



FOREST TENURE POLICIES IN VIET NAM: STATUS, GAPS AND WAY FORWARD

Yurdi Yasmi, Ganga Ram Dahal, Hoang Lien Son and Vu Tan Phuong

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KEY MESSAGES

- The current regulatory framework in Viet Nam addresses the issue of forest land tenure and recognizes the rights of legitimate holders of forests and forest land, but major policy gaps in certain areas remain such as: defining the roles and accountability of state and non-state actors, creating a mechanism to resolve tenure disputes, equitable sharing of benefits and ensuring gender and inclusiveness.
- In order to address tenure policy gaps, the government will have to amend key legislations such as the Law on Forest Protection and Development (LFPD) 2004 and Land Law 2013. For example, Article 29 and 30 of the LFPD should be amended to ensure community rights and Article 113 of the Land Law to strengthen rights over natural forests. In addition, new policies and regulations should also be formulated to address the policy gaps identified by the assessment.
- Strong forest tenure policies and regulations are key factors to ensure benefits from forests and forest land, but it is equally important to have strong institutional capacity and allocate sufficient resources (human and financial) to implement policy effectively.

BACKGROUND AND RATIONALE

Improving the livelihoods and income of forest-dependent communities is important in the contexts of poverty reduction efforts, food security and sustainable development. In this regard, many countries in Asia have initiated forest tenure reform programmes. However, the outcomes of such effort are mixed and potential benefits for rural people are not fully realized. Restrictive and weak regulatory frameworks, tenure insecurity and insufficient institutional capacity are key factors that inhibit the impacts of forest tenure reform (Gilmour 2016; RRI 2014; Larson and Dahal 2012; Yasmi et al. 2010).



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FAO initiated a regional programme on **Strengthening Forest Tenure for Sustaining Livelihoods and Generating Income** in Cambodia, Nepal and Viet Nam in 2014. The main objective was to strengthen regulatory frameworks and the institutional capacity of these countries for forest tenure to ensure better income and livelihoods for forest-dependent communities. Key activities include, among others:

- National-level assessment of the status, progress and gaps on forest tenure policies and institutional capacity;
- Multi-stakeholder policy dialogues to formulate national action plans to address forest tenure and institutional capacity gaps; and
- Targeted capacity development through training of trainers and exchange learning with China to learn best practices.

This brief presents key results of the forest tenure policy assessment based on the review of 76 policies and regulations, two multi-stakeholder national policy dialogues

and consultation with key government officials, civil society groups and development organizations. Key policy documents reviewed included: Constitution 2013; 8 Laws (e.g. the Land Law 2013, the Law on Forest Protection and Development 2004); Resolution No. 30a/2008/NQ-CP; 20 Decrees (e.g. No. 163/1999/ND-CP on forest land allocation); 30 Circulars (No. 23/2014/TT-BTNMT on providing for certificate of land use right, house ownership and other properties associated with the land), 18 Decisions (e.g. No. 2139/QĐ-TTg on approving the national strategy for climate change) and Directive - 03/CT-TTg on speed up the restructuring of state enterprises.

A policy assessment framework was developed based on principles stipulated in the Voluntary Guidelines for Responsible Governance of Tenure (VGGT). The assessment follows four steps as shown in Figure 1 and assesses eight thematic areas and 26 subthemes (see Table 1). Policy dialogues held in 2015 and 2016 brought together over 100 key stakeholders to review the results.

REGULATORY FRAMEWORK MAPPING

*Policies, Laws,
Legislation,
Acts,
Guidelines,
and Strategies*

WHAT EXISTS?

*Key elements
regarding forest
tenure and its
security, scope,
duration,
clarity, and
ownership
distribution*

WHAT IS MISSING?

*Missing elements
to ensure strong and
secure with balanced
distribution of
ownership*

WHAT NEEDS TO CHANGE?

*Recommendations
to address
missing elements
and tenure policy
gaps*

Figure 1:
Assessment framework

FORESTS AND FORESTRY IN VIET NAM

The total forest area of Viet Nam is 13.39 million hectares (mha). The forest is divided into three categories: production forests (6.75 mha), protection forests (4.56 mha) and special-use forests (2.08 mha). The Viet Nam Academy of Forest Sciences and Viet Nam Forest under the Ministry of Agriculture and Rural Development (MARD) are the key government institutions responsible for forestry sector development. The Revised Law on Forest Protection and Development (2004) and Land Law (2013) are key regulatory frameworks for forest management, which also provide a basis for Forest Land Allocation (FLA). In terms of tenure rights

the state owns 66 percent of total forest whereas households own 24.5 percent and the remaining 9.5 percent is owned by communities, private enterprises and other organizations (MARD 2013). Viet Nam is committed to international conventions and standards such as the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the United Nations Convention to Combat Desertification, the Ramsar Convention on Wetlands of International Importance, the Convention for the Protection of World Cultural and Natural Heritage, ILO Convention No. 169, the International Tropical Timber Agreement, the VGGT and so forth.

THE STATUS OF FOREST TENURE POLICIES IN VIET NAM

Table 1 has eight themes and uses the Likert scale.¹ It describes what elements of forest tenure are or are not addressed in the policies.

Table 1: Forest land tenure policy assessment result

THEMES AND SUBTHEMES		SCORE
1	Legal recognition and respect of rights	3.0
1.1	Recognition of a broad spectrum of existing forest tenure rights and rights holders and their duties by the regulatory frameworks (for both statutory and customary tenure).	3.0
1.2	Recognition and respect of legitimate tenure rights holders and their rights in terms of providing a bundle of rights involving access, use, management, exclusion and alienation.	3.0
1.3	A system of formal recording of legitimate tenure rights holders and their rights is in place.	3.0
1.4	Tenure rights are well secured with regard to duration, scope, clarity, level of restriction on rights and protection of rights from arbitrary withdrawal or breaching.	3.0
2	Legal allocation and transfer of tenure rights and duties	2.3
2.1	There is a clear and explicit mechanism to allocate and transfer forest tenure rights and duties from the state to other actors.	3.0
2.2	Rights holders receive fair compensation and advance information to get consent if the rights are to be eliminated.	2.0
2.3	Assured security of the transferred rights from the state to non-state actors.	2.0
3	Access to justice and resolution of tenure disputes	1.6
3.1	Measures and mechanisms are in place for the resolution of tenure disputes.	2.0
3.2	Effective and accessible means and provisions to access judicial authorities or other approaches to resolve disputes over tenure rights.	1.0
3.3	Strategies to prevent tenure disputes from arising and escalating to violent conflict.	2.0
4	Gender and equity, pro-poor focus and inclusiveness	2.0
4.1	Gender sensitivity that ensures equal tenure rights for men and women, indigenous and other marginalized groups over access and use of forest land and resources.	2.0
4.2	There is a special mechanism that supports and encourages the roles of the poor and marginalized.	2.0
4.3	Provisions that ensure inclusiveness and the participation of all stakeholders in forestry.	2.0
4.4	Legitimate tenure holders receive equitable benefits from forests and forest land.	2.0
5	Role and accountability of state and non-state actors including business enterprises	1.6
5.1	Clearly defined roles and accountability of the state and non-state actors, including business enterprises, in respecting human rights and the rights of legitimate tenure holders.	1.0
5.2	The state ensures the protection of the rights of legitimate rights holders against any rights abuses by private business enterprises.	2.0
5.3	Fair and transparent processes to allocate investment for any forest-based enterprises.	2.0
6	Responses to climate change and emergencies	2.0
6.1	Strategies and mechanisms are in place to address climate change impacts and emergencies.	2.0
6.2	Legal instruments and mechanisms exist to address REDD+, carbon emissions and climate change.	2.0
6.3	Provisions where the state addresses tenure issues in the context of disaster prevention and preparedness.	2.0

THEMES AND SUBTHEMES		SCORE
7	Sustainable forest management (SFM) and administration of tenure	2.0
7.1	The principles of SFM and administration of tenure are well recognized by policies and laws.	2.0
7.2	Legal instruments that confirm the principles of SFM management by considering the extent of forest resources, biodiversity, forest health, functions and the legal policy framework as criteria to define SFM are in place.	2.0
7.3	There is a system that records tenure rights, valuation, taxation and planning.	2.0
8	Responses to the livelihoods of forest-dependent communities	2.6
8.1	Approaches and strategies are in place to support the livelihoods of forest-dependent communities and indigenous people.	3.0
8.2	Poor and marginalized forest-dependent communities have access and rights to the use and sale of forest products, sharing of benefits, value adding and reduced poverty from the forests and forest land they have been managing.	2.0
8.3	Both environmental and economic functions of the forests are equally emphasized.	3.0
0 = not addressed; 1 = poorly addressed; 2 = moderately addressed; 3 = mostly addressed; 4 = fully addressed.		

The results show that existing laws and regulations address forest tenure differently. However, none of them address forest tenure fully as none of the eight themes score 4. Legal recognition and respect of rights scored the highest (3). This is attributed to the Constitution of 2013's Clause 2 Article 54 which states that "organizations and individual are entitled to land allocation and lease. Land users have rights to transfer and exercise the right and follow obligation as prescribed by the law". Similarly, Articles 2 and 7, Articles 173 to 187 of the Land Law 2004 and Articles 59 to 78 of the LFPD refer to inclusiveness and expansion of land-user rights of organizations and individuals. Various policies and laws such as Clause 3 of Article 5 Decision No. 304/2005/QD-TTg; Inter-ministerial Circular No. 52/2008/TTLT-BNN-BTC; Resolution No. 30a/2008NQ-CP; Circular No. 08/2009/TT-BNN; and Decision No. 178/2001/QD-TTg support forest-dependent community livelihoods. Despite having good policies in place, local communities and individuals are not able to achieve significantly rewarding livelihoods and income improvement. This raises a major question about the effectiveness of policy implementation.

The assessment also identified a number of policy gaps and shortcomings in the current policies and regulations, some being related to implementation. Current policies are relatively weak in providing access to justice and resolution of tenure disputes which scores only 1.6 on the Likert scale. Clauses 3 and 4 of Article 203 of the Land Law 2013 do not refer to the role of lawyers and legal bodies in dispute settlement. The current process of dispute settlement as described under Article 84 of the LFPD 2004 is too simple and not enough to address dispute. Similarly, the current regulatory framework is weak with regard to defining the roles and accountability of state and non-state actors which also scores 1.6 on the Likert scale. Clause 4 of Article 8 of the LFPD 2004 explains the role of government administration of people committees, but Commune People Committee is also regarded as forest users to manage 2.3 million ha of forest, that inhibit the impacts of non-state actors in respecting and advancing the tenure rights of legitimate rights holders.

Legal allocation and transfer of rights, responses to climate change, gender and equity and SFM all scored 2. This means current laws and policies only moderately address these areas and contain a number of policy gaps.

For example, there are no clear and precise objectives for forest management and use while granting land-use rights certificates. Decree 118 of the LFPD also lacks implementation guidelines to ensure gender and equity while promoting forest-based enterprises. The current policy overlooks the element that regulates the implementation of the Strategic Environment and Social Assessment for forest protection, development and planning. Similarly, Article 5 of the LFPD does not include village communities as forest owners.

Provisions under Article 113 of the Land Law 2013 and Article 69 and 70 of the LFPD 2004 indicate that the household's right over the use of natural forest is more limited than the right over use of land. The benefit-sharing mechanism is ineffective and is based on old and irrelevant forest management standards. Besides, the rights and duties of village community is defined by its own provisions (Articles 29 and 30 of LFPD 2004) but not sufficient, so their roles are not clear in the system of Vietnamese forest owners.



Overall, the tenure policy assessment indicates that there are both strong and weak elements in the current regulatory framework. The weak areas need to be strengthened through amendment of current policies and legislation or promulgation of new policies.



CONCLUSION AND POLICY RECOMMENDATIONS

There is clearly a set of gaps in forest tenure policies. Legal and policy frameworks address forest tenure but there are major areas to be improved, such as defining the roles and accountability of the state and non-state actors, including business enterprises and the private sector. There is no enabling legal and policy environment for private sector investment in forestry. Existing disputes require an amicable settlement mechanism. Legitimate rights holders should have access to judicial authorities to protect their rights.

Improvement can be accomplished by revising existing forest and land policies, in particular, the LFPD 2004 and the Land Law 2013 by identifying policy gaps.

The formulation of new policies and regulations for specific areas is inevitable while addressing these gaps, e.g. on benefit-sharing mechanisms, providing rights to communities and indigenous people, resolving tenure disputes and so forth.

While policies and regulations are preconditions for rural communities to benefits, they need to be implemented effectively to ensure better impacts on income and livelihoods. In order to do so there is a need to develop policy capacity at all levels and secure sufficient resources. For this, Viet Nam needs to strengthen existing institutional capacity and manage necessary human and financial resources to advance forest tenure and support the livelihoods of forest-dependent communities.

The most important strategy to implement agreed action plans is to establish strong collaboration and cooperation among stakeholders to ensure collective implementation of action plans. Sharing resources and mutual complementation should ensure that the proposed action plans are implemented effectively on the ground. In addition, there should be a strong commitment from the key actors who are directly involved in strengthening forest land tenure in Viet Nam.



The assessment also provides some pragmatic strategic action plan and approaches to move forward in addressing current policy and capacity gaps. These action plans were endorsed by key stakeholders during national policy dialogues held in Hanoi in 2015 and 2016. Key recommended actions include:

- Forest Use Right Certificates for individual households should not be limited to FLA within production forest; there is a need to improve the legal basis for all stakeholders while managing protection and special-use natural forests.
- Each type of tenure regime should have a specific strategy to manage forests and share benefits. Unclear and inconsistent policies and regulations need to be revised in order to strengthen the legal rights of traditional communities and households.
- In the long term, establish a team of experts within the MARD to assist with monitoring and evaluation of tenure policies, supporting tenure advancement and developing the capacity of key actors; this will contribute to improving the livelihoods of forest-dependent communities.
- Revise and amend Chapter V of the LFPD 2004 to clarify the rights and obligations of legitimate holders of forests and forest land.
- A mechanism with supporting policies to manage and resolve existing conflicts is urgently needed.
- Devise new policy to replace Decision 178/2001/TTg to ensure equitable sharing of benefits and Decree 99 needs to be improved to establish a better inclusive mechanism on payments for ecosystem services.
- Scale up agroforestry nationwide with strong market linkages to demonstrate the benefits and income enhancement of local communities.

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For more information please contact:

Yurdi Yasmi
 Forest Policy Officer
 FAO Regional Office for Asia and the Pacific
 39 Phra Atit Road, Bangkok 10200, Thailand
 E-mail: Yurdi.Yasmi@fao.org



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 I6251En/1/10.16