Institutional mapping of national and international forestry legislation: 
A prerequisite to conducting Participatory Governance Assessments

Innovative conservation since 1903
5.3 Effective Forest Governance Systems

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

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

Groups of articles in natural resource legislation superficially look like blocks of text arranged in a line
Decree 117. Example of an Institutional Body in a Forestry Law

SPECIAL USE FOREST MANAGEMENT BOARD

Article 24. Establishment of special-use forest management board

Article 25. Establishment of special-use forest management boards

Article 26. Organizational structure of special-use forest management board

Article 27. Dissolving of management boards
Decree 117. Examples of Management Activities

SPECIAL USE FOREST MANAGEMENT ACTIVITIES

Article 21. Sustainable uses of natural forest

Article 23. Eco-tourism

Article 32. Buffer zone identification and delineation

Article 33. Buffer zone investment projects

Article 34. Responsibilities for buffer zone management
The links into communities are very vague as are the benefit sharing mechanisms for communities.
A model of protected area legislation generated from a review of 44 pieces of legislation worldwide.
Protected Area Management
Institutional bodies, management actions and key documents – linking national level to grassroots level

National Protected Area Committee

Policy Statements

Protected Area Agency

Enforcement

GOOD GOVERNANCE

Management Advisory Committee

Management Plans

Villages
Information exchange paths under ideal circumstances

Other Ministries → MARD → Institutions, NGOs

Local Communities → Protected Area → Local Government Agencies, Other Stakeholders

Village A ↔ Protected Area ↔ Village C

Village B
Village A  
Village B  
Village C  
Local Communities  
Other Ministries  
Institutions, NGOs  
Local Government Agencies, Other Stakeholders  
PROVINCIAL PEOPLE'S COMMITTEE  
Protected Area  
MARD
Provincial People’s Committee

MARD, with a small number of staff, provides supervision to 54 provinces

Technical Information Exchange to complex landscape management extremely limited

- Financial Data Sets

There are extremely narrow exchange paths including management and financial aspects under Decree 117

High levels of leakage
Preparation of a Management Plan – optimizing participation at all levels
Promoting formalized community participation in managing special use forests
Protected Area Model Legislation – adjusted for Mu Cang Chai
Management Advisory Committees meet every three months to guide management.
Management Advisory Committee Regulations

Mu Cang Chai

Trung Khanh

Khau Ca
Distribution mechanism for delivering community development grants to local communities; this mechanism can be adapted for delivering carbon credits into watersheds and protected areas.
# Community forestry legislation in Vietnam

## ANNEX 6: COMMUNITY FORESTRY POLICY FRAMEWORK

<table>
<thead>
<tr>
<th>CF process</th>
<th>Related legal document</th>
<th>Opportunity</th>
<th>Challenge</th>
<th>Recommendations</th>
</tr>
</thead>
</table>
| Forest Protection and Development Regulations | - Circular 70/2007/TT-BNN on guidance for implementing organizations on the formulation of Village Forest Protection and Development Regulations  
  - Decree 159/2007/ND-CP on administrative punishment regarding forest management, protection and forest product management | - Strengthen the cooperation between Forest protection units and local communities; Increased awareness and patrolling by community members  
  - Strong basis for forest protection enforcement | - Village is no recognised administrative unit and is not allowed to apply financial punishment, however without sanctions enforcement is not feasible;  
  - Stipulated punishment often too high to be implemented by communities | - Communities require mandate to request compensation from forest violators (whether in terms of finance or in terms of social labour)  
- Communities require legal status to apply punishment as stated in Decree 159 |
| Land use Planning & Forest Allocation | - Land Law  
  - Forest Law 29/2004/QH11  
  - Decree 163/1999/ND-CP on forest land allocation, lease and lending to organizations, households and individuals for sustainable and long-term use  
  - Decree 181/2003/ND-CP on the implementation of the 2003 Land Law  
  - Inter-Ministerial Circular 193/2008/TTTLT-BNN-BTN&M&MT providing guidance on forest allocation, leasing in association with forestry land allocation and leasing | - Legal frame to allocate forest to entire communities, groups of households and individuals  
  - Decree 181 on implementation of the Land law stipulates local community to be allocated protection forest land with all rights and obligations as assigned to households and individuals. | - Overlap between MARD and MoRE criteria for forest land classification and mapping  
  - Unclear responsibilities for field implementation  
  - Communities are not allowed to convert, mortgage, transfer or lease land use rights | - Clarify responsibilities and procedures at all involved levels,  
- Simplify reporting and data management at lower levels  
- Development of standardised land management database combining land and forest resources  
- Red book should include a forest status map of the allocated area  
- Limit allocation of existing natural forests to individual households |
<table>
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| Forest Allocation in Central Highlands | - Decision 304/2005/QD-TTg on forest land allocation and leasing to ethnic minority households and communities in the Central Highlands.  
- Official document 623/2006/LN-SDR guideline on forest allocation and forest protection contract for Central Highlands | Clear focus on forest allocation to local ethnic minorities targeting FLA towards pro-poor. | - Only allocate poor forests to poor individual households with negative implications for natural forest management and poverty reduction  
- Local communities entitled to make full use of forest products, however process and harvest volume unclear  
- Food subsidies not sustainable, increases dependency  
- Do not consider customary land use rights  
- Lack of understanding of benefits and obligation by allottees | - Clear technical procedures for identification of harvest levels  
- Allocation of improved forest resources to provide immediate benefits  
- Widen scope to group of households and communities  
- Provide forestry extension service instead of food subsidise |
| Forest Inventory under FLA      | - Circular 38/2007/TT-BNN on guidance on processes and procedures of forest allocation, lease and reallocation to organizations, households, individuals and communities  
- Decision 112/2008/QD-BNN About promulgation of Technical Economic Norms for Forest allocation, Forest Rent, Issue of Land Use Rights Permit for Forestry Purposes combined with Preparation of Dossier for Forest Management | - Clear technical instruction and opportunities to involve private service providers;  
- Provision of detailed planning base for forest management;  
- Stipulates participatory process | - So far only limited expertise available to conduct forest inventory;  
- Lack of scientific data for volume calculations;  
- High cost norms (extreme high sample intensity) stipulated without known budget source;  
- Conflicting information regarding proposed sample intensity between two legal documents | - Clear budget lines to be identified;  
- Standardised procedures for identification of sample intensity (reduced intensity based on forest heterogeneity);  
- Adjusted procedures in view of obtaining additional information for forest management planning at the same time |
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| Forest Management Plan             | Decision 186/2006/QD-TTg promulgating the regulation on forest management              | - Communities have to provide forest management plans to be approved at district level  
- Subsistence use only to be approved at commune level | - No clear format or guidance on the plan development process  
- Stipulate minimum harvest diameter which is against local demand | - Approval of plans to be limited to district approval;  
- CF harvesting quota to be integrated into provincial harvesting plans |
|                                   | Decision 245/1998/QD-TTg on the implementation of state management responsibility on forest and forest land at all levels | DPC is authorised to formulate and approve land use planning as well as plan on forest management, protection, development and forest utilization before submitting to PPC.  
Could provide the legal basis for village level planning procedures | Harvest design on natural forest to be approved at provincial level; not feasible for local people |                                                                                                                                  |
|                                   | Circular 05/2008/TT-BNN                                                               | Only stipulates plan procedures and templates down to commune level        |                                                                                                                                                                                                           |                                                                                                                                                  |
| Forest Product Utilisation         | Decision 40/2005/QD-BNN on regulations for forest product harvesting                  | Communities are described as legal body for forest utilisation  
- Subsistence use tolerated by authority | Regulations designed for major harvesting operations under forest companies only; not applicable for communities  
- Timber exploitation procedures require involvement of administration up to MARD  
- No details on commercial use, state prefer to pay compensation, e.g. 661 instead to allow commercial utilisation. | Separate regulations for CF management required allowing selective low intensity cutting in all diameter classes  
- No limitations regarding harvest cycle  
- Until CF harvesting quotas will not be integrated into five-year and annual provincial forest development planning cumbersome bureaucratic permits will block any provision of |
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| Benefit Sharing     | Joint Circular 80/2003/TTLT/BNN-BTC guiding the implementation of Decision 178/2001/QD-TTg on the benefits and obligations of households and individuals assigned, leased or contracted forest and forestry land | -Options for legal commercial timber utilisation for local people as tangible incentives for sustainable forest management | -Unfeasible regulations force communities to return to previous unregulated timber extraction schemes.  
-Complicated timber approval procedures can only be effective in an environment with effective and strict enforcement and demonstrated exclusion of outsiders from the resource base, which at present cannot be ensured in Vietnam. | Direct incentive for local people from regulated timber harvest |
| Natural Resource Tax| Decree 05/2009/ND-CP, dated 19th of January stipulating natural resource tax.           | The decree details that individuals who exploit natural forest products on a subsistence basis, including bamboo and firewood, will be exempted from taxation. | -Designed for the context of state forest enterprise which receives direct budget from the state.  
-Communities do not receive financial support.  
-Following the new Decree, taxes for timber rose to 30% for group III  
-Reduced tax should be applied for local | Apply adjusted regulations for private entities with reduced tax levels (communities do not receive any state budget for forest protection and management) |
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</thead>
<tbody>
<tr>
<td>Cross-cutting</td>
<td>Decree 29/CP, dated 1998 on Regulation on enforcement of democracy at commune level</td>
<td>Decentralisation enables administrative support to CF</td>
<td>Still no major achievements in the field visible</td>
<td>Initiate forest administration reform by applying principle of subsidiarity</td>
</tr>
<tr>
<td></td>
<td>Decision 245/1998/QD-TTg on executing state obligations at different levels of forest and forest land</td>
<td>Common ownership concept of community recognised. Communities have ownership rights over properties and assets formulated upon traditional practices; assets contributed by community members, which are jointly used and managed under agreed principles that support for benefits of the community.</td>
<td>Implementation faces several shortcomings with still limited bottom-up</td>
<td></td>
</tr>
<tr>
<td>Civil Law 2005</td>
<td>Decree 161/2005/ND-CP detailing and guiding the implementation of a number of articles of the Law on Promulgation of Legal Documents and the Law</td>
<td>Stipulating that local level has to be consulted in policy making and to further provide feedback on policy impact.</td>
<td>Procedures established</td>
<td></td>
</tr>
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<td></td>
<td>Decision 158/2008/QD-TTg on approval of the National Target Program to respond to climate change</td>
<td></td>
<td>Community participation not stipulated in the decision</td>
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</tbody>
</table>
Legal Model generated for Community Forest Management
Other Ministries

MARD

Institutions, NGOs

Other Agencies

Provincial DARD

Local Representation

Unambiguous land tenure for benefit-sharing
COMMUNITY FORESTRY MANAGEMENT
Institutional bodies, management actions and key documents – linking national level to grassroots level

- Provincial Community Forest Management Committee
- Village Forest Management Committee
- Policy Statements
- Village Development Plans
- Village Demarcation, Zoning and Rules
- Enforcement and Penalties

GOOD GOVERNANCE
CONCLUSIONS

• Special use forest legislation does not provide a framework for meaningful community participation or for benefit-sharing involving local communities.

• The communication channels at all levels are minimal. This includes technical direction, financial supervision and monitoring, and other monitoring and evaluation.

• Funds dispersed through present and prior donor channels are having extremely low long-term impact (very limited institutional memory on highly complex landscape issues) in MARD
CONCLUSIONS (continued)

• There is no holistic community forest legislation in Vietnam.

• Existing legislation on community forestry is extremely fragmented, which weakens tenure and relationship to benefits.

• Many pieces of community forestry-related legislation indicate villages, user groups and households as target tenure bodies.
RECOMMENDATIONS (protected areas)

• There is a need for developing protected area legislation and centralizing the management of the protected area system

• Piloting co-management in special use forests and watersheds, promoting community participation

• Piloting delivery of community development grants through co-management bodies into enclave and buffer zone communities to field-test communities’ abilities to manage funds and promote sustainable livelihoods
RECOMMENDATIONS (community forests)

• A need to prepare holistic community forest legislation
• Provincial community forest management working groups (later to become committees) should be recognized as key institutional bodies through which all community forest and REDD+ related work is undertaken in pilot REDD provinces
• Village (community forest management) committees should be recognized as the key institutional bodies through which all local level community forest management issues and REDD issues are directed.
• Village (community forest management) committees should have the right (i) to manage the forests directly as a village unit, (ii) to appoint forest user groups or (iii) to organize households to manage forests.