



This project is funded by
the European Union

act:onaid

© ActionAid Vietnam

NEW LAND LAW, 2013: AN OPPORTUNITY FOR ETHNIC MINORITY PEOPLE TO ESCAPE POVERTY

In Hoa Binh, Dak Lak, Dak Nong provinces

Written by

Vu Van Me, Ph.D
Forestry Expert

Technical inputs by

CIFPEN & ActionAid

Hanoi, October 2014



© ActionAid Vietnam

Content

Introduction	4
1. Survey locations	6
2. Production land availability	8
2.1 Status of the land use of the commune.....	8
2.2 Lack of land and no land for cultivation.....	8
2.3 Reason for people having land shortage or no land for livelihoods.....	9
2.4 Consequence of land shortage and no land.....	11
2.5 Program and policy of the State.....	11
3. Access to the land and forest resources	12
3.1 Access to the agricultural land.....	12
3.2 Access to the forest land.....	13
3.3 Access to the forest resources.....	14
3.4 Access to other land.....	16
3.5 The right of the community for the land and forest resources.....	16
3.6 The right of access to the land by the Women.....	16
4. Land management and use by the State Forest Enterprise	17
4.1 The status of land management and use by the SFE in the whole country.....	17
4.2 Practical use of the land of the surveyed State Forest Enterprises.....	18
4.3 Return the land of the State Forest Enterprise to the surveyed communes.....	18
4.4 SFE land disputes and encroachment.....	20
4.5 SFE land management and use gaps.....	21
5. Conclusion and Recommendations	22
5.1 Conclusion.....	22
5.2 Recommendations.....	23
References	24



Abbreviations

AAV	ActionAid Vietnam
CPC	Commune People's Committee
MARD	Ministry of Agriculture and Rural Development
MONRE	Ministry of Natural Resources and Environment
Red Book	Land use right certificate
SLLC	One-Member State Limited Liability Company
SFC	State Forest Company
SFE	State Forest Enterprise
VNForest	Administration of Forestry

Introduction



Survey location:
Tu Ly (Hoa Binh), Hoa Phong,
Cu Dram (Dak Lak),
Quang Phu (Dak Nong)

Survey location
©Vu Van Me

Vietnam has an area of 330,972.4 km² with two thirds of hills and mountains; population is 89,708,900 people (General Statistics Office, 2013). The whole country has 54 ethnic groups, including 53 groups of ethnic minorities living in the communities of villages, hamlets; most of them live in the mountainous and border areas in the North and Central Highland. The total population of the ethnic minorities is about 1,3 million households, with nearly 12 million people, accounting for 14.4% of the population of the whole country. Educational level, cultural life and economic development of the ethnic minorities also differ markedly in different regions. Ethnic minorities mainly live on agricultural production in association with land; the ratio of poor households remains high.

Cultivated land is of high importance to the livelihoods of the ethnic people. However, in their place of residence, most of the agricultural and forestry production land are owned and being used sometimes ineffectively by the State Farm and State Forest Enterprise (SFE)¹. While, there still existed a large number of ethnic households without land or in shortage of land for production. Lack of productive land is one of the causes to poverty, land disputes and conflicts with State Farms and SFEs, leading to social unrest in the areas where ethnic minority people live.

The State has issued many guidelines and policies on land for ethnic minorities to solve poverty and unstable society, including highly important and directly influential policies such as Decision 132/2002 / QD-TTg dated October 8, 2002 by the Prime Minister on the resolution of the production land and residential land for the ethnic minorities in the Central Highlands, Decision 134/2004 / QD-TTg on July 20, 2004 by the Prime Minister on a number of policies to support production land, residential land, housing and clean water for poor and difficult ethnic households, Decree No. 200/2004 / ND-CP dated September 09, 2004 on arrangement, renovation and development of SFE. Thereon, the Prime Minister promulgated Decision No. 146/2005 / TTg on June 15, 2005 regarding the policy of revoking the agricultural and forestry production land of the State farms and State Forest Enterprises to allocate to the poor ethnic households. However, the implementation of the policies and guidelines

¹ In this Report, it can call as State forest enterprise, forestry company. State forest company or Forestry One-member State Limited liability Company are all the forest enterprises, share the same starting point is the State Forest Enterprise.

are still limited, presently, there are still over 300,000 poor ethnic households lack or have no residential land and production land².

Therefore, this study aims to find out practically a number of localities belonging to the provinces of Hoa Binh, Dak Lak, Dak Nong in implementing the land policy for ethnic minorities. This Summary Report tries to study and focus on the two key issues as follows:

- Land access of the ethnic minority households, women's rights on land, natural resources and community ownership of forest resources.
- Status of management and land use of SFE; the land problem of the Enterprise and recommendations on mechanisms and policies.

Summary Report is developed based on the result of field survey combined with study and synthesis of the related secondary documents.

The study area includes 4 communes which all have a part of the area under the management of the SFEs; representing the areas and regions with many ethnic minorities and also many difficulties in production land, livelihoods and poverty. Specifically, Tu Ly commune, Da Bac district, Hoa Binh province; Hoa Phong commune, Cu Dram, Krong Bong district, Dak Lak Province; and Quang Phu commune, Krong No District, Dak Nong province. The second locality is 3 SFEs are affected by the policy on solving the status of shortage of land, no land of the ethnic minority households.

2 *Report on the result of the monitoring of the performance of the policy and law on residential land, production land for the ethnic minority people of the Nationality Council of the National Assembly at the Workshop on "status and solution of management and land use in the ethnic and mountainous areas" on 25 / 01/2013 in Hanoi organized by the Committee on Ethnic Minorities cum Nationality Council of the National Assembly*



Commune meeting on cultivation land of households at Ong Village, Trung Hoa Commune, Tan Lac District, Hoa Binh Province (July 27th, 2011)



© ActionAid Vietnam

Survey locations

Tu Ly Commune, Da Bac District, Hoa Binh province, representing the northern mountainous provinces, with an area of 4,414 hectares, in which mainly consisting of shifting cultivation areas (60%); very little water rice field land. Tu Ly commune is located in the area of Tu Ly SFE, with 1,051 hectares belonging to the Enterprise. Tu Ly is the commune belonging to the land called “gathering people” along the Da River for the construction of Hoa Binh water reservoir, so, most of the water-logged rice field areas were flooded, leaving only hilly land for cultivation; the livelihood is unstable, very difficult. **The area is located along the lake** of Hoa Binh reservoir, therefore, forest protection is very important to prevent soil erosion, river-bed sedimentation and maintain water resources for Hoa Binh hydropower plant. Regarding the role of forests for household income, 96.7% of the interviewees assessed it as “very important” and 3.3% as “important”.

The Commune has 1,692 households with 6,080 persons; besides the Kinh majority, there are other ethnic minority groups: Muong, Tay, Dao, Thai. This is an agricultural commune, with 80% of their income from agriculture; the poverty rate is 34.6%, higher than the average rate of Hoa Binh province (18.7%) as well as the national rate (7.6%).

In **Hoa Phong Commune**, Krong Bong district, Dak Lak province, representing the Central Highlands, with total area of 14,055 ha, agricultural production is the main activity. The commune has five ethnic minority groups: Ede; M'nong; Tay; Van Kieu and H'mong; there are 1,759 households with 8,420 persons, in which the ethnic minorities accounted for 55%. Poverty rate is 16.2%, near poverty rate is 12.62%.

Most of the arable land of the commune is red basalt, very suitable for planting tree crops like coffee, pepper, or well-known fruit trees like avocado. Each household has more than one hectare of this land; therefore, the livelihood is rather stable. The existing forest area is mostly the “Khop”³ forest located in the area of the Krong Bong Forestry Company (FC); with low economic value, only having the environmental value. As a consequence, the local people rarely participate in forestry production activity. Regarding the role of the forest to household income, after reviewing, only 6.7% of the respondents assessed it as “very important”; 14.3% “important”; and “79.0 % “not really important”. The free migration and deforestation for agricultural cultivation, land disputes with the SFE is the major problem here.

³ The forest “Khop” is one specific forest type with the trees belonging to broad-leaved family (Dipterocarpaceae), dominant; often distributed in the areas with the two distinct rainy-dry seasons climate. In the dry season, the forest is fully deciduous, land is dry, risk to fire; while in the rainy season, the forest trees develop strongly and healthy.

Cu Dram Commune: Krong Bong district, Dak Lak province has an area of 16,067 ha, mainly consists of forest land of 11,124.9 hectares (69.3%); very little agricultural land (16.2%), mostly shifting cultivation land, red basaltic soil which is very suitable for industrial plants and fruit trees, and less water-logged rice field. Cu Dram has a part of agricultural land area belonging to Krong Bong forestry Company; however, the life of the local people is loosely linked to this Company. When interviewing about the role of the forest for household income, only 14.3% of interviewees responded as “very important”; 20.0% “important”; and 65.7 “less important”.

The Commune has 1,619 households with 7,883 persons; there are 12 ethnic minority groups, such as Ede, Muong, Tay, Dao, Thai, M’ong, and the like, with the rate of poor households at 26.5%. Cu Dram is an extremely difficult commune listed in Program 135 period 2014-2015⁴. Here, ethnic households often transfer and sell the productive land allocated by the State. Therefore, the issues of destroying the natural forests for production land as well as land disputes and encroachment of SFE occurs frequently.

Quang Phu Commune, Krong No district, Dak Nong Province representing the Central Highlands, has 1,428 households with 6,114 people, including 13 ethnic groups. Natural land area of the commune is 12,069.79 hectares, of which 43.6% is agricultural land, 39.7% is forest land, the remaining is other types of land. In terms of the role of the forest for household income, only 16.1% of the respondents evaluated it as “very important”; 48.5% “important”; and 29.0 “less important”.

Quang Phu commune is listed as one of the extremely difficult communes of Program P135, period 2014-2015. In 2012, in implementation of the Decree No. 200/2004/ND-CP dated December 3, 2004 of the Government on arrangement, renovation, and development of SFE (hereinafter referred to as Decree 200), Quang Duc forestry Company has already reviewed and re-allocated 7,970 hectares of land area to the communes whose land belongs to the Company and to some project. Quang Phu Commune received nearly 2,000 hectares. This land area has been re-allocated to the households. As a result, in Quang Phu Commune, each household has 3,6 ha in average of perennial crop land, which is an advantage in comparison to the other two Central Highlands villages as Hoa Phong (1.3 hectares) and Cu Dram (1.4 hectares).

Tu Ly Forest Enterprise, Tu Ly commune, Da Bac district, Hoa Binh province, was established in 1967, managing 4,680 ha, independent accounting. Since 2006, the implementation of Decree 200/2004/ND-CP has made Tu Ly Enterprise one branch of the Hoa Binh One-member State limited liability Company (OMSLC) in Hoa Binh province called Tu Ly Forest Enterprise.

On January 1, 2014, Hoa Binh Provincial People’s Committee approved for the Company to rent 2,601 hectares of the land of Tu Ly Forest Enterprise (located in the territory of Tu Ly commune with 1,051.25 ha), duration for rent is 30 years until October 15, 2043. After the Tu Ly Forest Enterprise renting the land, Da Bac District People’s Committee has defined the remaining area, developed the dossier to take back 1,083.61 ha of land, submitted to the Provincial People’s Committee for approval and returned to the local authority.

Krong Bong Forestry Company belonging to Cu Dram commune, Krong Bong district, Dak Lak Province, was established in 1986, managing 33,913.61 ha. Since 2010, the implementation of Decree 200/2004/ND-CP has changed the Enterprise into an One-member State Limited Liability Company (OMSLC). After reviewing the available land fund, the Company has handed over to the People’s Committee of Krong Bong district and a number of projects totaling 5,485.38 hectares. Currently, the Company still manages 28,472 hectares of forest land. The company has 63 people (3 officers and 60 workers).

According to the company’s report, the use of land and business production activity are relatively stable. From 2008-2012, the Company has allocated in average 2000 ha, to a total number of 417 households in the area on an annual basis. However, in terms of the contracted land for production forest planting, after 5 years of logging the plantation forest (fast growing tree), income from this is not high compared with growing cassava or Lauraceous. Many households suffer losses; therefore, people do not want to continue to receive land for forest land plantation.

The Forestry One-member State limited liability Company (FOMSLC) of Quang Duc belonging to Quang Phu commune, Krong No district in Dak Nong province, developed from Quang Duc SFE, was founded in 1993 with a total area of 33,750 ha. In 2007, in implementing Decree 200/2004 / ND-CP, the Forestry Enterprise has been changed into the Forestry One-member State limited liability Company (FOMSLC) of Quang Duc, receiving 14, 003 ha of forest land. The Company now has 24 people (3 management staff and 21 workers).

⁴ No 2405/QD-TTg dated 10/12/2013 of the Government on approval of the list of the specially difficult communes, border communes, security zone communes in the Program 135, 2014 - 2015.



Production land availability

2.1 Status of the land used in the commune

The surveyed data showed that the natural land area of the surveyed commune is not the same, reflecting the characteristics of the land in each area and region. Tu Ly commune belonging to the northern mountainous region has the smallest area (4,414 ha) equal to one quarter compared with Hoa Phong commune and Cu Dram (Dak Lak) and one third of Quang Phu (Dak Nong). Meanwhile, the Central Highlands are sparsely populated, therefore, the surveyed communes in provinces of Dak Lak and Dak Nong have a large area of over 10,000 ha.

Distribution of the land in each commune also differs significantly. Tu Ly commune is located on low hill of Hoa Binh province with the agricultural land area accounting for 60%, followed by Quang Phu commune accounting for 43.6%. Hoa Phong and Cu Dram communes (Dak Lak) have the smallest area from 16.3 % to 17.9%. Quang Phu commune has the largest area of fertile soil used for growing short-term agricultural crops or long-term industrial crops (5086 hectares), double times in comparison with the remaining communes.

In contrast, the forest land area in the communes of Hoa Phong and Cu Dram (Dak Lak) accounts for 53-69%; the least is Tu Ly commune (21.3%) and Quang Phu (39.7%). For unused land, Hoa Phong has the most (22.6%); Cu Drum and Tu Ly communes accounts for 13% while the least area is Quang Phu commune (1.5%) of the natural land area of the commune. Unused land area is not only of great potential for production development but also acts as land sources to allocate to the households to solve the shortage of residential land and production land.

In brief, the present status of the surveyed communes is not the same, reflecting the natural characteristics and the land using methods of local people in the mountainous areas. In the 03 communes of 02 provinces of Dak Lak and Dak Nong, the forest land owners (open land and forest) are mainly the forestry companies while the local people use low-slope hilly land and fertile land to plant short-term agricultural crops or long-term industrial trees.

2.2 Lack of land and no land for cultivation

a) Average forestry and agricultural production land in the surveyed commune

- Average agricultural land of the surveyed communes is very low, ranging from 1.5-1.6 ha per household, Quang Phu commune has the largest area of 3.68 ha per household; including rich soil/perennial crops of 1.3-1.4 ha per household; water-logged rice field land from 0.14 to 0.15 ha per household, on average one person has 300 m² for growing rice for two seasons, only secure a part of annual food for the households (Tu Ly: 417 m², Hoa Phong: 300m², Cu Dram: 288 m², Quang Phu: 284 m²)
- For the forest land, the average area calculated for each household in the commune is 3-4 ha per household, the lowest area is in Ly Tu only 0.5 ha, Hoa Phong:4.3 ha; Cu Dram is 6.8 ha,and Quang Phu 3,3 ha. However the actual figure will be much lower, since in the commune area there are still other owners (forest enterprise,

protection forest management Board, special use forest management Board) who are managing and using the majority of the forest land within the commune.

Compared with the agricultural land limits for allocation specified in Article 129 of the Land Law 2013, the shortage of agriculture and forestry production land in these communes is significant. The agricultural land area only meets less than 20% of the need while the forest land area merely meets 25-30%.

b) Lack of land, no land in the surveyed commune

Since the total agricultural and forestry land source is limited, many households are lack of or have no land for farming. The surveyed data at the 4 communes is shown in the table below.

Table 1 Households access to agricultural and forestry production land (%)
(Percentage of households having no land)

Communes	Agricultural land			Forestry land
	Paddy field	Cultivated land/shifting cultivation	Long-term crop land	
Tu Ly	10.0	16,6	80	83.3
Hoa Phong	6.7	0	66,7	93.3
Cu Dram	28.6	0	42,9	100.0
Quang Phu	50.0	35,5	80,6	100.0

(Sources : Survey document of the field study)

From the above figures, it is shown that:

- For the water-logged ricefield land, the percentage of the households without cultivative land is 10% (Tu Ly), 6.7% (Hoa Phong), 28.6% (Cu Dram) and 50% (Quang Phu). It is worth noting that, even for the households having the land to grow water-logged rice, this area is still very small and fragmented, only 1,000 - 3,000 m²/ household in average.
- For the shifting cultivation land and perennial crops, this is the main soil type for agriculture and forestry production and also the main source of livelihood for upland households. The percentage of the households lack of this soil type is different in the communes depending on the land fund and natural conditions of the locality.
- For forest land, although the 4 surveyed communes are the mountainous communes where people's livelihood depends on the forests, the proportion of the households having no forest land among the interviewed households is very high. For example, Tu Ly is 83%, Hoa Phong 93.3% and in Quang Phu and Cu Dram communes, the percentage of households with no forest land is 100%.

c) Lack of land, no land for production on the whole country

In the whole country, the result from residential and production land policy implementation is not of high satisfactory and still limited. As reported by the Committee of Ethnic Minorities Affairs of the National Assembly⁵, during the period of 2002 - 2011, there were 558,485 poor ethnic households in need of residential land and production land. As of 2011, the ministries and sectors together with the localities have provided residential and production land to 333,995 ethnic households, accounting for 59,8% of the total requirement for the whole period (according to the Decisions of the Prime Minister). In addition, there are still a large number of the ethnic minority people whose residential land and production land have been taken back due to projects on urban development construction, hydroelectric, irrigation, and transportation constructions. These households are in need to be supported with residential land and production land.

2.3 Reason for people having land shortage or no land for livelihoods

a) Subjective reasons

⁵ Report on the result of the survey of implementing the policy, law on residential land , production land for the ethnic minorities of the Standing Committee of the National Assembly in the Workshop on "status and solution of management and land use in the ethnic and mountainous areas" on 25/01/2013 in Hanoi co-organized by the Committee on Ethnic Minorities and Nationality Council of the National Assembly

- In the survey area, many owners manage and use the same land. The commune only manages a part of the land; as a result, the land fund allocated to the households is limited and insufficient to meet the needs for livelihood. For example, in Tu Ly commune, out of 4,114 hectares of total natural area, 1,051 hectares belongs to the Tu Ly Company in Dram Cu commune, amongst the total natural land area of 16,071 ha, there are:
 - ✓ Chu Yang Sin National Park manages 678.8 ha of the special use forest.
 - ✓ Krong Bong One-member State limited liability company manages 8.625 ha of the production forest.
 - ✓ Commune manages 6731.7 ha.
- Unpreportioned distribution of land: With the experience of many years, the State Forest Enterprises cover a large area of the commune, averagely each person of the three survey forest enterprises are managing and using from 450 - 500 ha. For example, presently the Krong Bong manages 28,472 ha, only with 63 people (3 managing staff and 60 direct workers) or Quang Duc Forestry Company being allocated with 14,003 ha, with 24 people (3 management staff and 21 direct workers).

As the surveyed forestry Companies manage the land of the commune, therefore, although the 3 communes of the Central Highlands with the shifting cultivation area and perennial crop land accounted for from 18-20% of the natural area and in the area specializing in industrial trees, but only 20% of the households in Quang Phu and 33,3% of the households in Hoa Phong having from 0,5 ha and growing perennial trees.

- Transfer of the land of the State Forest Enterprise back to the locality is slow and inefficient. In implementing Decree 200/2004/ND-CP, the recovery of the forest enterprises located in the communes to re-allocate to the household is slow and inefficient. For example: in 2008, Tu Ly Forest Enterprise reviewed and planned to allocate 1,800 ha back to the locality. After that the allocation plan fell down to 1,072 hectares, in 2013 the plan reduced to 700 ha, by January 2014, the Forest Enterprise just allocated 30 hectares to the locality, reaching at 1.4% of the plan.
- Deforestation, construction of hydropower plants and mineral exploitation not only reduced the forest land area but also eroded, degraded the soil, gradually destroy the fertility soil.
- Land conversion for construction of public welfare projects (roads, schools, health stations) or the State hydroelectricity constructions, farming settlement, etc.
- The transfer and sale of the land for industrial tree planting like rubber, coffee, pepper of some ethnic minority households to people from other areas often occur in the Central Highland areas like Hoa Phong, Cu Dram (Dak Lak) and Quang Phu (Dak Nong).
- The local people are much concerned about the hilly land and fertile soil suitable for productive planting industrial trees than receiving the land for forest plantation. The forest in the Central Highlands mainly consists of "Khop" forest with low economic value. Receiving this natural forest, there will be no income for the people.

b) Objective reasons

- The land is limited but the population is big: The surveyed households are lack of or have no land to grow rice, averaged at about 230-250 ha. Quang Phu has only 174 ha, while the population is dense with 6,114 people in 1,428 households; the population growth rate is high (1.6%), many newly separated households. The reclamation to increase the area of water-logged rice fields, the irrigation system here is less developed, unused land sources remain much (Hoa Phong: 2,921 ha, Cu Dram: 2,095 ha). Impact of the natural disasters, drought, and floods have significantly reduced the water-logged rice field area available in the communes.
- Unfavorable topography: At Tu Ly commune, the percentage of the households lacking the hilly cultivated land is higher than other communes, as Tu Ly commune is located in the steep and mountainous terrain, the part of the hill foot is flooded due to construction of Hoa Binh dam.
- In the communes with land areas which does not belong to any owner and temporarily managed by the Commune People's Committee, people often arrogate and cultivate on this area and gradually turn it into their land. This is the main land sources to solve land shortage for the households. But the commune authority could not take back the land occupied by these households to allocate to the families lacking or having no land.

c) Other reasons

In addition to the above-mentioned subjective and objective reasons leading to lack of land, no forest land, typically Hoa Phong commune (93.3%) Cu Dram and Quang Phu (100%), another reason is that other households contracted to get land for planting the production forest after 5 years of exploitation of the plantation forest (fast growing) efficiency collected is not high compared with growing or Lauraceae, many households suffer losses, therefore, the people do not want to get land to grow the forest.

In brief, from the above-mentioned data and analysis showed that the average land area per capita at the surveyed communes is very low. While the forestry land (accounting for 40-50% of the natural land area of the communes), mainly belonging to the State ownership such as the Protection Forest Management Board, The Special-Use Forest Management Board, State Forest Companies. This is the main reason leading to the status that the local people have no land for agricultural and forestry production.

2.4 Consequence of land shortage and no land

Lack of land, no land for cultivating in the surveyed communes leading to the status that people cut and destroy the forest, creating pressure on the forest sustainability in terms of both in forest area and forest quality. People occupying the cultivated land, land disputes of the SFE stationed in the commune, particularly Tu Ly forest enterprise (Hoa Binh), Krong Bong (Dak Lak) causing the land conflicts leading to the status of social unrest.

Ethnic minority people mainly rely on the agricultural production, so, lack of productive land will directly lead to the poverty, the poverty rate in the survey communes averaged at 30-70%. For details see the table below.

Table 2. Poverty rate of the surveyed communes (%)

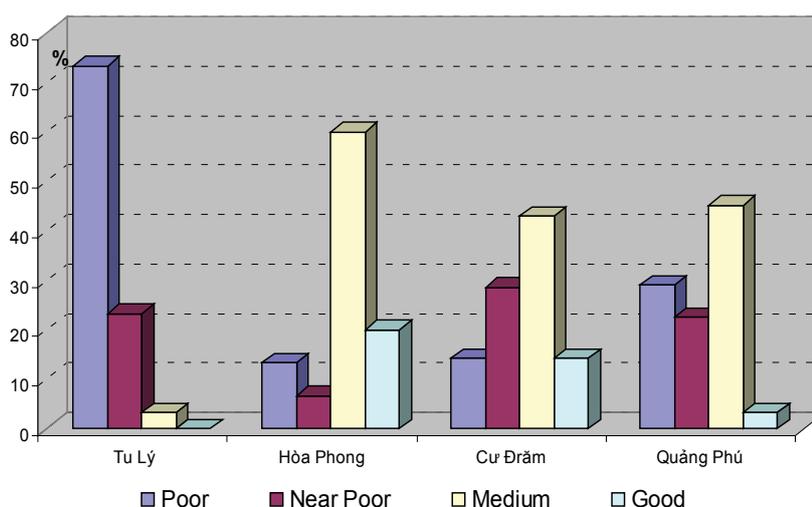
Commune	Poor	Near Poor	Medium	Wealthy
Tu Ly	73.3	23.3	3.3	0.0
Hoa Phong	13.3	6.7	60.0	20.0
Cu Dram	14.3	28.6	42.9	14.3
Quang Phu	29.0	22.6	45.2	3.0

(Sources : Field survey documents)

Result of the analysis of the characteristics of the poor households showed that most of the poor households, especially the households of the ethnic minorities usually have less land and less fertile soil than non-poor households. This is explained through the fact that the life of the majority of the ethnic minorities in Vietnam is closely connected to agriculture and forestry activity. 90% of the laborers of the ethnic minorities live by agricultural activity. Therefore, lack of land equals lack of means of production, most important thing to earn the living.

2.5 Program and policy of the State

Diagram 1: Status of household economy



To support residential land, productive land and stabilize the livelihood for the ethnic minorities in the whole country, the Politburo issued Resolution No. 22/NQ-TW dated 27/11/1989 and Resolution No. 24 / NQ-TW dated January 21, 2003

Specifying the above program, the Government has issued many policies and the Provincial People's Committees have many projects to support residential land and production land for the poor ethnic minorities. From 2002 - 2011, there are 40 decisions of the Prime Minister; 50 decisions and circulars of the ministries and sectors; 405

plans and projects of the Provincial People's Committee⁶. In which, the decisions of the Prime Minister stipulated that the number of households in short of residential land, productive land should be supported, such as Decision 132/2002 / QD-TTg on October 8, 2002 on solving the production land, residential land for the ethnic minorities in the Central Highlands; Decision 134/2004 / QD-TTg on July 20, 2004 on a number of policies supporting production land, residential land, housing and clean water for households of poor ethnic minorities, difficult life; Decision No. 146/2005/QD-TTg, on June 15, 2005 on revoking the production land of the State farms and forest enterprises to allocate to the poor ethnic households... In relation to the land revoking of the State farms and SFEs to return to the locality, the Government issued Decree 200/2004/ND-CP and Decree 170/2004 / ND-CP on arrangement, innovation and development of the State farms and State forest enterprises.

Most recently, after reviewing of 10 years of implementation of Decree 200/2004 / ND-CP, on March 2014, the Politburo issued Resolution No.30 / NQ-TW dated March 12, 2014 to continue arrangement, renovation and development, improve the efficiency of the operation of the agricultural and forestry enterprises.

⁶ The forest "Khop" is one specific forest type with the trees belonging to broad-leaved family (Dipterocarpaceae), dominant; often distributed in the areas with the two distinct rainy-dry seasons climate. In the dry season, the forest is fully deciduous, land is dry, risk to fire; while in the rainy season, the forest trees develop strongly and healthy.

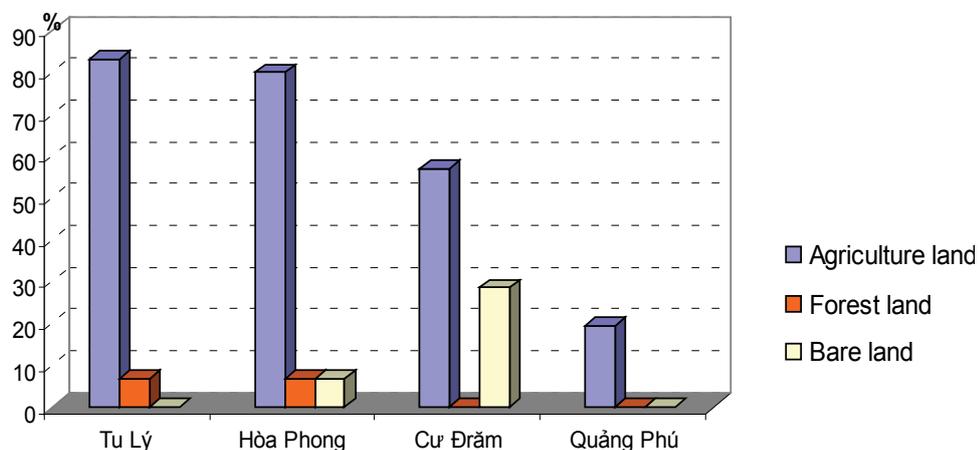
Access to the land and forest resources

The level of access to the land and forest resources of the mountainous farmers is assessed by the form of receiving the land for use and the ability to become their owners.

3.1 Access to the agricultural land

From the percentage survey data on the number of households using agricultural land, calculate the median value of different agricultural land types (water-logged ricefield land, fertile soil and perennial trees, it is shown that the accessibility to agricultural land of the households is very high, accounting from 70% to 90% the number of surveyed households having the agricultural land for cultivation. Specifically, Tu Ly 83.4%, Hoa Phong 93.3%, Cu Dram 71.4% and Quang Phu 50.0%. This reflected the fact that: For ages, Vietnamese farmers are familiar with the approach to agricultural land, especially water-logged rice land through management system of different administration at all levels; from measurement, division, identification in the field to issuance of the land use right certificate (Red Book). Farmers are well aware and accumulated experience about the right to use this land type. A small number of households in the surveyed communes are inaccessible (10-15%) due to lack of information, newly separated household or business households, non-agricultural households, households no need to have agricultural land.

Diagram 2: Percentage of surveyed households having Red Book (%)



However, the level of access to each agricultural land differs, depending on the traditional farming, livelihoods and land sources in the locality. For example, Tu Ly commune representing the northern mountainous provinces is water-logged rice cultivation, terracing ricefields land is limited, so, 90% of the households in the commune

access to water-logged rice production. While the communes in the Central Highlands (Hoa Phong, Cu Dram and Quang Phu) have the tradition of slash and burn cultivation with upland crops and perennial plants, is the main livelihood, so, the percentage (%) of the households access to the paddy land, shifting cultivation land is the highest (100%).

The right for the land is not only to access, use, but also the right to be issued with the red book. Legal certification confirms the legal relationship between the state with the land users in the use of land is the Red Book. So, according to the legal provisions of the Land Law, issuance of the Red Book is one of the contents of the State management activities on land, also as the first right that any legal user of the land also benefited.

Land Law 2013 stipulated that the land use rights are granted to the land field of the people who are eligible to ensure the long-term and sustainable farming. Through surveying the communes showed that in average 85-90% of the households using the agricultural land having the Red Books issued by the local administration (Tu Ly 83.3% Hoa Phong 80%, Cu Dram 57.1% Quang Phu 19.4%). In the communes there are still some households who are using the land but not yet have the Red Books issued the reason is that land disputes still occurring, newly separated households; completed the procedures for issuance the Red Books but not yet taking the Red Books or still under processing the procedures, example, in Quang Phu still 41.9% of the households are waiting for doing procedures.

The significant difference in the ratio of the households issued with the Red Books in the communes is due to: Tu Ly commune is in the North, the measurement and allocating the agricultural land has been done after the renovation period 1986, in accordance with the Land Law 1989; then gradually perfected so now basically in the North the agricultural land (Red Book) has been issued to the households. Meanwhile, this work in the South started after the date of unification of the country in 1975; therefore, in Hoa Phong Commune, Cu Dram Commune and especially Quang Phu Commune, many households have not received the Red Books issued.

3.2 Access to the forest land

The process, the approach as well as setting up the forest land use right have many differences compared with the agricultural land.

For the first time in the history of Vietnam, the Land Law 1993 stipulated on allocation of the forest and land to the household for stable and long-term use of the forest land. Since then, the Land Law has been changed many times, so, the policies on forest and land allocation have been also changed accordingly. Thereon, the forest and land allocation can be divided into 3 phases.

- From 1993 - 1999, implementing the forest and land allocation under Decree No. 02 / ND-CP of the Government dated January 15, 1994 of allocating the forest land to organizations, households and individuals for stable and long term use in the forestry purpose (in accordance with the Land Law 1993).
- From 1999 to 2003, implementing the forest land allocation under Decree No. 163/1999 / ND-CP of the Government dated 16/11/1999 on the allocation and leasing of the forest land to organizations, households and individuals for stable and long-term for forestry purpose, appropriate to Land Law (Revised) 1998.
- From 2003 to present, in accordance with the Land Law 2003, the forest land allocation work is performed under Decree 181/ND-CP on guiding the implementation of the Land Law 2003 and Circular No. 38/2007/ TT-BNN 25/4/2007 of the Ministry of Agriculture and Rural Development guiding the steps and procedures for allocation and leasing of the forest, taking back and re-allocating the forest organizations, households, individuals and rural communities

The data collected during the survey from the households showed that the proportion of the households in the communes accessed to the forest land through the form of receiving the forest and land is very low, for example: Tu Ly 16.7%, Hoa Phong 6.7% (average 1-5 ha per household), and Quang Phu and Cu Dram communes is 0%. From the interviews with the people and exchange of information with the land management agencies, local administration, it can be justified as follows:

The forest and land allocation work to the households was conducted from 1993 when the Land Law 1993 has been promulgated, it can take Tu Ly commune, Hoa Binh province as a typical example when the people did not understand this Law as well as the rights and obligations of the people receiving the land and forest, so not responding to this policy; many localities were assigned with the target as mobilizing cadres, party members to take the lead in receiving the land and forest. Thus, the percentage 16% of the households having the forest land only reflected the status of the forest and land allocation later in 1993, then, a number of households continued to receive the forest land through allocation, adjustment and addition of the land and forest by local authorities, not yet completed the procedures for issuance of the Red Book; or some households themselves occupied

the forest land managed by the commune for use (land tenure) etc... All these forms are not officially statistic, if doing adequate statistics, then, the percentage of the households accessible to the forest land may be higher. Practical observation found that many households in the commune still have the forest land, including natural forest, plantation forest and bare land for forestation; forestry production activities have been being carried out on these lands.

Moreover, the way of the forest and land allocation, from 1993 to 2003, the forest and land allocation work is implemented by the Forest Sector (Forest Protection Department of Ministry of Agriculture and Rural Development). In the field, not measuring the forest land plots to be allocated but only delineated on the map, then, showing to the households on both the map and on the ground. Therefore, most of the households did not receive exactly the boundary, area, status of the land plot in the field. Many cases that the information in the field is not appropriate to the dossiers of the forest and land allocation. Lack of the participation in the forest and land allocation.

Regarding the administrative procedures, by that time, the Forest Protection Department (MARD) was not yet coordinated with the General Department of Land Administration (MONRE) to complete the dossiers of forest allocation, just only allocation of forest not land or allocation land without forest or recognized the forested land use right but not yet make the dossier for forest allocation. This also reflect among the households be allocated with forest land in Tu Ly and Hoa Phong Communes, only 6.7% of the households have been issued with the Red Books.

To speed up the forest and land allocation and finalize the allocation dossiers, issue the forest land (Red Book) to the households, the local authorities continue to allocate the forest and land according to the policy and law of the State, while implementing the Decision No. 672/QĐ-TTg dated 28/4/2006 of the Prime Minister on approval of cadastral mapping, issuance the forest land use rights certificates.

The above-mentioned analysis of the real situation showed that the practical access to the forest land of the farmers in the surveyed communes in particular and mountainous areas in general still remained shortcomings and insufficiencies needed to be studied for improvement.

3.3 Access to the forest resources

Access to the forest resources of the households by contracted allocation of the land for afforestation and receiving the contracts for protection of the natural forest of the SFE performed from 1995.

3.3.1 Receiving the forest plantation land contract: According to the study data at Tu Ly commune, only 10% of the households involved in the survey received the contract for afforestation, 90% of the households have not participated yet. Out of the number of the contracted households 66,7% of the households with the area be allowed to receive 1-3 hecta, only 33,3% of the households allowed to receive an area from 5-10 ha. 66,7% of the contracted forest area belonging to the production forest, 33,3% of the remaining belonging to the special use forest. 33,3% of this figure is the land with the Red Books, the remaining of 66,7% is under the status of no Red Books. Sharing with us, the households allowed to receive the forest land said that during the process of receiving the forest protection contract, they did not receive any support. Through the survey of the households without the forest land, 93,7% of the interviewed households wish to be allocated with the forest land for protection and production.

Through exchange information with the people in Tu Ly commune, it was found that the SFE limited to make the contract for land contracting to plant the forest with the local people. Only few friendly people were allowed to joint in forest plantation with a little land area compared with thousands of hectares presently managed by SFE. The Enterprise is prioritized to joint venture with the unit or group of people coming from other areas.

The Forest Enterprise has a total of 9 officials including one Director, One technical Vice-Director also acting as a guard. Business of the Enterprise assigned to the local teams who themselves enter into the accounts by using their incomes to compensate the expenditures. The Forest Enterprise also associated production activities with the outsiders, but, only associated with 2-3 familiar households from Tu Ly commune. The Forest Enterprise hired the people outside of the province because the labour cost paid to the outside people is low. The local people are forbidden by the Forest Enterprise to go into the forest. Those violate this rule and caught by the guard and be taken with the minutes and heavily fined to prevent them again coming back to the forest. The representative of the Forest Enterprise also said that due to the limited human resources while the forest in a large area, therefore, the management work met with difficulties, exploitation of natural forest is the main task. Currently, the Forest Enterprise still has 200 ha of the forest land overlapped with Vinh Phu province, this dispute is yet settled.

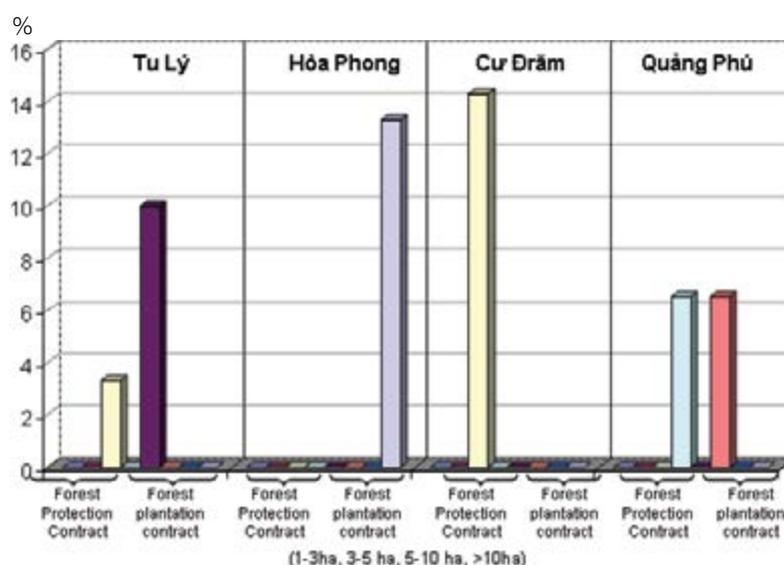
(Documented by Bui Khac Vu - CIFPEN)

Hoa Phong commune: 86,7% of the interviewed households did not receive the forest land contracts, only 13,3% of the households received the forest plantation contract with the area of over 10 ha per household, belonging to the production forest area. These households were supported with seeds and materials for forest planting from the data of contract reception. 13,3% of the interviewed households need to have the contract for forest plantation.

Cu Dram commune: 100% of the interviewed households did not receive the forest land contract. Of which, 28,6% of the interviewed households wished to receive the forest land contracting for production.

At **Quang Phu commune:** Result of the survey showed that, only 6,5% of the interviewed households have received the forest planting contracts with an area of 3 to 5 ha per household, belonging to the production forest. These households were supported with seeds and materials for forest planting from the date of contract received. Especially here, 54,8% of the interviewed households need to receive the forest contract for forest plantation and production.

Diagram 3: Ratio of the households receiving contracts



3.3.2 Receiving the forest protection contract: Result from the inventory showed that in Tu Ly commune only 3,3% of the interviewed people received the forest protection contract, while 96,7% of households not allowed to receive yet. The households received the forest protection contract having the area of 5-10 ha belonging to the production forest, allowable exploitation. Among the households not yet receiving the contracts, upto 96,7% of the households need to receive the forest land contracting. So, the need of allocation and reception of the forest land for protection of the people here is very large.

Hoa Phong commune: 100% of the interviewed households are not allowed to receive the forest protection contract. Surveying the need of forest land allocation, 80% of the households said that this issue is not necessary. Cu Dram commune only 14,3% of the surveyed households have received the forest contracts. While surveying the need of receiving the forest land, up to 71,4% of the surveyed households said that this is not necessary and 28,6% not yet want to receive the contract.

Quang Phu commune: Only low rate of 6,5% out of the total households involved in the interview received the forest contracting. Surveying the needs of the people, 32,3% of the households did not have the need to receive the forest protection contract, 58,1% of the households did not want to receive and 9,7% thought that this matter is not necessary.

In Hoa Phong and Cu Dram, the proportion of the households having no demand to receive the land allocation and contract in the area is rather high (71-80%) because, the forest “Khop” exhausted, no volume, dry soil, if planting the forest here, there will be no production and efficiency is low compared with agricultural crops such as cassava. Meanwhile, in the Central Highlands where forest planting for raw material supply is not developed as the distance for transportation to the factory is too far, high cost. This explains why the families did not want to receive the forest land contracting from the forest companies in the area.

3.4 Access to other land

At the survey communes, most the interviewed households do not own the lakes and ponds, if yes, only small pond and lakes, especially, in Tu Ly: 93,6% of the interviewed people said that they do not have lakes and ponds, a little rate of about 6,7% of interviewed households having the area less than 500m². Hoa Phong commune, the rate is 86,7% and 13,3%; Cu Dram commune: 85,7% and 14,3%, Quang Phu commune: 83,9% and 9,7%.

3.5 The right of the community for the land and forest resources

At Cu Dram commune, out of the total of 4.439,8 ha directly managed by the commune, already allocated to the community of 2.291 ha, with Red Books (Cu Dram community: 1.129,7 ha; village community 2 and Buon Cham village B: 1.162,2 ha). Until now, more than 70% of the area has been invaded due to financial constraint for management and protection; the forest became poor and degraded, no minor products; moreover, before allocating to the community, some land areas have been encroached, migrants from the North provinces destroyed the forest to get land for production, the community did not have enough human resources and power to prevent this status.

The allocation of the forest to the community has been confirmed by the Forest Development and Protection 2004 (Article 29 and Article 30) and the procedure of forest allocation guided by the Ministry of Agriculture and Rural Development in the Circular No. 38/2007/TT-BNN dated 25/4/2007. However, there remains a lack of mechanisms and specific policy on the management and use of community forest (community forest exploitation for local use or for commercial purpose). Community forests have not brought in real economic benefits to the local people, so, the result of allocation of the forest and land is very limited. Status of management and protection of the forest areas allocated to the communities is less effective, many forest places have been cleared.

It can be said that the community rights to the forest resources have been recognized, but, due to the lack of a legal framework, and specific policies, so, the accessibility of the community to the forest is very limited; the rights of the community toward the forest resources are not secured. Land Law 2013 recognized this right as legal, thought.

3.6 The right of access to the land by Women

The right to access to the land is expressed in the Red Book with names of both husband and wife. Before 2004, the issued Red Book was only written with the name of one representative of the family, later on, written with both husband and wife. The survey result in the communes showed that 71-76% of the Red Book only have the name of the husband, with husband and wife very limited, accounting for 6-13%, the remaining households have no Red Books issued or no Red Book.

The interviewed people said that there are so far no land disputes and complaints, when there is only one name written in the Red Book. In discussion, the people thought that when the husband and the wife are divorced, based on the origin of the land and the contribution, so, the right of the women on land is still protected, therefore, the people do not change the Red Book to get the Red Book with two names. In case of issuance of the new Book, then, both names of husband and wife will be written in the Book. However, in the discussions and interviews, some women desire to have the same names in the Red Book to be equal in the family as well as equal in access to land. The most difficult that they encounter is the Red Book issued before 2004, only the head of the family is written in the Book. Now, if need to change, the procedures are complicated, high fees for changing, they have less capacity to change themselves to have name in the Red Book to ensure their benefits. They expect the policy of the State to change simultaneously the Books like in other localities where the project has supported to do that.

Thereby, it is proved that the Women Union at the district and commune levels are not considered the issue of women's rights in the accessibility to the land as important task; both names of husband and wife should be written on the Red Book. Local government officials are not really interested in access to the land rights of the women, not taken into account the propaganda on the people's rights, especially women's rights to the land. Hence, the people are not aware of the importance and impact of this in gender equality as well as the favorable in mortgage for loans in the economic development of the family. This also reduces the assurance of the legitimate rights of the property division of the women in the event of divorce.

Land management and use by the State Forest Enterprise

4.1 The status of land management and use by the SFE in the whole country

On 3/12/2004, the Government issued Decree No. 200/2004/ND-CP. Before arrangement, the whole country had 256 SFEs. After the rearrangement, some SFEs have been moved to the Forest Protection Management Board, Special Use Forest Management Board, some Enterprises were dissolved. At the time of reviewing the Resolution 28 (June 2012) the whole country has 148 forestry companies; as of December 31, 2012, the whole country has only 139 remaining companies, reduced to 9 companies, because, some moved to the statistics of the rubber industry, accounting depends directly under the Vietnam Forestry Corporation or stopped operation (Project on assessment of the status of the State Forestry Company, VNforest 9/2014).

At present, 139 still companies are managing 1,958,381 ha, in average 13,694 ha per company. In which, the forest area is 1,903,605 ha, including the production forest land: 1,567,568 ha (82.35%), land planned for protection forest: 326, 042 ha (17.13%) and land planned for the Special use forest: 8135 ha (0.43%). The provinces issued the decisions on allocation of the land to the companies: 1,055,438 ha of the total 1,903,605 ha (55.6%). As of December 31, 2012, the number of the employees of the forestry companies in the country is only 12, 278 people, including indirect labor accounted for 24.3% and 75.7% is direct labor.

For the land used for the production and business of the Forestry Companies consists the forms below.

Table 3. Forest land use by Forestry Companies

Total forest land area Managed and used by the Forestry Company	Forms of use		
	Joint - venture, association	Contracted allocation to the households/community	Self - Production and trading
1,903,605 ha	40,477 ha	278,769 ha	1,584,359 ha *
100%	2.10%	14,6%	83.3%

* in which the area of the natural forest is being regenerated, rehabilitated, protected and managed 1,070,000 ha; In fact, the forest companies only produce, trade, contract, protect or establish the forest on the area of 514,000 ha.

A part of the area of the forest companies (290,000 ha accounting for 13%) has been returned to the local authority to allocate to the households, mainly the land capable for development of agricultural and forestry production, distributing near residential areas and mixed agricultural and forest land. Basically, after the step of land review, to restructure the forest companies, the land conflicts between the company and the people “cool down”, the previous land disputes at a large scale are no more. From 2005 back to the past, 47.637 ha of the State forest enterprises has been disputed or occupied, by 2012, only remained 7.684 ha (down to 83.7%),

Evaluation of land use management of SFE, in Notification No. 164 / TB-VPCP issued April 16, 2013 of the Government about the Meeting on Review of 10 years of implementation of Resolution 28 / NQ-TW of the Politburo on arrangement, renovation of the State Farms and State Forest Enterprises has stated clearly that: “Efficient use of the land resources, forest resources, perennial gardens and efficiency of the business and production of many agricultural and forestry companies is not high”. In fact, the SFEs manage a lot of land, but the efficiency of the use of the land sources, forest resources is not high, the forest has not been managed, protected and used sustainably; efficiency of the forest business and production of the forestry companies is not high; not created the changes in the livelihood of the people community. Especially, the open land and bare hills of some forest companies still have a lot (171,885.38 hectares, accounting for 34.57% of the total 514,537 hectares of the land for planting production forests). It is this unused land is the places where disputes frequently happen with the local people.

Acquisition of the land of the State farms and forest enterprises to allocate to the households was implemented slowly with many difficulties. Implementing the program on arrangement, renovation of the State farms, State forest enterprises, the Prime Minister issued Decision 146/2005/QĐ-TTg, on June 15, 2005 on revoking the

production land of the farms and forest enterprises to allocate to the poor ethnic minorities. Only calculating for the forest enterprises, as of December 31, 2012 after 10 years of review, SFEs returned to the local authority 289,992 ha out of the total of 2,193,597 ha (13% compared with the total area before reorganization).

4.2 Practical use of the land of the surveyed State Forest Enterprises

The allocation of forest land of the SFE to the households is divided into 2 phases: From 1995 to 2005, implementation of Decree 01 / ND-CP⁷ of the Government dated 04.01.1995 on allocation and contracting the land to use for the forestry and agriculture production purpose, aquaculture in the State enterprises. Since 2005 up to now, implementing Decree No 135 / 2005/ND-CP⁸ dated 08/11/2005 regarding the allocation and contracting the agricultural land, production forest land water surface land for aquaculture in the State farms and State Forest Enterprises.

Before the promulgation of Decree 01/ND-CP, non-productive fallow land, negatively impact on the environment. Also same as the first time of forest land allocation under Decree 02 / ND-CP stated above, when Decree No. 01/ ND-CP was issued, the people do not understand clearly the benefits of the people receiving the long-term land contract, therefore, very few people want to receive the land and forest under the contracting form. The local administration and the staff of the SFE must mobilize the cadres and workers to receive the land and forest. As the land fund is very large, so, the norm for each object receiving the contract is high. Later on, when the plantation forest is of value, by that time, the land fund is limited. So, it may arise the comparison and conflicts between the officer receiving many contracts and the households receive less contracts.

Implementing the policy of allocation and contracting the land for planting forests, the forest companies usually contract forest planting to the households, including the contracting by piece of work or by stages; annual contracting, contracting for some years or by business cycle (until the plantation forest is exploited). However, when contracting for forest plantation under the above-mention Decrees, then, the right to decide exploitation of forest planting belongs to the family, so, it is not appropriate to the plan of the company, affecting to production. The households usually use the less quality seedlings, less application of the technical progresses. The fact showed that, with this form of contract, the forest companies cope with very high risk, especially with Decree 01 / ND-CP, then to Decree 135 / ND-CP.

For present period, in implementation of the State provisions, many companies lease land for forestation, the remaining land will be returned to the local level. Therefore, the companies change again the forms of contracting the land for forestation and forest protection contracting; specifically as follows:

- For the natural forest protection, firstly priority is given to the natural forest contracting to the officers and the workers of the company to protect, next to the commune households.
- For the forest plantation land, the Company spends its capital or borrow loan for forestation, enjoy all products and benefits gained from plantation forest. In case of less capital, the Company signs the land contract for forestation under the form of the end- product contract (plantation forest is allowed to be exploited) or contracting by each stage and share benefits by investment rate depending on the ability of each household.

Over the past 20 years, the policy of the forest plantation land contracting always changed, especially in the current period, the forest Companies required to follow the Enterprise Law according to the market mechanism, reducing the support from the State (rent land for forestation and paying the land use tax, production and business having benefits), so, the accessibility of the people to the forest land of the companies is more and more limited.

4.3 Return the land of the State Forest Enterprise to the survey communes

4.3.1 The area returned to the locality

In implementing Decree 200/2004/ND-CP and Decision 146/2005/ QD-TTg June 15, 2005 of the Prime Minister on the policy of taking back the production land of the State farms and forest enterprises to allocate to the poor ethnic minorities. Tu Ly forest enterprise and forest companies of Krong Bong and Quang Duc has reviewed and planned to return 27,311 ha, accounting for 38% of the total area of 72,343 hectares managed by the company.

But actually, from 2008 to 2010, these three companies have returned to the local level a total of 13,441 ha, 49% of the 27,311 ha of the plan. Specifically, Krong Bong Forest Company returned 5,441 ha, reaching at 99% of the plan; Quang Duc Forest Company returned achieved 7,970 hectares (40.4%) of the plan. Particularly Tu Ly State forest enterprise in 2008 planned to return 2,079 ha, but already returned 30 ha, reached at 1.4% of the target.

⁷ Decree 01/ND-CP dated 01/04/1995 of the Government on the allocation of land for the purposes of agriculture, forestry, aquaculture production in the State Enterprises

⁸ Decree 135/2005/ND-CP dated 8/11/2005 of the Government on contracting of agricultural land, production forest land and water surface for aquaculture production in the State Agriculture Enterprises and State Forest Enterprise

In 2014, District People's Committees reviewing to make a plan to report to the Provincial People's Committee to revoke and allocate back 1,083 ha to the locality. The reason that Ly Tu forest enterprise returned to Tu Ly commune much less than the communes of Quang Duc and Krong Bong forest companies, as recently Tu Ly forest Company is in the process of doing the land renting procedure. Currently, the land lease process is finished, Tu Ly forest enterprise only keeps the leased land area, and the rest returned to the commune in 2014 is 1,083 ha. For details see the table below

Table 4. Statistics of the area returned to the locality

Forest Company Name	Area at the date of establishment		Returned by the plan*		Actually returned		Being managed	Note
	Year	Ha	Year	Ha	Year	Ha	Ha	
Tu Ly	1967	4,680.00	2008	2,079.00	2014	30,00 (1,4%)	2.601	* Year 2014 Tu Ly enterprise planned to return 1,083 ha
Krong Bong	1986	33,913.61	2010	5,485.38	2012	5.441,61 (99,2%)	28,472	
Quang Duc	1993	33,750.00	2010	19,747.00	2012	7.970 (40,4%)	14,003	

(Sources : Survey document of the field study group)

Over the whole country, the acquisition of the State farms and forest enterprises to allocate to the households is slow and much difficult, until now, the country has revoked and handed over to the locality 565,167 ha, accounting for nearly 9% of the total land area managed by the forest enterprises. For the SFEs, after 10 years of review, already returned to the locality 289,992 ha in the total of 2,193,597 ha (approximately 13% of the total allocated area).

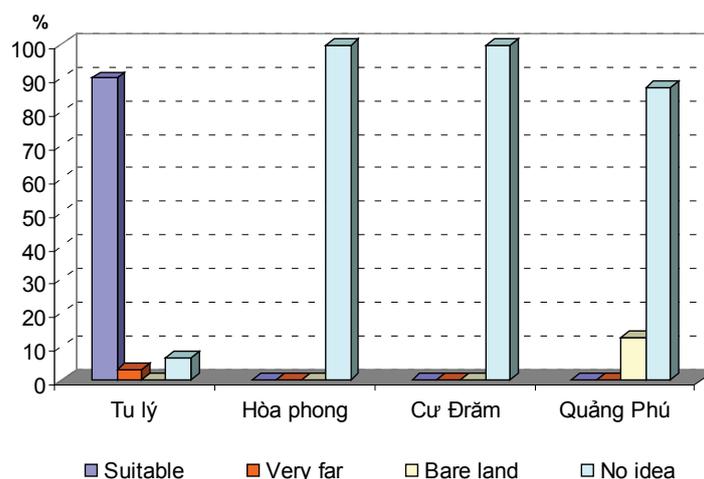
4.3.2 Process of land conversion of the State Forest Enterprise to the locality

The conversion takes place slowly, not meeting the requirement. In Tu Ly forest enterprise (Hoa Binh), the revoking was carried out in 2008, but until now, just only allocated 30 ha (1.4% of the plan). When interviewing the households, it was found that people less believed in taking back the land because this problem was mentioned for long time but not performed yet. Thus 43.3% of the people thought that it is impossible to take back; 20% said that it could be taken back, but the area is less, not enough to be allocated to the people; and 36.7% of the interviewed people said they do not know this program. Natural Resource and Environment Division of Da Bac district is making a plan for division but do not know in which year this will be completed.

In reality, there are many difficulties when implementing Decision No. 146/2005 / QD-TTg 06/15/2005 of the Prime Minister on production land acquisition policy of the farms and forest enterprises to allocate to the poor ethnic minorities.. At the locality having farms and forest enterprises, it just stops at reviewing and identifying the area not correctly used, not effective, but the land recovery is still very limited and slowly done, no meeting the requirement. Main problem is that the compensation of the asset value on the ground that the farms and forest enterprises invested is too high. The area recovered and allocated to the ethnic minorities with the farming conditions is very difficult (for water source, soil quality, roads...).

4.3.3 Characteristics of the land and forest to be returned, managed and used by locality

Diagram 4: Assess of the land returned



When being interviewed, exchange information with the people in the surveyed communes, all agreed with the policy of the State on taking back the land from the SFEs to return to the locality. However, the level of interest in this policy may vary, the least interest is 3 communes in the Central Highlands (from 87% in Quang Phu and Hoa Phong 100% and Cu Dram) do not know about this problem, it showed the lack of information from the local management agencies, on the other hand it also showed that the demand for the forest planting land is not high, not an urgent problem. Meanwhile in Tu Ly commune, 90% of the households involved in the survey said that land acquisition to be returned to the locality to allocate to the people for production is appropriate.

Assessment of the status of the land returned to the locality, many opinions expressed the different levels of satisfaction, depending on each company. For example, At Tu Ly commune: Most of the people said that the land returned from the forest enterprises is suitable for agricultural and forest cultivation; only 3.3% of the ideas said that the land is far from their houses, so, difficult for production and protection; 6.7% of the people said that no idea, while in Quang Phu 12.9% of the interviewed people said that the land acquired is bad land, open land and barren hills, far from the people, low crop productivity, inefficient use.

Out of the total of 5,457 hectares handed over by Krong Bong Company to Krong Bong district to allocate back to the people; through exchange with commune authority and the people, it was found that the majority of this area is open land, degraded forest, and being invaded for farming, the company did not need to use and capacity for management. The commune has no cost for measuring and allocating back to the people. If there are funds left, the handover for local people is also difficult because most of the area of forest land have been arrogated people productive land. When handed the conflicts will arise between people who are assigned and mining / production.

In the process of the study to transfer a part of the land fund to the local level, for management and business, the SFEs usually allocated full compartments or sub-compartments including the natural forests, bare land, land encroached and invaded by the households, upon receiving the returned land, the commune made a plan for use; in some places, the commune only allocated the land for forest establishment, the natural forest area managed by communes (Tu Ly); in other places, the land for forestation was divided and allocated the natural forest to the households for protection contracting (Quang Phu). The returned natural forest is often the poor forest and restored forest, so can not create the products, as a result, the land contracted with the households is gradually "degraded" and converted to the production land (Hoa Phong, Cu Dram commune). Besides 3 surveyed communes, most of the communes in the Central Highlands. The natural forest allocated to the communes to manage and protect, due to lack of the human sources and fund, so, after a certain time, the forest almost disappeared. In some cases, local authorities asked the forest protection and management company or return to the Company.

4.4 SFE land disputes and encroachment

Currently, except Tu Ly forest has less disputes and encroachment of the land between the local people and the SFE, the remaining forest companies occur frequently. In Quang Duc Forest Company. The biggest problem of the company at present in the forest management, protection and development is the status of land encroachment for farming activity by the ethnic people and the migrants is very great. Out of the total of 12,367.7 hectares of the forest land managed by the company, 4,510.8 ha of forest land was invaded. According to the leader of the company, with this invaded area, the Company has no solution to solve. For the remaining forest land, the Company has already coordinated with the authorities at all levels for management and protection, but are still affected because the people lack of productive land.

In Krong Bong Forest Company: As reported by the company, after 6 years, 127,29 hectares were invaded (about 0.4% of the total allocated land area managed by the company). However, in fact, the invaded area is much larger. For example, in Buon Lia (Hoa Phong commune) Out of 158 households, 120 households have spontaneous land (invaded area). Many households destroyed spontaneously the forest to get land for production from 2 to 7 ha. Thus, only one village of Hoa Phong commune, total invaded land area is over 200 ha.

In general, the land is weekly managed by the farms and forest enterprises, the status of land encroachment and disputes with the local people frequently take place. According to the official reports, the total land area of the farms and forest enterprises under disputes at present is 22,269.4 ha, accounting for 0.56% of the total natural land area allocated by the State. In which, the agricultural land area of the farms under the conflict is 2,493.42 hectares and the land of the forest enterprise is 19,775.96 ha. The statistic data of the land of the forest enterprise in 2010 showed that the most disputed land type is the unused land accounting for 61%; the forested land accounted for 28.0%; specialized land, residential land is 8.8% and the least is agricultural land occupies 2.2% of the total disputed land area. The disputing objects are mainly the households residing in the area of the State farms and forest enterprises.

4.5. SFE land management and use gaps

Analysis of the surveyed data and also analyze and synthesize the ideas at the Workshop “Real situation of the State forestry company (SFE), model, mechanism and sustainable, effective development policy” held by the Ministry of Agriculture and Rural Development on December 24, 2013 in Ha Long City, Quang Ninh Province showed that:

Most of the land and forest resources have not yet been reviewed, measured in the field, no topographic maps, the area with issued land use right certificates is limited, not yet creating the basic change in the management and use of the forest land; still having violations of the law in different forms, specifically as follows:

- Review of the land: the majority of the forest companies only review the land on the records and on the map. Some Forest Companies were established from merging some forest enterprises, but did not screen the land in the field during the arrangement process and just implicitly recognized the area already written in the land use right certificate of the forest enterprises, previously, the local authority has revoked the land of the Company and allocated to the people, but not pointing clearly the boundary of the revoked area and also no minutes for transfer of the land in the field.
- For the issuance of the land use right Certificate: Until now, still 46.7% of the land area managed by the Forestry Company, the Red Book has not been issued yet... The main cause of this situation is due to the large land area presently managed by the Companies are so large therefore, the work of review, measurement and demarcation of the boundary is very expensive, can not do it by themselves; some localities have not agreed how to handle the land encroachment, so, they did not demarcate the boundaries, as a result, the procedures are not enough for issuance of the Red Books.

Situation of the land disputes and encroachment is occurring regularly, mainly in the forestry company managed natural forests; the main reasons are:

- + When arrangement the forest enterprises, the work of allocation the land to the units without measuring, not demarcation of the boundary clearly on the ground, in many cases, only demarcation on the map including the land of the people under farming, the land left behind shifting cultivation, resettlements from the time of the foundation of the forest enterprises.
- + The coordination between the local administration with the forest companies is not closed, the local administration has not facilitated yet to solve and prevent from the act of land encroachment for a long time, even unable to settle the land conflict.
- + The land management work of the forestry companies is neglect, not strongly, lack of supervision;
- + The population in the area has quickly increased (both natural and mechanic); the need for land and land for production is highly increased; the land is valuable, the land value quickly increased due to development of infrastructure, socio-economic development in the region, encouraging the act of land encroachment of the people;
- + Awareness of the laws, policies on the land of some people is limited, not observing the law;
- For the contracting of forest and forest land: The allocated and contracted land area of the companies in the whole country only amounts for 30% of the total land area managed by the companies. Performance of the allocation and contracting of the forest and forest land has raised many complicated issues, like allocation and contracting to the people not belonging to the objects directly involved in the agricultural and forestry production; in some cases, allocating and contracting with the people outside the community in stead of allocating the land to the people on the spot to ensure daily life. Some companies have contracted to the households, but the people receiving the contract could not access to the support on seeds, materials, techniques or the contractor only used the State budget tot support (in fact, the contractor provided nothing), creating the negative in terms of taking advantage of the policy on forest land contracting.
- About land leasing: some enterprises put the land on lease (while they have not paid the renting fee). Besides the aim to lend arable land to poor people, in some places, this situation is actually taking advantage of power, money, and the policy of the State to put company’s land on lease for some people to build farm and grow fruit trees and crops. In some cases, the land was lent to use on wrong purposes or transferred to another person without informing the company.

Conclusion and Recommendations

5.1 Conclusion

1. Results from actual survey has added, demonstrated and deepened the status of land shortage, no land of the ethnic minorities in the mountainous provinces; leading to poverty, land disputes and social unrest; at the same time, looking towards to have one study on land allocation for the ethnic minorities in the context of implementation of the Land Law 2013 and newly promulgated guidelines and policies.
2. Access to the land, forest resources and land ownership right of the people especially women and the community are affirmed by the policy and the law of Vietnam. However, when implementing these rights for the ethnic minorities, the following issues should be considered.
 - The way and the level of access to the land, natural resources as well as the ability to establish land use rights of the ethnic minorities has special characteristics, reflecting the circumstances of residence, ethnic traditions, farming practices and always fluctuating due to the demand of the livelihood;
 - The right of the women to the natural resources is being limited due to the awareness of the local authorities and especially the Women's Union at all levels, lack of communication and awareness raising, understanding this right for ethnic women has caused limitation to the community ownership of the land and community forest;
 - The right of communities on forest resources has been recognized by the law, but due to lack of the concrete mechanisms and policies, especially mechanism of benefit sharing from the community, so, the community forest not yet brought in the practical economic benefits for the local ethnic groups; leading to the result of the forest allocation to the community being very limited. Therefore, the community merely have access to this resource while management and exploitation is very limited; the ownership of the community toward to the resources is almost none;
 - Some changes in the mechanism of the land contracting for afforestation and contracting for natural forest protection of the forestry companies, because the companies operation according to the enterprise Law and to the market mechanism, so, its has limited the accessibility of the local people to the forest and land sources of the forest enterprises. Procedures for measurement and developing the cadastral records are complicated and high cost; For a long time that there is no consensus among the forestry sector with the natural resources and environmental sector also limited the first right that any land user wants to have i.e the Red Book.
3. Over the past years, although the State has promulgated the target programs and policies to solve the status of land shortage, without land and production land for the ethnic minorities; but the result is not high, just met about 50% of the demand, now about 300,000 households still need to be supported with residential land and production land. Besides, still a large number of the ethnic minority people whose residential and production land have been taken back at the projects of urban construction development, hydroelectric plant constructions; irrigation constructions, transports etc... These households also need to be supported with residential land and production land, while the way for the people to access to the land and implement the policies is still limited, such as:
 - Lack of the transparent and open in the land management: The local authorities are not fully responsible for development and providing the information on the land, right and obligation of the people receiving the forest land, lack of dissemination to make the people understanding clearly the land policy, right and obligation of the forest land users. The forestry companies limit in publishing the list of land allocation for afforestation and contracting for natural forest protection and the contracted area so that the local people and authorities together monitoring and avoiding the corruption and embezzlement of the land of the forest enterprise.
 - Lack of participation in management and supervision of the people in the implementation of the land law like: Getting the comments from the people on planning, land use plan; compensation plan, support, resettlement, management and land use.
 - Lack of equitability: After 20 years (from 1994) implementation of the policy on forest and land allocation, it still remained the status that the households have more land and households have less land, when allocation of the land and forest contracting, the local authorities did not solve or adjust timely the limit of the land to be allocated to ensure equal allocation in the land use left behind by the history.
4. The most serious shortcoming and limitation in land management of the forestry companies is that most of the forest land resources have not been reviewed and measured in the field, the topographic maps have not been produced yet, the area with the issued Red Books is limited, not yet created the basic changes in the management, land and forest use.

5.2 Recommendations

The State policy

1. To remove the present problems on the land management of the Forest Companies, the State should promulgate early the mechanisms and policies to solve the issues as follows:
 - The forest Companies screen the status of land use in terms of position, management boundary, land use; the land area used in correct purpose; the land area used in wrong purpose; the unused land area; the land area is being announced for contracting, leasing, be invaded, be encroached, joint-venture, investment cooperation and being disputed. Thereon, having the land use plan of the Companies appropriate to the locality.
 - The Forestry Companies with the revoked land area should hand over all dossiers on the revoked land fund to the Provincial People's Committee where the land lies (land of the dissolved company, remaining land due to reduced tasks, unused land, contracting land, land used for wrong purpose, transferred land areas, land area with sold garden, infrastructure land not for production, approved residential land planned by local authority.
 - The Provincial People's Committee, after receiving the land shifted from the forest companies should screen the objects using the land, the area being used of each object; in which, priority to solve for the ethnic minority people in the locality who are landless or lack of land for production, those people are receiving the contracted land directly used for the production allowed to receive land allocated or land leased. Those households and individuals are using the land are allowed to continue using the land by the form of allocation of the land, not collecting the land use fee or land leasing.
 - For the land of the companies being invaded and encroached by the households and individuals: if the company's land area being cultivated by the households and individuals belongs in the land use plan of the company, then it should be examined and taken back for allocation. If the land area is not given back to the company, the land will be revoked accordance with the law.
 - For the land of the forest company in dispute: The disputed land area between the company and households, individuals depending on the agricultural activity for livelihood, the production has already been fixed, not impacting on the land use plan of the company, then it should be re-allocated to the locality for consideration and settlement.
 - The disputed land area between the company and households and individuals, being stably produced, but lying on the land use plan of the company, then, the company considers and signs the contract for land allocation with the households and individual. If not carrying out the contract and allocation of the land, then, the land is taken back in accordance with the land law.
2. The State needs to have the policy to raise the awareness of the society (women, men and stakeholders) on the rights of the women towards the land, natural resources and ownership of the community on the land/forest community. At the same time, need to have the policy to create conditions for the women to have their names together with the names of the husbands in the Red Book in order to ensure the right of equality in their families as well as to access to the land and forest resources.

Ministry of the Natural Resources and Environment

3. Providing the guidance on measurement, cadastral mapping, allocation and leasing and issuance of the land use right certificates for the agricultural and forestry companies in accordance with the law on the land;
4. Guiding in treatment of the cases of land leasing, borrowing; encroachment, disputes, joint-venture associate, contract, cooperation, investment, land contracting, residential land, household economic land, in accordance with the stipulations of the Land Law, investment law.
5. Ability to access to the land and forest resources that have a great impact on the economic life of the household, as the livelihood activity mainly depends on the land. However, the chance for the ethnic minorities access not only to the land given back by the State Forest Enterprises to the locality, but the land areas are not subject to any manager, are located in the commune, interim management by the CPC but essentially ownerless (about 2 million hectares); occupied by the people themselves, cultivating on these areas. Therefore, the MONRE needs to guide the CPC to allocate these areas to the ethnic minority households lacking land for production.

Ministry of Agriculture and Rural Development

6. Continue to review the land of the agricultural farms and forest enterprises in cooperation with the Ministry of Natural Resources and Environment to screen again the State Farms and State forest enterprises according to the Resolution 30-NQ/TW dated 12/3/2014 of the Politburo, basing on which a suitable part of the land can be taken back to prioritize settlement of the production land for the ethnic minorities living in the area.

Local administration

7. The Provincial People's Committee directs to review or adjust the planning, land use plan of the locality for the revoked land fund of the forest companies to organize to manage and use effectively the revoked land.
8. Commune People's Committee concerns the key factors in the local land governance:
 - Open and transparent in the management, firstly, develop and provide the information on land;
 - People are allowed to participate in the management and monitoring the planning, land use plan; compensation plan, support resettlement, management.

ActionAid Viet Nam(AAV) and Non-Government Organisations (NGO)

9. AAV continues to study the land policy for the ethnic minority people; study further two matters which presently still have many problems as: (i) Access to the land and right for ownership of the resources, chiefly women and community in order to raise the awareness of the society on this issue (ii) Transfer of the land of the forest companies back to the locality to re-allocate to the ethnic minorities. This issue is of more significant in the context of the Land Law in 2013 came into being; Politburo has just promulgated the Resolution 30/NQ-TW dated March 12, 2014 on continuing arrangement, renovation and development, raising the effectiveness of the operation of the agricultural and forestry companies; New Decree replaces Decree 200/2004/NĐ-CP that will be issued in coming period.
10. AAV or through the organisations (NGOs) need to have a study to support the farming technique, change the plant structure, animals, apply the scientific and technical progresses to increase the productivity and yield of the agricultural products on the allocated land.
11. At present, MARD is implementing the project on development of the Forest Sector management Information System in Vietnam - Phase II (FORMIS II). Objective of the Project is develop one Management Information System (MIS) to integrate comprehensively to serve the sustainable management of the forest resource through which contributing to the target of hunger eradication and poor reduction in the socio-economic development framework in Vietnam. While, AAV started to carry out the Project on the forest governance basing on the information system of the FORMIS Project in 6 provinces in the whole country. Therefore, AAV is kindly requested to provide information to FORMIS to integrate in this system for sharing and exchange widely all project activities with different objects.

References

1. Land Law, 2013
2. Decree No.170/2004/NĐ-Cp dated September 22,/9/ 2004 on arrangement, renovation and development of the State farms.
3. Decree No. 200/2004/NĐ-CP dated December 3, /12/2004 on arrangement, renovation and development of the State forest enterprises.
4. Decree 43/2014/NĐ-CP dated May 15/5/, 2014 of the Government on guiding the implementation of the Land Law 2013
5. Decision No.146/2005/QĐ-TTg, dated June 15/6/, 2005 of the Government on the policy of revoking the production land of the agricultural farms and forest enterprises to allocate to the poor ethnic households.
6. Decision No.Quyết định số 134/2004/QĐ-TTg, dated July 20/7/, 2004 of the Prime Minister on some policies on support to the production land, residential land, housing and clean water for the poor ethnic people, life is difficult.
7. Decison No.132/2002/QĐ-TTg, dated October 8/10/, 2002 of the Prime Minister on solving the production land, residential land for ethnic minorities on the plot in the Central Highlands.
8. Resolution No.30/NQ-TW dated March 12, 2/3/2014 of the Pplitburo on continuing arrangement, renovation and development, raising effectiveness of the operation of the agricultural and forestry companies.

ActionAid Vietnam

Add: 5th Floor, Vinafor Building, 127 Lo Duc,
Dong Mac Ward, Hai Ba Trung District, Hanoi, Vietnam
Tel: 84 (04) 39439866 - Fax: 84 (04) 39439872
Email: mail.aav@actionaid.org
Website: <http://actionaid.org/vi/vietnam>