



## **Key issues after the Seminar on Inadequacies and shortcomings in policies versus practice of forest and forestland allocation and post-allocation.**

In preparation for the review of forest and forestland allocation policy under the Letter 2734/BNN-TCLN dated on August 15, 2013, Vietnam Administration of Forestry, in collaboration with Social Policy Ecology Research Institute (SPERI), Consultancy on Development Institute (CODE) and Culture Identity and Resource Use Management (CIRUM) organized a seminar on **“Inadequacies and shortcomings in policies and practice of forest and forestland allocation and post-allocation”** on May 8, 2014 in Hanoi.

There were 57 people in attendance representing representatives from local authorities at communal, district and provincial levels of Lang Son, Lao Cai, Nghe An, Ha Tinh, Quang Binh, Quang Nam and Kon Tum province; representatives from State agencies such as National Assembly Office, Government Office, Central Committee for Economics, Government Committee for Ethnic Minorities, Vietnam Administration of Forestry of the Ministry of Agriculture and Rural Development, Ministry of Natural Resources and Environment and Ministry of Finance; representatives from Forest Protection Offices of Lao Cai, Lang Son, Nghe An, Quang Nam and Kon Tum provinces; scientific experts from research institutes of forestry, agriculture, and environment sectors; representatives from Vietnam Union of Science and Technology Associations and Kon Tum’s Union Science and Technology Associations; representatives from other science and technology organizations, and especially the grassroots consultants who have directly worked on forest and forestland allocation programs in mountainous areas of Lang Son, Lao Cai, Nghe An and Quang Binh provinces, where forest and land overlapping between individuals, households, organizations and companies have occurred since 1997 (Decree 02/1994/NĐ-CP, Decree 01/1995/NĐ-CP; Decree 163/1999/NĐ-CP, Decree 181/2004/NĐ-CP, Decree 200/2004/NĐ-CP and Joint Circular 07/2011/TTLT-BNN-BTNMT).

The goals of the seminar were to identify the nature and root causes of inadequacies/shortcomings in policies on forest and forestland allocation and between legal documents versus actual implementation; and to identify why long-standing conflicts caused by post-allocation between individuals and companies, companies and communities, and communities and State agro-forestry enterprises remain unresolved at localities. The seminar’s outputs are expected to provide practical inputs for further review and assessment for adjustment of the forest and forestland allocation policy under the Letter 2734/BNN-TCLN dated on August 15, 2013.

Prof.PhD. Nguyen Ba Ngai, Deputy Head of the Vietnam Administration of Forestry, in the opening speech, emphasized that “forest and forestland allocation was once seen as an effective solution for agricultural development, contributing to poverty reduction for people whose lives depend upon forest resources. After decades of policy implementation with hundreds of meetings and conferences, a question still arises: “Has the livelihood of forest-dependent communities/people been secured?” and remains unanswered. The answer is expected to be determined through continuous review and assessment of forest and forestland allocation over decades of implementation by the Vietnam Administration of Forestry.

In practice, implementation of forest and forestland allocation policy has often ignored feedback from local authorities at communal and/or provincial levels and also lacked independent criticism from scientific experts, especially consultancy organizations on methodology of conducting forest and forestland allocation and resolving conflicts during the allocation process (including post-allocation conflicts).

PhD. Doan Hoai Nam, Deputy Head of Forest Protection Bureau spoke of four topics for discussion and analysis including: (i) Forest and forestland allocation policies are inadequate, lacking consistency and synchronization; (ii) Inadequacies in practice, while policies are incomplete; (iii) Obstacles and difficulties in the implementation; and (iv) Good models of forest and forestland allocation and post-allocation, and solutions towards better policy amendment.

Forest and forestland allocation is the foremost policy focusing on identifying forest and forestland rights, serving as a foundation for further formation and implementation of other forest-related policies. While agricultural land allocation has been implemented relatively effectively under Decree 64/1993/NĐ-CP since the early 1990s; policies on forest and forestland allocation that are continuously revised, and amended, still face inadequacies and shortcomings.

This affects forest resources management and protection, especially the lives of over 25 million people living closely with forest and forestland.

Opinions contributed by 17 participants during the seminar focused on four groups of issues:

### **1. Group 1 of issues: Inappropriate, unsynchronized and inconsistent policies**

#### *a. Forest contract policy under Decree 01/1995/NĐ-CP and Decree 135/2005/NĐ-CP:*

Contract policy for forest and forest land protection aims at encouraging people to protect the forests so that to improve their income, to an extent, indicated its relevance in the 1995.

However, rearrangement and renovation of State forestry enterprises for forestry production have created loopholes for contractors to transfer significant areas of forest and forestland from one owner to the others, from workers to companies and/or from farmers to state officials, while the legal framework for “the forest post-contract” was not in place to properly manage the situation. This was one of the key inadequacies leading to other shortcomings, especially when the contractors largely came from State forestry enterprises (later transformed into “self-financing forestry companies”). For instance:

(i) After forest and forestland were contracted to workers and local people, the land transfers and sales became uncontrollable, often causing overlapping/conflicts between State organizations and individual households, and amongst the contracted households (normally coming from outside). A new social class of “the landlord” has formed.

(ii) In many places, some State organizations have taken advantage of this policy to give preferences/contracts to outside individuals, prompting a huge concern to the local people, who are now better aware of the values of forest and forestland as priceless property under the Law. When faced with these cases, they becomes difficult to resolve, largely due to the lack of budget for compensation (contracts broken, investment lost);

(iii) Given the 50-year grant for forest protection contract to households or group of households (sometimes included private business), the State agencies are actually unable to manage/control the forestland and forest. This has also affected the self-control of forestry businesses/companies (especially in accordance to Resolution 28 of Politburo and Decree 200/2004/ NĐ-CP on re-arranging and renovation

of State forestry enterprises);

(iv) In some areas, during implementation of forest and forestland allocation, there are cases of allocating forestland to households/individuals on the already contracted areas (i.e. simply transferring from ‘Green Book’ as contracted title for forest protection to ‘Red Book’ meaning forest land rights).

Given the above issues, many participants recommended that the contract policy for forest and forestland protection should be reconsidered for dismissal in order to improve land use and management and allowing more forestland areas to be redistributed to local people especially ethnic minority households who are in seriously need of productive land.

*b. Forest and forestland allocation and post- allocation:*

Inadequacies at the strategic level:

(i) In reality, households and communities are not yet considered as priority groups for forest and forest land allocation as per the policy document. Under Decree 38/2007/TT-BNN on guiding procedures for forest and forestland allocation for organizations (i.e. State and Economic Organizations), these organizations can easily access information on unallocated land areas and they are supported in completing paperwork for allocation (Article 6, Section II). As for households and communities, since they do not have access to such information, they are in a powerless position to apply for forest and forestland allocation. They also have to sit and wait for the district/commune periodical allocation plans followed by district and communal authorities’ approval and that is often associated with further waiting for budget plans from either central governments or projects to actually respond.

(ii) The guideline to resolve earlier shortcomings in forest and forestland allocation i.e. recent Joint Circular 07/2011/TTLT-BNN-BTNMT is not yet sufficient to resolve all the issues. Many past allocations were conducted merely on paper and maps without actual field surveys, leading to boundary overlapping whereby a land plot could have more than one owner; or no clear boundaries between land plots which were identified or wrongly demarcated of the areas/sizes. However, resolutions to these were yet fully addressed in the Joint Circular 07.

(iii) Benefit-sharing policy from forest and forestland allocation is still controversial. provisions are not clear and specific. For example: definition of primary products/by-products; pruning/thinning smaller trees; and benefits sharing mechanism of forest products. There are unrealistic provisions, such as who to assess forest quality and volume for use and access, how and on what criteria. For households and communities, who should conduct forest assessment? There are inconsistencies in rules of domestic timber exploitation i.e. between Decision 178/2001/QĐ-TTg (regulate benefits sharing) and Decision 186/2006/QĐ-TTg (regulate forest management). Procedures for timber exploitation are also too complicated and benefit sharing mechanisms are not effective – providing little incentive to implement.

(iv) Policies to support production land for ethnic minority people in the mountainous areas have yet to be integrated with policy on forest and forestland allocation. For instance, policy on compensation for production land after resettlement of ethnic minority households (for example, due to hydro-power projects) has not considered forest and forestland as part of the basic source for livelihood of households and communities but has merely considered agriculture land (i.e. areas for planting rice, secondary crops and aquaculture). There are very few projects working on forest and forestland allocation plans. Policies supporting production land for poor households which are lacking land e.g. Decision 132/2002/QĐ-TTg (in Central Highlands), Decision 134/2004/QĐ-TTg and Decision 1592/QĐ-TTg have just specified the provision of agriculture production land. Indication of support of forest production land has only recently been supplemented in the Joint Circular 04 of the Prime Minister guiding on implementation of Decision 755/QĐ-TTg of 2013. Forestry extension programs have not yet integrated the post-allocation support for

households and communities such as guidelines on inter-cropping or agro-forestry farming in the allocated forestland areas.

## **2. Group 2 of issues: Policies remain incomplete to address practical needs**

The following issues haven't been addressed or remain unresolved:

(i) *Creating land reserve(s) for households and communities has not been strongly addressed:* Guidance on forest and forestland allocation only focuses on procedures and steps for allocation but does not tackle how to create the land reserve for (re)allocation. The State has already reviewed land areas from State forestry enterprises to relocate to localities; but has not formulated policy on resolving associated issues (i.e. compensation, conflicts resolutions). Many areas thus have been unable to reclaim the land and redistribute to households and communities.

(ii) *Supports and guidelines after post-allocation of forest and forestland.* After the allocation, households and communities have not been supported and guided on how to use and manage forest and forestland effectively. Even key State supportive policies such as Program 661 have not reached households and communities. Intercropping and agro-forestry farming are essential to ethnic minority households; but regulations on intercropping and agro-forestry farming during the allocation (under the Law on Forest Protection and Development and other under-law documents e.g. Decree 23/2006/NĐ-CP, Decision 186) have not been institutionalized in the Circular 38/2007/TT-BNN. As a result, income generation from only a forest protection contract (if any) and/or forest benefits (often too complicated in procedure) can not secure people's lives so as to encourage them further protecting the forests.

(iii) *Discrepancies in forest use, management and protection as well as classification of types of forest(s) between the forestry sector and the traditional customs of ethnic minority.* Many forest areas that are inherently spiritual forests and watershed forests strictly protected by the community by their tradition have turned into production forests during allocation based on classification of the forestry sector. As these forests have not been recognized as special use/protection forests, the community has not been entitled to obtain rights and benefits from the forest policy.

(iv) *Forest and forestland allocation for households and communities has not been closely discussed with policy on financial resources for implementation:* According to State's policy, funds for the allocation should come from State budget. However, due to poor co-ordination between State agencies, the guidelines on forest and forestland allocation have not been informed by and closely linked with guidelines from the Ministry of Finance on funds preparation and disbursement (i.e. proportion supported by the State and those by each locality). Financial resources are a precondition for good implementation of this policy. Yet the practice shows that in areas with high coverage of forests and land, they are often too poor to have sufficient funds to conduct forest and forestland allocation for the households. Therefore, in order to allocate forest and forestland to these people, most of the localities need to rely on projects' funds. However, money from these projects is insufficient to meet actual demands. After the allocation, the localities have not prepared a budget to cover for forest protection payments or rice support for contracted households. For instance, the forest and forestland allocation in the Central Highlands for households and communities under the Decision 304/2005/QĐ-TTg has been suspended due to many areas still owed rice and could not pay the local people for forest protection as scheduled.

## **3. Group 3 of issues: Challenges in implementation**

- Relevant authorities and agencies have not paid sufficient attention to the forest and forestland allocation, especially to households and communities although this is extremely important for the livelihood, socio-economic development and stability and defense security of ethnic minorities. In many

localities they have not focused on allocation although the unallocated land remains large. Central Highlands is the home to many ethnic minorities; however, the rate of allocation for households and communities is very low, accounting for less than 3% of the total forestland areas. The lack of attention often means that (i) local authority do not prepare an annual budget for this action; (ii) they make excuses for delays in allocating forest and forestland to households and communities (complicated, trouble-making and time-consuming, fear that people will sell the allocated land or cannot protect the forest...). Thus, the progress of implementation is at a snail's pace. The results show that the allocation is mainly implemented under the Decree 02/1994/NĐ-CP and Decree 163/1999/NĐ-CP. Since the issuance of the Land Law in 2003 and Law on Forest Protection and Development in 2004, especially from 2007 to present, the results of implementation haven't been recorded much. According to the review of the Project on forest and forestland allocation in 2007 made by the Ministry of Agriculture and Rural Development (project under Decision 2740/QĐ-BNN-KL), the allocation has accomplished less than 1% compared to the planned targets since 2007.

- Lack of consistent systems: There is lack of efficient co-ordination between the Natural Resources and Environment sector/agency and the Forestry sector/agency in organization and implementation. The database and maps of these two sectors/agencies are inconsistent. Until now, these sectors/agencies have not reached consent on statistical indicators of the forestland, leading to the situation that each sector follows their own statistical system, causing the big discrepancies in the forestland statistics. The transfer of records (maps, tables) from the forestry sector to the allocation profiles specified by the Natural Resources and Environment sector/agency is complicated, inconsistent and time-consuming. The shortage of consistency and synchronization in allocation organization, rush to have things done quickly and bureaucratic implementation (in papers and maps only) have attributed to the conflicts in use and over-exploitation of the forest products amongst forest owners/users. The land allocation has not been connected to forest allocation either (assessment of forest features), overlapping in land ownership titles (more than one owner in the same forest/forestland plot), and actual demarcation was not conducted. These realities caused by earlier allocation processes occur widely throughout the country, resulting into the low rate of actual land ownership and inefficient use and management of the forests. Despite households and communities being allocated with forest and land, their forest and land rights are often not secured, making it hard to incentivize and enforce forest management (little benefits sharing and lack of assessment of forest quality and quantity), creating further barriers in implementation of PES under Decree 99/2010/NĐ-CP, especially REDD+ program.

- Allocation without participation: Participation of the local people in the forest and forestland allocation is very important in order to achieve the mutual agreement and benefits amongst forest users/owners for effective post-allocation forest protection and to avoid conflicts. Being aware of this importance, it is stipulated in the Circular 38/2007 that "Forest allocation, lease and withdrawal should be participatory and public". Nevertheless, only a few pilot projects follow this principle.

- Inappropriate type of allocated forests and land:

(i) *For the poor households*: the allocated forests are located either very far from residential areas or in an inconvenient direction, or the allocated forests are too poor that it takes too long and costs too much for the households to regenerate the forests before receiving benefits (normally very small or unfeasible), making the people reluctant to accept forest allocation. There are cases, when the households have never visited their forest since they were allocated, allowing opportunities for loggers to destroy the forests (in the Central Highlands).

(ii) *For the communities*: in some areas, the allocated natural forest is not attached with local traditional practices and customary law governing (spirit forest, watershed forest...); benefits from the forest are neither available nor sufficient for forest protection, e.g. once the project's support closed, no

further efforts in managing and protecting the forests were attempted (in Vi Chơ Ring village, Kon Tum province and communities in Quang Nam province);

- Other related issues: Lack of close monitoring and supervision of forest management and protection of functional agencies. The stage of uncontrollable and unsupervised transfers from protection forest and special use forests to production forests and vice versa for the immediate benefits without closed monitoring and strictly following forest classification criteria has happened in various areas. As a result, forests have not been effectively managed and have even rapidly degraded due to immediate changes of purposes. Planning activities by sectors and regions and competing interests from businesses have also hindered the forest and forestland allocation progress.

#### **4. Group 4 of issues: Policy adjustment and models of forest management, protection and development**

##### *a. Models of forest management and protection:*

The practice of forest and forestland allocation shows that poor households face many difficulties in management and protection of forest and land after the allocation. Their shortage of capital and limitation in production capabilities provide little incentives for them to use and manage forest and land effectively. Some of the poor households can manage and protect the forest well, often thanks to the external support or wider co-ordination and co-operation with other households in the community.

As for households that have good financial resources and production capabilities, they often co-operate with other households in planning the production land areas e.g. regenerating and protecting natural forest, inter-cropping and agro-forestry farming. Some great models of effective use and management of forests have also been identified such as: (i) Mr. Vi Van Chau (Tay minority) and Mr. Ly Van Than (Dzao minority) in Bac Lang commune, Dinh Lap district, Lang Son province; (ii) Khe 5 village, Son Kim commune, Huong Son district, Ha Tinh; (iii) Truong Son Forestry co-operative in Huong Son district, Ha Tinh province; (iv) Cao Quang commune, Tuyen Hoa district, Quang Binh province.

As for communities where the allocation is closely attached with traditional customs and practices, forests have been managed well by the community's culture and for the collective interests of the whole community without depending on external support: (i) Models of allocation for community forests in Lung Sui commune, Si Ma Cai district, Lao Cai province; (ii) Communities in Minh Son and Hoa Son communes, Huu Lung district; Dong Thang commune, Dinh Lap district, Lang Son province; (iii) Communities in Hanh Dich commune, Que Phong district, Nghe An province.

##### *b. Solutions towards assessment, review and policy adjustment of forest and forestland allocation*

To assess the effectiveness of forest and forestland allocation for further policy adjustment, the following actions should be prioritized:

- Conduct actual field research, analysis and assessment of the inadequacies in localities for further adjustment and completion of the policies;
- Conduct field survey and assessment of successful and unsuccessful models of allocation and post-allocation in forest use, management and development to draw lessons learnt for further policy adjustment;
- Review the system of policies related to forest and forestland allocation. Sort out those that are inappropriate, those need to be supplemented/amended and those are appropriate;
- Conduct analysis and assessment of policies on forest protection contract, forest and forestland allocation, transfer from contract to other forms of allotment to find out the nature of obstacles, inconsistency and incompleteness of the policies: (i) forest and forestland allocation; (ii) forest and forest

land protection contract; (iii) forest and forest land lease; (iv) auction of the ownership title of planted/unplanted forests;

- Review the transparency and publicity of forest and land reserves, especially of Forest Management Boards and forestry companies to resolve the shortcomings / insufficiencies. This is crucial to further identify the actual owners/users and allowing a forest and land reserve for allocation/relocation for those who lack land especially ethnic minorities households and communities;

- Reconsider dismissing the policy on forest and forestland protection contract (Decree 135/2005/NĐ-CP). Review forest and forestland that was earlier allocated/contracted under the effects of Decree 01/1995/NĐ-CP and Decree 02/1994/NĐ-CP but not to the right target-groups or too large land-areas (up to hundreds of hectares) contracted to households that needed to be redistributed; Formulate policies to return those forests and forestland and re-allocate them to households that lack production land;

- It is important and culturally significant /sensitive to formulate policies specifically for forests strongly attached with ethnic minorities traditional practices (such as spiritual forests, forests for ceremonies and special rituals, watershed forests...);

- There is a need for changing mindsets and establishing transparent institutional setup for forest and forestland allocation adjustment. Attitudes and awareness of roles, responsibilities and the importance of allocation of forest and forestland to households and communities must be prioritized. Promoting the allocation to households and communities, especially forests that are close to community and their traditional culture should also be prioritized.

## **CONCLUSION**

1. Conduct actual field research, review, assessment and analysis of inadequacies, inconsistencies, discrepancies and shortcomings for current policies versus practices to inform better decisions on forest and forestland allocation policy in the future;

2. Issuance of policies should meet practical needs, especially with distribution and benefit sharing. Dismiss the effects of Decree 135/2005/NĐ-CP on contract for forest protection. Review forest and forestland areas earlier allocated/contracted (under Decree 01/1995/NĐ-CP and Decree 02/1994/NĐ-CP) but not to the right target groups or too large land-areas (up to hundreds of hectares) contracted to households that needed to be redistributed; Formulate policies to return those forests and forestland and re-allocate to households that lack production land;

3. Forest management and protection for improvement of livelihood of ethnic minority people living in mountainous areas, environment protection and the national economy should be the priority focus in the coming policy adjustment of forest and forestland allocation;

4. Economic incentives and social improvement should be priority tasks in the policy adjustment. There is a need for changing mindsets of allocation policy, especially further promoting the allocation/redistribution of forest and forestland to households and communities;

5. Review land and forestland allocated to State organizations and re-allocate to local people. Adjust policies to make them suitable and considerate of local and regional characteristics/conditions, particularly in the areas of ethnic minority people;

6. Authorities and agencies at all levels should pay sufficient attention to forest and forestland allocation, particularly for households and communities of ethnic minority groups. Establish an independent supervisory and monitoring and fines mechanism to guide those who transfer and exercise inappropriate land and forest uses;

7. The upcoming action plan is to organize field trips to research and evaluate the implementation of forest and forestland allocation in localities with participation of local people who are facing obstacles, together with scientific experts and specialized institutes (focus on forest and forestland allocation and resolving overlapping) and seeking solutions towards the better policy-improvement on allocation, resolving inadequacies and shortcomings and improving the lives of forest-dependent communities.