

Research on the Implementation of Customary Law in the Protection of Forests and Forest Land by Ethnic Minorities in Đắk Lắk Province (Vietnam) today

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Abstract

Livelihood methods and the transition from subsistence production to commodity production are factors affecting current communities and also influence the changes in nature and the capacity of communities in managing and using natural resources. This article is conducted based on the collection, evaluation, and analysis of current Vietnamese legal documents and policies on Land, Forest Protection and Development, Civil Codes, sub-law resolutions, and other local documents. It also involves analyzing documents on the current state of forests, forest land, ethnic minority groups, and their customary laws. The content of the article provides an overall picture of the current state of using customary law in the management and use of forests and forest land in ethnic minority communities at the study sites.

Keywords: Protection, Ethnic Minorities, Forest Land, Đắk Lắk, Implementation

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Introduction

Đắk Lắk province, covering a natural area of 13,125 km², is located in the center of the Central Highlands region of Vietnam. It borders Gia Lai province to the north, Phú Yên to the east, Lâm Đồng to the south, and Đắk Nông and Cambodia to the west. The population of Đắk Lắk comprises 44 ethnic groups, with a total population of 1,869,322 people (General Statistics Office of Vietnam, 2019). Of this population, the Kinh people account for over 70%, while ethnic minorities such as the Xê Đăng, Ba Na, Ê Đê, M'nông, Thái, Tày, Nùng, etc., make up nearly 30% of the province's population. In recent years, Đắk Lắk's population has fluctuated due to mechanical growth, primarily due to free migration, which has exerted significant pressure on the province in terms of resolving issues related to residential land, production land, social life, public order, and ecological environment. The province currently has 2,199 villages and urban wards, of which 411 are classified as particularly difficult areas, mostly located in remote areas (category 3) (Đắk Lắk Provincial People's Committee, 2023). According to forest inventory results, Đắk Lắk has nearly 722,000 hectares of forests and forest land (Đắk Lắk Provincial People's Committee, 2015). Currently, the state of deforestation in the locality is concerning. There are multiple causes of deforestation: Areas of forest that have not been allocated to any forest owner and are currently managed by local authorities (commune-level People's Committees) suffer significant losses due to the lack of capacity and manpower of these entities. The Forest Protection Department only has a supervisory role, advising the district People's Committees without direct forest control, not participating in forest contracting within the locality, and not being directly responsible for forest loss (Wang et al., 2023). Although legal documents stipulate that forest owners are responsible for deforestation, in reality, the penalties are weak and unclear, making it difficult to address forest loss at the commune level. Decree 157 on administrative penalties is ineffective in ethnic

minority areas (Government of Vietnam, 2013). Contracted forest protection activities are not substantive; residents who contract for forest protection passively follow forest rangers when organized for forest protection. The responsibility of forest rangers in many areas is problematic. In many places, forest rangers allow locals to enter forests to collect wood or do not respond when informed of illegal logging. The economic difficulties of households lead many to clear forests for farmland due to a lack of food (Kidane & Kejela, 2021). The low awareness and technical knowledge of the people result in ineffective agricultural production. These causes highlight the necessity of discussing the implementation of customary law in the protection of forests and forest land among ethnic minorities in Đắk Lắk province to gain a clearer understanding of the current state of forest and forest land management and usage within these local ethnic communities.

Methods

This article primarily employs two main research methods: the method of collecting and reviewing secondary documents and the method of ethnographic fieldwork. Collecting and Reviewing Secondary Documents: (1) The author collected and analyzed current Vietnamese legal and policy documents on Land, Forest Protection and Development, Civil Codes, sub-law resolutions related to these laws, and other relevant documents; (2) The study involved gathering and analyzing reports and articles about ethnic minority groups and their customary laws in Đắk Lắk from both Vietnamese and international anthropologists and researchers. Ethnographic Fieldwork: (1) The author conducted group discussions with male and female land users from the study areas at the community level; (2) Group discussions were held with local leaders involved in land management and administrators (at district and commune levels); (3) In-depth interviews were conducted with experts, managers, researchers, and land policy makers, including representatives from the government, mass organizations, and cadastral officers, as well as household representatives who are current or past land users in the study areas.

Literature Review

To date, there have been several ethnographic studies on land management in the Central Highlands region (Đắk Lắk, Đắk Nông, Gia Lai, Kon Tum, Lâm Đồng). Since the 1960s, the role of customary law has been limited by the impact of new policies; however, areas under community management are generally well protected. According to the Forestry Department (2001), some current challenges in community forest and forest land management include inconsistent concepts of community (in land allocation), responsibilities, rights, and benefits of communities in using forest land, operational mechanisms, and the linkage between communities and administrative organizations/units.

In the field of community land management, numerous studies on community forest management and community forestry have been conducted by agricultural and forestry scientists. However, these studies have mainly addressed forms of community forest management rather than focusing on the human element, i.e., the primary subjects of community management. Some forestry researchers have primarily focused on community forest management issues based on implementing community-based forestry development projects. Authors like Phạm Xuân Phương and Nguyễn Tá Chiến, along with reports from community forestry groups in Đắk Nông, Gia Lai, Kon Tum, and Đắk Lắk provinces, have mainly addressed forestry strategies and the introduction of modern community forestry models into ethnic minority and mountainous areas (Lê Sỹ Giáo, 1992).

Results and Discussion

Customary Law in the Management and Use of Forests and Forest Land in Đắk Lắk Province today

The customary laws of the people in the Central Highlands, including Đắk Lắk, are not systematically documented in written form but are mainly passed down orally from generation to generation. The people do not have strict regulations on the use of forest resources but have general rules for communal resource use. The community believes in various deities such as the mountain/forest god and the water god (linked to the village water sources). Many areas within the forests, such as large trees, rivers with large rocks, caves, deep water areas, waterfalls, or places believed to be inhabited by spirits, are considered sacred. It is believed that those who disrespect or damage these places might suffer from illnesses, epilepsy, poisoning, or even death. Hence, villages forbid members from encroaching on sacred forests and grave forests. Rules about which areas can be cleared and which cannot are passed down through generations.

Water sources and village water wells are vital to the community. Anyone who cuts trees, uses explosives, or electricity to catch fish at these sites faces severe penalties. Each village has its longstanding boundaries for forests and cultivated lands. Within the village, swidden fields and large trees have specific owners. The boundaries of the forests, villages, and ownership of land and trees are determined by village elders who have extensive knowledge of the village's history and land origins. Villages clear, plant, and harvest within their boundaries. When harvesting timber, people must do so within their designated areas. If someone wants to cultivate or cut trees on another's land, they must seek permission, negotiate, and usually compensate the landowner with equivalent goods.

Land within a village is used for cultivation and can only be exchanged within the village; it cannot be sold to outsiders. Outsiders can only be considered members of the village if they marry within the village. Otherwise, they must buy or request a land transfer like any outsider. For significant matters such as gifting or transferring village forests and lands, village-wide meetings are held under the guidance of the village elder to discuss the issues. The protection of boundaries, forests, and lands is overseen by the entire community. Violations within the village are reported to the village elder for mediation and judgment according to village laws. If outsiders cut down community trees, they can be detained by the villagers.

Regarding swidden land, the M'ông people avoid highland areas, focusing on flatlands at the foot and mid-mountain where the forest is regenerating. They are taught that large trees retain water and moisture, thus they avoid cutting down large trees. Forests provide vital resources such as wild vegetables and essential food, so uncontrolled deforestation is prohibited. Old-growth forests and large trees are also unsuitable for their traditional farming practices. The village elder is responsible for overseeing swidden burning. Burning is done following the elder's signal, usually a drum beat, or the elder ignites the first fire. A week before burning, the elder mobilizes the village to clear firebreaks around the swidden to prevent wildfires from spreading to other forests or lands. If a fire spreads to another village's land or old-growth forest, the entire village must perform rituals or face severe penalties.

Forest products are gathered equally, and anyone with a need can collect them for family use. The M'ông do not traditionally harvest forest products for sale. Each household can harvest timber once in a lifetime, sufficient to build a house (around 4-5 large trees). They freely choose the timber, except in restricted areas. However, if they want to harvest large trees, they must consult with the village elder. Cutting trees in sacred areas such as near water sources or sacred

forests requires offerings of chickens, pigs, goats, or buffaloes, depending on the situation. Honey found on a tree belongs to the finder.

The M'ông do not have traditions of hunting large or dangerous animals, although they are free to hunt smaller animals like deer and wild boar for family needs, but not for sale. When encountering dangerous animals like tigers, they use fire to drive them away. Very few M'ông people capture and tame elephants due to the many associated taboos. Traditionally, the M'ông do not use guns but rely on crossbows, spears, nets, and traps for hunting. Traps are set primarily to protect crops rather than in forests. Deer hunting involves notifying the village elder, with each household sending one person. Fishing in ponds, lakes, rivers, and streams is done communally. Agriculture, fishing, or grazing near village water sources is prohibited and only allowed at locations agreed upon by the entire village. Game animals caught in traps are shared with the village, with the hunter keeping only a leg if the animal is large. Meat distribution depends on kinship and status within the community, with those participating in the hunt receiving larger portions according to their roles.

Conflicts between villages are resolved by the elders of both sides. If conflicts arise, the village elders meet and negotiate, rarely needing a third elder's intervention. Historically, village elders could resolve all conflicts without government intervention. Customary laws passed down through generations empower the village elder to make decisions on behalf of the village in social, religious, and legal matters. Although older and wealthier individuals play significant roles in the village, there is minimal social, economic, or religious discrimination within the Central Highlands communities (Hickey, 1982). The village elder, selected by the community, typically possesses high prestige, successful in livelihood, and is well-respected. Potential elders must master customary laws, community history, and land boundaries, demonstrating their ability to unite the community and mediate conflicts. The elder is often the village founder or the first settler, with succession usually staying within the family.

Customary laws for handling violations in the Central Highlands are strict and effective, despite being framework laws. Penalties range from offering rice wine for reconciliation to fines involving pigs, buffaloes, valuable ancient jars, or gongs. Offenders may be banned from village activities, required to compensate with labor, or adopted into the victim's family to repay lifelong debts. Violating the water source, such as cutting trees or using explosives, incurs a fine of a buffalo, which is slaughtered and offered to the water source while feasting the entire village. Damaging water sources entails immediate offerings and severe penalties. Water is the most crucial element, more significant than cutting trees or encroaching on land. Cutting trees in one's area incurs no penalty, but cutting trees in others' areas without permission results in fines. The village elder mediates, with penalties determined by the victim, based on tree diameter. Violating sacred forests or grave forests incurs fines involving goats or pigs. Burning forests incurs fines with goats, while cutting trees incurs fines with pigs. Encroaching on others' land results in fines ranging from rice wine and pig offerings to buffaloes, depending on the severity.

Implementation of Customary Laws in the Management and Use of Forests and Forest Land in Đắk Lắk Province today

Although the indigenous knowledge and customary laws of the people of Đắk Lắk have existed for generations, they have not been effectively utilized in community management, socio-economic welfare, or forest and resource protection (Thai, 2018). The neglect of the role of indigenous people and their customary laws has led to cultural and spiritual disconnection, resulting in various social and environmental issues. Over the past four decades, the cultural life of the Đắk Lắk community has been significantly affected by state policies, market

influences, and religious changes. Policies on migration have disrupted traditional social structures. The market economy has transformed many traditional production activities, impacting associated cultural traits. Although there have been positive changes, such as infrastructure development and the reduction of superstitions, many traditional cultural practices, including forest and resource protection knowledge and customs, have deteriorated.

Customary laws can be divided into two groups: those related to daily life and those related to forest management and protection. Currently, many social customs are still preserved, and some indigenous groups are striving to maintain them within their communities. However, the customary laws related to forest management and protection are fading as the people no longer have rights over the forests. In many areas, the population now includes multiple ethnic groups, leading to mixed cultures. The current forest destroyers are not indigenous people and do not respect the traditional customs and rights of the indigenous people. Therefore, customary laws are challenging to fully enforce.

In some places, both customary laws and state laws are applied. Violations within the same village, such as disputes over swidden land, are still resolved according to traditional customs. In contrast, conflicts with outsiders or on state-managed land are handled by state laws. Overlapping implementation of customary and state laws occurs frequently, with individuals attempting to comply with both legal systems.

The role of traditional institutions like village elders has diminished significantly. Elders now primarily participate in some community activities and, occasionally, in managing community forest resources but are not as prominent as before. Despite this, communities in Đắk Lắk still have specific customary laws for managing and using forests and forest land, although these regulations are general and lack detailed provisions. Community-based resource management persists to some extent, particularly in managing swidden fields, traditional use forests, and production forests after swidden farming.

From our research on policies and the practical application of customary laws in forest and forest land management in Đắk Lắk, we draw the following conclusions: (i) Community Concept: Based on field research, the community in forest and forest land management today includes: Traditional villages/hamlets; Clans and household groups; Mass organizations (Youth Union, Women's Union, Farmers' Union, Veterans' Association, Elders' Association). Traditional forms of forest and land management (or customary law-based management) represent the smallest portion of current forest management practices. (ii) Decision-Making Authority: In minority ethnic communities living in mountainous areas, where livelihoods mainly depend on forests and forest land, the individuals or organizations with decision-making power in forest management, exploitation, and protection have changed significantly from traditional norms. Village heads or mass organizations now have the most decisive voice in activities such as forest protection, community forest land transfer, and non-timber forest product exploitation. (iii) Institutionalizing Customary Laws: Combining customary law regulations with the provisions of the 2004 Forest Protection and Development Law to create community conventions is a legal tool to help communities exercise their rights and obligations regarding forest resources. However, there are many gaps in developing the content of these community conventions, especially concerning the benefits for community members and the legal status of the community in accessing resources for production development. iv) Cultural Heritage: Customary laws reflect the traditional culture and heritage of the production and livelihood practices of the communities in Đắk Lắk. In summary, while customary laws and traditional management practices still hold some influence in certain aspects of community life and resource management, their effectiveness and authority have significantly weakened. The overlapping application of customary and state laws creates a complex legal landscape, and the

role of traditional leaders has diminished, requiring a more integrated approach to preserve cultural heritage while adapting to modern legal and economic frameworks.

Conclusion

Political, religious, and developmental policy changes have had and continue to have a significant impact on both the environment and the people of Đắk Lắk. Indigenous people possess customary laws and community rules for managing and using forest resources, although these are not highly detailed or systematically documented. These traditional regulations can be integrated with state laws. The cultural essence and communal nature of the indigenous groups in Đắk Lắk remain relatively strong within their communities and clans. Although large, homogenous communities are now rare, clans and household groups are still prevalent. Indigenous people still live and connect with each other closely (observations show that it is usually individuals from other ethnic groups who integrate into indigenous communities rather than Đắk Lắk natives integrating into other communities). Traditional behavioral principles within the community are still practiced, even among those who follow Catholicism, Protestantism, or Buddhism. Customary laws are still used to govern and regulate most social activities within villages. Indigenous people can influence, coordinate, and manage tasks together, providing a solid foundation for resource management. Their knowledge and attitudes towards forest resources remain positive. Most people in Đắk Lắk are willing to take responsibility for and protect the forests. Although the younger generation in the community may have a lesser degree of traditional adherence, they are increasingly knowledgeable, concerned, and assertive. They continue to follow traditional practices and advice, such as protecting sacred places and water sources. Currently, forest management and protection are less effective, particularly in areas managed by districts, communes, and forestry companies. Assigning forest management to communities and household groups is feasible, although most community forest management models in Đắk Lắk have not succeeded due to various reasons, particularly the lack of a legal framework and implementation processes.

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