SUMMARY
Policy Messages for Draft Amended Law on Forest Protection and Development

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I. BACKGROUND

Laws governing forest and forestry have always played an important role in the sustainable development of Vietnam. The laws are important to the country’s economy; social development through hunger and poverty reduction in remote mountainous areas; and environmental protection and adaptation to climate change. The 2004 Law on Forest Protection and Development (LFPD) has had some positive results but also some shortcomings. The law, methodologies, scope of regulation and policies on forest and forestry often do not match reality on the ground or adhere to international best practice. Therefore, it is vital the law be amended.

The revision of forest law has attracted much attention from governmental agencies and law agencies, international and domestic non-government organizations, professional associations, social organizations, scientists and the expert community. In the past years, the group of social organizations called Forestland Alliance (FORLAND) coordinated by the Center for Indigenous Knowledge Research and Development (CIRD) has actively consulted communities, studied and made recommendations for improvements in policies and laws on forest protection and development.

The Vietnamese Government and National Assembly is currently amending the Law on Forest Protection and Development (LFPD) so that it more closely matches reality. FORLAND has cooperated with Vietnam Union of Science and Technology Associations (VUSTA), Vietnam Administration of Forestry (VNFOREST), Ministry of Agriculture and Rural Development (MARD) and Committee of Science, Technology and Environment of Vietnamese National Assembly (CSTE) to organize workshops to formulate ideas, opinions and recommendations from scientists and experts to develop a draft LFPD amendment.

This summary is based on FORLAND’s recommendations for amendments to the LFPD.

II. MAIN SUMMARY CONTENT

1. Forest owners should have more rights to protect natural forests

The regulations on the rights of forest owners to natural forests have not encouraged people and communities to be involved in the management, protection and use of natural forests. Therefore, millions of hectares of natural forests are not owned by anybody. Besides, the current policies have promoted the conversion of natural forests to planted forests or other forms because of greater perceived benefits. The government’s aim of socializing forestry is stopping at planted forests because natural forests are requiring huge sources for being protected and developed. Moreover, the state effort and investment in protecting natural forests will be wasteful because the current policies have not got people’s involvement. According to many research and consultation by FORLAND since 2012, the natural forest owners should be granted more rights, especially those for their benefits.

2. The rights of forest owners to natural forests are limited and impractical

According to the Law on Forest Protection and Development (No.29/2004/QH11), many rights of forest owners to planted production forests have been recognized and implemented. Accordingly, the reforestation has shown impressive results.
For example, forest cover has increased from 37% in 2005 to 40.84% in 2015; the amount of timber produced by households has also increased from 2 million cubic meters to over 6 million cubic meters each year. However, regarding natural forests, the LFPD only stipulates the use rights for forest owners under different conditions. A survey by FORLAND indicates that 100% of forest owners and households do not agree with their rights. The natural forests are still owned by the government despite being developed by individual investment. The most substantial benefits for forest owners come from Payment for Forest Environmental Services (PFES). However, this benefit is not significant enough to get people’s involvement in managing and protecting natural forests⁴.

3. Much area of natural forest is un-owned

Much natural forest is under the management of communal People’s Committee (CPC). On 31 December 2015, Vietnam had 10,175,519 hectares of natural forests managed mainly by state forestry companies and forest management boards (53.8%). The rest (2,460,527 hectares) was managed by households and communities (24.18%). 1,867,985 hectares of natural forests without owners are managed by CPCs. This area was recovered from state organizations and allocated to local authorities under restructuring and developing program. Despite being supported by local rangers, CPCs are incapable of protecting natural forests because of huge distance, difficult transportation and complicated society. Consequently, nearly 2 million hectares of natural forest is at risk of loss and degradation. In some provinces, the natural forests have not been allocated to households, but to some communities. According to the local authorities, natural forest should not be allocated to forest owners if they have not gained the rights and benefits from them.

Graph 1: Area of natural forests managed by different owners (hectares)

Decision No.3158/QD-BNN-TCLN dated 27/7/2016 of Ministry of Agriculture and Rural Development

4. Un-owned natural forests will increase in the future

Currently, state forestry companies (SFCs) have been restructured under Decree No.118/2014/ND-CP. Hundreds of thousands of hectares out of over 1 million hectares of natural forests managed by SFCs are allocated to the government because of poor production. The mountainous CPCs will get more pressure on forest protection after being allocated more natural forests because of limited resources and capacity.

5. Natural forest owners leave the forests untouched

Most natural forests allocated and managed by households and communities are not being developed. According to studies conducted by FORLAND in various provinces in the past years, forest owners only protect and improve the forest quality with support from projects. In some cases, natural forests giving special values to forest owners such as water source protection, residence and production protection and sacred forests are protected and developed. In the absence of external support, most forest owners, typically households make no significant investment into forest protection and development because there has been no specific regulation on protecting their rights to natural forests.

**Box 1. Forest owners are not motivated to invest in forest protection and development**

“In 2004, we found outsiders exploit 1.5m³ in our forests during our patrolling. We followed the right procedure from informing local authority to informing the Forest Protection Unit (FPU). After that, we also supported them to move the amount of timber to the FPU. However, we got no benefit from that. Although we are leading a difficult life, we still get the forests for protection under the state policy. We feel painful when seeing the destroyed forests. However, we feel sadder because we get no right and benefit from the forests. At this rate, we will not patrol the forest any longer. If we encounter a forest violation, we will not inform to not waste our effort, put us in danger, incur phone cost or offending others, even without being blamed for losing forests”.

Shared by group of Mr. Dao Viet Thang, Son Thuy commune, A Luoi district, Thua Thien Hue province.

6. People wait for natural forests to become poor for plantation

The current policies not only fail to protect natural forests, but instead promote forest loss and degradation. Vacant lands and poor forests may be converted into planted forests that bring more benefits to forest owners than that of natural forests. Accordingly, people prefer not to manage natural forests. Unprotected natural forests eventually degrade and become vacant land, paving the way for planted forests. During public consultations, people have said they would wait for natural forests to become poor to then allow for plantation.

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7. Natural forest owners should be granted more rights under the Constitution of the Socialist Republic of Vietnam

According to Article 53 in the Constitution of the Socialist Republic of Vietnam, “land, water resources, mineral resources, resources in the sea and airspace, other natural resources and property managed or invested in by the State are public property, owned by all the people and represented and uniformly managed by the State”. Natural forests considered as “other natural resources” are owned by the State. However, those which are invested and protected by forest owners is the property created and protected under human impact.

8. Forest owners who do not lose forests should be granted more rights

Forests bring various values to local people, especially ethnic minority people whose livelihood and culture depend on forests. If the forests are allocated to the rightful owners, the forests will be sustainably protected, bringing more benefits to forest owners as well as environmental and biodiversity protection. Lessons-learnt from other countries show that forests are better protected and developed when the forest owners are granted more rights. In Indonesia, granting forest owners with the right of forest enjoying (similar to ownership without transferring) has partly contributed to the success of community-based forests. In 1993, the Nepalese Government issued Forestry Law that recognized and protected the rights of forest management and use for people and communities. Accordingly, the Nepalese people have invested their time and other resources in protecting the allocated forests. In Nigeria, the 2004 Forestry Law recognizes the property rights of individuals and communities to forests. At the same time, a number of law enforcement cadres change their role into supporting people to manage the forests. As a result, over 200 million trees planted on 5 million hectares of land have increased 500,000 tons of food, which improves the livelihood for 2.5 million people.

9. Communities should be granted rights of forest management through their customary law and traditional conventions

Most livelihood and culture of ethnic minorities in Vietnam are associated with natural forests. They also have full understanding about the forests that they have been using. Accordingly, they have developed a set of regulations on forest use and management for a long time. Besides, the Kinh communities living near the forests have developed regulations on society management including forest management. Their customary law and traditional conventions have impacted different areas of social life, including forest management and protection. However, the studies and lessons-learnt from community forest models show that people should be granted more rights over allocated forests to make use of their customary law and traditional conventions. Communities should have rights to prevent illegal forest violations, use forests for common purpose and individual purpose within the community.

7 FORLAND, 2014. Consultation results on the impact of 2004 Law on Forest Protection and Development on households and communities in Lao Cai, Thua Thien Hue, Dak Lak and Lam Dong.
10. The rights over forests should be equal among forest owners

The 2004 LFPD has recognized “village communities” as one of forest owners. However, in comparison with other forest owners, “village communities” have fewer rights. Therefore, community-based forest management has not become popular although it has proved suitable within current context of Vietnam in terms of both theory and practice. The communities are incapable of mobilizing resources for forest investment, preventing illegal violations with strong legal basis and building a strong mechanism of forest management among members. Besides, the communities have no right to involve in forest-related civil transaction. Take PFES for example, the transaction is conducted by individuals rather than community.

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