USAID FROM THE AMERICAN PEOPLE

LEAF LOWERING EMISSIONS IN ASIA'S FORESTS

RAPID ASSESSMENT OF THE POLITICAL, LEGAL AND INSTITUTIONAL SETTING

VIETNAM

WINROCK INTERNATIONAL

SNV Connecting People's Capacities

CLIMATEFOCUS

Lowering Emissions in Asia's Forests (LEAF)

Cooperative Agreement Number: AID-486-A-11-00005

RAPID ASSESSMENT OF THE POLITICAL, LEGAL AND INSTITUTIONAL SETTING

VIETNAM

Submitted to
United States Agency for International Development
Regional Development Mission for Asia (RDMA), Bangkok, Thailand

Submitted by
Winrock International

Submitted on
October 31, 2011

Table of Contents

Executive Summary 1

1 National context 5

1.1 Engagement with REDD+ and other forest sector cooperation 5

1.2 State of REDD+ Readiness 8

1.3 Other UNFCCC engagement 10

1.4 Forest cover, deforestation and forest degradation trends 11

2 Drivers of Deforestation 14

3 Institutional Framework 19

3.1 Overview 19

3.2 Institutions involved in forest and land management 20

3.3 Roles of Institutions in Key Land Management Decisions 24

3.4 REDD+ Institutions 26

4 Domestic Policies and Legislation 28

4.1 Legal framework 29

4.2 Overall forest and land-use policy 34

5 Conclusion 38

Acronyms

5MHRP	Five Million Hectare Reforestation Program
ASEAN	Association of Southeast Asian Nations
AWG-LCA	Ad-hoc Working Group on Long-term Cooperative Action (under the UNFCCC)
BDS	Benefit Distribution System
CDM	Clean Development Mechanism (of the UNFCCC)
CIA	Central Intelligence Agency (of the United States of America)
CITES	Convention on International Trade in Endangered Species
DARD	Department of Agriculture and Rural Development
DILFPD 2006	Decree on the Implementation of the Law on forest Protection and Development 2006
DNC	Department of Nature Conservation
DONRE	Department of Natural Resources and Environment
DOSTIC	Department of Science, Technology and International Cooperation
DPC	District People's Committee
EIA	Environmental Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FCPF	Forest Carbon Partnership Facility
FLA	Forest Land Allocation
FLEGT	Forest Law Enforcement, Governance and Trade
FPD	Forest Protection Department
FPDF	Forest Protection and Development Fund
FSIV	Forest Science Institute of Vietnam
LEDS	Low Emission Development Strategy
LFPD 2004	Law on Forest Protection and Development 2004
MARD	Ministry of Agriculture and Rural Development
MONRE	Ministry of Natural Resources and Environment
MPI	Ministry of Planning and Investment
MRV	Measurement, Reporting and Verification
MW	Megawatt
NA	National Assembly
NAMA	Nationally Appropriate Mitigation Action
NFDS 2006-2020	National Forest Development Strategy 2006-2020
NGO	Non-governmental Organization
NORAD	Norway Agency for Development Cooperation
NRN	National REDD+ Network

NRO	National REDD+ Office
NRP	National REDD+ Program
NTFP	Non-timber Forest Product
NTP-RCC	National Target Program to Respond to Climate Change
PFDP	Production Forest Development Program
PFES	Payment for Forest Environmental Services
PM	Prime Minister
PPC	Provincial People's Committee
REDD+	Reducing Emissions from Deforestation and forest Degradation in developing countries, and the role of conservation, sustainable management of forests and enhancement of carbon stocks in developing countries
REL	Reference Emission Level
RL	Reference Level
R-PIN	Readiness Plan Idea Note
R-PP	Readiness Preparation Proposal
SEA	Strategic Environmental Assessment
SEDS	Socio-economic Development Strategy
SFC	State Forest Company (formerly State Forest Enterprise)
SFE	State Forest Enterprise
SFM	Sustainable Forest Management
SFMP	Sustainable Forest Management Program
SNV	Netherlands Development Organisation
STWG	Sub-technical Working Group
TWG	Technical Working Group (on REDD+)
UNFCCC	United Nations Framework Convention on Climate Change
VCS	Verified Carbon Standard
VNFOREST	Vietnam Forestry Administration
VPA	Voluntary Partnership Agreement (under the EU FLEGT Program)
VPC	Village Population Community
ZoI	Zone of Influence

Political, Institutional and Legal Setting for REDD+ in Vietnam

This report provides an assessment of the national, institutional, political and legal circumstances relevant to forest and land use in Vietnam; and, more importantly to identify areas of opportunity for increased support from institutional donors. The assessment provides an overview of national context, including the country's status of REDD+ readiness, involvement in multilateral REDD+ processes and other international forest sector reform initiatives, a discussion of the current forest cover and trend of deforestation, as well as Vietnam's experience in other carbon market mechanisms. This chapter is followed by an analysis of the main drivers of deforestation and forest degradation as identified by the country and described in existing literature, as well as by an analysis of the main institutions in the country in charge of land use matters including forestry, agricultural and REDD+. The fourth chapter provides an overview of the legal framework regarding land use, including national definitions (or lack thereof) for key issues such as forest types, forest degradation and different types of land tenure arrangements. This is followed by an overview of government efforts to address drivers through policies, programs and other legal provisions.

The basis for the assessment was an initial literature review to examine the political, institutional and legal challenges for REDD+ implementation in Vietnam. In a second step, twelve semi-structured interviews with experts in financial mechanisms, conservation and development initiatives and with a specific target audience, REDD+ practitioners and project implementers for national or jurisdictional REDD+ programs. The literature review together with these interviews helped to identify the opportunities and interventions most relevant to the provision of additional support from institutional donors.

Executive Summary

Forest cover in Vietnam is estimated at approximately 13.5 million hectares, which has been growing since 1990. However, the net increase in forest cover is not due to the absence of deforestation but due to forest gains (mainly from plantations) exceeding forest losses. Gross deforestation between 2000 and 2005 is estimated at 0.4%, mainly taking place in high carbon density forests, while plantations replacing those forests tend to be of low quality and hence lower carbon density.

Vietnam is strongly engaged in several multilateral REDD+ processes and other international cooperation initiatives in the forest sector, including the FCPF, UN-REDD and EU FLEGT. To date, the country has gained access to USD 3.6 million under the FCPF and USD 4.4 million under UN REDD for REDD readiness. Vietnam is making strong progress with respect to developing a national REDD+ strategy as well as a proposal for funding under UN-REDD phase II. Submissions to the UNFCCC on REDD+ indicate Vietnam's support for both market and fund-based finance, a flexible scope (to include forest management and enhancement of forest carbon stocks), as well as a phased approach and the ability for countries to set reference levels based on national circumstances.

Vietnam has gained substantial experience in the carbon markets. However, little of Vietnam's participation has thus far focused on forests and land-use to date, though a number of REDD+ projects are currently under development. While government understanding of how REDD+ projects may work is low, there are notable efforts to expand this knowledge among key officials. Strong interest has been expressed in expanding PES schemes in the country; and, legislation is currently under development to expand the existing decree on PES services to include carbon.

Despite strong Government support for REDD+ generally and project-based REDD+ in particular, an accompanying regulatory framework to stimulate project development is still in its early stages of development. Furthermore, implementation appears to be hampered by slow progress in forest land allocation as targeted by the Ministry of Agriculture and Rural Development (MARD), particularly in remote areas.

Drivers of Deforestation and Degradation

- Little quantitative data on drivers of deforestation and degradation is available for Vietnam.
- Loopholes and ambiguities in the legal framework often blur the lines between legal and illegal logging in Vietnam. Though illegal logging has been decreasing in recent years, it remains an important driver. Underlying factors include perverse policy incentives and a legal framework in need of improvements.
- Industrial agriculture, particularly rubber and cashew, is expanding rapidly, and poses a substantial threat to forests in the Central Highlands and the South-East. Though policy and market factors are driving expansion, there are indications that the current rules for forest conversion are also insufficient to protect high-value natural forest.
- Vietnam is planning large expansions in hydropower through 2025, with most planned developments located in areas with high forest density. Current legal and environmental safeguards appear insufficient to prevent large areas of forest in respective 'Zones of Influence' from being degraded or removed.
- Growth in aquaculture, in particular shrimp farming driven by government policies and high market prices, represents the greatest threat to mangroves in Vietnam. Inadequate enforcement and a lack of mangrove protection safeguards are contributing factors.
- Forest fires and shifting cultivation have decreased substantially in recent years. Warmer and dryer weather conditions have, however, placed large amounts of forests at risk from fire.

Institutional Framework

- Vietnam has a highly developed bureaucracy in which the roles and responsibilities of respective government bodies with respect to key land management decisions are defined in detail by legislation. However, capacity constraints often challenge the implementation of respective mandates.
- Though a separation of legislative and executive power exists at both central and local levels of government, in practice, key decisions are taken by the Government at the central level, and by People's Committees at provincial, district and commune levels.
- Public administration is top-down, and lower levels of administration must act within the limits set by their immediately senior administrative units. Nonetheless, provinces (and sometimes lower levels) have traditionally exercised a significant deal of autonomy, often through their ability to interpret and apply rules set by central government.

- Land-use and forest planning at the central level lie with MONRE and MARD, respectively. Both must coordinate with other ministries and agencies in the implementation of their respective roles.
- Overall responsibility for REDD+ lies with MARD, though there is some conflict with MONRE over their respective roles.
- Vietnam has put an ambitious REDD+ institutional structure in place which is active and being further elaborated, showing a high level of Government commitment. A number of working groups have been formed which invite broad stakeholder participation -- addressing international donors, environmental NGOs and the private sector.

Legal Framework

- Vietnam has a detailed forest classification system, setting out specific rules on allocation, use purposes and management for each category and several sub-categories. However, it can lack clarity and consistency, and physical demarcation needs some improvement.
- All land is owned by the state (on behalf of the people), which is charged with management.
- The majority of forests remain under the management of State Forest Companies and management boards, though the share of households and individuals is increasing. Exact figures are widely disputed.
- Vietnam is leading the region in the development of payment for ecosystem services (PFES) framework with a decree requiring compulsory payment for certain forest service's adopted in 2010. A further decree expanding PFES schemes to carbon services is planned for 2012.
- Carbon ownership and prospective procedures for accommodating the voluntary forest carbon market remain unclear, though active discussions within the government on carbon regulation are underway.
- The current National Forest Development Strategy places strong focus on sustainable forest management. However, there remains a lack of clarity on standards and indicators to define and monitor sustainable management practices.

Opportunities for additional institutional donor support

REDD+ readiness is progressing steadily, spurred by participation in several multilateral processes and growing government support. Several new institutions have been established, and Phase II of the UN-REDD Program will see its first activities instituted at the ground level. Together with ongoing developments under FLEGT and national policy initiatives to introduce sustainable forest management (SFM), interest in forest protection has rarely been higher. At the same time Vietnam's expansion in agriculture, aquaculture, and hydropower generation, along with the continued growth of the wood processing industry present significant threats to natural forests.

For institutional donors, these circumstances create substantial opportunities for policy actions at both the national and sub-national level. Expansion of agriculture is considered to be one of the main drivers for deforestation in the country, which is being noticed by the Government of Vietnam (GoV) and attempts are being made to address this by several initiatives. Proposed activities 1, 2, 3, and 6 in the list below would support selected GoV initiatives in this field. Strong interest has been expressed by GoV in developing regulation and planning processes to support establishment of PFES schemes that potentially include the service of water provision plus restoring/maintaining carbon stocks. This is being proposed by activity 1 in the following list

at the central level and activity 6 at the local level. Both activities would aim to support providing alternative income sources at the local level and reduce agricultural expansion for subsistence and commercial purposes. Activity 2 would complement the effort by aiming to close the regulatory loophole for conversion of forests to agriculture in degraded forests by clarifying and improving the definition of degradation. Interestingly, the GoV also expressed interest in exploring mitigation opportunities in the agricultural sector, as well as ways to consider agricultural emissions in sub-national economic development plans. Vietnam is the only South East Asian country expressing interest in exploring opportunities for potential REDD+ finance through measures taken outside of the forest sector (activity 3). Activities 4 and 5 are considered to be highly relevant from an environmental perspective as they would address drivers that are likely to have strong effects in the future (hydropower developments) or are considered to be left out by ongoing initiatives (shrimp farming). However, further investigation would be needed to explore the degree of Government buy-in and suitability for additional institutional donor support.

The following proposed activities should be further discussed with the Government, local stakeholders as well as the donor community and should be refined as part of a country strategy development process:

1. Provide support to MONRE and MARD in developing an interim policy framework for REDD+ pilot projects in line with the National REDD+ Program that is under development. This would include providing advice on i) strategies and options for the regulation of carbon ownership and crediting of activities, and ii) intended legislation governing the application of the PFES framework (Decree 99) to carbon services.
2. Support improvement of the forest classification system, including the process for classification of forest as “degraded” and thus suitable for conversion. This would help to address the potentially illegal space in which local groups are reported to act when acquiring land to sell it for the establishment of plantation. The GoV has expressed high support for improving the system for classifying forest as “degraded” to avoid conversion of high-value forest and uncontrolled expansion of agricultural production.
3. Support MARD to develop a National Strategy and Action Plan for the Agricultural Sector on lowering emission
4. Support the development of rules, guidelines and/or incentives for mangrove-friendly shrimp farming along with private sector initiatives.
5. Support enhancement of forest protection safeguards in the approval process for medium and large hydropower projects. This process would involve cooperation with several Ministries and further research is needed to assess whether this would be supported by GoV.
6. Both MARD and DARD expressed strong interest for local level support on
    a. Developing guidelines for the development of Low Emission Development Plans at the community level and its respective integration into an area master plan which is being developed by the Department of Planning and Investment at the provincial level and the Division of Planning and Investment at the district level.
    b. Developing guidelines for the integration of participatory forest monitoring into existing forest monitoring and inventory practices.

c. Reviewing the existing land use and forest planning process and propose guidelines for integration of GHG emission/ removal criteria in the planning process.

1 National context

Key Findings

- Forest cover in Vietnam is estimated at approximately 13.5 million ha and has been growing since 1990. However, a net increase in forest cover is due to forest gains (mainly from plantations) exceeding forest losses. Gross deforestation between 2000 and 2005 is estimated at 0.4%, mainly taking place in high carbon density forests; while plantations replacing them tend to be of lower carbon density.
- Vietnam is strongly engaged in several multilateral REDD+ and international forest cooperation processes, including the FCPF, UN-REDD and EU FLEGT. It is in the relatively advanced stages of all three.
- Vietnam is relatively well advanced in its REDD+ readiness, and is making strong progress with respect to developing a national REDD+ strategy. The country is currently in final stages of proposal development for funding under UN-REDD phase II.
- Submissions to the UNFCCC on REDD+ indicate Vietnam's support for both market and fund-based finance, a flexible scope (to include forest management and enhancement of forest carbon stocks), a phased approach and the ability for countries to set reference levels based on national circumstances.
- Vietnam has substantial experience in the carbon markets. Little of this has focused on forests and land-use to date, though a number of REDD+ projects are currently under development. While government understanding of how REDD+ projects may work is low, there are notable efforts to expand this knowledge among key officials.

1.1 Engagement with REDD+ and other forest sector cooperation

Forest Carbon Partnership Facility (FCPF)

Vietnam was one of the first REDD+ partner countries under the FCPF. It submitted its Readiness Plan Idea Note (R-PIN) in March 2008 and the final version of its Readiness Preparation Proposal (R-PP) in March 2011.[1] Its R-PP was assessed at the FCPF meeting in spring 2011, and was judged to be "a very comprehensive and high-quality document" with a high degree of ownership within Vietnam. As a result, Vietnam was deemed eligible to receive a USD 3.6 million grant from the FCPF, though this has yet to be disbursed.[2]

Activities under the FCPF, as defined by the R-PP, are closely linked with those under Phase I of the UN-REDD Program. The National REDD+ Program (NRP) and other elements of REDD+

[1] See http://www.forestcarbonpartnership.org/fcp/node/84.
[2] See http://www.theredddesk.org/countries/vietnam/financing.

implementation, including the establishment of high-level institutional arrangements to guide REDD+ readiness and activities, are currently being developed with support from both facilities. This is recognized in Vietnam's main program documents under each process which attempts to create synergies with one another.

Vietnam is an active participant in the multilateral FCPF process, and hosted back-to-back meetings in Dalat in the spring of 2011. Its national REDD+ focal point, Dr. Pham Manh Cuong of the Vietnam Forestry Administration (VNFOREST)'s Department of Science, Technology and International Cooperation (DOSTIC) participates actively and constructively in FCPF discussions.

UN-REDD Program

Vietnam is likewise an active participant in multilateral discussions under the UN-REDD Program. Dr. Cuong represents Vietnam and as with the FCPF he is known for constructive input. Vietnam began its participation under the UN-REDD Program in 2009. A grant of USD 4.4 million was approved in March 2009, and its national program document underwent final approval in September 2009.[3]

The Phase I Program was originally expected to be completed in April 2011, though it now appears that Phase I may continue well into 2012. **Phase I** activities include improved institutional and technical capacity for coordination in managing REDD+ activities as well as an increased ability to manage REDD+ at the district level. Achievements to date include the establishment of the National REDD+ Network and Technical Working Group, training various government staff, establishing provincial and district REDD+ teams, developing a first draft of the National REDD+ Program (NRP) document, and developing a methodology for FPIC.[4] Pilot activities in Lam Dong Province have also been a major part of Phase I. Though a full evaluation is currently underway, preliminary conclusions reached by the Ministry of Agriculture and Rural Development (MARD) indicate that Phase I has laid down sufficient foundations upon which Phase II can be based.[5]

The final draft of Vietnam's Phase II strategy is currently being prepared, and was expected to be completed in November 2011. Phase III is planned to begin in 2015.[6] **Phase II** of the Program seeks to actively implement major aspects of the (still to be completed) NRP, taking into account lessons learned under Phase I and in preparation of the R-PIN and R-PP. **Four outcomes will be focused on in Phase II**:

i. Developing and operationalizing the required **regulatory environment**, including adopting appropriate legislation; and, developing participation and financing mechanisms;
ii. Developing and implementing the **NRP** on a provincial level;
iii. Developing the technical capacity for participants in five to six selected provinces and **implementing activities** to reduce emissions and/or enhance removals, leading to performance payments; and

[3] See http://www.forestcarbonpartnership.org/fcp/node/84.
[4] GoV, "UN-REDD Program Vietnam Phase II: Operationalizing REDD+ in Vietnam", Draft 4.2, 26 November 2010 [*hereinafter* UN-REDD Phase II Strategy], at 25-27.
[5] Ibid, at 28.
[6] Ibid, at 7.

iv. Addressing **knowledge management** and active dissemination of knowledge and experience across the Southeast Asia region.[7]

Funding for the operationalization of Phase II is expected to come primarily from the Norwegian Agency for Development Cooperation **(NORAD)** who has committed to injecting capital (US$100 million) into a multilateral trust fund. Disbursement would be made to national banks, guided by a national steering committee at the Ministerial level and governed by an Executive Board. This is a substantial change in disbursement channels, compared to Phase I in which UNDP is making direct transfers to MARD and DARD and governed by a project steering committee and executive board. It remains to be seen how the Executive Board of the new fund will be staffed or decisions made on disbursements. However, the operationalization of the fund faces delays as one of NORAD's preconditions – the commitment by another donor to add a new tranche to the fund – has not yet been satisfied.

Forest Law Enforcement, Governance and Trade (FLEGT) Program

Vietnam is a major exporter of finished wood products, and the wood processing industry is important to the country's economy. Vietnam signed the Bali Ministerial declaration on FLEGT in 2001, pledging to address illegality in the forest sector and support a regional FLEGT task force.[8] Vietnam began preliminary discussion with the EU Commission on FLEGT in 2008, and began its full **Voluntary Partnership Agreement** (VPA) negotiations on 29 November 2010.[9] The goal for completion of the negotiations is April 2013, though there is some doubt over whether this will be met. MARD and the EU Commission have established a **joint FLEGT Working Group**, which has now organized several workshops in Hanoi to engage stakeholders in assessing the status of readiness for FLEGT implementation.[10] The Government of Vietnam (GoV) has also suggested that FLEGT may be incorporated as part of the country's NRP.[11]

REDD+ Partnership

Vietnam is a member of the REDD+ Partnership; however, it has not participated in any specific activities under the Partnership to-date.

USAID Program on Enhancing Capacity for Low Emission Development Strategies (LEDS)

Vietnam is a pilot country in the USAID Program on Enhancing Capacity for LEDS, a US Government initiative to support LEDS in developing countries through capacity building, technical assistance, and knowledge sharing. No further information on progress and alignment with national efforts on this matter could be gathered during investigations for this assessment report.

---

[7] Ibid, at 28-30.
[8] See http://www.iucn.org/about/work/programmes/forest/fp_our_work/fp_our_work_thematic/fp_our_work_flg/fp_forest_law_our_work/fp_forest_law_our_work_eu_flegt/fp_forest_law_our_work_vpa_vietnam/.
[9] See http://www.euflegt.efi.int/portal/home/vpa_countries/in_asia/vietnam/.
[10] Richard McNally, "Report on Forest Policy, Drivers of Deforestation and the REDD Readiness Strategy for Viet Nam", Input for the World Bank Forest Carbon Partnership Facility: Viet Nam Readiness Preparation Plan, September 2010 [*hereinafter* McNally (2010)], at 10.
[11] UN-REDD Phase II Strategy, at 21.

1.2 State of REDD+ Readiness

Thanks to early participation in both the FCPF and UN-REDD program, together with high national ownership of both processes and strong governmental support for REDD+ activities, Vietnam is **relatively well advanced** in its REDD+ Readiness activities. While none of the key implementation elements of the Cancun Agreements have yet been fully implemented, all are firmly underway, and are expected to be completed within the framework of activities under the FCPF, UN-REDD, and several bilateral initiatives.

National strategy or action plan

Vietnam's overall strategy to respond to climate change is the **National Target Program to Respond to Climate Change (NTP-RCC)**. The NTP-RCC is a broad-based strategy covering both mitigation and adaptation that includes capacity building, international cooperation and concrete actions. It exists alongside other key climate change programs, including the National Low Emissions Agriculture Program for the period 2011-2020, which has been finalized, and the National Green Growth Strategy, currently under preparation.

As part of the NTP-RCC, Vietnam is currently in the process of preparing its **National REDD+ Program** (NRP, formerly the National REDD+ Strategy), which will forms a key part of the NTP-RCC. The NRP was expected to be submitted for the Prime Minister's approval by mid-2011,[12] but as of September 2011 it was still under preparation. A draft has not yet been made available outside government circles. It is understood that the current goal is for the PRP to be **completed by the end of 2011**.

It is intended to be operationalized at national and provincial levels and at the field level in six provinces.[13] It has been suggested that the NRP be implemented as an implementation program under the NFDS 2006-2020.[14] According to Vietnam's R-PP (the latest information publically available) the current proposed NRP is centered on **five key component activities**:

i. Adjust **land-use planning and zoning** to minimize impact on forest areas, particularly through the integration of REDD+ into future provincial, district and village level land use plans, including current plans being devised for 2011-2015;
ii. Build on the forest use rights allocation process to improve coordination and enhance support to local communities. The process should increase benefits to local communities through, *inter alia,* the introduction of a comprehensive framework for **Community Forest Management** which will be integrated into land-use planning and zoning;
iii. **Forest policy, legislative and administrative reform**, including reform of the quota system, a process for classification of degraded forest, forest fire management, an introduction of certification of imported wood, and the elimination of legal loopholes;
iv. **Enforcement** of planning and environmental requirements through the introduction of appropriate systems and safeguards ensuring that Environmental Impact Assessment (EIAs) and Strategic Environmental Assessment (SEAs) are undertaken and used effectively;

[12] Vietnam R-PP, at 43.
[13] UN-REDD Phase II Strategy, at 34.
[14] Ibid, at 74.

v. Promoting **alternatives to forest conversion and degradation**. Options under consideration are more intensive agricultural cultivation, production of higher value crops, a shifting cultivation support program and the introduction of improved cook stoves and biogas digesters; [15]

The foregoing components are to be supported by an MRV framework as part of the emerging National System, which is a key part of the NRP. A benefit distribution system (BDS) is also under development, with some options to be tested at the provincial level during Phase II of the UN-REDD Program.[16] Government officials have expressed that the **development of a BDS is a key priority for Vietnam**, and it is actively seeking expert assistance in this matter. The NRP is to incorporate the Cancun safeguards and is to be guided by the principles of gender sensitivity and good governance, though the role of women appears to be focused on the household and community level rather than at national or local government level.[17]

National forest reference level

Vietnam is currently in the process of preparing its National Reference Level (RL), and is supported by JICA and the Finnish embassy.[18] However, the exact status and bottlenecks of RL development are unclear and also a key point of discussion within the sub-technical working group (STWG) on MRV. As described further below, the work of the STWGs provides a key input into current REDD+ readiness developments.

National monitoring, reporting and verification (MRV) system

Vietnam faces several challenges in developing a robust and transparent MRV system. The World Bank has noted that, unlike many countries, Vietnam does not routinely monitor forest cover change using spatial technologies,[19] and the GoV itself has stated that the country's "statistical information on forest data is inconsistent and questionable."[20]

Significant progress is being made toward addressing current gaps, however. An **MRV Framework Document** is currently under development, and a second draft, released in June 2011,[21] is currently undergoing an eight step stakeholder consultation process, of which the fourth stage was underway as of August 2011.[22] Moreover, an **STWG on MRV and REL development**, comprised of representatives of VNFOREST, the Forest Science Institute of Vietnam (FSIV) and several other national and international governmental and non-governmental organizations has been established to assess MRV options.[23] By the end of Phase I of its UN-REDD Program, Vietnam expects to have defined and proposed the institutional structure to begin working on all elements of MRV, initiated capacity building in all relevant institutions, and defined national policies and measures.[24] By the end of Phase II, the

[15] Vietnam R-PP, at 43-46.
[16] UN-REDD Phase II Strategy, at 21.
[17] Ibid, at 23.
[18] Vietnam REDD+ status and national circumstances", Presentation at workshop 'Road to REDDiness – Making RELs Work', Bangkok 23-25 August 2011 [*hereinafter* Vietnam Road to REDDiness Presentation], slides 8 and 13.
[19] World Bank Vietnam FLEGT Report, at iv.
[20] GoV, Readiness Plan Idea Note (R-PIN), submitted to FCPF on 8 March 2008, at 3.
[21] GoV, Measurement, Reporting and Verification (MRV) Framework Document (With Reference to Safeguards Information and Monitoring of PAMs) Under the Vietnam National REDD+ Program, Version 1, Draft 2 [*hereinafter* Draft MRV Framework document], June 2011.
[22] Vietnam Road to REDDiness Presentation, slide 14.
[23] Vietnam R-PP, at 69-70; Vietnam Road to REDDiness Presentation, slide 14.

country hopes to have collected sufficient activity data and developed the appropriate emissions factors to be able to prepare its national REDD+ GHG inventory based on Tier 2 estimates and to have developed a monitoring system and methodology sufficient to ensure Phase II demonstration activities are results-based.[25] In Phase III the MRV system is to be fully operational and accountable at the international level, including the use of Tier 3 methodologies.

Implementation and monitoring of safeguards

Following paragraph 71 of the Cancun Agreements on safeguards, Vietnam's proposed MRV Framework does include a **Safeguards Information System**. The system will gather information on current legislation relating to land-use and indigenous peoples' rights as well as on activities the government is taking to promote these. It is intended that this system will help to secure the full and effective participation of all relevant stakeholders and be operated through a web portal in order to ensure full and open access.[26] It is important to note, however, that the proposed system is purely an information system, and will not actively promote safeguards.[27]

1.3 Other UNFCCC engagement

Vietnam is aligned with the G77/China negotiating group. As a member of ASEAN, it participated in the bloc's joint submissions on REDD+ in 2008 and 2010, which supported the use of both **market and fund-based finance** for REDD (with flexibility for developing countries to choose which sources to receive based on circumstances and priorities), a **flexible scope** (to include forest management and enhancement of forest carbon stocks), a **phased approach**, including providing flexibility with respect to national accounting and sub-national implementation, and the ability for countries to **set reference levels based on national circumstances** and not just historic emissions.[28]

Vietnam has not yet developed a nationally appropriate mitigation action (NAMA), though the MRV Framework document refers to "potential [NAMAs] in the Agriculture, Forestry and Other Land Use (AFOLU) sector."[29]

Carbon market experience

Vietnam has significant experience with the UNFCCC's Clean Development Mechanism (CDM). As of August 2011 it has **192 projects in the pipeline**, with 68 registered.[30] The vast majority of these projects are hydropower projects, with 149 currently in the pipeline. There is currently one small-scale AR project, the Cao Phong Reforestation Project, which plans to reforest degraded grass and shrub land in Xuan Phong and Bac Phong communes, Cao Phong district, Hoa Binh province.

There are no AFOLU projects registered under the Verified Carbon Standard (VCS) or the American Carbon Standard (ACS). However, there are at least **two private sector REDD+ projects** being developed, in the Tam Dao (32,000 ha) and Bach Ma National Parks, respectively. The projects have not yet gone through validation under a carbon accounting

[26] Draft MRV Framework Document, at 33-34.
[27] Draft MRV Framework Document, at 33.
[28] ASEAN Common Position on REDD 2008, ; ASEAN Common Position on REDD 2010, ;
[29] Draft MRV Framework Document.
[30] Source: UNEP Risoe CDM/JI Pipeline Analysis and Database, August 1st 2011.

standard. The companies developing the projects are Vietnam Carbon Exchange Limited (VCE) and its partner Australian Voluntary Credits Limited (VCL).[31]

Moreover, Vietnam's considerable experience in the carbon markets indicates significant in-country expertise in developing carbon projects–including the design, implementation and monitoring of projects and the development of baselines and methodologies–much of which may be adaptable to the REDD+ context. It will be worth following closely the progress of the two REDD projects referred to above to learn from experiences gained in project-level implementation of REDD+ crediting activities.

1.4 Forest cover, deforestation and forest degradation trends

Vietnam has carried out its National Forest Inventory, Assessment and Monitoring of Forest Resources Change program since 1991. This Program aims to establish forest resource maps based on Landsat ETM, SPOT images, field checks and data from primary permanent sample plots. These data show that Vietnam's current forest cover is app. 1.5 million ha and has been steadily gaining area over time at a rate of >200,000 ha yr-1 between 1990 and 2005, with increases in natural forests, plantation forests and rubber plantations (Figure 1, Figure 2).

[31] See http://english.vietnamnet.vn/en/environment/10617/new-redd-project-is-taking-root.html.

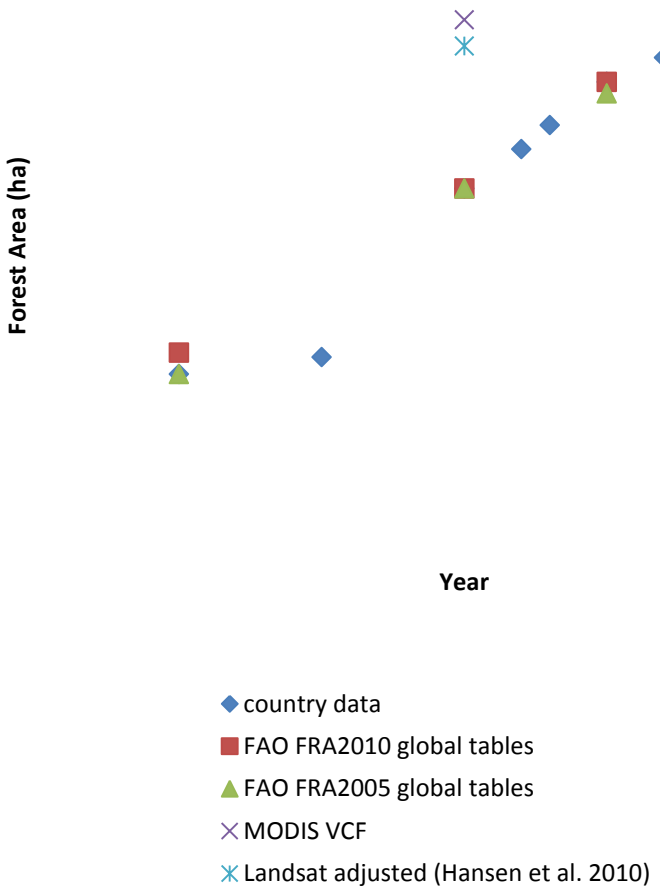


Figure 1: Trends in forest area over time in Vietnam according to multiple data sources.

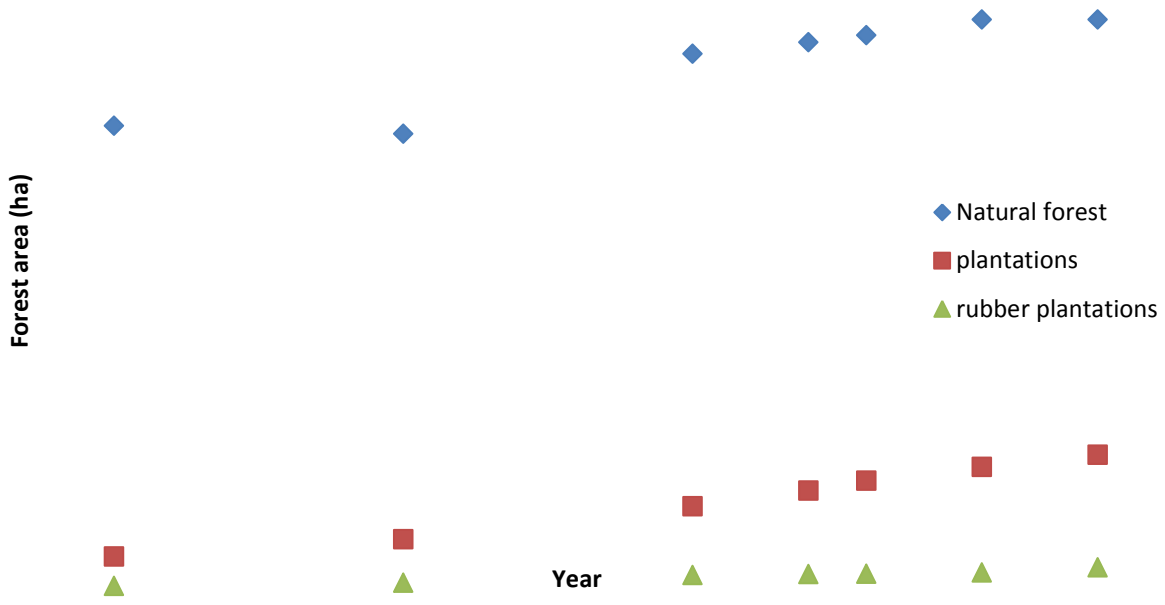


Figure 1: Trends in forest area over time in Vietnam categorized into gains in natural forest, plantation forest and rubber plantations. Data according to FAO FRA2010.

However, a net increase in forest cover does not mean Vietnam has experienced zero deforestation; forest gains have simply exceeded forest losses. The analysis by Hansen et al. (2010) shows that Vietnam lost forest cover at a rate of ~50,000 ha yr^{-1} between 2000 and 2005, or 0.4 % yr^{-1} (Table 1).

Table 1: Forest area change estimates in Vietnam for different time periods according to different data sources. FAO estimates represent net change while MODIS VCF and Hansen et al. estimates represent gross loss.

Time Period	Forest Area Change							
	ha yr^{-1}				*% yr^{-1}*			
	FAO FRA2010	FAO FRA2005	MODIS VCF	Landsat adjusted MODIS (Hansen et al. 2010)	FAO FRA2010	FAO FRA2005	MODIS VCF	Landsat adjusted MODIS (Hansen et al. 2010)
1990-2000	236,000	236,000			2.28	2.3		
2000-2005	270,000	241,000	-50,220	-54,966	2.21	2.0	-0.36	-0.40
2005-2010	144,000				1.08			

2 Drivers of Deforestation

Key Findings

- Little quantitative data on drivers of deforestation and degradation is available for Vietnam.
- Loopholes and ambiguities in the legal framework often blur the lines between legal and illegal logging in Vietnam. Though illegal logging has been decreasing in recent years, it remains an important driver. Underlying factors include perverse policy incentives and a legal framework in need of improvements.
- Industrial agriculture, particularly rubber and cashew, is expanding rapidly, and poses a substantial threat to forests in the Central Highlands and South-East. Though policy and market factors are driving expansion, there are indications that the current rules for forest conversion are also insufficient to protect high-value natural forest.
- Vietnam is planning large expansions in hydropower through 2025, with most planned developments located in areas with high forest density. Current legal and environmental safeguards appear insufficient to prevent large areas of forest in respective 'Zones of Influence' from being degraded or removed.
- Growth in aquaculture, in particular shrimp farming driven by government policies and high market prices, represents the greatest threat to mangroves in Vietnam. Challenges in enforcement and a lack of mangrove protection safeguards are contributing factors.
- Forest fires and shifting cultivation have decreased substantially in recent years. Warmer and dryer weather conditions have, however, placed large amounts of forests at risk from fire.

Empirical analysis of drivers of deforestation and degradation in Vietnam is scarce, and **little quantitative data is available**. The following presents an analysis of current drivers based on assessments made by governmental, non-governmental, academic and donor sources, as well as information obtained during a country visit to Hanoi in September 2011.

Though the global recession hurt Vietnam's export-oriented economy, the past ten years have seen sustained and relatively rapid economic growth in Vietnam.[32] The drivers of deforestation and degradation in Vietnam reflect this export-led growth as natural resources come under increased pressure to meet the demands of manufacturers, export markets, and the development needs of the local population. The following discusses some of the most significant factors driving forest loss in Vietnam.

Illegal and Unsustainable Logging

Due to complexities, ambiguities and legal loopholes, it is not always possible to distinguish legal and illegal logging in Vietnam.[33] Illegal and legal unsustainable logging are thus dealt with here together.

The level of forests lost to illegal and unsustainable logging in Vietnam is disputed. A 2010 evaluation report on the National Forest Development Strategy 2006-2020 (NFDS 2006-2020)

[32] Central Intelligence Agency, World Factbook (August 2011), available at https://www.cia.gov/library/publications/the-world-factbook/geos/vm.html.
[33] The World Bank, East Asia and Pacific Region, Sustainable Development Department, "Socialist Republic of Vietnam: Forest Law Enforcement and Governance" (2010) [*hereinafter* World Bank Vietnam FLEGT Report], at ii.

stated that the level of **illegal logging** decreased by 62% in 2008 compared with 2003.[34] Gregerson et al. similarly report a reduction in deforestation of natural forests due to stringent logging bans and better control of illegal logging.[35] However, the GoV has acknowledged that illegal practices remain an important driver, and has noted that 48,605m^3 of timber was confiscated in 2009, with considerably more violations likely going undetected.[36]

Though the government has made efforts in recent years to improve the legal framework related to logging, it is still possible for loggers to exploit the system with little chance of legal repercussions.[37] This is due not only to loopholes and ambiguities, but also due to the current enforcement strategy, which is directed primarily towards those violating laws within a forest rather than the "well-connected" businessmen and officials that control the bulk of illegal logging.[38] The difficulties with the current strategy, including its resource intensity and failure to tackle the primary cause of illegal activities, are compounded by a lack of coordination between relevant agencies, in past years in particular between the Forest Protection Department (FPD) and the Forest Department (FD).[39]

Several policies and programs also contribute to unsustainable wood extraction. These include the forest classification system, which is said to open up the possibility for the unnecessary removal of natural forestland; and, the harvesting quota system in which quotas are reported to be set so low that almost any logging becomes illegal.[40] The latter fact points to the fundamental issue of the imbalance between timber supply and demand. Vietnam has a booming wood processing industry that creates more demand than can be supplied locally, with 80% of logs for processing currently imported.[41] The Five Million Hectare Reforestation program (5MHRP) has sought to address this issue through the provision of planted timber. However it has encountered challenges in its planning, budgeting and control measures, which have hindered its effectiveness in this regard.[42]

Industrial Agricultural Expansion

Agriculture is a major part of the Vietnamese economy, accounting for 20% of GDP and employing 53.9% of the population.[43] Past years have seen growth in industrial crops increase more quickly than planned, increasing from 1.634 million ha in 2005 to 1.886 million ha in 2008.[44] This growth has centered on the Central Highlands and the Southeast, with **rubber and cashews** expected to account for the majority of growth, while coffee and tea plantations are expected to stabilize.[45] These areas have seen high levels of deforestation in past years due to

[34] Dr. Le Khac Coi, "Vietnam National Forest Programme Process Evaluation Report (2nd draft)", Hanoi - January, 2010 [*hereinafter* Le Khac (2010)], at 5.
[35] Hans Gregersen et al., "The Greener Side of REDD+: Lessons for REDD+ from Countries where Forest Area Is Increasing", Rights and Resources Initiative (2011) [*hereinafter* Gregersen et al. (2011)], at 48.
[36] GoV, Readiness Preparation Proposal, Submitted to FCPF on 4 March 2011, at 35.
[37] World Bank Vietnam FLEGT Report, at ii.
[38] Ibid., at ii.
[39] McNally (2010), at 23; World Bank Vietnam FLEGT Report, at 14. Note that the FD no longer exists, and its functions have been taken up by the various departments of the newly-created VNFOREST.
[40] McNally (2010), at 23-24.
[41] Le Khac (2010), at 1.
[42] World Bank Vietnam FLEGT Report, at 17.
[43] CIA World Factbook.
[44] Vietnam R-PP, at 33.
[45] Rubber is expected to expand by some 120, 000 ha in the coming years, and cashew plantations by 30, 000 ha. Vietnam R-PP, at 33.

agricultural expansion, and it is expected that the current expansion will lead to further forest loss.[46]

Much current expansion is driven by high market prices, and is strongly supported by government policy, such as the current five year plan for agriculture and rural development.[47] Problems in the regulatory system, however, contribute to forest land being converted without clear justification. The Degraded Forest Land Allocation policy has reportedly created incentives for the conversion of degraded forest into plantations, with the expectation that the land would later be allocated.[48] Moreover, many believe that the current criteria for "degraded" forest, which is allowed to be converted for reforestation, has the potential to apply to most natural forest in the Central Highlands. This danger is compounded by reports that current classification systems are open to influence.[49]

In addition, widespread **illegal conversion of land** to agriculture has been reported. Official statistics reported 1,998ha illegally converted in 2009, though under-detection means true figures are likely much higher.[50] The limited capacity of forest protection forces has been cited as a key underlying factor. In some cases, ethnic minority groups have been found to convert land in order that they may sell it later for plantation of perennial crops.[51]

Aquaculture Expansion

Studies have suggested that the greatest threat to mangroves in Vietnam is posed by the growth in aquaculture, particularly **shrimp farming**.[52] It is estimated that aquaculture in the coastal regions increased tenfold in the 15 years up to 2010,[53] and the area used for breeding shrimps in the Mekong Delta was expected to reach 80,000 ha in 2010, up from 3,000 ha in 1995.[54] Recent figures on mangrove loss could not be found, but FAO figures indicate that mangroves in Vietnam decreased from 165,000 ha in 1990 to 104,000 ha in 2000,[55] and in Ca Mau Province, mangroves had reportedly decreased from 200,000 ha prior to 1975 to 60,000 – 70,000 ha in 2002,[56] with loss in both cases attributed primarily to shrimp farming. With aquaculture continuing to expand, it is likely that much of Vietnam's existing mangroves are under significant threat.

---

[46] Vietnam R-PP, at 33.
[47] GoV (MARD), "5 year plan of 2011-2015 Agriculture and Rural Development (First Draft)", MARD, Hanoi.
[48] Thiha, Edward L. Webb and Kiyoshi Honda, "Biophysical and Policy Drivers of Landscape Change in a Central Vietnamese District", 34 *Environmental Conservation* 164 (2007), at 170.
[49] Thai Hoc, "Danger from 'legal' deforestation" (28/10/2009), available at http://www.baodatviet.vn/.
[50] Vietnam R-PP, at 34.
[51] Ibid., at 34.
[52] Phan Nguyen Hong and Quan Thi Quynh Dao, "Mangroves in Vietnam", Centre for Natural Resources and Environmental Studies, Vietnam National University, available at http://library.enaca.org/mangrove/inception/vietnam-overview2.pdf [*hereinafter* Phan Nguyen and Quan Thi], at 9.
[53] Deutsche Welle, "Saving Vietnam's coasts with mangroves and organic shrimps" (2010), available at http://www.dw-world.de/dw/article/0, 5458570, 00.html.
[54] GIZ, "Viet Nam: Mangrove protection is coastal protection", available at http://www.gtz.de/en/presse/23696.htm.
[55] Nguyen Dan Anh Thi, "Shrimp farming in Vietnam: current situation, environmental-economic-social impacts and the need for sustainable shrimp aquaculture", Presentation at 7th Asia-Pacific Roundtable for sustainable consumption and production, Hanoi, Vietnam, 25-27 April 2007, at 3.
[56] Tran Van Nhuong et al., "Vietnam Shrimp Farming Review", Individual Partner Report for the Project: Policy research for sustainable shrimp farming in Asia. European Commission INCO-DEV Project PORESSFA No.IC4-2001-10042, CEMARE University of Portsmouth UK and RIA1, Bac Ninh, Vietnam (2002), available at http://www.port.ac.uk/research/cemare/publications/pdffiles/sustainableshrimpfarminginasia/filetodownload, 28779, en.pdf, at 12.

Government policies and market factors are generally perceived as the primary underlying causes of growth in shrimp farming.[57] Farmers can make up to three times as much profit through farming shrimps as through rice cultivation, and many local authorities have added to these incentives through local policy.[58] In addition, there is a lack of clear policies on mangrove protection and little coordination between marine and forest protection bodies at local levels. As a result little is done to ensure expansion is undertaken in a way that minimizes damage to mangroves.[59]

Policy-supported expansion is compounded by **illegal mangrove clearing** by households. In addition, in many cases local authorities have issued long-term use rights for shrimp farming, leaving little land available for replanting lost mangroves.[60]

Hydropower dam construction

Increasing electricity generation and supply is one of the key policy goals of the GoV, and hydropower constitutes a key part of the mix. Current plans are to increase total electricity capacity by 77,500 Megawatt (MW) by 2025, with hydro accounting for 13,000 MW.[61] Vietnam currently has 149 CDM hydropower projects in the pipeline, including several large projects, indicating significant steps towards the stated goals.[62] During 2006-2010 alone, hydropower investments were expected to add 5,500 MW to Vietnam's grid.[63] Though these figures seem highly ambitious, adding even a fraction of the planned capacity would require significant dams.

Most existing and proposed hydropower projects are in highland forest areas, representing a potentially significant threat to forest cover.[64] Forests represent over 75% of the Zone of Influence (ZoI) area in 17 of 21 current hydro schemes.[65] It is estimated that the construction of roads and power lines will lead to the clearance of some 1% of forest (app. 5,600 ha) in the ZoI areas which are mainly taking place in primary forest[66]. The above figures do not take into account the secondary effects of opening up access to previously inaccessible areas, including increased logging and migration into the forests.[67] Though the Hydropower Master Plan was the subject of a pilot strategic environmental assessment (SEA), both the SEA itself and other sources have stated that present approaches to address social and environmental issues in hydro projects are not sufficient.[68] A key problem that has been highlighted is the lack of adequate consideration of environmental impacts at the planning stage and a **lack of effective legal safeguards,** i.e. laws requiring environmental impact assessments (EIAs) and SEAs including mitigation and compensation measures are often neglected.[69] In the absence of more stringent and effective measures, it is likely that the current planned expansion in hydropower will lead to significant proportions of forest in respective ZoIs being degraded or lost.

---

[57] See McNally (2010), at 15.
[58] Phan Nguyen and Quan Thi, at 11.
[59] Ibid., at 11.
[60] Ibid., at 30.
[61] John Soussan, Mans Nilsson et al., "Strategic Environmental Assessment of the Hydropower Master Plan in the Context of the Power Development Plan IV: Final Report", Ministry of Environment and Trade and Stockholm Environment Institute, January 2009 [*hereinafter* Soussan, Nilsson et al (2009)], at 25.
[62] Source: UNEP Risoe CDM/JI Pipeline Analysis and Database, August 1st 2011.
[63] Soussan, Nilsson et al (2009), at 7.
[64] Ibid., at 45.
[65] Ibid., at 76.
[66] Ibid., at 64.
[67] Ibid., at 78.
[68] Ibid., at v; McNally (2010), at 30.
[69] McNally (2010), at 30.

Forest Fires

Recent years have seen a substantial decrease in the volume of forests lost to forest fires. Figures from the Forest Protection Department (FPD) show that 3,096 ha were lost per year between 2004 and 2008,[70] compared with 6,000 ha per year between 1992 and 2002.[71] MARD figures show a further decrease in 2009.[72] However, unusually warm and dry weather in 2010 and 2011 saw significant fires, though overall figures for forest lost to fire in these years are not yet available. In addition, 6 million ha of forest is said to be vulnerable to fire, and upland areas and the Mekong Delta are projected to experience warmer conditions due to climate change.[73]

The main cause of forest fires in upland regions appears to be **slash and burn** activities, which coincide with the dry season. In lowland areas, such as the Mekong Delta, many fires are believed to be started by honey collectors and hunters attempting to flush out wildlife. Other causes include accidents/carelessness and other intentional fire setting.[74] Contributing factors include insufficient capacity to fight potential fires, despite a recent government capacity building program[75] and some cooperation between the police, fire department and FPD. Fire water management strategies are also a significant issue in the Mekong Delta.[76]

Shifting Cultivation

Shifting cultivation has historically been blamed as a key cause of deforestation by the GoV, though others have disputed its claimed impacts.[77] Several important policies in recent decades seeking to eradicate the practice, such as the 5MHRP, have substantially reduced the quantity of land under shifting cultivation in upland areas, and much land has been returned to fallow or reforested.[78] There have been reports, however, that the inability of government policies to provide adequate alternative incomes or farming practices for many swidden famers has resulted in continued shifting cultivation practices, though on much smaller areas of land, leading to shortened fallow periods and consequent land degradation.[79]

---

[70].GoV (FPD), "Report on five year implementation of Prime Minister's Directive on urgent measures for forest protection and management", MARD, Hanoi (2009).
[71] Ibid.
[72] Cited in Le Khac (2010), at 19.
[73] McNally (2010), at 33.
[74] Ibid., at 33.
[75] "Strengthening capacity of prevention and fighting against fire for forest rangers 2007 – 2010", approved by PM Decision No 02/ QD-TTg.
[76] McNally (2010), at 33.
[77] McNally (2010), at 17.
[78] Floriane Clement et al., "The Impact of Government Policies on Land Use in Northern Vietnam: An Institutional Approach for Understanding Farmer Decisions", International Water Management Institute Research Report No.112 [*hereinafter* Clement et al.], at 11.
[79] Jean-Christophe Castella et al., "Impact of forestland allocation on land use in a mountainous province of Vietnam", *23 Land Use Policy* 147 (2006) [*hereinafter* Castella et al. (2006)], at 153-157.

3 Institutional Framework

Key Findings

- Vietnam has a highly developed bureaucracy in which the roles and responsibilities of respective government bodies with respect to key land management decisions are defined in detail by legislation. Capacity constraints, however, often lead to inadequate implementation of respective mandates.
- Though a separation of legislative and executive power exists at both central and local levels of governmentin practice key decisions are taken by the Government at the central level, and by People's Committees at provincial, district and commune levels.
- Public administration is top-down, and lower levels of administration must act within the limits set by their immediately senior administrative units. Nonetheless, provinces (and sometimes lower levels) have traditionally exercised a significant deal of autonomy, often through their ability to interpret and apply rules set by central government.
- Land-use and forest planning at the central level lie with MONRE and MARD, respectively. Both must coordinate with other ministries and agencies in the implementation of their respective roles.
- Overall responsibility for REDD+ lies with MARD, though there is some conflict with MONRE over their respective roles.
- Vietnam has put an ambitious REDD+ institutional structure in place which is active and being further elaborated, showing a high level of Government commitment. A number of working groups have been formed which invite broad stakeholder participation, addressing international donors, environmental NGOs and the private sector.

3.1 Overview

National government

Vietnam is a single-party socialist republic, with the Communist Party of Vietnam as the sole party.[80] The **National Assembly** (NA), composed of representatives elected by popular vote, is the body vested with constitutional and legislative powers.[81] Among other powers, it decides on the program for adoption of decrees and other legislative instruments, supervises activities of state bodies, decides on the national socio-economic development plan and appoints the President, the government and the People's Court.[82] It is complemented by a Standing Committee, which conducts much of its daily work.[83]

The **President** is the head of state, and plays an important role in the election and appointment of the Government and other senior figures.[84] The **Government**, headed by the **Prime Minister** (PM), is the highest administrative body in the state and conducts the overall administration of the state. This includes proposing and implementing laws, directing the implementation of law

[80] Constitution of the Socialist Republic of Vietnam 1992 [*hereinafter* Constitution of Vietnam 1992], Articles 2 and 4.
[81] Ibid., Article 83.
[82] Ibid., Article 84.
[83] Ibid., Articles 90-91.
[84] Ibid., Articles 101 and 103.

and policy by People's Committees at local levels and, together with the NA, signing and acceding to treaties.[85] The power to appoint and remove ministers is vested jointly in the PM and the NA.[86] .

Though the powers of the NA under the law are broad, its de facto power is said to be limited by the constraints of the one-party system. In practice, the Government is the country's driving political force.

Local government

Local government is vested in **People's Councils** and **People's Committees**, which exist at provincial (or city), district (or municipal), communes (or townships). The former are akin to the National Assembly, being elected by local people and adopting resolutions governing their respective localities. The latter act as the executive wing of local government, and have responsibility for the overall administration of government and the implementation of national and local laws and regulations. As depicted in Figure 20 below, they are often divided into agencies corresponding to ministries in the national government, particularly at the provincial level. At the district and commune level this will depend on local resources and conditions.

Despite its general top-down approach to government, Vietnam has a history of **provincial autonomy**, and central authorities often have difficulty controlling the activities of provincial governments, who at times find significant room for interpretation of central laws and policies.[87] Moreover, the overall direction of reform policies in the past has been towards **further decentralization** of development planning and policy implementation, based on the principle of subsidiarity.[88] The Grassroots Democracy Decree 2003, for example, aimed to increase community participation in local decision-making, especially planning and budgeting.[89] As discussed below, however, the central government retains a crucial role in forest and land-use planning, and all lower-level plans must be compatible with those created at the central level.

3.2 Institutions involved in forest and land management

The Ministry of Natural Resources and Environment (MONRE)

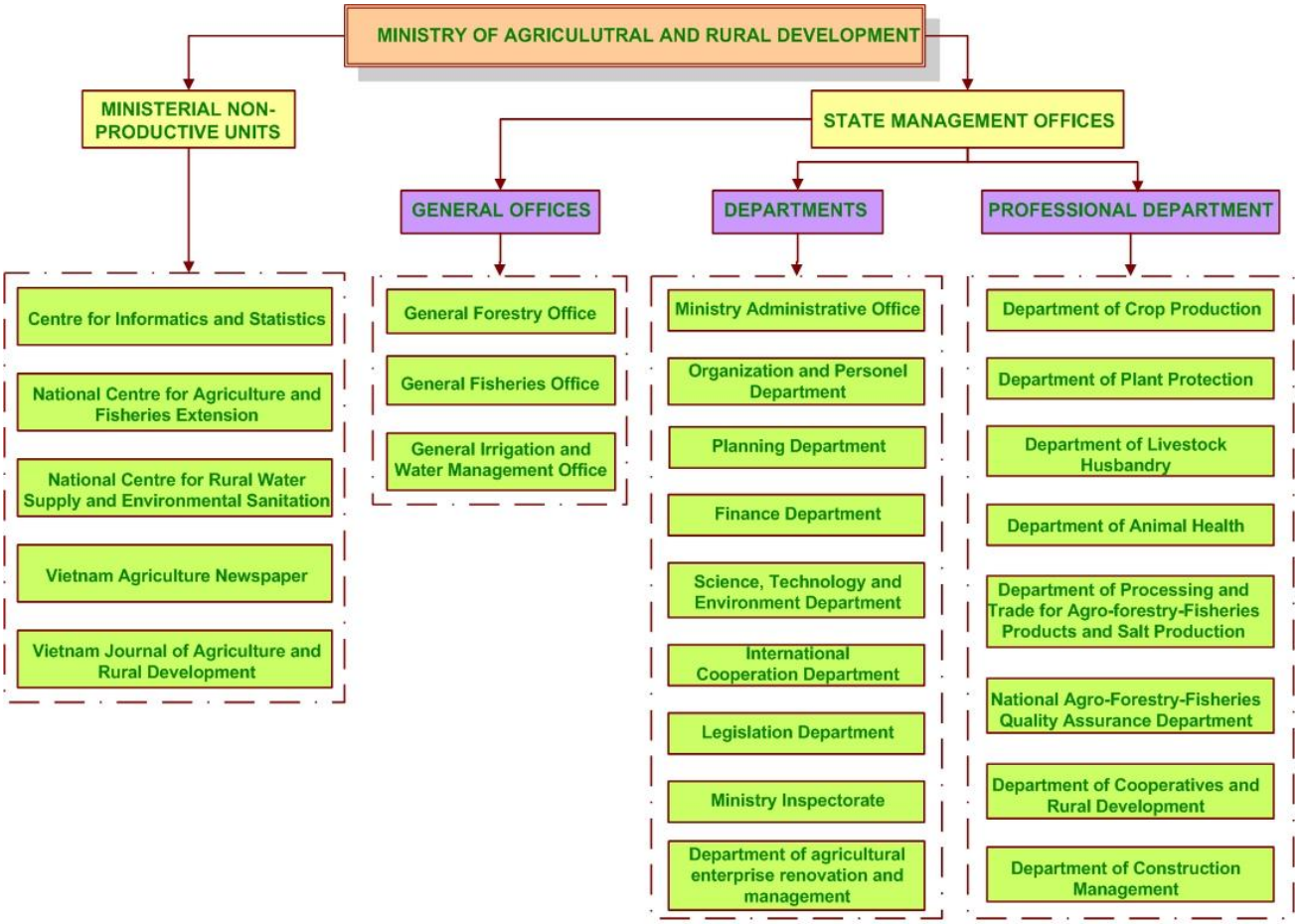
MONRE has overall responsibility for **land-use planning and allocation**, and is responsible for guiding and implementing biodiversity and natural conservation policies. It has overall responsibility for climate change programs and is also charged with the issuance of mining permits, supervision of the evaluation of EIAs and SEAs, and proposing and implementing environmental law. Its functions concerning land management are described further below.

[85] Ibid., Articles 109-112.
[86] Ibid., Articles 84 (7), 103 (4), 114 (2) and (3).
[87] Floriane Clement and Jaime M. Amezaga, "Afforestation and forestry land allocation in northern Vietnam: Analyzing the gap between policy intentions and outcomes" 26 Land Use Policy 458 (2009), at 464. [*hereinafter* Clement and Amezaga (2009)], at 462.
[88] Soussan, Nilsson et al (2009), at 8.
[89] Soussan, Nilsson et al (2009), at 8.

The Ministry of Agriculture and Rural Development (MARD)

MARD has primary responsibility for **agriculture, forestry, fisheries & rural development**,[90] including responsibility for forest protection and development.[91] Its powers include developing and implementing standards for forest protection and development, elaborating the national forestry development strategy and other forestry policies and programs, implementing assignment, lease and recovery of forests, and issuing and revoking permits.[92]

Figure 3: MARD organizational structure



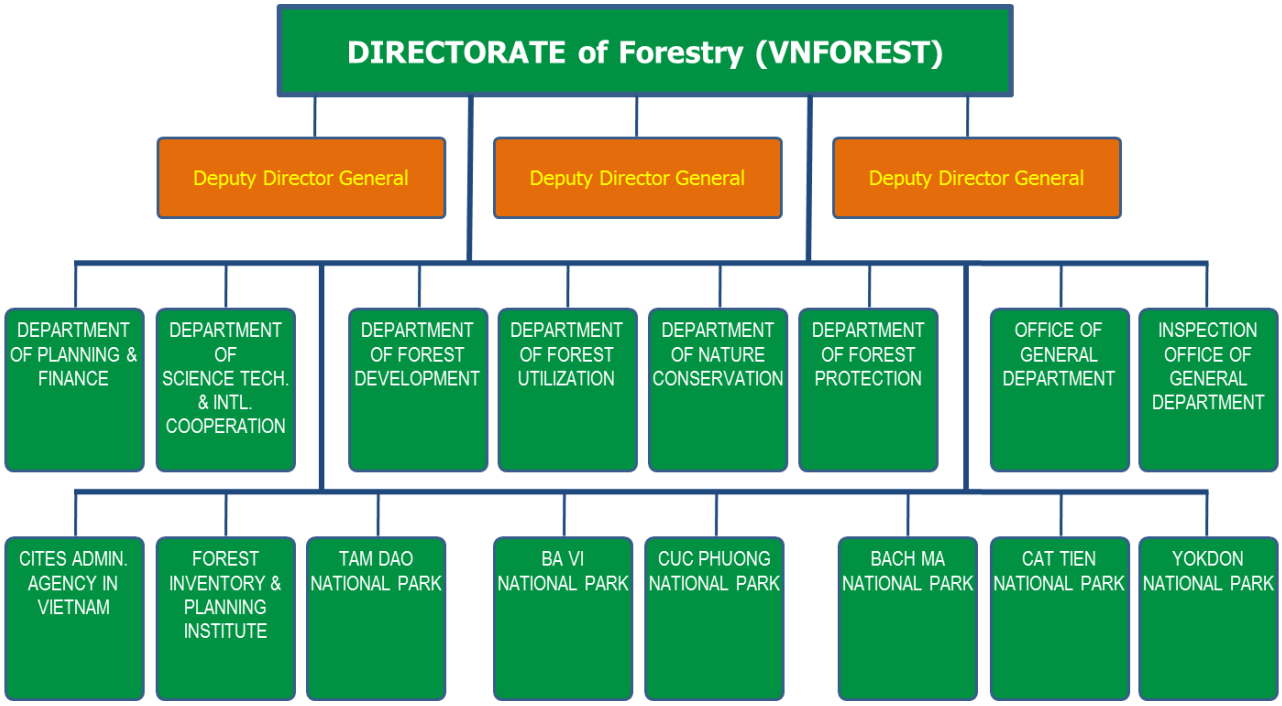
[90] http://www.agroviet.gov.vn/en/;
[91] Law on Forest Protection and Development 2004 (*hereinafter* LFPD 2004), Article 8.
[92] Decree on the Implementation of the Law on Forest Protection and Development 2006 [*hereinafter* DILFPD 2006], Article 3.

MARD is one of the Government's "major ministries".[93] It is responsible for **coordinating the efforts of all other ministries** related to forest protection and development.[94] This includes the Ministry of Public Security's coordination of the police force's forest law enforcement and forest fire management activities; the Ministry of Defense's coordination of the army's involvement in forest management; and the responsibilities of the Ministry of Culture relating to the cultural heritage of forests. An overview of the structure is provided in Figure 3.

Vietnam Forestry Administration (VNFOREST)

Direct responsibility for implementation of forest protection and development falls under the VNFOREST, one of the three directorates under MARD and created in May 2010. VNFOREST is headed by the Vice-Minister for Agriculture and Rural Development.[95] It oversees the eight functional departments and six national park authorities, as well as the CITES Administration and the Forest Inventory and Planning Institute.[96] VNFOREST is directly responsible for all climate change activities in the forestry sector including REDD+.[97]

Figure 4: VNFOREST Organizational Structure



One of the key reasons behind the establishment of the new agency was to improve **coordination** in forest management. It is intended that the existence of a single agency with

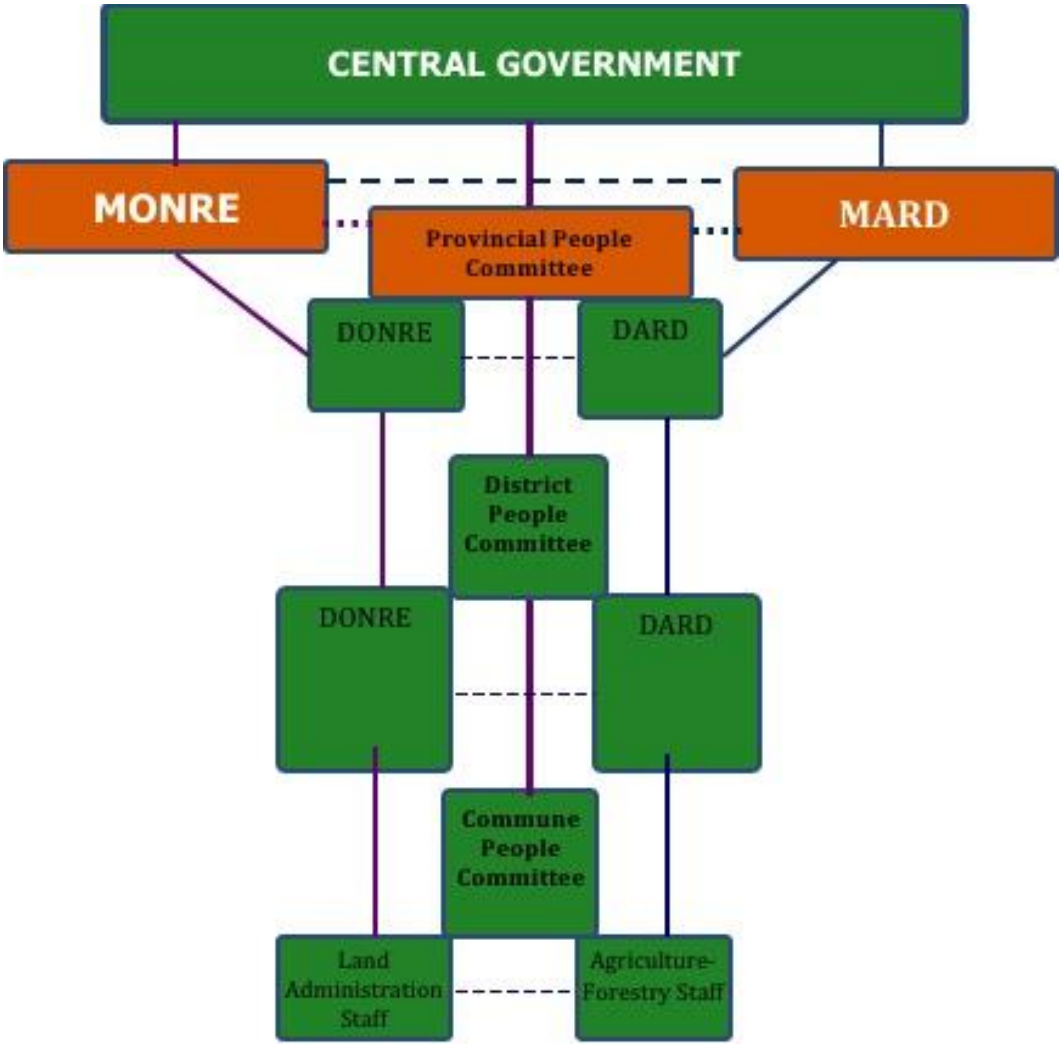
[93] François Fortier, "Taking a climate chance: A procedural critique of Vietnam's climate change strategy", 51 (3) *Asia Pacific Viewpoint* (December 2010), at 232.
[94] DILFPD 2006, Article 3.
[95] See http://www.tongcuclamnghiep.gov.vn (in Vietnamese).
[96] Vietnam R-PP, at 12.
[97] Ibid., at 12.

high-level leadership responsible for both forest protection and development will both improve coordination and strengthen forest governance capacity. The extent to which these goals are achieved will be a key determinant in the Government's ability to successfully implement REDD+ policies and programs.

Local land and forest governance

The key institutions at the provincial, district and commune levels are the relevant **People's Committees**, who retain responsibility for the overall management of the jurisdiction's affairs. As noted above, tasks related to particular subject areas may be delegated to functional departments or agencies. As depicted in Figure 5 below, specific responsibilities for forest management at the provincial and district levels are generally assigned to Provincial Departments of Agriculture and Rural Development (DARDs) and District DARDs, respectively. Some Commune People's Committees have agriculture boards or agriculture and forestry representatives, but this is largely dependent on local conditions.

Figure 5: Land and forest management at central and local levels



Specific responsibilities for land management lie with the Departments of Natural Resources and Environment (DONREs) at the provincial and district level, and with assigned land administration staff at the commune level. While varying levels of tasks concerning land and forest management may be assigned to these agencies, almost all major decisions and authorizations must be approved by the People's Committees.

State Forest Companies (SFCs)

Semi-autonomous SFCs (formerly State Forestry Enterprises) have historically been responsible for afforestation and managing most production forest, and acted as implementing units of the 5MHRP. They operate under the supervision of Provincial DARDs. Concerns as to their management of the forest estate has led to major **reforms** of their structure and much forest land being removed from their management, though the pace of this has been very slow (see further below).

Interaction of administration levels

Each level of administration is entitled to guide the forest protection and development activities of its immediately junior administrative units through circulars, regulations and other guidance documents. Thus, PPCs are entitled to guide the activities of District People's Committees (DPCs) within their jurisdiction trough circulars, and DPCs guide the activities of CPCs. Much of the autonomy of **local administrations** stems from their ability to **interpret and apply laws** and guidance formulated at more senior levels, rather than the direct formulation of their own rules or policies.

3.3 Roles of Institutions in Key Land Management Decisions

(i) Land-use planning

Land-use zoning and land-use planning must take place at the national, provincial, district and commune level every ten years for zoning and every five years for planning activities.[98] At the national level, the respective ministries, in coordination with Provincial People's Committees (PPCs), identify requirements for land-uses within their mandates. For forest land, this task lies with MARD. MONRE is then responsible for balancing these requirements in drafting the overall plan or zoning-plan and submitting this to the NA for approval.[99]

The **People's Committees at the provincial, district and commune level** are responsible for developing plans and zoning-plans in their respective administrations, based on the land allocated for each use-purpose by plans of their immediately senior administrative units[100]. Thus, PPCs elaborate provincial land-use plans and zoning plans based on the land designated for each use-purpose in the province by the national plan or zoning plan, and districts elaborate plans based on provincial plans. Plans and zoning plans must then be approved by their immediately senior administrative unit.[101]

[98] Land Law 2003, Article 24.
[99] Decree on Government Regulation of Land Use Planning, Land Prices, Land Acquisition, Compensation, Support and Resettlement 2009 [*hereinafter* Land Use Planning Decree 2009], Article 8; Land Law 2003, Article 26 (1).
[100] Land Law 2003, Article 25, Land use Planning Decree 2009, Articles 3-6.
[101] Ibid., Article 26.

Zoning plans must be compatible with the overall strategy for socio-economic development, and land-use plans must be compatible with five-year socio-economic plans.[102]

(ii) Forest Planning

Forest protection and development ”planning” and plans are also to take place at the national, provincial, district and commune level every ten years (for planning) and five years (for plans).[103] These are to be based, *inter alia*, on the land-use zoning-plans and plans for the administrative region in question.[104] Due to budget constraints in many forest provinces, however, planning often takes place on paper only, with little demarcation on the ground.

MARD is responsible for developing forest planning and plans at the national level, which is then sent to the PM for approval. Planning and plans at provincial level are developed by PPCs and approved by both the President of the PPC and the People’s Council, after receiving the written opinion of MARD. Plans at provincial, district and commune level must be compatible with those at their immediately senior administrative unit. District and commune planning are approved by their respective People’s Committees. Plans at the provincial, district and commune level are approved by the same level’s People’s Council.[105]

Designation of forest as protection or special-use forest is undertaken by **MARD** with the approval of the PM where protection and special-use forests of national or inter-provincial importance are concerned. The Presidents of the PPCs are responsible for approving the establishment and adjustment of all other forests within their own jurisdictions. The authority to authorize a change in forest use purposes (i.e. from one forest classification to another) belongs to the same entity that created the forest.[106]

(iii) Forest lease and assignment[107]

The process of leasing or assigning forest to **households and individuals** begins with the submission of an application letter by the applicant to the Commune People’s Committee (or the agriculture office, if one exists). This is then submitted to the DARD at the district level. After verifying that the application is complete, the DARD submits it to the District People’s Committee who makes the decision. The decision must be based, *inter alia*, on the relevant land and forest plans for the province, district and commune. The decision is then communicated back to the DARD, which sends it back to the applicant via the commune authorities.

Where the lease or assignment is to **economic organizations** (e.g. companies) the process is broadly similar, but the application must be sent up through the same channels to the PPC, who is empowered to decide whether or not to approve the application.

(iv) Authorizing conversion of forest to agricultural land

The authority to convert protection or special-use forest to non-forest purposes rests with the PPC, in the case of organizations, and the District People’s Committee, in the case of households and individuals.[108] Under current regulations only **“seriously degraded”** forest

[102] Ibid., Article 22.
[103] LFPD 2004, Article 16.
[104] Ibid., Article 14.
[105] Ibid., Articles 17-18.
[106] Ibid. Articles 18 (3) and 19 (4).
[107] Information extracted from Circular 38/2007/TT-BNN of 25th of April, 2007 on forest lease and assignment.
[108] Land Law 2003, Article 37.

is eligible for conversion to agriculture, which usually equates to forest with less than 100m³/ha of timber. The People's Committee responsible for authorizing conversion is also responsible for surveying forest quality and certifying that it is in fact "seriously degraded", based on guidelines developed by MARD.

3.4 REDD+ Institutions

The existing institutional structures relating to forest and land management are in the process of being complemented by an emerging framework governing REDD+ implementation.

REDD+ Steering Committee

The REDD+ Steering Committee, established in January 2011, is to coordinate all activities of government, development partners, NGOs and private sector. It is **chaired by MARD** and includes representatives of the Government, MONRE, the Ministry of Planning and Investment (MPI) and other key ministries. The Steering Committee complements the work of the National Steering Committee on the NTP-RCC, and it is expected that the two will establish a joint-working group to develop NAMAs and MRV frameworks, among other activities.[109] Though it has yet to have a stand-alone meeting, its members have met regularly through UN-REDD Vietnam Executive Board meetings.

Vietnam REDD+ Office

The Vietnam REDD+ Office was formally established in January 2011 to serve as the **standing office** for the Vietnam REDD+ Steering Committee. It is staffed and funded and has recently begun operationalizing its tasks. It operates within VNFOREST, and will undertake direct administration and operation of the NRP. It is envisaged that the office will also certify carbon removals for credit issuance.

National REDD+ Network (NRN)

NRN is responsible for developing and implementing action plans and sharing experience among stakeholders. Membership is open, and currently includes representatives of MARD departments, other government agencies (including research organizations), international NGOs and development partners. It is intended to meet quarterly.[110]

Technical Working Group (TWG) on REDD+

The TWG on REDD+ is designed to complement the work of the NRN. It is to assist the NRN in technical and administrative aspects of its operations and provide a regular forum for the development of working concepts to be employed for key elements of REDD+. The TWG is chaired by the director-general of VNFOREST.

The TWG is divided into **five sub-technical working groups (STWGs)**, membership of which is open and includes several key government representatives.[111] They are chaired jointly by a government and non-governmental representative. These STWGs are of critical importance for the possible expansion of institutional donor support. They provide entry points for engagement with government, donor, NGO and private sector stakeholders, as well as opportunities to

[109] Vietnam R-PP, at 12-13.
[110] Ibid., at 13-14.
[111] Ibid., at 15-16.

engage in the development of modalities and operating systems for the implementation of REDD+ policy. The following gives a brief introduction to each STWG and the key issues they have discussed thus far:

(i) Measurement, Reporting and Verification and Forest Reference Levels

The MRV and REL STWG is chaired jointly by VNFOREST's Department of Science, Technology and International Cooperation (DOSTIC) and the FAO. DOSTIC is generally represented by its vice-director Dr. Cuong, who is also Vietnam's REDD+ focal point. Its key focus has so far been on establishing RLs/RELs and considering the framework for MRV at the national level.

(ii) REDD+ Governance

This STWG had not met at the time of writing. It is intended that this working group will be chaired by VNFOREST's Department of Forest Protection together with GIZ.

(iii) Benefit Distribution Systems (BDS)

The BDS STWG is chaired by DOSTIC (represented by its director, Mdme Thoa) and the Centre of Research and Development in Upland Areas (CERDA). Discussion in the group has been focused on the design of a **'national BDS'** – essentially to distribute the pledge made by Norway in an equitable way among all levels of line agencies involved, including community compensation. It could not be fully explored whether this working group also has the mandate to explore tasks and responsibilities of institutions involved in performance based REDD+ development and implementation, which would be required to assess compensation levels according performed tasks. Discussions to date seem to focus on how to equitably divide revenue streams of carbon finance between all entities involved before the roles are actually defined. One main concern seems to be that most potential REDD+ area would be on land under management by SFCs, which are legally not allowed to participate in market mechanisms. Further investigation is required to clarify this matter but it would explain why discussions in this group are still comparatively opaque and missing focus. Also, it is unclear how this discussion will continue if Norway stalls or withdraws its pledge. Discussion on community participation has focused on the development of an 'R' coefficient for equity measurement. It is understood that discussion will move on to local-level BDS design once there is more certainty on the shape of the national system.

(iv) Local Implementation

The STWG on Local Implementation is chaired jointly by VNFOREST's Department of Nature Conservation (DNC) and SNV. It is understood, that DNC had recently assigned a staff member to co-chair the group, which is expected to increase its influence on developments within the government. Discussion thus far has focused on lessons learned in pilot projects and other implementation activities.

(v) Private Sector Engagement.

The STWG on Private Sector Engagement first met on 20 September 2011. It is still to be decided which Government agency will chair it, with Forest Trends acting as co-chair. The inaugural meeting saw broad participation from central and local government as well as private sector representatives, and was opened by the vice-director of VNFOREST. Discussion focused on a number of areas, including **carbon ownership** and **regulation of**

transactions. It is understood that the next meeting is to focus on the issue of carbon ownership.[112]

UN-REDD Program Institutions

Overall governance of the UN-REDD Program will fall under the **UN-REDD Program Executive Board**, which will be comprised of representatives from key ministries, including MARD, MONRE and the Ministry of Planning and Investment, as well as international organizations such as UNEP, FAO and UNDP.[113] Day-to-day management, including developing a national register of emissions and removals, is to fall to the **Program National Management Unit**, which will be assisted by provincial, and perhaps district, management units.[114]

As the emerging REDD+ institutional framework has yet to be fully operationalized, it is too early to assess how successfully it will operate in practice. The establishment of bodies that bring together representatives of various ministries, and even governmental and non-governmental organizations has the potential to greatly improve coordination in the forestry sector if used well and invested with sufficient political capital. It will be crucial that REDD+ activities are not viewed as operating independently of other forest and land-use related activities, but are seen as part of a broader objective of improving the protection and management of the country's forest estate. Similarly, it is vital that the representatives of the various ministries on the aforementioned committees are of sufficient rank to be able to speak with authority regarding the activities of their respective ministries, and equally are able to influence activities in their ministries' based on agreements made in the coordination bodies. Further, it is vital that the National REDD+ Steering Committee coordinate closely with the UN-REDD Program Steering Committee to avoid duplication of efforts and working at cross purposes, and that both exercise sufficient control over their implementing agencies to ensure coordination filters through to the ground.

4 Domestic Policies and Legislation

Key Findings

- Vietnam has a detailed forest classification system, setting out specific rules on allocation, use-purposes and management for each category and several sub-categories. Clarity and consistency are nonetheless lacking, and physical demarcation is often inadequate.
- All land is owned by the state (on behalf of the people), which is charged with management.
- The majority of forests remain under the management of State Forest Companies and management boards, though the share of households and individuals is increasing. Exact figures remain unsure.

[112] Reference once final meeting report is available.
[113] GoV, UN-REDD Program Revised Stan
dard Joint Program Document, at 15, 39-40.
[114] UN-REDD Phase II Strategy, at 76-77; GoV, "The UN-REDD Viet Nam Phase 2 Programme proposal: BDS chapter", at 7.

- Vietnam is leading the region in the development of PFES framework; with a decree requiring compulsory payment for certain forest service's adopted in 2010. A further decree expanding PFES schemes to carbon services is planned for 2012.
- Carbon ownership and prospective procedures for accommodating the voluntary forest carbon market are as yet unclear, though active discussions within the government on carbon regulation are underway.
- The current National Forest Development Strategy places strong focus on sustainable forest management. Though there remains a lack of clarity on standards and indictors to define and monitor sustainable management practices.

This section provides an overview of the legal and policy framework within which possible additional institutional donors will operate. The purpose is not to provide an exhaustive discussion of all law and policy related to forestry in Vietnam. Rather, we overview a selection of key legal issues that will inform the a donor's operation, identify the primary legal and policy documents currently in place, and analyze the current approaches to addressing some of the main issue areas. We begin by examining the legal framework pertaining to forest classification and land and forest ownership in Vietnam. After a brief discussion of the emerging framework related to PFES, among the most advanced in the region, we then identify the main legal and policy documents related to forestry. Lastly, we examine the main laws and policies addressing a selection of key drivers.

4.1 Legal framework

Forest definition and classification

Under the land law, forest land is classified as a sub-category of agricultural land.[115] "Forest" is defined by the forest law as "an ecological system consisting of the populations of forest fauna and flora, forest microorganisms, forestland and other environmental factors, of which timber trees and bamboo of all kinds or typical flora constitute the major components with the forest canopy cover of 0.1 or more."[116]

Forests are classified by the forest law as protection forests, production forests and special-use forests. Criteria guiding the classification and management of forest types are prescribed by law. The key tenets of each category are described in Table 2.

[115] Land Law 2003, Article 13.
[116] LFPD 2004, Article 3 (1).

Table 2: Key tenets of the three forest categories.

Forest Type	Sub-categories	Major use purposes	Other allowable uses	Potential "forest owners"
Production forest	- Natural production forest - Planted Production forest - Seedling forest	- Timber production - Non-timber Forest Product (NTFP) Production - Environmental protection	- Regeneration activities - Agro-forestry production - Tourism - Scientific research - Forest landscaping	- Households - Individuals - Economic organizations (domestic and foreign) - Overseas Vietnamese - Units of the People's Armed Forces - Protection forest management boards[117]
Protection forest	- Headwater protection forest - Wind and sand-shielding protection forest - Breakwater and sea encroachment protection forest - Protection forest for environmental protection	- Watershed protection (including for hydropower projects) - Erosion and desertification prevention - Restriction of natural calamities - Climate regulation	- Exploitation of timber within defined limits - Exploitation of NTFPs within defined limits - Tourism - Scientific research - Agro-forestry production - Agro-fishery production	- Households - Individuals - Economic organizations (domestic only) - Protection forest management boards - Units of the People's Armed Forces
Special-use forest	- National Parks - Nature Conservation Zones - Landscape protection zones - Forests for scientific research or experimentation	- Nature and biodiversity conservation - Scientific research - Landscape protection - Cultural heritage - Eco-tourism	- Regeneration activities - "Rational use" of natural resources[118] Extraction of dead and fallen timber in certain areas - Exploitation of NTFPs in certain areas	- Special-use forest management boards - Research & development institutions - Training centers - Economic organizations (domestic and foreign)[119]

Despite detailed rules, the rules on classification are said to **lack clarity and consistency**, and that the boundaries between protection and production forests are often unclear.[120]

Ownership of land and forest

[117] Where the production forest is intermingled with protection forest.
[118] In submerged land only.
[119] In Landscape Protection Zones only.
[120] Floriane Clement and Jaime M. Amezaga, "Afforestation and forestry land allocation in northern Vietnam: Analysing the gap between policy intentions and outcomes" 26 Land Use Policy 458 (2009), at 464.

The Constitution of Vietnam 1992 does not specifically vest ownership of land in the state, but indicates that state ownership of specific property is to be defined by law.[121] The Law on Land 2003 in turn, **vests ownership of all land in the people**, with the state as the representative owner.[122] Both the Constitution and the Law on Land assign responsibility for the unified administration of land to the state, which is empowered to allocate land to individuals and organizations for long-term use.[123] Planted production forest may be owned by individuals or organizations, though not the land on which they are located.[124]

Land and forest use rights

Rights to use and exploit forest require rights over both the forest and the land on which it is located, and forest assignments and leases, for which the main responsibility within local government lies with DARDs, must correspond to and take place simultaneously with the land allocation or lease, for which responsibility lies with DONREs.[125] In practice, the need for increased coordination between MONRE and MARD, as well as between DONREs and DARDs, means that forest is often allocated without the appropriate land allocation, and there are frequent cases of land and the forest sitting on it being allocated to different entities, often leading to conflict. Land may be allocated with or without the collection of land use fees or may be leased with an annual or one-off payment of rent.[126] For households and individuals, small areas of land may be allocated without fees for agriculture, forestry and aquaculture, household land may be allocated with fees, and larger portions may be leased for commercial purposes (including forestry).[127] Economic organizations may be allocated land for, *inter alia*, forestry use with fees or may be granted a lease.[128]

Forests may be assigned with or without levies or leases, depending on the category of forest and recipient.[129] **Households and individuals** may be assigned protection forests and natural production forests without the collection of levies**. Economic organizations** may be assigned protection forest without levies, natural production forests with levies, or may be leased planted production forest with annual rent payments.[130] Land leases to economic organizations for forestry purposes may be for a term of up to 50 years.[131] Protection and special-use forests may be assigned on a "stable and long-term basis" (i.e. with no defined durational limit) while land allocated to families and households for planting perennial crops is allocated for 50 years.[132]

Land and/or forest may be **recovered** where, *inter alia*, the state requires the land for public purposes; the user fails to make payment; the user intentionally fails to fulfill obligations with respect to the land/forest; the land is used for an incorrect purpose; or, in the case of forest, where the forest owner continuously neglects to conduct forest protection or development activities.[133]

---

[121] Constitution of Vietnam 1992, Article 17.
[122] Law on Land 2003, Article 5 (1).
[123] Constitution of Vietnam 1992, Article 18; Law on Land 2004, Section 6.
[124] LFPD, Article 3 (4).
[125] Ibid., Article 22.
[126] Law on Land 2003, Articles 33-35.
[127] Ibid., Articles 33 (1), 34 (1), 35 (1)(a).
[128] Ibid., Articles 34 (6) and 35 (1)(e).
[129] LFPD 2004, Articles 24 and 25.
[130] LFPD 2004, Articles 24 and 25.
[131] Law on Land 2003, Article 67 (3).
[132] Ibid., Articles 66 (1) and 67 (1).
[133] LFPD 2004, Article 26; Law on Land 2003, Article 38.

Land Users and Forest Owners

The Law on Land sets out seven categories of **"land users"** (i.e. those to which land can be allocated or leased). These include domestic public and private organizations, households and individuals, communities (generally at the village level) and foreign organizations and individuals.[134] The LFPD is more specific as to who can become a **"forest owner"**,[135] though the entities are broadly similar. Potential forest owners are: protection or special-use forest management boards, economic organizations, domestic households, army units, forest research and development organizations, overseas Vietnamese and foreign organizations, and individuals.[136]

There appears to be significant disagreement concerning the proportion of the nation's forests that have been assigned to the different categories of forest owner. A recent study cited MONRE statistics indicating that 1% of forest was under household or community management authorized by local authority allocation decisions as well as by DONRE.[137] Another recent paper cites RECOFTC figures indicating that some 3.3 million ha is under household or community tenure authorized by local authorities only, which would amount to approx. 30% of total land area.[138] A government presentation in 2010 put the figure in between, at 1.3 million ha.[139] There does appear to be some agreement, however, that the **majority of forest remains under the management of management boards and SFCs**.[140]

Incidences and registration of rights

Land users generally have the right to be issued **land-use certificates** ("Red Books"), enjoy the benefits of their labor and investments in the land, to have their rights protected by the state and to institute proceedings in defense of their rights.[141] They may also lease, assign, bequeath and transfer in a number of other ways their rights, as long as their rights are valid, they have been issued a Red Book, and the land is not the subject of a dispute.[142]

Forest owners have rights broadly similar to those of land users generally. A notable difference is that forest owners are entitled to have their rights "recognized by competent state authorities" rather than necessarily be issued land use certificates,[143] and the legislation only specifically provides for registration of rights over planted production forests.[144] Certain rights are common to all forest owners while others, including those relating to transfer of rights, are regulated according to the category of forest owner, the category of forest, and the type of right assigned.[145]

---

[134] Law on Land 2003, Article 9.
[135] Though the legislation refers to the term "forest owner", the incidents of this right are more akin to those acquired under a long-term lease. In line with the legislative use, this paper refers to "forest owners".
[136] LFPD 2004, Article 5.
[137] Nguyen Quang Tan, "Payment for Environmental Services in Vietnam: An Analysis of the Pilot Project in Lam Dong Province", Forest Conservation Project Occasional Paper No. 5, April 2011 [*hereinafter* Nguyen Quang (2011)], at 6.
[138] Gregersen et al. (2011), at 9.
[139] GoV (Directorate of Forestry), "Timber Legality Assurance System in Vietnam", presentation included in workshop document for Sub-Regional Training Workshop on Timber Legality Assurance Towards a Credible Timber Legality Assurance System in the Mekong Region 24 - 26 November 2010 Ha Noi, Viet Nam.
[140] Nguyen Quang (2011), at 6; Le Khac (2010), at 15.
[141] Law on Land 2003, Article 105.
[142] Ibid., Article 106.
[143] LFPD, Article 59.
[144] Ibid., Article 31.
[145] Ibid., Articles 61-77.

Community rights

Since 2003 communities located around villages or hamlets who share habits, customs or bloodline are considered eligible land users. The LFPD 2004 specifically provides for the assignment of forests to **"village population communities"** (VPCs) who have "close community association with forests."[146] VPCs are not, however, listed as forest owners, which affects their rights and obligations with respect to their assigned land. Though they enjoy many of the same rights as forest owners, a notable difference lies in their inability to lease, mortgage or otherwise transfer their land rights.[147] The legislation does not provide for registration of forest-use rights by VPCs, and there is some confusion as to whether they are indeed entitled to registration.

Payment for Forest Environmental Services (PFES)

Vietnam is the forerunner in South-East Asia in establishing a legal framework for payment for environmental services schemes. Decree No. 99 of 2010 on the Policy for Payment for Forest Environmental Services (*hereinafter* **"PFES Decree"**) establishes an obligation upon various users of forest environmental services to pay service providers for their use, and outlines a detailed framework for the implementation of this obligation.

PFES Piloting in Lam Dong and Son La

The development of Vietnam's detailed PFES framework has followed on from two highly successful PFES pilots implemented in Lam Dong and Son La provinces from 2009-2010. Both projects were implemented as government/donor partnerships, and were given a legal basis by PM Decision No. 380/QĐ-TTg of 2008 on the Pilot Policy for Payment for Forest Environmental Services. In Lam Dong, the pilot scheme was implemented by Winrock International in the context of the Asia Regional Biodiversity Conservation Program (ARBCP), together with the Lam Dong provincial authorities. The project was supported by USAID/RDMA. The project in Son La was implemented by GIZ and the Son La provincial authorities.

The projects, the first of their kind in South-East Asia, saw complex and innovative approaches to legal structures, benefit sharing and monitoring and evaluation being piloted. These included the establishment of provincial Forest Protection and Development Funds, establishing payment levels based on forest characteristics through the so-called 'K' coefficient*, and contracting households to monitor forest protection. A diagram of the implementation structure adopted for Lam Dong is provided in Annex 1. Lessons learned in implementing the above approaches have informed the development of Vietnam's PFES Decree and have been followed closely by delegations from neighboring countries.

*The "K" co-efficient determines the value of a forest based on the relative value based on an average of four factors: forest type, forest quality, forest origin, and human impacts on the forest.

The PFES Decree defines the services for which providers are entitled to payment broadly. These services include soil protection, water regulation, landscape preservation and biodiversity conservation for tourism, and the provision of aquaculture services, which are mainly provided by individuals and households.[148] The decree only defines tangible payment obligations, however, for hydropower generators, clean water suppliers, industrial water users and tourism

[146] Ibid.Article 29.
[147] Law on Land, Article 117; LFPD, Article 30.
[148] PFES Decree, Article 4.

operators. Rules for the payment of carbon services and aquaculture services are still to be defined in a further decree currently planned for 2012.[149] Service providers include both forest owners and persons contracted for forest protection.[150]

Though the decree encourages direct payments from service users to suppliers, it is expected that much of the fees paid will be channeled through newly established **Forest Protection and Development Funds (FPDFs)**. Payments collected will be distributed by the Vietnam FPDF to provincial FPDFs, who will in turn distribute payments to service providers.[151] Crucially, at least 85% of fees paid are to be paid directly to service providers.[152]

REDD+ regulation

Ownership of carbon in and prospective carbon credits from forests is as yet unclear in Vietnam. Many Special-use and Protection Forests are managed by management boards which, as non-profit and state-funded bodies, are not eligible to enter into economic transactions. This makes the establishment of voluntary or other carbon projects on forest land under their management legally difficult. As described above, this issue is being actively discussed, including in the recent meeting of the STWG on Private Sector Investment.[153] It has also been raised in the STWG on BDS. Senior government officials are reported to be supportive of the further development of the appropriate legal frameworks for the accommodation of the voluntary market, and MONRE is in discussions with MARD for developing an **interim policy framework to govern REDD+ pilot projects**.

4.2 Overall forest and land-use policy

Overall socio-economic development policy in Vietnam is guided by 10 year strategy documents and five year plans. The development and protection of the nation's forests was a key element of Vietnam's Strategy for Socio-Economic Development 2001-2010 (NSEDS 2001-2010) and continues to play an important role in the **Socio-Economic Development Strategy 2011-2020** (SEDS 2011-2020). The former laid out the goal of increasing forest cover to 43% by 2010 and set out goals of completing forest allocation for long-term stable use, placing 10 million ha of natural forest under protection, promoting sedentary cultivation, and increasing production of forest products. [154] Though it is does not appear that the 43% goal was reached, forest cover is steadily increasing, and the 2011-2020 Strategy states a goal of lifting cover to 45% by 2020.[155]

National Forest Development Strategy 2006-2020 (NFDS 2006-2020)

The main policy document for the forestry sector is currently the NFDS 2006-2020.[156] The Strategy sets out guiding principles, orientation amounts for proportions of forest under different classifications, regional priorities, and new **targets** for, *inter alia*, plantations, policy reform, and

[149] Ibid., Article 4.
[150] Ibid., Article 8.
[151] Ibid., Article 14.
[152] Ibid., Article 15.
[153] Draft meeting summary of STWG's of Sep. 20, 2011.
[154] Strategy for Socio-Economic Development 2001-2010 (Presented by the Central Committee, Eighth Tenure, to the Ninth National Congress), at 10-16.
[155] Nguyen Cong My, "Overview of Vietnam Socio-Economic Development Strategy", The Korea Association for Public Administration (KAPA). April 29-30, International Seminar for Public Administration at Busan, at 10.
[156] Viet Nam Forest Development Strategy 2006-2020, Promulgated and enclosed with the Decision No. 18/2007/QD-TTg, dated 5 February 2007, by the Prime Minister [*hereinafter* NFDS 2006-2020]

subsidies for forest protection and plantations. It establishes **five development programs** for the forestry sector, namely on sustainable forest management and development; forest protection, biodiversity conservation and environmental services; forest products processing and trade; research, education, training and forestry extension; and renovating forestry sector institutions through policy, planning and monitoring.

The NFDS 2006-2020 builds on the emphasis of the NDEDS 2001-2010 in **increasing forest cover** through plantations, continuing forest allocation, expanding processing capacity and enhancing forest protection through protection contracts. Increased emphasis is placed on market-based policy mechanisms and allocating the role of local communities.[157] Though adopted in early 2007, the 2006 – 2020 policy anticipates the emerging importance of forests as carbon regulators, and refers in several places to the generation of carbon credits and sequestration activities.[158]

MARD is designated as the focal point for **implementation** of the NFDS 2006-2020, and Coordination Sub-Committees for Program Implementation are established for each program. These are headed by a MARD agency leader, and include representatives of other agencies, communities, state enterprises and the private sector and are to establish annual and medium-term objectives and plans, propose coordination activities, develop specific aspects of the programs, propose policy revisions and collaborate with international partners.[159]

A 2010 **assessment** of the Strategy reported significant achievements in all five programs, though it also noted that significant strides have yet to be made and that certain areas remain weak. Seventy five percent of indicators were rated as either 2 or 3 (on a scale of 0-3, with 3 being the highest).[160] Other reports, however, have noted that various targets are too high, and have not shown themselves to be compatible with actual developments, particularly with regard to expected investment in the forestry sector.[161]

Laws

The Law on Forest Protection and Development (LFPD) 2004 is the main legislation governing the forest sector though the Law on Land 2003 is also of central importance with respect to rights to forest land It is implemented by several decision, decrees and regulations.

Reforestation Policies

Reforestation has been the cornerstone of Vietnam's forest policy since the early 1990s. Beginning with Program 327 (the Program of Tree Planting on Bare and Denuded Hills) in 1993, the policy has been continued through the **Five Million Hectare Reforestation Program (5MHRP)**, which is now considered to be "the largest and most significant national target program in the forestry sector."[162] The 5MHRP expired in 2010, but the government is currently seeking approval for its extension from the NA.

---

[157] McNally (2010), at 9.
[158] NFDS 2006-2020, at 18, 25, 40.
[159] Ibid., at 38-39.
[160] Le Khac (2010).
[161] Nguyen D. Doan and V. T. Phung, "Report on 3 year implementation of Viet Nam Forestry Development Strategy 2006-2020", Hanoi (2009); The World Bank, "Vietnam: Aligning Public Spending with Strategic Priorities in the Forestry Sector, " The World Bank Rural Development, Natural Resources and Environment Department East Asia and Pacific Region, November 2009. Cited in McNally (2010), at 9.
[162] World Bank Vietnam FLEGT Report, at 16.

One of the key strategies engaged by the government to operationalize reforestation was the provision of **financial incentives** to households and individuals, usually in the form of seedlings, fertilizer and labor costs, which were later deducted from any rewards earned.[163] Responsibility was allocated to provinces to implement the programs, with each province receiving funds depending on factors including the amount and category of land replanted.[164]

Reforestation aims at addressing a number of key policy objectives in Vietnam including the stabilization of **shifting cultivation**, the provision of environmental services, ensuring a steady source of timber, and fulfilling aesthetic goals. Sources differ as to the success of the reforestation programs in achieving their stated goals. While government studies have reported resounding successes in achieving a number of policy goals, others have questioned the prioritization of forest **quantity over quality**, noting that most plantations have been fast-growing monocultures with few environmental benefits. Supposed livelihood benefits have also been heavily questioned, though there is general agreement that the policy has contributed to stabilizing shifting cultivation.

Forest Land Allocation (FLA)

Along with reforestation policies, FLA has arguably been the most significant forest-related policy in Vietnam in the past two decades. Beginning with Resolution 10 in 1988, successive reforms, including two separate revisions of the land and forest laws to enhance land and forest use rights of individuals, families, households and, more recently, communities, have seen a substantial portion of the nation's forest land allocated to these groups for long-term stable use (though precise figures are disputed – see Section 7.4.1). The policy aimed to reduce shifting cultivation and improve management by lessening the role of the State Forest Enterprises (now SFCs).

There is a general consensus that the policy has **contributed to stopping deforestation** and had a generally positive impact on forest resources.[165] There is similar agreement that the policy has been relatively effective in stopping shifting cultivation in upland regions.[166] There are indications, however, that it has often **disrupted livelihoods** without providing adequate alternatives and that reduction of land for shifting cultivation has often led to shifting cultivation on smaller plots of land, leading to **land degradation**.[167] Additionally, the process has been reported to be relatively slow, inflexible, and lacking in adequate planning and participation, leading to somewhat negative effects on both poverty alleviation and forest protection.

Unsustainable/Illegal Logging

Unsustainable and illegal logging is currently being addressed by a number of policies and programs. The **Sustainable Forest Management Program (SFMP)** under the NFDS 2006-2020 aims to complete forest categorization, institute forest management plans for all forest and ownership types, increase legal timber and pulp production, increase plantations, and introduce

[163] Clement et al, at 11.
[164] Clement and Amezaga (2009).
[165] See, e.g., Clement et al, at 11; Nguyen Quang Tan, "Forest Tenure Reform in Vietnam", Presentation at "Decoding REDD" Workshop 3 – REDD in the Rural Landscape Negotiating Forest Land Use Change for REDD Balikpapan, Indonesia – 27-29 July 2009, Slide 33.
[166] Castella et al. (2006), ; Clement et al.
[167] Castella et al. (2006), at 153; Clement et al, at 18.

forest management certification for 30% of production forests.[168] This is an important program, addressing some of the core factors underlying unsustainable wood extraction. A 2010 review of the NFDS identified increases in forest cover, completion of a forest categorization review and the completion of planning maps as key successes of the SFMP.[169] It identified several areas for improvement, however, including the establishment of an adequate source of timber and increasing the efficiency of current ownership arrangements, particularly with respect to households.[170] Other sources have noted a **lack of standards, indicators and other regulations addressing SFM** despite the program.[171]

The **Production Forest Development Policy (PFDP)** has recently been instituted through the 5MHRP to address the issue of securing an adequate legal supply of timber for the wood processing industry through developing 250,000 ha of plantations per year.[172] This represents a shift from previous policies of severely limiting harvest quotas and promoting protection and special-use forests towards providing incentives for production forestry. The PFDP focuses on smallholder production forestry and stresses the need for land allocation as a precondition.[173]

The **Forest Protection, Biodiversity Conservation and Environmental Services Development Program**, also under the NFDS 2006-2020, aims to address illegal logging through the allocation of 1.5 million ha of special-use and protection forests under protection contracts (through the 5MHRP) and increasing community-based management.[174] The focus on community-based management is a relatively new departure and is expected to be an important part of future REDD+ activities.[175]

Another major policy reform to combat unsustainable logging has been the **reform of SFCs**, blamed for much of the unsustainable management of the country's forests in past decades. Reform has focused on reducing the number of SFCs, reclaiming land from them for allocation to households etc., and separating SFCs' business activities (primarily logging) from their role in public goods management.[176] The World Bank has noted that the process has been "extremely slow and tentative", and that most land reclaimed from SFCs has been allocated to other state bodies rather than households and communities.

Lastly, the **Forest Protection Department (FPD)** has recently set up a task force to tackle organized crime underlying illegal logging.

Hydropower Expansion

Article 14 of the Law on Environmental Protection 2005 requires **Strategic Environmental Assessments (SEAs)** to be carried out for, *inter alia*, all sectoral plans and inter-province natural resource exploitation plans, including all national hydropower plans. Article 18 requires **Environmental Impact Assessments (EIAs)** to be carried out for most medium and large scale hydropower projects. EIAs must be appraised and approved by public authorities, and

[168] NFDS 2006-2020, at 32-33.
[169] Le Khac (2010), at 4.
[170] Le Khac (2010), at 4.
[171] Consultative Institute for Socio-Economic Development of Rural and Mountainous Areas(CISDOMA), "Development of a New Sustainable Forest Management Planning Methodology - Final Report: Implementation of the Sustainable Forest Management in Vietnam and Recommendation", Hanoi (2009), at at 7-8.
[172] Gregersen et al. (2011), at 10.
[173] Ibid., at 52.
[174] NFDS 2006-2020, at 33-34.
[175] UN-REDD Phase II Strategy, at 15.
[176] FSIV, at 43; World Bank Vietnam FLEGT Report, at 17.

there is an obligation to implement the contents of a project's EIA and report on such implementation.[177]

An SEA was carried out for the Hydropower Master Plan in 2008/2009. As noted in chapter 1.2, the SEA found that present laws and policies to address social and environmental issues in hydro projects are not sufficient.[178] Measures taken to address these issues include the recent introduction of PFES (see chapter 1.4.1) and increased focus on community forest management. Despite the provisions on EIAs, there appears to be a lack of adequate consideration of environmental impacts at the planning stage, and **mitigation and compensation measures are often neglected**.[179]

A selection of **CDM hydropower projects** surveyed reveals that EIAs are generally conducted, and expected percentage change in forest cover is considered for all projects. There is little consistency, however, with respect to the environmental approval procedures undertaken by project developers, indicating a lack of clarity in the current law.

Shrimp farming

Article 5 of the Law on Fisheries 2003 states that fishery development should be sustainable, and various other decisions and resolutions repeat this.[180] There have also been several policies to promote sustainable shrimp farming.[181] However, the **practical implementation of these has reportedly not achieved the desired goals.**[182] In Tra Vinh province, many local farmers concluded contracts with the local authorities to keep 60% forest and 40% aquaculture, but most of these were not adhered to.[183]

5 Conclusion

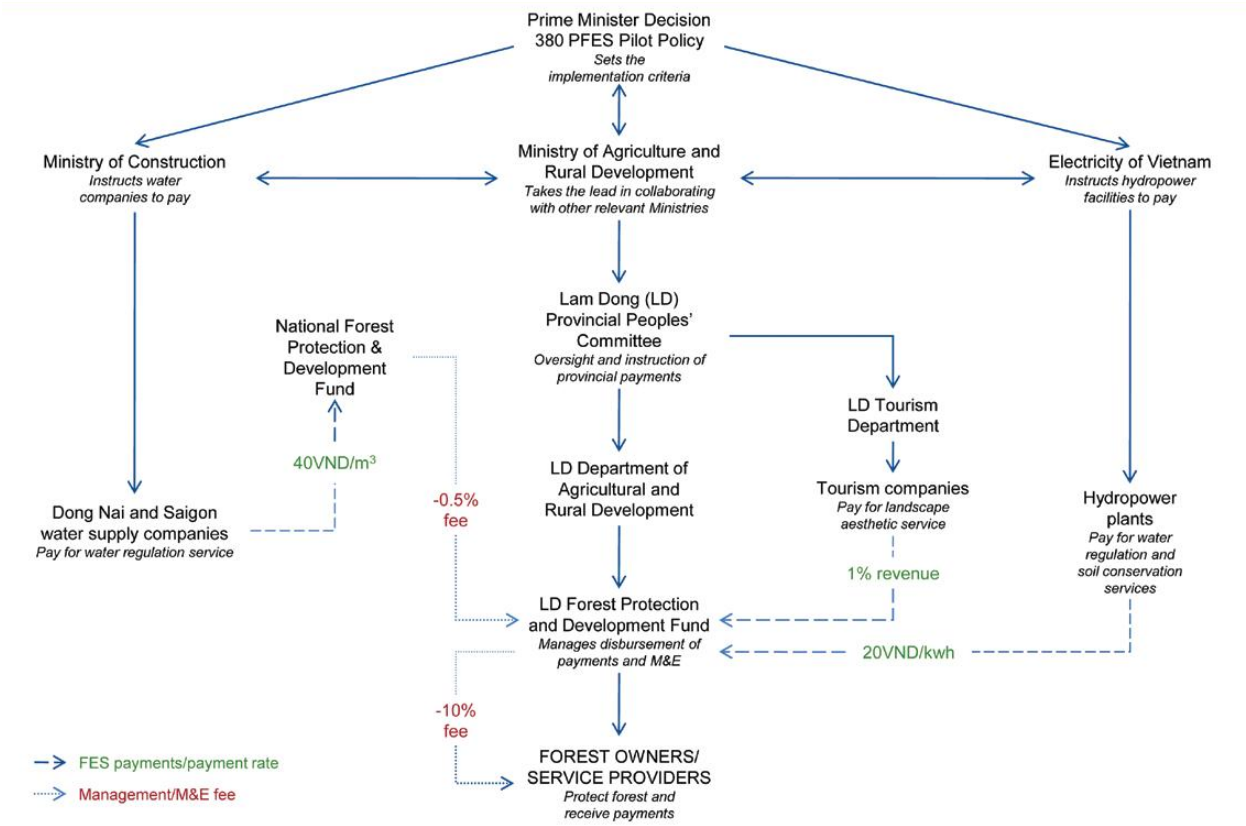
REDD+ readiness is progressing steadily, spurred by participation in several multilateral processes and growing government support. Several new institutions have been established, and Phase II of the UN-REDD Program will see the first activities being instituted at ground level. Together with ongoing developments under FLEGT and national policy initiatives to introduce SFM, interest in forest protection has rarely been higher. At the same time Vietnam's expansion in agriculture, aquaculture, and hydropower generation, along with the continued growth of the wood processing industry present significant threats to natural forests.

[177] Law on Environmental Protection 2005, Articles 21-23.
[178] Soussan, Nilsson et al (2009), at v.
[179] McNally (2010), at 30.
[180] Nguyen Dan Anh Thi, "Shrimp farming in Vietnam: current situation, environmental-economic-social impacts and the need for sustainable shrimp aquaculture", Presentation at 7th Asia-Pacific Roundtable for sustainable consumption and production, Hanoi, Vietnam, 25-27 April 2007, Slide 6.
[181] Ibid., Slide 12.
[182] Ibid., Slide 12.
[183] Ngo Thi Thanh Truc, Bui Van Trinh and Vo Thanh Danh, "Agricultural Development and Natural Resource Degradation: An Environmental Review", available at http://www.ctu.edu.vn/colleges/economic/Eng/research/Truc-Agricultural%20Development%20Andnatural%20Resources%20Degradation%20An%20Environmental%20Review.pdf, at 11.

For institutional donors, these circumstances create substantial opportunities for policy actions at both the national and sub-national level. Expansion of agriculture is considered to be one of the main drivers for deforestation in the country, which is being noticed by GoV and attempts are being made to address this through several initiatives. Proposed activities 1, 2, 3, and 6 in the list below would support selected GoV initiatives in this field. Strong interest has been expressed by GoV in developing regulation and planning processes to support establishment of PFES schemes that potentially include the service of water provision plus restoring/ maintaining carbon stocks. This is being proposed by activity 1 at the central level and activity 6 at the local level. Both activities would aim to support providing alternative income sources at the local level and reduce agricultural expansion for subsistence and commercial purposes. Activity 2 would complement the effort by aiming to close the regulatory loophole for conversion of forests to agriculture in degraded forests by clarifying and improving the definition of degradation. Interestingly, the GoV also expressed interest in exploring mitigation opportunities in the agricultural sector, as well as ways to consider agricultural emissions in sub-national economic development plans. Vietnam is the only South East Asian country expressing interest in exploring opportunities for potential REDD+ finance by measures taken outside of the forest sector (activity 3). Activities 4 and 5 are considered to be highly relevant from an environmental perspective as they would address drivers that are likely to have strong effects in the future (hydropower developments) or are considered to be left out by ongoing initiatives (shrimp farming). However, further investigation would be needed to explore the degree of Government buy-in and suitability for institutional donor assistance.

The following proposed activities should be further explored with the Government, local stakeholders as well as the donor community and be refined as part of the country strategy development process:

1. Provide support to MONRE and MARD in developing an interim policy framework for REDD+ pilot projects in line with the National REDD+ Program that is under development. This would include providing advice e.g.: i) on strategies and options for the regulation of carbon ownership and crediting of activities, and ii) on intended legislation governing the application of the PFES framework (Decree 99) to carbon services.
2. Support improvement of the forest classification system, including the process for classification of forest as “degraded” and thus suitable for conversion. This would help to address the potentially illegal space in which local groups are reported to act when acquiring land to sell it on for plantation establishment. The GoV has expressed high support for improving the system for classifying forest as “degraded” to avoid conversion of high-value forest and uncontrolled expansion of agricultural production.
3. Support MARD to develop National Strategy and Action Plan for Agricultural Sector on lowering emission.
4. Support the development of rules, guidelines and/or incentives for mangrove-friendly shrimp farming along with private sector initiatives.
5. Support the enhancement of forest protection safeguards in the approval process for medium and large hydropower projects. This process would involve cooperation with several Ministries and further research is needed to assess whether this would be supported by GoV.
6. The MARD and DARD expressed strong interest for local level support on

a. Developing guidelines for the development of Low Emission Development Plans at community level and respective integration into an area master plan which is being developed by the Department of Planning and Investment at provincial level and the Division of Planning and Investment at district level.
b. Developing guidelines for the integration of participatory forest monitoring into existing forest monitoring and inventory practices.
c. Reviewing the existing land use and forest planning process and propose guidelines for integration of GHG emission/ removal criteria in the planning process.

Annex 1: Implementation Structure for PFES pilot scheme in Lam Dong Province