

Exclusive versus inclusive devolution in forest management: Insights from forest land allocation in Vietnam's Central Highlands

Thomas Sikor^{a,*}, Tran Ngoc Thanh^b

^a*Junior Research Group on Postsocialist Land Relations, Humboldt University, Berlin, Luisenstr. 56, 10117 Berlin, Germany*

^b*Department of Agriculture and Rural Development Dak Lak, 47 Nguyen Tat Thanh Street, Buon Ma Thuot, Vietnam*

Received 8 August 2005; accepted 4 April 2006

Abstract

The devolution of forest management is high on the agenda in international forest policy. Devolution is generally conceived as a policy that aims to include a more diverse set of actors in forest management. One of the most problematic outcomes of devolution policies, therefore, is their tendency to exclude the claims of some local actors. This paper examines the exclusionary effects of devolutions in settings characterized by overlapping state and customary regulations and links these effects to exclusive notions of property and governance contained in particular devolution policies. The paper draws on insights gained in a pilot initiative of forest devolution in Vietnam's Central Highlands. Forest land allocation, as the initiative is called in Vietnam, took an exclusive approach to devolution by assigning ownership-type rights on forest to local actors, obliging those to protect the forest against encroachment by other actors, and centering governance in the state. In this particular case, exclusive devolution failed to diminish the gap between state and customary regulations, created conflicts among local actors, and contributed to forest loss. The unintended outcomes of exclusive devolution suggest the need for an inclusive approach to devolution that accommodates diverse kinds of overlapping claims made by multiple actors. The key elements of inclusive devolution are proprietary but not ownership rights granted to individual users and nested governance relations involving state and customary actors.

© 2006 Elsevier Ltd. All rights reserved.

Keywords: Devolution; Forest management; Forest policy; Property rights; Governance; Exclusion; Inclusion; Vietnam

Introduction

Devolution is high on the agenda in international forest policy. Governments around the world are in the process of transferring property rights and responsibilities in forest management from state units to local actors (White and Martin, 2002; Edmunds and Wollenberg, 2003). Even the World Bank advocates for the devolution of forests and recognition of customary land rights held by local communities (Bruce and Mearns, 2002; World Bank, 2002). Yet actual devolution policies are highly varied, as are their effects on local livelihoods, forest conditions, and the empowerment of local actors (Shackleton and Campbell, 2001; Edmunds and Wollenberg, 2003). There is an urgent need for the development of approaches to

devolution that contributes to local livelihoods, forest conservation, and local empowerment.

Devolution is generally conceived as a policy that aims to include a more diverse set of actors in forest management. In fact, devolution policies have granted statutory rights in previously state-managed forest to a wide range of local actors in many countries (Edmunds and Wollenberg, 2003). Yet in settings characterized by overlapping state and customary authorities, one of the most problematic outcomes of devolution policies is their tendency to exclude the claims of some local actors. As devolutions recognize the customary rights of some local actors, they often weaken the customary rights of other actors by failing to acknowledge them. For example, the devolution of swamp land to a village in Laos has terminated the customary use of the same swamp by 16 other villages (Tubtim and Hirsch, 2005). Or, community forestry groups in India and Nepal exclude women from forest benefits and

*Corresponding author. Tel.: +49 30 2093 6270; fax: +49 30 2093 6427.
E-mail address: thomas.sikor@rz.hu-berlin.de (T. Sikor).

participation in decision making (Agarwal, 2001). Devolutions thus easily turn into enclosures, notwithstanding inclusive intentions motivating the original policy initiatives.

This paper examines the exclusionary effects of devolution in settings characterized by overlapping state and customary regulations, linking these effects to exclusive notions of property and governance contained in particular devolution policies. It suggests that policy approaches founded on ownership rights and state-centered governance embody exclusive tendencies, which tend to bring about exclusionary effects when the policy is implemented in these kinds of settings. Where authority is shared between state and customary actors exclusive devolutions are likely to result in local enclosures, shifting local property relations from ‘use rights deriving from belonging to a place’ to ‘places belonging to people’ (Peters, 1998, p. 360). The exclusions involved in these processes are not accidental or due to the particular circumstances of implementation but stem from a systematic failure to recognize the nature of customary rights to forests. This failure originates from the exclusive notions of ownership and state-centered governance contained in particular devolution policies, which are radically different from the more inclusive relations characterizing many customary regulations. The aim of the paper is to explore the local outcomes of exclusive devolutions and develop the contours of a more inclusive approach.

The paper draws on empirical insights gained in a provincial pilot initiative of ‘forest land allocation’, as the devolution program is called in Vietnam. Since 2000, the authorities of the Central Highlands province Dak Lak have undertaken an innovative program to transfer significant rights and responsibilities on natural forests to local households, groups of households, and whole villages. The provincial authorities chose an exclusive approach to devolution by assigning ownership-type rights on forests to some local users, obliging those to protect the forests against encroachment by other actors, and retaining governance in the hands of state actors. This paper examines the initial effects of forest land allocation on the social relations among local actors and their forest use practices. It uses the insights gained from the empirical analysis to suggest the basic components of a more inclusive approach to devolution.

The paper begins with a brief discussion of the variety of approaches taken by devolution policies in international forestry, highlighting property and governance as two particular elements with implications for exclusive/inclusive tendencies. Study site and methods introduces the study site and research methods. The setting: forest relations in the 1990s examines forest relations in a village in Vietnam’s Central Highlands in the 1990s, with an emphasis on the overlapping nature of state and customary regulations. Forest land allocation: politics of enclosure discusses the implementation of forest land allocation in that village in 2000 as well as subsequent forest dynamics in

the first 2 years after devolution. These results inform a comparative discussion of exclusive and inclusive devolution in Forest dynamics after allocation, relating the insights from the Central Highlands to dynamics and debates in other settings.

International forest devolutions: actors, resources, property, and governance

International devolution policies take many different forms, even when one examines those taking place in the forestry sector only. For the purpose of this paper, it is useful to distinguish four dimensions along which the programs vary: the actors empowered, resources involved, property rights and responsibilities transferred, and governance relations foreseen (cf. Sikor, 2006b). Choices along these dimensions influence the exclusive and/or inclusive tendencies of devolution policies.

Devolution policies have targeted a wide range of local actors.¹ Chinese and Vietnamese forestry reforms allocate forest use rights primarily to households and individuals (Dachang and Edmunds, 2003; Tran and Sikor, 2006). The Indian and Nepali governments have promoted the participation of village committees in forest management (Agarwal, 2001). Recent reforms in Bolivia have strengthened the role of district governments in decisions about local forests (Pacheco, 2004). A useful distinction is between village committees, households/individuals, local government organizations, and corporate legal organizations as the primary actors to be empowered by devolution (Edmunds and Wollenberg, 2003).

Devolution programs apply to diverse sets of forest resources. While some programs apply to forest as a whole, others focus on specific forest products (Edmunds and Wollenberg, 2003). Examples of the latter are transfers of use rights to specific non-timber forest products (NTFPs) in India and wildlife in Zimbabwe (Behera and Engel, 2006, forthcoming; Matose, 2006, forthcoming). Even where devolution applies to whole forests, the actual nature of those may be highly varied, in terms of their productive capacity, economic value, regenerative capacity, and stability (Wollenberg, 1998). In addition, local actors may attach very different meanings and symbolic values to them (Fortmann, 1995).

But the programs not only include a varying range of forest resources, they also transfer different sets of property rights and responsibilities to local actors. In practice, a detailed break down into specific rights and responsibilities is necessary to accurately describe devolution programs. At a more abstract level, it is useful to distinguish between

¹This paper employs a broad definition of devolution, including transfers to individual and households, which others might call privatization (cf. Edmunds and Wollenberg, 2003). This broad definition is useful for analytical purposes, as will become clear in the remainder of the paper.

ownership, proprietary rights, and use rights (cf. Agrawal and Ostrom, 2001). The term ‘community forestry’ tends to imply private ownership rights for local communities, giving communities an extensive set of rights to the forest (White and Martin, 2002). In contrast, joint management or co-management limits the rights of local actors to use rights (Agarwal, 2001). In-between ownership and use rights are proprietary rights, which combine use rights with the power to exclude other actors. An example of proprietary rights are those held by village committees in Malawi and Tanzania, which include the rights to use the forest, exclude other actors, and collect revenues on forest utilization (Shackleton and Campbell, 2001). Similarly, one may distinguish between responsibilities to restrict forest use, engage in physical management, and exclude other actors.

Devolution programs also vary by the kind of governance relations they seek to set in place. Program specifications on governance consist of regulations about the enforcement of rights and responsibilities (including monitoring, sanctioning, and conflict resolution) and the potential adjustment of rights, responsibilities, and governance relations (Agrawal and Gibson, 1999). These regulations may seek to concentrate governance in the hands of the state, by putting all tasks of monitoring, sanctioning, and conflict resolution as well as adjustment in the hands of state actors. Forest departments may still hold the monopoly in law enforcement, even though some property rights have been granted to local actors. Yet devolution programs may also transfer some elements of governance to local actors, creating different forms of nested governance. Examples of nested governance can be found in India, where forest councils take an active role in the enforcement of villagers’ rights to local forests (Agrawal and Yadama, 1997).

This brief overview indicates the tremendous diversity of devolution policies. The policies vary by the actors empowered, resources involved, property rights and responsibilities transferred, and governance foreseen. Choices along these four dimensions influence the tendency of devolution policies to include or exclude local claims to forests when implemented in diverse local settings. For example, policies transferring statutory rights to individual households have different implications for the effects of devolution than policies empowering district authorities. This paper focuses on issues of property and governance associated with devolution policies and outcomes. The remainder of the paper seeks to uncover linkages between the notions of ownership and state-centered governance contained in exclusive approaches to devolution and the local effects of devolution in settings characterized by overlapping state and customary regulations.

Study site and methods

The paper proceeds by way of a case study of forest devolution in Vietnam’s Central Highlands province Dak

Lak.² Dak Lak is interesting because it contains a significant share of Vietnam’s remaining natural forest and a large number of different ethnic groups with distinct forest use practices and customary regulations. In addition, the provincial authorities have implemented ‘forest land allocation’ since 2000, granting ownership-type rights to villagers for forests previously under state control.³ Dak Lak’s program goes significantly beyond nation-wide forest land allocation because the provincial authorities grant villagers statutory rights to standing forest. In the rest of the country, villagers have so far received statutory rights to barren forest land only. In addition, the empowered actors include not only individual households as it is common practice in Vietnam’s other provinces but also groups of households and whole villages.

The fieldwork was undertaken in Cham B village of Dak Lak in 2002, 2 years after Dak Lak’s authorities allocated an adjacent forest to five groups from the village. Fieldwork consisted of a detailed analysis of actors, resources, rights and responsibilities, and governance relations related to the use of the forest. The forest uses of particular interest were the extraction of timber, collection of NTFPs, and conversion of forest into agricultural fields. The fieldwork took 4 months and included semi-structured interviews with all village households, many informal conversations with people from Cham B and neighboring villages, direct observation in the forest, and interviews with staff from the State Forest Enterprise.

The research used the following data to describe the legal rights granted to the forest user groups and distinguish them from those asserted by the groups themselves and actual forest use practices.

- Information on legal rights stems from legal documents and implementation guidelines made available by the provincial authorities.
- Data on asserted rights originate from group members’ statements in group discussions and informal conversations in response to questions about who was entitled to do what with regard to the devolved forest.
- Information on forest use practices was collected by way of semi-structured interviews with all village households, direct observation, and informal conversations.

The setting: forest relations in the 1990s

Cham B is a fairly typical village for the more remote parts of Dak Lak.⁴ In these parts, forest has remained

²Dak Lak was divided into two provinces, named Dak Lak and Dak Nong, in January 2004. This paper uses the name Dak Lak to refer to the area that now encompasses both Dak Lak and Dak Nong provinces.

³To be precise, the rights were not ownership rights because all land is ‘owned by the people’ according to Vietnam’s constitution. At the same time, they were similar to ownership because they included rights of exclusion and limited alienation.

⁴See Tran (2006) for a detailed discussion of study site, methods, and results.

relatively rich, and indigenous ethnic groups account for the majority of the population. The village today includes 38 households of Ede ethnicity, one of the largest indigenous groups in the Central Highlands. The Ede are joined by four ethnic Vietnamese (Kinh) households, who migrated into the village during the 1990s. Ede and Kinh work the land for a variety of subsistence and cash crops, covering their own needs and generating a modest income.

The Ede of Cham B reports a history of forest management that is fairly typical for indigenous villages in the Central Highlands. Before 1975, the people of Cham village used surrounding forests as a source of land, timber, firewood, and various NTFPs. Every few years they cleared new fields in the forest and worked them for a few years. They often returned to previously cultivated areas, as they retained the right of cultivation even during long fallow periods. The villagers did not claim any clear territorial boundaries in the forest, however. The areas worked by them and people from neighboring villages were often interspersed. They and their neighbors also tended to collect timber and other products from the same forests. In cases where property relations were not clear or disputed among people, villagers resorted to the headman, a customary leader chosen by the villagers. The headman typically possessed significant authority among villagers as well as Ede from neighboring villages.

Local forest relations changed gradually after national reunification in 1975. The forests surrounding Cham village first came under the statutory control of Krong Bong State Forest Enterprise. Just as the other Enterprises established throughout the Central Highlands, Krong Bong Enterprise had the mandate to not only manage the forests but also serve as the primary vehicle of national integration and local development (Evans, 1992). In the 1980s, the provincial authorities built up the People's Committee of Cu Dram commune as the lowest level of administration responsible for Cham village. The People's Committee appointed a 'state village headman' for Cham village, complementing the 'traditional village headman'. It also encouraged some villagers from Cham village to relocate their residences to a site next to the commune center, dividing the village into Cham A and Cham B. In the 1990s, finally, migrants arrived in Cu Dram in whole groups and individually. Kinh migrants settled in Cham B and Cham A and founded the neighboring Thon 6. In 1999, H'mong migrants from Vietnam's northern mountains started to form a new village nearby.

By the late 1990s, the forest adjacent to Cham B was effectively under overlapping state and customary regulations. Formally, the forest was managed by the State Forest Enterprise to produce timber. The Enterprise had used its statutory control to stop cultivation in the forest, although Ede from Cham B and Cham A claimed rights to the land on the basis of previous use in the mid-1970s. A small control post built next to Cham B helped the Enterprise enforce the ban on shifting cultivation. Krong Bong Enterprise had been less successful in its attempts to

stop small-scale extraction of timber by villagers. The Ede of Cham B and Cham A cut trees in the forest, referring to their customary use of surrounding forests for subsistence purposes. In addition, Kinh migrants living in Cham B, Cham A, and the neighboring Thon 6 extracted timber in the forest with approval by the Ede. The collection of NTFPs, finally, was open to all as the Enterprise ignored villagers' gathering activities. Ede, Kinh, and the recently arrived H'mong migrants all took advantage of the abundant NTFPs, the latter with consent by the Ede.⁵ In these ways both state and customary regulations served to justify property claims on the forest.

Forest land allocation: politics of enclosure

Forest land allocation started in Cham B in 2000, after the provincial authorities requested Krong Bong Enterprise to allocate 1000 ha forest land to villagers in that year. After consultation with the People's Committee of Cu Dram commune, the Enterprise chose two forest blocks for allocation, one of them being the forest of 570 ha located next to Cham B. Applying technical standards in forest management, enterprise staff divided that block into five parcels of similar size and demarcated the parcels by posting simple signs along their borders. Enterprise and People's Committee then called upon the Ede households of Cham B to form five groups as the ones to receive statutory rights to the five forest parcels. They chose Cham B for its proximity to the forest. They allowed only Ede to participate in the five user groups, because the provincial guidelines prioritized the allocation of forest to ethnic minority groups. The Ede of Cham B heeded their call, organizing themselves into five groups and selecting one household each to serve as group leaders. The group leaders finally received land certificates and forest protection contracts for the five parcels.

The land certificates and protection contracts included an elaborate list of rights and responsibilities for the new forest holders. The groups received the permission to harvest timber and NTFPs for home consumption, exploit timber for sale, receive a share of the revenues from commercial timber exploitation, convert 5% of the forest for agricultural uses, exclude others, pass the land certificates on to their children, exchange those among themselves, and use them as collateral for bank loans. In return, they were obliged to protect the forest against intrusion by outsiders, apply for permits before using timber for home consumption, develop a forest management plan and have it approved by the local government before commercial exploitation, and register transactions of land certificates with the cadastral service.

⁵The forests around Cham B harbored 251 types of 192 different NTFP species, as indicated by a biological inventory commissioned by the authors in 1992. People used them for food, medicine, fodder, and construction materials.

Forest land allocation did not change the statutory governance relations already in place centered on the State Forest Enterprise and the People's Committee. The two state bodies made all important decisions in the implementation of allocation, most importantly the division of the forest block into five parcels and limitation of group membership to Ede households from Cham B. The Enterprise and People's Committee also received the mandate to enforce the new state regulations, monitor compliance, sanction small violations, and resolve small disputes.⁶ They were expected to make sure that the user groups complied with the use restrictions, excluded outsiders from their parcels, and applied for the necessary permits before they cut timber. In contrast, forest land allocation did not acknowledge the role in forest governance previously assumed by the 'traditional village headman'. Allocation instead created the new position of group leaders, which did not include the 'traditional village headman' in Cham B. In addition, the user groups did not receive any guidance or assistance for developing internal regulations. Furthermore, the allocation procedures did not include any provisions on the potential adjustment of rights and responsibilities after the initial allocation.

Forest land allocation had the potential to radically change property relations governing the use of the forest. Allocation was intended to do away with the overlapping nature of state and customary regulations from the past. Allocation entitled the user groups to convert part of the forest for agricultural uses but expected them to give up any further claims, even though Cham village had worked extensive agricultural fields in the forest as recently as in the mid-1970s. Allocation allowed members of the user groups to cut timber and collect NTFPs for home consumption but required them to help terminate extraction by Kinh and H'mong migrants. More generally, access to the forest and its resources had been flexible and open to direct negotiations among villagers and between villagers and other people in the past. Forest land allocation was designed to do away with this flexibility, as it gave the user groups exclusive rights to the forest parcels and obliged them to keep out other people.

The prospect of enclosure immediately generated conflicts among villagers in Cham B and between Cham B and Cham A. Within Cham B, villagers complained about the distribution of forest parcels, as the large majority did not consider the parcels to be equivalent in terms of soil quality and timber. Part of their concern was that allocation forced households to commit to one group only, endangering their access to forest land allocated to the other groups. In addition, the requirement that they extracted timber from a portion of the forest only was new to them. The conflict with Cham A arose for similar reasons. Villagers of Cham A feared to lose their customary rights to open fields on the land previously cultivated by them if the forest was

allocated to Cham B with the obligation to protect it against intrusion by outsiders. The Enterprise and People's Committee refused their demands for inclusion, however.

Forest dynamics after allocation

Cultivation: rush on the forest

Local people seized on the opportunity to open up new agricultural fields in the allocated forest. As a result, forest cover declined by 21% between 2000 and 2002 (see Fig. 1). Villagers from Cham B expanded the total area under cultivation from 77 ha in 1999 to 122 ha in 2002, with nearly three quarters of the expansion happening in the allocated forest. The villagers were eager to open up new corn fields in the forest, as the returns from coffee cultivation had drastically dropped in the late 1990s. The new fields in the forest also allowed them to rent out some old fields to Kinh migrants, driving up the number of land leases from two in 1999 to 15 in 2002. In addition, households from Cham A cleared another 9 ha in the allocated forest in the 3-year period.

Competition among Ede households from the two villages combined with the general scarcity of cultivable land to cause the dramatic rush on the forest. When the state's plan became known informally in 1999, three households from Cham B immediately began to clear small fields on land that they had worked previously. Their initiative motivated four households from Cham A to follow suit. A year later, after Enterprise staff stopped patrolling the forest and allocation was announced, households from both villages rushed to secure plots in the forest for themselves. They secured plots by clearing forest, as this was the customary way to claim rights to forest land. Members of the forest user groups cleared allocated forest to assert their new rights against competing customary rights. Other households of Cham B and Cham

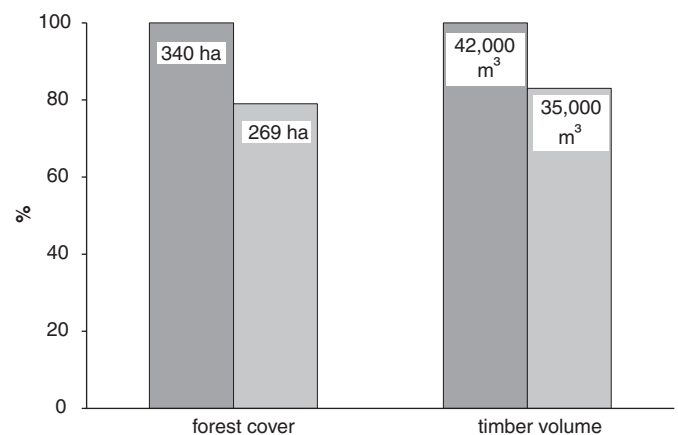


Fig. 1. Change in forest conditions 2000–2002 (2000 = 100%). Source: Forest inventories conducted during forest land allocation in 2000 and commissioned by the authors in 2002.

⁶ Large violations and dispute were sent up to the district-level Forest Protection Unit and People's Court for treatment.

A cleared land to assert their customary rights, ignoring the legal assignment to the forest user groups.

Exclusive allocation contributed not only to the rush on the forest but also new conflicts that lingered on after the initial distribution of property rights. Villagers from Cham B increasingly sought ways to terminate cultivation by households from Cham A in the allocated forest. Referring to the newly acquired land certificates, they explained that they would allow villagers from Cham A to continue cultivating existing fields but not to open up new fields. In reaction, villagers from Cham A contested the validity of the land certificates, refusing to call the Ede from Cham B ‘forest recipients’. They instead voiced an interpretation of the allocation policy as the state acknowledging the customary rights and allowing villagers to clear their old agricultural land.

The rush on the forest also brought to light internal problems in Cham B. People lacked a process and procedures by which they could allocate the available forest land to individual households in a fair manner. In the past, that had been the role of the ‘traditional village headman’. The headman had made sure that no villager would clear a new field on land rightfully claimed by another household. Yet when forest land allocation took place, villagers cleared the forest without consulting the headman or the group leaders.

Timber: fears of losing out

The extraction of timber changed after forest land allocation as well, though in counter-intuitive ways. Ede from Cham B, the intended beneficiaries of allocation, reported to have reduced their extraction levels on average by more than a half between 1999 and 2002. This reduction was related to the decline in house construction connected with general population dynamics, as Ede did not sell any timber. In contrast, Kinh households in Cham B and neighboring villages, the ones to be excluded from the forest, cut more timber in the forest after allocation than before. The four Kinh households in Cham B reported to have tripled their extraction levels, cutting an increasing volume for sale.

The Ede of Cham B in fact tried seizing the opportunity to exclude competing claims from the forest. By the standards of statutory law, forest land allocation had made their timber extraction legal and the same activity undertaken by Kinh illegal. The Ede opposed continuing timber extraction by Kinh, although most of them had previously deemed the Kinh claims as legitimate. Bolstered by the land certificates, all Ede villagers now demanded from the migrants that they stopped timber cutting. They argued that increasing migration forced them to make access to timber more exclusive, as the forest could not satisfy all needs any longer. They also perceived an increased competition between their own use and that by migrants because now the forest was no longer state forest. Now they started to believe that there would be more forest in the future if they reduced its exploitation in the present.

The Ede encountered problems, however, to get their exclusive rights to timber enforced. In 2001, the forest user

groups observed extraction activities in the allocated parcels that they did not approve of. Yet their requests for law enforcement support were ignored by the People’s Committee and Enterprise. In addition, villagers did not want to stop fellow villagers from extracting timber, just because they cut a tree outside the boundaries of their own user group. The forest user groups therefore terminated efforts to insist on their exclusive rights within Cham B and explained to the People’s Committee and Enterprise that they could not keep outsiders away from the forest.

Kinh villagers, in turn, recognized the threat posed by forest land allocation. The enclosure had the potential to turn the forest into a source of considerable value—to be controlled by Ede only. They also saw how one Ede household already took advantage of the emerging source of value for an unprecedented sale: the household sold wood gained by clearing a new agricultural field in the allocated forest to Kinh instead of burning it as in the past. It was no surprise, then, that Kinh drastically increased timber extraction, fearing to lose their access in the future. As a result of their timber extraction and the clearing of forest for cultivation, the timber content of the allocated forest decreased by 17% between 2000 and 2002 (see Fig. 1).

NTFPs: open access

Forest land allocation also reserved exclusive rights to NTFPs for the forest user groups. Yet the groups never attempted to claim the exclusive rights, consenting to the collection of NTFPs by Ede and Kinh from all villages. Nor did they object to gathering by the newly arrived H’mong migrants. For the villagers of Cham B, as for everybody else, access to NTFPs remained open, obliterating the boundaries instituted by forest land allocation.

The dynamics described in the previous paragraphs perpetuated the existence of overlapping state and customary regulations, though in new forms. A comparison of the legal rights specified in land certificates, the rights asserted by the user groups, and actual practices on the ground demonstrates significant discrepancies (see Table 1). The mismatch in property rights was closely connected with the nature of governance relations in Cham B. The State Forest Enterprise and People’s Committee did not have the means necessary to adapt rights and responsibilities and enforce those.⁷

Discussion: exclusive versus inclusive devolution

This section moves beyond the concrete practices and discussions associated with forest land allocation in Cham B, synthesizing those into more abstract insights about exclusive and inclusive approaches to devolution. The Introduction discusses insights relevant for forest land

⁷Please see Tran and Sikor (2006) for further discussion of the discrepancies between legal rights, asserted rights, and actual practices.

Table 1
Legal rights, asserted rights, and forest use practices in Cham B after forest land allocation

Rights	Legal rights			Asserted rights				Forest use practices			
	A1	A2	B and C	A1	A2	B	C	A1	A2	B	C
Extract timber	No	Yes	No	No	Yes	Yes	No	Increased	Reduced	No	Increased
Collect NTFPs	No	Yes	No	Yes	Yes	Yes	Yes	Unchanged	Increased	Increased	Unchanged
Convert to agr.	No	Yes	No	No	Yes	Yes	No	No	Increased	Increased	Unchanged
Exclude others	No	Yes	No	No	Yes	Yes	No	No	No	No	No

Note: A1 = Kinh from Cham B; A2 = Ede from Cham B; B = Ede from Cham A; C = migrants from neighboring villages.

Source: Field study (see discussion of methods).

allocation in Cham B and then relates those to dynamics and debates in other places in Vietnam and beyond.

The potentials of inclusive devolution in Dak Lak

In Cham B, devolution generated significant conflicts among local actors, failed to close the gap between state regulations, asserted rights, and forest use practices, and contributed to forest loss. Underlying these outcomes were the direct exclusion of some customary uses of the allocated forest and the lack of flexibility to adjust rights, responsibilities, and governance relations after the initial allocation. At a more concrete level, the exclusionary effects of devolution in Cham B found their expression in five concrete problems:

- Devolution imposed rigid group boundaries, creating a sharp dividing line between who is in and who is out. Villagers from Cham A and Cham B were afraid to lose access to forest land allocated to forest user groups.
- The assignment of rights and responsibilities applied uniformly to local actors. In Cham B, there was no procedure for dealing with the specific claims and needs of individual households for forest land and timber.
- Devolution divided up all resources spatially, bundling the rights to all resources and tying those to land rights. Forest land allocation combined the rights to timber and NTFPs with the rights to the land, excluding specific claims on NTFPs that were separated from claims on land and timber.
- Devolution provided uniform bundles of rights and responsibilities to diverse objects of value. The same rights and responsibilities applied to land, timber, and NTFPs, although those had been under different property arrangements before.
- Exclusive devolution was rather inflexible over time, as the mechanisms available for the adjustment of rights and responsibilities were cumbersome. There was no procedure in Cham B for accommodating the claims of the newly arrived H'mong migrants on NTFPs, making those claims illegal.

The people of Cham B, Cham A, and neighboring Kinh and H'mong villages recognized these problems and

reacted to them. Through their reactions, they modified the exclusionary outcomes of devolution in Cham B. Households from Cham A cleared agricultural fields in the allocated forest with successful reference to their customary rights, cutting right through the rigid group boundaries imposed by devolution. The forest user groups allowed Ede, Kinh and H'mong from neighboring villages to collect NTFPs, unbundling the spatially-organized statutory rights to land, timber, and NTFPs. The groups initially recognized customary rights to forest land based on prior use but did not make rights to timber dependent on that, diversifying the bundles of rights and responsibilities associated with different objects of value. The villagers, finally, changed the rights they asserted to land and timber over time, indicating the need for mechanisms to adjust rights and responsibilities.

The exclusionary effects of devolution and villagers' reactions to them point at particular elements in the design of Dak Lak's devolution policy that created exclusionary tendencies. Dak Lak's authorities sought to implement an exclusive form of forest devolution, as they decided to assign forest land to particular actors. Their rationale was not to recognize all customary rights on forest land but to elevate the claims of some actors over those of others. In other words, forests were to belong to particular actors on the basis of statutory law—in sharp contrast to the situation in the past, when multiple kinds of actors derived use rights to forests from their belonging to a place. For this goal of exclusion, Dak Lak's authorities employed an approach to devolution based on a particular nature of property rights and responsibilities as well as governance relations. The policy granted local actors ownership-type property rights to forests, including the right to exclude others and a limited right of alienation. It combined the rights with responsibilities, mainly the duty to restrict uses of the forest and protect the forest against encroachment by outsiders. The authorities also retained governance relations that left virtually all elements of the enforcement and adjustment of property rights and responsibilities with state actors.

The outcomes of exclusive devolution in Cham B suggest the need for a more inclusive approach to forest land allocation in Dak Lak. The inclusive approach would differ from exclusive devolution in two important regards. First,

in a more inclusive approach, the provincial authorities could grant individual households proprietary rights to key forest resources, including the rights to convert forest land to agricultural fields and extract timber. The rights would be connected with certain restrictions on forest use but not the legal obligation to exclude others. Second, a more inclusive approach would entail a shift towards nested governance relations, empowering local actors to adjust rights and responsibilities within a pre-defined range and in application of certain procedures. The change in governance would also involve a shift in the enforcement of rights and responsibilities, providing a role for local-level enforcement and limiting state enforcement to larger conflicts or violations.

Inclusive devolution would acknowledge all customary rights to the forest, whatever ethnicity and village right holders belong to. In Cham B, an inclusive approach involves recognizing the customary rights to convert the forest held by Ede from Cham A and Cham B as well as the rights to extract timber accorded to Ede and Kinh from Cham B and neighboring villages. These could be granted on a household basis, as individual members share a household's rights to land and trees. The challenge would be to bring together these actors and have them negotiate the concrete procedures for exercising these rights. Together with the State Forest Enterprise and People's Committee, the local actors would need to develop nested governance relations including state and local actors in the adaptation and enforcement of rights and responsibilities.

The move towards proprietary rights and nested governance would enhance the security and flexibility of property rights in Cham B in the following ways:

- More flexible group boundaries: in Cham B, devolution could recognize the historical rights to forest land by people from Cham B and Cham A.
- A distribution of rights and responsibilities that is more specific to actors with diverse needs and claims: the new forest holders could jointly institute procedures for deciding about households' requests for land and timber.
- Separation of rights to forest resources from rights to forest land: in Cham B, rights to land could be reserved to Ede from Cham A and Cham B, while the rights to collect NTFPs are widely shared among Ede, Kinh, and H'mong in the area.
- Variation of the bundles of rights and responsibilities between forest resources: following customary regulations, households with historical rights to forest land could pass those on to their heirs, while there are no such rights for timber.
- More flexible rights and responsibilities over time: as villagers can decide about some and adjust others within a predefined range, they can adjust rights and responsibilities in reaction to changing conditions, such as the arrival of H'mong migrants.

More broadly, inclusive devolution is likely to reduce the level of conflict in Cham B, as it recognizes all customary rights to forest. It has the capacity to reduce the gap between legal regulations and asserted rights by involving local actors in the adjustment of rights and responsibilities. Inclusive devolution may also help diminish the discrepancy between legal regulations and asserted rights, on the one hand, and actual practices, on the other, by recognizing all customary rights, including mechanisms for the adjustment of legal rights and possibilities, and involving local actors in their enforcement. In this way, inclusive devolution possesses significant potential to contribute to equitable and sustainable forest management in Cham B.

The potentials of inclusive devolution beyond Dak Lak's forests

Devolution has been associated with similar dynamics in other instances of land allocation in Vietnam's upland regions characterized by overlapping state and customary regulations. For example, land allocation and forest demarcation in Black Thai villages of north-western Vietnam brought to light similar contestations between exclusive and inclusive approaches to devolution (Sikor, 2004, 2006a). Black Thai villagers resisted land allocation, both its concrete effects on customary land relations and the exclusive notions underlying the state program. Their resistance concentrated on the transfer of long-term land use rights for wet-rice fields to households, a transfer to be documented and enforced solely by the state's cadastral service. The long-term allocation contradicted the customary practice of re-allocating use rights to wet-rice fields among all village households. The villagers wanted to retain the possibility to collectively redistribute the fields periodically, adjusting each household's fields to changes in the village demography and the household's labor capacity. They rejected the loss of this possibility, even though exclusive devolution would have given households ownership-type rights to wet-rice fields. They instead preferred a more inclusive form of devolution, which combined the proprietary rights of individual households with nested governance relations including the state and village community.

The distinction between exclusive and inclusive devolution has also emerged in the policy debate about communal lands in South Africa (Cousins and Claassens, 2003). The draft Land Rights Bill of 1999 proposed a similar form of inclusive devolution as suggested above for Dak Lak, building on a combination of individual proprietary rights and hybrid governance. The Bill generally recognized customary land rights held by local people and provided legal recognition to them in the form of proprietary rights. Instead of granting local people ownership rights, it empowered them to form local groups and develop governance relations for managing land rights. The groups would involve all people with claims on a particular resource and have the power to decide about the detailed

rights and responsibilities of group members within the limits set by the state legislation. The legislation furthermore foresaw a ‘bottom-line’ protection of group members against arbitrary exercises of group powers, specifying certain constitutional principles to delimit group powers and establishing so-called Land Rights Boards to oversee local groups. The Land Rights Bill was never put into legislation, however. Instead, the new Minister of Agriculture and Land Affairs proposed the Communal Land Rights Act, which gives ownership rights to customary leaders and combines those with state authority in an exclusive approach to devolution.⁸

Inclusive devolution also holds potential in other settings characterized by overlapping state and customary regulations. Inclusive devolution provides a viable alternative for India and the Philippines, where past forest devolution has established state-sponsored organizations parallel to existing local organizations (Edmunds and Wollenberg, 2003). It is sufficiently flexible to accommodate the great variation in the relations between state and traditional institutions in Southern Africa (Shackleton and Campbell, 2001). Inclusive devolution also provides means to respond to the reassertion of power by customary chiefs in many African contexts (Ribot, 2004). It advocates the assignment of proprietary rights to individual users but not chiefs. In addition, hybrid governance acknowledges the role of customary chiefs, but also establishes checks on power abuses.

Conclusions: devolution, inclusion, and authority

This paper has argued that devolution is not inherently inclusive. Devolution policies contain elements that can bring about inclusive and exclusive effects when they are implemented in settings characterized by overlapping state and customary regulations. In these settings, devolutions may turn into enclosures if they transfer ownership rights to local actors and center governance on state agencies. In this sense, exclusive devolution is similar to privatization, even where rights and responsibilities are devolved to collective actors.⁹ In contrast, inclusive forms of devolution combine proprietary rights given to individual users with nested governance involving local and state actors. It is inclusive by recognizing diverse kinds of overlapping claims made by multiple actors on specific resources and containing the flexibility required for adjustments and case-specific solutions.

The preceding discussion of inclusive and exclusive devolution indicates that devolution is intimately tied to questions of authority. As devolution transfers rights and

responsibilities to local actors, it also recognizes a specific authority legitimating those (cf. Lund, 2002). Similarly, the governance relations promoted by devolution derive their legitimacy from a particular position of authority throwing its weight behind. The changes in rights, responsibilities, and governance relations sought by devolution, therefore, are directly connected with power and authority relations.

This general observation indicates the significance of the particular nature of authority relations in which devolutions take place. Inclusive and exclusive forms of devolution contain different assumptions about the nature of power and authority relations. Exclusive devolutions largely rely on the authority of the state. Inclusive devolutions, in contrast, are founded on overlapping authority relations involving customary and state institutions. Vice versa, inclusive and exclusive devolutions carry different implications for the distribution of authority in settings characterized by overlapping state and customary regulations. Exclusive devolutions portray the intention to strengthen the authority of the state. Inclusive devolutions support both state and customary authority. More broadly, these findings underline the need for developing multiple approaches to devolution suitable for different kinds of authority relations. International forest devolutions need to employ multiple approaches if they want to achieve their goal of inclusion.

How could international devolution policies incorporate more inclusive approaches?¹⁰ Local and central state authorities may be reluctant to share governance powers with customary institutions, particularly in settings characterized by overlapping state and customary regulations. Forest departments are likely to be loath to accede to demands for giving up their control over forest land. Nevertheless, the highly varied outcomes of exclusive devolutions on the ground—not only in terms of their exclusionary effects but also associated effects on forest conditions and livelihoods—provide strong reasons for trying out inclusive approaches. Such policy learning proceeds by way of the formulation of diverse devolution experiments, their implementation in the field, and their timely evaluation (Mayers and Bass, 1999). The learning process would need to involve all relevant types of actors, as discussed in another paper (Sikor et al., 2005).

Acknowledgments

We thank Jesse Ribot, Lini Wollenberg, To Xuan Phuc, and three anonymous referees for very insightful comments. Ben Cousins was kind enough to share his analyses of South African land policy with us. The Tropical Ecology Program of the German Agency for Technical Cooperation (GTZ) and the Emmy Noether-Programm of Deutsche Forschungsgemeinschaft (DFG) provided funding for research and writing.

⁸As pointed out by one anonymous referee, the degree to which the Act gives ownership rights to customary leaders is open to interpretation.

⁹This is not meant to imply that exclusive devolution is the same as privatization. Exclusive devolution may be different from privatization in another sense, as noted by one of the anonymous referees. Devolution does not need to involve a move from communal towards more individual rights.

¹⁰This question was raised by one of the anonymous referees.

References

- Agarwal, B., 2001. Participatory exclusions, community forestry, and gender: an analysis for South Asia and a conceptual framework. *World Development* 29, 1623–1648.
- Agrawal, A., Gibson, C.C., 1999. Enchantment and disenchantment: the role of community in natural resource conservation. *World Development* 27, 629–649.
- Agrawal, A., Ostrom, E., 2001. Collective action, property rights, and decentralization in resource use in India and Nepal. *Politics & Society* 29, 485–514.
- Agrawal, A., Yadama, G.N., 1997. How do local institutions mediate market and population pressures on resources? Forest panchayats in Kumaon, India. *Development and Change* 28, 435–465.
- Behera, B., Engel, S., 2006. Institutional analysis of evolution of Joint Forest Management in India: a new institutional economics approach. In: Sikor, T. (Ed.), *Community-Based Forestry in the Developing World: Analyses from an Agrarian Perspective*. Forest Policy and Economics 7.
- Bruce, J.W., Mearns, R., 2002. Natural Resource Management and Land Policy in Developing Countries. Issue Paper No. 115. International Institute for Environment and Development, London.
- Cousins, B., Claassens, A., 2003. Communal land tenure: livelihoods, rights and institutions. *Development Update* 4, 55–78.
- Dachang, L., Edmunds, D., 2003. The promises and limitations of devolution and local forest management in China. In: Edmunds, D., Wollenberg, E. (Eds.), *Local Forest Management. The Impacts of Devolution Policies*. Earthscan Publications Ltd., London, pp. 20–54.
- Edmunds, D., Wollenberg, E. (Eds.), 2003. *Local Forest Management. The Impacts of Devolution Policies*. Earthscan Publications, London.
- Evans, G., 1992. Internal colonialism in the Central Highlands of Vietnam. *Sojourn* 7, 274–304.
- Fortmann, L., 1995. Talking claims: discursive strategies in contesting property. *World Development* 23, 1053–1063.
- Lund, C., 2002. Negotiating property institutions: on the symbiosis of property and authority in Africa. In: Juul, K., Lund, C. (Eds.), *Negotiating Property in Africa*. Heinemann, Portsmouth, NH, pp. 11–44.
- Matose, F., 2006. Co-management options for reserved forests in Zimbabwe and beyond: policy implications of forest management strategies. In: Sikor, T. (Ed.), *Community-Based Forestry in the Developing World: Analyses from an Agrarian Perspective*. Forest Policy and Economics 7.
- Mayers, J., Bass, S., 1999. Policy that Works for Forests and People. Executive Summary of Series Overview. International Institute for Environment and Development, London.
- Pacheco, Pablo, 2004. What lies behind decentralisation? Forest, powers and actors in lowland Bolivia. *European Journal of Development Research* 16, 90–109.
- Peters, P., 1998. The erosion of commons and the emergence of property: problems for social analysis. In: Hunt, R.C., Gilman, A. (Eds.), *Property in Economic Context*. University Press of America, Lanham, pp. 351–378.
- Ribot, J., 2004. *Waiting for Democracy: The Politics of Choice in Natural Resource Decentralization*. World Resources Institute, Washington, DC.
- Shackleton, S., Campbell, B., 2001. *Devolution in Natural Resource Management: Institutional Arrangements and Power Shifts. A Synthesis of Case Studies from Southern Africa*. Center for International Forestry Research, Harare.
- Sikor, T., 2004. Conflicting concepts: contested land relations in north-western Vietnam. *Conservation and Society* 2, 59–79.
- Sikor, T., 2006a. The politics of rural land registration in postsocialist societies: contested land titling in north-western Vietnam. *Land Use Policy* 23.
- Sikor, T., 2006b. Analyzing community-based forestry: local, political and agrarian perspectives. In: Sikor, T. (Ed.), *Community-Based Forestry in the Developing World: Analyses from an Agrarian Perspective*. Forest Policy and Economics 8.
- Sikor, T., Nguyen, Q.T., Tran, N.T., 2005. Learning forest devolution: an assessment tool developed in Vietnam for forest departments. *International Forestry Review* 7, 320–331.
- Tran, N.T., 2006. From Legal Acts to Village Institutions and Forest use Practices: Effects of Devolution in the Central Highlands of Vietnam. Shaker Publishers, Aachen.
- Tran, N.T., Sikor, T., 2006. From legal acts to actual powers: devolution and property rights in the Central Highlands of Vietnam. In: Sikor, T. (Ed.), *Community-Based Forestry in the Developing World: Analyses from an Agrarian Perspective*. Forest Policy and Economics 8.
- Tubtim, N., Hirsch, P., 2005. Common property as enclosure: a case study of a backswamp in southern Laos. *Society and Natural Resources* 18, 41–60.
- White, A., Martin, A., 2002. *Who Owns the World's Forests? Forest Tenure and Public Forests in Transition*. Forest Trends and Center for International Environmental Law, Washington, DC.
- Wollenberg, E., 1998. A conceptual framework and typology for explaining the outcomes of local forest management. *Journal of World Forest Resource Management* 9, 1–35.
- World Bank, 2002. *Building Institutions for Markets*. World Development Report 2002. World Bank and Oxford University Press, Washington, DC.