



COUNTRY REPORT: VIETNAM Payment for Environmental Services

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Introduction

Vietnam belongs to the Indo-Burma biodiversity hotspot. It benefits from a diversity of ecosystems and species of which 8 per cent are endemic.¹ Vietnam is also among the global centres for crops origination, with around 800 cultivated species.² Forests cover almost 39.5 percent of its territory³ with an increasing growth rate of reforestation.

For the past ten years, Vietnam has been introducing and implementing a new environmental legal framework: the *Law on Forest Protection and Development* in 2004; the *Law on Environmental Protection* in 2005; and the *Law on Biodiversity* in 2008 (and associated decrees, decisions and circulars). The *Law on Water Resources* (1998) is currently under revision. The focus of this Country Report is on *Decree No. 99/2010/ND-CP* of 24 September 2010 on the *Policy for Payment for Forest Environmental Services*, adopted in 2010.

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¹ UN-REDD Programme, *Vietnam Forest Facts and Figures* (2009) (available at <http://www.unredd.org/UNREDDProgramme/CountryActions/VietNam/tabid/1025/language/en-US/Default.aspx>).

² P. Thi Sen and L. Ngoc Trinh, *Vietnam Second Country Report on the State of the Nation's Plant Genetic Resources for Food and Agriculture* (2008) FAO (available at <http://www.fao.org/docrep/013/i1500e/VietNam.pdf>) 11.

³ FOMIS, *Viet Nam Forest Sector Progress Report 2006-2010* (2010) (available at http://www.vietnamforestry.org.vn/FOMIS_Report_2010/EN_VN/Chuong_14_EN.pdf) 262.

Forests are classified in three categories: special-use forest, protection forests, and production forests. Special-use forests are mainly used for 'conservation of nature, specimens of the national forest ecosystems and forest biological gene sources; scientific research; protection of historical and cultural relics as well as landscapes; in service of recreation and tourism in combination with protection'.⁴ Special-use forests encompass five sub-categories: national parks; nature reserves; species and habitat protected areas; landscape protected area; and scientific research and experiment forest area.⁵ Until the *Law on Biodiversity* (2008), Vietnam did not have protected areas legislation. The *Law on Forest Protection and Development* was the major legal document to create protected areas, under the special-use forest category. Today, overlaps between the biodiversity legislation and forest legislation remain, along with competing competences between the Ministry of the Environment and Natural Resources, and the Ministry of Agriculture and Rural Development.⁶ The new framework is an attempt to streamline the system for protected areas.

Protection forests are established 'to protect water sources and land, prevent erosion and desertification, restrict natural calamities and regulate climate, thus contributing to environmental protection'.⁷ Production forests are mainly used 'for production and trading of timber and non-timber forest products in combination with protection, contributing to environmental protections' including natural and planted production forests and seeding forests.⁸

The Introduction of Payment for Environmental Services (PES)

Vietnam has been one of the first South-Asian countries to implement a national policy on PES through its *Decree No. 99/2010/ND-CP* which entered into force on 1 January 2011.

The context behind *Decree 99/2010/ND-CP* can be found in the pilot projects on Payment for Forest Environmental Services (PFES) - the first of their kind in

⁴ *Law on Forest* (2004), Article 4(2).

⁵ *Decree No. 117/2010/ND-CP* of 24 December 2010 on the *Organisation and Management of Special-Use Forests*, Article 5.

⁶ Law and Policy of Sustainable Development Research Centre, *Project's Report, Review on Biodiversity Related Legislation and Responsibility of Ministries/Line ministries for Implementation* (2010) JICA.

⁷ *Law on Forest* (2004), Article 4(1).

⁸ *Law on Forest* (2004), Article 4(3).

Southeast Asia - that were established by *Decision 380/QD-TTg* of 10 April 2008.⁹ Two pilot projects for PES were established in Lam Dong province in the south, and Son La province in the north in January 2009. Pursuant to *Decision 380/QD-TTg*, three types of forest environmental services were piloted, namely water regulation, soil conservation and landscape aesthetics. Service buyers were electric and water utilities, and tour operators. Local farmers, households and communities were the services providers and the main beneficiaries of the scheme. It is estimated that the scheme generated a total payment of 87,067,200,000 Vietnamese Dong (US \$4.46 million), paid to 22 forest management boards, forest businesses and 9,879 households.¹⁰ The Ministry of Agricultural and Rural Development led the implementation of these pilot projects, with support from Winrock International and the German Development Agency, GIZ (formerly GTZ). Despite only two years of implementation experience, the two pilot projects were deemed so successful that a nation-wide decree on PFES was adopted at the end of 2010, namely *Decree 99/2010/ND-CP*.

The legal basis for implementing PES can be found in the *Law on Biodiversity* (2008), which provides that 'organizations and individuals using environmental services related to biodiversity shall pay charges to services providers'.¹¹ This provision is much broader in scope than *Decree 99/2010/ND-CP*, which focuses exclusively on forests ecosystems whether they are protected areas (special-use forests) or not (protection and production forests).¹² However, even if the new PES policy is limited to forests, these account for around 40 percent of Vietnamese territory and provide a wide range of services.

Article 4 of the Decree defines the relevant environmental services provided by forests. They encompass: soil protection and reduction of erosion and sedimentation of reservoirs, rivers and streams; regulation and maintenance of water sources for production and living activities; forest carbon sequestration and retention, reduction of greenhouse emissions through measures for preventing forest degradation and loss of forest area, forest sustainable development; protection of natural landscape

⁹ *Decision No. 380/QD-TTg* of 10 April 2008 on the *Pilot Policy for Payment for Forest Environmental Services*.

¹⁰ N. Thi Bich Thuy et al, *Payment for Environmental Services: A Case Study on Pilot Implementation in Lam Dong Province, Vietnam 2006-2010* (2011) Winrock International (available at <http://www.winrock.org/fnrm/files/PaymentForForestEnvironmentalServicesARBCPCaseStudy.pdf>).

¹¹ *Law on Biodiversity* (2008), Article 74.

¹² *Decree 99/2010/ND-CP*, Article 4.

and conservation of biodiversity for tourism services; and provision of spawning grounds, sources of feeds, and natural seeds, use of water from forest for aquaculture.

A payment for forest environmental services is defined as ‘a supply and payment relationship in which the users of forest environmental services pay the suppliers of forest environmental services’.¹³ Therefore, an ‘organisation or individuals benefiting from forest environmental services must pay for forest environmental services to forest owners of forest that create the supplied services’.¹⁴ The PES mechanism is based on contract.

The new national policy opts for a ‘user-led PES scheme’ contrasting with a ‘government-led PES scheme’ in place in countries such as Costa Rica.¹⁵ The Decree clearly specifies those who will pay, pursuant to a ‘beneficiary’s pays principle’. The Decree mentions four categories of users.¹⁶ Thus, hydropower production facilities have to pay for services related to soil erosion, reduction of erosion and sedimentation of reservoirs, streams and rivers. Clean water production and supply facilities have to pay for services such as the regulation of water sources. Industrial production facilities using water directly have to pay for services such as the regulation and maintenance of water sources for production. Finally, ‘organizations and individuals doing tourism services ... have to pay for services for protection of natural landscape and conservation of biodiversity of forest ecosystems serving tourism purposes’.¹⁷ Notably, the Decree does not mention the users benefiting from carbon sequestration or spawning grounds, but refers to subsequent regulation.¹⁸ PES related to forest carbon sequestration are likely to be combined with the implementation of REDD and REDD+ as Vietnam has been chosen as a REDD pilot country by the UN-REDD.

Such a restricted list can limit the scope of PES, as other users could be excluded from payments despite benefiting from the forest environmental services. For

¹³ Ibid, Article 3(3).

¹⁴ Ibid, Article 5(1).

¹⁵ S. Wertz-Kanounnikoff and H. Rankine H, *How Can Governments Promote Strategic Approaches to Payments for Environmental Services (PES). An Exploratory Analysis for the Case of Viet Nam* (2008) IDDRI, 31 (available at http://www.iddri.org/Publications/Collections/Analyses/An_0308_Rankine-Wertz_PES-Viet-Nam.pdf).

¹⁶ Decree 99/2010/ND-CP, Article 7.

¹⁷ Ibid, Article 7(4).

¹⁸ Ibid, Articles 4(3) and 7(5).

example, agriculture producers or even bio-prospecting industries could benefit from the maintenance of water flows or biodiversity conservation and be exempted from paying. The targeted users of the national policy are nonetheless increasingly significant users of environmental services. Additionally, while PFES can be a way to make current users pay for the FES they use, caution is needed to ensure that such schemes are not used as a way to legitimise future infrastructure projects, such as hydropower developments, without paying sufficient attention to the long-term environmental costs.

The beneficiaries of payment are 'forest owners of forests that supply forest environmental services'.¹⁹ 'Owner' relates mainly to those who are allocated or leased forests by the Government for long-term use. Forests are not owned by private entities in Vietnam, but since the 90's the forest policy has given more opportunities to individuals and communities to manage the forests by granting them rights of use. The Government can assign or lease forests to a range of 'forest owners' either on a long-term basis or on short-term contractual basis depending on the status of the forests. As a result, owners benefit from forest use rights in the form of rights to exploit the forests, to enjoy the benefits, and to lease their rights.²⁰ Conversely, individuals or households who are not allocated forests' use rights or not contracted by state organisation could be sidelined from the implementation of the PES scheme, as they will not fit into the supplier category.

A further aspect with respect to beneficiaries is the case of village communities and their capacity to enter into contracts. They are not 'forests owners' and have limited legal personality to enter into agreements according to the 2005 civil code even if they can be assigned forests.²¹ However, the new scheme on PES would appear to open up opportunities with respect to communities, as the scheme can also benefit village communities that are contracted for long-term forest protection by state organizations²² or who plant forest on forestry land allocated by the Government. According to the Decree, village communities can officially enter into contractual agreements with organisations or individuals, and be paid for forest environmental

¹⁹ Ibid, Article 8.

²⁰ *Law on Forests* (2004), Article 3.

²¹ V. Thu Hanh, P. Moore and L. Emerton, *Review of Laws and Policies Related to Payment for Ecosystem Services in Viet Nam* (2011) IUCN (available at http://cmsdata.iucn.org/downloads/080310_pes_vn_legal_review_only_legal_sections_final.pdf.)

²² *Decree 99/2010/ND-CP*, Article 8(2).

services, but conflict between the civil code and the decree is likely to favour the former.

The Decree stipulates that payment is monetary, either directly or indirectly. Direct payments can be made from users to suppliers under agreements specifying the amount and methods. Users make indirect payments to an intermediary organisation such as a specific fund (either the Vietnam Forest Protection and Development Fund or the Provincial Forest Protection and Development Funds). The Decree fosters direct payment rather than indirect payments. Direct payments might raise equity issues due to power imbalance between the users, for example a company, and the providers, such as a community that may be ill-equipped to conclude contracts. In an attempt to prevent this imbalance, the Decree specified that direct payments are carried out based on voluntary negotiated agreements²³ and indirect payments are possible if no agreement is reached. In the case of indirect payments, the provincial forest protection and development funds act as a representative, of 'the suppliers of FES to sign contract [sic] with users of FES specifying responsibilities of each party'.²⁴ The introduction of the fund can be viewed as a means to address unfair agreements between suppliers and users. However, the involvement of intermediaries needs to be carefully organised to ensure impartiality and that such arrangements are indeed equitable.²⁵

In the case of indirect payments, the national Vietnam forest protection and development fund allocates payments to provinces through provincial funds.²⁶ The latter allocates payments to suppliers according to their forest area multiplied by a coefficient 'K'. K is the payment coefficient used to define the amount of payment for a service. It is determined based on the forest owner, the type of forest, the origin of forest, the level difficulty or easiness in forest management.²⁷ The amount of the payment in Vietnamese Dong (VDN) is specified for hydropower plants and clean water production facilities, according to a fixed amount (respectively 20 VDN/kWH and 40 VDN/m³) multiplied by a time period. Regarding tourism, the amount is a percentage (one-two percent) of the revenue generated by tourist activities.

²³ Ibid, Article 6(1)(b).

²⁴ Ibid, Article 16.

²⁵ P. Thu Thuy, B. Campbell, S. Garnett, H. Aslin and H. Minh Ha, 'Importance and Impacts of Intermediary Boundary Organizations in Facilitating Payment for Environmental Services in Vietnam' (2010) 37 *Environmental Conservation*.

²⁶ Decree 99/2010/ND-CP, Article 14.

²⁷ Ibid, Article 16.

Suppliers of forests environmental services can decide upon the use of their payment. The Decree does not state the purposes of payments, whether they should be reinvested in environmental conservation or used for livelihood purposes.

From an institutional standpoint, the Ministry of Agriculture and Rural Development is the national body supervising the implementation of PES. On the provincial and local level, the provincial people's committees, along with the district people's committees, are in charge of implementing PES.

The Conditionality and Voluntary Criteria

Payment for environmental services is commonly defined as 'a voluntary transaction where a well-defined environmental service (or a land-use likely to secure that service) is being "bought" by a (minimum one) environmental service buyer from a (minimum one) environmental service provider, if and only if the environmental service provider secures environmental service provision (conditionality)'.²⁸ To what extent, therefore, does the new PES policy comply with the conditionality and voluntary criteria?

Under the PES Decree, rights and obligations of both suppliers and users are specified. It specifies that users shall pay 'in a timely and sufficient manner'. They also have the rights to be informed about the quality and quantity of FES and about payments. Suppliers have the right to request payment for services, be informed of the value of the services, and be involved in checking and monitoring activities. The conditionality for payments is weak. The Decree simply stipulates that suppliers who fail to 'ensure the areas of forest supplying forest environmental services are protected and developed' according to their obligations face prosecution. In addition, terms related to the possible suspension of a contract are not mentioned, although the users of FES have the right to request that the competent authorities 'consider adjustment of payment ... in case the suppliers ... do not ensure forest area or cause degradation of forest quality that the users have paid for'.²⁹

²⁸ S. Wunder, *Payments for Environmental Services: Some Nuts and Bolts* (2005) CIFOR Occasional Paper No 42, 3 (available at http://www.cifor.org/publications/pdf_files/OccPapers/OP-42.pdf).

²⁹ Decree 99/2010/ND-CP, Article 19(1)(d).

The implementation of PES follows a command-and-control approach. The people's committees shall ensure that FES providers comply with their obligations of protection or development of forests services. The formalisation of this approach nationwide confirms that "payment is good" as an auxiliary instrument facilitating policy implementation, but 'control is better'.³⁰ This scheme seems to create the means to make the users of environmental services pay, without creating incentives for local communities to protect sustainably the forest or to go beyond mere compliance with forest or environmental regulations.

For Vietnam, one may wonder about the voluntary aspect of this scheme. The Provincial People's Committee (the main policy-decision body at the Province level) lists the suppliers and the users of forest environmental services pursuant to article 22, even though it can be difficult to clearly identify which community or individual is actively working to provide or secure environmental services. Moreover, there is an inherent factor that suggests the non-voluntary characteristic. Households, individuals and village communities do not own but are assigned or leased forests, and their competences to manage them can be restrained. This raises the question of whether the Vietnamese scheme is truly a 'PES' as one characteristic of PES should be voluntary transactions. This shortcoming has been previously identified by experts,³¹ and the new national policy fails to overcome it.

Conclusion

Setting aside the question of its relevance in Vietnam, the new national policy on PFES will require subsequent specification to be implemented and effective. *Decision* No 2284/QD-TTg approving the scheme for implementing *Decree* No 99/2010/ND-CP has already been adopted in December 2010. This Decision mainly plans the activities and implementation schedule for the national policy. The legal framework will inevitably need to be complemented by circulars that provide more detailed guidance. Time will therefore tell to what extent PES and its associated legal and policy framework will support both livelihoods and biodiversity conservation in Vietnam.

³⁰ S. Wunder et al, *Payment is Good, Control is Better. Why Payment for Forest Environmental Services in Vietnam Have So Far Remain Incipient* (2005) CIFOR (available at http://www.cifor.org/publications/pdf_files/Books/BWunder0601.pdf).

³¹ Ibid.

Clearly Vietnam has taken the lead in Southeast Asia, both in adopting pilot projects on PES, and now a nationwide PES scheme for forest services. Irrespective of the future challenges, the Vietnam case provides an important insight into the challenges for implementing PES schemes and the contribution that legal instruments might play. In terms of further research, Vietnam's experience within the context of forest ecosystem services might be an important test case for the value of a PFES scheme to other ecosystems in Vietnam, and Southeast Asia. Additionally, while Vietnam's legal system is certainly unique, important insights might be gained from the evaluation of experiences in implementing *Decree 99/2010/ND-CP*. Such experiences will no doubt help inform law and policy developments within other sectors, ecosystems, and jurisdictions.