards the forests is changing. Examples are government's promotion of commercial use of	

			forest products (fruit trees, cardamom or orchid growing) and emergence of tourism. This is inevitably perceptions on the forest and changing values from conservation towards commercial exploitation.	
Boundaries of distribution and use are clear and widely agreed upon	++	+/-	Boundaries based on customary law are clear to people and people tend to classify areas based on these boundaries (especially Muong Phang). Land reallocation program is not well carried out yet (Muong Phang) and there are conflicts	
Not only timber but also NTFP benefits are generated through the forest, and they are important part of livelihood (both for domestic use as for income generation). Multifunctional uses of forests are promoted.	++	- -	In Customary Law forests are open for village or commune members to access NTFP, though they take guidelines and rules for sustainable use into account. These NTFPs are still widely used and important in people's daily lives. Because of this dependence people highly value the forest and want to preserve forests. The state does not have a clear strategy or approach to NTFP's. In Ta Phin NTFPs are planted for commercial purposes and this is quite beneficial to people.	<i>State law should have a clearer strategy and approach to NTFP use and management – therein promoting its sustainable use through customary rules. State focus is much more on commercial growing of NTFPs. This can be positive for local people in terms of benefits and sustainable at the same time – if it ensures that this kind of intensive plantation does not adversely affect forests.</i>
Users of the forest have the capacity to protect resources from outsiders	-	+	Illegal logging is recurrent in both communities and in Ta Phin the fire burns by other ethnic groups and people were not able to protect the resources totally. Household	

			groups in cooperation with forest ranger were recognised for their role to deal with outsiders. Here people strongly recognize that there is need for state support to protect their resources	
Conflict Resolution: people have means for setting disputes both internally and externally to the group	++	?	Traditional actors like village elders and priest still play the role of mediator in internal and external disputes. People themselves turn to these institutions first if there is a conflict. But the role of these institutions is getting lost. It is not clear what state mechanisms are for conflict resolution and how these function.	<i>Local officials should recognize and make use of the important social roles of traditional institutions</i>
Information on the quality of the resource is available to the group	?	?	People are in general aware that some forests and water sources have changed over time, currently depleted and cause a shortage of resources. It is not known how specific their knowledge is.	
Incentives / Benefits are of the resource to the people are positive and might include cultural as intangible benefits	++	-/+	For customary law the spiritual benefits and benefits for daily lives of forests and water are unambiguously clear. State law intends to provide (economic) benefits to the people but this is not in practice: people have no ownership over forests, do not decide about its benefits, and the forests given to them have poor quality. The state law does in no way take into account intangible benefits of forests or the importance of NTFP's	<i>Again; Benefits from NTFP must have more formal recognition and there is need for a strategy for sustainable NTFP use. Secondly the spiritual importance of forests must be gain formal recognition by local authorities and taken into account in local natural resources planning</i>
Incentives might	+	+	Both laws include	

also be negative in the form of sanctions			negative sanctions. In customary law the sanctions are mostly stemming from belief in supra natural entities. But also include social sanctions like exclusion, which are highly feared. However the specific information on sanctions related to natural resources management is lacking. State law sanctions are mostly monetary	
Institutional				
Rules and regulations provide indicators and guidelines to promote bio diversity and protecting the eco system. This includes rules and criteria to collect and manage NTFPs	++	+	See notes on ecology criteria; customary law clearly includes rules to preserve forest and water sources and are widely known and applied. State laws promote biodiversity as well and these overlap with customary rules. Though they are less widely known and do not include elaborate rules for NTFP's.	
People affected by a resource have a say in decisions how the resource is managed and how benefits are distributed as well in making final decisions. - Group size and organisation: groups are sufficiently small to enable regular contact and communication. - People have adequate inputs necessary for sustainable	+/-	-	At village level decisions (regarding natural resources and distribution of benefits) are taken through participation and local acceptance. Formal decisions on resource distributions and benefits are taken by local authorities and proposed to the villagers through village meetings in which they are asked to undersign decisions that are already made (is thus not formulated bottom up). The household groups at village level are small but we lack information on their	

management like labour, information and support			inputs for management, and the way they are organised to make any judgement.	
There is indigenous knowledge or information on sustainable ntfp's	+(+)	-	Customary Law rules for NTFP collection hide indigenous knowledge in them, but these seem to be getting lost.	

8. CONCLUSIONS AND RECOMMENDATIONS

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

Up to 1954 the control and protection over forest and water resources Ta Phin and Muong Phang used to be based on customary law, indigenous knowledge and traditional institutions. By then natural resources in both localities used to be rich and conflicts non-existent or easily solved through traditional institutions like village elders. People considered forest land and water resources as common property from which all community members should benefit equally and in a transparent way. However this did not mean that resources could be exploited unconditionally because through customary law there was wide agreement on the limitations to prevent depletion of local resources. In their daily practices people naturally adopted a modest, respectful and a nurturing attitude towards nature which was promoted by customary law. This is for instance illustrated by the way people are required to carry out rituals and to ask permission from trees and plants before cutting. And whenever natural or societal changes required a change, people adjusted their rules to use resources to fit to the new situation.

There is no doubt that the beliefs underlying to customary law are still strong among the Dzao and Thai people and customary rules and practices still recognized by people up to certain extent. Accordingly there is a clear link between people's belief and the way they protect forests that are considered as sacred. Nevertheless it is also visible that customary law in the two locations is in a process of breaking down and some parts of it have already been lost, which is the reason why this study could only unravel part of customary law. Traditionally customary law exists by memory and is orally passed over to younger

generations by key actors like village elders, clan heads and prayers. Yet in the past few decades the social role of these traditional institutions has been under pressure from the formal structures and institutions set up by the government. Due to major changes in the forest land management and administration system since 1954, the role of district authorities, FMB's and formally appointed village leaders have become stronger than traditional institutions. Also socio-economic changes and the technological development in general have affected (and is still affecting) the two communes and the existing values. Therefore although our findings show the existence attitudes and behaviours towards a balanced relation with nature, customary law is seriously threatened as the social and technological progress sets on.

A main concerning issue is that up to date state laws and programs have failed to take customary law, indigenous knowledge in to account in and did not recognize their positive functions for nature and society. State initiated programs after 1954 handed ownership and control over forests over to cooperatives or state organisations, without taking notice of existing local rules, boundaries and structures in the two communes. In both cases the period between 1954 and 1993 has seen characterized by a damaging and depletion of natural resources. Since 1993 the government made efforts to reverse this situation through laws and programs and has been able to improve people's livelihoods in Ta Phin and Muong Phang. However also in most recent policies and programs the government has failed to take into account customary law; for instance the creation of conditions that allow for community ownership of forests. On the other hand there was a low awareness on state laws and policies as they had hardly any access to such information. Consequently the Dzao and Thai people are excluded from their own development process and face obstacles in technically managing state initiated plans. Another concerning issue is that at the time of study local authorities had still not carried out a land reallocation program effectively and thus people had very limited rights to access and to use land and forest resources. In addition there exists much confusion and conflicts over boundaries which are leading to ineffective use, protection and development of the forests. A major conclusion in this study is that customary law is getting lost while state policies and programs are not optimally functioning. This is a highly unviable situation both for people and nature in Ta Phin and Muong Phang. Therefore we come up with the following *recommendations*:

- a) There is a stressing need for policy makers and legislators to understand customary law, its spiritual values and positive functions for societal and environmental development. It is therefore needed to adjust current laws on land and forests to close the gap between customary law and state law; for instance through allowing community ownership of forests or taking into account people's own classification of forests. As a result state interventions will be better aligned to the real needs and aspirations of local people and increase people's awareness and acceptance of the rules
- b) In processes of national and local planning, space should be created for communities to formulate, to regularly revise and to practice their customary rules on natural resource management use and protection. Authorities at different levels should try to understand the indigenous knowledge that is intimately built into customary law. This is on the one hand important to prevent the loss of indigenous knowledge and valuable mechanisms to maintain social order. On the other hand it will encourage people to control and protect their resources effectively and in cooperation with state institutions.

- c) Local authorities should recognize and utilize the role of traditional institutions like village elders and prayers in natural resources management, use and protection.
- d) State law should recognize the significance of NTFPs and must formulate a clear strategy for NTFP use and management – therein make use of indigenous knowledge and customary rules that guide people towards sustainable use and development of NTFPs.
- e) There is need to complete land-use planning and forestland allocation to households and communities in mountainous areas as soon as possible. This is an essential condition to clarify and secure their rights and roles in protecting and using these resources.
- f) We like to emphasize that no matter how the social and economic conditions are, there is the need to conduct research for a thorough understanding of customary law among different minorities and how it could strengthen state laws and policies towards sustainable natural resources use and management. This study has merely been an initial step to understand customary law and its link to sustainable natural resource management in a small area and we hope to continue our efforts to get a deeper understanding of customary law.

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ANNEXES

List of informants

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

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

2 6	Lo Van La	x		55	Villager	Chai Can
2 7	Lo Van Doi	x			Vice leader of the village	Bua
2 8	Luong Van Bich			56	Commune police chief	Bua
2 9	Luong Van Dung			32	Village leader	Bua
3 0	Quang Thi La		x		Chairman of village women union	Bua
3 1	Luong Thi Kem				Villager	Bua
3 2	Tong Thi Lon		x	90	villager	Bua
3 3	Lo Thi Tien		x	27	Official in charge of cultural issues of the commune	
3 4	Ca Van Thuan	x		42	Deputy leader of village security	Banh
3 5	Ca Van Cu	x		42	Village security chief	Banh
3 6	Lo Thi Thu		x	24	Vice chairwoman of women union	Bua
3 7	Luong Thi On		x	43	Former Chairwomen of women union	Phang I
3 8	Lo Thi La		x	29	villager	Phang II
3 9	Ca Thi Panh		x	30	villager	Phang II
4 0	Tong Thi Hoa		x	30	villager	Phang III
4 1	Luong Van Yen	x		47	Head of Fatherland front	Phang III
4 2	Lo Thi Tinh		x	50	villager	Phang III
4 3	Luong Van Lien	x		31	Secretary of trade union	Bua
4 4	Luong Van Lo	x		24	villager	Bua
4 5	Luong Thi Hoan		x	25	villager	Bua
4 6	Lo Van Chum	x		50	Leader of forest protection team	Bua
4 7	Luong Thi Thanh		x	18	villager	Bua
4 8	Luong Thi Nghia		x	65	villager	Bua
4 9	Ca Thi Minh		x	22	villager (tourist guide in General Giap forest)	Phang II
5 0	Ca Thi Tin		x	37	villager, herbal medicine collector	Phang II
5 1	Luong Thi Sua		x	42	villager, herbal medicine collector	Phang II
5 2	Lo Van Bien			44	Secretary of the commune party committee	Muong Phang

						commune
5 3	Quang Van San	x		43	Deputy Secretary of the commune party committee	Muong Phang commune
5 4	Lo Van Tinh	x		44	Villager	Muong Phang commune
5 5	Lo Van Chieng	x		41	Head of commune Fatherland Front	Muong Phang commune
5 6	Lo Van Xum	x		40	Vice Chairman of commune People's Committee	Muong Phang commune
5 7	Lo Thi Duyen		x	37	Member, commune Women union	Muong Phang commune
5 8	Duong Van O	x		41	Chairman of commune veteran association	Muong Phang commune
5 9	Luong Van Khut	x		44	Secretary of commune Trade Union	Muong Phang commune
6 0	Cam Van Khut	x		46	Vice Chairman of commune People's Council	Muong Phang commune
6 1	Cam Van Thinh	x		36	Deputy Secretary of commune Trade Union	Muong Phang commune
6 2	Lo Van Bun	x		55	Villager	Bua
6 3	Ca Thi Duong		x	26	Villager	Banh
6 4	Ca Thi Cuong		x	24	Villager	Banh
6 5	Luong Van Hoa	x		32	Villager	Phang 3
6 6	Lo Thi Ui		x	26	Villager	Bua
6 7	Luong Van Muon	x		50	Villager	Phang 1
6 8	Luong Thi Ngoan		x	40	villager, herbal medicine collector	Phang 3
6 9	Cam Thi Dien		x	20	Villager	Phang 1
7 0	Luong Van La	x		48	Villager	Phang 2
Ta Phin commune, Sa Pa, Lao Cai						
Trip 1+2						
71	Bui Duy Chien	x		34	Commune official	
72	Ly Pu Hang	x		48	Commune official	
73	Ly Phuc Chieu	x		47	Official of Fartherland Front	
74	Chao Senh Tinh	x		65	priest	
75	Ly Pu Liem	x		48	Village leader	
76	Chao Que Nga	x		34	Villager	

77	Phan Giao Quan	x		53	Village leader	
78	Phan Giao Trinh	x		48	villager	
79	Chao Quy Vang	x		30	priest	
80	Ly Tai Van	x		54	priest	
81	Ly Lo May		x	52	Herbal healer	
82	Ly Pu Kinh	x		57	villager	
83	Ly Pu On	x		50	priest	
84	Ly Sai Chiu	x		75	Village elder	
85	Ly Pu Chiu	x		40	Head of local Red Cross	
86	Tan Phu Quan	x		51	Former head of collective farm	
87	Giang A Cho	x		46	Commune Forest Protection	
88	Ly Pu Tinh	x		50	Villager	
89	Ly Quay Liem	x		40	priest	
90	Ly Pu Chiu	x		66	priest	
91	Ly Pu Seng	x		30	Leader	
92	Chao Van Chan	x		51	priest	
93	Ly Phuc Quay	x		66	priest, healer, oracle	
94	Ly Pu Trinh	x		47	priest	
95	Ly Pu Sieu	x		37	Commune official, priest	
96	Ly May Chan	x		53	Herbal medicine collector	
97	Ly Phu Hang	x		44	Secretary of commune party orgarnization	
98	Chang A Xa	x		42	Chairman of commune People's Committee	
99	Ly Pu Sieu	x		44	Vice - chairman of commune People's Committee	
100	Ly Phu Chieu	x		45	Head of commune Fatherland Front	
101	Chao Su May		x	41	Chairwomen of commune Women Union	
102	Ly May Chan		x	43	Handicraft making association	
103	Chang A Thao	x		52	Leader of Suoi Thau village	Suoi Thau
104	Nguyen Thi Huong		x	36	Cultural Department of the commune	
105	Giang A Chu	x		39	Forest Protection Department of the commune	
106	Nguyen Viet Ha	x		35	Forest Protection	Sapa Forest Protection
107	Ly Quay Seng	x		51	Famer	Ta Chay
108	Chao May Khe		x	37	Do business on herbal material for bath	Sa Seng
109	Ly Quang Sy	x		47	Retired official at commune level	Ta Chay
110	Ly Phu Ta	x		32	Farmer	Sa Seng
111	Chao Van Phu	x		41	Do business on herbal material for bath	Sa Seng
112	Ly Phu San	x		53	Farmer	Ta Chay
113	Ly Thao San	x		56	Farmer	Ta Chay
114	Ly Lo May		x	57	Official of Women Union	Sa Seng
115	Cheo Van Vang	x		30	Oracle	Sa Seng
116	Cheo Sinh Tinh	x		65	Farmer	Sa Seng
117	Ly Quay Sieu	x		34	Farmer	Ta Chai
118	Ly Phu Hang	x		53	Secretary of commune party orgarnization	Sa Seng

119	Ly Phet Sieu		x	26	Farmer	Ta Chai
120	Ly Quay Sinh	x		37	Farmer	Ta Chai
121	Cheo Van Chan	x		39	Farmer	Ta Chai
122	Ly Quay Choi	x		41	Farmer	Ta Chai
123	Ly Lao San	x		24	Farmer	Ta Chai
124	Phan Dao Phau	x		49	Farmer	Ta Chai
125	Tran Văn Sieu	x		48	Oracle, priest	Ta Chai
126	Phan Dao Ta	x		52	Herbal healer	Sa Seng
127	Ly Sai Van	x		41	Leader of Ly clan, priest	Sa Seng
128	Chao May Liu		x	41	Farmer	Ta Chai
129	Chao Van Phu	x		24	Farmer	Sa Seng
130	Ly Phu Trinh	x		48	Priest	Sa Seng
131	Chao Ta May		x	52	Farmer	Sa Seng
132	Ly Ta May		x	52	Farmer	Sa Seng
133	Ly Lo May		x	47	Farmer	Sa Seng
134	Phan Su May		x	82	Farmer	Ta Chai
135	Ly Phu Chiu	x		40	Farmer	Ta Chai
136	Ly Phu Tinh	x		49	Farmer	Ta Chai
<i>And 18 people in Nghiu village (4 female, 14 male) working at Nghiu village, Muong Phang commune, Dien Bien district: group meeting and interviewing</i>						

TABLE

Table 1: Livestock raising in Muong Phang

Animal	Unit	Quantity	Notes
Buffalo	Head	2 317	
Cow	Head	782	
Swine	Head	6 126	
Other poultry	Head	52 362	
Fish	ton	16	Annual crop yields estimated 16 ton

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

Table 2: Some medicinal plants in Muong Phang Forest

Name of medicinal plants			Functions
Thái	Vietnamees	Latin	
	Cây Xương Khi		Osteoarthritis treatment
	Hà Thủ Ô		
Công Sê rên			Osteoarthritis treatment
	Củ nâu đá		Curing Stomach
Cây một củ	Cây một củ		Liver Healing
	Củ Hoàng Tinh		Heart supplement
	Củ mài		
Cong Se Len			Nourishing health
Khâm chưa			Colitis, intestinal diseases

Table 3: Agricultural production in Muong Phang

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

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

Table 4 Price of some main NTFPs in Ta Phin (Interviews)

	NTFPs	Price in 2010	Note
1	Honey	150 000 VND/bottle 700ml	
2	Fresh bamboo roots	5 000 – 7 000 VND/kg	
3	Bamboo	3000 VND/tree	
4	Fire woods	300 000VND/m3	
5	Herbal plant use for bathing	30 000 VND/kg	
6	Herbalplant use women after giving birth	30 000 VND/kg	
7	Fresh cardamom	40 000 – 50 000VND/kg	
8	Dry cardamom	190 000 -198 000VND/kg	12kg fresh cardamom produce 1 kilogram of dry cardamom
9	Herbal bath concentrate	120 000 VND/litre	100 kg fresh herbal plants (13-15 different species) produce 30litre
10	Essential oil massage for treatment	3.000.000 VND/litre	1000 kg fresh herbal plant (13-18 different herbal species) produce 1 litre essential oil