

Community-based resolution of inadequacies and conflicts in the forest and land allocation in Dak Nen commune, Kon Plong district, Kon Tum province (2017-2018)

**Project No. 339-004-1013 ZG Co-Funding between
MISEREOR – CCFD – CARITAS - CENDI 2017-2018**

**Part I
General information about Dak Nen commune**

Dak Nen commune is located in the north west of Kon Plong district, 75 km away from the district centre.

Dak Nen has borders with Kon Tum, Quang Nam and Quang Ngai provinces:

- With Dak Rinh commune in the South
- With Mang But commune in the West
- With Tra Vinh commune, Nam Tra Vinh district, Quang Nam province in the North
- With Son Long and Son Lien communes, Son Tay district, Quang Ngai province in the East

The land use planning in Dak Nen commune as of December 2016:

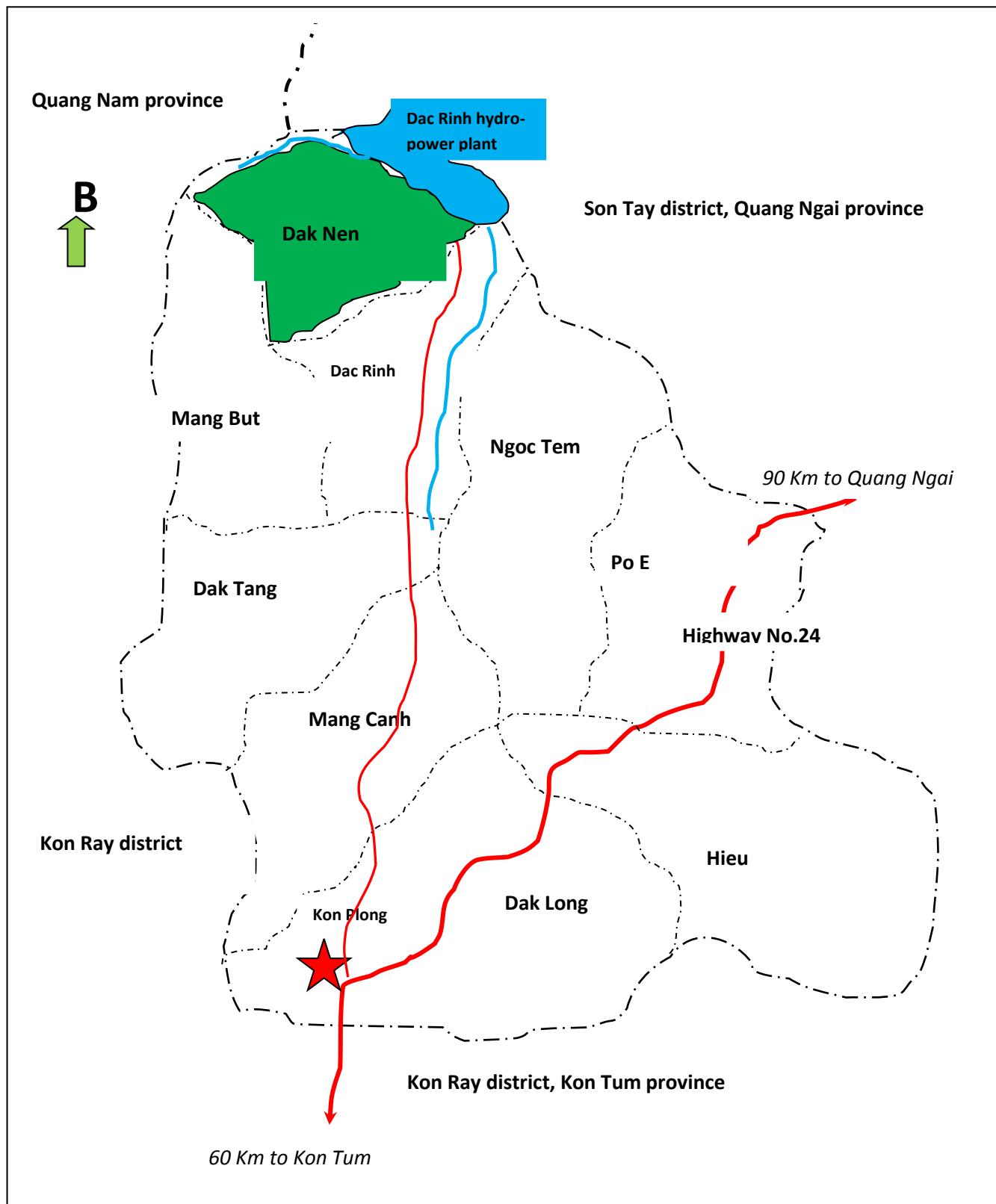
- Total natural area: 11,823 ha
- Agricultural production area: 687 ha, among which wet rice farming is 83ha, the remaining is for the upland farming.
- Forestry land: 9,601 ha, among which:
 - Protection forest: 3,650 ha managed by the Thach Nham WMB
 - Production forest: 5,951 ha, among which 1,000 ha of 51 households have the land use rights Certificates (Red Book). The remaining is under the CPC's management.
- Other land: 1,535 ha (for construction, transport, ponds/lakes, unused land)

As of December 2016, the commune has a total of 10 villages with 528 households and 2,341 people, among those the Ka Dong population accounts for 98.93%, with 520 households and 2,134 people.

Landscape of Dak Nen



I. Map of Dak Nen commune



Land use planning in Dak Nen commune as of 2016

Quang Nam province

Quang Nam province

Mang But commune

Dak Rinh commune

Quang Ngai province

Land
managed
by CPC

Forest
allocated to
51
households
in 2005

Tu Thon

Tu Ret

Lang Vuong (new)

Xo Luong (new)

Tu Ngu

Dak Lup

Dak Lai

Lang Vuong (old)

Xo Luong (old)

Xo Thac

Dak Tieu

Land
managed
by CPC

Dak Puk

Quang Ngai province

Protection
Forest

Thach
Nham
WMB

Forest
managed
by CPC

PART II

Forestland-related issues recognized during the implementation of the forest and land allocation (FLA) in Dak Nen commune

Issue 1: The implementation of FLA to households in the Dak Nen's subzone No.375 under the Decision 178/2001/QĐ-TTg by the Kon Plong DPC and in line with the Decision 566/QĐUB dated 25 July 2005 on allocation of forestry land and granting land use rights Certificates to 51 households in the subzone No.375 over the total area of 1,000 ha.

1. The State policy and Legal documents

On 16 November 1999, the Prime Minister enacted Decree 163/1999/NĐ-CP on land allocation and land contracting with organizations, households and individuals for a long-term use for forestry purposes. In the Article 8 & 9 of this Decree, it is stipulated that the State allocates planned forests for production to organizations, households and individuals for a long-term use for forestry purposes.

The aim of this Decree is to manage and protect forests effectively by the organizations, households and individuals. It, however, doesn't stipulate clearly the benefits of the forest owners.

The Government, therefore, further issued Decision 178/2001/QĐ-TTg dated 12 November 2001 stipulating the benefits of the organizations, households and individuals, who are allocated and contracted with forest and forestry land.

The aim of this Decision is to create an economic motivation and encourage people to protect forests, and to earn a remarkable income from the forest protection, which ensures the livelihood of the forest-dependent people.

2. Inadequacies during the FLA implementation in Dak Nen commune in 2005

Following the Decision 178/2001/QĐ-TTg, the Kon Plong District People's Committee (DPC) and the Dak Nen Commune People's Committee (CPC) had implemented the FLA to households in the subzone No.375 under the Decision 566/QĐUB dated 25 July 2005.

- At that moment, the Kon Plong DPC contracted with the Institute for Forest Investigation and Planning in the Southern Central and Central Highlands to

carry out the FLA. This affiliate then sub-contracted with the Phuong Minh mapping company to do the task.

- The Dak Nen CPC organized the meeting with the village and commune officials to discuss about the plan, location and list of the households for allocation.
- The subzone No. 375 was selected to be the location for allocation, which administratively belongs to the 3 villages of Tu Thon, Tu Ret and Tu Ngu.
- The selected households were the families of the village officials, who are the Heads, Deputy Heads, Party Secretaries and leaders of the functional branches of the 8 villages, making the total of the selected households up to 51, namely: Tu Thon (12 households), Tu Ret (16 households), Tu Ngu (8 households), Dak Lup (6 households), Dak Lai (5 households), Xo Thac (1 household), Lang Vuong (1 household), Xo Luong (2 households).
- 36 households among the total 51 households came from the 3 villages of Tu Thon, Tu Ngu and Tu Ret.
- The remaining 15 households came from the other 5 villages that lived outside the administrative boundaries the 3 a.m. villages, but still were awarded with land use rights Certificates for the land and forests owned by the 3 a.m. villages.

The inadequacy is in the top-down selection process imposed by the commune officials without the participation and agreement of the villages' people

- The selected households were allocated with land and forest by a bureaucratic and superficial technical team that just used UTM mapping (ratio 1/50,000 zoomed in into 1/25,000) instead of conducting a real field survey to select the subzone No.375 for allocation. After splitting the field land aside, the forest land area was divided into 51 land plots to be allocated to the 51 households with the name of each family shown on the allocation map. Then the households were invited to walk out to see their allocated land not at site but far from the site. As a result, the actual boundaries between the land plots were not identified.
- Following the technical team's work, the Dak Nen CPC and its cadastral department completed the FLA administrative proceedings. On 25 July 2005, the Kon Plong DPC issued a Decision 566/QĐUB on allocation of the forestry land and granting land use rights Certificates to 51 households in the subzone No. 375 over a total area of 1,000 ha.
- *The inadequacy is not only in the selection of the households, who were not the residents of the 3 a.m. villages owning the administrative boundaries in the subzone No.375 but still received the land use rights Certificates, but also in the way that the Phuong Minh mapping company and its technical team bureaucratically allocated the land plots by map not at the field, which nullified*

the villager's rights and ignored the objective existence of those land plots in the subzone No.375. For instance:

- The villagers were neither informed of nor discussed about the purpose and significance of the FLA, their benefits and responsibilities;
 - Administrative boundaries of the villages and land plots were not identified at the field;
 - The selected household did not really know where and how their land plot was;
 - 15 households, which did not live within the administrative territory of Tu Thon, Tu Ngu and Tu Ret villages, were still allocated with forest and land in these 3 villages;
 - The old FLA mapping was not accurate due to the map-based rather than the field-based allocation methodology, which was not based on the traditional boundaries and without consulting the villagers, making the allocated plots overlap the residential area, roads and farming land, etc.
(See the 2005 FLA map by the Phuong Minh company below. It is unknown whether this company still operates or not!)

2005 FLA map by the Phuong Minh company



3. How did CODE – CENDI resolve the Issue 1?

Step 1: Approach to legal documents

Legal documents promulgated prior to Decision 178/2001/QĐ-TTg:

Decree 163/1999/NĐ-CP on the rights of households to land use rights Certificates

Land Law 13/2003/ QH 11 stipulates:

- Article 17
 - d) A general description of the administrative land boundaries;
 - e) A writing acknowledgement of the description of the administrative land boundaries;
 - g) A list of geographical factors related to the administrative boundaries;
 - h) A Minutes of handover of the administrative boundary landmarks;
- Article 47:
 - e) Changes in land use and other related information;
- Establishment and management of a land boundaries profile
- Article 48:
 - Land use rights Certificate should be issued for each land plot.

Legal documents promulgated after the Decision 178/2001/QĐ-TTg

- Law 29/2004/QH11on Forest Protection and Development;
- Ordinance 34/2007/PL – UBTVQH11 stipulating the grass-root democracy, the contents to be published for people to know, the contents to be published for people to decide and the contents to be published for people to monitor and supervise the authorities at the grass-root level;
- Decision 755/QĐ-TTg in 2013 approving the policy of supporting residential land and production land for local people and poor households in extremely needy communes and villages;
- Forest 16/2017/QH14 stipulates :
 1. The legitimacy of open, democratic and transparent participation of people in the forest and land allocation process in Article 3 Clause 4, Article 10 Clause 1 Point d, Article 12 Clause 2 Point a & b and Article 14 Clause 7.

2. The legal status of the residential community for spiritual forests being special use forests, protection forests and production forest in Article 2 Clause 8, Article 4 Clause 6, Article 5 Clause 2, Article 14 Clause 8, Article 16 Clause 1 Point d and Article 86 Point 1.
3. The legitimacy of the community for village regulation/customary law in Article 2 Point 8; Article 14 Point 8 and Article 16 Clause 1Point d
4. The legal status of the community for the rights to use, manage and develop spiritual forests being special use forests, protection forests and production forests in Article 86 of the Forest Law 16/2017/QH14.

CODE and CENDI have closely collaborated with the village elders and key farmers in the villages of Dak Nen, the functional units of the village, commune and district, and the mapping company to step by step tackle the land overlapping and administrative boundary discrepancy in the allocated area caused by the FLA under the Decision 566/QDUB dated 25 July 2005 regarding the allocation of forestry land and granting land use rights Certificates to 51 households in the sub-zone No. 375 over the total area of 1000 ha.

Step 2: Approach to the local authorities at the village, commune and district levels

1. Facilitated the Kon Plong district authority to establish a district FLA Steering Committee

The lessons learnt from the community-based and customary law-based FLA and the legalization of inter-village community regulations of management of the spiritual forests and watershed protection forests via the key farmer network in Po E commune supported by NPA and SCCF have contributed to building a mutual trust between CODE-CENDI, the professional staff and the local authority officials at the village, commune and district levels to facilitate the legal steps at the district level for the implementation of FLA program in Dak Nen commune, which is co-funded by MISEREOR – CCFD – SCCF – CENDI.

Thanks to the mutual trust between CODE-CENDI and Po E commune, the Kon Plong DPC had issued Decision 1137/QĐ-UBND dated 6 December 2016 on the establishment of the Kon Plong District Steering Committee for the FLA implementation in Dak Nen commune. This CODE-CENDI's approach aims at creating opportunities to maximize the engagement of the local district officials and branches to understand the behavioral norms of the Ka Dong's philosophy of Nurturing Nature,

which serves as a decisive foundation for the successful FLA implementation in the Central Highlands. This is also a good opportunity for the professional and local authority officials to better understand the cultural identity, traditional customs and practices of the forest-dependent people in the Central Highlands, and their rights to protect and manage their own forests, which later will help the officials improve their attitude towards the Ka Dong, who so far have been labeled as “backward” and “superstitious” by the local governments and the society as a whole. That is the key to explain why the ethnic minority people have always been forcedly displaced from their ancestral land for the implementation of national development programs.

Finally, a district Steering Committee for FLA has been established under Decision 1137/QĐ-UBND dated 6 December 2016, which includes the officials from the Agricultural Department, Natural Resources & Environment Department, Land Registration Department, Department of Justice, Forest Protection Department, the commune Chairman, the commune cadastral office and the village elder of Dak Nen.

2. Conducted an in-depth research on the Ka Dong's customary law and the spiritual ecosystem in Dak Nen commune with the participation of the members of the district Steering Committee.

The research has come up with important findings which create the foundation for the implementation of FLA as well as for resolving the conflicts rooted from the the FLA in Dak Nen in 2005 as bellows:

- *P Loi* is the structure of the Ka Dong's village that reflects their wisdom and understanding of the landscape and ecosystem in which they reside;
- Therefore, the Ka Dong's village structure closely attaches with its geographic and natural characteristics such as the mountain edge and water source..., creating groups of villages living in harmony with the ecosystem. The Ka Dong worship the Natural Spirits based on mountain edges, forest edges and forest water sources;
- The Ka Dong believe the ecosystem has its spirit which safeguards and blesses all villagers. They, therefore, voluntarily worship Yang (the superpower of forest spirits). This finding is a key to the success of the district professional staff and plays an important role in resolving the inadequacies resulted from the bureaucratic FLA program implemented in 2005.
- The Ka Dong's traditional leaders, who are known as the village elders (or locally called *Ka Rả P loi*) are very knowledgeable about ecosystem. They are

respected and voted by the whole community based on their own prestige and knowledge rather than appointed by the local government;

- Community spirit is the key characteristic of the Ka Dong;
- Forests are the communal asset belonging to all members of *P Loi* for protection. Forests, therefore, cannot be splitted or allocated to individuals, according to the Ka Dong's belief for hundreds of years.

The research has identified the inadequacy that the traditional governance over the forest, land and water under the “P Loi”, which is based on their beliefs and customary rituals and ceremonies, is completely different from the governance under the government administrative village. The situation of splitting one P Loi into several villages, or combining several “P Lois” into one village has occurred in Dak Nen commune. These inadequacies will be based to step by step resolve the conflicts and forest and land overlapping during the FLA process.

3. Having applied the research outcomes, the villages organized meetings to recall their customary laws and P Loi's regulations, and build their own regulations in writing under the facilitation of CODE-CENDI and the district s justice official

- Village regulations based on the customary law and community local knowledge of forest and land management, protection and development had been recalled by each village at the meeting, then written on A0-sized papers. The members of the district Steering Committee and CODE-CENDI experts helped them type and edit the regulations;
- The village regulations were presented by the village representatives in the meeting organized by the CPC so that the commune leaders and functional staff could contribute opinions;
- Upon the commune approval, the village regulations were presented in the meeting organized by the district Steering Committee for gathering the opinions from the Committee, especially from the Department of Justice for further submittal to the DPC for approval.

The Kon Plong DPC has issued 10 Decisions (from No.242/QĐ-UBND to No.251/QĐ-UBND dated 3 April 2017) approving the village customary laws/regulations on community forest management, protection and development of the 10 villages, including: 1) Tu Thon, 2) Tu Ret, 3) Tu Ngu, 4) Dak Lup, 5) Dak Lai, 6) Lang Vuong, 7) Xo Luong, 8) Xo Thac, 9) Dak Puk, 10) Dak Tieu. These customary laws/regulations serve as the legal basis to affirm the community rights on their own traditional land and to resolve the conflicts over the land overlapping caused by the FLA program since 2005 during the implementation of the Project No.339-004-1013 ZG (2017-2018).

4. Conducted a series of legal training courses integrated with the legalized customary laws.

- Collaborated with the Kong Plong DPC to conduct the training on: 1) Ordinance 34/2007/PL – UBTVQH11 on democracy; 2) Law 55/2014/QH13 on environment protection; 3) Forest Law 16/2017/QH14; 4) the risks of GMO and herbicides to the ecosystem (this content was also integrated in the legal training conducted by the district Steering Committee);
- Each training was repeated 3 times for the 528 households in Dak Nen to make sure that the villagers understood the key contents of the legal documents, which were also distributed to the families.

The villagers felt happy and confident after the training, especially when they knew their P Loi's belief in Nurturing Nature has been recognized and legalized by the new Forest Law 16/2017/QH14 under the Article 2 Clause 8; Article 4 Clause 6; Article 5 Clause 2; Article 14 Clause 8; Article 16 Clause 1Point d and Article 86 Clause 1. Especially, the P Loi's customary laws of the Ka Dong have been mentioned in the Article 2 Clause 8, Article 14 Clause 8, Article 16 Clause 1 Point d of this Law.

5. Organized discussions on the village customary laws

- The village elders of the villages, under the P Loi structure, organized the meetings with the village leaders to discuss, and finally agreed to request those households that had received the land use rights Certificates (Red Book) since

2005 to return the forestland to the whole community for management and protection, according to the Ka Dong's belief and traditional culture, and the new Forest Law 2017;

- The village elders, village heads and key farmers together met with each of the households to encourage them to return the forestland to the community;
- Organized the village meeting, in which the households expressed their wish to voluntarily return their household Red Books to merge into the Community Red Book;
- The households voluntarily wrote the letters to return their land attached with their Red Books.

The households felt relieved after years of being guilty for receiving the Red Books imposed by the top-down selection, though they well understood that, according to the Ka Dong's belief and culture, forests must belong to the whole P Loi for nurturing and worshiping. Yang living in the forests will bless and safeguard the whole P Loi. Therefore, forests cannot be split out to the individuals. They happily wrote the voluntary letters to return the Red Books to the local authority.

6. Facilitated the legal activities

- Facilitated the Dak Nen CPC to write an official letter to the Natural Resources & Environment Department and the DPC to request the withdrawal of the allocated forestland of the 51 households and their Red Books;
- Facilitated the traditional leaders and village heads of the commune to conduct a demarcation for traditional boundaries with the neighboring villages (in pair): Tu Thon – Tu Ret; Tu Ret – Tu Ngu; Tu Ngu – Dak Lup, with the participation of the traditional leaders, village heads, youth and women.
- Facilitated the training and practicing for the traditional leaders and village heads, youth and women to assess the village forestland via GPS and take ecological transect at the same time.

The Kon Plong DPC has withdrawn 1,000 ha that already allocated to the 51 households since 2005 under the Decision 544/QDUB dated 13 November 2017.

7. Completed the legal procedure for FLA and granting land use rights Certificates to the communities.

- Facilitated the field trips engaging the Ka Dong's traditional leaders, village heads, key farmers, women, youth, members of the district and commune authorities and provincial mapping experts in order to re-identify the boundaries of the incorrectly demarcated and overlapped land since 2005;
- Facilitated the desk work and relevant legal documents;
- Facilitated the cross-checking;
- Facilitated the meetings between the villages and the mapping experts for the final confirmation before granting the land use rights Certificates to the villages;
- Facilitated the district FLA Steering Committee, the mapping experts and the villages' representatives to check the landmarks before granting the Certificates;
- Organized ceremonies to grant the Certificates to the villages;
- Fixed landmarks at the village boundaries.

On 18 December 2017 the Kon Plong DPC issued Decision 1127/QĐ UBND approving the plan for forest and land allocation to the Dak Nen's village communities. (See details in the project final report).

The Kon Plong DPC issued Decision 1175//QĐ UBND on forest and land allocation and granting of land use rights Certificates to the Dak Nen's village communities. (See details in the project final report).

After the FLA, starting from January 2019, the Dak Nen villagers have officially benefit from environmental service with the value of 3 million Dong in cash per household, which is beyond the project expectation.

Issue 2: The building of the Dak Rinh hydro-power plant has affected the living space and spiritual practices of the villagers of Xo Luong and Xo Thac in Dak Nen commune.

1. Reasons

In 2014, for the construction of the Dak Rinh hydro-power plant, people living in the reservoir of Xo Luong and Lang Vuong villages had been displaced to the subzone No. 375 for resettlement.

It the resettlement area, houses were built with titled roof, cement floor and private toilet and bathroom, which costed VND 300 million each. In addition, each household had been compensated with VND 500 million to VND 700 million depending on their lost farming land. They were also provided with production land and garden. Approx. 300 ha of land had been allocated to 50 households from Xo Luong and 40 households from Lang Vuong for residential area, garden, wet rice farming and upland farming, as well as for transportation and irrigation.

The inadequacies facing this two village communities are:

- When removing to the new place, the villagers have no forest for worshipping and practicing their spiritual belief;
- The cement houses are not appropriate to the Ka Dong according to their cultural lifestyle;
- As a result, only a half of the households accepted to resettle in the new place, where they also built their own additional Ka Dong-styled houses (made of bamboo or wood) behind the cement ones for storing firewood or animal housing. The remaining households returned to the area, which is close to their old villages, to temporarily settle down.

2. How did CODE – CENDI resolve the Issue 2?

- Based on the same legal basis for resolving the Issue 1;
- To ensure the villager's right, each meeting was organized two times, i.e. one with the household in the new resettlement area, and one with the households in the area near the old village;
- Facilitated the building of the village regulations based on the community customary law and local knowledge of forest management, protection and development.
- Facilitated the re-determination for the traditional boundaries of the two villages in the old places (in pair): Xo Luong – Dak Lai; Xo Luong – Lang Vuong; Lang Vuong – Xo Thac.
- To ensure the villager's right to the spiritual belief, the allocation of sacred forests in the old places of these two villages have also been implemented under the FLA program.

Issue 3: The forest contracting on the land managed by the CPC in the villages of Dak Tieu and Dak Puk

1. Reasons

In 2016, in order to enable the villagers to benefit from the environment service, the Dak Nen CPC has contracted the forest under the management of the CPC with the households from Dak Tieu and Dak Puk villages. Accordingly, the DHF consulting company had been selected to do this task. Unfortunately, this company also worked on the map not at the field, which led to the two serious mistakes:

- The overall forestland area (including the sacred forest) of Dak Tieu village was contracted with the Dak Puk's households for protection.
- The demarcation of the two villages was not based on the traditional boundary, which is known Dak Tong Cho (Stream of Trough) but on the mountain edge.

2. How did CODE-CENDI resolve the Issue 3?

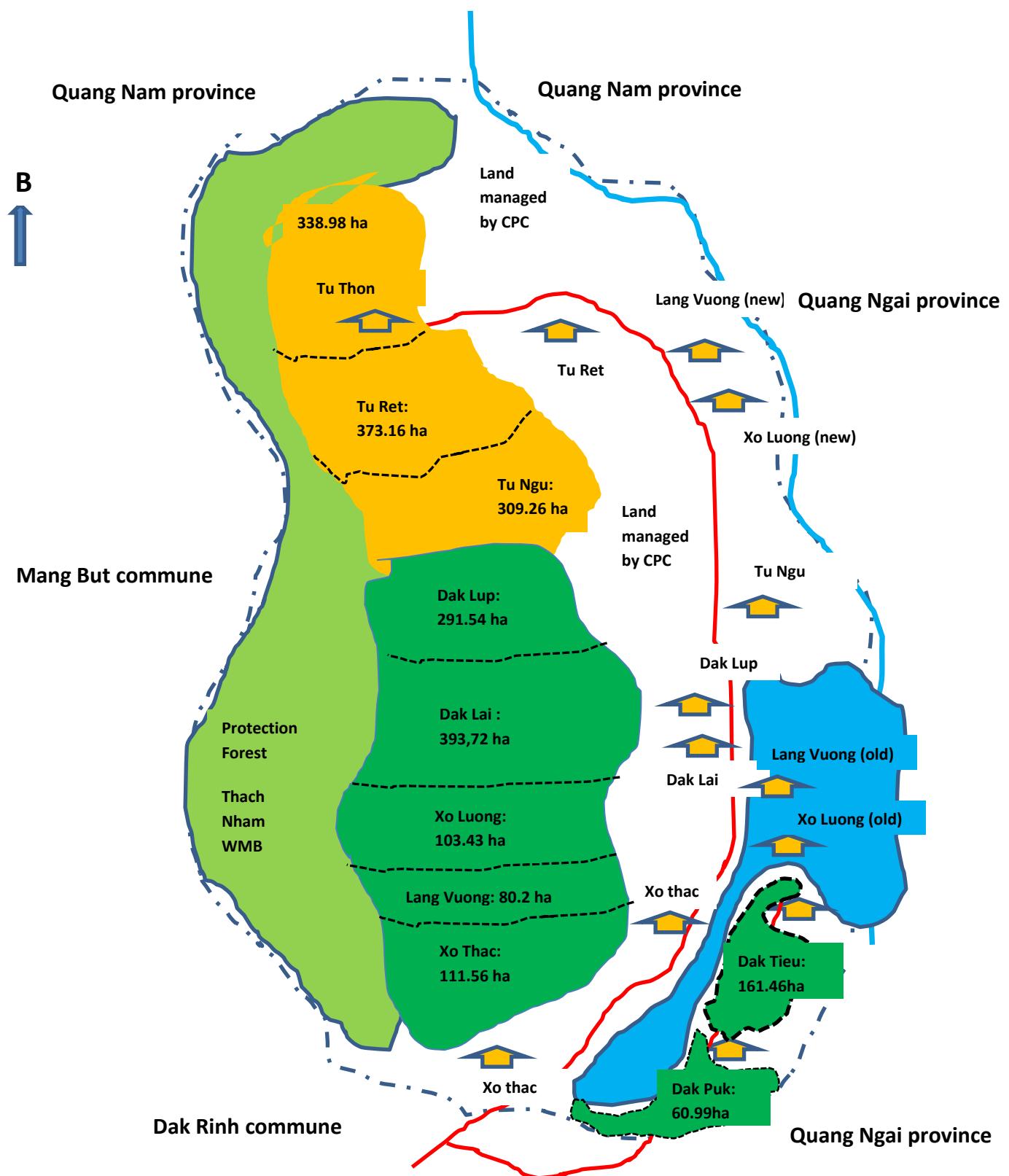
- Facilitated the Dak Nen CPC's meetings on the withdrawal of the contracted forestland with the villages' households for re-allocation to the communities;
- Facilitated the meetings with the village elders, village leaders of Dak Puc and Dak Tieu for consensus on the plan;
- Facilitated the separate village meetings in Dak Puk and Dak Tieu on the withdrawal of the contracted land for re-allocation to the village communities;
- Facilitated the demarcation at the field. Accordingly, the village elders and all the members of the two villages agreed to take Dak Tong Cho as the traditional boundary as it is.

3. Achievements in legalization of the customary laws for 10 village communities:

1. Decision 242/QĐ-UBND dated 3 April 2017 to legalize the Tu Ngu's customary law;
2. Decision 243/QĐ-UBND dated 3 April 2017 to legalize the Xo Thac's customary law
3. Decision 244/QĐ-UBND dated 3 April 2017 to legalize the Xo Luong's customary law;
4. Decision 245/QĐ-UBND dated 3 April 2017 to legalize the Dak Puk's customary law;

5. Decision 246/QĐ-UBND dated 3 April 2017 to legalize the Lang Vuong's customary law;
6. Decision 247/QĐ-UBND dated 3 April 2017 to legalize the Tu Thon's customary law;
7. Decision 248/QĐ-UBND dated 3 April 2017 to legalize the Dak Lai's customary law;
8. Decision 249/QĐ-UBND dated 3 April 2017 to legalize the Dak Tieu's customary law;
9. Decision 250/QĐ-UBND dated 3 April 2017 to legalize the Tu Ret's customary law;
10. Decision 251/QĐ-UBND dated 3 April 2017 to legalize the Dak Lup's customary law

Land use in Dak Nen commune as of 2018 (as a result of the issues resolving)

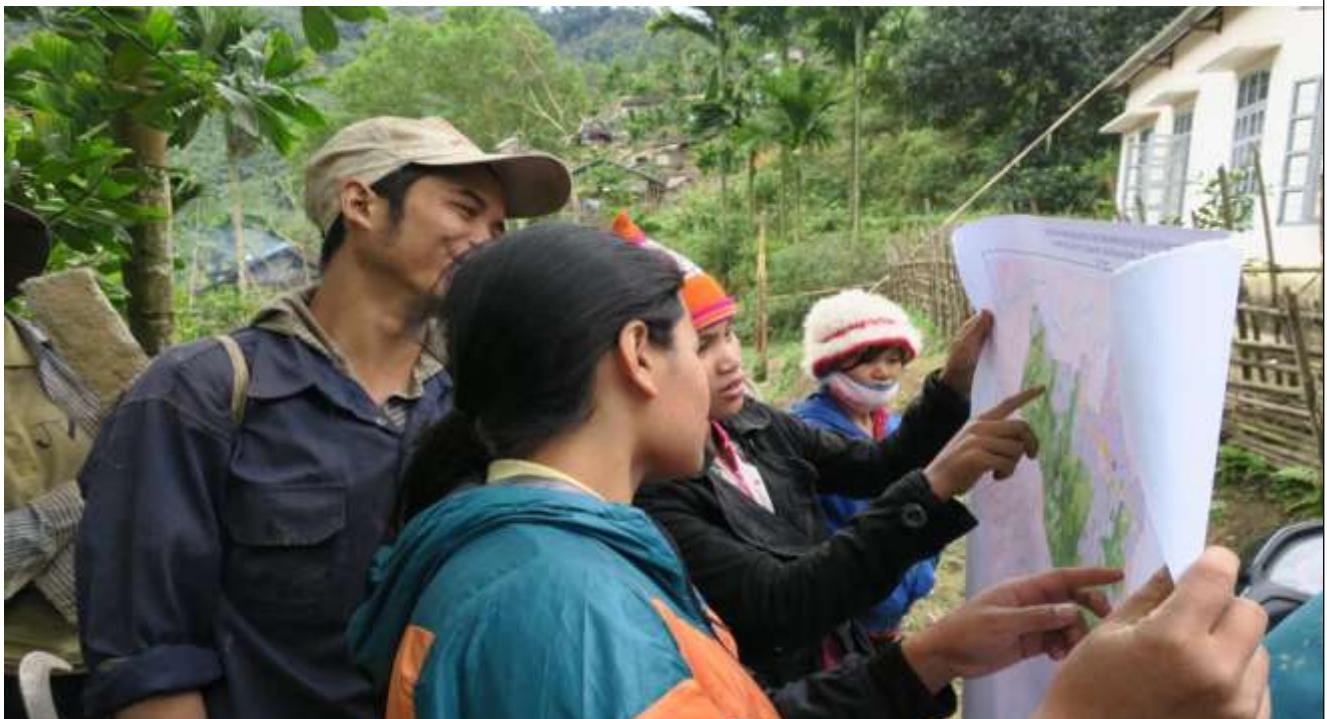


Pictures reflecting the project activities

Representatives from the two neighboring villages of Tu Thon and Tu Ret shake han and agree on the traditional boundaries



The villagers of Tu Thon indentifying the boundaries on the map



*The villagers of Dak Puc and Dak Tieu agree to take the Dak Tong Cho
(the Stream of Trough) as the boundary of the two villages*



The villagers of Dak Tieu and Dak Puc identify their village boundary on the map



The resettlement area of the Xo Luong villagers is almost empty



The villagers of Xo Luong and Lang Vuong fixing landmarks together

