Assessing Barriers Influencing Sustainable and Equitable Forest Management:
The Case of Vietnam

For IUCN “Strengthening Voices for Better Choice” Project

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The views expressed in this report are of the authors and do not necessarily reflect those of EU, IUCN and/or organizations that the consultants are from. All errors are ours.
Executive summary

Introduction about the project and the study

The project “Strengthening Voices for Better Choices” is designed to promote the development of improved forest governance arrangements in Vietnam and five other tropical forest countries. Its overall objective is to promote the establishment and implementation of forest governance arrangements that facilitate and promote sustainable and equitable forest conservation and management in priority regions.

This report is part of a study within the framework of the a.m. project. The study aims 1) to identify the policy, legal, institutional and economic obstacles to creating a level playing field at the local level, and 2) to provide recommendations for the future activities of the project. During the course of the study, a ‘tri-partite’ approach has also been employed in two ways. The study involves three consultants of three different backgrounds, namely state laws, social science and resource economics. In addition, it has benefited from the contribution of three different groups of stakeholders: the state organizations, the national and international NGOs, and individuals as well as private enterprises.

Background to Vietnam and its forestry sector

Vietnam is a tropical country located in the Indochina peninsula, Southeast Asia. Its territory stretches from 8°02’ to 23°23’ Northern latitude and from 102°08’ to 109°28’ Eastern longitude. The total land size is 33.038 million hectares (ha), administratively divided into 64 provinces and municipalities. According to the most recent statistics, total forested area is 12.62 million ha or 38.2% of forest cover. By uses, forests in Vietnam are classified as production forests (36.3% of the total forested area), protection forests (48.1%) and special-use forests (15.6%).

Stakeholders involved in forestry in Vietnam can be generally classified into two major groups. The first group includes only actors that perform functions related to state management of forest, including:

- At national level: The Ministry of Agriculture and Rural Development (MARD) and its subordinate agencies: the Forest Department (FD), Forest Protection Department (FPD), the Agriculture and Forestry Extension Department (AFPD), the Department of Agro-forestry Product Processing and Rural Industries, and Legal Department.
- At provincial level: Department of Agriculture and Rural Development (DARD), Sub-FD, sub-FPD, Extension Center
- District level: Agriculture and Rural Development Unit or Economic Unit, District Forest Protection Unit
- Forestry research, training and education organizations under MARD and outside the control of MARD

The second group includes all those that are directly involved in forest protection and utilization:

- State actors: state owned enterprises (SOEs), management boards of protection forest (MB-PFs), management boards of special-use forest (MB-SUFs);
- Private actors: individuals, households and joint-venture/ private enterprises;
Collective actors: collectives and communities whose members have similar rights and responsibilities to the forest compared to the others.

The study site:
Within Thua Thien Hue, Khe Tran village of Phong Dien district has been selected as the pilot site of the project. The following criteria were proposed for this selection:

- **Located in the poor upland area**: Khe Tran is located in the upland forest rich but economically poor area, distant from the district center.
- **Dominance of ethnic people**: All but one household in Khe Tran belong to Pa Hy and Van Kieu ethnic groups.
- **Medium size for project activities**: The village has 31 households with around 147 people, of medium size for this small project.
- **Problems with (forest) governance**: inequitable distribution of natural forest between the state and local people is found. In addition, there is also dispute about former swidden fields of the villagers.
- **Absence of forestry technical support project**: No external support program working in the village, except the national Hunger Eradication and Poverty Reduction (HEPR) program.
- **High incidence of poor and disadvantaged households**: it is estimated that around 45.6% of the people in the village are living under poverty line.

### Forest governance under statutory and customary laws:

<table>
<thead>
<tr>
<th>Governance issues</th>
<th>Statutory laws</th>
<th>Customary laws</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Categories of land tenure</strong></td>
<td>Land belongs to the ownership of the entire people with the state acting as the owner's representative. Forest can be managed by state, private, and collective actors</td>
<td>Land tenure categories include private tenure and communal tenure. Each tenure arrangement applies for specific land types</td>
</tr>
<tr>
<td><strong>Use rights</strong></td>
<td>Rights to exploit and enjoy the utilities from forest, granted to the forest owners</td>
<td>Belong to community members on ‘first comes first serves’ basis, granted to outsiders on <em>ad hoc</em> basis</td>
</tr>
<tr>
<td><strong>Access rights</strong></td>
<td>Rights to walk in the forest, granted to all people, except in special cases</td>
<td>Equal access rights to all community members. Flexible on access rights by outsiders</td>
</tr>
<tr>
<td><strong>Control rights</strong></td>
<td>Ultimate control rights belong to the state. Forest owners (state or non state) have limited control rights within the given legal framework</td>
<td>Vested in community head or land guardian, community members share responsibilities to execute</td>
</tr>
<tr>
<td><strong>Transfer rights</strong></td>
<td>Depending on specific type of forest and tenure arrangements, forest owners can mortgage, lease, inherit and transfer land use title</td>
<td>Only within the community for the case of land under private tenure. No transfer to outsiders, except for special case.</td>
</tr>
<tr>
<td><strong>Tenure security</strong></td>
<td>Vested in forest land use title, which</td>
<td>Provided when community members</td>
</tr>
</tbody>
</table>
is valid for 50 years recognize and respect one’s rights to the resource

Benefit sharing National and provincial legal framework available for benefit sharing from forest. Nevertheless, problems occurred with implementation of such regulations Based on real needs of community members

Fiscal and pricing measures to attract investment in forestry Defined in Forest Protection and Development Law, Investment Law, Enterprise Income Tax Law, and Value Added Tax regulation. Not mentioned

Monitoring of law enforcement FPD system Customary leaders

Accountability MARD responsible for the whole country, People’s Committee responsible within its territory Customary leaders

Sanction of violation By law By customary leaders

**Extra-sectoral influences:**

*Macro economic policies:* some macro economic policies from the Government of Vietnam that have influences on sustainable and equitable forest management include but not only limited to public administration reform, state owned enterprise reform, agriculture land tenure reform, and Vietnam’s commitments as member of the World Trade Organization.

*Donor supports:* assistance (financially and technically) from international communities has contributed a great deal to the development of Vietnamese forestry sector. However, it is unlikely that such generosity can continue very long. When donor supports decline, Vietnam will have to look for other sources of investment and have to pay for expatriate technical advice.

*Power relations and corruption:* existence of power relations has negative impacts on the incentives of local people in managing forest in a sustainable way. Furthermore, corruption in forestry contributes to make the matters worse.

*Poverty and poverty alleviation programs:* Vietnam has achieved significant results in halving the number of poor people for the last decade thanks to significant efforts from the government. However, the challenges are still lying ahead, particularly for forestry sector as the contribution of forest to poverty alleviation has not been as its potentials.

**Stakeholders, economics, law and forest governance**

In principle, mandates for all forestry stakeholders are meant to create incentives for legal forestry activities, which will bring in benefits for the society as a whole. Nevertheless, insufficient capacity to realize assigned functions coupled with problems with coordination and cooperation among stakeholders leave room for illegal forestry. Furthermore, the high economic incentives from abuse of power by state officials in charge have contributed to engrave the problems of illegality.
Currently, land tenures (as defined by either statutory or customary laws) provide both incentives and disincentives for illegal forest activities. The disincentives for illegal activities mainly come from the (potential) benefits that laws offer and the threats of discontinuing the endowed rights. The incentives mostly come from the gaps between the two systems of laws while the statutory law does not recognize traditional rules.

In terms of benefit sharing mechanisms, both arrangements proposed by statutory and customary laws do not work out as expected. For the legal benefit sharing mechanism, lack of clarity and economic compromise with local people is the major reason. By contrast, the problem with benefit sharing arrangements enacted by customary law is the lack legal recognition from the statutory law.

Similarly, equitable participation of various stakeholders in decision-making with regard to local forest resources is not yet achieved. In most cases, local elites are still dominating the decision making process and shape the derivation of forest benefits to their interests.

Incentives for illegal forestry activities are found with compliance of both legal and statutory laws because of the poor knowledge of local people about the existing legal documents, the quick change in legal framework, the absence of a clear monitoring system of law enforcement, and improper remuneration for economic loss due to legal compliance.

Illegal activities that can be legitimized by external influences include clearing forest for cropping and claim for ‘ownership’ of forest by local people. These activities have been the traditions of local people but were (or still are) not recognized by statutory laws during a certain period of time.

**Recommendations to the project:**

- Contribute to the pursuit of a meaningful devolution of forest to people: although forest devolution process has been going rather fast in Vietnam over the last decade, ownership of forest resources by local people remains rather nominal as restrictive regulations are still governing actual control of forest by local people.

- Contribute to the revision of benefit sharing policies and procedures: along with devolution of rights to forest, it is recommended that the project participate in the revision of existing benefit sharing mechanisms to make sure that the contents of the policies are understood and agreed by people/actors influenced.

- Improve local people’s access to legal information: the project can do it through educating them necessary provisions in statutory laws for concrete problems.

- Provide linkages to credit institutions: the project can assist local people to link up with local banks and help them with the paper works needed to apply for the loan.

- Involve private sector in helping poor people: the project should work together with this company in helping the poor villagers to get out of poverty by engaging in forestry activities offered by the company.

- Keep key decision-makers involved: it is important to keep decision-makers involved in the whole process by means of direct fieldwork and regular updates to promote dissemination of ideas developed by the project.
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<th>Full Form</th>
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<tr>
<td>5MHRP</td>
<td>Five Million Hectare Reforestation Program</td>
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<tr>
<td>CFM</td>
<td>Community Forest Management</td>
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<tr>
<td>CPC</td>
<td>Communal People’s Committee</td>
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<tr>
<td>CPRGS</td>
<td>Comprehensive Poverty Reduction and Growth Strategy</td>
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<tr>
<td>DARD</td>
<td>Department of Agriculture and Rural Development</td>
</tr>
<tr>
<td>DPC</td>
<td>District People’s Committee</td>
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<tr>
<td>FD</td>
<td>Forest Department</td>
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<tr>
<td>FLA</td>
<td>Forest Land Allocation</td>
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<tr>
<td>FLEG</td>
<td>Forest Law Enforcement and Governance</td>
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<tr>
<td>FPD</td>
<td>Forest Protection Department</td>
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<tr>
<td>FPDL</td>
<td>Forest Protection and Development Law</td>
</tr>
<tr>
<td>FPU</td>
<td>Forest Protection Unit (district level FPD)</td>
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<tr>
<td>GoV</td>
<td>Government of Vietnam</td>
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<tr>
<td>HDI</td>
<td>Human Development Index</td>
</tr>
<tr>
<td>HEPR</td>
<td>Hunger Eradication and Poverty Reduction</td>
</tr>
<tr>
<td>IUCN</td>
<td>The World Conservation Union</td>
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<tr>
<td>LL</td>
<td>Land Law</td>
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<tr>
<td>MARD</td>
<td>Ministry of Agriculture and Rural Development</td>
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<tr>
<td>MB-PF</td>
<td>Management Board for Protection Forest</td>
</tr>
<tr>
<td>MB-SUF</td>
<td>Management Board for Special-use Forest</td>
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<tr>
<td>NGO</td>
<td>Non Government Organization</td>
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<tr>
<td>NTFP</td>
<td>Non-timber Forest Products</td>
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<tr>
<td>ODA</td>
<td>Official Development Assistance</td>
</tr>
<tr>
<td>PC</td>
<td>People’s Committee</td>
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<tr>
<td>PPC</td>
<td>Provincial People’s Committee</td>
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<tr>
<td>SFE</td>
<td>State Forest Enterprises</td>
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<tr>
<td>SOE</td>
<td>State Owned Enterprises</td>
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<tr>
<td>SVBC</td>
<td>Strengthening Voices for Better Choice Project</td>
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<tr>
<td>TTH</td>
<td>Thua Thien Hue province</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Program</td>
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<tr>
<td>VFS</td>
<td>Vietnam Forestry Sector</td>
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<td>VND</td>
<td>Vietnamese currency</td>
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## Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>Forest governance</td>
<td>Forest governance is a broad concept about how forest resources are managed, which range from how decisions about forest use are made and who is involved in the decision-making process, to the enforcement of forest laws and policy on the ground</td>
</tr>
<tr>
<td>FLEG(T)</td>
<td>FLEG stands for Forest Law Enforcement and Governance. Letter ‘T’ is suffixed to FLEG to include attention on ‘Trade’. The FLEG process is a worldwide movement emerging from different parts of the world. The process aims to combat the threat posed to forests by illegal logging and trade, corruption and poaching. More generally, it aims to promote protection and sustainable management of the remaining forests.</td>
</tr>
<tr>
<td>A level playing field</td>
<td>In this study, a level playing field is used to describe a condition where all concerned stakeholders have equal rights and responsibilities with regard to forest resource management.</td>
</tr>
<tr>
<td>Tri-partite approach</td>
<td>By definition, tri-partite refers to the state of “having three corresponding components.” The tri-partite approach applied in this project refers to the belief that there is a greater chance of progress if governments, civil societies and the private sector (including forest dependent communities) move forward in concert.</td>
</tr>
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1 Background

1.1 Brief introduction to the project and the purpose of the study

The project “Strengthening Voices for Better Choices” (SVBC) is designed to promote the development of improved forest governance arrangements in Vietnam and five other tropical forest countries in Africa, Asia and South America. The design of this project is based on an analysis of the key forest governance problems and challenges faced by the countries and regions in which the project works. Three broad categories of stakeholder groups will be targeted: government (line departments, parliamentarians, local authorities and the judiciary); civil society (NGOs, CBOs and forest-dependent communities); and the private sector (including timber companies and local households). The project will identify the policy, legal, institutional and economic obstacles to improved forest governance (including the control of illegal logging); pilot test innovative approaches to overcoming these obstacles; enhance the capacity of key stakeholders to implement forest governance reforms; and disseminate the lessons learned at national, regional and global levels. The project will also support the regional Forest Law Enforcement and Governance (FLEG) official processes being organized by the World Bank and contribute to the European Union (EU) FLEGT Action Plan.

The overall objective to which the project will contribute is to promote the establishment and implementation of forest governance arrangements that facilitate and promote sustainable and equitable forest conservation and management in priority regions. The specific objective is to identify and promote policy, legal, institutional and economic arrangements that contribute to improved forest governance and secure support for them within government, civil society and the private sector.

This study, which is an integral part of SVBC project, aims 1) to identify the policy, legal, institutional and economic obstacles to creating a level playing field at the local level, and 2) to provide recommendations for the future activities of the project.

1.2 Forest governance and our concerns with it

Forest governance is a broad concept. It encompasses topics related to how forest resources are managed, which range from how decisions about forest use are made and who is involved in the decision-making process, to the enforcement of forest laws and policy on the ground. We are concerned with forest governance because good forest governance will provide opportunities for various stakeholders to dialogue and to share knowledge from practical experience with national forest programs and forest institutions. Furthermore, good governance requires alignment of the interests and responsibilities of the government, the private sector, and the civil society and promotes equitable and efficient forest management practices.

In the context of this study, good forest governance will not only take into account the statutory legal framework developed by the government but also the local knowledge in the management that has been accumulated for generations by the local people.

1.3 FLEG and its relevance to Vietnam

The acronym “FLEG” stands for Forest Law Enforcement and Governance. In some cases, a letter ‘T’ is suffixed to FLEG to include attention on ‘Trade’. The FLEG process is a

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1 Source: [http://leadindia.org](http://leadindia.org)
worldwide movement emerging from different parts of the world. The process aims to combat the threat posed to forests by illegal logging and trade, corruption and poaching. More generally, it aims to promote protection and sustainable management of the remaining forests.

In order to achieve such objectives, participating governments of Bali Conference in September 2001 declared to “take immediate action to intensify national efforts, and to strengthen bilateral, regional and multilateral collaboration to address violations of forest law and forest crime, in particular illegal logging, associated illegal trade and corruption, and their negative effects on the rule of law” (FLEG East Asia Ministerial Conference, 2001: 1)

FLEG is highly relevant for Vietnam. The focus areas of FLEG have also gained significant concerns in Vietnam. Over the last decade, illegal logging has been wide spread in the country. It is estimated that around 50% of the timber extracted from the forest are done illegally, causing a loss of around 60,000 ha of forest annually between 1999 and 2003 (MARD, 2005b) and of at least 5 million Euro (one hundred billion VND) per annum in tax revenue. In addition, the development of cash crops and livestock sectors has also made a significant contribution to the decline of forested area. In order to deal with such problems, it is recognized that only domestic efforts will not suffice as cross-country issues like illegal logging or cash crop production need collaborated efforts from various countries.

1.4 A level playing field

In economic sense, a level playing field is an “environment in which all companies in a given market must follow the same rules and are given an equal ability to compete.” (source: www.investorwords.com). It refers to a “fair competition, where no advantage is shown to either side.” (source: www.phrases.org.uk). In this study in specific and the project in general, a level playing field is used to describe a condition where all concerned stakeholders have equal rights and responsibilities with regard to forest resource management.

1.5 A tri-partite approach

Merriam Webster’s Collegiate Dictionary defines tri-partite as “having three corresponding components.” The tri-partite approach applied in this project refers to the belief that there is a greater chance of progress if governments, civil societies and the private sector (including forest dependent communities) move forward in concert. In reality, some stakeholders may have more power and influence than other because they have access to better information and more influential contacts to decision makers. The use of a tri-partite approach is to create a level playing field, which in turn will lead to forest governance arrangements that will deliver sustainable forest management and improve local livelihoods.

1.6 Study approach and methodology

In this study, a ‘tri-partite’ approach has also been used. The study involves three consultants of three different backgrounds, namely state laws, social science and resource economics. The three consultants examine forest governance from different angles and put them together into this synthesis report. In addition to having three consultants, the study has also benefited from the contribution of three different groups of stakeholders: the state organizations, the national and international NGOs, and individuals as well as private enterprises.

A combination of qualitative and quantitative approaches was employed throughout the study. The qualitative data collection and analyses were used in various stages by all the people involved. The social scientist used the methods of participant observations, open interviews, expert consultancy and documentary approach. The legal consultant employed
A qualitative method to assess the effectiveness of normative legal documents in forest protection and development and their enforcement and compliance. The economic consultant applied the method to understand the economic relationships among different stakeholders and between them and the forest and land resources. By contrast, the quantitative approach was used by the economic consultant to quantify the economic behaviors of local stakeholders.

Ownership of this report belongs to all that are involved in the discussion of the study outlines and collection and analyses of the data. Throughout the course of the whole study, a participatory approach has been employed. The development of the study outlines has benefited from the comments by people in Hanoi as well as Thua Thien Hue province. During the course of the data collection and primary data analysis, discussion has been held with stakeholders from state sector, NGOs, and private sectors. Primary findings and recommendations have also been discussed with them in the field. The main role of the three consultants has been facilitation of the discussions, more in-depth analyses of the collected data, and compilation of the report.

1.7 Limit of the study

The major limit of this study is the study site. The study covers only one province, namely Thua Thien Hue, out of 42 provinces with large forest area (i.e. over 50,000 ha) in Vietnam. Therefore the study is not meant to generalize for Vietnam as a whole. The main reason for focusing in Thua Thien Hue is that the province is the focus of SVBC. This agreement had been made prior to the start of the study. Nevertheless, concrete examples and lessons related to forest resource management/ extraction from other provinces have been used in the study to provide comparison of Thua Thien Hue with general situation in Vietnam.

Within Thua Thien Hue, in-depth study focused in one village. Once again, the choice of village for in-depth study was also influenced by the fact the village had already been selected for future project intervention. To gain a wider picture of Thue Thien Hue province, the team members also visited five other sites (two in the same district with the in-depth study village and three in other districts) during two field visits in May and July-August 2006. In addition, the team also met and discussed with state officials, development workers and researchers working in the province to gain a general understanding of the provincial situation.
2 Introduction

2.1 Forest area statistics

Vietnam is a tropical country located in the Indochina peninsula, Southeast Asia. Its territory stretches from 8°02' to 23°23' Northern latitude and from 102°08' to 109°28' Eastern longitude. The total land size is 33.038 million hectares (ha), administratively divided into 64 provinces and municipalities.

Following the currently enforced Forest Protection and Development Law (FPDL), forest in Vietnam is defined as an ecological system consisting of the populations of forest fauna and flora, forest microorganisms, forestland and other environmental factors, of which timber trees and bamboo of all kinds or typical flora constitute the major components with the forest canopy cover of 0.1 or more. According to the most recent statistics, total forested area is 12.62 million ha (Table 1), of which natural forest is 10.28 million ha and plantation forest is 2.33 million ha. This is equivalent to a national forest cover of 38.2% (31.1% of natural forest and 7.1% of plantation forest). By uses, forests in Vietnam are classified as production forests (36.3% of the total forested area), protection forests (48.1%) and special-use forests (15.6%).

Forested land in Vietnam can be divided into natural forests and plantation forests. Based on forest composition and physical settings, natural forests can be classified into timber forest, bamboo forest, mixed timber and bamboo forest, mangrove forest and forest associated with limestone mountains. Timber forest is the most dominant type. Of the total natural forest area, timber forest accounts for 78.9%, more than ten times as much as the size of bamboo forest area – the second largest forest type – which is around 7.6%. With 6.7% of the total natural forest, mixed timber and bamboo forest is the third in terms of size. Forest associated with limestone mountains accounts for 6.2% of the total forest. Mangrove forest is the least dominant type, with only 0.6% of the total forest area.

Table 1: Forest classification according to uses

<table>
<thead>
<tr>
<th>Forest Type</th>
<th>Total (ha)</th>
<th>Special-use forest (ha)</th>
<th>Protection forest (ha)</th>
<th>Production forest (ha)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Natural forest</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Timber forest</td>
<td>8,113,580</td>
<td>1,498,289</td>
<td>4,148,209</td>
<td>2,467,082</td>
</tr>
<tr>
<td>- Bamboo forest</td>
<td>783,667</td>
<td>83,500</td>
<td>341,889</td>
<td>358,278</td>
</tr>
<tr>
<td>- Mixed forest</td>
<td>684,958</td>
<td>119,118</td>
<td>314,707</td>
<td>251,133</td>
</tr>
<tr>
<td>- Mangrove forest</td>
<td>63,263</td>
<td>11,010</td>
<td>40,458</td>
<td>11,795</td>
</tr>
<tr>
<td>- Forest on rocky mountains</td>
<td>637,705</td>
<td>162,911</td>
<td>457,388</td>
<td>17,405</td>
</tr>
<tr>
<td>B. Plantation forest</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Forest with timber volume</td>
<td>825,485</td>
<td>32,208</td>
<td>317,188</td>
<td>476,089</td>
</tr>
<tr>
<td>- Forest with no timber vol.</td>
<td>1,209,882</td>
<td>48,133</td>
<td>468,993</td>
<td>692,757</td>
</tr>
<tr>
<td>- Bamboo forest</td>
<td>86,911</td>
<td>235</td>
<td>11,133</td>
<td>75,543</td>
</tr>
<tr>
<td>- Specialty trees</td>
<td>211,247</td>
<td>2,915</td>
<td>72,097</td>
<td>136,235</td>
</tr>
<tr>
<td><strong>Total forest area</strong></td>
<td>12,616,700</td>
<td>1,958,320</td>
<td>6,172,062</td>
<td>4,486,318</td>
</tr>
</tbody>
</table>

Source: www.kiemlam.org.vn
2.2 Forest stakeholders and their interests

Stakeholders involved in forestry in Vietnam can be generally classified into two major groups. The first group includes only actors that perform functions related to state management of forest (see Annex C for the description about the contents of state management in forestry). The second group includes all those that are directly involved in forest protection and utilization. The discussion in this section only focuses on the second group. The first group will be elaborated in details in Section 2.4.

Actors currently involved in forest protection and utilization in Vietnam can be divided into three major sub-groups: state actors, individual actors and collective actors; which corresponds to the three forest tenure arrangements: public property, private property, and common property (Nguyen, 2006b). Firstly, actors under state or public property include state owned enterprises (SOEs), management boards of protection forest (MB-PFs), management boards of special-use forest (MB-SUFs). Forest is allocated to state bodies for unspecified period of time. Where the forest falls into special-use or protection category, forest actors are entitled to receive state budget for management of the forest. Secondly, actors under private property include all individuals, households and joint-venture/ private enterprises. Under this arrangement, forest is allocated to its owner for long term (50 years) management or contracted for short term (annual) basis. Thirdly, actors under common property are collectives and communities whose members have similar rights and responsibilities to the forest compared to the actors in the private sector.

Of the total forest area, there are around 9.14 million ha or 72.4% administered by state agencies (see Table 2). Private actors have around 2.92 million ha or 23.2% of the total. Collectives and communities own around 0.56 million ha (4.43% of the total) of forest. In terms of natural forest, 7.86 million ha (76.5% of the total natural forest) are publicly owned by state organizations. Private ownership is around 1.92 million ha (18.7%). Around 0.5 million ha (4.9%) are owned by collective actors. For plantation forest, government owns 1.27 million ha (54.6% of the total plantation forest). Around one million ha (42.9%) are owned by individuals/ firms and 58.43 thousand ha (2.5%) by collectives. For forest area under collective actors, it is important to note that official statistics only counts for those that are legally recognized by the state and the area under traditional communal management (which is not officially recognized by the state) is not included.

<table>
<thead>
<tr>
<th>Table 2: Forest area under different tenure arrangements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owned by state actors</td>
</tr>
<tr>
<td>Natural forest (ha) 7,862,663 (76%)</td>
</tr>
<tr>
<td>Plantation forest (ha) 1,273,054 (55%)</td>
</tr>
<tr>
<td>Total (ha) 9,135,717 (72%)</td>
</tr>
<tr>
<td>Owned by private actors</td>
</tr>
<tr>
<td>Natural forest (ha) 1,919,472 (19%)</td>
</tr>
<tr>
<td>Plantation forest (ha) 1,002,041 (43%)</td>
</tr>
<tr>
<td>Total (ha) 2,921,513 (23%)</td>
</tr>
<tr>
<td>Owned by collective actors</td>
</tr>
<tr>
<td>Natural forest (ha) 501,038 (5%)</td>
</tr>
<tr>
<td>Plantation forest (ha) 58,432 (3%)</td>
</tr>
<tr>
<td>Total (ha) 559,470 (4%)</td>
</tr>
<tr>
<td>Total</td>
</tr>
<tr>
<td>Natural forest (ha) 10,283,173 (100%)</td>
</tr>
<tr>
<td>Plantation forest (ha) 2,333,527 (100%)</td>
</tr>
<tr>
<td>Total (ha) 12,616,700 (100%)</td>
</tr>
</tbody>
</table>

Source: www.kiemlam.org.vn

Note: Numbers in parentheses represent percentage over total in group

2.3 Forest policy and legislation

State’s forest policies in Vietnam include those on forest investment, scientific research, human resource development, forest management, forest protection and enrichment. Forest policies also include those that promote support people in forestry areas, such as policies of forest land allocation, forest product markets, and forestry production activities. At present,
there are more than 100 legal documents in Vietnam that are related to forest resources protection and development.

The highest legal document about forest resource is the Constitution. The current Constitution was passed on 15 April 1992 by Session 11 of the Vietnam’s 8th National Assembly. Under the Constitution are laws related to natural resources, including land law or LL (passed on 26 November 2003) and forest protection and development law or FPDL (passed on 3 December 2004). To guide the implementation of the laws, there are decrees, circulars, decisions and other types of legal documents.

The forest law making is an integrated part of the law making system in Vietnam. The National Assembly (NA) is the highest law making body. It has the power to approve the constitution and all laws. Under the NA is the Government, which has the power to promulgate decrees and decisions to be applied in the whole country. Concerned ministries are members of the government and have the power to issue decisions and circulars, which apply for the related sectors. At the local level, the People’s Committee at provincial (PPC) and district (DPC) is in the position to issue legal documents that governs forest resource use and management within its territory.

2.4 Forestry institutions

2.4.1 Forest administration system

At present, the Ministry of Agriculture and Rural Development (MARD) is the highest agency in charge of state management functions in forestry (and agriculture, salts industry, water resources, rural development, and public services) in the whole country. MARD is a member of the Government of Vietnam (GoV). Currently, the structure of MARD includes six functional departments, ten professional departments, five public service providers, the ministry office and inspectorate. In addition, under MARD are also research institutes, university and colleges, management and vocational schools, national parks, and state owned enterprises.

Under MARD, the Forest Department (FD) and Forest Protection Department (FPD) are the two government agencies in charge of forestry issues nationwide. FD is in charge of realizing state management in forestry in the whole country. FPD is in charge of state management in forest resource protection and enforcement of law in forest protection and management. Besides FD and FPD, the Agriculture and Forestry Extension Department (AFPD) and the Department of Agro-forestry Product Processing and Rural Industries are also related to forestry production; and Legal Department is related to forestry policies at the national level.

At the provincial level, DARD is a professional agency under the Provincial People’s Committee (PPC) whose one of the functions is to advise and assist PPC in realizing state management in forestry. Under DARD, Forest Sub-department (Sub-FD) is set up in 34 out of 42 forest provinces (i.e. provinces with large area of forest). In the remaining provinces, Forestry Section is established to deal with forestry issues. Sub-FD has no specific line

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2 The Ministry of Natural Resources and Environment (MONRE) is answerable to the Government for the state management over land.
3 Decree No 86/2003/ND-CP of the GoV on 18 July 2003
4 Decree No 119/2006/ND-CP of the GoV on 16 October 2006
5 Inter-ministry Circular No 11/2004/TTLT-BNN-BNV dated 2 April 2004 by MARD and Ministry of Home Affairs
agency at the district level and its tasks in the district are dealt with by forestry officials of Agriculture and Rural Development Unit (ARDU)\(^6\).

Forest Protection Sub-department (Sub-FPD) at provincial level has recently been placed under DARD\(^7\). At present, Sub-FPD has been established in 59 provinces. At the district level, Forest Protection Unit (FPU) is directly under provincial Sub-FPD. Within district FPUs, one forest ranger is in charge of one or more commune. In addition to the regular FPUs, there are 45 FPUs under special-use forest management boards (REFAS, 2005).

At the commune level, the forestry tasks lay with the Communal People’s Committee (CPC), with the assistance from FPU at the district level. In recent years, the idea of setting up Communal Forestry Board (CFB) under CPC has been introduced in upland mountain communes. Where CFB has been set up, it becomes the body in charge of forestry issues within the commune.

**Figure 1: Organizational structure of forest administration system as of 2006**

Note: Sub-FPD has recently been placed under DARD, following Decree No 119/2006/ND-CP

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\(^6\) In many districts, ARDU has joined with other production units into Economic Unit under DPC.

\(^7\) See Footnote 4
2.4.2 Forestry training and education system

Currently, forestry training and education have been provided by training organizations under MARD and those outside the control of MARD. The first group currently includes 1) five forestry technical training schools, which provide training for forestry workers, 2) four central forestry high schools and colleges, which offer training in technical forestry, 3) two management schools, which focus on (re-fresher) training for in-service forestry staff, 4) Vietnam Forest University, which provides forestry education at university and post-graduate level, and 5) Forest Science Institute of Vietnam that offers forestry education at Ph.D. level. The second group includes over 20 agriculture and forestry schools and colleges directly under the provincial authorities and four agriculture and forestry universities (under the Ministry of Education and Training – MOET). Current enrolment of all universities, colleges and schools is around 6,000 students per year.

Furthermore, higher education institutions, as defined by law, can issue certificates for the lower institutions. For example, universities can issue certificates for colleges and for technical vocational training schools. Forestry education also includes part-time continuing education programs that are provided to upgrade the formal qualifications of in-service forestry officials (ETSP, 2005). In addition to long term training, short term courses can also be provided by these training institutions.

2.4.3 Forestry research system

Similar to the forestry training and education system, the current forestry research system includes not only research institutions directly responsible to MARD minister but also those not under control of MARD. Of the former type, Forest Science Institute of Vietnam (FSIV), the Forest Inventory and Planning Institute (FIPI), and Vietnam Forestry University (VFU) are the prominent ones. In addition, the Agro-forestry Science and Technology Institute of the Central Highlands also conducts research in forestry sciences and the Central Forestry Seed Company is involved in research in forestry seed and nursery. Research in forest sciences is also conducted by staff of National Parks under MARD, such as Tam Dao National Park, Cuc Phuong Nation Park. The latter type of research organizations includes universities and colleges under the control of MOET and provincial authorities.

2.4.4 Forestry production and commercialization system

The forestry production and commercialization system of Vietnam include various different units. State owned enterprises include Vietnam Forest Corporation (Vinafor) with 45 member enterprises, around 319 State Forest Enterprises (SFEs), Central Forest Seed Company and its local affiliations, and a system of more than 250 wood and forest products processing enterprises under provincial authorities. In addition, there are around 40 foreign invested enterprises and 786 enterprises of non-state economic sectors also active in forest product processing (MARD, 2003).

2.4.5 Overall assessment of state forestry sector

It is difficult to say Vietnamese forest agencies have been effective or not as they have been quite progressive in some fields (e.g. policy making) but not efficient enough in the others (e.g. policy implementation and monitoring). Some observations are discussed below:

- **Ability of forestry sector to respond to changes:** The sector has been quick in adjusting itself in need to deal with emerging issues, such as social forestry, devolution of forest to local people, forestry development direction, integration of poverty alleviation measures in forestry activities.
Management of donor supports in forestry: the establishment of Forest Sector Support Program and Partnership (FSSP&P) is an important initiative in forestry sector in managing donor supports. The idea of setting up FSSP&P has been to better target international support to the needs of the sector. It has been widely supported by international donors, which is reflected in the increase in the number of international partners to FSSP&P from 19 in 2001 to 24 at the moment.

Unclear legal framework: Many legal documents are not clear enough and can be interpreted in different ways, mostly due to the complicated language used in the document. Decision 178/2001/QD-TTg is a concrete example of a vague policy. The decision is meant to regulate the entitlements and obligations of forest owners, but the calculation of benefits for specific owners is too complicated to understand.

Inconsistencies between different legal documents: Some provisions in different legal documents are contradicting. For example, local communities are legally recognized as owners of forest under the 2004 Law on Forest Protection and Development but not under Civil Code. Another example is the contradiction between the responsibilities of PPC. According to Resolution 08, “PPC is responsible for provincial strategy/plan development” while at article 18 in Law on Forest Protection and Development “PPC has to submit strategy/plan to MARD for appraisal.”

Overlapping roles and weak coordination between forest agencies: The most notable example of weak coordination is between the FPD and FD system. The existing division between FPD and FD systems at national, provincial and also at district levels creates delays and high costs because of inefficient work coordination. Although Decree No 119/2006/ND-CP has tried to eliminate coordination problem at the provincial level by placing Sub-FPD under DARD, the improvement is still to come while these two bodies are still operating rather independently at national and district levels.

2.5 Overview of challenges and opportunities in forest governance nationally and in the pilot site(s)

2.5.1 Challenges

- Too much state control over forest resources and poor compensation for local people: although significant achievements have been made in devolving forest from the state to various users, large share of forest is still under the management of state organizations. Not only in terms of areas, state control is also exercised on forests allocated to local people. For example, people have to ask for permission for logging and for use of forest for swidden farming. In addition, there is also control over market of (timber) products extracted from the forest, even where allocation of forest land to households and communities.

- Inadequate attention to indigenous knowledge: despite of the fact that local communities have been living in harmony with forests for generations, there is a current lack of attention to the traditional forest governance structure and knowledge in resource management. Traditional practices by local communities are thought to be backward and need to be abolished. In addition, there is also lack to involvement of local people in resource use planning process.

- Migrants as additional appropriators of the resources: in addition to the state organization, the appearance of migrants has also created a change in access to natural resources by indigenous people. In most cases, new comers are welcome to share the
resources with local inhabitants. Nevertheless, they are also the factor contributing to the break of traditional forest governance system.

- **Unclear benefit sharing mechanism for allocated forest**: although decision 178/QD/TTg on benefit sharing has been in effect for more than 4 years, local people are still not clear about how they can legally extract forest products (particularly timber) or use allocated forest land for cultivation purpose. In addition, it is not clear if timber products extracted from allocated forest can be certified and legally circulated in the market.

- **Improper implementation of state policies**: while there are many great ideas at the policy level, experiences in Vietnam show that problems have been observed in the realization of such policy ideas in practice. In many cases, law enforcers abuse the power they have for their own benefits on the account of local people. In other cases, weak implementation approach and capability, lack of proper monitoring mechanism, coupled with the complexity of policies, contributed to the failure in translating state policies into practice.

- **Upward accountability of (local) state officials**: despite the fact that (local) state officials are to represent the population that elects them, many fail to be local representatives. Instead, they are only accountable to their superiors and do not argue for the interests of the local population.

### 2.5.2 Opportunities

- **Promotion of meaningful devolution of forest management to ethnic villages**: although forest land allocation (FLA) process has been going rather fast in Vietnam over the last decade, ownership of forest resources by local people remains rather nominal as restrictive regulations are still governing actual control of forest by local people. With the current focus on devolving forest management to local people as specified in the National Forestry Development Strategy (MARD, 2005a), there is an opportunity to focus on giving forest management rights to people along with the decision making power with regard to forest.

- **Promotion of community forest management (CFM)**: with the approval of 2004 Law on Forest Protection and Development, community forestry is gaining momentum in Vietnam. There is an open opportunity to support development of community forestry models in the Vietnam, particularly in the areas where instances of traditional CFM have been observed.

- **Development of a pro-poor approach in forestry**: With the approval of the Comprehensive Poverty Reduction and Growth Strategy (CPRGS) in 2002, the Government of Vietnam (GOV) has given a lot of attention to rolling out poverty alleviation measures to concerned sectors and provinces. In forestry sector, there is a need to develop and test measures to improve forest income for the rural poor population.

- **Promotion of understanding and recognition of local land tenure system among state officials**: one of the barriers hindering legal recognition of forest management by indigenous people is that most state officials think of indigenous tenure system as a backward one. With the shift from state forestry to people centered forestry, there is a current need to improve the understanding of these officials about indigenous forest tenure system.
3 The project pilot site

3.1 The pilot site

Thua Thien Hue (TTH) province has been selected as the site for the project field activities in Vietnam. The province is located in the Central Region of Vietnam (see Figure 2). It shares borders with Quang Tri province to the North, Da Nang city and Quang Nam province to the South, Lao PDR to the West and Eastern Sea (also known as South China Sea in Western literature) to the East. The total physical area of TTH is 505 thousand ha. Of which, around 244 thousand ha or 48% of the total land are covered by forest. Production forest accounts for around 31% of the total forested land. Around 23% of the forest are classified as special use forest and 46% are protection forest. Agricultural land accounts for around 10.2% (52.4 thousand ha) of the total land size.

As of December 2005, the total population of TTH is around 1.14 million people. A large part of the population is the mainstream Vietnamese (the Kinh group) and indigenous people (e.g. Ta Oi, Ka Tu, Pa Ko, Pa Hy, Van Kieu) account for around 4%. Around 68% of the people are currently living in the rural area and more than 10% are in the remote upland villages.

Figure 2: Location of Thua Thien Hue province in the map of Vietnam

Within Thua Thien Hue, Khe Tran village of Phong Dien district has been selected as the pilot site of the project. While the village was proposed by the national project coordinator, we support this selection due to the following conditions of the village:

- **Located in the poor upland area**: Khe Tran is located in the upland mountain area of the province, in the economically poor zone according to the current classification of
Vietnam. The village is located near a forest rich area, about seven km from the commune center and 20 km from the district.

- **Dominance of ethnic people**: All but one household in Khe Tran belong to Pa Hy and Van Kieu ethnic groups – the two ethnic minorities in Thua Thien Hue province. The village is one of the two ethnic villages in the commune.

- **Medium size for project activities**: By the time of the study, the village has 31 households with around 147 people. This is of medium size for an ethnic village and seems to be an appropriate size for a small project like the “Strengthening Voices for Better Choice”.

- **Problems with (forest) governance**: although the village is located in the vicinity of Phong Dien Nature Reserve, which is under the management of Phong Dien Management Board for Special-use Forest (MB-SUF). No natural forest is under the management of local people. In addition, some of the former swidden fields of the villagers have recently been allocated by the province to a private company, namely 1/5 Company.

- **Absence of forestry technical support project**: Until now, there has been no external support program working in the village, except those under the national Hunger Eradication and Poverty Reduction (HEPR) program (see Section 5.4 later). The Center for International Forestry Research (CIFOR) has recently conducted a research in the village (see Boissière et al., 2006), yet no support activity to the villagers has been planned until now.

- **High incidence of poor and disadvantaged households**: While the average poverty rate of the province is 14.5% and that of the commune is around 26%, it is estimated that around 45.6% of the people in the village are living under poverty line. Most of the poor (10 out of 16 households or 41 out of 67 people) are those who moved to Khe Tran in 2005 under a resettlement program.

### 3.2 Local stakeholders

This section discusses stakeholders related to forestry in Khe Tran village, the proposed pilot site for the project. See also Tropenbos International (2005) for a detailed inventory of related stakeholders in Thua Thien Hue province.

**Villagers**: People of Khe Tran constitute the first group of stakeholders (see Table 3). On average, one household has 4.7 people and 2.5 laborers. Formally, all the 31 households (147 people) currently living in the village have no rights to the nearby natural forest. Yet, villagers still rely on this forest for supply of raw materials (e.g. rattan, timber). More than half of the interviewed households have collected some kinds of products from the forest for the last year. For many people, including the economically poor and medium, this forest serves as the safety net that provides quick cash in case of need. The most important products that local people have collected so far include rattan, leaves, and war wreckage. Some people are also interested in timber products but the collection is not common.

By contrast to natural forest, people in Khe Tran own relatively large forest plantation. On average, each villager has around 1.2 ha of plantation. The most common species planted is Acacia. So far, funding for around two third of the plantation has come from national programs via local state forest enterprise. The remainder was from villager’s budget.

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8 Decision 42/QD-UB dated 23 May 1997 by the Chairman of the Committee for Ethnic Minorities and Mountainous Areas (CEMMA)
The state forestry administration system: There are currently two state forest administration organizations related to forest governance in Khe Tran. The first one is district Forest Protection Unit (FPU), which is the line agency of the Forest Protection (sub-)Department at the provincial and national levels. FPU represents the state forestry administration to take care of forest law enforcement in the whole district. It has one staff member in charge of forest protection in the commune.

The second organization is the Phong Dien MB-SUF. Phong Dien MB-SUF is responsible for management the Phong Dien Nature Reserve, which is around 41.4 thousand ha (34.6 thousand ha are in Phong Dien and the remaining area is located in the neighboring district). The MB-SUF was newly established in 2005, after the discovery of the Edward’s Pheasant (Boissière et al., 2006).

State forest enterprise: with the enforcement of the State Enterprise Reform, the local state forest enterprise has been restructured to Phong Dien State-owned One Member Forestry Limited Company or Phong Dien Forestry Company Ltd. for short. After the reform, the company has 2.5 thousand ha of forest for (timber) production and commercialization purpose (Ho, 2006).

Private sector: The 1/5 Joint Stock Company is the only representative of private sector enterprise in Phong Dien district in general and Khe Tran in specific. Its operation covers the territory of four districts in Thua Thien Hue province. In Phong Dien district, the company has been allocated 377 ha of land (by the Provincial People’s Committee) for forest plantation for 50 years.

Table 3: Concerned stakeholders and their primary interests

<table>
<thead>
<tr>
<th>Stakeholders</th>
<th>Nature conservation</th>
<th>Timber</th>
<th>Non timber forest products</th>
<th>Enforcement of forest law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local villagers</td>
<td>√ (plantation)</td>
<td>√ (natural forest)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>District FPU</td>
<td></td>
<td></td>
<td></td>
<td>√</td>
</tr>
<tr>
<td>Phong Dien MB-SUF</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PD Forestry Company Ltd.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1/5 Joint Stock Company</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.3 Local livelihoods

3.3.1 Sources of livelihoods

Off farm sources: For the villagers of Khe Tran, there are two major sources of off farm income: salary (for those who and/or whose family member works for the government) and allowance (mostly for war invalid or victims of orange agent). Over the last several years, income from these sources appears to make the most significant contribution to the household economy in general. In 2005, income from this source contributed to around 36% of the total income.

Rubber plantation: Rubber plantation also provides important cash income for local households. On average, a household in the village has around 1.9 ha of rubber, of which 0.35 ha are in productive period (i.e. mature enough for extraction of latex)\(^9\). In 2005,\(^9\) Figures are based on the surveyed households in the village
average income from rubber was second after off farm, constituting around 27.7% of the aggregated income.

**Agriculture cropping:** Surprisingly, agricultural cropping is not the most important source of income for local people. The average cropping land per capita in Khe Tran is 0.13 ha; of which 0.0089 ha (89 square meters) is paddy land and the rest is dry land. In 2005, income from cropping was at 22% of the aggregated income.

**Forest plantation:** Local people have large area of forest plantation (mostly with Acacia). On average, a household has around 6.2 ha of plantation, of which 4.8 ha is ready for harvest (i.e. at the age of 7 or more). However, as the funding for most of these plantations came from state reforestation programs and it is still not clear what benefit sharing mechanism can be applied, local people have not been able to convert these forests into cash income (see Section 4.3.3). Only a few households who invested their own capital in the plantation are able to harvest the timber now.

**Collection of NTFPs and war wreckages in the forest:** Collection of various products and war wreckages from the forest also plays as a source of livelihoods for local people, particularly the poor. In 2005, earning (in cash and kind) from this source constituted around 10% of the household aggregated income.

### 3.3.2 Distribution of local income among wealth groups

The above mentioned sources of livelihoods play different role for local households. For poor household, non timber products from the nearby natural forest play the most significant role. Of the average per capita income in 2005, around 60% was from collection of NTFP and war wreckages from the forest (see Table 4). In fact, income from NTFP has provided ‘quick cash’ for many poor households in the village in case of need. Most of households who collected NTFP from the forest said they had to do so to get some income when there was no other option. By contrast, annual cropping plays a very minor role in their life. In 2005, income from annual cropping was only less than 4% of the aggregated income for an average poor farmer.

**Table 4: Per capita income from different sources in 2005**

<table>
<thead>
<tr>
<th>Source of Income</th>
<th>Poor HH</th>
<th>Medium HH</th>
<th>Rich HH</th>
<th>Sample ave.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Agricultural crops</strong></td>
<td>3 (66)</td>
<td>31 (620)</td>
<td>117 (2,337)</td>
<td>46 (925)</td>
</tr>
<tr>
<td><strong>Rubber</strong></td>
<td>-</td>
<td>40 (800)</td>
<td>150 (3,000)</td>
<td>59 (1,171)</td>
</tr>
<tr>
<td><strong>Forest plantation</strong></td>
<td>-</td>
<td>20 (400)</td>
<td>-</td>
<td>11 (211)</td>
</tr>
<tr>
<td><strong>Off farm</strong></td>
<td>32 (647)</td>
<td>104 (2,075)</td>
<td>55 (1,101)</td>
<td>76 (1,512)</td>
</tr>
<tr>
<td><strong>NTFP and war wreckages</strong></td>
<td>54 (1,075)</td>
<td>12 (236)</td>
<td>10 (192)</td>
<td>21 (413)</td>
</tr>
<tr>
<td><strong>Aggregated</strong></td>
<td>89 (1,787)</td>
<td>207 (4,131)</td>
<td>332 (6,630)</td>
<td>212 (4,231)</td>
</tr>
</tbody>
</table>

Comparison with national data of 2005
- GDP per capita: 504 (10,080)
- Minimum wage rate: 210 (4,200)
- Living cost in rural area\(^\dagger\): 170 (3,400)

Source: Household survey of Khe Tran village

Note: numbers outside parentheses are in Euro (€) and numbers in parantheses are in thousand VND

\(^\dagger\): data about living cost was of 2004 as no data of 2005 is available

For economically medium and rich villagers, collection of NTFP and war wreckage was of insignificant role. Although most of surveyed households in these groups did collected
products from the nearby natural forest in case of need, they mostly did it occasionally and only for consumption purpose. For these farmers, income from rubber plantation annual cropping and off farm sources was the most important in 2005. In addition, plantation forest also had a potential to make important contribution of their income as they manage most of the forest.

### 3.3.3 Legal versus ‘illegal’ livelihood sources

While income from rubber plantation, annual cropping, forest plantation and off farm sources is considered legal by state laws, collection of NTFP and war wreckages is not recognized as a ‘legal’ source of income. As mentioned in Section 3.1, because no natural forest in the surroundings of Khe Tran village legally belongs to the villagers, they do not have legal rights to withdraw products from this forest. As a result, all NTFP collection activities by the villagers are not legal, though they may be backed-up by villagers’ legitimate needs for daily life.

As a consequence, almost 10% of the annual income of an average Khe Tran inhabitant comes from an ‘illegal’ source. This rate changes significantly among wealth groups. While rich and medium income farmers have only 3% and 6%, respectively, of their income from ‘illegal’ source, a poor Khe Tran farmer has up to 60% of his/ her income from this source. As a consequence, an effort to provide local people’s rights to the natural forest and thus legitimizing this illegality will benefit poor farmers significantly.
4 Statutory law and forest governance

4.1 Land tenure and ownership rights in forest resources

4.1.1 Existing categories of land tenure in forest resources in the country

“Land, forests and mountains, river and lakes, water resources, […] are under ownership of the entire people” and “the State manages all the land in accordance with the master plans and laws”.


Formally, there is only one land ownership in Vietnam: land belongs to the entire-people ownership with the state acting as the owner's representative. The State transfers the land use rights to various stakeholders. For forest, owners may vary according to forest types and resources (2004 FPDL; see also Section 2.1). Forest wildlife, microorganisms, landscapes and environment uniformly managed and disposed of by the state; planted production forest is under the ownership of forest owners, which can be corporate, collective or individual.

View of land categorization has changes. The 1993 Land Law classified forest land in a separate land category, known as forestry land. The 2003 Land Law, however, put forest land under the category of agricultural land. As a consequence, there has no longer concept of forestry land in aspect of legislation. This leads to a need for supplementing some related provisions like law on agricultural land use tax.

4.1.2 Use rights

The 2004 FPDL defines forest use rights as the forest owners’ rights to exploit the utilities of and enjoy yields as well as profits from forests; to lease the forest use right via contracts in accordance with the provisions of forest protection and development legislation and civil legislation (Clause 6, Article 3).

Rights to use forest and land belong to forest owners. The forest owners are categorized into seven groups (Article 5, 2004 FPDL), including i) management boards for protection or special-use forests, ii) economic organizations, iii) domestic households and individuals, iv) army units, v) organizations involved in forestry-related scientific research and technological development, training or vocational training, vi) oversea Vietnamese investing in Vietnam, and vii) foreign organizations and individuals investing in Vietnam.

In addition, use rights to forests can also be given to communities. However, the following legal issues related to use right to forest by community need to be noted:

- Firstly, the 2005 Civil Code does not recognize community as a subject of civil legal relationship, although legislation has provision of common ownership of the community. Accordingly, the community members manage, use and dispose of common property following agreement or custom for the community’s interest but not breaching law and social morality.

- Secondly, the 2003 LL prescribes that community has same rights and responsibilities as the other land users, but the community cannot exchange, transfer, lease, present or donate its land use rights. In addition, it cannot mortgage, provide guarantee or use the land under its management as contribution to joint investment.
- Thirdly, according to the 2004 FPDL community cannot divide forests among their members, convert, transfer, donate, lease, mortgage, provide guarantee or use (the value of) rights over the assigned forests (Article 30).

In addition, practice of land and forest allocation to village community poses some questions of a) whether community includes all households and individuals living in the village or only a group of households and individuals, b) whether village community can be allocated with other forest areas beside the one that satisfies the allocation conditions (Article 29, 2004 FDPL), c) what mechanism of conflict resolution is available in case of conflict in land and forest use between community and the other actors, and d) what mechanism is available to ensure fair benefit sharing within the community. Such questions indicate inconsistency and unclearness of legal provisions, which are by themselves a barrier to an equitable and sustainable forest management.

4.1.3 Access rights

From aspect of learning, access right has various way of understanding: i) right to walk into forest, ii) right to do some activities in forest (such as scientific research, teaching…); iii) right to be assigned forest; iv) right to forest exploitation. Such inconsistency of concept of access right has a tendency to restrict the stipulation of this right in legal documents.

Vietnam legislation has no specific definition of access right to forest. So, it’s normal to understand that everyone have right to access forest in accordance with law, except the cases and persons prohibited by law. The meaning and objectives of access right is quite close with use right, but the 2004 FPDL only stipulates use right for forest owners, so, other rights involved use rights and access right of the others individuals and organization can be understood as they have access rights following the guidelines and inspection of forest’s owners and stipulations of laws, intramural regulations.

4.1.4 Control rights: rights to make decisions how the land should be used

According to the 2004 FPDL, the State implements control rights to forest and forest land management through authority of approval of forest planning, plans, projects and schemes, land assignment, land lease, land recovery, land use purpose change (Article 60).

In Vietnam, rights for deciding what purpose of, which area of, how long does term of land use and forest use, belong to the State (through the competent agencies). Forest and land users are responsible for conserving forest resources and develop forests in a sustainable manner, using forests for the right purposes within the boundaries defined in the forest allocation or lease decisions and according to the forest management regulations. Change in forest and land use purpose must be allowed by the State competent agencies.

The forest owners implement their control rights to forest through right to decide to invest to increase profitable capacity of land in accordance with forest land use purposes and legal provisions.

4.1.5 Transfer rights: rights to sell or mortgage the land, to reallocate use and control rights, to transmit the land through inheritance, etc.

In Vietnam, transfer rights to forest and forest land are determined based on the forest owners (see Section 4.1.1), forest categories (see Section 2.1), types of forest tenure arrangements (see Section 2.2), and level of financial responsibilities for the State (e.g. levies for allocated or leased forest). In a more concrete way, transfer rights for specific forest owners are defined as followings (Decree No 23/2006/ND-CP dated 3 March 2006):
- Forest owners, who are households or individuals, have rights to transfer, change, donate, lease, and inherit forest in accordance with Article 32.
- Forest owners, who are domestic organizations, have rights to transfer, donate, and lease forest following the Article 33 of the same Decree.
- Forest owners who are oversea Vietnamese have rights to transfer, donate, re-lease, and inherit forest in accordance with Article 34.
- Forest owners who are foreign organizations and individuals have rights to transfer, donate, re-lease forest in accordance with Article 35.

4.1.6 Tenure security

By issuing (forest) land use title, also known as Red Book Certificate or RBC (for the color of the document’s cover page), the State wants to guarantee tenure security for land users. According to 2003 Land Law, “the State grants land use right certificates to land users” and “adopts policies to create conditions for persons directly engaged in forestry to have land for production; at the same time adopts policies on preferences for investment” (Article 10). By law, holder of land use title is entitled to compensation (from the state) for the land reclaimed by the State for public purpose (Article 42). The 2004 FPDL also prescribes that “forest allocation and lease must be concurrent with land allocation, lease and granting land use right certificate” (Article 22).

Following the 2004 FPDL, the forest owner will also be compensated when the State reclaims the allocated forests. Value of the compensation is dependent on the forest prices also determined by the same law.

Land tenure security is also provided by Law on investment. According to this law, the State guarantees that investment capitals and legitimate property of the investors will not be nationalized or seized by administrative methods. This provision of law also applies to domestic and foreign individuals and organizations who invest in forestry in Vietnam.

4.2 Economic issues and instruments

4.2.1 Fiscal and pricing measures

Fiscal and pricing measures are not only prescribed in forest legal instruments but also in other laws on investment and tax. In forestry sector, the 2004 FPDL indicates that the state is in favor of i) investment in protection and development of special use forests, protection forests, national seeding forests, endangered, precious and rare forest fauna and flora; ii) protection and enrichment of poor production forests with precious and special timber trees, iii) development of forest products market, and iv) insurances for planted trees and some activities related to forestry production. In addition, tax exemption or reduction shall be applied in forest plantation. Priority policies shall be in use for credit organization providing loans for reforestation with favor interest rate, grace periods, and duration. Most importantly, determination and publicizing of forest valuation are the great progress of legislation on forest protection and development. The forest’s value will serve as a basis for calculation of payment for the environmental services; levies, tax and fees in forestry; value of right to forest use; and compensation by the state and other entities. However, such fiscal and pricing measures only have influence on corporate forest users, such as MB-SUF, MB-PF and economic entities. They have little, if any effects on households and individuals.

In the recently approved Law on Investment (LI), it is prescribed that afforestation, forest processing, environmental and ecological protection are among fields to receive favor
investment. It also states that the State favors investment into areas with difficult socio-economic conditions (Articles 27 and 28).

In the law on enterprise income tax, preferential tax rate for forest protection and development is prescribed. In a more concrete way, a tax exemption duration not exceeding four years (starting from the date that taxable incomes are generated) and a 50% tax reduction duration not exceeding nine subsequent years shall be applied. For newly set up investment undertakings in afforestation, forest products processing, and environmental and ecological protection, a preferential tax rate of 10%, 15%, 20% for 15 years as from the date they commence their business operations shall be in use.

Decree No 158/2003/ND-CP dated 10 December 2003 detailing the implementation of the value added tax law specifies that i) products from plantation forests are not subjects to value added tax (Article 4); ii) a 5% tax rate shall be applied to unprocessed forest products exploited from natural forests belonging to the groups of rattan, bamboo, mushrooms, Jew's ears, roots, leaves, flowers, medicinal plants and other kinds; iii) a 10% tax rate for timbers and non-timber forest products.

4.2.2 Credit institutions

At the moment, there is an established credit and financial institutions in Vietnam. Beside the State Bank of Vietnam, which has the functions of the Central Bank, there are six state owned banks, 37 joint-stock banks, five joint venture banks, 31 foreign banks, six financial companies, ten financial leasing companies and 45 representative offices of foreign banks. Of all these credit institutions, only the Vietnam Bank for Agriculture and Rural Development (VBARD) has its branch offices in all districts in the country. The presence in all parts of the country makes VBARD the most popular bank for agriculture and rural development activities.

In principle, credit for forestry development activities is available from commercial banks. In reality, however, most of the lending is for medium to large scale clients. Smallholder farmers find it too cumbersome to apply for credit from bank and often choose to get access to formal credit via development projects/ programs or through local organizations. In the study village, for example, none of the farmers who acquired official credit for the last five years got it from local bank. Instead, they borrowed money from local state forest enterprise and rubber company for timber and rubber plantation, respectively.

In addition to credit and financial institutions, lending for forest development activities comes from official development assistance (ODA). For the last decade, the World Bank (WB) and the Asian Development Bank have played important role in providing financial support to farmers through ODA projects. In addition, the role of International Non-government Organizations (INGO) in providing access to credit for forestry development is observed (MARD, 2004).

4.2.3 Anti-corruption

Anti-corruption in sector of land and forest land is prescribed by provisions of clarity and transparency in: i) setting up, adjusting land use plans, ii) leveling the ground and compensation for land recovery; iii) jurisdiction, proceedings, procedures and granting certification of land use right; iv) subjects being assigned land to build residential house.

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11 Funding comes from the World Bank funded project on supporting and developing forest sector in Thua Thien Hue
(Article 21, Law on Anti –corruption 2005). In addition, the anti corruption law also requires that officials and civil servants declare their assets and income through assets inventory, including land use rights (Article 45).

Those who abuse their powers and act against law, shall, depending on the nature and seriousness of their violations, be disciplined or subject to penal liability according to law provisions (Article 141, 2003 LL; Article 86, 2004 FPDL).

By the Penal Code 1999, money laundering is prescribed under crime of legalizing money, and/or property obtained through the commission of a crime (Article 251). In Vietnam, activities of legalizing money, assets owned by committing a crime in sector of land management in general and forest land in particular are usually under kind of asking the land use right, forest land use right in the name of relations, members of family. The highest penalty for this crime is 15 years of imprisonment. In addition, the offenders may be confiscated of property, fined, and banned from holding certain posts, practicing certain occupations or doing certain jobs for one to five years. However, in fact, detecting and handling this crime is not easy.

4.2.4 Trade measures influencing the use of forest lands and forest resources

For preservation of forest resources, the state prohibits export (for commercial purpose) of the following goods and products: i) round logs and sawn timber from domestic natural timbers; ii) specimens of wild endangered, rare, (economically) precious forest fauna and flora for commercial purpose (permit of Vietnam CITES management agencies is required for non commercial purpose) (Article 5, Decree 82/2006/ND-CP dated 10 August 2006 of the Government). The use of timber from natural forest to produce fine art products for export is permitted under Decision 1124/1997/QD-TTg dated 25/12/1997 of Prime Minister.

In addition, the state encourages import of various timber materials. A lowest rate of existing import tax frame is applied for imported round logs, sawn timber and products made of imported timber (Resolution 977/2005/NQ-UBTVQH dated 13 December 2005). Frame of tax rate for import timber is 0-10%, which is considered as an effective method that contributes to reduce pressure from domestic timber demand for development purposes.

4.3 Access to information, public participation, and benefit-sharing

4.3.1 Access to information

Provisions on access to information related to forest and land management have changes considerably. Competent state agencies are requested to publicize their plans on land use, forest protection and development, land and forest price, and list of forest animals and plants. For example, information on land use, forest protection and development plans must be publicized at PCs at all levels, land management agencies’ offices and multimedia 30 days after the approval (Article 28, 2003 LL; Article 20, 2004 FPDL).

According to the 2004 FPDL, the Government is responsible for prescribing and publicizing information on management and protection of endangered, precious and rare forest plants and animal species and lists of endangered, precious and rare forest plants and animals species. MARD is responsible for prescribing and publicizing the exploitation of forest plants, hunting of forest animals, tools and means banned or restricted from use; species, minimum sizes of forest plant and animal species and seasons allowed for exploitation and hunting; and areas where forest exploitation is banned (Article 41, 2004 FPDL). The prescribed land prices are publicized by the PPC at the beginning of the year (Article 56, LL
2003). In addition, forest owner can also access information on forest, forest land use and management through cadastral dossiers, books, maps and the others.

In reality, however, various problems exist for people to get access to forest and land information. Under existing legislation, there is no concrete sanction for obstructing to, making difficulties to access to forest and land information by the people.

### 4.3.2 Public participation

According to the 2004 FPDL, forest protection is the responsibility of the entire people. Consequently, state agencies, organizations, communities, households and individuals shall have to protect forests and strictly abide forest protection regulations. There is, however, no direct and concrete provision on participation of local communities (as social forces) in forest and forest land management. The 2004 FPDL only generally prescribes that “forest development planning and plan must be democratic and public” (Clause 4, Article 13). 2003, LL prescribes more detail about this issue but not concrete yet “in the course of elaborating the detailed land use planning, the agencies in charge must gather comments from people”(Clause 5, Article 25). Decision 106/2006/QD-BNN dated November, 27th 2006 guiding forest management prescribes detailed participation of the village community in forest allocation, forest management planning, plans elaboration, implementation of plans, as well as their rights and responsibilities in implementation, supervising and assessing forests allocation by the State (Article 3). However, the participation of above communities is limited in scope of 40 communes of 10 provinces experimenting this community forestry guideline.

### 4.3.3 Benefit-sharing

Benefit-sharing in forest protection and development is implemented following a common principle “to ensure the harmony between the State’s and forest owners’ interests; between the economic benefits of forests and the interests of protection, environmental protection and nature conservation; between the immediate and long-term interests, ensuring that forestry practitioners can live mainly on forestry” (Article 9, 2004 FPDL).

Concrete provisions on forest benefit sharing are prescribed in the Prime Minister’s Decision 178/2001/QD-TTg dated 12 November 2001 as followed:

**Benefit sharing from forest (land) allocated or leased by the State:**

Households and individuals owning forest are allowed to operate some services in the forests and derive benefits from these services, including harvest of non timber forest products (NTFP), dead branches for fuel, bamboos, and timber (through selective cutting). In addition, forest owners are also entitled to a share (with the state) of timber products after paying taxes, as followed:

i) special-use forests allocated to households for management, protection and development: benefits include state funding and permission to conduct scientific research, cultural, social and eco-tourist activities

ii) protection forests allocated to households for management, protection and restoration through regeneration: benefits include state funding, permission to harvest NTFPs (including fuelwood and bamboo) and timber (85-90% of the after tax value) through selective cutting.

iii) non-forested forestry land classified as protection area: benefits include state funding; 100% of the trees planted and forest thinning products (ensuring that a forest cover of
over 0.6 is maintained after thinning); permission to use no more than 20% of the non forested land for agricultural or aquaculture production; 90-95% of the after tax value of timber exploited through selective logging.

iv) natural forests allocated to household for production purpose: benefits include permission for intercropping, cattle grazing, collection of NTFPs and no more than 10 m³ of round for housing purpose; entitlement to a share of timber products (concrete share depends on the state of the forest at the time of allocation and the number of year the household has managed the forest).

v) plantation forest from state budget allocated to household for production purpose: benefits are similar to those under natural forests allocated for production purpose, excepting lower share of timber products (75-85% of the forest products value after paying taxes).

vi) non-forested land allocated to household for plantation of production forest: benefits include access to state capital for afforestation, permission to use part of the non forested land for agricultural or aquaculture production, rights to decide about planting, exploitation and use of forest products (only when the household invests its own capital).

vii) non-forested forestry land leased to household for plantation of production forest: same rights and benefits as non forested land, except those with state capital for plantation.

viii) special-use or protection forest leased to household for tourism or recreation purpose: benefits include permission to use the forest habitat for eco-tourism and recreation, subject to approval by competent State agencies.

Benefit sharing from forest contracted for restoration through regeneration or plantation

Depending on the kind of forest (i.e. special-use forest, production forest, or protection forest) that people who are contracted by the state shall be provided with funding for plantation, restoration, protection, and regeneration activities. In addition, the contracting people/ households are allowed to harvest NTFP, such as flowers, fruits, oil, and resin, or to use certain percentage of the non forested forestry land for agriculture and aquaculture purpose under the contractor’s guidance. Selective logging is also allowed and the contracting households are entitled to a share of timber benefits after paying the taxes.

However, above mentioned process of implementation of Decision 178/QD show some following major problems:

- Only provision or support of funding, payment of remuneration, harvesting of NTFPs, and use of land for agricultural purpose are implemented. Sharing the value of timber products from the contracted forest is still to be implemented as most of the contracted forests have not reached maturity.

- When Decision 178 was issued in 2001, forest contracting to village community was not established and developed. As a result, the mechanism of benefit sharing for community was not regulated in this decision.

- Community forest management has advantages in aspect of forest protection. However, it seems to be difficult to mobilize the resources to develop forest areas and to improve forest quality. As communities have no right to mortgage allocated forests for loan for forest development activities, they can only expect support of the state.

(www.vietnamforestry.org.vn/Cam_nang.html)
Benefit sharing of plantation forest in Thua Thien Hue province

In order to concretize Decision 178/2001/QDD-TTG, Thua Thien Hue PPC issued Decision 1430/2006/QD-UBND regulating benefit sharing arrangement for plantation forest with state budget. The decision applies for all plantation forest with state budget (e.g. under 327 Program, 5MHRP or plantation projects with local budget) and those from support projects (e.g. with NGOs or GOs funding) in which no benefit sharing policy is available.

According to the decision, the state is entitled to 65% of the benefits from the forest after deducting all the costs associated with the plantation and logging. This money will be used for reinvestment in future plantation and for forest protection. Another 3% go to the Communal People’s Committee (CPC) of the commune where the plantation belongs. The remaining 32% of the benefits will be distributed according to the following options:

- Option 1: 12% to local households and 20% to the forest owner (i.e. the organization or person that contracted households for planting and tending the forest) if the former received annual remuneration for protecting the forest
- Option 2: 15% to local households and 17 to the forest owners if no payment was made to the former for protecting the forest
- Option 3: all 32% to the forest owner if it (he/she) was responsible for planting, tending and protecting the forest.

4.4 Compliance and enforcement

4.4.1 Jurisdiction of statutory authorities

Jurisdiction of statutory authorities in handling violation of forest legislation is determined based on measures: administrative sanctioning, penal sanctioning or civil treatment. In concrete way, FPD has the functions of protecting forests, assisting MARD and the chairmen of PCs at all levels in exercising the state management over forests, ensuring the observance of forest protection and development legislation. In addition to FPD system, forest owners might protect their forest through: i) organizing forest protectors forces (average 1 person/500 ha of special use forest, 1 person/1000 ha of protection forests); ii) contracting forest protection to local households, individuals, communities or hiring professional guards to protect forests (Decision No 186/2006/QD-TTg of Prime Minister). However, those forces have no right to apply any measures to handle legal violators. In fact, current forest protection force is slim but the State still has no effective mechanism to mobilize social resources for this activity. The role of NGOs and Civil societies is very unclear in this activity.

Jurisdiction of handling against administrative violation of the forest protection system, includes: i) the forest protection agent (on duty) can impose a fine of up to 5 € (100,000 VND), ii) the Heads of FP post can impose a fine of up to 100 € (2,000,000 VND); iii) the Heads of FPUs, Mobile FPU Team can impose a fine of up to 500 € (10 million VND); iv) the Directors of Sub-FPD can charge a fine of up to 1,000 € (20 million VND); v) the Director of FPD can impose a fine of up to 1,500 € (30 million VND).

Jurisdiction of handling administrative violation of Chairman of PC at all levels includes: i) Chairmen of commune PC can impose a fine of up to 25 € (500,000 VND), ii) Chairmen of DPC can impose a fine of up to 1,000 (20 million VND); iii) Chairmen of PPC can impose a fine of up to 1,500 € (30 million VND). Jurisdiction of penal handling against forest crime in domain of forest protection and development belongs to courts at the district level where the
crime is committed. Responsibilities for handling of criminal and civil violations of forestry law belong to people court at all levels.

4.4.2 How illegal activities are defined

According to Decree 139/2004/ND-CP on sanctions of administrative violation in the sector of forest, forest products protection and management, illegal activities in forestry are defined as followed:

- **Illegal deforestation** is an act of destruction of forests for any purpose without permission of the competent State agency or with permission but not in compliance therewith.

- **Illegal exploitation of forest timber** is an act of felling forest trees to collect timbers without permission of the competent State agency or with permission but not in compliance therewith.

- **Illegal exploitation of firewood of the other forest products** is an act of violating the corresponding regulations of the State.

- **Illegally burning of forest for swiddening** is an act of slashing and burning forests for shifting cultivation purpose beyond the prescribed area. It should be noted that in the areas where local people have tradition of shifting cultivation, legal framework allows to zoning area for permanent fields with 1-2 ha of land for each household (Direction 36/2000/CT-BNN-KL of MARD dated April 6th 2000 on zoning area of swidden cultivation).

4.4.3 Penalties for illegal activities and enforcement authority

Sanctions against administrative violation in forest management and protection are prescribed by Article 5 of Decree 139/2004/ND-CP. In general, two main sanctions in use are warning and fines. A fine ranging from 5 to 1,500 € (100,000 to 30 million VND) shall be applied for an act of violating administrative in forest management and protection. Depending on level and nature of violation, supplement sanctions may be applied, including withdrawing permits or confiscating the forest products, vehicles or other materials used related to the action.

The 1999 penal code stipulates penal liabilities for crime breaching legislation of forest and forest law in which the highest penalty for crime of destroying forests is 15 years of imprisonment and fine of 500 € (10 million VND). Over the last several years, violation of forest law happens rather often. In the first ten months of 2006, for example, there are over 32 thousand violation cases (source: [www.kiemlam.org.vn](http://www.kiemlam.org.vn)). Most of them are minor violations but there are also quite a few forest crimes.

4.4.4 Accountability of statutory authorities

Following the 2004 FPDL, accountability of FPD system and staff is regulated by Article 80 (see Annex C) and Decree No 119/2006/ND-CP dated 16 October 2006 on organization and operation of forest protection system. Chairman of PC at all levels shall have to exercise the State management over forest protection and development following the 2004 FPDL in their respective localities according to their competence. In addition, they have to direct the coordination of activities between forest rangers and relevant agencies in their respective localities.

MARD is accountable to implement State management over forest protection and development following the 2004 FPDL nationwide and uniformly direct the professional activities, supervise and direct the inspection, mobilize and transfer, organize the training
and fostering organize the equipment of weapons, supportive instruments, specialized means, uniforms, badges, insignias, pennants for forest rangers at all levels under law provisions;

The specialized agencies such as the People’s Security Force, the Customs Service, the Taxation Agency, the Market Management Agency and the Specialized Inspectorate shall have to closely coordinate with the FPD system in supervising, inspecting and preventing administrative violations in the field of forest management and protection and forest product management; upon detecting violations they shall make records thereof and hand the dossiers and material evidences to the FPD for handling in accordance with provisions of law.

**4.4.5 Administrative remedies and judicial and alternative dispute resolution mechanisms applicable in the context of forest governance**

Liabilities of remedies for violation of legislation on forest protection and management are prescribed in detail under the Decree 139/2004/ ND-CP. Following that, the violators must implement following measures:

- Replanting forest and paying the cost of forest planting;
- Prohibiting to be undertake forest design for 2 years;
- Recovering business registration;
- Being forced to dismount illegal construction works on forestry land.;
- Being forced to pay the cost of fire fight, repair and treating environmental pollution and forestry land;
- Being forced to pay the cost of rescuing or incinerating injured and dead wild animals or releasing wild animals to natural environment;
- Being compelled to collect arrears of natural resources taxes, recover forest products being administrative proofs, and sell by the order to get money for the State budget.

In addition to above administrative liabilities, those whose violation of forestry law causes damages to the State, organization, households, individuals must compensate for the damages following legal provisions. Comparing with provisions of remedies, provisions of compensation for damages are not clear. The basis to determine damages are not clarified, especially for damages of natural forests, which is considered as a major barrier in determining the severity level of forest law violation.

Mechanism for land dispute solution has been established. Accordingly, disputes of forest use right for all kind of forests and ownership right for planted production forests are solved by the People’s Courts. Depending on specific case, disputes of forested land use right and planted forest land use right are solved by either People’s Committee or People’s Courts. In case of disputes under land legislation, the People’s Court will have jurisdiction to solve if the problems are related to forested land use right.

**4.4.6 Standing**

Vietnam legislation on forest protection and development does not mention the role of Vietnam Father land Front and its member, as well as other NGOs in forest management and protection in general and in the domain of protecting right and legitimate benefit of forest owners against the violation of forest law in particular. This is a weak point of the 2004 FPDL in comparison with 2003 LL (Article 8, 135) and the 2005 Law on Environmental Protection (Article 124).
4.5 Other issues

4.5.1 Ambiguity and changes in state forestry legislation

At national level, some policies of the State on forest resources have changed significantly, especially, the policies relate to forest inventory, planning, management and organization of protection’ system. The system of normative legal documents of forest management is more and more bulky with many various instruments, in which, the contents have changed that make difficulties for the people catching information. Some provisions of FPDL are still general and need the guidelines of implementation to apply. Some provisions are inadequate with actual requirements. Other provisions - such as provision on forest’s valuation, value of forest use right, and value of planted production forest - are too theoretic for the people to understand and comply.

At local level, local authorities confuse to concretize some policies of the State, especially policy of changing forest use purpose, policy of benefits sharing to households, individuals assigned, leased, contracted forestry land for protection, zoning to tend and regeneration and forest planting.

4.5.2 Law enforcement and compliance

At national level, a number of great policies of the State have not been implemented strictly and not attained expected results. Typical example is the Five Million Hectare Reforestation Program (5MHRP), which has been implemented since 1998. After eight years of implementation, following problems have been identified:

- **Undesirable achievement of plantation objectives**: after eight years of implementation, only 1.4 ha million (28.5% of the plan) have been planted. In addition, the planted forests are of low quality. It is common that re-planting takes place many times in the same area unit.

- **Low capacity of timber supply**: following the statistics, quantity of annual timber exploitation nation wide at 2.5 million m³/year from 12.6 million ha of forestry land is low.

- **Forest dependent people are still poor**: the 5MHRP only concentrates on the State. The people livings are not attached closely with the forests.

- **Failure of forest protection contracts**: the contract was not set up a material basis for the farmers to develop forestry in a stable and sustainable manner. The payment of 2.5 € (50,000 VND) per ha per year, which will be doubled from 2007, is causing a habit of relying on the state subsidy. In addition, there is no clear mechanism for people to derive benefit from forest for their living.

In addition to 5MHRP, the 2004 FPDL was not propagated, disseminated, implemented broadly nation wide.

Granting forest land use title was slow, and incomplete. Until now, only more than 25.6 million of the certificates for 15.7 million of ha of land have been issued, which accounts for only 66.7% of land area need to be granted with title. Only in 17 out of 64 provinces that issuance of title has been completed (http://www.dosm.gov.vn). In Phong Dien district, land use certificate has been issued for only 62.19% of the land in rural area (http://www.thuathienhue.gov.vn). Such slow process is influencing the intention to invest in forest by local people. Violation of legislation on forest protection and management is increasing incessantly, including burning of natural forest to for plantation, clearing of forest for land (to sell for mineral exploitation or aquaculture and agriculture purpose). By contrast,
sanctions of handling against violations of forest law are not sufficiently strict, which is partly due to low administrative sanctions for violation and complex legal procedure of violation handling.

In Thua Thien Hue, the followings are observed:

- High occurrence of conflicts and disputes over forest land and forest use rights between local people and outsiders (e.g. private enterprise, development projects).
- Unclear land use boundary in the field and disparity in land use map (cadastral records) and reality.
- Allocation of poorer forest to local people, resulting in low interest in forest land allocation and ineffectiveness in forest plantation and protection.
- Absence of foreign investment in forest activities.

### 4.6 Judicial decisions related to forest governance

The following legal documents prescribe customary law, village code in forest management and protection:

- Decree 79/2003/ND-CP dated 07/7/2003 regulating implementation of democracy at grassroots level (replacing Decree 29/1998/ND-CP);
- Directive 24/1998/CT-TTg dated 19 June 1998 on developing codes and regulations of village and residential group;
- Circular 56/TT-BNNPTNT dated 30/3/1999 guiding the development of regulation of forest protection and development of village and community;
- Inter-circular No 03/2000/TTLT-BTP-BVHTT, BTTUBTUMTTQVN dated 31, March 2000 on guiding implementation codes and regulations of village and residential groups;
- Decision 186/2006/QD-TTg by the Prime Minister dated 14 August 2006 regulating forest management;
- Decision 106/2006/QD-BNN by MARD minister on 27 November 2006 guiding the implementation of community forest management.

Although the legal document implicitly requires that “in areas where habits and customs of ethnic minority groups were described by customary law, it should be considered to choose appropriate rules to be described by village codes in accordance with legislation and good habits and customs”\(^\text{12}\), problems occur with developing new village codes and regulations:

- Poor participation of local people in the development of village codes and regulations: the work is done just in a nominal way, following the campaign and does not attract attention of the people.
- Administrative imposition: development of village codes and regulations on forest protection turns out to be obligatory administrative procedures to be fulfilled.
- Poor compliance with existing legal provisions: development of the codes and regulation does not follow terms and conditions of handling violations of forestry law. Some kinds of handling against violations proposed by people are heavier than legislation provisions.

\(^{12}\) Speech made by Prof. Dr. Hoang Thi Kim Que in the National Conference on role of community in environmental protection through village codes and customary law in Vietnam today.
Although judicial decisions related to forest governance may not refer to customary law, annual summary report of the courts shows that there is no case of trial using customary laws during the hearing process. This is because the Penal code was promulgated early and in detail enough.

4.7 Documented cases where application of existing law has been beneficial to local forest-dependent communities

In 2000, with support from a UNDP funded project and Thua Thien-Hue Forest Development Department, an agreement for an experimental management of a natural forest area by Thuy Yen Thuong village of Loc Thuy commune was made. Total forest under agreement was 405 ha at the quality of medium to rich. Average timber volume was 76 cubic meters per ha. The village would protect forest for a test period of three years. Upon satisfactory management of the forest resources, the village would be given a forest RBC, which will be valid for 50 years.

The main responsibility of the villagers is to maintain and develop the quality and quantity of the allocated forest. In return, they are entitled to extraction of non timber forest products and a timber benefit sharing scheme with the state as specified in Table 5. In 2004, the villagers were allowed to do a selected logging of 79m³, which was used for domestic purpose and to cover the cost of protection. In addition, local people also harvested firewood, rattan, and other NTFP from the forest. Another source of income from the forest is fee collected from visitors.

Table 5: Timber benefit sharing scheme for Thuy Yen Thuong villagers

<table>
<thead>
<tr>
<th>Rate of increment</th>
<th>Share of timber benefits by villagers</th>
</tr>
</thead>
<tbody>
<tr>
<td>≥ 2%/year, equivalent to ≥1,5m³/ha/year</td>
<td>50%</td>
</tr>
<tr>
<td>&gt; 1m³/ha/year</td>
<td>30%</td>
</tr>
<tr>
<td>&gt; 0,5m³/ha/year</td>
<td>20%;</td>
</tr>
<tr>
<td>≤ 0,5m³/ha/year</td>
<td>10%</td>
</tr>
<tr>
<td>No increase</td>
<td>None. The forest reverts to the state</td>
</tr>
</tbody>
</table>

4.8 Documented cases where application of existing law has been detrimental to local forest-dependent communities

In 1997, seven households in Khe Tran village in Thua Thien Hue were contracted to plant, tend and protect 34.7 ha of Acacia (Acacia mangium and Acacia auriculiformis) under the National 327 Program. As the plantation is ready for harvest now, the question of how logging can be done arises. However, local people are still unclear about their rights to benefit from this forest area. While the province has issued Decision 1430/QD-UBND guiding the extraction and sharing of benefits from forest plantation, local people will lose out compared to what is regulated in Decision 178/2001/QD-TTg (see Section 4.3.3). Local people, therefore, request the use of Decision 178 or the conditions with Phong Dien State Forest Enterprise (which is now Phong Dien Forestry Company Ltd – see Section 2.2) as the basis for benefit sharing calculation.

The bases for local people to raise requirement are: i) Decision 178/QD-TTg has higher legal validity than Decision 1430/QD-UBND. If conflict occurs between two legal documents, Decision 178 will be applied; ii) Decision 178 provides details on benefit sharing while Decision 1430/QD-UBND has no such provisions; iii) Decision 178 only assigns
MARD the responsibility to coordinate with MOF and related ministries and agencies in guiding the implementation. It does not assign this responsibility to PPC to concretize this legal document.

4.9 Statutory law, court decisions and stakeholder participation in forest governance on a “level playing field”

At present, 2004 FPDL, Decree 23/2006/ND-CP (3 March 2006), and Decision 186/QD-TTg (14 August 2006) are legal documents specifying the relationship between competent state agencies and the other subjects in coordinating forest protection and management. In a more concrete way, MARD coordinates with related line ministries, agencies in forest management and protection (Article 39). People’s Committees at all level coordinate with forest protection forces, police, military and other forces to protect forests and prevent all activities of forest violation and destruction (Article 38, 2004 FPDL). District PC, commune PC and forest owner in buffer zones are responsible for coordinating with forest management board in forest protection and development (Article 24, Decision 186/QD-TTg). The forest owners self-organize or coordinate with organizations, households, and individuals in landscape business, ecotourism, entertainment, and scientific research in the protection forests (Article 33, Decision 186/QD-TTg). However, the above coordination is only bilateral relationship and multi lateral relationship has not been sufficiently mentioned.

State forest policies can affect different stakeholders. The level of effects one may get depends on specific conditions. Followings are summary of some effects from state policies on different stakeholders and their (re)action:

- State policies on maintaining or decreasing special-use and protection forests and expanding production forest to meet demands of socio-economic development create opportunities for economic entities (excluding MB-SUF, MB-PF, SOE) to take part in forest development and protection. Due to prevalence of conservation projects, however, local stakeholders in the proposed project site want to broaden areas of special use forests to increase the possibility to enjoy benefits from conservation projects.

- State bodies are the ones who object the implementation of policies on decreasing forests areas under the state management and allocating forest to local stakeholders. Implementation of these policies would lead to decrease of capital investment from central state budget and increase initiatives at the local levels. Many forest management boards decline these policies as they want to continue with the investment of the central state budget.

- SFE reform policies are considered to have strong effects to different stakeholders. The reform create good opportunities for active SFEs to promote their imitativeness in business and production, but SFE leaderships mostly do not desire this situation because of their habit to receive subsidy from the state in forestry production.

- In general, state policies on provisions of rights and responsibilities to forest to local households through allocation, lease or contract have initially achieved some effects. However, as payments did not take into account specific characteristics and local conditions, local people are not sufficiently mobilized to actively participate in such policy programs.

- Similarly, policies and law on forestry market development have generally made some initial effects. However, as the system has not been functioning well enough, forest investment of the people is still spontaneous and full of risks.
5 Wider socio-economic influences on forests, livelihoods and voices

5.1 Macro-economic policies and policies of other sectors

5.1.1 Public Administration Reform

The Public Administration Reform (PAR) was launched in 1991 following the resolution of the 7th Congress of the Vietnamese Communist Party (VCP), aiming to develop a democratic, transparent, sustainable and modern public administration. In its 9th Congress in April 2001, VCP determined to strengthen this reform. Subsequently, the GoV launched a PAR Master Program for the period of 2001-2010 with the objective:

“to build up a democratic, clean, strong, professional, modern, effective and efficient public administration system which operates in line with the principle of the socialist State ruled-by-law under the leadership of the Party; public cadres and civil servants will have appropriate skills and ethical qualities to respond to the requirements of the cause of national building and development” (http://www.caicachhanhchinh.gov.vn)

The PAR Master Program 2001-2010 sets its focus areas in four reform, namely 1) institutional reform, 2) organization structure reform, 3) renovation and improvement of the quality of cadres and civil servants, and 4) public finance reform and seven sub-programs. These reforms are translated into seven action plans:

- Renovating the development, issuance, and quality improvement of legal normative documents
- Examining the roles, functions, and organizational structures of state administrative agencies
- Staff downsizing
- Quality improvement of the cadres and civil servants
- Salary reform
- Renovation of financial management mechanisms for administrative and public service delivery agencies
- Modernization of the administrative system

5.1.2 Restructuring of State-owned enterprises

Restructuring of State owned enterprise (SOE) system was initiated by Decree 388/HDBT dated 20 November 1991 by the Chairman of the Council of Ministers and in decision 90/TTg dated 7 March 1994 by the Prime Minister. Later on, in September 1999, the Prime Minister issued decision 187/1999/QD-TTg to specifically define the purpose of and principles for restructuring of SOE. The idea of SOE reform is to re-invent SOEs into business-like enterprises, which will operate on the self-financing basis.

The SOE reform process has been rather slow. In December 2004, the Government issued Decree No 200/2004/ND-CP to push the reform forward. Nevertheless, challenges still remain in terms of lack of political will to make reforms from within SOEs.

In forestry sector, reform of State Forest Enterprise (SFE) system has been connected with the SOE reform in the whole country. Following Decision 187/1999/QD-TTg, some existing forest land under management of SFE is to be transferred to local state administration. The idea of SFE reform is to re-invent SFEs into business-like enterprises, which will operate on the self-financing basis, or into Management Board for Protection Forest (MBPF), or to be liquidated. The reinvented SFEs will function as state owned enterprises in forestry.
production and commercialization system. Nevertheless, the process has been rather slow and only after the issuance of the Decree 200/2004/ND-CP, which immediately took effect in 2005 with 149 SFEs reformed into 78 forestry companies, 56 MB-PFs, and nine SFEs being dissolved. Around 226,000 ha of forest land have been reallocated from SFEs to local authorities, which can be devolved to non-state sectors (FSSP-CO, 2005).

5.1.3 Tenure reform in agriculture sector

Tenure reform in agricultural sector of Vietnam started in 1981 after Directive No 100/CT-TW of the Central Communist Party. The directive introduced a contract-based system in agricultural production, which aimed to enable individual farm households to cultivate on the assigned field and provide the contracted amount of output to the state. In April 1988, Resolution No 10 NQ/TW was issued, providing a new direction for agricultural land tenure reform. The main purpose of tenure reform under Resolution 10 was to provide farmers with farmed land as necessary means of production for household economic development.

In 1993, the reform in agricultural sector was consolidated with the promulgation of Land Law in July 1993 and Decree 64/CP in September 1993. The new legal documents provide tenure rights for annual and perennial crops of 20 and 50 years, respectively and extend the rights to:
- inherit land use rights;
- transfer, lease or exchange land use rights;
- pledge land use rights as security (or collateral) both to individuals and banks;
- receive compensation from the government in case of dispossession or seizure of the land property.

5.1.4 Grassroots democracy policy

On 11 May 1998, GoV issued Decree 29/1998/ND-CP on implementing grassroots democracy at the commune level. The decree sets up the legal framework for increasing community participation at the local level. According to the decree, local people must be informed of the commune plans, budgets, expenditure reviews, reviews of Commune People's Councils' and Committees' activities and other information. In addition, GoV wants to step up education and dissemination of legal information to citizens and to integrate community participation approaches in HEPR and other social programs as mentioned above.

However, the implementation process of grassroots democracy was slow and unsatisfactory. To improve the whole process, the GoV issued Decree 79/2003/ND-CP on 7 July 2003, replacing Decree 29/1998/ND-CP and providing new guidance on the implementation of democracy at the grassroots level.

5.1.5 Fixed Cultivation and Sedenterization (FCS) program

The history of Fixed Cultivation and Sedenterization (FCS) program started as early as 1968, when GoV launched a national program to sedentarize shifting cultivators and provide alternatives to their slash-and-burn practices. The program aims at stabilize over three million people engaged in shifting cultivation, stop the destruction of forest resources and thus increase forest coverage. One of the major assumptions of the program is that livelihood conditions of the shifting cultivators can be greatly improved by moving to a designed project site with better access to infrastructure and services.

Through the implementation of small-scale development projects at the commune level, the program tries to facilitate the transition from swidden agriculture to more permanent systems
of cultivation. Most projects under FCS program mainly focus on forestry activities (e.g. plantation, restoration of forests and tending of existing natural forest) and agriculture (construction of model farms, cultivation of industrial crops and introduction of high-yielding varieties).

5.1.6 WTO accession

On 7 November 2006, Vietnam joined the World Trade Organization (WTO) after 11 years long of discussion and negotiation and became official member in January 2007. While the official position in WTO provides open opportunities for Vietnam to boost its economy, there are challenges that Vietnam will have to face. Among these challenges are:

- **Increase of competitiveness**: as a member of WTO, protection of domestic production (in terms of subsidy, tax, licensing etc.) will be reduced (and removed) to realize the international commitments that Vietnam has made. This will allow commodities produced in other countries to enter Vietnam market and compete with those produced in Vietnam, directly influencing domestic producers, particularly small scale ones.

- **Need for improvement of legal and state system**: WTO accession also requires a strengthening of legal system to be in line with the international practices. At the same time, improvement of the capacity of local governments plays an important role in successfully integrate Vietnam in the fields of not only economic but also political, cultural, social, and environmental alike.

- **Limit on use of natural resources**: as part of the international commitments that Vietnam has made, requirements for sustainable use of natural resources will be strengthened and extraction or use of certain forest resources may not be able to continue. In addition, certification of sources of materials will be required for forest based products (e.g. those from timber). As a result, not all timber can be used as raw materials for woodwork.

5.2 Effect of donor support and consequences of it ending

5.2.1 Overview of international support in forestry sector

Since the beginning of its reform process in early 1990s, the Vietnam forestry sector (VFS) has received significant support from international donors. Early support to the sector came from Swedish Government through Swedish International Development Agency (SIDA), German Government through German Agency for Technical Cooperation (GTZ) and the German Bank for Reconstruction (KfW), Japanese Government through Japanese International Cooperation Agency (JICA), the World Bank (WB), Food and Agriculture Organization of the United Nations (FAO), World Food Program (WFP), Asian Development Bank (ADB) and others. International supports from donors have contributed to the achievements in reforestation, forest employment, forest protection and conservation, forest industry and shift to social forestry regime (cf. MARD, 2005a; Nguyen et al., 2001).

Since 2001, most of the international funding has been channeled through the Forestry Sector Support Program and Partnership (FSSP&P) for better targeting of forestry objectives. By now, 24 donors have been in partnership with FSSP&P. Their supports have recently focused on the areas of sustainable forest management; forest protection, conservation and environmental services; forest product processing and trade; forest research, extension, training, and education; and strengthening forest sector policy, organizational, planning, financial, and monitoring frameworks.
Thua Thien Hue province has a relatively large number of foreign projects working in the forestry field (see Annex D, note that the list is not exhaustive). At present, there are at least ten foreign supported projects and programs directly related to forestry activities. Important donors are the WB, UNDP, Japanese Bank for International Cooperation (JBIC), the Netherlands Development Organization (SNV), Finnish government. Most of these projects and programs are technical cooperation and only two are financial assistance. In addition, there are also various donor support projects working in the field of rural development, livelihood improvement and others, which indirectly linked with forestry (see Tropenbos International, 2005).

5.2.2 Decline in international support and its consequences

While support from international donors for VFS remains high (18% of the total investment in forestry in 2005), recent trend shows that such support is fading out. Between 2001 and 2005, financial support from international donors has declined in both relative and absolute terms (see Figure 3). It is expected that substantial support from donors will not continue in the long-run as Vietnam is going to join the group of medium income countries (Nguyen, 2006a).

![Figure 3: Investment in forestry for the last five years](image)

Source: Forest Department

The ending of donor support is a predictable future, which may bring in the following major consequences:

- **Funding for forestry activities**: ending of donor support implies significant decrease in fund available for forestry activities. As a result, measures will have to be taken to mobilize funds from other sources. At the moment, funds mobilized from private sectors for forestry activities are relatively limited. Between 2001-2005, the share of capital investment from individual households accounted for only 2.68% of the total investment fund. Contribution of enterprises (both state and non-state) was even less, at only 1.53%. These are the potential sources for capital mobilization for the future. In addition, new sources will need to be explored. For example, fee for the environmental services generated by forest ecosystem needs to be collected to reinvest in forestry activities.

- **Capacity building**: ending of donor supports would also mean that VFS needs to have a system of capable staff to meet with the work requirements. As a result, training and
retraining of existing staff needs to be strengthened. This includes not only theoretical training but also exposure to practical work experiences. For this to work, VFS will have to not only send its staff (on its own budget) for training and study tours abroad but also to create favorable conditions to attract skilled foreigners to Vietnam. This will allow VFS staff to interact with various people and learn from them.

- **Payment for technical advice**: technical advice from donor supported technical cooperation projects/programs will no longer be free of charge when donor supports end. The forestry sector will have to continuously improve its human capacity and mobilize the domestic expertise. Expatriate technical advice will have to be sought on a competitive market. On the one hand, this obviously has an impact on the fund available for forestry activities. On the other hand, paying for its technical advice will allow Vietnam (forestry sector) to be more selective of what it really needs and who or which organizations could meet such needs. In addition, it also allows the forestry sector, as the direct employer of the expatriate expert, to closely monitor the work progress and to dismiss the expert if the performance is not satisfactory.

- **Removal of influence from donors**: although donor supports are mostly targeted to the needs of Vietnam, there are goals for which these donors need to pursue and conditions to which grant recipients need to fulfill. When VFS no longer receive supports from donors, it will not have to be bound by the requirements of the donors.

5.3 **Power relationships and corruption**

At the national level, Vietnam is assessed by Transparency International as having a high level of corruption. As of 2005, Vietnam has the Corruption Perception Index (CPI) of 2.6, ranking 107 out of 159 countries assessed (Transparency International, 2006) (see Table 6). In the Southeast Asia region, Vietnam is the fifth highest corrupt country after Myanmar, Indonesia, Cambodia, and the Philippines (ranked 155, 137, 130 and 117, respectively).

**Table 6: Vietnam Corruption Ranking through Years**

<table>
<thead>
<tr>
<th>Year</th>
<th>CPI score</th>
<th>Rank</th>
<th>Number of countries assessed</th>
<th>Percentile</th>
</tr>
</thead>
<tbody>
<tr>
<td>1997</td>
<td>2.79</td>
<td>43</td>
<td>52</td>
<td>82.7%</td>
</tr>
<tr>
<td>1998</td>
<td>2.5</td>
<td>74</td>
<td>85</td>
<td>87.1%</td>
</tr>
<tr>
<td>1999</td>
<td>2.6</td>
<td>75</td>
<td>99</td>
<td>75.8%</td>
</tr>
<tr>
<td>2000</td>
<td>2.5</td>
<td>76</td>
<td>90</td>
<td>84.4%</td>
</tr>
<tr>
<td>2001</td>
<td>2.6</td>
<td>75</td>
<td>91</td>
<td>82.4%</td>
</tr>
<tr>
<td>2002</td>
<td>2.4</td>
<td>85</td>
<td>102</td>
<td>83.3%</td>
</tr>
<tr>
<td>2003</td>
<td>2.4</td>
<td>100</td>
<td>133</td>
<td>75.2%</td>
</tr>
<tr>
<td>2004</td>
<td>2.6</td>
<td>102</td>
<td>146</td>
<td>69.9%</td>
</tr>
<tr>
<td>2005</td>
<td>2.6</td>
<td>107</td>
<td>159</td>
<td>67.3%</td>
</tr>
</tbody>
</table>

Source: transparency.org

Corruption has been seen by GoV as a national disease that needs to be fought against. Various efforts have been made over the last several years to combat with corruption, including endorsement of the Anti-Corruption Action Plan for Asia and the Pacific in July 2004, approval of anti-corruption law in 2005, and establishment of National Committee for Anti-corruption in October 2006. Along with these efforts are detection and trials of

13 The CPI score is calculated based on perceptions of the degree of corruption evaluated by business people, academics and risk analysts, with the ranges from 0 (highly corrupt) to 10 (highly clean).
corruption cases. A recent survey shows that in the first ten months of 2006, a total of 1,728
corruption cases have been detected, involving over 80 million € (1,607 billion VND) and

In forestry sector, abuse of power and corruption have been serious disincentives for legal
forestry activities of different stakeholders. Imposition of a partial logging ban has
contributed to increasing pressure on domestic timber supply, providing high economic
incentive for illegal timber logging and trading all over the country (see more detailed
discussion in Chapter 7 later).

In the study village, no study has been made on the corruption. Nevertheless, the current
leadership structure in the village shows a clear relation among those with top political
power in the village. At the time of the study, the two highest positions in the village –
village head (state appointed) and secretary of the local party cell – are held by two brothers.
In addition, the position of traditional village chief in Khe Tran is held by the father of these
two men.

5.4 Poverty, inequity and gender

5.4.1 Poverty and poverty alleviation

Overview: according to the current definition by the General Statistics Office (GSO) of
Vietnam, poor households are those whose expenditure falls below the poverty line. The
1993 poverty line was 1.16 million VND per person per year. It was 1.79 million VND in
1998, 1.92 million VND in 2002, and 2.08 million VND in 200414. Over the last 12 years, Vietnam has made remarkable achievement. Poverty rate has dropped from 58.2% in 1993 to
37.4% in 1998, 28.9% in 2002, and 19.5% in 200415. This significantly implies a reduction of more than half of the population living in poverty between 1993 - 2004.

In Thua Thien Hue province, a radical rate of poverty alleviation has been observed. In fact, poverty has reduced more quickly in Thue Thien Hue than at the national level (see Figure 4). In 1998, the overall poverty rate of Thua Thien Hue was 9.66% higher that the national rate. This gap came down to 0.8% in 2002. In 2004, poverty rate in Thua Thien Hue was
around 14.5%, at 4.5% lower than the overall rate of the whole country.

Poverty alleviation has been a central goal of GoV since unification and one of the major
objectives of the Doi Moi (Economic Reforms) launched in 1986. Although Vietnam has
made a significant achievement in reducing the number of people living in poverty (see also Section 5.4), the poverty rate still remains high, at 19.5% in 2004 (GSO, 2006). To further
deal with poverty issues and to respond to the Millennium Development Goals (MDGs) that Vietnam has committed to achieve, a national Comprehensive Poverty Reduction and
Growth Strategy (CPRGS) was approved by the Government of Vietnam in May 200216. It is
the first time that a comprehensive poverty reduction strategy has been prepared in Vietnam,
and represents an important step forward in the systematic planning and coordination of
poverty reduction initiatives. The CPRGS recognizes agriculture and rural development as a
crucial component in poverty reduction, given the fact that 77% of the population and 90% of
the poor currently live in rural areas, while 70% of rural income is derived from agriculture.

14 Euro currency was not available in before 2002, all figures are presented in the original VND, instead. See Annex B for the exchange rate of VND against US$ in the related years.
15 This poverty line is based on both food and non-food items in use by GSO. There is also a national poverty
line issued by the Ministry of Labor, Invalids and Social Affairs (MOLISA) of Vietnam, which changes over
time. The poverty line introduced by GSO is used in this report due to its compatibility across time.
16 Document No 2685/VPCP-QHQT, dated 21 May 2002
In addition, the strategy also gives emphasis on healthcare, training and education as these sectors are well connected with sustainable growth and poverty reduction (SRV, 2002).

**Figure 4: Changes in poverty rate in Vietnam and Thua Thien Hue**


For forestry sector, the CPRGS aims to raise the quality of forest protection work, reforestation, reclamation of barren land and hills while increasing the forest coverage to 43% by 2010. To achieve this objective, the strategy gives emphasis on the devolution of forest and land to local people and to promote participation of the rural poor in forestry activities. The CPRGC considers incentive as an important factor linking upland people with forestry and poverty alleviation:

“Provide adequate incentives to people who plant forests and promote the role of community in protection and natural regeneration of forest. […] Ensure that people living in mountainous areas, especially poor households, can directly manage and protect their forests and be provided with appropriate incentives systems that link their benefits and responsibilities with the forest.” (SRV, 2002).

With the approval of CPRGS by the GoV, related ministries and provinces were requested to integrate CPRGS into their sector/socio-economic development strategies (ADB et al., 2003). In 2004, the Prime Minister issued an instruction on the preparation of the 2006-2010 socio-economic development plan, requesting integration of means to realize poverty reduction measures as specified in CPRGS\(^{17}\).

**National programs to combat poverty:**

Hunger Eradication and Poverty Reduction (HEPR) program is also known as Program 133 following Decision No 133/ QD-TTg dated 23 July 1998 of the Prime Minister. It was established in 1998 to integrate a range of various poverty reduction programs in the country. HEPR is coordinated by the Ministry of Labor, Invalids and Social Affairs (MOLISA) and linked with sectoral socio-economic development programs through the establishment of an integrated framework coordinating poverty-oriented policies and interventions at central, provincial, district and commune levels. HEPR strategy for the current period (2001-2010) identifies 11 specific direct targeting policy areas: credit for the poor, health care, education and vocational training, support of ethnic minorities having especially difficult

\(^{17}\) Instruction No 33-2004/CT-TTg dated 23 September 2004.
circumstances, social security, legal assistance for the poor, support to the poor in housing
and production, basic infrastructure works in poor communes, training of the poor in
business skills and extension services, sedentarisation and migration to new economic zones,
and support to the poor in culture and information (MOLISA, 2001): In addition to HEPR, in July 1998 the Government launched a Program on Socio-economic
Development in Especially Disadvantaged Communes in Mountainous, Isolated and Remote
Areas (also known as Program 135). The program was established following the Prime
Minister’s Decision No 135/1998/QD-TTg. The general targets of the program are 1) to
increase spiritual and material life of ethnic minorities in special difficult, mountainous and
far, remote communes; and 2) to create conditions for helping these rural areas get rid of
poor, backward situation, slow development, intermingling with development process of
whole country, contributing to ensuring security protection. The program is implemented in
1,715 communes for the period of 1998-2005 (later extended to 2006), focusing on
implementation of rural infrastructure projects, establishment of residential area center
among communes, training of local staff, and establishment of pilot models in typical areas.

However, the link between forest and poverty is not clear in these national programs. Both
programs do not give clear forestry objectives, nor do they provide guidance on what
forestry measures to be taken up to tackle poverty in the upland region.

Future challenges for poverty alleviation:

Despite of major achievements in poverty alleviation over the last decade, major challenges
in poverty alleviation, particularly in the upland area like the proposed project site, are still
lying ahead. First of all, the rate of poverty reduction has been unstable over the last years.
Between 1993 and 1998, the average rate of poverty reduction per year was 4.14 percentage
points. The rate fell down to 2.13% between 1998-2002 and promisingly went up to 4.7%
between 2002-2004 (see Table 7). Moreover, the poverty reduction rate varies across
regions. The two currently poorest regions of Vietnam (the Northwest mountains and the
Central Highlands) have experienced lower rate of poverty reduction than the national
average. Secondly, despite of the significant achievement in poverty reduction, poverty rate
still remains high in the upland forest areas. At the moment, around 25 million people (with
nine million poor) are living in the upland forest region of Vietnam. Distribution of the poor
is correlated with the distribution of forest resources. The provinces with high forest cover
are likely to have higher poverty rate than the national figure and those with less forest.18
Yet, it is still unclear in forestry sector on how forestry can be targeted to better contribute to
poverty alleviation (see (Dinh and Research Group of Vietnam Forestry University, 2005;
Sunderlin and Huynh, 2005). Thirdly, poverty remains high in the rural area and the poverty
gap between mainstream Vietnamese and the ethnic minorities is widening. While poverty
rate has reduced rapidly among the former group, from 53.9% in 1993 to 23.1% in 2002,
poverty among the latter still remains relatively high, at 69.3% in 2002 compared to 86.4%
in 1993. Fourthly, a large number of non-poor population is still vulnerable to poverty. This
represents a ‘near poor’ group of people whose income of expenditure is no more than 10%
above the poverty line and/ or who do not have valuable asset to cope with shock (ADB et
al., 2003; CPRGS Interministrial Working Group, 2005). According to the data of Vietnam
Household Living Standard Survey (VHLSS) of 2002, around 6.7 % of the population were
only 10% above the poverty line and 10.2% of the population had no asset to cope with
shock (ibid.).

18 Correlation analysis shows that the correlation coefficient of forest cover and poverty rate of 2004 is 0.5207,
at p<0.0001 significance level.
In general, the challenges ahead for poverty reduction in Vietnam largely lie with a changing approach to tackle poverty. The approach so far has worked out well with the lowlander and mainstream Vietnamese. Yet, such approach may not be suitable to cope with poverty among the ethnic minorities in upland forest environment due to the differences in cultural, socio-economic and physical contexts. As ADB et al. (2003) put:

“The low-hanging fruit are often harvested first. Further reducing poverty in Vietnam may become increasingly difficult, as more marginalized groups of the population will offer tougher pockets of resistance. While broad-based growth will continue to reduce agricultural poverty, especially in the lowlands, it might be insufficient to tackle the problems of mountainous and remote areas as well as the specific issues faced by minorities.” (p. 1)

### Table 7: Changes in Poverty Rate in Vietnam since 1993

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall poverty rate</td>
<td>58.1</td>
<td>37.4</td>
<td>28.9</td>
<td>19.5</td>
</tr>
<tr>
<td>Poverty in ethnic minorities</td>
<td>86.4</td>
<td>75.2</td>
<td>69.3</td>
<td>n/a</td>
</tr>
<tr>
<td>Poverty in Kinh and Chinese</td>
<td>53.9</td>
<td>31.1</td>
<td>23.1</td>
<td>n/a</td>
</tr>
<tr>
<td>Urban</td>
<td>25.1</td>
<td>9.2</td>
<td>6.6</td>
<td>n/a</td>
</tr>
<tr>
<td>Rural</td>
<td>66.4</td>
<td>45.5</td>
<td>35.6</td>
<td>n/a</td>
</tr>
</tbody>
</table>

Source: ADB et al. (2003); GSO (2006)

### 5.4.2 Gender and inequity

In the Human Development Report 2006, Vietnam continues to be assessed by the United Nations as having the medium level of human development (UNDP, 2006). With a human development index (HDI) of 0.709, Vietnam ranks 109th out of 177 countries being evaluated.19 Comparing to other countries in the Southeast Asia Region, Vietnam stands behind Singapore (ranked 25th), Thailand (74th), the Philippines (84th) and Indonesia (108th). By contrast, Vietnam ranks 80th in gender development, with the Gender-related Development Index (GDI)20 of 0.708, surpassing Indonesia (ranked 81st), which has higher HDI than Vietnam (see Table 8). Overall, GDI of Vietnam is two points higher than its HDI, implying a low rate of gender inequality (UNDP, 2006).

### Table 8: Comparison of HDI and GDI of 2006 for Southeast Asian countries

<table>
<thead>
<tr>
<th>Countries</th>
<th>HDI 2006</th>
<th>Rank</th>
<th>GDI 2006</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td>0.916</td>
<td>25</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Thailand</td>
<td>0.784</td>
<td>74</td>
<td>0.781</td>
<td>58</td>
</tr>
<tr>
<td>The Philippines</td>
<td>0.763</td>
<td>84</td>
<td>0.761</td>
<td>66</td>
</tr>
<tr>
<td>Indonesia</td>
<td>0.711</td>
<td>108</td>
<td>0.704</td>
<td>81</td>
</tr>
<tr>
<td>Vietnam</td>
<td>0.709</td>
<td>109</td>
<td>0.708</td>
<td>80</td>
</tr>
</tbody>
</table>

19 HDI measures the average achievements in a country in three basic dimensions of human development: a long and healthy life, knowledge, and a decent standard of living. All countries evaluated are classified into three groups: High level of human development (HDI of 0.8 or above), medium level of human development (HDI of 0.5 to 0.8), and low human development (HDI of less than 0.5).

20 GDI measures average achievement in the three basic dimensions captured in HDI adjusted to account for inequalities between men and women.
Nevertheless, women still play more significant role in family work than men do in Vietnam, with 71% of the work being taken care of by women and only 29% by men. In education, women also have lower rate of literacy, at 86.9% as of 2004 compared to 93.9% of men (UNDP, 2006). Lower rate of girls being enrolled in general education is also observed both nationwide and in Thua Thien Hue (see Table 9).

**Table 9: Rate of girls in school enrolment**

<table>
<thead>
<tr>
<th></th>
<th>Overall</th>
<th>Primary</th>
<th>Lower secondary</th>
<th>Upper secondary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whole country</td>
<td>48.57%</td>
<td>48.24%</td>
<td>48.57%</td>
<td>49.38%</td>
</tr>
<tr>
<td>Thua Thien Hue</td>
<td>48.20%</td>
<td>48.28%</td>
<td>47.67%</td>
<td>49.23%</td>
</tr>
</tbody>
</table>

Source: (General Statistics Office (GSO), 2006).

In economic activities, around 72.4% of women are currently engaged in income earning activities, even lower than that in 1990. By contrast, around 78% of men are economically active. Per capita income of women is also less than that of men, at only 70% (GSO, 2006).
6 Customary law and forest governance

6.1 Assumptions about customary law and the results of testing those assumptions

It is reported that for the past decade in Vietnam’s mountainous regions, thousands of disturbances, conflicts and disputes regarding land problems were broken out where the violation to the indigenous people’s customary land rights was seen as one of the main reasons (Vu et al., 2000; Ngo, 2003; Dang, 2002). Based on existing literatures (see Phan, 2003; Vuong, 1999; Vien Van Hoa Dan Gian, 1999; Phan and Vu, 1996; Ngo and Chu, 1996; Ngo and Cam, 1999; Nguyen, 2001) and data collected from fieldwork, this study assumes that the conception and practice of customary law in forest land tenure do exist and play a significant role in Vietnam’s rural communities. The conflict between the current policies and traditional conception of land tenure and use rights has been considered one of the major causes for the above-mentioned instability. This customary tenure system can be understood as the access, control and use of land and is determined through long-standing principles that operate outside the formal, state, or legal system. They are associated with the traditional land administration institutions and customary law that define how rights are ruled, allocated, and preserved. In this sense, there are some gaps and conflicts between the statutory law and policies and customary land tenure in the mountainous areas. Moreover, land and forest administrators at different levels are not always fully aware of the significance and role of the customary role in controlling resources and land. A further insight into customary norms and regulations can help answer the question why land-related conflicts in mountainous regions have increased, badly affecting the sustainable forest governance and development.

6.2 Land tenure and ownership rights in forest resources

6.2.1 Existing categories of land tenure in forest resources

Traditionally, villages were the units that owned or had collective rights to use land and forest resources. Within the territory of a typical community, there were the following types of land:

- Residential land: where villages were established; villagers’ houses and communal works were built;
- Forest land in use: where the village members were allowed to farm.
- Intact forest land: primeval forest, rocky mountains, or regenerating forests during fallow time.
- Forbidden forest land that was not allowed to use, including the watershed protection forests, cemetery forests, sacred forests (where communities worshipped their gods).

Over a few past decades, customary land rights have not been recognized. Instead, the new regime of land tenure was established, which is referred to as “public ownership of land” or “entire people’s ownership of land”. In the mountainous areas, there are currently four types of tenured land as follows.

- Land used by state organizations, military units and economic organizations;
- Land allocated to individual households or groups of households/communities with limited term of use.
- Land under the management by communities, including mainly sacred forests, cemetery forests and community-controlled forests.
- Land that are not in use under the state management.

Obviously, the current land regime in the mountainous areas of Vietnam has changed its nature from the traditional one. The previously community land ownership and use rights have been converted to those of households and economic organizations. Communities’ land use rights according to customary law have been narrowed. Most of the land and forest resources previously owned by communities have been allocated to other organizations or economic entities. Conservation forests and national parks are zoned and strictly protected with no or little collection of forest products allowed.

6.2.2 Use rights

The customary law has relatively clear regulations on the use rights of community members. These rights can be summarized as follows:

- Forest land and resources are owned by the entire communities while they are used and exploited by community members, who are treated equal in terms of using community land. Nobody is allowed to sell or transfer forest land to outsiders. When a member leaves the village, his/her community land use rights terminate.

- Invisible and supreme owners of forest land and resources are the gods. All land users must respect the gods who govern the land and all kinds. Those who make the land polluted by breaking the customary practices shall be penalized to apologize to the gods with a view to avoid the gods’ punishment on the entire community.

- Almost all villages have their forbidden forests, mainly including watershed protection forests, sacred forests, and cemetery forests. The rest is open for community members to access on the basis of “first-come first-use” principle. Such an assertion of individual land use rights in the community is realized by common conventions that are fully acknowledged by community members. This practice remains popularly until today in customary communities, particularly when they clear the forest for swidden cultivation.

- Wet rice fields, terraced fields, dry rice fields, and orchards of households can be exchanged, sold, mortgaged and inherited among community members.

- Forest resources other than land, including forest products, rivers, streams and water sources, belong to community ownership and can be used by all community members. Outsiders who come to exploit these resources must be allowed by the village chief.

- However, forest hunting and timber exploitation in general have been banned by law. The exploitation of timber for houses must be permitted by local authorities and follow state regulations.

- Village chiefs and community land guardians are responsible for controlling, protecting, and resolving all land-related conflicts, and representing their communities to organize ritual sacrifices to gods whenever their customary law is violated.

6.2.3 Access rights

In customary communities, access rights to land and forest resources are open equally to all community members. It can be assumed that their customary land tenure is designed mainly
to prevent the outsiders to have access to the land and forest resources that the community owned. However, the application of these regulations is relatively flexible. In various cases, villagers allowed the outsiders who come from allied villages or those who live in the buffer area between villages to obtain the access and use rights to the forest land owned by other villages. Conditions to obtain this access to land depend on their specific relationships.

6.2.4 Control rights: rights to make decisions how the land should be used

Rights to control land use are generally vested in the community heads or land guardians, but are also the common responsibilities of all community members. This principle perhaps originates from the organizational features of villages, local religious beliefs and their traditional perception of ownership. Members of customary groups do not seem to regard the land and forests a kind of common property but a community domain, instead. The village leaders, including the village chief, village elders, family heads and customary judges, are emerged as a leadership apparatus of village. These people are responsible for keeping eyes on the situation of using land and forest resources of communities to make sure they are not violated or ill used. Every village has their own regulations on hunting, gathering and fishing in which certain species or animals may not be allowed to hunt at some points of time or permanently. For instance, in Khe Tran village, hunting tigers is strictly prohibited by customary law and logging some kinds of wood (iron wood or big trees with mistletoes) is not allowed because the belief that such trees are lodged by the supernatural forces, which can cause bad effects on the entire community if its members ignore the norms. Because of the belief that it is the God who owns the land, individual households usually clear the land for their new crop only after the village chief has held the ritual ceremony to ask for permission from the God.

In many ethnic villages, it is not the chief of village but land guardian who is responsible for supervising and monitoring land use of community members. As regulated by customary law, he or she will make a visit to all households in the community and their farming sites every few years to ensure that the land is used correctly. If mismanagement or ill-use is found, the village land guardian will report to the village chief or elderly council to find appropriate solutions to deal with violations.

6.2.5 Transfer rights: rights to sell or mortgage the land, to reallocate use and control rights, to transmit the land through inheritance, among others

There is nearly no exception, most customary communities in mountainous regions of Vietnam tends to restrict outsiders from accessing forest land under their collective tenure. All transfer right-related regulations of customary law respect this principle. Therefore, despite the specific applications among/between communities, customary transfer rights share the same features as followed:

For land under community use, members have no rights to transfer, pledge, grant and use the land as an inheritance or marriage dowry portion. Watershed protection forests, sacred forests, cemetery forests, or primeval forests on mountain tops cannot be used for any purpose.

As for land under household use - such as paddy fields, terraced fields, permanent dry fields, and orchards - local households can grant, inherit, or transfer to other members of the community in accordance with customary law. For instance, as regulated in Chu Ru customary law, transfer of cultivation land including paddy fields and permanent dry rice fields can only be internally performed within the community and it is necessary to make offerings to Land God with the participation and witness of community members. Witnesses must include the old, the middle-aged, and children. Land buyers have to provide wine and
livestock to perform hecatomb to make apology to Land God. They take blood of the sacrifice and smear it on a rock and then bury the rock into the field to make a mark. After that, participants are invited to enjoy offerings right after the ceremony (Vu, 1994:90)

6.2.6 Tenure security

Rights of land use and forest resources of community members are fully protected. Customary law does not regulate the time-limit of land use as most forest land is under shifting cultivation. Each lot is normally cultivated for one or two years before it becomes impoverished, so farmers have to change to new lot. Disputes hardly occur among community members, as there exists another tie that is higher than the judgment: the belief that forest land is managed by God. They believe that if a plot of land or produce is appropriated by someone, it means that this person is accepted by God to use that resource. If latecomers intend to fight for this land or produce, they will be punished by God, and their crops will be lost. This belief creates a high self-consciousness in the compliance with customary law.

The customary law of ethnic minority groups also assures the right of land accessing and land use for women, widowers, and orphans. The custom of race continuation allows the wife to marry her deceased husband’s brother or allows the husband to marry his dead wife’s sister as a way to assure that the orphans be cared for and the rights to community land be maintained.

Another noteworthy issue is the difference between customary and statutory law on tenure security that is relating to the time-limit of forest land utilization. According to customary law, the utilization of community forest land can be temporary or permanent without reallocation. These land users also have the right to change their cultivation land to another appropriate place in the community land and thus normally feel secure about cultivation land. However, traditional tenure security is criticized as land administrators can not manage land because it is not registered, cultivation land area changes frequently, cultivation techniques are unsystematic and not supportive of the improvement of technique, productivity and effective utilization of forest land.

6.3 Economic issues

6.3.1 Monetary and non-monetary customary mechanisms equivalent to licensing, permitting, leasing, and/or other use fees

Customary law in Vietnam is built up on the basis of subsistence economy and communal use of land and forest resources. The customary law rarely regulates fees (monetary or non-monetary) for the allowance of exploitation, exchange, transference or lending among individuals or organizations relating to the utilization and exploitation of forest resources. It is possible that monetary relation, benefit purposes as well as treatment mechanisms with money as a unit of measurement are not the interest of customary law. This feature will be a challenge to the implementation of “licensing as mechanisms to promote legality”, which is dignified by the modern regulations on forest protection and development.

6.3.2 Incentives for compliance with customary norms

There is no monetary encouragement applied for the compliance with customary law. However, customary law are normally respected and complied more seriously than the statutory law. This may be a remarkable difference between customary law and statutory law in Vietnam. This difference can be generated from incentives for compliance with customary norms. The imposed punishment as applied by the statutory law may contain the risk that
violators will evade or deny their violations while in the communities where customary law prevails, incentives are likely more positive.

Customary norms are usually based the following foundations:

a) The conciliation among the community members is always seen as the first priority while judgments to violation is conducted;

b) The common agreement and self-consciousness of all concerned parties must be respected instead of forcibly coercion;

c) Religious beliefs have the role of monitoring/controlling individuals and the community activities.

Violators of customary law are generally not considered as crimes but only a kind of “torts” or a wrongful act in terms of morals or rules. Therefore, there is no capital punishment in customary law. The highest penalty is expelling from the community, which means to dispossess the violators of benefits and protection from the community. The judgment of customary law is normally flexible, mainly to improve self-consciousness of their torts for a better behavior. In such sense, customary mechanisms can be understood as cultural frame to put community members into moral principles. Voluntarily participating in the customary system, community members realize the protection and defense from not only the whole community but also from invisible gods. And above all, voluntary recognition of laws and participation in their enforcement is the way to maximize benefits from the community.

6.4 Participation and sharing information and benefits

6.4.1 Information

In Thua Thien Hue province, social network in the community plays an important role in information sharing. Even in a small community as Khe Tran village with only 31 households, social network of inhabitant group still plays a role of information sharing among the community. The most traditional network is normally organized on the basis of the same living area (neighborhood) and blood-relation (family). Traditional social network plays an important role as it brings information to every community members, including those who are illiterate. However, information in this network only focuses on partial issues of their groups. By contrast, the new forms of communication such as clubs and communication houses can easily approach the literate and young people. Interviews with community members showed that the young literate tend to know more about the forest policy and law as compared to the elders and women. It can be therefore assumed that the lack of information share among the community member is also a barrier for a better implementation of land management in mountainous communities.

In addition to traditional system, there exist social organizations such as Veterans Organization, Women Union, Elders Organization, Farmers Organization, Youth Union, and local party cell. These organizations are founded to implement duties assigned by the government; each has its own functions and obligations but all represent for benefits of the organization. The operation of these organizations is to exchange and share information of their group interests, cooperating with local competent officers to promote the implementation of national policies in the community.

The official information channel shared among the community members is organized by local authorities, including the following activities:
a) The club “Nature for Life” organizes training courses for youth, sharing information about livelihood improvement and experience in forestation and forest protection.

b) “Green Club” uses collections of pictures and paintings, films, and the form of community-based tourism to communicate information on environmental protection. These activities are aimed to target the local teachers and pupils in schools.

c) “House of Communication” offers open talks and discussions; organize the visits to various places to learn experiences from other.

d) “Mobile communication groups” run by Youth Union to broadcast and promote the implementation of policies relating to forest and forest resources.

It is obvious that the above activities brought new approaches to information sharing among the community members. The problems remain however the law and policies on forest land changed too often while the languages used in these official documents are not easy to understand for local peoples, particularly the illiterates.

6.4.2 Participation

Not all the members in the community can equally take part in making decisions relating to the access and use of land and forest resources. The mechanism of making such decisions mainly depends on the hierarchy of the traditional societies that still prevails in customary groups today.

The customary communities are basically built on the basis of hierarchy in which voice of the elders, the family heads, and the village chiefs play decisive role or give influence on the other member’s ways of thinking. In contrast, the statutory law system and the governmental authorities’ regulations are primarily obligatory and compulsory. In this aspect, the decisions which are made on the basis of the customary law are seen as more collective.

The woman’s participation in making communities’ decisions is relatively different in many mountainous areas in Vietnam. In ethnic groups where the maternal system dominated in the Central Highlands, the voice and role of woman are significant. In this system, children bear the mother’s family name and the right of inheritance belongs to the eldest sister (in some ethnic communities, the youngest girl to be the heiress of the family). The women, not the men, make the decisions regarding the family’s properties, and they are also active in participating in community affairs.

In the past decades, the role of women in ethnic communities has weakened. This is partially due to the implementation of some state policies, such as the one that grants the land use right to the name of husband as the household head, taking away the power of women as the owner of family property, including land rights. In addition, high illiteracy rate among women in mountainous communities also influences the women’s participation in land management in the communities. The decrease in women participation should be considered as one of the reasons obstructing the progress of creating “the actual field-level participation of local communities in the process of execution of rights”.

6.4.3 Benefit-sharing

Forest-dependent communities regard the forest as their source of livelihood giving them all necessities in life. Forest and land within the community’s territory are simply defined as a domain which every member has right to use on the basis of the common principle “who
work will get benefit”. Analyzing the source of benefit the local inhabitants enjoy from the forest, it can be divided into two categories: the direct benefit and indirect benefit.

The direct benefit can be the source of energy (e.g. firewood), food, building materials for houses and architectural work, herbs, etc. The forest does supply those essential sources for the inhabitants, especially the poor. Other important resources are timber and timber products which the communities exploit legally or illegally. For many households, this source of income is significant to maintain their life. Since the state claimed the ownership to land and forest resources and state organizations were set up to manage the land, the tendency of breaking regulations in the customary law of forest resources exploitation has occurred in many communities. The prohibition of hunting and cutting trees of the customary laws has become less effective. This is perhaps provoked by the worry that if they don’t use it, they lose it. This trend obviously encourages the local people to exploit the forest resources without care of their own native knowledge while the traditional communities’ control is no longer effective as ever before.

There are at least two constant factors relating to this sort of illegal exploitation and mismanagement. First, the forest products which people exploit and use are so popular that they don’t realize that every member in the communities benefit from these sources everyday. Second, the ownership conversion from the communities into the state emerges the thoughts that forest is not the communities’ properties so people outdo each other in exploiting “public property” without control of the communities’ members as ever before.

Indirect benefit from the forest which the people in the communities enjoy everyday lie in the ecology balance and environment role of the forest because it help stabilize the water resources and maintains the fertility of soil. Other forest products like rattan and bamboo also make contribution to development of the arts and crafts for export in the local communities. In addition, the diversification and richness in the living environment of the forest has brought the benefit to the communities due to the development of ecotourism or community-based tourism. For example, in Thuy Yen Thuong village of Thua Thien Hue, since the local community developed communities tourism in 2001, there has been about 25,000 visitors coming to the village every year, contributing to around 35,900 € (718 million VND) to the community’s income per year (Thua Thien Hue Sub-FPDt, 2006a). Income from this source is partly contributed to the common budget to use for community welfare. The problem remains is that the inhabitants in the communities don’t fully evaluate the forest’s value that they benefit and don’t consider it as the public properties to preserve and use altogether. This concept often results in illegal exploitation and mismanagement.

The imposition of state policies has an influence on the traditional system. In fact, if forest development and preservation policies don’t mention about the benefit the communities are sharing everyday, there is no hope for a synergy between the two systems. Where the mechanism of sharing the benefit from forest preservation is being applied, the mechanism of sharing benefit between the forest guardians (communities or groups of household) and the government (forestry units and local authorities) is still vague and not really practical as the communities share only small part. The local people’s reflections indicate that the benefit sharing mechanism need to ensure the flexible approach so that the expectation from both sides can be satisfied.

6.5 Compliance and enforcement

6.5.1 How illegal activities are defined

In general, the behaviors of the inhabitants who live in the customary law communities are adjusted to two law systems- statutory law and customary law. However, there are
similarities and differences in illegality definition between the statutory and the customary laws. In forest dependent communities, illegal activities are defined as any violation of the agreed laws in relation to forest management, including both the statutory law governed by the state and the customary law operated by the traditional authorities. In many cases, some violations in the communities are reconciled on the basis of applying the two laws.

Basically, the customary law is the community’s standardized manners and customs for the members to follow. Like the statutory law, the customary law also defines direct violation actions, i.e. land invasion, cultivation on the other land guardianship, rice and farming produce theft in the cultivated fields, unconventional forest land trading and so on as illegal activities. However, the customary laws differ from the customs in adjusting individual and communities’ behaviors in the direction of penalizing if the people violate the common standard. A key difference between the customary and statutory laws is the view on connection between social activities and land resources. The indigenous customary groups regard those activities such as rape, adultery, incest and so on as illegal activities because these wrong doings make the land polluted and provoke the anger from the land God.

6.5.2 Enforcement authority

In customary communities, the traditional leaders including village headman, land guardian, elderly council, and family heads are responsible for enforcement of the customary principles and rules. Although there is a person who serves as a specialized judge, the highest decision-making power belongs to the village chief and elderly council. The customary regulations are executed voluntarily by the communities’ members. The sinful deeds are also controlled by the members. Therefore, when a wrong doing is identified, it will come into effect without communities’ approval or the violator’s appeal. Noticeably, the traditional village elderly council and village chiefs are not recognized by the government but their power and decisions are still fully recognized by the community members. It indicates that the enforcement of customary laws is mainly executed on the principle of traditional norms, the result of reciprocal influence between religious belief and community awareness.

6.5.3 Penalties for illegal activities

In the judge practice of customary law, the concept of definitions of guilt, witness, material evidence, accusation principle has emerged though relatively simple. The penalty forms are applied in the order of warning, material compensation, conducting the ritual to redeem the crime, and lowering the personal dignity from free citizen to family slavery or dismissal from the community membership.

All losses as the results of sinful actions have to be compensated for and the violators have to pay the sacrifices for the Deity excuse ceremony. The foundation of this punishment originated from the concept that every sinful action caused by member can influence the whole communities because it makes the Deity angry. Therefore, punishing the guilty person is to ensure the welfare and harmony for the community.

Remarkably, there are no forms of capital punishment or physical torture applied by the customary norms. Expelling the violator from the community, which means revoking the membership status and the rights of using the public land, is considered the hardest penalty the customary laws can apply.

6.5.4 Dispute resolution mechanisms

The most prominent feature of the customary law ruled in Vietnam upland communities is the flexibility. For similar misbehavior in the different situations, the level of punishment can
possibly differ due to the changes in concepts and definitions of the violation. Therefore, only remarks on the most common feature of the dispute resolution mechanism can be given.

Disputes are considered as the danger of breaking the stability and good relationship of the community, so the resolution tends to reconciliation and the related sides have to pay the sacrifices to offer to the Deity. The dispute resolution therefore aims at the stability and education in the communities as the first priority. It is believed, however, that the payment for the sacrifices to the Deity sometimes exceeds the violator’s ability and forces them into the unnecessary destitute.

Dispute resolution is a main function of indigenous governance system in most Vietnam upland communities. The community headman, together with village elderly council and family heads, plays a decisive role in solving conflicts. The elders’ judgments are usually considered as the final decision. As a result, when conflict happens people often ask the elders for consultancy before publicizing.

There are several important principles that almost every dispute resolution by customary norms must observe: 1) maintain the solidarity relationship within the community; 2) keep the traditional norms and practices of the community in the right track; 3) show respect to the Yang (Deities), who are the Lords of lands and all kinds. According to those principles, dispute resolution in communities is in fact a form of arbitration, not adversarial. To ensure the explicitness in the judges, dispute resolutions often happen in the communal house, the place of Deities’ sacrifices and the political and social center, with the presence of the community members. This clearly means the dispute resolution is not only the private matter of the related sides but also the problem of the whole community. In case one party got an award, the whole community is witness and sees to it that the norm is enforced. This is also seen as the opportunity to socialize the customary norms and make the community aware of the misbehaviors that are to be avoided.

6.5.5 Accountability of customary authorities

Customary authorities in Vietnam upland communities are dominated by the elders and the heads of clans. The leader of the community is normally nominated from those people by means of election or recommendation by the village’s elderly council. As the principle of choosing the village leader, the candidate must be knowledgeable, in good communication, well-informed about the local history and from a better-off family. Although the leader must be responsible for every problem in the communities, he is also controlled by the village elderly council. In case of constant failure of crops, diseases or insecure in the communities, the leader is requested to resign and village have to elect a new leader. So, accountability of customary authorities must be secured by series of procedures, culture, knowledge and identities.

Undertaking the leadership is not only the great honor but also the burden. The leader’s power is his social prestige. He enjoys the people’s belief and respect because he has thorough and plentiful knowledge and can find out the good solution to the dispute for the communities’ sake, not the personal sake. If he is not able to undertake the leadership then election is the way to assure the accountability of local authorities.

The power of the traditional leaders has reduced as they are not officially recognized by the government. There are implicit worries of the state administrators that the recognition of those people’s power will provoke the restoration of the “backward primitive” way of administration. There is also worry that the traditional leader’s control in grass-root level will reduce the government’s power. Such prejudices are the challenges for the legal diversification and empowerment to community based forest management.
6.6 Other issues

In the wake of shifting from the purely state management to the community-based forest management, MARD issued the Circular No.56/1999/TT/BNN-KL in March 1999 guiding the preparation of regulations on forest protection and development at the village community level”. It is said that this guidance is a good means of forest management on the basis of combination between the customary norms and statutory law and policies (Interviews with Thua Thien Hue Forestry Department, 22 May 2006; see also (Nguyen, 2005:67).

During the field research in Thua Thien Hue, an attempt has been made to investigate the stakeholders’ attitudes on this village regulations and the role of such regulations in forest protection at the community level. Findings suggest that the forest policy makers and administrators at various levels generally recognize the existence of customary law. Their conception on the customary law reflects different views of whether and how the customary law should be used. Some argue that customary norms and principles are too flexible and careless. It might be appropriate to traditional and backward societies but not really suitable in the conditions of the fast changing society. In this sense, if the customary law is used, only relevant parts that support the statutory law can be considered. Others agree that customary law does exist in various communities, particularly in the remote areas but it usually conflicts with the state law, and it is therefore impossible to accept the customary law as an alternative management. By emphasizing these views, most of forest policy makers and administrators we have talked with tend to see customary law as an obstacle for implementation of the statutory law on forest management and development rather than advantage.

The above opinions more or less contribute to the decision of creating a common format of community regulations on the forest protection and development for local communities to follow. In the MARD format of village regulations, it is guided that the voluntary agreement and discussions among the villagers must be respected while making the regulations. While the forest administrators highly appreciate these village regulations, our interviews with household members at the research sites reveal that they do not know much about the regulations. In their views, the so-called village regulations on forest protection are another form of statutory law imposed on them, and they have no way but accept and do accordingly. This is apparently not the customary regulations they practice every day and therefore hardly becomes part of the community life as the government may expect. At least, the following reasons help explain why it is the case:

a) Village regulations (huong uoc), even when brought to the public for discussions, and accepted by village representatives, are considered regulations by MARD, approaching from top down. There is a formalistic trend of creating the village regulations without care if they are useful.

b) The core of customary land tenure is the community ownership or use rights. However, the forest land rights have not fully been allocated to the communities for use and management because village communities are not recognized as legal entities by Civil Code. In the view of indigenous peoples, they are protecting for the “others” to get paid, not their community land and forest. This is considered an obstacle to create the incentives for compliance with the statutory law.

c) The customary law is operated by the community leader who must be a knowledgeable elder with high prestige respected by the community members. This traditional mechanism is not fully recognized by the state and the village elders can be asked only when in need. Instead, the village regulations are now
operated by the state-nominated village heads that are representing the state at the village level. This means that the elders and customary norms are not brought into full use in term of traditional native knowledge and support from the whole community in forest protection and development.

Lack of knowledge on the customary norms or misunderstanding of customary practices are visible among the forest administrators, policy makers and economic institutions working in the field of forestry as well. This suggests that it is important to raise their awareness/understanding on the role of customary norms and practices which are deem to help improve the forest management and policy making process.

6.7 Cases where following customary law has been beneficial to local forest-dependent communities

In 2004, MacArthur Foundation supported Thua Thien Hue province a pilot project, which aimed at strengthening the capacity of natural forest management in local communities. The project was conducted in five villages of three communes in Aluoi and Phong Dien districts. The selected villages are located at the buffer zone of the Phong Dien Nature Reserve (see Table 10). Dominant ethnic groups are Pakoh, Pahy and Van Kieu.

### Table 10: Allocation of forest in Phong Dien Nature Reserve to local people

<table>
<thead>
<tr>
<th>Village</th>
<th>Allocated forest area (ha)</th>
<th>Number of households</th>
<th>Timber volume (m³/ha)</th>
<th>Term of use (year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thanh Tan (Phong Son Commune)</td>
<td>211,9</td>
<td>28</td>
<td>46</td>
<td>50</td>
</tr>
<tr>
<td>Son Qua (Phong Son Commune)</td>
<td>192,4</td>
<td>28</td>
<td>52</td>
<td>50</td>
</tr>
<tr>
<td>Ha Long (Phong My Commune)</td>
<td>320,0</td>
<td>33</td>
<td>47</td>
<td>50</td>
</tr>
<tr>
<td>Ta Lo (Hong Van Commune)</td>
<td>97,0</td>
<td>7</td>
<td>65</td>
<td>50</td>
</tr>
<tr>
<td>A Ho (Hong Van Commune)</td>
<td>104,2</td>
<td>8</td>
<td>63</td>
<td>50</td>
</tr>
</tbody>
</table>

Source: Thua Thien Hue Sub-FPD (2006b)

Local people have been invited to participate into the entire process of forest allocation such as making the plan, surveying the forest, proposing the benefit sharing policies, sharing the knowledge, and setting up the forest protection team. The local knowledge on forest management, the customary norms and practices have also been brought into the public discussions at the community meeting. Based on the common agreement suggested in this meeting, the community-based forest management and benefit sharing policies were documented and submitted to the district authorities for approval.

The community-based forest management pilot in Phong Dien Nature Reserve has received positive response by local people because villagers have been able to obtain forest land rights and benefits that are similar to their traditional customary tenure. Forest lands have been given to local people not just only for protection but also for farming, livestock raising and various other purposes under the conditions that their activities do not affect the natural forest development. So far, local people involved in the project have directly benefited from the forest in terms of timber and non-timber products. As assessed by Thua Thien Hue Sub-FPD, following results have been recognized:

- This model enables the local villagers to be the real users of forest. To some extent, their knowledge and customary norms are respected.
- Benefit sharing policy, rights and obligations to protection and development of forest are regulated on the basis of common agreement and willingness.
- More employments for local people have been created through such activities as protecting and developing the forest. Exploitation of non timber forest products and tourism development (for instance, the Adon Water Fall in Ha Long village) have contribute to improve local incomes.
- Illegal activities have been closely controlled by local communities, and therefore logging and farming without permissions have been reduced while the government does not have to pay for forest protection

Nevertheless, the model also has some shortcomings. First of all, forest land allocation was just applied to a group of households instead of the entire community. This excludes households that are unable to participate in the project because of their shortage of social/human sources. Secondly, it is too long for villagers to wait until the time the forest is allowed to exploit while most of them are lack of immediate sources of income. Last but not least, benefit sharing mechanism is relatively general because the governmental policies are still vague, inflexible and negotiable.

6.8 Cases where following customary law has been detrimental to local forest-dependent communities

There was no case where following customary law has been detrimental to local forest-dependent communities in the study sites.

6.9 Customary law norms and stakeholder participation in forest governance on a “level playing field”

For the past decades, customary tenure systems and social arrangements associated with traditional communities have experienced dramatic changes and will continue to change in the future. However, traditional tenure and resource management arrangement has been more or less adapted, though slowly, to respond to the changing social environment. In this changing context and nationalization of forest resources, customary communities stay in the rank between the statutory and customary law. Such changes have resulted in the fact that customary communities have likely been losing their long-year orientation of forest use and management. Of particular is the rights of exclusion of outsiders, a principle previously secured by their customary law, which has become weaken with the changes of land tenure. In coping with these rapid changes, indigenous peoples have asked themselves if they should exploit forest resources regardless of their traditional customary norms or lose them all to alien. Apparently, it is this poorly regulated situation that leads them to mismanagement and unsustainable forms of utilization. Furthermore, this situation is partly rooted in the lacks of formal legal acceptance of customary rules, while regarding the statutory law as the only and advanced means to protect and manage the forest land and resources.

As indicated above, holders of land use rights in Vietnam are granted with RBC. While RBC entitles the title holder the rights to exchange, transfer, lease, mortgage, and pass on land for inheritance, it implies the full right to exclude other users who are not included in the RBC. Since 2000, Thua Thien Hue province initiated a pilot program to allocate the natural forest under the state management to the local people as the implementation of community based forest management. Land allocation to local communities, although just starting as a pilot project, tends to highly appreciate the role of communities and attention to customary rights. There are, however, gaps and potential conflicts between the customary and statutory rights
that must point out to facilitate all stakeholders participating in forest governance on a level playing field:

- First, there is a gap and potential conflict between customary and statutory regulations in benefit sharing. Customary law regards benefit share among the members as internal matter, and the rights of withdrawal belong to the community. By contrast, the user’s rights as regulated by statutory law are under the judgments of state regulations, such as Decree 178 and Decision 1430, which are often too vague and not practical, flexible and negotiable.

- Secondly, forest land rights, according to the customary norms, belong to the communities within which certain categories of land can be used for different purposes. The community has rights to decide how to use such kinds of land. In contrary, under the statutory regulations, the users are not free to change the use purpose of land allocated to them. This difference can also be seen as potential conflict between the two systems of laws, and the clear methods of management should be created and applied to overcome this gap.

- Third, the access and use rights according to customary law are relatively flexible. The common trend of customary law is to ensure the community members’ land use rights but the outsiders can also obtain the use rights granted from the community when they ask for permission. Such flexibility in the use rights of forest land can be seen as a challenge when land is fully allocated to the local communities. This also suggests that the state needs to provide support to enforce endowed rights, in particular to exclude outsiders.

- Fourth, many communities in Thua Thien Hue expect that forest resources will be allocated to them. On the one hand, this reflects the interest of various communities in practicing the customary land use. On the other hand, land allocation to communities is said to be less costly than allocation to individuals and help minimize conflicts on land. The pilot program of allocation of forest to communities in Phu Loc district seems to support this assumption.

In the global context, recent studies on the forest governance tend to indicate that there has been an obvious trend in forest governance to move from public sector to varying degrees of private and community rights to forest resources (Moore, 2005:138). In Vietnam, the last 15 years have witnessed a move from the purely state forest management to the direction of “social forestry” in which various sectors, particularly individual households, groups of households and communities are now involved in forest management (Nguyen and Pham, 2005:1). To facilitate this process to achieve the goal of sustainable governance, more attention must be paid by the policy makers and forest administrators to build an appropriate mechanism to the community-based forest management in which recognizing the customary rights and developing laws that empower communities and enable community forestry becomes an urgent need.
7 Stakeholders, economics, law and forest governance

The discussion so far indicated that a level playing field for local stakeholders, particularly less powerful farmers, is yet to be achieved. This chapter goes into detailed elaboration of factors hindering or facilitating the participation of different stakeholders in a level playing field in forestry. Using the economic analysis as the center of the discussion, we argue that in addition to various other factors, economic incentives can play a very important role in encouraging legality among forest owners. However, high economic incentives can also attract illegality among various stakeholders.

7.1 Legal forestry mandates and (il)legal activities

In principle, legal forestry framework in Vietnam aims to promote social justice and legality. Consequently, mandates for all forestry stakeholders are meant to create incentives for legal forestry activities, which will bring in benefits for the society as a whole. Nevertheless, problems exist in the realization of these mandates and leave room for illegal forestry activities. First of all, insufficient capacity to realize the functions as assigned by laws has lead to accumulation of power in certain organizations/individuals. For example, although ARDU or Economic Unit at the district level is responsible for state forest management responsibility, lack of staff does not allow them to take care of the whole district. Consequently, the FPU, which is in charge of forest law enforcement and has staff at the commune and village level, is also involved in state forest management in most villages. In some cases, local FPU staff also takes the liberty to grant minor logging permit or transportation of wood. Secondly, problems with coordination and cooperation between organizations with different mandates, particularly across sectors, tend to encourage illegality. Although FPD is in charge of catching violations of forest laws, without the cooperation of other sectors like police or army it is unlikely that they would be able to arrest aggressive illegal loggers who are organized and armed. Recently, the number of attacks on FPU staff by illegal loggers, as aired by Vietnamese mass media, has been on the increase. This indicates an alarming fact that weak coordination and cooperation between concerned state organizations has not been able to help reducing the illegal forestry activities.

Furthermore, the high economic incentives to abuse legal power endowed by the state laws, coupled with poor self-discipline of some corrupted officials, pose a serious challenge for legal forestry activities. Illegal logging is the most vivid example. Imposition of a logging ban since 1993 has put a pressure on timber supply for domestic market and ignited the boom of illegal logging all over the country. Bitterly, local state officials, including those in the forest production (i.e. SFE) system and in state management (i.e. FD and FPD) system, are involved in many instances. As noted in McElwee (2004), various cases of illegal logging related to government officials have been uncovered over the last several years in the whole country, particularly in forest rich regions as the Central, Central Coasts and Central Highlands. The most serious case published so far was perhaps in Tanh Linh district of Binh Thuan province in the Central Coastal Region, which involved a volume of over 53 thousand cubic meters of timber illegally logged. Twenty-nine state officials at district and provincial levels, including the former deputy director of the provincial DARD, and from a local SFE were sentenced (ibid. p.122). In another instance, To and Sikor (2006) indicate that bribery of state officials in various check points is routinely done for a truck with illegal timber to pass through. For each truckload of six cubic meters of timber, an estimated amount of 350€ (seven million VND - more than half year salary of a state official) or 35% of the total profit generated from this volume of illegal timber was paid to various state officials – including local FPU staff, policemen, tax officials and others – for the transportation from the forest to the sawmills.
7.2 Linkages between tenure, access and use rights and (il)legal activities

At the moment, the statutory and customary land tenures provide both incentives and disincentives for illegal forest activities. First of all, direct benefits from the forest resources are important incentive for the tenure right holders, both individual and corporate alike, to pursue legal activities. The 2004 FPDL and the 2003 LL regulate that forest and land users who comply with statutory laws are likely to derive the benefits from the allocated forest resources in the long run. They are also in the position to renew the land title at the due date. For example, two interviewed farmers in Co Thap village of Quang Loi commune (see Annex A) have been able to achieve legal tenure rights to 17ha of land each for their efforts to convert this sandy land into beautiful forest farm, which is now becoming a major source of livelihoods for their families. In addition, tenure rights to forest and land also give rights holders the possibility to receive investment funding from the state and/ or donor supported project for forest resource development, which could be a substantial investment. For example, over the last ten years, 25% of the surveyed households in Khe Tran village have received almost 130 million VND\(^{21}\) in cash from various national programs for planting and tending of trees on 71ha of land.

By contrast, lack of tenure rights to natural forest has played as a disincentive for local people to prevent illegal appropriation of forest resources. At the national level, most (if not all) major illegal logging cases known to the public so far happened in the public forest where local people do not have legal rights to it (though still have responsibility to protect and report violation to competent authorities as specified in the 2004 FPDL). In Khe Tran village, interviewed farmers indicated that they often saw people coming to the forest near the village, which belongs to Phong Dien Nature Reserve, for timber and brought it elsewhere. Yet, these villagers made little (if any) efforts to stop these illegal loggers as they saw no direct benefits but danger in doing so.

Furthermore, the gaps between the existing statutory and customary laws (see Table 11) pose a threat for legal forestry activities. As the statutory law does not recognize traditional rules, which have been respected by local people for generations, local people who follow customary law are in fact violating statutory law and thus such activity is considered illegal. A common example of this type is swidden farming. In Khe Tran village, it is illegal that some local people re-open the field that they used to cultivate many years ago in the village vicinity because such area has been zoned off for reforestation purpose. As presented in Box 1, the gap between customary and statutory laws has lead to land conflicts in the study village.

### Table 11: Comparison of tenure systems in statutory and customary laws

<table>
<thead>
<tr>
<th>Governance issues</th>
<th>Statutory laws</th>
<th>Customary laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Categories of land</td>
<td>Land belongs to the ownership of the entire people with the state acting as the owner's representative.</td>
<td>Land tenure categories include private tenure and communal tenure. Each tenure arrangement applies for specific land types</td>
</tr>
<tr>
<td>tenure</td>
<td>Forest can be managed by state, private, and collective actors</td>
<td></td>
</tr>
<tr>
<td>Use rights</td>
<td>Rights to exploit and enjoy the utilities from forest, granted to the forest owners</td>
<td>Belong to community members on ‘first comes first serves’ basis, granted to outsiders on ad hoc basis</td>
</tr>
</tbody>
</table>

\(^{21}\) See Footnote 14
| Access rights | Rights to walk in the forest, granted to all people, except in special cases | Equal access rights to all community members. Flexible on access rights by outsiders |
| Control rights | Ultimate control rights belong to the state. Forest owners (state or non state) have limited control rights within the given legal framework | Vested in community head or land guardian, community members share responsibilities to execute |
| Transfer rights | Depending on specific type of forest and tenure arrangements, forest owners can mortgage, lease, inherit and transfer land use title | Only within the community for the case of land under private tenure. No transfer to outsiders, except for special case. |
| Tenure security | Vested in forest land use title, which is valid for 50 years | Provided when community members recognize and respect one’s rights to the resource |
| Benefit sharing | National and provincial legal framework available for benefit sharing from forest. Nevertheless, problems occurred with implementation of such regulations | Based on real needs of community members |
| Fiscal and pricing measures to attract investment in forestry | Defined in Forest Protection and Development Law, Investment Law, Enterprise Income Tax Law, and Value Added Tax regulation. | Not mentioned |
| Monitoring of law enforcement | FPD system | Customary leaders |
| Accountability | MARD responsible for the whole country, People’s Committee responsible within its territory | Customary leaders |
| Sanction of violation | By law | By customary leaders |

**Box 1: Conflicts between local and statutory land tenure**

Below are quotations taken from several among various interviews with various local stakeholders in Thua Thien Hue province, which may provide further understanding of the gaps and conflicts between customary and statutory law, as well as the difficulties that all stakeholders are facing.

Opinion of an old man about land issue:

“Households living in this village are facing a difficulty in finding land for farming. We were all born on this land. After years of living in exile from home because of war, we all then returned to this village, working on the field, defending this land since 1973. We have left the land in fallow period for a few years. Recently, all of a sudden one company came and cleared our land to plant forest. Some days ago, I went to clear the forest for rice cultivation, a forester stopped me, saying that this land was already allocated to a company with official documents. I said to him: “This land is mine, and I just work on my land. I don’t know what kind of document you mentioned. It’s my land, why the state did not ask me before allocating it to the
Being present at the interview, a local official immediately interrupted:

“You cannot say so. All matters regarding land must be solved by governmental authorities. Land is owned by the state. The Chairman of commune agreed to allocate this forest land to the company. This means you no longer have right to work on this land as it has been allocated to other user. You first have to stop clearing this land, bring your request to the commune authorities and wait until your matter is solved.”

The old man disagreed and suddenly got angry:

“I don’t know, and don’t need to know what so ever your paper documents. What I know is I am working in my land, and there is no reason to allocate it to others. I have been working here for many years and did not see any company. Now it is unacceptable that the state takes my land without notice. It is now time for field clearance for cropping. We cannot wait. We indeed submit our complaints but nobody listen to us. We would die because of starving if we wait until thing is fixed. We claimed this forest before, and it is still in its fallow. Now we clear it for new crop. It is impossible to say that there is no user in this land and no one can allocate it to other people”.

In order to understand this discussion, we interview the head of the company mentioned in the interview. Here is what he put it:

“We met difficulties in applying for land in Phong My commune. At the beginning, we planned to apply for 700 ha of land but local people protested to get back their land. As forest plantation is getting more profitable, indigenous people start to pay attention to the forest land. Further more, this area did not have any road for transportation. Our company had to invest to open new road to the forest for transportation and protecting the forest from fire. The land conflict with local people is a real challenge for us. Fortunately, the district leaders finally found solutions. The land allocated to us finally got approved but the total area was reduced because of protest of local community. This area of land has been settled and we are now just waiting for the official documents”.

Source: in-depth interviews

7.3 Mechanisms for participation in decision-making and benefit-sharing

At the moment, both the benefit sharing arrangements proposed by statutory and customary laws do not work out as expected. For the legal benefit sharing mechanism, lack of clarity and (economic) compromise with local people is the major reason. At the national level, Decision 178/2001/QD-TTg is meant to regulate the benefits entitlements of forest owners. However, the calculation of benefits for specific owners is too complicated to understand and to monitor the benefit distribution, resulting in rather slow implementation in the field, even five years after its promulgation. On the other hand, the benefit sharing arrangements enacted by customary law, which have been in use for generations, lacks legal recognition from the statutory law. As a result, such mechanism does not work properly or it may violate the existing legal provisions. For example, collection of timber from the forest for housing purpose by local people has been accepted as legitimate under customary practices. Needy people would just need the agreement from the community to collect timber for their house. However, legal regulations require that permit has to be sought from local authorities, without which timber logging for domestic purpose is also considered illegal.

In Thua Thien Hue province, the Decision 1430/2006/QD-UBND of the PPC on benefit sharing of plantation forest has a rather clear calculation of benefits for different stakeholders (see Section 4.3.3). However, such calculation is imposed in a top down manner without
proper consultation with local people. This decision poses substantial economic effects on local households in Thua Thien Hue in general and in Khe Tran in specific. Farmers engaging in forest plantation from state budget in Khe Tran expressed indignation to the loss of economic benefits from their plantation. According to them, a verbal agreement that 30% of total benefits from the plantation would go to the farmer at the harvest time was promised at the planting time. With Decision 1430, there is a clear loss of 18% of total benefit for the farmer. In more concrete terms, there is a potential loss of around 350€ (7 million VND) for each hectare of plantation that the farmer harvest compared to the verbal agreement. Following this calculation, the surveyed households would lose around 245,000€ (490 million VND) from almost 70 ha of plantation which were planted on state budget between 1997-1999 (and are now ready for harvest). On average, there would be a loss of around 16,300€ (32.7 million VND) per surveyed household if the decision were strictly enforced.

Similar to participatory benefit sharing, there are hurdles for the mechanism for participatory decision-making to function as disincentive of illegal activities. As discussed in Section 6.4.2, not all members can participate in the decision making process, following the customary practices. Decision making is mostly done by people of the higher hierarchy and the voice of people of lower hierarchy is less often heard. By launching grassroot democracy policy, the government wants to overcome this problem in statutory laws. Nevertheless, local elites are still dominating the decision making. In Thuy Yen Thuong village, for example, over 400 ha of forest were devolved to the whole village with a requirement that all local households participate in forest management and benefit from this forest. Yet, actual participation of most local households has been rather nominal. Decision making with regard to the allocated forest is mostly done by a forest protection group of 22 people (out of the total 370 households in the village), which is consisted of two people from the village management board and the head and vice head of the ten sub-units. As Vickers and Mackenzie (2006) indicate:

“Apart from those households directly involved in forest protection, community members were not aware of their responsibility to participate in forest protection or of their entitlement to the benefits brought by protection” (p. 11).

Table 12: Distribution of timber benefits in Thuy Yen Thuong village

<table>
<thead>
<tr>
<th>Income from timber sale</th>
<th>Cost in Euro</th>
<th>Cost in thousand VND</th>
<th>% over total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Logging design</td>
<td>135</td>
<td>2,700</td>
<td>2%</td>
</tr>
<tr>
<td>Felling of tree</td>
<td>4,497</td>
<td>89,930</td>
<td>74%</td>
</tr>
<tr>
<td>Monitoring and inspection of felling</td>
<td>125</td>
<td>2,500</td>
<td>2%</td>
</tr>
<tr>
<td>Forest protection</td>
<td>470</td>
<td>9,390</td>
<td>8%</td>
</tr>
<tr>
<td>Ceremony to launch logging</td>
<td>40</td>
<td>800</td>
<td>1%</td>
</tr>
<tr>
<td>Construction of village gate</td>
<td>470</td>
<td>9,400</td>
<td>8%</td>
</tr>
<tr>
<td><strong>Total cost</strong></td>
<td><strong>5,736</strong></td>
<td><strong>114,720</strong></td>
<td><strong>94%</strong></td>
</tr>
<tr>
<td><strong>Balance by August 2006 (in village fund)</strong></td>
<td><strong>348</strong></td>
<td><strong>6,950</strong></td>
<td><strong>6%</strong></td>
</tr>
</tbody>
</table>

Source: Based on Vickers and Mackenzie (2006)

This elite-dominant decision-making consequently leads to the elite-capture of benefits from the forest. As presented in Table 12, most of the 6,084 € (121.67 million VND) benefit from timber harvest from the forest went to the forest protection group and those who felled the trees. Decision on spending was made by the village management board and most of the
expenditures were for the benefit of around 10% of the total village population (Vickers and Mackenzie, 2006).

7.4 Compliance and enforcement mechanisms and (il)legal activities

Similar to the case of benefit sharing, compliance and enforcement of other provisions under legal and customary laws can provide both incentives and disincentives for illegal activities in forestry. Disincentives for illegal activities are created with the benefits (existing and/ or expected) offered by the two law systems. Such benefits include not only economic but also non-economic. For example, economic benefits for people to comply with statutory laws include the use of forest products (e.g. timber and NTFP) at the current time as well as in the future and possibility to renew forest land use title for continuation of benefit derivation. Non-economic benefits include social protection by the community (as generated by customary laws).

Despite of such disincentives, there are various incentives for illegal activities in complying with existing requirements from statutory and customary laws. Firstly, legal framework in Vietnam is rather abundant and not many people are well informed of the legal documents. In the interviews in Thua Thien Hue province, it appears that local people mostly come to know about certain policy/ state regulation when they are having or close to have problems in related issues. In some cases, people do not even know if there are any specific regulations addressing the problem(s) that they are having. Secondly, the existing legal framework is changing too quickly for people to understand. For example, within less than four years three important legal documents have been issued in which regulations on benefits (and obligations) of forest owners are specified: Decision 08/2001/QD-TTg dated 11 January 2001, Decision 178/2001/QD-TTg dated 11 November 2001 and the Law on Forest Protection and Development approved on 3 December 2004. On the one hand, the quick change in legal framework reflects rapid response of policy makers to the changing trends. On the other hand, it creates confusion at implementation level for both local law executing agency and people.

Thirdly, incentives for illegal activities are created at the absence of a clear monitoring system of law enforcement. Despite the fact that the FPD is fully in charge of forest land enforcement, monitoring of law enforcement is still rather weak as the legal system lacks feasible indicators for and participation of local people in the monitoring of law compliance. When wrong doings are not properly monitored and recorded, corrections and readjustments cannot be made one time. In addition, it is likely that people abuse the law or free-ride the others.

Fourthly and perhaps most importantly, absence of proper remuneration for the economic loss due to compliance with currently enforced laws or regulations can initiate or engrave illegal activities. Following a resettlement policy of local authorities, ten households in Khe Tran village moved from their original homestead to a new place in the village center in 2005. To support the resettlement, each household was provided with a 24 m² ready-made house and 1000 m² of home garden. As no cultivated land has been provided, these households have to work on the fields near their old house, which is around 4km from the new place. This significantly implies a loss of at least an hour a day for each laborer in the household for the two-way trip from the house to the field, and thus reducing the actual working time. Furthermore, these households end up relying more on the natural forest near the village for supply of green food as the garden around the new house is insufficiently large and fertile enough for vegetable growing. In fact, these households have so far been
worsen-off and their livelihoods negatively influenced by complying with local authority’s resettlement policy.

### 7.5 Extra-sectoral influences on legitimization of illegal activities

Clearing forest for cropping is one of the currently ‘illegal activities’ in forestry that can be legitimized by external influences. First of all, clearing forest for cultivation is part of the traditional swidden farming practice that local ethnic people have applied for generations. Such activity has been recently regarded by state laws as harmful to forest resources and need to be abolished. Nevertheless, changing of a traditional practice takes time and one should not expect people to completely give up such practice within a period of a few years. In addition, when clearing of forest for cultivation is driven by the need to meet food sufficiency as people are not familiar with newly introduced farming practice, legitimization of such ‘illegal activity’ may be justified. Back to the example of Khe Tran village, the fact that the share of agriculture production in total income of poor households is very low can be mostly attributed to the poor access to cultivated land by these villagers in both absolute terms and in comparison with people with better income (see Table 13). All poor household covered by the survey have neither upland field nor paddy land. Their only agricultural cropping land is the garden around the homestead. In 2006, these household reopened a total of 10ha of field (0.59 ha per capita) from their former cultivation land but cannot use it because such land clearing is considered ‘illegal’. With the threat of hunger, the use of such land would enable these people better access to cropping land and food production.

**Table 13: Access to agricultural cropping land in Khe Tran**

<table>
<thead>
<tr>
<th></th>
<th>Upland (ha/capita)</th>
<th>Home garden (ha/capita)</th>
<th>Paddy land (ha/capita)</th>
<th>Total crop land (ha/capita)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sample average</td>
<td>0.05</td>
<td>0.07</td>
<td>0.01</td>
<td>0.13</td>
</tr>
<tr>
<td>Poor household</td>
<td>-</td>
<td>0.05</td>
<td>-</td>
<td>0.05</td>
</tr>
<tr>
<td>Medium household</td>
<td>0.05</td>
<td>0.08</td>
<td>0.01</td>
<td>0.13</td>
</tr>
<tr>
<td>Rich household</td>
<td>0.10</td>
<td>0.07</td>
<td>0.02</td>
<td>0.19</td>
</tr>
</tbody>
</table>

Source: Household survey

Note: figures are rounded up

Another ‘illegal activity’ that can be legitimizied is ‘ownership of forest by local people’. In fact, the last 15 years have experienced a process of legitimizing forest ownership by local people. Back to the time before 1990s, all forest and land resources were nationalized and state management was the only form of tenure. Private or communal ownership of forest (land) was not legally recognized and thus regarded as ‘illegal’. Various factors have contributed to make such illegal thing legal. The first one is the success in the tenure reform in agriculture sector. Late 1980s and early 1990s showed a rapid increase in agriculture (e.g. from a net rice importer until mid 1980s, Vietnam became a rice exporter in 1989 and second largest rice exporter in early 1990s) as a result of such reform. The improvements in agricultural sector draw important lessons for the forestry sector to follow. The second factor is the influences from international community. With experiences from other countries in the world, donor supported programs have made significant contribution to the development of social forestry, the core of which is forest management by people and for people. Examples are German funded Social Forestry Development Project (SFDP) Song Da in the Northwest region and the Swiss funded Social Forestry Support Program (SFSP) (see Nguyen, 2006a).
7.6 Power relationships and (il)legal activities

One of the power relations that prevails at the moment and has been discussed throughout the report is the coalition of state agencies in forest management. Backed up by the statutory laws and law enforcement power in hand, this coalition has overridden the customary laws of the traditional communities. One consequence of it is that over years local people keep thinking that forest resources belong to the state. People are just hired to protect the forest, which state officials may take back at any moment. Consequently, this sense of insecurity in forest tenure provides disincentive for some people to manage the forest in a legal. Instead, they try to take any open opportunities to appropriate the forest resources for their own benefits.

In addition, absence of legal recognition of customary laws has excluded people from actively involved in monitoring of law enforcement. Law execution and monitoring of enforcement powers are left with state agencies. Consequently, (forest) officials in the power have incentive to abuse their power for own purpose. As earlier discussed in Section 7.1, it is not rare that state officials abuse the power they have for their own benefits.

Furthermore, coalition of powerful individuals and upward accountability of (local) state officials are also connected with abuse of power. Back to the case of Tanh Linh district of Binh Thuan province, illegal logging of such a scale could not happened without the cooperation of local forestry officials (McElwee, 2004). Obviously, without the help of officials at the lower level(s) who directly control the extraction and transportation of forest resources, officials in high position may not be able to make use of the power they have.

7.7 Other issues in relation with (il)legal activities

During our visits and discussion with different stakeholders, it appears that despite the current efforts and call for involvement of different stakeholders, particularly ethnic communities, in management of (natural) forest resources, there is still a strong belief by state foresters that the state is the only and powerful manager of forest. Such belief is likely to hinder the process of devolving forest management rights to local people. Consequently, there is a risk that local people continue to exploit forest resources for their (daily) needs despite of the fact that they are not the legal owners of the forest and are thus not entitled to do so.
8 Synthesis and Conclusions

The report has so far tried to identify and assess the obstacles related to forest governance in Vietnam in general and in the project site in Thua Thien Hue in particular. The discussion indicated that there are interlinks among different levels of forest governance, from the central to provincial, district, and village levels. Consequently, it is impossible to talk about local forest governance in Vietnam without framing the discussion within the legal framework of the national and provincial governments.

The tri-partite approach employed in the course of the study proved to be helpful in viewing forest governance issues in the relationship with statutory and customary laws. Within the core of this relationship, economic issues play a central role, particularly in the shift to an open market economy. In addition, the involvement of people at different levels and with different disciplines during the course of the study reduces the danger of the report being biased to a narrow viewpoint. Nevertheless, one major difficulty observed in applying the tripartite approach is the coordination required to make sure that the contribution of each party involved is constructive to the others’.

Findings from the study indicate the followings:

From the project pilot site:

- **Exclusion of local people in management of (natural) forest resources**: there is currently an inequitable distribution of the forest resources at the local level. As discussed in the paper, while local people have been living in the forest areas for a long time, they currently do not have legal rights to the nearby natural forest. All the natural forest areas near the village are under the management of the state organizations. Nevertheless, a large number of local households still rely on this forest area for their daily needs. It suggests a need to involve local people in the management of natural forest resource to enable them access to needy materials from the forest and to charge them with the duty to manage forest resources in a sustainable way.

- **Sharing of benefits from forest**: benefit sharing has been the most commonly discussed issue. At the provincial and district levels, the legal benefit sharing framework introduced by Decree 178/2001/QD-TTg appeared to be confusing to many forestry officials involved in its implementation due to its ambiguity and infeasibility. Nevertheless, the provincial decision on benefit sharing from plantation forests is confronted with resistance by local people as the terms of benefit sharing do not take into account the concerns of the local people. It suggests that a benefit sharing mechanism that is simple enough to understand and thorough enough to address the concerns of the various stakeholders needs to be developed together with stakeholders at different levels.

- **Investment in forestry activities**: private investment in forestry activities appears to be common in the study site. Nevertheless, investment has only been made in plantation, as the ownership of such forest is clear and the returns from investment are certain for local people. This finding suggests that in addition to clear benefit sharing mechanism, tenure security plays a very important role in attracting investment from various sources in forestry activities.

- **Access to legal information**: it is rather obvious during our visits that local people have poor access to legal information. The ones who are best informed of statutory legal framework are the officials living in the village. Dissemination of legal information to local people mostly depends on how active these officials are. This finding indicates that despite of FPD efforts to educate forestry laws to local people, the impact on people is
relatively limited. Again, this suggests the needs for change in communication approach to bring necessary legal information to the local people.

- **Gaps between national and customary laws**: throughout the field visit, it is generally observed that discrepancies exist between statutory laws and customary practices. In some instances, the former appears to override the latter in theory but the contrary is found in practice. For example, while swidden farming is regarded by state laws as backward and harmful to the forest resources and needs to be abolished, it is recognized by customary laws as an important means of livelihoods for thousands of people. As a result, swidden farming still exists despite of state efforts to put an end to it. This finding suggests that statutory laws should not simply try to disregard rules that have been recognized by local people for general and that have still been important to them. Instead, compromises should be made to adapt the traditional practices to the existing conditions.

- **Existence of traditional forest governance**: Similar to above, despite of a long period of state management over forest resources, traditional forest governance still exists in ethnic communities in the province. Finding indicates that in order to achieve good forest governance, it is desirable to take into account the governance structure that exists in each specific case.

- **Emerging role of non-state sector**: with the shift of only state management of forest resource to multi-holder forestry, it becomes clear that non-state sector can play a substantial role in forest production and management. The discussion shows that private companies and local people can actively participate in local forestry when their rights are respected and their (economic) benefits are realized.

**From the national level:**

- **Role of donor in promoting new ideas**: experiences in VFS over the last 15 years indicate that donor led initiatives play an important role in the forestry development, particularly in terms of social forestry. Not only in terms of financial support, which will be discussed later, donor support programs bring in new ideas and create opportunities to try out these ideas on the ground. This suggests that while external assistance still lasts, it is important for VFS to make use of the opportunities to change the ‘traditional’ thinking of state forestry.

- **Decline in external assistance and new trend in forest investment**: as Vietnam is entering the medium income group, it is likely that the financial assistance from international community will decline. To make up with such decline, it is important that measures need to be undertaken to attract investments from various sources from both inside and outside of the country to meet with the demands for forest development.

- **Forest management and poverty alleviation**: while great potentials exist for forest to contribute to the life of forest dependent poor people, the actual contribution of forest to poverty alleviation has been unclear. With the rolling out of CPRGS to the forestry sector, it is necessary that future forest management will need to emphasize on the social aspects of forestry in order to address the needs of poor forest dependent people.

- **Forest land tenure**: although management rights of forest have been shifted from the state organizations to various stakeholders over the last 15 years, significant areas of forest are still under the management of various state organizations. To promote better involvement of different stakeholders in forest management and more investment in forest development, it is important that area of forest under non state sectors should be extended.
Based on the discussion in the report, the following recommendations are made to the project to strengthen the voices of different stakeholders:

- **Contribute to the pursuit of a meaningful devolution of forest to people:** Although forest devolution process has been going rather fast in Vietnam over the last decade, ownership of forest resources by local people remains rather nominal as restrictive regulations are still governing actual control of forest by local people. It is recommended that the project should work with local authorities in devolving management rights to the local natural forest to the villagers. Whether forest should be allocated to the whole community or households groups of individual households will need to be discussed with local people. To make forest devolution more meaningful, it is important that not only rights to the forest are devolved but also necessary power to make decision on forest resource management is transferred to local people, taking into account the existing traditional governance structure. In addition, necessary back-up should be provided on time to build up the capacity of the local people in handling the newly endowed rights and power.

- **Contribute to the revision of benefit sharing policies and procedures:** Along with devolution of rights to forest, it is recommended that the project participate in the revision of existing benefit sharing mechanisms to make sure that the contents of the policies are understood and agreed by people/actors influenced. Contribution from the project to this aspect can be in two ways: revision of the contents and clarity of the policies and development of practical procedures for local people to harvest forest products from their allocated forest and market or use them in an officially way. Procedures developed in the field can then be documented into simple guidance, which can help improve the feasibility of the current policies.

- **Improve local people’s access to legal information:** As knowledge is power, if local people are knowledgeable of the legal provisions regarding specific real life issues they will be able to raise their voice to protect their rights and benefits. One of the workable ways to improve local people’s access to legal information is through educating them necessary provisions in statutory laws for concrete problems. This is a long term process, which may start with identification of the major problems in natural resource management that people are confronting. After that, concrete legal provisions for each problem need to be compiled. Then, these legal provisions will need to be put in simple language without losing the contents. The next step is to identify specific means of communication, which may include but are not limited to oral means (via radio), visual means (poster, pictures), and verbal means (simplified leaflet). Corresponding communication tools will then be prepared and used for legal education.

- **Provide linkages to credit institutions:** Together with improving access to information, the project can play a role in improving local people’s access to credit. At the moment, Vietnam Bank for Agriculture and Rural Development (VBARD) and Social Policy Bank (SPB) are providing loans in all rural areas of the country. It is recommended that the project can assist local people to link up with these banks in the district. The project can help with the paper works needed to be done for loan application.

- **Involve private sector in helping poor people:** So far most poverty alleviation efforts have been focused on state sector. As 1/5 Company (a private forestry company) has been operating in the pilot site, it is recommended that the project should work together with this company in helping the poor villagers to get out of poverty by engaging in forestry activities offered by the company. By doing so, the project cannot only help the local people in the pilot site in the improvement of their livelihoods but also contribute to
bringing a harmony between them and the 1/5 Company. As a result, both these stakeholders can benefit from the presence of each other.

- **Keep key decision-makers involved:** in order to promote dissemination of ideas developed by the project, it is important to keep decision-makers involved in the whole process by means of direct fieldwork and regular updates. The main reason is to show them the capability of ethnic people in planning, managing and commercializing forest resources when they are given the rights and power to do so. This will give decision-makers practical experience and knowledge, which can influence their decision making. Once decision-makers are convinced, they will become strong supporters for the dissemination of lessons learnt.
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Vietnamese National Assembly: Penal Code, 1999
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Vietnamese National Assembly: Land Law, 2003
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Government of Vietnam: Decree No 119/2006/ND-CP dated 16 October 2006 on organization and operation of forest protection system

Legal Documents Issued by Ministries:

Committee for Ethnic Minorities and Mountainous Areas (CEMMA): Decision 42/QD-UB dated 23 May 1997 on the recognition of the three economic zones in the mountainous remote areas

Ministry of Agriculture and Rural Development: Circular 56/TT-BNNPTNT dated 30 March 1999 guiding the development of community regulation on forest protection and development.


Ministry of Agriculture and Rural Development: Decision 106/2006/QD-BNN dated 27 November 2006 guiding the implementation of community forest management.
Ministry of Justice, Ministry of Culture and Communication, and Standing Board of Father Front’s Central Committee: Inter-circular No 03/2000/TTLT-BTP-BVHTT, BTTUBTUMTTQVN dated 31 March 2000 guiding the implementation of village codes, village regulations for village and residential group.

Ministry of Agriculture and Rural Development: Decision 106/2006/QD-BNN dated 27 November 2006 guiding the implementation of community forest management.
Annexes

A. List of people consulted during the study

Hanoi:

1. Mr. Nguyen Van Tu – Director of Legal Department, MARD
2. Dr. Pham Xuan Phuong – Vice director of Legal Department, MARD
3. Prof. Dr. Nguyen Ngoc Lung – former director of Forest Department, MARD
4. Mr. Nguyen Van Tuyen – staff of Forest Department, MARD
5. Dr. Hoang Xuan Ty – Landuse expert of ADB funded project “Strengthening Institutional Capacity of Local Stakeholders for Implementation of Son La livelihood and Resettlement Plan”
6. Prof. Dr. Ha Chu Chu – Vice director of Institute of Ecological Economy
8. Mr. Pham Quang Hoa – National Program Coordinator of IUCN Strengthening Voices for Better Choice Project
9. Mr. Thomas Osborn – Coordinator of Vietnam Forest Trade
10. List of people participating in meetings in Hanoi in May 2006 and January 2007 and in Hue in March 2007 will be provided by IUCN Hanoi

Thua Thien Hue province:

1. Dr. Nguyen Ngoc Thien – Vice chairman of Thua Thien Hue People’s Committee
2. Mr. Ho Dang Vang – Director of Thua Thien Hue Department of Agriculture and Rural Development
3. Mr. Nguyen Xuan Thieu – Vice director of Thua Thien Hue Department of Agriculture and Rural Development
4. Mr. Tran Huu Nghi – Program manager of Tropenbos International in Hue
5. Mr. Hoang Ngoc Khanh – Director of Thua Thien Hue Forest Protection Sub-department
6. Mr. Chris Dickinson – Chief Technical Advisor of the Green Corridor project
7. Mr. Nguyen Dai Anh Tuan – staff of the Green Corridor project
8. Mr. Thinh - the Green Corridor project
9. Mr. Ton That Ho – Vice director of JBIC funded Watershed Forest Plantation Project
10. Mr. Nguyen Dinh Dau – Director of Thua Thien Hue Department of Natural Resources and Environment
11. Mr. Nguyen Van Binh – Head of the Office of Thua Thien Hue Department of Natural Resources and Environment
12. Mr. Nguyen Van Quoc - Thua Thien Hue Department of Natural Resources and Environment
13. Dr. Duong Viet Tinh – Dean of Forestry Faculty, Hue Agriculture and Forestry University
14. Mr. Hoang Huy Tuan – Lecturer of Forestry Faculty, Hue Agriculture and Forestry University
15. Ms. Nguyen Thi Hong Mai – Lecturer of Forestry Faculty, Hue Agriculture and Forestry University
16. Mr. Ho Hy – Vice director of Thua Thien Hue Forest Sub-department
17. Mr. Nguyen Huu Huy - Thua Thien Hue Forest Sub-department
18. Mr Tran Dinh Vu – Vice chairman of Thua Thien Hue Ethnic Minorities Board
19. Mr. Vo Van Binh – Head of inspectorate, Thua Thien Hue Ethnic Minorities Board
20. Mr. Phan Trong Hoanh – Head of the office, Thua Thien Hue Ethnic Minorities Board
21. Mr. Ben Vickers – SNV in Hue
22. Mr. Le Viet Tam – SNV in Hue
23. Mr. Hoang Bang – Director of 1/5 Company
24. Mr. Bui Phuoc Chuong – Extension and Training Support Project in Hue
25. Mr. Bach Le Quang – Director of Tien Phong Forestry Company Ltd.
26. Mr. Phuong – Head of the Forest Protection and Management Team of Tien Phong Forestry Company Ltd.

Phu Loc district:
1. Mr. Dinh Ban – Chairman of Loc Thuy Communal People’s Committee
2. Ms. Binh – Vice chairperson of Loc Thuy Communal People’s Committee
3. Mr. Mua – Vice head of Thuy Yen Thuong village of Loc Thuy commune

Quang Dien district:
1. Mr. Le Van Thien – Quang Loi Communal People's Committee
2. Mr. Tran Phuong – Farmer in Co Thap village of Quang Loi commune
3. Mr. Tran Quy Quoc – Farmer in Co Thap village of Quang Loi commune
4. Mr. Le Lanh – Head of Co Thap village of Quang Loi commune

A Luoi district
1. Mr. Vo Nguyen Dai – Vice chairman of District People’s Committee
2. Ms. Nguyen Thi Linh Nham – Vice head of the office of District People’s Committee
3. Mr. Than – Vice head of District Forest Protection Unit
4. Mr. Phu – Technical assistant
5. Mr. Ho Mai – Director of UNDP supported project on Community forest management model in A Luoi district
6. Mr. Ho Sinh – Farmer in Village No 5 (formerly A Dut village) of Hong Kim commune
7. Mr. Ho Bui – Traditional village headman of Village No 5 (formerly A Dut village) of Hong Kim commune

Phong Dien district:
1. Mr. Nguyen Van Son – Vice chairman of District People’s Committee
2. Mr. Tran Duc Tat – Vice head of district office
3. Mr. Nguyen Van Dung – District Agriculture and Rural Development Unit
4. Mr. Mien – District Agriculture and Rural Development Unit
5. Mr. Chien – Head of district Forest Protection Unit
6. Mr. Nguyen Van Quyen – Vice head of district Forest Protection Unit
7. Mr. Khanh – District Legal Unit
8. Mr. Tuan – Phong Dien National Park
9. Mr. Nguyen Huu Thuy – Chairman of Phong My Communal People’s Committee
10. Mr. Hoang Chien – Vice chairman of Phong My Communal People’s Committee
11. Mr. Le Tien Hung - Phong My Communal People’s Committee
12. Mr. Phong – Phong My Communal People’s Committee
13. Mr. Tran Viet Loi - Phong My Communal People’s Committee
14. Mr. Tran Ngoc Chieu – Head of Ha Long village
15. Mr. Nguyen Viet Nam – Vice chairman of Pho Trach craft village

Khe Tran village of Phong Dien district
16. Mr. Nguyen Van Mua – Farmer and village head
17. Mr. Nguyen Van Hai - Farmer
18. Mr. Nguyen Van Muoc - Farmer and secretary of village party cell
19. Mr. Nguyen Van Vinh - Farmer
20. Mr. Nguyen Van Quyen - Farmer
21. Mr. Nguyen Van Phi - Farmer
22. Mr. Le Van Linh - Farmer
23. Mr. Nguyen Van Rao - Farmer
24. Mr. Nguyen Van Muor - Farmer
25. Mr. Nguyen Van Me - Farmer
26. Mr. Nguyen Van Mua - Farmer
27. Mr. Le Van Minh - Farmer
28. Ms. Nguyen Thi Tuyet - Farmer
29. Mr. Le Van Huu - Farmer
30. Mr. Le Van Hung - Farmer
31. Mr. Nguyen Van Em - Farmer
32. Mr. Nguyen Van Cuoi – farmer
33. Mr. Hoang Thai Nha – farmer
34. Ms. Tran Thi Nga – farmer
35. Mr. Ho Van Kiem – farmer
36. Mr. Ho Tu Lung - farmer
B. Exchange rates of Vietnamese Dong versus United States Dollar

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<tr>
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C. Excerpt from 2004 Forest Protection and Development Law

Article 7: Contents of State management over forest protection and development

1. Promulgating, and organizing the implementation of, legal documents on forest protection and development.

2. Elaborating, and organizing the implementation of, forestry development strategies as well as forest protection and development planning and plans nationwide and in each locality.

3. Organizing surveys, determination and delimitation of boundaries of forests of all kinds on maps and on field, detailed to the administrative units of communes, wards and townships.

4. Conducting forest statistical and inventory work, monitoring changes in forest resources and land for forest development.

5. Assigning, leasing and recovering forests, changing forest use purposes.

6. Compiling and managing dossiers on forest and land assignment and lease for forest development; organizing registration and recognition of ownership right over planted production forests and forest use rights.

7. Granting and withdrawing permits of all kinds according to the provisions of forest protection and development legislation.

8. Organizing advanced scientific and technological research and application, international collaborative relations and human resource training for forest protection and development.

9. Disseminating and popularizing forest protection and development legislation.

10. Examining, inspecting and handling violations of forest protection and development legislation.

11. Settling forest disputes.

Article 8: State management responsibilities for forest protection and development

1. The Government exercises the unified State management over forest protection and development.

2. The Ministry of Agriculture and Rural Development takes responsibility to the Government for exercising the State management over forest protection and development nationwide.

3. The Ministry of Natural Resources and Environment, the Ministry of Public Security, the Ministry of Defense and the other ministries as well as ministerial-level agencies shall, within the scope of their tasks and powers, have to coordinate with the Ministry of Agriculture and Rural Development in exercising the State management over forest protection and development.

4. The People’s Committees at all levels shall have to exercise the State management over forest protection and development in their respective localities according to their competence.
The Government shall prescribe the organization, tasks and powers of specialized forestry agencies from central to district levels and of forestry officers in communes, wards and townships with forests.

Article 80: Tasks of FPD

1. to work out forest protection programs and plans, schemes on prevention and combat of forest legislation violation and on forest fire;

2. to guide forest owners in elaborating and implementing forest protection schemes and foster forest protection skills for forest owners;

3. to inspect and controlling the forest protection, exploitation and use as well as the circulation, transportation and trading of forest products; prevent and fight acts of violating the legislation on forest protection and development;

4. conduct propaganda among, and mobilize, people to protect and develop forests; to coordinate with commune/ward/township People’s Committees in building and professionally fostering mass forces to protect forests;

5. to organize the forecasting of forest fire dangers and organize a forest fire prevention and fighting specialized force;

6. to protect the forest owners’ legitimate rights and interests when such rights or interests are infringed upon by others,

7. to organize the protection of key special-use forests and protection forests,

8. to join international cooperation in the domain of forest protection and control of the trading of forest plants and animals.
D. List of current forestry related projects and programs in Thua Thien Hue

Source: (Tropenbos International, 2005). Please note that the list is not exhaustive.

1. The Green Corridor - meeting global conservation targets in a productive landscape
Goal: The forests and biodiversity of Vietnam and the Annamites ecoregion maintain their significant contribution to global biodiversity
Budget: 1,996,724 US$, of which 998,634 from GEF; 733,112 from GoV; 173,000 from WWF; and 91,978 from SNV
Timeframe: 2004 - 2008
Implementing Agency: WWF

2. Project on Supporting and Developing Forest sector in Thua Thien Hue
Objective: To develop the production forests with high yield and to provide the forest plantation supporting services to offer favorable conditions for people to have the access to the packaged credit service.
Budget: from WB, amount unavailable
Timeframe: 2005 – 2011
Implementing Agency: Project Management Board set up by PPC

3. Extension and Training Support Project (ETSP)
Goal: Cost-effective systems of demand-driven extension and training are provided to upland farmers to contribute to sustainable natural resources management and improved household livelihoods
Budget: 8,750,000 CHF total (three provinces), 625,000 CHF for Thua Thien Hue.
Timeframe: 01.01.2003 – 31.12.2006 (phase 1)
Implementing agency: Helvetas

4. Project on protection forest plantation in Thua Thien Hue province
Objectives: to plant 4700 ha of protection forests and to develop the infrastructure serving for the forest plantation activities in the project areas.
Budget: 45,100 million VND; of which, 40,000 million VND from JBIC and 5,100 million VND from GoV
Timeframe: 2002-2008
Implementing agency: Project management board set up by PPC

5. Rural Development Program
Objective: Contributing to the reduction of poverty among the rural population of three districts in TTH province by creating the conditions for enhanced economic development.
Budget: 3,935,597 EUR from Finland plus 7,140 million VND by Vietnam
Timeframe: 1999-2008
Implementing agency: MOFA/ DIDC Finland
6. Stakeholders and Biodiversity in the forest at local level
Main objective: To develop appropriate mechanisms for integrating local perceptions and views in decision making and planning.
Budget: n/a
Timeframe: 2003-2006
Implementing agency: CIFOR

7. Strengthening Forestry Management Capacity in Thua Thien Hue Province
Main objective: To strengthen the forestry management capacity in TT Hue Province with special attention to the development of forest management options in the buffer zone of Bach Ma National Park and the North Hai Van Special Use Forest.
Budget: n/a
Timeframe: 1999-
Implementing agency: SNV

8. Tropenbos International Vietnam (TBI)
Main objective: to facilitate the development and implementation of research and capacity building programs in tropical countries.
Budget: around 1.7 million EUR for the second phase (2006-2010)
Timeframe: 2002-2020
Implementing agency: TBI

Main objective: construct a management model for conservation of natural resources in Phong Dien district in collaboration with local community
Budget: 225,000 US$
Timeframe: 2004-2006
Implementing agencies: MacArthur Foundation and Forest Protection Sub-department

10. Community forest management model in A Luoi district
Main objective: to establish a newly settled village of youth to manage and protect the community forest to recover the forest once affected by chemical sprays and to benefit from it.
Budget: 50,000 EUR (40,000 EUR from UNDP small grant program)
Timeframe: 2004-2006
Implementing agency: A Luoi Youth Union