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# Legal Analysis

*to Assess the Impact of National Laws, Policies and  
Institutional Frameworks on Ethnic Minorities & Local  
Communities in the Conservation and Development of  
Natural Resources in Viet Nam*

**October 2018**







Legal Analysis to Assess the Impact of National  
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Photo: Lam Dang*

# Introduction to Legal Analysis

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# ABBREVIATIONS & ACRONYMS

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<b>CBD</b>	Convention on Biological Diversity
<b>CBO</b>	Community-based Organisation
<b>CPC</b>	Communal People's Committee
<b>EIA</b>	Environmental Impact Assessment
<b>GEF</b>	Global Environmental Facility
<b>GOV</b>	Government of Viet Nam
<b>ICCA</b>	Territories and Areas Conserved by Indigenous Peoples and Local Community
<b>IUCN</b>	International Union for Conservation of Nature
<b>MARD</b>	Ministry of Agriculture and Rural Development
<b>MOF</b>	Ministry of Finance
<b>MONRE</b>	Ministry of Natural Resource and the Environment
<b>MPAs</b>	Marine Protected Areas
<b>NJ</b>	Nature Justice
<b>NGOs</b>	Non-Governmental Organizations
<b>NPs</b>	National Parks
<b>NTFPs</b>	Non-Timber Forest Products
<b>PAs</b>	Protected Areas
<b>PPCs</b>	Provincial People's Committees
<b>SEA</b>	Strategic Environment Assessment
<b>SGP</b>	Small Grants Program
<b>UNDP</b>	United Nations Development Programme
<b>WWF</b>	World Wildlife Fund



# INTRODUCTION TO LEGAL ANALYSIS



## 1. Background

Viet Nam is endowed with abundant and diverse natural resources and local people play a vital role in the conservation and development of these. The conservation of natural resources is especially important for ethnic minority people as their daily life is closely connected with species of plants, animals, fisheries, and their habitats and surroundings.

Various natural resources conservation-related issues have been regulated in a number of important statutes, such as the 2008 Law on Biodiversity, the 2004 Law on Forest Protection and Development and now the 2017 Law on Forestry and the 2017 Law on Aquatic Fisheries.



Along with its process of international economic integration, Viet Nam officially acceded to the Convention on Biological Diversity (CBD) in 1994, and then became the 31<sup>st</sup> member of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization within the framework of the CBD and the Aichi Biodiversity Targets. Viet Nam also signed the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in [...].<sup>1</sup>

The objective of the Nagoya Protocol is the sharing of monetary and non-monetary benefits arising from the utilization of genetic resources and traditional knowledge associated with genetic resources of indigenous peoples and local communities. The protocol emphasizes that indigenous peoples and/or local communities are entitled to benefits arising from the use of their traditional knowledge associated with the discovery of a certain useful genetic resources. The Aichi Biodiversity Targets request urgent and effective actions undertaken to address biodiversity loss with a view to safeguarding ecosystems and the life of mankind by 2020.

In addition to legal regulations on natural resources conservation, there remain traditional institutions existing among local communities to enable their conservation and development activities. For forest resources, now there are about 1.145 million ha of forests allocated by the State to the village communities for management and use for long-term forestry purposes. And for marine resources, many coastal communities have worked together with other legal subjects in co-management of marine protected areas (MPAs).

Also, there remain many community-based conservation models established and performed without official recognition from the State in forest, land and water surface areas temporarily managed by Communal People's Committees (CPCs), although they have not officially been allocated by the State to local communities and/or others for long-term management. The key features of these models, whether legally recognized or not, show that the protection of endemic species of fauna and flora, forest vegetations and marine ecosystems and/or high valued mangrove areas, has been performed well, contributing to improving local livelihoods and maintaining local cultural institutions.

Although the regulations on community-based natural resources conservation have been stated in many laws and policies, in practice these have not enabled local communities to deal with difficulties. Furthermore, the inclusion of the provisions of relevant international biodiversity conventions into these regulations has been constrained. This has led to various challenges facing local communities in the conservation of natural resources and the exercise of their rights (for example, to benefit from the State's financial support for the conservation of stork and/or bird colonies and groups of langur monkeys).

From a practical point of view, an analysis of laws, policies and institutions for ethnic minorities and local communities in the conservation and development of natural resources is very essential and profoundly practical.

The GEF-UNDP/SGP funded project on "Legal analysis to assess the impact of laws, policies and institutional frameworks on Indigenous Peoples and Local Community Conserved Territories

and Areas (ICCAs)" has been implemented in 26 countries in the world. Its overall objective is to assess the impact of laws, policies and institutional frameworks on ICCAs at national level; and develop through participatory means appropriate recommendations and strategies to improve the recognition and support of ICCAs.

ICCAs as defined by IUCN, are "natural and/or modified ecosystems of significant biodiversity values, ecological services and cultural values, which are conserved by indigenous peoples and local communities through their customary and other effective measures". Often ICCAs are characterized by:

- i. Culturally defined relationships between local communities and ecosystems and/or the reliance of indigenous peoples and local communities on ecosystems for livelihoods;
- ii. Indigenous peoples' and local communities' decisions and their governance efforts leading to the conservation of the environment, species of fauna and flora, ecosystem services and their relevant cultural values; and
- iii. A key role that indigenous peoples and local communities can play in the decision making process.

## 2. Objectives

This report focuses on the analysis of the current state of national laws, policies and institutions on ethnic minorities and local communities in the conservation and development of natural resources in Viet Nam; identifies inadequacies and constraints; and provides recommendations to appropriately recognize and strengthen ICCAs through changes to laws and policies (including promoting and developing protected areas (PAs) managed by ethnic minorities and local communities toward achieving the Nagoya commitments and the Aichi Biodiversity Targets.)

## 3. Research Methodologies

- Based on the Questionnaires and Guidelines provided by Natural Justice (NJ), a GEF-commissioned body, design the structure of a legal review report and compile its substance considering circumstances of Viet Nam and local communities especially ethnic minority peoples living traditionally and attending to the conservation of local natural resources, i.e. Land, forest, fisheries and biodiversity;
- Collect and review available legal documents relating to ethnic minority groups and communities in the conservation and development of natural resources issued by central competent authorities since 1987 (the first Land Law), and research reports and/or papers on communities' conservation activities documented in various documents and texts; and
- Host national level consultation workshops to present draft reports and collect comments and/or feedback from relevant agencies, organizations, managers, scientists, and staffs working in relevant programs and projects.

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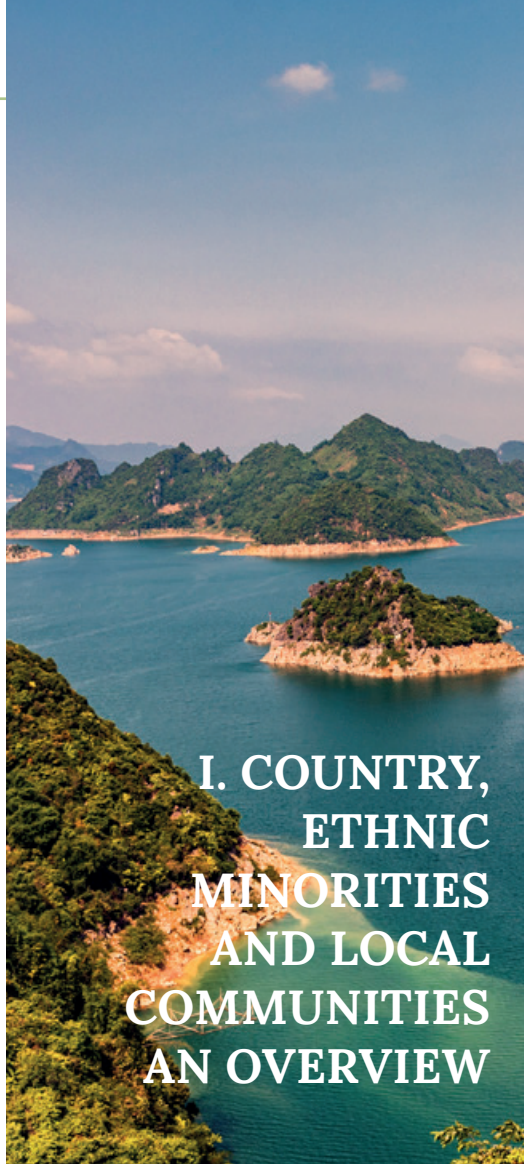
1. <https://www.google.com.vn/search>





# REPORT





# I. COUNTRY, ETHNIC MINORITIES AND LOCAL COMMUNITIES AN OVERVIEW

*“In Viet Nam there are 54 ethnic groups, of which 53 are ethnic minorities with 13.4 million people, accounting for 14.6 % of the total population of the country.”*

2. GoV Report on the 2011 - 2015 Five-Year Socio-economic Development and the 2016 - 2020 Five-Year Socio-economic Development Directions.



## 1. Introduction to the Country

Viet Nam is located on the Indochinese Peninsula in Southeast Asia, and the Pacific Coast. It is within a monsoon tropical zone. It has an area of 331,698 km<sup>2</sup> and is divided into seven ecological regions, including Northern Midlands and Mountains, Red River Delta, North Central Coast, South Central Coast, Central Highlands, South East and South West (of Mekong River). According to the 2014 census, the population of Viet Nam was 90,728.900 people including 44,758.100 males and 45,970.800 females accounting for 49.33% and 50.67% respectively. Viet Nam is a densely populated country. It is ranked 65<sup>th</sup> in terms of land area but 15<sup>th</sup> in terms of population.

Under the provisions of the Constitution of Viet Nam, land, water and mineral resources, resources in the sea and airspace, and other natural resources, are under the ownership of the entire people, and represented and uniformly managed by the State. The State grants the right to manage and use natural resources to organizations, households, individuals and communities and this is institutionalized in several specialized laws, such as the Land Law, Forestry Law, Law on Aquatic Fisheries, Mineral Law, Law on Public Property Management and Use, etc.

Viet Nam is administratively divided into 58 provinces and 5 centrally-governed cities. Its administration is decentralized to three provincial, district and communal levels. Viet Nam is a middle income country. Its average growth rate of GDP in 2011 - 2015 was 5.82%<sup>2</sup> per annum; and its GPD in 2017 accounted for USD 223 billion.

Viet Nam has now established diplomatic relations with 180 countries. It is a member of 63 international organizations and has relationships with more than 650 non-governmental organizations (NGOs). At the same time, Viet Nam has established trade relations with 165 countries and territories. it joined ASEAN in 1995 and officially became the 150th member of the World Trade Organization since 2007.



## 2. Communities and Environmental Change

### 2.1. Ethnic Minorities and Local Communities

► In Viet Nam there are 54 ethnic groups, of which 53 are ethnic minorities with 13.4 million people, accounting for 14.6 % of the total population of the country. The (dominant) Viet ethnic group (also known as the Kinh) makes up about 86% of the population, concentrated in deltas and coastal plains. The ethnic minorities are scattered across the country, mainly in remote rural, mountainous and border areas with fragmented terrains and difficulties.

While ethnic minority people account for one sixth of the country's population, they live in a territory that is three quarters of the total land area in 5,259 communes of 457 districts throughout 52 provinces/cities. Of which, there are 2,400 communes and 3,100 hamlets classified into the extremely difficult category.

From 2011 to 2015, the State invested in the settlement of 30,000 nomadic households to enable them to practice fixed cultivation; allocated productive and residential land to 12,000 households; and supported the shifting of career for 7,000 households. As a result, 80 communes and 372 hamlets were no longer in the extremely difficult category, and the rate of poverty was reduced from 35% in 2011 to 16.8% by the end of 2015 [8].

► The concept of indigenous peoples is recognized in the UN Declaration on the Rights of Indigenous Peoples as “the peoples who have long lived in a territory before the arrival of others.” In Viet Nam, the term “indigenous peoples” was used by the French since the French colonial rule (1884 - 1945) to refer to all the ethnic groups living in Viet Nam, irrespective of the Kinh or others. After the foundation of the Democratic Republic of Viet Nam

(Sept. 2<sup>nd</sup> 1945) and the Constituion determined that the people of Viet Nam owned the country, the concept of “indigenous people” was no longer used [15]. In fact, all the ethnic groups of Viet Nam have been formed and developed over the thousands of years history of Viet Nam.

The State of Viet Nam implements its policy of equal development for all the ethnic groups, and the preservation and strengthening of their traditions. This has been recognized in the first Constitution of Viet Nam in 1946 and the revised Constitution (Article 5) in 2013. Rather than using the concepts of “indigenous peoples” and “indigenous peoples’ rights”, the term “citizenship” has been introduced to refer to the rights of all Vietnamese people, regardless of whether they belong to an ethnic minority. At present in Viet Nam, the term “ethnic minorities” is used to distinguish ethnic minorities from the Kinh majority, which is widely referred to in legal documents<sup>3</sup>. The term “ethnic minorities” is referred to in the Law on Water Resources, Article 45, Section 1, Para. (a) relating to the exploitation and utilization of water resources for domestic activities.

► In Viet Nam, the official language is Vietnamese, the language of the Kinh people. This is the mother-tongue of approximately 85% of the population. Vietnamese is also the second language for members of ethnic minority groups. The State has invested in and prioritized the teaching and learning of ethnic minority languages for ethnic minority peoples. Viet Nam is a multi-religious country. Ethnic communities in Viet Nam have long-standing beliefs, such as Buddhism, Christianity, and Islam. In

addition, a significant number of people identify themselves as non-religious.

► In Viet Nam, the term “community” has been used in a number of specialized legal documents, such as the 2003 Land Law and the revised Land Law, 2013, the 2004 Law on Forest Protection and Development and now the Forestry Law of 2017<sup>4</sup>, and the 2008 Law on Biological Diversity. To promote their roles, self-reliance and protection of natural resources and the environment; and the protection, preservation and strengthening of their traditional cultural values, customs and good practices in their communities, the Prime Minister of the Government of Viet Nam (GOV) issued Decision No. 22/2018/QĐ-TTg dated May 8, 2015 on the formulation and implementation of village/ward level conventions applied for local communities at hamlet, village, and ward levels and so on (Article 1).

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3. GOV Decree 05/2011/ND-CP dated Jan 14, 2011 relating to the work of ethnic peoples, defines a concept of “Ethnic minorities are ethnic groups of population that is smaller than that of the ethnic majority within the territory of the Socialist Republic of Viet Nam “(Article 4 Para. 2); “The ethnic majority is an ethnic group of population that makes up more than 50% of the total population of the country according to the national census”(Article 4 para.3).

4. The 2013 Land Law states “A residential community include a community of Vietnamese people living together in the same territory of a village or ward or similar residential area and having the same customs and habits, and the same line of descent” (Article 5). The 2017 Law on Forestry states “A residential community include a community of Vietnamese people living in the same territory of village or ward or similar residential area and having the same customs and habits” (Article 2).



## 2.2. Threats to Cultures and Multilingualism

Ethnic minorities are at risk of losing their cultures and identity. The situation of diversity and dynamics in cultural activities and lifestyle is increasingly apparent; while the level of cultural enjoyment of the people is limited because of lacking opportunities to practice. Along with the trend towards integration and development, different cultural flows penetrate the social life in ethnic minority areas which strongly influence their traditional cultures. The risk of ethnic identity change and loss warrants ongoing concern.

One major issue relates to the fact that there are no effective policies and measures in the teaching and learning of ethnic minority languages for pupils of ethnic minorities although the State has prioritised teaching ethnic languages, which is a key issue in the preservation and development of the culture of each of ethnic minorities. Many aspects of the cultural heritage of ethnic minorities have not yet been studied and evaluated scientifically and methodologically, and are in danger of disappearing in the trend of modernization due to adverse effects of the market mechanisms, misunderstandings and prejudice.

## 2.3. Biodiversity and Conservation Issues

Viet Nam is internationally recognized as having one of the highest levels of biodiversity in the world. The country has many different types of forests, swamps, rivers, coral reefs and other environments providing habitat for about 10% of the total number of species of birds and wildlife worldwide. The country is endowed with three global ecosystems as recognized by the World Wildlife Fund (WWF)<sup>5</sup>; one of five zones of endemic bird species as recognized by the BirdLife International; and six plant diversity centers as recognized by the International Union for Conservation of Nature (IUCN).

The country's biodiversity resources mainly occur in three major ecosystems: wetland ecosystems, marine ecosystems and terrestrial ecosystems. Within each type of ecosystem there is great diversity. There are 26 types of wetland ecosystems including inland, coastal, marine and artificial wetlands, as well as mangroves, coral reefs and lagoons of high biodiversity. Marine ecosystems have a territorial sea water and coastal area of 226,000 km<sup>2</sup>, with 20 types of typical ecosystems of high biodiversity and biological productivity. Terrestrial ecosystems, especially forest ecosystem, are also very diverse, and each forest ecosystem is in fact, a very complex one, operated and governed by internal and external laws.

As of May 2018, there are 176 protected areas (PAs) established within wetland, marine and terrestrial ecosystems. According to

the National Master Plan for Biodiversity Conservation for 2020 and Vision toward 2030 (Decision 45/QĐ-TTg dated January 8th, 2014), Viet Nam will have 219 PAs established nationwide. Of this number there will be 159 terrestrial PAs, 47 conserved wetlands and 13 MPAs. Currently, Viet Nam has eight RAMSAR sites, nine world biosphere reserves, two world natural heritage and six ASEAN Heritage Gardens<sup>6</sup>.

Despite these efforts, Viet Nam's biodiversity resources continue to be degraded, ecosystems are shrinking, fragmented and degraded, endangered species are on the rise and genetic resources are being lost. This can be attributed to:

- Over-exploitation of biological resources: deforestation, logging and mineral exploitation; over fishing; illegal hunting and consumption of wildlife are a phenomenon in Viet Nam.
- Conversion of land use: many natural forests were converted into industrial crop planting lands, while new roads, hydropower projects and aquaculture areas have also been developed.
- Forest fires and climate change: Due to conditions of an equatorial climate with its increasing temperature, Viet Nam is at the risk of forest fires in the dry season annually. Viet Nam is one of the five countries most affected by sea level rise, and negative impacts of extreme weathers such as heat waves and heavy rainfalls, leading to high rates of changes in ecosystems and loss of plant and wildlife species.
- The introduction of new varieties and exotic species: the introduction of some seedlings and breeds has caused negative impacts to the conservation of indigenous genetic pools such as the Yellow Snail (*Pomacea canaliculata*) and the *Mimora pigra*, etc.
- Environmental pollution: Various wastes are disposed without treatment and dumped directly into the environment. Environmental incidents occur such as oil spills reducing the population of wildlife, indirectly destroying habitats of many species; and contaminating freshwater, coastal and marine ecosystems.

In addition, there are profound socio-economic causes such as population growth, land accumulation for industrial development, and poverty of communities living within and outside PAs. All these factors contribute to the degradation of biodiversity in Viet Nam.

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5. Curriculum on "Biodiversity and Biodiversity Conservation" – Ha Noi University of Natural Resource and the Environment – 2015.

6. Agency for Biodiversity Conservation, Viet Nam Environment Administration, Ministry of Natural Resources and Environment (MONRE), 2018





## 2.4 Conserved areas managed by ethnic minorities and local communities

### 2.4.1. Range and diversity of conserved areas

Field studies show that conserved areas managed by ethnic minorities cover approximately one million hectares<sup>7</sup>, mainly forests, wetlands and marine areas. One of the main features of the conserved areas is a very close relationship between biodiversity resources and local communities. The resources are voluntarily managed by local communities themselves through their traditional customs, or as a key partner in collaboration with outside agencies if the land is not under their ownership. Some of the conserved areas have been managed by ethnic minorities for a long time while others were established in recent years.

### 2.4.2. Governance of conserved areas

So far, there are no legal documents specifically regulating the governance of conserved areas of local communities, but some statutes such as the Laws on Forestry and Biodiversity refer to the community-based PA's management and the responsibility of local communities and people living within PAs for the conservation of natural resources. Local communities mainly protect natural resources by using their traditional knowledge passed down from one generation to another, and based on conventions developed under the State's guidelines<sup>8</sup> for establishing village/community conventions on forest protection and development. They have mobilized resources themselves or received support from outside to implement their governance activities towards their objectives.

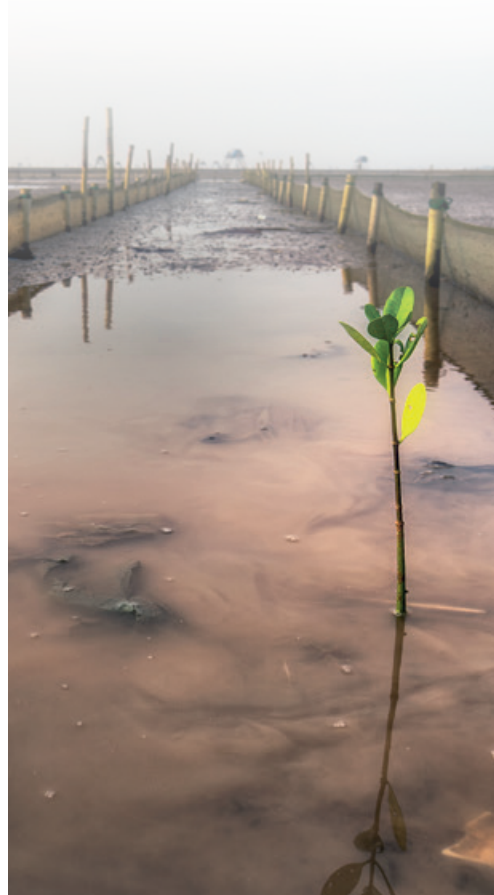
### 2.4.3. Threats to local communities' governance of natural resources

Population growth poses an increasing demand for food and other resources, which requires agricultural expansion. As a result, forests and natural habitats for wildlife species have been lost and biodiversity resources have been degraded, which threatens community based forests assigned by the State for stable and long-term management and use for forestry purposes.

Negative effects of the market economy have triggered spontaneous changes in land use and farming patterns for tangible economic profits, and conversion of forest use into other purposes, leading to the shrinkage of natural forest areas managed by local communities. Hunting, illegal wildlife trade and consumption have been endlessly increasing, affecting the management and protection of community based forests. Current trends in urbanization and privatization have also affected the traditional community and thus have posed the risk of the disintegration of community based forests into household and/or individual scaled ones.

7. Data from the 2017 national forest statistics (P10).

8. MARD's Circular 70/2007/TT-BNN dated Augst 8, 2007 for guiding the development and implementation of forest protection and development rules.



## II. HUMAN RIGHTS

Human rights, including the rights of ethnic minorities, are regulated in a number of different statutes, including the Constitution of Viet Nam and various codes, laws and sub-laws. The provisions of the Constitution have been institutionalized in a number of codes and laws, and can be summarized as follows:

### 1. Ensuring civil and political rights

All ethnic groups living in the territory of Viet Nam have equal rights to hold Vietnamese nationality<sup>9</sup> and to have a certain number of representatives to be elected to the National Assembly and/or the People's Councils<sup>10</sup>. The State respects and protects the right to freedom of belief<sup>11</sup>. Ethnic peoples have the right to use their spoken and written languages when participating in civil proceedings<sup>12</sup> and/or criminal litigation<sup>13</sup>, and are encouraged to mediate their disputes on the ground<sup>14</sup>. Other civil and political rights such as freedom of speech, to assemble, to form associations, freedom of residence and travel, and rights of marriage and family are legally recognized<sup>15</sup>.

### 2. Ensuring economic, cultural and social rights

Since 1992, when the National Assembly passed the Constitution of Viet Nam to enable the country to open up its economic renovation (Doi Moi) and integration, there have been hundreds of by-law documents issued to facilitate the development of all socio-economic sectors in ethnic minority areas and ensure all the rights of ethnic minorities. These include:

- ▶ A set of policies to support residential and productive lands and drinking water supply to settle nomadic households, allowing ethnic minorities with low levels of income to practice fixed cultivation<sup>16</sup>.
- ▶ A set of policies on credits<sup>17</sup> to lend without collateral, with preferential interest rates and loan terms according to the business cycle of crops.
- ▶ A set of policies on vocational training<sup>18</sup>, in which ethnic minorities are given priority.
- ▶ A set of policies on poverty reduction<sup>19</sup>, such as contract based forest protection, zoning for forest tending and regeneration, afforestation, and development of non-timber forest products (NTFPs), subsidizing rice for replacing slash-and-burn agriculture, and investment in infrastructure and production development in poor districts and communes with extreme difficulties, including ethnic minority areas.

In addition, the State has issued various regulations on:

- Support provided for ethnic minority laborers to create jobs<sup>20</sup> and giving priority to the selection of ethnic minority cadres<sup>21</sup>, the enabling of ethnic minority children to exercise their learning rights and obligations<sup>22</sup> and the entitlement of ethnic minority peoples to the State's policy on medical examination and treatment<sup>23</sup> and legal aid activities<sup>24</sup>.
- The development of policies to enable the protection and development of the spoken and written languages of ethnic groups in Viet Nam<sup>25</sup>.
- The involvement of local communities in, and their entitlement to benefits arising from, tourism activities<sup>26</sup>.
- The exercise of the right to access to information<sup>27</sup> from government agencies.

13. Criminal Procedure Code 2015 (Article 9,28).

14. Law on Reconciliations at grassroots level (Article 5).

15. In the last four NA congresses, its ethnic minority members accounted for between 15.6% and 17.27% (compared to the ethnic minority people that account for 14.3% of the national population). There are 14 religions with around 24 million followers (about 27% of the national population).

16. Decision 134/QĐ-TTg dated 20 July 2004 by GOV Prime Minister on policies on support of productive and residential lands, drinking water supply given to poor ethnic minority households; Decisions 1592/QĐ-TTg dated 12 Oct. 2009 and 755/QĐ-TTg dated 20 May 2013 by GOV Prime Minister on approval of the policy on support of productive and residential lands, drinking water supply given to poor ethnic minorities and households in communes and villages with extreme difficulties; Decision 2085/QĐ-TTg dated 31 Oct. 2016 by GOV Prime Minister on a specific policy on support of socio-economic development in ethnic minority and mountainous areas for the period of 2017 – 2020.

17. GOV Decree 78/2002/ND-CP dated Oct. 4<sup>th</sup>, 2002 on Credits for the poor people and other policy beneficiaries; GOV Decree 75/2015/ND-CP dated Sept. 9<sup>th</sup>, 2015 on Mechanism and Policy on Forest Protection and Development associated with Policy on Rapid and Sustainable Poverty Reduction and Support of Ethnic Minority People for the period of 2015 –2020; Decision 2085/QĐ-TTg dated 31 Oct.2016 by GOV Prime Minister on a specific policy on support of socio-economic development in ethnic minority and mountainous areas for the period of 2017 – 2020.

18. Decision 1956/QĐ-TTg dated 27 Nov.2009 by GOV Prime Minister on Approval of Plan for Vocational Training of Rural Laborers until 2020.

19. GOV Decree 75/2015/ND-CP dated 9 Sept 2015; Decision 1722/QĐ-TTg dated 02 Sept. 2016 by GOV Prime Minister on Approval of the Target National Program on Sustainable Poverty Reduction for the period of 2016 – 2020.

20. The Law on Labor, 2012 (Article 12).

21. The Law on Cadres and Employees, 2008 (Articles 36, 38, 63).

22. The 2005 Law on Education (Revised in 2009) (Articles 7, 10).

23. The Law on Health Examination and Treatment, 2009 (Article 4).

24. The Law on Legal Aid, 2017 (Article 7).

25. The Law on Cultural Heritage, 2001 and its revised in 2009 (Articles 17, 21).

26. The Law on Tourism, 2017 (Articles 4, 6).

27. The law on Access to Information, 2016 (Articles 17, 18).

9. Nationality Law 2008 (Article 2).

10. Law on the Election of Members of the National Assembly and the People's Council deputies, 2015.

11. Law on Religions 2016 ((Article 5, 6).

12. Civil Procedure Code 2004 (revised, 2011) (Article 8.20).



# III. LAWS AND POLICIES ON LAND, FOREST, FISHERY AND BIODIVERSITY RESOURCES RELATING TO ETHNIC MINORITIES AND LOCAL COMMUNITIES

## 1. Laws and policies on land resources

### 1.1. Overview of land ownership and land use rights granted to ethnic minorities

The 2013 Constitution of Viet Nam stipulates *“Land resources .... is a public property coming under the ownership of the entire people represented and uniformly managed by the State. Organizations and individuals are entitled to land assignment or land lease and recognition of the land use right by the State. The land user is allowed to transfer the land use right, and exercise related rights and duties in accordance with the provisions of the Law. The land use right is protected by law”*<sup>28</sup>. At present, all Vietnamese citizens including ethnic minority people are equitably granted the land use right<sup>29</sup> by the State to use land in a stable and long-term manner in accordance with the provisions of the law.

Land ownership is meant to include three elements:

*(i) The right to possession, (ii) The right to use and (iii) The right to disposition*<sup>30</sup>.

In Viet Nam, due to the specific nature of the land tenure regime, land is under the ownership of the entire people and represented by the State. But in fact, the State does not own and use the land but allocates and/or lease the land, and recognize the right of lands being used by organizations, households and individuals (land users) for stable and long-term use.

Since 1992, the State has concretized the allocation of land to organizations and individuals for stable and long-term use in two forms:

i. The State allocates or leases land to economic organizations; the people's armed forces, state agencies, political and social organizations, households and individuals; and

ii. The State leases land to foreign organizations and individuals<sup>31</sup>.

Accordingly, citizens began to have land use rights recognized by the State. In 2001 the Land Law stipulated additional forms of land allocation (whereby land users have to pay fees or are free of charge for land use), and of land lease (with land rent that is paid annually and/or paid in lump sum for the whole lease term). Then, the 2003 Land Law added two other forms of establishing land use rights:

i. The State recognizes the land use rights of those land users who are using land stably by issuing certificates of land use rights for the first time; and

ii. The State guarantees land use as agreed by the parties through the transfer of land use rights. Available data provided by the Ministry of Natural Resources and Environment (MONRE)<sup>32</sup> indicate that the State has allocated 24,480,887 ha (of total 27,284,906 ha) agricultural land (accounting for 89,72%) to target land users including organisations, households, communities and individuals.

Legislation has increasingly extended the rights of the user of land allocated such as the right to transfer, mortgage, and donate his/her land use right and extended the term of farming land use from 20 to 50 years. To guarantee gender equity, the inscribing of only the name of the husband as head of household on the certificate of land use right has changed to inscribing the name of both husband and wife. It is important that due attention is paid by the Land Law to ethnic minority people who lack productive lands as stated in Clause 2, Article 133, the 2013 Land Law: *“Provincial People's Committees (PCPs) are responsible for directing the review and approval of plans for land use; land*

28. Articles 53 & 54 – the Constitution of Viet Nam, 2013.

29. Article 4 – the 2013 Land Law: “Land is a public property coming under the ownership of the entire people, represented and uniformly managed by the State. the State grants the right of land use to land user in accordance with the provision of the Law.

30. Article 158 – the Civil Law, 2015: the ownership right includes the rights of the owner to the possession, use and disposition of property in accordance with the provision of the Law.

• Possession is the right to hold property. Owners are allowed to exercise all their own acts and control their property but not contrary to the law and social morality (Article 186 the 2015 Civil Law).

• Tenure is the right to exploit and profit from the property (Article 189 the 2013 Civil Law). Owners are entitled to use the property according to their own will, but must not cause damage to or prejudice the national and public interests, and legitimate rights and interests of other persons (Article 190 the 2013 Civil Law).

• Dispossession is the right to transfer ownership of property, relinquish ownership, consumption or destruction of property (Art. 192, the 2015 Civil Code); For example, the owner has the right to sell, exchange, donate, lend, lease, pledge, mortgage, relinquish ownership, consumption, destroy or perform other forms of disposition. in accordance with the provisions of the law on property (Article 194 of the 2015 Civil Code).

31. The Constitution of Viet Nam, 1992.

32. MONRE Decision 2311/QĐ-BTNMT dated 28/9/2017 on Approval and Announcement of the 2016 Land Inventory.

*allocation and/or land lease according to the approved land use plan; To revoke land use rights of those land areas that are not used or used for improper purposes, illegally contracted, leased, lent, encroached and/or appropriated in order to create a fund of land for the allocation and/or lease of land for organizations, households and individuals. The allocation or lease of land shall give priority to households and individuals who are ethnic minorities without or with lack of productive land in the locality".*

In addition, the 2013 Land Law also stipulates that the State shall adopt policies on residential land and community land for ethnic minority people in accordance with customs and habits, cultural identities and practical conditions of each region; and adopt policies to help ethnic minority people enable their agricultural production on farming land allocated in rural areas. Article 136 stipulates that the State allocates protection forest land to local communities for forest protection and development<sup>33</sup>.

## 1.2. Several priority policies and laws on the allocation of land to ethnic minorities.

In addition to policies and laws on equitable allocation of residential and productive land to all citizens as discussed above, there are many specific policies on residential and productive land for ethnic minority people<sup>34</sup>, including:

► Policy on the allocation of land and forests, and the greening of unoccupied land and baren hills: including major policies of the State that have great influence on the allocation of land to ethnic minority people in mountainous areas<sup>35</sup>. For instance, as of 2010 the 5-Million Hectare Reforestation Project involved 1,249,602 households with 4,657,211 employees participating in the project implementation; of which, there were 484,893 poor and ethnic minority households (38.6% of the total number of the households)<sup>36</sup>.

► Policy on the support of land for ethnic minorities in specific geographical areas expressed in several legal documents<sup>37</sup>: For example, after four years of the implementation of the Prime Minister's Decision 134/2004/QĐ-TTg, the localities built and provided 380,000 houses; allocated a residential land area of 1,500 ha to about 72,000 households as of 2008; and 40 provinces allocated 30,000 ha of productive land to 83,500 households<sup>38</sup>. To overcome difficulties in productive land, many localities have taken various measures to make forest protection contracts with local people and/or encourage them shifting their careers<sup>39</sup>.

The implementation of policies and laws on the settlement of residential and productive land for ethnic minority people has gained positive results. Hundreds of thousands of poor, nomadic and/or migrant ethnic minority households without residential land and housing or a lack of productive land, living in disaster prone areas and so on have been provided with residential land and housing, and enjoyed their more stable life<sup>40</sup> for example in the Central Highlands and in northern Viet Nam. In the settlement and resettlement areas the development of infrastructure was planned to meet the people's living and production needs.

33. Article 27 & 136, the 2013 Land Law

34. Resolution No. 22 / NQ-TW dated Nov. 27, 1989 of the Politburo on "a number of major policies on socio-economic development in mountainous areas" and Resolution No.24 / NQ-TW dated Jan, 21, 2003, the Party Central Committee's term IX on "Ethnic Minority Issues" have manifested clearly its undertakings, orientations and specific objectives, tasks and solutions to achieve hunger eradication and poverty reduction, stabilization of life and socio-economic development in mountainous and ethnic minority areas, including problems of settlement of residential and production land for ethnic minority people.

35. Decision 327-CT dated Sept. 15, 1992 by the Chairman of the Council of Ministers (now the Prime Minister) on a number of undertakings and policies on the use of unoccupied land and baren hills, forests, coastal alluvial grounds and water surface; (2) Decision. 661 / QĐ-TTg dated 29 July 1998 of the Prime Minister on objectives, tasks, policies and implementation of the 5 Million Hectare Reforestation Project

36. Report No. 1404/BC-BNN-TCLN dated 24 May 2011 of MARD on summarizing the project "Five Million Hectare Reforestation" and the Forest Protection and Development Program 2011-2020.

37. Decision 74/QĐ-TTg dated 09/6/2008 by the Prime Minister on the settlement of residential and productive land and jobs for poor ethnic minority people living in the Mekong River Delta; Decision 304/QĐ-TTg dated 23/11/2005 by the Prime Minister on piloting forest allocation and contracting for forest protection to local ethnic minority households and communities in the Central Highlands provinces; Decision 132/QĐ-TTg dated 08/10/2002 of the Prime Minister on the settlement of productive and residential land for ethnic minorities in the Central Highlands; Decision 134/2004/QĐ-TTg on support policies for productive and residential land, housing and drinking water supply for poor ethnic minority households; and Decision 1592/QĐ-TTg dated 12 Oct. 2009 of the Prime Minister on the implementation of a number of policies to support ethnic minorities with productive and residential land, housings, and drinking water supply until 2010 (2009 - 2010); etc.

38. Report No. 252/BC-UBTVQH13 of the Standing Committee of the National Assembly, Ha Noi, October 16, 2012 - Report on monitoring results of implementation of laws and policies on residential land and productive land for ethnic minority people. minority.

39. Conference on the Review of Decision 134/2004/QĐ-TTg dated 21 April 2009 in Ha Noi - Web site of Ministry of Labor, Invalids and Social Affairs.

40. Report No. 252/BC-UBTVQH13 dated 16 October 2012 of the Standing Committee of the National Assembly, Ha Noi - Report on monitoring results on implementation of laws and policies on residential land and productive land for ethnic minority people.





### 1.3. Limitations and inadequacies in the policies and laws on land for ethnic minority people.

► There is some inconsistency in the allocation of land and forest to communities between the Land Law and the Forestry Law. The 2017 Forestry Law stipulates the allocation of religious forests (of special use forests), protection and production forests to local communities while the 2013 Land Law only provides for the allocation of protection forest land to communities<sup>41</sup>.

Procedures for the allocation of land and forests to households, individuals, and communities are not well matched because they were established and conducted in two different sectors of agriculture and rural development and natural resources and environment, leading to land allocation procedures that were completed without the allocation of forests or vice versa.

► There is a gap between policy and its implementation. Some policies have not met expected targets initially designed<sup>42</sup>. Land allocated to several protected areas management units and/or forestry companies overlapped with forested land areas that had been traditionally managed by local people for a long time, resulting in land claims and conflicts between the local people and the state forest owners. A major paradox that has not been tackled is in large forest areas where many of the poorest ethnic minority households are living and many of them lack residential and productive lands.

► A spontaneous migration has run out of control. Since 1980, the migration of people in all parts of the country to the areas with forests and fertile land has been very diverse and has two main forms:

- A large contingent of laborers move from other places to new economic zones established by the State to work in state-run agricultural and forestry farms; and

- Households, groups of households and individuals spontaneously move to new places for their livelihoods. Among the spontaneous migrants, there is a major portion of ethnic minority people. The main reason is that they lack productive land and face many difficulties; and therefore move to new areas to have land for production and improve their living standards.

► There is also a lack of land due to the implementation of industrial development projects. In the territories of mountainous provinces in the northern region, the central region and the Central Highlands where many hydropower

projects are under construction, creating serious disturbance in the planning of residential and production areas. Several segments of ethnic minority households are most vulnerable to the situation. Since 1980, due to objective and subjective reasons, there has been changes in land management and use of ethnic minority households. Available statistics show that ethnic minority people now live in 5,266 communes of 458 districts in 52 provinces and cities, and of which about 10 million people live in border areas where socio-economic conditions are extremely difficult. According to the statistics, there are more than 80,000 households facing lack of residential land, and 221,000 households facing shortage of productive land<sup>43</sup>.

► Recovering land from state-owned enterprises for creating a fund of land to be allocated to people has not met the government requirements. An inventory of production forest land used by the state-owned agricultural and/or forestry companies in order to recover land to be allocated to the people has been conducted since the 2000s. Essentially, if various land areas were identified as being used improperly and ineffectively they could be recovered to be allocated to poor ethnic minority households without productive land. However, the recovery and redistribution of land for people living in the areas have been very slow, and has faced many obstacles. In particular, the compensation of assets on land due to very high rates of investment (proposed by the farm and forestry enterprises). Of land areas recovered, there are some areas re-allocated to households who previously worked for the state farms/forestry enterprises for keeping on their livelihoods; and some are allocated to ethnic minority households who lack productive land, although these areas often are infertile land in remote mountainous areas.

41. Article 135 of the 2013 Land Law. GOV Decree 01/2017/ND-CP dated 6 Jan. 2017 on revision of several articles of the Decree specifying the implementation of the revised Land Law, to stipulate supplementary allocation of production forest land from natural forests for households, individuals and communities. (Para 33 of Article 2)

42. For the implementation of Decision 134: By the end of 2011, only 35% of total households received the support of productive land with 38% of total area; and an amount of VND 147 billion was disbursed, accounting for 29% of the plan; and For the implementation of Decision 1592: continued the achievement of the objectives of Decision 134, but results were very low after nearly 3 years. By 2012, there were VND1,050 billion (equivalent to 15.6% of the plan) allocated from the central budget; and only four of 33 provinces developed and implemented projects to support 979 households with 281 ha of productive land.

43. Mrs. Au Thi Mai, Member of the National Assembly – Speech at its 14<sup>th</sup> Session.





## 2. Forest laws and policies

### 2.1. The establishment of forest ownership and use rights

The laws on forestry affirm that natural forests and planted forests invested by the State belong to the ownership of the entire people represented by the State<sup>44</sup>. The State grants forest use rights to social beneficiaries through the allocation and/or lease of forests, and the recognition of forest use rights. Accordingly, under the provisions of Vietnamese law, those who are entitled to the allocation and lease of forests and/or the recognition of forest use rights by the State, have only the right to use but not to possess forests.

### 2.2. The policy on the allocation of forest to households, individuals and communities

In Viet Nam, the policy on forest allocation was introduced in the 1970s, but at that time forests were only allocated to the state-owned organizations and/or agricultural and forestry cooperatives. The GOV Decree 02-CP dated January 15, 1994 was an important legal document<sup>45</sup> which stipulated the allocation of forests to organizations, households and individuals but not to local communities. Decree 17/HDBT dated January 17, 1992 by the Council of Ministers (now GOV) on the implementation of the 1991 Law on Forest Protection and Development, was the first legal document to recognize villages as a legal owner of traditional forests managed by villagers for a long time<sup>46</sup>.

► The Law on Forest Protection and Development, 2004 replaced the 1991 law, which regulates that protection and production forests shall be allocated to households and individuals; and all forests being effectively managed and used by local communities or all forests with water resources to which local communities have access, shall be allocated to local communities (Article 30).

In addition, in order to enable the implementation of policies and laws on community based forest management under the 2004 Law on Forest Protection and Development, the Government, the Prime Minister and MARD issued a number of legal documents which stipulate that CPCs shall: direct the villages to elaborate and implement their conventions on forest management, protection and development; prioritize the allocation of forests in association with customs and traditions of ethnic minorities<sup>47</sup>; ensure the right of ethnic minority households living in communes with forests to the allocation of natural, sacred, cemetery and protection forests with water resources and so on, depending on their available forests and their needs<sup>48</sup>; and provide guidelines for the management of village community based forests<sup>49</sup>; and promote the development and implementation of their forest protection and development conventions<sup>50</sup>. As of 31 December 2017, the State allocated 2,942,110 ha of forest to households and individuals, and 1,145,601 ha of forest to village communities, accounting for 20.4% and 7.8% respectively of the total forests allocated in the whole country<sup>51</sup>.

► The 2017 Law on Forestry replaces the 2004 Law on Forest Protection and Development with effect from January 1, 2019, which stipulates that the State shall allocate protection and production forests to households and individuals and particularly ethnic minority people as priority beneficiaries. The State allocates ghost, sacred and religious forests (of special use forest areas), and protection and production forests to local communities. The tenure of sacred and religious forests allocated is in the long-term and the tenure of production forests allocated is 50 years. The law stipulates that the State shall recognize households, individuals and communities that hold forests allocated by the State as forest owners (Articles 2, 8, 16). This is an important legal basis for the establishment of forests under the management of ethnic minority people and local communities for their long-term use.

### 2.3. Rights of households, individuals and communities holding forests allocated by the State

► Laws on forest protection and development stipulate that households and individuals including ethnic minorities holding protection and production forests allocated by the State have the right to harvest forest products and carry out agro-forestry and fishery production. They also have the right to enjoy benefits arising from forests including

44. The 2017 Law on Forestry (Article 7)

45. GoV Decree 02-CP of 15/1/1994 on issuing the regulation on the allocation forestry land to organizations, households and individuals for their stable and long-term use for the forestry purpose.

46. Article 9, Decree 17/HDBT, 1992 states: "Villages and hamlets held forests before the date of promulgation of the Law on Forest Protection and Development, which was not contrary to the provisions of the Law on Forest Protection and Development and the Land Law, shall be legally recognized as owners of forests and forested land areas being managed by them".

47. GoV Decree 23/2006/ND-CP of 3/3/2006 on the enforcement of the 2004 Law on Forest Protection and Development (Para.a Clause 2 Article 20).

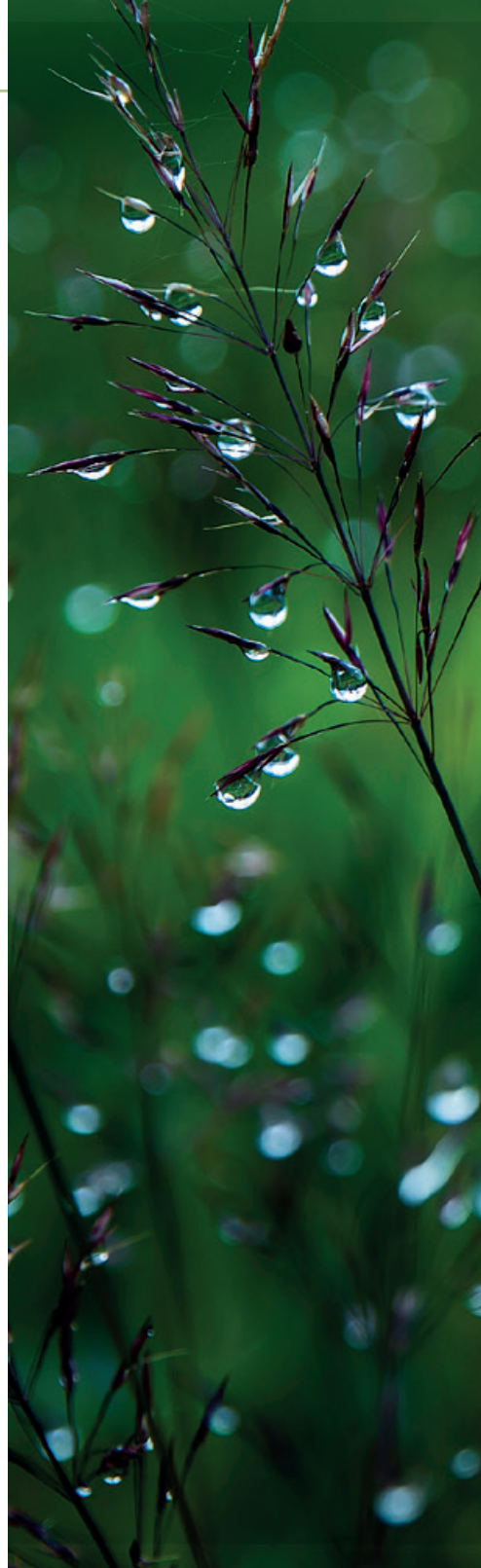
48. GoV Prime Minister Decision 304/2005/QĐ-TTg of 23/11/2005 on the pilot allocation of forest to, and contract of forest protection with, local ethnic minority households and village communities in Central Highlands (Article 4).

49. MARD Decision 106/2006/QĐ-BNN of 27/11/2006 on issuing Guidelines for village-community based forest management.

50. MARD Circular 70/2007/TT-BNN of 01/8/2007 on Guiding the formulation and implementation of village conventions on forest protection and development.

51. MARD Decision 1187/QĐ-BNN-TCLN dated 03 April 2018 on the Announcement of National State of Forests, 2017.





payments for environmental services<sup>52</sup>. The 2017 Law on Forestry was passed with amendments extending more rights, such as communities that hold forests allocated by the State are recognized as forest owners and the cost of protection and development of special-use and protection forests is guaranteed to be provided by the State. They are also allowed to farm and graze animals under forest canopies; to harvest forest products and to enjoy the sharing of benefits arising from forests; and to possess crops and livestock and other properties invested by communities on forest lands (Article 86).

## 2.4. Orientations towards policies for ethnic minorities and local communities living within and in the vicinity of forests in the coming time.

The 2017 Law on Forestry specifies orientations towards policies for ethnic minorities and local communities living within and in the vicinity of forests, such as that the State shall: protect the legitimate rights and interests of communities and ensure that ethnic minority people and local communities who rely on forests shall be entitled to the allocation of forests and land for agro-forestry and fishery production, the cooperation and/or partnership with forest owners in the protection and development of forests, the sharing of benefits arising from forests, and the practice of their cultural taboos associated with forests.

As such, the 2017 Law on Forestry provides an important legal basis to enable ethnic minorities and local communities to have access to forest resources and enable households, individuals and local communities to become owners of the production and protection forests. In addition, local communities can become owners of religious forests<sup>53</sup> (i.e. sacred and/or ghost forests). The establishment of forests for the combined purpose of conservation and the practice of cultural taboos, and the protection of water resources for ethnic minority communities, have also been legalized.

## 2.5. Inadequacies and constraints in forestry laws and policies related to ethnic minorities and local communities

There is an absence of legal documents that specify the allocation of natural forests to communities, and the rights they have to enjoy benefits arising from natural forests, such as:

- Which types of forests with poor, depleted or medium quality, located in remote, near and/or adjacent areas, and/or forests traditionally and effectively managed and used by local communities are allocated to communities?
- Which communities are entitled to the allocation of forests And what is the size of forest area to be allocated?
- Which specific rights to enjoy benefits arising from different (depleted or poor) natural forests allocated: i.e. specific rights to the harvest of NTFPs, and/or to payments for forest environmental services (water regulation, protection of soil from erosion, ecotourism operation and business), and/or agro-forestry and fishery production?

The support policy of the State upon the allocation of forests is expressed across a range of legal documents and/or generally regulated (i.e., funds for the protection and development of special-use and protection forests, technical guidelines, the establishment of models, the development of regulations on community based forest management, product marketing, and legal aid etc.).

- The rights of local communities are rather limited. For example they are not allowed to transfer, lease, donate, mortgage or contribute capital with the value of forest use right<sup>54</sup> or to have access to loans for the development of forests. The assignment of responsibility for forest areas already allocated to local communities and/or ethnic minorities, is not specified.
- There is no specific regulation on the form of the co-management of forests, but increased emphasis is placed on the form of cooperation and partnership in forest management.

<sup>52</sup> GoV Decree 99/2010/ND-CP dated 24 September 2010 on the payment for forest environment services; Decision 17/2015/QĐ-TTg dated 9/6/2015 of the Prime Minister promulgating the regulations on protection forest management; Decision 49/2016/QĐ-TTg dated 01/11/2016 of the Prime Minister promulgating the regulation on management of production forests.

<sup>53</sup> Point d, Clause 1, Article 16 - Forest allocation of the 2017 Forestry Law stipulates: "Local communities are entitled to the State's allocation of religious forests traditionally managed and used by them".

<sup>54</sup> The 2017 Forestry Law (Article 86).

### 3. Laws and policies on aquatic fisheries and marine conservation

Legal documents regulating the management of marine protected areas (MPAs) in Viet Nam include the Law on Aquatic Fisheries (2003), the Law on Biodiversity (2008) and relevant legal documents guiding the implementation of these laws.

Regarding the roles of individuals and communities: the laws on aquatic fisheries stipulate that the State encourages individuals and communities to participate in the establishment, development, management and conservation of MPAs; and that individuals and communities may participate in biodiversity conservation education and awareness activities, patrol and protect MPAs, and conduct ecotourism activities in MPAs<sup>55</sup>.

Regarding policies, the State emphasizes a need for the research of policies to enable local communities involved in the management of MPAs and benefit from the fishery resources protection services; legislate for the implementation of the allocation of coastal water areas to local authorities and communities for management<sup>56</sup> develop relevant mechanisms and policies to encourage organizations and individuals, especially local communities, participating in the planning of biodiversity conservation; improve the role of local communities in the management and protection of PAs, biodiversity conservation facilities and corridors within their territories; and to develop relevant policies to enable investment in infrastructure in local communities living within the buffer zone of PAs and biodiversity corridor<sup>57</sup>. In addition, there is a need to carry out the research and development of relevant mechanisms and policies to encourage local communities participating in the protection of fisheries resources, and assist local communities that rely on fishing to shift their livelihoods.

The 2003 Law on Aquatic Fisheries does not regulate co-management in the protection of fishery resources, but provided orientations towards community based fishery management.

The 2017 Law on Aquatic Fisheries stipulates the participation of community based organisations (CBOs) in the co-management of fishery resources protection and the legal status of CBOs and their conditions to be involved in the co-management. This regulation serves as a legal basis to enable the State to empower CBOs to protect fishery resources, to encourage local people, associations and/or unions participating with local authorities, in the management of fishery resource protection towards "socializing" the management of fishery resource protection and enhancing local communities' role and responsibility in this process. The co-management of fishery resource protection is a potentially effective solution to reduce conflicts over the benefits from the resources and contribute to sustainable fishery resources utilization.

Additionally, the 2017 Law on Aquatic Fisheries provides for the fishery resource protected areas and their management that can be flexibly assigned to CBOs. This co-management not only enables the mobilization of social resources and the promotion of public awareness but also reduces the workload of already over-burdened local authorities in fishery resource protection. The Law also provides for the establishment of a community fund (Article 22). This is a social fund established to support fisheries resources protection and development. The State encourages the establishment of the community fund; and this is entitled to financial supports provided by the existing fund for fisheries resources protection and development and other legitimate sources of finance.

However, there remain several constraints and inadequacies in the fisheries laws. Specifically:

- The position and role of communities/ethnic minorities in marine conservation is not well provided for, while the role of state organizations has been much emphasized despite that the Law on Aquatic Fisheries stipulates the recognition of CBOs and their right to the management of fishery resources protection.
- Lack of legal documents specifying relevant mechanisms for the sharing of benefits for local communities involved in the conservation of fisheries resources.



55. GoV Decree No. 57/2008/ND-CP dated 2 May 2008 on promulgating the Regulation on the management of Viet Nam's MPAs of national and international importance (Article 4).

56. Decision 742/QĐ-TTg dated 26 May 2010 of the Prime Minister on approving the planning of the system of MPAs in Viet Nam till 2020 (Section V).

57. GoV Prime Minister Decision 45/QĐ-TTg of 08/01/2014 on the approval of the National Master Planning of Biodiversity Conservation till 2020 and Orientations toward 2030 (Section III).



## 4. Laws and policies on wetlands and biodiversity conservation

The laws on biodiversity officially expressing the management of biodiversity resources are the GOV Decree 109/2003/QĐ-CP dated 23 September 2003 on sustainable wetland conservation and development. This Decree set out the role of local communities and their participation in wetlands and biodiversity conservation. Principles of sustainable wetland conservation and development include strengthening local communities' participation in the conservation of wetlands (Article 4), encouraging all organisations, individuals and communities protecting wetland ecosystems and endangered species of waterfowl, and participating in the monitoring of natural resources and rehabilitation of wetland ecosystems (Article 6), and prohibiting activities that harms the interests and lives of local communities living within and in the vicinity of wetlands (Article 7).

Currently, the 2008 Biodiversity Law is the highest statute regulating the State policy on sustainable biodiversity conservation and development. The Law ensures the involvement of local people in the process of biodiversity conservation planning, encourages and guarantees the legitimate rights and interests of organizations and individuals investing in and applying traditional knowledge to sustainable biodiversity conservation and development, developing ecotourism in association with hunger eradication and poverty reduction, ensuring the stability of the life of households and individuals legally living in PAs and developing sustainably PA buffer zones (Article 5).

In the PA planning and/or establishment process, it is necessary to have solutions to stabilize the life of households and individuals legally living in planned PAs as well as relevant plans to relocate them from the planned PAs. (Clause 5, Article 9; Clause 3, Article 13, Clause 5, Article 21 and Clause 2, Article 23).

The formation and review of national and/or provincial-level PA establishment projects must consult with local communities legally living in and/or adjacent to areas planned for the establishment of PAs. (Clause 2, Article 22 and Clause 1, Article 24).

The Law also specifies several issues as follows:

- ▶ The assignment of an organisation to the management of a PA with its rights and responsibilities (Article 29);
- ▶ The rights that households and individuals legally living in PAs have to harvest legitimate resources from PAs, participate in, and benefit from business and service activities taken place in PAs (Article 30); and/ or the rights and obligations that organizations and individuals undertaking legal activities in PAs, have to exploit legitimate resources and have access to genetic resources and sharing of benefits arising from natural resources and their legal activities (Article 31).
- ▶ The right that organizations and/or individuals assigned to manage forests, PAs, wetlands, sea waters and other natural ecosystems, have to request the inclusion and/or exclusion of

species from the List of Endangered, Precious and Rare Species for priority protection (Clause 1, Article 38).

- ▶ The rights that organizations and/or individuals have to enjoy preferential policies and mechanisms, and revenues generated from ecotourism operations, the management of biodiversity conservation facilities, and from the implementation of obligations to protect, nurture and care for those species included in the List of Endangered Rare and Precious Species as well as to undertake epidemic prevention measures in biodiversity conservation facilities (Article 43).

- ▶ The State's investment and incentives to encourage investments from organizations and individuals in the implementation of programs to isolate and eliminate species included in the list of invasive alien species; the obligations of those organizations and individuals who detect invasive alien species who must immediately notify CPCs (Article 53); the entitlement of households and individuals to the allocation of land, forests and water surfaces and natural resources for management and use within the extent of their assignments (Article 55); their rights and obligations in managing natural resources, and permits to access natural resources granted (Article 56, Article 60); and the sharing of benefits with organizations and individuals who manage the resource (Articles 58, 61).

- ▶ The responsibility of organizations and individuals to compensate damages caused by their infringements to PAs, biodiversity conservation facilities or valuable varieties of crops and animals, and species included in the List of Endangered, Precious and Rare Species for priority protection (Article 75).

The laws on biodiversity also encourage engagement by organizations, individuals and especially local communities participating in the implementation of biodiversity conservation planning, strengthening the role of the community in organizing the management and protection of PAs, biodiversity conservation facilities and biodiversity corridors in the area, and the development of relevant support policies on investment for local communities in the buffer zones of PAs and the biodiversity corridor<sup>58</sup>.

The content of the mechanism for the sharing of benefits arising from access to natural resources is specified in GOV Decree 59/2017/ND-CP dated 12 May, 2007 on the management of, and the sharing of benefits from the use of genetic resources. In addition to legislation on biodiversity, the substance of biodiversity conservation is expressed in a number of specialized legal documents, such as the 2017 Law on Forestry, the 2017 Law on Aquatic Fisheries, the 2014 Law on Environmental Protection and the 2008 Law on Intellectual Property, and sub-law documents.

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58. Gov Prime Minister Decision 45/QĐ-TTg of 08/01/2014 on the approval of the National Master Planning of Biodiversity Conservation till 2020 and Orientations toward 2030.

However, the laws on biodiversity have several inadequacies and constraints as follows: there are no specific regulations on: which PAs are assigned to communities for management; whether private organizations are eligible to manage PAs or not; and how responsibilities are defined for local communities legally living or carrying out their legal activities within PAs.

At present, there are abundant forms of community-based biodiversity conservation and communities are involved in conservation for different purposes. They have voluntarily preserved mangrove ecosystems, coral reefs or wetlands with their own money and efforts, and conserved forests with many values associated with their livelihoods and development, but not fully mentioned in the legal documents. There is a lack of specific guidelines on the mechanism of sharing of benefits for communities involved in the conservation of biodiversity in PAs.

## 5. General evaluations

### 5.1. Achievements

- Laws and policies on ethnic minorities and local communities in the conservation and development of natural resources have improved over time and this is manifested in the laws and policies on land, forestry, fisheries and biodiversity.
- Laws and policies on land and forestry have included the provisions for the allocation of land and forests to ethnic minorities and local communities, their entitlement to benefits arising from forests and the State's support policy on forest protection and development.
- Laws and policies on aquatic fisheries have legitimized co-management in the protection of fishery resources and the entitlement of local communities to the protection and conservation of fishery resources.
- Laws and policies on biodiversity have addressed the role and participation of local communities in biodiversity and wetlands conservation; the rights of households and individuals living within PAs to the exploitation of legitimate resources; the participation in business and service activities taken place within PAs; and the entitlement to the sharing of benefits arising from

natural resources and these activities.

### 5.2. Inadequacies

Although many Viet Nam has many policies and laws in this area, they are inconsistent and not well aligned. These include the following:

- The roles and positions of local communities in natural resource conservation and development are not properly defined; there remains a lack of focal institutions to coordinate and/or link a wide range of policies on natural resources conservation; and the local communities' traditional practices and culture (including indigenous knowledge) have not yet been included in the laws.
- The concept of "community" is inconsistently stated in legal documents on fisheries, forestry, land and so on;
- There remain inconsistencies between the Land Law and the Law on Forestry, for example in the allocation of land and/or forests to local communities, and transfer of land and/or natural forests);
- The existing laws have much emphasis on the state-owned organizations in the conservation of natural resources, but there is an absence of relevant laws dealing with the establishment of community-based and/or privately conserved areas. So far local communities have been primarily encouraged to engage with the state-owned organizations but have not yet become the subject in the conservation of natural resources.
- There is a lack of official documents to specify the support policy on, and the rights of local communities to the sharing of benefits arising from their traditional conservation and/or from the conservation organized jointly with state-owned organizations and/or with local communities living in PAs.
- The legal status of the local communities and their representatives has not been clearly defined in the legal documents and this has caused difficulties in their cooperation and/or partnership with other stakeholders, as well as in access to loans and so on in the conservation and development of natural resources.







## IV. LAWS AND POLICIES ON NATURAL RESOURCES, ENVIRONMENT AND CULTURE

59. Decision 81/2006/QĐ-TTg dated 14 April 2006 of the Prime Minister on approving the National Strategy on Water Resources to 2020.

60. Law on Environmental Protection 2015 (Article 18, 21.

### 1. Laws and policies on natural resources and environment

In the current legal system, the Land Law and the Law on Forestry provide favorable legal frameworks for establishing community-based protected and/or conserved forests through the State's policy on the allocation of land and forests (including protection, religious and special use forests) to local communities for stable long-term use with funds provided by the State, and for their legitimate interests (in agro-forestry and fishery production, NTFP harvest, and payment for forest environmental services) protected by the laws.

Other laws also encourage local communities participating in the protection and conservation of natural resources, for example:

- The Law on Aquatic Fisheries provides for co-management in the protection of fishery resources, in which local communities play an important role;
- The 2012 Law on Water Resources emphasizes the development and replication of typically good patterns of community based water resources protection<sup>59</sup>;
- The 2008 Law on Biodiversity emphasizes the development of ecotourism to be associated with hunger eradication and poverty reduction, and ensures the stable life of households and individuals legally living within PAs (Article 5);
- The 2015 Law on Natural Resources, Environment, Marine and Islands also states to ensure the involvement of local communities in the process of the development of sustainable coastal natural resources exploitation and utilization master plans (Article 26), and guarantees that local people have access to marine resources (Article 33); and
- The 2017 Law on Tourism stipulates that local communities have the right to participate in, and enjoy legitimate interests of tourist operations, and local communities have the responsibility to protect and preserve landscapes, the environment, and local cultural identities, religious and traditional taboos (Article 8).

The laws on environmental protection require strategic environmental assessments (SEA) and environmental impact assessments (EIA). According to the 2004 Law on Environmental Protection, there are six categories of strategies, plans and plans that are subject to SEA requirements. They include: national level socio-economic development planning; nationwide sectoral development planning; subnational and provincial socio-economic development planning; inter-provincial and regional land use, forest protection and development, other natural resources exploitation and utilization planning; focal economic zone development planning; and integrated inter-provincial river basin planning.

In addition, the Law specifies the requirements of EIAs for a wide range of development projects. The projects that are subject to EIA requirements include projects under the decree of development investment of the National Assembly, GOV and the Prime Minister; projects that use land of nature conservation zones, national parks, historical-cultural relics, world heritage, biosphere reserves and famous landscapes and beauty-spots that are already graded; and projects that are likely to have negative impacts on the environment. In the course of the EIA study<sup>60</sup>, the project owners have to carry out consultations with local communities. In addition, the 2014 Law on Environmental Protection also emphasizes the construction of environmentally friendly villages and residential areas; and the development of various forms of self-governing environmental sanitation services provided by local communities.

## 2. Ethnic minorities's traditional knowledge and physical and non-physical cultural heritage

### 2.1. General issues on ethnic minority community's traditional knowledge and cultural heritage in Viet Nam

*“As of December 8, 2017, Viet Nam has had 12 non-physical forms of cultural heritage recognized by UNESCO. There are 11 non-physical cultural heritage of humanity representative and one non-physical cultural heritage that needs emergency protection recognized by UNESCO”*

Viet Nam has 54 ethnic groups and they each have their own distinct cultural identity and beliefs. Ethnic groups have developed different ways of understanding their particular local environment and using natural resources. They have accumulated traditional knowledge regarding cultivating and managing environmental resources and have developed cultural traits that can be classified into the two categories of physical and non-physical cultural heritage.

Non-physical cultural heritage is “a spiritual product associated with a community or an individual, an object and its relevant cultural space that is valuable in history, culture and science, manifests the identity of the community, and is constantly being regenerated and handed down from one generation to another orally, or through passing down of careers, performance arts and other forms.”<sup>61</sup> These forms include scripts, art, science, language, literature, oral and folk history and mythology, lifestyles and festivals.

Physical cultural heritage is “a material product of historical, cultural or scientific value, including historical-cultural relics, famous landscapes and beauty-spots, relics, antiques and national treasures”<sup>62</sup> such as palaces, pagodas, exhibits in museums and natural landscapes. These things are of cultural, historical and scientific value as recognized by the ethnic community and mankind.

61. Article 1 - Law on Cultural Heritage 2009.

62. Article 4 - Law on Cultural Heritage 2004.

63. Article 30 - The Constitution of 1992.

As of December 8, 2017, Viet Nam has had 12 non-physical forms of cultural heritage recognized by UNESCO, including one form of heritage that needs emergency protection. In addition to cultural values, local communities have developed traditional knowledge that is known as a set of collective experiences gained in the process of human interaction- with the natural ecosystem. These shape the worldview and behavior of the community and has been passed down for generations and serves as the basis of activities such as cultivation, animal husbandry, hunting and gathering, fishing, health care, food preservation and processing, and making tools, clothing and housing. It also shapes how the community protects water resources, predicts weather forecasts, adapts to climate change and controls diseases, as well as the practice of religious rituals, beliefs and spirituality.

### 2.2. Laws and policies on traditional knowledge and physical and non-physical cultures.

#### a) Policies on physical and non-physical cultural heritages

Since 1992, many laws and policies on culture and cultural preservation have been promulgated by the State of Viet Nam. The 1992 Constitution officially affirms that the preservation and development of culture is the most important. *“The State and the society preserve and develop the culture of Viet Nam: its ethnicity, modernity and humanity; inherit and strengthen the values of the long lasted cultural tradition of the peoples of Viet Nam, and President Ho Chi Minh's ideology, ethics, and lifestyle; absorb the cultural quintessence of mankind; and bring into full play all creative talents of the people. The State uniformly manages the cause of culture, and strictly forbid the propagation of reactionary thinking and depraved culture; and abolishes superstition and out-dated customs.”*<sup>63</sup>







To institutionalize the state policy on cultural preservation, the Law on Cultural Heritage was adopted by the National Assembly in 2001<sup>64</sup>. The law affirms that the Vietnamese cultural heritage is a valuable asset of the peoples of Viet Nam and is a part of the cultural heritage of mankind.

The Law also stipulates that the State encourages and facilitates organizations and individuals to conduct research, collection, preservation and education of non-physical cultural heritages in order to preserve and strengthen national cultural identity and enrich the treasure of cultural heritage of the community of ethnic groups in Viet Nam<sup>65</sup>.

The 2009 Cultural Heritage Law specifies three important activities relating to the preservation and promotion of cultural values, including:

- i. Protection and strengthening of the value of non-physical cultural heritage;
- ii. Protection of the voice and script of ethnic minority peoples; and
- iii. The State facilitates the preservation and promotion of the cultural values of traditional festivals, especially those associated with forests of ethnic minorities such as the H'mong's Dong Seng Festival – to worship tall trees; the Tay's culture of Cao Bang province – to worship native forests; and the Festival of the Thai of Que Phong, Nghe An province – to worship sacred forests, etc.

The cultural policy for ethnic minority communities is expressed in several legal documents<sup>66</sup>. The issues concerning the preservation of the culture of ethnic minorities stipulated in these legal documents include:

- i. Support to preserve and promote physical and non-physical cultural values of ethnic minorities;
- ii. Support to preserve the voice and script of ethnic minorities;
- iii. Prioritize the establishment of a system of cultural institutions for ethnic minority peoples;
- iv. Preserve and promote traditional festivals of ethnic minorities;
- v. Support to launch cultural, literary and art movements;
- vi. Organize professional arts activities for ethnic minority people; and
- vii. Give priority to the training and education of ethnic minority cadres of cultural work.

In each of the areas, there are numerous activities of cultural preservation stipulated, of which two very important points affirm that the state shall provide funding for conservation activities undertaken by the state authorities or the people and prioritize activities relating to all areas of cultural conservation such as training, research, infrastructure construction, and development of cultural heritage conservation proposals for review and approval.

## b) Traditional knowledge

Traditional knowledge has not been widely addressed in Vietnamese laws and policies. At the international level, Viet Nam has acceded as a member or signatory of a number of international agreements relating to traditional knowledge, such as the World Intellectual Property Organization and numerous conventions and agreements including the 1883 Paris Convention on Industrial Property Protection; the 1886 Berne

64. Law on Cultural Heritage 2001, No. 28/2001/QH10 dated 19 June 2001.

65. Article 17 of the Law on Cultural Heritages 2001.

66. GoV Decree 05/2011/ND-CP, dated 14 January 2011 on providing for the work of ethnic minorities, Circular No. 12/2014/TT-BVHTTDL of the Minister of Culture, Sports and Tourism specifying some provisions of Decree No. 05/2011/ND-CP.



Convention on Copyright; the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights within the framework of the World Trade Organization.

Besides, Viet Nam signed the Convention on Biological Diversity (CBD) with many commitments to traditional knowledge. As defined by CBD “traditional knowledge refers to the knowledge, initiatives and practices of indigenous and local communities around the world, developed from experience gained over the centuries and adapted to local culture and environment, and traditional knowledge is orally passed from one generation to another.” Traditional knowledge is manifold as food, folk medicine, biodiversity and habitat conservation, various measures for trade exchange and economic development. In particular, traditional medicine is the “source of traditional knowledge” has often proven to be effective in medical treatment and healthcare for thousands of years.

The 2008 Law on Biodiversity most clearly references “traditional knowledge” in the country’s legal system. Accordingly, there are two points referring traditional knowledge, including Clause 28 of Article 3 which states that “Traditional knowledge about genetic resources is the local people’s knowledge, experience and innovation in genetic resources conservation and use “ and Clause 3, Para. (i), Article 58 which expresses that “The sharing of benefits with the State and other stakeholders, including the division of intellectual property rights with respect to innovative results on the basis of access to genetic resources and the copyright of traditional knowledge of genetic resources.” This is an important recognition of traditional knowledge relating to the conservation of genetic resources.

Recently, some Codes refer to the content of traditional knowledge but do not claim to be traditional knowledge. According to the 2013 Intellectual Property Law, some contents of intellectual property protection refer to the copyright and the right of crop varieties. The 2016 Pharmaceutical Law regulates some contents relating to traditional medical herbs<sup>67</sup>. These are the herbal medicine that local people have collected, preserved and passed from generation to generation for the prevention and treatment of diseases. The Pharmaceutical Law also prescribes a policy for the protection of secrets of traditional herbal medicine preparation, processing and clinical trial data; and a good treatment policy towards donors of precious traditional medicine to the State. At the Seventh Session of the 14th National Assembly, in May 2018, the Government submitted to the National Assembly a draft of the Law on Cultivation, which references the conservation of precious and rare indigenous genetic resources but not in much detail. In general, the above-mentioned legal texts deal with different aspects of traditional knowledge, taking into account the preservation and protection of this extremely important knowledge.

In addition, several laws to be entered in force in 2019, such as the Forestry Law, which already institutionalized the protection of the rights of ethnic minority people and disadvantaged groups. However, the content of traditional knowledge has not been clearly defined. In Clause 8, Article 14, on the principles of forest allocation, lease and change in forest use purposes, the Law stipulates “to respect local communities ‘existent spaces and their cultural taboos; Priority shall be given to the allocation of forests to those ethnic minority people, households, individuals

and/or local communities whose customs and habits, cultures, beliefs and traditions are closely bound to the forests, and their conventions on forest protection are in line with the provisions of the law.” The conventions in this law is in fact, a set of knowledge or maybe a traditional knowledge to specify the way that ethnic minority communities behave towards forests and the conventions may include customary laws, confidence, belief or culture. Therefore, the 2017 Law on Forestry has to some extent, referred to the traditional knowledge but has not affirmed the State’s recognition of the ethnic minorities’ traditional knowledge of forest protection and management.


### c) Challenges

- Ethnic minority people’s culture is at risk of being lost. The practice of rituals such as the worship of forests, tall trees and/or new rice fields that are of high value in the preservation of culture and nature are not being passed down to younger generations. Some communities in several provinces of the Central Highlands no longer believe in the Forest God and worship Christianity, and the role of the village patriarchs is increasingly blurred, leading to the disturbance of the life of ethnic groups and changes in the community structures and their production forms, and loss of natural forests in the vicinity because of the absence of the belief in the Forest God and the customary laws of forest protection.
- Some traditional knowledge with high values falls into oblivion, traditional intellectual property is lost, and traditional knowledge gains are inadequate. Due to the impact of the market, traditional herbal medicines have been made full use of by tourist operators without asking permission from local communities and equitably sharing benefits with local people. Besides, there is no legal basis to deal with illegal use of the knowledge as it was not granted the protection certificate. In addition, various traditional knowledge of forest protection is no longer used by local people as the area of natural forest has been shrinking and some local people are not entitled to long-term land and forest use rights.



67. Clause 8, Article 2 of the Pharmacy Law defines: 8. Traditional medicines (including traditional medical ingredients) are medicaments which are processed, prepared or prescribed according to traditional medical theories and methods or folk experience into formulations in the traditional or modern form.





## V. NATURAL RESOURCES EXPLOITATION

*“Viet Nam’s natural resources, particularly land, water, natural forests, minerals (including oil and gas) and renewable energy have had high profile in recent years.”*

### 1. Laws and policies for large-scale projects

Viet Nam’s natural resources have had a high profile in recent years, particularly land, water, natural forests, minerals (including oil and gas) and renewable energy.

#### 1.1 Laws and policies

Laws and policies related to large-scale projects include the 2014 Investment Law, the 2013 Land Law, the 2014 Law on Environmental Protection, the 2008 Law on Biodiversity, the 2012 Law on Water Resources, the 2017 Law on Forestry, the 2017 Law on Aquatic Fisheries, the 2015 Law on Natural Resources and Environment, Marine and Islands and the 2017 Planning Law. Those statutes that have been revised to meet management requirements include the Law on Environmental Protection, 2014 that was revised from the 1993 Law on Environmental Protection (3 revisions) and some parts of the Law are now being revised to be consistent with the 2017 Law on Planning; The Forestry Law 2017 replaced the 2004 Law on Forest Protection and Development; and the 2017 Law on Aquatic Fisheries replaced the 2003 Law on Aquatic Fisheries to be in line with the actual situation.

There are differences between the old and revised statutes. For example, the 2014 Law on Environmental Protection provides for stricter regulations on EIA procedures. The 2017 Law on Forestry specifies special use forests according to the categorization of natural conserved areas (including nature reserves, species-habitat conserved areas, and landscape protected areas) as stipulated in the provisions of the Law on Biodiversity; and ensures that those ethnic minority people and local communities who rely on forests have the right to participate in forest protection and development activities and to the sharing of benefits arising from forests. The 2017 Law on Aquatic Fisheries more clearly provides for CBOs in protecting and exploiting fishery resources, establishing MPAs, and prescribing specific fishing activities that are allowed in aquatic ecosystems within special-use forests and wetland PAs.

A number of statutes will be revised including the Land Law, the Law on Biodiversity and the Law on Environmental Protection.

#### 1.2 Over-exploitation

Natural resources have been over-exploited by large-scale development projects. Specifically:

- ▶ Biodiversity resources (including forest and aquatic ecosystems, endangered, rare and precious species of fauna and flora and genetic resources) have been seriously degraded because of many projects relating to hydropower, infrastructure development and rubber plantations. These have led to changes in land use patterns, loss of forest land and degraded aquatic ecosystems and forest resources.
- ▶ Mineral resources including coal and sand have been gradually depleted due to over-extraction of non-renewable resources. At present, sand resources of many rivers and estuaries are being over-mined causing adverse impacts to the flow of water, landslides and soil erosions to river banks and aquatic habitats of many species.
- ▶ The flow regime of rivers and streams has been severely affected by the development of large hydropower projects and reservoirs, affecting the water supply of many localities, and the hydrological regime of ground water resources as well as causing many death rivers in the dry season and decline in biodiversity resources<sup>68</sup>.

68. Decision No. 750/QĐ-TTg dated 03/6/2009 by the Prime Minister approving the master plan for rubber development to 2015 with a vision to 2020. Decision No. 2242/QĐ-TTg dated 11/12/2014 of the Prime Minister approving the scheme on strengthening the management of exploitation of timber from natural forests in the period 2014-2020. Decision No. 1208/QĐ-TTg dated 21/07/2011 of the Prime Minister on approving the national electricity development plan for the 2011-2020 period with a vision to 2030. Decision No.60/QĐ-TTg dated 09/01/2012 of the Prime Minister approving the development plan of the coal industry in Viet Nam To 2020, with a prospect to 2030.



### 1.3 Environmental impact assessment for natural resource exploitation projects

In recent years, there were about 200-250 EIA reports reviewed by MoNRE and approximately 33-35 EIA reports reviewed by each province annually; while the number of EIA reports reviewed by line ministries was only about 30 by total. However, there have been no specific data on EIA consultancies/practitioners so far. It is estimated that there are nearly 1,000 organizations and individuals who provide EIA consultation services nationwide.

In addition to results achieved in the EIA work, there are a number of constraints and remaining issues, such as the quality of EIA reports that depends on the investor, consultant/practitioner, project type, available resources for EIA study, and/or EIA review council/agency. There are also limitations remaining in the work of public consultation relating to disclosure of relevant information to: local authorities, people and particularly households that are likely to be directly affected, and units and individuals who comment on the proposed project. In reality, local people are not invited to participate in the EIA process or participated in the process at a superficial level only.

## 2. Impacts of large projects on ethnic minorities and local communities

► Mineral resource exploitation activities have occupied or deteriorated part of local land and forest areas, directly affecting local people's livelihood. The rate of compensation is less than what is required by local people whose land was lost, increasing risks and the vulnerability of a segment of local populations in the region and depriving the poor of sustainable income opportunities.

► Contributions and support given by mining and mineral processing enterprises to local authorities and communities have been limited while local infrastructure was degraded due to the impact of the mining process and mineral transportation

► The over-exploitation of forests has led to degraded forests and loss of income sources from forests that ethnic minorities rely on for their livelihood. The shrinkage of farming land due to the rubber tree expansion has put increased pressures on forest resources as households need to secure agricultural land and this directly affects local food security.

► The development of hydropower has led to the loss of watershed protection forests and biodiversity degradation. Ethnic minority communities have had to relocate from many localities to settle in available resettlement areas where infrastructure was already developed but its quality was poor and not suitable for the customs and habits of local people.

► The development of coal-fired thermal power has affected the geology and hydrology of mining areas, draining water from local people's wells and badly affecting rivers running through the areas. Coal-fired power plants are a source of toxic emissions that is a major contributor to acid rain and acidification of river systems and lakes, and causes serious damages to ecosystems, forests and agricultural production as well as buildings.





## VI. SACRED SITES AND CONSERVED AND PROTECTED AREAS MANAGED BY LOCAL COMMUNITIES IN VIET NAM

### 1. The conservation of natural resources - policies and practices

#### 1.1 Overview

The 2008 Biodiversity Law introduced the concept of natural protected areas (PA), which is a geographic area that has designated boundaries and functional areas to conserve biodiversity resources. This is based on the PA concept under the guidelines of the CBD and IUCN. According to this Law, the PA designation includes the following areas:

- a. *National park;*
- b. *Nature reserve;*
- c. *Species-habitat conservation area; and*
- d. *Landscape protection area (Article 16).*

Currently, the PA legal framework expressed in various laws is entirely agreed with the establishment of a PA management board according to its certain size and area. There is no specific regulation to assign the PA management to local communities or ethnic minorities but only a general regulation on the assignment of the PA management to an organization based on the actual situation of each locality (Article 27).

Accordingly, under this Law, households, individuals and communities are not subject to be assigned the PA management, and households and individuals legally living and working in PAs only have the right to harvest legitimate resources from the PAs and be involved in and benefit from business activities and services undertaken within the PAs (Articles 30, 31). In addition to the Biodiversity Law, several specialized laws such as the 2017 Law on Forestry and the 2017 Law on Aquatic Fisheries also regulate the establishment of PAs that are of specific characteristics of forest and/or aquatic ecosystems, and in accordance with the four categories of the PA as stipulated by the Law on Biodiversity.

#### 1.2 Establishment of protected areas

The establishment of protected areas is regulated by several statutes<sup>69</sup>. As of May 2018, in Viet Nam there were 176 PAs including 169 PAs of terrestrial and wetland ecosystems including

34 national parks (NPs), 58 natural reserves, 16 species-habitat conserved areas and 61 protected landscapes; and 7 MPAs. A number of PAs have been recognized as RAMSAR sites (7 NPs and 1 wetland PA); ASEAN Heritage Gardens (6 NPs); world biosphere reserves (9 reserves) and world natural heritage sites (2 sites) [4].

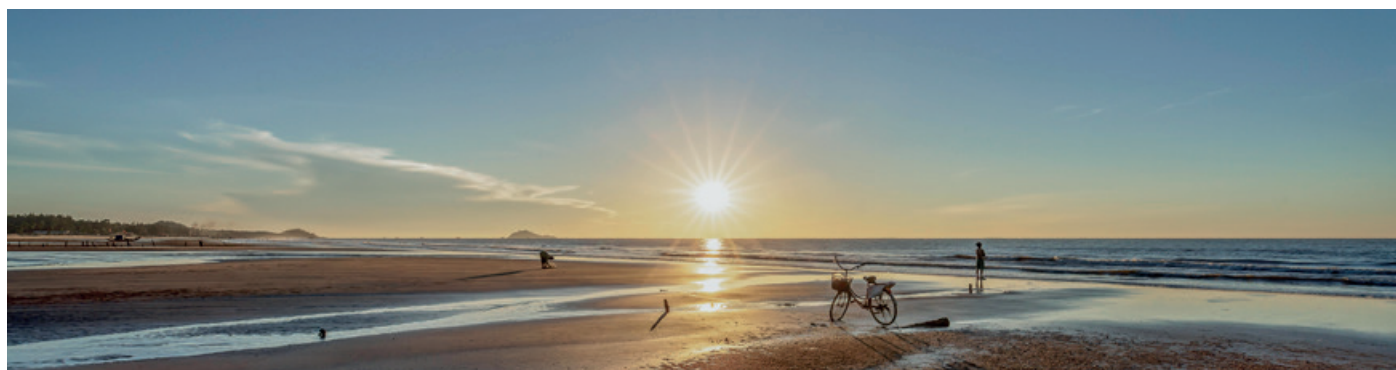
At present, all the established PAs are managed by state organizations and some PAs were established in areas previously conserved and effectively managed by local communities for many years.

#### 1.3 Other Effective Area-Based Conservation Measures (OECMs) are recognized in Viet Nam.

Many forests and/ or coastal areas such as mangrove ecosystems (in Dong Rui, Tien Yen, Quang Ninh province) and coral reefs (in Ninh Thuan province) have been managed and protected by local communities themselves in order to improve the value of the ecosystem services. Such areas managed by local communities or ethnic minority people might be 'potential conserved areas' due to their proactive management and conservation of biodiversity resources of ecosystems and/or habitats of species of organisms. In particular, the northern mountainous ethnic minority communities have conserved biodiversity and natural resources for generations. They have established their own village conventions on the conservation and protection of natural resources, habitats, the environment and/or areas of biodiversity resources protection because these areas are directly connected to their life and spiritual culture.

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<sup>69</sup>. Law on Biodiversity 2008, Forestry Law, Aquatic Fisheries Law; Decision 1250/QĐ-TTg dated July 31, 2013 of the Prime Minister on the National Biodiversity Strategy to 2020 and vision to 2030; Decision No. 45/2014/QĐ-TTg dated 08/01/2014 of the Prime Minister approving the national master plan for biodiversity conservation to 2020 with orientation to 2030 and Decision No. 218/QĐ-TTg dated 07/2/2014 Approving the management strategy for the system of special-use forests, MPAs and inland water conservation zones of Viet Nam until 2020 with a vision to 2030.



## 2. Sacred sites and community based forests

### 2.1 Policies and practices

The 2004 Law on Forest Protection and Development stipulates the allocation of protection and production forests to local communities. The 2017 Law on Forestry (Article 16) supplements the regulation on the allocation of religious forests to local communities. Community based forests have been established, through a number of means:

a. *Forests traditionally managed by the community:* These are sacred forests in which tall trees or the whole forest is strictly protected by local people for worship as they believe that Gods are living there and guarding their peaceful life. The local community's conventions on the sharing of benefits arising from traditional forests has been established and passed down by their ancestors and continues to be followed by younger generations. The conventions specifically provide for which trees are to be protected and/or are allowed to be logged at certain times according to their traditional experiences in the protection of forest trees. In recent years in several localities, forest management units have been established by local communities to coordinate their relevant activities and establish local forest protection conventions and forest protection patrol task forces.

b. *Establishment of forests managed by local communities as "forest owners" through the implementation of land and forest allocation policy*

According to available data provided by MARD, by 2017, the State allocated 1,145 million ha of forest to local communities, including 1.048 million ha of natural forest and 97,000 ha of forestry plantations; and about 805,559 ha of forests to ethnic minority communities and of which there are 626,122 ha traditionally managed by local communities<sup>70</sup>. These forests have the potential to become the community managed protected or conserved areas

### 2.2 Community-based water resource management model:

Many communities have protected water resources and watershed forests (in upstream) by deifying their natural resources. They believe that all rivers, streams, wharves, watering places, waterfalls and watershed forests have their 'souls' or belong to certain Gods, saints or ghosts. Thus, local people have to worship the Gods when they want to access to water resources according to their traditional rituals and procedures. This has become a customary law of local communities for the protection of water resources.

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<sup>70</sup>. Available statistics of the 2017 Monitoring Report of the National Assembly's Ethnic Council shows that 805,559 hectares of forest land allocated to the ethnic minority communities out of a total of 1,128,096 hectares allocated to local communities for management across the country, accounting for 71.4% of the total land area allocated to the community. The area of land granted the land use right was 345,711 ha out of 805,559 hectares allocated to ethnic minority communities, accounting for 42.9% of the total area allocated to ethnic minority communities.



*“Although the traditionally protected area has not been formally regulated in the legal and policy system, there have been many models of conservation traditionally managed by local communities themselves.”*

### 3. Other traditionally protected areas managed by ethnic minority people and local communities

#### 3.1 Selected conservation models managed by local communities

Although the traditionally protected or conserved area has not been formally regulated in the legal and policy system, there have been many models of conservation traditionally managed by local communities themselves. These include models for customarily and legally managing land, water, animals and forests for biodiversity conservation. Community-managed conservation models include the following:

- ▶ A group of local people in Thach Hoa commune, Tuyen Hoa district, Quang Binh province has organized to conserve 150 langur monkeys (*Trachypithecus delacouri*) over an area of 250ha. The delacouri langur population has been increasing under their protection.
- ▶ The Trai Duong Christian village, Quang Loc commune, Can Loc district, Ha Tinh province has protected white stork species from hunting. They have also protected their habitat for nesting and treat the birds when they are injured. At present the flock of stork accounts for thousands of individuals.
- ▶ The Cau Hai of Tam Giang Lagoon (15 km from Hue City) is a brackish ecosystem of 22,000 ha, which is endowed with diverse coastal aquatic animals and plants and waterfowls. This area is currently managed and used by local associations of fishermen and local people in a sustainable manner.
- ▶ The community-based aquatic fisheries and marine conservation model is characterized by co-management between the State stakeholders (MPA management boards) and local communities who work together to manage and utilize natural resources and protect the environment effectively in the Cham Island and Nui Chua MPAs for instances. Local communities have the rights to access resources and protect the environment. In addition to the benefits arising from local fishery resources, local communities are entitled to the sharing of benefits arising from tourist activities implemented within the MPAs.

#### 3.2 Community based protected area management

From various results gained from the research on PA management with the involvement of local communities in Viet Nam, many conform with the three characteristics of an ICCA:

- i. There is a close relationship between biodiversity resources and local communities;
- ii. Biodiversity resources are voluntarily and customarily managed by local communities in their ancestral land;
- iii. Biodiversity resources are managed by local communities themselves and/or as a key player in collaboration with external agencies in cases where land is not under their management.

It can be seen that objectives of the community based natural resources management are very diverse depending on specific topography, the community's cultural characteristics, categories of natural resources, and their legal relationships with



natural resources. The community based natural resources management may aim at achieving one or more objectives, e.g. of their culture and belief combined with livelihoods, of species diversity conservation with livelihoods; of cultural preservation with water resources conservation, or the conservation of rare and precious species of fauna and flora.

Given the time of their establishment, the community-based PAs can be categorized into two types: traditional and newly established PAs.

The traditional conservation is often associated with the conservation of forest resources. Forests are the existent space where local communities have been living from generation to generation and are closely connected to the community. Local communities protect forests with the aims of practicing their religion (as place of worship, cemeteries, birth and/or native place). Forests are protected with a view to improving their livelihoods such as the preservation and harvest of medicinal herbs for disease treatment, and natural pigment dyes, logging for house repairs and/or collecting firewood used by villagers to conduct funerals<sup>71</sup>, and the protection of forests aims to preserve watersheds in the upstream area for the supply of water for domestic and farming activities. Traditional conservation also involves fishing in a number of communities for their festive and cultural purposes. Local communities develop and maintain their conservation conventions, which assign specific tasks to participants to the conservation, regulate what activities are allowed or not, clearly define specific sanctions if any violation of the regulation, and highlight a very important role of the village patriarch.

Recently established community-based protected or conserved areas (or ICCAs) are of two main forms:

i. A group of local people has organized to protect some rare and endangered wildlife species, and

ii. The community has participated in models for co-managing mainly rare and precious fish species, coral reefs and marine ecosystems. Another feature of this conservation model is that the Kinh has been involved in the conservation but not ethnic minorities. Several local communities with the support of external organizations have developed numerous co-management models for conserving hundreds of thousands of hectares of water surface and improving their livelihoods.

#### **4. Some innovations in and solutions to the community based natural resource conservation**

In recent years, there were numerous innovations to promote conservation among local communities, of which the most

significant are legal aid, conservation approach, participation of local people in a larger number in, and external support of conservation. Consequently, community-based natural resources conservation has increasingly attracted a lot of interest and support from mass media, local government leaders and policy makers.

In an effort to help local communities to have the right to forest and land use of religious forests, water conservation forests and traditional protection forests, many domestic and international organizations have been involved in policy advocacy in order to recover forest land from state forest owners, such as state owned forestry/farming and protection forest management boards that once were traditional forest lands to be re-allocated to local communities. Available statistics of the Forland Alliance indicate that more than 20,000 ha were recovered and re-allocated to local communities. After the recovery, the organizations developed a participatory land allocation process, and developed village conventions in line with community customary laws and forest management and protection laws. At present, many forests have been rehabilitated, illegal logging and hunting of wildlife species have been prevented and there have been signs of the reappearance of rare and precious wildlife species.

Several international organizations in Viet Nam have assisted the development of models for fishery resource co-management. They have worked together with local authorities and local people to develop relevant mechanisms for the co-management, conservation and exploitation of fishery resources in a sustainable manner. Local communities have also been involved in the development of relevant regulations on sustainable fishery resource exploitation to ensure that aquatic species are not caught during the breeding season, and the establishment of mechanisms for the sharing of benefits arising from fishery resources and tourism.

In addition, several social organizations and local people have enthusiastically participated in conservation activities. Some farmer households themselves put effort into preventing illegal hunting of rare and precious langur monkey groups in Quang Binh (including through regular patrols). Residents of rice paddies in Dong Thap Muoi have set out regulations prohibiting the hunting of rare and precious red headed cranes and conserved coastal forests for migratory birds to live in, leading to an increased number of birds every year. All these activities have been voluntarily implemented by local people without dependence on the State's subsidies or support.

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<sup>71</sup> The area of forests allocated to ethnic minority communities is 805,559 ha out of a total of 1,128,096 ha allocated to local communities for management nationwide.







## 5. Challenges to protected areas managed by the community

### 5.1. Lack of laws on the establishment of protected areas managed by local communities

Lack of regulations on the establishment of protected areas (PAs) managed by local communities is a major obstacle to the maintenance and development of the community-based PAs. In addition, local communities have implemented conservation activities such as the protection of religious and cultural forests, rare and precious animals, and/or fishery resources which so far are not regulated by the law. Because of the absence of a legal framework, there is no legal basis on which local communities can prevent violations of natural resources, and there are no financial resources provided to maintain their regular conservation activities and work towards natural resources conservation, and more importantly, the community-based natural resources conservation has not been included into the National Biodiversity Conservation Strategy.

### 5.2. The position, role and right of various groups involved in the management of protected areas have not been fully established

Local communities, groups of households or groups of many communities are currently involved in the conservation of protected areas but with unknown legal status.

Communities are still lacking land and forest ownership. According to the National Assembly's report "Traditional forests managed by local communities till 2016, there were 54.25% of local communities have been granted land use right certificates"<sup>72</sup>. The remaining protected areas, including forests and wetlands, are mostly managed without land use right certificates. The religious forest as defined by the Law on Forestry is one of the categories of forest conserved by local communities as the protected landscape (Article 5).

### 5.3. Benefit sharing

Mechanisms for enjoying benefits arising from PAs managed by local communities have not been clearly defined

Instead they have been mostly developed by themselves based on their traditional customary laws and other conventions or agreements with newly established PAs. Local communities' rules of sharing benefits arising from some traditional forests were established by their ancestors, handed-down to, and applied by their descendants. Some recently established PAs have a clearer benefit sharing mechanism, especially groups of local people involved in fishery resource conservation and have achieved sustainable fishery resource conservation and exploitation to improve their livelihoods. However there have been some conflicts of interest in local communities involved in several models due to poor monitoring of fishing and benefit-sharing by relevant stakeholders.

### 5.4. Natural habitats have been shrinking

Habitats of animal and plant species have been shrinking due to the rapidly decreased natural forest area and over-exploited coral reefs. Some fish species have been over-exploited at a higher rate than that of their regeneration, and the development of tourist or industrial projects has caused serious adverse impacts to the effectiveness of community-based natural resources conservation. Also, illegal hunting and fishing have directly affected natural resources being conserved by local communities.

### 5.5. Lack of technical capacity

Local communities have lacked technical capacity, equipment and physical facilities required for the conservation of natural resources.

72. The 2017 report of the National Assembly's Ethnic Council on the monitoring of land allocation laws and policies indicated that the total land area being traditionally managed by local communities accounted for 626,122 ha as reported by 14 provinces, and the total land area granted the land use right was 339,690 ha, accounting for 54.25%.





## VII. LOCAL COMMUNITY'S CONSERVATION WITHOUT LEGAL RECOGNITION AND SUPPORT

In Viet Nam, natural resources, especially forest resources, are often distributed in mountainous areas where many ethnic minority peoples live. There are various close relationships between ethnic minorities and forests. The ethnic minorities rely on forests for their existence, and thus they protect forests which, in turn, provide them with shelter, timber for building houses and stables, medicines, food and water for their production and domestic activities.

There are many models for forest resource protection established and performed by local communities themselves within villages and/or communes for a long time, and some of them still exist, such as: stork and bird colonies, langur monkey groups, protected forests with precious timber and water resources, and religious forests. These forests, however, were not legally recognized because the State has emphasized its policy on the allocation of forests to State-owned organizations and/or cooperatives for management for a long time.

In reality, it is proved that the community's models for forest protection have worked well in several localities where local people established their own groups to protect forests and established their own conventions to govern forest protection activities.

Therefore, the laws on forest protection and development has been adjusted to legalizing forests managed by local communities<sup>73</sup>, which means that the State shall assign the village community to continue managing the forests as the subject of forest protection. However, since this provision was only stipulated in the sub-law document, there is some inconsistency in the compliance with it. For example, while forests were officially allocated to local communities in several localities, in

other locations there was an absence of legal procedures for legalizing these forests for the community.

However, there have been a number of international projects supporting these communities through the provision of training to build their capacity and financial support to protect forests, and to develop and implement their conventions on forest protection.

The 2004 Law on Forest Protection and Development clearly stipulates to allocate the following forests to local communities:

1. Forests which are being effectively managed and used by local communities;
2. Watershed forests being used by local communities
3. Holy/sacred forests - forests in cemetery zone.

The commune people's committee has responsibility to guide local communities in villages/hamlets on establishing local village/hamlet regulations on forest protection and development for managing the allocated forests. This is an important legal basis to attract many international organizations and projects and NGOs to support local communities through the provision of training to build capacity; financial support to protect forests, plant medicinal herbs and other non-timber forest plants under forest canopies and implement agro-forestry production models.

In addition, there are also a number of models for managing wetlands, protecting fishery resources and conserving wildlife species established and managed by local communities with technical and financial supports provided by international organizations, projects and NGOs. Unfortunately, due to the absence of legal recognition, these models did not receive financial support from the State and as a result local community have not had sufficient financial resources to continue their conservation activities upon completion of the projects

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73. Decree 17/HDBT of the Council of Ministers (now the GoV) dated January 17, 1992, on the implementation of the 1991 Law on Forest Protection and Development.



## VIII. JUDGMENTS AND CONVICTIONS

In the past several years, there have been disputes over the rights of land and other natural resources use which have arisen almost exclusively between individuals from ethnic minorities and/or local communities and no case has yet been recorded at the community level.

All cases of the disputes judged between households and/or individuals were associated with land encroachment, land acquisition and resettlement, and/or illegal land transfer. In particular, in cases of disputes between the local people and the state, many verdicts were returned in favor of the local people<sup>74</sup>. That is, the State has to recognize the land and forest use rights of local people.

In reality, there remains an overlap between local communities of traditional forest-land and special-use forests established by the State. Conflicts of land use rights between local communities and forest owners have taken place over a long period of time but have not been completely resolved. Commonly, the disputes are settled through agreements between the parties involved in which dispute resolution is held and/or relevant solutions are found by the district or provincial people's committees.



74. In case of dispute over forest use right in Xuan Trach commune (2005-2015) judged by the People's Court of Bo Trach district in Quang Binh province under Decision 327 and returned a verdict in favor of local people.

## IX. POLICY IMPLEMENTATION

In Viet Nam, laws and policies on natural resource conservation and development are mainly promulgated by central competent authorities while at provincial, district and communal levels, the People's Committees are primarily responsible for the implementation of these laws and policies through relevant guidelines which are tailored to local conditions and are not contrary to the laws and policies. To assist the People's Committees in the implementation of the laws and policies at local level, there are state management agencies that specialize in forestry, fisheries, natural resources and environment, finance and planning and so on.

Although the laws on forest protection and development since 2004 regulated the policy on the allocation of forests to local communities, there were only 1.145 million hectares of forest, accounting for about 7% of the national forest area, allocated to local communities so far. In general, the implementation of forest allocation to the community is slow due to many different reasons, including:

- *Limited and/or unavailable forest resources:* For a long time, the State has implemented its policy with an emphasis on the allocation of forests to State owned organizations and cooperatives for management only leading to limited forest resources available to be allocated to local communities.
- *Understanding of the position and role of local communities* in the protection and development of natural resources has not been properly perceived or even neglected. Often only the State-owned organizations that are a legal subject can be involved in

the management of natural resources while local communities have been subordinated to, or become a labor source hired by, the State-owned organizations. In some provinces, there are forest funds available, but forests have been allocated very slowly to local communities.

- *Limited budget for forest allocation.* The allocation of forests requires the inventory of forest resources and the development of forest allocation plans and procedures, while the budget allocated by the State is very limited.
- *There remain forest funds,* but most available forests are poor and depleted, which are not a source of income for local communities, while the State does not have funding to support forest protection. Additionally, the policy on the sharing of benefits arising from natural forests has not been clearly defined and thus has not created incentives for local people to accept the allocation of forests.

In order to accelerate the allocation of forests to communities, due attention should be paid by all levels of local authorities, socio-political organizations and relevant agencies specialized in land, forestry, fisheries and biodiversity resources to: raising public awareness of the laws and policies; providing adequate funds for the allocation of land and forests as well as forest protection; and encouraging technical and financial supports from international organizations and projects to provide technical guidance for the allocation of forests to local communities and improve local community's livelihoods



## X. RESISTANCE & ENGAGEMENT

The Ordinance on the exercise of democracy in commune, ward and township levels<sup>75</sup> stipulates the disclosure of the contents (of the State's policies) to local people for their reference, discussion, and/or comment prior to the approval by the competent authorities, as well as for their monitoring, and sets out the responsibilities of authorities, officers and civil servants of communes, wards and townships (communal level), villages and/or hamlets (village level), relevant agencies, organizations, individuals and people for the exercise of democracy at local levels.

This legal document also defines that local organizations such as the communal People's Councils, CPCs, relevant agencies, organizations and individuals shall have the responsibility for organizing the exercise of democracy at communal level. The People's Councils and CPCs have the responsibility to collaborate with the Viet Nam Fatherland Front Committees and their member organizations at the same level in organizing the exercise of democracy at communal level. And local people shall have the responsibility to discuss a policy on, and directly decide levels of their contributions to the construction of public welfare facilities, infrastructure and other works within their communes, villages and/or wards in accordance with the law.

Within the extent of the protection and development of natural resources, especially forest resources, local communities are encouraged to participate in policy consultation meetings. In the process of implementing the policy, local people have the right to express their opinions at the meetings organized by the community or CPCs, or their views directly to the community's representatives, such as head of village, or socio-political organizations at village level. In many cases, people's opinions are reflected through interviews and meetings locally organized by international organizations, projects and NGOs. This information shall be communicated in various forms to the competent authority.

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<sup>75</sup> Ordinance No. 34/2007/PL-UBTVQH11 dated 20/4/2007 on the exercise of democracy in communes, wards and townships





# XI. PROPOSAL TO IMPROVE RELEVANT LAWS AND POLICIES TO SUPPORT AND EXPAND CONSERVED AREAS MANAGED BY THE COMMUNITY

## 1. Some general issues

- Clarify the concepts of “community”, “co-management” and “community-based management”;
- Improve relevant mechanisms and policies and further develop a legal framework in the direction of socialization. While waiting for the legal framework, it is necessary to review and evaluate community based natural resources conservation and development models for replication.
- Develop an adequate and consistent set of legal documents on community-level natural resources conservation and development.
- Clarify the mechanism for sharing benefits arising from the process of natural resources conservation and development between local communities, management agencies and stakeholders, taking into consideration a need for the consultation of and respect for cultural taboos of ethnic minorities and local communities.

## 2. Specific issues

### 2.1. Further Study on the revision of laws on the establishment of community-managed protected areas

#### a) The Law on Biodiversity:

The Law on Biodiversity should be revised by: including the concept of “a community managed conserved area” into the Law; supplementing a regulation on the rights of local communities to participate in biodiversity conservation and to establish conserved areas (sacred forests and water-protected forests, and marine and wetlands conserved areas) in small areas that are scattered around villages, communes and residential settlements and traditionally managed by local people; and adding a regulation on the rights, interests and responsibilities of local communities and relevant stakeholders involved in the management of the community managed conserved areas.

#### b) The Land Law

The 2013 Land Law should be revised by including a regulation on the allocation of religious and production forest land to communities, as the allocation of religious forests (of special use forests), protection and production forests to communities has been regulated in the provisions of the 2017 Forestry Law (Article 16); whereas the 2013 Land Law only provides for the allocation of protection forest land to communities (Article 136).

#### c) The Law on Aquatic Fisheries

There is a need for a specific guidance to clarify Article 10 of

the 2017 Law on Aquatic Fisheries by including the sharing of fishing rights into the means of aquatic resources management and protection of CBOs; and the coordination of relevant stakeholders needs to be clearly specified and approved by competent authorities.

#### d) Laws on Forestry

- The concepts of “community-based forests” and “traditionally managed forests” need to be clearly specified.
- Priority should be given to the rationalization of natural forest areas traditionally managed by local residential communities for a long time now.
- Priority should be given to the allocation of forest areas temporarily managed by CPCs (3,1 million ha were not allocated and/or leased by the State as of December 31, 2017) to local communities for stable and long-term management and use, and to the determination of size and/or scale of forest area to be allocated to local communities.

- The conversion of the purposes of land and/or forest use of conserved areas being managed by local communities should be restricted in order to ensure local communities’ living space in terms of cultural taboos. The living space must be protected and in harmony between conservation and development, and thus local communities needs to be consulted when changing the purposes of land and/or forest use.

### 2.2. Study and revision of relevant policies for local communities involved in the management of protected areas

- The State guarantees that funds for forest protection and development activities should be allocated to cover costs incurred in the management of protected forests and the conservation of biodiversity resources in PAs allocated to local communities, as the State has provided funds for the State-owned forest management boards.
- Expand the rights of local communities to utilize their natural resource use rights as their capitals to contribute, cooperate, associate and/or go into partnership and joint venture with domestic and foreign organizations and individuals to invest in sustainable natural resource development and go into business in forest environmental services and biodiversity conservation (eco-tourism and/or carbon credits).
- Supplement policies to encourage local communities and ethnic minorities participating in biodiversity conservation and invest in the development of sustainable livelihood models for ethnic minority people and local communities relying on natural resources of PAs to limit pressure on the protected areas;

and determine a mechanism for sharing benefits arising from protected area management among relevant stakeholders.

- Supplement the right of local communities to have access to loans for their economic development in the direction of integrating conservation with development (such as harvest of NTFPs, planting of medicinal herbs, animal husbandry and aquaculture under forest canopies) and/or the conservation of rare and endangered species of fauna and flora, and sustainable management and development of PAs managed by local communities, and clarify the sharing of benefits arising from the co-management of natural resources, particularly the special-use forests.

- Support the development of co-management models for the protection of fishery resources, marine and biodiversity conservation as well as cooperation and partnership in the conservation of forests, wetlands and marine resources.

- Pilot a model for hiring local communities to conserve natural resources whereby local communities are hired and paid by the State to conserve natural resources based on a contract signed between representatives of state agencies and local communities.

### 2.3. Support for the development and replication of community-managed conservation models

- Review and evaluate local people/community-based models for protecting stork and/or bird colonies and langur monkey groups within villages/communes, taking into considerations local spiritual and religious factors in order to request the State to recognize, replicate, and legalize these models and/or develop relevant mechanisms for the cooperation, partnership and/or co-management of these models.

- Continue to support the development of models for the co-management of MPAs and fishery resources protection areas (focusing on community empowerment, sustainable financial and livelihood mechanisms, and capacity building for fisher folk communities), as well as models for forest conservation cooperation and partnership.

- Support the development of an inventory of religious forests and the performance of procedures for allocating local communities' religious forests being traditionally managed and used by them.

### 2.4. Study and supplement the provisions of the laws on the legal status of local communities

There are some contradictions in the legal system about the concept of community. It's already stated in a number of specialized laws, such as: the Land Law 2013 (Article 5); and the representative of the community (Article 7); and introduces a regulation on the allocation of protection forest land to local communities (Article 136); the Forestry Law 2017 also introduces the concept of the community (Article 2); stipulates the allocation of religious forests (of special use forests), protection and production forests to local communities (Article 16); and defines

the rights and obligations of local communities (Article 86); the 2013 Grassroots Reconciliation Law and the 2007 Ordinance on implementing social democracy at communal level, also mention the role of local communities (Article 6, 8, 23) ... While the 2015 Civil Law mentions the common ownership of the community (Article 211), the legal status of the community is not clearly stipulated. As a result, local communities face difficulties in their civil relationships. For example, access to loans, economic cooperation with other organizations and individuals; and civil liability when forests are lost.

- It is proposed that a legal document be issued by the State to deal with the conservation of natural resources at community level (or community-based natural resources conservation).

While pending the addition of the legal status of the local communities to the Civil Law, there is a need for a legal document to be issued by the State to encourage local communities participating in the conservation of natural resources, which clearly defines responsibilities of representatives and/or people for natural resources allocated to local communities and guides the development of community's conventions on natural resources conservation.





## XII. CASE STUDIES

### 1. Traditional forest protected by local communities in Uyen Phong village, Chau Hoa commune, Tuyen Hoa district, Quang Binh province

The Uyen Phong community-based forest is often called a treasure of the village by villagers who have protected and managed the forest through their conventions for centuries. The forest of 51 ha is located next to national road No. 12A and surrounded by residential communities but so far there has been no damage caused to the forest resources. Moreover, the forest is considered the treasure because it is home to communities of precious floral species including Lim (*Erythrophleum fordii*), Go Do tree (*Azizia xylocarpa*), Nao tree and Su (*Aegiceras corniculatum*) which are tall trees of 2-3m in diameter, and many rare and precious wildlife species. Equally importantly, the forest protects water resources for the irrigation of more than 100 acres of local farming land and the supply of drinking water for local people.

According to the local community, the Uyen Phong forest occurred there in the Pre-Le dynasty (the 11th century), where soldiers were sent to guard the southern border discovered a mountain-blocked land area that could be cleared for rice cultivation, and chose this area to settle down and expand the country's territory. The villagers have been living in harmony with the forest and regarded the forest as their God to protect their lives. They have worked together to formulate and implement their forest protection conventions until now. At the foot of the mountain, there are two small shrines built by the villagers to practice the worship of the forest and water gods to bring strength to the community, and provide water for their wet-rice farming. Every year on New Year's Day, the villagers launch a ceremony of singing Ca Tru folk songs on the grounds of the shrines. Young boys and girls often gather here for cultural exchanges, and also learning local customary laws on forest protection handed down from the older villagers.

According to the conventions, two people are assigned by the

community to protect the forest on a rotational basis, called forest defenders. Annually, each household contributes 5kg of rice to pay the defenders for their protection work and they receive two tons in total. Those who violate the conventions shall be sanctioned and not allowed to have access to water resources for wet-rice farming. External offenders shall be reported to, and dealt with, by local authorities. The grazing of cattle is also prohibited in the forest to ensure the safety and protect water resources up-stream from contamination.

Previously, there was an agricultural cooperative that had managed local production activities and the Uyen Phong community forest for a long time. Due to its poor management, illegal logging and hunting repeatedly occurred. After 1988, the cooperative disbanded and the villagers retook control of the forest. However, illegal logging, hunting and harvesting of honey continued to occur by external persons from other villages. The villagers have had to assign defenders to protect more strictly the forest. Additionally, because the Uyen Phong forest is endowed with plenty of precious timber trees, some investors have requested the provincial government to develop a project on limestone processing plant in this area but in fact, they intended for logging and seizing control of the community's sacred land. In spite of these difficulties, in 2014, the Indigenous Knowledge Research and Development Center (CIRD) worked together with the villagers to conduct the inventory and survey of the forest, and request a forest land use right certificate from the Tuyen Hoa district authority. By December 2014, the whole forest area was granted land use right certificate. The villagers have well conserved many valuable species of fauna and flora without benefitting from forest products and/or external support.



## 2. The community-based conservation of land crabs on Cham Island

Cham Island is situated 18 km from Hoi An towards the East Sea, which is administratively named Tan Hiep Commune of Hoi An City, Quang Nam Province. The Cham Island MPA covers an area of 5,175 ha of water surface and is endowed with about 311 ha of coral reefs including about 277 species of coral reefs belonging to 40 genera and 17 families; 500 ha of seagrass beds; 270 fish species belonging to 105 genera, 40 families; 5 species of lobster; 97 species of Mollusca and plenty of others valuable species. The Cham Island land crab is one of the most important resources of the MPA. The land crab is a marine animal but lives in stone caves in the forest. During its breeding season land crabs go to the sea and lay eggs in coastal waters.

However, as the number of tourists to the Cham Island increases

day by day, the crabs are likely to be at risk of extinction. The harvesting of and trade in land crabs was temporarily suspended and strictly managed under the direction of the Hoi An City People's Committee in order to restore their population. However, the land crabs continued to be caught and traded illegally and uncontrollably especially during the tourist season from March to September annually.

In 2010, the Tan Hiep Communal Association of Farmers in collaboration with the GEF-SGP Program and Hoi An City, implemented the project on 'the community participation in natural forest restoration and sustainable land crab exploitation in Cham Island'.

### Project Outcomes

The performance of community-based sustainable land crab conservation and exploitation group has enhanced the protection of the Cham Island's natural forest by culturing land crabs in the community, and after the trial period, local people have well understood the need to protect natural forest. The community group has managed the harvesting of land crabs by means of eco-labeling. Land crabs caught legally are eco-labeled and marketed. Those crabs without eco-labelling on their shells are confiscated and released back into the forest. The group's members meet at the end of the month to review their performance and decide how many crabs can be caught in the following month and their prices.

Only mature crabs not carrying eggs and measuring not less than 7cm across their shells can be caught according to the permitted number and season. The qualified crabs are labeled and sold legally. From 2013 to 2015, the community group caught and labeled 14,486 crabs, of which 9,890 males and 4,596 females.

The community based land crab conservation model is centred around the community group. Benefits arising from the land crabs harvested by the group have been shared with benefits arising from tourism services. Land crabs are a tourist product that benefits not only the group but also other community groups in the Cham Island.

In reality, the model has greatly contributed to the conservation of the land crabs in Cham Island as it has enabled the protection of 75% of crabs, and improved income for its (43) members. The

harvesting of the crabs with the annual permitted quantity of 10,000 crabs and the average weight of 4-5 crabs/kg is allowed from the first of March to the 31<sup>st</sup> of July. The eco-labelling fee for each kilogram of crabs accounts for VND 40,000. The proceeds are used by the community group to cover costs incurred in the printing of eco-labels, the resource taxes, its management and other activities.

The initiative of 'the Cham Island's community group of sustainable land crab exploitation and conservation has contributed to the development of ecotourism in the locality. The eco-labelling of land crabs shows a great effort of the community to conserve biodiversity resources and protect the environment. Developed eco-tourism has been enabling local people to improve their livelihoods and the quality of their lives. By 2013, there were over 485 local people from 169 out of 560 households directly involved in ecotourism operations with more than 12 new livelihoods.

After the completion of the project (Dec. 31<sup>st</sup>, 2012), February 2013, the Tan Hiep CPC issued a decision on the establishment of the Cham Island's community group of sustainable land crab exploitation and conservation, along with its regulations on land crab management and other relevant documents to ensure its legal operations in the locality as proposed by the project. Since then the community group has undertaken its responsibility and worked together with local authorities and other stakeholders to protect land crabs effectively in Cham Island.





## The sustainability of the project

In the three years since the completion of the project (the model operated from 2013 to 2015), the initiative had assisted the community in conserving more than 75% of the land crabs in Cham Island. The people's income from the harvesting of the land crabs was still high. The harvesters of the land crabs contributed their fees, and the visitors satisfied their tourist needs in Cham Island.

In 2014, the community group under the supervision and consultation of the Tan Hiep Communal Association of Farmers, received financial assistance from the Mangroves for the Future (MFF) Program. IUCN continues linking together four stakeholders including the Manager, the Business, the Scientist and the People on the basis of responsibilities and benefits with a view to strengthening the capacity of community groups to protect and exploit the land crabs more sustainably.

## 3. Community-based management of coastal and marine resources for livelihood improvement

### Project context

Viet Nam's marine ecosystems provide habitats to an estimated 10,837 species of plants and animals, including several threatened turtle species, corals, endemic fish species and mammals (Garcia-Herrera 2009). Due to consistent over-fishing the country's marine resources have come increasingly under pressure, which in turn has led to a decrease in economic performance for small-scale fishers and increased vulnerability of coastal communities. Thuan Quy, a coastal community in southern Viet Nam, covers an area of 51 km<sup>2</sup> and a coastline of more than 4 km. This marine area used to be a rich breeding and feeding ground for aquatic species, with a particularly dense population of bivalve mollusks and clams, making it a regular fishing ground for fishers from Thuan Quy and other localities in Binh Thuan province. However, as the volume of clams (*Anadara antiquata*) sharply declined due to overfishing, one of the main income sources of the local population became unavailable, resulting in increased economic vulnerability and poverty of coastal communities in the area.

Government support for the fishery sector is insufficient and no concrete measures have been taken to implement the 2003 Fisheries Law of Viet Nam on co-management. To ensure a more sustainable use of aquatic resources, particularly clams, in the marine area of Thuan Quy, the Binh Thuan Fisheries Association proposed a system of co-management, which envisioned the restoration of the local marine ecosystem through sustainable fishing, while improving the livelihoods of local fishers and their families.

### Project implementation

In 2014, the Binh Thuan Fisheries Association, with the support of the GEF-SGP, embarked on a joint mission to establish a community management program for the restoration and exploitation of marine resources that could serve as an example of sustainable fishery for other communities.

In the first phase, the Fishermen's Community Association was established, consisting of an executive board representing the fishing community, a team for the supervision and enforcement of state and community regulations, and separate communication and livelihood teams. With input from the fishing communities, the Association developed internal rules for meetings, reporting, financial management, and the settlement of disputes. The Association proposed a decentralized approach to aquatic resource exploitation, and enhanced coordination and benefit-sharing among local stakeholders. Activities to restore and maintain aquatic resources included the breeding and stocking of species, the demarcation of zones for exploitation and protection of parent breeds, installation of artificial reefs to replace reef habitat and collection of water samples for environmental quality assessment.

The Association designed sustainable livelihood models by establishing a revolving fund that provides financial support to the community for fishing, trading, aquaculture, ecotourism and agricultural activities. Considerable efforts went into developing outreach and advocacy strategies in order to engage the broader fishing community in the project; knowledge and project information was provided during meetings, dialogues, and public consultations, and communication materials were disseminated in the form of posters, leaflets and radio and television broadcasts. External experts were regularly invited to trainings and capacity building workshops to share knowledge and technical skills regarding project management and administration, communication and conflict resolution, as well as best practices for the co-management of aquatic resources and marine ecosystems.



The Fishermen's Community Association received additional financial support from the Fisheries Department of Binh Thuan province, the People's Committee and the fishers' community of the Thuan Quy Community. The Tan Thanh Border Guard, the People's Committee of the Ham Thuan Nam District, and local unions of farmers, women, youth and veterans provided support for the implementation of the project. The Nha Trang Institute of Oceanography and the Southeast Asian Fisheries Development Center (SEAFDEC) provided technical support for trainings about resource protection, demonstrating how FED (fish enhancing device) systems can be used to create safe habitats for marine species. Also the Japan International Cooperation Agency (JICA) supported the project by dispatching experts to organize trainings and share Japan's experiences in community-based, sustainable and decentralized fishery management. The GEF-SGP played a crucial role in the execution of this project: It supported local authorities and relevant government agencies in the development and promulgation of policies for co-management of marine resources, assisted in building bridges to other donors, and provided insights on project development.

The project's outcomes and best practices were shared during numerous conferences and seminars, including the National Co-Management Conference in which 15 other Vietnamese provinces participated. Progress and practical results were regularly demonstrated to stakeholders, local authorities, government agencies and fishing communities from other localities. The Thuan Quy community received several delegations from other provinces, and reportages about the coastal management model developed by the project were broadcasted on television and in the media. The results of this project informed the People's Committee of Binh Thuan province's decision to revise the Fisheries Law of 2003 and pilot a policy for allocating exploitation rights to fishers in an attempt to restore and protect aquatic resources while improving the livelihoods of the local population.

## Project implementation



Overall, the project affected people's awareness and behavior about the benefits of marine conservation in a positive way; none of the fishers of the Association violated regulations on sustainable exploitation and protection of aquatic resources, while the number of violations among fishers from other localities decreased by more than 90 percent. As a consequence, the seabed ecosystem and the habitats of more than 20 aquatic species were restored, with a positive spill-over effect in the surrounding areas, and an overall improvement and enrichment of the local marine environment. The once-depleted clam population, the main income source of the local population, was restored in less than one year's time, reaching an average density of 10 to 15 individuals/m<sup>2</sup>. Today, thanks to continuous monitoring of the marine environment by the association, the clam population has further grown to and stabilized at around 20-25 individuals/m<sup>2</sup>.



## Socio-economic results

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By allocating fishing rights, the livelihoods of the local fishing communities improved and stabilized.

The project also developed new production models for fishing (e.g. the use of gill nets for catching clams instead of diving and squid fishing) and other economic activities such as small trading, agriculture (particularly by planting dragon fruits) and ecotourism (by organizing recreational fishing tour for tourists) that helped diversify the livelihoods of fishing community. The new fishing practices increased the income of the local fishers from around \$15 to \$25 per day, while gains from alternative livelihoods rose from \$8 to \$15 per day.

The project mobilized the participation of many local stakeholders and the developed legal and institutional foundations that informed local policies and regulations in Binh Thuan province. Because the association agreed to reserve 20 percent of its revenue for social welfare purposes, such as the establishment of a library for children, a kindergarten, a village house, and student scholarships, the project indirectly benefited the entire community of Thuan Quy. The establishment of a financial mechanism (revolving fund), and with contributions of the fishers' association, the project managed to ensure long-term financial sustainability of this new organizational structure and its work.

## Experiences and lessons learned

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From a project management perspective: In the initial phase of the project it was important to increase awareness and build trust, strengthen communication within the community, and to organize information sessions and training activities for local stakeholders. Mobilizing members of the community that were considered influential proved effective for increasing outreach. Once more members joined, it was practical to divide them into different groups according to occupation and living area. To enhance transparency, new rules and regulations were formulated in such a way that they would be easy to understand and implement, which could gradually develop and expand. Regular stakeholder meetings were important for the association to receive community feedback, reassess planned interventions and adjust regulations. Monitoring and evaluation, including the collection of data and statistics, are necessary to adjust working plans and propose measures to prevent and deal with risks and challenges. Promoting the role of the community in self- and cross-monitoring proved helpful in this process.

From a financial perspective: A better understanding of the project intentions and proceedings motivated the community to contribute their own resources such as boats, equipment and small capital. This was also catalytic for gaining external support. The revolving fund granted non-interest loans to people with technical capacity but insufficient resources, and low interest rates to other members.

From an environmental conservation perspective: Starting small-scale is important, selecting a limited number (one or two) of target species for rehabilitation and a project area that can expand in parallel with project management capacity. The recognition and granting of fishing rights should only be made in a final stage of the project, when the community members are capable and qualified to perform the tasks and responsibilities in accordance to the rules and regulations of the association.



#### 4. The community voluntarily conserves a rare species of langur monkeys in Quang Binh province

The community based conserved area is an area enclosed by a range of limestone mountains that is home to a population of langur monkeys (Delacour's langur). This area of 175 ha large is administratively managed by Thach Hoa and Dong Hoa CPCs in Tuyen Hoa district.

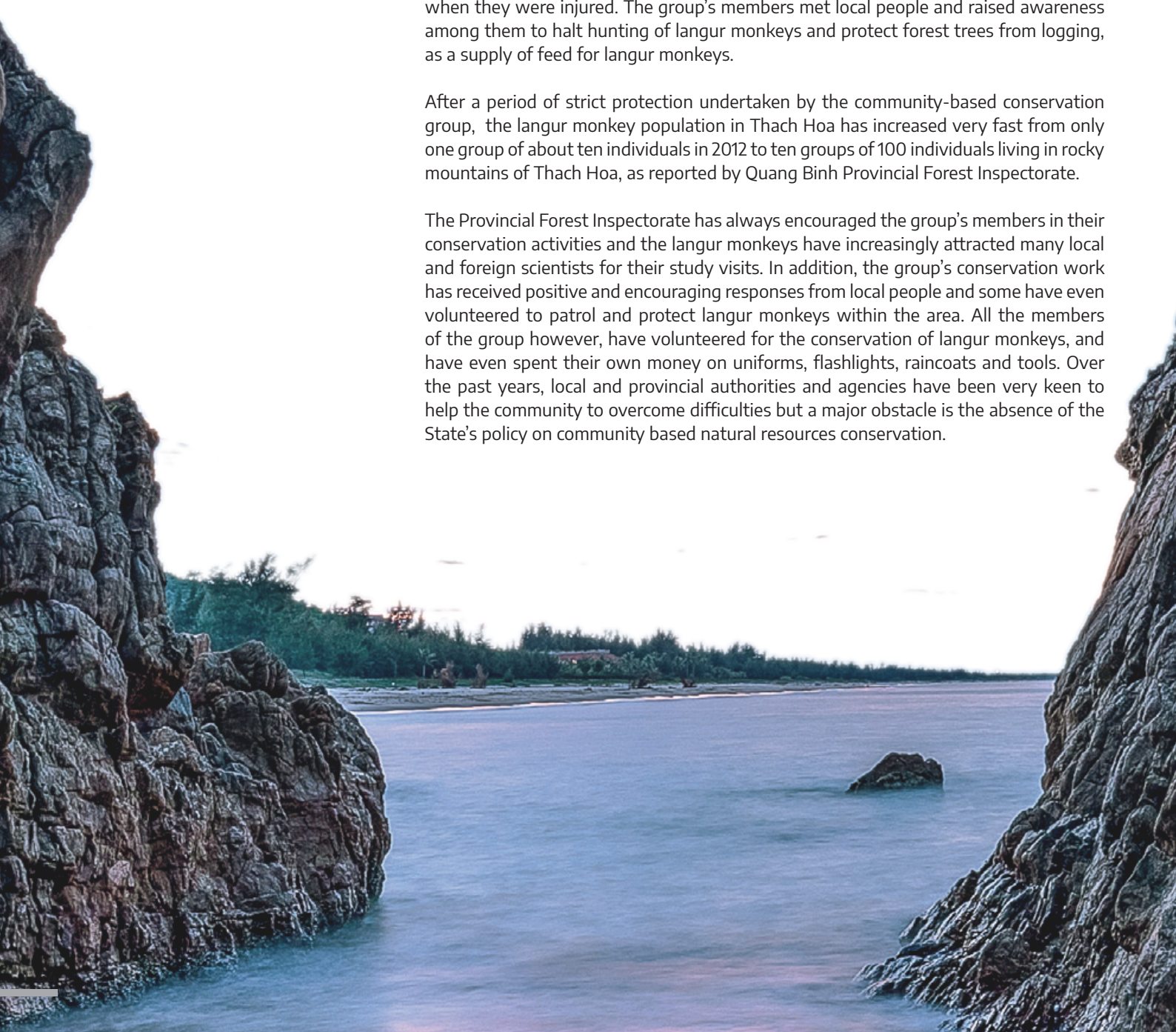
Before 1980, numerous langur monkeys individuals called gibbons by local people lived there. Langur monkeys lived in groups to feed and play together on rocky cliffs and chose caves to shelter in the evening. There were dozens of groups of langur monkeys and each occupied a mountain as its own territory. Local people could easily observe their habits of jumping and swinging from one branch to another and babbling every early morning.

After that, the number of langur individuals was severely reduced for numerous reasons, the most important of which was hunting and habitat loss. For a long time, local people in Thach Hoa no longer saw langur monkeys on the rocky mountains.

In 2012, Mr. Nguyen Thanh Tu, a retired soldier residing in Tan Thanh village, together with some other individuals formed their own group to conserve langur monkeys. In the group there were former marksmen and persons who had cured langur monkeys when they were injured. The group's members met local people and raised awareness among them to halt hunting of langur monkeys and protect forest trees from logging, as a supply of feed for langur monkeys.

After a period of strict protection undertaken by the community-based conservation group, the langur monkey population in Thach Hoa has increased very fast from only one group of about ten individuals in 2012 to ten groups of 100 individuals living in rocky mountains of Thach Hoa, as reported by Quang Binh Provincial Forest Inspectorate.

The Provincial Forest Inspectorate has always encouraged the group's members in their conservation activities and the langur monkeys have increasingly attracted many local and foreign scientists for their study visits. In addition, the group's conservation work has received positive and encouraging responses from local people and some have even volunteered to patrol and protect langur monkeys within the area. All the members of the group however, have volunteered for the conservation of langur monkeys, and have even spent their own money on uniforms, flashlights, raincoats and tools. Over the past years, local and provincial authorities and agencies have been very keen to help the community to overcome difficulties but a major obstacle is the absence of the State's policy on community based natural resources conservation.





## 5. Community-based customary and traditional forest management in Si Ma Cai district, Lao Cai province

Si Ma Cai district is located in the Northeast part of Lao Cai Province and about 95 km from Lao Cai City. It has an area of 23,454 ha and a population of approx. 26,753 people (2004) belonging to eleven ethnic groups, mainly the H'Mong (accounting for 82,52%), the Nung (12,25%), the La Chi (0.75 %), the Co Lao (3,98%) and the Phu La (0,09%), the Kinh (accounting for 0,28%).

The district is endowed with more than 10,000 ha of community forests and of which numerous forests have not yet been recognized by the State in terms of their land use right. Forests that have been customarily and traditionally protected and managed by local people include sacred and protection forests. Particularly for the H'Mong community, the forest is considered their stock of food and supply of water for farming on the terraced fields, and even as a place of the Gods that shelter the community. Consequently, despite the fact that natural forests were destroyed in many places, the forest of the community has been well protected and forest trees have been increasingly grown creating a diverse forest vegetation as a safe habitat for wildlife and plant species.

The H'Mong people have a strong belief in their gods of forest, land and water. From their point of view, the gods protect the village. Usually the village elders and villagers have discussed how to manage, protect and harvest forest resources to ensure the sustainable conservation and utilization of, and the equitable sharing of benefits arising from forest resources.

The Nao Long forests are of a category of sacred forests where the H'mong people practice worship. They were chosen by the H'Mong generations ago and passed down to their descendants. The Nao Long festival is annually held on the dragon day in the end of February or early March (according to the lunar calendar) to worship the God of Dragon and other gods from the four corners of the earth. Many H'Mong ethnic people from Si Ma Cai and other neighboring districts gather together to celebrate the festival. The dragon is a sacred symbol in the cultural taboos of the H'Mong ethnic people. The God of Dragon protects their peaceful life and good harvests of crops and animals. The local people believe that the God of Dragon resides in one of the biggest trees of the forest where they celebrate the worship

of Nao Long forest. In addition, another community forest was also chosen by the H'Mong people from other places in Si Ma Cai district to worship the mother rock and mother land called 'Thú Tỷ' on large rocks in the forest.

In general, at these religious rituals, the local people prepare and give traditional offerings and gather together to earnestly pray for the Gods. After practicing traditional rituals, at the ritual area, the village elder re-reads the H'Mong ethnic people's rules of conduct such as weddings, funerals, security, maintenance of life and especially activities allowed and not allowed in forest management and protection. This is a vital curriculum on the community based forest protection.

The local people's regulations on traditional forest protection allow local people to exchange, inherit, and transfer their private land only, while community forests are common property and no one is allowed to have the private ownership right. Outsiders who want to exploit forest products have to ask for permission from the community, if they enter the forest without permission, they will be punished very seriously according to community's regulations. As their customary laws are maintained in forest management and protection activities as mentioned above, the forest is considered the fulcrum of traditional cultures of the H'Mong and Nung ethnic people in the district. The protection of forests is to protect their lives. In addition to cultural values, the local people also preserve biodiversity values, especially the H'Mong people's endemic species of trees such as Thao Qua, Kim Giao, Hoang Dang that are of high economic values. The protection of forest is also the protection of the water resources including ground aquifers for the supply of water for wet rice farming and domestic use.

However, there are various challenges facing local communities in Si Ma Cai district, as follows:

a. There are various traditional forest areas in Lung San and Na Pa included on the map of protection forests by the management



board. In addition, some forest areas that have been cultivated for a long time and now still managed and protected by some local households were also overlaid on the map causing many difficulties to local communities.

b. The overlapping of forest land management with the protection forest management has resulted that many traditional community forests are not being recognized by the State for their forest use rights.

c. Local communities are not entitled to the payment for forest environmental services because they do not have red books and are not entitled to the State's incentives for afforestation, forest rehabilitation, enrichment and protection.

221

Phytoplankton species

46

Seaweeds species

18

Higher aquatic plant species

31

Higher plant species

## 5. Local communities manage, conserve and harvest fishery resources in Lagoon Tam Giang - Cau Hai in Thua Thien Hue Province

Wetlands in the lagoon system of Tam Giang - Cau Hai, Thua Thien - Hue Province belong to the territories of five coastal districts and towns of Phong Dien, Quang Dien, Huong Tra, Phu Vang and Phu Loc. This lagoon system is relatively closed, connecting with the outer sea through two gates at Thuan An and Tu Hien. It is a brackish water body in low tropical humid latitude. The lagoon system belongs to Category J of the Ramsar Convention – coastal brackish water wetlands. Results gained from recent studies indicate that the lagoon system is endowed with a diverse flora including 221 phytoplankton species, 46 seaweed species, 18 higher aquatic plant species and 31 higher plant species; and a fauna consisting of 66 zooplankton species, 46 zooplankton species, 230 fish species and 73 bird species. Also it is home to more than 20,000 waterfowl individuals in winter. This lagoon ecosystem provides a major source of nutrients for about 500,000 people living in 44 communes of 5 districts and towns around the lagoon.

As the right to the management and protection of natural resources was not granted the lagoon's fishery resources have recently become exhausted and the number of species has decreased significantly, and especially many species of high economic value. Aquatic ecosystems and terrestrial rare species are likely to disappear. This can be attributed to over-fishing taking place by increased numbers of local fishers using destructive fishing gear, and particularly the effects of hydrological currents, climate change related impacts, and environmental pollution.

Given the current status of the fishery resources being depleted at an alarming rate, since 2010 Thua Thien Hue PPC has, in collaboration with the provincial functional agencies and the ongoing projects in the lagoon, established fishery resources protection zones in







*Source: Isporre*

an area of more than 186 ha; developed the planning of, and re-arranged fisheries across the lagoon; and granted local associations of fisheries the right to the management water surface areas, with a view to strengthening the management and protection of breeding and spawning grounds and fishery resources in the lagoon. The effective “natural resources co-management” work has been brought into full play by relevant CBOs and is being developed into an integrated natural resources management model.

According to the Thua Thien Hue Provincial Fisheries Protection and Exploitation Agency, the local people have planted 5,000 tea trees, released 12,400 giant tiger shrimps, and 14,860 Dia (*Siganus*) fish for the regeneration of fishery resources, and introduced 50 artificial reefs made of hard material providing habitats for various aquatic species in these fishery resources protection zones. The agency also has facilitated the relocation of fishermen’s corals from the protection zones. To enable the implementation of fishery resource protection activities in the protection zones, local fishers have closed their shrimp ponds though they have not received any subsidy from the State. The exploitation of fishery resources for scientific research and epidemiology is also subject to permission from the agency.

Ships and/or boats can pass through, but not stop in, the protection zones. Ecotourism activities are also permitted with the involvement and monitoring of the local fishing community. The promotion of public awareness of protection zones has also been supported by relevant projects, research centers, programs and other sectors, and the creation of environmentally friendly jobs such as cultivating seaweed has been encouraged in order to conserve biodiversity resources, protect the environment, and improve sustainable livelihoods for people.

## XIII. ADDITIONAL COMMENTS

- ▶ Develop and sum up models for natural resources conservation to be integrated with local communities’ livelihood and cultural improvement in select ecological regions.
- ▶ Further study and assess the impact of laws, policies and institutional framework for community-managed protected areas and, on this basis, relevant recommendations should be made to develop community-managed conserved areas in Viet Nam.
- ▶ It is suggested that international organizations continue to support local communities in the conservation and development of natural resources, including the improvement of their knowledge and capacity for natural resources conservation.



# CONCLUSIONS

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1

In the existing legal system of Viet Nam, land and forestry legislation has created an important legal framework to enable local communities to become the owner of forests and integrate the purposes of forest protection and conservation with religious beliefs and cultures of ethnic minority communities through policies on the allocation of land and forests. The existing laws on fishery and biodiversity resources have provided a legal framework to enable local communities to participate in the protection of fisheries resources and the conservation of biodiversity through co-management models

2

The limitation of existing laws is that much emphasis is placed on the role of state organizations while the role of the local residential communities is largely undefined. The State's policy on the support of local community's participation in natural resources conservation is still unspecified and dispersed in various legal documents and the implementation of this policy is difficult due to limited financial resources.

3

In fact, there is many community-based conservation models established and performed in forests, land areas and/or water surfaces without land/forest use rights granted by the State, and they are successful in the protection of wildlife and plant species, marine ecosystems and high value mangroves. However, these models have not been evaluated to request the State to recognize and widely replicate and/or generalize them in the provisions of law.







4

Creating a legal framework to enable ethnic minority people to participate in the conservation of natural resources, it is necessary to study and legalize the establishment of community-managed conserved areas by including a concept of community-managed conserved area into the laws and granting official permission to establish community based conserved areas and legitimize conserved areas being traditionally managed by local people. There is also a need to define the rights, benefits and responsibilities of local communities and relevant stakeholders involved in the management of community based conserved areas.

5

Improve the policy of support of local communities to participate in natural resources conservation through the implementation of policies on investment, financial support, transfer of techniques and forest governance.







# **APPENDIX 01:**

List of relevant legal documents



No.	Statutes
<b>I</b>	<b>Laws, Ordinances, Resolutions of NA, and its Standing Committee</b>
1	Ordinance on forest protection in 1972.
2	Law on Forest Protection and Development 1991, 2004, 2017.
3	Fisheries Law 2003.
4	Civil Procedure Code 2004, 2011.
5	Education Law 2005, 2009.
6	Law on Biodiversity 2008.
7	Law on Public Employees 2008.
8	Law on Examination and Treatment.
9	Law on Cultural Heritage in 2001, 2009.
10	Law on Mineral Resources 2010.
11	Resolution 539/NQ-UBTVQH13 dated 30 October 2012 of the NA's Standing Committee on the results of monitoring the implementation of policies and laws on residential and production lands for ethnic minorities.
12	Law on Water Resources 2012.
13	Labor Law 2012.
14	Law on Conciliation at Grassroots 2013.
15	Intellectual Property Law 2013.
16	Law on Environmental Protection.
17	Investment Law 2014.
18	Resolution 76/2014/QH13 of NA dated June 24, 2014 on achieving sustainable poverty reduction goal until 2020.
19	Law on Marine Resources and Environment and Islands, 2015.
20	Code of Criminal Procedure 2015.
21	Law on Access to Information, 2016.
22	Pharmaceutical Law 2016.
23	Legal Aid Law 2017.
24	The Tourism Law, 2017.
25	Law on Public Property Management and Use, 2017.
26	Cultivation Bill, 2018.

<b>II</b>	<b>GOV Decrees</b>
27	Decree 17-HDBT of the Council of Ministers dated January 17, 1992 on the implementation of the Law on Forest Protection and Development.
28	Decree 02-CP dated January 15, 1994 for promulgating Regulations on the allocation of forestry land to organizations, households and individuals for stable and long-term forestry purposes.
29	Decree 163/1999/ND-CP dated November 16, 1999 on allocation and lease of forestry land to organizations, households and individuals for stable and long-term forestry purposes.
30	Decree 78/2002/ND-CP dated October 4, 2002 on credit for the poor and other policy beneficiaries.
31	Decree 27/2005/ND-CP dated March 8, 2005, specifying and guiding the implementation of several articles of the Aquatic Fisheries Law.
32	Decree 57/2008/ND-CP dated May 02, 2008 on promulgating regulations on the management of Viet Nam's MPAs of national and international importance.
33	GoV Resolution 30a/2008 NQ-CP dated December 27, 2008 on fast and sustainable poverty reduction support program for 61 poor districts.
34	Decree 82/2010/ND-CP dated 15 July 2010 regulating the teaching and learning of spoken and written languages of ethnic minorities in general education and continuing education centers.
35	Decree 65/2010/ND-CP dated 11/6/2010 specifying and guiding the implementation of several articles of the Law on Biodiversity.
36	Decree 05/2011/ND-CP dated 14 January 2011 on Ethnic Minority Affairs.
37	Decree 75/2015/ND-CP dated 9/9/2015 on mechanisms and policies for forest protection and development, attached to fast and sustainable poverty reduction and support for ethnic minorities, 2015-2020.
38	Resolution 52/NQ-CP dated 15 June 2016 on accelerating the development of human resources for ethnic minorities in the 2016-2020 period and orientations towards 2030.
39	Decree 109/2017/ND-CP dated 21 September 2017 on the Regulation on Protection and Management of World Cultural and Natural Heritages in Viet Nam.
<b>III</b>	<b>Prime Minister's Decisions</b>
40	Decision 133/QD-TTg of July 23, 1998 on the National Target Program on Hunger Alleviation and Poverty Reduction in the 1998 - 2002 period.
41	Decision 135/QD-TTg of July 31, 1998 on the approval of the program on socio-economic development in special difficulty-hit communes in ethnic minority and mountainous areas.
42	Decision 134/QD-TTg dated July 20, 2004 on a number of policies to support production land, residential land, housing and domestic drinking water supply for poor and lower living standard ethnic minority households.
43	Decision 146/2005/QD-TTg dated June 15, 2005 on the policy of recovering production land areas from agricultural and forestry farms and allocating to poor ethnic minority households.
44	Decision 304/2005/QD-TTg dated Nov. 23, 2005 on the piloting of forest allocation to, and forest protection contract with local ethnic minority households and communities in the Central Highlands provinces.
45	Decision 07/QD-TTg dated 10 January 2006 on approving the program on socio-economic development in extremely difficult communes in ethnic minority and mountainous areas in the 2006-2010 period.
46	Decree 23/2006/ND-CP dated 03 March 2006 on the implementation of the Law on Forest Protection and Development.
47	Decision 81/2006/QD-TTg dated 14 April 2006 on the National Water Resources Strategy to 2020.
48	Decision 32/2007/QD-TTg dated March 5, 2007 on lending loans for production development to ethnic minority households with special difficulties.



49	Decision 57/2007/QĐ-TTg dated 5 April 2007 on the revision of a number of articles of the Prime Minister's Decision 146/2005/QĐ-TTg dated June 15, 2005 on the policy of land acquisition for productive land of agricultural and forestry farms to be re-allocated to poor ethnic minority households.
50	Decision 1342/QĐ-TTg dated 25 August 2009 on approving the Plan for settled Residence and settled farming for nomadic ethnic minorities up to 2012.
51	Decision 750/QĐ-TTg dated 03/6/2009 on approving the Master Plan for Rubber Development until 2015 and vision towards 2020.
52	Decision 1504/QĐ-TTg dated 18/08/2010 on amending some contents in Article 3 of Decision 166/QĐ-TTg dated 30 October 2007 on promulgating the policy on investment support and benefit for households, village communities and organizations involved in the Forestry Development Project to improve the livelihoods of the Central Highlands.
53	Decision 742/QĐ-TTg dated 26 May 2010 on approving the planning of the MPA system in Viet Nam until 2020.
54	Decision 1208/QĐ-TTg dated 21/07/2011 on approving the National Electricity Development Plan for 2011 - 2020 with a view to 2030.
55	Decision 07/2012/QĐ-TTg dated 8 February 2012 on promulgating a number of policies to strengthen forest protection.
56	Decision 126/QĐ-TTg dated 02/02/2012 on the pilot sharing of benefits in sustainable special-use forests management, protection and development.
57	Decision 60/QĐ-TTg dated 09/01/2012 on approving the Viet Nam Coal Industry Development Plan up to 2020, with prospects up to 2030.
58	Decision 449/QĐ-TTg dated 12 March 2013 on approving the Strategy for Ethnic Minorities up to 2020.
59	Decision 2621/QĐ-TTg of December 31, 2013 on the revision of a number of levels of production development support specified in Decision. 30a/2008/NQ-CP of 27 December 2008.
60	Decision 551/QĐ-TTg dated 04/04/2013 on approving the 135 Program on investment support for infrastructure construction, production support for communes with special difficulties, border communes, communes in safe areas, villages with special difficulties.
61	Decision 1592/QĐ-TTg dated 12 October 2009 and Decision 755/QĐ-TTg dated 20 May 2013 on approving support policies for residential land, production land for poor ethnic minorities and poor households in communes and villages facing extreme difficulties.
62	Decision 218/QĐ-TTg dated 07/02/2014 on approving the Strategy for Management of Special-Use Forest Systems, MPAs and Inland Water Conserved Areas in Viet Nam until 2020, Vision towards 2030.
63	Decision 45/2014/QĐ-TTg dated 08/01/2014 on approving the Master Plan for Biodiversity Conservation Nationwide till 2020 with orientations toward 2030.
64	Decision 2242/QĐ-TTg dated 11 December 2014 on the approval of the scheme on strengthening the management of natural forest loggings, 2014 - 2020.
65	Decision 1722/QĐ-TTg dated 2 September 2016 on approving the National Targeted Program for Sustainable Poverty Reduction 2016 - 2020.
66	Decision 2085/QĐ-TTg dated 31/10/2016 on approving the policy of supporting the socio-economic development in ethnic minority and mountainous areas in the period of 2017 - 2020.
67	Decision 402/QĐ-TTg dated 14 March 2016 on the approval of the project on the development of the contingent of ethnic minority cadres, civil servants and employees in the new period.
68	Decision 1722/QĐ-TTg dated September 2nd, 2016 on approving the National Target Program for Sustainable Poverty Reduction in the period 2016 - 2020.
69	Decision 1722/QĐ-TTg dated 2 September, 2007 on approving the National Targeted Program for Sustainable Poverty Reduction 2016 - 2020.
70	Decision 2085/QĐ-TTg dated 31/10/2016 on specific policies to support the socio-economic development of ethnic minority and mountainous areas in the 2017 - 2020 period.

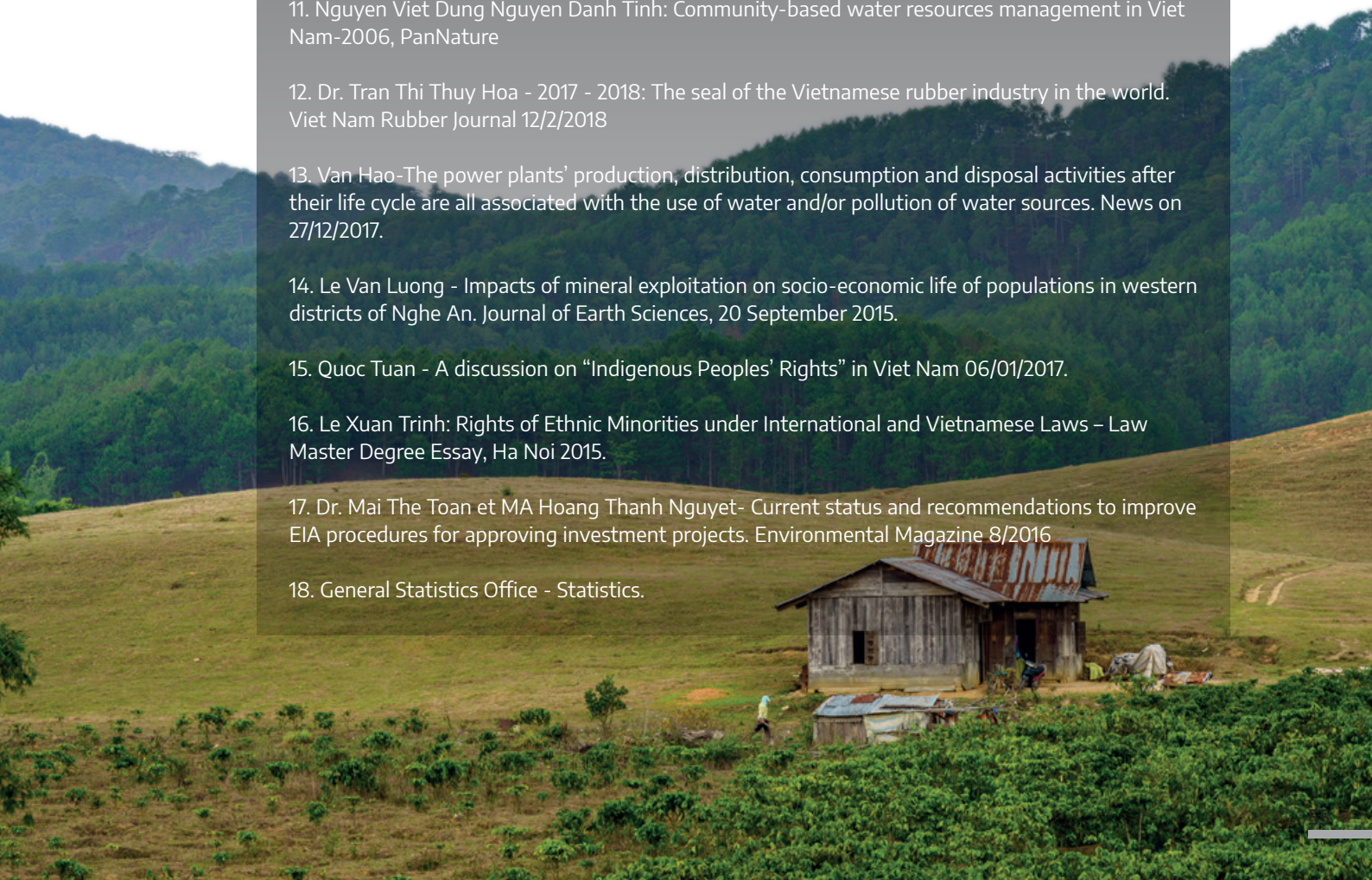
71	Decision 886/QD-TTg dated 16/6/2017 on the Program for Sustainable Forestry Development for 2016 - 2020.
72	Decision 900/QD-TTg dated June 20, 2016 on approving the list of communes with special difficulties, border communes and safe communes in the area of investment of the 135 Program in the 2017-2020 period.
73	Decision 22/2018/QD-TTg dated 8 May, 2018 on the formulation and implementation of the rural convention
<b>IV</b>	<b>Ministerial Legal Documents</b>
74	MARD Decision 03/2005/QD-BNN dated 5/01/2005 on promulgating regulations on timber exploitation to support housing for poor ethnic minorities with living difficulties.
75	MARD Decision 106/2006/QD-BNN dated November 27, 2006 on promulgating the community forest management guideline.
76	MARD Circular 01/2007/TT-BNN dated January 15, 2007 on guiding the implementation of the project on supporting the development of production and economic restructuring and raising the production level of the people, ethnic groups and mountainous areas under the 135 Program for the period of 2006 - 2010.
77	MARD Circular No. 38/2007/TT-BNN dated 25/4/2007 on guiding the order and procedures for forest allocation and lease to organizations, households, individuals and village communities.
78	Circular No. 02/2007/TT-UBDT dated 7 June 2007 of the National Committee for Ethnic Minorities on guiding the implementation of the Prime Minister's Decision No. 32/2007/QD-TTg on lending loans for development of production with ethnic minority households with special difficulties.
79	MARD Circular No. 70/2007/TT-BNN dated 01/8/2007 on guiding the formulation and implementation of forest protection and development conventions in village communities.
80	MARD Circular No. 79/2007/TT-BNN dated 20 September 2007 on the revision of a number of contents of the Circular No. 01/2007/TT-BNN dated 15/01/2007 guiding the Implementation of the production development project under the 135 Program for the period of 2006 - 2010.
81	Inter-ministerial Circular No. 52/2008/TTLT-BNN-BTC dated 14/4/2008 of MARD and MOF on guiding rice subsidies for ethnic minorities involved in the planting of forests replacing slash- and-burn agriculture in mountainous areas.
82	MARD Decision No. 82/2008/QD-BNN dated 17 July 2008 on announcing the Viet Nam list of endangered precious and rare aquatic species that need the protection, restoration and development.
83	MARD Circular 12/2009/TT-BNN on Support for production development under the 135 Program for the period of 2006 - 2010.
84	MARD Circular 08/2009/TT-BNN dated 26 February 2009 on guiding the implementation of a number of policies to support the development of agriculture, forestry and fishery production under the Resolution 30a.
85	Decision 1592/QD-TTg dated 12 October 2009 and Decision 755/QD-TTg dated 20 May 2013 of the Prime Minister on approving support policies for residential land, production land For poor ethnic minorities and poor households in communes and villages with extreme difficulties.
86	MARD, 2010. Profile of 16 MPAs in Viet Nam.
87	Circular No. 12/2014/TT-BVHTTDL of the Ministry of Culture, Sports and Tourism dated October 10, 2014 on specifying some articles of GoV Decree 05 on the work of ethnic minorities.
88	Circular No. 28/2014/TT-NHNN dated 01/10/2014 of the State Bank of Viet Nam on the revision of Circular No. 06/2009/TT-NHNN dated 9/4/2009 specifying preferential interest rate loans under the Program to support poor districts in the Government's Resolution 30a/2008/NQ-CP dated December 27, 2008.
89	MARD Circular No. 93/2016/TTLT-BTC-BNNPTNT on guiding the management and use of non-business expenditures in the implementation of Decree 75/2015/ND-CP of June 9, In 2015, the mechanism and policies on forest protection and development attached with the policy of fast and sustainable poverty reduction and support for ethnic minority people in the period of 2015 - 2020.



# REFERENCES

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1. Nhat Anh - People's Representatives elect. Newspaper, Aug. 18, 2012 – The enforcement of EIA requirement is for form's sake;
2. Minh Anh – Website of the Board of Religious Affairs, GOV 19/5/2018: Available legal documents on beliefs and religions in Viet Nam - results and inadequacies;
3. Report on MPA system in Viet Nam, orientations towards the expansion of the network of MPAs in Viet Nam for the period 2016-2020. Ninh Thuan Conference Proceedings 02/6/2015.
4. Open Encyclopedia
5. MARD, 2010. Records of 16 MPAs in Viet Nam.
6. MARD – Launching the State of Forests Report in 2017
7. Viet Nam Energy Newspaper – the Planning of Hydropower Development Nationwide 14/7/2017
8. Do Van Chien- Minister, Chair of the National Ethnic Committee - Speech at the second session, National Assembly XIV, November 3, 2016 - Electronic portal of the National Ethnic Committee.
9. Department of Forestry, MARD - Report on Community Forest Survey - Ha Noi 2008
10. GOV - Report on the performance of socio-economic development tasks in 5 years 2011 - 2015 and directions and tasks of socio-economic development in the 5 years 2016 - 2020.
11. Nguyen Viet Dung Nguyen Danh Tinh: Community-based water resources management in Viet Nam-2006, PanNature
12. Dr. Tran Thi Thuy Hoa - 2017 - 2018: The seal of the Vietnamese rubber industry in the world. Viet Nam Rubber Journal 12/2/2018
13. Van Hao-The power plants' production, distribution, consumption and disposal activities after their life cycle are all associated with the use of water and/or pollution of water sources. News on 27/12/2017.
14. Le Van Luong - Impacts of mineral exploitation on socio-economic life of populations in western districts of Nghe An. Journal of Earth Sciences, 20 September 2015.
15. Quoc Tuan - A discussion on "Indigenous Peoples' Rights" in Viet Nam 06/01/2017.
16. Le Xuan Trinh: Rights of Ethnic Minorities under International and Vietnamese Laws – Law Master Degree Essay, Ha Noi 2015.
17. Dr. Mai The Toan et MA Hoang Thanh Nguyet- Current status and recommendations to improve EIA procedures for approving investment projects. Environmental Magazine 8/2016
18. General Statistics Office - Statistics.





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