



# Scaling up Responsible Land Governance

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## REFORM STATE-OWNED FOREST ENTERPRISE AND ETHNIC MINORITY LAND TENURE SECURITY IN VIETNAM

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## **Abstract**

During revolution and national unification, Vietnamese government nationalized agricultural and forest land throughout the country. While agricultural land was de-collectivized in the *Doi moi* reforms since mid-1980s, the majority of forest and forest land has continued to be managed by state enterprises. For members of Vietnam's 53 recognized ethnic minority groups, the formation of state-owned forest enterprises (SFEs) has meant the end of customary tenure arrangements, leading to exclusion from traditional lands used for agriculture, hunting, and collection of non-timber forest products. Although in recent decades, a consensus has built on the need to change the SFE system, however, in reality it is still far to achieve the desire results. Conflicts over forest land between SFEs and local people are still widely happened in Vietnam.

This paper describes efforts to reform SFEs and resolve land conflicts, based on in-depth case studies of communities in Lang Son, Quang Binh, and Lam Dong provinces. These cases demonstrate villagers' initiatives to obtain and use land use rights in their traditional forest lands. The paper summarizes key drivers of land conflict and concludes with recommendations for policy change in revision of the Forestry Law and improvements in the management of forest tenure rights.

**Key Words:** Customary law, Land and forest conflicts, Land tenure security, State-owned forest enterprise

## 1. INTRODUCTION

During the process of revolution and national unification, Vietnam's Communist government nationalized agricultural and forest land throughout the country. While agricultural land was de-collectivized in the *Doi moi* reforms beginning in the mid-1980s, the majority of forest and forest land has continued to be managed by state enterprises. For members of Vietnam's 53 recognized ethnic minority groups, the formation and persistence of state-owned forest enterprises (SFEs) has meant the end of customary tenure arrangements, leading to exclusion from traditional lands used for swidden agriculture, hunting, and collection of non-timber forest products. The system of exclusion embodied by SFEs has been a major contributing factor behind many local conflicts, including in the Central Highlands, Northern mountains, and elsewhere in the country – conflicts that are ongoing and continue to emerge today.

To improve effectiveness of the SFEs and reduce conflict between people and SFEs, Vietnamese authorities have been aware of the need for reform of SFEs for well over a decade. In 2003, the Politburo issued Resolution 28, replacing direct state management with four types of companies and management boards with mixed government and individual ownership, a superficial change that was widely critiqued as “old wine in new bottles” (*bình mới, rượu cũ*). The Law on Forest Protection and Development (2004) allowed for some forest land to be allocated to households and communities. As of 2015, 26% of forest land has been allocated to individual households and 2% to collective community management. However, some community members complain that the land they are allocated is of poor quality, inaccessible from their villages, and/or entirely lacking in existing tree cover, making it next to impossible to earn a sustainable livelihood from forest management alone. SFEs, in spite of their recognized inefficiency, have been able to keep much of the best forest land for themselves: nationwide, 164 SFEs continue to control 2,222,330 hectares.

Although a consensus has built on the need to change the SFE system, it remains unclear how much state land will be returned to local communities and households, and how much could be re-allocated by authorities to private investors. Proponents of privatization (or what is euphemistically called “equitization” in pseudo-socialist Vietnam) tout what would surely be significant economic efficiency gains, but serious questions exist about the transparency of the transactions involved and their effect on ethnic minority communities. As long as land is state-owned, villagers at least have the potential to advocate upwards within the Party-state system for their interests. Privatized forests risk exacerbating insecurity of tenure among ethnic communities, pointing to the potential for new and more severe forms of land disputes and conflicts.

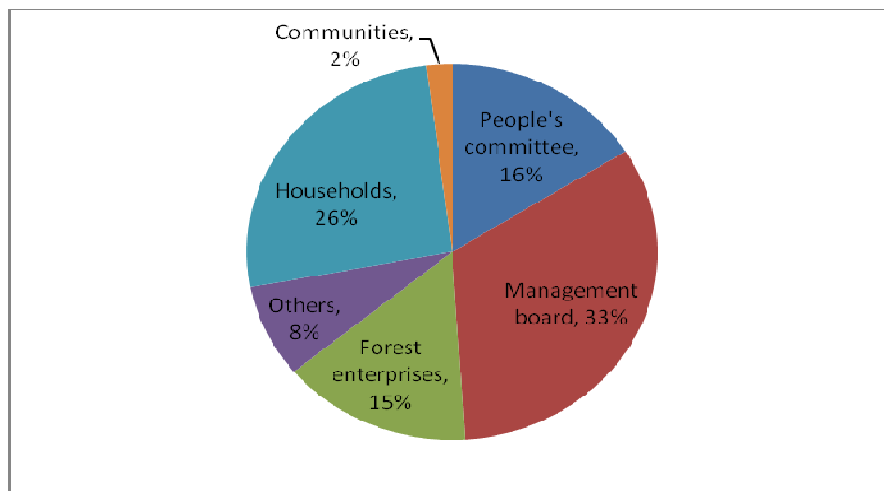
This paper will examine in-depth case studies of SFE reform and local land and forest conflicts in three provinces: Lang Son in the northeast, Quang Binh in the north-central region, and Lam Dong in the

Central Highlands. In all cases, the paper will analyze the current land conflict, then emphasize villagers' actions to obtain and use land use rights in their traditional forest lands. The paper ends with recommendations for policy change, especially in the process of continuing renovation of SFEs and revision of the Forestry Law, as well as policy implications for implementation of Forest Law Enforcement, Governance and Trade (FLEGT) and Reducing Emissions from Deforestation and Forest Degradation (REDD+) to advance and protect forest tenure rights in Vietnam's ongoing economic reform process.

## 2. FOREST LAND MANAGEMENT IN VIETNAM

According to the Vietnamese General Statistics Department (GSO), as of December 2014 the total forest land area nationwide is 15,373,063 ha, of which 12,134,259 ha (accounting for 78.9%) was allocated to different land user groups. The remaining area (3,238,804 ha, 21.1% of the total) has not been allocated and is currently being managed by Commune People's Committees (CPCs) and communities (temporarily allocated for management). Forest land is divided by law into three main categories: special-use forests (*rừng đặc dụng*) such as in national parks and nature reserves; protected forests (*rừng phòng hộ*) maintained for environmental purposes, such as watershed protection; and production forests (*rừng sản xuất*) that is used for production of timber and other forest products.<sup>1</sup> Forest area is allocated to 7 major user groups, as shown in Figure 1.

**Figure 1. Forested area classified by different forest owner groups**



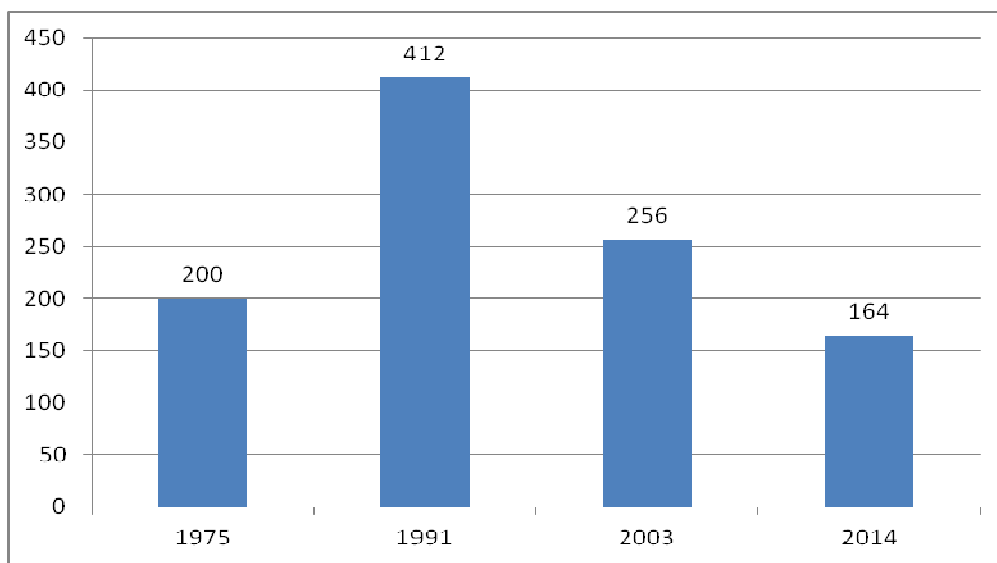
*Source: Government Report to National Assembly supervision, 2015*

The terminology of State Forest Enterprises (*lâm trường quốc doanh*) first appeared in Vietnam in 1959

<sup>1</sup> As this paper deals with state forest enterprises, all forest areas referred to in the text are classified as production forest except as otherwise noted.

(Nguyen Van Dang 2001). The State established SFEs to undertake forest management and protection tasks and to harvest timber for the purpose of post-war economic rehabilitation. Unlike other state-owned enterprises (SOEs), SFEs were allocated large areas of state-managed land for the purposes of timber logging and food production. By 1991, there were a total of 412 SFEs nationwide; after implementing the 2003 Politburo resolution on renovation of SFEs, the number has reduced to 164 (Figure 2). In almost all provinces, however, there is an overlap between SFEs and local governments regarding the management of forest land.

**Figure 2. Changing number of state-owned agriculture and forest enterprises over time**



*Source: Authors' synthesis from data in Government of Vietnam (2015)*

The over-exploitation of natural timber without proper attention to forest protection and enrichment has resulted in serious forest resource depletion. Government management through SFEs did not attract the participation of local people and or incentivize forest production (McElwee, 2012). In 1986, as many as 200 SFEs out of more than 400 SFEs did not have adequate forest resources for timber harvesting. A report reviewing SFEs' performance during this period showed that most SFEs were poorly managed, had no capital, and lacked business and production capacity. (Nguyen Van Dang, 2001).

To tackle this problem, the forestry sector shifted its focus from exploitation of natural resources to forest development and production (Sikor, 1998). Various reforestation programs started to be carried out, in particular Program 327 on greening bare land and hills, and other reforestation and forest protection programs with support from international organizations such as FAO, UNDP, and JICA. The Government identified one of the alleged drivers of forest degradation was shifting cultivation practiced by ethnic minorities. Forest protection tasks were, therefore, connected to the permanent farming and settlement

policy (*định canh định cư*). As of 1990, after 20 years of implementing the permanent farming and settlement policy, there were 1.9 million people in 1,185 communes who had been permanently resettled. During this period, many SFEs played a crucial role in stabilizing the lives of local inhabitants through the development of rural infrastructure and supports to livelihood enhancement. In 2000, as many as 280,000 households out of 25 million people were being mobilized to permanent farming and settlement practice (Nguyen Van Dang, 2001). Due to the SFEs' increasing land utilization demands for reforestation and increasing population, however, the pressure of the population over the land was, therefore, increasing. This required the SFEs to quickly transform in order to establish new forests and enrich forest resources, and balance between economic interests of the SFEs and interests of the local communities. Since 1991, SFEs have experienced four reviews and restructuring processes, including restructuring under the directions of Politburo Resolution 28-NQ/TW dated June 26, 2003, Decree 200/2004/ND-CP dated December 3, 2004, Politburo Resolution 30-NQ/TW dated March 12, 2014, Decree 118/2014/ND-CP dated December 12, 2014 and implementation of the he 5 Million Hectare Reforestation Programme (also known as 661 program according to the name of Prime-Minister decision 661/QĐ-TTg of 29 July 1998 for the program). The situation of forest land utilization by state forest companies after restructuring is shown in Table 1.

**Table 1: Land utilization types in SFEs, 2015**

No	Activity	Unit	Total area
<i>1</i>	<i>Total land area</i>	<i>ha</i>	<i>2,222,330</i>
1	Self production and management	ha	1,479,998
2	Allocation and contract	ha	627,550
3	Joint venture	ha	23,102
4	Lease and lend	ha	810
5	Conflict, encroachment	ha	39,950
6	Unidentified land use	ha	50,920

*Source: National Assembly report 958/BC-UBTVQH13 dated October 16, 2015*

Table 1 shows that the land area which SFEs manage and use for timber production is quite substantial. Many SFEs, however, perform their production and management functions through short-term or seasonal contracts (eg, reforestation, grass clearance) with individuals. The contracts expire when these tasks are accomplished. The land area under conflicts and encroachment is listed as 39,950 ha, but National Assembly delegates state that the figure is much higher in reality.

### **3. CUSTOMARY LAW OF ETHNIC MINORITY PEOPLES REGARDING FOREST LAND MANAGEMENT**

Vietnam has 54 officially recognized ethnic groups, of which the Kinh majority accounts for 87 percent of the population. With the exception of the Hoa (ethnic Chinese), Khmer and Chăm, the remaining 50 ethnic groups mostly reside in rural, mountainous areas and are economically and socially disadvantaged across a range of dimensions (World Bank, 2009). Traditionally, these ethnic minority communities have been almost self-sufficient in their daily livelihoods, land and forest use, ensuring both daily consumption and spiritual needs (Luong Thu Hang et al, 2015). For thousands of years, ethnic minority communities have created a special relationship with their natural environment through their social structure and systems of customary law.

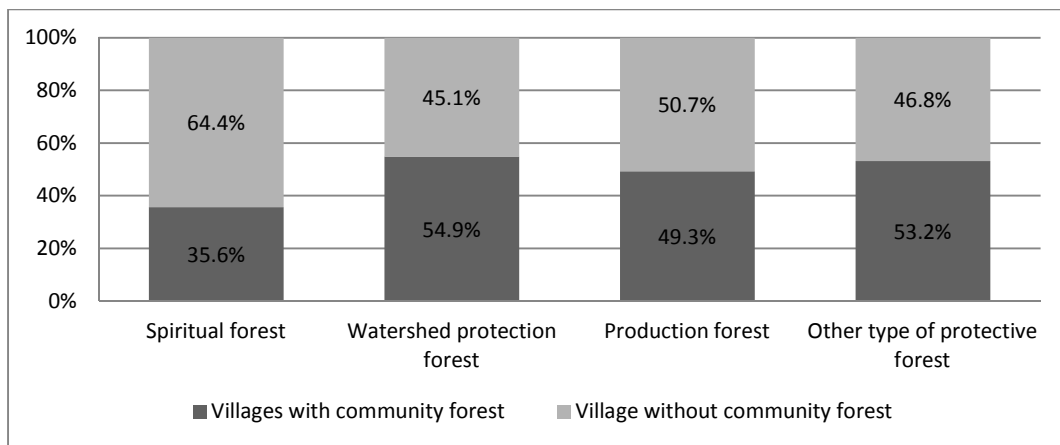
Customary law is an “established pattern of behavior” that can be objectively verified within a particular social setting (Wikipedia, n.d.). Customary law consists of rules and customs which have been recognized locally, are orally held as having legal effect, and shared and developed, or adapted and evolved, over time through the practices of specific collective such as a community, tribe, ethnic or religious group. Customary law is not is the crystallization of human behavior and labor in the process of mobilizing resource use and management over one or many generations in order to adapt and adjust to internal and external changes. By virtue of their dependence upon land and forest, ethnic minority groups have developed knowledge, skills and customs which have allowed them to survive and live in harmony with nature over centuries. Customary rules must be abided by members of the community in order to protect the common resources for future sustainability (Tuan, 2015).

Land and forest tenure is the most fundamental element that relates to the daily existence of ethnic minority communities. For generations, ethnic groups have been using resources derived from the land to serve their daily material and spiritual needs. Through these practices, customary law/tenure has been formed. Customary law defines how people allocate resources for certain groups, e.g. who has the authority to give permission to villagers to get the water, or to use tree barks, and so forth. In a context where customary law/land tenure is not recognized, e.g. community rights over forestland, there likely to be a higher threat of losing customary practices because community governance over resource use has been disregarded by official authorities (Luong Thu Hang et al, 2015).

Land and forest tenure has a communal nature and is acquired through membership of social groups which is the bonding force for a living customary law. One of the key features of living customary law is that land relations are created by, and mirror the bonds and relations between people within the community. At the heart of a customary land and tenure system are the rights that are exercised and interacting at all levels of social units ranging from individual, household, family, clan, village, and inter-

village. Customary land tenure identifies the rotation of access and use of common resources between social groups within the community, e.g. which group/individual can access non-timber forest products at a certain time during harvesting season; or when and how people should stop cutting the forest. Customary tenure is known to provide security of land/forest and water rights to individuals and households. This is the key to protecting individual minority rights and community rights as the whole (Tuan, 2015). Research done by Oxfam in 3 Vietnamese provinces (Dien Bien, Thua Thien-Hue, and Dak Lak) in early 2015 shows that 84.39% of research villages have their own regulations to protect forests, and 59.9% have community forests which are protected by customary law for different purposes (Figure 3).

**Figure 3: Percentage of villages with community forests**



Source: Luong Thu Hang et al (2015)

#### 4. CRITIQUES OF IMPLEMENTATION OF STATE POLICY ON SFEs

Vietnam has transitioned to a market economy since early 1990s, and as a consequence, the model of the government to subsidize state-owned agriculture and forest enterprises is no longer relevant and needs to be reformed. Efforts by the Communist Party and Government to reform SFEs have been underway for over a decade, beginning with Politburo Resolution 28/NQ-TW in 2003 and Government Decree 200/2004/ND-CP. However, research has demonstrated that the implementation of Resolution 28 did not have any significant results, except for changing the name of state-owned forest enterprises to “forest companies” and “protective forest management boards” (CODE and Forest Trends, 2013). The most important issues to help facilitate the process of reforming state forest enterprises are to conduct assessments of current land use of the enterprises and to take back some land to distribute for local people. These tasks have hardly begun. The main critiques of the poor implementation of the Politburo resolution are:



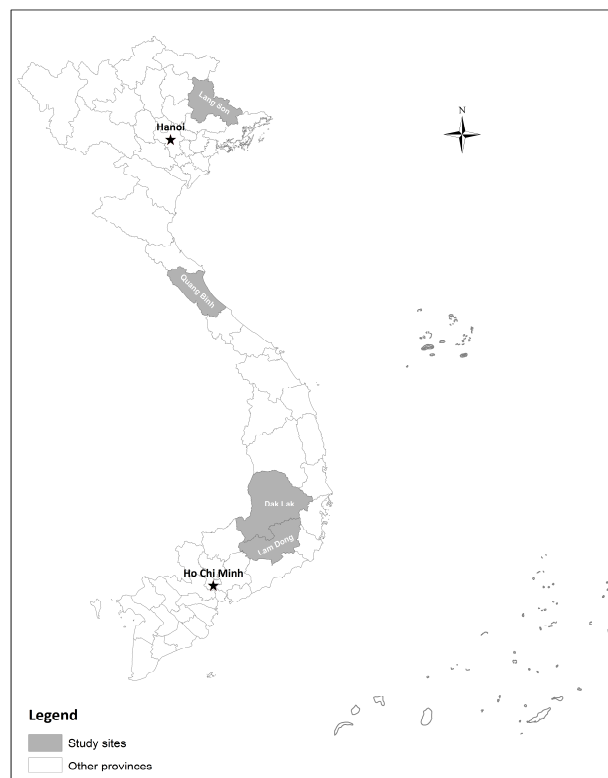
- *State forest enterprises manage land inefficiently:* According to valuation by MARD in 2010, SFEs manage more than 4 million hectares of land with a total value of about US \$47 billion. However, the total income of SFEs is \$2.3 billion, or only 4.7% of the total value of the land. On average, one hectare of SFE land only produces about 11 million Vietnamese dong (equivalent to about \$500), compared to 30 million dong (~\$1,350) per hectare of land managed by a small-scale farmer. Compared with private agriculture and forest enterprises working in the same area, percentage between income per investment of SFEs is only about 61% while those with private forestry company is 150% (CODE & Forest Trends, 2013).
- *Land encroachment and conflict between SFEs and local people are regular occurrences:* According to the report of the National Assembly to supervise the land management of SFEs in 2015, the total area of land under conflict between SFEs and local people is about 39,950 hectares. However, the report noted that this number is as reported by the government, and in reality conflict areas are much higher than that. There are several reasons to create conflict, including the overlapping of mapping during land and forest allocation for SFEs and local people, as well as increasing demands of people for land and forest, while the SFEs keep much land but do not use it efficiently. Details of land and social conflicts are illustrated in case studies in the next section of the paper.
- *SFEs create few jobs and make little contribution to poverty reduction:* In 2010, SFEs managed more than 6 million hectares of land but only provided 267,000 jobs, comprising 0.5% of the total national work force. Also, the income of SFE employees is much lower than many other jobs. The average monthly income of SFE workers is about 2 million dong (less than \$100), compared to more than 5 million dong (~\$250) for workers in private agriculture companies and other sectors (CODE & Forest Trends, 2013).
- *Local people cannot access forest land for their livelihood and religious needs:* Since the land and forest are allocated to SFEs, local people are not allowed to access the forest anymore. In many cases (which will be further described in the case studies), people are not even allowed to collect firewood, bamboo, or mushrooms from forests just a few meters distant from their homes. Access restrictions also affect the traditional worship practices of many ethnic groups.

## **5. CASE STUDIES OF LAND AND FOREST CONFLICTS BETWEEN SFEs AND LOCAL PEOPLE**

According to statistics by the Ministry of Natural Resources and Environment (MONRE), land complaints in general, including complaints related to forest land conflicts, are on the increasing trend (World Bank, 2011). In 2003, a total of 5,211 complaint cases associated with land issues were referred to

MONRE. This figure increased to 10,650 cases in 2006 and even more in the following years (ibid.). Conflicts between SFEs and local residents are also prolonging in duration. In many provinces, fierce land conflicts between SFEs and local residents are ongoing. Land and forest conflicts do not only occur between local inhabitants and SFEs, but also on land managed by local commune and district governments and by forest management boards. For instance, in Thanh Son district (Phu Tho province), a number of forest land plots are located in land areas under conflicts between the Xuan Dai SFE and commune governments in the district (To Xuan Phuc, 2007). The below case studies focus on land conflicts in three sites where field surveys were conducted by the authors and colleagues at CODE and Forest Trends in 2013 (Figure 4).

**Figure 4. Sites of case studies of local forest land conflicts**



*Source: CODE & Forest Trends, 2013.*

### **5.1. CASE 1: LAND CONFLICT IN LANG SON PROVINCE, NORTHEASN VIETNAM**

Dong Bac Forestry Single Member Liability Limited Company (in short Dong Bac Company), Huu Lung district, Lang Son province was established from a former collective enterprises. The Company's key tasks include timber production and trade of material plantations for paper pulp. The Company was allocated for management of a total natural area of 21,825.8 ha, which are located within three provinces,

namely Bac Giang (3,235.2 ha), Lang Son (14,124.9 ha) and Thai Nguyen (4,465.7 ha).

Huu Lung district previously contained rich natural forests with numerous precious timber species. During the war of resistance against the French (1946-54), Huu Lung was a contiguous area between the enemy-occupied territory and revolutionary bases; it was, therefore, depopulated (most local residents evacuated and the area was called an “empty zone”).

Tan Thanh and Thien Ky are two communes within zone 3 of Huu Lung district. More than 80% of the population is made up of the Nung and Cao Lan ethnic groups. Local households face high poverty rates (45% in Thien Ky commune and 21% in Tan Thanh). Both communes have large agricultural land areas, making up more than 75% of the communes’ area; however, this productive land is located inside the area allocated to the Dong Bac Company. As a consequence, residents have very little land area for agriculture: 0.7 ha/household in Thien Ky and 0.3 ha/household in Tan Thanh. This land is mostly used for cash crop production.

Land conflicts between the Company and local households have occurred in almost all villages where the Company was allocated forest land for management and utilization. The Company’s statistical data shows that the total land area encroached by households is 17,095 ha, accounting for 78.3% of the total land area allocated to the Company. Taking Cot Coi village of Tan Thanh commune as a single example, the Company is managing 400 ha of forest land in this village, of which 272 ha are encroached and about 70 ha are under conflict. Due to land conflicts, the Company is unable to implement its sustainable forest management plan (FSC), and as a result has lost opportunities to increase the value of its plantation timber.

In Huu Lung, encroachment by local villagers into the Company’s land for agricultural cultivation has occurred since the 1980s, when local households cleared land for agricultural cultivation. Land conflicts have escalated since 2005, when the Company expanded its plantation forests. Local households were aware of the potential economic benefits which plantation forests could bring about. Conflicts arose on the SFE’s logged-over plantations, because local households used various tactics to encroach on the land for cultivation and prevent the Company from re-establishing plantations.

The Company is currently managing 3,700 ha of plantation forest, of which about 2,700 ha is contracted with local households. Before 2009, the Company contracted with local households or “joint venture” as it was called by the local villagers, with different benefit sharing options. The first option was *state-owned plantation forest contracts*, which are directly managed and invested by the Company. Contracted households are paid for their labor efforts contributed to the work they are employed to do. The Company contributes the entire investment in seedlings, fertilizer, and pay for tending costs to contracted

households. When the plantations are harvested (with a cycle of six years), contracted households are obliged to repay the Company 35-70 m<sup>3</sup> of timber per hectare depending on the soil condition of each specific location. The repayment level which contracted households are required to contribute to the Company is reduced to 25-50 m<sup>3</sup> in the case of logged-over plantations which are regenerated from saplings.

The second option, *household contracts*, was applied to new plantations. In this model, the Company provides direct investment in the design, seedlings, and fertilizer. Contracted households make contributions to the “joint venture” with their labor and are obliged to repay to the Company 20-40 m<sup>3</sup> of timber per hectare depending on soil condition. For plantations regenerated from saplings, contracted households must repay 15-30 m<sup>3</sup> per hectare.

## **5.2. CASE STUDY 2: LAND AND FOREST CONFLICT IN QUANG BINH PROVINCE, CENTRAL VIETNAM**

The Long Dai Company in Truong Son commune, Quang Binh, was established from the former Long Dai Forestry Industry Union, which was administered by the Ministry of Forestry. In 1989, the Company was transferred to the Quang Binh Provincial People’s Committee for management. In 2010, the Company’s official name was changed to “Long Dai Forestry Industry Single Member Liability Limited Company”. The Company’s key functions include forest protection and management, wood production, forest product processing and services. After having restructured in accordance with Decree 200 (2004), the Company was allocated 100,035 ha of forest land for management, of which 71,000 ha was natural forest, about 17,000 ha of plantation forest and 11,500 ha of non-forested land. The Company is proceeding to apply for sustainable forest management certification for 35,000 ha of natural forest that the Company is managing with the expectation to increase its revenues from their certified natural timbers.

Truong Son is a commune in Quang Ninh district, Quang Binh province. The majority of the commune’s approximately 70,000 ha of forest land (96.4%) is managed by the Long Dai Company and an associated Protected Forest Management Board . The Van Kieu ethnic group accounts for 60% of the commune’s population. After 1972, a number of Van Kieu communities migrated from Quang Tri province, further south, and established villages along the Long Dai River. During this period, the livelihood of local households mostly depended on shifting cultivation, forest products and partially from agricultural production (vegetables, peanuts, and beans) in narrow valleys along rivers and streams. When the Government mobilized ethnic minority groups to cease shifting cultivation and follow permanent cultivation and settlement, the Van Kieu responded positively to this appeal. The local government, however, could not allocate arable land to local people to replace their abandoned upland rice. Arable land area along streams was too small to ensure the subsistence of local households, particularly when the

population continued increasing rapidly. As a result, local households in the commune, including 100 Van Kieu households in Khe Cat village, are now facing a serious shortage of production land. On average, each household (4-5 persons) has 0.4 ha of arable land along streams, which is mainly used for cash crops. Households are also allocated forest land with a limited area of 0.8 ha/household on average. In Khe Cat village, 100% households lack production land. The commune's poverty rate is approximately 52%; for Van Kieu households in Khe Cat, the rate is 80%. The Government has to provide food relief on an annual basis to fight hunger.

Land conflicts between the Long Dai Company and local residents occur in all 15 villages of Van Kieu people in Truong Son commune. According to the Company's report, the total land area under conflict is only 42 ha and another 20 ha is under encroachment. However, according to village leaders, the actual figure is much higher. In Khe Cat village alone, 56 ha of forest land are under conflict between the Company and local households. In the Truong Son commune center, an additional 164 ha are disputed between the Company and the Commune People's Committee. These conflicts began when local households prevented the Company from reforestation in areas of the Company's logged-over plantations that are adjacent to their houses and are mainly used for cassava production.

In implementing Decree 200, the Company signed plantation contracts with local households on 4,481 ha out of the Company's total area of 17,000 ha of plantation forest land. Similar to the case of Dong Bac Company, forest land was also allocated to users external to the community, who are normally those having a close relationship with the Company. Many households in Truong Son commune, by contrast, received no contracts. This generated discontent not only among local Van Kieu villagers, but also from the local governments of Truong Son commune and Quang Ninh district. Conflicts normally arise according to the following pattern:

- Local households immediately plant cassava in the Company's most recently logged-over plantations
- All village households (such as the case of Khe Cat village) prevent the Company from reforestation
- The whole community blockades and impedes the Company from harvesting the plantation forests that the Company contracted with local households under Program 661.
- The local households clear forests to produce cassava and plant eucalyptus in the area near the residential areas on the Company's land.
- Local households and the commune government have repeatedly submitted petitions to the Company requesting allocation of land to local people to stabilize their livelihoods. These

complaints have not been resolved yet. Local residents still lack land for subsistence, undermining their confidence in the Company and the local government. The potential risks of land conflicts and social disorder are likely to spread. In Truong Son commune, conflicts are collective, with the involvement of the entire community.

### **5.3. LAND AND FOREST CONFLICTS IN LAMDONG PROVINCE, CENTRAL HIGHLANDS OF VIETNAM**

The Loc Bac Forestry Company was established in 2008 from the former Loc Bac SFE. The SFE was originally allocated a total of 32,849 ha of forest land in 2 communes of Loc Bao and Loc Bac, Bao Lam district, Lam Dong province. In 2008, the reformed company was placed under the management of the Lam Dong Provincial People's Committee (PPC) and was allocated 28,840 ha, of which 3,000 ha is protected forest and the remaining area production forest. Implementing Decree 200, the Company reviewed its land use status and planned to return 5,000 ha to the local government for management, but this has not yet taken place. Instead, during the 2006-2011 period, implementing the request of the PPC, the Company reviewed its land use status and converted approximately 5,000 ha of natural forest land, which was classified as poor quality forest, to planting industrial and fruit trees (rubber, coffee, jackfruit, etc). These land areas were allocated by the PPC to 19 companies, which are mostly privately owned.

Forest land accounts for 90% of the total area of Bao Loc commune. However, this land is almost completely controlled by Loc Bac Company. In 2011, the commune's total population was 3,370 people (826 households), of which the Ma ethnic group accounted for 61%. The remaining population included other ethnic groups such as Kinh, K'Mong, Dao, Tay, and Nung. Most households in Bao Loc have shifted their livelihood from subsistence production to plant cash crops such as tea, coffee, and cashews. However, the poverty rate of the local ethnic group of Chau Ma is still very high, approximately 41%.

Village 3 of Loc Bao commune has 4 hamlets (B'xa A, B'xa B, Bru, Xnia). Before 1978, inhabitants of these four hamlets resided along the Dong Nai river. In 1978, the State implemented the permanent settlement program and moved hamlets to the existing location. The entire previous settlement and production area was transferred to the SFE for management (including cultivation fields, spiritual forests, and cultural and traditional forests). When settling in the new location, the livelihood of the Ma ethnic group was still largely dependent on agricultural cultivation practice on the SFE's land. In 1994, the State mobilized local residents to shift to plant cash crops (coffee, cashew, tea) on agricultural land near residential areas and terminate the practice of forest clearance for cultivation. When first moving to the new settlement location, the villagers were not too numerous, and their livelihoods did not face many difficulties. Since 2000, with the improvement of the road system after the construction of the Dong Nai 4 and 5 hydropower plants, Hmong, Tay, Nung, and Kinh ethnic groups began to migrate into the area. The

increased population contributed to land degradation and ineffective production, as soil conditions in the new settlement area are much less fertile than in the previous residential areas. The pressure of a production land shortage is increasing, not least because the entire former agricultural land area is located within the 5,000 ha which the Company returned to the PPC for re-allocation to private companies.

The original residential area of the Chau Ma ethnic community in Bao Lam district was a revolutionary base during the American War. The community trusted and supported the Revolution. They, therefore, have a high sense of compliance with the law; as a result, they have hardly ever encroached on State-managed land. Yet in complying with the permanent cultivation and settlement movement introduced by the State, the local population is facing a serious shortage of production land. 191 households in Loc Bao commune, nearly one-fourth of the commune's total households, lack arable land. Members of these households are workers for a rubber company that is active in the commune.

Over the last few years, due to the problem of production land shortage, many households returned to cultivate on their former agricultural land, even though these lands were allocated to the Loc Bao Company or had been transferred to rubber plantation companies, including Bao Lam Rubber Company which is under management of the Dong Nai Rubber Corporation. As a consequence, land conflicts are rampant, especially after the PPC decided to re-allocate the 5,000 ha of natural forest land to companies instead of to local residents or commune governments. By 2012, almost all the rubber companies which were allocated land by the PPC had their land encroached by the local households, including Bao Lam Rubber Company, which has the largest conflicted land of about 120 ha. Many households planted coffee and impeded the rubber plantation companies from entering their former land. Land conflicts occur frequently, sometimes resulting in fighting. In one typical case, local residents of Loc Bao commune attacked and ruined the Bao Lam Rubber Company's office in 2009. In village 3 of Loc Bao commune, villagers have submitted petitions to the local government three times (in 2000, 2008 and 2012), appealing to allocate productive land to stabilize their lives. But instead of allocating productive land to the local population, the PPC allocated forest land to rubber companies.

## **6. SUMMARY OF THE MAJOR CHARACTERISTICS OF LAND AND FOREST CONFLICTS**

The National Assembly's 2012 report on the implementation of policies and legislation on residential and productive land for ethnic minorities showed that the problem of production and residential land faced by ethnic minorities had reached a critical point: more than 347,000 ethnic minority households lacked productive land and access to the forest (National Assembly Standing Committee, 2012).

To tackle the problem of production land shortage of ethnic households, the Government issued Decision 134/2004/QĐ-TTg dated July 20, 2004 on some supportive policies which provide agricultural and

residential land, housing and clean water to poor ethnic minority households. The Decision stipulates that the minimum land area that should be allocated to one household is 0.15 ha of double-crop rice paddy land<sup>2</sup>, 0.25 ha of single-crop rice paddy land, or 0.5 ha of cash crop land. This minimum area is too small to ensure that a household can escape poverty. According to a survey conducted by the Consultancy on Development Institute (CODE) in 2012 in the Central Highlands, this minimum area could hardly ensure subsistence even for Kinh households who have cultivation experience and high level of intensive investment. In this survey, each Kinh household in the upland area, in case of having no rice land, needs at least 1 ha of cash crop land to escape poverty. Ethnic minorities normally have less intensive investment capacity than that of the Kinh, they, therefore, need an area which is at least one and half or two times higher than that of the Kinh to escape poverty, that is an area of 1.5-2 ha of cash crop land area per household.

To prepare land availability for implementing Decision 134, the Government issued Decision 146/2005/QĐ-TTg dated June 15, 2006 to reclaim production land from state farms and SFEs to re-allocate to poor ethnic minority households. However, this decision did not lead to significant re-allocation of land to the local population. There are two reasons causing the delay. Firstly, some land plots are of poor quality, far from residential areas and not suitable for cultivation. In case that SFEs seek to allocate poor quality land, local residents would not necessarily be willing to receive it. Secondly, local governments do not have a budget to conduct land allocation. Third, and most significantly, there is an absolute shortage of available land to allocate. In practice, even if the first two conditions are met, the land availability cannot sufficiently meet the demand of ethnic minorities for productive agricultural and forest land. This explains why more than 347,000 ethnic minority households are lacking production land.

The above case studies show that land shortage is the major driver causing land conflicts between local population and forest companies. Land shortage, however, is only one of the drivers leading to land conflicts in these sites. Other important drivers include unfairness in land utilization of SFEs and local governments, and the development of commercial agricultural products. We examine each of these drivers in turn.

***Lack of productive land:*** This driver is identified in all three studied sites. In these sites, almost all local households have limited wet rice and cash crop land. Newly-formed households, if they are not distributed land by their parents, do not have land for cultivation. In locations with active SFEs, the local population faces the most serious shortage of production land, because when SFEs were established, the State sequestered the entire productive land of the local population and allocated it to SFEs for management, including the agricultural cultivation land of local households. On the other hand,

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<sup>2</sup> That is, land that has sufficient irrigation to allow for planting of two rice crops per year.



population growth (both natural and through migration) intensifies the pressure on land and negatively impacts on local land availability. In some localities, land which was previously managed by the SFEs was returned to local governments to re-allocate to local population. Local governments, however, do not always follow through with land allocation. In certain locations, commune People's Committees still have available land that they have delayed in allocating. In other locations, SFEs were issued land use right certificates for their management area. Land use right certificates are recognized as the legal basis to determine legal rights of SFEs over their land. Facing a land shortage, the local population has no choice other than cultivating on the land areas which are allocated by the State to the SFEs. This triggers land conflicts.

***Unfairness in land utilization:*** Many local people feel that they suffer the loss compared to the SFEs and external users in land accessibility and utilization, and this triggers land conflicts in some locations. The unfairness is reflected in certain aspects:

- The lack of productive agricultural and forest land results in a high poverty rate in the community.
- SFEs manages a large area of land but allocates it to external users who are wealthy and powerful people, not community members
- Local governments reclaim SFEs' land, but allocate it to private companies instead of to the local population, presumably due to formal or informal incentives, including corrupt practices in some cases
- Private companies clear forests for rubber plantations (or other uses) on forest land which has been maintained and protected by the local population for decades.

The National Assembly's report on SFE reform stresses that: *"Voters reflected that the land is poorly and improperly managed and ineffectively utilized by state farms and SFEs; conflicts occur rampantly in a number of localities and are slowly resolved and inadequately attended"* (National Assembly Standing Committee, 2012).<sup>3</sup>

Improper implementation of land policy in some localities has prompted discontent among the local population and leads to land conflicts. In the section of voters' recommendations on land issues, the National Assembly report mentions *"in some cases, although certain land areas were not planned by the Prime Minister as rubber plantation zones, three provinces... have decided to convert 5,068.86 ha of forest land to rubber plantations"* (ibid.). This shows that when local governments do not properly implement land use regulations and instead favor enterprises over the needs of the local population, this

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<sup>3</sup> Translations by the authors.

can trigger local land conflicts.

The unfairness in land utilization in some localities is also emphasized in the supervision report, which highlights “*Agricultural and forestry companies... are subject to lease land... but almost no such companies...have signed land lease contracts, or even if they sign land lease contracts, they have not fulfilled their financial obligations to the land, whereas when allocating production land to households through contracts, the local population must pay back both product values and land rentals to state farms and SFEs. This represents unfairness and partiality which could easily lead to wastefulness and corruption*” (ibid.,). This issue was also found in the case studies, especially in Lang Son. The local population and local government in Huu Lung district considered that the product sharing contract option that the Company signed with the local households was, in its nature, actually the practice of leasing land for land rental, and this option appeared unfair to the local population. This is also a driver which triggers local land conflicts.

***The roles of commercial agricultural commodity markets:*** Market development of agricultural commodities in many upland areas directly affects and sometimes increases the complexity of land disputes in some localities. Market development and expansion is mainly due to the development of the upland road system, which has been heavily promoted by the Vietnamese Government and donor agencies such as the World Bank. This facilitates the trade of agri-forestry products in upland areas in a far more convenient way than before the road system was constructed. Profits earned from cultivation on land increase, and this drives local land prices to increase as well. Previously, cultivation on agricultural and forest land provided low efficiency. Now, through planting crops of higher market value, land not only helps maintain livelihoods but also allows for accumulation. Increasing land values motivates relevant stakeholders seeking ways to access and control land. This makes land conflicts more complex.

***Customary and legal rights over the land:*** In a number of locations, including the case study sites, land conflicts are characterized by historical elements. When establishing the SFE system, the State allocated the entire forest land area nationwide to SFEs for management. In many localities, the land area allocated to SFEs covers cultivation land of the local population. Although customary cultivation rights have not legally recognized by law, these rights were recognized by households in the community and by neighboring communities. The claim of customary cultivation rights in the context that legal rights over land of SFEs are recognized by the State leads farmers and forest users to confront SFEs in land utilization.

## 7. CONCLUSIONS, POLICY IMPLICATIONS AND RECOMMENDATIONS

The three case studies presented in this paper suggest that:

- **The spatial extent of conflicts over forest land is larger than that indicated by Vietnamese government statistics**, i.e. conflicts cover a significant portion of the 2 million ha under formal SFEs control. One SFE alone (Dong Bac company in Lang Son province) reports conflicts covering over 17,000 ha.
- **Competition for land lies at the core of these conflicts, more so than access to timber**, although this may reflect the depletion of timber resources in many areas. The lack of access to productive land fuels villagers' insecurity over basic subsistence and deeper frustrations with the SFEs and, more broadly, the state.
- **Specifications of SFEs reforestation contracts coupled with lack of company support causes local resentment**. This usually includes resentment about benefit-sharing arrangements for forest product harvesting, land allocations or contracts given to outsiders, dissatisfaction with the support received from the company and restrictions imposed on agricultural uses of the land.
- **A sense of injustice is the trigger for most land conflicts**. Villagers are more likely to oppose SFEs if they feel their customary rights to land or livelihood are being violated and/or they perceive land is unfairly allocated to outsiders (e.g. private companies).
- **Authorities lack effective mechanisms to address land conflict at the local level**. Even where SFEs (or their renamed successor companies) agree to transfer land to villagers, transfers are often stalled because a) local authorities lack the human and financial resources for implementation, b) land is given to private companies, or c) land is too far from villagers or is not productive. The issuance of land use right certificates (LURCs) has been ineffective in resolving conflicts, as LURCs are often issued without due diligence and overlook established land uses by villagers as well as their customary rights to forest land. This suggests that LURC issuance, while important for agricultural land, is an insufficient mechanism to promote forest land rights. The Vietnamese Government, together with the World Bank and other donors, should rethink their approach to land certification to take better consideration of customary rights and the practical obstacles to forest land reform.

Currently, the Vietnamese state is in the process of implementing Politburo resolution 30-NQ/TW and Government Decree 118/2014/ND-CP to continue renovating SFEs, as well as National Assembly resolution 112/2015/NQ-QH13 on strengthening land management by SFEs. Given the situation described in the above case studies and lessons from implementation of previous SPE reform efforts, we recommend that the Vietnamese government:

1. Develop a comprehensive framework and criteria to evaluate the overall effectiveness (economic, social and environment) of SFEs in order to develop an action plan for further forest land reform.
2. Develop criteria for assessment of current land use of SFEs.
3. Identify solutions and mechanisms to solve land and forest conflicts between SFEs and local people. The implementation of action plan for renovating SFEs will only be completed when land conflicts between SFEs and local people are fully identified and solved.
4. Local authorities should pay attention to the process of returning land from SFEs for local people to make sure that land and forests are sufficiently used for local livelihoods and spiritual purposes after their return.
5. The coming revision of the 2004 Forest Protection Law into a Law on Forestry, scheduled for 2016-17, should ensure that communities have full rights to access to the forest after they are issued land and forest use certificates.

The analysis in this paper also has implications for implementation of REDD+ and FLEGT in Vietnam. Reducing Emissions from Deforestation and Forest Degradation (REDD+) is an effort to create a financial value for carbon stored in forests, offering incentives for developing countries to reduce emissions from forestlands and invest in low-carbon paths to sustainable development. REDD+ includes the role of conservation, sustainable management of forests and enhancement of forest carbon stock. The program started in 2008 and since 2009, Viet Nam has taken steps to align its forestry sector with REDD+. After implementing preparation and readiness phase, in July 2013, Vietnam became the first country among of 47 partnering with UN-REDD countries to sign MOU with UN for implementing phase II to operate REDD+ in Viet Nam ([Vietnam-redd.org](http://Vietnam-redd.org)).

Forest Law Enforcement, Governance and Trade (FLEGT) aims to reduce illegal logging by strengthening sustainable and legal forest management, improving governance and promoting trade in legally produced timber. The EU's FLEGT action plan was established in 2003. Vietnam started to negotiate voluntary partnership agreement (VPA) with EU's FLEGT in November 2010 and process is still going on up to now ([euflegt.efi.int](http://euflegt.efi.int)).

Forest conflicts influence the potential of implement FLEGT and REDD+ to achieve their primary objectives, i.e., ensure the legality of timber harvests, processing, domestic sales of wood products, and their export as well as maintain and increase carbon stocks in forests. The current conflict dynamics between villages and SFEs could undermine these primary objectives and even potentially aggravate the conflicts if conflicts resolution processes are not designed and implemented properly. The following challenges may occur:

- **Inability to demonstrate the legality of wood products from contested lands for domestic consumption or EU export**, as would be required under the FLEGT VPA. At the very least, the conflicts may deter retailers who want to avoid controversy associated with wood products. Villagers, for example, cannot produce “legal wood” when they are not recognized as legal landholders on forestland allocated to the Company. Companies, in turn, may be the legal landholders, yet cannot grow trees due to encroachment by villagers. Land conflicts make the legality of the timber controversial. Local communities contest the LURC granted to FCs due to lack of prior consultation or consideration of pre-existing claims on land.
- **Inability to demonstrate sustainable forest management for carbon stocks while meeting local livelihood needs along the lines of the REDD+ safeguards.** The clearance of land for agricultural crops (subsistence or otherwise) or rubber plantations does not increase carbon stocks but rather leads to further degradation. In addition, the failure to recognize villagers’ customary rights and promote participatory decision-making may block global finance due to non-compliance with REDD+ safeguards.
- **Potential rise in conflict due to increase in value of land**, either from increased access to EU and potentially other markets or new sources of income for forest management from REDD+ funding mechanisms.

With those potential risks, it is suggest that the Vietnam FLEGT VPA process should facilitate a forest sector review process that could facilitate the resolution of many of these long-standing land conflicts to facilitate their resolution, particularly during the development of a national legality definition and Timber Legality Assurance System (TLAS). Vietnam’s VPA process would need to prioritize several issues within a legality definition processor TLAS:

- **Clarification of forest tenure rights, especially with regard to the timber legality definition, i.e. the legal framework determining what constitutes legal timber.** This would include clarification of who holds the rights to forestland and resources, particularly in situations where LURCs conflict with actual land use or customary rights. Furthermore, conflicts prevent the issuance of more LURCs across the country, yet no wood producer can produce demonstrably legal wood without the LURC. This calls for a reform such that existing LURCs would need to be accompanied by some sort of proof that adequate consultation has taken place, or a nationwide initiative to review forest tenure, conflict resolution and mandating the inclusion of Free Prior Informed Consent (FPIC). There should be an enabling framework for civil society organizations (CSOs) to monitor and facilitate all LURC processes.

- **Perceived injustices associated with reforestation contracts (definition of legality stage):**

Villagers often perceive the sharecropping arrangements and allocation of contracts to outsiders or local elites as unjust. Even when contracts are in compliance with laws and regulations, conflicts impede producers from obtaining LURCs or producing controversy-free wood products. Options for resolution include accepting such contracts only if they comply with minimum standards for the protection of villagers' rights and interests, including FPIC before contracts are signed, the monitoring of compliance supported by TA and training of FCs and CSOs, and allowing free media coverage of conflicts.

Also conflicts between villagers and SFEs will directly affect the success of the REDD+ Action Plan in Vietnam. The implementation of Vietnam REDD+ phase II would need to prioritize at least four critical issues to lay the foundation for successful implementation:

- **Address conflicts leading to forest conversion.** SFEs land is often encroached upon due to villagers' subsistence and income needs, whereby villagers feel that land encroachment for agricultural production is the only option that allows them to benefit from the forest land. Any effort to contain agricultural uses and enhance carbon stocks in the landscape, therefore, must involve villagers to avoid risking failure or further impoverishing them. SFEs and villagers should both be involved in the development of carbon-rich landscapes on the basis of existing use and customary rights, which may have to be preceded by land claims settlement processes.
- **Improve forest management practices by SFEs:** Due to conflicts over land use, SFEs cannot be assumed to be effectively managing all the forestland officially listed in their land use rights certificates. Any efforts to assist SFEs to access global funds for climate change mitigation through high-carbon management of tree plantations will need to involve villagers as active participants and give them a central role in efforts to improve the management of degraded forest lands, and will likely need to include land claims settlement processes.
- **Operationalize Cancun Safeguards and prepare action plan for implementation of the agreement of COP 21:** Existing UN REDD documents value local knowledge and the rights and local people to be informed and consulted on REDD+ actions, but pay less attention to local peoples' forest tenure or customary rights. Stakeholders should be involved in the design and implementation of REDD+ actions, particularly local communities. While implementing the National REDD+ Action Plan, the Vietnamese government is committed to Cancun Safeguard 4, and it is now time for FPIC to be integrated into institutional commitments and monitored during the REDD+ implementation. Existing procedures under Vietnam's Decree on Grassroots Democracy and other policy mechanism fail to enable meaningful participation in public decision-making. The implementation of the Action

Plan can provide support to the safeguard processes to address forest tenure issues, particularly conflicts between SFEs and villagers. They can also enable the independent monitoring of safeguard implementation. This may include expanding procedures under the Ordinance on Grassroots Democracy (2007) to include FPIC and enabling independent organizations to conduct and monitor FPIC stakeholder consultations to implement Cancun Safeguard 4 as well as preparation of an action plan for implementing the agreement of COP 21 which was just signed in Paris on December 12, 2015.

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