

Conflict resolutions in land allocation process

The case of the Ka Dong ethnic group in Dak Nen commune, Kon Plong district, Kon Tum province, Vietnam

1. Overlapping between formal allocated land and traditional village boundary

1.1. Description of the conflict

In 1999, the Government of Vietnam enacted Decree 163/CP aiming at promoting effective use of forestry land by granting long-term land certificates to organizations, households, individuals. In addition, Prime Minister's Decision 178/QD-TTg dated November 12, 2001 clarifies the rights of households and individuals to benefit from obtaining contract for forest protection. This Decision aims at encouraging local people to involve in forest protection and create income from this activity.

The mentioned legal frame seems to be good for local people, however, real implementation in Dak Nen commune and elsewhere was another story. On the basis of Decision 178/QD-TTg, the Kon Plong district People's Committee offered a contract with a private company to conduct measuring and doing cadastral maps at the sub-zone No. 375. This intended land allocation area covers traditional land of the three villages of Tu Thon, Tu Ret and Tu Ngu.

The selected households who benefited from land allocation and got land certificates include the communal officers and head of villages. There were total 51 beneficial households, of which 12 belonged to Tu Thon village, 16 were from Tu Ret village, 8 from Tu Ngu village, 6 from Dak Lup, 5 from Dak Lai, 1 from Xo Thac, 1 from Lang Vuong and 2 from Xo Luong village. So, according to this list, only 36 households were from right the three villages, which contained the allocated land. The rest 15 households are associated with communal officers coming from other villages in Dak Nen commune.

The most serious discrepancy was the top-down approach in selecting beneficial households without consultation with local villagers. After selecting unsuitable households, the technicians simply use UTM map with 1/50,000 scale for transferring to the other map of 1/25,000 scale for conducting land allocation for 51 households. After sorting out paddy field, the technicians use the map to divided into 51 plots of land, wrote the names of households on the map and informed those households accordingly. Then the technicians invited household members to walk along the road and pointed to describe the demarcation without going direct to the site for real identification. Because of shortage of on-site clarification, some allocated 'forestry' land plots are actually located or overlapped on the residential areas of Tu Ret and Tu Thon villages.

After the 'field work' done by the technicians, Dak Nen communal People's Committee and the district Cadastral Office, the cadastral profile was sent to the District People's Committee (DPC) for approval. On July 25, 2005, the DPC provided Decision 566/QD-UB on granting forestry land right certificates for 51 households on the area of 1,000 ha of the sub-zone 375.

Since then, the conflict happened because of land overlapping between traditional land use and formal recognition via land certificates. The conflict linked closely to the lack of clarity and transparent information released to local people, so people could not have chance to

know, to discuss and participate in decision making. The real borderline between villages and borderlines of each land plots drawn on the map were not identified clearly at the field. Even the beneficial household members (of which 15 households were outsiders of the three villages containing the allocated land areas) could not know exactly where their allocated land was. Because of using the old map and shortage of checking traditional village land demarcation at the field, the formal allocated land areas offered to households were actually overlapped with the cultivated land, road and even residential areas.

1.2. CENDI approach to conflict resolution

CENDI has found some legal provisions, which could be good to support traditional community land rights. Firstly, base on Ordinance 34/2007/PL-UBTVQH dated April 20, 2007 on the grassroots democracy, people can claim and use their rights in accessing information, involvement in discussion and decision making on land use plan and land allocation in their locality. Secondly, community can claim their land right according to Decision 775/QĐ-TTg dated May 20, 2013 on the policy of supporting residential land, production land and water for poor ethnic people. Thirdly, CENDI tried to find out policies and regulations mentioning the benefits of ethnic minority communities in forestry land allocation, forest protection, and practice of their traditional cultural and religious values.

In addition, CENDI initiated five standards for a stable and prosperous community, which require an assurance and practice of the community rights to use, to nurture land and forest, to practice their knowledge, to decide on land and forest and to co-manage natural resources. CENDI also requires an inclusion of the following requirements in approaching communities: people know, people discuss, people do, people check and people decide.

In conducting cooperation agreement between CENDI and the Kon Plong district People's Committee for co-management, protection and development of forestland resources of the Ka Dong people in Dak Nen commune during 2016-18 period, a steering committee was set up to facilitate the process. The very first activity was an in-depth study on customary law and spiritual ecosystem.

The field study addressed the following conclusions, which form a basis for a suitable approach to the land allocation process: 1) the Ka Dong ethnic people's perception of the spiritual ecosystem, which is blessed by Yang or the superpower and governed by community customary law. 2) P'loi, or traditional village is a surrounding ecosystem of a certain Ka Dong community, which is created by Yang in a harmony between the human and the nature. 3) Ka Ra P'loi is the traditional leader of the Ka Dong people because of the leaders' reputation and wisdom seen by people rather than a formal title granted by the state. 4) Community spirit is one of the most important unique characteristics of the Ka Dong community. 5) Forest is the common property of the whole Ka Dong community, so only community can protect forest and share benefit from forest according to customary law.

On the basis of the field study, CENDI facilitated elders and the entire communities to involve in drafting village regulations on management, protection and development of forestland on the basis of traditional customary law. This activity and the advocacy process resulted in the Kon Plong DPC decisions dated April 13, 2017 on approval of village regulations of the ten villages of Tu Thôn, Tu Rét, Tu Ngú, Đăk Lup, Đăk Lai, Làng Vương, Xô Luông, Xô Thác, Đăk Puk, Đăk Tiêu. The endorsed community regulations create foundations for the claim of the community on their traditional forestland areas and the mechanism for solving conflicts arising from land allocation process.

CENDI staff and the district officers facilitated several training workshop to help villagers to understand more clearly about the law and policies relating to management, protection of land, forest and ecosystem. Those events focus on the stipulations of the new Forestry Law, Ordinance on grassroots democracy, Law on Environmental Protection No 55/2014/QH 13. These activities were replicated 3 times in order to make sure that all 528 households in Dak Nen commune could have chance to participate. That helped villagers understand of the needs and significance of their involvement in land allocation and conflict resolution.

In the next steps, elders and village leaders involve in discussion to come up with an agreement on requiring households who had got land certificates granted to return their certificates and land to the community. Elders and village leaders met every households to explain, then they could get consent from the household members. After that, a meeting of the entire villagers were held for the households to show their voluntary wish to return land certificates for the re-establishment of common community space and community land right certificates instead. The related households signed in a document to confirm their decision; then they sent a signed application and return the land certificates to the community.

On the basis of the related households' voluntary commitment of returning land to community, the Dak Nen Communal People's Committee sent an official letter to the district Department of Natural Resources and Environment (DONRE) and DPC requiring decision on revoking land certificates and land rights of households. Then the Kon Plong DPC enacted Decision 544/QD-UB dated November 13, 2017 on revoking 1,000 ha of land from 51 households in order to reallocate land to the three village communities of Tu Thôn, Tu Rét and Tu Ngú.

CENDI staff facilitated elders and village leaders, representatives from mass organizations, such as youths and women to do field survey and identify traditional land boundaries between villages. During this process, the participants obtained practical training on how to use GPS, to do ecological transect mapping, to measure and calculate forest situation and volume.

The official process follows these on-site activities to complete cadastral profile for granting land certificates to village communities. As a result, the Kon Plong DPC endorsed Decision 1127/QD-UBND dated December 18, 2017 on approval of forest land allocation to the village communities of Tu Thôn, Tu Ngú, Tu Rét. On December 29, 2017, the Kon Plong DPC enacted Decision 1175/QD-UBND on land allocation in association with forest allocation and granting land certificates to the mentioned three villages. The total allocated land area was 1,021.4 ha, of which Tu Thôn village got 338.98 ha; Tu Rét: 373.16 ha, and Tu Ngú obtained 309.26 ha.

After getting community land right, all households in the community enjoy equal benefit. As an agreement, the 15 households who are outside of the three mentioned villages join Tu Ngú village to share benefit because this village has the least (27 households) while Tu Thon has 45 and Tu Ret has 77 households. Until January 2019, people from the three villages got payment from the fund for forest environmental services for 2018. Each of the 27 households of Tu Ngu village plus 15 outside households could get VND 3 million (approximately USD 130). Each household of Tu Thon village got VND 3 million, and each households of Tu Ret village got VND 2.5 million (approx. USD 110).

2. Impacts to spiritual forests caused by Dak Rinh hydropower plant

2.1. Situation

In order to build up Dak Rinh hydropower plant, all households of the two villages of Xo Luang and Lang Vuong had to move out of the submerged village areas in 2014. The mentioned households resettled in the new site belonging to Sub-zone 375.

In the new resettled site, houses with tiles and cemented ground and separated auxiliaries were built and transferred to people. Each house cost 300 million (approx. \$13,000). Each allocated household received a compensation package ranging from VND 500 million to VND 700 million (\$21,600 to \$30,300) depending on the lost size of cultivation areas. The resettlement project offered 300 ha of land to 50 households of Xo Luong village and 40 Lang Vuong households for their use as residential, gardening, paddy rice field, slope field, roads and irrigation system.

The resettled households of the two villages of Xô Luông and Làng Vương faced shortage of forestland, so they no longer have worshipping place in the forest. Furthermore, the 300-million cemented houses are completely unsuitable to the Ka Dong villagers. Therefore, only a half of the resettled households accepted to live in the new resettled areas. They made a Ka Dong house style beside the formally offered cemented house. The cemented house was then transferred to stables for animals and or firewood container. The other half of the resettled households returned to their old village areas, made simple make-shift households there.

2.2. CENDI approach to solve problem

CENDI bases on the mentioned legal frame. In order to ensure people's rights to participate, village meetings should be held at least twice, one should be at the new resettled area, and the other was held nearby the old village. Villagers involved in setting up customary law-based community regulation on management, protection and development of forestland. This process resulted to Decisions 244 and 245/QD-UBND of the Kon Plong DPC on approval of the community regulations of the two villages of Xô Luông and Làng Vương.

A survey was carried out in order to identify traditional village boundaries between the remaining areas of the two old village and other adjacent villages. Villagers of the two old villages had the sacred forest areas allocated in order to preserve and practice their spiritual rights. The result was that, the Kon Plong DPC granted Decision 967/QD-UBND dated December 28, 2018 regarding land allocation in association with forest allocation and granting land certificates to the two village communities (Xô Luông village got 103.43 ha and Làng Vương had 80.2 ha).

3. Discrepancy because of the previous formal land allocation on the land areas managed by communal authorities

3.1. Situation

In order to get forest environmental service paid to villagers, Dak Nen communal People's Committee offered contracts to groups of households of Dak Tieu and Dak Puk in 2016. Local authority signed contract with a local consultancy agency called DHF in order to complete the activities. The company simply conducted drawing maps and used the maps to show the beneficial group of households to clarify their own reallocated land.

In this process, CENDI staff identified that forestland (including sacred forests) of Dak Tieu village is managed by the households of Dak Puk village. It is found out that the current land demarcation did not comply with the traditional boundary (i.e. Dak Tong Cho stream). Instead, the technicians of the formal previous land allocation used mountain edge instead.

3.2. CENDI approach to solve problem

CENDI has discussed with Dak Nen Communal People's Committee to come up with an agreement on the process of revoking forestland contract with the related groups of households and reallocating forestland to village communities.

Village elders and leaders of the two villages of Dak Puk and Dak Tieu held meetings to identify methods and set up detail plan. Then they organize meetings in each village for villagers to discuss and clarify how to withdraw land from groups of households and return forestland to the community.

Village elders and representatives from the two villages go to the field for identification of the traditional village boundaries. They agreed to choose Đăk Tông Cho as the borderline between the two villages. This is also the respected borderline, which is accepted by the two villages for generations.

Finally, the Kon Plong DPC provided Decision 967/QĐ-UBND dated December 28, 2018 on allocating land in association with forest and granting land right certificates to the two villages. Dak Tieu village community has 161.46 ha of land allocated while Dak Tieu village has 60.99 ha.