

PRELIMINARY
RESEARCH REPORT ON THE PMS

-C. Nickey

FIELD ADMINISTRATION DIVISION

MICHIGAN STATE UNIVERSITY
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PREFACE

The analysis and recommendations contained in this report are based on research carried out by the Field Administration Division during the past three months. In addition, data from other reports on the PMS were used. Specifically, the Wickert Report (March, 1956) and the Noone Report (December, 1956) proved valuable sources of knowledge about the situation in the PMS. Much of the other material was gathered during field research by staff members of the MSU Field Administration Division and the National Institute of Administration. The object of this field work was to determine what could be uncovered by research on land tenure and tribal leadership. It was preliminary research and, therefore, the results are to be considered indicative rather than conclusive.

The report was prepared by Gerald C. Hickey, Field Administration Division, with the assistance of Frederic Wickert, Chief, In-Service Training Division. Material help was provided by the USOM Field Service and MAAQ.

Wesley R. Fishel

Part I

RECOMMENDATIONS AND ANALYSIS

Conclusions and Recommendations.

1. Land grabbing and fear of land grabbing is one of the primary causes of Mountaineer discontent. Therefore, it would be advisable for the Government to adopt a firm policy regarding the land rights of the Mountaineers as soon as possible and to publicize the adopted policy widely. The present ambivalent attitude of the Government in this respect leads to administrative chaos. Some province chiefs saw a need to define Mountaineer land rights while others declared that the Mountaineers have no such rights because they do not have "papers." Research conducted thus far has established the fact that all of the ethnic groups in the PMS have a traditional system of land tenure and definite mechanisms for holding and transferring title or use of land. Further, Rhade land owners express their willingness to discuss the sale or rental of their land with a commission composed of Government officials and Rhade leaders.

This was one of the major problems that had to be resolved in the case of the American Indians. At the present time, about 2/3 of the Indians in the United States live on land which they own, the title of which is guaranteed by treaties or statutes.

2. In view of the pressing need to establish in the minds of the Mountaineers the good faith of the Government, the following programs should receive special attention:

a. Medical Service. Under the French there was an effective medical service in the PMS. It included resident doctors in the provincial towns, dispensaries in many villages, and periodic visits to all villages to administer inoculations and general medical care. In the present transition period this service has been discontinued in the villages, leaving a noticeable gap. This medical service should be reestablished as soon as possible.

b. The Education System. The education system is badly neglected in many areas. Missionaries have established some impressive schools, but there is a noticeable lack of government schools. The shocking condition of the Kate school (mostly Mountaineer orphans) near Dran is a striking example of administrative neglect.

c. Alcohol Sales. The continuing sales of alcohol, mostly chaume-chaume rice wine, is a contribution factor to the problems that exist in the PMS. Responsible individuals have expressed great concern over the effect of this alcohol on the Mountaineers and the exploitation associated with it (chaume-chaume is much stronger than the rice wine which the Mountaineers make for their own consumption). There were cases cited where Mountaineers drunk on chaume-chaume would sign over property or their harvest. It would be advisable for the Government to consider an effective ban on alcohol sales in this area.

d. Price Controls in the Markets. The markets appear to be a source of many incidents. The Mountaineers often complained of being cheated by the merchants. There are many incidents cited where the merchants offer very low prices for vegetables the Mountaineers bring in to sell, and in some instances when the Mountaineers refuse, the merchants crush the vegetables, making them unsalable. There are also cases of Mountaineers being overcharged for articles they want to purchase. In the Pleiku market it was noted that prices were marked on many articles. This is a step in the right direction and it is recommended that it be carried out more completely and strictly enforced in all of the markets.

3. Serious consideration should be given to the formation of joint Vietnamese-Mountaineer committees in each province to act as advisors to the province chiefs on problems that arise between the Mountaineers and the Vietnamese.

4. Administrators being sent to the PMS should receive a special course of training in mountaineer customs and traditions so that they will be better prepared to deal with administrative problems associated with the Mountaineers.

5. Mountaineers should be placed in administrative positions in the PMS whenever possible. Special attention should be given to a program for training more Mountaineer administrators at the National Institute of Administration.

6. A propaganda campaign should be launched among the Vietnamese and Mountaineers alike to increase understanding and tolerance of their respective customs and traditions.

7. The Secretary of State for the Interior should have access to advice on Mountaineer affairs from the Mountaineer viewpoint. This could be achieved by appointing a Mountaineer or someone fully cognizant of the Mountaineer viewpoint as a Special Assistant for Mountaineer Affairs, or establishing a Council of Representatives of Mountaineer tribes which would meet with the Secretary at stated intervals to discuss Mountaineer problems of national interest.

8. In view of the programs proposed for the PMS by the Government, there is definite need for additional knowledge on certain aspects of Mountaineer societies. This is particularly true in the areas of traditional economic systems and land tenure as well as internal political systems. The administration of these programs and the successful administration of the PMS in general demands perceptive understanding of the Mountaineers. The PMS is a unique area in Viet Nam and should be recognized as such.

It is proposed that such research be carried out in conjunction with the economic projects being started in the PMS. As areas are selected for development research on the Mountaineers in these particular areas should begin as soon as possible thereafter, so that the collected information would facilitate the carrying out of the project. For example, in a relatively short time, valuable information on Rhade land tenure and the possibility of purchasing or renting Rhade land was collected in relation to a land development project being launched near Ban Me Thuot.

This work should be done by the Research Division of the National Institute of Administration in collaboration with the Michigan State Advisory Group. Basically, the knowledge gained in such research will be applied in an administrative framework. It not only will result in a deeper understanding of the administrative problems in the PMS; but it also will be valuable in training a permanent cadre of researchers for the Vietnamese government.

Analysis.

In many respects, the present situation in the PMS resembles that of the American West during the 19th century. The movement of settlers into the new western territories touched off years of struggle with the Indians who regarded it as an invasion of their ancestral lands. It also precipitated problems which have taken years of study and work to resolve. The American government and interested agencies have put much effort in the Indian problem and have learned a great deal in the process.¹

From the Vietnamese point of view, the PMS is a new territory and settlers, encouraged by the Government, are moving in at an ever-increasing rate. Towns such as Ban Me Thuot and Pleiku have almost doubled their populations and the areas surrounding them are dotted with new villages and new fields. More than one outside observer has noted, however, that the Mountaineers fear this influx of settlers. Like the American Indian they look upon it as an invasion--a colonization of their land. They bitterly recite instances of exploitation, mostly by the military and merchants, and land grabbing by the new settlers. They seem to feel a deep sense of frustration at not being able to do anything about it. Although they resented the presence of the French, they tend to look back on the days of French rule as a time when things were better. Many express the desire to flee to the remote parts of the mountains and others appear determined to fight.

One important element in the PMS situation is the presence of Viet Cong agents abetting the unrest and utilizing it in their propaganda to the detriment of the Government's prestige and programs. This propaganda stresses the Government's lack of interest in the Mountaineers and the Government's lack of good faith in failing to keep promises. In addition, Viet Cong agents reportedly are making the tempting offer of autonomy if the Mountaineers support their cause.

The current Government program is to bring settlers into the PMS for economic development and also to stabilize the area by a large influx of anti-communist refugees from the North. It would be well to consider the effect this may have on the Mountaineers, viz., to alienate them further. This could possibly lead to a situation where stability is gained in isolated spots while the region as a whole becomes less stable.

¹ At the present time there are more than 400,000 Indians in the U.S. The number is increasing every year at a very rapid rate. At the close of the 19th century there were only about 250,000 Indians.

The French remain an economic force in the PMS. Any role they may be playing in the present situation is not clearly visible. If additional research is undertaken, one of the specific objectives might be to determine the influence, if any, of the French on the Mountaineers.

The above recommendations are made with a view to forming a program for the PMS that will ameliorate the existing situation and more clearly define the role of the Mountaineers in the economic development of the area.

Part II

BACKGROUND ON THE PMS

The People.

The Mountaineer population of the PMS is estimated at between 600,000 and 700,000. The ethnic groups visited during the field research constitute the majority population of the area and they occupy most of the land. These are the Rhade, Jarai, Bahnar, and Sedang. The Rhade and Jarai speak very similar languages of the Malayo-Polynesian language stock. The Bahnar and Sedang languages belong to the Mon Khmer stock which includes many languages of central Viet-Nam, Laos, and Cambodia.

The Place.

Prior to the Geneva Conference, the PMS was classified as a Domaine de la Couronne, a Crown Domain, directly under the authority of Emperor Bao Dai. The area was maintained as a reserve where economic exploitation was carried on exclusively by the French planters and where Vietnamese settlement was carefully controlled almost to the point of non-existence. Administratively the PMS was divided into three provinces, Darlac, Pleiku, and Kontum, each with a French résident. The provinces were divided into districts and the districts into cantons. Officials at the district and canton levels as well as the assistants of the résident were Mountaineers.

Through the administration a medical service was established throughout the PMS. Schools were begun by the administration and by the missionaries as well. Corvée labor and military service were required of the Mountaineers and they were the primary source of labor for the French plantations in the PMS.

Historical Brief.

The recorded history of the PMS is a complicated series of inter-tribal wars and shifting allegiances with the Cham, Khmer, and Vietnamese¹. French penetration into the area during the last half of the 19th century was not without great difficulty and the pacification of the PMS continued until

¹ For detailed history of the PMS see Bulletin de la Société des Etudes Indochinoise, Tome XXX, No. 1, 1955. This issues is available for purchase at the Musée Nationale (ex Musée Blanchard), Saigon.

very recent times. The establishment of French plantations after World War I precipitated considerable unrest among the Mountaineers. They considered it an invasion of their lands. In some cases, the planters reportedly took fields that the Mountaineers had burned off preparatory to planting their dry rice.

In 1931 a revolt broke out among the groups in the southern PMS as a reaction to French settlement and establishment of plantations in that area. This was marked by several ambushes of French troops and attacks on French outposts. It lasted until 1933. In 1936 another wave of unrest began in Kontum province and spread throughout the PMS. It began with a rumor that a ya, an incarnated spirit capable of superhuman deeds, was born in the province. There was a man from Phu Yen who was widely reputed to be the incarnation of Set, the bearded son of the thunder god, and rumor had it that his daughter gave birth to a python-child. Immediately this was hailed as a sign that the golden age was imminent. Nobody would have to work and the tribes would gain control of their land again. Ma Wih, the father of the child, encouraged these stories, and when pilgrims began arriving at his village he sold them bottles of water which he claimed had the power to protect them from ill fate. Excitement spread throughout the groups in Kontum and Pleiku and soon pilgrims were arriving from Darlac province. There were many incidents of armed attacks against the French authorities, particularly in the Sedang area. Famine spread among the Jarai due to the fact that many of them did not sow their fields in anticipation of the golden age. This period of unrest lasted until 1938.

One source in Kontum province contended that there was communist activity in the Sedang area at the time of the revolt. This was supposed to have been an important factor in these revolts.

Part III

AGRICULTURE AND LAND TENURE IN THE PMS

Mountaineer Agriculture.

The predominant form of agriculture carried on by the mountaineers is known generally as shifting agriculture. In the French literature it is called ray, a term that refers more to the burned-off field itself than to the method of agriculture employed. The compromise term "shifting-ray" will be used in this report to describe the method.

¹ Mountaineer revolts led by sorcerers and miracle-workers promising a golden age have occurred in other parts of Indochina in recent history. In northern Vietnam the Meo, led on by sorcerers who promised supremacy over neighboring groups and independence from the authorities, revolted against the French several times since the beginning of the century. In the Boloven plateau area of southern Laos there were serious revolts against the French when they tried to establish plantations in that area. They were led by a powerful sorcerer who distributed charms to the tribesmen guaranteeing immunity from death. This led to a fanaticism difficult to repress.

The area selected for shifting-ray agriculture must be covered with forest or thick growth. Several months before the rains are expected to begin the trees and brush are cut and allowed to dry. The fields are then burned by a group of mountaineers who guard the fire to see that it doesn't spread to adjacent areas and also to see that all the wood burns. After the rains begin the fields are raked and planting takes place. This is done with digging sticks and hoes or bamboo tubes to cover the holes. Generally provisional shelters are constructed on the edge of the field. If the field should be located some distance from the village, the men will remain in this shelter for the duration of the planting and harvesting. In the interim, a group of young men will remain in the shelter to guard the fields. This system permits the mountaineers to keep villages in one location for very long periods.¹

With shifting-ray agriculture, a field can be cultivated for three years and then a new area must be cleared.² The field is then left fallow from five to ten years while other fields are cleared and cultivated. Usually a group will cultivate the same set of three or four fields in a continuous cycle. There apparently are magico-religious factors in the selection of new areas to be cleared and cultivated.

In addition to the mountain (dry) rice cultivated in the ray, a number of secondary crops also are grown. Maize may be planted in rows alternating with the rice. Manioc, taro, cabbage, eggplant, and a variety of other vegetables also are cultivated in the ray. Tobacco usually is planted in small patches set apart from the larger fields.

Most of the well watered bottom land throughout the PMS already is cultivated in wet rice. Many of the wet-rice fields are cultivated by Mountaineers and many by long-time Vietnamese residents. In addition to the large, mostly French owned, coffee and tea plantations, there are some small concessions operated by Vietnamese and Mountaineers. The missionaries are responsible for most of the coffee cultivation among the Mountaineers. In some cases they are privately owned, but most are village projects.

Land Tenure in the PMS.

The Rhade. In order to understand the mechanism by which land is held and transferred among the Rhade, it is necessary to examine briefly certain features of Rhade social organization. The Rhade have a matrilineal kinship system i.e. the females own the house, gongs, jars, harvest, and other valuable commodities which are considered to be "family goods". After marriage the husband goes to live at the house of his wife. Children take the mother's family name and after the death of the mother, the daughters inherit the family goods. As a king grouping, the lineage consists of those individuals

¹The only time most of the mountaineers move their villages is if some catastrophe strikes, such as an epidemic, fire, or if the village should be struck by lightning.

²Some areas are exceptions. In the Dak To area of Kontum province the bamboo grows rapidly and in great thickness, permitting a longer cultivation period.

related through female kin to a common ancestor--the great-great grandmother on the mother's side. Groupings of lineages form clans. In taking their mother's name, the children are, in effect, becoming members of her clan. In addition to being distinguished by a name, the clans have taboos associated with hunting or eating certain animals. It also is forbidden to marry within the same clan.

Land in the Rhade area is owned by the clans. This includes all of the land on which Rhade live and a clan may have one or more large tracts which it claims as ancestral land. For each tract there is a representative of the clan called the po lan who is considered the hereditary or appointed guardian of this land. The duties and responsibilities of the po lan are clearly prescribed by Rhade traditions.¹

As keeper and protector of the clan land, the po lan has no right to alienate it. Due to the marriage pattern of the Rhade, clan members are scattered throughout the area. It is likely therefore, that non-clan people will be cultivating clan land--whether wet-rice or shifting ray. This is done with the permission of the po lan.

In many instances the po lan does not live on the clan land. For example, the H'mok clan owns most of the land around the town of Ban Me Thuot, but the po lan lives some five kilometers away. The clan elders and the po lan know the limits of their land. Some of the po lan have papers attesting their ownership. During a discussion with a group of them, several presented sets of undated, rather crudely drawn titles and maps. These had been issued by M. Sabatier, one time Résident of Darlac.

In order to purchase land from the Rhade it is necessary to negotiate with the po lan, with those cultivating portions of the land, and the notables of villages in whose territory the land in question is located. More than likely the individuals cultivating land are from the village concerned so the two latter parties can be dealt with together. In this case, it is a question of compensating them for the loss of cultivated land. Discussion with the po lan would have to be held separately.

The land marked for development in the Buon Kros Project near Ban Me Thuot is part of the ancestral land of the Eban clan. The current po lan, by heredity, is a woman named H'deo Eban. When the French were establishing a plantation on part of this land, they agreed to pay the po lan three piasters a year, two of which went to the administration and one to the po lan. These payments continued until 1954. For the Buon Kora Project, General Kim organized a commission to deal with the land problem. This consisted of himself, several assistants, the Chief of District, and several notables from villages located in the area. They negotiated with the Rhade who were cultivating ray on the site and agreed to pay them 2000 piasters a hectare for five hectares. Not having any more available funds, they were unable to negotiate further. H'deo Eban, the po lan was never consulted.

¹ See Appendix A which is a translation of sections of the codified Rhade custom relating to the po lan system. This is taken from the following source: Sabatier, L., Recueil des Coutumes Rhadées du Darlac, Ecole Francaise d'Extrême Orient, Collection de Textes et Documents sur l'Indochine, IV, Hanoi, 1940. Selected tribal laws and customs of the Bahnar and Jarai are in process of translation--see Note 1, Part IV.

Discussions with H'deo Eban, the village chief of Buon Kora, several district officials, the Chief judge of the Tribunal Coutumier (tribal court) and several Rhade farmers, revealed that the most equitable way of dealing with this problem is to have the commission formed by General Kim meet with the parties concerned in the presence of the Chief Judge of the Tribunal Coutumier. Those cultivating ray in the area should either be paid or re-located to another suitable location. H'deo Eban stated that he would be willing to discuss the question with the commission if they invite her, but there was no indication as to what she would consider just compensation. On one of the po lan titles mentioned previously it was indicated that land was rented to another Rhade for a large jar, a woman's skirt, and a pig.

The major difficulty is such negotiation lies in the fact that the concept of transferring title of land does not exist among the Rhade. They are unfamiliar with money economy and it is very difficult to discuss cash compensation. In addition, they are very fatalistid in their approach. In these discussions all of the Rhade stated that they would rent land, but they didn't want to do so. They would agree because the government was stronger than they, as they agreed with the French because the French also were stronger.

On the other hand, there was some indication that the po lan system was losing its traditional function. The role of the po lan does not seem to be as important as it had been and there is less respect for the po lan claim to land. For example, the Rhade assistant to the Province Chief of Darlac province is preparing a plan to redivide the Rhade land to give each family a determined amount of land and title as well. It was noted that if this plan were adopted, it would mean the end of the po lan system.

Jarai. The Jarai system of land ownership differs considerably from that of the Rhade. From all indications, there is no clan land system among the Jarai. Their kinship system is matrilineal with may features of the Rhade system. The clan system appears to have broken down among the Jarai of Pleiku, but it continues to function among the Jarai of Cheo Reo (generally considered a more traditional group). Notwithstanding the differences between Pleiku, Jarai and Cheo Reo Jarai, the land was reported to be owned by individual "families" in both areas. On further investigation, the family proved to be all those individuals living in the same long house. This would be related females, their husbands, children, and unmarried male kin. Since family property belongs to the females, the eldest female in the house would have the strongest claim to family land.

Each Jarai village has a specific territory in which its residents can practice agriculture whether wet-rice or shifting-ray. Each family has specific fields which its members work in common. The village chief and village council seem to exercise a kind of supervisory control over the land in the village. The limits of family land are well defined e.g. in the Cheo Reo area, the fields are carefully fenced. In purchasing land the village council should be approached and the family holding immediate title (whether written or oral) as well. Around Pleiku it was reported that if a family had what they considered to be extra land, they would sell it to

another Jarai for money or animals and gongs. In one village they specifically noted that they would not sell land to outsiders.

Bahnar. There are some Bahnar in the Pleiku area, although their major concentrations are in Kontum province. The social organization of the Bahnar differs radically from that of the Jarai or Rhade. They have what is known as a bi-lateral kinship system. This type of family is found in Europe and the United States. Neither the male or female side of the family is stressed; the inheritance is divided among all of the children; and residence after marriage alternates between both sides of the family until the couple are able to establish their own household.

The Bahnar do not appear to have any clan organization. The village stands out as the most important social unit. The kra are the respected village elders and in Bahnar society, they exercise great authority. They select the head man and they are directly responsible for all village affairs.

Bahnar at Pleiku. The Bahnar at Pleiku cultivate more by the wet-rice method than shifting-ray. Both wet-rice and ray fields belong to individual families, i. e. those living in the same long house. The village has a certain territory in which its residents exploit the land, but title appears to rest more with the family than with the village. If there is unused land in the forest, unclaimed by a family, the one who clears and cultivates it is considered the owner. Land is alienable. There were extensive wet-rice fields near the Bahnar villages visited. One group of fields belonged to a wealthy Bahnar named Peu who sold them to Vietnamese long ago. This indicates the possibility of outsiders purchasing land.

Bahnar at Kontum. Each Bahnar village has a set territory, and there is no "free land." Within this territory each family has its own fields, both wet-rice and ray. The kra know the limits of the village land and they exercise supervisory authority over the entire territory. If there are any land disputes, the kra are called upon to settle them. More than one informant noted that land could not be sold to outsiders. In any case, it appears that any negotiation for the purchase of Bahnar land would have to be made through the kra of the village and the family holding immediate title.

Sedang. Sedang social organization is very similar to that of the Bahnar. The Sedang are reputed to be more individualistic than the Bahnar, and this spirit carried into their land tenure system. They have both wet-rice and shifting-ray agriculture. Cultivated land and land lying fallow is the property of individual families. Each village has a definite territory which its members cultivate, and uncultivated forest land is considered the property of the village. If a family requires more land, it requests permission from the village to clear some of the forest land. Family land is alienable--at least to other Sedang. The family would make the decision concerning sale of land. The village council also would have to be consulted.

Mountaineer Attitude Toward Agriculture and Land. The following are expressed attitudes of Mountaineers in the Ban Me Thuot area relative to land sale and their present system of agriculture:

"We don't want to sell our land. We won't have enough to graze cattle and grow rice."

"One would think there is enough land, but we don't think we have enough land. The land around Ban Me Thuot is supposed to support five or six large villages and the Vietnamese too. It is a serious problem--there just is not enough land."

"It (shifting-ray agriculture) is the only way we know. Maybe we should use animal fertilizer, but the fields seem to be exhausted just as fast as when we do not use it. Rotted vegetables helped. If we had tractors we could grow more. It is hard to grow rice in stumps and stones."

"It is very hard work to clear this land by hand. Vietnamese all get tractors, but not the Rhade. Why don't you (Americans) give us tractors too so we can compete? Soon there will be no more Rhade. We don't know how to work."

Part IV

MOUNTAINEER LEADERSHIP

The Tribe.

One of the aims of this field research was to collect whatever information available on Mountaineer leadership patterns. Knowing the difficulty of gaining a profound knowledge of power structures of societies such as those found in the PMS, it was considered more feasible to simply determine whether the so-called tribes actually function as political units. Technically the term "tribe" embodies the concept of a political structure based on traditional roles of authority and lines of leadership. It involves levels of leaders culminating in one central leader or set of leaders recognized as such by the members of the tribe.

On the basis of this research, it appears that the tribes cannot be equated with any such political organization. Historical evidence indicates that in the past the tribes did have a political function. This was particularly true in times of difficulty when tribal solidarity was necessary for the common cause. In some instances the tribes even allied with one another for the purpose of carrying out warfare.

With the arrival of the French, an administrative organization was established for the entire PMS. Three provinces, Darlac, Pleiku and Kontum, were formed, each with a French résident. The provinces were divided into districts and the districts into cantons. French policy was to maintain local leaders as much as possible and to train and use secretaries and assistants from the local population. Consequently, the clerical echelon in the provincial headquarters, the district chiefs and canton chiefs were practically all Mountaineers. Thus it appears that whatever leaders there were in the tribal sense were channeled into this super-imposed political system. The only types of leaders remaining outside of this framework appear to be clan elders and leaders of kin groupings. By and large, the situation has remained the same since the Vietnamese have replaced the French in the PMS. The French résidents were replaced by Vietnamese province chiefs, but the cadre of local employees have remained.

The Mountaineers often refer to "kings" whom they infer have considerable power. In the province of Darlac there is a man known as the "King of the Rhade" living at the district town of Ban Don. Actually he is head of the Tribunal Coutumier which is held monthly in Ban Me Thuot (see section on Tribal Justice for details on the tribunal and the chief judge). While he is known among the Rhade for his role as Chief Judge of the Tribunal, he apparently has no political function.

According to French sources¹, there have always been two traditional leaders for all the Jarai. These were sorcerer-kings known as the Lord of the East and the Lord of the West or the God of Fire and the God of Water respectively. Each extended his influence over a determined territory and they were never to meet or great calamities would befall the Jarai.

An elderly informant in Cheo Reo district noted that the French gave great Jarai chiefs the titles Sorcerer of Water and Sorcerer of Fire. He also recalled that in the old days there was a royal family in Cheo Reo, the head of which was a great war chief. They were the traditional rulers of the entire area. According to him, this royal family still resides in a village some thirty kilometers from the town of Cheo Reo and the head of this family is known as the "king". In the vicinity of Pleiku, informants spoke of the "King of the West" and the "King of the East". The latter is supposed to have died some time ago. The King of the West would visit the village before the War, but he couldn't enter. The villagers would bring him offerings so that he could make the proper sacrifices to bring rain, good crops, and good fishing. One informant claimed that there was a new king. His visits to the village are very irregular and unlike the old king, he enters the village limits to collect the offerings.

In general it appears that there are no real tribal leaders in the political sense. Officials designated by the provincial administration are the functioning political leaders throughout the PMS. The chief judges of the tribunals are well known and have high prestige, but they are not political figures. There also appear to be well known sorcerers who perform only magico-religious functions. Those designated as "royal" appear to have vague and indeterminate influence in the political sense.

Tribal Systems of Justice.

With the establishment of French authority in the PMS, a system of political administration was organized for the entire region. In doing this, there was no attempt to bring about any sweeping changes in the existing system of justice which was based on what could be called tribal law. Instead the French formed a tribunal coutumier at each province headquarters. This is a formal court intended to settle Mountaineer difficulties and generally mete out justice according to tribal customs. The tribunal is only intended to settle those cases which cannot be resolved by the village chief and village council.

¹

Maspero, H., L'Indochine, Paris et Bruxelles, B. Van Oest, 1929, p. 254.

The tribunal in Ban Me Thuot more or less typifies the situation. There the tribunal convenes for the first seven days of every month. The Mountaineers who have grievances gather and wait their turn to be heard. The Chief of the Tribunal is an elderly man from Ban Don, of Lao-Mnong, origin. His uncle had been appointed the first Tribunal Chief by the French when the tribunal was founded. He inherited this role and it will be passed on either to his son or his sister's son. In judging the cases brought before the tribunal, the Chief Judge relies on the written collection of Rhade customs compiled by a former French résident¹.

In an interview, the Chief Judge noted that he does have some cases concerning property disagreement between Rhade clans. However the most frequent difficulties are those concerning cases of adultery. The tribunal deals only with cases in which both parties are Mountaineers. Cases involving both Vietnamese and Mountaineers are the responsibility of the Province Chief. The Chief Judge is assisted by some Rhade leaders and there is a court clerk to record the testimony and judgements. Provincial authorities pointed out that they never interfere with the operation of the tribunal. Many of the non-mountaineer individuals interviewed considered tribal justice very harsh. Reportedly, there continue to be some trials by ordeal. In some instances, both parties are immersed in water, and the first one to come up is adjusted to be in wrong. There are also cases reported where hot lead has been poured on the hand of the accused. It is believed that the spirits will protect the innocent.²

Part V

COMMUNIST ACTIVITIES IN THE PMS

Darlac Province.

1. Reportedly between 5000-6000 Rhades left with the Communists after the Geneva Conference. Three out of four Rhade doctors also left.
2. Rhade and Vietnamese Communist agents are reported to be active in the province. They gain acceptance in the villages by participating in the life of the people. The Rhade agents are accepted easily, and the Vietnamese agents break their teeth to comply with Rhade custom and wear Rhade clothes to gain the confidence of the villagers.
3. The propaganda of the Communist agents is anti-government in general. They make a great issue of the promises of the Government which they claim will not be carried out, and of the Government's lack of respect for the Mountaineers. They point out that in the North the Government has formed an autonomous state for the Thai minority and they promise that if the Mountaineers in the South support the Viet Cong, they too will have autonomy. (They apparently are referring to the communist-proposed Thai federation that would include the Thai groups of southern China, northern Viet-Nam, and northern Laos.)

¹ Sabatier, L., Recueil des Coutumes Rhadées du Darlac, Ecole Française d'Extrême Orient, Collection de Textes et Documents sur l'Indochine, IV, Hanoi, 1940.

² A more recent collection of tribal laws is that compiled by Paul Guilleminet-Coutumier de la Tribu Bahnar des Sedang - et des Jarai de la Province de Kontum, Publications de l'Ecole Française d'Extrême Orient, Volume XXXII, Hanoi, 1952.

Pleiku Province.

1. There are reported to be agents operating throughout Pleiku province, although the situation is reported to have improved since last summer. The most sensitive area appears to be in the Cu Ty district in the western part of the province.
2. Radio Hanoi has some special broadcasts in the Jarai language.

Kontum Province.

There are Viet Cong agents operating in Kontum province, mostly in the northern area. They will visit villages for several days and then move on. The area around Dak To district is more stable than a year ago, and Viet Cong activity has diminished greatly.

Part VI

SOME MOUNTAINEER ATTITUDES

The following are related incidents and direct statements of individual Mountaineers reflecting prevailing attitudes toward the Vietnamese.*

1. One man said he was very upset about his land. He had just cleared a rice field and a Vietnamese moved in and settled on it. He went to the authorities and received no help. When he went directly to the squatter and asked why he was there, the man retorted by threatening to burn his house.
2. In Pleiku one man noted that Vietnamese treatment of the Mountaineers had improved.
3. Several agreed that it was a common occurrence in the Pleiku market that if the Mountaineer would not accept the offered price for sale of his vegetables, the Vietnamese merchant would crush the vegetables, making them unsalable.
4. Several noted that in the Pleiku market, the merchants often try to badger them into buying things. If the police are there, they try to help the Mountaineers, but when the police leave the merchants resume their pressure.
5. The Vietnamese promise to pay them for working on the roads, but either they never receive the money or it takes a long time. They must work on the roads three times a year for a period of ten days each time. They must obey when they are called, for they are afraid of what will happen if they don't agree.
6. "The Vietnamese talk equality," a group of Mountaineers agreed, "but they don't mean what they say . . . in their hearts, they want to dominate us. They are colonialists. The French were bad at the mouth, but in their hearts they were good. Things were better."

*Identifying data omitted for protection of informants.

"The Vietnamese look down on us. They don't mean it when they call us brothers. Even little Vietnamese call Mountaineer functionaries 'moi,' and 'moi' means savage. The Vietnamese think they are all mandarins."

7. Several mountaineers separately noted that the Vietnamese, particularly the soldiers, were always coming into villages stealing chickens, pigs, and other things. One pointed out that the refugees in the center 30 km. south of Pleiku did this very often. One stated, 'We complain to the colonel, but nothing happens.'

8. A Vietnamese visited many of the villages in the vicinity of Pleiku saying he was checking identification cards. Many Mountaineers did not have cards because a smallpox epidemic prevented their going to town to register. He charged 100 piasters for each person without a card and reportedly collected 25,000\$. He was caught and freed without punishment.

9. One group of Mountaineers stated that they would not sell their rice in the market because the merchants would cheat them. They only sold it to one another.

10. "Under the French the schools were better. The Vietnamese have better schools, but the Mountaineer schools only get worse--no money, no instructors, and no directors."

11. Vietnamese merchants take advantage of illiterate Mountaineers by giving them five piaster notes and telling them that they are twenty-five piaster notes.

12. In several places they expressed the idea that their only hope was to go back to the mountains.

13. When General O'Daniel was visiting the Pleiku area, he told the people we would send some uniforms for the school children; one man said they were still waiting for them.

Part VII

NOTES ON INTERVIEWS WITH PROVINCE CHIEFS

1

Darlac Province.

Regarding Mountaineers. The Province Chief doesn't interfere with their customs, and he has not made any progress in changing them. For example, they continue to break their teeth and make sacrifices to the spirits. Even the more evolve Mountaineers continue to believe in spirits and have sacrifices to them.

The Tribunal Coutoumier is strictly a Mountaineer affair. The Province Chief doesn't interfere with its operations and decisions. He does most of his dealing with Mountaineers through his Rhade assistant. If there are any disputes between Vietnamese and Mountaineers, he sends this assistant to settle them.

¹This Province Chief has been transferred since this interview.

Problems and Program. It is a problem to get the Mountaineers to learn the customs of the lowland people. The Province Chief would like them to wear clothes like the Vietnamese.

There also is a problem concerning land rights. The Mountaineers believe they own all of the land and everything on it. This has been the cause of some trouble because the Vietnamese fish in the rivers and the Mountaineers resent it. The Province Chief has had to send his Rhade assistant to settle this question. Another problem in this regard concerns granting land concessions to individuals.

The Province Chief has permitted travelling merchants to operate in the villages. This has caused some difficulty because they offer the Mountaineers attractive articles which the Mountaineers cannot afford. There are about thirty such merchants in Darlac province at the present time.

The Mountaineers are French trained and cannot speak the official language. As a result, the Province Chief believes that three experienced Mountaineer secretaries are worth but one new Vietnamese secretary. He felt that schools and teachers to teach the Vietnamese language to the Mountaineers would yield great dividends.

The Province Chief feels that there is a pressing need to gain greater understanding of the Mountaineers. This should be a primary aim in their program.

The economic development of the province is also another very important part of the provincial program. A Cadastral service is badly needed and is being organized. There also is great need for a program to teach the Mountaineers a better system of agriculture and how to care for their animals.

Pleiku Province.¹

Regarding Mountaineers. According to the Province Chief, all of the people in the province are Jarai. (Actually there are Rhade, Bahnar, and other ethnic groups in addition to Jarai.) The Mountaineers "adore what they fear," and their religion is based on superstition. They move their villages continually in order to practice their type of agriculture. There are limits to village land, but they have no papers to prove their ownership. The only land that is owned is that which is being cultivated.

The Province Chief notes that relations between Mountaineers and Vietnamese are very good. They eat together, have entertainment together, and live together. The Mountaineers and their families participate in Vietnamese dinners. Those Mountaineers working at the provincial headquarters eat in the homes of the Vietnamese and they attend meetings together. There are some remote villages where there is less understanding.

¹This Province Chief recently was killed in an auto accident.

With respect to the arrogant attitude of Vietnamese toward the Mountaineers, the Province Chief has personally circulated in the province and tries to correct it. He calls frequent meetings to discuss this problem. In addition he sends agents to towns and villages to counteract the Viet Cong propaganda.

At meetings, the Mountaineers speak from the same platform as the Vietnamese. The Province Chief does not drink from the jar. He can't drink their wine. He just pretends to drink. He does eat their food, even if it is not sanitary or hygenic.

The Province Chief feels it is necessary to attend such things as Mountaineer festivals in order to counsel and aid them. It serves to establish confidence in the Government.

He knew of no cases of Vietnamese stealing pigs and cows. Sometimes they may steal chickens, but this is illegal. The Province Chief never hears complaints anymore. If theft of animals should occur, the plaintiff should go to the Chief of the village and from there through channels.

The Province Chief feels that one learns to deal with the Mountaineers only through one's own wisdom and experience. As Province Chief, he receives letters from the Government from time to time giving instructions on how to treat the Mountaineers.

The Province Chief wants the Mountaineersmen to wear pants--at least short ones. It would look much better. Even the soldiers who have learned to wear pants eventually return to their villages, get rid of their pants, and go back to the simple breech cloth.

Problems and Program. According to the Province Chief, the most important needs of the province are the following:

1. Develop agriculture.
2. Develop a system of roads.
3. Find a market for produce.

An Khe and Cheo Reo are the richest places in the province and the likeliest areas for economic development. There are twelve abandoned coffee plantations in the province that should be reactivated; however, there is a lack of technicians and other help. Tobacco could be grown in much larger quantities. At present it is cultivated in small patches and there is great need for a cooperative to produce and market tobacco.

Kontum Province.

Regarding Mountaineers. Since there is no cadastral service in this province, a Mountaineer chooses some land and cultivates it for one or two years at the most. The Province Chief thinks the Mountaineers are lazy. They work four months of the year and their agricultural methods are very rudimentary. One chooses a piece of land where he wishes and omens are important in this selection--one goes west if he sees a bird flying in that direction when he is selecting a field.

According to the Province Chief, whoever clears the ray is the owner. If someone cultivating the ray becomes ill, the field is considered bad luck and is abandoned. It nevertheless remains the property of the one who cleared it.

The wet-rice fields between Pleiku and Kontum are owned by Vietnamese who hire Mountaineers to work in the fields. The Mountaineers living near the Vietnamese imitate Vietnamese ways.

The Province Chief noted that sometimes the Vietnamese buy wet-rice fields from the Mountaineers. The Vietnamese should always purchase the land they want and they can pay with gongs or buffalo.

One outstanding problem among the Mountaineers is that they often do not have enough to feed themselves. They want to keep their own costumes--keep their identity. The Province Chief pointed out that he does not want to make the Mountaineers into Vietnamese. He would like to educate them so they can cultivate enough land to feed themselves.

He noted that if the Vietnamese have a superior attitude toward the Mountaineers, the Mountaineers will not respect them. The Province Chief makes periodic tours throughout the area to check this situation.

Problems and Program. With respect to corvees, the Province Chief states that they pay forty piasters a day. This is supposed to be paid monthly, but since there is no treasury in the province, the pay is usually late. This makes the Mountaineers unhappy and the Province Chief thinks it would be better if Saigon would advance 200,000 to 300,000 piasters so that payments could be made on time.

In order to educate the Mountaineers in better agricultural methods, the Province Chief feels that it would be necessary to give each family four or five hectares of their own choosing. They could be instructed on plowing methods. It would not deteriorate the land and no fertilizer would be needed at least for ten years. Plowing would reach deeper and the land could be more fully utilized.

There is a problem in finding trained Mountaineers to fill administrative positions. At present only one out of four districts chiefs in the province are Mountaineers.

There is not much plantation land in Kontum province because the terrain is too hilly and there is no red land. There is one place where there is the possibility of arranging 2000 hectares of rice fields, but at present there is insufficient water.

The Province Chief feels that there is a possibility of cultivating tea, coffee, and pepper in the province.

The Province Chief is currently trying to launch a forest conservation program. Its primary objective is to instruct the Mountaineers on fire control so they will not burn more than they need when preparing the ray. He feels that it has not been very successful thus far.

The most important points in the program for this year are the following:

1. Develop popular education.
2. Develop health and sanitation programs.
3. Develop their cultures.

RECUEIL DES COUTUMES RHADEES DU DARIAC

By L. Sabatier

Chapter XI

229. Taking care of the land.

The girls are like rice seeds; they wear vests and cover themselves; they are the care-takers of the vans and the riddles, and the ancestors' "back" (land).

The eldest sister must be considered as a mother, and the eldest brother-in-law as a father.

They must take care of the land (the property) and the woods, and if mango and bamboo trees do not blossom, because young men and girls behave themselves badly (incest), the latter must be punished.

If grasses either in the steam and taroes fade in the marshes; if formication takes place between relatives of the same clan, the landowner will claim some compensation from them.

Men cannot appropriate rolls of copper wire and pumpkins (charges de citrouilles).

If the aunt dies, her niece inherits; if the grandmother dies, her granddaughter inherits and if the latter dies, another will inherit (the land and other personal goods).

If there remains only one man or one woman, they will take care of the vans and riddles, and the ancestors' land.

They will always preserve the land; they will always keep watch on the woods; they will always look after the land that belongs to them.

When their children grow up, they will educate them; when their grandchildren grow up, they will educate them too, because the bond that is broken should be retied and what is weak should be strengthened.

230. Concerning the obligation to preserve the land under all circumstances.

If the aunt dies, her niece succeeds her; If the grandmother dies, her granddaughter succeeds her; If the latter dies, another succeeds her. Thus, nobody dares to lay hands (on the land). Nobody can divide it in order to take possession of it.

231. The rights and duties of landowners.

The land, water, woods, flat vans and hollow vans, the ancestors' back (ancestral land).

The landowner is obliged to keep them, to watch over the "Hole," the forests, the trees bearing bee-hives, to prevent the mango and bamboo trees from withering, to prevent young men and girls from being guilty (of incest) because of bad behavior.

If he doesn't know how to carry out his job, he must ask the village chief for advice.

If too much watercress withers in streams, too many taro dry up in marshes, it is because young men and girls related by blood, or brothers and sisters of the same parents have practiced incest.

The guilty people are condemned by the village chief to pay a compensation fine of a pig or a chicken.

If they behave badly, they are fined by the village chief.

They will provide a pig and a jar of alcohol to purify the land and the woods.

The woman and man who are known, will have to furnish a pig.

The woman gives it to the landowner, the man to the village chief.

But if they are unfairly charged by the village chief, the latter has to give them two male elephants or three female elephants because he has wronged them, and the question only concerns the wronged people and the village chief; the landowner is not involved.

232. Concerning the rights of the landowner (Po lan).

All landowners who have children or grandchildren must teach them the following:

They must not climb on trees bearing bee-hives, because doing so is as serious a sin as cutting off the tail of an elephant, or breaking the tax bowl, or sleeping with a rich man's wife or one's brother's wife.

There would be a punishment for that sin.

Therefore, one must not climb on trees bearing bee-hives; it is forbidden and it is a sin.

On the contrary, burning is authorized, so is fishing in the rivers.

One may gather honey on shrubs and in bushes.

One may take reeds, straw, bamboo for building houses without paying anything.

But if the "po lan" (landowner) cannot transport his wood, one must help him; if he cannot carry water, one must help him; if he cannot build his house, one must help him; if he is sick, one must visit him.

When he is alive, one must invite him to drink; if he dies, one must help in his burial; one must never abandon him.

All people must listen to the above with the same ear, must speak of it in the same manner; all people must agree upon it (recognition of the rights of the po lan).

All young brothers (of sparrow-hawks), village elders, nephews and nieces, all the neighboring inhabitants, all must remember the above.

233. Concerning the obligation of the "po lan" to visit his lands.

The "po lan" must visit the big round van, the oval van, the ancestors' back (the land).

He must visit them so that the land be green all the time, the water be limpid, the banana trees and sugar trees always grow well.

The land must never be like a horse without a master, like oxen without a guard.

Since the time of the ancestors, since the olden times, custom has required the "po lan" to visit his land at least once every seven years.

234. Injuries to the land.

The land, water, woods: nobody can lay hands on them; nobody can appropriate them.

They are the property of the po lans who cannot part from them.

235. Of the monopolization of the land.

He who lays hands on the land and water, who appropriates the land of the rich.

He who appropriates forests and land, grazing lands of rhinoceros and elephants.

He who fears nobody, who dares disobey (the laws), who crosses the highest mountain, is a guilty man and there will be difficulties between the po lan and him.

236. Of the visit to properties.

One must visit the round van, the oval van, the ancestors' land to see whether the land is green all the time, the water is clear, the banana trees and sugar trees grow well.

Every seven years, during the dry season, custom requires that the po lan visits his lands and woods.

That he goes to see the exit "Hole" which he has to take care of, the forests located in his property, the trees of which he is the owner.

For fear the others may attempt to appropriate the land and the water and the property belonging to the rich.

But nobody dares to do so if someone is always watching over the "Hole," visiting the land and the woods and taking care of the trees.

For that reason, the land left by ancestors since olden times must always be watched so that the rich may not appropriate them.

If the aunt dies, her niece must be taught; if the grandmother dies, her grand-daughter must be taught; if a person dies, another must be taught, about how to maintain the integrity of the land, so that nobody can lay hands on it.

For that, all the sparrow-hawk's brothers, village elders, nephews and nieces, must offer to the proprietor of the land, once every seven years, one a small basket of rice, others a big basket of paddy, so that all the younger brothers of sparrow-hawks, village elders, nephews and nieces be in good health, so that the land be green all the time, the water be limpid, the banana trees and sugar trees grow well, so that the rice plants be strong and able to bear well.

This has been known since the time of our ancestors; nobody could know it before them, and it has been a custom ever since.

COUTUMIER DE LA TRIBU BAHNAR DES SEDANG ET DES JARAI
DE LA PROVINCE DE KONTUM

by Paul Guilleminet

(VOLUME II)

Translation of Articles 71 to 76 inclusive.

Article 71

The Territory.

Principles

I. The lands, the waters, and the forest constitute the territory which is totally shared between groups of villages: the toring.

II. The inhabitants of each toring have the exclusive right to use that territory, but cannot forbid, at any time or in any way, the free movement of all people by any ways and means. The most they can do, in certain precise cases, is to restrict and to direct it (Article 26, I, 8).

III. Each toring, each village may manage its own property, transfer its use to others, give it away under definite conditions, and refer to the law if necessary.

Comments

The toring mentioned in note 1 of the preamble, page 18, share between themselves all the land of the area. In the Kontum province, there is no unappropriated land nor even any unappropriated portion of river. The rights of usage of them are fixed; whoever does not belong to a toring may purchase some land belonging to the inhabitants of the toring but are not authorized to live on it. Since the arrival of the French Administration, the situation has become complicated because of the fact that the administration has some rights defined in Article 35 and 72.

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The toring authorities have not the right to stop traffic on the territory, they must direct or control it in case there exists an epidemic or epizootic disease and may temporarily divert it in case of interdiction, on condition that the interdiction will not apply to agents and officials on duty.

An agent or an official who infringes an interdiction would fall within the purview of article 20, III, and would not be protected by paragraphs I and II of said article (unless said person had some imperative reason) without his being on duty.

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A recent regulation requires the intervention of the Administration in all sales of land to the Vietnamese. The sale is valid only if the certificate of

sale (which must be established) is certified by the Residency; however the Residency may oppose any sales of land. These regulations are designed to prevent the Mountaineers, who are oftentimes improvident, from being deprived of their cultivated lands by selling them to the Vietnamese for an immediate profit. The latter may also clear lands in accordance with conditions stated in Article 72, but generally they do not want to do so and prefer buying fields already cleared by others.

During these last few years some villages have intervened either for the purpose of building dispensaries, schools or churches, or for setting up rice reserve stocks (commentaries on article 95).

In the first case, it is not yet expressly known who is the proprietor of the buildings, in the second case the ancients are considered as managers of these stocks which remain the property of each of those who have contributed to their establishment. Such is the case since 1935 in Polei Bong Mohr village in which three ancients fill the position of managers in the name of the inhabitants who have established the stock (and are individually known), but not in the name of the village proprietors as a whole (commentaries on article 95). In fact, when it is said that such portion of the territory "belongs" to such a village, an usual but inaccurate term has been used; we must say that such portion of the territory is indiscriminately placed at the disposition of any inhabitant of such village and not of other villages.

The group exists constituting a village, but the village is not properly speaking a corporate body possessing property and the right to dispose of it freely. The above fact reveals itself when the village (or better, the group) makes offerings, for instance when a parish house is built. In such case, each one subscribes to a common fund, because the village has no animals to kill nor crops to sell.

Article 72

Some cases where the Administration may occupy land or private property.

Principle.

I. The Administration is the eminent proprietor of all territories and estates which are not the object of individual private property. (Article 35, 77, III; case 345).

II. Consequently, the administration can mark on objects; when necessary, it can appropriate some plots of land in the territory, occupy them or authorize others to occupy them, temporarily or not, create servitudes there, even if compensations should be paid to the rightful owners in the following cases:

- 1/ these plots are private properties, are actually used or developed by an individual or a group;
- 2/ there exist some harvest or planted trees thereon.

III. The positions of the Administration before the court is defined in Article 13.

Comments.

From the Mountaineers' standpoint the juridical position of the French Administration is exposed in Article 13 and the land situation is as follows:

The Administration has the right to use:

For a common interest or for serving a general interest.

- 1/ vacant estates and unoccupied lands, with no compensation to be paid.
- 2/ occupied lands and land belonging to individual properties, with payment of some compensation.

The Administration is concerned in any of the following cases:

- 1/ A road is to be built and necessary lands must be taken;
- 2/ A house is to be built (for instance a watching post for the Indo-Chinese Guard) and the traffic in a given area must be restricted or forbidden;
- 3/ When it cuts forest-trees for its own need;
- 4/ It decides forest reserves;
- 5/ It fixes the limits of the territory of a concessionaire or of Vietnamese settlers;
- 6/ It issues felling-licences;
- 7/ It authorizes Vietnamese hunters and fishers to settle themselves in some places.

It was in the year 1910 that Resident Guénod made the Bahmar accept the territorial notion under the following circumstances:

He has used a fallow ground belonging to the toring of Pôlei Tónia as a sheep-fold. A man by the name of Den claimed it back. Before the village ancients Guénod made Den recognize that neither the latter nor his ancestors had ever cultivated that land, that the Administration should be considered as having everywhere the rights recognized as belonging to each inhabitant of a toring and consequently it can, without indemnifying anybody:

- 1/ First, occupy a plot of land, then become its proprietor through permanent occupation.
- 2/ Use its rights to felling trees and other rights in the same way as others.

Besides, the Administration, in the general interest, would be able to dispose of lands already occupied or possessed by others, by paying compensation to people it might damage.

But nothing may justify (naturally from the Mountaineers' point of view) the installation of French or Vietnamese colonists, the issuance of felling-licences to private people nor the installations of hunters and fishers in the conditions where that has been done.

If the Mountaineers have been in fact obliged to give way, and if they have accepted this situation because they could not do otherwise, it is interesting to examine the objection they present:

- a) They realize the fact that the Administration needs trees and takes them, but the villages near Kontum through which run broad roads suffer from the fact that many licences have been issued to Vietnamese for felling trees in their territory, to such a point that they run the risk "of soon no longer having any wood to make their coffins."
- b) They realize the fact that the Administration makes forest reserves, but while small numerous and scattered reserves do not incommode them, a vast reserve may prevent certain villages from earning their living, because there exist resources they can obtain only in their own toting which is however completely covered or almost entirely covered by the reserve.
- c) They permit the installation of some concessions, while making the same objection to them as above, and they wonder why the holders of these concessions who do not enclose them (contrary to Article 75), forbid their cattle to go therein during the months of migration (comments on Article 75);
- d) They accept the foreign hunter who clears away for them wild beasts, who kills red deer and wild boars which destroy his crops, and who, oftentimes affords them meat from those beasts; but they believe that fishers (case 403), may deprive them of one of their principal resources at a moment when they sense the need to preserve them (case 402).

These are not foolish arguments and are worth being considered by either the Administration or by the tribunals which happen to study cases in the Mountaineers' region. Murders have been committed, fires have been started in plantations, vengeances have been executed by some Mountain people; they had tried in vain to make people understood what they believed to be their fair rights, while the interested persons turned deaf ears or proved themselves to be in-experienced people. They had not even been able to arrive at a compromise (which they would accept, as indicated in case No. 403) with those who appeared to them as having violated their customs with the agreement of the Administrative authority.

The installation of the French authority in Kontum is too recent for the inhabitants to have understood the significance of the regulations, the application of which upsets their notions of right.

However, the regulations may be modified, at least temporarily, to suit the present situation, because the Mountaineers, more capable of comprehension than we imagine, realize the reasons for which such or such a measure has been taken by us. For instance, in order to satisfy them about the forest problem, it would be sufficient that the felling of trees be done on the

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territories of many different villages, and that many small forest reserves be made in lieu of a single vast reserve.

Comparisons.

Captain Huard gives this curious and interesting detail relating to the Mnong: "During the construction of the tract North of the central Plateau which would cross the communal field, the hostility of one village ceased after an offering to the spirit of the paddy had been celebrated at the expense of the Administration."

Article 73

About clearing lands.

Principle.

I. Anyone may clear land on the territory of his own toring. The clearing must be made on vacant land which is not already cleared, nor can it encroach upon a clearing, especially a tapering encroachment; the field must be used according to the local customs. No charge is to be paid to the village or the toring when clearing land. What follows the clearing operations is given in comments below (See also the comments on Article 35).

II. The clearing area must be marked by signals of occupation, even if it is enclosed; it is possible to set traps there only in accordance with conditions provided in Article 75.

III. An unmarked and uncared for land, abandoned after one or several cultivations and where bushes have grown again, is a "tsar" which anyone may occupy.

Comments.

Any member of a toring may clear lands of his toring, nobody else may do it (commentaries on Article 70), a track is chosen, then occupying signals are laid; from that moment the field is occupied, even before any work is started thereon. The trees are felled, lopped and left there until the wood dries up.

Fire can only be started on the felled trees according to the method of the village ancients (in March), and precautions stated in commentaries on Article 35 must be taken. The old custom wants to avoid firing the felled trees too soon, before the end of the rainy season. In such case, not only the woods of the impatient one would not burn completely but it is also possible that the fire would extend on his neighbor's woods and burn them incompletely thus making it impossible to burn them well later.

In fact, such a case never appeared before the tribunal, but the ancients, questioned on the matter, have agreed that if an individual, starting the fire to his trees too soon, damages the neighbouring areas, he could be sued in accordance with Article 36.

As soon as sowing is finished (in April, May), enclosures, stakes, traps may be placed and then the cattle must be specially taken care of, (to prevent

them from damaging the seed). (Article 79, III, 1)

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Whosoever has occupied a field has a pre-emption right on that field the next year, then the following year (the field is then a mir puh klong) and the 3rd year also (the field becomes a mir ful). Only at the end of five years (except in the case of improvement works spoken of in Article 74), does this occupied field become a property.

It may happen that a field is temporarily abandoned during some short period of time (such case is nevertheless rare) then is occupied again, the rights of the occupying person are not considered as prescribed. It will not be so however, if bushes have grown again, if the field has become fallow again, and if in order to cultivate it the whole series of clearing operations is again needed. The first occupier is then considered as having abandoned his rights to that field.

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In paragraph I of Article 73, we find enumerated the conditions regulating contiguous fields. A field must not be "offensive" from the ritual point of view. But no arrangement has been made to separate two contiguous fields by a strip of land and therefore, this is the cause of numerous law-suits, either because of encroachment of land, or because there exist only one barrier between neighbouring fields, and it is difficult to know who is the landowner who has neglected taking care of it.

Compariaons.

For the Rhade, lands are the properties of families (customs 229 to 236), they are bound. Families lease them.

The situation therefore varies greatly in the Mountaineers' country.

- 1/ (Comparisons of Article 72): villages (or more truly groups) cultivate land;
- 2/ Families (or groups) farm land and lease plots of it to others. Such is the case in Darlac and in some regions of High Donnai (comparisons of Article 71).
- 3/ Individuals cultivate (such is the case in Kontum) without paying rent to anyone.

Elsewhere, the cultivated lands are the following:

- 1/ They may be simply occupied by the one who cultivates them;
- 2/ They may be owned by long usage, by purchase having it allotted.

I have not enough details about what happens outside of Kontum to be able to speak more on this matter.

Article 74

About the fields occupied and the fields owned.

Principles.

I.- The toring and the villages do not develop the lands, do not sell them nor rent them.

II.- He who holds the same fields permanently for 5 years, and notably keeps up the enclosure of that field, can claim the right of ownership. This delay is reduced to 2 years when the operations for the parcelling, embanking, canals, drains have been undertaken on the field.

As soon as a person having the right to ownership (article 73) holds the field, nobody can forbid his living in that field; the loan or the rent of the field does not interrupt nor put off the delay necessary to having access to ownership- "mir jing tomain de."

III.- Tenants or borrowers never can become proprietors of a land borrowed or rented, no matter how long the duration of their occupation. It is up to the tenant or the borrower to watch himself and to avoid pretending to own the field (affairs 347,350, and 356).

IV.- Everybody who buys or inherits an owned field in application of paragraph 2 becomes proprietor of that field.

Commentaries

The first paragraph of article 74 takes all its value when we compare the situation of Kontum to the one of the neighbouring provinces (references to article 73) concerning the ownership of the lands.

For many reasons, the toring of Kontum and their constitutive elements which are the villages, did not develop, did not sell nor rent the lands which constitute their territory to the moi at the beginning of the 19th century.

The Société des Mission étrangères around 1870 (or perhaps before) bought the land (1)

In 1890 the Administration kept its rights stated in article 72 and, for political reasons, controls even at the present time the sale of lands, private properties to the Vietnamese, as it will be mentioned below (see also Commentaries of article 71)

x
x x

The Administration finds to settle the inhabitants to the soil and to reduce their movements. The Moi is not refractory to this evolution. Far from it, some sub-tribes have settled down themselves when, by chance, they possessed good lands that the floods periodically fertilized (Bahnar Bonom for instance)

(1) The payment of these lands was made to the chiefs (?) to the old (?)

1) sold lands that did not belong to them
2) cashed money that did not fall to them

The problem consists then in improving the poor lands of some toring and in showing the Moi ways to avoid ruining the lands.

The provincial Administration encourages this policy. Also it favours both the construction of tile roofed-houses and the accession to the private ownership of the lands. It also tends to have the titled established by the Mois, as it will be mentioned below for the following reason:

Formerly there were Vietnamese who rented the private lands from the Moi, paid the taxes and came to declare themselves proprietors by presenting to the Residence their acquittances.

These facts dated from an unsettled period (1915-1920) and can no more happen. The present situation is the one mentioning in the commentaries of article 71 and supra; the Administration stands out against the sale of lands so that the Moi does not risk to be left without resources, but (Commentaries of article 72) it favours, on the other hand, the installation of the Vietnamese in some limited and non-cleared regions, with the agreement of the Moi and Vietnamese authorities. (Commentaries of article 71). The results acquired in Kontum justify the usage of this method, it is in honor of Resident Jerusalémy and H.E. Vo-Chuan who paid much attention in precomizing it, then putting it in application (1928-1936)

x
x x

The accession of the Moi to the ownership by a 5 year occupation (which could correspond to the duration of a rotation of cultivations in Kontum), is probably a relatively old custom Resident GUENOT noticed its existence upon his arrival. The chiefs followed him as soon as he asked that people may accede to the ownership of a field in 2 years only, provided they work on it (irrigation canals or drainage).

Doubtless the chiers expected to be the first to take advantage of the situation, nevertheless that idea had slightly touched their mind.

Besides, it is probable that formerly the Moi did not conceive that, by being proprietor of a land, he could use it freely. Instead of ownership, it would be better to say inalienable occupation (boleng boang) of land of which he could be dispossessed and that he could pass on to his descendants. It is to be noted how the veto right that the administration exerts on the sale of lands is easily accepted. I have always noticed that the Bahnar, all ready to give way to the regulations (luât) conceived in the spirit of the custom Khôy (restriction to the sale of land, burning the forest for instance), was recalitrant when he thought that the principles of the customs were violated (case of the tax and prestations, authorizations for cutting trees etc).

It is around 1935 that it was possible to orientate the land-owners towards the establishment of titles and plans of their real estate drawn by the Provincial Service of Land Registration. The possession of these titles corresponded to the annual payment of very small tax (0.20\$ to 0.50\$). (By working their lands) the Bahnar were eligible to have these titles delivered to them. Nevertheless they were not forced to do it. The buyers of Vietnamese land, on the other hand, were required to establish compulsorily a title and a plan of the land they just bought.

After having loudly and publicity applauded this regulation, the chiefs did nothing then to incite their people to conform to this regulation. They succeeded in persuading a French functionary unaware of the real situation of the country, that this regulation presented no interest. Their attitude is easily understood. The properous families, the Guardians of well-to-do minors do not restrain themselves from nibbling progressively the lands of their neighbours or their words; the division, between various heirs, of lands inherited from their parents is no more, 20 years after, than what it was at the death of these latter; the parents or children who are influential have laid hands on a part of the properties of the others.

Consequently, the classification of the Moi properties is a very long effort and should not be prematurely denigrated, but we should come never to judge affairs like affair 12, which are difficult to be instructed (Commentaries of article 82)

It is not usual that a Moi rents his land to a Moi, in general he borrows it as long as he does not need it. However, little by little, the line of interest becomes greater and some lands are worked on by metayers who have right to a part of the crop, whereas the other lands are rented for a yearly charge (in paddy, in money or in merchandises)

The lease by tacit agreement is unknown (comparisons of article 82)

Comparisons

I said in the Comparisons of articles 71 and the following, how the situation of the territories and the real estates was different with the Bahnar, Jarai, sedang in one hand (provinces of Kontum and Pleiku) and the other tribes.

However, I would remark that, following M. Gerber, the Stieng pass their lands down to their descendants. This shows that in this tribe, at least one can be landowner.

I would point out, on the other hand, that Canivey, after having said that uncultivated land in Haut-Donnai is totally portioned out among the descendants of the first families, specifies that these families have plots of forest leased for a yearly charge (one or two pigs, some chickens, some baskets of paddy or of corn) to the KIL (tribes living on high summits of the province of Haut-Donnai). Hiring out of uncultivated lands is thus normal in Haut-Donnai, when in Kontum no one could ever lease land not previously worked.

Article 75

About the setting of fences, the installation of traps, the sticking of lancets

Principle

I.- Occupied or possessed lands can be fenced. The occupier or the proprietor cannot obtain any indemnity for the damage caused in his land by other's cattles, if his barrier does not exist or is inadequate.

II.- Owners or occupiers of adjoining lands may fence the lands with a common barrier. Them all are then responsible for the condition of this fence. Who-ever wants to elude from this common responsibility can make a private fence.

IV. - When a fenced field is located far from villages, out of the roaming area, the proprietor or occupier may lay traps and lancets. Inside the fence, the lancets can be stuck everywhere and in all directions. Outside, the fence may be strung with thorns, but the lancets must be stuck against the fence, pointed towards the inside, attended for the animals coming from the fields.

Traps can only be laid inside of the fence.

Traps and installations of lancets must be marked by visible marks.

When a village changes location and is established close to an existing field, the owner or the occupier of this field may keep his traps and lancets inside of his fence. The fence must be in perfect condition. In other words, if a field is located in a place where its occupier enjoys the rights stated in paragraph IV, the owner has most of his rights retained if a village comes to settle down near it.

V. - The owner or occupier of a field is responsible for accidents, damages incurred or suffered by others' cattles, in proportion of what he has observed in preceding prescriptions (article 79).

VI. - The responsibility for precautions to be taken in the application of paragraphs I to IV here-above is incumbent on the leasee or the borrowers of a land which, in case of accident or damage, is involved.

VII. - The gardens in the village must be fenced. People are allowed to lay neither lancets nor traps in them.

VIII. - Hunting traps duly warned cannot be laid but outside the roaming zone for cattles (article 80, paragraph II).

Commentary.

Article 75 rules the touchy relationship between breeders and cultivators, and, under certain reserves, subordinates (like almost everywhere else) the former to the latter who can even defend their fields, in so interesting a case of moving of the village stated in paragraph IV of the principles here-above.

Cultivators, however, are not omnipotent. During a period of the year (in dry season) when the cattles go roaming in search of a pasture and the lands are fortunately not worked, the cultivators must leave cattle pasture temporarily on fallow fields. It, only, inconveniences European or Vietnamese concessionaries, as has been discussed about in the commentary of article 72. One cannot ask them to fence their concessions. As a result, they are exempted from the present article when they ought to observe it more strictly than others, those with their farming under operation at the time when cattles are roaming at will.

Comparisons

Diverse customs show us in Darlac province, the right and duties of cultivators and breeders.

The custom 216 specifies that "one fences the fields and gardens in order to prevent from outside penetration" and that it is forbidden to permit these

fences to deteriorate.

The custom 226, 227 and 228 enumerate the rights of fields owners. They are entitled to reimbursement of damages done in their fields (well fenced, of course) by others' cattles. They are not responsible for the fact that the cattle get wounded or killed on their traps or lancets, but they have no right to kill the cattle that damage their crops.

I have not found other specifications in the Rhadé customary in which many questions (especially that of the changing of location of village, that I discuss in paragraph IV of article 75) are not stated.

x
x x

I have no accurate information on what is going on in Haut-Donnai.

x
x x

Stieng fields must be fenced if the owner wants to be reimbursed for all damages that the cattle may cause eventually. If there is no barrier, the owner will have only half of the amount of damages done. A sacrifice for reparation, of course, will be made in both cases.

But M. Gerber does not inform us on all the rights and duties of the Stieng farmer. He does not especially point out the custom relating to the roaming zone for cattles, the dressing of lancets in the fields and to the maintenance of rights of the occupant, when a village comes settled down close to his field (article 75, paragraph IV).

Article 76

Water - Alluvion - Erosion.

Principle.

I. Within each "toring", villages and inhabitants individually or by groups, are entitled to make use of water for irrigation purpose or fishing providing that use will not hamper the traffic and farm work of others.

II. "Toring" or private owners profit by alluvion deposit damages caused erosion are supported by owners or occupiers without their having rights to indemnity. However they might be compensated by being granted alluvion deposit especially when a river changes its bed.

III. Springs, village fountains, canals, and drains should be kept from pollution.

IV. Should permanent or temporary ponds, take shape in a piece of owned field, they would be the property of the field-owner and its use would result not from application of Paragraph I above but of Article 81, Paragraph V.

Comments.

Problem relating to water involves the following aspects:

- 1/ Fishing.
- 2/ Consumption, Bathing: each village has at its disposal one or several springs or a river. Villagers draw water out of them, to take baths or do the laundry.

Permanent pollution of water constitutes one of major instances of filth. This rule has caused conflicts between the Vietnamese and the Moi since to the latter's fountains and springs are somewhat sacred.

- 3/ Alluvion deposits, change to the river bed: According to article 76 anytime alluvion deposit, erosion or shift to the river bed occur, newly built land shall be partitionned between concerned "torings" after having replaced the land which has been scrapped out.

Impaired owners should be served first.

- 4/ Irrigation, drainage. Nobody has the right to raise objections to the establishing of a canal which will pass on his land.

The proprietor or occupier of a land on which a canal passes is empowered to:

- a. Make use of the canals in which case he shall participate in sharing the expenses in proportion of the land area. or:
- b. Raise the use of the system and thus be entitled to claim a compensation which will be fixed as follows:
 - If he merely is an occupier, he might eventually have the right to a compensation equal to the value of the crop which should have been lost due to the canal;
 - If he is the proprietor, he shall get the value of the piece of lost land and acquired to the maker of the canal;
 - Making and using a canal constitute one of the ways by which a person obtains the property of the irrigated land.

- 5/ Another feature which could not be omitted: polluting water is regarded as a major violation. "Yang Dak", the water genius plays an important role and every year is celebrated a fountain feast.

People only do not fear actual pollution of water and not ritual pollution. They also realize its poisoning effect. As a matter of fact such a fear has much diminished in time. It still remains that "tomoi" (strangers) are forbidden to approach the fountain, and villagers themselves will bring drinking water to them. During my trip I haven't seen any village authorizing my men to draw water themselves. On every occasion young natives supplied us in person.

Custom Rhade' 163 shows how terrible still is the inhabitants obsession of polluting water. Repeated discussions between moi villagers and Vietnamese settled nearby shows how strong is the Rhade' feeling concerning the pollution of their rivers, even though fear of having them poisoned has disappeared.

Collation of customs.

Customs Rhade' 231 then 235 regulate the land property. In Rhade' land waters are the property of "polan". Custom 232 provides that fishing is permitted in rivers but none is recorded with regard to erosion, alluvium, drains despite the fact these subjects are fundamental in Moi land.

Thereupon it might be concluded that whether the Rhade' customary we have in hand is far from being complete, or tribe Bahnar has undergone a social evolution which is unknown of Rhade'.