



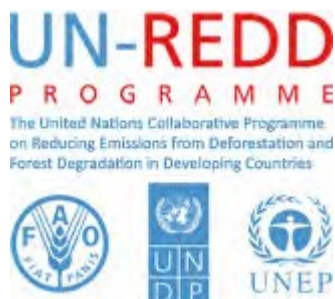
Legal Preparedness for REDD+ in Vietnam Country Study

November 2011



International Development Law Organization
Organisation Internationale de Droit du Développement

This document is the result of a legal research study conducted by the International Development Law Organization (IDLO), with support from the Food and Agriculture Organization of the United Nations (FAO) and the UN-REDD Programme.



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Published by:

International Development Law Organization
Viale Vaticano, 106
00165 Rome, Italy
Tel: +39 06 4040 3200 Fax: +39 06 4040 3232
www.idlo.int idlo@idlo.int

in conjunction with
Food and Agriculture Organization of the United Nations

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Acknowledgements

This Country Study was prepared by the International Development Law Organization (IDLO) with support from FAO and the UN-REDD Programme under their respective authorities. The final study will draw upon multi-stakeholder inputs made in consultations conducted in Vietnam from December 2010 to November 2011.

IDLO would like to express their deep appreciation to the following people who contributed invaluable suggestions towards the development of this Country Paper: Emelyne Cheney, Peter Holmgren, Patrice Talla, Francesca Felicani Robles, Alberto Sandoval, Rosalind Reeve, Akiko Inogushi, Pham Minh Thoa, Pham Manh Cuong, Pham Quoc Hung, Nguyen Quang Tan, Le Duc Chung, Nguyen Thi Huyen. They also wish to thank Paul Crowley, Marie-Claire Cordonier Segger, Liliana del Villar and Patrick Reynaud who contributed to the paper from IDLO.

Primary authors and editors: Phan Tuan Hung, Legal Specialist and Asia Coordinator for the Legal Preparedness Climate Change Initiative in Vietnam, Environment and Sustainable Development Law Programs, International Development Law Organization

Co-authors and Contributors: Pham Xuan Phuong, Nguyen Mai Hanh, Sarah A. Mason-Case (Importance of Legal Preparedness for REDD+ & Annex 1 Reference Tool), Yolanda Saiko, Katherine Lofts.

Abbreviations and Acronyms

5MHRP	5 Million Hectares Reforestation Programme
APF	Action Plan Framework for Adaptation to Climate Change in the Agriculture and Rural Development Sector
BDS	Benefit Distribution Systems
CDM	Clean Development Mechanism
CERs	Certified Emission Reductions
CITES	Convention on International Trade in Endangered Species
COP	Conference of the Parties
CPC	Communal People Council
DARD	Department of Agriculture and Rural Development
DDONRE	Divisions of Natural Resources and Environment
DONRE	Department of Natural Resources and Environment
DPC	District People Council
DPO	Detailed Proposal Outline
EIAs	Environmental Impact Assessments
EPF	Environmental Protection Fund
FAO	Food and Agriculture Organization
FCPF	Forest Carbon Partnership Fund
FLEG	Forest Law Enforcement and Governance
FMT	Facility Management Team
FPES	Payment for Ecosystem Services
FPIC	Free, Prior and Informed Consent
GAL	General Administration of Land
GDP	Gross domestic product
ICCPR	International Covenant on Civil and Political Rights
ICECSR	International Covenant on Economic, Cultural, Social Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ITTA	International Tropical Timber Agreement
IUCN	International Union for Conservation of Nature
LB	Law on Biodiversity
LC	Law on Construction
LCFP	Law on Corruption Fighting and Prevention
LCPC	Law on Children Protection and Care
LEP	Law on Environmental Protection
LFPD	Law on Forest Protection and Development
LHIV/AIDS	Law on HIV/AIDS Prevention
LI	Law on Investment
LL	Law on Land
LM	Law on Minerals
LP	Law on Press
LT	Law on Transportation
LTNR	Law on Tax on Natural Resources
MARD	Ministry of Agriculture and Rural Development
MDGs	Millennium Development Goals
MONRE	Ministry of Natural Resources and Environment
MPS	Ministry of Public Security
NA	National Assembly
NFDS	National Forest Development Strategy

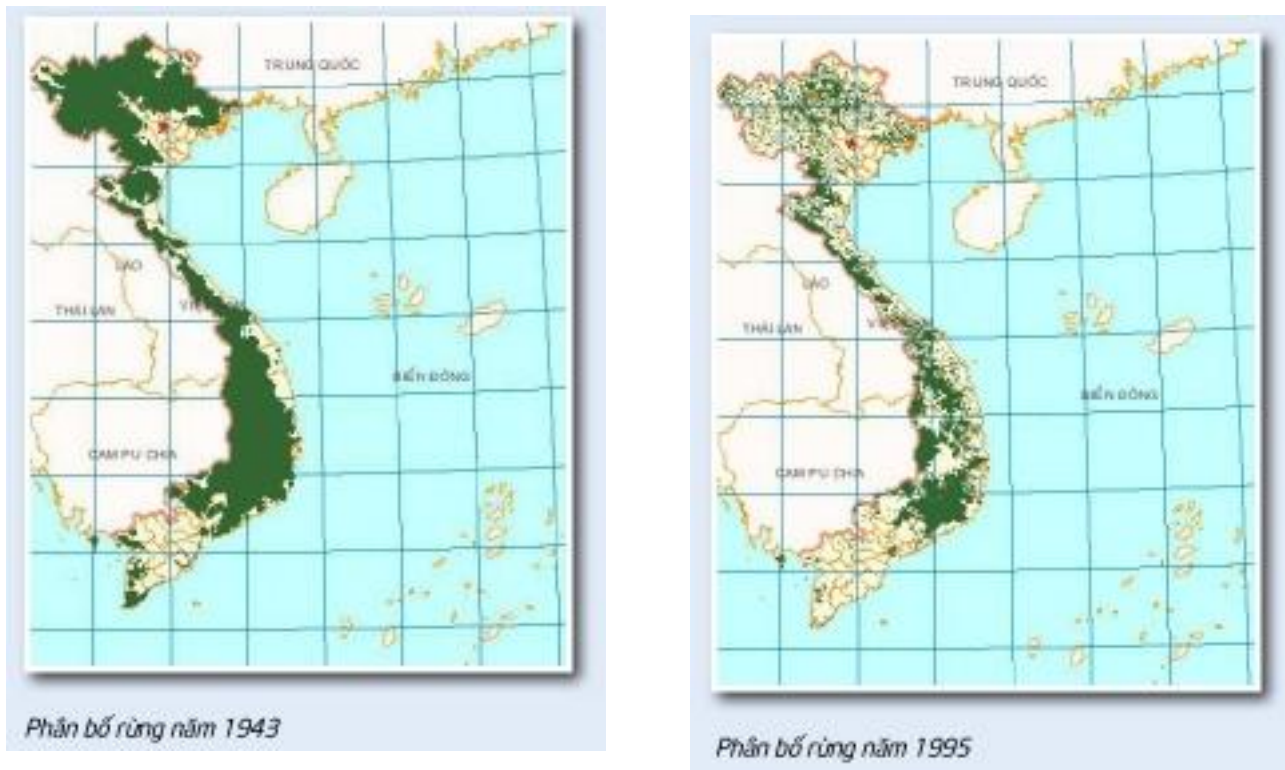
NGO	Non-Governmental Organization
NJPD	National Joint Programme Document
NLUP	National Land Use Planning
NORAD	Norwegian Agency for Development Cooperation
NPDS	National Power Development Strategy
NPFPD	National Plan on Forest Protection and Development
NSCC	National Strategy on Climate Change
NSEDS	National Social – Economic Development Strategy
NSEGPR	National Strategy for Economic Growth and Poverty Reduction
NSESP	National Social – Economic Development Plan
NSRTD	National Strategy of Rubber Tree Development
NTPRCC	National Target Program on Climate Change
ODLL	Ordinance on Democratic at Lower Levels
P135	Program 135
PC	People’s Court
PFPD	Fund for Forest Protection and Development
PP	People's Prosecutor
PPC	Provincial People Council
R-PP	Readiness Preparation Plan
RAMSAR	Convention on Wetlands
RECOFTC	Regional Center for Forests and People
SFEs	State Forest Enterprises
UN CBD	United Nations Convention on Biodiversity
UN CCD	United Nation Convention on Combat Diversification
	UN CEDAW United Nations Convention on Elimination of Discrimination Against Women
UN CRC	United Nation Convention on Rights of the Children
UN DRIP	United Nations Declaration on the Rights of Indigenous Peoples
UN REDD	United Nations Reducing Emissions from Deforestation and Forest Degradation
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change
VAF	Vietnam Administration on Forestry
VIFS	Vietnam Institute on Forest Science
KfW	Kreditanstalt für Wiederaufbau

1 Introduction

In Vietnam, the management and protection of forests are crucial for sustainable development. Vietnam consists of 330,991 km² of complex terrain characterized by mountains, plateaus, plains and rivers, including the Mekong and Red River deltas. The forests in Vietnam are located at the convergence of natural plant and animal corridors from the East to the West and the North to the South, and are among the most highly biologically diverse in the world.

Vietnam lost approximately half its forest cover during the period from 1943 to 1990 (see **Figure 1**). Since then, Vietnam's forests have grown by approximately 2% per year. However, although forest cover increased from 28% in 1993, to 38.7% in 2008 and 39.5% in 2010, deforestation and forest degradation continues, especially in the Southeast and Highland regions. In fact, according to the Food and Agriculture Organization (FAO), in 2005 Vietnam had the second highest rate of deforestation of primary forests in the world, second only to Nigeria. Moreover, the quality of existing forests continues to be degraded.

Figure 1. Forest cover in 1943 and 1995



In addition to environmental concerns, the sustainability of the forestry sector also plays an important role in improving livelihoods and reducing poverty for local communities. Vietnam has the highest population density in Southeast Asia, with a national average of 232 people/km² and up to 1,000 people/km² in the Northern Delta region. It is estimated that

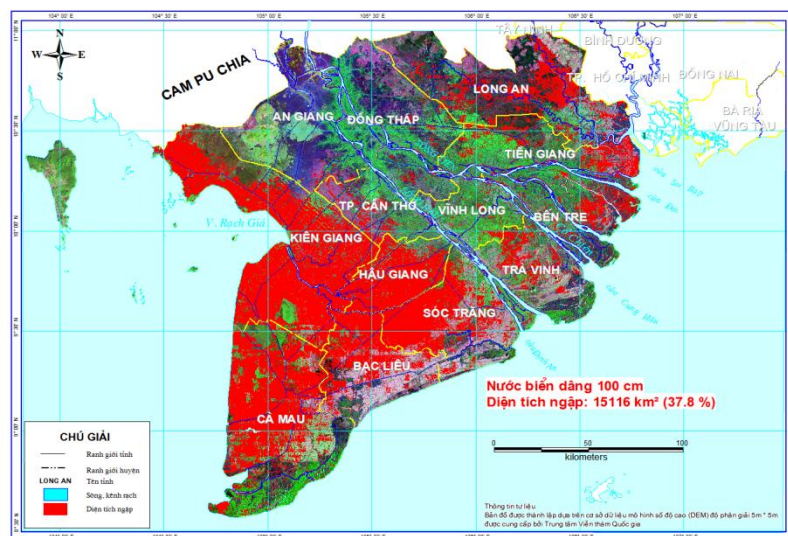
there are about 25 million people (representing 28% of the country's population) living in mountainous and remote areas of Vietnam, many of whom belong to ethnic minorities who depend on forests for their survival.

Vietnam also faces serious threats from climate change. At the 13th Conference of the Parties (COP13) in Bali, Indonesia, Vietnam was recognized as one of the five countries most affected by climate change in the world. The effects of climate change have already begun to take a serious toll on Vietnam's development, its forestry and agricultural sectors, and its water resources. Climate change also threatens the country's recent economic gains, achieved by the Vietnamese Government's "DoiMoi" economic policy of building and strengthening a socialist-oriented market economy. While annual gross domestic product (GDP) grew between 6% to 9% from 1990 to early 2000, and Vietnam achieved middle-income status in 2009, this development is now at risk.

Vietnam has a tropical monsoon climate, with average temperatures of 24-27 °C, and an average rainfall of 1500-2.500mm, mainly in the rainy season from May to October. Changes in basic climatic factors, as well as other extreme weather phenomena such as storms, heavy rains and drought, are already being felt in the country. Analysis of climate change scenarios based on data from the period 1980-1999 indicates that the average temperature in Vietnam by 2100 is likely to increase by between 1.1 to 1.9 °C and 2.1 to 3.6 °C, annual rainfall will likely increase by 1.6% to 14.6%, and the sea level will rise by 11.5 cm to 68 cm. Already, average temperature increases have taken place over the course of the last 50 years, from 0.5 to 0.7 °C. In this same period, the frequency of tropical cyclones has increased by a factor of 2.15 and the sea level has risen by about 20 cm. Coastal regions suffer from tropical storms originating from the South China Sea, with an average of 7 storms per year.

Given that much of Vietnam's territory is low-lying, these serious effects, particularly the projected sea level rise of 0.5 cm to 0.6 cm per year, will be highly detrimental.ⁱ For example, the rising sea level could salinize the Red River and Mekong Deltas and reduce the area of mangroves, causing adverse impacts to the melaleuca forests and forests planted on alkaline soil in the South, as well as changes in the distribution of ancient and secondary forests. The Red River Delta, QuangNinh province, the North Central Coastal Plain, South-central and Mekong Delta regions are most vulnerable to these changes. In particular, if the sea level rises up to 1 m by 2100, it is estimated that Vietnam will suffer an economic loss worth 10% of its GDP, 17 million people will directly suffer from climate change impact and 17,000 km² of coastal land will be covered in seawater. In particular, 37.8% of the Mekong Delta will be flooded, and over 15,000 km² lost.ⁱⁱ (See **Figure 2**) Climate change also threatens biodiversity, particularly native plants and species with high economic values.

Figure 2. Land flooded in Mekong Delta



Concrete steps are being taken in Vietnam to mitigate and adapt to these harmful effects. Vietnam is one of 13 pilot countries chosen under the United Nations Reducing Emissions from Deforestation and Forest Degradation (UN-REDD) Programme, which helps developing countries prepare for participation in a future REDD+ mechanism. In addition to the UN-REDD Programme, Vietnam has also submitted a REDD+ Readiness Preparation Proposal (R-PP) to the Forest Carbon Partnership Facility (FCPF). Given the three criteria of the FCPF – area of existing natural forests, biodiversity, and changes in forest resources – Vietnam is particularly well-suited for the implementation of REDD+.

At COP16 to the UNFCCC, the international community made significant gains in elaborating what REDD+ may entail. The resulting Cancun Agreements set out a basic framework for REDD+, which has been identified as including three key elements: mitigation activities, guidance on how they should be undertaken and safeguards. They also contain provisions for the phases and manner in which REDD+ activities should be developed as well as requirements for monitoring, reporting and information systems.ⁱⁱⁱ REDD+ activities may include those described at paragraph 70 of the Cancun Agreements, namely, reducing emission from deforestation and forest degradation, sustainable management of forests, and conservation and enhancement of forest carbon stocks (REDD+ activities). Additionally, the guidance provisions at Annex I to the Cancun Agreements form an integral part of the whole and require that REDD+ activities are, *inter alia*, country driven, consistent with sustainable development needs and results-based. The safeguards for REDD+ found in the same Annex similarly state that the following should be promoted and supported, *inter alia*: transparent and effective national forest governance structures, respect for the knowledge and rights of indigenous peoples and members of local communities, actions to address the risks of reversals and actions to reduce the displacement of emissions.

Notably, the Cancun Agreements also request that countries develop and implement national REDD+ strategies or action plans that address the drivers of deforestation and

forest degradation at the same time as they “enhance other social and environmental benefits [...] taking into account the need for sustainable livelihoods of indigenous and local communities and their interdependence on forests in most countries.”^{iv} This increases the challenge to developing countries, and those who support them, to at once guarantee climate change mitigation while also improving social benefits to local and national stakeholders. Moreover, it highlights the necessity of an appropriate regulatory mix to incentivize, enforce and otherwise guide public and private sector activities toward REDD+ desired ends.

The purpose of this Country Study is to review existing laws and regulations relevant to REDD+ in Vietnam, in order to identify and analyze legal challenges and innovations for REDD+ implementation. Ultimately, the project aims to draw generic options and recommendations to support REDD+ countries in strengthening their legal and institutional capacity. The Country Study is organized in several Parts. Part 2 discusses the importance of legal preparedness for REDD+ and introduces a reference tool used herein to identify and analyze key challenges in Vietnam’s legal and institutional framework. Part 3 situates REDD+ within Vietnam’s general governance framework, including its development goals, and laws for public participation and access to information. Part 4 reviews a wide array of existing laws and institutions in Vietnam that could have a bearing on REDD+ design and implementation, including land tenure, forestry, and trade and investments, among others. Part 5 draws out key challenges to legal preparedness for REDD+ in Vietnam, focusing on those most pertinent to the Cancun Agreements. Before the Conclusion at Part 7, the final Part 6 reveals certain of the innovative legal and institutional reforms that are presently underway in Vietnam that will directly or indirectly affect REDD+ implementation, and may provide useful lessons for other countries.

2 Importance of Legal Preparedness for REDD+

2.1 Laws and institutions for REDD+ design and implementation

An enabling legal and institutional framework is a prerequisite to effective REDD+ design and implementation. However, the 2010 Cancun Agreements on REDD+ are new and still evolving. Most domestic legal regimes of relevance to REDD+ were created prior to these international negotiations, without taking REDD+ strategies into consideration. Vietnam, like many other countries, now faces challenges in creating the right regulatory mix to reduce deforestation and forest degradation and undertake other REDD+ activities.

Laws are often mistaken for the “stick” over the “carrot.” They are, however, capable of both functions and more. Laws and institutions not only prohibit or incentivize but they also provide an overall enabling framework that guides public and private sector activities toward desired ends. They can thus eliminate barriers to REDD+ activities, promote social and environmental co-benefits as well as improve overall implementation by enabling positive steps toward new low-emission pathways across relevant sectors. The term “laws” is meant

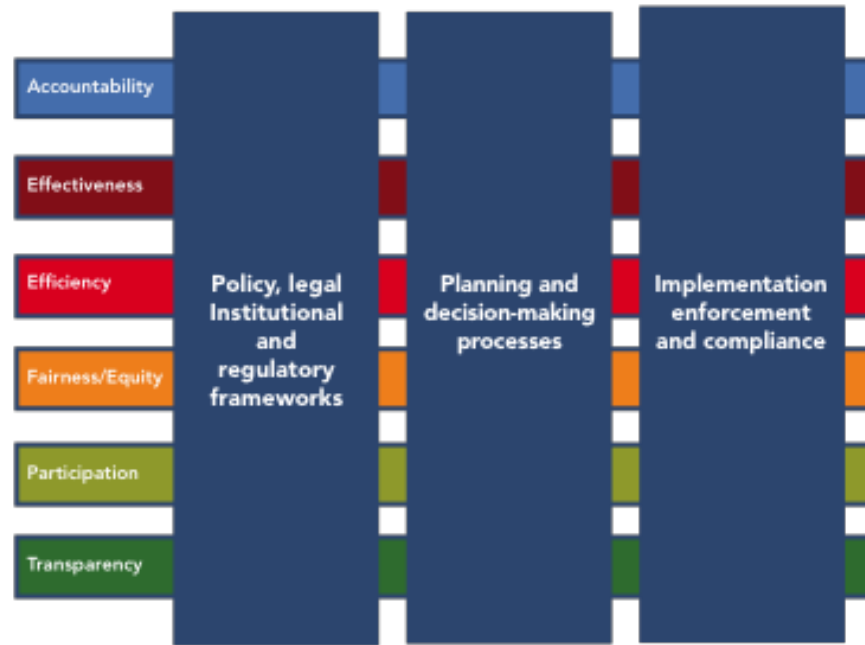
inclusively herein to encompass “soft” and “hard” legal instruments that fall along a spectrum of precision, delegation and obligation, such as government policies, legislation and regulations.^v Laws have many functions for REDD+ preparedness. They furnish government actors with jurisdictional mandates, delineate public and private rights and responsibilities, create project-level programmes and implement fiscal policies that engage investors. As this Country Study concerns Legal Preparedness for REDD+, the term “institutions” is restricted herein to legally backed customs, behavioural patterns and rules that are implemented by public and traditional administration systems.^{vi} Laws and institutions can thus have a neutral, inhibitive or facilitative effect on REDD+ implementation and are integral to the preparatory process.

2.2 Legal Preparedness for REDD+ Reference Tool

This review and analysis of Legal Preparedness for REDD+ in Vietnam was conducted using a Reference Tool that was designed to identify concrete legal and institutional instruments that may be conducive to fulfilling the requirements of the REDD+ activities, guidance and safeguards found in the Cancun Agreements. That Reference Tool, located at **Annex 1**, is not comprehensive and may not be applicable to each country. Nor is it meant to provide precise indicators for data collection and assessment since any such criteria are highly contextual and should be tailored to the country based on REDD+ strategies.^{vii} Instead, the Reference Tool seeks to set out a variety of generic legal and institutional options available to policy makers in planning and implementing REDD+ activities. Thus, it provided a foundation for a broad-based gap analysis through which the laws and institutions examined in this Country Study were identified for key challenges and innovations.

The generic legal instrument options for implementing REDD+ activities, guidance and safeguards contained in the Reference Tool are reproduced from documented recommendations found in a wealth of sources. For instance, one source, the UN-REDD Programme and Chatham House, *Guidance for the Provision of Information on REDD+ Governance (Draft)*, identifies policy, legal, institutional and regulatory frameworks as one of the three pillars of REDD+ governance. There, “REDD+ governance is assumed to refer to the oversight of all institutions, policies and processes that a country has in place at national and subnational levels to implement REDD+.”^{viii} **Figure 3** illustrates the pillars and principles that characterize good governance under that model. The pillars of good governance for REDD+ occur simultaneously and hence all contain legal and institutional considerations underpinned by the key principles: accountability, effectiveness, efficiency, equity, participation and transparency. Relevant elements of those pillars that have been incorporated into the Reference Tool as legal instrument options include, *inter alia*, clarity and coherence of laws and institutional mandates across sectors impacting REDD+, such as forestry, land use and trade and investment; full and effective stakeholder participation in the design of policies relating to REDD+; and accessibility, fairness and independence of grievance mechanisms.^{ix}

Figure 3: Pillars and Principles of Good Governance for REDD+



(UN-REDD & Chatham House, 2011)

Additional key sources from which specific legal instrument options were documented in the Reference Tool include the FAO and Profor, *Framework for Assessing and Monitoring Forest Governance*; IUCN, *Legal Frameworks for REDD: Design and Implementation at the National Level*; Baker & McKenzie and Covington & Burling LLP, *Background Analysis of REDD Regulatory Frameworks*; and ICV, Imazon and WRI, *The Governance of Forests Toolkit (v.1)*.^x As illustrated in the table at **Annex 1**, however, the primary source for the Reference Tool is the Cancun Agreements themselves, which contain numerous provisions that can be grounded in a range of concrete legal instruments. **Figure 4** summarizes select provisions of the Cancun Agreements, which are reproduced in the Reference Tool along with correlated legal instrument options. The Reference Tool should be referred to as desired by the reader for informational purposes in reviewing this Country Study.

Figure 4: Summary Cancun Agreements Provisions for Legal Preparedness for REDD+

1. Ensure that REDD+ activities are used to enhance other social benefits
2. Fully respect human rights
3. Address the drivers of deforestation and forest degradation
4. Develop a national REDD+ strategy or action plan
5. Develop national forest reference emission levels and/or forest reference levels
6. Develop national MRV systems
7. Develop information systems on how the safeguards are addressed and respected
8. Promote and support transparent and effective national forest governance structures, taking into account national legislation
9. Address land tenure issues
10. Address gender considerations
11. Promote and support actions to address the risk of reversals
12. Promote and support actions to reduce the displacement of emissions
13. Promote and support multiple forest functions
14. Undertake activities consistent with national sustainable development needs and goals
15. Promote and support that actions complement or are consistent with international agreements
16. Promote and support that actions complement or are consistent with national forest programmes
17. Undertake activities to be consistent with adaptation needs
18. Undertake activities that are results-based
19. Promote and support the knowledge and rights of indigenous peoples and local communities
20. Promote and support the full and effective participation of relevant stakeholders in para. 70 activities and developing and implementing national REDD+ strategies or action plans

2.3 Breadth of laws and institutions reviewed

This Country Study reviews laws and institutions that have a bearing on REDD+. Therefore, not only is the forest sector considered but also crosscutting issues of land tenure, land use planning, protected areas, easements, land acquisitions, and trade and commerce as well as sectoral laws concerned with the drivers of deforestation and forest degradation, such as energy, agriculture and mining (see **Annex 2 "Government of Vietnam Laws Reviewed"**). The breadth is wide because laws create rights, responsibilities and hierarchies in interests that affect issues such as carbon ownership and use, the risk of reversals and displacements, participatory decision-making, and results-based benefit distribution. Gaps and conflicts in institutional mandates may also result in the absence of action, duplication of efforts or cancelling out of positive initiatives where actors work at cross-purposes. Vietnam does not yet have a stand-alone REDD+ strategy or action plan and the existing laws are the only information on which to consider its legal preparedness. Once it does have such as strategy or action plan, Vietnam will still have to contend with laws and institutions that impact REDD+ because coordination across government actors, civil society and the private sector is necessary to address the drivers of deforestation and forest degradation

and implement mitigation activities in a manner that provides adequate substitutes for unsustainable practices without compromising human needs. Consequently, the importance of laws and institutions for the success of REDD+ implementation necessitates review across all related sectors.

3 Situating REDD+ within Vietnam's Governance Framework

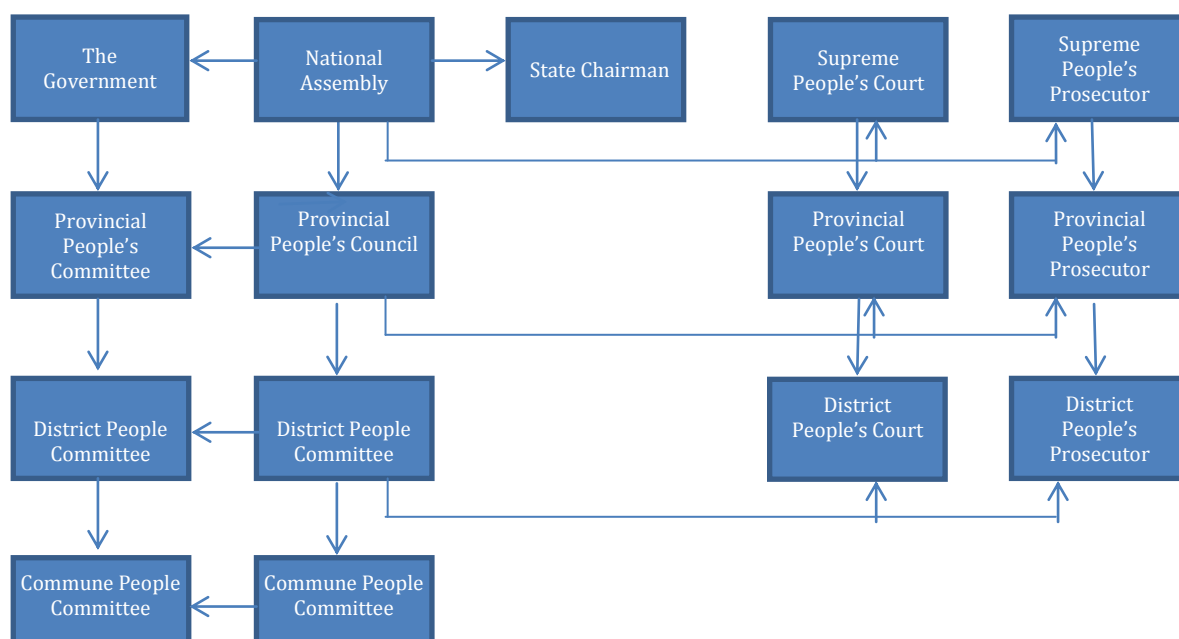
3.1 Vietnam's governance system

Vietnam's governance system is relevant to the country's legal preparedness for REDD+ because it determines the foundational mandates of the actors who design and implement REDD+ from the national to the local level. The government structure comprises the National Assembly (NA), the Government, the People's Courts (PC) and the People's Prosecutor (PP). The State is managed at four levels – central, provincial, district and communal (see **Figure 5**). At the central level, the NA is the highest organ of state power, with the Government as its executive body. Members of Government include 22 ministries and ministry-equivalent organizations.

At the provincial level, the Provincial People's Council (PPC) is a provincial body elected by and representing the local people. The People's Committee is elected by the People's Council as an executive organ of provincial state administration. It is responsible for implementing the constitution, laws and formal orders of state organs at the central level and the resolutions of PPC within the province for the sake of socio-economic development measures and national defense and security. Professional agencies, which are line departments of central level ministries or ministry-equivalent organizations, assist the People's Committee to realize its tasks.

At the district level, District People's Council (DPC) is the highest state body in the district and the District People's Committee has the task of law execution. The District People's Committee is also assisted by professional agencies. At the communal level, Communal People's Committee is the elected body of Communal People's Council. The Communal People's Committee is in charge of executing constitutional laws, formal orders and resolutions from the superior state body or communal People's Council.

Figure 5. Vietnam's governance system



In Vietnam's centralized system, state powers primarily reside at the central level. All policies and laws are issued by the National Assembly (for framework legislation) and the Government (for documents on guiding the implementation of legislation), and are enforced nationwide. Nevertheless, certain competences can be decentralized to local authorities, and local governments have the authority to implement national policies and laws within their jurisdictions. Thus, to guarantee a strong legal foundation, REDD+ law must be enacted at national level, but it is also crucial to improve the capacity of local authorities to ensure the effective implementation of REDD+ in Vietnam.

3.2 REDD+ and Vietnam's development goals

The Cancun Agreements state that REDD+ activities should be undertaken in accordance with national development priorities, objectives, circumstances and capabilities, and that they should be consistent with sustainable development needs and goals. For Vietnam, the Cancun Agreements mean mitigating climate change while simultaneously achieving domestic and international development goals, such as the Millennium Development Goals (MDGs) and Vision 2020. Therefore, Vietnam's future development goals and objectives are directly relevant to REDD+ and must be supported by the country's legal, regulatory and institutional frameworks.^{xi}

Vietnam has been lauded for its rapid gains toward achieving its development goals through its "DoiMoi" economic development policy. However, challenges still remain, particularly in remote and mountainous areas and with respect to ethnic minorities who are directly

involved in forest management but who constitute a growing proportion of the population living in poverty.^{xii} Furthermore, much of Vietnam's recent economic growth has been fueled by intense natural resource exploitation, including the logging of natural forests. As a result, Vietnam will need to revisit current policies to make certain that natural resources are harvested at a level that allows for regeneration.^{xiii} As noted by the World Bank in the 2011 Vietnam Development Report (VDR), meeting the objective of sustainable growth will also "increase the need for clear property rights, rules of transaction and conflict resolution," including community benefit sharing schemes, transparency in governance, and public participation in decision-making.

The Vietnamese government has taken some important steps toward incorporating a more sustainable approach to its national development strategy. For example, the Vietnam Agenda 21 was approved in 2004 by the Prime Minister under the Decision 153/2004/QD-TTg, with the goal of the sustainable development based on three pillars: economic development, social equity and environmental protection. Agenda 21 was the first time that "environmental protection" was mentioned as a key factor in the national strategy, with clear objectives and standards on reasonable use of natural resources and environmental protection. However, climate change was not included.

In 2011, Vietnam also approved the Social - Economic Development Strategy (SEDS) 2011-2020, which sets out the government's economic roadmap. The SEDS states that national development must be sustainable as Vietnam works toward becoming an industrialized country by 2020. It also contains specific objectives on economic and social development and the environment, including a target to increase forest coverage to 45%. Notably, responding to climate change is described as a national priority. In order to implement the SEDS, the Government developed the Social - Economic Development Plan (SEDP) 2011-2016, with correlative objectives of natural resource management and environmental sustainability. The SEDP further specifies a target of 42.5% forest coverage by 2015. These objectives and targets could create advantages to REDD+ implementation in Vietnam.

3.3 International commitments

The Cancun Agreements promote and support REDD+ activities that complement or are consistent with the objectives of relevant international conventions and agreements. Vietnam is a signatory to numerous international treaties that may influence how it undertakes REDD+ policies and programmes. These include: (a) the UNFCCC regime, which features the Cancun Agreements; (b) the UN Convention on Biological Diversity (UN CBD), which includes work programmes on forest biodiversity; (c) the UN Convention to Combat Desertification and Drought (UN CCD), which speaks to the need for Parties to ensure sustainable forest management, afforestation, reforestation and soil conservation; (d) the International Tropical Timber Agreement (ITTA), which enjoins parties to promote sustainable management of tropical timber producing forests; and (e) the Convention on Wetlands of International Importance (RAMSAR), which supports the conservation of nature reserves for forested wetlands.

Vietnam is also a signatory to human rights treaties that may inform the social aspects of REDD+ activities, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention on the Elimination of Discrimination Against Women (UN CEDAW), the UN Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Universal Declaration of Human Rights.

Further, Vietnam has developed and adopted a number of “soft law” Declarations such as the 1992 Rio Declaration on Environment and Development, Agenda 21, the 2002 Johannesburg Declaration and Plan of Implementation from the World Summit on Sustainable Development, and the UN Declaration on the Rights of Indigenous Peoples (UN DRIP). Under the doctrine of legitimate expectations, these soft law instruments can guide the country’s steps in this realm of law and policy.

3.4 Human rights and poverty reduction

The Cancun Agreements emphasize that Parties should fully respect human rights in all climate change actions. Furthermore, they safeguard the inclusion and participation of local communities and indigenous peoples in the planning and undertaking of REDD+ activities. Vietnam has important human rights and poverty reduction goals, especially for indigenous people whose development will be affected by changes in laws and policies associated with REDD+, and the Government has expressed strong commitments to guarantee human rights in compliance with international standards.^{xiv} The Government has also made efforts in the implementation of international agreements on human rights for poverty reduction, gender equality, childcare, and HIV and AIDS prevention. Basic political, economic, social and cultural rights are protected by the Constitution (article 50), while other specific rights are stated in related documents, such as the Law on Gender Equality, the Law on Child Protection and Care (LCPC), and the Law on HIV/AIDS Prevention.

In the area of poverty reduction, Vietnam has made impressive progress on Millennium Development Goal 1. From a poverty rate of 58.1 per cent in 1990, the country successfully decreased poverty to an estimated rate of 14.5 percent in 2008 – a reduction of 75 per cent. The food poverty rate has also been reduced by more than two-thirds, from 24.9 per cent in 1993 to 6.9 per cent in 2008. In 2002, Vietnam adopted the National Strategy for Economic Growth and Poverty Reduction (NSEGPR) and has developed numerous regulations on the implementation of human rights and poverty reduction measures, especially in the fields of forestry and biodiversity protection. The Law on Biodiversity (LB) also guarantees indigenous communities the right to benefit-sharing from biodiversity protection, including with respect to the use of genetic resources (usually in herbal medicine production). Local communities also reserve the right to participate in assessing and monitoring the implementation of projects that impact biodiversity.

In addition, the Government gives incentives for poverty reduction to poor communities in mountainous and remote areas. For example, the Socio-Economic Development Programme for Particular Difficult Communes in Mountainous and Remote Areas — more commonly

referred to as Programme 135 (P135) — is a national poverty reduction programme that began in 1998 for a seven-year period and in 2006 was extended to 2010. Its target areas were communities and villages in remote and isolated mountainous areas and which have a high population of ethnic minorities. People living in these communities face extreme difficulties, including harsh natural conditions and few opportunities to participate in national and mainstream economic growth. Villages and communes in these areas have high rates of household poverty that are typically higher than the national average. The P135 objectives were to build infrastructure (such as roads, small irrigation dams, schools, electricity), supply sufficient drinking water, improve production skills and knowledge for the poor, and promote rural markets.

REDD+ may provide another source of poverty reduction programming in Vietnam should it be designed with supportive systems that ensure efficient and equitable benefit distribution.

3.5 Public participation in decision-making and access to information

The Cancun Agreements safeguard the full and effective participation of relevant stakeholders, particularly local communities and indigenous peoples, in developing and implementing national REDD+ strategies and action plans. In addition, they call for transparent national forest governance structures and information on how REDD+ activities, guidance and safeguards are being addressed. For Vietnam, these conditions must be taken into account in the development of legal frameworks and institutions for REDD+. Public participation in Vietnam is based on the following commitments:

- The 1992 Rio Declaration on Environment and Development provides that: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunities to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” (Principle 10)
- The Resolution No 41/TW-BCT of the Politics Bureau stipulates that all individuals and organizations have an obligation to participate in, and contribute to, environmental protection. Therefore, non-governmental organizations (NGOs) and CSs require the right to information and the right to participation, as well as support in facilitating the participation of communities in environmental protection.
- Vietnam’s Agenda 21 states the public’s right to take part in decision-making related to sustainable development.

- The Law on Environmental Protection (LEP) 2005 sets out the rights of people and local communities to participate in Environmental Impacts Assessments (EIAs) for projects located in their areas (Article 20). The Law on Land (LL) 2003 requires that the process of land use planning be open and transparent (Article 21).
- Vietnam also has several access to information laws, such as the Law on Corruption Fighting and Prevention (LCFP) and the Law on Press (LP), Law on Complaints and Accusations.
- Regarding infrastructure, the Law on Construction (LC) and the Law on Transportation (LT) both require participation to create employment for local people.
- The Ordinance on Grassroots Democracy states that local people and communities have the right to comment on important policies relevant to their rights and obligations. This framework focuses particularly on the rights of indigenous people.
- In the forestry sector, the Law on Forest Protection and Development (LFPD) (Article 13) stipulates that the process of forest protection planning and its approval must be open to the public. In addition, technical information and forest policies must be regularly updated and available to local people living in or around forest areas.

The above laws and commitments support a right to public participation and access to information and can be extended to REDD+ design and implementation, particularly those dealing with environment, EIAs and forest protection and development. Additional safeguards for public participation could also be incorporated into Vietnam's future REDD+ strategies.

4 Review of Existing Laws and Institutions Impacting REDD+

4.1 Overview

This review of existing laws and institutions impacting REDD+ identifies those legislative provisions and jurisdictional mandates which are more pertinent to REDD+ in the following issue areas: (s.4.2) UN-REDD Programme; (s.4.3) Climate change; (s.4.4) Land use, ownership and management; (s.4.5) Forestry; (s.4.6) Environmental management; and (s.4.7) Trade, investment and financial accountability. Various gaps, barriers, challenges and opportunities will be briefly mentioned throughout, leaving an in-depth analysis of key challenges and innovations to **Section 5 "Key Challenges to Legal Preparedness for REDD+."**

4.2 Vietnam UN-REDD Programme

The objective of the UN-REDD Programme for Vietnam is to assist the Government of Vietnam in developing an effective domestic REDD+ framework and also to reduce the risk

of regional emission displacements. The UN-REDD Programme for Vietnam seeks to address deforestation and forest degradation through capacity building at national and local levels. Firstly, it will build capacity at the national level to permit the Government of Vietnam to coordinate and manage the process of establishing tools for the implementation of a REDD+ programme. Secondly, it will build capacity at local levels (provincial, district and community) through pilots in two districts in Lam Dong Province. Additionally, the Programme seeks cooperation among Mekong countries in reducing emissions in the region. This work will be carried out in two phases. Phase 1, from 2008 to 2012, focuses on increasing the capacity of institutions and examining laws that have a direct or indirect impact on REDD+, at the same time as carrying out the pilot projects. These activities will help ensure that in 2012 Vietnam is REDD-ready. Phase 2, from 2012, will focus on piloting REDD+, estimated from 2012-2015, once it becomes an officially recognized financial mechanism under the UNFCCC. From 2016, Vietnam will be able to fully implement REDD+. The main activities of UN-REDD Phase 2 are anticipated to include establishing a National REDD+ Programme through the definition of forest reference emission levels and establishing benefit distribution systems piloted in six provinces, namely, BacKan, BinhThuan, Ca Mau, Ha Tinh, Lam Dong and Lao Cai.

Vietnam is one of three Southeast Asian countries, together with Cambodia and Indonesia, involved in the UN-REDD Programme, which was launched in September 2009 at the cost of nearly \$4.4 million sponsored by the Norwegian Government. Lam Ha and Di Linh districts of Lam Dong province were selected for pilot project implementation through consultations with local communities. UN-REDD also carried out activities to improve the monitoring and assessment of forest carbon stocks, and to raise REDD+ awareness at the local level. Significant achievements were realized within the first 18 months, including a distribution regime established for relevant ministries, departments and organizations; the building of a REDD+ network; the establishment of technical groups; the building of the national REDD+ programme; the implementation of community consultations on Free, Prior and Informed Consent (FPIC) in select provinces; the improvement of capacity and awareness through seminars and training; the preparation of communication and plan for consultation of related stakeholders; and the implementation of technical studies on forest reference levels. Highlights of those activities are listed in **Figure 6** below.

Figure 6. Highlights of the REDD+ Preparatory Process in Vietnam

- **February 2008:** Vietnam delivered its document on methodology and an implementation schedule of REDD to the Secretariat of the Convention
- **July 2008:** The R-PIN of Vietnam was approved
- **March 2009:** The Draft on the joint UN-REDD Program of Vietnam was approved by UN-REDD
- **July 2009:** The Prime Minister approved the Detailed Proposal Outline (DPO)
- **August 2009:** The Minister of Agriculture and Rural Development and the Coordinator of the United Nations both signed in NJPFiD
- **February 2010:** Publication of "Design of a REDD-Compliant Benefit Distribution System (BDS) for Vietnam"

- **May 2010:** Vietnam proposed UN-REDD+ project phase 2 to UN-REDD programme and Norway joined the interim partners for REDD+
- **August 2010:** Vietnam submitted a draft version of the REDD Readiness Preparation Plan (R-PP) to the Facility Management Team (FMT) Forest Carbon Partnership Facility (FCPF)
- **December 2010:** Vietnam submitted the draft UN REDD phase 2 to the Norwegian Government
- **January 2011:** Vietnam established a National REDD+ Steering Committee and a National REDD office
- **March 2011:** Vietnam hosted the UN-REDD Programme's sixth Policy Board meeting
- **March 2011:** The Norwegian Agency for Development Cooperation (NORAD) visited Vietnam to jointly appraise the UN-REDD Vietnam Programme Phase 2 proposal.

The Ministry of Natural Resources and Environment (MONRE) is the State agency that is responsible for activities responding to climate change in Vietnam, but the Ministry of Agriculture and Rural Development (MARD) is leading REDD+ development under an overarching National Steering Committee to REDD+ and National Steering Committee to respond to Climate Change. The National Steering Committee to Respond to Climate Change is an institutional framework for cross-sectoral collaboration with MARD, MONRE and other Ministries, presided over by the Prime Minister. Decision No.01/2008/NĐ-CP sets out the functions, rights, duties and institutional organization of MARD to respond to climate change. The Vietnam Administration of Forestry (VAF), an organization under MARD, is currently collaborating with MONRE and other Ministries, departments and local governments to survey REDD+ implementation in Vietnam. However, because REDD+ is relatively new and is the subject of ongoing international negotiations, Vietnam's sectoral programmes, policies, legislation and its plans for socio-economic development have not yet fully incorporated REDD+ objectives and activities.

In 2010, with the agreement of Prime Minister, MARD established the Steering Committee to lead REDD+ in Vietnam. The National REDD+ Network and REDD+ Working Group, were also established, to create awareness of the REDD+ mechanism and build capacity at national and provincial levels to coordinate activities by ministries, and other international agencies and organizations. The National REDD+ office was established in 2011 to coordinate and manage the process of developing tools to implement Vietnam's National REDD+ Programme. The various partners are rapidly moving the country forward to make REDD+ a reality in the country.

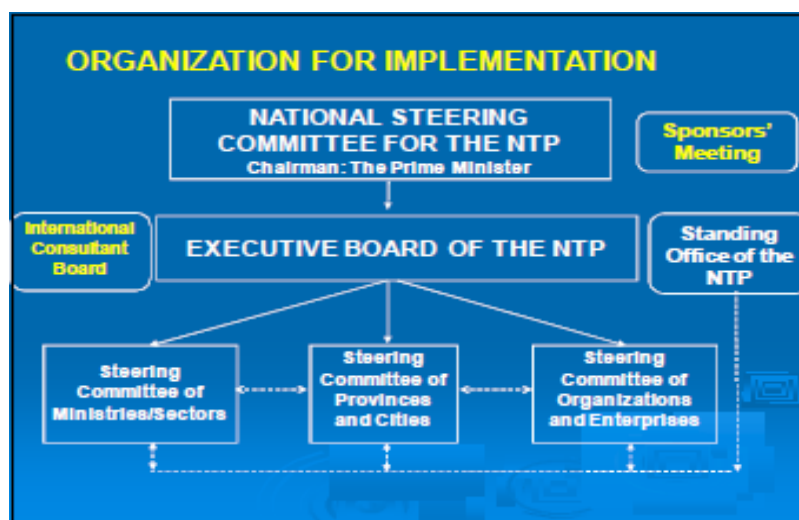
In February 2008, Vietnam submitted a proposal outlining an implementation method and schedule of REDD+ in Vietnam to the UNFCCC Secretariat, and in October 2010, MARD began to incorporate REDD+ into the National Plan on Forest Protection and Development (NPFDP) for 2011-2020. The NPFDP contains complementary work programmes on the enhancement of law enforcement, management and trade of forest products, and Forest Payment for Ecosystem Services (PES), among other policies.

4.3 Climate change strategies

The Cancun Agreements provisions for REDD+ target reducing greenhouse gas emissions in the forestry sector to mitigate climate change, but they also require that REDD+ activities be consistent with countries' adaptation needs. Therefore, it is necessary to situate Vietnam's approach to REDD+ within the broader context of its climate change strategies.

According to the World Bank, Vietnam is one of the five countries in the world most affected by climate change. With improved evidence of its risks in recent years, measures to combat climate change have received increasing political interest and support. Vietnam's National Target Programme to Respond to Climate Change (NTP-RCC) was approved by the Prime Minister in 2008 under Decision 15/2008/QĐ-TTg. The strategic objectives of the NTPRCC are to assess climate change impacts on specific sectors and regions; to develop feasible action plans to effectively respond to climate change in the short-term and long-term; to ensure sustainable development; to tap into opportunities to develop on a low-carbon economic trajectory; and to join the international community's efforts in mitigating the effects of climate change. To implement the NTPRCC, a National Steering Committee has been established with the Prime Minister as its Chairman. The Minister of MONRE is the Deputy Standing Chairman and other members of the Committee come from MPI, MOF, MARD and MFA (see **Figure 7**). MONRE is the focal point for NTPRCC implementation.

Figure 7: Organization of National Steering Committee for the NTP.^{xv}



The Action Plan Framework for Adaptation to Climate Change in the Agriculture and Rural Development Sector for the period 2008-2020 (APF), was also launched by MARD in 2008 under Decision No. 2730/QĐ-BNN-KHCN, together with Decision No. 2730/QĐ-BNN-KHCN, to improve climate change adaptation capabilities and ensure the sustainable development of agriculture and rural development. The APF includes a five-year action plan and establishes a MARD steering group on climate change and mitigation. The APF focuses on the goal of "ensuring that rural communities benefit from the equal actions to adapt to and mitigate climate change." One of the key programme activities is research and planning for

forest protection development in coastal sea areas. Overall, however, the APF makes little mention of forest development as a climate change adaptation measure.

Vietnam is also a signatory to the UNFCCC and the Kyoto Protocol. To implement international climate change commitments in Vietnam, the Prime Minister has instructed ministries and agencies to perform certain tasks, including: to propose a Kyoto Protocol implementation plan for the period 2006 – 2010; to identify sectors and priority areas in accordance with national socio-economic development plans for 2006 – 2010; to research opportunities in the carbon market, including Clean Development Mechanism (CDM) projects in Vietnam; and to ensure that CDM activities are consistent with the UNFCCC and other international commitments on the environment to which Vietnam has signed or acceded (see a further discussion of Vietnam’s afforestation and reforestation CDM projects below). Vietnam has also begun to undertake related legislative reforms including the following, which are of relevance to REDD+ implementation:

- Decision No. 172/2007/QĐ-TTg issued on 16/11/2007 by the Prime Minister, to approve the national strategy on disaster prevention and reduction by 2020;
- Directive No. 35/2005/CT-TTg issued on 17/10/2005 by the Prime Minister on the implementation of the Kyoto Protocol under the UNFCCC;
- Decision No. 47/2007/QĐ-TTg issued on April 2007 by the Prime Minister approving the Plan of Implementation of the Kyoto Protocol under the UNFCCC in the 2006 – 2010 period, which makes MONRE and other ministries, branches and localities responsible for the implementation of the Kyoto Protocol and CDM;
- Decision No.158/QĐ-TTg issued on December 2, 2008 by the Prime Minister approving the NTPRCC ;
- Decision No.2730/QĐ-BNN-KHCN issued on May 9, 2008 by the MARD promulgating the APF to Climate Change for Agriculture and Rural Development for the period 2008 -2020, including within the forestry sector.

To deal effectively with climate change, Vietnam is also developing a National Strategy on Climate Change (NSCC) until 2050 and vision to 2100. This strategy is prepared by MONRE and it has been submitted to the Prime Minister for approval. In this draft, the role of the forestry sector, and in particular a REDD+ mechanism, are recognized by the Government of Vietnam.

4.4 Land use, ownership and management

Interests in land are diverse and are often regulated by separate legislative mandates, such as agriculture, natural resource management and land use planning. Laws and governance over land use, ownership and management are of primary importance to any future REDD+ activities and will be considered below, with the exception of land tenure, the forestry sector and integrated environmental management for which in-depth reviews are provided. Therefore, the following subsections consider: Land management (s.4.4.1); Mines and minerals (s.4.4.2); Hydropower undertakings (s.4.4.3); Agriculture (s.4.4.4); Easements and land acquisitions (s.4.4.5); and Protected areas for biodiversity (s.4.4.6).

4.4.1 Land use planning and management

Vietnam's land use planning laws and frameworks are relevant to REDD+ design and implementation as they define a hierarchy of land use rights that affect forest management. MONRE is in charge of consistent land use planning nation-wide, and accordingly, is responsible for developing National Land Use Planning (NLUP), which is submitted for the approval to the NA. Locally, People's Committees at all levels (provincial, district and community) are designated to undertake land management within their jurisdictions, developing local land use plans and submitting them to higher levels for approval. Sectoral land use plans are also formulated by competent ministries, (e.g., agricultural land use planning undertaken by MARD). These sectoral and local land use plans are compiled to develop the NLUP. Under the same process, forest land use planning is done at the national level for each type of forest. As regulated by the LL, LFPD and the NLUP, land is classified into three types: agricultural land, non-agricultural land and unused land. Forest land is considered a sub-group of agricultural land, together with agricultural production land, aquaculture land and land for salt production.

Under the Land Use Planning regime, there are five types of forest land: (1) production forest, (2) protection forest, (3) special-use forest, (4) land for reforestation and (5) land for afforestation. This classification differs from that based on Article 4 in the LFPD, in which forests are divided into only three types: (1) protection forest, (2) special use forest and (3) production forest. Among these types, production forest and land for afforestation cannot be the objects of REDD+, as REDD+ requires natural forest. An additional complication is the fact that forest land continues to be shifted to other purposes. Forests are also subject to illegal deforestation practices, making forest land unstable and posing risks to the permanence of REDD+ activities.

4.4.2 Mining and minerals

Mining and mineral exploitation laws and regulations in Vietnam will be important for REDD+ implementation, as subsurface rights often take precedence over forest management and can cause reversals in the way in which forests are managed to reduce emissions. Because of their significant contribution to GDP (approximately 10% of GDP), mining and mineral exploitation activities in Vietnam have received incentives and direct funding from the state budget; however, mining and mineral exploitation are also a factor in the decrease and degradation of forested land, causing deforestation for exploration, access to, and exploitation of subsurface stores (Figure 8 shows a good example).

Figure 8: Deforestation in some mining areas (Nguyen DucQuy, Science Magazine, vol.4, 1996)

Area	Deforestation area (ha)	Level of degradation
Antimonate exploitation in Mau Due (Ha Giang province)	25	Forest was destroyed and became waste-land
Gold and antimonate	>720	Decrease of natural forest and

exploitation in ChiemHoa (TuyenQuang)		planted forest; excavation destroyed part of forest land
Mining in Bac Lung, Thai Nguyen province	218	Natural forest loss, up-hill land destroyed
Charcoal mining in Thai Nguyen	671	Forest land decreased for exploitation area and landfill area
Metal mines in Bac Can and Thai Nguyen	671	Forest land decreased for exploitation area and landfill area
Stone exploitation in QuyChau, Nghe An	200	Natural and planted forests lost and degraded

Vietnam has a comprehensive legal framework on the management of mining and mineral exploitation and environmental protection, which requires mining projects to conduct EIAs before implementation. Moreover, pursuant to the Law on Minerals (LM) and the Law on Environmental Protection (LEP), after completing exploitation, mineral exploiters must rehabilitate affected environmental resources (primarily land recovery and re-plantation) to return them to their previous conditions. To enforce this obligation, according to Article 114 of the LEP, mining companies must deposit a certain amount of money prior to exploitation, determined according to the scale of exploitation, the degree of adverse environmental impacts, and the costs needed for environmental improvement and rehabilitation after exploitation. This deposit is used in whole or in part to rehabilitate the environment should mining companies fail to perform their obligations after exploitation. However, actual implementation of this regulation is weak, and in many cases, deposits for environmental recovery are not collected.

The LM prohibits mining activities in the areas of special-use forests, protection forests or areas planned for special-use forests or protection forests, which creates a legal basis to facilitate the implementation of REDD+ in Vietnam. However, conflicts exist between mining and forest protection, such as the contradiction between forest planning and mineral planning. In reality, mining and mineral exploitation are prioritized and primarily take place in naturally forested areas, resulting in forest loss. This incompatibility between sectors must be addressed if REDD+ is to be effectively implemented.

4.4.3 Hydropower undertakings

The laws and regulations governing the construction and operation of hydropower undertakings will also have important impacts on REDD+ implementation in Vietnam insofar as such undertakings may require the clearing of forests and wetlands to establish works, facilities and access. In fact, hydropower projects have been considered a primary driver of forest loss, as almost all hydropower projects are undertaken in forested areas. On average, the production of 1 MW of electricity causes the loss of 62.63 ha of forest land.^{xvi} Currently,

47 out of 128 special-use forest areas are directly or indirectly affected by hydropower projects. The development of hydropower in Vietnam is also a cause of forest degradation, especially of special-use forests and forests in conservation areas, leading to water shortage in the dry season and flooding in the rainy season. In some cases, hydropower development has been abused to conceal illegal logging. Nevertheless, the National Power Development Plan for the 2004-2010 period encouraged the development of hydropower and hydropower resources. As a result, the rapid development of hydropower in recent years has caused a number of adverse impacts on environment.

Hydropower projects are subject to EIAs pursuant to Article 18 of the LEP, and hydropower companies must plan for environmental protection measures. The LEP also mentions the right of indigenous communities to participate in the monitoring of project development and implementation. In addition, to reduce the harmful effects of hydropower projects, the Government has issued a number of policies on developing watershed protection forest, such as the 5 Million Hectares Reforestation Programme (5MHRP), in which the Government invested in the re-plantation of watershed protection forest, and the policy on FPES, which requires hydropower producers to pay households, individuals and communities to protect watershed forests.

Nonetheless, EIAs have had little practical effect; proposed measures for environmental protection are usually ignored while the monitoring of EIA implementation is weak. The mechanism for enforcement of EIAs and proposed measures for environmental recovery, as well as other policies on rehabilitation and protection of watershed forests, is also limited. The result is insufficient or no implementation of those regulations, causing the rapid loss of watershed protection forests in many hydropower areas and the abuse of indigenous communities' rights. In these circumstances, it is unclear whether current EIAs will be sufficient to ensure the permanence of REDD+ activities in forested areas that have hydropower potential.

4.4.4 Agriculture

The most important economic sector of Vietnam is agricultural production. More than 75% of the population of labour age works in the sector.^{xvii} Vietnam is the biggest pepper exporter and the second biggest rice and coffee exporter, in the world. Agriculture, particularly the development of industrial tree plantations, is also a significant driver of deforestation and forest degradation in Vietnam; it therefore poses challenges for REDD+. Since 2005, MARD has conducted reviews of forested lands and available lands for forests nationwide in order to determine the zoning areas for stable and long-term cultivation. Currently, MARD is directing the implementation of a scheme to support populations in the highlands to find replacement crops that will allow them to move from mobile to fixed farming and to apply measures to improve their land. These land improvement methods include scattered plantations, industrial crops, fruit trees and fodder crops. The programme aims to create jobs and increase incomes while protecting the forest.

To increase agricultural development, the Government of Vietnam has made significant investments in this sector; however, in some cases, agricultural development has resulted

in the conversion of forests to agricultural land, mainly for the plantation of perennial crops and industrial plants. Moreover, although MARD has jurisdiction over both agriculture and forestry, its policies in these two sectors are not always complementary. For instance, in 2009, the Government approved the National Strategy of Rubber Tree Development (NSRTD) to 2015 with a vision toward 2020 (Decision 750/QĐ-TTg), which targets the increase of rubber plantations nation-wide. The implementation strategy is divided into 3 periods: (1) to 2010: rubber plantations increased by 70,000 ha; (2) to 2015: increased by 150,000 ha and (3) to 2020: increased by 800,000 ha. To expand land for rubber plantations according to this Strategy, some forested areas will be cut down and converted to rubber plantations, including ineffective agricultural production land, unused land and "natural poor forest." However, the benefits of agriculture are perceived as much higher than those from REDD+ and people tend to shift forest land to agriculture land. Moreover, by 2020, the Government has also planned for the development of aquaculture in brackish water areas, estuaries, coastal areas and mangrove forests. With the target of increasing seafood export turnover to USD 8-9 billion in 2020, a large area of coastal mangrove forests are at risk of destruction for conversion to aquaculture. Given these challenges, the conflicts and opportunities for synergies in the agriculture and forestry sectors should be clarified for REDD+ to ensure that forested lands are not converted to agricultural production in a manner that compromises REDD+ activities.

4.4.5 Easements and land acquisitions

Easements and acquisitions allow relevant actors to enter and develop works or undertakings on a parcel of land. In Vietnam, existing or new easements and acquisitions could impact REDD+ efforts should they reverse gains made in REDD+ activities through the removal of trees or displacement of projects for other land use. Moreover, should lands subject to REDD+ activities be acquired for easements or other undertakings, those communities and investors who would stand to benefit from REDD+ activities must be adequately compensated.

The Government has enacted a number of laws, decrees and regulations that constitute the legal framework for land acquisition, compensation and resettlement. The principal documents include the LL, which provides a comprehensive land administration law; Decree No. 197/2004/ND-CP dated 3/12/2004, on compensation, rehabilitation and resettlement in the event of land recovery by the State, as amended by Decree No. 17/2006/ND-CP dated 27/01/2006; and Decrees No. 188/2004/ND-CP dated 16/11/2004 and 123/2007/ND-CP dated 27/7/2007, which specify the methods for land pricing and land price frameworks in the event of land recovery by the State. Decree No. 84/2007/ND-CP dated 25/5/2007 provides additional regulations on the issuance of land use rights certificates, land acquisition, land use rights implementation, the procedure of compensation, assistance in the event of land recovery by the state and grievance redress.

Article 38 of the LL states 12 cases in which the state will recover land. As per Article 42 of the LL, compensation or support for land acquisition will only be provided in cases where land has been recovered for purposes of national security, national benefit, public interest and economic development. In these cases, the Government must compensate, rehabilitate and support organizations, households and individuals from whom land is acquired. The

Government will not be responsible for paying compensation and support for the illegal or expired use of land, or for the use of illegal land encroachment. Other laws, decrees and regulations relevant to land management, land acquisition and resettlement include the Construction Law 16/2003/QH11 on compensation and relocation of people affected by ground clearance for investment projects, Decree 16/2005-ND-CP dated 7/12/2005 on the implementation of the LC, Decree 182/2004/ND-CP dated 29/10/2004 on penalties for administrative violations in land issues, and Decree 198/2004/ND-CP dated 3/12/2004 on land use fees.

According to Decree 197/2004/ND-CP, if persons who have land acquired by the State meet conditions related to land ownership specified in the Decree, they shall receive compensation. If they fail to meet the conditions for compensation, the Peoples' Committees of the provinces or centrally run cities shall consider providing such support. Decree 69/2009/ND-CP dated 13/8/2009 (Article 20(1)) states that households directly engaged in agriculture who lose 30% or more of their agricultural land are entitled to life stabilization assistance. Land acquisition regulations on compensation are also applied to the acquisition of production forest areas that have been allocated to households, individuals or communities for protection and management. However, this policy does not apply to natural forests and communities living in their vicinity – an omission that could have serious implications for REDD+.

4.4.6 Protected areas for biodiversity

Protected areas for biodiversity could overlap with potential REDD+ activities insofar as habitat for flora and fauna can be preserved while also reducing the emission of greenhouse gases. Moreover, the Cancun Agreements ask that REDD+ activities take into account the multiple functions of forests and other ecosystems and are consistent with the conservation of natural forests and biological diversity. Vietnam is one of the most biodiversity-rich countries in the world. According to MARD, Vietnam has 167 natural conservation areas including national parks, nature reserves, landscape conservation areas and marine conservation areas. Nevertheless, Vietnam now has approximately 700 species of threatened flora and fauna, of which 300 are facing extinction in the world. Forty-nine of Vietnam's globally threatened species are classified as "critically endangered."^{xviii} Biodiversity degradation is also taking place at an alarming rate in coastal areas.^{xix}

Vietnam has signed various biodiversity related conventions such as the Convention on Biodiversity (CBD), the Convention on International Trade in Endangered Species (CITES), the UN Convention to Combat Desertification (UNCCD), and the Ramsar Convention on Wetlands (Ramsar). The LB promotes sustainable development and conservation of biodiversity, including the rights and obligations of organizations, households and individuals to participate in conservation. The LB contains provisions related to climate change adaptation in terms of community participation in conservation management and reforestation, including Article 22: Planning and assessing projects of national conservation zone establishment. The LB has specific provisions on the establishment of national parks and protected areas for national conservation and is used to establish protection zones for Vietnam's forested areas.

Protected areas for biological diversity also often provide lessons learned for REDD+ in relation to benefit distribution systems from community-based management initiatives. In Vietnam, local peoples are permitted to exploit natural resources in protected areas and may participate and benefit from business services in sanctuaries, and enjoy preferential policies, support, and compensation in accordance with Clause 1 of Article 30 of the LB. Organizations and individuals that use environmental services related to biodiversity must pay money to the organizations and individuals that provide such services under Article 74. (See also the discussions on FPES, below in the section on “Innovations”). Notably, however, the LB and Decree 65/2010/ND-CP dated 11/6/2010, which provides guidance and details on its implementation, do not mention the Government's concern for the impacts of climate change on forests and biodiversity, nor do they include provisions to ensure the implementation of adaptation in this area.

In addition, in 2007, Prime Minister approved the National Action Plan on Biodiversity to 2010 with vision toward 2020 and implementation of Convention on Biodiversity and Cartagena Protocol on Biosafety. This plan sets the objective of recovering 50% of natural, typical and sensitive ecosystems. In 2010, the Government also approved Decree 117/2010/ND-CP on the organization and management of special-use forests, setting the objective to manage and protect natural forests and protected areas. This Decree will help to maintain and protect natural forests and aid in biodiversity conservation. However, it allows for the shift of special-use forest lands to other purposes, including protection forest and production forest, as well as other uses such as agriculture, transportation, and hydropower (Article 18 of the Decree) which could adversely affect REDD+ implementation.

4.5 Forestry

4.5.1 Forest characteristics and recent trends

According to MARD, Vietnam had 13,030,939 ha of forest cover in 2010. Of this forest cover, special-use forest accounted for 1,994,151 ha (15%), protection forest for 4,775,045 ha (37%), production forest for 6,108,689 ha (47%), and other forest for 153,054 ha (1%) – (see **Figure 9**). Of Vietnam's forests, 77% were natural and 23% were plantation (see **Figure 10**).

Figure 9: Forest Cover in Vietnam 2010

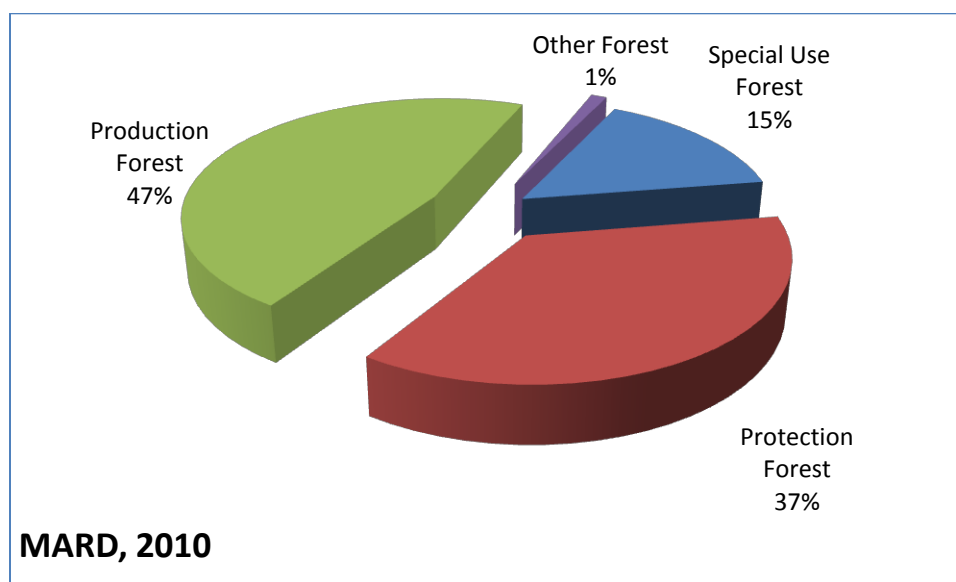
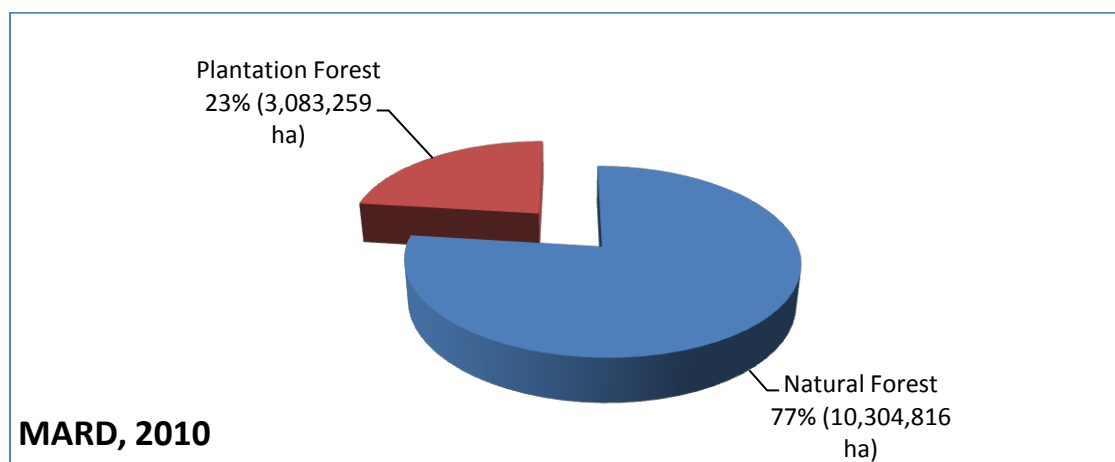


Figure 10: Forest areas in Vietnam



Forests are unevenly distributed throughout Vietnam, constituting 5% of land in the northern delta and the Mekong River, 35% in North Central region and the Coastal Central areas, and 56% in Highland regions. The forest types are varied, including: coniferous forests; deciduous forests; mixed coniferous forests; wet and dry dipterocarp forests in the highland; and lowland dipterocarp forests, mangroves, bamboo, and mixed wood and bamboo trees in the lower regions, plains and wetlands. The quality of the forests is also significantly differentiated.

Forested land in Vietnam has undergone extremely important changes in recent decades. During the period from 1943 to 1983, about 50% of Vietnam's forests were degraded or

destroyed. The area of forest coverage decreased to a minimum of approximately 27% in 1990. However, from 1990 to 2000, Vietnam increased its forests by 236,200 hectares annually each year, equivalent to a 2.5% per year increase. From 2000 to 2005, the rate of increase was 2.1 % a year. This led to the growth of forest coverage to 38.3%, or about 2,568,000 ha in 2008. These figures demonstrate that Vietnam has moved in the right direction by increasing forest areas. In the Highland region, however, deforestation and forest degradation continue to be major factors in forest loss. In other areas, increased forest cover is the result of plantation forests, which provide less biodiversity and other co-benefits as compared to natural forests. In some areas, such as the North Central region, deforestation is continuing at a much lower rate and the level of forest cover can be considered stable.

In addition, the value of existing forests in Vietnam has not yet been fully calculated. Valuation of forests through an ecosystem services approach, which recognizes the multiple functions of forests including timber, non-timber forest products, water retention and filtration, and other environmental values, could create a solid factual basis for comparing the interests of forest protection and development against the immediate profits from the conversion of forests to other uses. Such data would also provide the basis for building strong policy incentives to prevent deforestation and forest degradation. However, such valuation, especially with respect to carbon sequestration, still faces difficulties.

4.5.2 Legal barriers driving deforestation and forest degradation

Results of the Programmes of Survey, Monitoring and Evaluation on National Forest Resources from 1991 to 2011 implemented by MARD have found certain major drivers of deforestation and forest degradation in Vietnam, many of which have important legal, regulatory and institutional elements. These include:

- Unclear legal regimes governing, but not preventing, the conversion of forest land to agricultural land (especially conversion into industrial plantations for products such as rubber trees, coffee and pepper).
- Gaps in land use planning rules that govern the farming patterns and shifting cultivation of migratory highland ethnic minorities, who are heavily dependent on forest resources for survival. The relocation of people from the lowlands to the highlands and from the Northern mountainous areas to the Highland region has also contributed to population pressures on the existing forest area.
- Lack of forest management and enforcement measures to prevent illegal logging. This problem is compounded by inadequate legislation, limited law enforcement capacity, and lack of coordination between law enforcement agencies.
- Unclear forest rights stemming from inadequate licensing procedures (for example, forest use rights and benefits from forest protection).

- Fragmented law and policy regimes governing the construction of irrigation systems, hydroelectric facilities, road systems, resettlement and industrial parks, among other economic development activities.
- Gaps in regulations monitoring and governing systems to supply raw materials for processing industries and for the export of timber and forest products.

While the Government of Vietnam has invested a great deal of effort to increase forest cover (for example, through Program 135, 5MFHP and NFDS), there exists a strong need for these legal barriers to be addressed. There are also continuing challenges relating to securing land tenure and rights to participate in sustainable forest use and management. As a corollary, the pressure on forest resources is increasing, and deforestation and forest degradation is occurring in many areas.^{xx}

4.5.3 Existing forestry laws

In Vietnam, the Constitution is the basic and highest law, in which it is stated that land and forest belong to people (Article 17) and the State is the representative owner. The LFPD is the most comprehensive law regulating forest management, protection, development and use, as well as the rights and obligations of forest owners. As in many countries, the definition of forests and forest degradation under the law was, until recently, relatively unclear. The LFPD provides, “[t]he forest is an ecosystem consisting of the complex of forest vegetable, forest animals, forest microbe, forest land and other ecosystem factors, in which timber, bamboo or characterized flora is the main component of the forest cover from 0.1 upwards. Forests include natural forests and planted forests on production forest, protection forest and special-use forest land” (clause 1, Article 3). This classification is not consistent with international classification and the LFPD has no definition of forest degradation. In 2009, MARD supplemented the LFPD to develop specific criteria for forest definition under Circular No. 34/2009/TT-BNNPTNT dated 10/6/2009. Accordingly, in Vietnam forests can now be defined as follows:

- An ecosystem where the main components include perennial, woody, palm trees with the top soaring height of 5.0 meters or more (except for newly planted forests and some species of coastal mangrove), bamboo, and is able to provide timber, non-timber forest products (NTFPs), and other direct or indirect values such as biodiversity conservation, environmental protection and landscape.
- Young forests of woody trees and post-harvest forests have an average height of 1.5 meters for slow-growing tree species, over 3.0 meters for the quick-growing tree species and a density of 1.000 plants / hectare or more.
- The main component of forests must reach 0.1 foliage coverage or more.
- The minimum consecutive area is 0.5 hectare or more, if it’s a strip of trees, it must have a minimum width of 20 meters and with more than 3 lines of tree.

Such definitions are helpful, as they prevent bare or barren lands from being classified as “forests” for the purposes of REDD+ programming. The Government regulates the management and use of special-use forests, protection forest and production forests

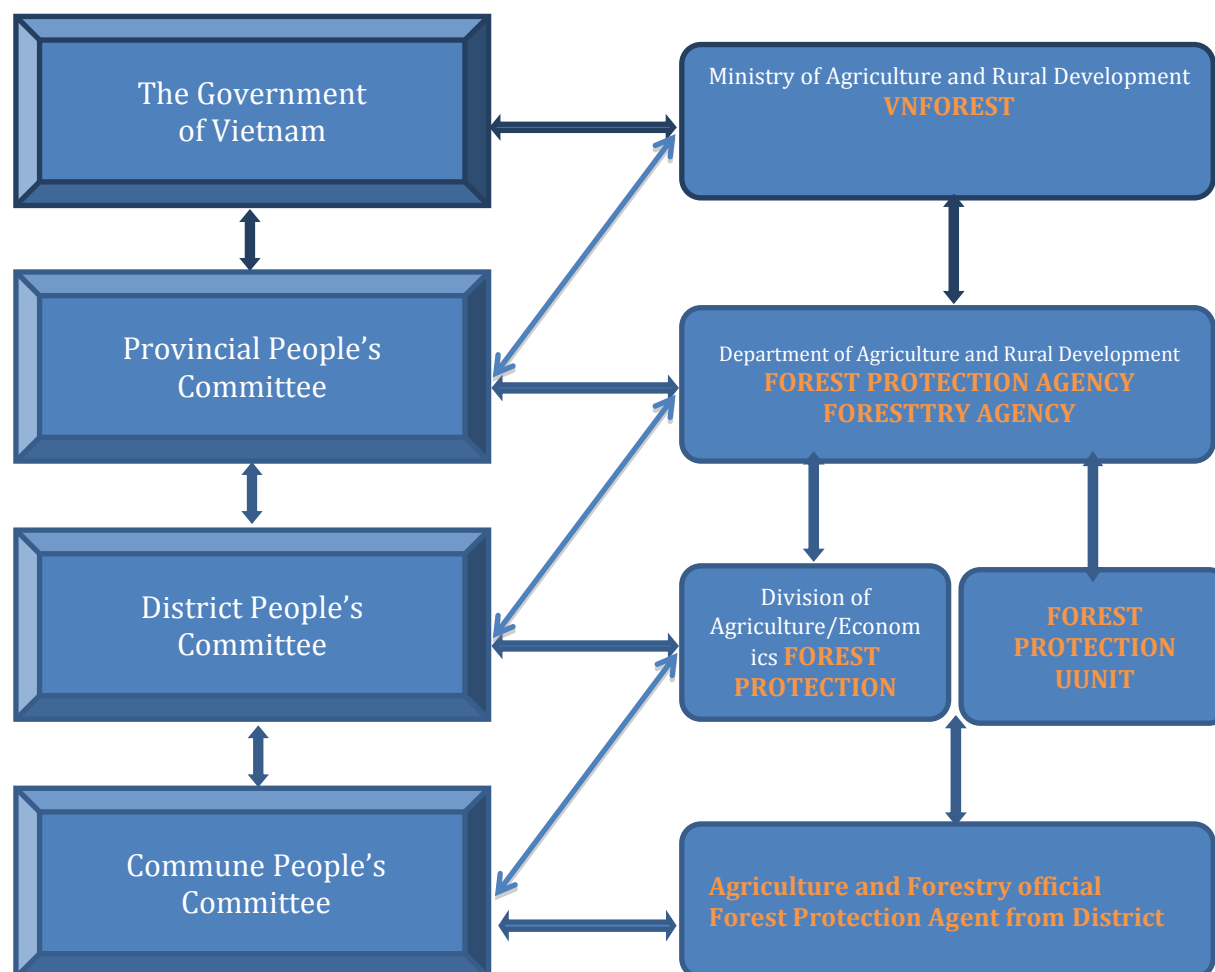
according to the suitability of practices for each type, and it takes into account the function (natural forest, plantation forest); the terrain conditions (mountainous land forests, wetland forests, mangroves); the tree type (woody forest, mixed forest); and according to the forest reserves (poor, medium, rich, very rich, or no reserve).

MARD approved the NFDS for 2001-2010, in which planning measures extend to 16 million ha of forested lands, including 2 million ha of special-use forest, 6 million ha of protection forest and 8 million ha of production forest. In 2005, consistent with the NFDS, the Prime Minister issued Directive No. 38/2005/CT-TTg dated 5/12/2005 to direct localities to resurvey and re-plan forests to suit the requirements of forest management, including conservation, protection and sustainable economic development. According to MARD, as of December 31, 2010, the national forest area was 13,388,075 ha (coverage rate of 39.5%), including 2,002,276 ha of special-use forest, 4,846,196 ha of protection forest, and 6,373,491 ha of production forest. The existing classification of forests will assist in surveying and assessing forest conditions to select suitable locations for REDD+ implementation. In 2007, the Prime Minister also approved the NFDS strategy for 2006-2020, which delineates plans to manage, protect and use 16.24 million ha of forested land, while increasing the area of land with forest cover to 47% by 2020. Of this forest cover, special-use forest will account for 2.16 million ha, protection forest for 5.68 million ha, and production forest for 8.4 million ha.

4.5.4 Institutional framework for forest governance

In Vietnam, the institutional framework for forest governance and land management extends from the central to the provincial and local levels. The institutions for forest governance are led by MARD. According to the LFPD, the institutional framework for forestry is represented at the central to the district level. The state management agency in forestry at central level is MARD (VNFOREST is the focal point and it was established in 2010 from the merger of two departments under MARD, including the Department of Forestry, which is responsible for forest management, utilization and development, and the Department of Forest Protection, which is responsible for forest protection and law enforcement). Additional agencies that assist the General Director are the Department of Forest Development, the Department of Forest Service Use, the Department of Nature Conservation; the Department of Forestry, the Department of Inspection, the CITES Management Authority of Vietnam, the Department of Science and International Cooperation, and the Department of Planning and Finance. State management agencies that are charged with the forestry sector at the provincial level are the DARD with the provincial Department of Forestry and Forest Protection Department. At the district level, there are departments with a focus on both agriculture and rural development, which employ officials responsible for monitoring forests or part-time rangers. At the commune level, there are forestry officials who are responsible for consulting with the Communal People Committee and for directly implementing forestry management at the commune level (see **Figure 11**).

Figure 11: Institutional framework for forest governance in Vietnam



In contrast, the primary land management agency at the central level is the MONRE, through its General Administration of Land (GAL). Land management agencies at the provincial level are the Department of Natural Resources and Environment (DONRE), with responsibility for the registration department of land use rights. Land management agencies at the district level consist of the Divisions of Natural Resources and Environment (DDONRE), which include registration offices. There are also administrative offices at the commune levels. It means that forest land is under direct management of MARD, but as a part of land, forests are also under management of MONRE. These two management systems with different regulations and competences are creating inconsistency among related agencies.

4.5.5 Land tenure and forest governance

In Vietnam, there are two main laws and regulations on forests and forested lands. The LL regulates the relationship between forests and land tenure and the LFPD details the regulation of forest resources. These are reviewed below.

Legislation and policies on land and forest allocation

The Government of Vietnam's policies on land and forest allocation are significant not only for the promotion of economic growth and job generation in rural and mountainous areas, but also in terms of the protection of forests and the sustainable development of local communities. Article 5 of the LL states that land belongs to the people of Vietnam and that the State is the representative owner. Article 6 of the LFPD states that the State unanimously manages and determines ownership and use rights to natural forests or forests invested by State budget. As a result, the State has actual authority to determine land and forest use. The State grants land and forest use rights through land allocations, leases, the recognition of user rights and the regulation of plantations. Land and forest allocations are one of the basic methods by which the State grants long-term stable land and forest use rights to local and forest dependent peoples, and other forest owners. The LFPD states that forest owners are organizations, households and individuals to whom the State allocates and releases forests, allocates land to plant, releases land to plant, recognizes forest use rights, recognizes plantation ownership, and accepts the transfer of forests from other owners.

According to the LFPD, there are 8 types of recognized forest owners in Vietnam (Article 5): State enterprises, joint venture enterprises, individual households, management boards forest protection, management boards for special-use forests, army units, science and training organizations of forestry, Vietnamese people in foreign countries investing in Vietnam, and foreign organizations and individuals investing in Vietnam. Furthermore, village communities are also granted forest use rights and are considered as forest owners, although such communities have not yet been recognized as legal subjects under the Civil Code. These owners may participate in REDD+ related activities and benefit from REDD+ revenues in the future.

After the promulgation of the national LFPD, State agencies adopted many legal documents to guide the law's implementation. For instance, in 2007, MARD issued Circular No.38/2007/TT-BNN, which provides administrative procedures for the allocation or lease of forests to as well as forest acquisitions from organizations, households, individuals and rural communities. Recently, on Jan 29, 2011, MARD and MONRE issued another similar law, Circular No. 07/2011/TTLT-BNNPTNT-BTNMT. Guidelines also provide for coordination between MONRE and MARD to perform tasks such as the allocation and lease of forests with land allocation and lease.

The LL and LFPD also provides rights of forest owners, through conversion, transfer, donation, lease, inheritance, mortgage, guarantee or contribution of capital, depending on the types of forests and forested land and depending on the types of forest owners. Households, individuals and rural communities that are assigned forested lands, only have rights to use lands and forests and do not have full ownership rights. Moreover, among those categories, rural communities have the fewest rights because they have no rights to convert, transfer, donate, lease, mortgage or use their lands as collateral (see **Figures 12 and 13**). This may limit how they can participate in and receive the benefits from REDD+ activities.

Figure 12: Summary of land tenure and forest sector rights of ownership and use for households and individuals

Criteria	Under Law on Land (LL)	Under Law on Forest Protection and Development (LFPD)
TYPE OF ALLOCATION	Allocating production and protection forest land without collecting the land use fees	Allocating protection and production forests without collecting the land use fees
LIMIT	Each household, individual is assigned not over 30 hectares for each type of land. The exceeded land areas must be changed into leased land. - Encourage to cultivate the waste land and bare hill	- Each household, individual is assigned not over 30 hectares for each type of forest. - The exceeded forest areas must be changed into leased forest.
DURATION	- Production forest land: 50 years- with extension conditions. - Protection forest land: stable and long-term	- Production forest: 50 years –with extension conditions. - Production forest: stable and long-term
FOREST CONDITION	Not mentioned	Does not differentiate (rich, poor or medium forest)
RIGHTS	<p>1. General rights</p> <ul style="list-style-type: none"> - are granted by State as land use right -use of land in the long-term -stable duration and suitability to time of land allocation -compensation for working and investment results on assigned land -protection by the State of the legal rights and benefits appurtenant to assigned land. <p>2. Specific Rights</p> <ul style="list-style-type: none"> - rights to convert, transfer, donate, lease, mortgage, guarantee or contribute capital on business 	<p>1. General rights</p> <ul style="list-style-type: none"> - are granted by State as forest use right -use of forest in the long-term -stable duration and suitability to time of forest allocation - -compensation for working and investment results in forest protection and development– training in technique funded under the State; -protection by State of the legal rights and benefits from assigned forests. <p>2. Specific Rights</p> <ul style="list-style-type: none"> - For production forest as planted forest: rights to converse, transfer, donate, lease, mortgage, guarantee or contribute capital on business equivalent to the value of forest use right. - For production forest as natural forest: rights to mortgage, guarantee, contribute

	equivalent to the value of land use right; individual is inherited	capital on business equivalent to the value of forest use right. - is inherited the forest use right. - For protection forest: only logging under regulations, rights to transfer the assigned forest area, is inherited the forest use right under law.
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Figure 13: Summary of land tenure and forest sector rights of ownership and use for communities

Criteria	Under Law on Land (LL)	Under Law on Forest Protection and Development (LFPD)
TYPE OF ALLOCATION	State allocates protection forest land without collecting land use fee	- State allocates production and protection forest without collecting forest use fee
LIMIT	Not regulated	Not regulated
DURATION	Stable and long-term	-Production Forest: 50 years – and extension - Protection Forest: Stable, long-term
FOREST CONDITIONS	Not mentioned	Does not differentiate (rich, poor or medium forest)
RIGHTS	1. General rights Similar to rights of households and individuals 2. Specific rights - not allowed to convert, transfer, donate, lease, mortgage, guarantee or contribute capital on business equivalent to the value of land use right	1. General rights Similar to rights of households and individuals 2. Specific rights - Not allowed to divide forest to members of community; not allow to converse, transfer, donate, lease, mortgage, guarantee or contribute capital on business equivalent to the value of forest use right

According to MONRE, as of January 1, 2009, the State has allocated about 11.4 million ha of forest land to organizations, households, individuals and rural communities for stable and long-term use; this figure includes allocations to households and individuals of 3.82 million ha (equivalent to 33.5%) and 2.97 million ha to economic organizations (26%). The structure of ownership and use rights over forested lands and natural resources has changed in recent years. In fact, three major types of forest use/ownership rights have been established as follows.

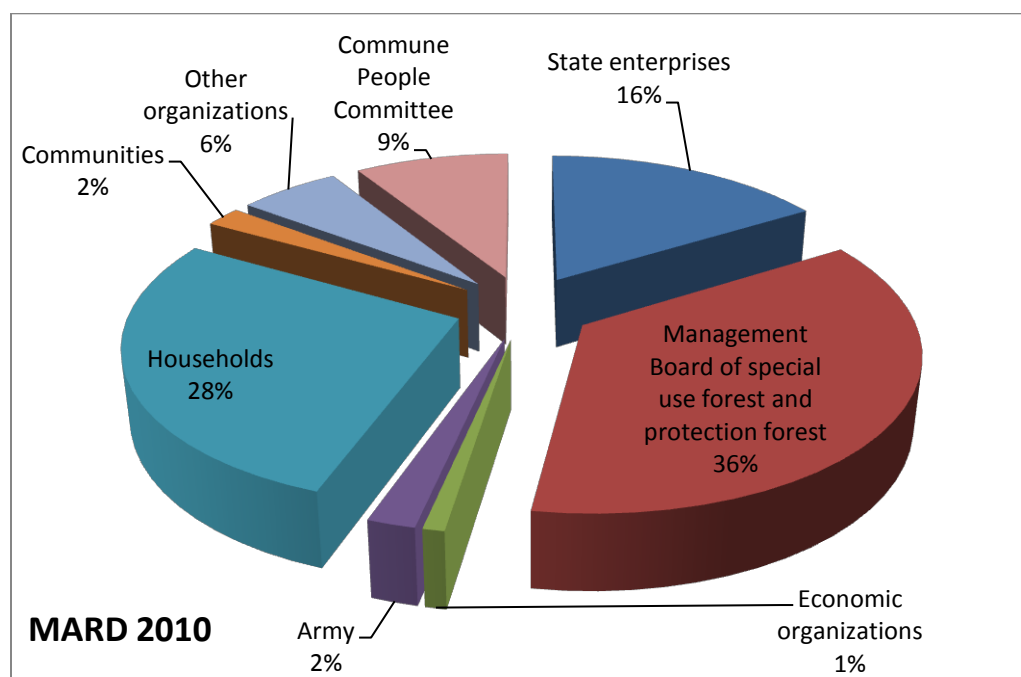
Forests belonging to State agencies under State economic organizations, Management Boards of special-use forests, protection forests and production forests, to armed forces, and other units. Unassigned forest and forested land areas are owned and managed by Peoples' Committees at the commune level.

Forests belonging to households, individuals, private units or joint venture companies.

Forests belonging to communities managed traditionally or as allocated by the State for stable and long term forestry use.

As of Dec 31, 2009, according to MARD, the total natural forests are 13.388 million hectares, including: 4,487,813 hectares managed by the Management Board of special-use and protection forests; 2,018,273 ha managed by State Enterprises; 3,431,555 ha managed by households; 110,528 ha managed economic organizations; 247,075 ha managed by the Army; 258,265 ha managed by communities; 726,409 ha managed by other organizations; and 2,108,159 ha managed by Commune People's Committees (see Figure 14). It can be seen that state organizations manages 7,861,320 ha of forests (66%), in which 2.108 million ha have not been allocated to specific owners and are, therefore, under the management of People's Committees at the commune level. The forested areas under the ownership/use rights of non-state actors account for 34%. However, the forests allocated to non-state actors are of low quality and lack investment policy from the State. Vietnam continues to promote policies to allocate land and forests to households, individuals and communities in the coming years. Consequently, forests and forested lands owned by the State will decrease while increasing for non-state actors.

Figure 14: Forest Owner and Management Groups in Vietnam



Alienation of forested land uses through civil contracts

In addition to allocating lands, the Government of Vietnam also establishes civil contracts with owners over forested lands pursuant to Decree No. 01/CP of 1995 as amended in 2005 into the Decree No. 135/2005/ND-CP dated 8/11/2005. Those Decrees regulate the assignment of lands for the purposes of agriculture, plantations, agroforestry and lands subject to aquaculture farming. The distinction between forest allocations and contracts

alters the legal status of actors involved in land use management (see Figure 15). Households, individuals and rural communities, who accept contracts to protect, regenerate and afforest are not “forest owners” but employees of the primary contracting party who is the forest owner. According to the MARD, along with forest and land allocations and leases, the Government of Vietnam, under 5MHRP, has spent about 150 to 200 billion to contract for the protection of over 2 million ha of concentrated forests in the priority areas to contract for forest protection.

Figure 15: Distinction between forest allocation and forest contracting

Forest allocation	Forest contracting
<p>Forest allocation means that the State grants the land use right by administrative condition to those who have demand of forest management and use.</p>	<p>Forest contracting means that state agencies allocated forest and land by the State would sign the contract to hire households, individuals and rural communities to protect, regenerate, push regenerate or reforest forest lands. The state agency is the contracting party while households, individuals or rural communities hired to protect forest are contracted party.</p>
<p>In the relationship of forest allocation, the allocating party is the competent State agencies, while the allocated party is the forest owner (organizations, households, individuals, rural communities);</p>	<p>In the relationship of forest contracting, the contracting party is the forest owner and the contracted party is households, individuals, rural communities who are responsible for protecting and developing forests belonging to the use right of the forest owner under the contract.</p>
<p>The relationship of forest allocation is done through administrative decisions of competent State bodies.</p> <p>For example: households and individuals are assigned planted production forests which are entitled to transfer, donate, lease, mortgage, guarantee or contribute capital equivalent to the value of planted production forests; the individuals have rights to be inherited the forest use right, exploited forest products in the regulation of forest management.</p>	<p>Forest contracting is a civil relationship done by agreement between the forest owners and employees through the forest contract.</p> <p>For example: Contracted households and individuals do not have above rights and just are entitled to a share of forest products as agreed with the forest owners in the contract.</p>
<p>Households and individuals assigned land and forests are directly responsible for financial obligations and law on assigned forest areas</p>	<p>Contracted households and individuals are responsible for what is mentioned in the contract with forest owners.</p>

In comparison to the forest allocation policy, households, individuals and communities under forest contracting regulations are in a weaker legal position, with limited rights and benefits, but heavy responsibilities to directly protect the forest. This is an important issue in Vietnam, and it must be carefully considered in future REDD+ implementation, particularly in refining carbon rights and benefit sharing.

Legislation on investment, credit and taxation relating to forests

Legislation on investment, credit and taxation relating to forests are relevant to REDD+ in as much as they could incentivize or create economic barriers to international and domestic REDD+ investments. Policies on investment and credit are mainly presented in the Law on Investment (LI), LFPD and other documents on guiding implementation of the two aforementioned laws. According to those documents, the Government invests in activities on protection and development of special-use and protection forests and has supports for the protection and enrichment of production forests, which are poor natural forests, big or valued woody forest. The Government offers incentives to organizations, households and individuals to promote afforestation in bare lands, such as providing preferred interest or loan durations suited to particular plant types and ecological regions, as well as exemptions from or reductions of land use tax or land use rental costs.

The LFPD clearly states that financial resources for forest protection and development include the state budget, the funds of forest owners, and the budget of the Fund for Forest Protection and Development (PFPD) regulated by Decree 05/2008/ND-CP on 14 January 2008. According to this Decree, the Fund can receive deposits from local and foreign organizations and individuals. Moreover, the Environmental Protection Fund is also a good financial resource for environmental protection projects including forest protection, with a low interest rate of 3% - 5%/year. This is advantageous for the management of REDD+ revenues, because these revenues could transfer to this Fund under the form of trust receiving.

To strictly manage the natural forest, the Law on Tax on Natural Resources (LTNR) 2009 imposes the tax rate of 10% - 35% for the exploitation of natural forest. The rate also varies according to the wood types: 10% - 15% for bamboo; 1 - 5% for firewood; and 10 - 20% for byproducts (branch, top, foot, root). In addition, the Law on Tax of Agriculture Land is applied to organizations, households and individuals using agriculture land including forest land. The tax rate is 4% of agriculture and forest productivity. This tax, however, is reduced or waived from 2003 to 2020.

4.5.6 Forest resource use and management

Decision No.186/2006/QĐ-TTГ on forest management regulation, issued on 14/8/2006 by the Prime Minister, and Circular No.35/2011/TT-BNNPTNT, issued on May 20, 2011 by MARD, guide the exploitation of timber and NTFPs under the three types of forests (special-use forests, protection forests or production forests); under each type of forest owner (organizations, households, individuals or rural communities); under the function of forests (natural forests or plantation forests); and under the types of investment (the capital of the State, capital of the forest owners, or investment and funds of the international projects). In

addition, this policy specifies that free lands in protection and production forests can be used for agriculture and aquaculture productions or ecotourism exploitation.

Since 1997, a project "to promote afforestation and greening of barren hills towards the closed natural forests" suspended the exploitation of all protection forests and most production forests areas as natural forests in Vietnam. The programme has reduced the number of operators from 36 provinces to 20 provinces, and the forest enterprises from 241 to 134. The annual output of natural timber logging decreased from 1.2 million m³ to 300,000 m³ while yearly exploitation is 150,000 m³.^{xxi} The project aims to manage forests under established forest management schemes setting out specifications on permissible exploitation, extraction methods, rotation and abuse rates, and to create solutions for regeneration, improvement and development of the natural forest.

Rights to benefit from forests are specified in a number of legal documents such as Decision No. 178/2001/QĐ-TTg issued on Nov 12, 2011 by the Prime Minister on the benefits and obligations of households and individuals assigned, leased or contracted forest and forest land; Decision No 661/QĐ-TTg issued on July 29, 1998 by the Prime Minister on the objectives, tasks, policies and implementation of the 5 MFHRP (discussed below); and Decision No.147/2007/QĐ-TTg issued on Sept 10, 2007 by the Prime Minister on policies for production forest development in the period of 2007 to 2015. Based on those pieces of legislation, the right to benefit from forests means the benefits from the forests that forest owners or contracted persons will get, including timber, firewood, NTFPs (mainly forest vegetation not banned from exploitation), and the combined products of agriculture and fisheries. The right to benefit from forests is applied as follows:

1. The right to benefit from forests for the forest owners who are allocated or leased land and forests.
2. The right to benefit from forests for actors under contract who protect, regenerate and plant forests. Actors are entitled to a share of forest products as agreed with forest owners in the contract.
3. Organizations, households, individuals and communities participating in planting, protecting, and regenerating forests funded by private or international investors benefit from forests, under specific project terms.

Under the current legal framework, the majority of benefits go to forest owners who are households, individuals are related to the direct services that forests provide. When REDD+ financial mechanisms are established, it will be necessary to address the two main forest resource management and use relationships (allocation and contract) for benefit distribution systems. In other words, the benefit relationship between the State and forest owners, and between forest owners and forest contractors, will need to be clarified.

4.5.7 Plantation forests and state owned forest enterprises

Plantation forests have increased considerably in Vietnam through various forest policies and programs. For instance, since 5MFHRP ended, plantation forest has increased to 1,132,990 ha including 253,264 ha of protection and special-use forest and 887,365 ha of production forest. Forest plantation is supported by government policies to invest in SFES

and to provide subsidies to households and individuals for such things as seeds, technical and financial support. At this early juncture in international REDD+ negotiations, it is unclear how plantation forests will interact with REDD+ activities; however, they could provide one source of carbon sequestration.

In 2005, there were 365 State Forest Enterprises (SFEs) and forestry companies in Vietnam. SFEs are established by the Government and have the functions of undertaking business according to market mechanisms under the state's regulatory authority. Formed by the Government, SFEs are allocated land; forest with large areas for forest management and protection, afforestation and exploitation; and materials to provide for industrial processors and other economic actors. It is obvious that SFEs is taking an important role in afforestation in Vietnam.

In 2005, 365 SFEs and forest companies managed an area of 4,081,150.43 hectares of natural land. The Forest Land Area is 3,914,682.97 ha, which includes forest land for production (2,114,933.11 ha accounting for 54% of forest land), protection forest land (1,686,542.99 ha (43%)) and special-use forest land (32,483.11 ha (3%)). In 2009, 157 forest companies manage an area of 2,190,400 ha and 96 management boards were established after the reorganization of SFEs with a managed area of 1,140,145.33 ha. Thus, on average, a forestry management company manages about 14,471 ha of natural land. The area of land transferred to the local management boards after the reorganization of SFEs (2005-2009) is about 0.5 million ha.

In summary, the SFEs nationwide were reorganized according to Decree No. 200/2004/ND-CP on December 3, 2004, to ensure that the forest companies were operating under the law. The 365 SFEs in 2005 were transformed into 157 forestry companies by 2009, along with the establishment of 96 forest management units. The area of land that the forestry sector manages was reduced from 3,914,682.97 ha to 2,272,102.03 ha. From 2005-2009, approximately 0.5 million ha of forest lands were transferred to the SFEs as part of a reform of local government and nearly 1.2 million ha of forest lands were transferred to SFEs to allocate to organizations, households, individuals and communities. The State also allocated about 1,2 million ha forest land managed by SFEs to the Management Boards of special-use forests and protection forests. Since Jan 7, 2010, many forestry companies have been converted into limited liability companies owned by the State.

4.5.8 Policies on payment for forest ecosystem services

Vietnam has implemented numerous payment for forest ecosystem services projects and CDM afforestation and reforestation projects, which are described in-depth under the section on "Innovations" below. These projects could provide a source of lessons learned for the development of benefit distribution systems for REDD+. By way of example, a pilot community forest programme ran from 2006 to 2009 for provinces and 64 communities. Major project achievements include the development of standard operating procedures as a basis for planning and organizing the management of community forests; the creation of training courses for local forest rangers and local people; the allocation of nearly 17,000 ha of forest to local communities; the funding of 38 communes for the building of forest protection; and the implementation of testing activities in late 2008. An evaluation of

programmes and community forestry in general found that some challenges need to be overcome to allow further community forestry development in Vietnam. For example, it is necessary to allocate better quality forest land to communities and to develop a better approach to integrate community forestry into plans for land use, land allocation, benefit sharing, forest management plans and financial management.

Vietnam is known as the first country in Southwest Asia to have successfully piloted a policy on payment for forest ecosystem services, in Lam Dong and Son La over a period of two years (from 2008-2010) under Decision 308/QD-TTg. Households, individuals and communities participating in forest protection were paid by other organizations and individuals who use forest ecosystem services, namely for hydropower, clean water supply and ecotourism. After this success, the Government has decided to introduce this policy on a permanent basis, and it has been applied to the entire country under the Decree 99/2010/ND-CP on the policy for payment for ecosystem services (approved by the Government in 2010). This regulation covers five types of ecosystem services, including carbon absorption and storage. A future REDD+ mechanism is expected to complete the policy. However, this service still lacks detailed regulations for implementation and still awaits guidance from the Prime Minister. According to the Decree, the user of forest ecosystem services has a binding responsibility to pay the providers, whereas REDD+ is a voluntary tool. Also, the inclusion of carbon under this Decree for national “buyers” could be problematic, as it potentially contradicts REDD+ discussions, which are for international “buyers”. Details on benefit sharing distribution of this policy are presented in S.6.2.1.

4.5.9 Control of deforestation and forest degradation

The control of illegal deforestation and forest degradation as well as natural disasters impacting forests is important to the sustainability of REDD+ projects and creating a secure climate for international investors. Pursuant to Law on Trade and LFPD, only wood and timber products with lawful origins can be exchanged and circulated in the market. However, there is still incoherence in identifying wood origins and the weak enforcement, leading to violations, such as illegal logging and timber transport. Vietnam has promulgated many laws on strengthening forest law enforcement. Crimes are classified under the Criminal Code, including four types related to forestry: exploitation and protection (Article 175), forest management (Article 176), destruction of forests (Article 189) and a special regime for the protection of natural protected areas (Article 191). The LFPD (Article 12) establishes a number of prohibited actions, including: illegal logging; illegal hunting and gathering; violations of the regulations on the prevention of forest fires; illegal encroachment and conversion of forest land use; illegal transportation of forest products; illegal grazing and other activities. To implement this Article, the Government approved the Decree 99/2009/ND-CP dated 2/11/2009 on administrative sanctions in the field of forest management, forest protection and management of forest products, which lists prohibited activities. In reality, forest violation rates remain high, with approximately 50,000-60,000 forest crimes committed per year.

MARD forest rangers have been assigned by law the responsibility to supervise and inspect the implementation of the law, to gather evidence and conduct investigations, and to monitor and enforce sanctions. For more complex and serious violations of forest laws, this enforcement role is assigned to the Department of Environment Police, established by

Decision No. 1899/2006/QĐ-BCA(X13) on 29 November, 2006 under the Ministry of Public Security (MPS). The Government has also issued the Decree No. 72/2010/ND-CP on July 8, 2010, providing for the prevention and combat of environmental crimes and other environmental-related violations under the MPS. In addition, MARD is leading a project on improving forest fire prevention capabilities, approved by the Prime Minister in Decision No. 02/QĐ-TTg on Jan 2, 2007. The project focuses on the prevention of forest fires during the dry season, organization of professional training, and legal education and awareness-raising for the public.

4.5.10 Other sustainable forest management programmes

The Scheme of Rehabilitation and Development of Coastal Mangroves was approved by the Prime Minister in Decision No. 405/QĐ-TTg - KTN on March 1, 2009. The objective of the project is to increase the mangrove area from 209,741 ha to 307,295 ha by 2015. Contents of the project are: (i) to plant and protect mangrove forests in front of the dike along special-use forests and forest production, and (ii) to build the models for rehabilitation, development and protection and exploitation of mangrove ecology in a sustainable way, to prevent and mitigate the impacts of environmental and development economics. The scheme is being implemented in 29 coastal provinces and cities.

MARD has also developed the project to survey and assess desertification, to research the causes of desertification and propose solutions, and to develop a database on desertification prevention and control. This project implements the National Action Program to Combat Desertification for 2006-2010 and 2020 and is driven by Decision No. 204/2006/QĐ-TTg issued on Sept 2, 2006. MARD is also developing a programme to combat desertification in the provinces of Ninh Thuan and Binh Thuan, employing an integrated financial strategy to implement anti-desertification initiatives and to respond to climate change. Finally, MARD is currently completing a feasibility report on "Sustainable forestland management in nine Central coastal provinces through natural forest management," under Phase 1 of the "National partners programme on sustainable forest land management."

4.6 Environmental management systems

Environmental management systems, including integrated land use planning and EIAs, are important to REDD+ as they may provide overarching coordination and consistency for REDD+ activities alongside the management of other natural resources. The LEP designates "vandalism, illegal exploitation of forests, other natural resources" as prohibited acts (Article 7), and it requires strategic environmental assessments for land use planning and forest protection and development (Article 14), as well as the elaboration of strategic environmental assessment reports (Article 15). EIAs are required for any project that uses a part of land area or adversely impacts natural protection areas, national parks, water resources in river basins, coastal areas or areas of ecosystem protection (Article 18). The Law also requires that the economic value of natural resources be investigated and evaluated to provide a basis for resource use planning, in particular to determine exploitation limits, environmental taxes and environmental protection charges.

Any nature conservation area that contains an ecosystem with important biodiversity of national and/or international value must be investigated and evaluated, and such areas should be protected as marine protected areas, national parks, nature reserves, biosphere reserves, or conservation habitat areas. Each natural conservation area should have its own regulations and management department.

The LEP requires the payment of an environmental tax by all organizations, households and individuals producing and/or trading products that cause adverse long-term impact on the environment and human health. Fees for environmental protection (Articles 112, 113) must be paid by organizations and individuals that discharge pollution into the environment or undertake activities that give rise to adverse impacts on natural resources. The trading of carbon credits between Vietnam and foreign countries is made possible by regulations set out by the Prime Minister. The State also encourages industry, businesses and service organizations to reduce their carbon emissions, according to Article 84.

In addition, National Environmental Protection Strategy to 2010 and vision to 2020 also set out some specific objective indicators for 2010 and vision to 2020, including indicators for the forestry sector such as increased forest cover, rehabilitation of degraded forests and enhancement of forest quality and biodiversity conservation.

4.7 Trade, investment and financial accountability

Laws and institutions related to trade, investment and financial accountability are important to REDD+ in order to create the right climate for international investment in REDD+ activities. Certain laws may create barriers to REDD+ investments, should private or foreign investors feel insecure or be prohibited from engaging in forest sector activities. The LI was developed from the integration of two laws: the Law on Domestic Investment and the Law on Foreign Investment. The LI sets limits on private investment in the development of special-use forest and protection forest. Funding for these two types of forests comes mainly from the state budget.

In addition, there are financial incentives for forest protection and development. For instance, the LTNR generates revenue from the exploitation of natural forests, and the FFPD and Environmental Protection Fund are funds for forest protection and development. Financing collected from payment for forest services are kept in the FFPD, which may provide a funding mechanism for future REDD+ revenues in Vietnam or a model for lessons learned.

5 Key Challenges to Legal Preparedness for REDD+ in Vietnam

5.1 Overview

This section draws on the previous review of existing laws and institutions to identify the key challenges to legal preparedness for REDD+ in Vietnam. This section does not provide a comprehensive assessment of the detailed provisions of all laws in Vietnam for the purposes of legislative reform. Instead, this Country Study focuses on predominant gaps and challenges that may be assessed at a later date, namely: (s.5.2) Coordination of land use planning for REDD+, (s.5.3) Effective Forest Governance Systems, and (s.5.4) Rights to Carbon, Land and Forest Tenure.

5.2 Coordination of Land-Use Planning for REDD+

5.2.1 Advancing REDD+ activities through cross-sectoral coordination

The coordination of policies, legislation, regulations and institutional mandates across the various sectors related to REDD+ is crucial to overcome inhibitive ambiguities and conflicts in REDD+ planning and amongst implementing actors. This aspect of legal preparedness for REDD+ derives from a number of requirements under the Cancun Agreements, as indicated at **Figure 16**.

Cross-sectoral coordination should be fostered across ministries, departments and agencies to address the drivers of deforestation and forest degradation in a manner that does not deprive forest dependent communities of human needs, such as food and energy. Gaps and conflicts in institutional mandates can result in the absence of action, duplication of efforts, or the cancelling out of positive initiatives where actors work at cross-purposes. Additionally, there must be clarity and coherence of laws and institutions addressing hierarchies in land and natural resource interests, such as mining, easements and acquisitions for undertakings, which can quickly undermine ongoing REDD+ forest management activities. Such occurrences could have a detrimental effect not only on the permanence of mitigation effects but also on the possibility of results-based payments destined to enhance social benefits for communities. Consequently, it is vital that legal and institutional frameworks have a high degree of cross-sectoral coordination.

Figure 16: Cross-sectoral coordination and REDD+ activities, guidance and safeguards

- **Ensure that REDD+ activities are used to enhance other social benefits**
- **Address the drivers of deforestation and forest degradation**
- **Promote and support transparent and effective national forest governance structures, taking into account national legislation**
- **Promote and support actions to address the risk of reversals**
- **Promote and support multiple forest functions**
- **Undertake activities consistent with national sustainable development needs and goals, including reducing poverty while responding to climate change**
- **Undertake activities that are results-based**
- **Promote and support that actions complement or are consistent with national forest programmes**
- **Promote and support actions to reduce displacements of emissions**

5.2.2 Key challenges to cross-sectoral coordination in Vietnam

REDD+ is a new issue not only within the forestry sector but also in all other relevant sectors. Cross-sectoral coordination may require the modification of plans and programmes in several sectors in order to make land-use planning compatible with REDD+. Vietnam's various laws impacting land-use planning, and by extension REDD+, are currently disparate and uncoordinated across key sectors. For instance, the definition of forests is vague and changes according to the context. The LFPD and the NFDS set out three forest types (special-use, protection and production) with little legal specificity, and the definition of the forest types changes frequently within other sectoral plans. Moreover, due to inconsistencies among laws that impact land use planning, other sectors tend to be prioritized over forest protection. For example, forests continue to be converted for other undertakings such as roads, hydroelectric plants, and village resettlements. Forested lands are also often converted for agricultural cultivation, such as in the Government's programme to expand rubber areas as part of the Rubber Tree Development Plan. As a result of this Plan, poor natural forests will continue to be converted to rubber tree plantations.

Similar trends can be observed in other sectors. For example, Vietnam's NPDS, which sets out targets for the country's power needs until 2010, has resulted in the rapid development of hydropower in recent years. This development has caused adverse impacts on the environment, including changes in water flow and the decrease of biodiversity. It has also been a primary cause of forest loss because almost all hydropower projects are undertaken in forested areas. As mentioned above, 47 of the 128 special-use forest areas are directly or indirectly affected by hydropower projects, and on average, the production of 1 MW of electricity causes the loss of 62.63 ha of forest land. Mining and mineral exploitation are also major drivers of forest loss as forests are cut down for roads and mining operations.

In light of these examples, it is clear that an integrated land and forest use policy is needed in Vietnam, and current policies on land use and forest resource allocation need to be modified, added to or improved, in order to take into account REDD+ activities. While the State has issued some relevant policies to address this need, these have proven insufficient in practice. For instance, though MARD and MONRE signed Circular 07/2011/TTLT/BNNPTNT-BTNMT to harmonize forest allocation and land allocation policies, this harmonization is still not fully implemented at the local level.

5.3 Effective Forest Governance Systems

5.3.1 Forest governance systems and REDD+ activities, guidance and safeguards

The Cancun Agreements call for transparent and effective national forest governance structures, taking into account national legislation and sovereignty. Forest governance structures should clearly define institutional roles and provide the necessary capacity and funding for agencies to carry out their roles, including preventing illegal deforestation and forest degradation. Agencies charged with enforcing forest protection provisions should operate on clear legal authority with ownership and use rights, recourse mechanisms, and fines and penalties available and known to all participants in forest governance and use. Effective governance also requires the engagement of communities, households and individuals.

5.3.2 Key challenges to the forest governance system in Vietnam

Successful implementation of REDD+ may require improvements in forest governance capabilities in Vietnam. Effective REDD+ mechanisms will depend on the coordination, clearly defined roles and management capacities of those involved in the forest sector at all levels. State management of forests from the central to the local level has been developing slowly, but the necessary conditions to strongly promote the role of local authorities, especially at the community level in forest management, organization, protection and development, have not yet been created.

Collaboration amongst government agencies is also weak, including as between those responsible for agriculture and rural development, and natural resources and environment (such as land use, information sharing, biodiversity, and conservation). Inconsistencies and overlap between ministries, particularly in terms of legal classification and land administration, complicate institutional arrangements for monitoring REDD+ activity data and require sectoral harmonization. For example, it is currently unclear whether forests falling outside the “forestry land” classification will be monitored by MONRE or MARD. Inconsistencies between ministries also lead to different interpretations of activities under REDD+, such as whether or not forests outside the “forestry land” classification, like cashew and rubber plantations, will be counted for REDD+.^{xxii} The lack of a legal basis for MARD’s forestry inventory statistics creates another challenge. While MRV will be conducted and reported on the basis of the MARD’s Forest Inventory and Planning Institute, it is unclear what to make of the ‘other set’ of forest area statistics (by the Forest Protection

Department), as officially published in the annual GSO publications. Going forward, these uncertainties must be clarified and defined within the forest governance framework.

Forest governance at the level of local enforcement must also be strengthened. The legal status of forest rangers is not currently strong enough to allow rangers to perform their tasks effectively, with the result of severe violations of forest legislation. For example, forest rangers do not possess the same rights as police officers in protecting the forests and are frequently placed in danger of attack by illegal loggers and poachers. Difficulties with enforcement also lead to gaps between forestry law and practice, and deforestation continues due to poverty and weak management. This is a key issue in Vietnam where the Forest Protection Department records 50,000-60,000 forest crimes a year and natural forest area continues to decline despite state protection goals. As Vietnam continues to develop rapidly, the demand for timber is also growing. Even Vietnam's protected areas are vulnerable, with frequent reports of illegal logging in national parks and nature reserves. In the absence of improved Forest Law Enforcement, Governance and Trade (FLEGT), REDD+ could also exacerbate conflicts between forest owners. The REDD+ and FLEGT agendas are therefore two sides of the same coin: they are mutually supportive and require careful sequencing and coordination.

Finally, the lack of legally binding targets for forest management in some instances may also impede the success of forestry governance schemes on the ground and thereby affect enforceability. For example, while the NFDS for Vietnam in the period 2006-2020 has set a target of 16.24 million ha of designated forestry land by 2020, this policy direction remains without a legally binding requirement. In light of such challenges to enforcement, it is clear that substantially improved FLEGT in Vietnam must accompany REDD+ in the country.

5.4 Rights to the Benefits of REDD+ Activities

The legal definition of rights to benefit from REDD+ activities is a necessary precursor to fulfill several of the Cancun Agreements provisions for guidance and safeguards. The Cancun Agreements request that REDD+ activities enhance social benefits for communities directly involved in REDD+ for poverty reduction and sustainable development. They also require that Parties address issues such as land tenure and participatory decision-making in developing national REDD+ strategies or action plans. Vietnam faces particular challenges in clarifying the rights to the benefits of REDD+ activities, in particular due to the legal status of communities and the attribution of carbon and land rights, described in detail below.

5.4.1 Key challenges to the definition of rights to benefit from REDD+

Legal status of communities and forest contractors

Vietnam has identified the design of an equitable and efficient benefit distribution system (BDS) as a key requirement in anticipation of a future REDD+ mechanism. To this end, however, current uncertainties regarding the legal status of communities in Vietnam must first be resolved. Under Vietnam's Law on Forest Protection and Development (LFPD), communities are recognized as one type of forest owner, and are thus deemed eligible to receive payments for carbon credits. However, the Civil Code fails to recognize communities

as legal entities, which means that communities lack official legal status in the country. This lack of legal recognition could impede access to REDD+ benefits at the community level.

Yet an analysis of Vietnam's extensive past experience with BDS has shown that communities are ideal forest managers. PFES pilot projects in the country, such as the 5 Million Hectares Rehabilitation Programme, have demonstrated that the payment of REDD+ benefits to communities results in more equitable disbursement. In particular, disbursement at the community level helps avoid the problem of "elite capture." Under this phenomenon, local elites – those with the most power and influence – retain the best land and receive disproportionate payments at the expense of the rural poor and other marginalized groups. For example, in past BDS projects in which forest was allocated on a household basis, such as the 5 Million Hectares Programme, the poorest households generally ended up with poor quality forest, while those responsible for making allocations (such as State-Owned Companies) kept the higher-value forest for themselves. Conflicts may also arise if some households receive benefits and others do not, due to issues with legal status.

In light of these challenges, expert studies such as the UN-REDD's "Design of a REDD-Compliant BDS" conclude that disbursement to communities is preferable to disbursement to individual households, State-Owned Companies, or Protected Area Management Boards. This strategy has also been shown to be effective by the PFES pilot project in Lam Dong and by the KfW Community Forestry Pilot Programmes. Ultimately, community-level disbursement can result in more equitable distribution, contributing to Vietnam's poverty alleviation goals. In addition to changes to the legal framework to enable village communities as beneficiaries, the capacity of MARD to support communities must also be strengthened to facilitate the BDS process.^{xxiii}

The unclear legal status of Forest Contractors – those contracted to plant and protect forests – is also problematic. Under the Forest Protection and Development Law, such contractors are not considered forest owners, which may result in difficulties in distributing benefits to these actors.

Carbon and land rights

The rights of forest owners and users in the context of conversions, transfers, mortgages and benefit distribution also lack the legal clarity needed for future REDD+ strategies. The definition of these rights is pertinent to how carbon ownership and transfer will be defined for REDD+.

According to the Constitution of Vietnam, the State owns all land and forest resources, which it allocates to individuals and organizations for "stable long-term use" (Article 18). The 2003 Land Law (LL) also states that the land belongs to the people of Vietnam under the representative ownership of the State, while individuals and organizations may be granted its use and benefit (Article 5). By implication, this right to use and benefit from the land extends to carbon, although no such explicit mention is made in the LL. According to this legal framework, therefore, the State has actual authority to determine land and forest use. The State grants land and forest use rights through land allocations, leases, the recognition of user rights and the regulation of plantations. As a consequence, stakeholders

have no land or natural forest ownership; they have only the rights to land use and forest management and protection.

This picture is complicated somewhat by the LFPD and the 2005 Law on Environmental Protection (LEP). The former, which deals directly with forest goods and services, recognizes payment for the protection and regeneration of forests by those who purchase forest goods and services. However, LEP states that the “transfer, buying, and selling of greenhouse gas emissions quotas between Viet Nam and foreign countries shall be stipulated by the Prime Minister” (Article 84). This means that transactions with international buyers would require the approval of the Prime Minister. The implications of this stipulation present a challenge for future REDD+ activities, which assume sales to international buyers.

Land rights present another challenge to future REDD+ implementation. As Covington *et al.* point out, “[u]ncertainty surrounding land title is the single most significant impediment to effective preconditions for a REDD Scheme.”^{xxiv} Addressing this situation requires implementing legal certainty surrounding land title and implementing and enforcing existing land title. This issue has particular implications for ethnic minorities who frequently lack enforceable rights or legal title to the land that they manage and use. Gaps also exist between the *de jure* land rights and their *de facto* recognition.^{xxv} Therefore, a particular legal challenge to REDD+ in Vietnam will be ensuring that these rights are clarified in an equitable way, as competing claims to forests that have been traditionally used by local communities are likely to arise, and such communities may lose access to forest resources if they lack formal title.

Given Vietnam’s existing land and forest tenure regime, outstanding and complicated questions remain respecting carbon, land and forest ownership that will provide equitable benefits to communities who undertake REDD+ activities. The manner in which Vietnam resolves these issues by defining rights to forest carbon and land will be significant to how local and indigenous communities participate in decision-making on, and implementation of, REDD+ activities. Moreover, the types of benefits communities receive based on carbon, land and forest tenure laws could also impact the sustainability of results-based activities.

6 Innovative Laws and Institutions for Legal Preparedness for REDD+ in Vietnam

6.1 Overview

In spite of challenges to legal preparedness for REDD+, Vietnam has proactively pursued policies and programmes that may offer novel legal solutions for future REDD+ implementation. The innovative laws and institutions reviewed below directly or indirectly impact REDD+ planning and implementation, concerned as they are with issues such as effective and participatory forest management and incentives for private sector investments. These innovations include: (6.2) Vietnam's existing benefit distribution systems; (6.3) Lessons learned from afforestation and reforestation CDM projects; (6.4) the Draft Vietnam National Strategy on Climate Change until 2050 and vision to 2100; (6.5) Implementation of free and prior informed consent for REDD+ pilot projects; and (6.6) Other innovations.

6.2 Drawing lessons from Vietnam's existing benefit distribution systems

Equitable and results-based benefit distribution systems (BDS) are understood to flow from the Cancun Agreements as a necessary precursor to several activities, guidance and safeguards. In particular, BDS enhance the social benefits of REDD+ activities for communities directly involved in forest management activities, contributing to poverty reduction and sustainable development. Equitable BDS also provide the foundation for the effective implementation and permanence of REDD+ by incentivizing activities that sequester carbon and/or limit or reduce GHG emissions through results-based payments.

Vietnam has extensive past experience with BDS. Since the 1980s, the Government of Vietnam has encouraged the decentralization of forest conservation and management through a number of initiatives, including the Five Million Hectares Rehabilitation Programme, PFES pilot projects, Community Forest Management, International Forest Protection Projects, and Clean Development Mechanism afforestation and reforestation projects. Vietnam is also one of the only countries that has drafted a BDS strategy under the UN-REDD Programme, which builds on its many years of experience with similar systems and its rich stock of lessons learned. Three of these BDS – PFES, 5MHRP and International Forest Development Projects– are examined below.

6.2.1 Payment for Forest Ecosystem Services

Pursuant to Decision No. 380/QĐ-TTg, Vietnam piloted a PFES programme over the course of 2 years (from May 2008 to December 2010) in Lam Dong and Son La. Under this Decision, businesses that benefit from ecosystem services were required to pay a stipulated amount into a fund from which moneys were redistributed toward community ecosystem

maintenance, including for forests. Under this pilot programme, seven hydropower production facilities and pure water suppliers paid the Government for the provision of water and solid conservation and maintenance services.^{xxvi} All of the hydroelectric power production and water supply facilities made their payments as required, raising a total amount of 169,870 billion Dong. In addition, organizations and individuals dealing in tourism based on forest ecosystems also made payments for services.^{xxvii} The proceeds from those schemes were categorized as non-state budget and were placed in the FFPD. Funds were then paid out to the providers of forest ecosystem services including forest owners and contracted households. The level of payment for forest ecosystem services to households protecting the forest in the pilot areas in Lam Dong province ranged from 270,000 VND/ha/year to 400,000 VND/ha/year (about three to four times higher than the contracting fees of forest protection paid by the State under the 5MHRP). The payment level in Son La province ranged from 85,000 to 136,000 VND/ha/year.

Based on the success of these pilot projects, the Government issued Decree No. 99/2010/NĐ-CP on Sept 24, 2010 on payment policies for forest ecosystem services, which has been in effect nationwide since January 1, 2011. Under the provisions of this Decree (Article 4, Article 7 and Article 11), three types funding are provided for forest ecosystem services, including: (a) soil conservation, erosion and sedimentation limitation on the lakes, rivers and streams; (b) regulation and maintenance of water resources; and (c) protection of natural landscapes and biodiversity conservation of forest ecosystems. There are also three types of funders for these services, including: (a) hydroelectric power production facilities; (b) pure water production and supply facilities; and (c) organizations and individuals in the tourism business.

The total proceeds of forest ecosystem services from hydroelectric power production facilities and pure water production and supply facilities by 2015 is estimated at 1,300 billion Dong/year, not including revenues from the tourism business. Decree 99/2010/NĐ-CP (Article 8) provides that the subjects who may be paid for forest ecosystem services are forest owners and contracted households. Parties using services must pay service providers through the FFPD at the central and provincial levels. This Fund, similar to what is regulated in Decree No.05/2008/NĐ-CP issued January 14, 2008, is an entrusted intermediary organization from the users of forest ecosystem services and the proceeds will be paid to the providers of forest ecosystem services. Thus, according to Decree 99/2010/ND-CP, the owners of special-use forests, production forests or protection forests will benefit from the payment for ecosystem services schemes if they are able to provide the site for specific activities under the regulation, such as ensuring water resources for hydropower generation, pure water production and eco-tourism activities. Payment mechanisms for forest ecosystem services are expected to gradually establish a sustainable economic base to help protect the environment and ecosystems, improve the quality of forest ecosystem services, and provide social benefits to households and communities.

There are some lessons to be learned from the test model of FPES in Lam Dong and Son La provinces that can help to continue research in the framework of REDD+ implementation, including with respect to the level of compensation necessary to successfully engage community members in FPES schemes, as well as the necessity for central and provincial

funds for management and disbursement of revenues, such as the FFPD, which could possibly also serve future REDD+ BDS systems.

6.2.2 The Five Million Hectare Reforestation Programme

Another BDS that Vietnam may build upon for future REDD+ initiatives is the Five Million Hectare Reforestation Programme (5MHRP). The 5MHRP was adopted at the 2nd Session of the 10th NA from November 21 to December 12, 1997 by Resolution 08/1997/QH10, and ran from 1998 to 2010. The objectives of the 5MHRP were to accelerate the pace of reforestation and afforestation by protecting existing forests and planting new forests, protecting and promoting ecological functions and biological diversity, and creating conditions for sustainable development in order to increase the forest coverage rate to over 40% of the country. In addition, 5MHRP sought to provide wood for the development of the forest products processing industry and to create a new source of employment income for local communities, contributing to Vietnam's policies of poverty alleviation.

In implementing the NA's Resolution, the Prime Minister issued Decision No.661 QĐ/TTg on July 29, 1998, which outlined specific policies and strategies for implementation. These strategies include protecting natural forest area as special-use forest, protection forest, and production forest; allocating land and forests to organizations, households and individuals associated with the cultivation of settlements; and meeting poverty eradication goals.

The Programme also set ambitious forest planting goals up to 2010, including:

- 2 million ha of protection forests and special-use forests: To achieve forest regeneration through natural regeneration and planting combined with fixed cultivation and sedentarisation; and
- 3 million ha of production forests: To provide the wood materials for the paper industry, artificial board, pit props, by planting 2 million ha of specialty crops and forests, and precious timber and 1 million ha of perennial crops and fruit trees. Organizations and people will be mobilized to fully take advantage of unoccupied land for the planting of trees.

Since implementing the 5MHRP, improvements have been seen in forest management, protection and development. For example, the number of violations decreased (compared with 1998, 37% less in 2005 and 46% less in 2010), fewer forest resources were lost due to illegal acts (compared to 1998, 24% less in 2005 and 60% less in 2010) and annual forest area increased by 0.62% (average increase of 200,000 ha/year). Significant advances have also been made in terms of forest development. For the overall programme period from 1998-2010, the total area of plantation and zoning for regeneration of forest was 4,675,006 ha, 93.5% of the plan goal was reached, as follows:

- Planting reached 2,450,010 ha per 3,000,000 ha (81%), including 898,087 ha per 1,000,000 ha of protection and special-use forest (89.7%), and planting for raw material forest was 1,551,922 ha per 2,000,000 ha (76%);

- Regeneration reached 1,000,000 ha to 128% of plan, including 900,000 ha of forest zoning areas.
- Industrial crops and fruit trees reached 941,464 ha per 1,000,000 ha (94%).
- Forest cover in 1998 was 32%, in 2005 was 37.1% and in 2010 was 39.5%, excluding the area of rubber trees, cashew, fruit trees such as tree canopy forests. New forest area coverage achieved 46.4% by 2010.

The total mobilized capital of the project was \$31,858 billion, with multi-stakeholder funding sources including 22.9% from the central budget (VND \$7,281 billion); 3.6% from local budget accounts (VND \$1,215.2 billion); 7% from credits fund (VND \$2,260.2 billion) and 6.2% from accounts of capital by households themselves out (VND \$2,000 billion including the value of labor and operating joint ventures with the other economic sectors), 50% of capital of the afforestation project (VND \$15,788.7 billion) and 10.3% foreign capital (VND \$3,312.4 billion).

With respect to the social benefits of the 5MHRP, by 2010 there were 1,249,602 households with 4,657,000 workers participating in the project, including the 484,893 poor households (accounting for 38.6% of households participating in the project), mainly living in mountainous and upland areas. Through the project, new jobs were been created to protect forests (average 2.4 million ha / year) and to plant forests 2.4 million ha (including 0.9 million ha of special-use, 1.5 million ha of production forests and industrial crops and 930,764 ha of fruit trees). The programme also contributed to changing the economic structure in the mountainous areas by providing raw materials for industrial production, attracting investors to build processing facilities of timber and forest products in the local areas, contributing to increased incomes for workers, and increasing revenues for local people. The perception of the authorities and people towards forest resources has also changed, especially within populations living in mountainous regions and remote areas where the idea that forests are an infinite resource to exploit used to prevail, while today most people understand the environmental and economic benefits and value of forest protection and sustainable use.

Although the 5MHRP is innovative and has achieved much success in terms of both environmental and social benefits, a future REDD+ BDS would also have to take into account some of the challenges experienced by the Programme. For instance, although the government invested considerably in the programme, that funding was limited and scattered. First, wages offered are still 50,000 VND/ha/year for forest protection, after being raised to 100,000 VND/ha/year (about US \$5) and up to 200,000 VND/ha/year in some other places. However, the support of the programme was not always sufficient, especially for forest plantations (cost is adjusted from 2.5 million VND/ha to 6 million VND/ha and 10 million VND/ha). There was also a lack of clear monitoring and evaluation in the implementation of the 5MHRP. Once approved, it progressed with little monitoring and inspection. An improved mechanism for the planning, testing and auditing of projects is needed. Lastly, there was a lack of participatory decision-making on the programme and, overall, it remained controlled by the central government. The budget and disbursement plans, objectives, standards and budget costs for each component, and granting of funds,

were determined at the national level. The current institutional structure provided very few opportunities for the final beneficiaries of the programme, such as rural communities, to participate meaningfully in this process. Therefore, the final beneficiaries of the program had no right to decide the levels and modes of disbursement of the capital budget for the programme. Each of these challenges should be carefully addressed by Vietnam in designing a future REDD+ compliant mechanism.

Examination of these past BDS programmes has yielded important lessons learned for future BDS design and implementation. For example, these experiences have shown that a system of fixed payments per hectare (as employed by 5MHRP) fails to account for differences in forest quality and ecosystem services. The challenge, then, is to set payments at a level that offsets opportunity costs incurred by forest users while also offering a clear incentive to participate in REDD+. The K-factors (coefficients used to determine the relative value of different forest areas) employed in Vietnam's PFES pilot projects provide one model that could be adapted to meet REDD+ objectives. The "Design of a REDD-Compliant BDS" study recommends the use of a system of "R coefficients" based on performance, with payments differentiated according to carbon stocks.

These experiences have also demonstrated that it is preferable to create a dedicated national fund for REDD+ revenues, in order to ensure that these revenues are "fire-walled" and do not leak into general government revenues. The Forest Protection and Development Fund is one such off-budget mechanism that was established in 2008 to receive funding from PFES projects, but it lacks the civil society participation in its management likely to be required in REDD+. The Trust Fund for Forests, provides another example.

6.2.3. International Forest Development Projects

Reforestation projects supported by the WB and ADB provide alternative experiences on how the government can provide direct support to individual households. The Forest Sector Development Project funded by the WB had the objective to establish plantations on 66,000 hectares in four provinces located along Vietnam's Central Coast by 2010. Total investment is US\$59 million, including US\$33 million allocated to the Bank for Social Policy for loans to be disbursed to individual households. Currently, households can get loans of up to VND 15 million per hectare (US\$830) for a duration of up to 15 years if they commit to establish tree plantations for a minimum rotation period. The maximum area for which a household can take out a loan is 10 hectares, and the minimum area eligible for a loan is 0.5 hectares. Participating households also receive extended support in the form of training courses and information materials. Households can request loans from the Bank for Social Policies for up to 75% of total investment costs for a duration of up to 15 years. They receive the loan in three installments: 50% at the point of planting, 40% in the second year and the remaining 10% in the third year. Project staff inspects the tree plantations before each installment is disbursed. Households make annual payments on the interest due but are not required to repay the principal before the end of the loan period. The underlying assumption is that the eventual sale of timber generates the required revenues for households to repay the loan. This WB loan model is possible for REDD+ payment, (i.e., a household could take up a loan and, if successful, eventually repay the loan from any carbon credits earned). The obvious disadvantage of this model is that it makes households bear all the incurred risks.

Households are liable for loan repayment regardless of any unforeseen biophysical or social-economic events. If they cannot repay the loan at the end of its duration, the applicable interest rate increases by one-half. More importantly, households face the risk of losing their land use right certificate deposited with the Bank as collateral.

Kreditanstalt für Wiederaufbau (KfW) has supported seven mid-sized reforestation projects in Viet Nam since the mid-1990s. The sixth KfW-funded project (hereafter referred to as KfW-6) currently operates in 4 provinces of central Viet Nam with total funding of US\$18 million. Like the previous KfW-funded projects, KfW-6 assists individual households in the establishment of "production forest with protective functions." It provides free tree seedlings and fertilizer to households and deposits financial payments on savings books at the Bank for Social Policies. The savings books amount to VND2.0-3.4 million (US\$110-190) per ha, depending on the planted species. The maximum area eligible for funding is 2 ha per household, the minimum being 0.5 ha. The various reforestation projects funded by KfW have developed a novel mechanism to finance household plantations on a conditional basis. They initially provide free tree seedlings and fertilizer to households. They also establish savings books for the participating households at the Bank for Social Policies to compensate for their labor inputs. Households receive the savings books 3 months after planting if the survival rate is at least 80%. They can withdraw up to 20% of the deposited funds right away, and thereafter can withdraw an additional 15% every year up to year 6. The projects reserve the rights to freeze or terminate savings books in case of household non-compliance with the required management practices. It has direct leverage on the funds remaining in the savings books, as those are released gradually to households. Yet it is likely to face difficulties demanding the repayment of withdrawn funds. The KfW projects thus achieve a limited conditionality of the provided support by staggering the grant in multiple installments.

In sum, the KfW-funded projects and WB-funded reforestation programme reveal possibilities of how *ex post* payments based on performance can be combined with the *ex ante* provision of financial means to make the necessary investments. Neither initiative solely relies exclusively on *ex post* disbursements to link payments to performance. Neither disburses payments *ex ante* as simple transfers. They share the same underlying idea, even though they chose different mechanisms to implement it in practice. The different mechanisms imply significant differences in the distribution of risk. The loan model puts all risks on forest users in principle, who are obliged to repay the loans even if plantations fail. It may be difficult in practice, however, to recover loans in case of non-performance, as it is politically unfeasible for the Bank to collect land use rights certificates. The conditional savings books distribute the involved risks more evenly between the bank, the state and the forest user. Moreover, the threat to stop further payments in the case of non-compliance is more credible than the threat to seize land use right certificates.

6.3 Afforestation and reforestation CDM projects

Vietnam has implemented one registered afforestation and reforestation (AR) CDM project, and several others are currently in development. These projects provide important lessons for future REDD+ activities, including in the area of public-private partnerships.

Decision 130/2007/QĐ-TTg issued in August 2007 created the legal basis for CDM projects in Vietnam, defining the general parameters of permissible projects, including afforestation

and reforestation to increase carbon absorption and reduce emissions. The Environmental Protection Fund (EPF), under MONRE, is responsible for organizing the supervision and management of Certificates of Emission Reductions (CERs) issued under CDM, and for organizing the collection of CERs royalties for the government. The EPF is also responsible for distributing project subsidies. In the case of afforestation and reforestation, the CERs royalties are 1.2% of sales.

Vietnam's one registered AR-CDM is the Cao Phong Reforestation Project, located in Hoa Binh Province. It was started in 2009 and is expected to last 16 years. The objective of the project is to restore 320 ha of forest in two communes of the province. The project is being carried out in cooperation with the Japan International Cooperation Agency (JICA) and Honda Vietnam, along with several Vietnamese partners including the Vietnam University of Forestry (VUF), the Vietnam Institute on Forest Science (VIFS), the district agricultural extension centres, and the district ranger. These Vietnamese partners have collaborated to establish a non-profit organization to implement the projects. This non-profit pays local families a rate based on their contribution to the project using funds contributed by Honda. Participation is voluntary, but participants must be holders of legal land use rights for the land to which they intend to contribute. Households receive 40,000 VND per day. In the future, participating households will share all revenues from the sale of emission quotas (CERs). When the timber is harvested after 16 years, households will receive two-thirds or three-fourths of the revenue. The rest will belong to the non-profit and administrators. Participating households are expected to earn a total of US \$3,366/ha for the duration of the project, including payments for their workers' contributions, the sale of CERs, and revenue from timber sales.

Another AR-CDM project, though not yet registered, involves reforestation in A Luoi, Thua Thien Hue. This project is funded by the SNV Netherlands Development Organization with the participation of the Center on Ecology and Environment under the VIFS. The region of A Luoi DPC, Thua Thien Hue, is also employing the CDM as a financing mechanism for reforestation. After the successful completion of a 38 ha pilot project, the current project aims to plant 5,000 ha of forest, including the forests of 3,000 poor households. The SNV Netherlands Development Organization is also developing a project in Cat Tien district, Lam Dong province, which includes the Cat Tien National Park.

In addition to the direct economic benefits for the poor, AR-CDM projects in Vietnam have had significant social benefits, which include:

- The granting of certificate of land use rights;
- Financial transparency throughout the project;
- Initiatives for planting different varieties of trees;
- Positive contribution to the environment and socio-economic situation of parties; and
- The surveying and monitoring of forested areas.

CDM projects have also been the impetus for several new public-private partnerships (PPP) that could provide useful models for private investors seeking to support a REDD+ financial mechanism. Such is the case in the AR-CDM Project in Nguyen Loan Commune, Pac Nam District, Bac Kan province. The relevant parties to this project include provincial and district leaders, D&G Co. (a private company involved in planting and exporting timber in Vietnam), and local communities. Cooperation is facilitated through two partner mechanisms. Firstly, D&G Co. deals with local leaders to lease public unoccupied land. Land rent is delivered directly to the local people who contract with D&G Co. for replanting and protecting the forest. After harvest, the breakdown of profits from the sales of wood and wood chips is 2% for the district, 3% for the communes, 75% for the D&G Company, and 20% for the local people. D&G Co. also contracts directly with households who possess certificates of land use right. The breakdown of profits is 40% for the household residents and 60% for D&G Co.

Additional support for PPP AR-CDM projects in Vietnam comes from districts and communes, the EPF in MONRE, and other partners and such ICRAFT and the Vietnam University of Forestry. For instance, for CERs, low interest or no interest loans are available from the Environmental Protection Fund to support the development process of CDM projects. The Fund management and the D&G Co. coordinate to develop the project documents and solicit buyers for the CERs. After the sale, 20% of profits are assigned to the EPF. For verified emission reductions (VERs), ICRAFT and the VUF provide technical design assistance. ICRAFT has also transferred technology to the professionals of D&G Co. on rapid assessment methods to quickly evaluate carbon storage and measure baselines. The VUF assists companies in finding buyers on the voluntary carbon market.

Other lessons can be learned from Vietnam's AR-CDM projects for a future REDD+ mechanism, particularly in terms of initial investments. For example, the delay in the issuance of CERs from the date of project launch until after verification has often been a barrier for CDM projects. It is difficult for project developers to gain the support of financial institutions in order to cover initial start-up costs or access credit, highlighting the challenge of results-based payments, which may also apply in cases of REDD+. Although results-based payments are associated with performance (see Section 6.2.3 above), they do not provide adequate incentives for initial investments to get projects started. Nevertheless, Vietnam's experience with the CDM has shown that the assistance of third parties through public-private partnerships can assist in filling that gap, as can the provision of low interest or no interest loans through funds, such as the EPF. In addition, CDM projects are not attractive to investors due to their use of a large area of land for forest plantation but low benefit compared to CDM in other sectors.

6.4 Draft Vietnam National Strategy on Climate Change until 2050 and vision to 2100

MONRE is currently developing the National Strategy on Climate Change (NSCC) until 2050 and vision to 2100, which was submitted to the Prime Minister for approval in August 2011. According to the draft NSCC, Vietnam's vision to 2100 is to be a prosperous, civilized

country with low carbon sustainable development that responds to climate change. The draft NSCC lists 9 Strategic Missions to achieve its climate change objectives, including REDD+ and the forestry sector, which is included not only for the purposes of mitigation, but also as an adaptation tool.

Strategic Mission 4 provides a good example of how the NSCC is aimed at protecting and sustaining forests, increasing GHG absorption, and protecting biological diversity. (Details of the Strategic Mission 4, see **Figure 17** below):

Figure 17. The Strategic Mission 4 in Draft NSCC until 2050 and vision to 2100

- Speed up afforestation and reforestation and encourage enterprises to invest in economic afforestation.
- By 2020, establish, manage, protect and sustainably develop 16.24 million ha of forestry land; increase the coverage of forest land to 47%; sustainably and effectively manage 8.4 million ha of production forests, 5.68 million hectares of protection forests and 2.16 million ha of special-use forests.
- Implement programmes to reduce GHG emission from deforestation and forest degradation associated with maintaining and diversifying local livelihoods, combined with climate change adaptation.
- Protect biodiversity, focusing on protecting and developing ecosystems that are resistant to climate change; protect genetic resources and species endangered by the impacts of climate change.
- Develop and implement programmes on protection and sustainable management of existing natural forests, protection forests and production forests.
- Develop and implement models of green urban areas and green residential areas.
- Develop and implement policies on mobilization of the participation of all socio-economic sectors in conservation, sustainable development of forests and natural ecosystems, in order to effectively respond to climate change and enhance the capacity of carbon absorption of forests and ecosystems.
- Build and develop the carbon market with the leading role of the State and the participation of all socio-economic sectors, mobilize mechanisms of international cooperation in exchange of carbon credits to support the domestic enterprises in developing the carbon market.
- Develop and implement systems to monitor, report and evaluate the activities and programmes to improve the carbon reserve capacity of forests.

- Improve and enhance the capacity and effectiveness of the system evaluation, forecast, prevention, monitoring, surveillance and emergency responses to forest fires.

The draft NSCC until 2050 and vision to 2100, which will be approved by the Prime Minister, provides a strong legal foundation for responding to climate change with a long term vision for REDD+ strategy and its implementation in Vietnam. By making the forestry sector (including a REDD+ mechanism) an integral part of the NSCC, the Government can help ensure the harmonization and cohesiveness of future climate change planning and REDD+ planning.

6.5 Piloting free and prior informed consent

The Government of Vietnam has pioneered the application of free and prior informed consent (FPIC) as a prerequisite for the implementation of its REDD+ pilot projects and it is the first country to pilot FPIC. This FPIC pilot was the first of its kind and provides important lessons for the future implementation of FPIC nationally, as well as in other countries.

Initiated by the Government in the Lam Ha and Di Linh districts of Lam Dong province, these FPIC projects, which were funded by UN REDD Vietnam, involved a 9-step process that included awareness-raising, recruitment and training interlocutors, preparing and conducting village meetings, recording decisions on consent, documenting decisions, and independently evaluating and verifying the FPIC process (provided by RECOFTC) (see **Figure 18**).

Figure 18: Guiding Steps to Undertake FPIC under the UN-REDD Vietnam Programme

Step 0: Preparation

Prior to the actual FPIC process beginning, some preparatory work will be required, including:

- The preparation of a summary of the legal basis for local community engagement/FPIC in Vietnam;
- The preparation of communications materials;
- Advance consultation with provincial and district authorities on the proposed process.

Step 1: Consultation with local officials

The National REDD+ Programme will organize awareness-raising events for provincial, district, and commune leaders to ensure that the principles guiding the UN-REDD Programme and district-level activities are understood.

Step 2: Recruitment of local facilitators

The National REDD+ Programme will recruit local facilitators to guide the consultation process in each village in Lam Ha and Di Linh districts.

Step 3: Training of local facilitators

The National REDD+ Programme will organize a training event for the local facilitators to ensure that they are fully familiar with the anticipated results and activities of the program

and the principles guiding consultations necessary to secure FPIC.

Step 4: Awareness-raising

Each interlocutor will be assigned to a number of villages where the ethnic minorities in whose language they are fluent reside. Each facilitator (or facilitators for villages with more than one ethnic minority) will contact the village head in order to organize an awareness-raising event at a location and at a time that is mutually acceptable to all village heads. They will also agree with each village head on the form and timing of events to engage the villagers in their village (for example, whether a single village meeting is appropriate, or whether a multi-stage process is required).

Step 5: Village meeting

The interlocutor(s) will attend the village meeting(s) at the time(s) established in Step 4.

Step 6: Recording decision

Having reached consensus, the villagers will prepare a document, using a template prepared by the UN-REDD Programme, indicating either their consent or non-consent; or otherwise indicate their decision.

Step 7: Facilitators report to the National REDD+ Programme

The document recording consent or non-consent of each village will be provided to the National REDD+ Programme by each interlocutor, who will also prepare and submit a report summarizing the consultations, highlighting any concerns as to whether there was evidence of coercion or pressure having been brought to bear on the villagers.

Step 8: Verification and evaluation

Independent verification of the FPIC process will be secured by contacting an independent, international organization with specialization in the area of forest–community interactions.

(from "Evaluation and Verification of the Free, Prior and Informed Consent Process under the UN-REDD Programme in Lam Dong Province, Vietnam," The Centre for People and Forests (RECOFTC))

RECOFTC identified several challenges that arose during FPIC piloting. For example, there was some concern that the timeframe for FPIC village meetings was too short to fully inform villagers of the issues being discussed. Concern was also raised about the lack of an independent FPIC complaint mechanism for local people.

Nevertheless, the Government's institution of FPIC with respect to REDD+ projects is an important innovation toward effective and participatory forest management. Vietnam has 53 ethnic minority groups, constituting 16 million people, many of whom live in and around forests, and such steps toward participatory decision-making are relatively new in Vietnam. Instituting FPIC programmes as a condition of pilot project implementation is crucial in safeguarding the rights of these peoples and recognizes the primacy of participation and inclusion as key human rights that must guide sustainable development projects. FPIC can also help to engage local communities more fully in REDD+ activities.

The UN-REDD Programme also hosted a three-day FPIC workshop in Hanoi from June 16-18

2010, to begin elaborating how the principle can be applied to UN-REDD and in the context of REDD-readiness more generally. The event was billed as a key consultation between “Indigenous Peoples organizations from Asia and The Pacific and the UN-REDD Programme on Free, Prior And Informed Consent Processes And Recourse Mechanisms For REDD+.” This workshop provided an opportunity for Vietnam to share its experiences regarding the challenges and realities of engaging communities in FPIC, and will allow Vietnam’s innovations to help inform FPIC design and implementation globally.

6.6 Other innovations

The current legal system of Vietnam features several policies, provisions and agencies that will facilitate the implementation of REDD+. For instance, Vietnam aims to set up a national forest area by 2020. The NFDS has set a goal to delineate, manage, protect, develop and sustainably use 16.24 million ha of land zoned for forestry, thereby increasing the percentage of forestland to 47% in 2020. This Strategy is an important basis for determining national forest area for land use planning, forest protection and development, and the implementation of REDD+ in Vietnam.

The legal framework for allocating and leasing land and forest areas has been supplemented, modified, and improved to contribute to the establishment of land use and forest use rights to organizations, rural communities, households and individuals. The legal framework related to uses and benefits mining and forestry is being supplemented, modified and improved. Decree No. 99/2010/ND-CP issued on 24/9/2010 establishes a policy on payment of forest ecosystem services, and lists carbon absorption and storage services as an eligible paid service. The LEP provides for the transfer or sale of carbon credits between Vietnam and foreign countries through a process established by the Prime Minister's regulations. The State encourages the production facilities, business and services reducing emissions (Article 84). The LB requires that organizations and individuals use environmental services related to biodiversity be responsible for paying money to organizations and individuals providing services (Article 74). Decree No. 05/2008/ND-CP issued on Jan 14, 2008 provides for the establishment of a fund for forest protection and development, at the central and provincial levels. Sources of funding include trust funds received from international institutions, organizations, and individuals inside and outside the country. Overall, Vietnam presents a welcome legal framework to facilitate the participation of fund management revenues from the REDD+ model in accordance with domestic laws and international commitments.

Furthermore, MARD and the European Community (EC) has set up a mixed working group on FLEG-T (Commerce) as an effort to improve forest governance and forest law enforcement (FLEG). The Working Group held a workshop in Hanoi, which attracted the participation of many related parties to assess the activities of FLEG in Vietnam and identify priorities. One of the objectives of the working group is to prepare for Vietnam to participate in negotiations on the Voluntary Partnership Agreement with the EC.

7 Conclusion

This Country Study has sought to provide a snapshot of Vietnam's preparedness with respect to legal and institutional aspects REDD+ under the Cancun Agreements as it begins to implement the UN-REDD Programme. Specifically, the Country Study surveyed the laws, regulations, guidelines and related instruments of relevance for REDD+ in Vietnam, then identified key legal and institutional challenges for effective REDD+ implementation, while also featuring domestic legal innovations.

In the Introduction, the Country Study noted that Vietnam is well-placed to benefit from REDD+ implementation due to its strong national commitment to achieve its climate change goals while promoting national development. The main drivers for deforestation and forest degradation in Vietnam are conversion of forests to agricultural land, relocated and mobile peoples, lack of rational forest control, unclear forest rights, lack of infrastructure, and the continued demand for raw wood materials. Vietnam had allowed its forest cover to decrease to 29% in 1993 but subsequently implemented various forestry programs that have resulted in an increase to 38.7% forest cover in 2008. The sustainability of Vietnam's forests is critical to improving livelihoods and reducing poverty for communities, especially those living in mountainous and remote areas, and the Vietnamese government has recognized this fact. Forest management is one of five key programmes of the National Forestry Development Strategy, and the design of a transparent and equitable benefit distribution system is a national priority.

In Part 2, the Country Study provided a focused discussion of the importance of legal preparedness for REDD+ and introduced the main methods used to identify key challenges in Vietnam's legal and institutional framework. In Part 3, the Country Study situated REDD+ within Vietnam's general governance system, including its development goals, centralized governance, and laws for public participation and access to information. It noted that Vietnam has achieved major developmental successes through the "DoiMoi" economic policy, but also that such development has relied largely on intense natural resource exploitation.

In Part 4, the Study reviewed the range of existing national laws and institutions in Vietnam that are particularly relevant to REDD+ design and implementation, including forest management, land use planning, and trade and investments, among others. In Part 5, the Study drew out the key challenges for legal preparedness for REDD+ in Vietnam, focusing on those most pertinent to the Cancun Agreements. In particular, it found that the key legal and regulatory gaps or challenges are the Coordination for Land Use Planning for REDD+, Effective Forest Governance Systems, and Rights to Carbon, Land and Forest Tenure.

Finally, in Part 6, the Country Study featured certain innovative legal and institutional reforms that are presently underway in Vietnam, and that will directly affect REDD+ implementation. These include Vietnam's existing benefit distribution systems, lessons learned from afforestation and reforestation CDM projects, and the Draft Vietnam National Strategy on Climate Change until 2050 and vision to 2100.

In conclusion, it is important to note that while a broad-brush survey has been presented above, more legal research and careful assessment is necessary, particularly since these new policies and laws are still only emerging and new solutions just being tested for REDD+. Furthermore, a great deal of technical assistance and support will be needed to provide tailored regulatory solutions that are appropriate to specific countries and to ensure engagement and ownership with a focus on sustainable livelihoods of local communities. Finally, to implement any legal and regulatory measures, capacity building at international, national and local levels, will be essential.

- ⁱ Vietnam Assessment Report on Climate Change (VARCC), ISPONRE, 2009, p.35
- ⁱⁱ Climate change, Sea level rise scenarios for Vietnam, MONRE, 2009, p. 34
- ⁱⁱⁱ FAO, Monitoring and Information for REDD+ Implementation: Draft Discussion Paper for UN-REDD Policy Board 7 (forthcoming).
- ^{iv} Decision 1/CP.16 Cancun Agreements: Outcome of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, para. 72 & Annex I, footnote 1.
- ^v See for instance, "Keohane et al. The Concept of Legalization" (2000) International Organization 401.
- ^{vi} This is adapted from a broader definition of "institutions" in FAO and Profor, *Framework for Assessing and Monitoring Forest Governance* (Rome, 2011).
- ^{vii} See for instance: ICV, Imazon and WRI, *The Governance of Forests Toolkit (v.1)* (September 2009); FAO and Profor, *Framework for Assessing and Monitoring Forest Governance* (Rome, 2011).
- ^{viii} UN-REDD Programme and Chatham House, *Guidance for the Provision of Information on REDD+ Governance (Draft)* (June 2011) at 4.
- ^{ix} UN-REDD Programme and Chatham House, *Guidance for the Provision of Information on REDD+ Governance (Draft)* (June 2011) at Table 1.
- ^x Other important sources are listed in the References section.
- ^{xi} To be supplemented by September 08 2011 with additional information that is currently under review by legal experts in Vietnam.
- ^{xii} United Nations Vietnam, Challenges Remain for Viet Nam to Achieve the MDGs, http://www.un.org.vn/index.php?option=com_content&task=view&id=649&Itemid=1.
- ^{xiii} World Bank, 2011 Vietnam Development Report – Executive Summary (World Bank, 2011).
- ^{xiv} Vietnam has ratified 4 international Conventions on human rights: Convention on Civil and Political Rights; Convention on Economic, Social and Cultural Rights; [Convention on the Elimination of All Forms of Discrimination against Women \(CEDAW\)](#); Convention on Children Rights
- ^{xv} Nguyen Van Thang & Tran Dinh Trong, Vietnam Institute of Meteorology, Hydrology and Environment, Climate change Adaptation in the Agricultural and Water sectors: Current status, issues and challenges in Vietnam, Inception workshop "Mainstreaming Climate Change Adaptation in the Agricultural and Water Sectors", Kuala Lumpur, August 2009
- ^{xvi} PAN Nature, Draft Report "Hydropower development and special use forest system of Vietnam", 2011
- ^{xvii} General Department of Statistics, Statistics of Labour – Employment – Unemployment 2006
- ^{xviii} World Bank, Report "Vietnam Environment Monitor", 2005
- ^{xix} MARD website, http://www.agroviet.gov.vn/Pages/news_detail.aspx?NewsId=12126
- ^{xx} To be supplemented by September 08 2011 with additional information that is currently under review by legal experts in Vietnam.
- ^{xxi} MARD, Document No. 1404/BC-BNN-TCLN on 24 May 2011 on Summing-up Report on Implementing results of the Plan 2010 and 5 year Plan of the period 2006-2010 and Planning for 2011 and 5 years from 2011-2015
- ^{xxii} Another potential challenge is the possibility that voluntary-market REDD+ initiatives may crop up locally, resulting in an un-nested (or un-nestable) REDD+ activities that will further complicate governance issues.
- ^{xxiii} Design of a REDD-compliant Benefit Distribution System for Viet Nam, UN-REDD Programme 2009 at p.79.
- ^{xxiv} Covington, Baker & McKenzie, "Background Analysis of REDD Regulatory Frameworks," 2009.
- ^{xxv} Design of a REDD-compliant Benefit Distribution System for Viet Nam, UN-REDD Programme 2009 at p.74.
- ^{xxvi} Fee to Hydro-power business: 20 VND/kwh; to pure water supplier 40 VND/m³ of water
- ^{xxvii} Fee to tourism business: 0.5 – 2% of tourism revenue in the fiscal period

Annexes

Annex 1 Legal Preparedness for REDD+ Considerations and Related Instruments

Annex 2 Vietnamese Laws Reviewed

Annex 3 Vietnam Policies & Programs Relevant to REDD+

Annex 4 Persons Consulted

Annex 5 References

Annex 1 Legal Preparedness for REDD+ Considerations and Related Instruments

	Legal Considerations	Cancun Agreements provisions	Related Legal Instrument Options
1.	<p>Ensure that REDD+ activities are used to enhance social benefits.</p>	<p>I.10. <i>Realizes</i> that addressing climate change requires a paradigm shift towards building a low-carbon society that offers substantial opportunities and ensures continued high growth and sustainable development, based on innovative technologies and more sustainable production and consumption and lifestyles, while ensuring a just transition of the workforce that creates decent work and quality jobs;</p> <p>Appendix I 2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported: (e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits;FN1</p> <p>FN 1 Taking into account the need for sustainable livelihoods of indigenous peoples and local communities and their interdependence on forests in most countries, reflected in the United Nations Declaration on the Rights of Indigenous Peoples, as well as the International Mother Earth Day.</p>	<ul style="list-style-type: none"> ▪ Participatory decision-making procedures to determine appropriate levels, nature and timing of monetary and non-monetary benefit distribution for local communities and indigenous peoples, including ex-ante support for start-up costs ▪ Rules for the entitlement to and how benefits will be distributed among investors, landowners, government, local communities and indigenous peoples and persons engaged in forest management (i.e. for opportunity costs, traditional knowledge, employment, management, royalties) ▪ Enforceable provisions for free, prior and informed consent (FPIC) in all REDD+ activities that affect stakeholders, particularly local communities and indigenous peoples ▪ Labour and employment standards that take into account freedom of association and decent work conditions ▪ Procedures, such as Impact Assessments and indicator-based reporting, for local communities and indigenous groups to signal unexpected impacts taking place as a consequence of REDD+ projects ▪ Risk sharing mechanisms to insure recoverable damages for disputes between employed persons, public authorities, and national and international investors ▪ Pricing tools, value addition and other incentives to promote alternative and sustainable livelihoods, for instance from non-wood forest products or ecotourism ▪ Clear and defined rights to land, forests and carbon ownership, use and transfer that support the assessment of benefit distribution systems ▪ Legal education on designing and drafting REDD+ contracts for local communities, indigenous peoples and persons undertaking forest management activities
2.	<p>Fully respect</p>	<p>I. 8. <i>Emphasizes</i> that Parties should, in all climate change</p>	<ul style="list-style-type: none"> •

	<p>human rights</p>	<p>related actions, fully respect human rights</p>	<p>incorporation of human rights legislation and international commitments in REDD+ strategies and action plans (i.e. Bills of Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination Against Women, Universal Declaration of Human Rights)</p> <ul style="list-style-type: none"> • Guarantees against discriminatory practices by political and traditional administrations in all REDD+ related projects, particularly with respect to property rights • Access to justice through dispute resolution mechanisms that are accessible, effective and enforceable
<p>3.</p>	<p>Address the drivers of deforestation and forest degradation</p>	<p>III.C. 68. <i>Encourages</i> all Parties to find effective ways to reduce the human pressure on forests that results in greenhouse gas emissions, including actions to address drivers of deforestation;</p> <p>72. Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p>	<ul style="list-style-type: none"> • Clarity and coherence of laws and institutional mandates across multiple sectors and jurisdictions with respect to REDD+ activities (i.e. energy, agriculture, minerals and mining, infrastructure, transportation, national, provincial, local) • Incorporation of cross-sectoral policies and programmes in REDD+ strategies and action plans • Coordination through inter-ministerial committees, working groups and crosscutting teams • repeal of laws and regulations that create perverse incentives, such as subsidies • Economic incentives to reduce the human pressure on forests in key sectors, such as tariffs, tax exemptions, subsidies, public-private partnerships, power purchasing agreements, loans and grants • Clarification of the hierarchy of competing interests in land use planning (i.e. easements, exceptions, expropriation, concessions, subsurface rights) • Prohibition, licensing and enforcement of deforestation and forest degradation reflecting actual implementation capacity, including community policing •

			<p>onetary and non-monetary substitutes for unsustainable practices, including guaranteed livelihoods through new employment or provision of new sources of food and energy</p>
<p>4.</p>	<p>Develop a national REDD+ strategy or action plan</p>	<p>71. <i>Requests</i> developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements: (a) A national strategy or action plan;</p> <p>72. Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p> <p>78. Also requests Parties to ensure coordination of the activities referred to in paragraph 70 above, including of the related support, particularly at the national level;</p>	<ul style="list-style-type: none"> • Key definitions consistent with international commitments and finance mechanisms • Project cycle procedures for approval, verification, data collection, auditing, reconciliation, emissions registration, and social and environmental impact assessment • Clear, consistent and coherent responsibility for REDD+ design, implementation and finance at different levels and sectors of governance • Clarification of tax and royalty treatment of investments, carbon credits earned or traded and benefit distribution systems • Determination of foreign investment and trading rules on ownership and use of carbon credits and export duties • Identification of whether carbon ownership is linked to the land, trees or other, where ownership lies and how it can be transferred • Rules on public and private entitlements to directly enter into contracts for REDD+ projects, public-private partnerships and public procurement laws • Enforceable public access to clear information on REDD+ procedures, applications and projects • Incorporation of the REDD+ Safeguards and issues, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations
<p>5.</p>	<p>Develop national forest reference emission and/or forest reference levels, including subnational forest reference emission levels and/or forest reference levels in combination and/or as an interim measure</p>	<p>III.C. 71. Requests developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements: (b) A national forest reference emission level and/or forest reference level⁶ or, if appropriate, as an interim measure, subnational forest reference emission levels and/or forest reference levels, in accordance with national circumstances, and with provisions contained in decision 4/CP.15, and with any further elaboration of those provisions adopted by the Conference of the Parties; FN6</p>	<ul style="list-style-type: none"> • Incorporation of international modalities for the development of reference levels into national and subnational policies, such as historical baselines or projections of future trends in the forestry sector • Coordination of subnational, inter-subnational and/or national institutions for data collection • Definition of the relationship among national reference levels, subnational projects, emission displacements and benefit sharing distribution systems

		<p>FN6 In accordance with national circumstances, national forest reference emission levels and/or forest reference levels could be a combination of subnational forest reference emissions levels and/or forest reference levels.</p>	<ul style="list-style-type: none"> • Establishment of carbon emissions registries to enable credits to be issued, transferred and retired
6.	<p>Develop national MRV including the integration of subnational monitoring systems into a national monitoring system and/or as an interim measure</p>	<p>III.C. 71. <i>Requests</i> developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements: (a) A robust and transparent national forest monitoring system for the monitoring and reporting of the activities referred to in paragraph 70 above, with, if appropriate, subnational monitoring and reporting as an interim measure, FN7 in accordance with national circumstances, and with the provisions contained in decision 4/CP.15, and with any further elaboration of those provisions agreed by the Conference of the Parties;</p>	<ul style="list-style-type: none"> • Credible and transparent institutions and standards to measure, certify and verify carbon at local, subnational and national level results • Development of criteria or indicator-based data collection and reporting • Funds or contractual provisions with investors or community members to finance independent field-based MRV and review of data • Transparent and accountable financial institutions, including for reporting, auditing and reconciliation • Anti-corruption laws and investigations, including protections for whistleblowers
7.	<p>Develop information systems on how the safeguards are addressed and respected</p>	<p>III.C. 71. <i>Requests</i> developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements: (c) A system for providing information on how the safeguards referred to in appendix I to this decision are being addressed and respected throughout the implementation of the activities referred to in paragraph 70 above, while respecting sovereignty;</p>	<ul style="list-style-type: none"> • Social and environmental impact assessments at each stage of the project cycle approval, monitoring, reporting and verification procedures • Clear institutional roles, mandates and responsibilities for multi-stakeholder and two-way information contributions • Indicator-based data collection systems tailored to the domestic context and involving stakeholder participation, operational analysis, strategic assessment and feedback, including through publication of assessment results • Rules and institutional mandates for auditing and reconciliation responsibilities, including verification and follow-up on discrepancies • Rules for peer reviews to assist the credibility of information
8.	<p>Promote and support effective and transparent national forest governance structures, taking into</p>	<p>Appendix I 2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported: (a) Transparent and effective national forest governance structures, taking into account national legislation and sovereignty;</p>	<ul style="list-style-type: none"> • Definition of key terms (i.e. forest, deforestation, permanence, carbon) • Clear and coherent laws and institutional mandates for forest management with national policies and devolved implementation that are commensurate to actual capacity

	account national legislation		<ul style="list-style-type: none"> • Participatory procedures for decision-making on and implementation of forest management and benefit sharing • Access to information and legal education on ownership and use rights, decision-making processes and recourse mechanisms • Transparent rules on converting or alienating forests, including for sale, land use planning, easements and concessions • Legislative fines, penalties and prosecutions that appropriately address deterrence
9.	Address land tenure issues	<p>III.C. 72. <i>Also requests</i> developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p>	<ul style="list-style-type: none"> ▪ <i>De jure</i> legal framework for land tenure that accurately reflects and addresses <i>de facto</i> occupation, management and use, including in traditional administrations ▪ Clear and accessible legal framework supporting and protecting attribution of entitlements for land tenure, including for customary, freehold, leasehold, concessions, leases and public ownership, use, management and transfers of interests ▪ Land titling procedures that are clear, accessible and enforceable (i.e. legal education, accessible registration, disputes resolution) ▪ Rules on the alienability and acquisition of lands, including free, prior and informed consent, compensation or resettlement ▪ Coordination of land tenure with forest governance objectives and other land use planning
10	Address gender considerations	<p>III.C. 72. <i>Also requests</i> developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p>	<ul style="list-style-type: none"> ▪ Mainstreaming of gender issues into land titling and forest management procedures ▪ Programmes for gender sensitization, focal points, consultative fora and management teams ▪ Precise rules on gender equality in benefit distribution systems ▪ Meaningful representation of gender interests on decision-making bodies at all jurisdictional levels, including at the national policy level
11	Promote and support actions to address the risks of reversals	<p>Appendix I 2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported: (f) Actions to address the risks of reversals;</p>	<ul style="list-style-type: none"> • Action plans to deal with force majeure events (i.e. fires, extreme weather events, droughts) •

			<p>lear and coherent hierarchies in competing interests in land across sectors that threaten permanence (i.e. easements, exceptions, expropriation, concessions)</p> <ul style="list-style-type: none"> • Rules for risk mitigation mechanisms such as title registration, insurance, bonds, liens, guarantees and buffers or carbon pools • Risk management tools for monitoring and enforcement
12	<p>Promote and support actions to reduce the displacement of emissions</p>	<p>III.C.71. Requests developing country Parties aiming to undertake the activities referred to in paragraph 70 above, in the context of the provision of adequate and predictable support, including financial resources and technical and technological support to developing country Parties, in accordance with national circumstances and respective capabilities, to develop the following elements:</p> <p>(a) A robust and transparent national forest monitoring system for the monitoring and reporting of the activities referred to in paragraph 70 above, with, if appropriate, subnational monitoring and reporting as an interim measure, FN7 in accordance with national circumstances, and with the provisions contained in decision 4/CP.15, and with any further elaboration of those provisions agreed by the Conference of the Parties;</p> <p>FN7 Including monitoring and reporting of emissions displacement at the national level, if appropriate, and reporting on how displacement of emissions is being addressed, and on the means to integrate subnational monitoring systems into a national monitoring system.</p> <p>Appendix I 2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(g) Actions to reduce displacement of emissions.</p>	<ul style="list-style-type: none"> • International or regional treaties on displacements (i.e. SADC Protocol) • Subnational accords to promote coordinated actions across disparate communities • Mainstreaming of REDD+ activities into national, regional and local land use planning • Rules on the relationship between project-level, subnational and national baselines and crediting, including: • That activities will be counted toward national commitments • Benefit distribution among national and subnational institutions • How subnational/project-level participants will be compensated if displacements elsewhere reduce national crediting • RV and information systems that report on how displacements are being addressed
13	<p>Promote and support multiple forest functions</p>	<p>Appendix I The activities referred to in paragraph 70 of this decision should:</p> <p>(b) Be consistent with the objective of environmental integrity and take into account the multiple functions of forests and other ecosystems;</p> <p>(k) Promote sustainable management of forests;</p>	<ul style="list-style-type: none"> • Integration of conservation and sustainable use of biological diversity into REDD+, and relevant sectoral or cross-sectoral policies, plans and programmes

		<p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(e) That actions are consistent with the conservation of natural forests and biological diversity, ensuring that the actions referred to in paragraph 70 of this decision are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits</p>	<p>ules against the conversion of natural forests into plantations, including prohibitions in benefit distribution systems</p> <ul style="list-style-type: none"> • system for simultaneous payments for carbon storage and biodiversity protection to promote integrated management and avoid investor favoritism to carbon-rich forests • strategic and environmental impact assessments of REDD+ projects with biodiversity criteria
14	<p>Undertake activities consistent with national sustainable development and adaptation needs and goals, including reducing poverty while responding to climate change</p>	<p>Appendix I</p> <p>1. The activities referred to in paragraph 70 of this decision should:</p> <p>(c) Be undertaken in accordance with national development priorities, objectives and circumstances and capabilities and should respect sovereignty;</p> <p>(d) Be consistent with Parties' national sustainable development needs and goals;</p> <p>(e) Be implemented in the context of sustainable development and reducing poverty, while responding to climate change;</p> <p>(f) Be consistent with the adaptation needs of the country;</p>	<ul style="list-style-type: none"> • incorporation and/or respect for commitments under national poverty reduction and development strategies (i.e. Vision 2030s, MDGs) into REDD+ strategies • establishment of REDD+ benefit sharing systems that provide an appropriate level and form of compensation • allocation of benefit distribution funds to finance socio-economic infrastructure with REDD+ co-benefits, such as ITC systems, legislative and institutional reforms, feeder roads and education • creation of the right cross-sectoral policy mix to address the drivers of deforestation and forest degradation without compromising livelihoods or necessary goods and services
15	<p>Promote and support that actions complement or are consistent with relevant international conventions and agreements</p>	<p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;</p>	<ul style="list-style-type: none"> • incorporate and/or respect international commitments under: <ul style="list-style-type: none"> ○ Cancun Agreements and REDD+ Safeguards ○ UN Declaration on the Rights of Indigenous Peoples ○ International Convention on the Elimination of All Forms of Racial Discrimination ○ Convention on Biological Diversity ○ UN Convention to Combat Desertification ○ International Tropical Timber Agreement

			<ul style="list-style-type: none"> ○ amsar ○ nternational Covenant on Civil and Political Rights ○ nternational Covenant on Economic, Social and Cultural Rights ○ onvention on the Elimination of all Forms of Discrimination Against Women ○ LO Convention No. 169 ○ frican Charter on Human and Peoples Rights ○ onvention on the Elimination of All Forms of Racial Discrimination ○ niversal Declaration of Human Rights
16	<p>Promote and support that actions complement or are consistent with national forest programmes</p>	<p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) That actions complement or are consistent with the objectives of national forest programmes and relevant international conventions and agreements;</p>	<ul style="list-style-type: none"> • Incremental legal reforms to existing legislation through regulatory amendments and by-laws to supplement existing laws and lower transaction costs • New umbrella policies and laws adequately address and incorporate existing laws, policies, guidelines, regulations and institutions • Incorporation of prior community based or decentralized forest management programmes and/or lessons learned • Programmes on protected areas for wildlife, biological diversity, water catchment areas and heritage conservation are respected
17	<p>Undertake activities that are results-based</p>	<p>III.C. 73. Decides that the activities undertaken by Parties referred to in paragraph 70 above should be implemented in phases, beginning with the development of national strategies or action plans, policies and measures, and capacity-building, followed by the implementation of national policies and measures and national strategies or action plans that could involve further capacity-building, technology development and transfer and results-based demonstration activities, and evolving into results-based actions that should be fully measured, reported and verified;</p> <p>Appendix I</p>	<ul style="list-style-type: none"> • Robust and equitable benefit sharing distribution systems that include results-based or performance-based payments using set milestones and/or MRV criteria • Rules defining, supporting and protecting public or private carbon ownership and use, including alienability, transfer, royalty and fraud prevention rules • System of performance-based penalties resulting from non-adherence to forest management rules

		<p>1. The activities referred to in paragraph 70 of this decision should:</p> <p>(j) Be results-based;</p>	<ul style="list-style-type: none"> • Short-, medium- and/or long-term contracts for carbon credits that take into account periodical review and revision of reference levels to ensure additionality (i.e. dynamic baselines)
18	Promote and support the knowledge and rights of indigenous peoples and members of local communities	<p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;</p>	<ul style="list-style-type: none"> • Incorporation of traditional knowledge into forest management standards • Rules to obtain and protect free, prior informed consent in all s.70 related activities • Provision of legal education to local communities and indigenous peoples (i.e. on rights to tenure, carbon ownership, labour standards) • Dispute resolution mechanisms that are equitable, transparent, accountable, independent, confidential and affordable (or free), and that respect customary justice systems of indigenous peoples and local communities • Reinforcement of capacity of the judiciary for alternative dispute resolution, including expanding adjudicators, arbitrators or mediators to include administrative bodies and representatives of local communities
19	Promote and support the full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities in s.70 activities as well as in developing and implementing national REDD+ strategies or action plans	<p>III.C. 72. Also requests developing country Parties, when developing and implementing their national strategies or action plans, to address, inter alia, the drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 of appendix I to this decision, ensuring the full and effective participation of relevant stakeholders, inter alia indigenous peoples and local communities;</p> <p>Appendix I</p> <p>2. When undertaking the activities referred to in paragraph 70 of this decision, the following safeguards should be promoted and supported:</p> <p>(a) The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities, in the actions referred to in paragraphs 70 and 72 of this decision;</p>	<ul style="list-style-type: none"> • Design of REDD+ strategies through consensus building events with local communities and indigenous peoples • Clearly defined and enforceable rules on levels, timing and mechanisms for stakeholder participation in decision-making • Incorporation of culturally sensitive, traditional and community structures for decision-making, including representatives chosen by themselves in accordance with their own procedures • Broader public consultations at various levels of project design and implementation (i.e. public notice and open comment periods) • Accessible and enforceable access to information rules for all applications, EIAs, SEAs, project documents, laws and institutional mandates affecting REDD+ activities

Annex 2 Government of Socialist Republic of Vietnam Laws Reviewed

General Laws and Regulatory Decrees

Law on Minerals 2010;

Law on Tax on Natural Resources of 2009;

Law on Bio-diversity 2007;

Law on dykes and embankment systems, 2006

Law on Land 2005;

Law on Environment Protection 2005;

Law on Forest protection and development 2004;

Construction Law 2003;

Decree No. 99/2010/ND-CP on 24 September of the Government on PFES;

Decision No. 2284/QD-TTg, 13 December 2010, on approval of the proposal "Implementation of Decree No. 99/2010/ND-CP on PFES";

Decision 327/CP, 1992. Policies for the Use of Bare Lands, Denuded Hills, Forests, Alluvial Flats, and Bodies of Water;

Decision No. 661/QD-TTg dated 29 July 1998 by the Prime Minister on objective, tasks, policies and organization for the establishment of five million hectares of new forest;

Decree 01/CP, 1995. Decree on the Enactment of Regulations on the Allocation of Land for Agriculture, Aquaculture, and Forestry in State - run Enterprises/Farms to Organization, Households and Individuals for Stable and Long -term Use;

Decree No. 163/1999/ND-CP dated 16 November 1999 by the Government concerning allocation and lease of forest land to Organizations, households and individuals for long-term forestry purposes;

Decision No. 08/2001/QĐ-TTg dated 11 January 2001 by the Prime Minister issuing Regulation on management of natural special-use, protection, and production forest;

Decision No. 178/2001/QĐ-TTg dated 12 November 2001 by the Prime Minister issuing Regulation on the benefit right, responsibilities of the households, individual who are allocated, leased, and contracted forest land.

Decision No. 18/2007/QĐ-TTg of Prime Minister on 5 February 2007 on approval of Strategy of Forestry Development of Vietnam from 2006 – 2020;

Decision No. 172/2007/QĐ-TTg on 16 November 2007 on approval of National strategy on disaster prevention, response and mitigation toward 2020;

Decree 117/2010/ND-CP on organization and management of special-use forests

Resolution 10, 1988. Resolution on Allocation of Agricultural Land to Individual and Households. The Central People's Government.

Resolution 272/CP, 1972. Resolution on Allocation of Forest and Forestland to Cooperatives.

Decision No. 172/2007/QĐ-TTg issued on 16/11/2007 by the Prime Minister approving the national strategy on disaster prevention and reduction by 2020;

Directive No. 35/2005/CT-TTg issued on 17/10/2005 by the Prime Minister on the implementation of the Kyoto Protocol under the UNFCCC.

Decision No. 47/2007/QĐ-TTg issued on April 2007 by the Prime Minister approving the Plan of Implementation of the Kyoto Protocol under the UNFCCC in the 2006 – 2010 period, which assigned the Ministry of Natural Resources and Environment and other ministries, branches and localities as responsible for the implementation of the Kyoto Protocol and Clean Development Mechanism;

Decision No.158/QĐ-TTg issued on December 2, 2008 by the Prime Minister approving the National Target Program to Respond to Climate Change;

Decision 130/2007/QĐ-TTg dated 02/8/2007 of the Prime Minister on some financial mechanism and policy for CDM projects.

Decree 05/2008/NĐ-CP dated 14/01/2008 of the Government on Forest protection and development Fund.

Decision No.2730/QĐ-BNN-KHCN issued on May 9, 2008 by the Ministry of Agriculture and Rural Development promulgating the Framework Program on Adaptation to Climate Change for Agriculture and Rural Development for the period 2008 -2020, including within the forestry sector;

Decision No. 1828/QĐ-BNN-TCLN of MARD, on 12 August 2011 on publicizing forest status in 2010

Decision No.186/2006/QĐ-TTG issued on August 14, 2006 by the Prime Minister on forest management regulation

Circular No.35/2011/TT-BNNPTNT issued on May 20, 2011 by the Ministry of Agriculture and Rural Development guide the exploitation of timber and NTFPs under the three types of forests (special-use forests, protection forests and production forests)

Decree No. 200/2004/ND-CP dated 03/12/2004 aimed at continuing efforts to restructure, promote innovation and develop SFEs currently regulated by provinces and cities with control under the Central Government.

Decree 99/2009/ND-CP on settlement of administrative violations in the field of forest management, forest protection and management of forest products

Decision No. 1899/2006/QĐ-BCA(X13) on 29 November, 2006 of the Ministry of National Security on establishment of the Department of Environment Police

National statistics and data

Monitoring Report on Implementation of National Assembly's Resolution on the project of 5ha afforestation, No. 570/UBTVQH11, Standing Committee of National Assembly 11, 23 October 2006;

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Report of Forestry in 2005, Ministry of Agriculture and Rural Development

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Annex 3 Vietnam Policies & Programs Relevant to REDD+

1. Vietnam Policies and Programs Addressing REDD+, Forests and Climate Change

- 1.1 National Target Program to respond to climate change (NTP);
- 1.2 Strategy of Forestry Development of Vietnam from 2006 – 2020
- 1.3 National Strategy for environmental protection until 2010 and vision toward 2020 (NSEP)
- 1.4 Action Plan Framework for Adaptation to Climate change in the Agriculture and Rural Development Sector, period 2008 – 2020
- 1.5 Action Plan on Responding to Climate Change in the Sector of Industry and Trade, period 2010-2015
- 1.6 National Strategy on Natural Disaster Prevention and Mitigation to 2010
- 1.7 National Strategy for development of electricity sector in period 2004-2010 and vision toward to 2020
- 1.8 National Strategy for Energy Development until 2020 and vision toward 2050
- 1.9 National Target Program on Efficient Use and Saving Energy (EUSE)
- 1.10 Strategy of Rubber tree development to 2015 with vision toward 2020
- 1.11 National Action Plan on Biodiversity to 2010 with vision toward 2020 and implementation of Convention on Biodiversity and Cartagena Protocol on Biosafety
- 1.12 National Action Program to Combat Desertification for 2006-2010 and 2020

2. Vietnam Policies and Programs Addressing REDD+, Climate Change and other related programs

- 2.1 UN-REDD Programme Strategy 2011-2015, FAO, UNDP, UNEP;
- 2.2 5 Million Hectares Reforestation Programme
- 2.3. Project on improving forest fire prevention capabilities, approved by the Prime Minister in Decision No. 02/QD-TTg on Jan 2, 2007
- 2.4 The Scheme of Rehabilitation and Development of the Coastal Mangrove was approved by the Prime Minister in Decision No. 405/QD-TTg - KTN on March 1, 2009

Annex 4 Persons Consulted

1.	Mr. Nguyen Xuan Phuong	Forestry Legal Expert
2.	Dr. Nguyen Quang Tan	Country Program Coordinator - Vietnam The Center for People and Forest (RECOFTC)
3.	Dr. Pham Manh Cuong	National REDD Focal Point Ministry of Agriculture and Rural Development (MARD)
4.	Ms. Nguyen Mai Hanh	Climate Change expert
5.	Mr. Le Duc Chung	Strengthening Sustainable Development and Climate Planning Project Ministry of Planning and Investment (MPI)

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International Development Law Organization
Organisation Internationale de Droit du Développement